Who Pays? Fines, Fees, Bail, and the Cost of Courts
Twenty-First Annual Liman Colloquium
Yale Law School, April 5 and 6, 2018

In the last decades, growing numbers of people have sought to use courts, government budgets have declined, new technologies have emerged, arrest and detention rates have risen, and arguments have been leveled that private resolutions are preferable to public adjudication. Lawsuits challenge the legality of fee structures, money bail, and the imposition of fines. States have chartered task forces to propose changes, and new research has identified the effects of the current system on low-income communities and on people of color. The costs imposed through fees, surcharges, fines, and bail affect the ability of both plaintiffs and defendants to seek justice and to be treated justly.

This Colloquium explores the mechanisms for financing court systems and the economic challenges faced by judiciaries and by litigants. We address how constitutional democracies can meet their obligations to make justice accessible to disputants and to make fair treatment visible to the public. Our goals are to understand the dimensions of the problems, the inter-relationships among civil, criminal, and administrative processes, and the opportunities for generating the political will to bring about reform.

Thursday, April 5, 2018
4:10 to 6:00 pm   Fines, Fees, Bail, and the Financing of Justice: Political Will and Paths to Reform

Democracies promise “open courts” and “access to justice,” but the costs of being involved in the courts have steadily risen. In both the civil and criminal legal systems, litigants have been subjected to an array of charges. This panel opens the 2018 Liman Colloquium by exploring the central questions: Who pays for courts? What has produced the current inequalities? What changes are underway? Will profound reforms take place?

Alexes Harris  Presidential Term Professor, University of Washington, Department of Sociology
Nathan Hecht  Chief Justice, Supreme Court of Texas; Member, National Task Force on Fines, Fees, and Bail Practices
Dannel Malloy  Governor, State of Connecticut
Mary McQueen  President, National Center for State Courts; Member, National Task Force on Fines, Fees, and Bail Practices
Diane Wood  Chief Judge, U.S. Court of Appeals for the Seventh Circuit

Moderator: Judith Resnik, Arthur Liman Professor of Law, Founding Director, Liman Center for Public Interest Law, Yale Law School

6:45 to 9:00 pm   Dinner reception, YLS Ruttenberg Dining Hall
Friday, April 6, 2018

8:15 to 8:45 am  Breakfast

8:45 to 10:00 am  Understanding the Challenges Faced by Low-Income Litigants
A significant body of research is developing on legal financial obligations (LFOs) imposed by courts. Civil plaintiffs and defendants in civil and criminal litigation face an array of fees, surcharges, and special assessments, including fines and sanctions. Some of the charges are levied by the public sector and others from private-sector providers. This session explores when courts impose LFOs, the possibility of obtaining fee waivers, the situations faced by juveniles and their families brought into the justice system, and the role played by lawyers in creating or mitigating debt.

Brandon Buskey  Staff Attorney, ACLU Criminal Law Reform Project
Andrew Hammond  Lecturer, The University of Chicago Law School; Of Counsel, The Sargent Shriver National Center on Poverty Law
Devon Porter  Liman Fellow, 2016-2018, ACLU of Southern California
Jeffrey Selbin  Clinical Law Professor, UC Berkeley School of Law; Faculty Director, Policy Advocacy Clinic

Moderator: Monica Bell, Associate Professor of Law, Yale Law School
Limant Fellow, 2010-2011

10:15 to 11:45 am  Bail and Bond
Bail systems across the country have come under renewed scrutiny, as research has documented the impact of money bail on individuals and communities. This session explores the function and harms of the current systems for criminal defendants and for immigrants and the reforms underway.

Emily Bazelon  New York Times Magazine, Staff Writer; Truman Capote Fellow, Yale Law School
Nina Rabin  Clinical Professor of Law, University of Arizona College of Law; Director, Bacon Immigration Law & Policy Program; Senior Liman Fellow in Residence, 2012-2013
Paul Heaton  Senior Fellow and Academic Director, Quattrone Center for the Fair Administration of Justice, University of Pennsylvania Law School
Robin Steinberg  Founder, The Bail Project

Moderator: Marisol Orihuela, Clinical Associate Professor of Law, Yale Law School; Liman Fellow, 2008-2009
12:00 pm       Box Lunches Available in YLS Ruttenberg Dining Hall

12:15 to 1:15 pm   The Consequences of Legal Debt
New initiatives and research projects aim to document the impact of LFOs on individuals’ lives and on the courts. This session focuses on what is known and what needs to be learned to bring about reform.

Nancy Gertner       Senior Lecturer on Law, Harvard Law School; U.S. District Court, D. Mass. (Ret.)
Michael Morse       J.D. Candidate at Yale Law School; Ph.D. Candidate in Harvard’s Department of Government
Mitali Nagrecha    Director, National Criminal Justice Debt Initiative, Criminal Justice Policy Program, Harvard Law School
Keith Fisher        Principal Consultant & Senior Counsel, Domestic and International Court Initiatives; Staff Counsel, National Task Force on Fines, Fees, and Bail Practices
Jon Wool           Director of Justice Policy, Vera Institute of Justice

Moderator: Fiona Doherty, Clinical Professor of Law, Yale Law School
Senior Liman Fellow in Residence, 2011-2012

1:30 to 3:00 pm   Legal Theories of Mandates for Change: Litigating Economic Barriers to Courts
Several lawsuits have brought challenges to fees, bail, and fines. Arguments are based on state and federal equal protection and due process clauses, provisions prohibiting excessive fines, constitutional commitments to open and accessible courts, and on statutory claims. In the U.K. and in Canada, recent decisions have relied on the state’s provisions of courts as the basis for finding unlawful fees that impose “substantial” hardships. This segment explores the range and kind of legal theories advanced so as to understand whether and how law can intervene.

Beth Colgan         Assistant Professor of Law, UCLA Law
Cary Franklin       W.H. Francis, Jr. Professor, University of Texas School of Law
Alec Karakatsanis   Founder & Executive Director, Civil Rights Corps
Reva Siegel         Nicholas deB. Katzenbach Professor of Law, Yale Law School
Ivy Wang            Staff Attorney, Southern Poverty Law Center; Liman Fellow 2013-2014

Moderator: Miriam Gohara, Clinical Associate Professor of Law, Yale Law School
3:15 to 4:30 pm  **Political Will and Making Change**
How and when do social and political movements mobilize to bring about new rules? This panel focuses on how to engender public support for courts and litigants, even as some jurisdictions have imposed more costs, such as by limiting judicial discretion to waive fees. Examples of efforts to mitigate the challenges to justice come from task forces in states, such as Connecticut and Illinois, that have undertaken research and proposed reforms, and from initiatives by many organizations seeking to reframe the practices of prosecutors and of courts.

- **Bill Clendenen**  Co-Chair, Task Force to Improve Access to Legal Counsel in Civil Matters; Founder, Clendenen & Shea, LLC
- **Derek Cohen**  Director, Center for Effective Justice, Texas Policy Foundation and Right on Crime
- **Tim Fisher**  Co-Chair, Task Force to Improve Access to Legal Counsel in Civil Matters; Dean & Professor of Law, University of Connecticut School of Law
- **Miriam Krinsky**  Executive Director, Fair and Just Prosecution
- **Mike Lawlor**  Under Secretary for Criminal Justice Policy and Planning, Connecticut
- **Cathy Malloy**  First Lady, Criminal Justice Reform Advocate, Connecticut
- **Steven Pflaum**  Chair of Illinois’s Statutory Court Fee Task Force; Partner, Neal Gerber Eisenberg

**Moderator:** James Forman, Professor of Law, Yale Law School

4:45 to 6:00 pm  **Alternative Financing and Alternative Norms**
Changing systems require new models of costs, services, and processes in order to support both courts and users. Possibilities include innovative technologies and alternative revenue sources. This session explores ways to make change sustainable.

- **Robert Ebel**  Consultant and former Lead Economist at the World Bank Institute
- **Lisa Foster**  Co-Director, Fines and Fees Justice Center California Superior Court, San Diego (Ret.)
- **Gloria Gong**  Director of Research and Innovation, Government Performance Lab, Harvard Kennedy School
- **Tanina Rostain**  Professor of Law, Georgetown Law School
- **Joanna Weiss**  Co-Director, Fines and Fees Justice Center
- **Crystal Yang**  Associate Professor, Harvard Law School

**Moderator:** Anna VanCleave, Director, Liman Center, Yale Law School

6:30 to 9:00 pm  **Dinner reception, YLS Ruttenberg Dining Hall**