



**New York University**  
*A private university in the public service*

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**ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM  
ANNUAL REPORT 2010-2011**

As detailed below, this was another busy and productive year for the Hays Program. In May the Law School honored Norman as the first faculty member to serve for 50 consecutive years. Among other forms of recognition, the School named Room 202 the Professor Norman Dorsen Seminar Room.

This happy event was overshadowed by the premature death, on June 5, of Harriette Dorsen, Norman's wife of 45 years. Norman and Harriette have three daughters and three grandchildren. Harriette's career was marked by her public-spiritedness. After spending ten years raising her daughters, she became a publishing lawyer (and managing partner) at Lankenau, Kovner and Bickford. She then became general counsel of Bantam Doubleday Dell and, after a merger, general counsel of Random House. Her outside activities were also formidable: Chairman of Volunteer Lawyers for the Arts and member of Planned Parenthood's New York board, a devotee of yoga, crossword puzzles and NIA dancing, and most recently chair of the Cornwall, CT, Town Democratic Committee and the Democratic Coalition of Northwest CT. She will be deeply missed and we all extend our condolences to Norman and his family.

We again received applications from many more students than the number of available fellowships, and the selection process was challenging. Lynn Lu, Hays Fellow 2003-2004, participated in this year's interviews and provided valuable assistance.

As in past years, each semester a former Hays Fellow met with current Fellows before and during dinner to discuss experiences with the Program, career choices, and other issues. Jenny Pizer, (Hays Fellow 1986-1987) spoke with us in the fall. Jenny was the long-time

managing director of LAMBDA and recently became the legal director of UCLA's Williams Institute. Barton F. Stitchman (Hays Fellow 1973-1974) joined us in the spring. Bart is the founder and director of the National Veterans' Legal Services Organization.

In May, we hosted the fourth annual reception for graduating Fellows and their friends, held this year in a local restaurant. It was a delight to meet the partners, siblings, and friends who have provided support to the Fellows and therefore to the Program.

For further news on the Program, we urge a visit to the Hays website: <http://www.law.nyu.edu/academics/fellowships/haysprogram/index.htm>. The site also provides a link to Lora Hays's video about the Program.

## 1. THE FELLOWS

The Fellows for 2010-2011 were Laura Arandes (Palmer Weber), Shira Lauren Feldman (Harriet Pilpel), Summer Lacey (Roger Baldwin), David Lee Menninger (Tom Stoddard), Eli Northrup (Robert Marshall), Lisa Nowlin (Tom Stoddard), Roopal Patel (Deborah Rachel Linfield), and Jessica Wheeler (Leonard Boudin).

The work of the Hays Fellows — always the heart of the Program — reflects the ever-evolving challenges to civil liberties. This year, problems involving the rights of immigrants, national security, and poverty were the main focus of the Fellows. Reproductive freedom and criminal justice also commanded attention. First Amendment questions were implicated in a great deal of the Fellows' work. A summary follows.

### Immigrants.

In the fall semester, David Menninger worked with Lee Gelernt in the Immigrants' Rights Project at the ACLU to defend a Ninth Circuit victory in *al-Kidd v. Ashcroft*. *Al-Kidd* challenged abuse of the material witness detention statute by the Bush administration. David helped on a brief in opposition to certiorari, which was quickly granted by the Supreme Court. David drafted numerous memoranda on prosecutorial immunity and the Fourth Amendment. He reports, "I felt like a valued member of the small *al-Kidd* team, and I was completely swept up by the case. Our brief was due in January, and even though Hays Placements normally end in December, I could not walk away from *al-Kidd*. On the night before the brief was due, I sat around the conference table with the handful of attorneys on the case making our final edits. Although I moved on to my next placement in the spring, I was sure not to miss oral argument in March. Seeing the Justices grapple with the questions that I had thought so hard about was the high point of my law school experience. At this writing, no decision has been handed down, but no matter what I know I will always look back on this as a formative moment in my legal career." [*Al-Kidd's* arguments were rejected by a unanimous Court on May 31, albeit, in a narrow decision.]

Laura Arandes, Palmer Weber Fellow, worked with the Immigrant Defense Project, which focuses on community advocacy and impact litigation combating the harsh effects of the

criminal justice system on immigrant communities. Laura's primary project involved brainstorming and researching possible arguments for use in a New York Court of Appeals *amicus* brief challenging the New York Appellate Divisions' practice of dismissing the criminal appeals of involuntarily deported defendants without reaching the merits of their claims.

In the spring, David worked at the Immigrant Defense Project, relying on Laura's research to help draft the *amicus* brief. In addition, David worked on other cases, including litigation challenging the interrelated issue of whether a noncitizen can be deported on the basis of a conviction that is still on appeal. Both Laura and David report that their experience at IDP provided new and interesting perspectives on public interest advocacy.

Summer Lacey, Roger Baldwin Fellow, also worked on immigration issues, with the African Service Committee (ASC). The organization's mission is to improve the health and self-sufficiency of the African community in New York City and beyond. To that end, ASC provides health, housing, legal, educational, and social services to 10,000 immigrants, refugees, and asylees from across the African Diaspora each year. Summer's work focused on interviewing clients and helping attorneys decide which form of immigration relief was most directly applicable for clients, many of whom were victims of human trafficking and other forms of violence.

#### Poverty.

Eli Northup, Robert Marshall Fellow, interned at the South Brooklyn Legal Services, Foreclosure Prevention Unit in the fall, working one-on-one with clients who were facing foreclosure proceedings. SBLS runs a foreclosure prevention clinic at the Kings County Courthouse and Eli conducted intake and counseling sessions at the Courthouse. Eli helped people who SBLS could not represent to place them with other organizations, or give them advice on steps they could take on their own. He also drafted a brief on behalf of a client alleging that she had been the target of predatory lending practices by a large bank.

In the spring both Lisa Nowlin and Roopal Patel interned with Tara Urs (Hays Fellow, 2004-05) at the Brooklyn Family Defense Project (BFDP). BFDP represents parents in child welfare cases, providing high quality legal representation to protect parents' due process rights while simultaneously promoting access to the services necessary to build safe and stable families. Lisa's work focused on the rights of parents with mental health issues. She also worked closely with one client to try to get her daughter back, drafting an affidavit and a motion for summary judgment. Roopal represented parents in Family Court proceedings trying to reunite or remain with their children. She prepared clients for testimony, conducted a direct examination, a cross examination, and delivered a prima facie motion. She also conducted research into questions of family law.

In the spring, Shira Feldman assisted the NYCLU in crafting a case challenging trespass arrests in New York City made under the "Clean Halls" program of the NYPD. These arrests are frequently made illegally, often arresting people for trespass in their own residences, and

although they purportedly serve to keep communities safer by providing policing to residences in high-crime areas, in reality they create a climate of fear for people in their own homes. Shira was involved in the case from its outset, assisting in locating plaintiffs and researching possible causes of action.

### Criminal Justice.

In the spring Eli Northup worked with NAACP Legal Defense and Education Fund, Criminal Justice Project, focusing on an Eighth Amendment challenge to a sentence of life without parole imposed on a juvenile offender. He did extensive research into the procedural hurdles for filing a post-conviction petition in Mississippi and in federal court. He also drafted the factual narrative portion of the brief filed, and conducted a study on all persons convicted of a homicide offense in Mississippi since 1994 who were under the age of 18 at the time the crime was committed. With the help of the Hays Program, Eli traveled to Mississippi for five days to meet the client, and to collect important files located in courthouses across the state. The post-conviction petition was filed on May 13, and Eli continued to work on the case throughout the summer, helping with a supplemental brief. On July 6 the Mississippi Supreme Court ruled that the LDEF can proceed to trial in state court on its motion for post-conviction sentencing relief.

Summer worked with the Neighborhood Defender Services of Harlem (NDS). NDS is a nationally renowned holistic public defense organization that is dedicated to providing high quality legal representation to the residents of Harlem. Summer worked with Supervising Attorney Matt Knecht to help develop the organization's newly established civil rights practice. Summer also conducted research and wrote memos on behalf of clients challenging criminal convictions.

Jessica Wheeler interned with the Queens office of the Legal Aid Society's Juvenile Rights Practice. She did research and drafted motions on behalf of juveniles in delinquency hearings and participated in interviews and consultations with clients and client families.

### Reproductive Freedom.

Shira Lauren Feldman, Harriet Pilpel-Planned Parenthood Fellow, worked with National Advocates for Pregnant Women, founded and led by Lynn Paltrow (Hays Fellow 1982-1983). Shira worked on an array of cases, including a family court trial in New Jersey in which NAPW was co-counsel and an appeal to the Supreme Court of Mississippi. She also assisted in the compilation of a report documenting the arrests of pregnant women.

Laura Arandes interned with the ACLU's Reproductive Freedom Project, which works broadly on issues surrounding contraception, abortion, and pregnancy. Among other projects, she researched state public accommodations law in various states where men are being denied access to over-the-counter emergency contraceptives. Laura also analyzed various First Amendment arguments that could be brought to challenge state laws requiring doctors to

testify that women who request abortions are not doing so on the basis of race or sex discrimination.

### First Amendment.

Roopal Patel, Deborah Linfield Fellow, interned at the ACLU's National Security Project, working with Melissa Goodman (Hays Fellow, 2002-2003). Roopal conducted research on third-party standing and the political question doctrine for *Al-Aulaqi v. Obama*, a D.C. Circuit court case, regarding the constitutionality of the federal government's targeted assassination program. Roopal also conducted research into the First Amendment implications of a case where a government worker was fired after publishing an article in the *Washington Post* criticizing the government. Roopal additionally worked on research into the constitutionality of the government's "No-Fly" list, prohibiting citizens and lawful residents from flying due to suspected terrorist activities.

Jessica Wheeler, Leonard Boudin Fellow, interned with the ACLU's Speech, Privacy, and Technology Project. SPT, which was created in the ACLU's recent reorganization, focuses on issues that implicate free speech and/or privacy, including those that are complicated by advancing technology. Jessica provided research and writing support on some straight speech cases, such as one alleging government retaliation for a political bumper sticker; a case, regarding government efforts to obtain individuals' Amazon.com purchase histories, at the intersection of speech, privacy, and technology; and an investigation into privacy threats presented by new technology.

### LGBT Issues.

Lisa Nowlin interned with the American Civil Liberties Union's LGBT Project. The LGBT Project focuses its efforts across five issue areas pertaining to LGBT people and individuals living with HIV/AIDS: relationships, youth & schools, parenting, gender identity and expression, and discrimination in employment and housing. She focused primarily on documentation for transgender individuals, specifically the requirements for changing gender markers on birth certificates and driver's licenses. On July 6 a complaint, based on her work, was filed in Alaska, challenging rules that deny transgender people the ability to correct identifying information on their drivers' licenses. She participated in staff discussions of leading LGBT cases, including *Windsor v. United States*, in which the Department of Justice announced that it will no longer defend DOMA.

## 2. THE DIRECTORS.

Norman Dorsen. Norman continues to divide his time between law school duties, notably the Hays Program, including the James Madison lecture, and serving as counselor to NYU President John Sexton. He continues to offer his seminar on Judicial Biography and Opinions. At the University, he advised those responsible for compliance with labor and human rights norms, and he consulted on the now concluded negotiations with adjunct faculty at a number of schools. (The Law School was not involved.)

He continues to serve as a board member of The Thomas Jefferson Center for the Protection of Free Expression (in Charlottesville, VA), and as a member of the National Advisory Council of the ACLU.

When Professor Joseph Weiler succeeded Norman as editor-in-chief of the International Journal of Constitutional Law (“I.CON”), which Norman founded in the late 1990s, he decided to devote two issues of the journal “in homage” to Norman. The first issue included ten non-American scholars, who each discussed briefly the ten books that most influenced their intellectual growth. 8 I.CON 421 (2010). Norman wrote a “Response” in which he commented on the selections and underlying premises of each of the authors. 8 I.CON at 509. The second issue repeated the pattern for ten U.S. scholars, one of which was Norman. In this issue he presented his selections and also commented on those of the other nine. This issue is at press.

Sylvia A. Law taught Health Law and led a health policy seminar in the fall semester. She resumed her role as a co-author of the Foundation Press text, Law and the American Health Care System (with Sara Rosenbaum of George Washington and Rand Rosenblatt and David Frankfort of Camden Law School). In the fall semester, as chair of the Sheinberg Scholar in Residence Program, she helped to organize a law school program featuring Dolores Huerta, co-founder of the United Farm workers of American. She continues to serve on the boards of the Center for Reproductive Rights and the Center for Law and Social Policy. She worked with Compassion and Choices to promote laws in New York and in California, requiring that when health care providers determine that a patient is terminally ill, the patient must be informed of the range of options legally available to them. She helped to organize and participated in a “Hot Topics” session on these new laws at the AALS convention in San Francisco in January.

In the spring, Sylvia was on leave, living in Hawaii. She and Michael D. Sant’Ambrogio wrote an article evaluating the impact of Baehr v. Lewin, the 1993 Hawaii Supreme Court decision holding that excluding same-sex couples from marriage was presumptively unconstitutional. The article was presented at a conference at the University of Hawaii Law School in April, will be published in their law review and is available at <http://ssrn.com/abstract=1855065>.

Helen Hershkoff’s highlight of the year was delivering the Inaugural Lecture of the Herbert M. and Svetlana Wachtell Professorship of Constitutional Law and Civil Liberties, entitled, “The Private Life of Public Rights: State Constitutions and the Common Law.” From 2006-2009, Helen was honored to be the Anne and Joel Ehrenkranz Professor of Law.

The year also saw the publication of Civil Procedure: Cases and Materials Compact Tenth Edition for Shorter Courses (Thomson West, 2010) (with Jack H. Friedenthal, Arthur Miller, and John E. Sexton), and an accompanying Teacher’s Manual and rules supplement. Helen’s essay, State Common Law and the Dual Enforcement of Constitutional Norms, was included in New Frontiers of State Constitutional Law: Dual Enforcement of Norms (Oxford

University Press, 2011), and an article on a related subject was published: "Just Words": Common Law and the Enforcement of State Constitutional Social and Economic Rights, 62 Stan. L. Rev. 1521 (2010). A short version of the Stanford piece appears online: <http://legalworkshop.org/2011/02/09/just-words>. Another article, Horizontality and the "Spooky" Doctrines of American Law, was published in volume 59 of the Buffalo Law Review. Helen presented a co-authored paper, Contracting for Procedure (with Kevin Davis), at the William and Mary Law Review Symposium, Constitutional Transformations: The State, the Citizen, and the Changing Role of Government; presented another co-authored paper, State Courts and Constitutional Socio-economic Rights: Exploring the Underutilization Thesis (with Stephen Loffredo), by video at the Dickinson School of Law Pennsylvania State University Symposium on State Constitutions; and worked with Alice Henkin of the Aspen Institute to organize a conference for state court judges on state law and human rights.

Helen's teaching focused on the required first-year course in Civil Procedure, as well as Federal Courts and the Federal System and the Hays Civil Liberties seminar. She also taught two courses during the summer 2011 program at NYU@NUS: Introduction to U.S. Law and U.S. Courts and Global Business. Helen supervised student scholarship on a range of topics related to procedure and courts. One of her students took first prize and received a \$2500 award in the ABA Law and Business Essay Competition.

During academic year 2011-2012, Helen will be on sabbatical.

### 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 25 Court of Appeals judges have delivered Madison lectures. Norman has directed the Madison lectures since 1977, and it is administered as part of the Hays Program. The fall 2010 lecture was delivered by Hon. Robert Henry, President, Oklahoma City University and former Chief Judge of the Tenth Circuit. The 2011 lecturer will be Judge Robert Katzmman of the Second Circuit.

### 4. THE FELLOWS' NEXT STEPS.

Laura Arandes will be in Nashville for one year clerking for Judge Martha Craig Daughtrey, and then clerking in DC for two years after that for Judge Gladys Kessler. Shira Feldman will work in the law office of Joel B. Rudin, a small New York City firm that does post conviction practice and seeks remedies for prosecutorial misconduct. Summer Lacey will work at the Brooklyn Defender Services. David Menninger will clerk for Judge Carlos Lucero on the Tenth Circuit Court of Appeals in Denver. Eli Northrup will be clerking for Judge Robert P. Patterson in the Southern District of New York in 2011 and in 2012 will be clerking for Judge Julio M. Fuentes, of the Third Circuit in Newark, New Jersey. Lisa Nowlin will be at the Paul Hastings firm in Washington, D.C. Roopal Patel will be the George Katz Fellow at the Brennan Center. Jessica Wheeler will be working at Wilmer Hale's New York office.

## 5. NEW FELLOWS.

In 2011-2012 the Fellows will be: Greger Calhan, (Robert Marshall), Lauren Jones (Harriet Pilpel), Wonjun Lee (Roger Baldwin), Jessica Rubin-Wills (Deborah Rachel Linfield), Julia Smith (Tom Stoddard), and Jeffrey Stein (Palmer Weber). As in the past, the new Fellows were selected following interviews by the Directors and current Fellows on the basis of their demonstrated commitment to civil liberties, their public interest experience, and their academic qualifications.

We again express our thanks to Gail Thomas for her dedicated work as administrative assistant and secretary to the Hays Program. We also thank Robert Anselmi for his administrative support.

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 either by email to [gail.thomas@nyu.edu](mailto:gail.thomas@nyu.edu) or mail your updated information to NYU Law School, Attn: The Hays Program VH 308, New York, NY 10012.

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