



**New York University**  
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School of Law  
Arthur Garfield Hays Civil Liberties Program

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### ANNUAL REPORT -- 1983

In 1983 the Arthur Garfield Hays Civil Liberties Program celebrated the success of past efforts, continued work to protect traditional civil rights and civil liberties, and moved to develop approaches to emerging areas of civil libertarian concern.

Celebrating our victories. On April 22 over one hundred former fellows and friends of the program gathered at NYU to commemorate the 25th Anniversary of the program. At that time we formally announced the endowment of the Roger N. Baldwin Fellowship and launched a campaign to create an endowed fellowship to honor Harriet Pilpel. Speakers at the program included Professor John A.G. Griffith, a leading British civil libertarian, Hon. J. Skelly Wright of the D.C. Circuit Court of Appeals, and Lora Hays, Arthur Garfield Hays's daughter.

In June, in Akron Center for Reproductive Health v. City of Akron, the Supreme Court affirmed and extended the constitutional protection of women's right to reproductive choice. This case had been in the courts for several years and many Hays Fellows made important contributions to the work involved in it.

In September the United States was required to pay damages to James Peck, one of the original Freedom Riders, who was beaten in Birmingham, Alabama in 1961 by Klan members, who were also FBI agents and informers. Former Hays Fellow Ed Copelon was one of the lawyers representing Peck and several generations of Fellows assisted him.

Continued Vigilance. Fellows worked on free speech and Fourth Amendment cases with the American Civil Liberties Union, on school desegregation cases with the Legal Defense Fund, Inc., and on a variety of voting rights issues with both the Inc. Fund and the New York Civil Liberties Union.

Emerging Areas. Fellows worked to develop means to address international human rights issues arising out of the current conflicts between the government of the United States and many of the peoples of Latin America. Other Fellows aided efforts to develop approaches to the economic insecurity arising from plant closings, unemployment and the forced work programs the Reagan Administration has promoted for the poor.

A more detailed description follows.

First Amendment. Nancy Miller worked with the ACLU's Reproductive Freedom Project on a case concerning the decision of the Agency for International Development terminating federal funds for the Alan Guttmacher Institute's publication, "International Family Planning Perspectives." The publication is concededly of high quality, and unique in addressing issues of global importance. It was defunded solely because, over a one year period, it contained two articles that mentioned the word "abortion." Nancy worked to develop a means to restrict the government's power to impose content based restrictions on speech, in an area where the state has traditionally had large discretionary authority over funding choices.

In a related case the Ninth Circuit Court of Appeals upheld an Arizona statute denying family planning funds to organizations that offered privately funded abortion counseling services. Nancy worked on a brief in support of a motion for a rehearing or a rehearing en banc.

Fourth Amendment. Andrew Karron worked with the NYCLU on a challenge to New York State's practices of conducting warrantless searches of parolees' homes and making unannounced home visits. The federal district court has issued a preliminary injunction against the searches, but has allowed the unannounced visits to continue. Andy is helping the NYCLU to prepare for trial on both issues.

#### Civil Rights

In the spring semester, Rachael Pine, a Robert Marshall Fellow, worked on preparation of the post-trial brief in the Peck case described above.

Sherryl Michaelson worked with the Legal Defense Fund, Inc. on briefs in Williams v. City of New Orleans, an affirmative action case concerning hiring and promotion discrimination within the police department.

Andy Karron worked with the Legal Defense Fund on a complex suit challenging the virtually all-black inner-city school district in Kansas City, Missouri. Plaintiffs seek a remedy for both housing segregation and resulting school segregation. Andy's work involved an exploration of the structure of Missouri government and the relationships among the state, housing authorities and municipal corporations.

Jon Orleans worked with the NYCLU on Morris v. Board of Estimate, a suit arguing that New York City's Board of Estimate violates the one person, one vote principles of Reynolds v. Sims. The Board is composed of three citywide officials, each with two votes, and five Borough Presidents, each of whom has one vote. Despite vast differences in borough populations, each is equally represented on the Board. Jon's work included legal research, soliciting and drafting affidavits from experts on City government, and research into City history, demographics and the budget process.

Alice Brown, a Robert Marshall Fellow, worked with the Legal Defense Fund investigating the feasibility of challenging the majority vote requirement, which mandates a run-off election to be held between the two highest candidates running for an office when no candidate wins a majority in the first election. She examined all of the cases which refer to the majority vote requirement to determine the factors that would influence where a challenge to the requirement was most likely to succeed.

#### International Human Rights

Mark Risk, the first Roger N. Baldwin Fellow, worked with the National Emergency Civil Liberties Committee on a suit challenging the United States' denial of a visa to Mrs. Hortensia Allende, widow of the late President Salvador Allende of Chile. Mrs. Allende wants to do political speaking and organizing and the Reagan Administration seeks to prevent her from doing so under the 1952 McCarran Act, which permits exclusion of aliens whose presence in this country is believed to threaten the public interest. In Kleindienst v. Mandell the Supreme Court held that the government need only advance "facially legitimate and bona fide" reasons for a decision to deny a visa application. The Allende litigation focuses on the meaning of that phrase.

Jose Luis Morin worked with the Center for Constitutional Rights developing legal and factual material for a suit on behalf of Nicaraguan plaintiffs that argues that the United States actions supporting efforts to overthrow the Nicaraguan government violate the Alien Tort Claims Act, the Neutrality Act, and customary international law.

## Jobs and Justice

Michele Chandler worked with a coalition of poor people's and civil rights organizations that sought to develop a means of challenging New York's workfare program under which poor people are required to work, without salary and often under oppressive conditions, in exchange for subsistence grants.

Jon Orleans and Mark Risk prepared readings and led the discussion in a Hays Seminar addressing issues of workplace democracy, remedies for plant closings, and the relationships between these economic issues and more traditional civil libertarian values. The Program sponsored an address by Peter Pitigoff, a lawyer with the Industrial Cooperative Association, a group that provides assistance to workers seeking a greater measure of control over their work conditions.

## The Directors

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 1983 Professor Dorsen published several law articles and edited a collection of essays entitled Our Endangered Rights, which is scheduled for publication in May 1984.

Sylvia A. Law was awarded a MacArthur Prize Fellowship that provides her \$40,000 a year for five years. This award will enable her to take a leave of absence from much of her teaching responsibilities and to undertake new projects. She will, however, continue to work with the Hays Program. In 1983, Roger N. Baldwin Fellow Hal Candee worked with her on an essay on civil liberties and economic justice that was included in Our Endangered Rights and an essay on the messages of legal education for the Society of American Law Teachers' book, Looking at Law School. She completed work on her article, "Rethinking Sex and the Constitution," to be published in the University of Pennsylvania Law Review in June, 1984. She represented several legal organizations who successfully challenged the legality of proposed Reagan Administration regulations that would have forced Legal Services programs to apply client eligibility standards more restrictive and intrusive than those now used to determine eligibility for AFDC. She began work, with Prof. Herbert Semmel of Cardozo Law School and Prof. Fran Miller of Boston University School of Law, on a book of cases and materials in health law.

Martin Guggenheim argued his third case in the United States Supreme Court challenging the constitutionality of a preventive detention law for accused juvenile delinquents. The Fellows attended the oral argument and participated in a post-argument seminar on the case. Professor Guggenheim has four articles scheduled for publication in 1984: "The Right to be Represented But Not Heard: Reflections on Legal Representation for Children" will be published in the New York University Law Review; "State Intervention in the Family: Making a Federal Case Out of It" will be published in the Ohio State Law Journal; "Protecting the Family From Too Much Help" will be published in the New York University Review of Law and Social Change; and "Incorrigibility Laws -- The State's Role in Resolving Intra-Family Conflict" will be published in Criminal Justice Ethics. Professor Guggenheim also has completed the second edition to The Rights of Young Persons, to be published in 1985.

#### Program Financing

In the past few years we have been engaged in an effort to place the Hays Program on a more stable financial base through the creation of endowed fellowships. The income from an endowment has long supported the Robert Marshall Fellow. As noted above, the Roger N. Baldwin Fellowship is now fully endowed so that work in civil liberties and international human rights will be continued in the name of the principal organizer of the American Civil Liberties Union.

In 1983, about half of the needed \$100,000 was raised toward the endowment of the Planned Parenthood/Harriet Pilpel Fellowship to support civil liberties efforts in reproductive freedom. Also in 1983, the Samuel Rubin Foundation announced a substantial grant toward the creation of an endowed fellowship in honor of F. Palmer Weber, a longtime supporter of civil liberties.

Fellows

The full roster of fellows during this period is as follows:

1982-1983

Hamilton Candee (Baldwin Fellow)  
Michele E. Chandler  
Sherryl E. Michaelson  
Jose Luis Morin  
Lynn M. Paltrow  
Rachael Pine (Marshall Fellow)

1983-1984

Alice L. Brown (Marshall Fellow)  
Andrew T. Karron  
Nancy K. Miller  
Jonathan B. Orleans  
Mark D. Risk (Baldwin Fellow)

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