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**ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM
ANNUAL REPORT 2015–2016**

The work of the Fellows is the heart of the Hays Program and is detailed below.

We are happy to say that after Norman's unexpected health problems last year, he has continued to heal. He regularly comes into the office and participated in most of the Hays seminars. We are looking forward to his presence at our seminars and dinners again this year. John Sexton, with whom Norman worked so closely when John was Dean of the Law School and President of the University, prepared almost weekly recorded conversations with Norman about his Supreme Court litigation and other matters of interest to civil liberties. When those conversations are available, we will be sure to share them on the Hays website.

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. In the fall, we met with David Rudovsky, Hays Fellow 1966–1967. David is the founding partner of the law firm of Kairys, Rudovsky, Messing, and Feinberg, and a Senior Fellow at the University of Pennsylvania Law School. He is a leading civil rights and criminal defense lawyer and was awarded a MacArthur Fellowship in 1986. In the spring, we met with Lauren Robinson, Hays Fellow 1993–1994. Lauren is now Senior Associate General Counsel of the American Bar Association. Previously, she served as Vice President of Chicago Community Ventures, a non-profit organization providing financing and consulting services to small businesses in low-income neighborhoods.

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. On October 6, we met with Michael Waldman, NYU Law 1987, who is now the Director of the Brennan Center. From 1993 to 1999, Michael served as President Bill Clinton's special assistant and chief speech writer. In the spring, 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. As we write this report, Steve has announced his intention to retire from the ACLU sometime after the summer.

This year, the Hays Program celebrated the twentieth anniversary of the establishment of the Tom Stoddard Fellowship in the Rights of Lesbians and Gay Men. Tom, who taught as an adjunct professor at NYU Law School, was critical to the success of the campaign for marriage equality. Together with Norman, he also helped to found the NYU Journal of Legislation and Public Policy. Tom's achievements, as well as his importance to the Program and to all of us, were the focus of a dinner held on November 13, 2015. Welcoming remarks were given by Walter Rieman, NYU Law 1984, Tom's partner. You can find a video of Walter's remarks and the rest of the dinner program at: <https://www.youtube.com/watch?v=HUKG69N-G3w>. We also prepared a dinner brochure with details about the Stoddard Fellows and their work.

The Stoddard Celebration coincided with a symposium co-hosted by the Hays Program and the NYU Journal of Legislation and Public Policy, "It Is So Ordered": Social Change and the Campaign for Marriage Equality." The program examined the future of the LGBTQIA movement's struggle for equality, while locating the campaign for marriage access in the broader context of civil rights movements in the United States. The impressive speakers included Bebe Anderson, Richard Blum (Hays Fellow 1988–1989), Eliza Byrad, Keven Cathcart, Professor Peggy Cooper Davis, Roberta Kaplan, Professor Melissa Murray, and Andrew Tobias. The Journal will be publishing articles and comments from participants at the Symposium, and some of the remarks also are available at the program link.

Adam Cox has stepped down as Acting Director of the Hays Program. He joined us four years ago, with extensive experience, both theoretical and practical, on immigration law and voting rights. He has continued to do important work, often with our former colleague Professor Cristina Rodriguez of Yale, on issues of presidential power and immigration. Oxford University Press has now asked them to bring this important work to a broader audience by producing a book on an accelerated schedule. In addition, Adam has assumed major administrative responsibilities at the Law School. He has brought insight, wit, and support to students of the Hays Program. We will miss him, but he promises to continue to help as a friend of the program.

For further news on the Hays Program, visit our website at: <http://www.law.nyu.edu/academics/fellowships/haysprogram/>. 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 Davis (Roger Baldwin Fellowship)
Molly Lauterback (Leonard Boudin Fellowship)
Samantha Lee (Robert Marshall Fellowship)
Andrew Nellis (Deborah Linfield Fellowship)

Max Selver (Palmer Weber Fellowship)
Samuel Steinback-Pratt (Tom Stoddard Fellowship)
Courtney Weisman (Harriet Pilpel Fellowship)

The work of the Hays Fellows reflects the ever-evolving challenges to civil liberties. This year, criminal justice commanded greatest attention, followed by immigration and national security, economic justice, women's rights and reproductive freedom, and free speech. Here is a summary of the work done by the Hays Fellows this past year.

Criminal Justice

In the fall, Samuel Steinback-Pratt worked at the Innocence Project in the Strategic Litigation Unit that seeks to correct wrongful convictions by means other than DNA testing and to improve the state of the law on the leading causes of wrongful conviction. Samuel's work focused on challenging convictions secured through invalidated and unreliable forensic science. He researched several procedural issues related to post-conviction litigation, including the impact of Virginia's habeas limitations period on the availability of federal habeas relief and whether it would be possible, under Massachusetts law, to qualify an expert witness to testify about the role that cognitive bias plays in forensic science. Samuel also helped to draft a *Brady* argument on behalf of a man whose conviction was later reversed based on due process violations and the improper use of now-discredited bite mark testimony at trial. Finally, he wrote a brief in anticipation of habeas litigation arguing that the use of unreliable scientific evidence renders a trial fundamentally unfair, in violation of the defendant's due process rights, even when the evidence was not known to be faulty at the time of trial. Maddy DeLeone, Executive Director of the Innocence Project and Marshall Fellow in the Hays Program 1993–1994, was helpful in opening this opportunity for Samuel.

Max Selver joined the ACLU Criminal Law Reform Project on a lawsuit filed in New Orleans to end the practice of putting criminal defendants on a waitlist for appointed counsel while they remain detained. Max drafted the motion for class certification and helped draft the complaint in the case, which was filed in January of 2016 (for more information, see: <http://www.nytimes.com/2016/03/20/us/in-louisiana-the-poor-lack-legal-defense.html?hp&action=click&pgtype=Homepage&clickSource=thumb&module=second-column-region®ion=top-news&WT.nav=top-news&r=0>). In addition, he contributed legal research on the Sentencing Reform bill pending in Congress that would end the policy of mandatory life without parole sentences for non-violent drug offenders.

Molly Lauterback worked at the ACLU-Criminal Law Reform Project (CLRP), under the supervision of program director Ezekiel (Zeke) Edwards. She helped to represent a client referred by the North Carolina CLU. Her client had been subjected to a warrantless, unconsented penile swab upon arrest. Molly prepared a memo on the Fourth Amendment implications of such a search, which was used by local counsel, arguing for the defendant on appeal. In addition, Molly worked with Brandon Buskey on CLRP's systemic campaign to ensure access to counsel for indigent criminal defendants. She focused on when the right to counsel attaches under the Sixth Amendment, and on access to bail hearings for unrepresented criminal defendants in

Alabama. Molly reports, “because CLRP works on a broad range of areas, I felt fortunate that I was able to research all kinds of constitutional issues and be supervised by multiple attorneys within the project.”

Samantha Lee interned at the Neighborhood Defender Service of Harlem (NDS) with Executive Director Rick Jones, and their Criminal Defense Practice with Senior Trial Attorney Elsie Chandler and Staff Attorney Quincy Myers (NYU Law). Sam researched and drafted a recommendation to the Chilean government on the use at trial of videotaped child witness statements. She also researched and drafted a white paper for the National Association of Criminal Defense Lawyers (NACDL) on their stance on police body camera use. Additionally, Sam investigated collateral consequences stemming from sex offender registration and worked with the Office of the Appellate Defender to clear several old plea convictions, so that NDS clients could move on with their lives. Lastly, Sam researched and drafted legal memoranda on issues confronting NDS’s criminal defense lawyers, including DNA transfer, a Molineaux issue (on whether the state can introduce evidence of prior, similar crimes), and whether the “inventory search” warrant exception permits an officer to read the serial numbers on money seized.

In the fall, Andrew Nellis interned at the Center for Constitutional Rights (CCR), working with former Linfield Fellow Rachel Meeropol in CCR’s Government Misconduct and Racial Justice docket. Andrew contributed research on several of CCR’s cases, preparing memos on a variety of issues relating to prison litigation, ranging from the constitutional rights of prisoners to the attorney’s fees to which prisoners’ lawyers are entitled. He also wrote the first draft of parts of two appeal briefs; one for a civil case before the D.C. Circuit and another for a criminal case before the Seventh Circuit.

National Security and Immigration

In the fall, Molly Lauterback worked with Families for Freedom (FFF), a human rights organization created by and for families and loved ones facing and fighting deportation. The organization was started in 2002 with the support and help of the Immigrant Defense Project (IDP), a legal advocacy organization that provides materials for public defenders about immigration law.

Molly researched the intersections between the NYPD, the NYC Department of Corrections, and the U.S. Immigration and Customs Enforcement (ICE). Families for Freedom observed an increase in ICE home-raids of immigrants in New York City 2015. The staff suspected that more noncitizens were being taken directly from their homes because ICE agents could no longer access Rikers Island due to the city’s passage of an anti-detainer bill in November 2014 (for more information, see: <http://www1.nyc.gov/office-of-the-mayor/news/520-14/mayor-bill-de-blasio-signs-law-bills-dramatically-reduce-new-york-city-s-cooperation-with#0>). They were curious as to how ICE was able to access contact information for the noncitizen New Yorkers they were raiding. Molly researched the factual questions and found evidence that city agencies were sharing information with ICE, despite its announced commitment to keep a person’s “alienage” confidential. Unfortunately, her legal research revealed statutory and judicial

authority for sharing information between the city and federal government. She communicated with the Mayor’s Office and drafted Open Records Requests on behalf of FFF. Molly presented this information both to FFF and to the larger community, including groups like ICE-FREE NYC. Families for Freedom used this research to expand its Know Your Rights program and to inform its members about the extreme risks associated with giving city officials contact information. In addition, she worked with individual FFF members on their specific cases, either through referring them to legal organizations or connecting them with other social services. She reports, “Through my work at FFF, I was able to get an intimate look at the way activist groups function and learn tremendously about the role of lawyers within social movements.”

Economic Justice

Elizabeth Davis spent her fall semester at the MFY Legal Services’ Medical Legal Partnership, providing civil legal services to young people receiving mental health treatment. She conducted intakes and interviews focusing on clients’ legal needs related to special education, government benefits, and housing. She worked with one young client with autism, examining extensive medical records, school reports and prior legal submissions to prepare an appeal of a denial of Supplemental Security Income. She advocated with schools and doctors to obtain appropriate Individualized Education Plans and to assure that children received the services they needed. She researched the services available to children through the Office for People with Developmental Disabilities, and worked with families not receiving appropriate services.

In the spring, Lizzie worked at The Legal Aid Society’s Juvenile Rights Practice in Brooklyn, assisting in the representation of children, primarily in child protective cases. She conducted interviews with children to understand their goals in their family court proceedings and help them achieve those goals. For an older client, who was concerned primarily with receiving services, Lizzie’s work included preparing for a hearing to advocate with the Administration for Children’s Services to ensure college tuition was paid, counselling was received, and a proper plan was in place for when the client was no longer eligible for foster care. For another client, she prepared a motion to quash a subpoena to get the child to testify in court—or, in the alternative, to allow testimony on camera—so that the client would not have to face her mother’s abusive partner in court. In addition, she prepared an opposition to an order to show cause, from a parent asking for an emergency visitation order, to prevent visits between a parent and the client, who was alleging sexual abuse and did not want to see the parent.

Women’s Rights

Courtney Weisman worked at the ACLU’s Women’s Rights Project, learning about much anticipated guidance from the Department of Justice on “Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence.” This guidance came in the wake of sustained advocacy by organizations like the ACLU’s Women’s Rights Project, and also in response to numerous DOJ investigations into police departments across the country. The DOJ investigations uniformly found evidence of gender bias, ineffective investigations of sexual assault and domestic violence, and a lack of accountability for police officers accused of sexual assault and domestic violence. She read many consent degrees, examined the DOJ’s

investigation reports, and analyzed the DOJ's newly-issued guidance. She prepared many memos to guide the local reform efforts of ACLU affiliates and police departments.

Reproductive Freedom

In the spring, Samantha Lee 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. Sam 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, drafted motions to certify a class of provider- and patient-plaintiffs and to allow patient-plaintiffs to proceed pseudonymously, and researched procedural issues to seek preliminary injunctions to stall de-funding Planned Parenthood affiliates in various state or federal courts.

Voting Rights

In the fall semester, Courtney Weisman worked at the Brennan Center exploring litigation to challenge an administrative rule proposed by the Republican Secretary of State of Kansas, Kris Kobach. The rule would require election officials to remove "incomplete" voter registration applications after 90 days and would remove voters who had not provided documentation of U.S. citizenship. She collected and analyzed data on the voters on this "suspense list" and drafted public record requests in advance of potential litigation. She also examined the comments in response to Kobach's rule, new coverage, and prior litigation on the issue. In addition, she helped to draft voter registration memos for each state.

Free Speech

In the spring, Andrew Nellis interned at the Media Law Resource Center, where his work centered on First Amendment issues relevant to the press, such as defamation and copyright law. Andrew did research on and analysis of recent court decisions, as well as various research projects relating to the MLRC's regular conferences and workshops.

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*. As chair of the Sheinberg Lecture Program, she helped to organize the 22nd Annual Law School Program featuring Andrea Ritchie, co-founder and director of Streetwise & Safe, a leadership development initiative for LGBTQ youth of color. Ritchie was introduced by Urvasi Vaid, CEO of the Vaid Group, which works with social justice innovators to address structural inequality. Sylvia also served on the board of the Center for Law and Social Policy. She worked on a special committee of the NYCLU, considering the organization's policy on end-of-life choice. At the Law School, Sylvia is chair of the Faculty Committee on Career Services and of the Health and Benefits Area Group.

Sylvia wrote a memo for the Hays Fellows in preparation for the Stoddard Conference described above. It argues that a critical difference between the struggles for marriage equality and reproductive freedom is the extent to which the two movements have come out of the closet, both in personal relations and in popular media. With the help of Lawyering Professor Scott Skinner-Thompson and 2L student Hugh Baran, the memo has been turned into a law review article: *Marriage, Abortion and Coming Out* (soon to be published in the online *Journal of the Columbia Law Review*). In a similar vein, she participated in brief amicus curiae for the Supreme Court, on behalf of women lawyers who have had abortions, in support of the plaintiffs' challenging restrictive Texas abortion laws (available here: <http://www.scotusblog.com/wp-content/uploads/2016/01/Janice-Macavoy-Paul-Weiss.pdf>). She participated in an amicus curiae brief for the 9th Circuit, exploring the ethics and law of fetal tissue research in *National Abortion Federation v. Center for Medical Progress*.

Helen Hershkoff. In fall 2015, Helen taught three courses: Civil Procedure; a “reading group” for first-year students, called “Becoming a Lawyer: Lon L. Fuller and Legal Education”; and, with the other directors, the Hays seminar. In spring 2016, Helen was on research leave, but continued to co-teach the Hays seminar. During the year, she published a book and two articles: the revised, updated, and newly-numbered volume 14 of Wright & Miller’s *Federal Practice and Procedure* (sections on the United States as a party); “Early Warnings, Thirteenth Chimes: Dismissed Federal-Torts Suits, Public Accountability, and Congressional Oversight,” 2015 MICH. ST. L. REV. 18 (2015); and “Waivers of Immunity and Congress’s Power to Regulate Federal Jurisdiction—Federal-Tort Filing Periods as a Testing Case,” 39 SETON HALL LEGIS. J. 243 (2015). In addition, Helen participated in a “conversation” with colleagues Barry Friedman and Kenji Yoshino, hosted by the Brennan Center for Justice, on how legal change produces social change, and the transcript of that conversation was published as a chapter in a book: “How Does Legal Change Happen? Perspectives from the Academy,” in *Legal Change: Lessons from America’s Social Movements* (Jennifer Weiss-Wolf & Jeanine Plant-Chirlin, ed., Brennan Center for Justice, 2015).

Helen joined a number of amicus curiae briefs on issues pertaining to civil procedure and federal jurisdiction: *Doe v. Hagenbeck* (2d Cir. March 2016) (whether relief is available under the Federal Tort Claims Act for service member who was raped); *Whitfield v. Howard* (7th Cir. Jan. 2016) (whether “favorable-termination rule” barred constitutional claim of plaintiff no longer in custody); *Adhikari v. Kellogg Brown & Root, Inc.* (5th Cir. Oct. 2015) (whether retroactivity doctrine barred application of jurisdictional statute enacted as part of the Trafficking Victim Protection Reauthorization Act of 2008, to unlawful trafficking of Nepali men by division of private company); and *Whole Woman’s Health v. Cole* (U.S. Oct. 2015) (whether claim preclusion barred the right to obtain facial relief in constitutional challenge to regulatory provisions barring access to abortion).

Helen served as faculty supervisor to the *NYU Journal of Legislation and Public Policy*, and took a leading role in organizing the Stoddard Celebration and our co-hosted symposium with the Journal. In fall 2015, she chaired the Special Committee to Review the Adjunct Cap, and prepared a major report on this subject for the faculty. Finally, Helen served on the Board of

Directors of the Urban Justice Center, the Brennan Center for Justice, and Party for Humanity, Inc.

Adam B. Cox. This past year, Adam continued to work on issues relating to immigration law, immigrants' rights, and democracy. Along with Cristina Rodriguez, he published a paper defending the legality of the Obama administration's program to provide relief from deportation to millions of unauthorized immigrants who are parents of U.S. citizen children. That paper, *The President and Immigration Law Redux*, 125 YALE L.J. 104 (2015), along with their earlier work on the subject, was relied on by the White House Office of Legal Counsel, the Solicitor General, and others in the litigation before the Supreme Court over the legality of that deportation relief initiative. They are currently working on a book about the power of the President to shape American immigration policy.

Adam taught Constitutional Law during the fall, Legislation and the Regulatory State during the spring, and led a 1L reading group called "Beyond Markets" with NYU colleague Scott Hemphill. He continues to serve on the board of the Brennan Center for Justice.

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 2015 lecture was delivered by Rosemary Barkett on October 22, 2015. Born in Mexico to Syrian parents, Judge Barkett was the first woman to serve on the Florida Supreme Court, beginning in 1985. She served as Chief Justice of that court and on the Eleventh Circuit Court of Appeals from 1992 to 2013, when she resigned to become a judge of the Iran-United States Claims Tribunal. In fall 2016, Sandra L. Lynch of the First Circuit Court of Appeals will deliver the James Madison Lecture.

4. THE FELLOWS' NEXT STEPS

Elizabeth Davis will be the Chadbourne & Parke Fellow at the Door's Legal Services Center in New York City. Molly Lauterback will be working as a staff attorney at Brooklyn Defenders in the Immigration Unit, doing deportation defense for clients in immigration detention. Samantha Lee is clerking for Judge Anne E. Thompson in the District of New Jersey in Trenton. Andrew Nellis will work as a Madison Fellow at Americans United for Separation of Church and State in Washington, D.C. Max Selver will be clerking for the Hon. James C. Francis in the Southern District of New York. Samuel Steinback-Pratt will work for two years at the Center for Appellate Litigation, a public appellate defense office; in 2018, he will clerk for Judge Jed S. Rakoff in the Southern District of New York, and then for Chief Judge Robert A. Katzmann of the Second Circuit. Courtney Weisman will be in the Political Law Group of Perkins Coie in Washington, D.C.

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 Sylvia A. Law Fellowship in Economic Justice this year, and thank the donors and friends who have made this fellowship possible.

In 2016–2017, the Fellows will be:

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)

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 Ian Brydon, Helen's assistant, as well as Hetty Dekker and Dante DelGiacco, who provided help at the Stoddard Dinner.

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:

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