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**ARTHUR GARFIELD HAYS
CIVIL LIBERTIES PROGRAM**

ANNUAL REPORT -- 1986-1987

The past academic year was an eclectic and unusually energetic one for the Arthur Garfield Hays Civil Liberties Program. Fellows worked in the areas of free speech, religious liberty, privacy, and discrimination against black people, women immigrants and AIDS victims. We cooperated with our old friends -- the ACLU, the NAACP Legal Defense Fund, the National Emergency Civil Liberties Committee, the Center for Immigrants Rights, and Lambda -- and with some newer organizations including Non-traditional Employment for Women and The Center for Law and Social Justice, a community based organization in Brooklyn. Fellows helped prepare briefs in federal court cases, participated in trial preparation, did background research on legal issues, made factual analysis of complex social and political problems, and played key roles in organizing a major conference and law review symposium.

In March 1986 the Hays program co-sponsored -- with the ACLU's Reproductive Freedom Project, the N.Y.U. Journal of International Law and Politics, and the Ford Foundation -- a conference on constitutional and international law ramifications of the Reagan Administration's policy restricting international family planning funds to groups that do not use either government or private funds to refer women for abortions. The Fellows were deeply involved in preparing papers for this conference and making it a success. The papers will be published in the Journal of International Law and Politics.

At our annual spring dinner, we had the opportunity to receive Leonard Boudin's engrossing insights about the practice of a radical lawyer during the McCarthy era.

A detailed description of the year's work follows.

Thomas Viles, Robert Marshall Fellow, worked with the National Emergency Civil Liberties Committee, under the

supervision of Ellen Winner, on two cases involving First Amendment rights of prisoners. In the first, Tom did legal research, drafted pleadings, and contacted potential plaintiffs for a suit challenging New York prison rules that forbid inmates from receiving publications from "unapproved" publishers. On the eve of suit the state agreed to rescind its rules and allow the 50,000 prisoners in New York to receive whatever publications they choose.

In the second suit, Tom helped prepare an amicus brief on behalf of the American-Arab Anti-Discrimination Committee and several prominent U.S. Muslim organizations urging the Supreme Court to affirm a Third Circuit decision requiring New Jersey prisons to allow Muslim inmates to celebrate their weekly sabbath. The Supreme Court ruled 5-4 against the claim. O'Lone v. Shabazz, 107 S.Ct. 2400 (1987).

Tom also worked with Hays Director Norman Dorsen on an article on the history of civil liberties and did background research on an analysis of the Skokie case.

Tom is now clerking with federal district court Judge William Wayne Justice in Texas.

Lisa Rackner, Harriet Pilpel Fellow, helped to organize the conference on international family planning funding with former Hays Fellow, Rachael Pine, of the ACLU Reproductive Freedom Project. She also co-authored, with Hays Director Sylvia Law, a paper on potential sex-equality challenges to this discriminatory policy. The article explores the application of sex equality norms to restraints on reproductive freedom under the U.S. Constitution and international human rights covenants.

Lisa is working with a firm in Portland Oregon and continuing her work on reproductive freedom issues on a pro bono basis.

Elizabeth Hough, Robert Marshall Fellow, worked with Abby Rubenfeld and Paula Eittlebrick of the LAMBDA Legal Defense Fund on two cases involving discrimination against gay people. In one, Liz helped prepare a defense for a lesbian mother who sought to retain custody of her children after divorce. In a second case she explored the challenging and increasingly common problem of finding a legal remedy for a man whose insurance agent told his business associates and social friends that he had tested positive for HTLV antibody.

In the spring semester Liz continued to concentrate on issues involving discrimination against gay people. She worked with Elizabeth St. Clair of Rabinowitz, Boudin, et. al representing State Department employees who challenged an official policy requiring AIDS testing and prohibiting them

from serving abroad if they tested positive for HTLV virus. The plaintiffs sought to establish that the policy violated Section 504 of the Rehabilitation Act of 1973 as well as the equal protection clause. In April, Judge Gesell denied plaintiffs' motion for a preliminary injunction. Local 1812, American Federal of Government Employees v. U.S. Department of State, 662 F. Supp. 50 (D.D.C. 1987).

Liz is now working with former Hays Fellow, Sue Ross, at the Georgetown Law School's Women's Rights Fellowship Program.

Gemma Solimene, Palmer Weber Fellow, worked with Jack Boger of the NAACP Legal Defense and Education Fund in the fall semester. She researched state anti-discrimination law in an effort to find a legal basis on which to challenge zoning practices that perpetuate patterns of racial discrimination. The New Jersey Supreme Court in the Mount Laurel decision had fashioned such a remedy; the effort was to apply the Mount Laurel principles in other states.

In the spring semester, Gemma pursued her interest in racial discrimination, working at the community level with the Center for Law and Social Justice. The Center is funded by New York State to promote civil rights and social justice locally. Gemma researched the new federal immigration laws, organized community educational forums to educate people about their rights under the new law, and moderated these programs.

Gemma now serves as a pro se clerk in the Second Circuit Court of Appeals.

Jenny Pizer, Robert Marshall Fellow, worked with Mary Ellen Boyd of Non-traditional Employment for Women, to understand how state and local anti-discrimination laws might be used to open job opportunities for women in the construction industry in New York City. She interviewed women in construction trades unions, people currently and formerly working in the New York City Bureau of Labor Services, and others. She researched the history of anti-discrimination programs, as reflected in press releases and official reports, and participated in a number of meetings to educate and learn from public and private anti-discrimination lawyers. She produced an extensive report outlining the ways in which New York's anti-discrimination programs fail to integrate blacks or women into construction work. While her work has generated more attention to these problems, to date no effective strategy has been developed to solve this conundrum.

In the spring semester, Jenny worked with the ACLU Reproductive Freedom Project helping to prepare the

conference described above. She also worked with Janet Benshoof to develop First Amendment religious clause arguments challenging governmental policies that target state aid to support particular forms of contraception that some religions regard as "natural."

Jenny is now working with the National Abortion Rights Action League (NARAL) in Washington, D.C.

Maureen Graves, Roger Baldwin Fellow, worked with Ann Pilsbury of the Center for Immigrants Rights. She prepared several briefs in asylum application cases before the Board of Immigration Appeals. In another deportation case she wrote a motion to suppress evidence gathered in alleged violation of the Fourth and Fifth Amendments.

In the spring semester she pursued her interest in this area, working with Lucas Guttentag at the American Civil Liberties Union. She did preliminary research for a suit to challenge the INS policy of detaining aliens in the Rio Grande Valley, and prepared a letter challenging the Social Security Administration's efforts to use the public schools to gather data about aliens.

Maureen is now clerking for federal district court Judge Dickinson Debevoise in Newark.

THE DIRECTORS

Hays Director Norman Dorsen published several articles during the past year, including the entry on Civil Liberties in the Bicentennial Encyclopedia of the U.S. Constitution and a comment on the application of the religion clauses of the Constitution to nonbelievers. Among his public appearances was a speech at the first official Bicentennial event, which took place at Macalester College in St. Paul, Minnesota, where he appeared with former Chief Justice Warren Burger and Justice Antonin Scalia. Hays Fellows contributed to these efforts. In December 1986 he completed his tenth year as president of the American Civil Liberties Union.

In addition to the work described above, Hays Director Sylvia A. Law prepared an analysis of the conceptions of women and families held by the Framers of the Constitution, and the relevance of those ideas for contemporary constitutional analysis. She presented this discussion in Bicentennial programs and publications around the country. With the help of several Hays Fellows, she wrote an article that attempts to understand the cultural, moral and psychological factors underlying the Supreme Court's 1986 decision approving criminal punishment of sexual relations between two people of the same sex.

NEW CONFERENCE PROGRAM

The Reed Foundation has approved a pilot grant for the Hays program to support a small annual working conference to bring together local advocates intensely involved in particular issues, such as homeless policy, deportation of aliens, specific aspects of race or sex discrimination, or pervasive First Amendment problems. Participants will be drawn from ACLU affiliates, NAACP cooperating attorneys, legal services lawyers and private practitioners, as well as academic, political and intellectual leaders able to make fruitful contributions.

The heart of each annual conference will be an opportunity for dialogue among the participants. The Directors and Fellows will select and focus the issues, identify the appropriate participants, and administer the conference.

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