

# The Fifteenth Annual Liman Colloquium

## Accessing Justice, Rationing Law

Thursday, March 1

3-4            **Registration**

Yale Law School, 127 Wall Street, Room 122

4:15           **Welcome**

4:30-6:30    **Gatekeepers to Justice: The State of State Courts, 2012**

Most state constitutions guarantee “open courts” and rights to remedies. Further, in 1963, Gideon v. Wainwright established a constitutional right to counsel for indigent defendants facing felony charges. Implementation of these rights, however, continues to occupy the legal profession. A 2004 report on criminal counsel by the American Bar Association’s Standing Committee on Legal Aid & Indigent Defendants reached “the disturbing conclusion that thousands of persons are processed through America’s courts every year either with no lawyer at all or with a lawyer who does not have the time, resources, or in some cases the inclination to provide effective representation.” On the civil side, California counted 4.3 million civil litigants without lawyers in its courts in 2009; New York tallied 2.3 million in 2010, and that number includes almost all facing evictions and 95 percent of those in family conflicts. This opening panel will take up an overarching question for the twenty-first century: how can courts respond to the demand for their services?

**The Honorable Tani Cantil-Sakauye**  
Chief Justice  
California Supreme Court

**The Honorable Margaret Marshall**  
former Chief Justice  
Supreme Judicial Court of Massachusetts

**The Honorable Sue Bell Cobb**  
former Chief Justice  
Alabama Supreme Court

**The Honorable Chase Rogers**  
Chief Justice  
Connecticut Supreme Court

**The Honorable Wallace Jefferson**  
Chief Justice  
Supreme Court of Texas

**The Honorable Randall T. Shepard**  
Chief Justice  
Indiana Supreme Court

**The Honorable Jonathan Lippman**  
Chief Judge  
State of New York

## Friday, March 2

8:30-9 am Breakfast

President's Room, Woolsey Hall

9:15-11:00 ***Gideon* Revived: Criminal Defense, Financial Austerity, and Overcriminalization**

As state courts experience severe cuts, layoffs, and furloughs, the criminal justice system continues to produce defendants, detainees, and prisoners. More than a half century ago, the debate was whether the federal constitution mandated that indigent criminal felony defendants be provided state-paid lawyers. Contemporary discussions focus on *Gideon's* scope and implementation. Some state courts have responded by creating mechanisms for public defenders to decline assignments and by recognizing pre-conviction habeas review of ineffective assistance of counsel. Other responses include task forces, diversion programs, and sentencing reforms. Questions include: What remedies can courts order, and what are the limits on what judges can do? Should lawyers decline appointments when their caseloads become too large? What role might prosecutors play in selecting cases? What can the executive branch do? What forms of rationing, by which institutions, are acceptable? Should the narrative be one of progressive realization of constitutional ideals or of a failure of political will to support courts and litigants?

Discussants: **The Honorable Sue Bell Cobb**, former Chief Justice, Alabama Supreme Court  
**The Honorable Wallace Jefferson**, Chief Justice, Texas Supreme Court  
**The Honorable Jonathan Lippman**, Chief Judge, State of New York

Commentators: **Andrea Marsh**, Executive Director, Texas Fair Defense Project, Liman 2002-03  
**McGregor Smyth**, Managing Attorney, Civil Action Practice and Reentry Net Director, Bronx Defenders, Bronx, NY

Moderator: **Sia Sanneh**, Senior Liman Fellow in Residence, Yale Law School, Liman 2007-08

11:15-1:00 ***Gideon* Reconceived: State Subsidized Lawyers for Civil Litigants— In and Outside the United States**

Both the federal government and several states—including California and New York—have provided statutory access to civil legal services for low-income people, and a few jurisdictions also provide that, as a matter of state constitutions, some civil litigants have counsel rights. But, as New York's Chief Judge Jonathan Lippman cautioned in 2011, "we cannot provide a lawyer to every poor person with a legal problem, as much as we would want to. What we are seeking is to provide legal representation to those struggling to access life's most basic necessities, such as shelter, food, and personal safety." These materials reflect on how and why certain kinds of proceedings are characterized as "civil" or "criminal," and how – and which institutions – decide priorities for legal counsel. Variables proposed include age, income, the type of service

sought, and the kind of claim raised. And, of course, the United States is not alone in facing funding challenges, as current developments in the United Kingdom and European Union make plain.

- Discussants: **Helaine Barnett**, former President, Legal Services Corporation  
**The Honorable Tani Cantil-Sakauye**, Chief Justice, California Supreme Court  
**Hazel Genn**, Dean of Laws, Professor of Socio-Legal Studies and Co-Director, UCL Judicial Institute in the Faculty of Laws at University College London  
**Gillian Hadfield**, Richard L. and Antoinette S. Kirtland Professor of Law and Professor of Economics, USC Gould School of Law and Visiting Professor of Law, Harvard Law School  
**Rebecca Sandefur**, Senior Research Fellow, American Bar Foundation  
**Dr. Angela Ward**, Référéndaire, Court of Justice of the European Union, Luxembourg and Adjunct Professor in EU and Human Rights Law, University College Dublin
- Commentators: **Talia Inlender**, Public Counsel, Los Angeles, California  
**Jorge Baron**, Executive Director, Northwest Immigrant Rights Project, Seattle, WA, Liman 2005-06
- Moderator: **Allison Hirschel**, University of Michigan Law School, Liman 1997-98

1:15 – 2:30

**Lunch**

**Yale Law School**

2:45 – 5

**Alternative Courts and Alternatives to Courts**

**President's Room, Woolsey Hall**

Many jurisdictions (in and outside of the United States) are exploring alternatives to civil and criminal litigation. Mediation, arbitration, and settlement are encouraged, and many advocate “problem-solving courts” or specialized courts, with names such as homeless courts, drug courts, reentry courts, veterans’ courts, girls’ courts. Trade-offs abound, as some of these alternatives are not voluntary, and some do not permit lawyer participation. Moreover, such alternatives are less public than adjudication. This segment focuses on the extant experimentation, the successes, the risks, and the relationship of these alternatives to constitutional, statutory, and common law rights of litigants. Questions include what types of litigants and cases have been sent to alternative courts, the sustainability of innovation, and the relationship of these changes to the ideology of “rights to remedies.”

- Discussants: **The Honorable Randall T. Shepard**, Chief Justice, Indiana Supreme Court  
**Tom Tyler**, Professor of Psychology, New York University and Senior Research Scholar in Law, Yale Law School  
**William Vickrey**, former Administrative Director of the Courts, California
- Commentators: **Lisa Dugaard**, Liman Fellow 1998-99 and Deputy Director, The Defender Association, Seattle, WA  
**Allegra McLeod**, Liman Fellow 2008-09 and Law Research Fellow, Georgetown University Law Center
- Moderator: **Judith Resnik**, Arthur Liman Professor of Law, Yale Law School