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ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM
ANNUAL REPORT 2013-2014

As detailed below, this was another busy and productive year for the Hays Program.

On Saturday, October 26, the Hays Program celebrated its 55th anniversary and the creation of a new, endowed Hays Fellowship, the Sylvia A. Law Fellowship in Economic Justice.

The reunion began with coffee and conversation, followed by a panel discussion of the topic, “Which case did the liberals lose in the Supreme Court in recent years that we can best live with (or even may have been right)?” Panelists included: David Rudovsky (1966-1967)(Kairys, Rudovsky Messing, & Feinberg and the University of Pennsylvania Law School); Eric Lieberman (1971-1972)(Rabinowitz Boudin, Standard, Krinsky & Lieberman); Gemma Solimene (1986-1987)(Fordham Law School); Maddy deLone (1993-1994)(The Innocence Project); Rachel Meeropol (2001-2002)(The Center for Constitutional Rights); and Rachel Goodman (2009-2010) (The ACLU Racial Justice Program). Adam B. Cox, Acting Hays Co-Director, moderated.

At the pre-dinner reception, Norman welcomed the new Dean Trevor Morrison, and Trevor praised NYU’s tradition of commitment to public interest, describing the Hays Program as “a jewel in that crown.” At dinner, Norman announced the new Sylvia Law Fellowship, with stories about Sylvia, and thanks and praise to Steve Polan (Hays Fellow 1975-1976) who conceived and organized the fellowship, as well as the many who contributed generously. Sylvia added her

thanks to Steve and others. She lamented that the economic and social inequality that she had criticized since the 1960s has only grown grievously worse.

Susan Herman, President of the ACLU and 1974 NYU Law graduate, gave a moving, perceptive, and witty key note address. She reminded us the importance of remembering the heroes of civil liberties. She recalled the late Tom Stoddard (Hays Fellow 1976-1977) as an exemplar of the Buddhist teaching that there are multiple paths to victory in civil rights. She recalled Tom's analysis, following the great loss in *Bowers v. Hardwick* in 1986, outlining the multiple paths to LGBT liberty and equality. She noted that on the ACLU docket, LGBT cases are now "feel good" work, because their clients often win, as opposed to immigration, reproductive freedom and many other issues.

As in past years, each semester a former Hays Fellow met with current Fellows to discuss experiences with the Program, career choices, and other issues. Anne Clark, (1989-1990), a partner at Vladeck, Waldman, Elias & Engelhard, P.C. joined us in the fall. In the spring, Kerwin Tesdell (1985-1986), president of Community Development Venture Capital Alliance, shared conversation and dinner. In addition, each semester we invite a leading civil liberties lawyer, not a Hays Fellow, to speak with the Fellows about their work. Steve Shapiro, legal director of the ACLU, joined us in the fall and Vince Warren, executive director of the Center for Constitutional Rights, met with us in the spring.

In May, we hosted the seventh annual reception for graduating Fellows and their friends. It was a delight to meet the partners, siblings, and friends who have provided support to the Fellows and therefore to the Program.

For further news on the Program, we urge a visit to the Hays website: <http://www.law.nyu.edu/academics/fellowships/haysprogram/index.htm>. The site also provides a link to the 55th reunion event, to Lora Hays's video about the Program, and to all of the Madison Lectures as published in the New York University Law Review.

1. THE FELLOWS

This year's fellows were:

| | |
|-------------------|--------------------------------|
| Shira Burton | Harriet Pilpel Fellow |
| Kadeem Cooper | Palmer Weber Fellow |
| Thomas Gottheil | Leonard Boudin Fellow |
| Leila Kang | Roger Baldwin Fellow |
| Jessica Rofe | Deborah Rachel Linfield Fellow |
| Allison Wilkinson | Robert Marshall Fellow |

The work of the Hays Fellows—always the heart of the Program — reflects the ever-evolving challenges to civil liberties. This year, the rights of immigrants commanded greatest attention, followed by reproductive rights, economic justice, and race discrimination. Here is a summary of the work done by the Hays Fellows this past year.

The Rights of Immigrants

Allison Wilkinson interned at the ACLU Immigrants' Rights Project (IRP) with Deputy Director Judy Rabinovitz (Hays Fellow 1984-1985) and Skadden Fellow Dror Ladin. Allison helped ACLU attorneys prepare an amicus brief submitted on behalf of the petitioner in the First Circuit case, *Hinds v. Holder*. She researched and drafted legal memoranda on issues confronting the petitioner, who is seeking judicial recognition of the need for proportionality considerations in immigration cases before final removal orders are issued. The research and analysis Allison developed will be used by IRP in future cases including litigation currently pending in the Ninth Circuit.

Tom Gottheil worked with the ACLU's Immigrant Rights Project (IRP) on several of their long-term cases, including a challenge to discriminatory law enforcement practices in Arizona, an attempt to introduce proportionality review to immigration proceedings, and an argument to broaden the scope of review of certain immigration decisions where a deportee is likely to be tortured on return to his or her home country. He also assisted on a civil damages case against the federal government, the Tennessee government, and a private management company for instigating an immigration raid in an attempt to drive Latinos out of an apartment building. This case is set for trial in fall, 2014.

Shira Burton worked at the Immigrant Defense Project (IDP) under the supervision of Alisa Wellek (Hays Fellow 2007-2008) and Isaac Wheeler. Shira's primary project at IDP involved drafting a long letter from a coalition of immigration advocates to the New York City Counsel in response to the City's immigration detainer laws adopted in 2013. Shira consulted advocates' reports on the laws' implementation and data collected by the Department of Corrections and the NYPD to formulate future legislation.

Jessica Rofé interned at a new organization, Atlas: DIY, Developing Immigrant Youth, a client governed cooperative that provides a safe space for undocumented youth, as well as holistic legal and social services and programming. Jessica represented clients on affirmative applications for U-visas, T-visas and Special Immigrant Juvenile Status. She also collaborated with comprehensive youth service providers to assist young people with benefits applications, and facilitated College Club for Atlas members, with an emphasis on researching scholarships available to undocumented students. Lastly, she conducted intakes for potential clients, with an emphasis on eligibility for deferred action for childhood arrival ("DACA").

Reproductive Freedom

In the spring, Allison Wilkinson interned with Planned Parenthood's Public Policy Litigation and Law Department, which is responsible for the organization's litigation efforts to protect the right of women nationwide to access safe and effective reproductive healthcare. Allison conducted research and drafted legal memoranda on a wide variety of issues arising in Planned Parenthood's ongoing cases. She assisted attorneys in responding to discovery requests, researched procedural and evidentiary issues to anticipate potential objections, and prepared a

memorandum evaluating the liability of Planned Parenthood's affiliate offices in Texas under new laws that further restrict the ability of these organizations to operate.

In the fall, Shira Burton, Harriet Pilpel-Planned Parenthood Fellow, worked at National Advocates for Pregnant Women (NAPW) with Executive Director Lynn Paltrow (Hays Fellow 1982-1983). Shira worked on a federal habeas petition challenging the constitutionality of a Wisconsin statute that allows the civil commitment of pregnant women who use drugs or alcohol. After the petition was filed, Shira conducted research involving evidentiary issues anticipated to arise in the continuing litigation. She also contributed to NAPW's work on a child welfare case pending before the New Jersey Supreme Court by investigating the availability of methadone treatment services for pregnant women living in New Jersey.

Economic Justice

In the fall, Tom Gottheil worked in the legal office of Local 32BJ of the Service Employees International Union. 32BJ represents over 145,000 property service workers (i.e. cleaners, doormen, security officers, etc.) in states throughout the northeast, and is known as a dynamic local at a time when unionization is in decline. Tom worked primarily with Elizabeth Baker (Hays Fellow 1994-1995). He prepared research for pending grievance arbitrations and contract negotiations, and his work culminated in a comprehensive memo on the rights of privacy and publicity of 32BJ members and the public.

In the spring semester, Kadeem Cooper also interned at the Service Employee International Union Local 32BJ. The local represents 1,200 security officers in New York and New Jersey in collective bargaining with state and federal contractors. Kadeem supported the bargaining unit by investigating legal claims against a particularly vile health insurance provider for violations of federal labor law. The threat of litigation helped the union negotiate a favorable contract for its security guard members. Kadeem also researched whether reprinting favorable news coverage of a labor campaign violated federal copyright laws (it does!) and whether an airport services company could retaliate against workers attempting to form a union under the Railway Labor Act (hopefully not!).

Race Discrimination

Kadeem Cooper spent the first semester of his Hays Fellowship at the NAACP Legal Defense and Educational Fund. At LDF, Kadeem worked with lawyers in the Criminal Justice Project to develop a campaign to repeal "Stand Your Ground" laws. Kadeem drafted congressional testimony and investigated incidents of violence against African American men in jurisdictions with Stand Your Ground statutes. The organization ultimately plans to pursue class action litigation to repeal laws in jurisdictions where African American victims of racially motivated violence are routinely denied access to justice. Kadeem also provided legal research for the NAACP litigation team in its effort to reform the stop-and-frisk policies of the New York City Police Department.

Leila Kang worked at the Racial Justice Program of the American Civil Liberties Union. She worked chiefly on *Winston v. Salt Lake City Police Department, et al.*, a class action lawsuit against school and police officials over a "gang sweep" that detained, interrogated and sometimes falsely accused students of color. Leila assisted the ongoing litigation by conducting research on Fourth Amendment standards with respect to school searches and government databases, municipal liability for constitutional violations, and various procedural issues. She also assisted with *Adkins, et al. v. Morgan Stanley*, a lawsuit filed on behalf of African American residents of Detroit harmed by Morgan Stanley's predatory lending.

Education and the First Amendment

Jessica Rofé interned at the New York Civil Liberties Union in the Advocacy Department. Jessica worked on a number of issues at the NYCLU. She focused on education reform, particularly on the initiative to end the school-to-prison pipeline, helping to edit the New Vision for School Safety, a list of nine guiding principles to inform the overhaul of the Memorandum of Understanding between the New York City Department of Education and the New York Police Department. She researched and drafted memoranda on the privacy implications of a new data-sharing system adopted by the New York State Department of Education, and another on the First Amendment implications of a potential New York State ban on state-licensed medical providers offering sexual orientation change information to minors.

Criminal Justice

Leila Kang interned with the Center for Appellate Litigation. She worked with the Plea Project, which assists clients who have pleaded guilty. She drafted briefs on behalf of three clients seeking to appeal excessive and illegal sentences. In addition to her appellate defense work, she also assisted two clients through the Parole Advocacy Project. She completed a comprehensive submission packet to the Parole Board and prepared the clients for their appearances. Both clients won their release before the parole board.

2. THE DIRECTORS.

Norman Dorsen. Norman continued as counselor to President John Sexton as well as serving on the law faculty. He was on sabbatical leave in the spring, but continued with his normal schedule except that he did not teach his seminar on Judicial Biography and Opinions and did not serve on a faculty committee. In February, a university committee that Norman chaired completed a two year report on NYU's inter-disciplinary, multi-school programs, including public health, cities and the environment, data science, and humanities initiatives. The report was submitted to the Middle States Association for Higher Education as part of NYU's decennial application for re-accreditation, which was granted in June. The Buenos Aires Law Journal published Norman's 2013 commencement address on Seeking Civil Liberties. He also published two articles in the Lakeville Journal, one on considerations in deciding whether to retire and the other a tribute to Marc Simont, an artist and activist who died this year. In May, Norman received a lifetime award for his work on the First Amendment from the Hugh Hefner Foundation.

Sylvia A. Law. Sylvia taught Health Law and the Health Policy Seminar at NYU in the fall semester. In the spring, she was on leave, visiting in Hawaii at the Richardson School of Law.

As chair of the Sheinberg Lecture Program, she helped to organize the 20th annual law school program featuring Winona LaDuke, founder and Co-Director of Honor the Earth, a national advocacy group encouraging public support and funding for native environmental groups. Her presentation, “Predator Economics, Human Rights, and Indigenous Peoples” documented that runaway energy consumption, compounded by greed, hurts not just indigenous people but all of us. Sylvia also serves on the boards of the Center for Reproductive Rights and the Center for Law and Social Policy. At the Law School, Sylvia is chair of the Faculty Committee on Career Services and of the Health and Benefits Area Group.

In the spring in Hawaii Sylvia helped organize a week-long program on current threats to reproductive rights that included presentations at the law school, the medical school, the Hawaii Women’s Bar Association and a showing of the film, *After Tiller*, at the Honolulu Academy of Arts. In April she traveled to Korea to participate in a conference on the future of legal education in Korea and Japan, and to speak on physician reimbursement at the law school and school of public health at the National University of Seoul. *Current Issues in Physician Payment in the United States and the Republic of South Korea*, 13 J. Korean Law. 335 (2014).

Helen Hershkoff was selected by NYU Law School as a “Teacher of the Year” and was honored by the Association of American Law Schools at its 2014 Annual Meeting held in January. In addition to her usual teaching of Procedure and The Federal Courts and the Federal System, she taught during the summer 2013 two courses at NYU@NUS: Introduction to United States Law and Introduction to U.S. Litigation and Procedure for International Business Lawyers. During summer 2014 she taught at the University of Freiburg: Introduction to United States Law: Common Law/Constitutionalism and the Idea of American Legal Exceptionalism. Looking forward, in fall 2014 she will be visiting at the Harvard Law School, but will continue teaching in the Hays Program as well as a “Reading Group” to 1Ls.

Helen’s research and writing involved practical pieces and academic scholarship. On the practical side, she prepared annual supplementation to Volumes 14 and 14A of Wright & Miller, FEDERAL PRACTICE & PROCEDURE, pertaining to the United States as a party, and also updated the Federal Rules supplement to accompany a number of Civil Procedure casebooks. She co-authored Joint Comments on Proposed Amendments to Federal Rules of Civil Procedure,” submitted in February 2014 to the Committee on Rules of Practice and Procedure to the Administrative Office of the United States Courts. The comments registered opposition to proposed amendments to the Federal Rules of Civil Procedure. One hundred and seventy-one law professors submitted a statement to the Committee endorsing these comments. She co-authored with Norman and with Professor Burt Neuborne an ultimately losing a brief for the Brennan Center as *amicus curiae* in support of the Government in *Sebelius v. Hobby Lobby Stores*, on whether “for-profit business corporations owned by religious shareholders are entitled to a religiously-based exemption from employee health insurance obligations imposed by the Affordable Care Act”. She also joined, along with other law professors, a brief *amicus*

curiae in *Al Shimari v. Caci Premier Technology, Inc.* (4th Cir. 2013), on whether the territorial reach of the Alien Tort Statute is a jurisdictional or merits question.

On the scholarly side, her essay, "The Michigan Constitution, Judicial Rulemaking, and *Erie*-Effects on State Governance," will be published in 2014 in the *Wayne Law Review* as part of a symposium entitled "A Wave of Change: Celebrating the 50th Anniversary of Michigan's Constitution and the Evolution of State Constitutionalism." Her chapter, "Tough Times and Weak Review: The 2008 Economic Meltdown and Enforcement of Socio-economic Rights in U.S. State Courts," co-authored with Stephen Loffredo, will be included in *ECONOMIC AND SOCIAL RIGHTS AFTER THE GLOBAL FINANCIAL CRISES* (Cambridge University Press), which is planned for publication in late 2014.

At NYU, she chaired the Curriculum and Adjunct Appointments Committee. She also continued to serve as faculty supervisor to the *JOURNAL OF LEGISLATION AND PUBLIC POLICY*. In addition, in January 2014 the Dean appointed her to serve as the Law School's representative on the Association of the Bar of the City of New York's Working Group on the New York Bar Examination, created by the City Bar's Task Force on New York Lawyers in a Changing Profession. In June 2014 she attended the 2014 Second Circuit Judicial Conference.

Finally, Helen continued to participate in community service, serving on the Board of Directors of the Urban Justice Center, the Brennan Center for Justice, and Party for Humanity, Inc. (a non-profit organization that she started with her family aimed at encouraging habits of giving among young children).

Adam B. Cox. During the 2013-14 academic year, Adam taught Immigration Law and the Rights of Noncitizens. He wrote a number of papers, including "Three Mistakes in Open Borders Debates" (forthcoming in *Nomos*) and "Does Immigration Enforcement Reduce Crime?" The latter paper is part of a large empirical project Adam has been working on that explores the intersection of the criminal justice and immigration enforcement bureaucracies. The project is designed to address long-standing debates over whether deportation is an effective tool of crime control, whether local immigration enforcement interferes with community policing, whether turning criminal arrest into points of federal immigration screening leads to racial profiling by local police, and so on. In addition to this project, Adam is working on other papers related to voting rights and constitutional law.

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 29 court of appeals judges have delivered Madison lectures. Norman has directed these lectures since 1977, and it is administered as part of the Hays Program. The fall 2013 lecture was delivered by Judge William A. Fletcher of the Ninth Circuit Court of Appeals who spoke on the death penalty. The 2014

James Madison lecturer will be Judge Anthony J. Scirica of the U.S. Court of Appeals for the Third Circuit.

4. THE FELLOWS' NEXT STEPS.

Shira Burton (Harriet Pilpel Fellow) is going to be a Hennepin County Public Defender in Minneapolis. Kadeem Cooper (Palmer Weber Fellow) will be working at Paul, Weiss in Washington, D.C. Thomas Gottheil (Leonard Boudin Fellow) is clerking for District Judge Legrome Davis of the Eastern District of Pennsylvania. Leila Kang (Roger Baldwin Fellow) is working at the Northwest Immigrant Rights Project in Seattle. Jessica Rofe (Deborah Rachel Linfield Fellow) will be an inaugural Fellow in the Immigrant Justice Corps, a program created to help new graduates provide and social support to immigrants. Allison Wilkinson (Robert Marshall Fellow) will be the Chadbourne and Parke Fellow working at The Door in New York City.

5. NEW FELLOWS

In 2014-2015 the Fellows will be:

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

As in the past, the new Fellows were selected following interviews by the Directors and current Fellows on the basis of their demonstrated commitment to civil liberties, their public interest experience, and their academic qualifications.

We again express our thanks to Gail Thomas for her dedicated work as administrative assistant and secretary to the Hays Program. We also thank Robert Anselmi for his administrative support and, in particular, his work in maintaining the Hays website.

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

PLEASE KEEP IN TOUCH WITH THE HAYS PROGRAM

We try to maintain up-to-date contact information for all Fellows. If your contact information has changed, please be sure to send us the new data either by email to gail.thomas@nyu.edu or mail your updated information to NYU Law School, Attn: The Hays Program VH 308, New York, NY 10012.

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