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ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM  
ANNUAL REPORT 1995-1996

For the second year running, we are pleased to begin our report by announcing that efforts are under way to establish a new Fellowship in the Hays Program: the Deborah Rachel Linfield Fellowship on the First Amendment (with special emphasis on issues related to freedom of the press). Although we are still raising necessary funds, the first Linfield Fellowship will be awarded in 1996-1997.

Deborah Linfield was a 1978 graduate of N.Y.U. Law School who gravitated to first amendment law while working in the office of the general counsel to the New York Times. She was a widely respected lawyer, fashioning a notable career, when she tragically died at an early age. Her family, friends and colleagues are now working with us to create a fellowship in her memory.

When the Linfield Fellowship is established, the Hays Program will have seven endowed Fellowships, but we do not plan to award all of them every year. We try to ensure that each Fellowship remains fully endowed by reinvesting annual income from time to time. More important, the small size of the Program -- no more than six Fellows in any year -- allows for the close working relationship between Fellows and ourselves that is a central aspect of the Program.

The Program was privileged to have David Cole serve as Acting Co-director during the spring semester while Sylvia was visiting at Stanford Law School. David, a professor at Georgetown Law School, is one of the outstanding civil liberties scholars and litigators of his generation, working in diverse areas including First Amendment, immigrants' rights, criminal justice and feminist jurisprudence. NYU students found him to be a powerful and sensitive teacher, and the Hays Fellows learned much from his blend of sophisticated theory and down-to-earth practical insight.

This spring New York University Press published the book Speech and Equality: Do We Have to Choose?, edited by Gara LaMarche. The book is based on a conference that was jointly sponsored by the Hays Program and the Free Expression Project of

Human Rights Watch (of which Gara was director for several years). It includes essays by nine leading civil liberties and civil rights figures addressing three important areas where speech and equality values tend to conflict: abortion clinic protests, hate crimes/hate speech and workplace harassment.

The Rockefeller Foundation has made a grant to the Hays Program to organize a scholarly conference and a book on the issue of why women in Europe have access to many more contraceptive drugs and devices than women do in the United States. The conference will include leading people from the fields of law, medicine, government, and from the drug industry. It will be held in Bellagio, Italy, on October 14-18, 1996.

The 1995-1996 Hays Fellows were Sean J. Bolser (Robert Marshall Fellow), James Eichner (Reed Foundation Fellow), Jenny Huang (Palmer Weber Fellow), Stevenson O. Munro (the first Tom Stoddard Fellow), Sarita Ordonez (Roger Baldwin Fellow), and Rebecca B. Rosenfeld (Harriet Pilpel-Planned Parenthood Fellow).

We continued our series of informal evenings at which former Fellows meet with the current Fellows to discuss their backgrounds, aspirations, successes and disappointments in civil liberties work. Both guests this year have had impressive careers in the criminal justice field. The fall guest, Sherryl Michaelson (Hays Fellow 1982-1983), served for several years in the U.S. Attorney's office in Los Angeles, where she won the highest award that the Justice Department bestows on its lawyers. She is now engaged in private practice, and she continues to play a leading role in the movement to secure the rights of lesbians and gay men. In the spring, Richard Greenberg (Hays Fellow 1968-1969) joined us. He engages in criminal defense matters, both trial and appellate, continuing the substance of his longtime work as a Legal Aid attorney. Richard has written prolifically in the field, most recently as editor-in-chief and co-author of a major work on New York Criminal Law. The evenings with Lee and Richard were engrossing as, among other things, they recounted many of their most memorable experiences as well as recollections of their time as Hays Fellows.

### The Work of the Fellows

As usual, the heart of the Hays Program is the Fellows work with civil rights and civil liberties organizations, much of which we all discussed in monthly seminars which were followed by slightly raucous dinners that are now an established feature of the Program. The Fellows worked with many forceful advocates for civil liberties, to whom we are deeply grateful for their contribution to the Program and its transcending goals of individual liberty and equality.

This year the Fellows worked on issues of free expression, the

death penalty, racial discrimination, international human rights, discrimination against gay and lesbian people, immigrants rights, rights to housing, workers rights, and domestic violence. A summary follows.

#### Free Expression:

Sean Bolser worked with Chris Hansen at the ACLU in the fall semester, exploring possible First Amendment challenges to a bill pending in Congress to prohibit "indecent" material on the internet. Sean prepared a memo on defenses to searches and seizures of computers and computer information which analyzed possible claims under copyright impoundment rules, the Electronic Communications Privacy Act, the Privacy Protection Act, and the Fourth and First Amendment. The memorandum was distributed to local ACLU offices to assist them in advising computer users who seek their help.

Jim Eichner worked with Norman Siegel at the New York Civil Liberties Union in the fall semester preparing a challenge to the constitutionality of New York City's new zoning laws regarding pornography. He interviewed potential plaintiffs for this class action suit.

#### Gay and Lesbian Rights:

Steve Munro, the first Tom Stoddard Fellow, spent the fall semester with David Buckel at the Lambda Legal Defense and Education Fund. He helped develop litigation strategies and legal theories under which lesbian and gay students might hold public schools liable for the school's unwillingness to protect them from abuse inflicted by classmates. His research will be used in a Lambda publication for attorneys considering the problem of peer abuse among students in public schools. Steve also assisted a Lambda client, Jamie Nabozny, who was subjected to years of severe abuse by his classmates at public schools in Ashland, Wisconsin; the schools took no meaningful action to curb the abuse. Lambda accepted Nabozny as a client after a federal district court granted the school district's summary judgment motion. Steve worked on the appeal to the Seventh Circuit, which in July broke new doctrinal ground and held that Nabozny had a Fourteenth Amendment right to be free from discrimination based on gender and sexual orientation.

Becky Rosenfeld also worked at the Lambda Legal Defense Fund, in the spring semester. She researched constitutional protections for public school teachers who speak about homosexuality -- coming out or being "outed," counseling students, or simply answering questions about the topic. She wrote an extensive memorandum of law on Sixth Circuit cases to help Lambda advise a tenured

Michigan public-school teacher who suffered harassment and sanctions from his school principal after conservative community members discovered he was gay. She also helped to develop guidelines for gay teachers to help resolve conflicts between honest communication and fear of firing or other sanctions.

### Death Penalty

In his fall semester at the New York Civil Liberties Union, Jim Eichner helped to coordinate the efforts of New York public interest groups opposed to New York's death penalty law and he researched potential challenges to the law under the New York Constitution. He also read every New Jersey Supreme Court case involving the death penalty in an attempt to determine why New Jersey has not executed a single person for more than a decade, despite having a death penalty law in place.

Sean Bolser worked with George Kendall of the NAACP Legal Defense Fund in the spring semester, writing a memo for a capital case in Tennessee. LDF had been removed as counsel by the trial court for post-conviction proceedings, on grounds of a conflict of interest. Sean analyzed possible challenges to that ruling for appeal. He also began research for a policy paper regarding indigent counsel across the country. LDF wants to do a survey of indigent counsel services and issues, at a time when the underpinnings of the historic Gideon case are being challenged.

### Civil Rights

Jenny Huang worked with the Public Interest Law Center (PILC), a coalition of organizations including NAACP LDF, National Organization for Women LDF, Asian American Legal Defense and Education Fund, and the Puerto Rican Legal Defense and Education Fund (PRLDF). Under the supervision of Ann Filloramo and Juan Figueroa of PRLDF, Jenny sought to determine how best to present the issue of affirmative action to the general public. After considering the various arguments and data from a public opinion survey, Jenny formulated an approach to the issue and wrote a pamphlet that provides a basic introduction to affirmative action and arguments supporting it. Jenny also worked on a paper that attempted to reframe the debate on affirmative action to emphasize the diminished economic opportunities caused by the globalization of business. Finally, she organized a day-long conference on affirmative action with labor specialists, academics, and civil rights organizers.

In the spring semester, Jenny worked at the NAACP LDF, with Dennis Parker, Victor Bolden, and Jackie Berrien. She did research on a potential case involving several thousand public school teachers who were fired because they failed the standardized

National Teachers Exam, which is supposed to test for competence in the classroom. The teachers who failed the exam were rehired full-time into their same classrooms at half their previous salaries. The test also has a disproportionate impact on African American, Latino, and female teachers. Jenny interviewed potential clients and researched potential claims, including Title VII, violations of tenure under state education law, due process, Title VI, and claims under state and city human rights law.

#### International Human Rights

Sarita Ordenez spent the entire year with the Lawyer's Committee for Human Rights. In the fall semester she worked with the Committee's Latin American program preparing a joint American Bar Association-Lawyers' Committee report on a 1994 mission to Peru to investigate human rights abuses linked to the "faceless courts" the Fujimori government instituted in response to domestic terrorism. She worked from the notes the members of the mission took while interviewing government and prison officials, judges, lawyers and human rights advocates on the problems of an anonymous court system where security officers have vast powers to investigate and detain persons without judicial oversight. She also did extensive research on the contemporary political, legal and constitutional history of Peru to set the delegation's findings in an appropriate context. Sarita's report was the basis for a Lawyers Committee briefing for members of the U.N. Human Rights Committee in preparation for the mandatory review of the Peruvian government's compliance report under the International Covenant of Civil and Political Rights (ICCPR).

Sarita later worked on the "public order" courts of Colombia. These courts, set up to prosecute and sentence drug traffickers, were rife with the same types of due process issues that beset the Peruvian justice system. In addition, military officers accused of grave human rights abuses, such as massacres of civilians, were escaping punishment behind the shield of military jurisdiction. Sarita assisted in the preparation of a "Call to President Samper of Colombia" letter in order to draw the Colombian government's attention to these problems and to make a record for the international community, including U.N. oversight bodies, in support of appointing a Special Reporter for Colombia to monitor its human rights situation.

In the spring, Sarita focused on U.S. compliance with the death penalty provisions of the ICCPR, recently ratified by the United States. This first entailed meeting with board members and death penalty lawyers from the ACLU, the Center for Constitutional Rights, etc. to determine what direction the program should take, what issues the Committee should focus on, and what strategies it should use to raise awareness about these issues. After settling on juvenile executions and the elimination of the federal death

penalty resource centers as focal points, Sarita prepared two reports analyzing these issues in relation to the U.S.'s obligations under international law. Sarita's juvenile execution report became the basis of testimony submitted by the Lawyers Committee at national "town hall" meetings on the death penalty.

### Immigrants' Rights

Becky Rosenfeld worked with the ACLU Immigrants' Rights Project, under the supervision of Judy Rabinovitz, Hays Fellow 1984-1985. She wrote a memorandum of law and then an amicus brief on the statutory right to counsel in deportation proceedings. The ACLU submitted the brief to the Board of Immigration Appeals in support of an appeal from an order of deportation of an Ecuadorian-born legal permanent resident of the U.S. Since he has lived in the U.S. most of his life and has a citizen daughter, and all of his community and employment ties are here, deportation would be a tremendous hardship (typical of many of the 8000-plus non-citizens in New York state prisons). While many qualify for discretionary relief from deportation, few can hope to prevail without a lawyer, and most go unrepresented due to the lack of lawyers near upstate prisons and the INS's refusals to hold the hearings in New York City, where greater pro bono resources are available.

Becky's brief argued that the statutory "privilege" of counsel "at no expense to the government" means the INS can't leave the search for a lawyer in the hands of indigent, incarcerated immigrants. If the argument prevails, the government would have to assist people to find counsel, to move them to New York City for hearings if they do find a lawyer here, and to appoint counsel where failing to do so would result in a fundamentally unfair proceeding.

### Housing

In the spring semester, Jim Eichner worked for Rick Wagner at Brooklyn Legal Services, Corporation A, on three housing issues. He assisted in ongoing litigation, under the RICO laws, to impose civil liability on landlords who received money from the federal government for repairs they did not make. Related to this first suit, Jim prepared materials to persuade a judge to appoint a temporary receiver for the building that was the object of the litigation. The judge approved the application, and the receiver was able to enter the building and make much needed repairs. Jim also researched novel legal theories under which the federal government could be held liable for not effectively regulating landlords. The federal government had an obligation to inspect the buildings, but it failed to conduct inspections, and the landlords let the buildings further deteriorate. Corp. A is still considering whether to file this suit.

### The Future.

The Hays Fellows selected for 1996-1997 are: Gregory Chen (Palmer Weber Fellow), Rebekah Diller (Harriet Pilpel-Planned Parenthood Fellow), Eric Fink (Deborah Rachel Linfield Fellow); Manuella Hancock (Tom Stoddard Fellow); Laura Kelly (Roger Baldwin Fellow), and Jennie Pittman (Robert Marshall Fellow). We were greatly assisted in interviewing and selecting these Fellows by Acting Co-director David Cole and by Sarah Ludwig, Hays Fellow 1991-1992.

The plans of last year's Fellows for 1996-97 are: Sean Bolser is clerking for Judge Stephen Reinhardt of the Ninth Circuit Court of Appeals, Jim Eichner is clerking for John G. Koeltl of the Southern District of New York, Jenny Huang is clerking for Esther M. Tomljanovich and Sandra S. Gardebring of the Minnesota Supreme Court, Steve Munroe is working at Arnold & Porter in Washington, D.C., and Becky Rosenfeld will be working as a public defender in New York in the criminal defense division of the Legal Aid Society. Sarita Ordonez is still seeking a hot public interest job.

### The Directors

Norman Dorsen continued his service with several public interest organizations, primarily the Lawyers Committee for Human Rights, which in November elected him chairman of its board of directors. Among Norman's other active affiliations are the Thomas Jefferson Center for the Protection of Free Expression, Planned Parenthood International (Western Hemisphere Division), and New York City's Landmarks Conservancy.

As reported last year, in 1994 Norman chaired the committee that planned the new global law school program at the law school, a major effort to bring top faculty and graduate students from countries throughout the world to NYU. After the program was approved, he directed it until early 1996, when a new director was hired. Norman then became the faculty chair of the program, and he chairs the faculty committees that oversee it and recommend its foreign law professors. Norman also continued to head the James Madison lecture series in which federal appellate judges address a constitutional law topic; last year's lecturer was Chief Judge Harry Edwards of the District of Columbia Circuit.

Concerning public service, last year Norman was the chairman of the Secretary of the Treasury's citizens review panel that monitored and evaluated the Treasury's investigation and report on racist and other improper activity that occurred at the Good O'Boys Roundup, an annual reunion of Treasury and other law enforcement personnel held in Ocoee, Tennessee.

Norman completed a major article on Justice John Harlan for the book, The Warren Court, edited by former NYU Law Professor Bernard Schwartz. He also wrote prefaces or introductions to three books: Speech and Equality, edited by Gara LaMarche (noted above), the latest edition of Looking at Law School, edited by Professor Steve Gillers, Hays Fellow 1967-1968, for the use of law students and college students contemplating a career in the law, and Fundamentals of American Law, essays on the basics of American law, edited by NYU Adjunct Professor Alan B. Morrison, with chapters written by NYU faculty members in their specialties; the book is designed primarily for lawyers from other countries who deal with American lawyers and need to understand our system.

Norman continued his work as general editor of the ACLU's handbook series. The Rights of Religious Minorities was published, and several books are at press, including The Rights of Poor People, by NYU law professor Helen Hershkoff and Stephen Loffredo, and The Rights of Families by NYU law professor Marty Guggenheim (former Hays Fellow 1970-1971) and others. After more than 25 years as editor of the series, Norman is handing the reins to Professor Eve Cary of Brooklyn Law School, a longtime civil libertarian and NYU Law alumna (and the spouse of former Hays Fellow Richard Greenberg, mentioned above).

Sylvia Law continued her work as an active member of the boards of the Society of American Law Teachers, the Center for Reproductive Law and Policy, and New York's Interest on Lawyer's Trust Account program.

In the spring semester Sylvia escaped the New York winter and spent a semester teaching at the Stanford Law School. Former Hays Fellow, Katie Watson, 1991-1992, sat in on her seminar on Advanced Topics on Feminist Perspectives on Reproduction. Katie is doing death penalty defense work. Former Hays Fellows Michel Florio and Ellen Barry, both 1977-1978, gave Sylvia the opportunity to babysit their wonderful children. Mike continues to do public utility advocacy and Ellen represents prisoners with children. Josh Konecky, Hays Fellow 1994-1995, who is clerking in Sacramento, also was a welcome guest at Sylvia's fashionable soirees.

She published "Physician-Assisted Death: An Essay on Constitutional Rights and Remedies," 55 Maryland Law Review 929 (1996). Just as the article came out, both the Second Circuit and the Ninth Circuit en banc held bans on physician assisted suicide unconstitutional and Sylvia is working with the lawyers for the plaintiffs in the event that the Supreme Court grants review. She also wrote a new version of her essay, "The Messages of Legal Education," for the book Looking at Law School, edited by Professor Steve Gillers. In addition, she is organizing the Bellagio Conference mentioned above and writing a background paper for the participants.



## Summary

Becky Rosenfeld offered the following comment on her year as a Hays Fellow that we hope is typical of how Fellows view the experience:

"I have worked with seasoned, inventive legal advocates who spent time editing my work and strategizing on legal theories and public and political education to support them. I appreciated the practice researching legislative history, statutes, and caselaw, the detailed editing on legal writing (a skill I can tell it will take a lifetime to master), the role models I encountered, and the inspiration of laboring within a community working towards a vision of justice and not just money. That contrast with the mainstream of law school helped keep me going this year, and I expect continued contact with the Hays program and alumnae/i will keep that energy flowing."

In closing, we express our appreciation for the strong support we have received from the Law School administration, from the indefatigable Evelyn Palmquist, the Program's secretary and administrative assistant, and from the numerous individuals and foundations who have provided financial support. Above all, we are grateful to the scores of former Hays Fellows who have remained in close touch with the Program and assisted us as we continue to build a strong civil liberties community at and beyond Washington Square.

*Norman and Sylvia*

Norman Dorsen and Sylvia A. Law  
Co-Directors

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