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Breast Cancer at 35 A Diary of Youth and Loss

By PEGGY ORENSTEIN

What's a Nice Jewish Lawyer Like John Rosenberg Doing in Appalachia?

Staying put. That commitment helps explain why legal service attorneys in eastern Kentucky have won over the locals, even as conservatives in Washington try one more time to cut off their funds. **By Michael Winerip**

The first time John Rosenberg drove into David, Ky., in the early 1970's, fresh from Washington and eager to fight the War on Poverty, he was struck by how little there was there. What once had been a thriving coal camp of a hundred homes, a company store, a swimming pool and ballfields had become an Appalachian shantytown of boarded-up shacks. When the coal was mined out, the company abandoned David, Ky., selling the town to an absentee landlord. On the day that Rosenberg appeared out of the East, 30 tenant families remained. Untreated sewage flushed into the creeks. Residents had to cart in their drinking water. People giving directions to David joked, "It's right on 404 — you can't miss it, unless you get lucky."

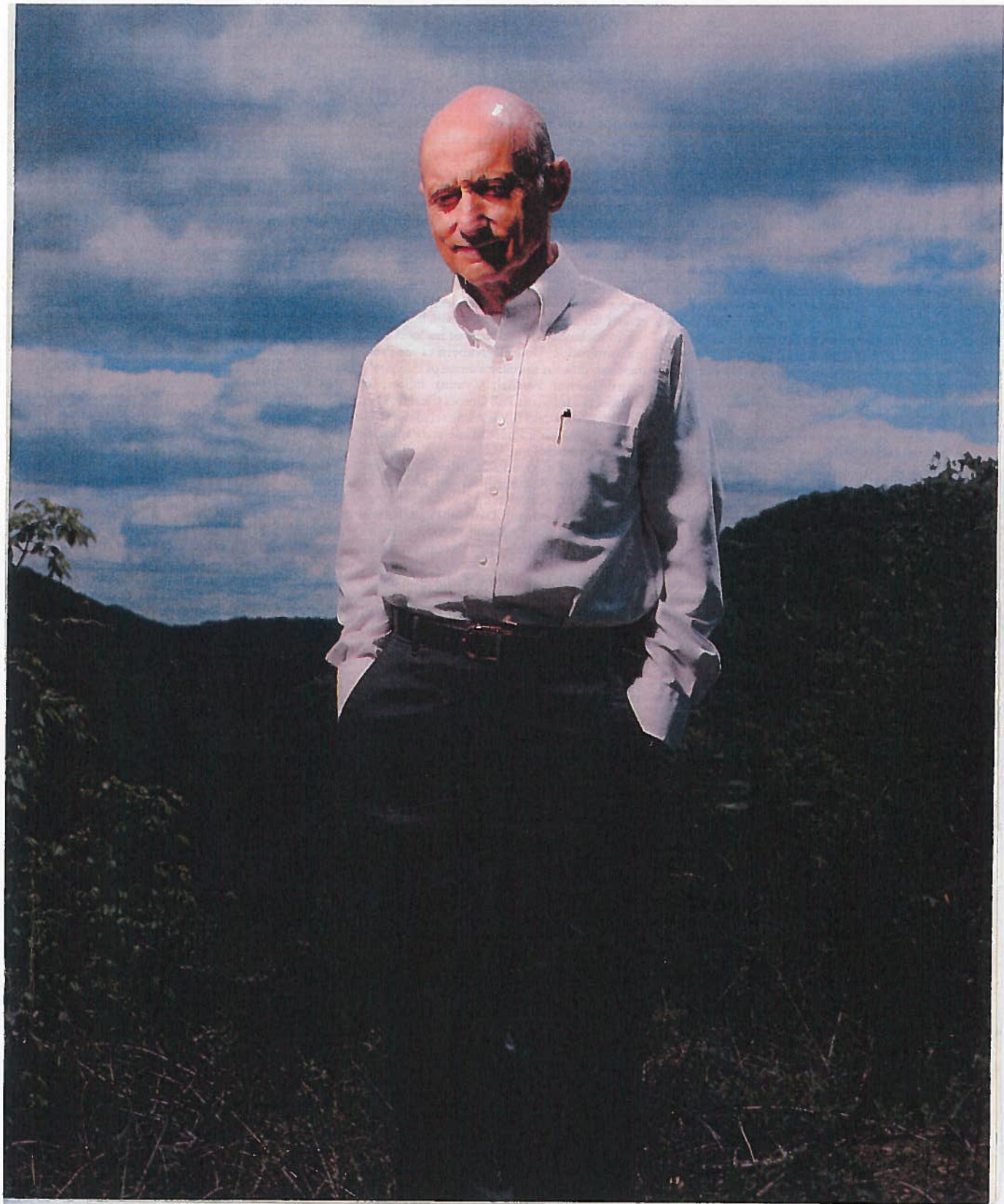
That first time John Rosenberg drove into David, the townspeople eyeing this bald-headed lawyer in a Volkswagen bus were also struck by how little there was there. Rosenberg is 5 feet 5 inches tall, 135 pounds — small even for a legal service lawyer — and easy to underestimate. He has a high-pitched voice, and when he gets excited about something, which is often, he squeaks. Townspeople had trouble sizing him up; he does not stand still very long. "Whirlwind guy," says Danny Greene, a resident.

Rosenberg went to David to help the remaining families in a tenant dispute with the town landlord. He is still there, a quarter of a century later.

The landlord had seen the downside of owning a town and quickly agreed to sell David for \$110,000. Rosenberg drew up incorporation papers and helped tenants buy their homes. He supervised applications to get grants for new water and sewage systems.

When the rebuilding faltered, Rosenberg responded in classic fashion: he assigned the town its own lawyer. Rosenberg runs an 11-office legal service operation in eastern Kentucky that stretches over an area twice the size of New Jersey, and he never has enough attorneys to

Photograph by Ted Rice



go around. But he took the risk of assigning one full time to the little town, giving his new man the usual marching orders. "John always says, 'Good lawyering is not just sitting behind the desk,'" said David Rubinstein, who came to the town right from law school.

The new lawyer's first assignment was to dig a large hole. A water main was supposed to be buried three feet down so it wouldn't freeze, but townspeople suspected the contractor had cut corners. So Rosenberg's attorney got a tape measure and a shovel and dug a ditch. "Contract compliance," they called it. The pipe was relaid.

Good lawyering helped the town thrive. Today David has grown to 300 people, an enclave of modest, well-kept homes. In the old company store, a free private school opened for poor children failing in the public schools, and Rosenberg joined the school's board. Whenever the school had a crisis, Rosenberg sent a lawyer. In 1989 the school wanted to put up a new building on town land but was blocked by a coal company that held the mineral rights. "I was panicking and called John," said Danny Greene, founder of the David School. Branham & Baker Coal Company held all the legal aces. Still, the company gave in. Taking on poor children and Rosenberg would have been a public relations nightmare.

One day this spring, Rosenberg drove down State Road 404. He parked in front of the new school that opened in March, a two-story cedar-

tion of the Republican Congress in 1994, conservatives thought for sure they would finally end Federal financing of the nation's 300 legal service groups, but in 1995 and again in 1996, bipartisan support from across America saved the day.

The reason is so simple it usually gets overlooked: legal services has been around for a quarter of a century now, long enough for Rosenberg and his colleagues to become part of the establishment. Staff members in Rosenberg's 11-office program are influential in the towns where they live and work. Patricia Thomas, a lawyer in the Somerset office, is president of her county bar association; Ira Newman, lead attorney in Richmond, is president of his local zoning commission; Donna Blackburn of the Prestonsburg office is the chairwoman of that city's annual Pioneer Festival; Cynthia Elliott, in Jackson, is a soloist at Full Gospel Church; Dan Goldberg, who until his death directed the Columbia office, was a leader of the state's homeschooling association.

It is part of a remarkable national transformation. When Rosenberg arrived in 1970 to open the legal service group known as the Appalachian Research and Defense Fund, he was labeled a radical, a Communist, a "glorifier of the poor." Landlords refused to rent him office space. The Floyd County bar association president, Clifford Latta, wrote Washington urging that Federal funds be withdrawn. An article in the Kentucky bar journal mocked Rosenberg's

citizen in our community," says Latta, the bar association president who had lobbied to cut off Rosenberg's funds. "He's done wonderful things for eastern Kentucky."

For his part, Rosenberg says that was his plan all along. "This is my home," he says. "That's what this thing is all about. You may have to take on city officials or the coal industry, but you're doing it to make a better place to live."

He comes from the other side of the world, born Hans Rosenberg in Germany in 1931, just as the Nazis were seizing power. The family spent a year in a refugee camp in Holland, leaving on one of the last ships to America. In this country, his father, a teacher, found work in Southern textile mills. John Rosenberg graduated from Duke University and the University of North Carolina Law School.

He has spent all his life in public service. Before Kentucky, he was a lawyer in the Justice Department's civil rights division, an Air Force navigator and an Eagle Scout. It has made him a funny mix, an agitator who has a refugee's chauvinistic love for America. "I always thought one of the things that made this country great," he says, "is that the Federal Government would give us money to sue the Federal Government."

At age 65, there are no signs he's easing up. Asked about his energy level, Karen Alfano, head of his Hazard office, said: "He called me twice at home on Sunday. Does that answer your question?" On the way back from David, he

'One of the things that made this country great,' says Rosenberg, whose family fled Germany in 1939, 'is that the

log building with science, computer and home economics labs. Though legal service attorneys are criticized for being obstructionists, Rosenberg has spent 27 years in Appalachia helping to build things — playgrounds, a science center, the town of David, this school for Appalachia's poorest children. In the morning sunlight, the grassy, unmined mountains surrounding the new David School were a dazzling green, the air was full of birdsong and the sight so excited Rosenberg that as he spoke, he squeaked.

EACH TIME CONSERVATIVES IN CONGRESS have come close to killing Federal funds for the Legal Services Corporation — and there will be another battle this summer — little bar associations all over eastern Kentucky rally to John Rosenberg's aid. Letters of support pile up in Washington from Kentucky's Republican-controlled county associations (Pulaski, Laurel, Russell, Clinton, Wayne), as well as the Democratic counties (Letcher, Floyd) and from the guys in the middle, the Kentucky Circuit Judges Association.

And Kentucky is no aberration. With the elec-

group as "a propaganda organization whose avowed purpose is essentially propagandizing so-called problems in Appalachia."

By 1991, the very same Rosenberg was being given one of his county's top honors: induction into the Floyd County Chamber of Commerce Hall of Fame, along with Ed Music, a local Chevy dealer.

What makes this even more astonishing is that over the years, he was so busy suing the established powers. His two to three dozen lawyers repeatedly took on coal companies over safety and environmental issues, the Federal and state governments over benefits programs, banks to stop foreclosures, housing authorities to block evictions, a school district that charged poor children for books, another district that fired a one-legged bus driver.

But with time, as people realized that Rosenberg intended to stay, that he was sending his children to the same schools their children attended, that he wanted most of the same things they wanted, they softened toward him. Rosenberg worked on a volunteer effort to build a playground at Clark Elementary, a local public school. He and his wife, Jean, then a P. T. A. president, helped put together a gifted-children program there. They raised money for window shades. "John's been a very active

suddenly turned up the road where one of his attorneys, Steve Sanders, was at home on a day off, taking care of his 2-year-old quadruplets. "Steve won't mind if we drop in," Rosenberg said.

From the beginning, his goal was to create a first-class law practice for the poor, and he has done that. Even in the 1980's, when the Reagan Administration appointed a Legal Services Corporation board in Washington hellbent on killing the program, Rosenberg won top marks from monitors. A 1986 site visit reported that Kentucky lawyers and judges rate the program's legal work "as being superior to that generally found in the private bar."

Several attorneys have been with him two decades, though they could make more in private practice. The starting salary is \$23,500; the boss makes \$72,700. Three-quarters of the program's \$3 million budget comes from Washington.

Rosenberg drives an '84 Nissan with 238,000 miles on it and a rear bumper held together with duct tape. He and his wife, director of a women's support program at Prestonsburg Community College, live in a three-bedroom ranch house not as fancy as most Levittown houses.

INTAKE AT ONE OF ROSENBERG'S OFFICES IS A numbing parade of the most mundane cases. Forty percent are family matters like divorce,

Michael Winerip is a staff writer for The New York Times Magazine. His most recent article, "My Dear Cousin Julius," appeared in April.

custody, adoption; 25 percent are benefits problems — food stamps, disability, Medicaid.

There are not enough lawyers for all the divorces — staff was halved during the Reagan era — so priority is given to divorces involving domestic violence. Ada Thompson says her husband drank heavily and beat her for years. She had no money, and it was hard holding waitressing and cooking jobs. "I'd have to quit," she says. "You can't really call your boss and say, 'I won't be in today because my face is beat up.'"

It took her 20 years to leave her husband. "He was beating me in the kitchen — I was in a corner against the sink trying to find something to defend myself — and my daughter ran out to his service truck to find a gun. That stopped me. If she shot, I would have never let her take the blame. I'd have shot him again." She found a number for a women's shelter on the bathroom wall of the Kentucky Fried Chicken in Hazard.

"I came to legal services in the summer of '94 to get some legal protection," she says. "As long as I was his wife, he believed he could do or say whatever he wanted." She got an order of protection and a divorce. A Section 8 Federal housing voucher helped her pay for an apartment. Hazard Community College offered a program to get an associate degree. This fall, both Ada Thompson, 40, and her 17-year-old daughter will attend college.

Seventy percent of Rosenberg's legal aid clients are women. Lois Valentine, who runs a

called the Labor Department attorney, who testified that the miner had changed his story. Oppogard won. And still he is considered fair by opponents. "Tony maintains an excellent relationship with those of us who represent industry," said James D. Asher, a coal-company lawyer.

THE PROSPECTS FOR LEGAL SERVICES ARE iffy this year in the Republican Congress.

Conservatives argue that providing lawyers for poor people in civil cases is not the Federal Government's job. They see legal services as advancing a liberal, antibusiness agenda.

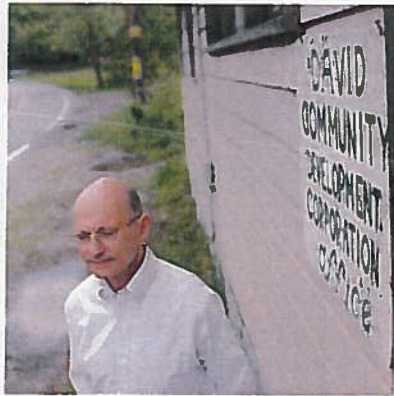
Representative Harold Rogers, the Republican from eastern Kentucky who is the chairman of the subcommittee overseeing legal services, issued angry warnings at a hearing earlier this year. "You are in the fight for your life," Rogers told legal service representatives. "I would do everything I could to be nice to the people that have you by the neck here, and that is the Congress."

Last year, 56 moderate House Republicans broke with the party's conservative leadership, joining the Democratic minority to continue the \$280 million program. As a condition for their support, Republicans had placed several new restrictions on legal services, banning class actions and prohibiting challenges to welfare reform.

Legal service programs in Hawaii and New York quickly filed court challenges, infuriating conservative Republicans. Rogers sent a shudder

1980's by moderate Republicans seeking to rein in the program. In 1981 Representative Bill McCollum of Florida won passage of an amendment that required each local program to have a board with a majority of its members from local bar associations. At the time, legal service lawyers reacted angrily, fearing they would be muzzled by their local bars.

Yet today, when Bruce Davis, executive director of the Kentucky bar association, is asked how legal service lawyers went from being the renegades to the establishment, the first thing he mentions is the intermingling of the two groups: "Over the years the legal service reps got to know the members of the bar. They bridged the gap. They joined the same committees. It's really



Federal Government would give us money to sue the Federal Government.

shelter program for battered women, relies on legal services because she can't find private attorneys to take cases pro bono. "You can't even get them to return a phone call," she said.

It is hard for city people to imagine how important one legal service lawyer can be in a place so isolated. Rosenberg's mine-safety expert, Tony Oppogard, has a long string of victories in safety cases against coal companies in eastern Kentucky, where there are few union mines left. He has no secretary, types his own grant proposals, does all his own investigating — as the Odell Maggard case illustrates.

Maggard was fired by Chaney Creek Coal after refusing to work with a faulty electrical cable that gave a shock so severe it knocked him on his face. As Maggard's Federal hearing was winding up, Oppogard worried it would take one more witness to win. A second miner had confirmed to Oppogard privately that the cable was faulty, but he would not testify, out of fear of losing his job. So that night, Oppogard took along W. F. Taylor, a U.S. Labor Department attorney, and went to see the miner. "We sat on his porch and I asked about the cable," said Oppogard. "He repeated it was bad, but said he wouldn't testify. I got out a subpoena and said, 'You're going to have to.'"

At the hearing, the miner would not confirm that the cable was faulty. But Oppogard then

through the hearing room when he asked, "What would it cost if the Congress wanted to shut down legal services but provided closedown costs?" Yet even members of Congress who damn legal services often point out they don't mean *their* local legal services. At the same hearing where Rogers threatened to blow up the program, he praised Rosenberg's operation as "a legitimate hard-working group that works on individual poor people's problems."

Indeed, Representative Rogers often has turned to Rosenberg's offices for constituency service. In 1993, for example, Lewis Herald, a Rogers supporter, spoke to a Rogers aide in Hazard about getting custody of his grandchildren. Rogers's aide referred him to Cynthia Elliott with legal services. She agreed the case had merit and helped Herald and his wife win custody.

Supporters say that privately Representative Rogers is torn. "They serve a very legitimate need out there, especially in districts like mine," he told The Lexington Herald-Leader a few years ago. But he is reluctant to defy party conservatives like Representatives Dick Armey and Tom DeLay, who want the program dead. (Rogers's spokeswoman, Susan Zimmerman, said he was too busy to be interviewed.)

The biggest reason Federally financed legal service is still around is changes in the early

been a matter of working together."

Rosenberg's group is one of seven Federally financed legal service programs in Kentucky. Each has a board. That means about 1,000 Kentucky attorneys active in their local bar associations have sat on a legal service board in the last 15 years. Over time, familiarity bred respect. "John Rosenberg is held in high esteem now," says Davis.

This is not peculiar to Kentucky. In 1995 and 1996, all 50 state bars sided with legal services against conservatives in Congress. The American Bar Association's biggest recent lobbying push has been for legal services, and in 1997 it has amassed a six-figure kitty for a lobbying blitz.

The annual battle for funds will play out in Congress this summer, but the ultimate decision gets made out in the country, based on the day-to-day performance of men and women like Rosenberg. For a decade now, he has been treasurer of the Floyd County bar. He sits on the board of one of the state's public universities. On May 1 he delivered the prestigious Law Day speech at the state capitol in Frankfort. Members of the Kentucky Supreme Court and state bar leaders sat up front. Before the Jewish refugee from Floyd County rose to speak, he was introduced by Chief Justice Robert F. Stephens. "John Rosenberg," he said, "has exemplified that which all attorneys should strive to be." ■