

ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM
ANNUAL REPORT
1992-1993

This year, as in the past, the Fellows worked with the major organizations of the public interest legal community, including the ACLU, the NAACP Legal Defense and Education Fund, the NYCLU, the NOW Legal Defense and Education Fund, and the Center for Reproductive Law and Policy. The Fellows' work was dominated by challenges to discrimination against a variety of vulnerable groups including racial minorities, pregnant women, people with AIDS, and aliens. In addition, Fellows worked on free expression issues, including the regulation of hate speech and the regulation of sex and diversity education in the public schools.

We continued our program of informal evenings at which former Fellows meet with the current Fellows to discuss their backgrounds, aspirations, successes and disappointments in civil liberties work. The former Fellows who joined us for these evenings this year were Jeremy Travis (1981-1982) and Connie Carden (1971-1972). After serving in other positions in New York City government, Jeremy has been general counsel to the New York City Police Commissioner through several commissioners. He discussed the challenges of effectuating his commitment to equality and civil liberties in this special context. Connie has worked for many years as an advocate for the poor through the Legal Aid Society. Both Jeremy and Connie also shared their insights on the dilemmas of integrating parenthood with a demanding professional career.

We commemorated the 35th anniversary of the Hays Program with a gala event on October 16th and 17th. A large number of Fellows attended the day-long symposium on the 16th, in which a distinguished group debated abortion clinic protests, hate speech, and workplace harassment under the general rubric of Free Expression and Equality: Do We Have to Choose? The enclosed flyer contains the program.

Afterwards, Norman led a ceremony in memory of the late Dede Fuchs Carson, the Hays secretary from 1963 to 1967. The Fellows of that era and many members of Dede's family gathered in the Hays seminar room and placed an engraved plaque there in her honor for the outstanding contribution that she made to the Program.

At the dinner, the Hays Fellows Gospel Choir surprised Sylvia by singing an inspired tribute, written and led by Lynn Paltrow, the poet laureate of the Program. A copy of the lyrics is enclosed. Justice Blackmun was our featured guest. In an engaging talk, he offered a personal tribute to Arthur Garfield Hays and then described his work as Justice. He and his wife Dotty were delightful dinner companions and seemed to enjoy the exuberance of the Fellows. On Sunday morning, about 25 current and former Fellows gathered for brunch and conversation.

The 1992-1993 Hays Fellows were Kim Barker (Harriet Pilpel/Planned Parenthood Fellow), Daphne Eviatar (Roger Baldwin Fellow), Sean Farhang (Reed Foundation Fellow), Kim Hawkins (Harriet Pilpel/Planned Parenthood Fellow), Barbara Junge (Palmer Weber Fellow), Karla Rusch (Robert Marshall Fellow). A detailed description of their work follows.

THE WORK OF THE FELLOWS

Free expression

During his year with John Powell at the ACLU, Sean Farhang prepared memos in connection with a scholarly article Powell was writing on the hate speech issue. His research ranged from philosophy and political theory, such as the writings of John Stewart Mill, to Supreme Court first amendment case law. The article attempts to find common values underlying free speech theory and equality theory, and to use those values to mediate the hate speech issues.

Kim Barker also worked on free expression issues with Donna Lieberman at the New York Civil Liberties Union's Reproductive Rights Project. She researched a possible first amendment challenge to District 24 Community Board's decision to prohibit and delete references to "masturbation, homosexuality, abortion and contraception" from the school curriculum. She wrote a memo on applicable first amendment law and prepared a freedom of information request to retrieve documents from the school board. In addition, she arranged for a meeting between teachers in the school district and NYCLU lawyers to discuss possible litigation strategies.

Race discrimination. Sean Farhang worked with John Powell of the ACLU preparing for a class action suit to challenge insurance companies practices denying homeowner's insurance in African-American neighborhoods -- "insurance redlining." He prepared memos comparing discrimination in this area with more familiar concepts of discrimination in employment, antitrust and securities litigation. He researched and wrote a memo on how to assess and prove compensatory and punitive damages in the insurance redlining context, and on the scope of injunctive relief available. The case is presently in discovery.

Discrimination against pregnant women and women with children. Kim Hawkins worked with the ACLU Reproductive Freedom Project on a variety of briefs filed in cases arguing that state constitutions provide greater protection against laws restricting reproductive choice than the Supreme Court has recognized under the federal constitution. She focused on discriminatory state funding schemes and parental notification requirements. She was

also involved in educational work, explaining to state legislators why proposed laws violated the federal constitutional standards announced by the Supreme Court in Casey v. Planned Parenthood of Southeast Pennsylvania.

Daphne Eviatar also worked on issues of discrimination against pregnant women, helping the NOW Legal Defense and Education Fund prepare challenges to laws denying welfare benefits to children born while a woman is receiving public assistance. Daphne prepared a memo exploring whether such policies could be challenged under the National Research Act of 1974, which restricts experimentation on human subjects.

Kim Barker worked with Charlotte Rutherford of the NAACP Legal Defense and Education Fund's Black Women's Employment Project to challenge a New York state policy denying child care services to AFDC recipients enrolled in four-year college programs. The federal Family Support Act of 1988 requires states to take a variety of steps to assist AFDC participants in obtaining work. New York law supports child care services for poor women enrolled in two-year educational or vocational training programs, or those completing the last two years of a four year program. It denies child care help to poor women pursuing a four-year degree. Kim explored possible legal and political challenges to the policy.

Barbara Junge spent the entire year working on issues of reproductive freedom in an international context, first with former Fellow Rachael Pine at the Center for Reproductive Law and Policy and then with former Fellow Joan Bertin at the Program on Gender, Science and Law at the Columbia University School of Public Health. Both of these programs are relatively new. At the Center, Barbara helped develop methods to make the experience of U.S. struggles for access to reproductive health services available to women in other countries, while at the same time remaining sensitive to cultural differences. At the Columbia program she researched issues of reproductive hazards in the workplace in an international context.

Discrimination against people with disabilities.

In the fall term, Kim Hawkins worked with the ACLU Gay and Lesbian Rights Project, drafting a complaint for a case filed in state court against a hospital that refused to treat an HIV positive patient. It included claims under the Americans with Disabilities Act and various state torts. The case prompted an investigation by the state civil rights commission. Kim also updated and edited a chapter of a book on the rights of prisoners with AIDS.

Karla Rusch worked on AIDS issues with Terry McGovern of The HIV Law Project. She did research for litigation to compel the National Institutes of Health (NIH) to do research on HIV disease

in women, low income people, and people of color. She gathered information from NIH on its current AIDS research areas and funding and the process for allocating resources for research work. She also analyzed the statutes and case law to develop legal theories to challenge discriminatory AIDS research funding.

Karla also did research and wrote a memo on state child abuse and neglect, and child custody and guardianship laws, as they relate to parents with HIV. Finally, Karla worked with Jane Stevens of Brooklyn Legal Services doing research in anticipation of a legal challenge to the failure to make state courthouses in New York City accessible to the physically disabled. She researched state and federal law, including the Americans with Disabilities Act, to determine how best to compel the state to make these buildings accessible.

Discrimination against aliens

A recent New Jersey law provides that undocumented aliens may not obtain drivers licenses. Daphne Eviatar worked with Lee Gelernt of the ACLU Immigrants Rights Project to develop a litigation strategy to challenge this law as a violation of the New Jersey constitutional guarantee of equal protection. She also did factual research for affidavits describing discrimination against both undocumented and resident aliens.

Access to health care.

While working at the NYCLU, Kim Barker wrote a pamphlet on the rights of minors in relation to health care. She examined the responsibility of school-based health clinics to provide special services to gay and lesbian students. She visited several New York City public high schools and conducted workshops for pregnant and parenting teens on their rights to reproductive health services.

Karla Rusch helped Brooklyn Legal Services research New York's non-compliance with the federal law mandating states to organize a program to provide early and periodic screening, diagnosis and treatment to poor children.

THE DIRECTORS

Norman Dorsen completed his adjustment to life after the ACLU by, among other things, spending more time on Hays Program activities, including fund-raising and the planning of the 35th reunion. His article An Agenda for Social Justice Through Law appeared in the Cleveland State Law Review (a copy is enclosed) and, among other pieces, he contributed a chapter to a book comparing the state of human rights in the U.S. and Russia. He was active on governing or advisory bodies of several public interest organizations, including the Lawyers Committee for Human

Rights, the Fund for Free Expression, the Thomas Jefferson Center for the Protection of Free Speech, the Lawyers Committee for Human Rights, and International Planned Parenthood (Western Region). Finally, four more of the ACLU handbooks that he edits were published in 1992 and 1993 -- The Rights of Authors, Artists and Other Creative People (2nd ed. 1992), The Rights of Indians and Tribes (2d ed. 1992), The Rights of Lesbians and Gay Men (3d ed 1992), and the Rights of Women (3rd ed. 1993).

Among other public appearances, Norman gave several speeches in Australia in August 1993 on topics including judicial review in the U.S., the history of American civil liberties, the Carter Administration's probable impact on civil liberties and social policy, and the teaching of Professional Responsibility in law school. The speech on judicial review will be published in Australia and the U.S.

Sylvia A. Law engaged in organizational work, continuing her term as President of the Society of American Law Teachers. She helped to arrange the largest annual dinner in SALT's history, honoring Cruz Reynoso, and the largest of SALT's biennial teaching conferences, at which 260 law professors discussed means of integrating issues of race, gender, and homophobia into the mainstream of the law school curriculum. She is also an active member of the boards of the Center for Reproductive Law and Policy, the Medicare Beneficiaries Defense Fund, and New York's Interest on Lawyer's Trust Account program.

Sylvia gave several addresses. At the AALS workshop on constitutional law in San Francisco, she addressed the challenge of teaching the new Supreme Court jurisprudence. At an international conference on informed consent in Lund, Sweden, she explored the legal and ethical principles that should govern the conversations between physicians and pregnant patients. This talk, which will be published, provides a basis for work to integrate abortion counseling and referral into mainstream medicine. She published three additional articles: "Addiction, Autonomy and Advertising," 77 Iowa L. Rev. 909 (1992), "Crystal Eastman: Lessons for Contemporary Feminism," 12 Pace L. Rev. 529 (1992), and "Abortion Compromise: Inevitable and Impossible," 4 University of Illinois L.Rev. 921 (1992).

In October, 1993, Sylvia was one of seven nominees approved by a screening committee to be a Judge of the New York Court of Appeals. On December 1, Governor Cuomo selected the first person of Latin descent for the court, an excellent candidate but, in Norman's words, no Sylvia Law.