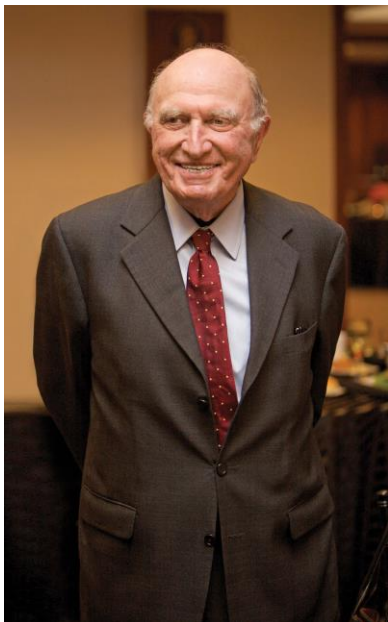


**THE ARTHUR GARFIELD HAYS
CIVIL LIBERTIES PROGRAM**

ANNUAL REPORT 2016–2017



NORMAN DORSEN: IN MEMORIAM



We mark with great sadness the passing of Norman Dorsen, who died at home on July 1, 2017, shortly after his retirement from the Law School and after a brief illness following complications from stroke.

The Law School will hold a Memorial Service on Monday, September 18, 2017 at 6:00 p.m. in Tishman Auditorium at NYU School of Law (Vanderbilt Hall, 40 Washington Square South). A reception will follow. In case of an overflow audience, guests will be able to watch the service via a live feed in Vanderbilt Hall. Sylvia and Helen invite former Fellows and guests to convene after the Memorial Service in the Faculty Library in Vanderbilt Hall (from around 8–9:30 p.m.). We will have an open microphone and hope you will share stories about Norman others might not know. Please RSVP for the Hays Reception [here](#).

Norman's contributions to civil liberties were unparalleled—in his mentorship of young lawyers, his creation of enduring progressive organizations, his leadership at both NYU Law School and the ACLU, and his arguments in leading constitutional cases. This year marked the fiftieth anniversary of several of Norman's landmark Supreme Court cases. In *re Gault*, in 1967, first recognized due process rights for juveniles accused of delinquency. See *v. Seattle*, also in 1967, protected commercial property from intrusions by administrative officials. While winning these landmark victories, Norman also was lead counsel on lower court cases that would become seminal Supreme Court decisions. *Levy v. Louisiana*, in 1968, recognized rights of children born to unmarried parents; and, *Flast v. Cohen*, that same year, liberalized standing requirements for Establishment Clause violations. This past year, many scholars, historians, film-makers and activists documented these important decisions, and Norman worked closely with them.

Throughout the year, Norman remained engaged with the Hays Program. In the spring, we held our traditional seminar dinners at Norman's apartment. In May, we celebrated Norman's retirement from the Law School with a book of tributes from the Hays community. You can read those tributes [here](#), as well as letters written on the occasion of Norman's eightieth birthday [here](#). We also include the Law School's announcement to the NYU community [here](#), and the New York Times obituary [here](#).



New York University

A private university in the public service

School of Law
Arthur Garfield Hays Civil Liberties Program
40 Washington Square South
New York, New York 10012-1099

Directors

Professor Sylvia A. Law
Telephone: (212) 998-6233
Email: sylvialaw42@gmail.com

Professor Helen Hershkoff
Telephone: (212) 998-6285
Email: helen.hershkoff@nyu.edu

September 2017

THE ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM
ANNUAL REPORT 2016–2017

As in past years, each semester a former Hays Fellow met with current Fellows to discuss their experience as a Hays Fellow, and choices about career and life. In the fall, we met with José Luis Morin, Hays Fellow 1982–1983. As a Professor at John Jay College of Criminal Justice (CUNY) since 1998, José has created and led programs to diversify the legal profession, in cooperation with former-John Jay President, Jeremy Travis, Hays Fellow 1981–1982. José is a prolific scholar and activist on Latinos and criminal justice, as well as the legal and social status of Puerto Ricans. Before joining the faculty at John Jay College, José worked for many years as a civil rights and human rights advocate with the Center for Constitutional Rights, the Puerto Rican Legal Defense and Education Fund, and the Center for Hawaiian Studies at the University of Hawaii.

In the spring, we met with Cory Greenberg, Hays Fellow 1993–1994, now Director, Legal & Business Affairs, A+E Networks. For decades, Cory has worked to represent artists, promote diversity in entertainment, and protect civil liberties.

In addition, each semester we invite a leading civil liberties lawyer who was not a Hays Fellow to speak with the Fellows about life and work. In the fall, Steven R. Shapiro, longtime friend of the Hays Program and Legal Director of the ACLU for the past two decades, joined us for a lively discussion. Steve has now retired from the ACLU and will be teaching a seminar on civil rights and liberties at NYU Law. We also were joined by Janet Benshoof, longtime leader in securing reproductive justice and international human rights. Janet led the ACLU's Reproductive Freedom Project through its formative years from 1978 to 1992, and

founded the Center for Reproductive Rights and led it from 1992 to 2002. She spoke with the Fellows about her current work as head of the Global Justice Center, utilizing international human rights norms to protect women, particularly war crime victims of sexual violence.

In the spring, Dale Ho, Director of the Voting Rights Project of the ACLU and Adjunct Professor, NYU Racial Justice Clinic, met with the Fellows in Norman's apartment. Dale spoke about the challenges to voting rights presented by recent Supreme Court decisions interpreting the Voting Rights Act.



Dale Ho of the ACLU with Norman Dorsen

Finally, on May 1, we held our annual end-of-year celebration of graduating Hays Fellows. Rachel Meeropol, Hays Fellow 2001–2002, gave dinner remarks, and Helen offered introductions. Rachel is Senior Staff Attorney & Associate Director of Legal Training and Education at the Center for Constitutional Rights, and argued *Ziglar v. Abbasi* this year before the U.S. Supreme Court. You can listen to her remarks [here](#).

For further news on the Hays Program, visit our [website](#). The site also provides a link to the videos of prior Hays events, Lora Hays's video about the Hays Program, prior annual reports, and Madison Lectures published in the *New York University Law Review*.

1. THE FELLOWS

This year's Fellows were:

Elizabeth Harrington (Palmer Weber Fellowship)
Juliana Morgan-Trostle (Harriet Pilpel Fellowship)
Adam Murphy (Leonard Boudin Fellowship)
Julia Popkin (Robert Marshall Fellowship)

Samuel Schoenburg (Tom Stoddard Fellowship)
Rhidaya Trivedi (Sylvia A. Law Fellowship)
Lucy Zhou (Roger Baldwin Fellowship)



The 2016–2017 Hays Fellows: (L to R, bottom row) Juliana Morgan-Trostle, Rhidaya Trivedi, Lucy Zhou, (L to R, top row) Samuel Schoenburg, Elizabeth Harrington, Julia Popkin, and Adam Murphy

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, family defense, economic justice, and reproductive freedom. Here is a summary of the work done by the Hays Fellows this past year.

Criminal Justice

In the Fall Semester, Adam Murphy worked at the Vera Institute of Justice, where he mostly focused on the Lippman Commission, created by the City Council to produce a “blueprint for justice” in New York City by driving down the population of Rikers Island. Adam examined areas that, if revised, would reduce the average daily population of Rikers Island to a level where Rikers could be closed. He examined: case processing time (court delay); pre-arrest and pre-arraignment diversion; bail reform; pre-trial release options; alternative sentencing; and alternatives for people who violate conditions of their probation and parole. Vera prepared recommendations for the Commissioners to lobby the legislature to change the law and seek funding to implement pilot projects. In March, the New York Mayor and City Council President announced a [ten year plan](#) to close Rikers.

Adam's second project with Vera was the Alternatives to Bail Project. In almost every case where bail is set, judges impose either cash bail or bond. Cash bail requires that defendants pay upfront for their release, while a bond requires that they pay a premium to a bail bond agent, while posting collateral in case the bond is forfeited. As a result of judges exclusively imposing cash bail or bond, the overwhelming majority of people who have bail set in criminal cases in New York cannot afford to pay their bail. They are then detained at Rikers Island until their case is over.

Since 1970, New York has authorized alternative forms of bail: an unsecured bail bond and a partially secured bail bond. Most judges, prosecutors, and defense attorneys are unfamiliar with these alternative forms of bail. NYU Law students, including Adam, have worked with Vera to educate legal actors about these alternative forms of bail. They have gathered data, and offered many people accused of minor offenses alternatives to incarceration.



The 2016–2017 Hays Fellows and Sylvia Law with activist guests Michele Jenkins and J.M. Parker

Julia Popkin worked with the Prisoners' Rights Project of Legal Aid (PRP), which protects the legal rights of individuals incarcerated in New York City jails and New York State prisons through litigation, advice, and assistance to individuals. PRP does not represent individuals in lawsuits seeking relief affecting only themselves, but does provide individuals in prisons and jails with informational materials about their legal rights and, at times, brief advocacy on their behalf. Julia responded to individuals incarcerated in New York State prisons, and wrote advocacy letters on behalf of individuals to responsible state prison officials. She did research as part of PRP's monitoring of DOCCS's compliance with a settlement of a previous class action, concerning accommodations for hearing-impaired people incarcerated in DOCCS facilities. Her research focused on cost-bearing and price parity in rates for telephone calls

made from standard telephones and rates for calls made using telecommunication devices for the deaf, such as TTY and videophones.

In the Spring Semester, Adam worked at the National Lawyers Guild's Parole Preparation Project ("PPP"). PPP represents parole applicants at their hearings before the New York State Board of Parole ("the Board"). Traditionally, they only take on the most serious parole cases. Recently, however, PPP expanded its work to include two broader policy initiatives: (1) blocking former Governor Pataki's parole commissioner re-appointments and (2) organizing a statewide advocacy day in Albany on May 10. Adam worked on both initiatives. In 1991, the Board granted parole to 66.7 percent of the 22,604 people who applied. By 2015, the rate of release plummeted to 17 percent. Most people who appear before the Board are serving sentences for non-violent crimes. Adam collected transcripts of parole hearings presided over by Pataki appointed commissioners, synthesized sixty of these hearings, and wrote a letter to the governor's counsel about James Ferguson, the commissioner who is most harsh. Adam's letter documented that Ferguson consistently denied parole to anyone who pled guilty, requested a jury trial, or pursued an appeal, even when parole applicants expressed genuine and heartfelt remorse and had served many years with exemplary behavior. This pattern forces people to choose between exercise of constitutionally protected rights and pursuit of the possibility of parole.

Adam documented striking individual cases. One person released on parole had a condition forbidding him from speaking with anyone with a criminal record. (Approximately 33 percent of Americans have some type of criminal record.) This man's parole officer learned that he spoke on his cell phone with someone with a criminal record, though there was no allegation of substantive wrongdoing). His parole was revoked and he pleaded guilty to one count of unauthorized contact. The Administrative Law Judge recommended a severe sentence of 18 months' imprisonment. But the Board has final say in parole revocation matters. Mr. Ferguson, who presided over the case, doubled the recommended time and imposed a sentence of three additional years.

Adam's second spring project was organizing Advocacy Day in Albany on March 10. Two-hundred people from New York City (and many more throughout the state) met with legislators to promote passage of the Safe Parole Act (S. 3095A, A. 4353). Among other things, this bill would require the board to hold in-person interviews (most interviews are held over Skype) and require the Board to tell denied applicants concrete things they could do to obtain parole at their next appearance. Adam reports, "The pushback—mostly from upstate Republicans—for even modest legislation like the Safe Parole Act is stunning. I provided statistics and answered legal questions, but the most powerful voices were Sharonne Salaam (mother of Yusuf Salaam from the Central Park Five) and Thomas Little (who recently came home after being denied by the board seven times). We held a huge rally in the park, 'stormed' the Capitol Building and did a sit-in at the Million Dollar Staircase." Adam writes, "Here is a photograph of our legislative lobbying group with a supporter, Senator Alcantara, who is in the red shirt."



Adam Murphy and legislative lobbying group with Senator Marisol Alcantara at Albany's Advocacy Day

National Security and Immigration

In the fall, Rhidaya Trivedi worked at the ACLU's Immigrant Rights Project. IRP was in the middle of preparing the merits brief in *Jennings v. Rodriguez* before the Supreme Court of the United States. *Jennings* addressed decisions by the Ninth and Second Circuits to provide all mandatorily detained immigrant detainees' bond hearings after six months of detention. Rhiya's work focused on researching the constitutional and administrative law bases of having a federal court read a time limit into the statute. Rhiya also helped research various unsubstantiated claims made by the Solicitor General in their briefing; namely, the high risk nature of immigration bonds, and details as to the legislative history of the mandatory detention statute. Additionally, Rhiya helped develop strategies for a planned excessive bond challenge in the Third Circuit, researching the law of prudential exhaustion.

In the spring, Juliana Morgan-Trostle was an intern in the Health Justice Program at New York Lawyers for the Public Interest (NYLPI). She assisted in the representation of an undocumented patient who was facing medical deportation. She translated and interpreted materials for Know Your Rights sessions for immigrant clients with serious health conditions. Juliana also developed and presented Know Your Rights trainings on health and immigration for directly affected individuals and for health care providers at local hospitals and dialysis centers.

Sam Schoenburg worked with Brooklyn Defender Services (BDS) in their immigration practice for his spring 2017 Hays placement. BDS participates in the New York Immigrant Family Unity Project (NYIFUP), a city- and now state-funded program providing free lawyers to individuals in federal immigration detention. NYIFUP is the first publicly funded program of its kind in the country, and serves thousands of detained immigrants in New York and New Jersey each year.

Sam's work with individual clients included applications for asylum and parole, petitions for habeas corpus, requests for visa certifications, preparation for bond hearings, and outlines to prepare attorneys for argument before immigration judges. His most in-depth assignment on a specific case involved a series of interlocking legal questions concerning reopening an order of deportation. A broader research assignment involved a bar to asylum eligibility for arriving asylum seekers who were "firmly resettled" in a third country (separate from the country they were fleeing) before entering the United States. The memo Sam wrote on this aspect of asylum law as applied in the Second Circuit has since been widely forwarded to attorneys at BDS and throughout the NYIFUP program in New York City.

Although the NYIFUP program has received new funding from New York State, there has been recent controversy about how the funds it receives from New York City should be used. Mayor Bill De Blasio [proposed a budget](#) that would provide immigration attorneys only to clients without any criminal history. This proposal takes direct aim at a large percentage of the docket at BDS, which, along with other NYIFUP providers, routinely retains clients who have criminal records. Indeed, the mission of these organizations is to provide fair defense to all comers, and the clients who have both the greatest need and the most complex immigration cases are often those with prior convictions. As such, BDS was [one of dozens](#) of New York organizations to call for this restriction to be lifted from Mayor De Blasio's plan. This dispute has not been resolved.

Family Defense

In the fall, Elizabeth Harrington worked at The Legal Wellness Institute of The Family Center. Located in Brooklyn, the Family Center offers wraparound social and legal services to New York City families dealing with serious illness, crisis, or loss of a loved one. The Legal Wellness Institute provides legal help in the areas of housing, family law, public benefits, and end of life planning. While at the Family Center, Elizabeth conducted intakes and provided referrals and information to callers with a wide variety of issues. She assisted clients with end of life planning. This included talking with the client and his or her family to determine which advance directives best met their needs, drafting the appropriate documents, including a will, and often traveling to clients' homes or hospitals to execute the documents. In addition, Elizabeth drafted a motion to unseal adoption records to allow adoptive parents to get their child's original birth certificate, a document they needed to renew their son's passport from his birth country. She also successfully assisted a client in getting prior illegal evictions removed from her credit report. Finally, Elizabeth conducted a number of discrete research assignments, including how one parent's voluntary relinquishment of their parental rights in another state affects the other parent's ability to obtain guardianship over the child.

In the fall, Julia Popkin worked with the Family Defense Practice (FDP) at the Bronx Defenders. As part of the Bronx Defender's provision of holistic public defense, FDP represents indigent parents in the Bronx who are accused of child abuse and neglect and who are potentially facing termination of parental rights. FDP provides zealous, client-centered

advocacy, helping parents in the Bronx navigate the many challenges of the child protective system and working to keep families together and communities intact. In addition, FDP does some appeal work and policy work to make broader systemic change in the child welfare system.

Julia researched procedural issues pertaining to the rights of non-custodial and incarcerated parents in termination of parental rights proceedings. She also did research related to the constitutional rights of parents to maintain the care and custody of their children, particularly as these rights relate to parents who have been found to have neglected their children due to mental illness. She assisted with preparing for an appeal to the Court of Appeals of New York, researching appeal as of right and the irreparable injury exception to the finality requirement. She partnered with the Civil Action Practice to file an Article 78 appeal for an FDP client who had been denied Medicaid waiver services from the Office for People with Developmental Disabilities (OPWDD). She wrote a motion for visitation in a termination of parental rights proceeding, and prepared a trial for a neglect case based on allegations of inadequate supervision and substance use. When the Administration for Children's Services (ACS), the agency that administers the child protective system in New York City, announced that it would begin to implement predictive analytics and risk-assessment tools in the child protective system in New York, Julia wrote a research and policy memorandum on predictive analytics. The memorandum examined, among other things, the use of predictive analytics in the criminal justice system and in other child protective systems throughout the United States, potential challenges and problematic outcomes of using predictive analytics, and what additional information would be needed to better assess the implementation of predictive analytics in the child protective context.

Economic Justice

Sam Schoenburg spent his fall Hays semester at the Community Development Project of the Urban Justice Center (CDP). He worked on a particularly tricky case, a hybrid between an eviction proceeding and a consumer justice issue. The client, appearing without an attorney, had signed a stipulation of settlement several years earlier for rent arrears, but she did not understand the terms of her agreement and had been ordered to pay much more than she thought she owed or had agreed to pay. The goal was to vacate her stipulation and have the court recognize that she had already satisfied her debt for back rent. Sam's tasks included drafting an affirmation to submit to the court, which summarized the facts and narrative of the case, and writing a separate memo of law to present their legal claims.

The case was a challenging exercise in piecing together a narrative from documents their client provided and others that CDP attorneys had gathered from public records requests and investigation. Sam pored through rental ledgers and rent receipts to see where they did and did not match, observe where errors were introduced, and why their client had been asked to pay as much as she was. He also researched and wrote the memo of law with what appeared to be their strongest legal arguments.

In the fall, Lucy Zhou worked at MFY Legal Services in the Workplace Justice Project, under the guidance of Supervising Attorney Maia Goodell and Staff Attorney Bernadette Jentsch. The Workplace Justice Project provides legal assistance in employment matters to workers throughout New York City, with a focus on the problems faced by low-wage workers, immigrants, and people with criminal records. Lucy helped prepare and represent various clients in administrative hearings that appealed the State's denial of occupational licenses to those individuals because of their criminal history. Lucy also assisted on a case of unpaid wages and overtime in which the defendants refused to satisfy the default judgment. There, she prepared a memorandum identifying next steps to enforce the judgment, conducted research on defendants' assets, and drafted information subpoenas and restraining notices directed at defendants and non-parties. In addition, Lucy provided legal research support for the Workplace Justice Project's new workers' compensation practice, preparing a memorandum summarizing the procedure and standard of review for workers' compensation appeals.

In the spring, Lucy worked at Brooklyn Legal Services in the Foreclosure Prevention Project, under the supervision of Rachel Geballe and Ayana Robertson. The Foreclosure Prevention Project represents homeowners in foreclosure, as well as in state and federal court litigation challenging predatory lending, abusive mortgage servicing, and fair housing and lending violations. Lucy provided assistance on document review and a motion to compel discovery in a case on behalf of two homeowners whose loan modifications were not honored by Bank of America. She also drafted an answer and motion to dismiss on behalf of a homeowner in foreclosure, as well as a complaint on behalf of a homeowner who was a victim of deed theft. In addition, Lucy assisted with matched-pair testing to study racial discrimination in the homeowners' insurance industry, and drafted a white paper summarizing the results of that investigation.

During the spring semester, Rhiya Trivedi interned at the General Counsel's Office of 32BJ, an affiliate of the Service Employees International Union. Her work primarily focused on investigating whether the Union can regulate its own Facebook page in light of union members' robust free speech rights (as recognized by the Landrum-Griffin Act). She also engaged in several research topics related to 32BJ's interest in filing amicus briefs in ongoing Sanctuary Cities litigation in Lawrence and Chelsea, Massachusetts and in San Francisco, California.

Reproductive Freedom

Juliana Morgan-Trostle interned at Planned Parenthood Federation of America in the Public Policy Litigation & Law program in the fall semester. She researched and drafted legal memoranda to assist with ongoing cases challenging targeted restrictions of abortion providers ("TRAP laws") and Medicaid defunding. She attended weekly strategy meetings with the entire legal department and participated in several depositions. Juliana also contributed legal research on opportunities for impact litigation following the Supreme Court's decision in *Whole Women's Health v. Hellerstedt*.

In the spring, Elizabeth Harrington worked at The Center for Reproductive Rights in the U.S. Legal Program (USLP). USLP is responsible for domestic litigation. During her internship, Elizabeth conducted a number of research assignments to assist USLP in strategizing for future litigation. For example, Elizabeth researched legal barriers to medication abortion and provided recommendations about which barriers seemed most susceptible to a successful challenge. During that time, President Trump had been recently sworn in, and Justice Neil Gorsuch was nominated and later confirmed to the Supreme Court. Elizabeth conducted research on the legal areas of focus of anti-choice groups as a result of the new administration to assist the Center in adjusting their strategies accordingly. Elizabeth conducted a number of other discrete research assignments and was involved with USLP strategy meetings.



The 2016–2017 Hays Fellows with guest Rachel Geballe (Brooklyn Legal Services)

2. THE DIRECTORS

Sylvia A. Law

At NYU Law, Sylvia taught Health Law and the Health Policy Seminar in the fall semester, and led a 1L reading group that discussed Andrew Solomon's *Far from the Tree*. She continued to Chair the Career Services Committee. She helped to organize the [23rd Annual Sheinberg Lecture](#) presented by Linda Sarsour, Executive Director of the Arab American Association of New York. In response to the fall election, the Sheinberg Committee organized an emergency program: [What Now? Building an Intersectional Resistance to Trump](#). On January 30, several of our recent speakers and introducers, including Gara LaMarche, Kathy Boudin, Vince Warren and Urvashi Vaid, led a conversation for over 100 people.

Sylvia helped prepare the annual supplement to the casebook she co-authors, *Law and the American Health Care System*. She published an article that began as a paper for a Hays

Seminar. Marriage, Abortion and Coming Out, 116 Colum. L. Rev. Online 126 (2016) (with Scott Skinner-Thompson & Hugh Baran). She contributed to an NYU Law Review tribute to the late Judge Judith Kaye and enjoyed working with current fellow Sam Schoenburg as her editor. Judge Kaye's 1991 Solomonic Dissent in *Alison D. v. Virginia M.*, 92 NYU L. Rev. 72 (2017). She is working on an essay, *In Defense of Liberal Feminism*, which began at a conference in Shanghai in 2015 considering various forms of feminism and now to be published as a Research Handbook on Feminist Jurisprudence, to be included in Elgar's Legal Theory Research Encyclopedia series.

She continued to work on issues of end of life choice. The issues are now being debated in legislatures and courts in both New York and in Hawaii. In New York, she served on a New York Civil Liberties Union Committee that adopted a pro-choice position after decades of debate, and filed a brief in a case currently pending in the New York Court of Appeals. She also helped to organize a New York law professors brief in that case. Links to the amicus briefs can be found [here](#).

Helen Hershkoff

Helen taught Civil Procedure in the fall and two sections of Federal Courts and the Federal System in the spring, as well as the seminar component of the Hays Program. The highlight of the year's teaching was bringing the seminar to Norman's apartment; the discussions were substantive and the evenings were filled with warmth. Helen also developed an on-line law course for the newly established Master's Program in Cybersecurity Risk and Strategy, offered jointly by the Law School and the Tandon School of Engineering. In May, Helen taught a one-week course at the University of Freiburg, *An Introduction to Anglo-American Law*.

Helen joined a number of amicus curiae briefs on issues pertaining to civil procedure and federal jurisdiction: (1) *Meyer v. Uber Technologies*, No. 16-2750 (2d Cir. 2016) (enforceability of arbitration provision in internet vendor's contract); (2) *Rivera v. Berlin*, No. 2016-1134 (N.Y. Court of Appeals 2016) (availability of attorney fees under state EAJA on catalyst theory and for state's liability on respondeat superior basis); (3) *Myers v. Schneiderman*, APL-2016-00129 (N.Y. Court of Appeals 2017) (right of mentally competent, terminally ill person to obtain doctor's assistance to choose time and manner of death). She presented and submitted a statement to the Association of the Bar of the City of New York in opposition to the holding of a New York Constitutional Convention—an issue that will be presented to state voters in November 2017. In particular, she expressed concerns that a convention is likely to dilute, and not to expand, state constitutional protections for the poor and for public workers.

In terms of scholarship, two book chapters that last year were in the publication pipeline are now out in print. The first discusses U.S. discovery in aid of foreign litigation and whether such discovery ought to be available for international arbitration, *Private Preference, Public Process: U.S. Discovery in Aid of Foreign and International Arbitration*, in *The Limits to*

Party Autonomy in International Commercial Arbitration (Franco Ferrari, ed. Juris 2016) (with Kevin E. Davis and Nathan Douglas Yaffe); the second discusses the state action doctrine and the place of “positive” socio-economic rights in the U.S. legal system, *Privatizing Public Rights: Common Law and State Action in the United States*, in *Boundaries of Rights, Boundaries of State* (Tsvi Kahana & Anat Scolnicov, eds. Cambridge University Press 2016). An essay in honor of Chief Judge Kaye, discussing the judge’s jurisprudence of separation of powers and its relation to questions of judicial reform and of educational adequacy, was published: *Chief Judge Kaye’s Dynamic Legacy*, 92 N.Y.U. L. Rev. 32 (2017). Helen is a co-editor and co-author of *Civil Litigation in Comparative Perspective*, and saw the publication of a second edition of the book in August 2017. Helen also prepared annual supplementation to a volume of the *Federal Practice and Procedure* treatise (on the United States as a party), and the annual *Rules Supplement* for the *Civil Procedure* casebook on which she is co-author with Jack Friedenthal, Arthur R. Miller, and John Sexton. In *Champion v. Commonwealth*, 2017 WL 636420 (Ky. 2017), the Kentucky Supreme Court cited to her earlier co-authored essay on begging, in holding unconstitutional a local ordinance as a content-based regulation in violation of the First Amendment. See Helen Hershkoff & Adam S. Cohen, *Commentary, Begging to Differ: The First Amendment and the Right to Beg*, 104 *Harv. L. Rev.* 896 (1991).

Looking at school service, Helen continued to serve as faculty supervisor to the *NYU Journal of Legislation and Public Policy*. In fall 2016, the *Journal* co-hosted a symposium on the fiftieth anniversary of the *Miranda* decision. Helen chaired the *Promotion and Tenure* Committee. The faculty voted to award tenure to David Kamin and to promote Emiliano Catan, agreeing with the Committee’s recommendations. She continued to serve on the Boards of the *Brennan Center for Justice*, the *Urban Justice Center*, and *Party for Humanity, Inc.*



The 2016–2017 Hays Fellows with Norman Dorsen and guest Zoey Jones (Brooklyn Defender Services) for a seminar dinner

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 thirty-one 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 2016 lecture was delivered by the Hon. Sandra L. Lynch of the First Circuit Court of Appeals. Judge Lynch discussed *U.S. v. Korematsu*. In retrospect, it is widely known that the military authorities lied about the evidence that Japanese Americans posed to national security. Judge Lynch explored the obligations of lawyers in presenting evidence that they knew, or should have known, was false.

4. THE FELLOWS’ NEXT STEPS

Elizabeth Harrington will be at New York Legal Assistance Group (NYLAG) doing a two-year Poverty Justice Solutions Fellowship, working on eviction prevention. Juliana Morgan-Trostle will be an Equal Justice Works Fellow at Bay Area Legal Aid, where she will establish a medical-legal partnership providing wraparound legal protections to Spanish-speaking survivors of domestic violence, sexual assault, and human trafficking. Adam Murphy is going to Alabama to work with the Equal Justice Initiative. Julia Popkin will be a staff attorney at the Family Defense Practice at Brooklyn Defender Services. Samuel Schoenburg will work next year with Wilmer Hale in Washington, DC, and in 2018–2019 will clerk for Judge Marvin E. Aspen of the Northern District of Illinois, in Chicago. Rhidaya Trivedi will work at the law office of Ronald L. Kuby. Lucy Zhou will be clerking for Judge Dale Drozd in the Eastern District of California.

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

We are very pleased to inaugurate the Norman and Harriet Dorsen Fellowship, and thank the generosity of all who made this fellowship possible.

In 2017–2018, the Fellows will be:

Katrina Feldkamp (Leonard Boudin Fellowship)
Tony Joe (Palmer Weber Fellowship)
Edie Joseph (Tom Stoddard Fellowship)
Samah McGona (Roger Baldwin Fellowship)
Mason Pesek (Sylvia Law Fellowship)

Samantha Reiser (Robert Marshall Fellowship)
Allison Zimmer (Norman Dorsen Fellowship)

This year, the applicant pool was unusually large, strong, and diverse. The current Fellows deserve kudos for energetic, effective recruitment. (It is also possible that the fall election inspired students to seek a social change community.) 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. Ian Vandewalker, Hays Fellow 2007–2008, and Kadeem Cooper, Hays Fellow 2013–2014, participated in the interview and selection process.



Outgoing and incoming Hays Fellows share a meal at Old Tbilisi Garden, a favorite of the Hays Program.

We again express our thanks to Gail Thomas for her dedicated work as administrative assistant and secretary to the Hays Program. We also thank Ian Brydon, Helen's assistant, who contributes in myriad ways to the program.

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 information either by email to gail.thomas@nyu.edu, or please mail your updated information to:

NYU School of Law
Attn: The Hays Program
40 Washington Square South, Room 308
New York, NY 10012

Name

Home address

City

State

Zip code

Email address

Phone number with area code

Organizational affiliation

Professional title

Business address

City

State

Zip code

Email address

Phone number with area code