

ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM
ANNUAL REPORT

1961-1962 (Re-created)

The Hays Fellows this year were Graduate Fellows Jeffrey Albert and Robert Burns (Robert Marshall Fellow), and Alvin Goldman and Joseph Downs, J.D. Fellows. Bob died several years ago after a long academic career at Loyola and DePaul law schools in Chicago. Joe practiced law at several firms, and he has also passed away. Both will be greatly missed.

Jeffrey Albert reported on his year as follows:

“I doubt if I could remember all that I did back then. I know I drafted a chapter for one of Norman’s books [Frontiers of Civil Liberties], which Norman properly rewrote. I recall writing a ton of memos on various subjects for the Emergency Civil Liberties Committee. I testified before a committee of the New Jersey State Legislature against a proposed wiretap law. Roger Baldwin was originally scheduled to testify but at the last minute he asked me to step in (I was from New Jersey). I also testified before the New Jersey legislature on a proposed sales tax, but I don’t recall the civil liberties issue. I remember sitting in on a symposium that Norman conducted which included such luminaries as Leo Pfeffer, Anthony Lewis (NY Times columnist), and Leonard Boudin. And I worked on an article, NLRB-FEPC, for the Vanderbilt Law Review, 16 Vand. L. Rev. 547 (1963).”

Jeff also assisted Norman in the preparation of a memorandum, written at the request of Senator Jacob Javits of New York in response to an attack on the Supreme Court by James Eastland of Mississippi, the segregationist chairman of the Senate Judiciary Committee. Norman published this memorandum, after revisions, as Senator Eastland’s Attack on the U.S. Supreme Court: An Analysis and Response, 111 U. Pa. L. Rev. 693 (1963), and Senator Javits wrote Dean Russell Niles on October 13, 1962, saying that he had inserted the memorandum into the Congressional Record, and that he “greatly appreciated the care and craftsmanship that Professor Dorsen [and a Hays Fellow] lavished upon this work.”

Al Goldman wrote, “Norman has already memorialized some of the more important activities of my Hays year in a book he published in the late 1960s, Frontiers of Civil Liberties. I recall one project mentioned in the book in which we prepared a memorandum for counsel in the Los Angeles area where, as I recall, a charitable foundation had been enjoined from providing living assistance to families of prisoners. In the memo we offer a number of arguments, stressing that state statutes promoted prisoner rehabilitation and helped indigents regardless of the misdeeds of relatives. Accordingly, the charity was consistent with state policy. We also argued that due process is violated when the state penalizes persons who themselves have done no wrong, an argument later used on behalf of the rights of nonmarital children. The charity used our suggestions and prevailed.”

“In addition, during my Hays year, in helping Norman for a talk, Joe Downs researched the lawyer’s duty to represent unpopular causes. He asked me to help him on the project and soon after graduation, with Norman’s help, we published Downs and Goldman, *The Obligation of Lawyers to Represent Unpopular Defendants*, 9 *Howard L.J.* 49 (1963). While a Hays Fellow, I also began examining legal theories that could provide protection for student civil liberties and eventually published a journal article on the topic, *The University and the Liberty of its Students: A Fiduciary Theory*, 54 *Ky. L.J.* 643 (1966). In addition, some of that research was used by a committee of the Bar Association of the City of New York in preparing a report urging that public universities cannot penalize students in a manner that is inconsistent with substantive and procedural due process.”

Joe Downs worked on due process issues and, as noted in Al Goldman’s letter, co-authored the article on the obligation of lawyers.

Bob Burns worked on a series of issues relating to criminal justice, but there is no product available in the Hays files.

In the spring of 1962, the Hays Program organized a conference on public aid to religious schools. The participants included William Butler, son-in-law of Arthur Garfield Hays and (a founder of the Hays Program); Edward Ennis, then a general counsel of the ACLU; Leo Pfeffer of the American Jewish Congress, and Professors Gerald Gunther (Stanford Law School), Louis Jaffe (Harvard Law School), and Norman Redlich (NYU Law School). The proceedings were published as *Transcript, The Arthur Garfield Hays Civil Liberties Conference, Public Aid to Parochial Schools and Standing to Bring Suit*, 12 *Buff. L. Rev.* 35 (1962), which includes an introduction by Norman.