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September, 2010

**ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM
ANNUAL REPORT 2009-2010**

The last year has been difficult and important for civil liberties. The Supreme Court is more conservative than any since the New Deal, and the Senate minority has withheld confirmation from more of President Obama's judicial nominees to this point in the presidency than ever before. Significant questions involving national security, religious tolerance, sexual equality, and immigrant rights dominate public discussion and have raised constitutional issues. Fortunately, the Hays Program continues to attract highly qualified students committed to civil liberties and civil rights. As always, this year we received applications from many more students than the number of available fellowships, and the selection process was challenging. Colin Stewart, Hays Fellow 2000-2001, participated in this year's interviews and provided valuable assistance.

As in past years, each semester a former Hays Fellow met before and during dinner with current Fellows to discuss experiences with the Program, career choices, and other issues. Sarah Ludwig (Hays Fellow 1991-1992) spoke with us in the fall, and Jonathan Orleans (Hays Fellow 1983-1984) joined us in the spring.

Together, the two former Fellows demonstrated very well the different shape that a career in civil liberties may take. We also continued our recent practice of inviting a distinguished public interest lawyer to discuss his or her work with the Fellows. Arthur Eisenberg, the longtime legal director of the New York Civil Liberties Union was our guest in the fall. In the spring, Janice Goodman '70 met with us to share stories of the founding of the first feminist law firm and her decades of experience representing employees challenging gender, race, and age discrimination.

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.

On a sad note, Lora Hays, the daughter of Arthur Garfield Hays, died at age 99. She was a remarkable woman, teaching film at the NYU Tisch School of the Arts into her mid-90s and mentoring many students who have reached prominence in their fields. Lora also was close to the Hays Program, often attending dinners and other functions, and supervising a video of the Program that we still show to applicants for the Fellowship.

We also regretfully report the recent death of Traute Mainzer, who was a mainstay of the Hays Program's Project on Social Welfare Law during the 1960's and went on to become a Family Court Judge in New York City. Traute was a sparkling woman who befriended many Hays Fellows. In her Will Traute Honored the Hays Program with a bequest.

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's video about the Program.

1. THE FELLOWS

The Fellows for 2009-2010 were Rachel Goodman (Roger Baldwin), Colin Reardon (Leonard Boudin), Alexa Rosenbloom (Robert Marshall), Amalea Smirniotopolous (Deborah Linfield), Laura Trice (Palmer Weber), and Alisa Wellek (Harriet Pilpel).

The work of the Hays Fellows — always the heart of the Program — reflects the ever-evolving challenges to civil liberties. This year problems confronting immigrants were the main focus of the Fellows. Poverty, racial discrimination, and reproductive freedom also commanded attention. Finally, Fellows worked on issues of national security and the First Amendment. Here is a summary of the work done by the Hays Fellows this past year.

Immigration.

Rachel Goodman worked in the fall semester at the Immigrant Defense Project (IDP), an organization that advises immigrants with criminal records and their attorneys about their rights and advocates for the reform of immigration law so that it better responds to the complex, individual circumstances of this population. Rachel was responsible for researching and drafting IDP's amicus curiae brief to the Second Circuit in *Garcia v. Shanahan*. That case presented a challenge to the government's new, expansive interpretation of the mandatory detention statute, which allows it to deny bond hearings to immigrants in removal proceedings based on the fact that they committed crimes more than ten years ago. The brief that Rachel wrote for IDP collected and presented stories of immigrants and their families whose lives had been devastated by detention, even though they subsequently prevailed in their immigration cases. She spoke with immigration attorneys around the country who had handled these cases and synthesized their experiences in the brief.

The brief further argued that, because detained immigrants from the Second Circuit are often shipped to detention facilities in the Fifth Circuit, where immigration law is interpreted in a stricter fashion, mandatory detention can be determinative of whether or not an immigrant will be deported. The case was successful and NYU acknowledged the work of Rachel and the IDP, see http://law.nyu.edu/news/IRC_HABEAS_MONESTIME

Alexa Rosenbloom worked with Judy Rabinovitz (Hays Fellow, 1984-1985) at the ACLU Immigrants' Rights Project in the fall semester. She researched possible challenges to the prolonged imposition of the Intensive Supervision Appearance Program (ISAP). ISAP, an alternative to immigration detention, places restrictive conditions of release on people within the immigration court system. Alexa also researched a newly-amended Georgia law expressly passed to inhibit immigration and drive away non-legal immigrants from the state. She collaborated with IRP staff and other organizations in brainstorming ways to ensure that the law does not get enforced in an unconstitutional or discriminatory fashion.

In the fall, Amalea Smirniotopoulos interned with The Door, Inc. Legal Services Department. The Door provides comprehensive health, legal, educational, counseling and nutrition services to youth ages 12-21. Amalea advocated on behalf of youth on immigration issues, researching and writing applications for Special Immigrant Juvenile Status and an asylum petition. She also researched and wrote part of a brief challenging the unconstitutional detention of two clients by local police.

In the spring, Amalea continued to focus on immigration working at the Center for Constitutional Rights (CCR), where she was supervised by Rachel Meeropol (Hays Fellow, 2001-2002). CCR litigates on domestic and international issues ranging from prisoner's rights to corporate abuse of human rights. Amalea worked primarily on *Turkmen v. Ashcroft*, which challenges the detention of undocumented immigrants in the aftermath of September 11, and wrote a section of CCR's motion for class certification in the case. (Amalea also worked on *U.S.A. v. Buddenberg*, a criminal prosecution of animal rights activists for their protest activities. Over the course of the semester, she researched and wrote memos on whether the First Amendment protects the publication of addresses, as well as several procedural issues.)

Poverty and Social Services.

In the spring semester, Alexa Rosenbloom worked in the Foreclosure Prevention Unit of South Brooklyn Legal Services (SBLS), which is directed by Chip Gray (Hays Fellow 1967-1968), to assist homeowners who have been targeting predatory landowners and attempting to help them keep their homes. Alexa worked on a wide variety of project, from negotiating with a loan servicer on behalf of a client, to conducting legal research, to writing two legal motions in foreclosure actions. She also conducted client intakes and assisted in the Foreclosure Unit's ongoing federal court litigation against predatory lenders.

In the fall, Laura Trice interned with the Mental Health Project (MHP) of the Urban Justice Center. MHP empowers low-income New Yorkers with psychiatric disabilities to break the

devastating cycle of homelessness, hospitalization, and incarceration. While at MHP, Laura researched and developed ideas for using the ADA as a defense in family court proceedings against parents with mental illness or mental disability. She also helped clients secure benefits and retain rent-stabilized housing, and helped MHP monitor the New York City Department of Correction's compliance with a class action settlement requiring discharge planning services for inmates with serious mental illness at Rikers Island.

Alisa Welleck's spring placement was at Emery Celli Brinckerhoff & Abady (ECBA), a small firm devoted mainly to civil rights litigation. Alisa worked on a lawsuit brought by ECBA and the Neighborhood Economic Development Advocacy Project (NEDAP). For this project, she researched the application of civil RICO to a scheme whereby debt collection agencies, process servers, and their lawyers failed to serve defendants in debt actions (a process known as "sewer service") and then won default judgments against the defendants in court. She prepared a memo with arguments responding to a motion to dismiss these claims. She also researched Title IX standards for a lawsuit challenging a college's inadequate response to campus rape that contributed to the suicide of a young female student. She prepared deposition outlines and assisted in deposing witnesses for the case. Finally, she performed fact development and research for cases related to police brutality, wrongful convictions, LGBT discrimination, and immigration asylum.

Racial Justice.

Rachel Goodman worked in the spring at the Center for Constitutional Rights, in the project on Racial Justice and Government Misconduct. There, she performed legal research supporting CCR's challenge to the federal Bureau of Prisons' Communications Management Unit (CMU). This unit houses prisoners, overwhelmingly Muslims, who are alleged to have been fomenting terrorist activity while incarcerated. The case challenges the utter lack of process surrounding transfers into the unit as well as conditions of confinement there, which include highly restricted telephone access and no contact visits.. Rachel's memoranda were crucial in refining and directing the complaint, as well as for developing a long-term strategy for the case.

Colin Reardon worked in the spring at the Brennan Center for Justice, where he participated in a campaign to enforce a provision of the National Voter Registration Act (NVRA) which requires state Departments of Motor Vehicles to update voter address information when voters renew their drivers' licenses. Although this provision has been law for over 15 years, and is important to ensuring that voters who move are able to vote, the Center found that many states do not comply with it. Colin helped identify which states were most out of compliance, and he drafted letters to seven states explaining how they failed to comply with the NVRA and explained the cost savings that would accrue if they automated their data collection processes. Colin also helped prepare Congressional testimony by conducting research on the impact of the Citizens United campaign finance case on labor unions.

Reproductive Freedom.

In the fall semester, Alisa Wellek worked at the ACLU Reproductive Freedom Project. She researched state restrictions on women's choices in childbirth. Primarily, she focused on state coercion of pregnant women's medical decisions, including court orders mandating caesarean sections. She also researched state limitations on the practice of midwifery, interviewed key stakeholders, and wrote a memo detailing the outlook for litigation challenges in different states. Alisa developed a number of innovative litigation strategies, researched potential plaintiffs, and wrote an administrative complaint to challenge these practices on behalf of an ACLU client.

In the spring, Laura Trice interned with National Advocates for Pregnant Women (NAPW), headed by Lynn Paltrow (Hays Fellow 1982-1983). NAPW works to secure the human and civil rights, health and welfare of all women, focusing particularly on pregnant and parenting women, and those who are most vulnerable – low income women, women of color, and drug-using women. At NAPW, Laura worked primarily to defend the rights of women who choose to carry their pregnancies to term while struggling with drug use and addiction. She researched use of a new law in Alabama to prosecute pregnant and birthing women who test positive for drugs, participated in efforts to dismiss similar charges against a new mother in Florida, and assisted NAPW in its myriad efforts to protect pregnant women.

National Security.

In the fall Colin Reardon interned at the National Security Project at the American Civil Liberties Union under the supervision of staff attorney Jonathan Hafetz. His main project was a Freedom of Information Act case seeking the release of a legal memorandum written by the Office of Legal Counsel concerning the constitutional rights that Guantanamo Bay detainees would be able to claim if they were tried by military commissions in the United States. He conducted legal and factual research for the case, and eventually drafted a summary judgment motion arguing that the memorandum should be released because the Obama administration had publicly relied on its contents. In addition to the FOIA case, he conducted legal research on how to obtain the identities of United States government agents who participated in the extraordinary rendition of a foreign national to another country where he was subject to torture.

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. At the University, he advised those responsible for the new Abu Dhabi campus on compliance with labor and human rights norms, and he consulted on some of the issues in play in the current negotiations with adjunct faculty at a number of schools (not including the Law School).

Norman was on sabbatical in the spring semester. Although he continued with the Hays Program, he did not teach his usual seminar in Judicial Biographies and Opinions, which explores the jurisprudence of Supreme Court Justices in light of their life experiences. After

many years of service as founder and editorial director of the quarterly International Journal of Constitutional Law (ICON), he handed over his duties to his colleague, Professor Joseph Weiler. The journal has authors and editorial board members from more than 40 countries.

Although he retired from the board of the International Association of Law Schools (IALS), which has members from all parts of the world, he continues his participation. He continues 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.

As announced last year, the second edition of the casebook Comparative Constitutionalism, which Norman co-authors with colleagues from Germany, Hungary and the U.S., was published in May His article on American Federalism and the ACLU, which he wrote with current ACLU president, Professor Susan Herman, has been published as a monograph by Yale Law School (a copy is available on the Program website). Norman made his first appearance on the Internet when he wrote an analysis of the work of retired Justice John Paul Stevens for SCOTUSblog (the blog, Supreme Court of the U.S.). Finally, he wrote two prefaces, one for a book of political cartoons by Marc Simont, his 95 year old neighbor in Cornwall, CT., who among other things illustrated many of James Thurber's books, and the other a political and social discussion of probably the first gay rights ordinances in the country (in Minneapolis), which will be published this fall or winter.

Sylvia A. Law. In the spring, Sylvia returned from her sabbatical in Hawaii and taught Health Law and led a health policy colloquium. With Rhonda Coplelon, she wrote a chapter on Harris v. McRae, the 1980 Medicaid abortion funding case, for the book on women's stories for the Foundation Press law stories series. (Elizabeth Schneider (Hays Fellow 1972-1973) and Stephanie Wildman are the editors of the book.) In April, she spoke at a conference at Santa Clara Law School that included many of the authors of this volume. In addition, she worked with various groups crafting response to the abortion funding compromises contained in the 2010 health care reform legislation.

In the spring semester, as chair of the Sheinberg Scholar in Residence Program, she helped to organize a law school program featuring Van Jones, co-founder of the Ella Baker Center for Human Rights and author of the best-selling book on green jobs, The Green-Collar Economy. Sylvia rotated out of her position as Vice President and Board member of Compassion & Choices. She continues to serve on the boards of the Center for Reproductive Rights and the Center for Law and Social Policy.

Helen Hershkoff. Helen taught Civil Procedure in the fall and Federal Courts and the Federal System in the spring. On the administrative front, she convened the Procedure Area Group; was a member of the Executive Committee; worked as faculty advisor to the Journal of Legislation and Public Policy; and served on the Board of Directors of the Brennan Center for Justice, where she co-chaired the program committee and was a member of the governance committee.

During summer 2009, Helen was named the Herbert M. & Svetlana Wachtell Professor of Constitutional Law and Civil Liberties, and she will deliver an inaugural lecture in spring 2011. She previously was the Anne & Joel Ehrenkranz Professor of Law, and she thanks both the Wachtell and the Ehrenkranz families for their past and ongoing support.

Helen saw the release of a new co-authored casebook, *Civil Procedure: Cases and Materials Compact Tenth Edition for Shorter Courses* (with Jack H. Friedenthal, Arthur R. Miller, and John E. Sexton), designed to meet the needs of those teaching Procedure courses that are shorter than the traditional assignment of three hours for each of two semesters.

The Compact Tenth Edition is based on the Tenth Edition of the longer version of the casebook, and is accompanied by a Rules Supplement and two teacher's manuals. Helen's article, "Celebrating Jack H. Friedenthal: The Views of Two Co-authors," (with Arthur R. Miller), appeared in the *George Washington Law Review*; another article, "'Just Words': Common Law and the Enforcement of State Constitutional Social and Economic Rights," was published in the *Stanford Law Review*. In addition, her essay, "State Common Law and the Dual Enforcement of Constitutional Norms," will appear in *Dual Enforcement of Constitutional Rights: New Frontiers of State Constitutional Law* (Oxford University Press, forthcoming 2010). In October 2009 Helen participated in a workshop on federal courts at the American University School of Law, and in May 2010, together with Professor Stephen Loffredo of the City University of New York Law School, she co-taught two seminar classes on comparative constitutional law at the University of Florence, Department of Comparative Law.

Finally Helen continued to serve on the Board of the Urban Justice Center, on the Advisory Board of the Association of Union Democracy, on the Board of Party for Humanity, and on the Schools Committee of the Harvard Club of New York.

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 2009 lecture was delivered by Judge M. Blane Michael '68 of the Fourth Circuit and the 2010 lecture will be delivered by Hon. Robert Henry, President, Oklahoma City University and former Chief Judge of the Tenth Circuit. The 2011 lecturer will be Judge Robert Katzmann of the Second Circuit.

4. THE FELLOWS' NEXT STEPS.

Rachel Goodman will be the Marvin M. Karparkin Fellow at the ACLU Racial Justice Program. Colin Reardon is clerking for Judge Louis Pollack of the Eastern District of

Pennsylvania. Alexa Rosenbloom will clerk for Magistrate Judge Robert Levy of the Eastern District of New York. Amalea Smirniotopolous is finishing her joint-degree at the Wagner School and will be clerking for Jack Weinstein, Chief Judge of the Eastern District of New York, beginning in the fall 2011. Laura Trice will clerk next year for Judge Lucy Koh of the Northern District of California and in the following year for Judge David Tatel of the U.S. Court of Appeals for the D.C. Circuit. Alisa Wellek was awarded a two year Equal Justice Works Fellowship and will work at the Immigrant Defense Project.

5. NEW FELLOWS.

In 2010-2011 the Fellows will be: 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). 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 and Hetty Dekker for their 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 or mail your updated information to NYU Law School, Attn: The Hays Program VH 308, New York, NY 10012.

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