

**Transcript of KMYR series on The Public Affair: Marilyn Haft**

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This radio program is a four-part series of interviews with Marilyn Haft, attorney for the American Civil Liberties Union, concerning the rights of gay people, prostitutes, and women in prison. Interviews conducted by Tasia Young, Executive Director of the New Mexico Commission on the Status of Women.

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TASIA YOUNG: Marilyn G. Haft, Director of the American Civil Liberties Union's National Sexual Privacy Project, was in Albuquerque last week to participate with other civil rights lawyers to participate in the successful defense of a young woman accused on several counts of soliciting for prostitution. Starting today and continuing through Friday on KMYR, we will be hearing parts of an interview with Marilyn Haft. During the interview, she talks about teaching law to women in prison, an interest which grew out of Attica and about COYOTE, the National Prostitute's Union. In today's segment, she explains her work with the Sexual Privacy Project.

MARILYN HAFT: The A.C.L.U. Sexual Privacy Project is, um, a project that has been set up to eliminate through litigation, in other words through going to court and through legislation, all laws which make consensual sex in private amongst adults illegal and all practices and other laws that discriminate against people on the basis of their sexual activities, their sexual orientation, and their sexual preferences. And it sounds all kind of obscure, probably, but really, it mostly deals with, um, gay rights and prostitution and discrimination on the basis of marital status. And, um, it may also seem not to be a great problem, um, in terms of law enforcement. But it is much greater than most people believe. There are a lot of people in prison, um, for consensual sex crimes. Not as many as for other crimes,

but certainly for those kind of crimes. And certainly prostitution, a lot of people in jail for that. Prostitution is part of the project as well. And a tremendous amount of discrimination – like employment discrimination – um, and people’s children being taken away from them because they’re gay parents or things like that. There is a lot to be done and is being done. The project started about in May ’73. And it’s funded, um, by the Playboy Foundation, primarily. Um, litigation is paid for through the national office of the A.C.L.U. But, my salary and my secretary’s salary, for instance, is paid for by Playboy, um, so it’s a joint project. And it was done in response to -- I think, a number of things, but mostly the gay community coming out and being willing to fight for their rights. And then more – after that, prostitutes. But mostly, it was a response to the gay community coming to the different A.C.L.U. affiliates and clamoring for their rights. And also the time after the abortion decisions. Um, when the Supreme Court [United States Supreme Court] made sexual privacy, um, more viable legally. It became possible, possibly, to do something about it. So the combination of those two things and the changing attitudes toward sex made us set up the project in response to that.

YOUNG: I asked Marilyn to tell me about some of the cases which she has tried in the first year of the project.

HAFT: I have been involved in lesbian mother cases and visitation rights of a gay father. Which is when, uh, people, uh, who have had heterosexual relationships and had children in those relationships, when they – when the – either after divorce, well usually after divorce. The spouse or somebody else finds out that the person is a lesbian or a homosexual and, um, they want to take the children away just based on that, or limit their visitation rights in the case of the father. And so we went to court in a number of those cases. And, um, I personally handled three, um, of those cases. We brought in expert witnesses to show that the children are not harmed by being around homosexuals or homosexual parents and it is more traumatic to be separated from a parent than not. And the causes of homosexuality, et cetera. Um, the lesbian mother cases have been successful, the gay father’s visitation case was not, but what we have done is set up a model in showing lawyers how to litigate those cases because there’s a lot of scientific knowledge that has to be brought into the courtroom. I have the doctors, for instance, coming in talking about, um, well, research on the causes of homosexuality and that, for instance, a child is determined, according to some

doctors, it's determined by the age of four if a child is going to be homosexual or not homosexual. And the sexual orientation, in other words, of a child is decided by that time and being around a homosexual parent does not change that. What causes homosexuality, that kind of information. And doctors examining the children and saying, you know, is this child emotionally harmed? Would the child be more emotionally harmed, and that thing.

YOUNG: This has been the first part of an interview with Marilyn G. Haft, Director of the American Civil Liberties Union's National Sexual Privacy Project. Tomorrow she talks further about the project's cases challenging the laws against sodomy and about the A.C.L.U. position on prostitution. This is Tasia Young on KMYR.

[5:08]

YOUNG: This is the second in a series of conversations with Marilyn G. Haft, a lawyer with the American Civil Liberties Union who is the author of a soon-to-be-published A.C.L.U. handbook on the rights of gay people. Today, Ms. Haft talks about prosecutions against gay people and about a test case in North Carolina in which she challenged that state's law against sodomy.

HAFT: Which carries sentences of up to ten years and twenty years, et cetera. Incredible. And people are in jail for those, but they usually bust them for public activities like, um, bathrooms they called it "tea room trade", and um, parking on the side of a road where a heterosexual couple would just get, you know, a move on kind of warning, but homosexuals are really prosecuted for that kind of stuff. Anyway, I've got a test case – a very good test case because it happened in private between two consenting adults. Um, there was a guy who is not very favored in the small North Carolina town. He runs a massage parlor and he's gay and he's obviously so, and the cops wanted to get him. They couldn't find anything that he was doing wrong and they wanted to run him out of town. So they set him up with a young Marine who was straight. He was a heterosexual to do the act with him and then prosecuted the – in the privacy of his home. In the privacy of the defendant's – my client's home. And this was truly private. So private that the, um, chief of police was looking with binoculars to see if he could see in the window and he could not see. That's how private it was. So we took that to court in North Carolina with the North Carolina Civil Liberties Union, uh,

and litigated that. And I brought down expert witnesses talking about, you know, why do people – when you have a law on the books, one of the rationalizations they say is that there is an interest – a public interest to keeping the laws on the books. And I had like, like for instance, uh, that homosexuals molest children and this will stop them from doing that. Um, that, uh, it's immoral, on and on. And so I had people from the Kinsey Institute, the sex research people, come down and testify to the fact that that's a myth about homosexuals molesting children. And that more people -- there are a tremendous amount of homosexuals, and on and on and all that kind of, um, stuff. So that's now at the North Carolina—in the North Carolina – we lost. As the judge said to us, we made a very good argument but he doesn't have the prerogative to challenge – uh, to change the law because he's only a trial judge. Which I told him was, you know, nonsense. It's his duty to change the law.

YOUNG: And you're appealing?

HAFT: Yeah, we're appealing. And that's a very important, a very good test case.

YOUNG: Among the hundred and fifty-two cases currently on the legal docket of the A.C.L.U.'s Sexual Privacy Project, which Marilyn Haft directs, are several cases challenging loitering and disorderly conduct statutes. I asked Marilyn to tell me how these cases are related to a project concerned with sexual privacy.

HAFT: Most of the people whose sexual orientation or sexual activities are disliked by the police, including prostitutes and gay people, can't be picked up for truly private stuff. Because, you know, they simply don't know and can't go into everybody's bedroom and they won't bust into the bedroom. So the way to arrest them and to harass them is to use the loitering – the loitering laws.

YOUNG: Have you been successful in getting those struck down?

HAFT: Not directly. What's happened in those cases is every time we've gone into court, um, they have settled and said that they would not do that. That happened in Florida. And um –

YOUNG: So you win an individual judgement?

HAFT: Yeah, I would prefer to win a precedential, larger judgement in court. But we do get – we do get the cops to stop doing it where we can catch it. Difficult.

Difficult to prove the pattern, though. Because, um, gays, for instance, are not recognizable. It's not like a racial minority.

YOUNG: Marilyn Haft was in Albuquerque last week to defend a young woman charged with prostitution. Before the actual trial began, Haft argued that the charges should be dismissed because the statute has not been equally enforced against males. But Haft actually favors, and hopes to move the A.C.L.U. toward a policy, that prostitution should be decriminalized, as she explains:

HAFT: Most people, um, involved in the new prostitution movement – um, decriminalization of prostitution -- want decriminalization. They don't want the laws to be equally enforced. The arguments in court against the prostitution laws is that it's unequally enforced. And it should be enforced against the men – the Johns and the customers-- well as the women or male prostitutes. That's not what we're looking for, really. Besides the fact that it has -- uh, what we're looking for is get the laws off the books and get the government out of it completely. And what's happened – there have been a number of places like D.C. [Washington, D. C.] is a notorious, uh, example. Or it's known all over the country. They started busting Johns or customers, patrons, um, it didn't work because the – the men from the suburbs, respectable people, started yelling and screaming. And after a while, it stopped. And I don't think it's successful in the long-range or short-range.

YOUNG: This has been part two of an interview with Marilyn G. Haft, an A.C.L.U. lawyer who is concerned with the rights of prostitutes and gay people. Tomorrow she talks about the research of a Seattle woman who was an expert witness in last week's prostitution trial in Albuquerque; about COYOTE, the first prostitute's union; and about her work with women in prison. This has been Tasia Young on KMYR.

[10:40]

YOUNG: Marilyn G. Haft is a lawyer for the American Civil Liberties Union and the author of a recent article in the *Civil Liberties Review* called "Hustling for Rights". In today's segment, she discusses the work of a woman who testified as an expert witness in last week's successful defense of a local woman accused of soliciting for prostitution.

HAFT: Jennifer James, of Seattle, has done a doctorate on it and is an expert. Anyway, she's, uh, as a matter of fact, just wrote an article on customers, but the customers -- she says the customers are mostly, um, men between thirty and sixty. Um, middle-class and white and suburbanites.

YOUNG: Marilyn Haft is currently serving as chair of a sub-committee on prostitution and one on victimless crimes for the American Bar Association. And she talks next about her efforts with that organization.

HAFT: I've tried to get them to, uh, adopt a resolution calling for the decriminalization of prostitution, repeal of all laws for prostitution and solicitation for prostitution in the various states. And so far it passed one committee and it was unsuccessful, um, this past year in Hawaii. Mostly because, I think, there was just not enough public education about it. It's a new issue, the kind that has to keep on going back and to go back to all the time. I think it just -- keep on telling these kind of people that we're practically the only nation in the world -- western nation in the world where prostitution is still illegal. That blows their mind. Just makes them think how one -- why? And two, how ignorant they must be and how ignorant the country must be about prostitution. And I think that's just such a mind-blowing fact. And it's been, I think, since 1958, the United Nations has endorsed decriminalization of prostitution with one hundred nations.

YOUNG: What was the United States' reaction to the U.N. doing that?

HAFT: Well, very little, because the press hardly covered it. Um, because prostitution and sex outside marriage has been, until recently, completely swept under the carpet. I mean just, swept under the rug. Puritanical attitudes that used to be, I think, prevalent in this country -- more prevalent anyway. Just um, they just wouldn't talk about it the same way that legislators won't get up and say, "I'm for prostitution". It's the way -- even the journalists wouldn't do that.

YOUNG: Although the press may have taken little interest in the position of the United Nations, they could hardly be accused of any disinterest in the formation of COYOTE, the first prostitutes union. I asked Marilyn to explain the name and also to explain the current amount of interest in the rights of prostitutes.

HAFT: Cast Off Your Old Tired Ethics -- Call Off Your Old Tired Ethics. And it stands, um, for the coyote, which is supposed to be the most promiscuous animal in the

desert. And I think it's the women's rights movement, mostly, has made it, um, feasible for these women to press for their rights and also probably because of, um, feminist lawyers that are interested and aware that something could possibly— probably be done about it in court. A combination of those things and, as I said, a sexual revolution. Or at least the revolution in attitudes has made all that possible.

YOUNG: Finally, I asked Marilyn how and why she became interested in the rights of women in prison.

HAFT: Attica happened and the newspapers were suddenly – back in 1971, filled with information about prisons. And I realized that, my God, they were talking about every prison, prison conditions all over the country and not one article that I saw any place, and I looked, had said anything about women in prison. And so, I, along with this other woman, said, well, let's just go and find out where those women are, why they aren't reported about, and on and on. And I guess we started the women's prison movement, um, at that time. We started, um, -- we ended up going – we didn't know how to get into the prisons because we didn't have any clients. And an attorney can't just go in, especially not after that kind of situation. So, we decided the best way to go in to see what was happening was to offer our legal services free and, um, offer to teach the women in prison – we ended up teaching women in prison the law. Taking their cases and organizing around NYU [New York University] Law School. I want to do it on a national level, but we started at the smaller level and then we organized with other people across the country.

YOUNG: I have been talking with Marilyn Haft, an A.C.L.U. lawyer, about the rights of gay people, prostitutes, and women in prison. On tomorrow's segment, she talks about the attitudes of women in prison and about the treatment of women in the criminal justice system. This has been Tasia Young on KMYR.

[15:23]

YOUNG: This is the final segment of an interview with Marilyn G. Haft, a lawyer with the American Civil Liberties Union. As director of the A.C.L.U.'s one-year-old National Sexual Privacy Project, Ms. Haft is primarily concerned with the rights of

gay people and of prostitutes. In today's interview, however, she talks about her work with women in prison. I asked her first to tell me if women's prisons have developed any jailhouse lawyers, inmates who do non-professional legal work for themselves and for, in this case, their sister inmates.

HAFT: I have seen, at least in the prison that I was working in, the development of a few jailhouse lawyers. The populations of women in prison is smaller, much smaller, than men. Which is one of the reasons that they've been ignored. Everybody says, well they're such a small problem. In numbers, it doesn't pay, and they're not violent, and all that kind of thing. So there are fewer women and so the likelihood that they would be jailhouse lawyers is smaller. Plus, the attitude that a lot of those women – the kind that really got shuttled off to prison are the kind that couldn't stand up for their own rights. I mean, those were more likely the ones to end up there, and so there were fewer. Now that the women are becoming a little more militant, um, they are becoming jailhouse lawyers. It's certainly happened in my prison and I know of others, but not many.

YOUNG: Earlier this year, the New Mexico Civil Liberties Union, which is affiliated with the A.C.L.U., argued in district court in Santa Fe that the facilities for women in the New Mexico Penitentiary are unequal to those for men and therefore unconstitutional. Marilyn Haft comments next on the general state of women's prison facilities as compared to those for male prisoners.

HAFT: There are many states that don't have separate state institutions for women. Um, the facilities that – for instance, they will have separate wings for women in – separate wings of the male institution for women and they will have them sometimes segregated because they don't want the groups mixing and so the women don't get the same recreation, the same facilities, the same, um, supposedly, the programs that they get and all that kind of thing. And sometimes in jails, for instance, the women are isolated so they're really in what amounts to segregation. Um, or, um, solitary. Because they can't really get out. Um, and there are other places where they have the institutions – the state institutions, separate institutions, but they don't, uh, emphasize or have the same amounts of money poured into it so that they don't have the same programs, the same opportunities as male prisoners do. And when they do have the, you know, these projects or programs available, they're mostly for stuff like a beauty parlor, you know? Hair



dressing and stuff like that. And unfortunately, the only thing that they will be employable for when they get out is stuff like hair dressing and, uh, so you really run into a difficult, um, theoretical problem. We want to teach them about other, more skilled jobs, and, um, they can't get them when they get out, so you really have a difficult problem.

YOUNG: Finally, I asked Marilyn to tell me what she would really like to see happen to women in prison. Whether her purpose and that of the A.C.L.U. in the long run is equal treatment for men and women prisoners.

HAFT: Women do have a right – should have a right to equal amounts of money, um, to be expended on the prisons. On their -- if women are in the criminal justice system at all, they should be subject to it – they should have the same amount of money flow towards their – the institutions they're in. And I'd like to see the money used, um, for things like alternatives to prison like halfway houses, like places where women can be in the community and that kind of thing. Because the prisons just don't work for anybody, for males or females. Certainly for us to advocate building more, you know, prisons and more fortresses like that, which breed crime, is ridiculous.

YOUNG: This has been an interview with an A.C.L.U. lawyer who visited Albuquerque recently to defend a woman accused of solicitation of prostitution. The lawyer is Marilyn G. Haft. For the past year, she has been director of the A.C.L.U.'s National Sexual Privacy Project. The project is funded by the A.C.L.U. and by the Playboy Foundation and is concerned primarily with the rights of prostitutes and of gay people. Ms. Haft has also worked extensively with women in prison. At some time in the future, I hope to take a look at the status and the rights of women in prison in New Mexico. This has been Tasia Young on KMYR.

[19:59]

[end]