

ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM
ANNUAL REPORT

1970 - 1971 (Re-created)

The Hays Fellows this year were Sharyn G. Campbell, Peter F. Gold, Martin F. Guggenheim, Nancy Jacoby-Akbari, Randolph N. Jonakait (Graduate Robert Marshall Fellow), and Nicholas B. Waranoff.

Marty Guggenheim devoted most of his time to the National Emergency Civil Liberties Committee. Marty writes, “In practical terms, this meant I was assigned to work with the law firm of Rabinowitz and Boudin. I spent a large part of my placement there working closely with Michael Standard on an expatriation case. The State Department claimed that a noted writer and photographer, Margaret Randall, born in New York, lost her citizenship in 1966 when she declared her allegiance to Mexico. Her parents were citizens of the United States residing, since 1947, in Albuquerque, New Mexico; her four children were also United States citizens. Randall sought an adjustment of her immigration status to that of a permanent resident so that she could again become a United States citizen. So, apparently, her citizenship was revoked because she “declared her allegiance to Mexico.” My work consisted mostly of researching and writing a memorandum on the law of expatriation. (This was a little daunting since Leonard Boudin had largely created this law by litigating a number of landmark cases.) I argued that American citizenship could not be lost except by renunciation and that Ms. Randall never renounced her citizenship. Before too long, the State Department (INS) declared Ms. Randall to have lost her citizenship. I was pleased to read many years later that her citizenship eventually was fully restored. See *Randall v. Meese*, 854 F.2d 472 (D.C. Cir. 1988).”

Marty also worked on a number of other matters at Rabinowitz and Boudin. He recalls, “I never had the privilege to work directly with Leonard Boudin that year. He was, as I recall, visiting at Harvard Law School. I did, however, attend the Supreme Court” when Norman argued *Law Students Civil Rights Research Council, Inc. et al., v. Lowell*, 401 U.S. 154 (1971), and Leonard argued the companion case, *Application of Stolar*, 401 U.S. 23 (1971). Both cases challenged the refusal of Ohio (*Application of Stolar*) and New York (LSCCRC), to admit applicants to practice law unless they answered a series of questions related to their beliefs about government and any affiliation they might have with organizations suspected of advocating the overthrow of the government by force. Marty continues, “We Fellows had the opportunity to spend several hours with Leonard and Norman before the argument discussing the legal issues raised by the cases and the strategies they were going to employ. After the arguments they met again with the Fellows. I remember being fascinated by watching the oral arguments, but I was even more fascinated by the post-mortem where I got to learn what the oralists were thinking as they tried to figure out the best answers to the questions thrown at them.” Marty also worked at the Center for Constitutional Rights with Kristen Glen, then an ACLU staff attorney and later a judge, and then Dean of CUNY Law School.

Peter Gold writes, “As a Hays Fellow, I was assigned to help the ACLU Board in its consideration of 14th Amendment issues. I recall doing, what I thought at the time, was a seminal piece on the interrelationship between the 5th and 14th Amendments. In hindsight, it was a straightforward review of the state action doctrine.”

Peter played an important role in the establishment of the NYU Review of Law and Social Change. He was one of the first, and perhaps the very first, to recommend that such a journal be created, in part because of the reception to the Harvard Civil Right – Civil Liberties Law Review, which had recently begun publication. He and other students spoke with Norman about the idea, who helped work out the plans. A few members of the faculty opposed the new journal, but after a long and somewhat contentious faculty meeting the idea was endorsed.

Randy Jonakait wrote us as follows: “I came to be a graduate Hays Fellow right after I had graduated from the University of Chicago Law School. I remember little about my courses except for one in which I worked on a paper about household workers for a conference that I believe was being organized by the course’s teacher, Eleanor Holmes Norton, then a staff attorney for the ACLU and later a member of congress from the District of Columbia. That work comes back to me often because the many issues concerning household workers have still not been confronted, although recently the Supreme Court upheld a Department of Labor regulation that excludes in-home care workers from the wage and overtime protections of the Fair Standards Labor Act.

“My main work was a study of the military chaplaincy, which the United Church of Christ had asked the ACLU to undertake. I produced a long paper, which was edited to a version that was published by the ACLU. Even today I get occasional requests for the publication.

“I also interned at the ACLU. I remember little of that work, except that I did some research on an espionage act in spring 1971. A few months later, as I was about to leave the Hays Program, the New York Times published the Pentagon Papers. I got calls to dig out my work since my research on some obscure point about espionage had unearthed relevant cases. I do remember shoehorning myself into the crowded District Court for the first arguments in the case.

“I also remember several more personal things. I was looking for a job, but I was only interested in something in civil liberties or other public interest work. I was offered a trial attorney job by the Criminal Defense Division of the Legal Aid Society. I talked to Norman, who said that in his experience those who started as trial attorneys often went on to other kinds of legal work, but that almost no one who did not start as a trial attorney ever learned those valuable trial skills. I took the job, and I have found those skills valuable.

“And one day, for reasons I don’t remember, Norman took me to meet Roger Baldwin. Seldom, if ever, have I been in a more distinguished presence.”

Nick Waranoff recalls that his Fellowship spanned portions of two years. He had entered the law school in the fall of 1967 and completed his second year in the spring of 1969.

That spring, he joined the Army Reserves and was called for six months of active duty which ended in November or December of 1969. He returned to the Law School in January of 1970 for the spring and fall semesters, graduating in 1971.

Nick remembers, “The single most exciting experience from the Fellowship was working with Norman on *Tate v. Short*, 401 U.S. 395 (1971), in which the Supreme Court ruled, 8-0, that sentencing an indigent person to 30 days or \$30 discriminated on the basis of wealth. I remember being assigned to prepare the first draft of the brief in the Supreme Court and embarking upon the traditional analysis. Norman then observed that in the previous Term the Supreme Court had decided *Williams v. Illinois*, 399 U.S. 235 (1970), involving a similar issue, and restructured and rewrote the brief to focus on how the *Williams* case dictated the result in *Tate v. Short*. Norman invited me to accompany him to the Supreme Court and asked me to try to anticipate the questions the Court would ask. I was allowed to sit inside the rail at counsel table, and Norman gave me the quill pen as a souvenir.”

Nick also assisted Norman with *The Rights of Americans: What They Are, What They Should Be* (1971), and he writes, “My mother was thrilled by the acknowledgment in the book. In fact, when I told her (she is now 91) that Norman had asked me to write this letter, the first thing she said was to be sure to refer to the book.”

Nick also wrote, “On May 4, 1979, the Ohio National Guard fired at students from Kent State University who were protesting the Vietnam war and killed four of them. That summer (with a semester of law school remaining), I worked at the ACLU on issues arising from the Kent State case”.