

ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM  
ANNUAL REPORT

1963-1964 (Re-created) \*

The Hays Fellows this year were Paul S. Adler (Robert Marshall Graduate Fellow), Franklin S. Bonem, Bernard E. Harvith (Graduate Fellow), Julian K. Melmed, and Lawrence D. Ross.

**Paul Adler** worked on two free speech issues. He assisted the Village Voice in defending a libel case at the time that *New York Times v. Sullivan*, 376 U.S. 254 (1964), was moving through the courts. The case, decided on March 9, 1964, greatly expanded constitutional protection for defamation of public officials.

In a vivid example of the frequent conflict between different civil liberties, the New York Times case required dismissal of a libel suit brought in 1962 by John Goldmark, a rancher and a liberal member of the Washington state legislature in Washington against a group of right-wing adversaries. They accused Goldmark of being a Communist and called the ACLU a Communist front – classic McCarthy tactics. Just before a jury was to decide Goldmark’s libel case, it was dismissed on the authority of the new Supreme Court ruling. See William L. Dwyer, *The Goldmark Case: An American Libel Trial* (1984), to which Norman wrote the foreword. Dwyer later became a U.S. District Judge.

Paul also worked with Norman in preparing a manual for NAACP field workers entitled *Demonstrations: How to Protest Within the Law*. During this period there were many civil rights cases in which police interfered with marching and other forms of protest, and the law related to the subject was unsettled, as in several respects it still is today. The manual, which discussed the contours of the law at that time, was reprinted in Norman’s book, *Frontiers of Civil Liberties*, 161 (1968).

Paul wrote: “I also remember a wonderful lunch I had with Roger Baldwin. I was supposed to have been part of luncheon group that included all the Fellows, but through some misunderstanding I missed the meeting. Mr. Baldwin then kindly invited me to lunch with him alone at his home. I don’t remember the details of the meeting, except that I was nervous and he was very gracious.” Baldwin, a principal founder of the Hays Program (as of the ACLU), took a great interest in the Program until he died in 1981.

**Frank Bonem** recalls working with Norman on a habeas corpus petition filed in U.S. District Court on behalf of the NYCLU in the case of Frederick Charles Wood, who was convicted of murder and sentenced to death. Norman, Frank, and other lawyers filed the petition

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\* As explained in the note on Methodology, supra, this re-created report was prepared before the original report for 1963-1964 was discovered. Both versions are presented in the history.

over the objection of Wood, who said he “wanted to ride the lightning sans further delay” and “I do not welcome any intrusion into this stinking case of mine.” The petition claimed that Wood was insane (although three psychiatrists had found him sane) and that to execute him in these circumstances would violate the Due Process Clause of the Fourteenth Amendment. The District Judge denied the petition, and the Second Circuit affirmed by a vote of 2-1 (Judges Lumbard and Marshall in the majority, Judge Clark dissenting). The U.S. Supreme Court denied a stay of execution two days later, and Wood was executed that evening. Excerpts from the habeas petition and the application for the stay are reprinted in Norman’s book, *Frontiers of Civil Liberties* 281 (1968).

**Bernard Harvith’s** work in the Hays Program fell into two parts. In the first, he assisted Norman on several cases, including *U.S. v. Barnett*, 376 U.S. 681 (1964), which unsuccessfully argued that a person found in contempt by a federal judge and sentenced to six months in prison was entitled to a trial by jury, an academic freedom controversy involving Professor Koch at City College of New York, and two cases with the Congress of Racial Equality. One of these involved the study of whether it was violation of the Equal Protection Clause for segregated public schools to benefit from tax free municipal bonds, and the other involved an attempt by civil rights workers arrested in Mississippi to obtain reasonable bail.

The second part of Bernie’s work concerned welfare and other entitlements for poor people. He wrote memoranda on a number of issues that led to the establishment in 1965 of the Project on Social Welfare, a unit of the Hays Program. Bernie was a founding member of the editorial board of and wrote often for the *Welfare Law Bulletin*, which the project published from December 1965 to 1969.

Bernie remained at the Law School as an acting assistant professor after his Hays Fellowship, but sickness in his family soon led him to return to his home area of Albany. He became a member of the City’s board of education and a productive member of the faculty of Albany Law School, where he remained until he died in 1995.

**Julian Melmed** has told us, “The one project on which I remember working was a report on *Baker v. Carr* and the significance of its holding on the then-existing gerrymandering of districts in the various states. We were concerned with implementing the U.S. Supreme Court’s holding in the many states that were affected and where changes needed to be encouraged and made. ‘One man-one vote’ (later ‘one person-one vote’) was a big issue during our year and required much of our time. I also remember our meeting with Leonard Boudin and Anthony Lewis during that year. I do not remember in what context we met with them, although I am quite sure the meeting with Lewis concerned the *Baker v. Carr* holding.

**Larry Ross** reported as follows on his work that led eventually to the decision in *Loving v. Virginia*, 388 U.S. 1 (1967), holding that miscegenation laws violated the Equal Protection Clause:

“I went to Virginia (Charlotte, I believe) for several days to research the history of

Virginia's miscegenation statute, which provided that the marriage of a 'white person' with a 'colored person' was a felony punishable by up to five years imprisonment. I do not recall the attorney or group for whom we were doing this research. My main recollection is spending a good deal of time deep in the stacks of a musty Virginia library, looking at original statutes and other documents. The experience was eye-opening."

Larry was particularly interested in the civil rights movement because one of the three civil rights workers who had recently been murdered in Mississippi was his classmate and friend, Mickey Schwerner.

In the spring of 1964 the Hays Program held a conference on de facto school segregation. The air was full of the crisis generated by the apparent impregnability of Northern schools to significant integration, and numerous school boards and courts were facing up to the fact that de facto segregation – largely a product of racially-driven housing patterns in cities and suburbs – was undercutting the promise of the Fourteenth Amendment and of the Supreme Court's segregation cases even as some southern schools were slowly beginning to integrate. Discussing these issues at the conference were Will Maslow, executive director of the American Jewish Congress; Robert Carter, general counsel of the NAACP; Professor John Kaplan, then of Stanford Law School; and Stanley H. Lowell, then chairman of the New York City Commission on Human Rights.

The full transcript of the conference was published in 10 Howard L.J. 127 (1964) and excerpts appear in *Frontiers of Civil Liberties*.