Houston Objectivism Society

Vol.6, No. 6 December 1993 Newsletter

Mock Debates at December Meeting

On Saturday, December 11, two mock debates will be presented. Jeri Eagan and Janet Wich will debate the propriety of sexual harassment laws, while Brian Phillips and Dwyane Hicks will debate different systems of land use. After initial arguments and rebuttals, questions from opponents and the audience will be addressed. (Attendees will be asked to check their guns at the door.)

Following the debates, HOS will have a Christmas party, featuring a "progressive" gift exchange: Everyone will bring a wrapped gift ($10 or less), and numbers will be drawn by lottery. The person with the lowest number gets to select the first gift. The person with the second lowest number selects the first person's gift or an unknown one, etc., until everyone has a gift.

Please join us at 6:30 pm, Saturday, December 11, at the Phillips clubroom. The gate code is still #5145.

Free Counsel Debated

At the November meeting, attorney Michael Mazzone examined issues surrounding the case of *Gideon v. Wainwright*, argued before the U.S. Supreme Court in 1963. Michael introduced the facts and issues of the case and then played an audio tape featuring the arguments made before the court.

After playing the tape, Michael led a discussion of the issues, focussing mainly on the question of whether defendants should be provided with counsel for criminal cases. This issue was spotlighted because it may affect Michael's battle against mandatory pro bono: Some have argued that if the provision of attorneys to defendants in criminal trials is proper, then this implies that attorneys should be forced to provide their services in all cases, criminal or civil.

After much debate, many of the attendees thought that the provision by the government of an attorney in criminal trials was proper. (For a further exploration of this issue, see the article on page 3.)

Attending an HOS meeting for the first time were Sean Rainer, a student in journalism, and Laura Lucas, a student in music, both attending the University of Houston. Welcome Sean and Laura.

Zoning Mortally Wounded

On November 2, Houston voters rejected zoning 52% to 48%, with about 25% of the registered voters participating.

For three years, the officials of the City of Houston have worked to bring zoning to Houston, culminating in an affirmative vote by the City Council this spring. Zoning advocates claimed that a vote on the issue was not needed since polls indicated a broad level of support. This would have been the end of the matter but for the efforts of The Houston Property Rights Association (HPRA), which successfully circulated a petition for a referendum on zoning. This successful effort stimulated the advocates of zoning to call for a non-binding vote on the issue November 2, in an effort to eclipse the more strongly worded referendum of HPRA. Zoning advocates were also forced into calling an election because of strong opposition, which belied their assertion that polls indicated a consensus of support.

Despite the results of the November election, the referendum of HPRA will still be voted on in January. But the second vote is not redundant since the referendum adds to the City Charter the requirement that future attempts to zone be accompanied by presentation to the public of a zoning plan, followed by a six-month period for debate prior to a binding referendum on that plan. In addition, any existing plan is nullified.

While this second vote only requires an election on any future attempt to zone Houston, its defeat would surely be used by advocates of zoning as a justification to reverse November's rejection of zoning. In effect, zoning is dead until January, at which time it may be necessary to drive a wooden stake through its heart.

While the defeat of zoning in the election may not be sufficient to bury it, this defeat was crucial.

Many members of HOS contributed to the defeat of zoning by providing money, volunteering for work and by spreading the right ideas. While those ideas were absent from the most publicized means of debate (billboards and television ads, sponsored by Citizens for a Better Houston), they were used in some editorials and bolstered the arguments of many participants. In particular, opponents of zoning relied on Objectivist ideas when interviewed on television and radio.

Leadership in spreading those ideas was taken by Brian Phillips—in writing editorials and position papers, which were distributed to all participants on both sides, and in delivering speeches to various groups—and we congratulate him for his part in defeating zoning. Initially Brian and Warren Ross wrote a position paper on zoning which was distributed to approximately one hundred employees of communications media. This position paper was also distributed at meetings of various groups throughout the campaign. Brian thereafter wrote a series of articles dealing with several topics subsumed by zoning. In all, approximately five thousand pieces of literature were distributed.

The most likely current threat from advocates of zoning, though it was defeated, is the future passage by City Council of piece-meal ordinances which violate the same property rights. Still, this victory should be savored, and it should serve as an example of the leveraging power of good ideas.

INSIDE

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Over the Halloween weekend, Objectivists gathered in Austin for the fifth annual Texas Objectivist Societies Conference.

This year five papers were offered to attendees, along with the usual mix of workshops and entertainment. In addition, Yaron Brook filled the meeting rooms with the luxurious prints and posters of *Values*, a commercial provider of romantic art.

Brian Johnson from Chicago started the conference with his examination of *The Thomas Jefferson Bible.* Then Brian Phillips completed the morning with *The Politics of Reproduction.* During Saturday afternoon, four workshops were given: Hans Schantz presented *Philosophic Premises of Quantum Mechanics*, Robert Garmong presented *Assault on the Ivory Tower: Objectivism versus Academic Philosophy*, Dina Garmong presented *They the Living: Existence under the Soviet Dictatorship*, and Paul Blair presented *Brahms: Piano Concerto No. 1.*

Conferees then dined at various Austin restaurants and returned for entertainment provided by the following: Michael Clover, Jay Garing, Hans Schantz and Chris Land. Entertainment was followed by a social gathering featuring a selection of ice cream sundaes.

Sunday morning was started with Paul Blair's *Limits to the Simulation of Human Intelligence*, followed by Jeri Eagan's *Rights in the Parent/Child Relationship.* In the afternoon, two workshops were given: *Space, Time and Gravity* by Hans Schantz and *Home Education: A Rational Alternative* by Gail and John Withrow. Robert Garmong closed the conference with his paper on *The Philosophy and Economics of the Division of Labor.*

Except for the conference of 1990, which was held in Houston, all the conferences have been held in Austin. Steve Rogers announced that the 1994 conference will take place in Houston and be chaired by Brian Phillips.

HOS members attending this year were Jim and Sandi Brents, George Marklin, Mary Heinking, Dwyane Hicks, Brian and Dawn Phillips, Jeri Eagan, Warren Ross, Chris and Lisa Land, J.P. Miller, Clark Hamilton, Janet Wich, Johnnie McCulloch, Richard Beals, Michael Gold, Bonnie Berchenhoff, Bob Peterson (California), and Bennett Karp (New Jersey).

Celebrating "The Year of Objectivism" in Boston

by
Bennett Karp

Leonard Peikoff's lecture at the Ford Hall Forum on Sunday, November 7 highlighted an Objectivist weekend in Boston. Other major events included a banquet/auction sponsored by the Ayn Rand Institute and a reception co-sponsored by Second Renaissance Books and Values.

Dr. Peikoff spoke on the topic of "Madness and Modernism." His theme was the similarity between schizophrenia and modern culture. The title of Dr. Peikoff's talk was borrowed from a recent book by Dr. Louis A. Sass, *Madness and Modernism* (Basic Books, 1992). Dr. Sass, a psychiatrist at Rutgers University, points out in his book many similarities between schizophrenia and modern culture. He concludes that schizophrenics should be held in higher regard in our society. Dr. Peikoff, relying heavily on Sass's own material and agreeing on the parallels, reaches an opposite conclusion, viz., that modern culture is insane.

Madness, and especially schizophrenia, represents the low point of the human mind. "Culture" is associated with human achievement. Can you imagine a society, Dr. Peikoff asked, in which madness and culture are the same in all their essential characteristics?

Dr. Peikoff illustrated similarities between schizophrenia and modern culture in metaphysics, epistemology and ethics. In metaphysics, for example, the schizophrenic is entirely focused on his own inner world. "Why should we be *tied down* by reality?" asks a schizophrenic. Modern art expresses this same metaphysical view with its war against physical objects as expressed in its non-objective, non-representational approach. The modernists dispense with reality and seek to substitute for it their own "creative process," i.e., their own mental states apart from anything in the external world, i.e., consciousness apart from existence. In epistemology, the schizophrenic deals with a world of floating abstractions. He makes pathological use of overly abstract concepts and loses the ability to think in terms of essentials. Modern culture parallels schizophrenia with its over abstractness (e.g., linguistic philosophy), its poly-logisms, its intentional inaccessibility. "Thinking in essences is a disease," says one modernist. Since the schizophrenic and the modernist both reject the external world, they reject action in it and hence the pursuit of values. The schizophrenic adopts laughter, i.e., a laughing *at* something. Modern culture exhibits the same laughter syndrome with its nihilism.

The philosophic essence of schizophrenia is a personal version of the primacy of consciousness. Though the modernists distinguish, to some extent, at least in their everyday lives, between consciousness and existence, the essence of modernism, too, is the primacy of consciousness. The modernist seeks power over reality. He seeks to project what the schizophrenic is hospitalized for.

What explains the similarity between madness and modernism? The answer to such a fundamental question can be found only in philosophy. The philosopher who put an end to the primacy of existence in Western culture was Kant. "Kant has been where I am going," says one schizophrenic. The cure for the disease of modern culture is to reject Kantianism in all its forms and to grasp the same thing the schizophrenic needs to grasp. As one recovered schizophrenic put it: "This is it: reality."

A brief summary cannot do justice to a talk like this one. Readers can look forward to seeing the entire talk in *The Intellectual Activist* and to obtaining the tape from Second Renaissance Books.

The evening before Dr. Peikoff's talk, about 190 people attended the ARI banquet and auction. The event celebrated the 50th anniversary of *The Fountainhead* and 1993 as "the year of Objectivism." Nearly $94,000 was raised for the institute in spirited bidding for items donated by the Estate of Ayn Rand. John Ridpath, with occasional help from Harry Binswanger, did an excellent job as auctioneer. Ayn Rand's handwritten manuscript for her final public lecture, "Sanction of the Victims," brought in the largest sum: $25,000.

Aside from the items auctioned off for ARI, four extra items were auctioned off (as a group) to benefit Ford Hall Forum, which Miss Rand always held in high regard for its intellectual honesty and for its truly being open to all views. The items—the May 1960 letter from the Forum inviting Miss Rand to speak and her acceptance letter; Frank O'Connor's invitation to that first talk, "The Intellectual Bankruptcy of Our Age"; the Forum's letter praising Miss Rand's first talk and inviting her back and Miss Rand's response; and Miss Rand's edited transcript of her answer to the question on the Nazi march in Skokie, Illinois—went for $7,000.

Before the auction began, Dr. Peikoff read excerpts from Miss Rand's correspondence with fans of *The Fountainhead*. These fascinating letters, written in the mid-1940's, illustrate Ayn Rand's intellectual powers and exemplify her approach to ideas. One reader had asked Miss Rand what kind of god Roark would love and serve. Miss Rand, offended, responded that "Roark" and "serve" don't go together. Roark does not serve; he is an end in himself. A rather concrete-bound reader had complained that Miss Rand had misrepresented granite-quarry pay scales. Showing the depth of her research, Miss Rand reminded the reader that the passage in which Roark worked in the quarry was set in 1928, and she gave reference by which she had checked on the pay scales that were in effect at that time. This and other of Miss Rand's correspondence will be the topic of a lecture by Michael Berliner at the Second Renaissance conference next summer. Miss Rand's correspondence will be published "soon."

Overall, it was an action-packed, intellectually stimulating weekend. Along with the Texas Objectivist Societies Conference one week earlier, it made for a wonderful two weeks for those of us fortunate enough to be able to attend both events. $

Right to Counsel

by
Dwyane Hicks

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence [emphasis added].

In 1961, Clarence Gideon was convicted of breaking into the Bay Harbor Poolroom in Panama City, Florida. While in prison, Gideon asked the Supreme Court to hear his case, based on his contention that trying a poor man without giving him a lawyer deprived him of due process of law, as guaranteed by the fourteenth amendment.

Unknown to Gideon, the Supreme Court had ruled against his contention in 1942 with *Betts v. Brady*, and the ruling had stood for twenty years. *Betts* had ruled that the lack of counsel due to poverty was not a denial of "fundamental fairness" unless the defendant could show that he was a victim of "special circumstances", which could be any of the following: illiteracy, ignorance, youth, mental illness, the complexity of the charge against him or the conduct of the prosecutor or judge at the trial. In short, "fundamental fairness" was to be assumed in state trials, despite the absence of an attorney for the defense. This was the law until Gideon's case was resolved in 1963.

In *Gideon v. Wainwright*, the Supreme Court reconsidered *Betts* and found that poor defendants were to be provided an attorney in the interest of ensuring fair trials. The basis for this ruling was that the Fourteenth Amendment's guarantee of "due process" included the Sixth Amendment's right "to have the Assistance of Counsel."

This conclusion, however, is deceptively simple, and a brief history of the issues is necessary to see what this case resolved.

Prior to 1937, the poor were not provided an attorney in state courts or in federal courts. This was so because courts recognized that the "right to Counsel" was stipulated in the Sixth Amendment in order to ensure that defendants could hire a lawyer and bring him into court. The Founding Fathers thought this precaution necessary in order to preclude the English practice of barring lawyers for the defense in felony trials.

Thus, the Founders' view of "right to counsel" comported with their view of rights in general—that a right was a sanction to take action, not a claim on services or goods provided by others.

Prior to 1937, a court might, at its discretion, have counsel furnished, but, in that year, *Johnson v. Zerbst* quietly ruled that federal courts *must* provide counsel to the indigent in federal trials, using the Sixth Amendment as justification, but without discussing its purpose of overcoming the English rule against counsel. Justice Black wrote the opinion, in his first term on the Supreme Court, as he would twenty six years later in *Gideon*.

In *Johnson*, Justice Black's opinion prevailed, although by a bare majority, perhaps because of very few federal crimes at that time and because federal courts were the province of the Supreme Court but also because Democrats of the Roosevelt era had reversed the Founding Fathers' view of rights, from liberties to claims, as mentioned above. Ayn Rand described this concept reversal of the 1930's in "Man's Rights" in *Capitalism: The Unknown Ideal*. One might entertain the thought that this concept reversal was too subtle to notice or appreciate in regard to the provision of counsel, but the same court proved otherwise, as we shall see next, in 1942 with *Betts*.

Betts dealt with the same issue of providing free counsel but in state court, not federal. Confronted by the prospect of comanding the states to provide free counsel to indigents, the Court suddenly found that a historical study to ascertain the meaning of the Sixth Amendment was relevant: "Justice Roberts first reviewed the counsel provisions of the thirteen original states at the time of the writing of the Constitution and concluded that they were designed not to assure lawyers for the poor but to reject the English common-law rule and let those

who could afford it retain counsel" (See *Gideon's Trumpet*, Anthony Lewis, p.110)

Justice Roberts also found that contemporary state courts were diverse in their handling of the issue: some states required appointment in all cases, while some permitted it at the court's discretion. Justice Roberts had voted with the majority in *Johnson* to require appointment of counsel at the federal level, but in *Betts* he wrote that "appointment of counsel is not a fundamental right, essential to a fair trial. On the contrary, the matter has generally been deemed one of legislative policy." Thus, each state was left to decide the issue until *Gideon* in 1963.

The decision of *Betts*, to regard appointment as less than a fundamental right, did not affect the regard for that right at the federal level. In subsequent cases, rights continued to be regarded as claims, not liberties. With *Betts*, the word "fundamental" meant only that the Sixth Amendment was deemed a restriction on the federal government, but, expediently, not on the states.

If the reader is surprised to learn that the Bill of Rights is not always a restriction on the states, as it is, officially, at least, on the federal government, Harry Binswanger illuminated this subject in the December 1987 issue of *The Objectivist Forum*. To state the issue briefly, the Fourteenth Amendment was written so as to "incorporate" the Bill of Rights as restrictions not only on the national government but also on the states. The Supreme Court, however, sabotaged this aspect of the Amendment in the *Slaughterhouse Cases* of 1873, and the issue of "states' rights" survives even today, despite, as Binswanger points out, the victory "of the *Union* forces over those of the *Confederacy*."

Instead of "incorporating" wholesale the Bill of Rights against the states, the Supreme Court has used the "due process" clause of the Fourteenth Amendment to apply selectively the provisions of the Bill of Rights to the states. Thus over the years, the Court has accepted in a piece-meal and subjective manner only those rights deemed "'fundamental' by society," a historical process described by Justice Cardozo as a "process of absorption" of those rights "implicit in the concept of ordered liberty." As late as 1922, that process had still not accepted even the First Amendment as a protection against action by the states.

Given this historical review of the context of *Gideon v. Wainwright*, it remains to ascertain whether an indigent defendant *should* be provided with an attorney, whether in state or federal court. The legal justification has primarily been that the complexity of the law has made the attorney for the defense as necessary an officer of the court as the judge or the prosecutor, in order to ensure "due process" and a fair trial. But a concomitant view has been present from the start. In the 1937 *Johnson v. Zerbst*, Justice Black quoted from an earlier case: *Consistently with the wise policy of the Sixth Amendment and other parts of our fundamental charter, this Court has pointed to "...the humane policy of the modern criminal law..." which now provides that a defendant "...if he be poor,...may have counsel furnished him by the state...not infrequently...more able than the attorney for the state." (Patton v. U.S., 1930)* The "humane" portion of this statement comports with the atmosphere surrounding the argument and decision of *Gideon*, an atmosphere of extending "welfare rights" to the arena of the law. It was assuredly this view of the issue which motivated Anthony Lewis, a liberal columnist, to write the popular book *Gideon's Trumpet* and inspired the movie of the same name, starring Henry Fonda.

It is not surprising then that current efforts to impose mandatory pro-bono services on attorneys is presented as merely an extension of the "the right to counsel", even in civil cases. (See HOS Newsletter, December, 1991.) But this conclusion is suspect in a number of ways, even if one agrees with the outcome of *Gideon v. Wainwright*.

1. The provision by the government of an attorney for the defense in criminal proceedings is not a "welfare right" but a procedural means of protecting individual rights, justified for the same reasons that require the alleged victim to be represented by a competent prosecutor. (As a result of this justification, the provision of an attorney should be offered independent of the defendant's economic status, i.e., not only "if you are unable to afford one.")

2. Even if provision of an attorney is held to be in the nature of a "welfare claim," holding only one group of citizens, attorneys, responsible for providing such claims is indefensible, although predictable in a society progressively deprived of rights.

3. Outside of criminal law, the defendant is not necessarily threatened with a loss of his rights; therefore, the provision of an attorney may not be justified, despite upholding the validity of *Gideon*.

To elaborate on this point, a brief outline of the classifications of law are necessary. Distinguished from criminal law is civil law, which is divided into tort, contract, family and "regulatory" law. Although there are exceptions, particularly in the area of regulation, civil law is generally different from criminal in that the defendant is not threatened with punishment which involves a loss of rights, i.e., loss of life, liberty or property. It's true that the property which the defendant considers his may be at risk, but the purpose of adjudication in the civil realm is to determine whether that property *is* properly his, not whether it should be an object of punishment. (One exception to the principle of punishment being absent from civil law is the existence of punitive damages, an exception which is unjust: Given the civil law's function of resolving disputes by assigning values to one party or another, the burden of proof is lowered from that required in criminal court. Thus, punitive damages are punishment meted out in avoidance of the standard, "beyond a reasonable doubt.")

In criminal law, the defendant is threatened by a loss of his rights, not just by a loss of values, however important (for example, property or child custody). This threat is an incapacitation of his ability to gain such values. This is different from civil law, even in the area of torts, which involves suits concerning intentional acts, negligence and strict liability. In regard to torts concerning intentional acts, the law formally treats such acts from both perspectives, from the perspective of punishing an individual with loss of rights in the criminal trial and from the perspective of granting awards from losses in the civil trial.

Thus to a great extent (limited only because of the existence of a mixed economy), the basis for a distinction between criminal law and civil law is the same basis for providing attorneys to defen-

dants in criminal trials only. While defendants obviously need legal representation in civil matters, such a need is attendant on the pursuit of values, which are always at risk beyond the threat of criminal behavior. To the extent possible, one is protected from such risks by normal commercial means, here, by purchasing insurance for legal services or by the offering of contingency fees.

In any event, the acceptance of the position that defendants in criminal trials should be provided legal counsel by the government does not depend on a welfare-state argument, and it does not imply that such provision should extend to the civil arena. $

Comments deleted by newspapers are shown in italics.

Houston Post—11/5/93

The distortions by The Houston Post concerning zoning continued with its editorial about Houston's rejection of zoning on November 2.

The election results showed that the so-called consensus for zoning excluded the voters. And contrary to the view that a grass-roots effort was stymied by wealthy developers and lies, it was a battle between government-financed elitists and grass-roots organizations with members of every economic level spreading the word about what zoning entailed, *a service notably absent from the smear campaign conducted by the Post.*

Adding insult to injury, the Post asserts that the voters are simply fools. Could it be that they are concerned for their rights instead? *That they are fearful of a government body controlling all property use in Houston and thereby forcing on them a "quality of life" to which they do not agree?*

In advocating zoning, the Post showed itself to be contemptuous of individual rights. The attitude displayed *by the Post* for the decision of the voters shows its contempt for their judgement nd concerns. *It is this attitude that really nks.*

Dwyane Hicks

Houston Chronicle—11/13/93

Before evaluating "political correctness", one should first identify what it is: "Political correctness" is the moral and political demand that all ideas and actions should respect and conform to a certain view of human nature.

That view is that one's identity is determined not by one's thinking, values or behavior, i.e., by the characteristics over which we have control, but by one's gross physical attributes, especially one's race, gender or physical handicap.

As a result of this crude view of human nature, our society is not becoming "color-blind" or "sex-blind", but instead is increasingly looking to our physical characteristics to evaluate the worth of individuals and even the truth and acceptability of ideas.

The source of this view is not the KKK, "skinheads" or radio talk shows but our universities, where the ideal of intellectual diversity in pursuit of truth has been replaced by ethnic diversity. If the crude racists in our society are judging everyone by the color of their skin, they are only adhering to what is taught in the classrooms devoted to multiculturalism: that race is what's important. But one cannot fight collectivism based on race or gender by accepting and advocating it.

A benevolent society is built on the sanctity of the individual, not on the group, and on a profound respect for that capacity which is every person's birthright and source of real self-esteem—a reasoning mind. "Political correctness" celebrates a conforming mind, which is no mind at all, and that is the doctrine which our universities, particularly their philosophy departments, are delivering to our society.

"Political correctness" racism and sexism will disappear when our universities teach a valid concept of human nature: one that acknowledges free will, the competency of the individual mind and individual responsibility for one's character and behavior.

Dwyane Hicks

Houston Chronicle—11/26/93

Now that the North American Free Trade Agreement will become law, it is time for President Clinton to recognize the connection between his position on this issue and his position on other issues—specifically his program for health-care reform.

If the president would think in terms of principle, he would not be proposing to socialize the health-care industry. Instead, he would be proposing MIFTA—Medical Interaction Free Trade Act.

Just as the government has no moral right to intervene in a voluntary transaction between two individuals trading in the United States and Mexico, so it has no moral right to intervene in a voluntary transaction between two individuals—the patient and his doctor—trading solely within the borders of the United States.

Warren S. Ross

CALENDAR of HOS Events for 1993/94

December 11: Mock debates with issues of the day.

January 8: "How Come?"—Chris Land.

February 12: To be announced—George Marklin and Mary Heinking.

March 12: Intro to Objectivism—Dawn Phillips and Chris Land.

April 9: Pamphleteering—Warren Ross.

May 14: Objectivism at work and play—Johnnie McCulloch.

June 11: Current events and essays—Keith Robertson.

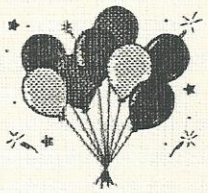
July 9: Mock trial—Matthew Gerber.

August 13: Arguing ideas—Clark Hamilton.

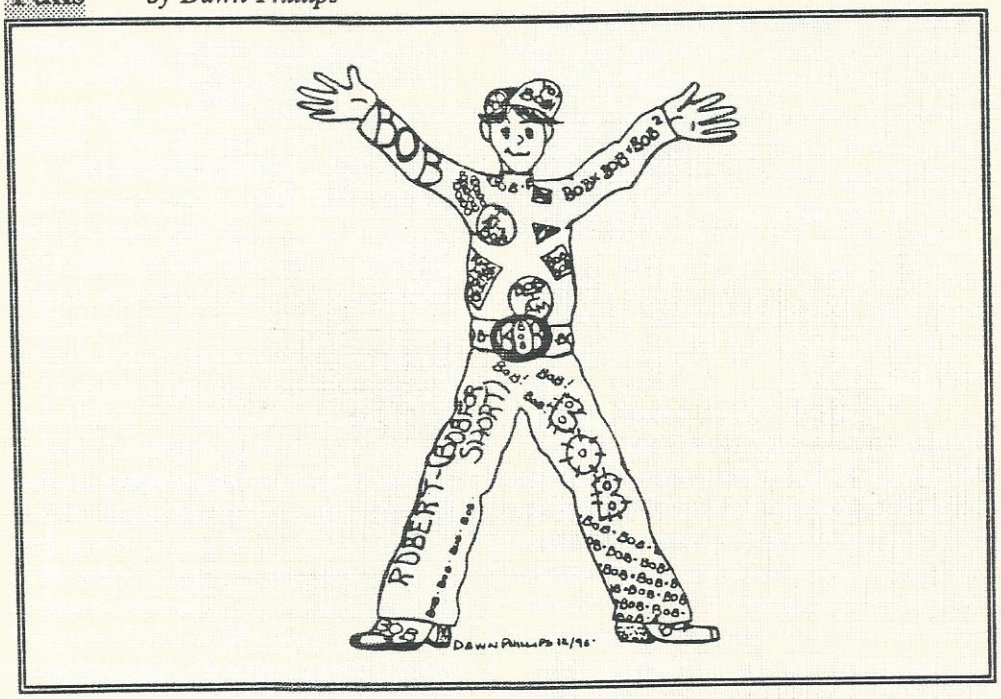
Announcements

$ The Ayn Rand Institute has announced the establishment of the Objectivist Graduate Center (OGC). The OGC will be an educational institution dedicated to training Objectivist teachers and writers, a task "essential to the spread of Objectivism and the establishment of a new philosophic foundation for our culture." Classes will begin this January in southern California, and the initial faculty will consist of Leonard Peikoff, Harry Binswanger and Peter Schwartz.

$ Merry Christmas and Happy New Year.



Yuks *by Dawn Phillips*



Bob's initial grappling with the Law of Identity

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