

ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM
ANNUAL REPORT
1988-1989

The Hays Program academic year began with a memorable celebration of our 30th anniversary that brought together more than half of those who have been Hays Fellows since 1958. Recalling the reunion has been a source of inspiration and pleasure throughout the year, as we remember complex insights shared and friendships renewed. A complete report on the reunion is available from LuAnn Rolley, the Hays secretary.

The Fellows worked on a range of vital issues, contributing to some surprising successes as well as suffering some devastating defeats for civil rights and liberties. Fellows worked in the areas of reproductive freedom, employment discrimination, sex discrimination in educational testing, right to counsel in landlord/tenant cases, and immigration. We cooperated with many old friends, such as the ACLU's Legal Department, including the Women's Rights Project and Reproductive Freedom Project, the NAACP Legal Defense and Education Fund, Inc., the Center for Constitutional Rights and the Center for Immigrants Rights. We developed a new working relation with the Civil Appeals and Law Reform Unit of the Legal Aid Society. Fellows prepared briefs, researched factual and legal issues, did trial preparation and participated in organizing conferences.

Here is a detailed description of the year's work.

Robin E. Abrams, Robert Marshall Fellow, worked during her first semester at the ACLU Reproductive Freedom Project. She drafted an answer to a motion to dismiss Bowen v. Kenrick, 108 S. Ct. 2562 (1988), in which the Supreme Court remanded the case for consideration of evidence of actual violations of the establishment clause after denying a facial challenge to the Adolescent Family Life Act despite its express language providing for the involvement of religious organizations in counseling on issues surrounding teenage pregnancy.

Robin also researched and helped prepare a brief for the Second Circuit in Rust v. Bowen, 690 F. Supp. 1261 (S.D.N.Y. 1988). In that case the ACLU appealed a decision upholding Title X regulations that prohibit family planning clinics that

receive federal funds from providing information concerning abortion services. Robin returned to the Reproductive Freedom Project in June 1989 to develop legal challenges to the revival of antiquated abortion statutes, following the Supreme Court's decision in Reproductive Health Services v. Webster (1989).

In the spring semester Robin worked at the NAACP Legal Defense Fund Inc. on two employment discrimination cases in the pre-trial stage. Gilchrist v. Human Resources Admin., No. 87 Civ. 7820, challenges the promotion practices of the New York City Human Resources Administration Department of Social Services. Robin prepared a motion to amend the original complaint to include allegations that 1) HRA intentionally manipulated the selection process to eliminate class members and 2) HRA took retaliatory actions against the named plaintiffs in the class action suit. She assisted in discovery work in a second case, Dickerson v. Dept. of Highways, Civ. Action No. 2:88-0651; this suit challenges race and sex discrimination in the hiring practices of the West Virginia Department of Highways.

While at the Legal Defense Fund, Robin also assembled available data on the race, age and state of origin of persons seeking abortions from 1969 to 1989, to show the effect on minorities of the Supreme Court decisions upholding restrictions on the use of public funds for abortions.

Robin plans to pursue legal work in Asia for a year following graduation. For 1990-91, Robin has accepted a clerkship with Federal District Court Judge Jack B. Weinstein. This friend of civil rights and civil liberties rarely selects NYU graduates as his clerks.

Ricky Blum, Roger Baldwin Fellow. In the fall semester, Ricky worked in the Legal Department of the ACLU, primarily for Helen Hershkoff. He did initial research in preparation for Donalson v. New York, a suit seeking to establish a right to counsel for indigent tenants in eviction proceedings.

In addition Ricky did background research for Sharif v. New York State Dep't of Education, a sex discrimination case challenging the exclusive use of SAT scores to determine recipients of Regents and Empire State Scholarships. His research helped determine who should be plaintiffs in the suit, traced the history of the program, and explored possible causes of action under Title IX regulations. When Ricky presented his work on this case at a fall meeting of the Fellows, we were not optimistic about the prospects for success. Thus we were pleased and surprised when the federal court granted the relief the plaintiffs sought.

In the spring, Ricky worked in the Civil Appeals and Law Reform Unit of the Legal Aid Society under the supervision of

Lynn Kelly. Loe v. Thornburgh challenged INS procedures for evaluating amnesty applications. Ricky helped to achieve a victory for five to seven thousand people who had been or would have been denied amnesty and who may now receive it as a result of this suit.

He also helped prepare a witness for the examination of an INS employee in a Social Security hearing in which the claimant had been improperly denied disability benefits because of her immigration status. The INS employee did not show up to testify and Ricky's client won the hearing with an opinion highly favorable to elderly immigrant disability applicants. In addition, the research into INS procedures helped identify some of the problems with the Service's procedures for verifying the status of benefit claimants.

Finally, Ricky investigated and analyzed possible examples of intracircuit nonacquiescence by the Social Security Administration in the Steinberger case, a suit challenging that practice in the Second Circuit.

This fall Ricky begins a clerkship with Federal District Judge Constance Baker Motley.

Mallika Dutt, Harriet Pilpel/Planned Parenthood Reproductive Freedom Fellow

In the fall semester, Mallika worked with the Center for Constitutional Rights, under the supervision of David Cole, on an amicus brief involving abortion rights in Ireland. The brief was an appeal to the European Commission on Human Rights challenging an Irish Supreme Court decision that construed an amendment to the Irish constitution which held that the right to life of the fetus bars women from receiving any counselling on abortion. The appeal was based on the European Convention on Human Rights and challenged the Irish Supreme Court decision on the grounds that it violated the Convention rights of privacy, free speech and equal protection.

In the spring, Mallika worked at the ACLU Reproductive Freedom Project on a number of projects. She worked with Catherine Weiss on a brief challenging the U.S. Agency for International Development abortion restrictions on foreign family planning non-governmental organizations. DKT Memorial Fund, Ltd. v. AID, 810 F.2d 1236 (D.C. Cir. 1987), on remand, 691 F. Supp. 394 (D.D.C. 1988).

Mallika also helped prepare an amicus brief on behalf of the ACLU urging the Supreme Court to maintain the fundamental right of abortion in Webster v. Reproductive Health Services. She worked under the supervision of Rachael Pine, former Hays Fellow.

Finally, Mallika worked with former Hays Fellow, Lynn Paltrow, to organize a conference In Defense of Roe v. Wade, cosponsored by the ACLU, The Women of Color Partnership Program and The Religious Coalition for Abortion Rights. Approximately 140 activists from 24 states participated, including experienced, creative reproductive rights activists, more than half of whom were women of color. The conference, and the coalition that emerged from it, seeks to make the reproductive rights movement more inclusive of women of color and poor women.

Mallika is now working at a law firm in New York City.

Natalie Gomez, Palmer Weber Fellow, worked in the fall semester with the Central American Legal Assistance project, handling political asylum cases for Salvadoran and Guatemalan refugees. She interviewed applicants for asylum and assisted in preparation for hearing. In addition, she developed evidence packets to support individual cases by compiling records of human rights violations in El Salvador and Guatemala that matched applicants' claims of persecution with reports of systematic violence where the applicants lived. Finally, she worked with supervising attorney, Ann Pilsbury, to develop a means of using due process or equal protection claims to challenge immigration judges who consistently demonstrate bias against political asylum applicants from Central America, relative to those from other parts of the world.

In the spring semester, Natalie worked with the Center for Constitutional Rights on a case in which the Yankton Sioux Tribe of South Dakota sought to challenge a local school board's misappropriation of funding under the Indian Education Act, Impact Aid and other federal programs targeted to Native American children. Investigation reveals that while federal regulations prohibited the challenged practices, they did not provide a procedural mechanism by which alleged violations could be challenged.

At the CCR, Natalie also assisted David Cole with an appellate brief in a case challenging Baruch College's refusal to recognize a Black and Hispanic Alumni Association. The college claimed that it had legitimate reasons for refusing to recognize ethnic alumni associations. She examined the issue of mixed-motive in this type of case.

Natalie is now working with a law firm in New York City.

The Directors

Norman Dorsen was on sabbatical during the 1988-89 academic year and did more than the usual amount of travel, including several trips abroad for purposes related to human rights. He served on a multi-national mission to the Philippines in July 1988 to investigate the assassination of human rights lawyers there; he attended a conference in York England in September 1988 that commemorated the tricentennial of the English Bill of Rights; he attended a human rights conference in Argentina in October 1988; he spent February 1989 as a visiting professor at the London School of Economics during which he lectured in England and France on civil liberties issues; he attended a conference in Crete in June 1989 that was sponsored by the Harvard Law School Human Rights Program; and in August 1989, he participated in a US-USSR scholars' dialogue in Berkeley on the future of human rights in the two countries.

In addition to several pieces in magazines, Norman published an article on the role and performance of the Supreme Court in civil liberties cases, 31 Ariz L. Rev. 1 (1989), and assisted Stephen Gillers in producing a second edition of their casebook on professional responsibility. He continued as president of the American Civil Liberties Union, whose importance was magnified because of the attacks on the ACLU during the 1988 presidential campaign.

Sylvia A. Law published several articles relating to civil rights and civil liberties issues, including: "Thomas I. Emerson: A Pioneer for Women's Equality," 38 Case Western Reserve L. Rev. 539 (1988) (with Ann Friedman); "Brief Amici Curiae of Feminist Anti-Censorship Taskforce, et al., in American Booksellers Association v. Hudnut," 21 Mich. J. of L. Reform 1 (1988) (with Nan Hunter); "Girls Can't Be Plumbers"--Affirmative Action for Women in Construction: Beyond Goals and Quotas (The Biddle Lecture at Harvard Law School), 24 Harv. Civil Rights-Civil Liberties L. Rev., 45 (1989). In addition she completed work on a new casebook American Health Law, which she wrote with George Annas, Rand Rosenblatt and Ken Wing, and is being published by Little, Brown. Finally, she was heavily involved in organizing amicus briefs for the Supreme Court in Webster v. Reproductive Health Services, and wrote a brief on behalf of over three hundred American historians in support of reproductive choice.

While Norman was on sabbatical, former Hays Fellow, Professor Stephen Gillers, served as Acting Director with Sylvia Law.*

*For the historical record, we note that we did not prepare an annual report for 1987-88. Our chagrin is mitigated to some degree by a recollection that the annual report did not get done last year because President Reagan's nomination of Robert Bork to the Supreme Court drew both of the Directors into an effort to think through and contribute to the ensuing debate on

the Constitution and the court. We had excellent Fellows that year: Deborah Epstein, Maia Ettinger, Darya Geetter, Faith Herndon and Anne F. Zinkin. The record of their work is available in Hays Program files.