

Andrew Nelson

Liman Summer Fellowship in Public Interest Law 2015

ACLU of Washington

Final Report

As a Liman summer fellow in public interest law, I spent the summer working on criminal justice projects with the American Civil Liberties Union of Washington's Policy Advocacy Group. Headquartered in Seattle, the Washington State chapter of the ACLU is one of the largest and most robust affiliate offices of the national American Civil Liberties Union. The organization has played an essential role in many recent important state-level legal and legislative victories, including marriage equality and the decriminalization of marijuana. While the ACLU is well known for defending liberty in court, the Policy Advocacy Group (PAG) takes a holistic approach to the defense of civil liberties in Washington State, pursuing a full array of strategies not limited to civil rights litigation. In addition to working closely with the legal department to bring cases forward, develop legal strategy, prepare legal briefs, and monitor enforcement, the PAG team works to develop and promote policies that reflect a commitment to civil liberties. The PAG team works with legislators and the Governor's office, writes laws for initiative campaigns, builds stakeholder coalitions of legal and social organization and distributes information publicly. My summer work as a Liman fellow primarily supported three of the ACLU of Washington's current criminal justice projects: the ACLU's work to protect civil liberties and promote effective, community-based practices in the mental health system; the Washington Campaign for Smart Justice; and the voting rights campaign for people with criminal convictions.

The world of mental health laws and services is remarkably complicated, cutting across multiple state systems including social and health services, corrections and Medicaid and resulting in various forms of court involvement. Broadly speaking, in my previous criminal justice work, my

awareness of the mental health service world stopped at the sweeping and true statement that much of our criminal justice system is attempting to address what are at root public behavioral health issues. What this statement fails to note, however, are the complex issues facing our nation's chronically underfunded public behavioral health systems, as well as how closely the crisis service, civil commitment and criminal justice systems can be connected. Prior to ACLU litigation, in Washington State people in mental health crisis could be left shackled to an emergency room bed for days without care, waiting for a publicly funded bed; and people deemed mentally incompetent to stand trial could be held in jail for months without services, waiting for availability at the state hospital to treat them such that their trials could even begin. Moreover, the problems facing the mental health system are not just a lack of beds and funding, but an inadequate attention to the legal and moral requirement to provide care in the last restrictive setting available, an obligation which was made clear in the US Supreme Court's 1999 decision in *Olmstead v. L.C.*

In the wake of two recent major court victories regarding inadequate mental health services in Washington state as well as a slew of new legislation this past session, the ACLU of Washington was working this summer to actively promote system reforms and good policies related to mental health, rather than defensively litigating illegal practices and lobbying against restrictive laws. My work throughout the summer supported this effort, largely through the writing and distribution of a series of research memos on mental health statutes, system organization, litigation and best practices as well as changes occurring as a result of the Affordable Care Act. One of my most interesting projects in this area involved researching states whose mental health systems underwent substantial reforms as a result of Department of Justice litigation and *Olmstead* enforcement since 2010. In addition, working on this project proved particularly instructive on the impact of Medicaid expansion and the Affordable Care Act on public health, as well as the immensely complicated state-level programs and procedures that are undergoing changes as a result of these national policies. As

part of the mental health team, I also participated in monthly “sync” meetings of staff from across the agency and coalition partners to report on progress, assess the changing situation and set goals. These meetings informed my research throughout the summer, illuminating ways that litigation is connected to policy development and enforcement, and how lawyers fit into a comprehensive system of legal aid organizations, policy groups and service providers in this arena.

My second set of projects related to the Washington Campaign for Smart Justice, which is part of the national ACLU’s Smart Justice, Fair Justice campaign. The national ACLU is pursuing an ambitious goal of halving the nation’s incarceration rate in the next five years, and with so much of the nation’s jail and prison population incarcerated in state and local facilities, state affiliate chapters will be essential in reaching this goal. Washington faces a slightly different set of issues than most states in achieving this goal, with a relatively progressive Department of Corrections and proportionally fewer individuals incarcerated for drug offenses than in other states. My main project was to compile information about who is currently in Washington’s prisons, with particular attention to what sentences they were charged with, how long they are staying in confinement, how old they were at the time of the offense, and the racial proportionality of these measures when compared to the state’s demographics. In this project, I combined information from statewide reports, public databases and ACLU public records requests.

My final set of projects supported the ACLU of Washington’s voting rights project. While people with felony convictions in Washington State have their voting rights automatically restored on completion of their sentence, many people are unaware of their restored right to vote or wrongly face local barriers to voting. This summer, the ACLU of Washington’s field team was working to distribute educational materials, especially to Latin@ voters in Yakima County, who historically have been underrepresented in local politics. I assisted in preparing mailings to community-based

organizations likely to work with people who have criminal convictions across the state, sending informational letters to the organizations as well as flyers for them to distribute to their clients.

Preparing mailings, while essential work in community education, can feel like an onerous task without a tangible impact on people's lives. Shortly after sending off our first mailing, however, we received a phone call from a pastor in Yakima County thanking us for the materials. The pastor noted that he and the ACLU of Washington had been on different sides of issues many times, but appreciated that the organization reaches out to community organizations across issues related to civil liberty regardless of political beliefs. In a message to the entire staff of the ACLU of Washington, the Executive Director thanked the field team and summer staff for our work in support of this project, sharing the pastor's words of support. While the voting rights project was only a small and occasional part of my summer fellowship, it was wonderful to be reminded of the real world impacts of this system-level work.

One particularly memorable moment from the summer was sitting in on the ACLU of Washington's legal committee meeting in July. A number of prominent Washington State lawyers sit on the organization's legal advisory committee, and they meet once a month with legal staff to discuss cases and legal strategy. Sitting in on a legal strategy meeting for civil rights cases was like a scene out of a legal drama, underscoring everything that is important and exciting about public interest law. It was a truly inspirational experience, and one that I am grateful to have witnessed.

My experience as a Liman fellow in public interest law, however, affirmed my decision not to go to directly to law school on graduating from Princeton this year. My experience provided insight into how litigation is a limited tool to be used judiciously as one component of comprehensive public interest work. Litigation is a powerful tool for enforcement and to incite change in deeply entrenched institutions, but it is a slow and expensive process that sometimes results in targeted rulings that fall short of wider goals. This summer, for example, we saw the passage of a civil

commitment law in Washington State that was more regressive with regard to civil liberties, even as the courts were affirming the state's obligations to provide timely and appropriate care in the criminal mental health system.

In a system as complex as public mental health, legally minded efforts need to approach the issue from multiple perspectives including policy, service delivery, funding and litigation. The staff of the Policy Advocacy Team at the ACLU of Washington are lawyers who practice law as one piece of their work, and it is this kind of a career that I hope to pursue in the future: one informed by and deeply engaged in legal work, but that is embedded in comprehensive efforts to support people's livelihoods and life chances. To that end, I hope to continue working in public service organizations in the years to come, and to eventually attend law school with a very specific focus on supporting and enhancing public interest work.

Starting with the spring conference focused on the ethics and legality of detention, the Liman program provided great support throughout the summer fellowship. If I had to make a recommendation, I would encourage the Liman program to connect summer fellows more actively to yearlong fellows leaving law school and alumni from both programs, particularly if these people are located in the same city or region as the summer fellow's placement.

I am deeply grateful for the opportunity to work at the ACLU of Washington as a Liman summer fellow in public interest law. The experience was enriching, fascinating and informative, and it will undoubtedly shape the path I take in the coming years.