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Programmers, manufacturers, and military personnel could all escape liability for unlawful deaths and injuries caused by fully autonomous weapons, or “killer robots,” Human Rights Watch said in a report released today. The report was issued in advance of a multilateral meeting on the weapons at the United Nations in Geneva.

The 38-page report, “Mind the Gap: The Lack of Accountability for Killer Robots,” details significant hurdles to assigning personal accountability for the actions of fully autonomous weapons under both criminal and civil law. It also elaborates on the consequences of failing to assign legal responsibility. The report is jointly published by Human Rights Watch and Harvard Law School’s International Human Rights Clinic.

“No accountability means no deterrence of future crimes, no retribution for victims, no social condemnation of the responsible party,” said Bonnie Docherty, senior Arms Division researcher at Human Rights Watch and the report’s lead author. “The many obstacles to justice for potential victims show why we urgently need to ban fully autonomous weapons.”

Fully autonomous weapons would go a step beyond existing remote-controlled drones as they would be able to select and engage targets without meaningful human control. Although they do not exist yet, the rapid movement of technology in that direction has attracted international attention and concern.

Human Rights Watch is a co-founder of the Campaign to Stop Killer Robots and serves as its coordinator. The international coalition of more than 50 nongovernmental organizations calls for a preemptive ban on the development, production, and use of fully autonomous weapons.

The report will be distributed at a major international meeting on “lethal autonomous weapons systems” at the UN in Geneva from April 13 to 17, 2015. Many of the 120 countries that have joined the Convention on Conventional Weapons are expected to attend the meeting of experts on the subject, which will continue deliberations that started at an initial experts meeting in May 2014.

Human Rights Watch believes the agreement to work on these weapons in the Convention on Conventional Weapons forum could eventually lead to new international law prohibiting fully autonomous weapons. The Convention on Conventional Weapons preemptively banned blinding lasers in 1995.

A key concern with fully autonomous weapons is that they would be prone to cause civilian casualties in violation of international humanitarian law and international human rights law. The lack of meaningful human control that characterizes the weapons would make it difficult to hold anyone criminally liable for such unlawful actions.

Military commanders or operators could be found guilty if they intentionally deployed a fully autonomous weapon to commit a crime, Human Rights Watch said. But they would be likely to elude justice in the more common situation in which they could not foresee an autonomous robot’s unlawful attack and/or were unable to stop it.

“A fully autonomous weapon could commit acts that would rise to the level of war crimes if a person carried them out, but victims would see no one punished for these crimes,” said Docherty, who is also a lecturer at the Harvard Law School clinic. “Calling such acts an ‘accident’ or ‘glitch’ would trivialize the deadly harm they could cause.”

The obstacles to accountability would be equally high under civil law, Human Rights Watch said. Civil liability would be virtually impossible, at least in the United States, due to the immunity granted by law to the military and its contractors and the evidentiary hurdles in product liability suits. Many other countries have similar systems of sovereign immunity. Even if successful, a civil suit would have limited effectiveness as a tool for accountability. The primary focus of civil penalties is compensating victims, not punishment. While monetary damages can assist victims, they are no substitute for criminal accountability in terms of deterrence, retributive justice, and moral stigma.

A system in which victims could receive compensation without proving legal fault also would not achieve meaningful accountability, and most governments would be hesitant to adopt such a system, Human Rights Watch said.

The accountability gap is just one of a host of concerns raised by fully autonomous weapons. In other publications, Human Rights Watch has elaborated on the challenges the weapons would face in complying with international humanitarian law and international human rights law. It has also noted concerns about the potential for an arms race, the prospect of proliferation, and questions about whether it is ethical for machines to make life-and-death decisions on the battlefield.

“The lack of accountability adds to the legal, moral, and technological case against fully autonomous weapons and bolsters the call for a preemptive ban,” Docherty said.
During the 2015 winter term, 34 students traveled to 15 different countries, representing 19 cities across the world to work with organizations such as European Bank for Reconstruction and Development, Judicial Reform Foundation in Taiwan, National Children's and Youth Law Centre in Australia, and Legal Resources Centre in Ghana. Through the Independent Clinical Program students represent clients and dedicate their skills to meet the legal needs of the community.

Wossen Ayele ’16 traveled to Kigali and Lake Kivu, Rwanda, for an independent clinical placement at the Rwanda Development Board, where he prepared documents for investment negotiations for energy projects and helped to vet proposals from foreign investors.

Kyun Saiidnia ’16 undertook an independent clinical at the National Children's and Youth Law Centre in Sydney, Australia, researching a copyright case and developing materials about cyber safety.

Sarah Weiner ’15 traveled to Metro Manila and Palawan, Philippines, to research the country's legal strategies to promote climate change adaptation.

Kelvin Kesse ’15 traveled to Kema, Ghana, and conducted research for new legislation on human trafficking as part of an independent clinical placement with the Legal Resources Center.
MISSOULA — Montana has the strictest law in the nation governing the “sell by” date for milk, forcing grocers to dump untold thousands of gallons of perfectly good food every week. That’s why a documentary film crew from Harvard Law School’s Food Law and Policy Clinic was in town on Friday to interview Pattee Creek Market owner Jim Edwards.

“We went through a bunch of big ideas throughout the semester and finally settled on this law in Montana, which requires milk to be thrown out 12 days after pasteurization, and we just thought this is good because it’s such an extreme example of the bigger problem,” said clinic director Emily Broad Leib.

Emily Deddens, a law student, said she has been working with Broad Leib and Rebecca Richman Cohen, a filmmaker who teaches media advocacy at Harvard Law School, to illustrate the issue of food waste and how food dates, specifically, contribute to the problem.

“We went through a bunch of long-running interest of ours that’s around how we’re wasting so much of the food we produce in the U.S. We’re looking at how these laws – like the law we’re looking at in Montana – are the cause of that waste,” said clinic director Emily Broad Leib.

Deddens said only one other state has a requirement for the number of days that milk is allowed to sit on a retailer’s shelf.

“In Pennsylvania it’s 17 days, and in any other state they either have no law at all or they just require a date, but they don’t specify what the date has to be,” she said. “It differs state by state, but many states don’t necessarily regulate whether you can sell or donate the milk even after the date.

“But in Montana, you can’t sell or donate when that 12 days passes.”

Wyoming and Idaho have no specific date labeling requirement. Montana’s strict law was implemented in 1980 by the Montana Livestock Board, and it has survived many attempts to change it over the years.

Most recently, Rep. Greg Hertz, R-Polson, introduced House Bill 399 this past February aimed at getting rid of the rule, but it was tabled in committee and appears to be dead.

“Montana has a law for 12 days, but studies have shown that it’s just as fresh after 28 days, so we’re trying to understand whether that impacts consumers or what they think that date means,” Broad Leib explained. “It’s arbitrarily very short, and it’s not just a waste of people’s food but a waste of money.

“This law makes no sense. It’s really bad for consumers. But even though Montana is the strictest on milk, other states are strict on other things. Again, it’s not just milk. With all of these foods, it’s a quality date. It’s when the manufacturer thinks you get the peak quality on that food. And yet, 90 percent of consumers think it’s about safety, and they throw perfectly good food away.”

Edwards said dairies don’t want the rule changed, because it means grocers like him have to buy more milk. It also keeps milk prices higher in Montana than in surrounding states.

“Every time I have to throw out a gallon of milk I cringe,” Edwards said. “Because it’s not 50 cents. It’s $2.50, and the grocery business is a penny business.”

Because of the threat of lawsuits, Edwards said he can’t donate the milk to homeless shelters, even though it’s fine to drink for weeks after the “sell by” date. He has found a woman in the Bitterroot Valley who gives it to her horses, but most grocery stores simply send it down the drain or to the landfill.

“Little cartons of milk, they go bad quick,” Edwards explained. “But they’re dated for 30 days or something like that. But the gallons never go bad. Half gallons go bad before gallons because anything in a bigger container will last longer. It’s just like wine. A big great huge bottle of wine will age better than a small bottle of wine.”

“Which is the craziest thing of it, is that the bigger gallons have the sooner dates, but your half gallons have a date that is further out, so it’s the opposite of science,” Broad Leib added.

The women all agreed that most people have no idea that they are throwing out perfectly good milk or that grocery stores are forced to do the same.

“Most people think that if they eat that food after the date, they are going to get sick,” Broad Leib said. “Consumers see one date and think they must throw it away. We’re trying to raise consumer awareness. If you divert some of that food that is going to waste, you can actually alleviate some of the hunger and food insecurity problems in this country. And milk is a very environmentally intensive product to make.”

Richman Cohen said the hope is for the film to play a part in a larger advocacy campaign. “We hope that it raises general awareness about these laws and expiration dates, the fact that milk, even when it spoils, doesn’t pose a safety risk,” she said. “Pasteurization kills all the pathogens. So it’s going to be a little gross if you drink spoiled milk, but it’s definitely not a danger. So people that are just going based on dates and throwing it out just because of the ‘sell by’ date are costing themselves a lot of money and wasting good food. And so we hope to educate consumers and we also hope to change laws.”
The 2015 edition of the Harvard Law School Semester in Washington has now ended. During our semester, we escaped the worst winter in Boston’s history; saw the convening and first 100 days of a new Republican-controlled Congress and later, the first days of the 2016 presidential campaign; struggled in class to find genuine policy solutions to the long-term problem of police/community relations; worked in government offices across the city and across the political branches; and had a time full of learning and new experiences.

In these three months, we have tried to model and learn from great government policy lawyers. We’ve done so by exploring issues arising from our placements and our work in government, and also from the headlines and our own interests: from the structure of elections to marijuana policy; from labor law to human rights; from crime, policing and justice to education policy. We’ve learned from one another, from government lawyers and policy makers in our placements, and from leaders in government and the private sector. We met fascinating people, including Supreme Court Justice Stephen Breyer, Senator Mike Lee and his Counsel, Benji McMurray, Presidential Advisor Valerie Jarrett, Ebola Czar and Policy Guru Ron Klain, and Google Public Policy Director Adam Kovacevich.

We’ve looked at what policy making means and the building blocks that make up rigorous and thoughtful policy making. We’ve tried to expand our thinking about policy making to include “nudges” and changes to the bureaucracy and governmental leadership. We worked on some critical skills for the policy lawyer and heard some pretty good elevator pitches and PowerPoint presentations. We visited the Supreme Court and watched two terrific oral advocates argue before the Court. We set goals for ourselves; met many; and missed a few too. We worked hard at our placements and shared and learned from each other’s experiences. We thought about the ethical responsibilities of the government lawyer and what it means to take care that the laws be faithfully executed, while the President and the Attorney General were regularly being criticized for failing to do so (and a new Attorney General waited the entire semester to be confirmed because she agreed with the President on this issue). We read about what makes a great organization in the social sector great and how leadership figures into that. We ventured outside the Washington of tourists and monuments and served some of the people who call Washington home. We shared a few meals together and got to know one another a bit better. For each of us, there were expectations met, expectations missed, and surprises too.

As always, what was most gratifying for me was the chance to get to know each of you a bit and to create a small community of learning away from Cambridge. I have enjoyed learning from you and seeing your energy and passion for justice over the past three months. I hope I have helped channel that energy and passion and that you will now take your places as leaders who will contribute in real and measurable ways to improving our country and our world. In whatever you do next and throughout your career, there will be opportunities for you to serve.

Please don’t hesitate to call on me if there is ever anything I can do for you. For our graduating 3-Ls, my congratulations to you all on a job well done. For our 2-Ls, I will be in Cambridge in the fall to recruit for our Semester in Washington Class of 2016, and I hope to see some of you there. For all of you, if you are ever near the Main Justice Building, please drop me a line and let’s find time to catch up.

My best to you all. Enjoy the summer!
Anthony was nervous. Sitting across from him was the North Korean Minister of Health. Armed guards stood nearby, ready and waiting. Did a drop of sweat slip off of Anthony’s brow? Perhaps caused by the steamy Pyongyang summer? Or perhaps it fell because Anthony knew that lives depended on this conversation. He opened his mouth to explain.

How did he get here? It was the refugees; they led him here: the North Korean refugees fleeing into China. Anthony, an expert in public health who was then pursuing his graduate studies at the Harvard School of Public Health, had been moved by their stories and had devoted himself to searching for solutions to their plight. In the end, the search led him here, into the Democratic People’s Republic of Korea (DPRK, or North Korea) itself. He knew the only way to truly help the refugees was to tackle the problems that had forced them to leave in the first place: lack of food and basic healthcare.

DPRK was, and is still, suffering from a catastrophic tuberculosis epidemic. People are dying from a curable disease. So many people are infected that there are not resources to treat everyone. In an effort to insure equal access to healthcare, the government requires hospitals admit everyone who needs treatment. However, a patient needs to take medicine continuously over at least six-months in order to cure the infection. Because hospitals are overcrowded with patients, they are forced to discharge patients after only two months of treatment. This not only leaves them uncured, it also contributes to the rise of drug-resistant strains of the bacteria. These super bug strains (known as multi-drug resistant TB, or MDRTB) are much more costly to treat. If they spread, they pose a formidable threat to global public health.

Anthony explained to the DPRK Minister of Health his plan: to open companion clinics to house TB patients discharged from current hospitals. There, North Korean medical personnel could continue to administer their drugs up to completion. Anthony would also raise money to buy food for the hospitals, for both the patients and the staff. How could Anthony make all of this happen? He would form a nonprofit organization in the U.S. and conduct fundraising there. Anthony watched the Minister… how would he respond?

Suspicious at first, the Minister soon saw that Anthony sincerely wanted to help. The Minister was a man devoted to improving the lot of his people, and was overjoyed to meet someone with Anthony’s energy and creative ideas. Not only did the Minister agree to support Anthony’s plans, he also instructed his men to escort Anthony wherever he wanted to go, even to regions where foreigners were usually prohibited. Anthony visited clinics around the country, and when he returned to the U.S. he threw himself into building his team and laying the groundwork for what he hopes to be his life’s work: the non-profit organization Justice And Health.

So where do I come in? I was Justice And Health’s student attorney. As a 2L in my third semester of law school. Unbelievable, right?

While Justice And Health was planning how to prevent a major global health catastrophe, its members had not exactly prioritized the legal details of forming a nonprofit. Anthony came into the Transactional Law Clinics for our first meeting, along with Terrence Park, the organization’s administrative mastermind, looking for help with securing federal tax-exempt status. This status is crucial to their mission—without the status they cannot get donations; without donations they cannot build clinics; they cannot feed starving people.

We agreed to take them on as clients, and immediately realized that their incorporation documents were incomplete. I drafted amended articles of organization for them as well as organization by-laws. Then I assembled a massive amount of information for their tax-exempt status application. During my conversations with Anthony and Terrence, I learned what it’s like to try to save the world. And my questions about technicalities actually flagged some important issues that were hard to see from their big-picture vantage point. For example, no one knew who would own clinical property: Justice And Health or the DPRK government.

After a great amount of legal research, several meetings, and many cups of coffee, I had everything ready to go. I was one email away from filing their application. Then something unexpected happened. “I had a meeting with folks on the ground and have some updates. When can we speak on the phone?” After spending time reflecting on the details of their clinical construction plan, Justice And Health had changed their strategy. Better to start small and grow from there—instead of an independent clinical unit, they would build a soymilk factory and bakery within the clinical compound. They would supply the ingredients for both. This project would take much less capital to get started and could be up and running much faster than a full clinic.

So my application was out the window. Time to begin on another version. Even acknowledging the hiccups along the way, words cannot express how much working with Justice And Health helped me grow as both a person and as an attorney. Transactional law probably does not seem like the place to promote a better world. But, after just a few weeks in the Transactional Law Clinics, I was helping do just that.

“Justice And Health has been so fortunate to have access to a resource like the Harvard Transactional Law Clinics,” Anthony Lee said. “Nonprofits like ours that are just getting started face all sorts of legal hurdles. Our TLC student advocate both helped us identify what we needed to do and how. Because she was still learning about this area of law, she brought a level of enthusiasm and curiosity that we couldn’t have expected elsewhere. Not to mention that the price was reasonable enough that our nascent organization could take care of the legal stuff without sacrificing progress on our broader goals.”
Building Community Dialogue with the Help of Big Data

By Petra Plasilova J.D. ’16

Do you get annoyed by websites that require you to register and create a full user profile, including personally identifiable information, even to complete a minor purchase? Does it unsettle you that moments after you search for that perfect vacation spot on Google, your Facebook feed fills with ads offering you discounted plane tickets to get there? As the use of big data collection and analysis increased in both the private and public sectors, so did public debate on the ethics and even legality of the practice.

Following numerous recent hacks and leaks of customer data at large retailers and banks, the public has become understandably skeptical of the data collector’s ability to appropriately protect sensitive data and consumer’s privacy. Amid the flurry of negative press and research reports, few have focused on the potential benefits and opportunities big data offers. For example, researchers’ ability to store and process large amounts of data have made it possible for NASA to monitor climate change more accurately,[1] and the need to store large amounts of data has helped drive infrastructure development and the move to cloud computing.[2] I used to be very skeptical of statements proclaiming the benefits of big data. Until I met a person who showed me that big data truly has potential to drive positive change within our own immediate community.

I met Elsa Sze one morning in mid-September. A motivated graduate of the Harvard Business School and Harvard Kennedy School, she filled the room with energy as she passionately described the mission of her organization, Agora Townhall, Inc. (Agora). Through her coursework and prior experience in the Obama re-election campaign, Elsa identified a key problem – disenfranchisement of constituents – and decided to fix it.

An experienced consultant, Elsa knew the answer lay in accurately diagnosing the problem. She quickly realized the reason why many people did not engage in community dialogue on important issues was not because of lack of engagement or interest. People were simply too busy to attend town halls or rallies. For many, social media have become the primary way of voicing their opinions. Yet, the government and politicians have failed to accordingly adapt and create online fora in which important civic dialogue could take place. Luckily, Elsa saw the gap and stepped in to fill it.

Agora provides an easily-accessible online platform for individuals to publicly raise and discuss issues important to them and their community. In addition to discussion boards, the Agora website and app also offer a town hall functionality, which enables government officials and politicians to host online debates and discussions on various topics. Agora users have the ability to join these town halls and share their opinions, or simply “listen in” by reading the town hall host’s contributions and other users’ comments. The feature has attracted officials from as near as Somerville and as far as Libya to Agora, and has helped drive dialogue on topics as diverse as local construction and constitutional reform. So what does this all have to do with big data?

To empower as many members of the local and global community as feasible, Elsa developed a business plan that capitalizes on Agora’s ability to collect and analyze meaningful data about the site and app’s users. With the users’ permission, Agora captures data on its users’ demographics, views, and areas of interest. Elsa’s team of analysts produces reports and statistics for select clients, mostly politicians, which enables them to better understand their constituents. As a result, politicians can make more inclusive decisions that reflect the needs of the aggregate community, rather than those of a few powerful constituents. Agora’s data analytics function thus gives individuals a unified credible voice when it comes to important matters impacting their community, as the algorithm turns isolated one-off chatter into actionable insights.

While Agora needs to turn a profit, like any other business, Elsa is committed to respecting the users’ privacy. She has carefully crafted Agora’s data analytics approach to be in line with her ethical beliefs. As Elsa said to me during our first meeting, “There are many apps that are very creepy. Agora is not and will not be one of them.”

One of the key professional responsibilities of lawyers is to provide service to all clients, regardless of our own personal beliefs on the subject of the matter. When I read my Transactional Law Clinics (TLC) colleague’s notes from her intake interview with Agora after being assigned the matter, I became nervous. Privacy and user data protection are issues I deeply care about and like many, I find the overly personalized ads on Facebook disturbing. I doubted my ability to remain objective and effectively represent Agora, especially when it came to negotiating contracts about user data analytics. Ultimately I resolved to stay on the matter and I am glad I did.

While I advised Agora as a student attorney for three months, I gained the experience of a well-rounded start-up lawyer. I researched and advised on issues as diverse as voting provisions in by-laws, splitting ownership and control of the company, applicability of U.S. securities laws to foreign investors, and employment law implications to start-ups, just to name a few. I helped Elsa finalize Agora’s corporate formation in Delaware, drafted Agora’s by-laws and numerous Board documents, and drafted licensing and referral agreements to be used with future clients (one of which was executed shortly after my semester and thus work for Agora ended). I also had a chance to cooperate with a student attorney from the Cyberlaw Clinic at the Berkman Center, who I brought in to advise on Agora’s privacy policy.

Working with Agora through the TLC was one of my most challenging and rewarding experiences at HLS. I learned how to be a real lawyer, something that most other courses unfortunately fail to teach us. But most importantly, TLC gave me an opportunity to help an extremely talented young entrepreneur execute her vision for improving the world around us and giving a platform to drive change to those who did not have one before.


Katrina Fleury Reflects on Winter Term Experience in Karnes, TX

Via Harvard Immigration and Refugee Clinical Program

The asylum seekers currently detained in Karnes, Texas may be far away from Boston, but for students at Harvard Law School’s Immigration and Refugee Clinic (HIRC), the issues and work couldn’t be closer to home. This past winter break a group of Harvard law students spent part of their January term volunteering and providing pro-bono work to Central American women and children held at the Karnes detention center.

Combining what she learned in the classroom and at HIRC, Katrina Fleury (HLS ’16) spent part of her January term working with the asylum seekers in Texas. She recently provided HIRC with a description of her experience and why she believes the work being done there is so important.

HIRC: How did your experience at HIRC prepare you for volunteering at the Karnes detention center?

KF: The clinic at Harvard was invaluable; I don’t think I would have been an effective advocate at the detention center without it. During the semester clinical course we learned about the asylum process and the necessary elements to prove an asylum case. It’s critical to understand those in order to prepare detainees to explain their stories during their credible fear interviews.

HIRC: What was a big difference between the work at Karnes and your experience at HIRC?

KF: One of the biggest contrasts with the clinic was how detention center work required a drastically different approach to interviewing and advising clients. In the clinic, students are assigned a client to work with over the course of the semester. The client is generally not detained and the court date is often months or a year or more away. The theory of the case comes to light slowly throughout weekly interviews as students develop trust with the client and she/he gradually reveals traumatic details.

In the detention center, you have an hour or two with the asylum seeker to understand his/her story, figure out if he/she potentially qualifies for asylum, and then help the asylum seeker practice explaining it for the credible fear interview. This means having to ask those sensitive questions regarding horrific events and delve into the details of painful experiences the client often has never revealed before to anyone. As you hear story after story, with details of rape, murder, violence, and unimaginable examples of human cruelty, you have to find a way to remove yourself. What I learned quickly was that you end up compartmentalizing what you hear. I was still listening and understanding the stories and trauma, but not quite fully processing it.

At the end of the day, I was often physically, mentally, and emotionally exhausted. One way to get over this was to do something fun, spend time with loved ones, or watch something funny to remind you that while humanity has the ability to be unspeakably cruel, it is still capable of compassion and love.

HIRC: What do you think the biggest obstacle facing many of the asylum seekers at Karnes is right now?

KF: The biggest obstacle facing asylum seekers is getting to speak to an attorney or volunteer before their credible fear interviews. Receiving a positive determination from the asylum officer is crucial. If the asylum officer rules positively, the detainee is usually released on bond and continues his/her asylum claim elsewhere. If he/she receives a negative determination, an immigration judge can review the decision, but the judge’s review is limited and often upholds the asylum officer’s original determination.

Even if the asylum seeker has a potentially valid asylum claim, the interview is filled with legal questions that are often confusing to the asylum seekers and often fail to reveal the entire story. For example, one question often asked during credible fear interviews is: “Have you ever been threatened or harmed on account of your membership in a particular social group?” Most women who have suffered domestic violence would say no, even though asylum recognizes that gender constitutes membership in a particular social group and domestic violence can be the basis of a claim for asylum. Or the same question, but on account of “political opinion.” Most people think politics and political parties when they hear that question and automatically say no. But under asylum law, political opinion includes feminist actions and beliefs, like pursuing independence from a male-dominated society and refusing to submit to the societal norms for women. Just spending an hour speaking with the women about what happened to them and explaining the types of interview questions and what the questions are actually trying to ask makes a world of a difference in their credible fear interview outcomes. Unfortunately, there are not nearly enough volunteers and lawyers currently there to be able to reach every woman and child.

HIRC: Did you feel you were able to make a difference during the short time you were volunteering?

KF: One personal difference that I was able to make involved a case of one particular woman. She wasn’t able to meet with us prior to her credible fear interview or immigration judge review, and she received negative determinations both times. In general, there isn’t much that can be done at that point, especially if you don’t have a private lawyer. Pro bono lawyers and organizations are strapped for resources and unlikely to take on the case that has almost no chance of succeeding yet requires many hours of work. I spoke with her for several hours that week. I felt deeply troubled by the way the asylum officer spoke to her in her interview, and how despite such a strong claim, she had been slighted by the system.

I knew it was crazy, a long shot, but I felt compelled to help. The realization that I was truly her last option weighed on me. My supervising attorneys, John and Nancy, graciously agreed to let me take on her case with their guidance, even though January-term was ending and they themselves were swamped with so many cases. So I wrote her affidavit, drafted a request for re-interview letter, and worked with the family to get supporting documents sent. We communicated with the asylum office about the documents and what we were doing, and they agreed to stay her removal order until they reviewed our request.

We were astounded a few days ago when the asylum office decided to reverse their initial negative credible fear determination and instead grant her a credible fear. This is almost unheard of. Now we are working with her on the bond hearing paperwork, and hopefully she will be released soon.

HIRC: What was your biggest takeaway from the experience?

KF: My experience reminds me of the poem, “The Starfish Story,” and how much it sums up my motivations and reasons for pursuing a career in immigration and asylum law:

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The Starfish Story

A young man is walking along the ocean and sees a beach on which thousands and thousands of starfish have washed ashore. Further along he sees an old man, walking slowly and stooping often, picking up one starfish after another and tossing each one gently into the ocean.

“Why are you throwing starfish into the ocean?” he asks.

“Because the sun is up and the tide is going out and if I don’t throw them further in they will die.”

“But, old man, don’t you realize there are miles and miles of beach and starfish all along it! You can’t possibly save them all, you can’t even save one-tenth of them. In fact, even if you work all day, your efforts won’t make any difference at all.”

The old man listened calmly and then bent down to pick up another starfish and threw it into the sea. “It made a difference to that one.”
Gender Equality, Human Rights, and Women Agricultural Entrepreneurs in Tanzania

By Lauren Blodgett, J.D. ’16

The advancement of gender equality and women’s rights is currently at the forefront of international discourse. Just last month, delegations from across the world gathered at the United Nations in New York City to participate in a “Commission on the Status of Women.” This group examined the implementation of the Beijing Declaration and Platform for Action as it celebrated its 20th anniversary. The Beijing Declaration, adopted by 189 countries, is an initiative to promote the empowerment of women worldwide. However, despite collaborations like the Beijing Declaration, various human rights treaties, and endless efforts by women’s rights advocates, in 2015, there is still no country in the world that enjoys complete equality for women.

While issues of gender equality cut across many spheres of life, they are particularly visible in the workplace, especially in developing countries. According to the International Labor Organization, gender discrimination is the most prevalent form of inequality in the workplace worldwide. Because of this sweeping problem, I decided to utilize our clinical study in Tanzania to explore the challenges faced by women entrepreneurs on the ground and to examine these challenges in the context of human rights law and international trade. My goal was to identify solutions for empowering women entrepreneurs in Tanzania by combining knowledge of the laws and feedback from women regarding the obstacles they face.

After spending over a week in Tanzania and having over a dozen meetings with individuals and organizations, the commonalities in the challenges voiced to us fell into three categories: lack of capacity, no enforcement of rights, and cultural norms that perpetuate gender inequality. It quickly became clear that the domestic laws and human rights treaties that purported to empower women were not effective in practice. Therefore, I found that operating outside of the prescribed legal protections and utilizing innovative grassroots solutions was the most successful method available. Such solutions include creating women-women networks, implementing programs that expose women to new markets, and offering training to help women entrepreneurs build the skills necessary for a prosperous business.

We were fortunate to witness a few of these solutions in action while in Tanzania. For example, we saw the power of women-women networks when we met with Vicoba, a microfinance organization that seeks to ensure that entrepreneurs have access to capital. The group has over 400,000 members, 88% of which are women. Vicoba represents a great example of women helping each other when the systems in place fail to help them.

One of the biggest lessons I received from this clinical experience is that lawyers cannot always rely on the law to create change. An important part of our legal education at Harvard Law School is being able to identify gaps where the law is failing and finding ways to help others through collaboration and innovation.

An important part of our legal education at Harvard Law School is being able to identify gaps where the law is failing and finding ways to help others through collaboration and innovation.

- Lauren Blodgett (2L)
Clinic Files Amicus Brief in Mass SJC on Location Privacy

The Cyberlaw Clinic filed an amicus brief this week in the Supreme Judicial Court of Massachusetts on behalf of the American Civil Liberties Union of Massachusetts (ACLU) and the Electronic Frontier Foundation (EFF) in Commonwealth v. Estabrook, SJC–11833. The case concerns location privacy and cell phone technology — specifically, whether law enforcement can gather a large amount of cell phone location information if it only plans to use a small fraction of that information in a prosecution. This is the third brief the Clinic has filed on location privacy issues in Massachusetts, including briefs for EFF in Commonwealth v. Augustine and Commonwealth v. Rousseau in 2013.

Cellular service providers must know where their subscribers are at any given time to provide them with service. Providers therefore collect vast quantities of location information, tracking the movements of customers wherever they go. Last year, in Augustine, 467 Mass. 230 (2014), the Supreme Judicial Court ruled that, in general, the police must get a search warrant to obtain location information from a cellular service provider. The ruling left open the possibility, however, that the police might be able to obtain a “brief period” of location information without a warrant but, instead, with a court order that is considerably easier to obtain.

This latest brief argues that Augustine requires police to get a warrant to obtain location information even if they only plan to use a small amount. It urges the SJC to establish a blanket warrant requirement that applies whenever police seek cellphone location data. As the brief notes, considering the growing volume and accuracy of such data, and the confusion that the Augustine exception has created in the lower courts, a blanket warrant requirement would provide much-needed clarity to police, prosecutors, and the public. Such a rule would align Massachusetts with the dozen other states that have imposed blanket warrant requirements for cellphone location data, without any apparent ill effects on the ability of the police to investigate crimes.

The case is scheduled for argument on Thursday, May 7th, at the John Adams Courthouse in Boston. Special thanks go to HLS Cyberlaw Clinic students Abigail Colella (’16), Sandra Hanian (’15), and Travis West (’16), who worked closely with Vivek Krishnamurthy, Andy Sellars, and the amici, to prepare and file the brief.

Clinic Files Amicus Brief on Free Speech Issue in Massachusetts

the Cyberlaw Clinic filed an amicus brief in the Supreme Judicial Court of Massachusetts on behalf of the New England First Amendment Coalition, Boston Globe Media Partners, LLC (owners of the Boston Globe), Hearst Television, Inc. (owners of WCVB-TV Channel 5 in Boston), the Massachusetts Newspaper Publishers Association, the New England Newspaper and Press Association, Inc., and the New England Society of Newspaper Editors in Commonwealth v. Lucas, SJC-11830. The case was brought under the Massachusetts false campaign speech law, M.G.L. ch. 56 § 42 (“Section 42”). The defendant in the case, a treasurer with a political action committee that sent a mailer in the 2014 state election, challenged the constitutionality of the statute under the First Amendment and Article 16 of the Massachusetts Declaration of Rights.

The brief argues that Section 42 is an unconstitutional restriction on the content of speech, and is also unconstitutionally vague. The brief describes the robust protection for speech in the realm of political debate, and notes several cases in other jurisdictions where courts struck false campaign speech statutes. As those cases note, counter-speech by political opponents is the preferred way to remedy misleading political speech, and statutes that criminalize false speech for the sake of protecting listeners are usually instead used as tools to extract partisan revenge by filing frivolous criminal complaints.

As the brief notes, Section 42 presents more serious concerns than the statutes in those cases, as it criminalizes the making or publishing of “any false statement in relation to any candidate for nomination or election to public office, which is designed or tends to aid or to injure or defeat such candidate.” Thus, Section 42, “potentially ascribes liability to publishers of third-party information, even when the public well understands that they are not the originators of that speech.” The statute could also criminalize statements that are technically false but are not misleading or fraudulent, including rhetorical hyperbole, satire, false statements published in the process of debunking them, or statements made in covering both sides of a controversial story.

The case is scheduled for argument on Thursday, May 7th, at the John Adams Courthouse in Boston. Special thanks to HLS Cyberlaw Clinic students Catherine Essig (’16), Naomi Gilens (’16), and D. Patrick Knoth (’16), who worked closely with Andy Sellars and Chris Bavitz, along with amici, to prepare and file the brief.
This post is about decision-making in the context of innocence programs. More specifically, it is about the difficult decision innocence programs must make regarding whether or not to take a case. That decision hinges on whether the incarcerated individual in question has a viable claim of innocence. Of course, that’s a different question from whether the man or woman in prison is actually innocent. They very well may be. But without a way to prove it—or to at least get a new trial on the basis of newly discovered evidence—the person’s innocence is, in a perverse way, kind of beside the point. How do innocence programs make this decision?

I’ve spent much of the past ten weeks working on a single case, a murder from the 1980s. My first task was to organize three bulging boxes full of trial transcripts, exhibits, news reports, correspondence, appellate motions, and various odds and ends relating to the case. Essentially, my mandate was to bring order to chaos. Once that was complete, I set about determining what material, exactly, we had in our possession, and, conversely, what we were missing and needed. I then spent several weeks trying to track down a long list of documents and items of evidence. Much of it is long gone. But I found some of it, and sometimes in the unlikeliest of places, like town libraries. After gathering and organizing the material, my next task was to analyze it. Toward that end, I created a number of documents—including charts, tables, and timelines—that, over the past couple weeks, I have been working to fill out, slowly and methodically.

Strangely, this mountain of work may end up hurting—not helping—the man who was convicted of the murder. Why? Because it may very well lead my supervisor to conclude that there is no viable claim of innocence and that therefore the case is no longer worth pursuing.

That’s an awful lot of time and effort devoted to the simple question of whether or not to take the case. All told, I’ll have devoted more than 150+ hours to the case by the end of the semester. And that’s not counting similar efforts by other interns who preceded me (the CPCS Innocence Program has been working on the case on-and-off since 2011).

But that’s the nature of innocence work. It is slow and ponderous. Most of one’s time and energy is spent on recreating the record in order to simply get enough information to decide whether or not something is there. It’s tempting to continue investigating cases ad infinitum; you never know what you might find, and the next document you unearth could be the one that proves your client’s innocence. But as with most players in the criminal justice system, innocence programs are strapped for cash and resources, and at a certain point they have to cut their losses and move on to cases with more promise. This is a wrenching decision, especially in cases like the one I’ve been working on where the attorneys and client have developed a relationship over the course of years. It must be unimaginably difficult to tell an incarcerated individual that he is out of chances, especially when that means he’ll spend the rest of his life in prison.

It would be far nicer to tell him not only that you believe his protestations of innocence, but that you can do something about them. So I’ll keep plodding through the murder case hoping to find enough favorable material to justify continued efforts on our client’s behalf.
Harvard Law School Students Honored with the Weiler Awards

On March 26th, four Harvard Law School students – Javier Oliver (3L), Juan Arguello (3L), Jaimie McFarlin (3L), and Joshua Lee (3L) – were honored with the Weiler Awards presented at the Committee on Sports and Entertainment Law’s 2015 Symposium. The awards are presented annually to eligible students who have participated in the HLS Sports and Entertainment Law Courses, in the Committee on Sports and Entertainment Law and the Journal on Sports and Entertainment Law activities, as well as clinical placements through the Sport Law Clinic.

Lecturer on Law and Sports Law Clinic Director Peter Carfagna, started the event by recognizing Joshua Lee and Jaimie McFarlin with the 2014-2015 Weiler Award for excellence in legal writing for sports and entertainment and Javier Oliver and Juan Arguello as the 2014-2015 Weiler Scholars. He also recognized Professor Emeritus Paul C. Weiler LL.M. ’65, “the father of Sports and the Law” at Harvard.

“Winning the Weiler writing prize is a humbling honor,” she said. “For me this award represents the merge of two fantastic experiences at HLS — academic writing with one of my good friends, Joshua Lee, and the sports law program’s distinct setting for legal commentary in an ever-changing, fun and exciting area of law.”

Javier Oliver has worked with the Philadelphia Eagles and the San Jose Sharks and is a Senior Editor for the Harvard Journal of Hispanic Policy and a Technical Editor for the Harvard Journal on Racial and Ethnic Justice.

“I feel humbled and honored to receive the Weiler Scholars Award. I want to thank Professor Carfagna for the nomination and all of his guidance throughout my work in the Sports Law program. I would also like to thank Professor Weiler for founding the program,” Javier said. “The Sports Law coursework introduced me to the complexity of this legal sphere, while simultaneously preparing me to approach the legal issues in sports law with confidence. My work with the Philadelphia Eagles and San Jose Sharks allowed me to develop and hone my contract drafting, negotiation, and legal research skills and also meet some amazing attorneys in the sports law field. The Sports Law program has truly been the highlight of my time in law school.”

Juan Arguello served six years in the Army National Guard as an enlisted infantryman. While at HLS he has advocated for undocumented immigrants, veterans challenging the denial of disability benefits from the VA, as well as indigent criminal clients in show cause hearings. Juan has interned for the Memphis Grizzlies, where he conducted in-depth an analysis of select provisions of the NBA CBA and is one of the current Co-Presidents of the Armed Forces Association of Harvard Law School.

“It is a true honor to receive the Paul C. Weiler Scholars award. I felt blessed to have had the opportunity to meet Professor Weiler, his family, and some of his former students,” Juan said. “I have thoroughly enjoyed the courses and clinical opportunities in the Sports Law Program. In my clinical placements with the Memphis Grizzlies and the Sports Legacy Institute I have been able to use the skills I learned in Professor Carfagna’s classes. The courses and clinics of the Sports Law Program have been some of the highlights of my experience at Harvard Law School.”

Jaimie McFarlin holds positions with multiple student organizations and the Harvard Journal of Sports and Entertainment Law. She captained the 2010 Washington University women’s basketball team to a NCAA Division III National Championship. After graduating, she played professional basketball for Værløse Basketball Club in Copenhagen, Denmark.

“ Winning the Weiler writing prize is a humbling honor,” she said. “For me this award represents the merge of two fantastic experiences at HLS — academic writing with one of my good friends, Joshua Lee, and the sports law program’s distinct setting for legal commentary in an ever-changing, fun and exciting area of law.”

Joshua Lee is involved in the HLS community as a resident assistant, teaching assistant, and a variety of other roles in prominent campus organizations. He has had an abiding interest in sports and entertainment since his time as an AAU basketball coach in Central Florida.

“I am honored and incredibly grateful to receive this outstanding prize for legal writing,” Joshua said. “Professor Weiler’s work here at Harvard Law within the area of sports law has given me, and countless others, the opportunity to explore a burgeoning and highly interesting field. To be awarded for my work with a Weiler prize is a true highlight of my time here and a memory I will cherish.”
Congratulations to the 2015 Skadden Fellows

The Skadden Foundation announced the 2015 Class of Skadden Fellows, including six of our own Harvard Law School students who are dedicating the next two years of their professional careers to public interest work. All six students have devoted a significant amount of time to clinical and pro bono work.

Please read about the Fellows and their experiences in the Clinical and Pro Bono Programs below.

Ayirini Fonseca-Sabune ’12
Urban Justice Center, New York, New York
Fonseca-Sabune will work to combat harassment of low-income tenants in New York City’s most rapidly gentrifying communities through affirmative litigation and community education.

Scott Hochberg ’15
Community Legal Services, East Palo Alto, California
Hochberg will provide direct representation, community education and policy advocacy for low-wage immigrant workers facing wage theft and retaliation, using a groundbreaking new law aimed at preventing the improper use of employees’ immigration status to silence complaints.

“I came to law school wanting to serve immigrant communities, spent my first summer doing asylum work on the US-Mexico border, and then took the Employment Law clinic. The clinic introduced me to a powerful way of thinking about protecting immigrants’ rights, since almost every employment law applies to all workers regardless of their immigration status. My placement gave me the opportunity to work with clients across the Boston area affected by a set of workplace problems, including discrimination, wage theft, and sexual harassment. The clinic brought into focus how advocates could use these shared problems to mobilize entire communities to address these issues collectively, which can be a powerful tool for reform. Inspired by this experience, I designed my fellowship project to focus on both individual and collective solutions for the workplace problems of immigrant workers in the Bay Area.”

Rebecca Livengood ’12
American Civil Liberties Union, Newark, New Jersey
Providing direct representation of children in solitary confinement in New Jersey detention facilities who are denied access to an education will be the focus of Livengood’s Skadden fellowship. She will also represent such children upon release in Individuals with Disabilities Education Act hearings to help them re-enroll and re-adjust to school.

Nora Mahlberg ’15
Business and Professional People for the Public Interest, Chicago, Illinois
Mahlberg will work to build community capacity in Chicago neighborhoods hardest hit by the foreclosure crisis by partnering with community organizations to effectively utilize the Cook County Land Bank and ensure its sustainability by strengthening its legal infrastructure.

“My experience working at the Harvard Legal Aid Bureau has had a profound impact on my legal education and my career path. During my two years at the Bureau, I represented low-income tenants in housing court and defended former homeowners against eviction after foreclosure. With my clients, I saw the extent of the affordable housing crisis we have in this country and the fundamental importance of stable, safe housing in people’s lives. These experiences inspired my Skadden project where I will work with community organizations and the Cook County Land Bank in Chicago to revitalize neighborhoods hardest hit by the foreclosure crisis and to create much needed affordable housing from properties that are currently sitting vacant after foreclosure.”

Blake Strode ’15
ArchCity Defenders, St. Louis, Missouri
Direct representation and impact litigation in housing, landlord-tenant and consumer law on behalf of low-income residents in the St. Louis area will be the focus of Strode’s Skadden fellowship. He will work to promote economic and racial justice through advocacy and community education in Ferguson, Mo., and the surrounding areas of north St. Louis County.

“For me, the clinical and pro bono programs at HLS have been a welcome and much-needed supplement to the more theoretical grounding in most law school classes. The Harvard Prison Legal Assistance Project provided my first ever one-on-one client interaction and introduced me to the practice of direct client advocacy. I have been able to develop my advocacy skills further through the Post-Foreclosure Eviction Defense Clinic and Project No One Leaves, where I have seen people at every stage of the foreclosure and/or eviction process who have been able to stay in their homes far beyond what was expected because of a robust web of community and legal support. These experiences have been an indispensable part of my legal education, and they will continue to inform much of the work that I will do next year as a Skadden Fellow.”

Michael Turi ’15
Asian American Legal Defense and Education Fund, New York, New York
Turi will provide direct representation to low-wage immigrant workers seeking to collect damages on unpaid wages and other labor law violations, employing strategies in the pre-judgment phase and ensuring that damages will be paid.

“I came to law school wanting to represent low-income immigrants in the challenging grid of immigration applications and proceedings. The Harvard Immigration and Refugee Clinic was a perfect fit, and my experience assisting clients with asylum cases there encouraged me to explore other areas of legal aid. Representing low-wage immigrant workers in the Housing Clinic, Employment Clinic, and my independent clinical project at the Equal Justice Center in Austin, Texas exposed me to the other roadblocks and hurdles that immigrants face in obtaining justice in this country. I decided to apply for public interest fellowships in the workers’ rights field because I now know, from experience and my clients’ struggles, that there is room for great progress in this area.”
Clinic students document lessons learned outside the classroom

Via HLS News

This March, several teams of HLS students used their Spring Break to work on a number of humanitarian projects, including documenting property rights issues in the Mississippi Delta, working with asylum seekers in detention centers at the Texas border, and helping undocumented immigrants in Chicago with their applications for permission to stay in the U.S. With photos and blog posts, students documented the lessons they learned about the law outside the classroom. Read more below.

Alternative spring break trips for students are developed and sponsored by the Office of Clinical and Pro Bono Programs. This is the 11th year that the Office of Clinical and Pro Bono Programs has funded; The trips originated in response to Hurricane Katrina in 2005, when students went to New Orleans to assist displaced families.

In Chicago, students worked with Community Activism Law Alliance (CALA) to help bring free legal services to some of Chicago’s most disadvantaged communities.

“Community lawyers play an essential role in addressing the kinds of structural problems low-income communities face. The trip is over, but the life lesson remains. “

- Andréa R. Lavourinha
  LL.M. ’15

A small group of three students spent a week with the ProBar South Texas Pro Bono Asylum Representation Project in Harlingen, Texas. They were working with the office that assists adults in the Port Isabel Detention Center who are seeking asylum.

“It was challenging to spend such long stretches in the Detention Center, but it gave us a real feel for what the clients have to go through while they wait for their hearings. “

- Mojca Nadles LL.M. ’15
A second group traveled to the Mississippi Delta to help make a documentary about the heirs property system in the state, which can contribute to family division, stolen economic opportunity and deprivation of land for families that they have held the land for generations.

“What we saw is that there are strong communities and brave individuals who care and who are pouring their energies into giving their neighbors in Mississippi a better future. “

- Colin Ross ’16

In Tennessee, students working with Equal Justice Under Law (EJUL) investigated debtors’ prisons, gathering information about constitutional civil rights violations, observing municipal court hearings, comprehensively recording their observations, and interviewing indigent defendants and families.