



New York University
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**ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM
ANNUAL REPORT 2014-2015**

As always the work of the Fellows is the heart of the Hays Program and that work is detailed below. But this year, Norman Dorsen, who ordinarily leads by quiet care and example, commanded our attention.

On February 17, we celebrated the inauguration of the Norman Dorsen Professorship in Civil Liberties. NYU President John Sexton and Dean Trevor Morrison offered erudite, moving tributes to Norman. Professor Burt Neuborne, the first Dorsen Professor, highlighted his new book, *Madison's Music: on Reading the First Amendment*. It was a magnificent evening. Here is a link to a video of the event:

<https://www.youtube.com/watch?v=BoN3eXEm01s>.

On April 18, Norman had a small accident backing out of his driveway in his country home in Cornwall Bridge, Connecticut. Neighbor friends persuaded him to go to the local hospital. Imaging revealed lesions on the brain, He was transferred to NYU Medical Center, where he had brain surgery. The good news was that there was no cancer. The bad news is that he required serious rehabilitation. Norman took on the challenge with characteristic strength, working hard, engaging the professionals who cared for him, first at the Rusk Institute at NYU and then at Green Acres Rehabilitation Center, near his home in Connecticut. In July he returned home to Cornwall Bridge. After Labor Day he returned to the Law School to the delight of his friends and colleagues. His daughters, Jennifer, Caroline, and Annie, have been a great source of support.

They have set up a web site where you can learn news and post comments:
Normandorsen@wordpress.com.

On May 4, we hosted the eighth annual reception for graduating Fellows and their friends. . . Burt Neuborne had agreed to give a short, surprise tribute to Norman, as a more intimate follow-up to the formal February event. Norman was then recovering from surgery. As always it was wonderful to connect with the partners, friends and supervisors of the Fellows. Norman's precarious condition made us appreciate his absence. Here is a link to a video of the event: <http://128.122.159.212/?c=425&k=26da41d0f0> (click on the thumbnail, then hit "download." It may take a few minutes, but the video will save in your downloads folder).

As in past years, each semester a former Hays Fellow met with current Fellows to discuss experiences with the Program, career choices, and other issues. Katie Watson (1991-1992), Assistant Professor in Medical Education, Medical Humanities and Bioethics a Northwestern University Feinberg School of Medicine joined us in the fall. Her career as a lawyer, and then a student and teacher of comedy and improvisation at Second City, help her to train doctors in medical ethics and communication. In the spring, Dan Pachoda (1969-1970) shared conversation and dinner. Former lawyer for the prisoners at Attica, Dan has long served as legal director of the ACLU of Arizona.

In addition, each semester we invite a leading civil liberties lawyer, not a Hays Fellow, to speak with the Fellows about their life and work. Steve Shapiro, longtime friend of the Hays program and legal director of the ACLU, joined us in the fall. In the spring Roberta Kaplan, a partner in the Litigation Department at Paul Weiss, joined us to discuss her work on behalf of Edith Windsor, persuading the Supreme Court to hold that key provisions of the Defense of Marriage Act unconstitutionally deny same-sex couple benefits conferred by federal law.

On November 13, 2015 the Hays Program and the NYU Journal of Legislation and Public Policy are partnering to host a symposium, on "Civil Rights and Constitutional Litigation: Lessons from the Struggle for Same-Sex Marriage." The Symposium will examine the future of the LGBTQIA movement's struggle for equality, while also locating the campaign for marriage access in the broader context of civil rights movements in the United States. While the Symposium is intended in part to look toward the future, it will also pay tribute to the late Professor Tom Stoddard, whose work helped make today's landscape possible. This fall is the twentieth anniversary of the establishment of the Hays Program's Tom Stoddard Fellowship in the Rights of Lesbians and Gay Men. Both Norman and Tom were influential in founding the Journal of Legislation and Public Policy. An impressive group of civil rights advocates have committed to speak, including Andrew Tobias, Eliza Byrad, Melissa Murray, Keven Cathcart, Theane Evangelis, Richard Blum (Hays Fellow, 1988-1989), Nancy Northup, and Roberta Kaplan. Save the date. It will be a great conversation and you are all welcome.

For further news on the Program, visit the Hays website:
<http://www.law.nyu.edu/academics/fellowships/haysprogram/index.htm>. The site also provides a

link to the videos of prior Hays programs, to Lora Hays's video about the Program, prior annual reports and to Madison Lectures as published in the New York University Law Review.

1. THE FELLOWS

This year's Fellows were:

Cara Gagliano (Harriet Pilpel)
Nishi Kumar (Tom Stoddard)
Joanna C. Lane (Robert Marshall)
Etan Newman (Roger Baldwin)
Lisa Sangoi (Palmer Weber)
Aimee Thomson (Deborah Linfield)
Josh Wertheimer (Leonard Boudin)

The work of the Hays Fellows reflects the ever-evolving challenges to civil liberties. This year, criminal justice commanded greatest attention, followed by immigration and national security, economic justice, and reproductive freedom. In addition, fellows worked on issues of race discrimination, voting rights, LGBT rights and free speech. Here is a summary of the work done by the Hays Fellows this past year.

Criminal Justice

Etan Newman worked at the Bronx Defenders, under the supervision of criminal defense attorneys Amalea Smirniotopoulos (Hays Fellow, 2009-2010) and Colby Dillon. The Bronx Defenders is a pioneer of the holistic model of public defense, which broadens the scope of representation to address both collateral consequences of criminal justice involvement as well as the underlying issues that drive clients into the system. Etan conducted research on several legal issues, including speedy trial protections, the right to confrontation, and New York civil forfeiture laws, to support both litigation and legislative advocacy on behalf of Bronx Defenders clients. He drafted motions to dismiss in several cases challenging the DA's initiation of misdemeanor prosecutions supported only by hearsay evidence. Finally, Etan interviewed clients and drafted Pre-Pleading Investigations (PPIs) to document the collateral immigration consequences of certain criminal convictions. These PPIs were submitted in support of requests that the DA agree to "immigration-safe" pleas.

In the fall, Lisa Sangoi interned with the Brooklyn Family Defense Practice (BFDP) at the Brooklyn Defender Services (BDS). She worked with families facing abuse and neglect proceedings, or some other legal challenge to their parental rights, due to their arrest or incarceration. It quickly became apparent that there was a dearth of institutional knowledge on the issues arising at the intersection of the BDS criminal and family court dockets. Family defense attorneys were not able to provide incarcerated clients the robust representation otherwise afforded their clients. In addition, BDS's other units, including its criminal, housing, reentry, jail services, and education units, were not being utilized or coordinated to decrease the impact of arrest and incarceration on parents and families. Lisa assisted family defense attorneys

in advocating for their incarcerated clients by filing motions for visitation and seeking services for pregnant, incarcerated clients. As BDS saw the need for a permanent division within the organization to coordinate response to state threats to liberty and to family integrity, her work turned to outlining a plan for a division within BDS specifically dedicated to fighting for family justice for incarcerated parents. After consulting with many advocates in the area, she created a blueprint for an incarcerated parents division at BDS.

Nishi Kumar spent her spring semester placement at the Correctional Association of New York, working with Gabrielle Horowitz-Prisco (Hays Fellow 2002-2003) in the Juvenile Justice Project. She worked on the “Raise the Age” initiative to move New York’s the upper age of juvenile jurisdiction from sixteen to eighteen. When Governor Cuomo adopted the recommendations of the Commission on Youth, Public Safety, and Justice (co-chaired by the director of the CA) into his 2016 budget legislation, Nishi reviewed the proposed legislation and drafted comparison charts and testimony for the budget hearings. After the legislation was dropped from the budget, she helped craft stand-alone legislation, around which allies could unite. The New York legislature failed to act in 2015 and New York remains one of two states in which sixteen and seventeen year old are automatically prosecuted as adults.

In the spring, Lisa Sangoi worked with the Center for Justice at Columbia University. Housed in the Psychology and Social Work departments of Columbia University and focused on criminal justice policy in New York, the Center does grassroots organizing and policy advocacy. She assisted in community education work educating young people in New York City about restorative justice and alternatives to the traditional criminal justice system. She also helped to draft a Center report on parole for people aging in prison. This report seeks to influence the New York State governor and legislature on parole policy and legislation for people convicted of violent offenses.

National Security and Immigration

Aimee Thomson interned with the Center for Constitutional Rights (CCR) in both the Government Misconduct/Racial Justice Project (GM/RJ) and the International Human Rights Project (IHR). For both projects, Aimee worked on several Freedom of Information Act (FOIA) cases. As a part of GM/RJ, she researched and prepared legal memoranda on FOIA exemptions, the government’s obligation to index documents even if it seeks to withhold those documents from public view, and government justifications for withholding information for a FOIA case requesting documents about the congressional detention bed mandate, which requires 34,000 immigration detention beds be filled at all times. For IHR, Aimee researched and prepared legal memoranda in a FOIA case requesting documents about the Israeli military operation against the 2010 Gaza Flotilla. Aimee also prepared several FOIA administrative appeals for a series of FOIA requests concerning the U.S. military’s use of depleted uranium in the Middle East. Finally, she assisted in the preparation of an appellate reply brief in the Third Circuit case *Hassan v. City of New York*, which challenges the suspicionless surveillance of Muslims by the NYPD.

In the spring, Joanna Laine worked in the Immigration Unit of Brooklyn Defender Services (BDS), under the supervision of Nyasa Hickey. Joanna assisted several lawyers with their work on the New York Immigrant Family Unity Project (NYIFUP), which is the first defender program in the country for immigrants facing deportation. Joanna researched a wide range of immigration issues for NYIFUP clients, including the proper application of the modified categorical approach when determining whether a crime renders an immigrant deportable, and the standard of proof required to show that an immigrant has validly waived his right to a hearing under the Visa Waiver Program. Joanna also drafted briefs for clients in deportation proceedings, conducted country conditions research, and interviewed an immigrant detainee and his family.

Economic Justice

In the spring, Aimee Thomson interned with Legal Services NYC – Brooklyn (previously known as South Brooklyn Legal Services) in the Housing Unit. She researched and prepared memoranda on legal issues related to several clients, including a holdover proceeding brought against a tenant of a two family home illegally converted into SROs (single room occupancy) and a holdover proceeding brought against a tenant of a commercial building illegally converted into lofts.

In the fall, Joanna Laine worked at the ACLU's Women's Rights Project, under the supervision of Sandra Park (Hays Fellow 2001-2002) and Michaela Wallin. Joanna's work focused on the housing rights of domestic violence (DV) survivors. Joanna's major project at the ACLU was a guide for municipal leaders which discusses the legal consequences of discriminating against DV survivors in municipal housing policies, and advises leaders about how they can enhance housing opportunity for DV survivors in their communities. The guide was published in April 2015 and the U.S. Department of Housing and Urban Development (HUD) distributed it to its fair housing partners across the country. The guide was also presented at a conference of the International Municipal Lawyers Association, and it is available on the ACLU's website. In addition to her work on the guide, Joanna drafted comments to HUD in response to its proposed rulemaking on Affirmatively Furthering Fair Housing, which urged HUD to include gender-based metrics in its new tool for assessing fair housing. She also drafted FOIA requests in anticipation of potential litigation. Finally, Joanna researched various topics related to the housing rights of domestic violence survivors, including best practices for police responses to domestic violence and alternatives to municipal nuisance ordinances which force landlords to evict DV survivors who report incidents of abuse to the police.

Reproductive Freedom

In the fall, Cara Gagliano interned at the Center for Reproductive Rights in the U.S. Legal Program. At the time, the Center was actively litigating several major lawsuits in various states, challenging laws that limit access to abortion services by imposing undue restrictions on providers and mandating outdated treatment protocols. Because the Center expects at least one of these cases to make its way to the Supreme Court, Cara worked closely with the Center's Judicial Strategy department, producing research memoranda on potential partnerships and

angles for amicus submissions. Cara also worked with the Center's litigation team, tackling both procedural and substantive research questions and producing a comparative analysis of the penalty schemes under challenged state statutes.

In the spring, Josh Wertheimer worked with the Judicial Strategy team at the Center for Reproductive Rights to expand the types of organizations that file amicus briefs on behalf of reproductive rights. Josh authored a lengthy memo examining libertarian groups in the United States and abroad, considering their history of litigation and amicus briefs dealing with reproductive justice, access to healthcare, and gender to identify which groups would be most likely to weigh in favorably on a reproductive freedom case. Josh also drafted outlines of amicus briefs to propose to libertarian scholars, physician associations, state government leaders, and architectural safety organizations (relating to requirements that abortion clinics satisfy ambulatory surgical center building codes).

Voting Rights

In the fall, Josh Wertheimer worked at the Brennan Center for Justice, where he focused on voting rights and court reform. Josh conducted research for the Brennan Center's amicus brief to the Supreme Court in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, a case challenging the constitutionality of non-partisan redistricting commissions that operate outside the control of states' legislatures. On June 29, 2015, the Supreme Court upheld the Brennan Center's position in an opinion by Justice Ginsburg. Josh also researched early voting practices and pending legislation around the country. In the court reform area, he wrote an extensive memo examining the underfunding of a particular state's judicial system in preparation for potential litigation by the Brennan Center under the access to justice provisions of the state's constitution.

LGBTQ Rights

Nishi Kumar worked at Lambda Legal in their Youth in Out-of-Home Care project. The project's goal is to raise awareness and advance reform on behalf of LBBTQ youth within the child welfare, juvenile justice, and homeless systems of care. Her work included doing initial investigation and research into calls and inquiries received through Lambda's phone hotline—including one in which an HIV-positive youth was threatened to be expelled from his group home because of a provision in the group home's contract with the state. She also participated in meetings with larger coalitions of groups advocating for juvenile rights, assisted in developing trainings, and helped design advocacy toolkits for lawyers representing LGBTQ youth.

Free Speech

In the spring internship, Cara Gagliano worked at the ACLU in the Project on Speech, Privacy, and Technology. She did research for an amicus brief submitted to the U.S. Supreme Court in *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, addressing viewpoint discrimination in Texas's specialty license plate program. On June 18, 2015, the Supreme Court rejected the ACLU position, holding that state authorization of specialty license plates was state

speech, not subject to the First Amendment principle against view point discrimination. Cara also wrote a memo analyzing the procedural obstacles to challenging mandatory Ebola quarantines; wrote guidance for criminal defense attorneys on how they can obtain their clients' cell site location information to use as evidence; and assisted in an administrative appeal to the FBI's denial of a FOIA request for information on the use of aircraft-mounted cell-site simulators. Cara also worked with Rachel Goodman (Hays Fellow, 2009-2010), a staff attorney with the ACLU's Racial Justice Program, on a cross-department project addressing concerns about discriminatory uses of consumers' online data.

2. THE DIRECTORS.

Norman Dorsen. Norman continued as counselor to President John Sexton as well as serving on the law faculty. In the fall 2014 he introduced Madison Lecturer, Judge Anthony J. Scirica of the U.S. Court of Appeals for the Third Circuit, who spoke on judicial ethics. In the spring semester he taught his seminar on Judicial Biography and Opinions. In February, he spoke the creation of Norman Dorsen Professor in Civil Liberties. Professor Burt Neuborne gave the Inaugural Lecture and Norman offered a trenchant, and succinct, review of the transformation of NYU Law School over the past half century. Stephen Gillers, Hays Fellow 1967-1968, received The American Bar Foundation's 2015 Outstanding Scholar Award, and Norman organized and wrote a tribute on behalf of the Hays Program. Earlier in the year Norman spoke at the launch of *The Harbinger*, the on-line review of the Review of Law and Social Change. As the original faculty sponsor and advisor to the Review, he recalled the history and praised the Review's contributions. His remarks will be published in *The Harbinger*.

Sylvia A. Law. At NYU Law, Sylvia taught Health Law and the Health Policy Seminar in the fall semester and Constitutional Law in the spring. She also led a 1L reading group, a new NYU Law program that brings together a small group of 1Ls and a professor over food and conversation. The group, which included students with deep, diverse experience with disabilities, read Andrew Solomon's, *Far From the Tree*.

As chair of the Sheinberg Lecture Program, she helped to organize the 21th annual law school program featuring Ai-Jen Poo, founder and director of Caring Across Generations. Sylvia also serves on the board of the Center for Law and Social Policy. At the Law School, Sylvia is chair of the Faculty Committee on Career Services and of the Health and Benefits Area Group.

In the spring Sylvia worked with the Cuba Legal Studies group, advised a student led seminar, supervised student papers and traveled with the group to Cuba for spring break. She participated in a tribute to the 25th anniversary of the historic *Zebley* decision that extended Social Security benefits to half a million disabled children. Here is a video: [file:///C:/Users/Law/Downloads/ClearinghouseCommunity_Zebley%20\(1\)](file:///C:/Users/Law/Downloads/ClearinghouseCommunity_Zebley%20(1)). In May she traveled to Shanghai to participate in a transpacific dialogue on feminist legal theory in the United States and Asia sponsored by Fudan Law School of Shanghai and Cornell Law School. The conference papers, including her defense of liberal feminism, will be published in 2016. In June she moderated at program honoring outstanding alumnae at the 50th anniversary of her graduation from Antioch College.

Helen Hershkoff. During summer 2014 Helen taught at the University of Freiburg; the course was for graduate students and called “Introduction to United States Law: Common Law/Constitutionalism and the Idea of American Legal Exceptionalism.” During fall 2014 she taught at Harvard Law School, where she was honored as the Sullivan & Cromwell Visiting Professor of Law. She taught two courses: Civil Procedure to 1Ls, and a “reading group” to upper-level students, called “Sinking Islands: Imagining Disaster.” Helen commuted back to New York every week, and taught two courses: she joined the Hays seminar and taught a version of the reading group on Sinking Islands to 1Ls. In spring 2015, Helen was back full-time at NYU, teaching Federal Courts and the Federal System and the Hays seminar. While at Harvard, Helen was invited to become a member of the Board of Advisors of the Systemic Justice Project, which you can learn about here: <https://systemicjustice.wordpress.com/>.

At NYU, was honored to receive a 2014-2015 Distinguished Teaching Award, given by the University. She continued to serve as faculty supervisor to the New York University Journal of Legislation and Public Policy. In spring 2015, she became Chair of the year-long Special committee to Review the Adjunct Cap. In May 2015, Helen presented at the Fourth Annual Law School Conference on Access to Justice, held at Fordham Law School, as part of a panel entitled “Infusing Access to Justice in the Doctrinal Curriculum.” She continued to serve on the Boards of the Brennan Center for Justice, the Urban Justice Center, and Party for Humanity. Helen co-authored, along with a team of civil procedure professors, an amicus curiae brief urging the Supreme Court to grant cert in *Landers v. Quality Communications, Inc.*, 771 F.3d 648 (9th Cir. 2014), concerning the pleading standards in cases challenging wage underpayments under the Fair Labor Standards Act.

Her article, “Waivers of Immunity and Congress’s Power to Regulate Federal Jurisdiction—Federal-Tort Filing Periods as a Testing Case,” appeared in 39 *Seton Hall Legis. J.* 243 (2015); “Contracting for Procedure,” co-authored with Kevin Davis, was re-published in *NEGÓCIOS PROCESSUAIS* (2015), edited by Antonio do Passo Cabral and Pedro Henrique Nogueira; and “Early Warnings, Thirteenth Chimes: Dismissed Federal-Tort Suits, Public Accountability, and Congressional Oversight,” will appear in 2015 *Mich. St. L. Rev.* 183.

Adam B. Cox. Issues of immigration enforcement and reform consumed a good deal of Adam’s time over the past year. Along with Tom Miles, he published a large empirical study, *Does Immigration Enforcement Reduce Crime?*, whose findings undermined the popular belief that immigration law is an important instrument of crime control. The study was covered by the N.Y. Times and others. He and Tom also recently completed a follow-on project about police legitimacy and community cooperation. The paper explores whether immigrants will be less likely to cooperate with local police who help enforce federal immigration law.

During the fall, Adam, along with Cristina Rodriguez, convened a joint NYU-Yale roundtable on executive branch reforms of immigration law. The roundtable, which took place just weeks before President Obama’s announcement of sweeping executive immigration reforms, sparked an online symposium in which leading immigration law scholars, lawyers, and policymakers evaluated the President’s proposed reforms (<http://balkin.blogspot.com/2014/11/>

symposium-on-administrative-reform-of_26.html). It also led Adam and Cristina to co-author a paper on the subject, *The President and Immigration Law Redux*, which will be published this fall by Yale Law Journal. They are now working on a book about the role of the President in American immigration law.

Adam taught Immigration Law and the Rights of Noncitizens during the Fall of 2014, as well as a 1L reading group on the Politics of Regulation. He continues to serve on the board of the Brennan Center for Justice. This summer, he was honored to be named the Robert Kindler Professor of Law at NYU.

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. Fifteen Supreme Court justices and 30 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 2014 lecture was delivered by Judge Anthony J. Scirica of the U.S. Court of Appeals for the Third Circuit, who spoke on judicial ethics, with a focus on recusal. The 2015 James Madison lecturer will be delivered by Rosemary Barkett on October 22, 2015. Born in Mexico to Syrian parents, Barkett was the first woman to serve on the Florida Supreme Court, beginning in 1985. She served as Chief Justice of that court and on the Eleventh Circuit Court of Appeals from 1992 to 2013, when she resigned to become a judge of the Iran-United States Claims Tribunal.

4. THE FELLOWS' NEXT STEPS.

Cara Gagliano will be working at O'Melveny & Myers in San Francisco. Nishi Kumar is clerking on the 9th Circuit with Judge Paul J. Watford in 2015-2016 and for Judge Jessie M. Furman of the Southern District of New York in 2016-2017. Joanna C. Lane will be clerking for Hon. Mary Catherine Cuff on the New Jersey Supreme Court. She hopes to work in nonprofit legal services related to housing and consumer matters. Etan Newman will be clerking for Judge William A. Fletcher at the Ninth Circuit Court of Appeals in San Francisco. Lisa Sangoi will be working with Lynn Paltrow (Hays Fellow 1982-1983) at National Advocates for Pregnant Women as a Ford Foundation Public Interest Law Fellow. Aimee Thomson will be the Appellate Advocacy Fellow at the Electronic Privacy Information Center (EPIC) in D.C., and the year after clerking with Judge Berle M. Schiller in the Eastern District of Pennsylvania. Josh Wertheimer, in the best tradition of public interest lawyers, is still looking for a great job.

As this report suggests, this is another extraordinary group of Hays Fellows. Readers should keep them in mind for public interest jobs that need strong people in the next few years.

5. NEW FELLOWS

In 2015-2016 the Fellows will be:

Lizzie Davis (Roger Baldwin)
Molly Lauterback (Leonard Boudin)
Samantha Lee (Robert Marshall)
Andrew Nellis (Deborah Linfield)
Max Selver (Palmer Weber)
Samuel Steinback-Pratt (Tom Stoddard)
Courtney Weisman (Harriet Pilpel)

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 Danto DelGiaccio for his administrative support and, in particular, his work in maintaining the Hays website.

Norman Dorsen
Sylvia A. Law
Helen Hershkoff
Adam B. Cox

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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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