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ARTHUR GARFIELD HAYS  
CIVIL LIBERTIES PROGRAM  
ANNUAL REPORT -- 1984

1984 was a productive year for the Arthur Garfield Hays Civil Liberties Program. The Directors and Fellows continued to make substantial contributions in the areas of women's rights, reproductive freedom, and international human rights. Our major new area of work is civil liberties issues in relation to housing and gentrification. The Fellows and Directors worked on other issues, including due process for disabled people, federal jurisdiction over civil rights violations, and the Fourth Amendment.

A more detailed description follows.

WOMEN'S RIGHTS AND REPRODUCTIVE FREEDOM

In December 1984, the New York Court of Appeals extended the protection of the rape law to married women. The decision is important both for practical reasons and as a symbolic affirmation of the autonomy and personhood of married women. The case arose as an equal protection challenge by a man convicted of raping a woman who was not his wife, and was legally difficult in that courts rarely extend the application of criminal laws. Hays Fellow Nancy Miller worked with the Center for Constitutional Rights preparing the brief that produced this victory.

In 1984 the struggle for reproductive freedom seems to have shifted from the state legislatures to abortion clinics. State and local legislatures realize that restrictive laws will be held unconstitutional and legislatures adopting unconstitutional laws will be required to pay the costs of litigation. Frustrated in the legislative process, and emboldened by the rhetoric of the 1984 presidential campaign, anti-choice activists have moved to direct action against clinics, women seeking abortions, and those providing them.

Clinic bombings are the most blatant form of direct action. In addition, anti-choice activists have stepped up picketing at clinics, often forming a gauntlet through which prospective patients must walk, past cries of "murderer," dolls covered

with ketchup, and pictures of fetuses. Anti-choice activists trace licence plates of clinic patients, and follow patients and clinic workers to their homes. They harass them, and their children and families, with phone calls and letters. It is enormously challenging to devise legal remedies to protect the privacy and peace of mind of clinic patients as well as the First Amendment rights of the anti-choice activists. David Kohane, the first Harriet Pilpel/Planned Parenthood Fellow, worked with the reproductive Freedom Project to develop a comprehensive analysis of these difficult issues to guide clinic personnel and local ACLU affiliates.

Hays Fellow Nancy Miller helped the ACLU and the Alan Guttmacher Institute to achieve a partial victory in their challenge to the Agency for International Development's decision to terminate federal funds for "International Family Planning." The district court denied the government's motion to dismiss, allowing the First Amendment claim to go to trial. The government quietly announced its intent to resume funding this publication, while at the same time terminating funds to the International Planned Parenthood Foundation, an organization that has been less outspoken on abortion and less aggressive in resisting government interference than AGI. While this struggle is far from over, for the time being it seems that aggressive resistance to government action suppressing speech has proven successful.

#### International Human Rights

The Roger Baldwin Fellow, Judy Rabinovitz, began her year with the program after a summer in Nicaragua. She worked at the Center for Constitutional Rights and sought to develop legal theories to challenge the actions of secret CIA actions condoning political assassination and "private" funding of efforts to overthrow that government. When it appeared that redress in the federal courts was unlikely, Judy developed testimony for the Congressional committee with oversight responsibility in this area. Her work has been a valuable aid.

Earlier in 1984, Mark Risk, the first Roger Baldwin Fellow, participated in discovery and trial preparation on a suit challenging the United States' denial of a visa to Mrs. Hortensia Allende, widow of the late President Salvador Allende of Chile.

Hays Director Sylvia A. Law organized 190 law professor to join an ad in the New York Times protesting the Reagan Administration's actions restricting American citizens' freedom to travel to Cuba, and harassing groups that sponsor permitted travel. This is part of an ongoing effort seeking Congressional action to reaffirm the right of ordinary citizens to travel abroad.

At the 1984 Hays Dinner the Fellows and friends were enlightened by a talk by Patricia Hewitt, the former head of the British

counterpart of the ACLU, the National Council on Civil Liberties, and now press officer to Neil Kinnick, leader of the Labour Party. Ms. Hewitt described the role of the European Court in protecting civil liberties in Great Britain and argued that England would not be well served by adoption of an American style Bill of Rights. She was accompanied by her husband, William Birtles, English barrister and former Hays Fellow who recently was elected the Chairman of NCCL.

### Housing

Hays Fellow Sean M. Scott worked at the New York Civil Liberties Union which, under the leadership of the new Director Salvador Tio, has placed a major emphasis on civil liberties issues relating to housing and gentrification. Sean worked with Rob Levy representing the proprietor of a community book store who was sued by his landlord. The landlord sought to terminate the book store's lease and rent to an ice cream parlor paying higher rent. The community protesting, and the ice cream company exercised its right to terminate the lease. The landlord charged the book store with interference with advantageous business relations and intentional infliction of emotional distress. The legal claims involve the conflict between traditional tort remedies and protected First Amendment activities. [The underlying dispute is described in the attached story from the New York Times.]

Hays Fellow Roberta Mueller worked with MFY Legal Services representing poor people in the neighborhood surrounding Times Square. They are attempting to assure that redevelopment of that area will not result in the arbitrary displacement of low income tenants who have traditionally lived there. Roberta also worked with the NYCLU and the Center to develop a constitutional argument to expand the circumstances in which tenants are entitled to legal representation in housing cases.

### Other Issues

The Reagan Administration's policies terminating subsistence benefits to tens of thousands of disabled citizens have stimulated lawsuits protesting these actions. Hays Fellow Alice Brown worked at Harlem Legal Aid with former Hays Fellow Jon Dubin on Figueroa v. Heckler, one of the many cases filed. The federal district court concluded that the Social Security Administration had adopted a "fixed clandestine policy against those with mental illness." 578 F. Supp. 1109 (E.D.N.Y. 1984).

The 1984 election gave rise to many issues of civil liberties concern. A Hays seminar in September 1984 examined the constitutional issues in a case brought by citizens seeking appointment of additional registrars to assure access to the ballot box by poor citizens who find it difficult to go to the special headquarters of registrars.

Hays Director Sylvia A. Law worked on voter registration and election day activities in New Jersey, and is involved in an ongoing effort with the New Jersey Civil Liberties Union to facilitate registration and voting, particularly for low income citizens.

Hays Fellow Andy Karron worked with Richard Larson of the ACLU on issues left unresolved by the Supreme Court's second decision in Pennhurst v. Halderman. Richard writes that, in addition to researching an issue of waiver of eleventh amendment immunity, Andy and other students argued that Pennhurst II was not retroactive, "an idea which had been dismissed without thought several weeks earlier at a meeting of some 20 ACLU attorneys. The students turned out to be right where we attorneys were wrong; and their research and meetings with me were tremendously useful in preparing our reply brief and in preparing me for oral argument."

### The Directors

Hays Director Norman Dorsen continued his work as President of the American Civil Liberties Union. In addition, he edited OUR ENDANGERED RIGHTS: THE ACLU REPORT ON CIVIL LIBERTIES TODAY, which was published in early 1984 by Pantheon Books. (Sylvia A. Law contributed an article to the book on Economic Justice.) Norman Dorsen also contributed a chapter to a book published in Great Britain entitled, "A Transatlantic View of Civil Liberties in the United Kingdom, CIVIL LIBERTIES 1984. His articles included, "Can Civil Liberties Survive Massive Concentrations of Power," 1983 Detroit L. Rev. 1171 and "The American Civil Liberties Union: An Institutional Analysis," Spring 1984 Tulane Lawyer 6. He also was of counsel on the brief in Lynch v. Donnelly, 104 S. Ct. 1355 (1984), in which the Supreme Court by a 5-4 vote permitted Pawtucket, Rhode Island to erect a crèche to celebrate Christmas.

In addition to the work described above, Hays Director Sylvia A. Law spent the spring semester as a visiting professor at the Harvard Law School. She is working on articles about issues of physician reimbursement and the application of anti-trust principles to health care.

Former Hays Fellow, Martin Guggenheim, served as Acting Hays Director during the spring semester and fully participated in the activities of the Program. He presented the argument against preventive detention for juveniles to the Supreme Court. The Fellows attended the argument and participated in a seminar analyzing it. In June, 1984, in Schall v. Martin, the Court approved preventive detention by a 5-4 vote in a decision that has dangerous implications for adults as well.

In 1984 Marty published several important articles: "The Political and Legal Implication of the Psychological Parenting Theory," 12 N.Y.U. Rev. of Law and Soc. Change 549; "The Right to be Represented, But Not Heard: Reflections on Legal Representation for Children," 57 N.Y.U. L. Rev. 76; "State Intervention in the Family: Making a Federal Case Out of It," 45 Ohio St. L. J. 399.

## Funding

Efforts in recent years to place the Hays Program on a solid financial footing are continuing, and 1984 saw much progress. The Roger N. Baldwin Fellowship, for which funds were sought beginning in 1982, is now fully endowed. The long standing Robert Marshall Fellowship is also endowed. Approximately half the income from these funds is used for Fellowship and associated overhead, and the rest is reinvested in capital, as a hedge against inflation.

Two other Fellowships that the program is attempting to endow are the Harriet Pilpel/Planned Parenthood Fellowship and the Palmer Weber Fellowship. Sufficient funds have been raised to meet the University standard for the awarding of the first grants, and we hope to fully endow each of these Fellowships in 1985 or 1986.