

ARTHUR GARFIELD HAYS
CIVIL LIBERTIES PROGRAM

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Annual Report -- 1981

The Arthur Garfield Hays Civil Liberties Program was particularly active this year. The Hays and Marshall Fellows and the Directors of the Program did significant work on over twenty civil rights and civil liberties cases, as well as on a variety of other projects.

Most of the Fellows worked at traditional civil rights and civil liberties organizations, including the NAACP Legal Defense Fund, the Children's Rights and Women's Rights Projects of the American Civil Liberties Union, the Center for Constitutional Rights, and the Legal Action Center. Others were associated with private firms and lawyers doing pro bono cases, and one Fellow served on the staff of New York City Council President, Carol Bellamy. Most of their effort was devoted to cases involving claims of race and sex discrimination in employment and education. In addition, Fellows worked on cases raising claims of First Amendment violations, privacy rights, and discrimination against prisoners, aliens, drug addicts, and children.

A more detailed summary follows.

Race Discrimination in Employment

Two Fellows worked on a case of the NAACP Legal Defense Fund raising race discrimination claims against Gulf Oil Company. Early in 1981 Doug Hoffman helped prepare Supreme Court papers raising First Amendment and Federal Rules of Civil Procedure objections to a lower court order limiting the freedom of the NAACP lawyers to communicate with black employees, who were members of the class challenging the company's employment policies. The Supreme Court unanimously upheld the claims of the black plaintiffs and their lawyers. Bernard v. Gulf Oil, 101 S. Ct. 2193 (1981). A second Hays Fellow, Jeremy Travis, is now assisting in discovery and development of the factual record upon which the case is based.

Doug Hoffman had two other cases involving race discrimination in employment. In Miller v. Continental Can, a federal court had held in 1977 that the employer's seniority system violated Title VII. When the Supreme Court decided Teamsters v. United States, 431 U.S. 324 (1977), approving some seniority systems with a racially discriminatory impact, the defendants moved for reconsideration. Doug worked to demonstrate to the judge that the discrimination by Continental Can was not permissible under the Teamsters standard. In addition, he helped to defend on appeal a court order redressing race discrimination against the black postal workers in Mecklenberg County, North Carolina.

Jeremy Travis participated in the final stages of settlement negotiations in a race discrimination suit against the New Orleans Police Department. He compared and analyzed the practices of the New Orleans Police Academy against national accreditation standards, and he prepared witnesses and legal memos for the trial that eventually proved unnecessary when settlement was reached. Earlier in the year Jon Dubin worked on an individual race discrimination claim pressed against New York City.

Sex Discrimination in Employment

Paula Smith and the ACLU Women's Rights Project challenged policies that exclude women from jobs involving contact with toxic substances. Her legal research was on a claim by an individual woman who was denied a job as a lab technician with a coal company, on the grounds that women of childbearing age could not be allowed to work with hazardous chemicals. In addition, Ms. Smith analyzed Environmental Protection Agency regulations defining when women of childbearing age may be prohibited from using certain chemicals to determine whether the regulations are overbroad, and whether they can be appropriately challenged on constitutional or procedural grounds.

White v. Nassau County Police Department is a major class action presenting sex discrimination claims in policy department hiring and promotion. Shailah Stewart participated in discovery and developed the facts on the forty named plaintiffs. She also prepared legal analysis on the remedies available to redress the proven discrimination.

Discrimination in Education

Cheryl Howard worked with the Center on Constitutional Rights on the preparation of Supreme Court briefs in Texas v. Certain Named and Unnamed Undocumented Alien Children, 101 S. Ct. 3078 (1981), which presents the question whether alien

children can be excluded from the public schools. Doug Hoffman reviewed all the files in a Tennessee school desegregation case that has been in the courts for 20 years. As he said in his report, "I can't say it was much fun going through reams of documents, pointing out where defendants had not responded to our interrogatories, but it had to be done."

Privacy Cases

Lynn Armentrout did both legal and factual analysis for the Socialist Worker's Party suit challenging FBI surveillance of political activity. She did a comprehensive analysis of remedies under the Privacy Act and wrote a memo on the scope of governmental immunity from tort claims. She catalogued documents discovered in a related suit against the FBI to find materials relevant to the SWP claim.

Other Fellows worked on cases raising privacy issues, including a challenge to employer demands that employees take lie detector tests and a libel action against the CIA on behalf of the Manley government in Jamaica for the publication of covertly gathered information.

Other Cases

Fellows participated in a variety of other cases. One worked with the ACLU's Children's Rights Project on a claim by black children in New York City seeking foster care that the policy requiring matching for religious background violates the Establishment Clause of the First Amendment and results in race based discrimination. Another Fellow helped in representing an organization of former drug addicts to challenge a zoning decision preventing creation of a halfway house. Another did a legal memo in support of a tort claim by the parents of a prisoner who had died, allegedly because of inadequate medical treatment.

Non-Litigation Work

Many problems touching on civil liberties interests of discrete minorities cannot be redressed through litigation. Bill Bernstein has worked with New York City Council President Carol Bellamy to prepare an analysis of state funding of medical schools. The state spends about 135 million dollars a year on medical education, and over 95% of the money is provided without strings or conditions. A consensus exists that there is an oversupply of doctors in New York, but a serious shortage of primary care physicians practicing in certain underserved areas.

Bill's paper recommends that the State tie its support for medical education to specific policy objectives, and proposes alternative ways in which this could be done.

The Directors

During 1981 the Directors of the Hays Program engaged in a wide range of activities, both organizational and academic, in the civil liberties field.

Norman Dorsen continued as President of the American Civil Liberties Union, a post he has held since 1976. In this position he chairs the Union's Board and Executive Committee, appoints members to all ACLU committees, participates in policy and financial discussions, travels throughout the country to meet with ACLU officials and members, and speaks at public events. In addition, in 1981 Professor Dorsen helped produce a supplement to the two volume work on Political and Civil Rights, a long essay in the Harvard Law Review, and other publications. In June 1981 he received an honorary degree (LL.D.) from Ripon College, Wisconsin, for "protecting the rights of all Americans . . . no matter how unpopular or disadvantaged."

During the first part of 1981 Sylvia Law was on sabbatical leave. She wrote and published two short articles, one on public hospital based health organizations and a second on sex discrimination in the medical profession. She also completed initial drafts of two major studies, one on welfare, women and work and the second on the organization of the hospital workforce and the impact of licensing, labor law and anti-discrimination principles on the organization of hospital work and patient care. In addition to these scholarly pursuits, Professor Law represented New York City's Council of Municipal Hospital Community Boards in an appeal in a suit seeking additional City funding for the public hospitals and wrote a brief for the Sixth Circuit in support of a District Court decision requiring a public hospital to allow its physicians to use its facilities for abortion services.

Other Program Activities

The work summarized above is the heart of the Hays Civil Liberties Program. In addition, the Fellows and the Co-Directors meet each month to discuss their work and to explore in depth one issue that an individual Fellow is engaged in. An experienced civil rights or civil liberties lawyer is usually asked to join us in these discussions to enrich the analysis and to give the Fellows an opportunity to meet some of the practitioners in the field. Finally, each spring the Directors and Fellows hold a year end dinner at which a leading civil libertarian speaks and answers questions. Last year the guest was Drew Days, formerly Assistant Attorney General for Civil Rights and now a professor at Yale Law School.