



**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, NY 10012-1099

**Norman Dorsen, Co-Director**  
Frederick I. and Grace A.  
Stokes Professor of Law  
Tel: (212) 998-6233  
Fax: (212) 995-4030  
E-mail: [norman.dorsen@nyu.edu](mailto:norman.dorsen@nyu.edu)

**Sylvia A. Law, Co-Director**  
Elizabeth K. Dollard Professor  
of Law, Medicine & Psychiatry  
Tel: (212) 998-6265  
Fax: (212) 995-4526  
E-mail: [sylvialaw@aol.com](mailto:sylvialaw@aol.com)

**Helen Hershkoff, Co-Director**  
Professor of Law  
Tel: (212) 998-6285  
Fax: (212) 995-4341  
E-mail: [helen.hershkoff@nyu.edu](mailto:helen.hershkoff@nyu.edu)

August 2002

## ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM ANNUAL REPORT 2001-2002

September 11th changed the world. Because of our location close to ground zero and our ties to the civil liberties community, the profound events of that day have had a special impact on the Law School and the Hays Program. The Law School organized daily open meetings for the community. The first meeting, on September 11th, was spiritual; indeed, that element never disappeared. By the next day, the focus had already become more practical. Some law students had been evacuated from their Battery Park City dorm; they needed places to sleep, food, books, disks, notes, and most important, reassurances that were difficult to provide. By the end of the week, classes were back in session. The community forums continued for two weeks, drew large crowds and addressed complex questions. Was this a crime or an act of war, and how does the law treat these differently? What is a prisoner of war? What are the limits of detention? Does Islam support these actions? Is this different from the Christianity of the Crusades? The global law faculty, nurtured by founder Norman Dorsen, made diverse and sophisticated contributions to these complex discussions.

As usual, the important news of the Hays Program is reflected in the magnificent work of the Hays Fellows. Some of this work was influenced by September 11th, but much was not. Defense of civil liberties and equality is a mission requiring eternal vigilance. Even in the wake of our new understanding and priorities post-September 11th, many vital issues remain unaffected and are still deserving of our close attention and hard work.

The Hays Program is approaching its 45<sup>th</sup> anniversary. Information will be circulated in due course about the spring reunion of all Fellows to commemorate the event.

## 1. THE FELLOWS

The Hays Fellows in 2001-2001 were: Mallory Ciar Curran (Tom Stoddard Fellowship), Caroline Flintoft (Palmer Weber Fellowship), Ken Hashimoto (Roger Baldwin Fellowship), Rachel Meeropol (Deborah Rachel Linfield Fellowship), Sandra Shin-Young Park (Robert Marshall Fellowship), Andrew Turner (Leonard Boudin Fellowship), and Christine Bohrer Van Aken (Harriet Pilpel-Planned Parenthood Fellowship).

The Fellows' work is largely driven by their individual interests. Each August and January dozens of public interest lawyers submit proposals to us seeking a Fellow to work with them. The demand for committed, talented help in public interest work always outstrips the supply, and regrettably most applications must be denied.

The supervising lawyers provide great projects and guidance, and the Fellows contribute valued work. Many Hays supervisors have become regulars. By word of mouth, students learn of good placements. It is a special joy when a former Fellow supervises a current student. We appreciate these ongoing relations, and always welcome the opportunity to add new placements or revive older ones. At our regular meetings, each Fellow leads a discussion of a current civil liberties case on which he or she has worked. While in the past we have included supervising attorneys in these meetings, this year we decided to limit the discussion to the Fellows and the Directors to encourage leadership on the part of the Fellows.

We encourage Fellows to seek the work, people and organizations most attractive to them, with two important qualifications. First, we generally insist that each Fellow take on different assignments in the fall and the spring. We also encourage Fellows to work on at least one issue that is new to them. These restrictions on choice reflect our considered view that the Hays Fellowship is a special opportunity for Fellows to be exposed to a range of issues and public interest practice styles.

Fellows are selected on the basis of their demonstrated commitment to civil liberties and their legal abilities. Virtually all are involved in a wide range of public interest work, in addition to their Hays responsibilities and academic commitment.

This past academic year, the Fellows worked on many civil liberties issues including First Amendment jurisprudence, reproductive freedom, work place justice, immigrants rights, gender equality, death penalty, international justice, welfare law, and voting rights. The work performed by the Fellows reflects the intersection of race, gender, and economic status with traditional civil rights and civil liberties concerns.

a. First Amendment. Rachel Meeropol, the Deborah Linfield Fellow, worked at the Center for Constitutional Rights ("CCR") in the spring semester. Since September 11th, CCR has developed several important organizing and litigation projects to challenge attacks on civil liberties. As the Linfield Fellow, Rachel sought a placement that would allow her to work on First Amendment issues, especially free press litigation. Following September 11th, hundreds of men of Arab descent have been arrested on immigration violations, and detained for months, often without charge or explanation. Many of these individuals are currently being held at Metropolitan Detention Center ("MDC"), a federal prison in Brooklyn. MDC has stonewalled attempts by various press and human rights organizations to enter the prison to interview detainees and observe conditions. Under the supervision of Nancy Chang, a lawyer at CCR and an ex-classmate of Deborah Linfield, Rachel worked on research and development of a first amendment challenge to denial of press access to detainees.

Andrew Turner, the Leonard Boudin Fellow, spent the spring semester working on the Justice for Janitors Campaign of Service Employees International Union Local 32B-J. There he worked with SEIU's Associate General Counsel Elizabeth Baker (Hays Fellow 1994-95) on complex litigation defending the first amendment rights of union members facing retaliatory civil litigation for protected labor speech. Union employees had been displaced from their long-term jobs through a subcontract awarded to a low-wage, non-union contractor. When the workers picketed outside their workplace, their joint-employers, who owned the office complex, responded by seeking a broad injunction to restrain the protests, including a request to enjoin the content of the workers speech. Andrew worked on motions to dismiss the TRO and underlying business tort claim for damages and on the National Labor Relations Board brief, arguing that such retaliatory litigation is an unfair labor practice under the Wagner Act. Litigation continues in both cases.

b. Reproductive Freedom. During the spring semester, Christine Bohrer Van Aken, the Harriet Pilpel-Planned Parenthood Fellow, worked at the Reproductive Freedom Project of the ACLU under the supervision of Jennifer Dalven and Louise Melling. Christine researched the feasibility of a suit against a public hospital in Hawaii that had recently implemented a policy that would deny abortions to minors who had not obtained parental consent. Christine also researched a potential challenge against a federal program that provides grant funds to abstinence education-providers who agree not to provide contraception education to adolescents. Such a challenge implicates the still-developing body of doctrine that considers the extent to which government can burden First Amendment rights under voluntary programs. Finally, Christine researched Georgia constitutional and statutory law as part of an effort to develop a challenge to Georgia's prohibition on the use of Medicaid funds for most therapeutic abortions. Although such a prohibition is permitted under the Federal Constitution, Christine searched for Georgia precedent in an attempt to establish that discrimination on the basis of gender receives greater scrutiny under the state constitution.

In the spring semester, Sandra Shin-Young Park, the Robert Marshall Fellow, researched the viability of a challenge to Medicaid reimbursement rates for abortion procedures at the Center for

Reproductive Law & Policy. Specifically, Sandra considered whether a claim under 42 U.S.C. §1983 to enforce the equal access provision of the Medicaid statute, 42 U.S.C. §1396a(a)(30)(A) was feasible. The Medicaid Act requires that states pay providers rates that will assure that covered services "are available to recipients at least to the extent that those services are available to the general population." Over the past decade reimbursement rates for abortion, in those states that cover the service, have deteriorated significantly. Sandra produced a memo evaluating whether a private right of action exists, the strength of the states' 11th Amendment immunity defenses, and an outline of the factual scenarios presented in past equal access cases.

In the spring semester, Mallory Curran, the Tom Stoddard Fellow, worked with 1996-97 Hays Fellow Rebekah Diller, Interim Director of the Reproductive Rights Project at the New York Civil Liberties Union. She researched the legal rights of adolescents in foster care to obtain confidential reproductive and sexual health care. Legal responses to the plight of children in New York City's foster care program were first developed by 1968-69 Hays Fellow Marcia Robinson Lowry in the groundbreaking *Wilder* litigation.

c. Work Place Justice. Andrew Turner began the year at the Brennan Center for Justice, working on the Living Wage Project. There he worked with a team of Brennan Center lawyers on strategies to implement Suffolk County, New York's, new living wage legislation. The Suffolk County ordinance took effect in January and mandates an hourly minimum wage of \$9.00 with health benefits, or \$10.25 without benefits to be paid by all contractors doing business with the county. While applicable to all service contracts, the ordinance is having its greatest impact upon Suffolk's contracts with low-paying home healthcare agencies. As such, the effect of the ordinance on health service costs became a matter of increasing budgetary concern to the County Executive. Andrew prepared extensive research memoranda explaining New York's Medicaid funding streams and the adjustments that could be made to reimburse the county from state and federal coffers for its increased costs to ease the implementation of the living wage bill. Andrew and the Brennan Center staff participated in a meeting of the County executive living wage implementation task force at which these strategies were discussed. Administrative resolution of Suffolk County's application for supplemental Medicaid reimbursements is still pending.

Andrew also worked with the Brennan Center in the formative stages of a potential class action addressing the systematic under-compensation of home health care workers employed through New York's Medicaid program. The action would seek to augment the salaries of low-paid home health workers through a trickle-down, by increasing the compensation their employers receive from the state Medicaid program. Andrew did extensive legal and factual research on the ability of a plaintiff class of Medicaid eligible patients denied adequate home health care to sue the state for denial of equal access to services available to private, paying patients. Andrew worked with the Brennan Center staff to build a coalition among labor, disability and retiree rights advocates and home health industry associations. The Center has put this litigation project on hold while they investigate the statistical support for their position.

In the spring Ken Hashimoto, the Roger Baldwin Fellow, worked at the New York regional office of the EEOC, which is responsible for enforcing federal statutes that prohibit employment discrimination on the basis of race, color, sex, religion, national origin, age, and disability. Facing many of the same resource challenges as non-profit organizations that advocate on civil rights issues, the New York regional office has styled itself an impact litigation organization, focusing on cases that will have broad impact and clarify the law. Because the New York offices of the EEOC had been located in at 7 World Trade Center and were completely destroyed in the September 11th attacks, Ken worked from home and in the library, and met with EEOC staff in their temporary offices on Varick Street. Although nearly all documents for ongoing (and past) litigation were lost in September, EEOC attorneys were able to substantially reconstruct their case files with the assistance of opposing counsel and co-counsel.

Ken worked on a broad array of litigation matters, each in different procedural postures, that represented the "cutting edge" of employment discrimination work. He unearthed facts and determined the viability of claims under the Americans with Disabilities Employment Act (ADEA). He drafted a court motion in a case in which Mexican workers complained to the EEOC of disparate treatment by a Salvadoran-run business. He worked on a discovery motion and litigation research concerning mitigation of damages in two "glass-ceiling" cases, one brought against one of New York's largest investment banks, and the other against a prominent law firm, in which women in management and executive positions challenged employment practices that provided them with significantly less compensation and fewer privileges than male counterparts. In a class action suit brought against a major American manufacturer and retailer, he assisted in the development of facts and arguments to exclude testimony by the manufacturer's expert witness— an issue central to the determination of both liability and damages in any class action suit. Finally, he gained insight into the difficulty of enforcing civil judgments, through work on proceedings supplemental to execute a judgment in a Title VII case that, though litigated and won by the EEOC a year ago, had still not been enforced, as the defendant had changed its corporate identity and failed to respond to all attempts at enforcement.

d. International Justice. In the fall, Caroline Flintoft, the Palmer Weber Fellow, worked under the supervision of Eric Schwartz (NYU Law '85), former Special Assistant to President Clinton and Senior Director for Multilateral and Humanitarian Affairs at the National Security Council, on a research project concerning transitional justice and rule of law in countries emerging from conflict. The project focused primarily on the international community's peace-building activities in Kosovo, Sierra Leone, and East Timor. Caroline helped to prepare a report submitted to officials at the United Nations and the U.S. Department of State that evaluated particular transitional justice and rule of law programs and advocated specific improvements and reforms.

The first issue Caroline worked on was an assessment of the use of international judges in Kosovo's judicial system to ensure that system's competency to try war crimes, ethnically motivated crimes, and organized crime. The international community interposed foreign judges into the Kosovar system when, after the Balkan conflict, it found the system to be too weak and too

susceptible to bias to try such cases fairly. Caroline conducted interviews of U.S. and international lawyers responsible for designing and implementing the program, reviewed decisions rendered by international judges sitting in Kosovar courts, and interviewed practicing Kosovar attorneys. In addition, she conducted research on the structure and funding of other post-conflict transitional justice mechanisms (i.e., truth commissions and specialized tribunals), such as those currently being implemented in Sierra Leone and East Timor.

Caroline also investigated the processes of recruitment and training of international civilian police to work in post-conflict settings, with a specific emphasis on the U.S. civilian police program. To assess the program she collected information from UN officials, U.S. Government representatives, and NGOs. That information was used to determine whether the U.S. is providing adequate training to its recruits to ensure they are sufficiently sensitive to the communities in which they will be working. In particular, Caroline researched the amount and quality of training that U.S. officers receive in human rights, religious and ethnic sensitivity, gender sensitivity, and responses to situations of domestic violence.

e. Immigrants' Rights. In the fall of 2001, Ken Hashimoto worked with Manny Vargas at the Immigrant Defense Project ("IDP") of the New York State Defenders Association. IDP was established in 1997 to ensure that New York State immigrants accused of crimes are properly informed by their criminal defense lawyers about the severe immigration implications of the choices they make during criminal proceedings. IDP files *amicus curiae* briefs on cases important to the rights of immigrants who are criminal defendants, and provides New York State immigrants and their defense lawyers with published resource materials, including a detailed reference manual, training, technical assistance and legal support on the immigration issues that may arise in criminal cases.

Ken was excited to begin working at the Immigrant Defense Project just as IDP was beginning preparations for a probable appeal before the 2nd Circuit Court of Appeals dealing with the retroactive application of provisions of the 1996 federal immigration law, in light of the Supreme Court's decision in *INS v. St. Cyr*. In *St. Cyr*, the Supreme Court held that: (1) federal courts have jurisdiction under the federal habeas corpus statute to review questions such as the lawfulness of the government's retroactive application of certain 1996 immigration law amendments in the face of government claims that the amendments stripped the courts of jurisdiction to decide such questions of statutory interpretation, and (2) it was contrary to law for the government to apply retroactively the 1996 amendments eliminating the possibility of relief from deportation to persons who pled guilty to deportable offenses before these amendments.

From the start, Ken's work for IDP focused on the constitutional limits on the government's authority to detain immigrants suspected of terrorism. Central to issues related to the Due Process rights of immigrants were principles articulated by the Supreme Court only two months earlier in *Zadvydas v. Davis*. In *Zadvydas*, the Supreme Court struck down the government's practice of indefinitely detaining immigrants who have been ordered deported or removed but whom the

government is unable to remove. Noting the serious constitutional problems that would arise if the immigration statute were read to permit indefinite or permanent deprivation of personal liberty, the Court interpreted the statute to limit a deportable immigrant's detention to a period reasonably necessary to bring about the individual's removal from the United States.

As the statutory and regulatory outlines of the federal government's response to the terror attacks became more defined, Ken's preliminary research took the shape of a memo analyzing the constitutionality of the immigrant detention provisions contained in the USA Patriot Act and the Justice Department's interim immigrant detention regulations. Later in the semester, he returned to work on issues relating to appeals from retroactive application of the 1996 federal immigration law in light of *St. Cyr*.

f. Gender Equity. During the spring term, Caroline Flintoft worked with the Women's Rights Project ("WRP") of the ACLU. She assisted Lenora Lapidus, the director of the WRP, and Emily Martin, WRP staff attorney, helping to prepare and file *Bellum v. Grants Pass*, a case concerning gender equity and girls' community athletics. The WRP is representing girls who play in a selective community softball program in Grants Pass, Oregon, against the City and its Recreation Department. The latter have been persistently denying the girls' program access to the City's public playing fields and related resources (such as concession stands and scoreboards), access that would equal that granted to the community's two selective boys' baseball programs. As a result, the girls had not had as many practices and home games as they would like. They are being forced to play on fields that are not designed for softball and are of significantly poorer quality than the fields available to the boys. The WRP is challenging the City's practice under the federal and state constitutions as well as the state public accommodations law. Caroline conducted research on the viability of one of the anticipated defenses to the plaintiffs' claims and helped Emily Martin research and write the brief in support of the plaintiffs' application for a TRO. The WRP filed the case in federal district court in Oregon on April 6, 2002.

Caroline also helped the WRP challenge the dismissal of a young girl from the National Honors Society ("NHS") in a public high school in Alabama, after the school learned that she was pregnant and planning to carry the child to term. The case follows upon the WRP's victory in *Chipman v. Grant County School District*, 30 F. Supp. 2d 975 (E.D. Ky. 1998) (granting preliminary injunction against policy barring students who had engaged in premarital sex and become pregnant from membership in the NHS, and finding the policy likely in violation of Title IX's prohibition on sex discrimination). The WRP sent a demand letter to the principal of the school in the spring, requesting that the school reinstate the girl to the NHS before her graduation in May. Caroline helped Namita Luthra, WRP staff attorney, to draft a complaint and a brief in support of a motion for a preliminary injunction. Fortunately, before the case was filed, the high school complied with the demand letter and reinstated the student in the honor society.

The final issue Caroline worked on in the spring concerns the use of "zero-tolerance against violence" policies to evict female victims of domestic abuse from their homes. Such policies

mandate eviction of all members of a household, including victims, when any violence occurs on the leased premises. Last year, the WRP took part in *Alvera v. C.B.M. Group*, a case in Oregon challenging a "zero-tolerance" policy as applied by a private property manager to evict Tiffanie Alvera after she had obtained a TRO against her husband, who had attacked her in their apartment. The challenge, originally brought by the Department of Justice, alleged that the application of "zero-tolerance" policies to female victims of domestic abuse constituted sex discrimination under the Fair Housing Act. In November 2001, the case was concluded in a favorable consent decree. Since *Alvera* the WRP has been seeking ways to address discriminatory evictions of domestic abuse victims from housing facilities across the country. Caroline researched standing and abstention issues that arise in attempting to challenge such policies affirmatively in federal court as opposed to defensively in state eviction proceedings.

g. Voting Rights. Christine Bohrer Van Aken spent the fall semester working for the Democracy Project at the Brennan Center for Justice. Under the supervision of Jessie Acker Allen, Christine worked on *Johnson v. Bush*, a class-action lawsuit brought Florida officials on behalf of former inmates. Class members challenged Florida's unusually restrictive ex-felon disenfranchisement provisions. Florida provides for permanent disenfranchisement of felons, and prohibits felons who owe their victims restitution funds from applying for restorations of their civil rights. One element of this challenge was brought under the Voting Rights Act; plaintiffs argued that because the provisions disenfranchised vast numbers of African-American voters, these provisions constituted vote denial on account of race. Christine researched theories on how to prove such a claim. Since most Voting Rights Act jurisprudence focuses on vote dilution claims instead of vote denial claims, Christine researched proof of discrimination comparable theories that courts have accepted in Fair Housing Act claims and in Title VII employment discrimination litigation, examining whether such theories could be applied in the vote denial context. Additionally, Christine drafted portions of a *Johnson v. Bush* brief in opposition to the defendants' motion for summary judgment. Her section dealt with class members' claim that Florida's felon disenfranchisement provisions were arbitrary and irrational.

h. Poverty Law. In the fall semester, Sandra Shin-Young Park worked at the Welfare Law Center ("WLC") under the supervision of Marc Cohan. As part of the WLC's educational efforts, she drafted a guide to aid public benefit recipients who represent themselves in administrative fair hearings, with a specific focus on welfare-to-work issues. The guide was targeted to address the needs of students and those already in the workplace.

i. Prisoner's Rights. In the fall semester, Rachel Meeropol took part in NYU's unique Alabama Capital Litigation Clinic. Students in the clinic spend a full semester living in Montgomery, Alabama and working on state post-conviction petitions for individuals on death row. While in Montgomery, Rachel completed her Hays placement at Equal Justice Initiative of Alabama ("EJI"), where she researched potential challenges to Alabama's repeat offender law. EJI is a



private, nonprofit organization that provides representation for indigent defendants and prisoners. It litigates on behalf of condemned prisoners, juvenile offenders, individuals wrongfully convicted and others charged with serious crimes; denied effective representation, or tried in an atmosphere marred by racial bias and prosecutorial misconduct. EJI also prepares newsletters, reports, and manuals to assist advocates or policymakers in reforming the criminal justice system. While working at EJI, Rachel researched the successfulness of various attempts at organizing and litigating against similar repeat offender laws across the country.

In the fall semester, Mallory Curran worked for the Criminal Justice Initiative at the Brennan Center for Justice, on a project identifying civil legal barriers faced by women ex-offenders upon reentry to their respective communities, including issues of housing, custody, and health care.

## 2. THE DIRECTORS

Norman Dorsen. Norman underwent heart surgery in mid-April that kept him out of the office until early June for seven weeks. On June 1 he stepped down as chair of the Global Law School Program, which he founded. When John Sexton was selected as New York University's 15<sup>th</sup> president, he asked Norman to chair his transition team and to join the University administration in the new post of Counselor to the President. Norman agreed to do this two-thirds time, while remaining at the law school, above all in the Hays Program, the rest of the time.

Beginning last summer the transition team and its four committees worked to prepare an analysis of current issues and challenges at the University. In March 2002, the Team's report was submitted to President Sexton and the University community, and it will serve as a foundation document for the new University administration.

Norman also had an active year of publications, including the editing of three books: (1) *Democracy and the Rule of Law*, which contains papers from the bicentennial conference of the Library of Congress, which NYU Law School co-sponsored (the co-editor is Prosser Gifford of the Library); (2) *Justice John Marshall Harlan: Remembrances by His Law Clerks* (published in October 2001), which Norman co-edited with Amelia Newcomb a granddaughter of Justice Harlan; and (3) *The Unpredictable Constitution* (early 2002), containing ten recent James Madison lectures, including lectures by Justice Ruth Bader Ginsburg, Justice Sandra Day O'Connor and Judge Richard Posner. The Harlan book was reprinted in the summer 2002 issue of the *Journal of Supreme Court History*.

Norman's other publications during the year were an article in *51 Journal of Legal Education* 332 (2001), a preface to *The Legacy of Abuse: Confronting the Past, Facing the Future*, edited by Alice H. Henkin (2002), and two columns of "Greetings" in the October 2001 and April 2002 issues of *GlobalLaw*, the newsletter of the Hauser Global Law School Program.

Among Norman's other activities were arranging the October 2001 James Madison lecture

by Justice Stephen Breyer on "Our Democratic Constitution", organizing a conference on constitutional courts for late September 2001 to commemorate the naming of the Global Law School Program after Rita and Gus Hauser, the largest benefactors of the Program, and the planning of a forthcoming conference, in conjunction with the Association of American Law Schools, to increase cooperation among law schools from around the world.

Sylvia A. Law. Sylvia also had a busy year. She has continued her work on reproductive freedom issues, serving on the Board of the Center for Reproductive Law and Policy ("CLRP"), the primary legal counsel to the movement for reproductive choice, both in the United States and around the world. In April 2002, Janet Benshoof, the Founder and President of CRLP, resigned to work on a broad spectrum of human rights in Southeast Asia, and Sylvia accepted the daunting responsibility of chairing the search for a new leader.

Sylvia worked on related issues of choice in the end of life context, as a board member of the Compassion in Dying Federation, and as legal advisor to that group. In April, a federal district court in Oregon rejected Attorney General John Ashcroft's effort to use the federal Controlled Substances Act to thwart Oregon's Death with Dignity law. Ashcroft has announced an appeal. Sylvia will continue to work with the legal team in defense of the Oregon law. In addition, Sylvia gave the Dean's Lecture on end of life care at the University of North Dakota Medical School and a keynote address to an event sponsored by Compassion in Dying of New York State.

Sylvia also worked on issues of gay and lesbian rights, in the context of the federal Solomon Amendment. As chair of the Law School's Placement Committee, she helped organize forums to educate the law school community about discrimination against gay people in the military. She spoke on these issues at Washington University in St. Louis, in October 2001 and at a panel sponsored by the American Association of Law Schools in New Orleans, in January 2002. Sylvia also continued her work on commercial sex, giving talks and leading discussions at the Law and Society Conference in Budapest in August 2001 and at a MacArthur Fellows Reunion in New Mexico. She gave the Mary Edwards Memorial Lecture at SUNY Purchase in April and in June she moderated a panel at the Bar Association of the City of New York on efforts to legalize prostitution. Sylvia participated in NOW Legal Defense and Education Fund strategy sessions on feminism and federalism, and spoke at a conference on federalism at the University of Indiana in Bloomington in February.

Sylvia's most delightful report concerns the impact of her law review articles. In *Centola v. Potter*, 183 F.Supp.2d 403 (D. Mass., 2002), Judge Nancy Gertner held that a male postal worker who was harassed by fellow workers because they perceived that he was not attracted to women could sue under Title VII, which prohibits discrimination on the basis of sex, but not on the basis of sexual orientation. Relying on Sylvia's 1988 Wisconsin Law Review article, "Homosexuality and the Social Meaning of Gender," Judge Gertner said, "Sexual orientation harassment is often, if not always, motivated by a desire to enforce heterosexually defined gender norms."

Helen Hershkoff. This year Helen enthusiastically participated in the Hays Program --

attending sessions, enjoying dinners, and staying involved with the students' placements -- despite being on research leave in the fall and visiting at Columbia Law School in the spring. She also pursued a broad array of scholarly and professional activities. She delivered the annual lecture on state constitutional law at Rutgers Law School; presented written testimony to the Florida legislature on a proposed amendment to that state's constitution; co-authored an article on the use of magistrate judges in pro se cases; continued a collaborative book-length project on civil procedure in a global context; participated in the Appellate Judges Seminar hosted by the Institute for Judicial Administration at NYU; and -- most important -- continued her research involving the right to petition and private bills. Helen was pleased to learn that her essay on public interest litigation, prepared for the World Bank, had been translated into French and reprinted for use at a workshop on human rights in Pretoria organized by the Institute for Human Rights and Development and the International Commission of Jurists (Kenya and Swedish sections). Helen also served on the Root-Tilden-Kern Program selection committee; taught a Continuing Legal Education course at the ACLU; served on the Board of the Urban Justice Center; joined the Board of the Brennan Center; and continued to consult with Constitution Works, a non-profit organization that help New York public school students learn about the Constitution and the work of lawyers.

### 3. ADMINISTRATION

We continued our tradition of inviting former Fellows to spend an evening with the current Fellows. In the fall semester, our guest was Marcia Lowry, Hays Fellow, 1968-69. Marcia is the founder and president of Advocates for Children and a leading activist for the rights of children in foster care and victims of abuse and neglect. Marcia's work over the past decades was recently explored in the award-winning book, *The Lost Children of Wilder: The Epic Struggle to Change Foster Care* by Nina Bernstein. Marcia shared with us her passion for the children she represents as well as frustration with the challenge of reforming the child-care bureaucracy. In the spring, Wayne N. Outten, Hays Fellow, 1973-74, described his work as an employment rights lawyer, including his founding and leadership of the National Employee's Law Association, now a significant force advocating employee rights. Both evenings were of great interest as the former Fellows discussed their careers and other endeavors since their Hays Fellowships.

Kim Barry, Hays Fellow, 1997-98, and now a Fellow at the Brennan Center, provided wise guidance in the selection of next year's fellows.

We are tremendously grateful for the strong support we have received from the Law School administration, from Evelyn Palmquist, the Program's secretary and administrative assistant, and from the numerous individuals and foundations that have provided financial support. Above all, we are grateful to the scores of former Hays Fellows who have supported the Program and remained in close touch, relaying information about their own lives and work, and in various ways assisted us as we continue to build a strong civil liberties community at and beyond Washington Square.

#### 4. FUTURE PLANS

Next year, Mallory Curran will serve as a Skadden Fellow in Cleveland, Ohio. Her project is a collaboration between the Legal Aid Society of Cleveland and the Pediatrics Department of MetroHealth Medical Center, the area's public hospital. She will educate the hospital's pediatricians and other health care providers about their patients basic legal rights and will also provide on-site legal services to MetroHealth patients and their families on a variety of civil legal matters. Caroline Flintoff is clerking with Judge Kimba Wood in the Southern District of New York. Ken Hashimoto and Sandra Shin-Young Park will be clerking in the Southern District of New York, with Judges Deborah A. Batts and Alvin Hellerstein, respectively. Christine Bohrer Van Aken will be clerking on the Second Circuit in New York with Judge Pierre N. Leval. Rachel Meeropol will return to CCR, where she will begin an Equal Justice Fellowship designed to combine litigation and organizing in an effort to improve conditions of confinement in Supermax prisons and the development of police training protocols. Andrew Turner will be replacing Hays Fellow, Derek Baxter, 1998-99, at the Virginia Justice Center for Farm and Immigrant Workers, a Project of the Charlottesville-Albemarle Legal Aid Society. Andrew will join the Justice Center's central Virginia office, which provides civil legal services to the thousands of migrant farm workers in the Commonwealth.

The Hays Fellows for 2002-2003 are Melissa Goodman, Benita Jain, Gabrielle Prisco, John Daniel Radice, Kathryn Sabbeth, and Priyamvada Sinha.

Norman Dorsen  
Sylvia A. Law  
Helen Hershkoff