Legal Aid Program At Fordham

by Joan Paik

Thanks to the energy of Mike McIntosh and Peter Jakab, assisted by Ira Mateiskey, public interest is growing at Fordham Law.

While summer associates at Skadden, Arps, Slate, Meagher & Flom, Mike and Peter did some work as Participating Attorneys (PA) through a Legal Aid volunteer service. Legal Aid conducts numerous volunteer programs throughout the city, enlisting volunteer attorneys from law firms and other legal institutions. When their summer was over, Mike and Pete decided it was time for a volunteer program to be initiated at Fordham.

The Legal Aid volunteer service at Fordham, which is a pioneer program to enlist third year and fourth year evening students from within the law school, gives students invaluable legal experience while they provide legal services to needy clients. A third year who wishes to become a PA submits a form to Pete or Mike. They screen applicants and assign cases in one of three areas: housing, SSI disability or unemployment. Case assignments are limited to these areas because such cases are brought in administrative bodies, before which unadmitted students may handle cases.

However, a third year law student is far more capable of handling the matter for the client. Even if the client has a strong case, it is likely that he won't understand the substantive issues and proper procedure. A client has a 60% greater chance of winning if accompanied by a PA rather than proceeding pro se.

There is ample supervision for the PA. Administering the entire Legal Aid program is a Ms. Paula Williams, who worked extensively with Pete and Mike to get the program going at Fordham. Each case will have a Legal Aid attorney assigned to it as an advisor, strategist and someone on whom the PA can call for advice. Several professors, including Professors Martin, Batts, Hawk, Cohen, Daly, Vairo and Sims, have volunteered their time and advice. Then there are the student advisors, Pete, Mike and Ira, all of whom have had hands on experience as active PAs.

For the volunteer PA, the primary benefits are satisfaction and experience. The PA works alone for most of the case, and at his/her first hearing, a supervising attorney may or may not accompany as a back-up. For the client, whether his concern involves housing, SSI or unemployment benefits, the matter often represents his daily subsistence.

Pete and Mike are optimistic about the future of the program. So far, 20 volunteers have signed up for case assignment, which is about the capacity for a pioneer program. The first cases have already been assigned. (On Feb. 3 they won their first case.) The Legal Aid volunteer program is off to a strong start, but its continued existence depends upon all of us at Fordham. Contact the Legal Aid student advisors and find out what can be done for Legal Aid.

Calimari To Receive Honor

Professor John D. Calimari has been selected to receive the Fordham Law Alumni Medal of Achievement—the highest honor conferred by the Association. This is the first time an active member of the faculty will receive the medal. The medal will be presented at the Annual Alumni Luncheon scheduled for Saturday, March 7, 1987 at the Waldorf Astoria.

Professor Calimari, a noted authority on Contracts, has been a member of the faculty since 1952. He has authored a number of law review articles and, with Professor Perillo, has authored Contracts (1st ed., 1979; 2nd ed., 1977), Contracts Cases and Problems (1978) and Contracts, Black Letter Series (1983) (all West Publishing Co.). He presently occupies the Agnes and Ignatius M. Wilkinson Chair of Law.

For Some, Death
A Capital Idea

Associated Press—Ten years after Gary Gilmore was executed by firing squad, 87% of Americans support the death penalty, and many more want it used for crimes other than murder, according to a Media General-Associated Press poll.

Fifty-six percent think the death penalty should be used only in certain cases, such as slayings of children, police officers or multiple murders.

Only 30% of the 1,251 adults surveyed nationwide thought the death penalty should be used in all murder cases.

Eleven percent said there should be no death penalty at all, and 3% weren't sure.

When asked if the death penalty was appropriate for crimes other than murder, 47% said yes.

Slightly more than half of them said it should be imposed in rape cases, about one third cited child molestation or abuse, 20% said treason and 14% said drug dealing.

Forty-seven per cent did not think the death penalty should be imposed for crimes other than murder, and the rest were unsure.

On Jan. 17, 1977, Gilmore became the first person executed after the U.S. Supreme Court reinstated the death penalty in 1976. Sixty-six men and one woman have been put to death since then.
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We The People Living A Fantasy?

by James Cecchi

A billboard in Fascist Italy once proclaimed “Mussolini ha Sempre Ragione.” That is, Mussolini is always right. Ronald Reagan has never erected such billboards along the highways of America, but he does have many other political characteristics in common in Il Duce. Primary among them is a failure to distinguish between rhetoric, ideology and reality.

In 1980 the perceived weakness of Jimmy Carter was an important factor leading to Reagan’s election. On the campaign trail Reagan promised that he would be a strong leader restoring America’s power, dignity and pride. He communicated with simple, folksy imagery that evoked memories of a mythical past filled with virtue and decency. The people welcomed this wholesome message and elected Reagan by a landslide. For six years the American people tolerated Reagan’s obvious flaws and detached style. America continued to listen to his familiar speeches filled with familiar myths and familiar promises. He remained our most popular leader ever, seemingly always right. But just as the Italian people eventually grew tired of the lies and bombast of Mussolini, the American people have grown tired of Reagan’s pleasant fantasy world.

The Iranian arms scandal reveals a government in chaos. Reagan’s image as a tough moral leader presiding over a businesslike administration has been destroyed. Instead we see a disinterested President presiding over an anarchist group of infighters, squabblers and sucksters. Further, Reagan’s misstatements and lies on the matter reveal that the trust the American people bestowed in him, was seriously misplaced. This result was almost inevitable. For six years America was content with Reagan’s obvious flaws and detached style. America continued to listen to his familiar speeches filled with familiar myths and familiar promises. He remained our most popular leader ever, seemingly always right. But just as the Italian people eventually grew tired of the lies and bombast of Mussolini, the American people have grown tired of Reagan’s pleasant fantasy world.

In the State of the Union address Reagan sounded more like a broken eight track than a concerned statesman. He attempted to do what he has done so often in the past—divert public attention from substantive issues through the use of pleasant and inspiring rhetoric. He invoked all the old themes, ideas and heroes. He spoke of his concern for the deficit and his admiration for the three words “We the people.” But when spoken by a man who doubled the national debt, and, by way of “Irancon,” flouted Constitution, it is now contrived. The cake shaped images and phrases rang hollow. Because the speech was so devoid of honest concern and serious proposals for the future, Reagan revealed that his administration is at a dead end.

Americans have always demanded that their foreign policy reflect a higher concern than self interest. Our actions have often been infected with a missionary zeal. Properly controlled, this passion to fight for justice can benefit America as well as the rest of the world. However, when our actions, deemed moral, are indistinguishable from those actions we deem evil, we compromise the integrity of our lofty ideals. Similarly when we use different ethical standards to guide our relations with other nations, from those we use to guide our own relations, we tread perilously close to moral schizophrenia. Iran is such a case. By dealing arms to an outlaw nation Reagan has made a mockery of our role as champion of international justice. He has confessed our friends, particularly in the Middle East, and has denigrated the sacrifice of American servicemen he sent to battle terrorism. Further, his failure to accept responsibility for the consequences of his initiatives betrays a pragmatic callousness irreconcilable with his principled image.

The Iranian issue will not fade away because Reagan can no longer govern by gesture. The picture of the Iranian speaker holding a Bible, sent by President Reagan, would be laughable if it were not such a sorry example of how American foreign policy is now conducted. The Bible is like a key, and the Bible, represent the triumph of policy by gesture, rather than by study. They demonstrate the failure of the Reagan administration to develop rational policy to reach sensible goals. They reveal an administration lost in a fog of rhetoric, contradictions and deceptions.

In the State of the Union address Reagan said the Constitution “grew out of the most fundamental inspiration of our existence, that we are here to serve him by living free, that living free releases in us the noblest impulses…that we would use these gifts for good…for all mankind.” The Founding Fathers held no such illusions. To them America was not a divinely blessed nation with a mission to enlighten the world. It was, and still is, a precarious experiment in self government. The structure of the Constitution is testament to the Founding Fathers’ distrust of human nature and the exercise of unchecked power. America can be a force for justice in the world but only if our leaders are cognizant of our own human weaknesses. Only if the President remains committed to government by Constitutional Law can our policies reflect or noblest impulses. Had Reagan adhered to a Constitutional method of policy discussion and implementation it is unlikely that the Iranian scandal would ever have developed. But it is unlikely that a man incapable of understanding the specifics of his own agenda would be able to distinguish between government by law and government by rhetoric. There is no doubt that in a complex world covert action is often necessary. This action must, however, be guided by a process of discussion to insure that it reflects a concern for the principles of justice rather than political pragmatism.

Reagan was elected by a people who preferred to listen to heart-warming stories of freedom and pride rather than serious debates concerning a troubled world. And eventually this rhetoric became like an opiate, masking reality behind a fog of dulled senses. The complete lack of substantive debate in 1984 revealed that America’s capacity for thought had been reduced to a 30 second television commercial. But now, like the junkie rumaging through an alleyway in search of a dirty needle, America has reached an important juncture. We can continue to get our fix of rhetoric, and mortgage the future, or we can confront our failures today. The chaotic state of our arms policy, deficit policy and terrorist policy demand that in the future we reject government by myth.

The lesson to be learned from the Reagan Presidency is that a people who are not vigilant in the exercise of power endanger the vitality of the Republic. The Reagan presidency is thus a perfect mirror of the apathetic state of our civic concerns. For a people solely obsessed with private wealth can not expect their leaders to be motivated by higher ideals. Further, when a nation chooses to ignore the substance of political debate, it should not be surprised to find its President using cakes, Bibles and revolvers as the primary method of exporting the ideals of American democracy.

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Thursday, March 26-7 - - - - Child Abuse Conference
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Embarrassment

By now many of you have probably seen or heard of the fraudulent First Judicial Department Disciplinary Committee memorandum regarding alleged recent decisions. Copies of the memo and a disclaimer have been distributed throughout the school. The particulars needn't be repeated here.

What does bear stating and repeating is that we of the Fordham Community will not accept this kind of irresponsible, foolish behavior. All of us have a duty to ourselves and the legal profession. The conduct displayed in the publication of that trash is of the lowest order.

We hope that the person(s) who created and distributed the memo will consider, without perversity, the negative impact the hoax had on a great number of people. In addition to causing the inconvenience and harassment of law school students, faculty and administrators, and prominent members of the legal profession, this idiocy has embarrassed Fordham and all of us who have anything to do with the law school.

The ADVOCATE encourages anyone with knowledge of the distribution of this memo to notify Professor Daly.

Pride

THE ADVOCATE editors take pleasure in congratulating Michael McIntosh, Peter Jakab, Ira Matesztky and all the student and faculty volunteers who have made the Legal Aid Clinical Program a part of the law school. Those responsible have demonstrated their commitment to the fair distribution of justice in our society.

Legal representation is one of the necessities of life, but it comes at a price...a price too high for many. Adequate legal representation can mean the difference between sleeping on the street and sleeping at home.

The recent cuts in the Legal Services Corporation's budget require increased participation by the legal private sector in providing legal services to the needy. Fordham's new clinical program goes far to accomplish this task.

And of course the student volunteers come away with litigation experience they could get nowhere else. The beauty of this project is that it confers rewards on all concerned.

We wish the program longevity and continued success.

Support Fordham Pro Bono
Absurdity of Urban Living

by Henry Fairlie

Between 3 a.m. and 6 a.m. the life of the city is civil. The natural inhabitants of the city come out from damp basements and cellars. With their pink ears and paws, sleek, well-groomed, their whiskers combed, rats are true city dwellers. Urban life, during the hours when they reign, is urbane.

Rats are social creatures. But after 6 a.m., the two-legged, daytime creatures of the city begin to stir; and it is they, not the rats, who bring the rat race. You might think that human beings congregate in large cities because they are gregarious. The opposite is true. Urban life today is aggressively individualistic and atomized. Cities are not social places.

The lunacy of modern city life lies first in the fact that most city dwellers try to live outside the city boundaries. Disdaining rural life, they try to create simulations of it. No effort is spared to let city dwellers imagine they are living anywhere but in a city: patches of grass in the more modest suburbs, broader spreads in the richer ones farther out; grim new trees planted along the streets.

Professional people buy second homes in the country as soon as they can afford them, and as early as possible on Friday head out of the city they have created. New York intellectuals and artists quaintly say they are "going to the country" for the weekend or summer, but in fact they have created a little Manhattan-by-the-Sea around the Hamptons. City dwellers take the city with them, for they will not live without its pamperings. The main streets of America's small towns are now strips of boutiques.

In the old industrial cities, people lived near their places of work. The mill hands lived around the cotton mill, and the mill owner lived close at hand, in the big house on the hill, looking down on the chimney stacks belching out the smoke that was the evidence they were producing and giving employment.

City churches had congregations that were representative of both the resident population and the local working population. It wasn't so much that work gave meaning to life as that it created a community that extended into and enriched the residential community, and sustained a solidarity among the workers. Automakers realized that their own product enabled them to build factories far from the dispersed homes of the workers, and not unconsciously they appreciated that a dispersed work force would be docile.

In the city today work and home, family and church, are separated. What office workers do for a living is not part of their home life. At the same time they maintain the pointless frenzy of their work hours in their hours off. They rush from the office to jog, to the gym or the YMCA pool, to work at their play with the same joylessness.

As the farmer walks down to his farm in the morning, the city dweller is dressing for the first idioxy of his day, which he not only accepts but even seeks—the journey to work.

This takes two forms: solitary confinement in one's own car, or the discomfort of extreme overcrowding on public transport. Both produce angst. There are no more grim faces than those of the single drivers we pedestrians can glimpse at the stoplights during the rush hour. It is hard to know why they are so impatient in the morning to get to their useless and wearisome employments; but then in the evening, when one would have thought they would be relaxed, they are even more frenetic.

On the bus or subway each morning and evening other urban dwellers endure the indignity of being crushed into unwelcomed proximity with strangers whom they have no wish to communicate with except in terms of abuse, race and sometimes violent hostility. The wonder is not that there is an occasional shooting on public transit, but that shootings are not daily occurrences.

But whether they have come by car or public transit, the urban workers must continue their journey even after they have gotten to the city. They then must travel in one of the banks of elevators that often run the height of three city blocks or more. City people are so used to moving in herds that they even fight to cram themselves into the elevators, as if it mattered that they might get to their pointless occupations a minute later.

The odd thing about elevators is that there are no fares for distances often longer than those between two bus stops. Office elevators are public transit, free to anyone who needs to use them—but there's no such thing as a free elevator ride, as the president will tell you. Banks of elevators occupy large areas of valuable city land on every floor. This and the cost of running and maintaining them is written into the rents paid by the employers. If the urban workers had not been reduced to a docile herd, they would demand that the employers who expect them to get to work subsidize all the public transport into the city.

In the modern city office building, there are windows that don't open. This is perhaps the most symbolic lunacy of all. Outdoors is something you can look at through glass but not touch or hear. These windows are a scandal because they endanger the lives of office workers in case of fire. But no less grievous, even on the fairest spring or fall day the workers cannot put their heads outside.

The opposite is true. City churches had congregations that occupy large areas of valuable city land and cellars. With their pink ears and paws, people, slumping along their streets even when scurrying, never looking up at their buildings, far less the sky, have the insolence to disdain and mock the useful and rewarding life of the country people who support them.

(Di) Everything in urban life is an effort to simulate rural life or to compensate for its loss by artificial means. The greatest robbery from the country in recent years has of course been Levis, which any self-respecting farmer or farm worker is almost ashamed to wear nowadays. It was when Saks Fifth Avenue began advocating designer jeans years ago that the ultimate urban parody of rural life was reached. The chic foods of the city have to be called health foods, which would seem a tautology in the country. And insofar as there used to be entertainments in the city that enticed, these can now be enjoyed more than sufficiently on VCRs and stereos.

It is from this day-to-day existence or unreality, pretense and idiocy that the city people, slumping along their streets even when scurrying, never looking up at their buildings, far less the sky, have the insolence to disdain and mock the useful and rewarding life of the country people who support them.

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Repeal Wicks

by Mayor Edward I. Koch

At 1 p.m. on Nov. 23, 1986 skaters were again gliding across the ice at Wollman Memorial Rink in Central Park. Beneath an almost cloudless sky with temperatures just above freezing, smiles beamed from faces both young and old. "Just like velvet," said Olympic champion Dick Button of the ice, which after six years, again covered the world's largest outdoor skating rink. "Very smooth," opined a 10-year-old girl who may one day be a champion herself. But Donald Trump—billionaire developer who's not always received the applause of New York crowds—probably had the most reason to smile.

To many, Wollman Rink is proof we're mismanaging capital projects. But the delays and overruns associated with it aren't typical of our capital program. And, in those city projects with overruns and delays, it's not city management, but something known as the Wicks law which often creates the problem.

Consider some facts about Wollman Rink that have been ignored. Originally it was to be rehabilitated. More analysis suggested it should be entirely rebuilt. Only $2.3 million of the $10.9 million was budgeted for the rink, with the rest for a state-of-the-art refrigeration system, the two buildings, and landscaping.

We finished the buildings, landscaping and, even though it didn't perform as promised, finished the refrigeration system. Donald Trump helped us complete that part of the project which had foiled our best efforts. Also consider the power Donald Trump has as a private developer. He can pick up a phone, call an experienced contractor, and say, "I want you to complete this project on time and within its budget." When he talks, they'd better listen. They've worked for me," he says, "and they want to continue working for me.

Under state law, contractors' ears need not be as wide open when the city talks. While private builders select contractors who've brought earlier contracts in on time and within budget, we must by law use an open, competitive bidding process and award contracts to the lowest responsible bidder. We can't deem a contractor "irresponsible" merely because earlier projects on which he's worked took longer or cost more than planned. Donald Trump awards projects based on a contractor's prior performance. Price is almost the sole consideration we may use in our awards.

Public projects are also more likely to be buried in paperwork and approval processes than private ones. Between the closing of the rink in 1980 and his involvement in the project, Donald Trump said this year, "I have constructed major hotels, apartment buildings, and, in 26 months, Trump Towers." It's no surprise. He doesn't have to advertise for bids, submit formal architectural designs, or go before the Board of Estimate for approval of change orders. That means he can cut months, even years off a construction schedule.

And, as a private developer, he doesn't have to do battle with the Wicks Law. A private developer normally places responsibility for management of a construction project in the hands of a prime contractor. All decisions based on site conditions and coordination among subcontractors are made by the prime contractor. The only other sign-off required, if any, is the owner's. With responsibility in the hands of a single project manager, work can be kept on schedule and within budget.

If it isn't, the buck can't be passed.

Since 1921, though, the Wicks Law has prohibited local government from using private contractors. Instead, it forces us to award separate sub-contracts for electrical, plumbing, ventilation, and lighting work on a project with coordination to be provided by the city. Sub-contractors can pass the buck to the city if anything goes wrong.

The Wicks Law was supposed to increase competition and reduce the cost of public projects. It hasn't. A 1971 Assembly study concluded that the law "has served to prevent efficient coordination of projects, to increase project delay, to lessen competition, and... to insure the participation of inferior contractors." The State Charter Review Commission in 1975 and the State Budget Division in 1979 reached the same conclusions.

That means money. In 1971 city Building Commissioner Milton Muscietti reported that major projects took a year longer because of the poor coordination fostered by multiple contracting required under the Wicks Law and costs were 10 percent higher. In 1981, a review of 282 city construction contracts by City Comptroller Goldin confirmed that—total cost overruns of about 11 percent because of the Wicks Law.

The Wicks Law should be repealed. The American Institute of Architects, the Ford Foundation, the New York Conference of Mayors, the Daily News, the Post, and the Times agree. Mayhor Wagner and Mayor Lindsay supported repeal. So have Gov. Cuomo and I. But for years the Legislature has paid more attention to contractors than to those of us who oppose the law. I hope the Legislature will one day repeal it. Until then, public projects will take longer and cost more than they should.

Until then, we're also taking other steps to control costs and keep projects on schedule. We've instituted new contractor and consultant performance procedures and created a default process to ban poor contractors from doing business with us for up to three years. We've also used construction managers in a few critical projects at Shea Stadium, the Central Park Zoo, the Brooklyn Botanical Garden and Rikers Island. But wider use requires a change in state law. Given the power of contractors in Albany, it won't be easy to obtain.

Wollman Rink may be seen as a symbol of city projects that go wrong, but most city projects go right. We recently reviewed 6,000 city projects contracts completed since 1981. The average cost overrun was 7.2 percent. Fifty-eight percent had no overruns while 84 percent had overruns of less than 10 percent. And that compares favorably to private sector projects. A review of nine of these—including the IBM and AT&T headquarters, the Philip Morris Buiklding and Goldman Sachs headquarters—found average cost overruns of 29 percent. That's four times more than the average overrun on our private projects.

On a typical day, the City of New York is managing over 2,500 construction projects. Despite the Wicks Law and despite the advantages private developers have over public managers, I believe our performance in trying to keep these projects on time and within budget is remarkable for the success it has had. Donald Trump's work at Wollman Rink suggested even more remarkable success. We're putting them in place. And, who knows, if the Wicks Law is ever repealed, managing a capital construction project may turn out to be easier than learning how to ice skate.
Wednesday, April 8
Thursday, April 9
In Pope Auditorium

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Torn Iron Curtain?

by Alan Dershowitz

Recently a group of 50 former Soviet citizens who had emigrated to the United States returned to the Soviet Union. Authorities in Moscow treated the return as a propaganda bonanza for the Soviet way of life.

The returnees—some Jews, some Armenians, some ethnic Russians—were greeted at the airport by high-ranking Soviet officials, including Samuel Zivs, who is the Kremlin's chief spokesperson on Jewish emigration. Zivs claims that the return of the 50 individuals proves that Jews in the Soviet Union do not wish to leave and that those who made the mistake of leaving now want to return.

But the real message is quite different. The personal message is familiar and poignant: Uprooting oneself from one's culture, heritage, family and familiar habits is very difficult. Every large-scale emigration—from the American colonists who came over on the Mayflower, to the Irish, Italian and Polish immigrants who arrived at our shores in the late 19th century, to the Asians and Latin Americans who seek refuge here today—has included a small proportion of nostalgic returnees who can't cope with change. Some go back. The majority suffer through the difficult transition.

The same is true of the hundreds of thousands of recent emigres from the Soviet Union. The vast majority have endured—indeed welcomed—the change. But a small percentage have gone back, citing the difficulties of adjusting to American life, the lack of job security, the crime, the permissiveness.

The right to emigrate has little to do with whether the United States is "better" or "worse" than the Soviet Union. It has everything to do with choice. Every human being should have the right to choose where he or she wants to live. Given that, some will prefer the regimented security of Soviet society, while others will prefer the risky freedom of America.

I welcome the news that a few emigres have chosen to return to the Soviet Union. The Kremlin's decision to allow them back enhances freedom within the Soviet Union. The return of expatriates who arrived at our shores in the late 19th century, to the Asians and Latin Americans who seek treatment abroad, and a new, if uncertain, emigration law are all good omens.

It seems clear that the best policy for the Soviet Union over the long run is to join the rest of the civilized world in competing for the allegiance of its citizens. This will not be an easy task. The Russian people have never known real freedom—neither under the czars nor the commissars.

But there are stirrings of a growing appreciation for freedom there. With the growth of technology, it will become increasingly difficult for Soviet leaders to present their citizens with only one version of Pravda ("The Truth"). More of them listen to broadcasts from the West (most recently, President Reagan's new year's message over the Voice of America). More of them crave the right to practice religion. But many simply want to leave for personal or family reasons.

The return of 50 people to the Soviet Union demonstrates that one response to the challenge now facing Gorbachev is to open the doors both ways and let the chips fall where they may. Let's see how wise you really are, Mr. Gorbachev.
Note

EDITOR'S NOTE: We apologize for omitting the following data regarding Michael R. Graham's Parody Fair Use Defense article published in the last issue.

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