Attorneys for whom pro bono is de facto

Just for the Good of It

Among the many traditions inherited by the American legal system from the Roman and British systems of law is that of doing work without pay *pro bono*—for the good. In the United States, attorneys are often required to offer such service on a minimal basis—in New York, for example, about 20 hours a year.

Some attorneys, however, find themselves doing hundreds or thousands of hours of unpaid or minimally paid work because they are idealists. The Swarthmoreans described in the following story might react to such an appellation either by merely humoring it or by calling themselves, instead, pragmatists with a social conscience. Perhaps they are both.

And in the case of Marshall Beil '67 and Arthur Block '70, they are also quixotic, even eccentric. Consider Block's statement that as a result of work for community-based, collective organizations and businesses in New York over the last decade or so, his income has actually declined. Or Marshall Beil's quiet admittance that when he argued in front of the Supreme Court, he wore an extremely conservative dark suit but also, in a Swarthmore-like remembrance of individualism, a bright, flowery tie.

Block, co-founder of the Harlem Legal Clinic and counsel to 1988 third-party presidential candidate Dr. Lenora Fulani, has spent a great deal of time working in Harlem, where few attorneys would deign to go. And Beil, equally tenacious and passionate in pursuit of his cause, has devoted nearly a decade to arguing a case for abortion rights activists who have challenged the Internal Revenue Service and the Roman Catholic Church for violating tax-exmpt status laws and outwardly entering partisan politics.

Both graduates of Harvard Law School, the two attorneys live and work in New York City, where years of effort devoted to separate but far-reaching issues have led them recently to argue closely related cases before the 2nd U.S. Circuit Court of Appeals. The two had not known each other previously and travel in different circles. Beil is a partner in a firm with spacious and comfortable offices on Madison Avenue. Block, located in a small and unpretentious suite among other businesses that are cooperative and community based, works on West 47th Street when he isn't at the Harlem Legal Clinic.

Their cases, now related by the issue of standing—the right of one party to sue another—reveal how much each has done to make American society stronger and the rights and opportunities of its citizens more equal.

The case that lasted a decade

Ten years ago New York attorney Marshall Beil '67 accepted a case that would put him at the apex of a philosophical and legal question fundamental to the safe conduct of our democracy—the separation of church and state. He did not expect the case to unfold with a Dickensian complexity that would stretch into the decade of the 1990s.

Beil agreed to represent a group of 21 plaintiffs consisting of Protestant and Jewish clergy, Catholic laity, and abortion rights groups in a suit against the Internal Revenue Service and the Roman Catholic Church.

by Roger Williams

The plaintiffs charged that the IRS had allowed Catholic organizations to carry on improper political activities in its fight against abortion. Formed under a coalition called Abortion Rights Mobilization (ARM), the plaintiffs argued that the United States Conference of Catholic Bishops and other Catholic groups had repeatedly and flagrantly violated federal tax law by actively supporting political candidates who opposed abortion.

"The Catholic Church, like Swarthmore College, is a tax-exempt organization," Beil explains. "The tax code that grants that status—501(c)(3)—states that organizations with tax-exempt status can't participate in the partisan political process. The notion is that tax exemption is a form of subsidy by the treasury, and the politcal process in this country should not be funded by the treasury."

A partner in the Madison Avenue firm of Lefrak, Newman & Myerson, Beil points to a file cabinet in one corner of his office that holds a decade's worth of documents and papers in the case, known either as *ARM vs. Baker*, or *In re: United States Catholic Conference*. Beil has carried the case through several professional advances in New York, where he practices law as a "generalist," because, he says, its significance is far-reaching. Now, after 10 years and countless thousands of hours of effort *pro bono*, much of which time he worked alone or with student and other volunteers, he is seeking a second opportunity to take the case before the Supreme Court.

"It's a test case raising a crucial issue and one in which there's no redress," he says. "I see it as an abortion rights case and a case protecting the separation of church and state, definitely not as an anti-Catholic case." Using similar language in a 1987 *Newsday* article, he termed it a "religion-in-politics lawsuit."

"This suit was started to achieve a level playing field on which the plaintiffs are saying, 'We aren't asking to be allowed to participate in the partisan process; we are asking that the Catholic Church be required

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Marshall Beil '67 has devoted a decade to preserving the separation of church and state in a case involving the Catholic Church and the IRS.

to follow the strictures of the tax-exempt code, just as we are.' The plaintiffs feel that no church should tell people how to vote or use tax-deductible contributions to participate in partisan campaigning."

Beil describes this aspect of the case as narrow, citing the first ten words of the First Amendment, which begins the Bill of Rights: "Congress shall make no law respecting an establishment of religion. . . ." And he is quick to point out that his plaintiffs are active in the abortion debate and that they want the Catholic Church or any other church to be equally active. "But," he adds, "not when they violate the law by telling church members how to vote. Swarthmore, for example, can't take its money and give it to a political candidate. And President Fraser can't tell people, as a representative of the institution, how to vote. He may certainly express his opinion as a private citizen. The same goes for the church or any other 501(c)(3) organization."

In one well-publicized newspaper editorial in 1980, for example, the Archbishop of San Antonio urged voters to vote for Ronald Reagan as the only candidate "clearly opposed to abortion."

Beil's arguments are rooted in a long historical view of politics and law in the West, which he has analyzed with a scholar's breadth to reach a simple, unequivocal conclusion: "Europe was plagued for hundreds of years by political wars and conflict resulting from religious differences. The founding fathers were determined not to repeat this."

After nearly a decade of litigation, the original charges brought by the plaintiffs have yet to be dealt with in court. Instead the court fights have focused on the issue of standing. Opposing lawyers for both the church and the government, trying for many years to get the case dismissed, have argued that the plaintiffs have no standing to sue because they have suffered no direct damage from the church or the IRS and are merely "third parties."

"The standing law prevents a third party, a bystander, from bringing suit against someone who hurts another," explains Beil. "The rules of standing exist to avoid collusive lawsuits and to ensure that the real parties are involved."

Beil has argued for the plaintiffs that specific damages suffered as a result of IRS bias include misuse of their tax dollars and infringement of their political rights, as well as violations of their constitutional right to religious equality. These arguments have been vindicated, in part at least, in several

early court decisions. Ironically, however, although the standing issue was orignially resolved in favor of the plaintiffs, it returned to hurt them more recently.

After ARM sued the IRS and then the church beginning in 1980, a federal district judge ruled that the plaintiffs did, indeed, have standing to sue, a victory for Beil that few expected. Although that judge also granted the church's motion that it be dropped from the lawsuit, the church continued to be deeply involved in the case, in part because ARM subpoenaed church documents relevant to the case in 1983.

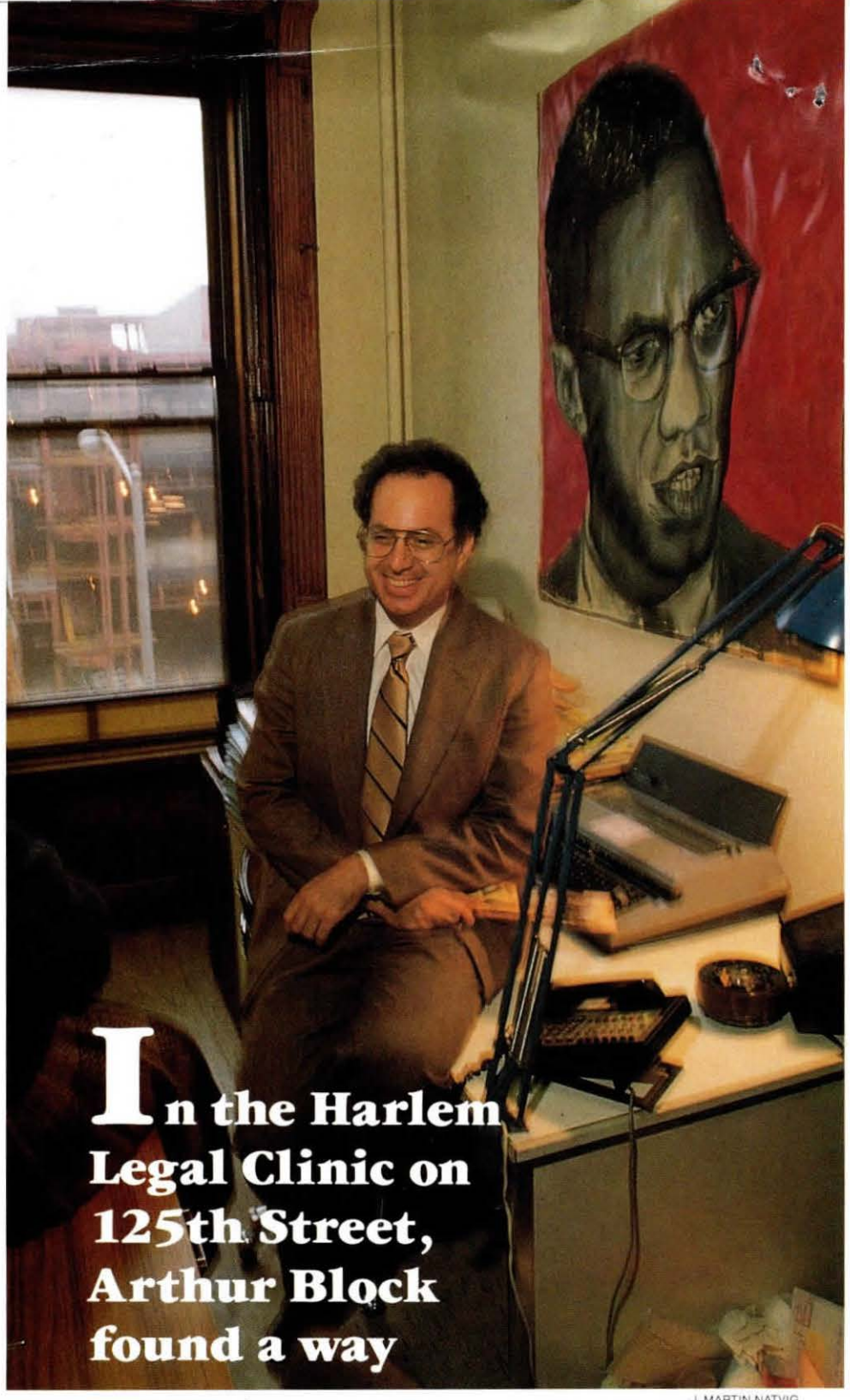
Over the next three years in a series of hard-fought debates, the church was denied an attempt to quash the subpoena, a federal district judge again upheld ARM's right to standing, and finally, in a landmark decision, the church was cited for contempt for failing to produce the relevant documents sought by the plaintiffs. The court fined the church $100,000 a day for every day it refused to provide the documents.

An appeal by church lawyers eventually served to freeze this penalty and raised again the question of standing. When the U.S. Court of Appeals for the 2nd Circuit ruled 2 to 1 in 1987 that the church could not challenge the plaintiffs' standing because it was no longer a party to the lawsuit, the case finally went to the Supreme Court.

This labyrinthine series of point-counterpoints led finally to one of the most exciting events in Beil's career. As he describes it, arguing in front of the Supreme Court is really just "a 10-person conversation between you and nine of the most powerful people in the country. For one-half hour you have their undivided attention.

"It's surprising how intimate it is. As the lawyer in the well, you're physically closer to the justices than in any appellate court in which I've argued."

But the Supreme Court, in an 8 to 1 decision in June 1988, put the case in remand by overturning the appeals court and ruling that the church could challenge the plaintiffs' standing, thereby forcing the case back on the appeals court. In the most recent decision, handed down last Septem-



In the Harlem Legal Clinic on 125th Street, Arthur Block found a way to make a difference for poor people.

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ber, a three-judge panel of the U.S. Court of Appeals ruled 2 to 1 that the abortion rights groups do not have standing.

"This," says Beil in a likely understatement, "I found hugely discouraging."

But, he adds quickly, the case is far from over. The plaintiffs have appealed to the full-panel appeals court; they hope eventually to convince even conservative judges in the highest court who may not agree with their specific cause that they do have standing and that the underlying constitutional question must be addressed in this case.

In his appeal, Beil noted that another decision in a standing case by the 2nd U.S. Circuit Court of Appeals only five weeks earlier was "diametrically opposed" to the court's decision in *ARM vs. Baker*. Significantly, that decision was handed down in favor of attorney Arthur Block '70, serving as counsel to third-party 1988 presidential candidate Dr. Lenora Fulani.

When "grass roots" means the streets

Arthur Block '70 might be characterized as a community activist lawyer who first met psychologist and politician Dr. Lenora Fulani in 1984, when he and a partner decided to found the Harlem Legal Clinic. Fulani's friend, New York educator Barbara Taylor, called Block to ask what he could do for Fulani's New Alliance Party. The party, a black-run, multiracial political party with strong support in Harlem, sought to offer legal aid, among other services, to residents of Harlem after the elections of that year.

"The Democrats," recalls Block, "would send representatives into Harlem to open offices before an election, but when the election was over, those offices would close. Dr. Fulani really wanted to offer permanent services out of her office, not just for somebody's vote but for the good of that community."

So Block and then partner Harry Kresge decided to devote nearly all of their extra time, some 20 hours a week, to the Harlem Legal Clinic—for little or no money. Opening first in a "bare bones office with no heat" on 135th Street and Lenox Avenue, they began to advertise the clinic by handing out a questionnaire on Harlem street corners and in bars, grocery stores, and beauty shops throughout the community.

"The first question was, 'What would you like attorneys to do?' " reveals Block. "And the answer was often, 'Help with housing.' So we did.

"Promoting the clinic on the streets of Harlem as a white, I was surprised at just how warm and generous people in Harlem can be. Of course when they heard the clinic was free, they were very appreciative. And when they heard we were part of the New Alliance Party, which is loved in Harlem, they began to trust us."

The point is brought home when Block, offering a tour of the current headquarters of the Harlem Legal Clinic and New Alliance Party at 125th Street and Fifth Avenue, is challenged by a passerby. "Hey, you must be a politician looking for votes or something," calls out the man.

"No," comes Block's quick reply, "but I'm with the New Alliance Party. Is that OK?"

"Dr. Fulani?" he sings out with a smile. "Yeah, Dr. Fulani, she's OK, I get all her literature."

"Do you read it?"

"She makes me read it," the man says, laughing and moving away with a companion.

Though Block's friend, attorney Harry Kresge, is now solely in charge of the Harlem Legal Clinic, Block occasionally fills in for Kresge or one of the volunteers who work at the clinic. "We don't actually take on cases unless they're very unusual and we

Jane Moody Picker '57: securing the rights of women proves to be the work of a lifetime

Jane Picker first encountered discrimination at Yale Law School in 1960 as one of seven female classmates seeking employment following graduation. Now a professor of law and director of the Fair Employment Practice Law Clinic at Cleveland State University College of Law, Picker decided in the early 1970s to devote her professional life to securing equal rights for women.

Leaving private practice, she sought funding for a nonprofit clinic or program that could be adopted by a law school and would be instrumental in helping people seeking to litigate sex discrimination cases.

"I was dumbfounded," she quips, "when we actually received that funding in full."

Thus began the Women's Law Fund in Cleveland, supported variously by grants from the Ford Foundation, the Gund Foundation, the Cleveland Foundation, and the Fair Employment Practice Clinic (first funded by a federal grant). According to Picker, "Cleveland State was eager to set up this program, and now it's expanded to include many different types of employment-related discrimination cases."

Picker describes the relationship between the law clinic and the university as "symbiotic." Working under supervision, law students at the school have the opportunity to become deeply involved in important, sometimes controversial federal cases accepted by the clinic. Because the clinic is a nonprofit organization, clients can be served without regard to their ability to pay attorneys' fees.

Picker explains, "We hope that some aspect of our work will strike a chord of idealism in students, and we want to accomplish something as well."

Under Picker's guidance, the fund and the clinic got off to an auspicious start in 1972. "The first big case we had, and the first argument I ever made, was in the United States Supreme Court. It was called *LaFleur vs. the Cleveland Board of Education*, an important case because it allowed us to challenge the mandatory maternity rules that were common throughout the country then. In this particular instance, two teachers in Cleveland were required to leave school at the end of their fourth month of pregnancy and couldn't return until their babies were 6 months old. In addition, they had to wait to return until the beginning of a semester. And all of this forced maternity leave was without pay."

Her clients, Jo Carol LaFleur and Ann Elizabeth Nelson, had been out of work for months. What happened? "We won," she says firmly.

Nowadays when Picker isn't teaching, she's litigating. "Currently we represent women who want to be firefighters. We're also litigating the issue of whether Title VII of the Civil Rights Act protects Americans working for American companies overseas." Picker adds that increasingly the clinic works with nonprofit groups and attorneys throughout the country.

If her tone is any indication, a great deal still needs to be done, and she intends to help do it.

can effect a change for a large group of people," he explains of the clinic's work. "What we do is offer free counsel to anyone who comes through the door on what they ought to do and where and how they can do it. A lot of times people will have a problem with a landlord, for example, that doesn't even require an attorney, or we can point them to someone who really cares and has expertise, instead of to lawyers doing the minimal *pro bono* obligation and taking on cases they have no experience with just so they can have a change of pace."

For Block, the experience of co-founding the Harlem Legal Clinic in the early 1980s evolved coincidently with his changing view of politics and responsibility. "I was set for life with a career as a liberal public interest lawyer," he explains. "But it wasn't enough for me to have a niche as a successful liberal. I was looking for a different way to function as a professional. The Republicans were moving to the right, the Democrats to the center. And more and more the Democrats were speaking the rhetoric of the New Deal but advocating a policy of total austerity in relation to the poor."

According to Block, the progressive legal tradition of the '60s and '70s, a time when great stock was put in having the courts change such institutions as prisons and schools and when liberal lawyers sought to protect the poor through the 14th Amendment, broke down.

"The kind of major social reforms we wanted in desegregation, racism, education, and women's rights weren't happening in the courts, so I reorganized my entire practice," he says. "The right wing had built a grass roots base, a community base, after Goldwater's defeat in 1964, and spent 15 years strengthening it. So I said, 'Block, you've got to build something.'"

What he built was a New York practice devoted to initiating and strengthening community-based collective businesses or nonprofit enterprises, several of which were formed in various parts of the city by members of the New Alliance Party.

Block's focus expanded when he became special counsel to Fulani during the 1988 presidential campaign. His greatest achievement, in his view, came when he helped Fulani secure matching funds, making her one of only 16 candidates and the only non-Democrat or Republican to do so.

"She was the first black woman presidential candidate in history," he notes, "and a serious candidate who had raised funds in over 20 states. When the League of Women voters, a tax-exempt 501(c)(3) organization, sponsored the debates on television, they didn't want to include Dr. Fulani. We felt we had standing to sue them and to sue the IRS, and we wanted to find a legal way to make a point—that the debates were not democratic."

The suit demanded extensive legal work long after the election and required appeal to the 2nd Circuit Court after being thrown out of court in a first hearing. Finally, on Aug. 2, 1989, the 2nd Circuit Court found that Fulani had standing to challenge both the tax-exempt status of the League of Women Voters and the IRS. In this important victory, Block used arguments formed by Marshall Beil.

But the court ruled that the league was justified in excluding Fulani from primary-season debates because she could not be considered a primary candidate. In response to this decision, Block simply expresses hope that Fulani will remain in politics.

Reflecting on his work and his future, he says, "You've got to have some emotional and social support to do this kind of thing. I feel I have it here"—he gestures toward other offices in his suite. "These are all talented, bright people who used to be on Wall Street or in big ad agencies, for example. Now they're running collective or nonprofit businesses for people. These people are not into deprivation. They like stuff. But they care about the rights of people and about communities."

In the end, it seems, that best defines those who work *pro bono*.

BRUCE REEDY '68

Margaret Kohn '69: A rare and compassionate attorney comes to the aid of handicapped children

Ever since Margaret Kohn graduated from Columbia University School of Law in 1972, she's worked for the good of someone else. Like many Swarthmoreans of her generation who provide passionate, lifelong services to underprivileged members of the society, Kohn began this process at the College. She recognized that the way to change society lay either in education or in the law. Her senior thesis, consequently, analyzed the inequities of funding between urban and suburban schools.

After graduation from law school, Kohn worked ardently for women's rights, eventually devoting a decade to the National Women's Law Center and the Center for Law and Social Policy.

"From 1972 to 1985," she notes wryly, "all of my work was *pro bono*. Now most of it is." Helping to right inequities, inevitably, proved a poor way to get rich.

Her abiding idealism, uninhibited as she approached the middle years of a successful career, surfaced again in 1985, when she decided to explore her longtime interest in education. "I had always wanted to teach, so I went back to school, became certified as an elementary school teacher, and taught the fourth and fifth grades for a year in a large, urban public school system." That effort, in a system that offers mediocre remuneration for teachers, was unquestionably *pro bono*.

How did it go? "I have to say it was the most exhausting work I've ever done," she states flatly. "And I discovered that I'm a better lawyer than I am a teacher. But I'm glad I explored it."

Now an associate in the Washington, D.C., firm of Bogin & Eig, Kohn specializes in education and handicap law, focusing most of her work on the Education of the Handicapped Act (Public Law 94-142). She devotes herself specifically to helping parents acquire special education services their handicapped children require from public school systems.

"Many of the people I work with are not in a position to pay me when I do the work," she reveals. "I may or may not get paid. And I devote all of my *pro bono* work to those from low-income families who need the same services wealthier clients can pay me to provide."

In one recent case, a low-income 4-year-old awaiting a kidney transplant was barred from a regular public school class because he needed medication and tube feeding during the school day. Kohn forced an administrative hearing, then negotiated with the school to have the boy admitted and to train staff members in his care. This, Kohn explains, allowed him to be mainstreamed in a regular pre-K classroom, rather than placed in a segregated school for severely handicapped children.

"I think that part of it has worked out well for him," she says modestly.