

ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM
ANNUAL REPORT

1985-1986 (re-created)

The Hays Fellows this year were Mitra Behroozi (Palmer Weber Fellow), Aimee R. Berenson (Harriet Pilpel-Planned Parenthood Fellow), Anne Marie Degraffenreidt (Robert Marshall Fellow), William C. Smith (Roger Baldwin Fellow), and Kerwin E. Tesdell (Robert Marshall Fellow).

Mitra Behroozi worked at the Reproductive Freedom Project of the ACLU, then directed by Nan Hunter. Mitra's research focused on the clash between the right of those who oppose abortion to assemble and to express their views as guaranteed by the first amendment and a woman's constitutional right to obtain an abortion and a clinic's ability to make abortions available. She helped to write the complaint in the Everett, Washington clinic firebombing case, Feminist Women's Health Center v. Roberts, filed in the Western District of Washington in February 1986. The complaint included what were then novel claims under the federal Ku Klux Klan Act of 1957 and the RICO statute. In her memorandum to the Fellows for her seminar presentation, Mitra wrote:

When women seek to obtain abortions, they must often get past a hostile crowd of anti-abortion demonstrators at the clinic who scream epithets, push anti-abortion literature on them, photograph them and more. In order to continue to provide abortions, clinic employees must calm the patients who are seriously upset by the demonstrators and often endure constant noise and the threat of disruptions as they perform medical procedures. Clinics must also work to maintain normal operations in the face of endless harassing phone calls, bomb threats, and actual bombings and arsons which have partially or completely destroyed many clinics nationwide.

Mitra and the Fellows discussed "some of the strategic issues faced by clinics and pro-choice activists, such as the role of seeking vigorous law enforcement and prosecution, and whether the 'conspiracies' alleged in Section 1985 and RICO claims really exist."

Ann-Marie DeGraffenreidt also worked in the fall at the ACLU'S Reproductive Freedom Project. "I researched and wrote a paper examining the issues related to non-coital reproduction, with a particular focus on legal rights when surrogate mothers are involved. This was new territory and not much had been written on the issue back in 1985." During the spring, Ann-Marie worked at the NAACP LDF.

Bill Smith worked at the Center for Immigrants Rights, Inc., writing a brief with Anne Pilsbury in a case before the Board of Immigration Appeals, In Re Faustino Antonio Sosa-Rodriguez. Bill helped to develop arguments to support the constitutional

right of asylum applicants to be represented at deportation hearings. At his seminar presentation Bill asked the Fellows to consider the racial implications of current asylum policy in light of case studies of asylum applicants from Haiti, El Salvador, and Soviet-bloc countries. Under U.S. law, asylum is granted only to refugees who are threatened as individuals with persecution on account of race, nationality, religion, political opinion, or membership in a social group. This standard excludes both “economic refugees” (e.g., those threatened with poverty and hunger) and those fleeing from a generally high level of violence or unrest. Bill wrote to the Fellows: “The government obviously is more concerned about the asylum rights of Soviet bloc citizens than it is about the asylum rights of Salvadorans and Haitians. How does this concern manifest itself in the treatment of individual refugees? . . . Does this policy have racial overtones?”

Kerwin E. Tesdell worked on voting rights at the NAACP LDF. He attempted to develop standards of proof of racially polarized voting and, in particular, a response to Judge Higginbotham’s approach to the question as set out in his concurrence to the per curiam opinion in *Jones v. City of Lubbock*, 730 F.2d 233 (5th Cir. 1984). Kerwin explained in a memo to the Fellows for his seminar presentation: “Denial of the right to vote is easy to identify when a guy with a gun and a dog blocks the way to the ballot box. Courts must, however, deal with much more subtle ways in which minority voters are denied effective participation in the political process. At our next meeting, we will focus on the problem of constructing and defending legal standards that secure for minorities more than what Justice Marshall has characterized as ‘the right to cast meaningless ballots.’”