

ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM
ANNUAL REPORT

1987-1988 (re-created)

The Hays Fellows this year were Deborah L. Epstein, Maia L. Ettinger (Harriet Pilpel Fellow), Darya Geeter (Roger Baldwin Fellow), Mary Faith Herndon and Anne F. Zinkin (Palmer Weber Fellow).

The year included Sylvia's publication of a series of articles on sex discrimination and reproductive freedom.

Debbie Epstein worked at the ACLU's Reproductive Freedom Project (RFP) under the supervision of Rachael N. Pine, Hays Fellow 1982-1983. At the start of her placement, the RFP had just completed an analysis of proposed Title X regulations, which barred federally-funded family planning centers from counseling women about abortion. The period for public comments was scheduled to close on November 1, and the RFP wanted to file a challenge as soon as Health and Human Services promulgated final regulations. Over the next few weeks Debbie drafted a complaint, helped prepare three key affidavits (including that of Dr. Irving Rust, one of the plaintiffs), and of the American College of Obstetricians and Gynecologists, and worked on a memorandum in support of plaintiffs' motion for a preliminary injunction – in the lawsuit that eventually became *Rust v. Sullivan*, 500 U.S. 173 (1991).

Maia L. Ettinger worked with Michael Ratner at the Center for Constitutional Rights on a lawsuit against the Contras, a Nicaraguan anti-government organization that received clandestine support from the United States, for the torture and murder of an American citizen who worked in Nicaragua. Maria recalls that "CCR was crafting a civil action against the Contras over the murder of Benjamin Linder, a young American engineer who was in Nicaragua building an electro-hydraulic dam. This was during the era when the U.S. was funding Contra activities against the Sandinista government." A key issue in the case "was how to hold liable the leaders of a paramilitary organization for activities performed by low-ranking troops." Maia developed an argument under the federal RICO statute that turned on Linder's work as "a non-profit entrepreneur." "This was probably one of the more creative interpretations of a statute aimed at foiling organized crime, though there was no doubt that the Contras, and their White House allies, were engaged in criminal conspiracy," Maia writes. Although the district court eventually dismissed the action as presenting a nonjusticiable political question, the Eleventh Circuit reversed, 963 F.2d 332 (11th Cir. 1992), holding that plaintiffs could challenge the Contras' actions under Florida tort law.

Faith Herndon spent her placement at the NAACP LDF on next-generation voting rights work, and specifically with issues relating to majority voting requirements

in a democracy. As Faith explained to the Fellows in a memorandum prior to her seminar session:

One example of the problem is the New York City runoff requirement, which requires that candidates for Mayor receive a majority rather than a plurality of popular votes to win. This kind of requirement can prevent minorities from getting political power. A related example concerns majority vote requirements for governing bodies to pass measures. Under a simple majority vote requirement, if blacks are represented by 3 out of 7 councilors on a town council, they can still be outvoted consistently and thus completely frozen out of the governing process. Using a supermajority requirement, e.g. 5 of 7, to pass measures is one way to avoid the problem of outvoted majorities.

Faith's research largely concerned whether courts can "impose supermajority voting requirements as creative relief in voting rights cases." She asked the Fellows to consider whether the argument for super-majority voting requirements ought to turn on case specific demographic factors in various settings, "for example, a large, racially and ethnically mixed urban area like Philadelphia and New York, or a mostly biracial southern city like Mobile, or the U.S. House of Representatives?"

Anne F. Zinkin worked at the NYCLU on issues involving the civil liberties of the homeless and the mentally ill. Very quickly, she found herself involved in a high profile litigation on behalf of a homeless woman whom, despite a lower court's finding that the individual was sane and not dangerous, the City committed as an involuntary patient. The previous year, New York started a policy of rounding up homeless people and forcing them into shelters on freezing winter nights. Anne's law suit dealt with a related problem: "My initial assignment . . . was to research and write a background memorandum for a potential facial challenge to Mayor Koch's policy of coercively admitting homeless people to mental hospitals. The memorandum never got written primarily because the issue became focused on Joyce Brown, a/k/a 'Billy Boggs' – the first person picked up under the new directive."

Anne wrote to the Fellows that the following concerns had been raised about the case and asked what were the best responses to them?

"1. This case is really about Ms. Brown's supposed 'right' to die in the streets, isn't it? Should a humane state be free to allow that?"

"2. Hundreds of mentally ill people were let out of mental hospitals in the 1960s and 1970s and were never given the community facilities promised them by the state. Is the state powerless to help them?"

“3. Is there a general right not to have to see these people on the streets or be pan-handled continuously? Do businesses have a right to have their entrances and sidewalks clear of homeless people? More generally what about the right of people in Joyce Brown’s neighborhood to have a clean, safe neighborhood, free of homeless people?”