

# INSHORT

## CEO Squirm

When a Nobel Peace prize winner talks, people listen. This year's recipient—South African Bishop Desmond Tutu—has used the opportunity to repeat for as many ears as possible a conversation with a young girl he met in a resettlement camp in his country, reports Paul Bass. He told this story in an unusual place: St. Luke's Episcopal Church in Darien, Conn., a wealthy bedroom community noted for its Fortune 500 executives. Tutu met the girl outside the shack she shared with her mother and sister. The South African government had recently demolished their home in a squatter camp outside Capetown, where they had moved to be near their father. The bishop asked her what the family does for food. She said they "borrow" food—when they can. And when they can't find anyone to "lend" them food? "We drink water to fill our stomachs," the girl replied. "We drink water to fill our stomachs in South Africa, which is a net exporter of food," Tutu somberly told the congregation. "And I wish to remind those who are involved economically in South Africa that whether you like it or not, whether you wish it to be so or not, you are buttressing a system such as this one."

## Tennis, Buffy?

Organizers of Student Peace Day—the left students' answer to the Student Liberation Day of College Republicans (CR)—beat the CRs at their own game. While the CRs brought in medical students "freed" during the invasion of Grenada to let students know what a great guy Ronald Reagan is, Peace Day people responded by holding forums to give an alternative view of Reagan's foreign policies. And reports from a dozen or so colleges—including conservative Georgetown, Iowa State and University of Pennsylvania at Philadelphia—showed an abysmal following for the CRs and more than decent turnouts for the Reagan opposition. Sixty-seven colleges reported running Peace Day events, some with notable theatrics. At the University of Colorado, for example, 1,500 students were on hand for a forum on Central America and then marched over to witness a presentation of a tennis racket and beach towel to the U.S. medical student speaking at the Liberation Day event. And Joe Iosbaker of the Progressive Student Network (PSN) group at the University of Iowa thinks it won't end there. "The conservative base on campus is complacent. They're not well organized, they're not motivated." Which leads the PSN, CISPES and the U.S. Students Association to work for a planned shake-up on the campuses next spring with a focus on Central America.

## Suicide's not painless

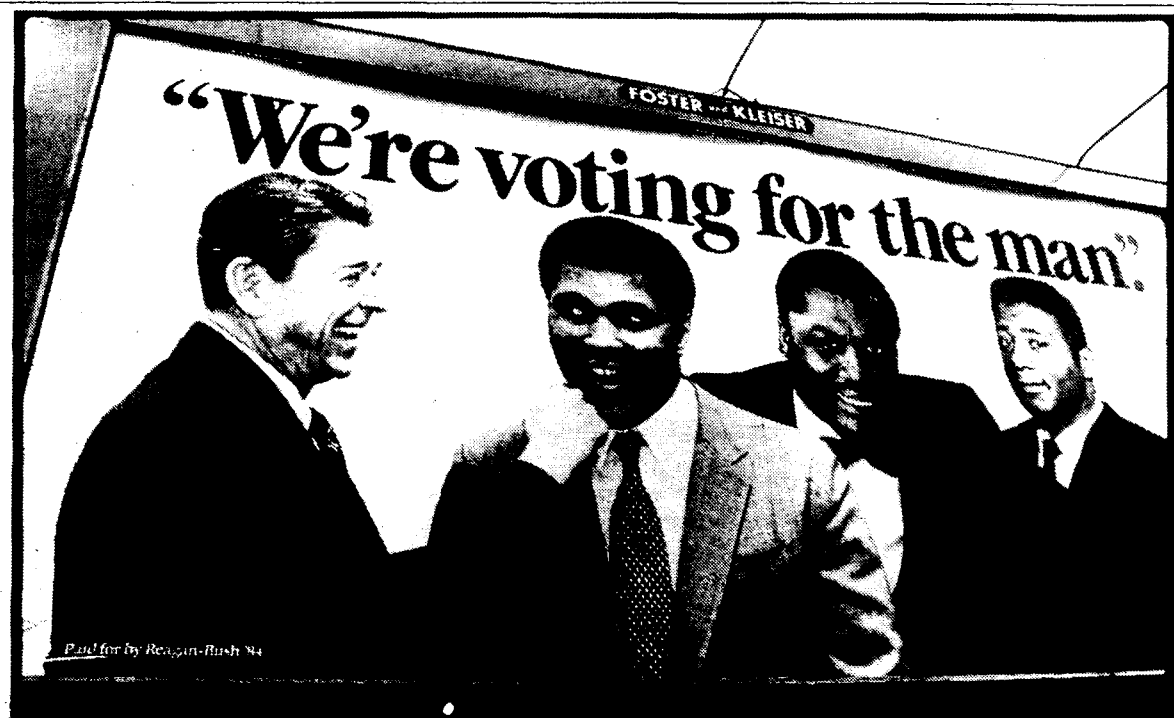
Some nuclear freeze supporters took exception to a non-binding referendum last month at Brown University, in which students voted to ask their campus health services to stock cyanide capsules so they could commit suicide in the event of a nuclear war. Although the referendum passed, some expressed concern that the despairing tone of the proposal would cause the students to give up hope rather than motivate them to activism. Brown junior Jason Salzman, who thought up the idea for the referendum, disagreed. Now he says he has proof. Through publicity generated by the referendum, Salzman and fellow Brown activists linked up with groups on 14 other college campuses to organize nationwide rallies on November 2 urging students to make the arms race a key election issue. The organizers made sure to point out this time that they didn't invent the concept of hopelessness during a nuclear war: they're calling themselves Students Against Nuclear Suicide.

## On the auction Block

In Iowa, corporations involved in farming must file disclosure reports with the secretary of state. But Agriculture Secretary John Block's farm corporation, Su-Jac, Inc.—he owns it with his wife, Sue—hasn't filed a report since 1981, when Sue Block took over the business. More than 200 farmers gathered in Galesburg, Ill., in late October to conduct a protest "auction" of Block's farm, reports Jim Schwab. Dan Levitas of Rural America's Midwest office in Des Moines followed Block's failure to report, telling the farmers that it's punishable by a fine of up to \$1,000, and once the sloucher is notified by the secretary of state, an additional \$100 a day can be tagged onto the original fine. As of last week, Levitas didn't know if the secretary of agriculture had been notified yet, though.

The auction highlighted a rally that was marked by an increasing level of hostility and dismay toward the Reagan administration's farm policies. Iowa United Auto Workers President Chuck Gifford was cheered long and loud for his appeal for farmers to "go to the streets" and use civil disobedience if necessary to let people know that the future of family farms in America is at stake and must be preserved. —Beth Maschinot

Readers are encouraged to send news clips, interesting reports, eye-opening memos or short articles to "In Short," c/o In These Times, 1300 W. Belmont, Chicago, IL 60657. Please include your address and phone number.



Taking it to the streets: This ad, paid for by Reagan-Bush '84, was the target of graffiti groups across the country when it surfaced in black communities. COVERT (Committee of Voters Embarrassed by Reagan Tactics) claimed three hits in Chicago alone.

## San Francisco's restaurant workers: A two-month strike raises the stakes

SAN FRANCISCO—When the largest union in this city—Local 2 of the Hotel and Restaurant Union—voted over two months ago to strike rather than accept a take-away contract from their employers, local media called it a bluff. The head of the Golden Gate Restaurant Association (GGRA), that represents 55 restaurants, accused Local 2 President Charles Lamb of hiding the details of the contract from union members. But seven and a half weeks later, when the members voted 95 percent to reject that same offer, restaurant owners finally realized they had a serious fight on their hands.

"The GGRA has insulted our members by saying they do not understand what they strike for," declared Lamb after the second vote. "You don't go on strike this long without knowing why."

The restaurant workers knew they were in for a long battle when, months before the last contract was to expire on September 1, the GGRA presented their union with a demand for give-backs in every area. The owners asked for a two-tier wage system in which many new employees would make nearly 30 percent less than veteran workers. They also proposed increasing the minimum hours needed to be eligible for medical benefits.

And most objectionable to the union, the restaurants demanded an end to job classifications: waiters could be told to clean bathrooms, cooks to wash dishes. "For years we've fought for and won craft rules that protect

us from becoming interchangeable, while allowing the restaurants to do their business," explained Local 2 organizer Wendy Russman. "Now in one contract the owners are trying to dismantle it all."

To drive home the seriousness of their demands, 17 of the restaurants whose contracts had expired broke off from the GGRA and hired San Francisco's most well-known management attorney: Mark Montobbio. Montobbio arrived fresh from a victory over Local 1100, the department store union representing more than 4,000 workers at San Francisco Macy's and Emporium Capwell. During a bitter six-week long strike, Montobbio obtained a crippling injunction restraining picketing in front of Macy's. Exhausted and broke, the workers settled for a two-tier system and cutbacks in medical benefits.

"Montobbio position is 'take it or leave it,' and if you leave it he sets out to destroy you," says Chuck Mack, a Teamster official in Oakland whose union has tangled with the attorney in the past. No sooner did Montobbio begin negotiations with Local 2 than he started decertification proceedings against the union in six restaurants, sending letters to workers informing them of their "right" to leave the union.

Although Local 2 members are sold against making concessions in the next contract, not everyone agrees on the union's handling of the strike. Lamb has been cautiously calling union restaurants one by one, two by two, so that even now only about half of

the 77 eating houses—employing more than 2,000 union members—are being picketed. Some of the union organizers think it's a smart move—a number of well-known union restaurants lost business even before they were actually on strike.

Others opposed the "rolling strike" strategy, especially members of Local 2's negotiating committee. They say that it demoralizes workers out on strike to see so many other union members still on the job collecting pay. "It's also unfair to the members still working," explains Ted Zurr, who sits on the negotiating committee. "The owners spend every day trying to intimidate them into going against the union."

Petitions signed by several hundred strikers have been presented urging Local 2's leaders to expand the strike. It's likely now that most of the owners will see picket lines in front of their restaurants before both sides agree to a contract.

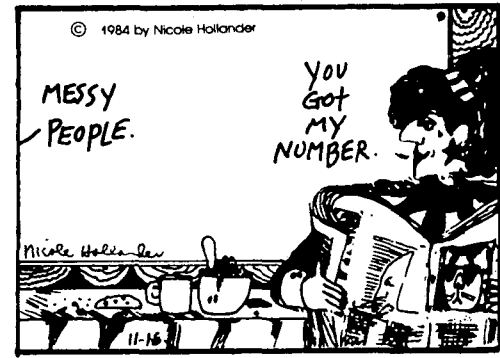
That contract is probably not coming for at least a few months. Some restaurants are already hiring permanent replacements for strikers—a move that has received much press attention. But the leaders and organizers of this union remain officially, and unofficially, confident of victory: an agreement with modest wage gains and without major concessions. "The restaurants can't hire customers," explains Local 2 press agent Barbara Lewis. "And people in San Francisco honor picket lines."

—Matthew Lasar

### SYLVIA



### by Nicole Hollander





## NEW JUDGES

## Court's worst-case scenario

By John B. Judis

**W**HEN LIBERALS QUAKE over the prospect of Ronald Reagan establishing a conservative majority on the Supreme Court, they most often conjure up the goateed visage of Judge Robert Bork, who as Richard Nixon's solicitor general fired Watergate prosecutor Archibald Cox after Nixon's attorney general and his deputy had demurred. Known for his outspoken opposition to abortion and homosexuality and for his narrow interpretation of the First Amendment—in a 1971 essay Bork argued that it should apply only to non-subversive and “explicitly political” speech—he was appointed by Reagan in 1982 to the Appeals Court of the District of Columbia and is rumored to be high on his list of prospective Supreme Court nominees.

But there may be a fate even worse than a Supreme Court that makes abortion illegal and reinstitutes the ban on *Ulysses* and Communism. In conservative legal circles, the most prominent philosophical trend is called “law and economics.” Developed largely at the University of Chicago Law School under the influence of Milton Friedman and George Stigler's free-market economics, Law and Economics can claim the allegiance of four appointed Appeals Court judges: Bork (who graduated from the University of Chicago Law School), Yale's Ralph Winter, and former University of Chicago law professors Richard Posner and Antonin Scalia.

Of these, the most eminent intellectually is Posner, 45, the author of the standard “law and economics” textbook, *The Economic Analysis of the Law*. In a *Washington Post* profile of Posner, Lincoln Caplan described him as a “prime candidate for a Reagan Supreme Court.”

Posner's legal opinions would make those of the current right-wing *enfant terrible* Justice William Rehnquist look tame and moderate. A Court dominated by Posner and by “law and economics” would threaten not only the First Amendment and *Roe v. Wade*, but the very foundations of the welfare state and of civilized society as we know it. Beneath the legal pronouncement of “law and economics” lurks a right-wing radicalism far more sweeping than any the U.S. has seen.

**Rules of the market.**

The premise of “law and economics” is that all legal questions, from rape to libel, can be reduced to the quantifiable terms of free market economics, as propounded originally by Adam Smith and Jeremy Bentham. “Whereas the ‘old’ law and economics confined its attention to laws governing explicit economic relationships,” Posner writes, “the ‘new’ law and economics recognizes no such limitation on the domain of the economic analysis of law.”

According to Posner, each individual is out to maximize rationally his or her “satisfactions” or “wealth.” When a criminal decides whether to commit a crime, he weighs whether he wants to purchase the “good” (i.e. the crime) at the “price” (i.e. the possible jail term) at which it is available. When a judge rules on a case, he rules—or ought to rule—according to how to allocate most efficiently the society's resources—in other words, how to maximize the society's wealth. For Posner and “law and economics,” questions of justice are reducible to questions of the efficient allocation of resources. Posner wrote in a 1975 summary of his position:

*When we describe as ‘unjust’ convicting a person without a trial, taking property without just compensation, or failing*

*to require a negligent automobile driver to answer in damages to the victim of his carelessness, we can be interpreted as meaning simply that the conduct or practice wastes resources.*

“Law and economics” claims to be both a descriptive and normative theory. It describes what the underlying, if unacknowledged, premise of many a judicial decision is, and it also sets out a standard of efficiency by which to evaluate judicial decisions.

Some of the targets of Posner and “law and economics” are predictable. He recently took aim against the “exclusionary rule” (which forbids courts to accept evidence that is obtained illegally) on the grounds that “the private [and social] cost imposed on government [by the rule] may greatly exceed the social cost of [a policeman's] misconduct.” Other proponents of “law and economics” have attacked anti-trust laws, securities and ex-

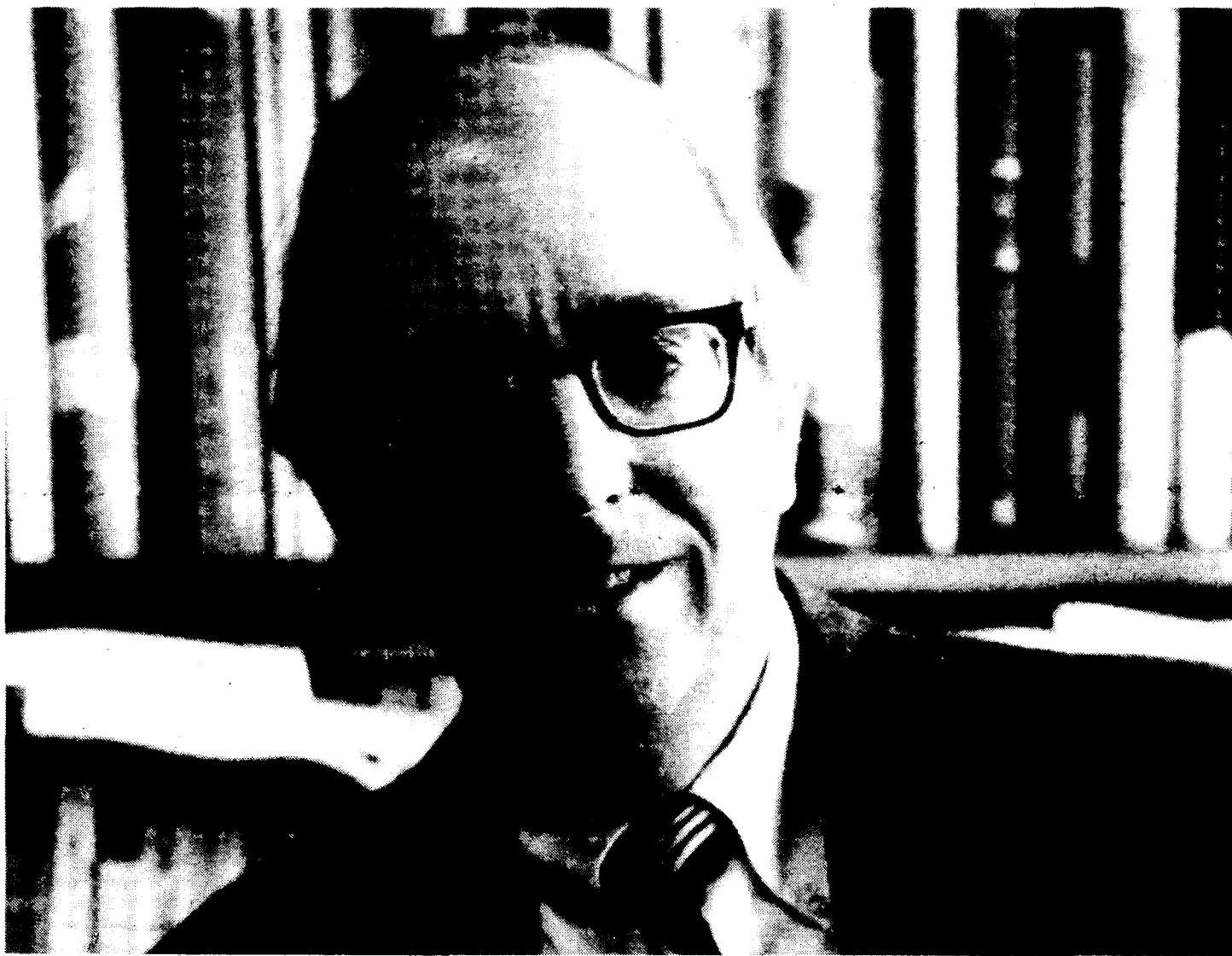
“Modest Proposal” for ending the famine in Ireland. But Posner and Landes were not writing satire.

**Buying and selling babies.**

Posner and Landes propose that the system of adopting children through agencies be replaced by a free market in babies, where adoptable babies would simply be sold to the highest bidder. They tirelessly enumerate the advantage of establishing a baby market:

*At a higher price for babies, the incidence of abortion, the reluctance to part with an illegitimate child and even the incentive to use contraceptives would diminish because the costs of unwanted pregnancy would be lower while the [opportunity] costs to the natural mother of retaining her illegitimate child would rise....*

*Thus the effect of legalizing the baby market would be not only to shift the marginal cost of baby production and*



Richard Posner, a former colleague of Milton Friedman, could soon be a Supreme Court appointee.

**U.S. Appeals Court Justice Richard Posner, a Reagan favorite, believes in “free baby production and sale” to reduce the incidence of abortion and even the use of contraceptives.**

change regulation and workers' compensation laws because of their alleged inefficiency.

But Posner has not flinched before the most controversial applications of his method. As a Seventh District Appeals Court judge stationed in Chicago, he has argued against allowing free counsel to prisoners who bring civil rights suits. According to Posner, a prisoner should have to test the viability of his suit by seeking an attorney who was willing to take the case on a contingent fee.

Posner's most startling application of “law and economics” came in a 1978 essay published in *The Journal of Legal Studies*, written with Elisabeth Landes, on “The Economics of the Baby Shortage.” Posner and Landes' essay bears a striking resemblance to Jonathan Swift's

*sale downward but to move the demand curve for adoptive children upward....*

They even raise the possibility of warranties and of economic planning of babies—or eugenics. They write, “In a regime of free baby production and sale there might be efforts to breed children with a known set of characteristics that could be matched up with those desired by prospective adoptive parents.”

Posner and Landes run through a series of objections to their proposal—they insist they do not believe that parents “should have a right to sell older children”—but they curiously ignore the most basic objection of all: that human beings, from birth to death, should not be treated as commodities, but as ends in themselves. Since such an objection falls outside the scope of Milton Friedman's

economics, they do not consider it. The actuary's green eyeshade blinds them to the principles for which many Americans died in the Civil War and in World War II.

Other proponents of “law and economics” do not necessarily share Posner and Landes' view of babies or Posner's view of prisoners (“would the objection to medical experimentation on convicts remain unshaken if it were shown persuasively that the social benefits of such experiments greatly exceeded the costs?” he asks), but they share the premises from which such conclusions follow. “Law and economics” reduces morality to the market.

**Right-wing radicals.**

Both the libertarians and the conservatives have championed “law and economics.” An October 26 conference in Washington sponsored by the libertarian Cato Institute on “Economic Liberties and the Constitution” highlighted Scalia and University of Chicago professor Richard Epstein, who took over the editorship of *The Journal of Legal Studies* from Posner when Reagan elevated him to the bench. In the conservative Heritage Foundation's *Policy Review*, Richard Vigilante included Bork, Scalia and Epstein in his list of the four most desirable

Supreme Court nominees.

“Law and economics” illustrates the darker side of American conservatism. The free-market jurists present their ideas as an attempt to restore liberties Americans once had. And by eliminating the minimum wage, workers' compensation, anti-trust laws and other forms of business regulation, they would restore to corporations a degree of freedom they have not enjoyed since the 1890s, while depriving the employees of those corporations of a host of freedoms that do not readily fall within the libertarian calculus.

But by extending market principles to areas of life formerly ruled by love, friendship and individual responsibility, they would fashion a capitalism only vaguely imagined by Aldous Huxley's *Brave New World* and Jean Luc Godard's *Alphaville*. And by extending the market to human beings themselves, they would lay the foundation for the kinds of excesses in the name of wealth and progress practiced by the Stalins and the Pinochets.

In his second term, Reagan may get to appoint as many as five new justices. The Democrats on the Judiciary Committee would be well advised not merely to ask nominees what they think about fetuses and Christmas *creches*, but what their opinion of “law and economics” is. ■