

September, 2008

ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM
ANNUAL REPORT 2007-2008

The 50th anniversary celebration of the Hays Program on May 17, 2008 was the highlight of the year. About 115 Fellows (almost 45% of the total) attended, representing all of the Program's decades, along with their friends and friends of the Program, including many members of the Hays family. Justice Ruth Bader Ginsburg was the keynote dinner speaker and University Professor Anna Deavere Smith, a performance artist, offered a moving commentary on contemporary civil liberties. Norman prepared a monumental history of the Hays Program, with help from Sylvia and Helen as well as Gabrielle Prisco (Hays Fellow 2002-2003) and Kathryn Sabbath (Hays Fellow 2002-2003). Two afternoon panels generated a lively exchange of ideas. Martin Guggenheim (Hays Fellow 1970-1971) led a discussion about "challenging clients" that included Mitch Bernard (1978-1979), Anne Clark (1989-1990), Jon Dubin (1980-1981) and Judy Rabinovitz (1984-1985). Stephen Gillers (Hays Fellow 1967-1968) led a discussion on "civil liberties positions that have changed" that included Mitra Behroozi (1985-1986), Crystal Crawford (1990-1991), Judith Resnik (1974-1975) and Michael Rothenberg (1990-1991). The reunion was a magnificent and stimulating day and we are especially glad that so many Fellows were able to attend.

As in past years, a former Hays Fellow met informally in Norman's office and then over dinner with current Fellows to discuss experiences with the Program, career choices, and other issues. In the fall, Katherine Graham (Hays Fellow 1996-1997), who is a senior attorney with the Office of General Counsel of the Australian Government joined us for an engaging discussion peppered by many questions from the Fellows. In the spring, we continued with our new practice of inviting a distinguished public interest lawyer to meet informally with the Fellows. Steven Shapiro, Legal Director of the ACLU, shared his thoughts about the current state of civil liberties and the changing roles of public interest organizations.

On May 20, we hosted the second annual reception for graduating Fellows and their

families. It was a delight to meet the parents, partners, siblings and friends who have provided support over the years.

1. THE FELLOWS

The Hays Fellows in 2007-2008 were Kristin Connor (Roger Baldwin Fellow), Julie B. Ehrlich (Harriet Pilpel-Planned Parenthood Fellow), Mandy Hu (Tom Stoddard Fellow), John Infranca (Leonard Boudin Fellow), Alexander Moulter (Palmer Weber Fellow), and Ian Vandewalker (Deborah Rachel Linfield Fellow). Rebecca Rosenfeld (Hays Fellow 1995-1996) provided valuable help in the selection process. Fellows are selected following interviews by the Fellows and Directors on the basis of their demonstrated commitment to civil liberties, their public interest experience, and their academic qualifications.

The work of the Hays Fellows — always the heart of the program — reflects the ever-evolving challenges to civil liberties. Reproductive freedom and the rights of immigrants commanded most attention from the Fellows. The First Amendment and the rights of ex-felons also provided much work. In addition, Fellows addressed important issues involving international human rights, voting rights, GLBT issues and economic justice. Once again, many of this year's Fellows were supervised by former Fellows who are now staff attorneys or supervisors in some of the City's leading public interest offices.

Here is a summary of the work done by the Hays Fellows this year.

Kristin Connor, Roger Baldwin Fellow. Kristin interned at the Immigrant Defense Project (IDP) under the supervision of Manny Vargas and Alina Das. IDP coordinated litigation in *Lopez v. Gonzales*, in which the Supreme Court held that state felonies are not “aggravated felonies” under the Immigration and Nationality Act unless the corresponding act would be a felony under *federal* law. She helped complete briefing in a case before the Board of Immigration Appeals addressing whether a second conviction for possession of a controlled substance automatically is an aggravated felony. Kristin also drafted a practice advisory and template brief to inform non-citizens and their advocates about the current state of the law and of arguments that they could advance pending the BIA's resolution of this issue. In December the BIA adopted IDP's argument.

In the spring, Kristin interned at the Center for Constitutional Rights (CCR) under the supervision of Rachel Meeropol (Hays Fellow 2001-2002) working on *Turkmen v. Ashcroft*, a class action civil rights lawsuit filed in 2002 on behalf of a class of Muslim, South Asian, and Arab non-citizens who were swept up by the INS and FBI on immigration charges following 9/11. Under this pretext, the government held the plaintiffs for up to nine months in the Brooklyn Metropolitan Detention Center, where they were subjected to physical and verbal abuse, kept in solitary confinement with the lights on all day, often unable to contact their attorneys and families, and obstructed in their efforts to practice their religion. Rachel argued the constitutional claims before the Second Circuit in February and in June the Supreme Court agreed to hear John Ashcroft's appeal from an earlier Second Circuit rejecting his claim of sovereign immunity.

Kristin also worked on other cases at CRR, including *Walton v. New York State Department of Correctional Services (DOCS)*, challenging DOCS for its 57.5% kick-back from a contract with MCI, which resulted in exorbitant telephone rates for the families, friends, and lawyers of inmates.

Julie B. Ehrlich, Harriet Pilpel-Planned Parenthood Fellow. Julie interned during the fall semester at the Center for Reproductive Rights – International Legal Program. She provided extensive research on international human rights language and law regarding pregnancy discrimination in education and employment. Her research was incorporated into a complaint to the Inter-American Commission on Human Rights.

In the spring, Julie worked at the Legal Action Center (“LAC”), an organization that engages in legal and policy advocacy to counter discrimination against people with HIV/AIDS, people with substance abuse histories, and people with criminal records. At LAC, Julie participated in client intake sessions and in litigation strategy planning meetings. She also assisted in efforts to reform New York’s laws regarding the dissemination to prospective employers of applicants’ criminal records. Finally, she coordinated the updating of LAC’s 50-state-survey of laws creating roadblocks to post-incarceration community re-entry.

Mandy Hu, Tom Stoddard Fellow. In the fall Mandy interned at the National Coalition Against Censorship under the supervision of Joan Bertin (Hays Fellow 1978-1979) where she researched First Amendment and statutory prohibitions against the suppression and distortion of scientific information by the government.

In the spring, Mandy interned at the Transgender Legal Defense and Education Fund, where she worked on behalf of several people who had been discriminated against in employment and access to public accommodations because of their sexual orientation and/or gender identities.

John Infranca, Leonard Boudin Fellow. In the fall John worked in the SSI Unit of South Brooklyn Legal Services, which is headed by Chip Gray (Hays Fellow 1967-1968). There he assisted clients in responding to the unlawful garnishment and freezing of bank accounts containing funds that are exempt from debt collection. Even when such funds are eventually released, the freezing of such accounts—which often lasts a number of weeks—can cause severe hardship for low income individuals. In addition to helping individual clients responding to creditors, John researched debt collection practices and regulations, particularly state and federal attempts to better protect such funds from collection.

Soon after the academic year ended John was informed that the National Academy on Social Insurance had awarded him a grant to write a paper on enforcing laws that protect social security benefits from creditors when the funds are held in bank accounts. This issue is of increasing importance because of rising bankruptcy and insolvency rates, and we are proud that the grant flowed directly from John’s work as a Hays Fellow.

In the spring John worked in the Democracy Program at the Brennan Center for Justice. He provided research in aid of the Brennan Center's defense of Connecticut's public election financing program, in *Green Party v. Connecticut*. In addition, he worked on drafting materials for challenges to state laws restricting third-party voter registration efforts.

Alexander Moulter, Palmer Weber Fellow. In the fall, Alex worked at the Housing Unit at South Brooklyn Legal Services. He assisted SBLS in two ongoing projects. The first involved researching whether property owners must prepare an environmental impact statement when ending their participation in the Mitchell-Lama affordable housing program. The second project analyzed how courts address mixed motive housing discrimination claims. A landlord in the Red Hook neighborhood of Brooklyn unlawfully targeted an SBLS client for eviction.

In the spring semester, Alex worked in the Legal Aid Society's Employment Law Unit. He was supervised by Ricky Blum (Hays Fellow 1988-1989). Alex assisted in client intake, gathering information to best evaluate potential claims. He also helped research legal issues for an amicus brief filed in the Court of Appeals. The case involved an immigrant worker's eligibility for a specific type of worker's compensation benefit.

Ian Vandewalker, Deborah Rachel Linfield. Ian worked at the NYCLU in the fall semester, providing associate legal director Chris Dunn with research on the legal issues at play in the lawsuit against New York City over the mass arrests of protesters, journalists, and passersby at the Republican National Convention in 2004. He produced an extensive memo examining the existing law regarding mass arrests and explaining the First and Fourth Amendment problems with the City's actions.

In the spring, Ian interned at the ACLU Reproductive Freedom Project to improve access to reproductive health care for incarcerated women. Working with Diana Kasdan (Hays Fellow 2000-2001), Ian researched state policies affecting pregnant women in jails and prisons, including the provision of health care that meets the medical needs of pregnant women and access to abortion. He also researched the state of the law nationwide on the ability of pregnant inmates to sue jails and prisons for the denial of appropriate health care.

2. THE DIRECTORS.

Norman Dorsen. Norman continues to divide his time between law school duties, most notably the Hays Program, and serving as counselor to NYU President John Sexton. After completing a two-year study of undergraduate education at NYU that an external accrediting agency, Middle States Association Commission on Higher Education, has approved, Norman is helping to supervise the University's implementation of the report's recommendations and chairing a committee to examine other academic, and administrative and financial issues for the Commission.

As noted above, Norman spent much of the year writing and compiling the history of the Hays Program. Copies were sent to all Fellows for whom we have an address.

Norman taught a seminar in Judicial Biographies and Opinions, which explores the jurisprudence of Supreme Court Justices in light of their life experiences. In addition, he serves as editorial director of the quarterly International Journal of Constitutional Law (ICON), now entering its seventh year. The journal has authors and editorial board members from more than 40 countries.

Norman was the U.S. representative on the board of the newly organized International Association of Law Schools (IALS) which has members from all parts of the world (he stepped down from this post in June, after several years of service). He continues to direct the James Madison lectures at the Law School, to serve as a board member of The Thomas Jefferson Center for the Protection of Free Expression (in Charlottesville, VA), and act a member of the National Advisory Council of the ACLU.

In *re Gault*, the first Supreme Court case holding that juveniles possessed due process rights in delinquency cases, was decided on May 15, 1967. Norman argued the case and on its 40th anniversary he received invitations from, among others, the Open Society Institute, the ACLU, the New York City Bar Association and the National Juvenile Defender Center to speak about its origins and significance. His talk was published as *Reflections on In re Gault*, 60 Rutgers Law Review 1 (2007).

In addition, Norman contributed to a symposium honoring his successor as president of the ACLU, Nadine Strossen and the ACLU, 41 Tulsa L. Rev. 61 (2006), and he published a mini-memoir of his year (1957-1958) as law clerk to Justice John Marshall Harlan in 2008 *The Green Bag Almanac and Reader* 47. He also helped organize a global conference that took place in Paris and New York on Constitutional Law in an Age of Globalization and Privatization. Paper from the conference are being published in the fall 2008 issue of the International Journal of Constitutional Law. And he delivered one of the tributes at a memorial for Judge James L. Oakes of the U.S. Court of Appeals for the Second Circuit. Norman's 2000 article on flag desecration were excerpted in *Raymond Waters, Values*, produced by Craig Scott Gallery in Toronto.

Finally, in January, at its annual dinner, the Society of American Law Teachers honored Norman by establishing a fellowship a fellowship in his name. Norman was the founding president of SALT in 1972.

Sylvia A. Law. In the fall, Sylvia co-taught family law with Patricia Hennessey (Hays Fellow 1978-1979) and in the spring she taught health law and led a health policy colloquium. In June she visited Singapore to teach an intensive family law course in the joint degree program sponsored by NYU and the National University of Singapore.

In Oct. 2007 she delivered the Brigitte M. Bodenheimer Lecture at U.C. Davis; it is published as *Human Papilloma Vaccine, Private Choice and Public Health*, 41 U.C. Davis L. Rev. 73 (2008). She also published, *Childbirth: An Opportunity for Choice that Should be Supported*, 33 N.Y.U. Rev. L. & Soc. Change 101 (2008). Her 2007 article on mayors and

same-sex marriages won the Dukeminier Award from UCLA's Williams Institute on Sexual Orientation Law and Policy.

As chair of the Sheinberg Scholar in Residence Program, she helped to organize a program that brought Tracie L. Washington, President & CEO of the Louisiana Justice Institute to the law school in April 2008. She continues to serve as a member of the board of Compassion & Choices, the Center for Reproductive Rights, and the Center for Law and Social Policy.

Helen Hershkoff. In the fall, Helen taught Civil Procedure. She served as a member of the Lawyering Personnel Committee and as convener of the Procedure Area Group. In the spring, she was on academic sabbatical, but participated in the Hays seminar, helped Norman to write the Hays history, worked with Norman and Sylvia to plan the fiftieth anniversary celebration, and organized the second annual reception for graduating Fellows and their families.

A number of writing projects came to a conclusion. She co-edited and co-authored *Civil Litigation in Comparative Context* (2008) (co-edited with Oscar G. Chase and co-authored with Oscar and Linda Silberman, Vincenzo Varano, Yasuhei Taniguchi, and Adrian Zuckerman). She helped prepare and saw the publication of the 2008 Revised Ninth Edition of *Civil Procedure: Cases and Materials* and the accompanying *Teacher's Manual* (with Jack H. Friedenthal, Arthur Miller, and John E. Sexton). She completed a consultancy for the World Bank on the enforcement of health and education rights in Brazil, India, Indonesia, Nigeria, and South Africa, and her essay about the project, "Transforming Legal Theory in the Light of Practice: The Judicial Application of Social and Economic Rights to Private Orderings," will be published in *Democracy by Other Means?: Legalizing Demand for Social and Economic Rights* ed. Varun Gauri (Cambridge University Press, 2008 forthcoming). She contributed an essay to a forthcoming book on state constitutional law, "State Common Law and the Dual Enforcement of Constitutional Norms, to appear in *Dual Enforcement of Constitutional Rights: New Frontiers of State Constitutional Law* eds. James Gardner and Jim Rossi (Oxford University Press, 2008 forthcoming). Her essay, "Public Law Litigation: Lessons and Questions," was published in *Human Rights Review*. Two other short pieces also appeared in print: *Poverty Law and Civil Procedure: Rethinking the First Year Course*, 34 *Fordham Urban L.J.* 101 (2007); and *Book Review, Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee*, 8 *Hum. Rts. Rev.* 277 (2007).

Helen continued to serve as a member of the Board of Directors of the Brennan Center for Justice, of the Urban Justice Center, and of Party for Humanity, Inc. (a new non-profit organization that Helen, along with her husband and son, recently launched—read about it at www.partyforhumanity.org). Finally, Helen was invited to become a Fellow of the American Bar Foundation.

3. JAMES MADISON LECTURE.

The James Madison lecture is considered the leading annual lecture at NYU Law School. It was founded, in 1959, "to enhance the appreciation of civil liberty and strengthen the sense of national purpose." The lecturers are limited to U.S. Supreme Court justices and judges of the U.S. Courts of Appeals. Fourteen Supreme Court justices and 23 Court of Appeals judges have delivered Madison lectures. Norman has directed the Madison lectures since 1977, and he administers it as part of the Hays Program. The fall 2007 lecture was delivered by Judge J. Harvie Wilkerson of the Fourth Circuit and the 2008 lecture will be delivered by Judge Marsha Berzon of the Ninth Circuit.

4. THE FELLOWS' NEXT STEPS.

Kristin Connor will be clerking for Judge David Briones of the Western District of Texas in El Paso, Texas, for two years. Julie B. Ehrlich will be a fellow at the Women's Rights Project of the American Civil Liberties Union. Mandy Hu will be clerking for Judge David Coar of the Northern District of Illinois. John Infranca will be clerking in Philadelphia for Judge Berle Schiller of the Eastern District of Pennsylvania. In 2009 he will be clerking in Newark, New Jersey for Judge Julio Fuentes of the Third Circuit. Alex Moulter will work with Kasowitz, Benson, Torres, and Friedman in New York City. Ian Vandewalker will clerk for Judge Frederic Block in the Eastern District of New York. (In February, Ian married Jessica Willis in a sun-drenched ceremony on the bayside campus of their alma mater, New College, in Sarasota, Florida.)

5. NEW FELLOWS.

The Fellows for 2008-2009 will be: Elizabeth Seidlin-Bernstein, Deborah Linfield Fellow; Jess Braverman, Tom Stoddard Fellow; Vinay Harpalani, Palmer Weber Fellow; Ryan Hooper, Robert Marshall Fellow; Amy Kimpel, Roger Baldwin Fellow; and Molly Tack, Leonard Boudin Fellow.

Norman Dorsen
Sylvia A. Law
Helen Hershkoff

PLEASE KEEP IN TOUCH WITH THE HAYS PROGRAM

We try to maintain up-to-date contact information for all Fellows. If your contact information has changed, please be sure to send us the new data.

Name

Home address

City

State

Zip Code

Email address

Phone number with area code

Organizational affiliation

Professional title if any

Business address

City

State

Zip Code

Email address

Phone number with area code