

ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM
ANNUAL REPORT

1978-1979 (re-created)

The Hays Fellows this year were Mitch S. Bernard, Sharon D. Blackmon, Patricia E. Hennessey, Ellen D. Levine (Robert Marshall Fellow) and Stefan Presser.

The year was marked by the publication of Volume II of Political and Civil Rights, two of whose authors were Norman and Sylvia, and to which many Hays Fellows contributed.

Mitch Bernard worked on three assignments. He helped Bruce Ennis on a free speech case before the Georgia Supreme Court, did research for Burt Neuborne in his long-running case against the Margiotta political machine in Nassau County, and worked with Alan Levine, then at Clark, Wulf & Levine, representing rent-striking tenants of a Manhattan building. He recalls a spirited discussion at Sylvia's Prince Street loft in which all the Fellows and Directors decried the new Iranian Ayatollah, while he and Sylvia defended him! "Not praising his authoritarian regime, but highlighting the repressive tendencies of the deposed Shah, and the right of the Iranian people to select their own government, rather than one imposed by the United States." He relished "the spirit of fierce, challenging, collegial debate within the Hays Program."

Patty Hennessey worked at the ACLU with Chuck Sims and George Kannar, under the general supervision of Bruce Ennis, in the early stages of defending the First Amendment right of the Progressive magazine against a government injunction preventing publication of a secret recipe for an H-bomb. After the Progressive lost in the District Court, the case was dismissed when the same material was found on an open shelf in Los Alamos. Patty also worked with Burt Neuborne on an amicus brief to the U.S. Supreme Court on burdens of proof in desegregation cases. She tracked down the source for the line, "In law as in baseball there can be no ties," which we thought would appeal to Justice Blackmun.

Ellen Levine writes: "I had a Hays placement with Rabinowitz, Boudin, and Standard and I worked on a Section 1985 argument for a case for Eric Lieberman. I did a review of Section 1983 as well. Here's one sharp memory: I was told, 'Leonard wants to see you.' The coffee I'd been drinking didn't help the racing heartbeat. I was about to be quizzed by a constitutional law expert, and I worked hard at appearing calm. An open-ended question at first: 'What are you working on?' That I could answer without any hesitation. I told him the name of the case, and that Eric wanted a Section 1985 analysis. Then the conversation turned interesting. Leonard leaned back and asked me 'to remind him' what Sections 1983 and 1985 were. After a long moment of naïve confusion, I decided surely this eminent constitutional lawyer can't be saying he doesn't remember these. He must be testing me. Whatever I said apparently satisfied him.

“Another Boudin story. During my Hays time with the firm, Leonard was scheduled to argue a motion in district court. I went. When Leonard rose to make his argument, he was firm in tone, looked relaxed, but most important of all, spoke in a very soft voice. The courtroom was still enough for the proverbial pin-drop. We all leaned forward to hear his argument, literally cupping our ears. With that low tone, he riveted the attention of everyone there, most importantly that of the judge, who leaned over so as not to miss a word. It all appeared to be unplanned, just a calm, soft-voice presentation. And yet, of course, it had been designed ever so carefully. In those few moments I learned a powerful litigation tactic lesson.

“Another memory fragment: a meeting of the Fellows with Tom Stoddard at Sylvia’s house. I think we were planning the round of applicant interviews, reviewing our own work, etc. What I loved about those meetings was that our conversations were never abstract. We were working on issues and cases happening ‘now.’ And so when the talk turned to non-Hays current events, there was a seamless segue. And that particular night was shortly after the Shah of Iran had been overthrown. I only remember Stefan, Mitch, Tom, and Sylvia, at this particular meeting. We got into a roiling discussion about the good and bad aspects of the Shah’s regime versus what we were learning about the Ayatollah. Everything that we each had brought to being a Hays Fellow, all our shared passions about poverty, womens rights, gay rights, civil liberties and social justice in general, were out there on the table.

“It was a wonderfully rich year.”

Stefan Presser worked most of the year with the NYCLU challenging a New York City Health Department policy excluding children who were carriers of Hepatitis B from public schools. The children contracted the virus in a state sponsored experiment while in custody in Willowbrook, and the Centers for Disease Central said that the risk of transmission was small. Stefan was the Legal Director of the ACLU of Pennsylvania and a leading figure in the public interest community when he died of cancer in 2004.