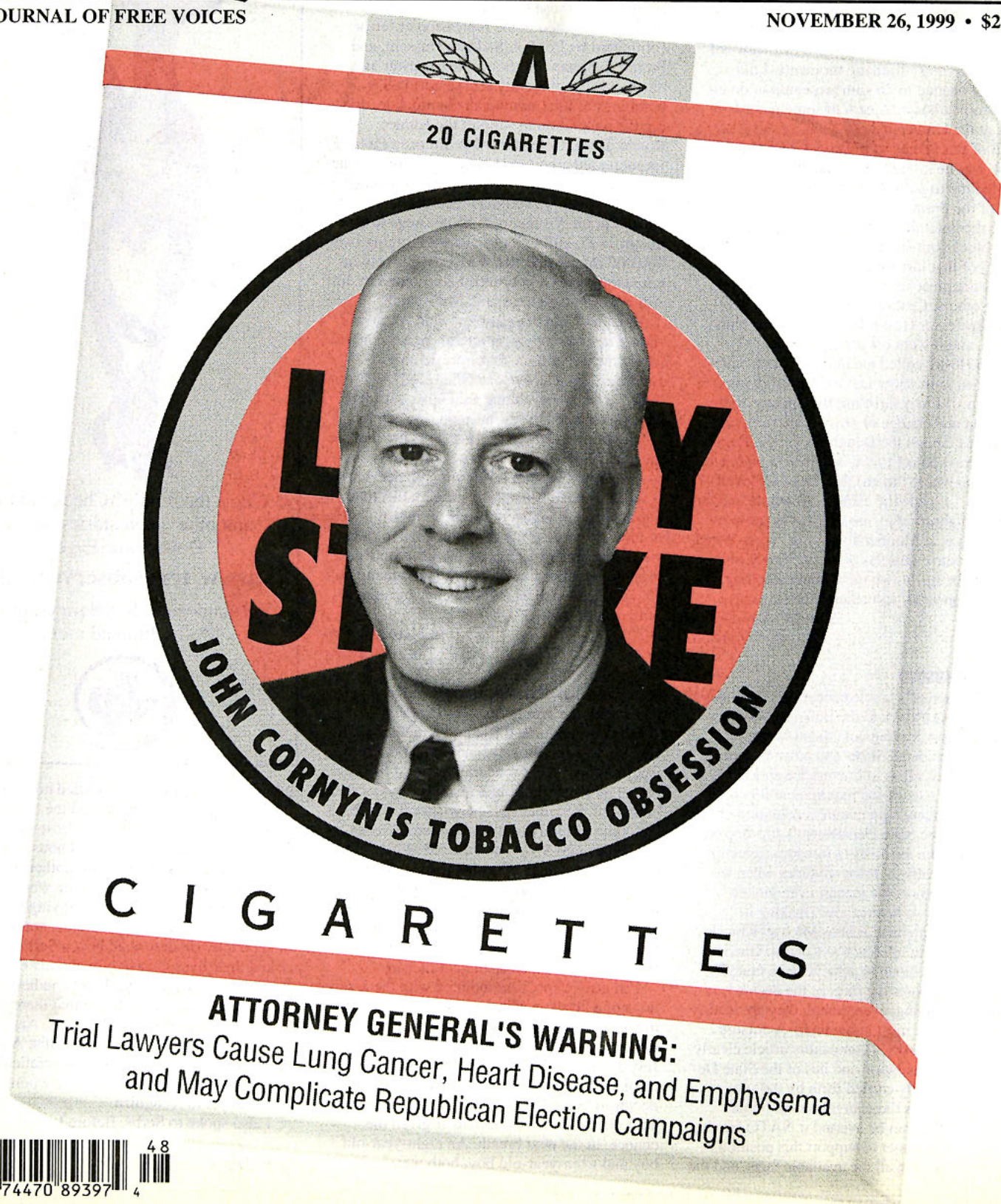


Dugger on Democracy • Lomax at the D.P.S.

THE TEXAS Observer

A JOURNAL OF FREE VOICES

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MOVING DAVY'S GRAVE

Re "The Sound of Toilets Flushing," by Jeff Mandell, September 3:

I was a student at Southwestern University in Georgetown from 1946 to 1948. In my last year, Professor George Hester asked me to do a few illustrations for a book he and a guy named Nunn were doing on the history of Texas. Two full page jobs were of the battles at the Alamo and San Jacinto. I did two bird's-eye views of each, of the most dramatic moments. I did both, but needed to do some research to do either. I took a bus to Austin to some records room at the University.

All of this brings us to Davy Crockett: where was he killed? My research, such as it was, led me to put his death somewhere in front of the dormitory or in front of the Alamo, where the defenders were in final retreat. In small blocks outside the birds-eye view [illustration] of that last day, showing where the walls were breached, etc., I indicated where, among others, Crockett had most likely perished. Professor Hester liked it and said Nunn did too, and it went off for the proofs.

Then Hester called me in a week later and said, "You must show Davy Crockett dying in the Alamo." I may have mildly objected to the white-out and change of arrows. He went on, "Seems as though the Daughters [of the Republic of Texas] object to this and have a plaque in the Alamo where (ahem) they *know* Crockett was slain." I made the change. About the power of the Daughters, they are as loyal as those in Virginia [i.e. at Monticello] — e.g., when asked where the slave quarters were, they only mumble about being "down there" but have long since disappeared, and change the subject.

*Stuart C. Van Orden
Perkins, Oklahoma*

THREE FOR KOSOVO

Richard Kraemer's article concerning the conflict in Yugoslavia ("Back to the Balkans," October 15), aside from leaving out crucial events that implicate the United States and other Western powers in their effort to fracture the area (such as James Baker's secession requirement for credit in 1991, Germany's premature recognition of Croatia, and the State Department's flip-flop on the K.L.A. from terrorists to freedom-fighters), writes, "Ironically ... there are times when we must use undemocratic means, even violent means, to achieve democracy" (making it what?). This statement echoes Michael Kingsley in the eighties, in reference to Central America: "We must shed blood to achieve democracy."

Kraemer ignores the facts of the events leading to the bombing, even though they are readily available and he must know them. A cursory reading of Chomsky's companion article clearly shows the manipulation and lies of the State Department willingly carried forth by the subservient media. Is there an imminent human catastrophe that can be averted if NATO bombs Serbia? For Kraemer to support this position at this late stage with all the available facts, and the

level of lying carried out by NATO/State Department, is a grotesque display of hypocrisy.

Kraemer then goes on to list cases of states warring against their own people, including the quote from Edmund Burke, condemning people who do nothing while bad things happen. What about condemning those people who actively contribute to those bad things? The U.S. actively participated in the repression or terror committed by Pol Pot, Saddam Hussein, and Franjo Tudjman. Pol Pot came to power as a result of the (apparently still secret) U.S. bombings of the Cambodian countryside, driving the population to support the Khmer Rouge. Bush, Dole, and Alan Simpson lobbied for increased credits to Hussein shortly after he gassed the Kurds in 1989, where he remained a friend to stability. Tudjman received U.S. tactical and military support as he lay siege to Krajina in 1995, killing thousands and forcing over 300,000 refugees to flee. The U.S. actively ignored the repression or terror committed by Idi Amin, Rwandan Hutus, and Milosevich.

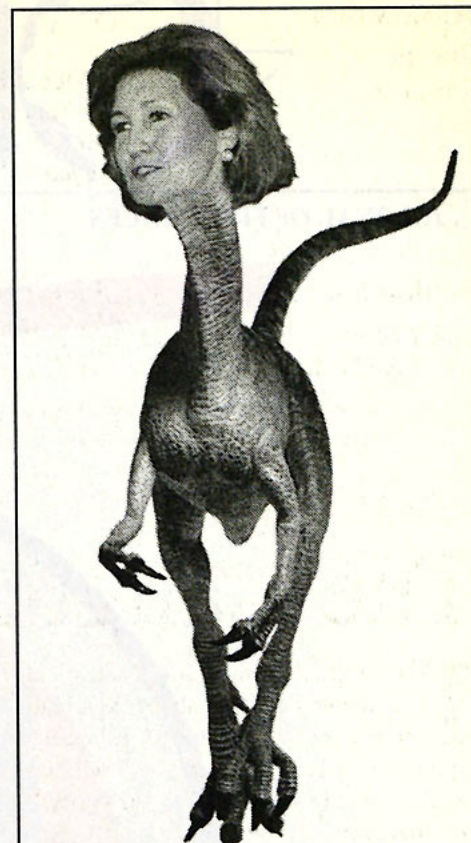
Kraemer's use of examples, which clearly show external support for internal repression, to justify the use of force to restore democracy, is supremely cynical. How can the U.S./NATO use violence when they, along with other outsiders, have precipitated the events requiring bombing?

The irony in Kraemer's article is not that we must use violence to achieve democracy, but that when we support or ignore violence when it suits our need for stability, the intellectuals in our culture rationalize this use of power, unable or unwilling to see the contradictions in their words. Kraemer belongs on the list with Rusk, Rostow, McNamara, Holbrooke, and many others, who ignore facts and evidence in support of the status quo.

*Hepburn Ingham
Houston, Texas*

As a journalist who was recently in Kosovo, reporting for the progressive *Dallas Peace Times*, I began to read Richard Kraemer's article "Back to the Balkans" with great interest. But no sooner had I read to the end of the first paragraph when I became dismayed rather than interested. Kraemer says he wishes the Serbs would be instantly transformed into Swedes, the Croats into Swiss, and the "Muslims" into Danes. How can an educated man, a professor no less, justify an admitted ethnic preference? If one were to say in America that one wishes all blacks would turn into Asians or all the whites would become Hispanics this would be correctly condemned as blatant racism.

I'm also deeply disappointed with the assertions of a "Balkan Mindset." Is there a "black" mindset, or a "white" mindset? I was in Kosovo, living with ethnic Albanians, from July 25 to August 11, 1999. I met an Albanian medical doctor who told me that he became a doctor to "save lives" in one breath, but said he'd gladly cut Serbs' throats if given the chance, in the next breath. An eight-year-old boy and a ten-year-old boy, both wearing



Who's the reptile? Check out this and other great stories on the Downhome Page.

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pseudo-military uniforms, smiled broadly as they took my photographer and me through the burned out Serbian section of Urosevac, gleefully explaining that the burned houses were the former homes of "Serbian motherfuckers."

But I also met a man in Greme who spoke warmly of his Serb neighbors, saying that the army and police are the problems, not the Serbian people. He described how a Serb family risked their lives to save him and his family from the Yugoslav army. I met another girl, a medical student, who told me that there "has to be peace" for Serbs and Albanians. And I remember Ibrahim Rugova, the pacifist Albanian Kosovar President, the only democratically elected leader in Kosovo, but one whom the U.S. has yet to recognize.

I also spoke to Serbs. Before I went to

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EDITORIAL ▶

The Language of Power

The politicians may not understand the theological talk about 'love and power' but, when the I.A.F. speaks to power, they listen respectfully," William Greider wrote in *Who Will Tell the People?* The Industrial Areas Foundation's language of love is the intellectual legacy of theologian Paul Tillich. But the language of power, the organization's *lingua franca*, was the language spoken when 5,000 members of twenty-four I.A.F. groups from seven states gathered in San Antonio on November 7.

Since 1988, I have attended a number of meetings of the state's I.A.F. organizations: Valley Interfaith in the Lower Rio Grande Valley; Communities Organized for Public Service (COPS) in San Antonio; Austin Interfaith; the El Paso Interreligious Sponsoring Organization (EPISO); the Metropolitan Alliance in San Antonio. I write about these events because, like Bill Greider, I am convinced that these community-based organizations are a rare sign of vitality in an otherwise moribund democracy. But they are difficult to write about, without writing a formulaic story: the people came, they met in convention, the leaders said this, the politicians said that, and a strategy was agreed upon. Reporters sometimes avoid these events because they are not "news."

At the San Antonio meeting I was overwhelmed by news and intrigued by one observation. The observation required walk-

ing to the back of the stage and looking over the heads of sixty or seventy people — elected officials, members of the business community, clergy high and low, and the I.A.F. organizers and leaders coordinating the event — who were facing the audience. What was first-term Congressman Charlie González seeing when Father Jimmy Drennan asked the 5,000 enthusiastic delegates to stand and endorse an item on the I.A.F. Domestic Strategy Agenda? How did this

"IT'S UNCONSCIONABLE THAT THE BOTTOM 20 PERCENT CAN SEE THEIR WAGES DECLINE WHILE THE TOP 20 PERCENT ACCUMULATE SO MUCH WEALTH."

event look to Congressman Nick Lampson, or Congressman Ciro Rodríguez, or U.S. Senator Kay Bailey Hutchison, or state Senators Rodney Ellis and Eddie Lucio, or House Ways and Means Chairman René Oliveira, or Bexar County Judge Cyndi Krier, or San Antonio Mayor Howard Peek? These elected officials were confronted with the angry enthusiasm of 5,000 people, who represent tens of thousands of votes. (Governor Bush was invited but, as he has in the past, declined to attend.)

Watching the convention from the back of the stage, I realized the I.A.F. had reversed the spatial dynamics of the ornate auditorium in downtown San Antonio. The audience was sitting on stage, watching a

demonstration of political power in the tiered seats on the floor and the balcony. The language of love was inaudible but the language of power was evident. And the politicians sat and listened respectfully.

There is also news. Since I started paying attention ten years ago, the Southwest I.A.F. (which began in 1974, when seven community leaders met to discuss the lack of drainage in South San Antonio) has developed into a regional power that might be described as the Interstate-10 Alliance. I asked I.A.F. southwest regional director Ernesto Cortes if the Southwest I.A.F. considers itself a national power, as its member organizations now extend from Houston to Los Angeles.

"You forget New Orleans," Cortes said. "We're a regional organization. We've put together a regional agenda responding to problems that are distinct to the Southwest. But they have national implications.

"There is grotesque inequality," Cortes continued. "It's unconscionable that the bottom 20 percent can see their wages decline while the top 20 percent accumulate so much wealth." The inequality Cortes describes is particularly egregious in San Antonio. Among the fifteen largest cities in the country, San Antonio has the second-highest number of people living below the poverty level. Half those living below the poverty level are between the ages of eighteen and fifty-nine. And most are working; San Antonio's current unemployment rate is lower

than 3.5 percent. Why are people working to remain poor?

The I.A.F. would argue that the city's generally low level of education has left working families bearing the consequences of the global economy, with mid-wage manufacturing jobs moving to cheaper labor markets abroad. It's worth noting that while the city of San Antonio has funded some COPS programs, it has put far more public money into subsidizing a service economy that provides low-wage jobs in the place of manufacturing jobs. The Alamodome, Henry Cisneros' tax-payer-funded, "if we build it, they will come" stadium is still awaiting its N.F.L. franchise. Seaworld received a tax rebate for a theme park that hires minimum-wage workers. And voters recently approved a new taxpayer-funded arena for the San Antonio Spurs, in which ticket sellers and concession stand employees will earn the minimum wage. (The Alamodome remains one of the rare exceptions in sports socialism: a stadium built for no team.)

Cortes mentioned none of those projects. But he envisions better uses of tax dollars. "There should be no public money for poverty-level jobs," he said. "No money for domed stadiums or arenas or hotels that pay minimum wages. Any time you make a public investment, it should be for something that pays living wages. There should

be no subsidies for poverty."

COPS is asking the city for an annual "human endowment investment" of \$16 million, divided among:

- A city-wide after-school program that currently serves 30,000 students in San Antonio public schools;
- An education partnership program that has provided college scholarships for 4,100 students and reduced the dropout rate;
- A job-training program that has placed more than 1,000 workers in jobs that pay an average of \$10.16 an hour;
- A program in the city's Alliance Schools, which provides after-school programs, curriculum innovations, and counseling for students and their families.

To raise the \$16 million in San Antonio, COPS and the Metro Alliance are asking for a sales-tax increase of one-eighth cent ("or perhaps more, if needed," Father Drennan told the crowd). The tax increase is smaller than the Alamodome sales-tax increment (no longer in effect because the stadium has been paid for), said COPS founding president Andres Sarabia.

The sales-tax increase will require a city council vote to refer the issue to voters for a May 2000 referendum. "If this passes, San Antonio will be the first city in the country to invest public money in a human development program," Sarabia said. He added that the new money will not supplant

the city's current general-revenue contributions to the programs COPS and the Metro Alliance have created.

The convention was not without its odd moments. No sooner than Senator Hutchison publicly pledged to support the Domestic Strategy Agenda than she stepped offstage and began backing away from her commitment. And Brownsville Senator Eddie Lucio told the convention he would kick off the \$16 million fund initiative by donating \$1,000 of his own money — a gesture that embodied all the dignity of a drunk slipping a twenty-dollar tip into a waitress' bra.

But the San Antonio meeting marked an important moment in the Southwest I.A.F.s quarter-of-a-century history. Local organizations such as COPS and Valley Interfaith have served as incubators for policy initiatives that will be replicated across the Southwest: a sales-tax initiative that began when Valley Interfaith agreed to support McAllen Mayor Othal Brand's proposed tax increase, only if money would be set aside for schools and libraries; an after-school program that was developed by the Metro Alliance in San Antonio; a market-driven job-training program that began as COPS' Project Quest in San Antonio.

"Think of a line that starts in Fresno, California, and goes south to Mississippi," Cortes said. "Everything below that line, that's where we're working now." — L.D.

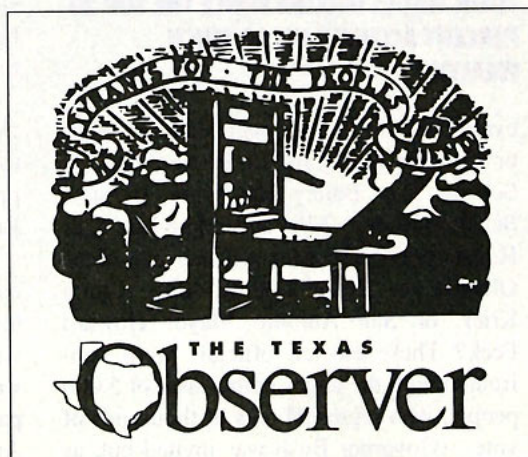
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La Familia

Laredo National Bank wants a retraction — and \$10 million. The retraction would clear the good name of Mexico's *Grupo Hank*, which bought into the Laredo bank and at one time controlled 70 percent of the its assets. The quarterly Latino journal *El Andar*, based in California, reported that the Hank family amassed some of its fortune in criminal enterprises — as well as banking and transportation enterprises that it takes credit for. It's the reporting on the Hanks' "criminal enterprises" that the bank (represented by the San Antonio firm of Davis, Cedillo, and Mendoza) wants retracted. The \$10 million, the bank's attorney Richard Cedillo writes in his demand letter to *El Andar*, will be used "to offset legal fees and expenses incurred in prosecuting your false and defamatory article worldwide."

"Worldwide" might be a stretch, but the Hank family, previously untouchable by the Mexican press, is getting more negative coverage than it ever experienced at home — in the form of secondhand reporting of the *El Andar* story in Mexican news outlets. (One of the oldest rules of journalism: if you can't report it yourself, report what was reported somewhere else.)

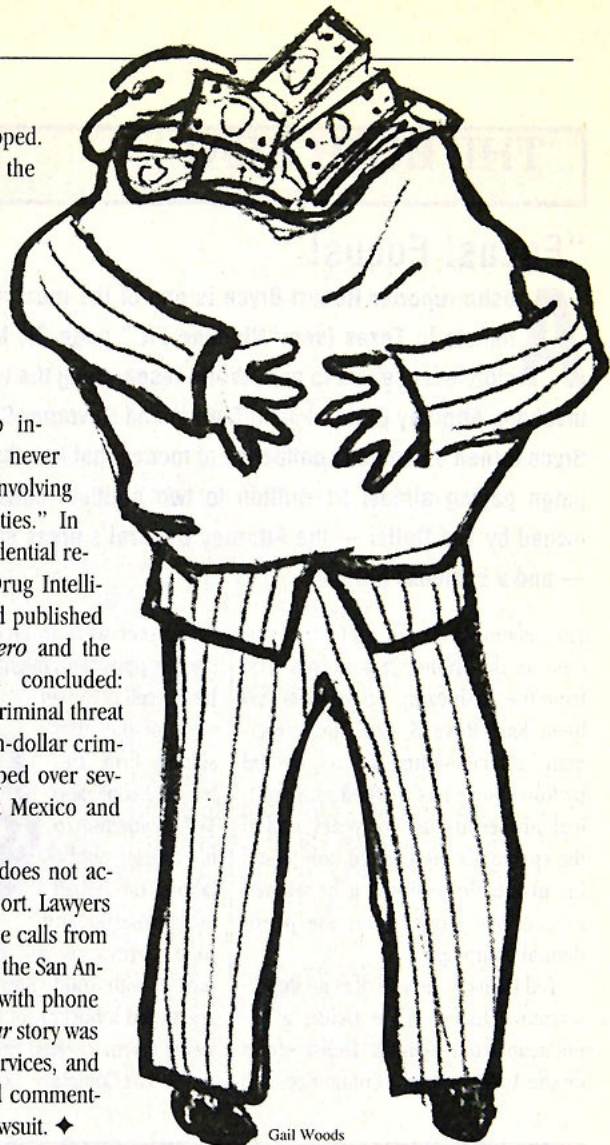
The Hank business combine is led by family patriarch Carlos Hank González, a former Governor of the state of Mexico and a power broker in the *dinosaurio* faction of the ruling Institutional Revolutionary Party (PRI). It was one of Hank's sons, Carlos Hank Rhon, who bought into Laredo National Bank.

El Andar editor Julie Reynolds told Left Field that the magazine refused to comply with the demand that publi-

cation of the article be stopped. (*Grupo Hank* filed suit before the magazine published the article, in response to an *El Andar* press release outlining the story. The Hanks have also recently threatened to sue the *Washington Post* and the Canadian Broadcasting Company.)

In his demand letter, Cedillo insisted that "the Hank family has never been accused of any wrongdoing involving drug or money-laundering activities." In July of this year, however, a confidential report by the National Center for Drug Intelligence was leaked to the press and published in the Mexican daily *El Financiero* and the *Washington Post*. The report concluded: "Grupo Hank poses a significant criminal threat to the United States. Its multibillion-dollar criminal and business empire, developed over several decades, reaches throughout Mexico and into the United States."

Reynolds says Laredo National does not acknowledge the existence of the report. Lawyers from the bank did not return phone calls from Left Field. Reynolds speculated that the San Antonio law firm has been swamped with phone calls from Mexico since the *El Andar* story was picked up by the Mexican wire services, and therefore the lawyers have stopped commenting on the article and threatened lawsuit. ♦



Rusty Windle with girlfriend Kristie Izzo

Department of Corrections

What do Kuwait City, Saigon, and Wimberley have in common? Left Field is still scratching its head over that conundrum, after an early November phone call from Regis DeArza, the commander of the Hays County Narcotics Task Force. DeArza was apparently delivering the official response to Nate Blakeslee's investigative report on the shooting death of Wimberley resident Rusty Windle by a task force member last May ("Zero Tolerance," October 29). Windle was shot by one of nine officers who surrounded his house before dawn to serve warrants on a charge of delivery of two half-ounce bags of pot. Before being shot, he

allegedly came to the door with a rifle and pointed it at two of the officers.

In a five-minute tirade, DeArza (who phoned to object to the *Observer's* "irresponsible journalism") managed to cite as military precedent the 82nd Airborne Division, the Gulf War, and the Vietnam War. By the time he hung up (without saying goodbye), the one-sided exchange had revealed less about the *Observer's* reporting than it had about the mindset of law enforcement in Hays County.

According to DeArza (who was not present at the raid), ski masks were not worn by the police at Windle's house that night. Yet in two separate interviews with suspects whose residences were also raided that night, the

See "Corrections," page 6

THE BUSH BEAT

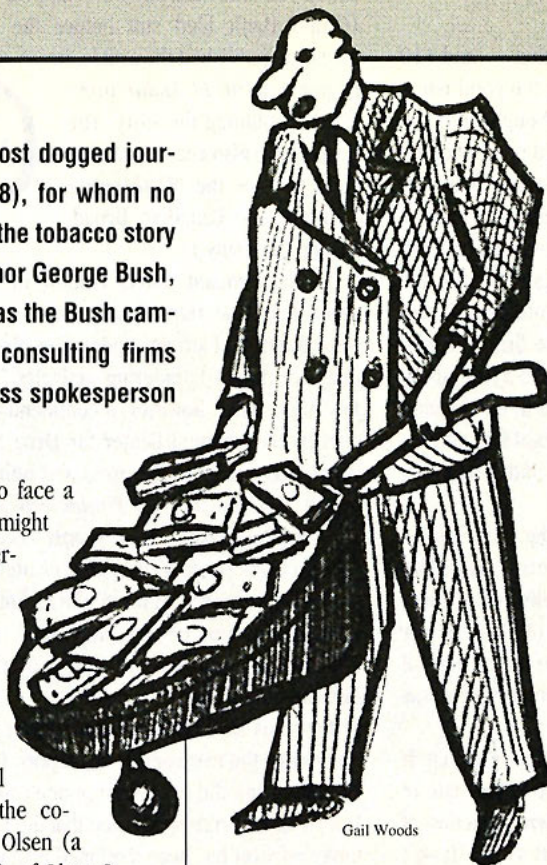
“Focus! Focus!”

Austin reporter Robert Bryce is one of the most dogged journalists in Texas (see “Nicotine Fit,” page 8), for whom no story ever seems to end. While researching the tobacco story involving Attorney General John Cornyn and Governor George Bush, Bryce turned up an odd confluence of money that has the Bush campaign paying almost \$1 million to two political consulting firms owned by Ted Delisi — the Attorney General’s press spokesperson — and a business partner.

The relationships get pretty incestuous, as the money has moved first from the Bush campaign to what had been Karl Rove & Co., the direct-mail and consulting service owned by Rove. Rove has worked as a political adviser to Bush for years, and in the spring his boss asked him to sell his profitable business if he wanted to continue working on the presidential campaign.

Ted Delisi is the son of State Representative Dianne White Delisi, a Republican from Temple. Delisi serves on the Appropriations Committee, and

if she ever were to face a serious opponent, might be in need of the services of the consulting firm run by her son. Son Ted, in addition to his official public labors on behalf of Attorney General John Cornyn, is the co-owner, with Todd Olsen (a registered lobbyist), of Olsen & Delisi (formerly Karl Rove & Co.) and Praxis List Company. Rove himself has



previously worked for Phil Gramm, Kay Bailey Hutchison, and George Her-

bert Walker Bush (the former president). He also worked as a consultant for Philip Morris — the cigarette company, not the state rep.

Rove wasn't too eager to sell his company, at least according to his sister, who spoke to *Dallas Observer* reporter Miriam Rozen for a profile of Rove in May of this year. Rove's sister suggested that her brother's hasty sale of his business might have cost him some money. But Rove told Michael Holmes of the Associated Press he was selling because Bush “didn't want my focus diluted.”

Bryce called the A.G.'s press office to see if Delisi's focus might be diluted by the political jobs he was holding while working for Cornyn. “It would not be appropriate for me to comment on this while I'm here,” he told Bryce. “I'll have to call you back later from my cell phone.” Delisi never did call back, but Bryce's story must have sharpened his focus. A week after it ran he resigned from Cornyn's staff. ♦

“Corrections,” from page 5

sources reported that ski masks were worn by the black-uniformed task force officers serving the warrants. DeArza angrily declined to answer whether or not it was standard procedure for task force members to wear the masks, insisting only that none were worn at Windle's house. He also noted that his task force works with only one A.T.F. agent, not two. That was it for corrections. In fact, DeArza was more concerned with what he considers *omissions* from the story.

In DeArza's editorial judgment, for example, the story omitted crucial information: DeArza's own police and military résumé. The task force commander pointed out forcibly that he is a 31-year law-enforcement veteran, a former D.P.S. anti-narcotics officer, a former assistant director in the Governor's narcotics control program, and a Vietnam veteran. Likewise, DeArza said, one of the officers at the door that night served during the Gulf War (in the 82nd Airborne Division).

DeArza took particular exception to the report that Windle's gun was later found to be unloaded (although he did not dispute that it was). “I've had plenty of guns pointed in my face over the last twenty-five odd years, my friend,” he recalled angrily, “and when you've got a gun in your face, I'd like you to be able to tell me whether that son of a bitch is loaded or not.” DeArza was kind enough to offer our reporter the opportunity to serve as “point man” on the next raid, although he did not wait for a reply: “We'll let you go up and knock on the door, Nate. We'll let you do it, okay!? Punk!” With that,

he slammed down the phone.

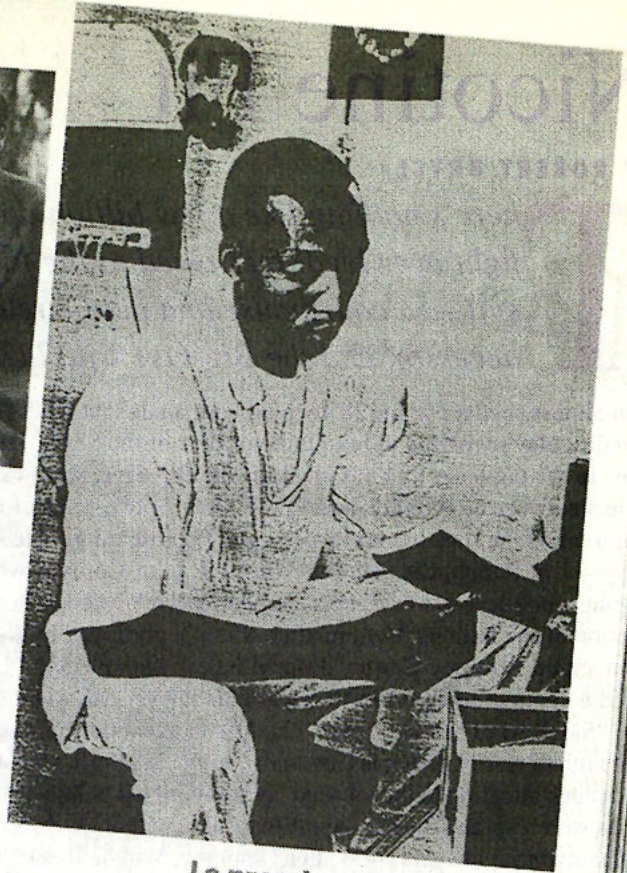
Left Field gives credit where it is due: DeArza's explanation of how Rusty Windle came to be shot dead that night was more forthright than that offered by Detective Chase Stapp, the officer who actually shot him. Stapp, now DeArza's assistant commander, was interviewed by the *Observer* in October, before we obtained the Texas Rangers incident report that confirmed Windle's gun was unloaded. Asked how he had managed to get off four shots, while Windle (who allegedly had the drop on him with an assault rifle) never fired a round, Stapp replied, “That's a good question. I guess we'll never know the answer to it, will we?” Stapp, of course, knew the answer moments after he shot and killed Windle.

DeArza's abrupt farewell also leaves Left Field with more than a few *real* unanswered questions. What does he know about Windle that his friends and family never did? What might drive a young man, with only a couple of misdemeanors on his record, to take on nine cops with an unloaded weapon, over a couple of fourth-degree felony warrants?

And why does the Hays County Narcotics Task Force require nine cops and black paramilitary uniforms to serve warrants on non-violent, low-level drug offenses? And what, we ask again, do Vietnam, the Gulf War, and the 82nd Airborne have to do with a sleepy resort community on the Blanco River? Regis DeArza has served in both Vietnam and Wimberley, so he ought to know the answer. Come to think of it, maybe he *is* the answer. ♦

Il faut sauver Farley Matchett!

DERRIÈRE FRANÇOISE ET CLAUDE DÉBÉDA, UN VILLAGE DU CHER FINANCE LA DÉFENSE D'UN JEUNE CONDAMNÉ NOIR.



La Justice Américaine

Depuis quelques mois, une série d'articles et de sujets télé saluaient la mobilisation d'un village du Cher en faveur de Farley Matchett, Noir-tenu à la prison de Huntsville, au Texas. Parce que la journaliste Marie-Claire a fondé une association de solidarité transatlantique sur le thème de la justice, elle justifiait plus encore une visite au maire de Saint-Léger, Françoise, instigateurs de ce mouvement. Sur place, le discours est loin d'être respectueux pour eux, parce que les salopards, c'est pas une vie, il faut respecter la vie. Comme elle et

August's issue fit that description, in particular the department "Le monde en face," which includes: a lead feature about the neglect of French women by mainstream medicine; a photo-driven essay about smart, hip, young Japanese women and their problems finding and adapting to the birth control pill recently introduced there (as a result of Japanese women's complaints that Viagra was approved in Japan in less than a year, while *la pilule* had been unavailable for four decades); a travel feature that took readers to a legendary beach resort which twenty years ago was a "new Nirvana known for culinary orgies and torrid nights" — and a long article on the death penalty in America.

Any article on the death penalty in America must inevitably find its way to Texas, and the report by journalist Nathalie Gathié is no exception. Two pages of the six-page feature are dedicated to death in Texas, and the feature begins with a screened monochromatic image of the Texas death chamber. There's little news here for anyone who pays any attention to the quotidian grind of the executioner's machinery in the U.S. There's a story about Mumia Abu-Jamal, this country's most celebrated death-row inmate. And a story about an epistolary relationship between a French woman and Robert Carter — who was executed at Huntsville last year, while his French companion stood by as a witness. There's also a box with statistics on U.S. executions since 1976.

What is newsworthy is Gathié's report of a French village adopting a death-row inmate in Texas.

Françoise Débédà — and her husband Claude, who is the Mayor of their small French village — began a local campaign to raise money for the defense of Farley Matchett, a 36-year-old African American convicted of killing a white man in 1991. The reporter, in a straightforward if somewhat editorial voice, describes Matchett's trial as "a legal masquerade," and "a process pushed through in five hours by a judge known as 'the lynchman.'" Matchett, she writes, was convicted by a jury made up of eleven whites and one black. Not out of the ordinary in Texas, the reporter writes, where race is a big factor in who is prosecuted and executed.

The Débédas have collected 50,000 francs for Matchett's appeal, while an additional 300,000 francs have been collected as the effort grew beyond the village. Matchett is represented by Austin attorney David Botsford, although he is identified in the story only as "maître Botsford, an attorney with a good reputation."

Execution stories have become background noise in the U.S. Perhaps the best hope for paying for legal counsel for death-row appeals lies in European "adoption" schemes similar to those that appear in American magazines — where for a few cents per day an American couple can adopt a child in the Third World.

How much to adopt a death-row convict in the U.S.? The Débédas even have the requisite photo of Matchett in their living room. "He could be one of our sons," said the Mayor. ♦

pris ma vie? Serait-il dans le couloir de la mort?» a notamment écrit aux Débédà, leur rappelant que la victime avait la «vertu» de ne pas mourir. Dans un mémoire remis en novembre 1998, Farley Matchett a servi sous les ordres de la police depuis

Le premier avocat de Farley Matchett, commis d'office, s'est endormi deux fois au cours du procès.

ont été exécutés pour le meurtre de deux personnes, auteurs d'homicides sur la route de la capitale. Les juges les ont poussés à l'aveu. «Je vous donne un conseil: ne soyez pas exécuté», a dit le procureur. «Grâce à votre avocat, vous serez libéré».

Nicotine Fit

BY ROBERT BRYCE

There's nothing like a few billion dollars to bring out the worst in people. Just look at the fight over legal fees owed to the five lawyers who represented Texas in the tobacco lawsuit — a courthouse and public relations fight that involves the attorney general, his predecessor, and the Big Five trial lawyers the state hired to take on Big Tobacco.

You almost need a playbill to keep up with a tale that reads like a morality play involving at least three or four of the Seven Deadly Sins. In the tag-team role of Greed are the Big Five, who want to collect between \$2.3 billion and \$3.3 billion for two years of work representing the state in the tobacco case. Representing Pride — or Envy — is Republican Attorney General John Cornyn, who is waging a political war to make sure the tobacco lawyers get only a fraction of the billions they are after. Sloth is portrayed by former Democratic Attorney General Dan Morales, who allegedly backdated a contract in an effort to reward his lawyer pal, Marc Murr (see "Say It Ain't So, Mo," page 13). And in a featured appearance in the minor role of Anger is Governor George W. Bush, who never paid much attention to the tobacco lawsuit until his political adversaries won it — and the big payoff that came with it.

The five trial lawyers — Walter Umphrey, Wayne Reaud, John O'Quinn, John Eddie Williams Jr., and Harold Nix — won the lawsuit. The state signed a contingency fee contract that promised the five lawyers a fixed percentage of the loot, *if* the state won. The lawyers took a case with poor prospects, risked between \$40 million and \$50 million of their own money, and won the largest settlement in the history of civil litigation — \$17.3 billion — for the state of Texas. They should get paid for their efforts. That's their strongest argument: a deal is a deal.

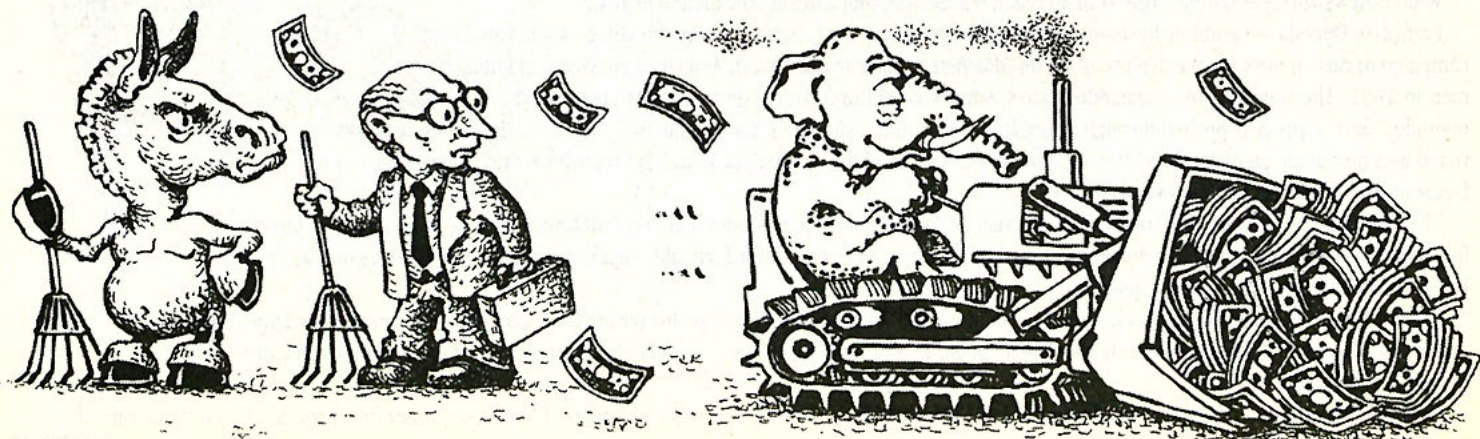
Three point three billion dollars split five ways is an enormous amount of money. And these attorneys are not a very sympathetic bunch. "They are not a pack of folks that you would ever give a shit about, quite frankly," said one Austin lawyer. Perhaps. But they know how to fight in court, and they prevailed in a case that few ever believed they could win. Now they're holding the state

hostage to make sure they get paid. They have begun collecting the first installments on the \$3.3 billion awarded by a national arbitration panel, all of which will be paid by the tobacco companies. However, they haven't relinquished their claim to the 15 percent share of the state's settlement. That would amount to \$2.3 billion, and would come out of the state's award from the tobacco companies. It was granted to the five trial lawyers by U.S. District Judge David Folsom, who is overseeing the tobacco case from the federal bench in Texarkana. However, the Big Five now have a deadline for their decision.

On November 5, Folsom ruled that the lawyers have to decide by November 19 whether they will accept the fees from the tobacco companies directly, or instead, continue to press their claim against the state for their 15 percent fee. Folsom also ruled that seven legislators, as well as Governor George W. Bush, are now official parties to the fee fight litigation, a move that allows Bush and others to stand shoulder to shoulder with Cornyn in their attack on the tort lawyers.

Cornyn's job could be simple. He could laud his fellow lawyers for their work, remind Texans that no one had ever beaten the tobacco companies in court, and celebrate the state's windfall. But Cornyn believes there is something fishy about the contract the Big Five made with Morales, when Morales was the attorney general representing the state's interest. Cornyn and his deputies have uncovered evidence that Morales may have doctored a contract that could have netted his friend, Mark Murr, several hundred million dollars. So Cornyn now claims that the Big Five may have also been involved in something nefarious.

According to documents provided by the Attorney General's office, Cornyn has been subpoenaed to testify before a grand jury



Kevin Kreneck

believed to be investigating the matter. Additionally, in a letter regarding an open records request, Cornyn's office says there are "two ongoing federal investigations into the hiring of outside counsel by the Morales Administration." The letter goes on to say that the A.G.'s office has shared information with the F.B.I. and that both the F.B.I. and the U.S. Attorney have "verbally requested that we do not disclose any information relevant to this investigation, as release at this time would interfere with prosecution of their case. Prosecution is pending." (That is, however, Cornyn's office speaking, and not the U.S. Department of Justice.)

CORNYN PUSHES AHEAD

But while Cornyn uses the F.B.I. and the Department of Justice to keep the press at bay, he is not sitting in his office waiting for the feds and the grand jury to conclude their investigations. Cornyn is pressing his own investigation, albeit in a clumsy manner. On October 5, he filed a writ of mandamus with the federal Fifth Circuit Court of Appeals, in an effort to force Judge Folsom to rule on the motions before his court. While it's unclear if Cornyn will succeed with his writ, he has undoubtedly irritated Folsom. In May, attorneys for the A.G.'s office and the Big Five met with Folsom and agreed there was nothing for Folsom to rule on, because both sides had reached a "standstill agreement" while they tried to mediate their dispute. By the time the two sides met again in Folsom's court in August, Cornyn was impatient, requesting the judge to take action. His writ of mandamus before the Fifth Circuit suggests that he is not standing still.

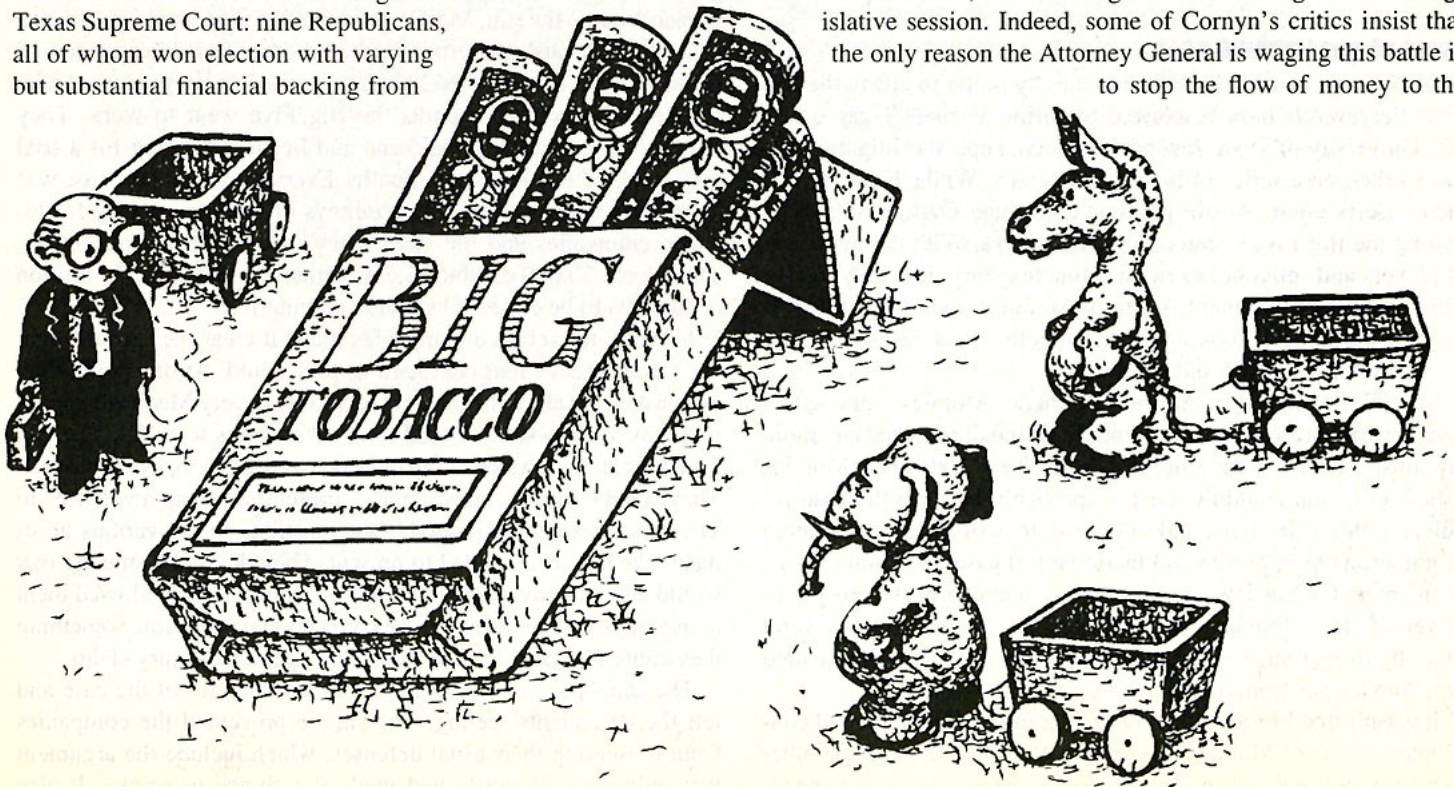
Cornyn may have further insulted Folsom by attempting to seize control of the investigation of the Big Five, even though the federal judge has overseen all other aspects of this tobacco case. Cornyn wants to conduct his own investigation under the Texas Supreme Court: nine Republicans, all of whom won election with varying but substantial financial backing from

the same interests which have been fighting trial lawyers for more than ten years.

While Folsom considers the Attorney General's request to move the investigation to state court, Cornyn has made at least one other questionable move. In August, he sent out eighteen C.I.D.'s — civil investigative demands, the A.G.'s equivalent of a subpoena — to some of the lawyers who worked for Morales when he was attorney general, and to other lawyers who have either worked with the Big Five or were recruited to work on the tobacco case. The demands seek all kinds of information from the attorneys, including documents normally protected by attorney-client privilege.

Cornyn's tactic could be considered harassment. He issued the demands under the authority of the state's Deceptive Trade Practices Act, although the statute does not apply to professional service contracts such as those used by trial lawyers. Nor does the law apply to contracts valued at more than \$100,000. As the trial lawyers are eager to point out, Cornyn's biggest financial backers during his run for the A.G.'s office were the tort reformers, the corporate interests who for ten years have pooled their resources in elections and lobbying efforts aimed at making it much more difficult for trial lawyers (and individuals) to sue corporations. About \$1 million — approximately 16 percent of the \$6.5 million Cornyn spent on his campaign — came from Texans for Lawsuit Reform or from individuals who have contributed to the tort reform group. The tort reformers would like nothing better than to hurt the trial lawyers any way they can.

As it happens, the Big Five — like most trial lawyers — are big contributors to the Democrats. If Cornyn and Governor Bush can choke off some of the money the Big Five would give to Democrats, it should be easier for the GOP to maintain its stranglehold on statewide offices, while dealing with redistricting in the next legislative session. Indeed, some of Cornyn's critics insist that the only reason the Attorney General is waging this battle is to stop the flow of money to the



Democrats. For that reason, says one lawyer familiar with the case, "Cornyn will never settle this case. He's going to fight the trial lawyers until somebody dies of old age." But Folsom's November 5 ruling may encourage Cornyn to think about his own mortality. By allowing Bush to become a litigant, Folsom opened the door for the Big Five to depose Governor Bush and ask him about the money he has raised from tobacco interests.

Then there's Cornyn's predecessor, Dan Morales, who allegedly backdated a contract that could have netted his friend Mark Murr more than \$500 million — even though Murr's duties in the tobacco case were never clear to anyone on the Big Five's legal team. In addition to the ongoing federal investigation into his deal with Murr, a look at the record shows that Morales clearly misled the public. Right after the \$17 billion settlement was announced, Morales told reporters there was no way the outside counsel would get \$2 billion in legal fees. Yet at about the same time he was making that statement, Morales was signing a court document saying he wouldn't fight the Big Five's fee request.

Other states that filed similar suits are taking the tobacco money and moving on. But Cornyn, Bush, and a few legislators are fighting the lawyers hired by the state, even though by comparison the Texas lawyers got less — on a percentage basis — than attorneys working for the other major states. The Big Five aren't exactly getting stiffed: Cornyn's office estimates they've already collected \$364 million from the fees awarded to them by the arbitration panel. But lawyers elsewhere are reaping more. In Mississippi, the trial lawyers got 35 percent of the state's settlement, or about \$1.4 billion; in Florida, the lawyers picked up \$3.4 billion, 26 percent of the state's take. Here in Texas — even if the lawyers get the maximum they're demanding — they stand to take home about 19 percent of the state's total award: \$3.3 billion over two decades.

THE LONG AND WINDING ROAD

While Cornyn is using his office as a bully pulpit to attack the Big Five, the lawyers have responded by hiring Michael Tigar, a former University of Texas law professor and superstar litigator who has worked on a series of high-profile cases. While Tigar presses their case in court, Austin political consultant George Shipley is putting the Big Five's spin on the press corps. With the multitude of players and spin doctors in this complex story, it is easy to lose sight of the fact that there is a fairly straightforward story line. It began with the state looking for lawyers to take a case, and those lawyers taking the case and winning.

In 1995, when then-Attorney General Morales approached Houston trial lawyer John O'Quinn, O'Quinn didn't need any more lawsuits. And he wasn't hurting for money. Yet when Morales called, O'Quinn couldn't resist — probably because the case involved politics, intrigue, and of course, tons of money. A veteran of numerous high-profile and lucrative tort cases, O'Quinn is one of the most famous lawyers in Texas — and one of the most controversial. He's fought with the State Bar and been sued several times by former business associates. *Fortune* magazine once called him "the lawyer from hell."

It wasn't that Morales liked O'Quinn; in fact, O'Quinn had contributed to one of Morales' opponents. But O'Quinn and the other four lawyers had the deep pockets Morales needed to go after the to-

bacco companies. Morales simply didn't have the budget and manpower to go after the companies by himself — a situation that provided Cornyn a disingenuous soundbite to use in his campaign to succeed Morales. Cornyn, who left his position on the Supreme Court to run for A.G., attacked Morales for hiring the Big Five. The A.G. had a \$250 million budget and 3,800 employees; Cornyn complained: "Can't Morales find a lawyer in his own office to represent the state in court without resorting to this offensive practice?"

The simple answer to Cornyn's question was "No." The Big Five spent between \$40 million and \$50 million litigating the case — about a fifth of the A.G.'s entire annual budget. There was no way Morales could have risked that much money on a case with such poor prospects. Indeed, the odds were terrible. From 1954 to 1996, between 800 and 1,000 personal injury lawsuits were filed against the tobacco companies. The plaintiffs lost every one, largely because the tobacco companies have such huge resources. In May 1998, *American Lawyer* reported that in 1996 Big Tobacco's annual legal bill came to about \$600 million. In 1997, it was estimated at \$750 million. By the time this case settled in 1998, Big Tobacco had hired some twenty-three law firms in Texas alone.

Despite the intimidating odds, O'Quinn and the others agreed to work for the state. They liked Morales' strategy. Other states were suing solely for reimbursement of Medicaid costs incurred while treating smokers. Morales and the Big Five did sue for those costs, but they also sued the tobacco companies under the Racketeering and Corrupt Organizations Act (RICO), which would allow the state to recover treble damages, while exposing the tobacco companies to criminal penalties.

In March 1996 Texas became the seventh state to sue the cigarette makers, as Morales and his lawyers filed suit in federal court in Texarkana. The Texas team asked for \$4 billion.

Announcing the suit, Morales said the Big Five would get 15 percent of any award. Governor Bush and other Republicans ignored the matter. No one believed Morales and the five lawyers could win.

Over the next few months the Big Five went to work. They rented office space in Texarkana and began preparing for a trial they believed would last six months. Everything about the case was Texas-sized. There were 129 attorneys of record, working for tobacco companies and the state. They filed 1,856 docket entries. There were 50,000 exhibits, 1,500 witnesses, and some 23 million documents to be coded, filed, and computerized.

Initially, the tobacco companies made it clear they would fight the Texas case as long and hard as they could. At one point, they even asked for all of the medical records for every Medicaid patient in Texas, a request that could have taken years to fulfill. The Big Five fought the tobacco companies on every motion, every request. They held several mock trials, presenting their evidence to Texarkana residents to gauge their reactions to the various arguments the lawyers planned to present. They devised a strategy that would take full advantage of the RICO statute, which allowed them to use statistical models to prove damages and causation, something they could not have done in an ordinary personal-injury claim.

The state's use of RICO changed the dynamics of the case and left the defendants reeling. The statute prevented the companies from presenting their usual defenses, which include the argument that individual plaintiffs had made the choice to smoke. It also

allowed the state to subpoena all the top tobacco executives. By the end of 1997, faced with putting their chief executives on the stand in a protracted trial they were likely to lose, the tobacco companies came to the bargaining table.

THE SETTLEMENT

On January 16, 1998, Dan Morales was on top of the world. He announced that the tobacco companies had agreed to pay the state between \$14.5 billion and \$15 billion. The value of the settlement has since been revised upward, to \$17.3 billion. And that's not all. Depending on who's doing the math, the final value of the deal could be as much as \$105 billion, because the payments continue for as long as the tobacco companies sell cigarettes. There's even a cost-of-living adjustment in each annual payment, and the state will likely have lower health care costs because it will have fewer smokers to care for.

When Morales announced the deal, however, he was immediately confronted with questions about the fees for the Big Five. "I think any discussion or speculation of fees in the multibillion-dollar amount range is laughable," Morales told reporters. "I think the court is going to do something appropriate, something responsible." Trial lawyer Walter Umphrey saw things differently; he said he intended to ask Judge Folsom to "honor our contract." Asked if that meant getting the full 15 percent, Umphrey assured everyone that was exactly what he meant. Six days later, Folsom signed an order obligating Texas to pay \$2.3 billion of its recovery to the Big Five. Responding to the announcement of the settlement, Bush first congratulated Morales, then began complaining that the fees due the Big Five were "too big, way too big. A substantial part of that money ought to be going to the taxpayers." A group of legislators headed by Republican Senator Troy Fraser (who has led the tort reform battle in the Legislature) agreed with Bush, and asked the court to intervene in the case to block payment of the fees to the lawyers. Cornyn joined them, saying that as A.G. he would not give any cases to lawyers whose "idea of public service is a fee that would make Midas blush."

Throughout 1998, the two sides skirmished over the fees, and after months of wrangling, the Big Five agreed to submit their claims to a national arbitration panel. On December 11, the panel decided how much the lawyers from Florida, Mississippi, and Texas would get. The Big Five got \$3.3 billion — all to be paid by the tobacco companies. Not a penny would come from the state. But there was a catch. The tobacco companies agreed to pay no more than \$500 million per year nationwide to all of the lawyers who worked on the tobacco lawsuits. The \$500 million per year will not be adjusted for inflation, and it must be shared with scores of lawyers from other states. So the Big Five will get their \$3.3 billion, but the payments may be spread out over a period of ten to twenty-five years, making the award much less valuable than an immediate cash payment.

NEW A.G. ON THE BLOCK

Once he was sworn in this year as Attorney General, John Cornyn officially joined the fight. On January 12, representatives from his office and those of the Big Five met to talk about the fee dispute, and how to facilitate whatever investigation into their actions Cornyn

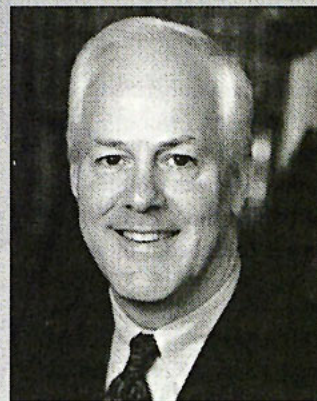
wanted to conduct. The meeting was scheduled to start at 3:30 p.m. but actually didn't get underway until about 4 p.m. The time is important, because while the meeting was *still in progress*, Cornyn's office distributed a press release claiming the Big Five "are not satisfied with their \$3.3 billion attorneys' fee award. They want a release from me, on behalf of the state, for any illegal or unethical conduct that they may have engaged in while representing the state." The fax machine time stamp on the press release is 4:21 p.m.

The trial lawyers were livid. Charles Silver, a U.T. law professor serving as their (unpaid) ethics advisor, was at the January 12 meeting. After reading the press release, Silver wrote an op-ed piece that appeared in *Texas Lawyer*, blasting Cornyn. "An ethics investigation should not begin with a lie," wrote Silver, "but here in Texas one just did."

Yet facing a protracted investigation of their work, the Big Five still tried to strike a deal. They would relinquish their claim to the \$2.3 billion award granted to them by Folsom if Cornyn agreed to conduct his investigation under the direction of the federal judge rather than the Texas Supreme Court. In return, the Big Five would

CORNYN RESPONDS

The following is Attorney General John Cornyn's response to a list of specific questions submitted by Robert Bryce.



▲ John Cornyn

The primary concern of the Office of the Attorney General is to protect the taxpayers of Texas from any potential liability. Currently, the five outside trial lawyers have broken their agreement to decide between the \$3.3 billion from the tobacco companies and the \$2.3 billion from taxpayers. It seems like an obvious choice to most Texans, but these lawyers admit to holding the taxpayer hostage for "leverage." That is wrong.

These five trial lawyers should honor their December 1998 agreement with Governor Bush to let the taxpayers off the hook. In addition, these lawyers continue to refuse to cooperate with our investigation. They throw up roadblocks at every turn. I do not think it is proper to submit an investigation by the Attorney General's Office to be supervised of a federal court. [sic]

Time and again these trial lawyers claim that they acted ethically. Now they have the chance to show the world that they did so. I call on them to help bring this issue to closure and honor their agreements to let taxpayers off the hook. I ask them to honorably comply and fully cooperate with our investigation and produce the documents which rightly belong to Texas.

If they choose not to cooperate and keep taxpayers on the hook, I will use every available legal means to protect the State of Texas. □

only make a claim to the \$3.3 billion awarded by the arbitration panel. Cornyn refused, because to agree would have eroded the basis for one of the legal arguments he was advancing. Cornyn claimed that by pursuing their claim to the \$2.3 billion, the trial lawyers were essentially suing the state, which violates the Eleventh Amendment to the U.S. Constitution's guarantee of sovereign immunity. That immunity, Cornyn argued, meant the fee dispute was a state matter and must be moved from federal court to the Texas Supreme Court. But in a major blow to the Attorney General, Cornyn's legal argument was dismissed by Folsom in his November 5 ruling.

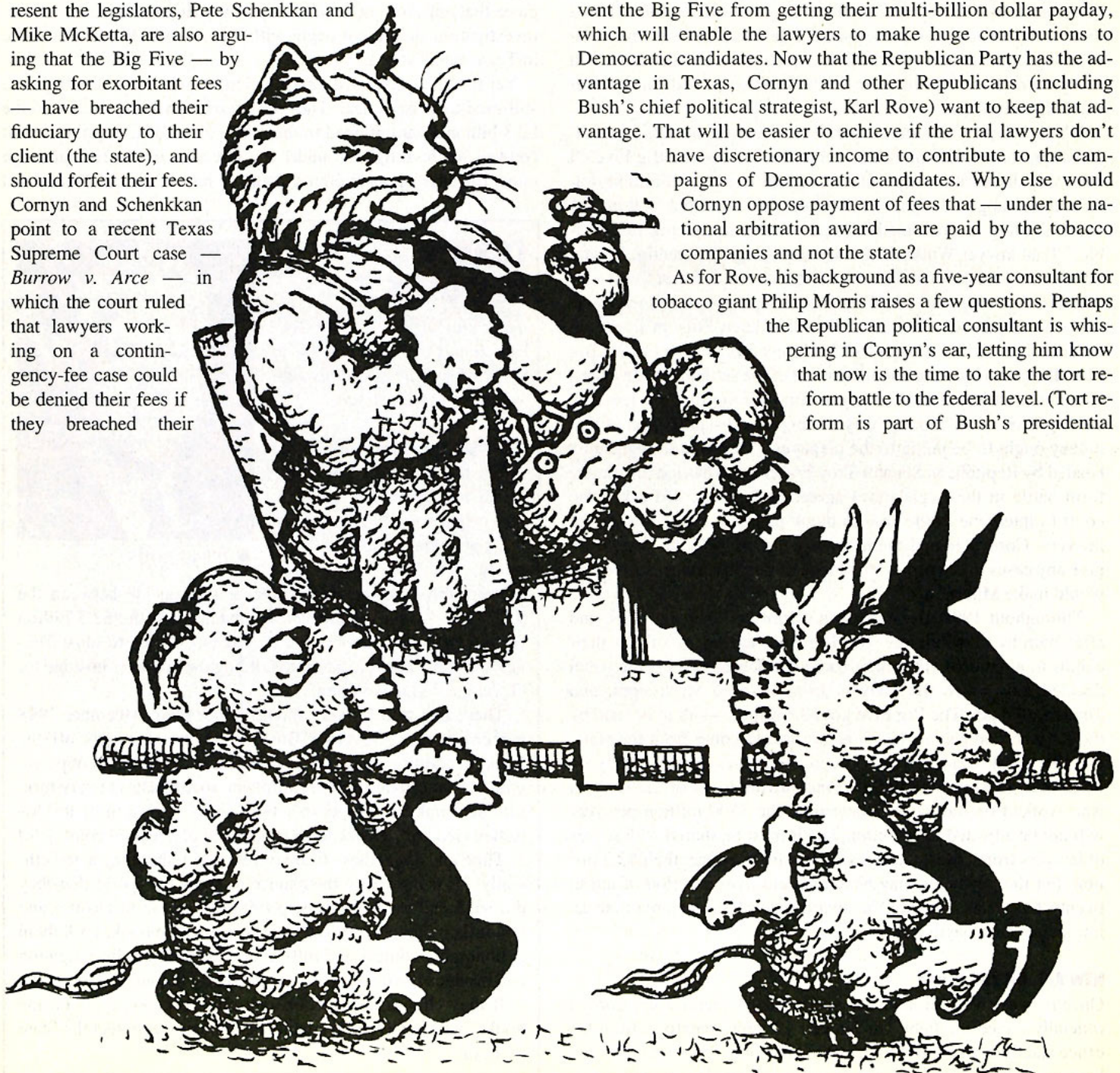
Cornyn and the private attorneys who represent the legislators, Pete Schenkkan and Mike McKetta, are also arguing that the Big Five — by asking for exorbitant fees — have breached their fiduciary duty to their client (the state), and should forfeit their fees. Cornyn and Schenkkan point to a recent Texas Supreme Court case — *Burrow v. Arce* — in which the court ruled that lawyers working on a contingency-fee case could be denied their fees if they breached their

fiduciary duty to their clients. But the Burrow case was tried in state court. Cornyn is fighting the Big Five in federal court — which might explain why he submitted his October 5 writ of mandamus to the Fifth Circuit, asking it to order Folsom to either dismiss the Big Five's \$2.3 billion award or transfer the entire fee dispute to the Texas high court.

WHAT'S CORNYN'S ANGLE?

The motivation of the Big Five is easily understood: money. Some argue that Cornyn's motivation is more complex and is informed by political ideology. However, his critics believe Cornyn's motivation is also money. They think Cornyn is simply trying to prevent the Big Five from getting their multi-billion dollar payday, which will enable the lawyers to make huge contributions to Democratic candidates. Now that the Republican Party has the advantage in Texas, Cornyn and other Republicans (including Bush's chief political strategist, Karl Rove) want to keep that advantage. That will be easier to achieve if the trial lawyers don't have discretionary income to contribute to the campaigns of Democratic candidates. Why else would Cornyn oppose payment of fees that — under the national arbitration award — are paid by the tobacco companies and not the state?

As for Rove, his background as a five-year consultant for tobacco giant Philip Morris raises a few questions. Perhaps the Republican political consultant is whispering in Cornyn's ear, letting him know that now is the time to take the tort reform battle to the federal level. (Tort reform is part of Bush's presidential



campaign agenda.) Cornyn may also believe that the publicity generated by his fight with the trial lawyers will serve his interest in a future campaign — perhaps a race for governor — or else might serve as Cornyn's audition for a role in the Bush White House. Perhaps Cornyn and Rove see it simply as payback time. The Big Five and other trial lawyers have hammered the tobacco companies in court, so Cornyn and Rove are content to watch the tobacco companies beat up on the trial lawyers in the court of public opinion. Cornyn, who has the power to stop the fight, must assume that he can't lose, because even if the Big Five prevail, Cornyn can cash in the next time he runs for office and get tobacco companies to underwrite his campaign.

Notre Dame University law professor G. Robert Blakey, who was a member of the Big Five's legal team, thinks Cornyn's motivation is even simpler: Cornyn is protecting Big Business. Prior to his as-

ension to public office, Cornyn made his living defending big companies against plaintiffs' lawyers. Cornyn even made an appearance before the Texas Supreme Court during the final weeks of the 1998 campaign, where he argued that asbestos manufacturer Pittsburgh-Corning has a right to keep out-of-state asbestosis plaintiffs from filing suit in Texas courts. Cornyn, Blakey says, is fighting the trial lawyers in an effort to protect the moneyed class. "This is a cultural war between people who want to hold people with money responsible for what they do," he concluded, "and the people with money who want to be free of responsibility for what they do."

Whatever is driving Cornyn, a source close to him says he has no choice but to continue fighting. That's particularly true now that the F.B.I. is reportedly involved. If Cornyn settles the case now and the U.S. Attorney's office returns indictments against Morales,

SAY IT AIN'T SO, MO

Though Attorney General John Cornyn is at a standstill in his fight with the five attorneys in the state's tobacco case, he's run up the score in his investigation of former A.G. Dan Morales and his friend Mark Murr.

During his first few weeks in office, Cornyn began looking at a deal Morales made with Houston lawyer Murr, which could have netted Murr \$520 million in legal fees. According to lawyers close to the matter, when Morales first approached the state's outside counsel in 1997 about cutting Murr into the deal, the lawyers refused. In fact, the sources say the five threatened to quit if Murr were allowed in. Despite their threats, Morales persevered; in January of 1997, he offered Murr a 3 percent cut of the award.

By all accounts, Murr did little or nothing in the way of legal work. "I never met the guy. I never heard anybody say his name. When he showed up afterward and had that contract, I thought 'here we go again,'" recalls G. Robert Blakey, professor of law at the University of Notre Dame and expert on the RICO statute used in the civil suit against the tobacco companies. Blakey worked for the five lawyers Morales hired to represent the state.

Murr wasn't bashful about pressing his claim. He initially asked for all \$520 million that he believed his contract guaranteed him. In September of last year, however, a state arbitration panel reduced that amount to \$260 million. Later, the national arbitration panel agreed to give



▲ Dan Morales

Alan Pogue

Murr just \$1 million. A few months later, Murr forswore any claim to the \$1 million.

It didn't take Cornyn long to follow the trail left by Morales and Murr. Within a few weeks of taking office, Cornyn got a copy of Murr's contract; forensics experts hired by Cornyn concluded it had been doctored and backdated. Armed with that information, Cornyn went to court and accused Morales of "fraudulent manipulation of a court document." For his part, Morales wanly called Cornyn a "liar." But the damage was done.

The F.B.I. was soon questioning the various players. Morales and Murr — who have known each other since 1981, when they both began working at

Bracewell & Patterson in Houston — were thrust into the spotlight. And lawyers who worked for Morales when he was A.G. were put on the defensive.

One lawyer said that during his years working with Morales, "there was nothing that had a hint of impropriety. I have a hard time reconciling what was going on with Murr. It made me sick at the time and still bothers me today."

The Murr incident may have convinced Cornyn that there are other misdeeds to be uncovered. For one thing, Cornyn's allies claim that Morales asked the trial lawyers who joined in the tobacco litigation to contribute at least \$1 million each to a legal defense fund that Morales would control. The fund would have been used to defend Morales if the tobacco companies decided to file suit against him. Those allegations and others are reportedly being considered by a jury looking into Morales' conduct. Travis County District Attorney Ronnie Earle, whose Public Integrity Unit is in charge of investigating any wrongdoing by public officials, refused to comment on the existence of a grand jury or any inquiries into Morales' conduct.

All of which leads to a contradictory conclusion to Morales' tenure as A.G. Fellow politicians always described Morales as too uptight about ethical issues. And now, despite his role as the main engineer in a deal that could net the state billions of dollars, he could end up being indicted on criminal charges. —R.B.

Murr, or anyone else, then Cornyn would look like an idiot. The same source says Cornyn has yet to fully investigate charges made by Houston trial lawyer Joe Jamail, who allegedly has told investigators Morales asked him and other trial lawyers to each contribute \$1 million to his legal defense fund.

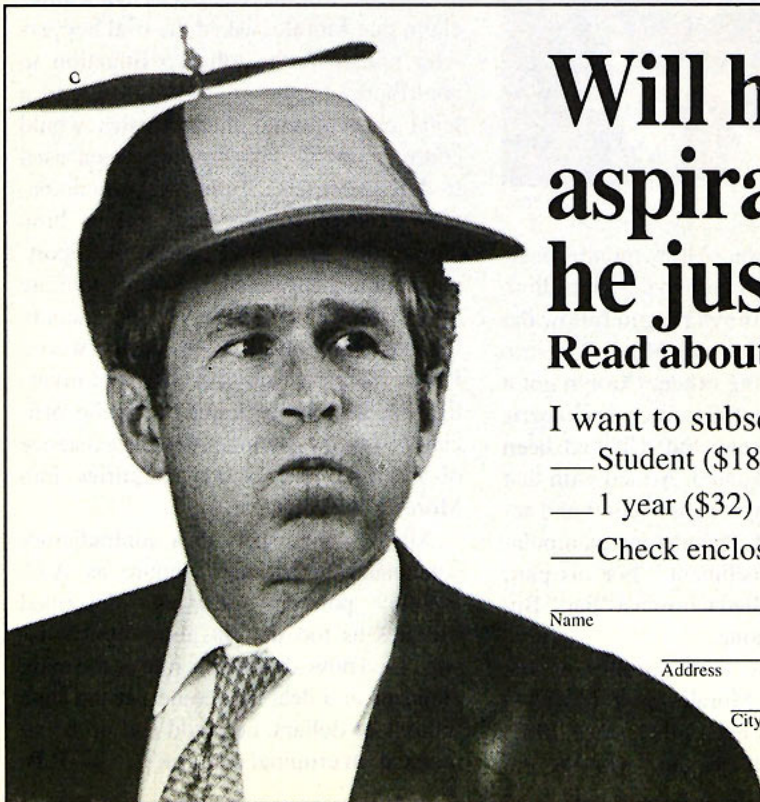
Politics aside, there are troubling public policy aspects in the way Cornyn has handled the fee fight. Cornyn has refused to answer any questions about the investigation, responding with a four-paragraph statement that did not answer any of the twenty questions this reporter submitted in writing (see "Cornyn Responds," page 11). In response to a request made under the Texas Public Information Act, Cornyn's office has even refused to estimate the number of hours spent on the matter. (Yet he has demanded to see time sheets for the Big Five, to determine how many hours they worked on the case.) There are additional questions about the legal basis of the C.I.D.s Cornyn issued to the trial lawyers. There is his sandbagging of the trial lawyers by attacking them in the press at the very moment he was meeting with them in negotiations. Cornyn has yet to fully explain his refusal to conduct his investigation under Judge Folsom. Nor will Cornyn — nor anyone working with him and the legislators opposing the payment of legal fees — say what they believe is owed to the lawyers who tried and won the case. A.G. spokesman Ted Delisi would say only, "We don't want to disclose our legal strategy," and Pete Schenkkan, who is working alongside Cornyn, said the trial lawyers "are due an appropriate fee, unless they breached their fiduciary duty."

Amidst all this controversy is one indisputable fact: the tobacco settlement was a colossal win for the state of Texas. Without risking a dime of taxpayers' money, the state won an outlandish sum

that will enrich Texas for generations to come. The settlement also requires tobacco companies to stop billboard advertising, to fund anti-smoking campaigns, and to pay for hundreds of millions of dollars' worth of medical research. The trial lawyers won the war, yet Cornyn and Bush, who had nothing to do with it, are fighting over the spoils. Cornyn has pledged to continue the fight, perhaps all the way to the U.S. Supreme Court, and the Big Five have 3.3 billion reasons to keep fighting.

While no clear winner has yet emerged in the fee fight, the tobacco companies have won several important battles. They are out of court, they have a guarantee that the states and their medical institutions won't sue them again, and they have limited their payments to trial lawyers to \$500 million per year — about two cents per pack of cigarettes sold. They even ended up with some unlikely allies in the \$20 billion lawsuit the federal government filed against them in September: the states. Any amount the feds squeeze out of the tobacco companies will likely come from the money the companies are currently paying the states. So the states now have a financial interest in making sure the feds don't get a dime out of Big Tobacco. "The tobacco companies made all the states that settled with them partners in the cigarette business," said one lawyer working on the case. "This enterprise that was so evil, the one that's killing our children, is now a partner of the states. Settling the lawsuits with the states is the smartest thing the tobacco companies ever did." □

Robert Bryce is a regular contributor to the Observer and a staff writer at the Austin Chronicle, where an earlier version of this article first appeared.



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BERNARD RAPOPORT
Chairman of the Board and
Chief Executive Officer

INSATIABLE GREED

By Bernard Rapoport

Just a few times in my lifetime have I had the ecstatic joy of observing a public official rising to heights that so-called pragmatic politicians reject. Instead, they rationalize, "I know it is not right, but the pressures are too great, and I will hold my nose and cast a vote for something that I really do not think is good legislation." I am alluding to the financial legislation that passed in the United States Senate on Thursday, November 4. *The New York Times*, in a front-page story the following day, opened with this paragraph: "The Senate approved landmark legislation today that opens the door for a new era on Wall Street in which commercial banks, securities houses and insurers will find it easier and cheaper to enter one another's business." It is reported that financial interests spent over \$350,000,000 lobbying to ensure passage of this measure to convince our representatives that this bill was just *arcanum*. Yet less than two decades ago, legislation was passed which lessened the regulatory requirements of Savings and Loans. The multi-billions that deregulation cost American taxpayers remain incalculable. There is an old cliché that says, "The bigger they are, the harder they fall!"

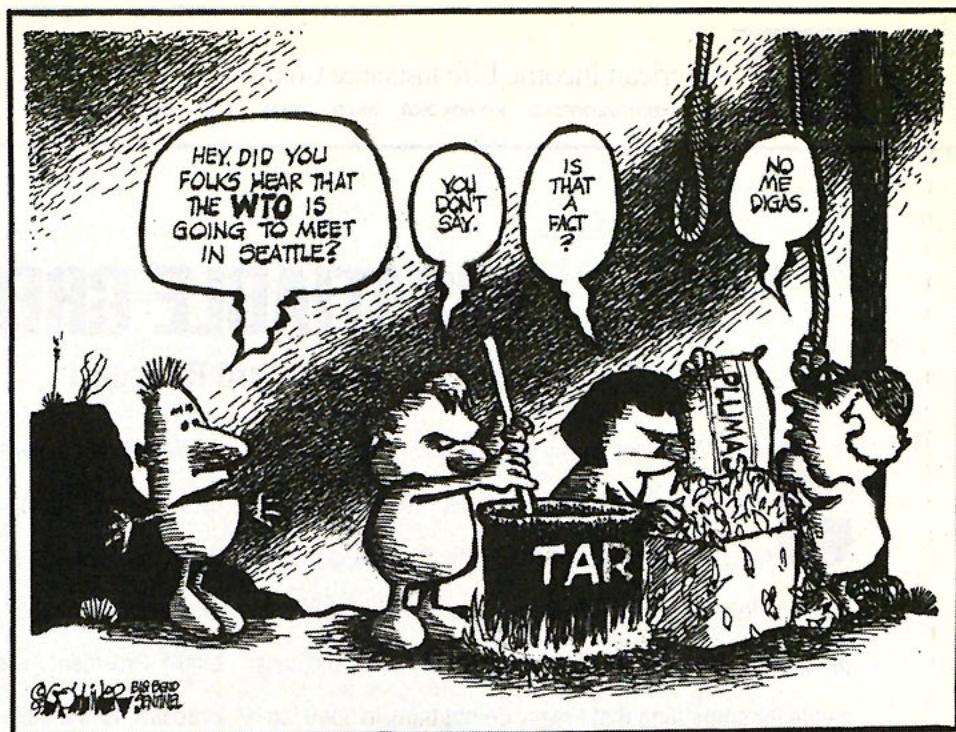
We are all concerned about the lack of community — or civic-mindedness — in our society. Perhaps this reflects our failure to understand that the greed instinct can increase exponentially with the size of the enterprise. Certainly President Theodore Roosevelt recognized this problem, in the early part of this century, when he proposed legislation to control "bigness." Twenty years ago, no one predicted the Savings and Loan debacle. Now consider the effects if one of these new conglomerates fail. Can anyone seriously say, "It cannot happen"?

Just a few months ago, a hedge fund managed by Nobel Prize winners in economics had a \$150 billion debacle that required Federal Reserve intervention. What short memories we have — or perhaps more accurately, what short memories our legislators have. Yet we who live in the Central Texas area can be very proud! Our representative, Chet Edwards, withstood the pressure groups, said this legislation is not good for the people, and voted "no." There were not too many who did so, but he is one who should earn eternal gratitude — not only from those in his district, but from all Americans. □

BATTLE IN SEATTLE. Nationwide plans proceed for protests and related educational activities about globalization during the World Trade Organization's Ministerial Summit in Seattle later this month. The official W.T.O. sessions, hosted by the Seattle Host Organization, run from November 29 to December 3. Opponents are planning events beginning with an International Forum on Globalization (November 26) to forums on Women and Globalization (December 4). The highlight is "The Big March" November 30, which opponents have organized to bring thousands of people into the streets of Seattle, to march against the international corporate and political push for more arbitrary rights for capital under the guise of "free trade." For more information, consult the Mobilization website at www.seattle99.org, or the Global Trade Watch home page at www.citizen.org/pctrade/tradeframe.html.

There will likely be a considerable Texas contingent of activists in Seattle, and plans also continue for local actions around the state in solidarity with the Seattle events. Educational forums and related actions are being organized in Houston and Dallas, and a major rally and march will take place in Austin November 30. Activists will gather at Republic Square (Fourth and Guadalupe) at 3 p.m. and march to the Capitol at 4 p.m., with stops at various W.T.O.-friendly businesses and banks along the way. There will be speeches, songs, and street theatre at the Capitol from 5 to 6:30. At press time, scheduled speakers include Rebecca Harrington of the Texas AFL-CIO, Erin Rogers of the Austin Coalition for Fair Trade, Dick Richardson of the University of Texas, Susana Almanza of the Austin environmental organization PODER, among others. For more information, contact James Scott of Public Citizen at (512) 477-1155; or Jere Locke of the Texas Network for Economic Democracy: (512) 263-1883.

PRECARIOUS. With the lukewarm exception of Bill Bradley, the bi-partisan campaign consensus maintains that welfare reform has worked wonders across the country, the rolls are miraculously down, and all we have to do to make the rest of those freeloaders get jobs is to withhold their checks. According to a new report announced by Austin's Center for Public Pol-



Gary Oliver

icy Priorities, the reality is not so rosy. Close to a third of current welfare recipients (27 percent) face significant obstacles in returning to work, and are likely to be without either assistance or jobs when time limits expire. And when the number includes those who are already looking for work, the percentage of clients at risk rises to 38 percent.

That was the conclusion of the National Survey of America's Families, which found that 27 percent of T.A.N.F. (Temporary Assistance to Needy Families) clients faced at least three barriers to work and were not participating in any work activity — including a job search — in 1997. Barriers to work include less than a high school education, a poor work history, caring for a child under one year of age, caring for a disabled child, language barriers, mental or other health problems, or lack of transportation.

Predictably, in Texas the situation is worse. In 1998, over 65 percent of single-parent recipients in Texas had worked fewer than six months in the previous two years; 55 percent had less than a high school education; and 15 percent were caring for children under age one. In South Texas, over 70 percent had poor work histories; 66 percent had less than a high school education. And in 1998, regional unemployment ranged from 6.7

percent in Nueces County to 27.7 percent in Starr County.

C.P.P.P. analyst Elizabeth Mueller notes that current Texas welfare policy strongly emphasizes "work first," whether or not employment is a realistic possibility for a particular client. Since many clients find themselves sanctioned for failing to comply with program demands or cycling back onto T.A.N.F. when they are unable to hold down a job, Mueller said, "Without greater attention to these issues, when the economy slows down and recipients hit their time limits, they will have nowhere to turn."

ANGELS IN KILGORE. The play has closed, but not the controversy. The decision to stage Tony Kushner's *Angels in America* at Kilgore College has generated local outrage and national support, and the Texas Shakespeare Festival may never be the same. When Raymond Caldwell, head of the Kilgore College theatre program, chose to produce Kushner's epic dramatization of American history and gay life (which won both the Pulitzer Prize for Drama and the Tony Award for Best Play in 1993), he anticipated some protest. "I knew there would be some objection, but it never crossed my mind that people would react by withholding money from the college," Caldwell told

the *Chronicle of Higher Education*. "I guess I was naive." Not only did rumors of the production spark angry protests from local fundamentalists — including one lawyer who tried in vain to buy up most of the tickets for opening night — but the Gregg County Commissioners have threatened to withhold future funding from Kilgore's Texas Shakespeare Festival, which Caldwell also directs.

Much to the credit of the college, the trustees and President William Holda refused demands by the county, the mayor, and other major funders to cancel the production. "We could have stopped the production, but it would have been a sad legacy," Holda said. "To me, the whole issue boils down to academic and artistic freedom."

City and county politicians had threatened to pull a total of \$65,000 from the college if it went ahead with the production. News of the censorship battle has spread across the country, and playwright Kushner sent a ringing statement of support for the Kilgore College administration and teachers. He described a mob assault on a Romanian production of the play, and wrote, "Those who wish to silence us have learned that they can attempt an end-run around the Constitution's mighty edict against censorship by simply using money, from the state or from foundations and individuals, to force compliance with their convictions and beliefs.... What they seek is no different from what that mob in Bucharest sought: a world in which people are afraid to make art that challenges convention, that says what may not have been spoken before."

BURNING MAN. On November 4, Colorado City attorney Pat Barber burned his "Just Say No" billboard on I-20, about sixty-five miles west of Abilene. Barber erected the billboard on his own property, facing west-bound traffic on the highway, to inform motorists that they have the right to refuse highway patrolmen who, without probable cause, ask to search their vehicles for drugs or other contraband. The Texas Department of Transportation claims the sign is a violation of the Highway Beautification Act, while Barber — a Republican who recently declared his candidacy for a seat on the Texas Court of Criminal Appeals — insists it is protected free speech under the

U.S. and Texas Constitutions. Barber burned the homemade billboard (which read, "Just Say No To Searches" and gave his telephone number) because an Austin District Judge had announced her intention to rule in favor of TXDOT and its threatened \$1,000 a day fine.

"It's obvious to me we need more judges who take their oath to support and defend the Constitution more seriously," Barber told reporters. "Our lawyers will appeal, but for now the sign must go."

GUN NUMBERS. Cliff Pearson of the Dallas Peace Center provided Political Intelligence with some interesting statistics picked up from the Sixth Annual Citizens Conference to Stop Gun Violence in D.C. earlier this month. According to The Violence Policy Center, a U.S. resident is forty-three times more likely to be killed by his or her own handgun than by one owned by someone else. A woman is twelve times more likely to be killed by someone she knows than by a stranger. A long-term study at the University of Miami showed that over 90 percent of all unintentional shootings involve "family handguns" in homes. Less than 2 percent of all home handgun owners have had military training, and less than 29 percent have had any gun use training at all. Massachusetts gun violence expert John Rosenthal said that in Massachusetts, of the 960 registered gun dealers in their state, more than 800 dealt out of their homes prior to a state law requiring retailers to have a commercial address. Three hundred eighty-nine of these home dealers were the suppliers of more than 50 percent of the handguns used in violent crimes last year in Massachusetts.

ROCKET ON THEIR DOCKET. Some day, Texas Civil Rights Project legal director Jim Harrington will hold a press conference in front of Johnny Rocket's retro-theme restaurant in Austin's Barton Creek Mall. Harrington is representing a group of young Mexican-American plaintiffs who allege they were denied entrance to the restaurant because of their ethnicity. Harrington filed a public-accommodations lawsuit and held a press conference in front of the restaurant to announce the suit — at which time the mall management had him arrested. (He reportedly was retained by a new client while he was in jail.)

Harrington then went to Travis County District Judge Mary Pearl Williams with a request that she order the mall management to comply with an injunction handed down by Travis County Judge Joe Hart in 1983. Hart's injunction seemed to be on point: it applied specifically to Barton Creek Mall, and declared the mall a quasi-public space, where no limits could be imposed on free speech. And it had been in place for sixteen years.

Harrington rescheduled his press conference, only to discover that Judge Williams' order enforcing Judge Hart's injunction had been appealed by Thompson & Knight — the attorneys representing the mall and the restaurant. When the Third Court of Appeals in Austin affirmed Judge Williams' ruling, the Civil Rights Project prepared to hold its press conference at the mall. Late on the afternoon of Friday, November 12, Thompson & Knight went to the Texas Supreme Court with a request that it block the press conference Harrington had scheduled for noon the following Monday. The court (a 9-0 Republican majority) issued a temporary order, shutting Harrington and his plaintiffs out of the mall. "When you choose not to appeal a case [in 1983], and sixteen years later you are trying to get around it and the Supreme Court helps you out, I can't figure it out," Harrington said. (A Political Intelligence Guess: Thompson & Knight's partners are major givers to Texas judicial candidates — including members of the Supreme Court.) The Supremes have scheduled a hearing on the Wednesday before Thanksgiving, to issue a final ruling on free speech in an Austin mall. Harrington and his clients will schedule their press conference after the ruling — if the Court so ordains. □

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How Not to Cover Politics

You may have noticed a certain ... ah ... frothiness in the coverage of the 2000 presidential race to date. I don't know about you, but *The Unbearable Lightness of the Political Beat* is really starting to chap me.

Early in November, we had the grave matter of whether Al Gore is an alpha male thoroughly parsed for us — one news-magazine made it the lead story. We were also confronted with George W. Bush's ignorance of the names of three out of four leaders in world trouble spots, and this called for much double-doming and deep dissection. After Ronald Reagan, who didn't know all the names of his own Cabinet members, you would think there was little excitement to be mined in that department. The disquieting news that John McCain has a temper has been thoroughly mulled over by all and sundry. All this follows months of discussion on burning topics like W. Bush's alleged drug use thirty years ago, vast attention to Gore's shifting from blue suits to earth tones, Donald Trump being treated as though any reasonable citizen would consider voting for him, the Warren Beatty candidacy, and much more that is of no help whatever in selecting the next Leader of the Free World.

The most annoying aspect of all this piffle is the brain-dead defense that we in the media are writing about froth because the country is in a high state of peace and prosperity, and so there's nothing important about which we need to ask the candidates. Thomas Friedman, the foreign affairs columnist for *The New York Times*, managed to raise a couple of substantial issues without even breaking a sweat, so we know it can be done. He suggested the following questions for Bush:

■ "You've already brought on some foreign policy advisers: Condoleeza Rice, Paul Wolfowitz, Richard Perle. They're all Cold War conservatives. What is it about their world view that appeals to you?"

■ "You were in favor of the Senate's rejection of the Comprehensive Test Ban Treaty, which would have banned all nuclear testing. Fine. Suppose you were sitting with Prime Minister What's-his-face of India and General Whatever-his-name-is from Pakistan and trying to persuade them

to stop testing. How would you explain why you believe America should retain the right to test nukes, but India and Pakistan should be denied it?"

■ "Do you believe your father was right when he decided at the end of the Gulf War not to go to Baghdad and take out Saddam Hussein, even though we had 500,000 troops on Iraq's border?"

■ "Hispanic Americans are increasingly in favor of lifting the pointless U.S. embargo on Cuba. Your brother Jeb, the governor of Florida, wants to maintain the embargo in deference to his Cuban supporters. Where do you come down?"

I suppose after eighteen months of Monica Lewinsky as the most important political story on the planet, we should be inured to the Maureen Dowdization of political coverage. But let me suggest a few items of perhaps greater import that we might ask our candidates to address.

■ Our entire political system has been corrupted by the system of legalized bribery called "campaign financing." Last week, *Time* magazine ran a two-page story citing the special-interest bills that have been bought through Congress recently. The airlines managed to scuttle a bill that had consumers cheering — it cost the airlines \$3.2 million.

■ The Patients' Bill of Rights, bankruptcy overhaul, broadband access, Caribbean tariff relief, interstate wine sales — all of it is up for sale. We know that John McCain and Bill Bradley have ideas on how to fix this mess; what about Bush and Gore?

■ The health-care system is increasingly fouled up. Only Bradley has come up with a plan to fix it.

■ The public schools are in dire need of attention. How much longer do we think we can get away with paying schoolteachers less than \$30,000 a year?

And then there is the dark side of the nation's prosperity, which the media themselves have resolutely refused to address: Since 1977, average household income for

the bottom 20 percent of Americans has gone down by 10 percent. For the middle fifth of the people, it has risen all of 8 percent since 1977, a roaring 0.5 percent a year. But for the top 1 percent, average income has gone up 115 percent. According to the Center on Budget and Policy Priorities, the bottom 80 percent of the people in this country own 16 percent of the wealth; the top fifth owns 84 percent of the wealth.

None of this is inevitable or irreversible. Tax policy accounts for a great deal of the income inequality in this country.

The media are supposed to get candidates to give us something besides pat soundbites on these issues. The anodyne pabulum that passes for political discourse is the main reason that Americans are so turned off by politics. Ever heard George W. Bush's stump speech? Like a good deodorant, it is guaranteed Not to Offend. In theory, it's the media's job to get the candidates to actually address the issues. So far we sound like the old parody of a reporter interviewing a movie star: "Do you sleep in the nude?" □

Molly Ivins is a former Observer editor and a columnist for the Fort Worth Star-Telegram. Her forthcoming book, written with Observer editor Louis Dubose, is Shrub: The Short and Happy Political Life of George W. Bush. You may write to her via e-mail at mollyivins@star-telegram.com.

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Happy Days Are Where?

Blue skies, heading my way, nothing but blue skies ... da-da-da. Yes, that's the song the Powers That Be want us singing: "Consumers are showing no signs of pessimism and no signs of curbing their strong spending habits," gushed a goofus of a group that publishes the always perky "consumer confidence index."

Is that you? Are you out there gaily buying \$50,000 S.U.V.s, 5,000-square-foot homes, and round-the-world cruises? Or, are you like the majority of folks in the real world, who are scrambling just to handle the basic bills, and even then having to put your "strong spending habits" on your already over-extended credit cards?

Here's another little happy-face sticker they're trying to plaster on your economic reality: "Average incomes are up, so people are spending more!" The "average" they're talking about takes Bill Gates' multimillion-dollar income, adds yours, and then divides by two. This math makes you a millionaire, too! Try explaining that to your credit card company. The fact is that in this time of extraordinary prosperity, eight out of ten Americans have seen their incomes go flat or down. It's no longer a matter of poor people being trampled by the prosperous few — but of the middle-class majority being trampled.

Ordinary Americans — the working stiffs, the family farmers, the small business people, the grassroots folks — they're what make our country work. These folks are running faster than a hamster in its wheel, and not getting any farther ahead. How absurd and self-defeating that our economic and political leaders pretend that our nation is prosperous when the majority of the people are not. Wall Street is zooming, but 90 percent of the stock market gains made this decade have been pocketed by the wealthiest 10 percent of Americans.

Even a dog knows the difference between being stumbled over and being kicked. And it's time the majority began to kick back.

VIRTUAL FORESTS

Time for another Hightower Hog Report. This week's hogs are the giant timber and paper companies that are granted logging privileges in America's national forests.

They're granted much more than the privilege to log, however — taxpayers also provide millions of dollars in annual subsidies by letting the corporations take our trees at *waaaay* below the market price, while we build thousands of miles of logging roads in the forests to make it easier and cheaper for them.

Now, *Mother Jones* magazine reports that the U.S. Forest Service is providing an additional, high-tech, cosmetic subsidy. It amounts to a corporate P.R. scam paid for by you and me: a \$3 million, state-of-the-art computer software program that helps the loggers hide their environment-destroying, clear-cutting practices from the public eye, with a computerized game of hide-and-seek. To reduce the public's outrage at coming to a national forest and seeing acres and acres of stumps where majestic, thousand-year-old trees once stood, computer programs with names like "Smart Forest" and "Virtual Forest" allow the corporations to analyze the terrain so their clear-cuts can be done behind ridges, down in ravines, and on the back side of mountains. These "out of sight, out of mind" software programs are being put in all 800 Forest Service offices.

The Forest Service also helps the companies create "beauty strips" along the tourist roads: a veneer of trees that look great as you drive along, but beyond your view is the distressing sight of our once magnificent forests, stripped of their trees. All of this is the Forest Service's way of letting us "have" our forests, while letting the timber companies eat them. To stop the stupidity and the scam, contact a group called the Lands Council: (509) 838-4912.

HIGH-TECH GREED-O-RAMA

Welcome to the All American High Tech Carnival, with its exhilarating new ride, "The Greed-O-Rama Whirlygig." The Greedy-Whirly takes you up to the zenith,

then drops you into the abyss. It's a ride designed by Congress, and powered by the campaign contributions of Microsoft and the other giants of the high-tech world. These corporations, we're told, embody the future for America's middle class. Forget manufacturing jobs, they say — get wired instead, and grab one of the exciting information-age jobs as a computer programmer, software designer, or engineer. The industry claims it will need 140,000 new high-tech workers a year for the next decade.

But this is where the Greedy-Whirly drops you into the economic abyss. Thanks to a little wage-busting loophole called "H1B visas," Americans mostly won't be getting these jobs. Under this loophole, an industry can simply declare that no Americans can be found to fill these techie jobs, and instead, fill them with foreign workers. Russia, India, and other nations abound in skilled computer workers who'll gladly take the jobs for a third to a half less than the going salary in the U.S. The greed-headed, billionaire C.E.O.s who run the computer industry see this teeming force of foreign workers as a great way to bust the whole salary level for their employees, so they've begun declaring that no Americans are up to snuff skill-wise, and are bringing in H1B workers from abroad.

Problem was, there was a limit of 65,000 H1B visas per year — so campaign contributions flowed to Congress, lobbyists were hired and — *voilà!* — the visa level was raised to allow 115,000 foreigners per year. Now, they're pushing for 200,000 a year, which would mean 60,000 more foreign workers each year than there are jobs. The Greed-O-Rama Whirlygig is class war in action. □

Jim Hightower's radio talk show broadcasts nationwide daily from Austin. Find him at www.jimhightower.com, or e-mail: info@jimhightower.com.

“Crimes Against Democracy”

BY THE DEMOCRACY BRIGADE

Editor's note: As reported in the Observer November 12, The Nation November 15, and virtually nowhere else, nine U.S. citizens who called themselves "The Democracy Brigade" were arrested October 26 at the U.S. Capitol following a midday rally for clean elections, at which Ronnie Dugger of the Alliance for Democracy delivered an address called "Crimes Against Democracy: Citizens' Address to Members of Congress." The rally was sponsored by the Alliance and co-sponsored by Public Campaign and United for a Fair Economy. The Democracy Brigade entered the Capitol rotunda, unfurled a banner reading, "Stop Crimes Against Democracy," and attempted to take turns reading aloud through the same address. They were arrested, charged with demonstrating in the Capitol contrary to federal law, and commanded to appear in court November 17.

What follows are excerpts from "Crimes Against Democracy."

"This system stinks. This system is money."

So spoke Senator George Mitchell, the Democratic majority leader, in December 1994, as Congress killed, again, "campaign finance reform." That was our democracy he was talking about. Then he gave up — the majority leader of the United States Senate walked away from Congress. Today we, some of the people, have walked back to the Capitol, the scene of the crime. We want to speak to you, Members of Congress. We want to speak to you.

Some say our democracy has never belonged to the people, and that may be right. We didn't have a deep enough democracy. But we did have our country, and now we've lost it.

We want it back.

We want it back from the gigantic corporations.

We want it back from the billionaires and the multimillionaires.

We want it back from you, Members of Congress.

We want you to do our business, not theirs.

You declaim and legislate against crime

and criminals. But your crimes against democracy mock your eloquence and your righteousness....

If you are not working to end campaign corruption by enacting full public funding of all federal elections and the other needed reforms of the election system, your honor and your virtue are mocked by the crimes that you, you personally and you together, are committing against democracy....

Men and women of the Congress, when you refuse to seriously consider letting us pay for our own elections with our own public funds, to educate ourselves about the ideas and plans of those who would lead us, when you turn over our elections to domination by big-money propaganda, you are selling stolen property, democracy that is not yours to sell. This is Grand Theft.

■ When you let the gigantic corporations befool our elections with "soft money" that buys your re-elections just as well as hard money does, you commit crimes against democracy.

■ When you let PACs pack your wallets and in return get for themselves what should be our laws, you are selling our democracy to them for your profit and power.

■ When you deny the people national health insurance because of your payoffs from the pharmaceutical and health insurance corporations and their HMOs, you are conspiring with them to put their profit and your power ahead of our health....

■ When you continue to let the giant corporations pollute the land, the soil, the rivers, the oceans, and the air, what we eat and drink and breathe and where all our fellow beings are, so you can get their money and keep your power, you sicken and damage our bodies, and you poison the only earth we have whereon to live and govern ourselves.

■ When, for money that you receive, you give away to the mining corporations the hundreds of billions of dollars in minerals that we own in the public lands that we also own, and when you let cow corporations graze their cows on our land for next to nothing, you are stealing from the common wealth of all the living and yet to be born,

you are selling, again you are selling, what is ours, for your profit and power.

■ And when, in the Telecommunications Act of 1996, you gave to the present billionaire-corporation licensees of our television channels — *gave them, for nothing* — new channels that belong to us and are worth (Senator Bob Dole of Kansas has told us) up to \$70 billion of our money, you consolidated corporate control of the public space that is essential to free speech and democracy, and you committed a criminal theft and giveaway of our public property that makes every other heist from our national Treasury look like kids stealing Lifesavers....

Now, let us be clear with you: we did not come here for fig-leaf reform, mere tinkering with this rotten system. As long as election campaigns are privately financed, big corporations and the rich will continue to control our democracy just as they control our economy. Only publicly-financed campaigns will break their stranglehold....

You are trapped, but we are trapped with you, and you are failing us, for your crimes against democracy are crimes against us. You're keeping us from having honest democratic conversations in our elections. You're giving money we need for our families to corporations so they can get bigger and charge us more for less. You're taking money for votes you should be casting for us. All these crimes against democracy and us may not be illegal, but they are immoral and unethical, they are just plain wrong....

So we have come to the Capitol, to the scene of these crimes against us, Ladies and Gentlemen of Congress....

We are the people, and we will enforce democracy....

And so today we take the first of a series of steps to bring into being an interactive cooperation of our independent organizations and a great new national movement of the people to achieve full public funding of public elections, national health insurance, and the complete supremacy of democracy

See "Democracy," page 20

Prison Lit

Inside and Out the Prison-Industrial Complex

BY MARY S. MATHIS

DOING TIME:

25 Years of Prison Writing.

Edited by Bell Gale Chevigny.

Arcade Publishing.

349 pages. \$27.95.

THE CELLING OF AMERICA:

An Inside Look at the U.S. Prison Industry.

Edited by Daniel Burton-Rose, Dan Pens, and Paul Wright.

Common Courage Press.

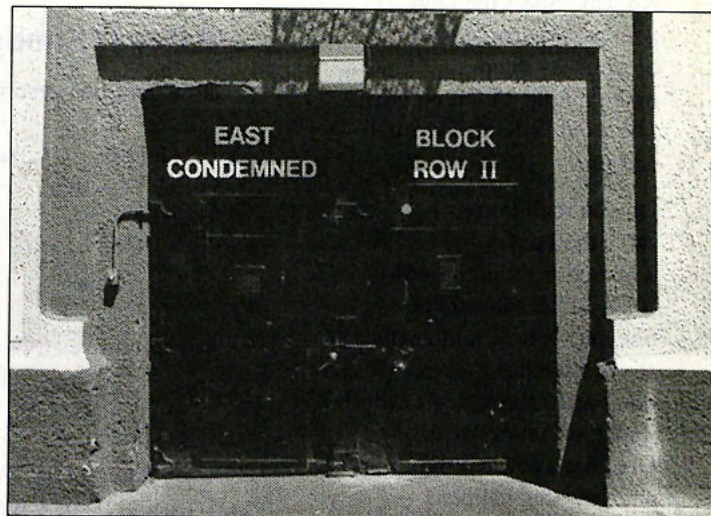
263 pages. \$19.95 (paper).

In “Coming to Language” (collected in *Doing Time*), poet Jimmy Santiago Baca writes of learning how to read and write in prison. First, he listened:

Before I was eighteen, I was arrested on suspicion of murder after refusing to explain a deep cut on my forearm. With shocking speed I found myself handcuffed to a chain gang of inmates and bused to a holding facility to await trial. There I met men, prisoners, who read aloud to each other the works of Neruda, Paz, Sabines, Nemerov, and Hemingway. Never had I felt such freedom as in that dormitory. Listening to the words of these writers, I felt that invisible threat from without lessen ... my sense of teetering on a rotting plank over swamp water where famished alligators clapped their horny snouts for my blood. While I listened to the words of the poets, the alligators slumbered powerless in their lairs. The language of poetry was the magic that could liberate me from myself, transform me into another person, transport me to places far away.

During his next stint in prison, at age twenty, Baca learned how to write, and he has been writing for his life ever since. Winner of the American Book Award, holder of endowed chairs at Yale and Berkeley, Baca transformed himself from an illiterate chronic criminal into a major American poet. It's easy to say that Baca is an exception, and, of course, he is. It's also easy simply to look away from prison writing. But prisoners see what most of us will never see, and we owe it to ourselves at least to understand what the prison system — increasingly called “the prison/industrial complex” with good reason — is doing in our name.

Our jails and prisons (warehouse 1.8 million people (roughly the population of Houston), an incarceration rate exceeded only by that of Russia. The demographics of the prison population are changing. Increasingly, those we incarcerate are African Americans, who now make up a majority — 51 percent — of the U.S. prison population. Almost a third of black men in their twenties are under the supervision of the criminal justice system. According to Noelle Hanrahan, a grassroots activist contributor to *The Celling of America*, if present trends continue, by 2010 a majority of African-American men between eighteen and forty will be incarcerated.



▲ Death Row entrance, San Quentin

Alan Pogue

Since these rates are grossly disproportionate to the amount of crime actually being committed by African Americans, the suspicion that the criminal justice system has become a selective instrument of control is impossible to ignore. Although women make up only about 6 percent of the prison population, the growth in women's incarceration is six times that of men's, in large part thanks to certain rules of engagement in the war on drugs. *The Celling of America: An Inside Look at the U.S. Prison Industry* and *Doing Time: 25 Years of Prison Writing* give voice to our burgeoning “prison nation,” and they provide an invaluable education that simply can't be found anywhere else.

I came away from these two remarkable books grappling with this challenge: what do we want our prisons to do? Do we want our society to be one that believes in the possibility of rehabilitation, in the capacity of criminals to change? Or are we satisfied with the current ruling functions of incarceration: punishment and profit? Despite the politically popular “lock 'em up and throw away the key” approach, the vast majority of this nation's prisoners — even those in our shiny new experiments in de-humanization, the Super-Max prisons — will get out some day. Who will they have become by then? And who have we become, to tolerate the U.S. prison system as it exists today?

The *Celling of America* reads like a primary sourcebook for the nineties. Most of these short, dense, detailed articles were culled from *Prison Legal News*, edited by Dan Pens and Paul Wright, prisoners in the Washington state prison system (www.prisonlegalnews.org). This distinguished contribution to the penal press, founded in 1990, relies for information and articles on a network of inmates all over the country. Pens and Wright themselves account for roughly half the essays here; the rest are by other



▲ *Babies Behind Bars, Bedford Hills detention facility, New York. Mothers of newborns keep their babies for eighteen months.* Alan Pogue

prisoners, prison activists, journalists, even a former judge. The facts are generally offered with restraint, economy, even understatement; the research and investigative skills seem virtually impeccable. These writers offer well-informed, often persuasive views on everything from weight-lifting programs and “frivolous” prisoner lawsuits to the effects of “three strikes” legislation. The trends these essays reveal and the future they portend are ominous.

Doing Time is a stunning collection of the last quarter-century’s best offerings to an annual literary contest sponsored by PEN (the authors’ rights organization) for federal and state prisoners. The fifty writers (including ten women) were convicted for the whole gamut of criminal activity: from white-collar crime to drugs to armed robbery to capital murder. Yet *Doing Time* is full of blazing, finely honed literary talent, and many of these short stories, poems, and essays could hold their own anywhere, and indeed have: from *Harper’s* to the *Harvard Educational Review* to *Yoga Journal*.

The variety of genre, mood, and style in the collection is almost as striking as the overall quality. The surreal and the absurd mix with the confessional and the documentary. Many writers use stark realism to great effect; dialogue is crisp and fresh, imagery inventive. Some have become careful historians in prison. A rich prison

argot and gallows humor find their counterpoint in quiet, meditative pieces. Irony rubs shoulders with unflinching self-examination. The thematic arrangement of the book, covering the “lifespan of imprisonment” from initiation to death, invites the reader to try to imagine a life behind bars, where we meet a gallery of memorable characters. There is the “Toledo Madman,” in J. R. Grindlay’s story, who enlists the aid of sparrows in an escape attempt and adopts a pet mouse named Hercules. He befriends an inmate named Burnout, who is forcibly administered Thorazine after his first escape attempt. Robert Kelsey’s “Suicide,” given his nickname by his work as a Suicide Prevention Aide, has recently started doing time for a drunk-driving manslaughter conviction. His charges in the Mental Observation Unit wonder if they’ll survive after he is transferred upstate. Scott A. Antworth’s “Tower Pig” escorts “Caine” to a family funeral; during the journey, the relationship between guard and inmate changes in surprising, complex ways.

Doing Time is a most impressive addition to the canon of American prison literature. In the seventies, an era of prison reform sparked by the massacre (by state troopers and corrections officers) at Attica in 1971, that canon flowered, fed by prison writing workshops, journals, newsletters, newspapers, and books, in what

prison poet William Aberg calls a "prison renaissance." College and university course offerings featured more and more prison writing, and PEN started both a prison writing workshop and the annual contest during this period.

A sea change occurred in the eighties. Reagan's War on Drugs brought mandatory and longer sentences, harsher sentences for crack (read: black) than for powder (read: white) cocaine, and defunding of rehabilitation programs. Trickle-down economics made the drug trade harder to resist in poor communities. Predictable results included prison overcrowding and an influx of younger, often gang-affiliated, violent offenders who had no hope of getting out anytime soon. The Reagan Devolution also coincided with a watershed event in the history of prison writing: Norman Mailer's protégé, Jack Henry Abbott, committed murder a month after his high-profile release. Prisoners lost their cachet.

Since the eighties, punishment has been the name of the game. Some forms of punishment, such as the currently favored solitary confinement, systematically strip inmates of their humanity. In the nineties, "the hole" simply won't do. We are building Super-Max prisons — huge, maximum security warehouses. Usually built next to a minimum-security prison, which provides much of the necessary labor, the Super-Max can be a big draw to economically depressed rural areas. Inmates are always "locked down," spending twenty-two to twenty-four hours a day alone in their cells. They exercise alone, in an outdoor cage or in an internal cell with a chinning bar. In some facilities, the prisoners can't even hear, much less see, other inmates.

The persuasive myth marketed by the prison system, politicians, and the mainstream media is that only "the worst of the worst" (those who have been most violent in prison) are transported to these "control units." A code word common to the myth is "predator": these people must be animals. As it turns out (*The Celling of America* has an entire section on this topic), some convicts are sent straight from court to these warehouses, which have already become dumping grounds for the mentally ill, political prisoners, and disproportionate numbers of homosexuals, people with AIDS, and African Americans. Both books document the fact that such a punishment is often meted out to writers and jailhouse lawyers with no prison violence on their records. Men and women are often moved hundreds of miles, even several states away from home, cutting off the possibility of visits from loved ones. Yet most of these prisoners, dehumanized by years of sensory deprivation and lack of human contact, will eventually rejoin society. That prospect is elided in public discourse. Instead, the Super-Max is sold to voters as an economy-booster.

In the post-Cold War nineties, absent Communists as a viable enemy, criminals (despite falling or static violent crime rates) make a convenient substitute. So the prison population has swelled, and we just can't build prisons fast enough. Actually, this is an old form of corporate welfare: the prison biz. It exists in two main forms: profit from prison labor and the privatization of prisons.

The Thirteenth Amendment didn't really outlaw slavery, but simply confined it to prisoners. It is undeniable that work can give prisoners' lives meaning and purpose and can prepare men and women for a productive life on the outside. Several writers attest to

the transformative power of work. The question is, *cui bono?* Who benefits? Should private enterprise benefit from prison labor? In the New Deal era, we said no, though primarily for economic reasons. The practice, which had grown out of the post-Civil War "land-lease" system, was outlawed in 1935. (Ironically, the federal prison industry started during the New Deal.) Dan Pens explains how a 1990 law effected a widespread revival of this practice. Almost one quarter of *The Celling of America* is devoted to prison labor and the prison industry. Here are just a few items:

- Microsoft had a packaging contract with Exmark, which used prison labor from Twin Rivers Corrections Center in Washington. Prisoners packaged 50,000 units of Windows '95 demo disks and direct-mail promo packets. Other reported clients included Starbucks, JanSport, and the telecommunications giant US West.

- Lockhart Technologies eliminated 130 jobs in Austin and moved their machinery into a private prison (owned by Wackenhut).

- The Texas Department of Criminal Justice had a sweetheart deal with VitaPro Foods of Montreal to be sole distributor of VitaPro's soy-based meat substitute for prisons and jails all over the U.S.

- Ohio's brainchild, Ohio Offshore Industries Project (OSSI), kept Unibase, a data processing company, at home (instead of going overseas) with the lure of cheap prison labor (forty-seven cents an hour).

The privatization of our prisons also continues apace. In 1987, there were only five private prisons in the U.S. Texas alone now has thirty-eight (thirty-seven if we don't count the one the state is taking over from Wackenhut). The Big Three in the corrections industry are discussed in Ken Silverstein's "America's Private Gulag" and in Dan Pens' "INS Detainees Trash Private Prison" (collected in *Celling*). According to the industry leader, Corrections Corporation of America, the private sector is now responsible for 6 percent of the prison population (almost 162,000 inmates), and, since 1998, the number of privately contracted beds in the U.S. is up 24 percent, from 97,000 to 120,000 (www.correctionscorp.com). The nineties have made the prison biz a huge growth industry. Dr. George C. Zoley, Vice Chairman and C.E.O. of Wackenhut Corrections, puts it like this on his company's web site: "There are numerous opportunities on the horizon that indicate continued growth for our company and our industry." The opportunities are indeed endless: poverty, personal and institutional racism, a corporate-controlled mainstream media, the (failed) war on drugs.... The reader may wish to extend the list.

The end of the road for increasing numbers of U.S. prisoners (especially in Texas) is the death chamber. *Observer* readers are familiar with the basic facts, which I won't rehearse here. Contributors to both books address this issue, and half a dozen writers in *Doing Time* are among the roughly 3,500 people living on death row. Despite the accelerated pace of state-sponsored killings, we usually know little about those put to death in our name. A few are granted celebrity status before we poison, electrocute, or shoot them, but by and large, they remain invisible. *Doing Time* humanizes death row prisoners, just a little, and puts a few names and stories behind the statistics. Talent certainly isn't an index of virtue, or even of rehabilitation. Still, the sheer talent, effort, and energy behind each contribution from death row remind me of something often said by Sister Helen Prejean, author of *Dead Man Walking* and leading death



▲ Firefighting Crew No. 3, California Prison System, near Yosemite

Alan Pogue

penalty abolitionist: we are, all of us, including murderers, much more than the worst thing we have ever done in our lives.

Take Anthony Ross, for instance, former Los Angeles gang member and high school dropout. Before gang allegiance took over his life, he dreamt of becoming a cartoonist. Instead he wound up on San Quentin's death row, where he now reads and writes voraciously. In his story, "Walker's Requiem," his protagonist, Nathan Cole Walker, also condemned, reads Ralph Ellison's *Invisible Man* on his date with death. The man guarding him, Ford, with whom he often plays chess, asks if he is afraid of dying.

I thought about it for a moment, but I already knew my answer.

"Naw, I ain't afraid of dying. Dying is something I've been doing all my life. But when you know when and how it's gonna happen, all it takes is that one step over the edge inside your head — then bam! That's why most men are able to walk to their execution. They're already dead inside their heads."

I don't know the particulars of Anthony Ross' life: what led him away from cartoons and toward weapons, what rendered his talent and his potential invisible for so long. But is he no more than the worst thing he ever did in his life? There are many compelling reasons to oppose the death penalty, but I'm left, after read-

ing these books, with a sense of loss at the sheer wastefulness of state-sponsored killing. In retaining (even reviving) capital punishment, the U.S. is fighting the international tide of change, and some day the death penalty will be consigned to history's dustbin. In the meantime, we offer up a few people — almost always poor, disproportionately non-white — as public sacrifices. Ross' protagonist, Nathan Cole Walker, awakens from a nightmare about his funeral, which is not a funeral at all, but a public feast. He is the main course. His homeboys and his family partake, and a "dark-robed figure" presides. Here in Texas, our Governor and would-be president may be the Master of Ceremonies at these community sacrifices, all at suppertime. But each of us has a place at the table.

Dostoevsky wrote that we can understand a society only by looking at its prisons. I nominate these two books for inclusion in one of those millennial time capsules. Will a future people, upon reading them, thank their lucky stars that a new path has been forged? Or will these two books simply be seen as steps on an unbroken path to the Dark Ages of the American Gulag? □

Austin writer Mary S. Mathis is a member of the Texas Coalition to Abolish the Death Penalty and the recently organized Criminal Justice Reform Coalition.

The More Things Change...

The Transformation of a Fort Worth Neighborhood

BY JOHN SUMMERS

*LEFT BEHIND IN ROSEDALE:
Race Relations and the
Collapse of Community Institutions.*

By Scott Cummings.

Westview Press.

240 pages. \$24.00.

It was really a nice community, the kind that you would be proud to send your kids to its schools," remembers a 49-year resident of Polytechnic Heights, a neighborhood in southeastern Fort Worth. "And now you go down and you see old filthy mattresses out on the curbs and it is taking on a ghetto look." According to Scott Cummings' book, filthy mattresses have proven the least of the problem for the 10,000 inhabitants of "Poly," as the area is commonly called.

Once a stable, middle-class, and exclusively white neighborhood, the racial composition of Poly has undergone a striking series of changes during the last half of this century. The economic boom of the fifties and the desegregation efforts of the Great Society conspired to bring a wave of prosperous African Americans, whose presence disturbed the community's hitherto reliable sense of racial hierarchy. Then, in the seventies, lower-class minorities in search of jobs began to pour into the area. To observe that Poly's white citizens did not avail themselves of this opportunity to forge a multiracial neighborhood is to understate the matter somewhat dramatically. The most affluent among them quickly headed for the suburbs. The rest soon followed, encouraged by real estate brokers, bankers, businesses, and other profiteers who fed the logic of "white flight."

By the mid and late seventies, when Cummings worked in the neighborhood as a community organizer, "white resistance had collapsed, white flight had accelerated," and Poly "was well on its way to becoming a predominantly black neighborhood." Census records, he notes, indicate that white families occupied 98 percent of



▲ Polytechnic Heights, Fort Worth: street scene from commercial district courtesy of Albert G. Mogo

Poly's households in 1960. Thirty years later, that number fell to a mere 12 percent. Of those whites who were "left behind," the majority were elderly — whose homes one could rather easily identify by the iron bars fixed across the windows and doors.

As this narrative suggests, what makes the recent history of Polytechnic Heights a tragedy is not racial transformation per se, but the decline into poverty that accompanied the loss of jobs and the flight of middle-class money. This point does not always seem obvious to Cummings, who spends much of the book presenting, in needless detail, an inventory of rapes, thefts, burglaries, murders, and drug sales, along with numerous episodes of vandalism, intimidation, and extortion — all of which were committed by Poly's black youth at the expense of a vulnerable (and understandably terrified) group of white elderly. To be sure, in the wake of the white exodus Poly degenerated into an exceptionally violent, squalid place to live. A series of brutal rapes in 1978 and again in 1982 gathered such a storm of media protest that — even if a heavy crack-cocaine traffic in the eighties

had not fortified its reputation for lawlessness — the neighborhood might still signify little else but violent crime to the larger population of Fort Worth.

Yet it seems quite possible to argue that the process of "ghettoization" in Poly turned not only — or even necessarily — on a racial axis, but also on the question of class. Soon after whites abandoned the community, the black middle class, which had made its initial forays in the fifties and sixties, left as well. Cummings notes this in passing but makes little of it, referring frequently to the poverty-stricken "underclass" that resulted, but failing to develop any particular insights in this direction. Among his observations concerning the feelings of those white elderly who were left behind in Poly, consider this notation, which is not pursued by any analysis: "Some of the elderly insisted that they did not object to living in the same neighborhood with black people, but most were very concerned about the 'type of colored' that were moving in." "The elderly," he continues, "were highly critical of certain classes of people regardless of racial or ethnic origin." For some, then, the problem was

clearly that filthy mattress, not the skin color of its former owner.

None of this is meant to substitute class for race. Nor is it to minimize the powerful sense of racial antagonism that the author conveys through his interviews of black criminals, white victims, and their various interlocutors in the judicial system. The record of race hatred in Poly is profoundly troublesome. Nevertheless, Cummings treats the complicated degeneration of an entire community by applying a series of well-worn slogans and tautologies — versions of “The community was devastated by the forces of urban decline and disinvestment” appear in each chapter. In the main, he avoids both conceptual clarity and the sort of subtle analysis that could have yielded a particularly rich bounty, given the nature of the subject and the availability of the sources.

A related, and revealing, problem concerns his treatment of evidence. In the first chapter, Cummings writes, “I have chosen to maintain the anonymity of all subjects discussed in this book. I have also used fictitious names for some of the communities studied” — including, you may have noticed, Polytechnic Heights, which he names “Rosedale.” Readers have no need, of course, for the actual names of the individual subjects herein. But I can think of no persuasive reason to shield the location of the neighborhood, and two important grounds for disclosure. In the first place, Cummings gives so many hints about the neighborhood’s identity (wittingly or unwittingly) that whatever ethical standard he is trying to meet is plainly compromised anyway. (A modest research effort turned up the name “Poly” for this reviewer, who has never been near Fort Worth.) In the second place, his refusal to cite the relevant sources by their proper names (i.e., census records, community newspapers, demographic data) leaves readers unable to measure his claims even in a minimal fashion. For a book that purports to enrich the literature of urban sociology, withholding vital sources is hardly a compelling move to make.

Much of the trouble here appears due to Cummings’ preoccupation with the emotional and psychological consequences of the community’s fall — with “the human

side of neighborhood succession,” as he puts it. This approach leads him both to overprotect his evidence and to subsume analytical rigor to empathetic reporting. The final chapters contain some useful observations about the nationwide problem of racial integration in urban communities as well as a survey of the failed efforts to “revitalize” Poly, yet these seem oddly disconnected from the body of the book. Unfortunately, the “human” perspective in this book means that *Left Behind in Rosedale* says very little about how institutions function, and instead tenders a bundle of conclusions with which few readers will quarrel: racism is pernicious, neighborhoods need jobs, and strong communities are important for the spiritual health of their residents.

Despite these failures, *Left Behind in Rosedale* amply succeeds in conveying the third of these findings. Popular books such as Jonathan Kozol’s *Amazing Grace* cover some of the same territory, yet Cummings’ stark interviews with the whites left behind in Poly underscore the importance of stable neighborhoods in American culture.

In this respect, the book belongs to the larger reevaluation of community life currently underway among intellectuals, academics, journalists, and policy experts. Throughout much of American history, the urbane and the sophisticated have scorned an excessive sense of rootedness as little else but the bulwark of parochialism and prejudice. In the small town, the farmhouse, the urban enclave, and the suburban neighborhood, you will recall, have languished the “boob,” the “redneck,” the “working-class ethnic,” and the “soccer mom.” What has united these disparate figures in the cosmopolitan imagination is a frame of mind into which the virtues of tolerance, culture, and mobility supposedly do not penetrate. To be sure, the temper as well as the substance of this indictment have varied across time and place. And the idea of rootedness has managed to acquire its own set of rewards — especially among the upwardly mobile, whose ambivalence has led them to imbue community life with a durable sense of nostalgia. Nonetheless, when measured against a bourgeois ethos that reveres progress, success, speed, and impermanence, “community” long has been a notion too static for the American on

the make.

Some of this reflexive bias against community life seems to be diminishing in the nineties, at least in certain quarters. Whereas Sinclair Lewis and Sherwood Anderson once met critical acclaim for their bleak portraits of Zenith and Winesdale, Ohio, Tracy Kidder has earned praise for his *Hometown*, his rich, textured ode to the “sense of place” that permeates modern-day Northampton, Massachusetts. Consider, too, the rise to prominence of the “communitarian” movement among intellectuals and policy-wonks. Led by theorists such as Amitai Etzioni and Robert Bellah, and succored by the work of Robert Putnam and like-minded intellectuals, communitarians place at the center of their program connections among civic virtue, individual morality, and the networks of associational life — that is, churches, amateur sports leagues, local charities — that are refracted by stable neighborhoods.

Of course, the racist attitudes of the white elderly in *Left Behind in Rosedale* should help quash the romanticism that sometimes creeps into these discussions. If neighborhood life can function as a crucible of moral virtue and an antidote to the corrosive anonymity of the marketplace, it can also harbor the sort of prejudice that cripples the imagination and disables political will. Ultimately, whatever one makes of the evocations of “lost community” that Cummings displays here, the book should remind us that the fate of our neighborhoods and local institutions remain, at the end of the twentieth century, central to the promise of American life □

John Summers, a doctoral candidate in American history at the University of Rochester, is at work on a book about C. Wright Mills.

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"Dialogue," from page 28

Kosovo, I received a letter from the Serbian mayor of Belgrade, begging for peace for Kosovo and Serbia. I've spoken with Serbian members of the Free Serbia Movement. They've been sharply different in personality and temperament, from how the Serbian military seems to be. Balkan Mindset? Not that I could see. Ethnic Albanians and Serbs seemed as diverse as any group of people.

Peacefully yours,

Cliff Pearson
Editor, Dallas Peace Times

(Editor's note: A report of Cliff Pearson's trip to Kosovo may be read at www.dallaspeace-center.org/kosovo-rpt.htm.)

Congratulations to Richard Kraemer on a beautifully written and well-reasoned article on the Balkans. I found the Chomsky piece unreadable and unappetizing, especially after Kraemer's very level-headed, historically informative treatment of the same subject.

Dave Oliphant
Austin

Richard Kraemer responds:

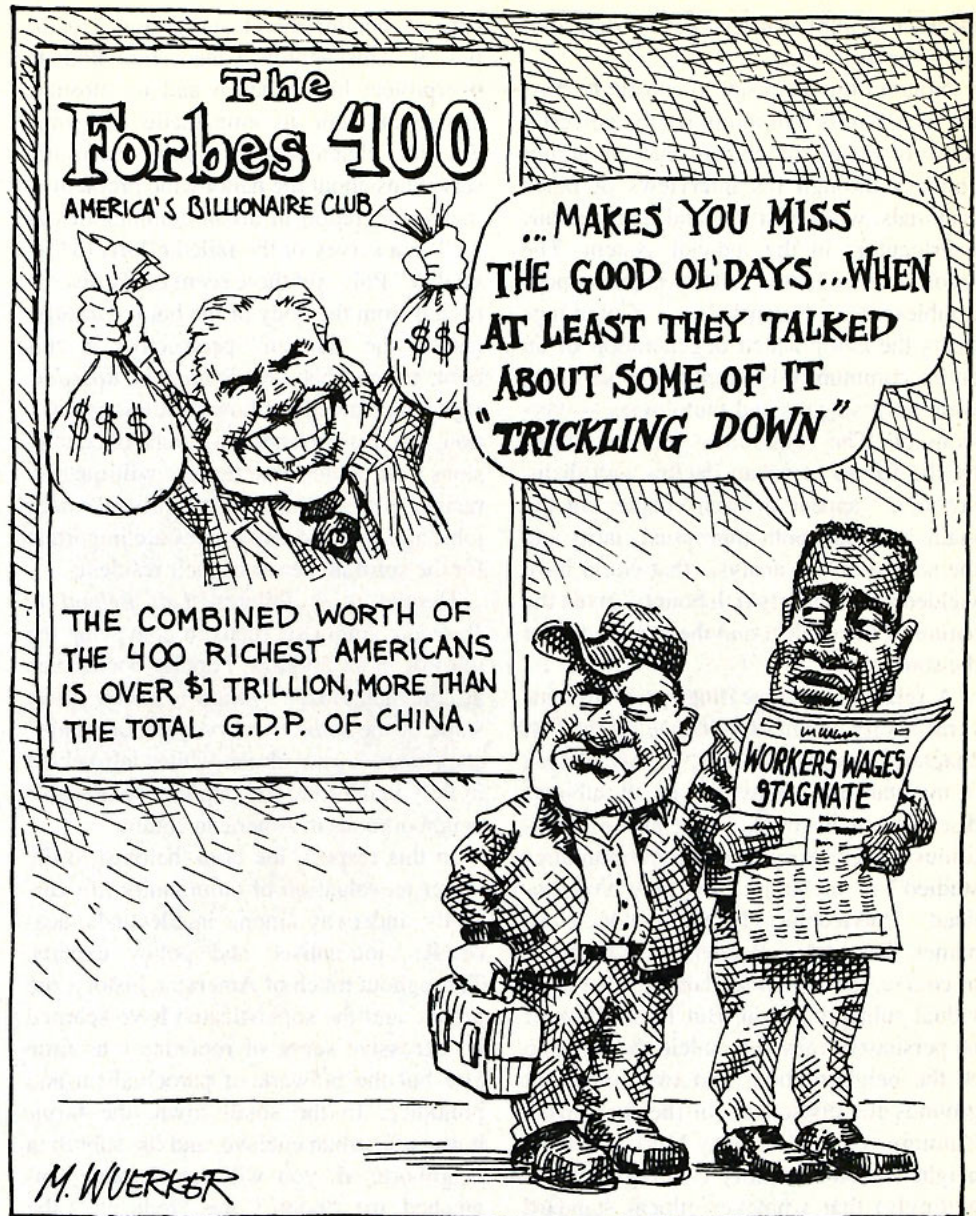
I began my essay by noting that it is virtually impossible to write about the Balkans today with being accused of bias and inaccuracy. Score one for prophecy.

First, the bias. In W.W.II, I worked with guerrilla groups of all ethnicities and religions. I came away profoundly impressed by their ability to endure terrible hardships, by their courage and self-sacrifice, and by the outpouring of gratitude for the support we gave them. My whimsical wish to transform Serbs into Swedes, etc., was not a slur but an expression of my hope that the Balkan people can soon live peacefully and productively, as do the Swedes, Swiss, and Danes.

Now as to accuracy. In doing research on W.W.II, I discovered that Ray Brock, a former New York Times bureau chief in Belgrade and an "authority" on the Balkans, wrote an article describing Yugoslavia as "one vast battlefield" at a time when the guerrilla groups were completely inactive.

In researching the nineties, I encountered a situation in which two "Balkan experts" gave vastly different factual accounts of the same event. Moreover, soon thereafter, two other "authorities" provided almost totally contradictory interpretations of the same set of facts. Conclusion: anyone who claims that his knowledge of the Balkans is accurate and that those who disagree are wrongheaded or worse should be regarded with grave suspicion.

Much of the above criticism of my essay consists of name-calling and accusations of inaccuracy in an area where inaccuracy is endemic. I had hoped for at least one constructively critical letter, one that might begin by saying, "I think your conclusion is inappropriate because your logic is flawed, and this is how and why." Such



a letter would have sparked a dialogue that could help us all perceive more clearly a novel, complex, and important problem.

One final thought: are the long term prospects for the Balkan peoples better or worse than they were before the U.N. and NATO interventions?

WOMAN FOR LIFE

I have been a long-time funder of *The Texas Observer*. However, your cover drawing ["Abortion Rites," by Karen Olsson, April 2] of women who work for a culture of non-violence and life as snobs, marching with their haughty noses in the air didn't fit me, who is pro-woman and pro-life. I work for campus housing and campus child care in Feminists for Life, a liberal national organization. We work against the death penalty, for better-funded child care, etc.

You have a picture of pro-life women and

men that excludes me and people like Nat Hentoff, ambassador and former Democratic Congresswoman Lindy Boggs, actors Patricia Heaton and Hunter Tylo, etc.

Joan Denkler
Houston

ROOM TO RANT

I was looking for an unbiased source for information about the presidential candidates and your web site is certainly not it (www.texasobserver.org). It might hold someone's attention a bit longer if you could delete what seems to be a mean spiritedness with little or no substance to back it up. How about some real info about the candidates rather than more hysterical rantings? You're no different than the Jerry Fallwells. Your politics are just different.

Norman Bradshaw
Alvin

Feeling Sorry at the D.P.S.

BY LUCIUS LOMAX

When the Texas Department of Public Safety decides to fire a state trooper, the condemned officer has a right of final appeal to the three-member Public Safety Commission, appointed by the Governor, which oversees the Department. There's a hearing in Austin, with evidence presented and witnesses called, concluded by the commission's vote to uphold or overrule the decision to terminate. In late September, the Public Safety Commission fulfilled its duty and sat in judgment of the evidence against Trooper Kevin Hodge.

In the Highway Patrol academy, Hodge's average grade was 93. He was so admired by his fellow cadets, he was elected class chaplain. But during his first year of service, he committed an offense which the Department has concluded is inexcusable: he tore up three citations, written by another officer, against crying young women. There is no evidence that Hodge destroyed the tickets for any reason other than sympathy. But for his overzealous action, which he admits, the Department wanted his badge, his gun, and his ass.

At first glance, tearing up an already-issued traffic citation might seem like a good reason for a trooper's termination. The abundant evidence at Hodge's hearing, however, contradicted that impression. Ticket-tearing is apparently an accepted practice in the D.P.S. — depending, of course, on who's doing the tearing. The procedure goes something like this: "You get a phone call that you wrote the wrong person a ticket," testified one trooper. "The word is, 'Can you help me?' Rather than asking, 'Can you dismiss the ticket?,' they'll ask, 'Can you help me?'" In his own defense, Hodge testified that at first, because the practice was so widespread among his peers, he did not believe he had done anything wrong in destroying the three citations. Previously, for example, he had destroyed a ticket at the request of another trooper (a citation that Hodge had written against the father of a local policeman); on another occasion, Hodge received a telephone call from a D.P.S. criminal investigator with a similar request.

But the department says what is different in this case, is that Hodge tore up *another* trooper's tickets — in fact, those written by his partner and training officer, with whom



he was riding on the day in question. The three citations, written during three different stops on the same day, were for violations that included speeding, a broken headlight, and failure to wear a seatbelt. The three apprehended drivers were weeping, and apparently the show of emotion touched the young officer. At the station later in the afternoon, Hodge pulled the tickets from a box holding the day's citations awaiting computer entry, and disposed of them. "I didn't think it was that serious at the time," he told the disciplinary hearing. When first questioned by his superiors, Hodge was evasive, and later realized his mistake. "I admit what I did was wrong, and I deserve some kind of punishment for it," he says. "I just don't believe I deserve the death penalty."

His supervisors do not agree. His sergeant labeled Hodge a "marginal employee." Higher up the chain of command, Hodge's personality became an issue. "I've noticed this tendency [in Hodge] to feel sorry for people," his captain says. "I've noticed that he's a very friendly per-

son. I wonder sometimes if he's in the right profession."

Even given the sometimes puritanical standards of the D.P.S., Kevin Hodge has been pursued with extraordinary zeal. The Department attempted unsuccessfully to have him charged (apparently with "destruction of a government document") by Montgomery County prosecutors, where he was stationed and where the ticket-tearing occurred. Yet inexplicably, Hodge's sergeant continued to give the trooper satisfactory evaluations and kept him on the road, often working alone — while at the same time attempting to have him arrested and fired. Indeed, the Hodge case illustrates a major problem in the Department: its investigation of misconduct by its own officers has been, it appears, more than a little contradictory and misguided. The D.P.S. (which includes the Rangers and the Highway Patrol, "intelligence" officers, and assorted criminal investigators) has been criticized by both the state auditor and the Legislature for having a faulty internal affairs mechanism. (A federal appeals court will soon rule on a lawsuit brought against the Department by the former chief of the Texas Rangers, fired by the D.P.S. for spending too much time socializing with legislators. The Ranger captain had also been accused by his superiors of the sin of praising a Democratic plan for fighting welfare abuse, under a Republican Governor.)

Many of the complaints for which troopers have been disciplined are, of course, valid. Transporting drugs across the Mexican border in a highway patrol car should be grounds for dismissal. Ditto for aggravated assault and burglary. Having sex in the back seat of a patrol car is a malfeasance of duty. Driving a state vehicle to a

fishing tournament in Missouri deserves some time off without pay, if only to contemplate one's error, as does seizing drug paraphernalia and giving it to an unauthorized civilian. But are such violations as "having an affair with a deputy sheriff's wife," or "an affair with a fellow Ranger's wife," or "failing to conduct [oneself] as a decent and honorable man" violations as serious as unlawful arrests, falsifying government records, or official oppression? By the Department's rules, they are.

Consider also a few precedents: the kind and degree of punishments regularly allotted by the D.P.S. A trooper who "forgot" for five months that he had collected a \$53.50 cash fine from a traffic violator was given a one-day suspension. A trooper who pulled over an attractive woman for no apparent legal reason, then asked for her telephone number and a date, was given a punishment of six days off without pay. An officer who was speeding in excess of 100 miles an hour, and who then used his badge to avoid the ticket, was given three days off without pay. An officer who was found guilty of a laundry list of violations, including abuse of his position, seeking favors, and conduct unbecoming an officer — was given one day off.

In that light, the Department's chosen punishment for Hodge for the offense of destroying three traffic tickets — termination — seems more than a little out of proportion. But Hodge's supervisors insist they want him out of the Highway Patrol. "The department doesn't feel that we can trust him when he's alone late at night on the highway," a D.P.S. lawyer explained to the Public Safety Commission. "The Department cannot say that what [Hodge] did was okay. We have to make a stand. And we make that stand here."

Kevin Hodge is a slow-talking, bespectacled young man who looks as if he could be a high-school physical education teacher. He is thirty-one years old, the father of two children, and a volunteer fireman who also helps out at the Y.M.C.A. His professional background is distinctly law and order. He is a petty officer (a military policeman) in the Naval Reserve, and during his active duty he served on the U.S.S. Texas, among other ships. Following his active service he worked for

five years as a prison guard in Huntsville, including periods of duty at the infamous Ellis Unit and death row. (He is currently on reserve assignment in Stuttgart, providing U.S. military security.)

Despite his captain's disapproval, Hodge's "friendly attitude" may in fact be in the best tradition of the D.P.S. Troopers, especially Highway Patrol officers, are generally distinguished by their courtesy, and on average seem to lack the machismo so common to big-city police forces, especially in Texas. Many of the 3,100 licensed D.P.S. officers come from small towns and rural counties (Hodge is from Huntsville) and they grew up wanting to be Highway Patrol officers or Rangers. That small-town ethos of service is apparent throughout the Department's ranks.

The agency's managers have a difficult job. With outposts covering 254 counties, state troopers must integrate themselves into the communities where they are stationed. For that reason, extramarital affairs — even those that have nothing to do with work performance and do not, for example, take place in the back seat of a patrol car — are still subject to discipline in the department. "We do have from time to time," D.P.S. director Colonel Dudley Thomas confided to the Legislature earlier this year, "individuals who slip that we need to get out of a community."

Was Trooper Hodge one of those officers: someone whom his superiors needed not only to get out of Montgomery County, but also out of the Highway Patrol entirely? An alternate explanation, and one that the Department resists, may be the system D.P.S. routinely uses for disciplining its own officers. Unlike most other police agencies, the leadership of the Department of Public Safety circumvents its own Internal Affairs process.

Most allegations against D.P.S. officers are investigated by the trooper's own supervisors, and disciplinary action is recommended within the chain of command. The agency's independent watchdog, Internal Affairs, becomes involved only when an investigation is requested by the director himself or by members of the Public Safety Commission. This system has been criticized by both the State Auditor and by the Legislature's Sunset Commission. In the Hodge case, the sys-

tem's practical effect was that the charges against Hodge were investigated by his own sergeant (who brought the charges in the first place) and the recommendation for dismissal was made by his captain, who may have lacked an unbiased perspective, disapproving as he was of Hodge's "friendliness." (A spokesperson for the D.P.S. has declined comment on the Department's disciplinary procedures.)

The lack of an efficient internal affairs mechanism may partly explain the Highway Patrol's hot pursuit of Hodge. But there is another possibility as well. Hodge is black. After Hodge's dismissal hearing, Donald Dickson, the attorney for the Texas State Troopers' Association who represented Hodge before the Public Safety Commission, made a pointed observation. "In three-and-a-half years of doing discharge [termination] appeals," Dickson said, "I have yet to appear with a white client." (Dickson said he has represented about ten troopers before the Commission.) Indeed, Dickson says he generally avoids raising race as an issue because the tendency at the Department, whenever race is mentioned, is "to circle the wagons" in defensiveness. Dickson did note that in those three-and-a-half years he has yet to win a case, and each time, the Commission's votes have been a unanimous 3 to 0 to uphold the director's decision to terminate. (By the Department's own count, of nineteen cases appealed in the last five years, the Commission has reversed the director's decision to fire in only two.)

Race is not the only issue, Dickson admits. "To some degree, my guys are victims of D.P.S.'s reputation as an elite force," the troopers' lawyer says. "There is the perception that this is a pretty damn good police force — and it is."

It's just not a very well-integrated one. There are no blacks, Hispanics, or women among the department's highest-ranking, policy-making officers. The upper ranks of the D.P.S. have been described by legislative staffers who follow the agency's operations as the last white male club in state government. It seems that the only time a black or brown face appears in the agency's board room, where the Public

Safety Commission meets, is for a termination hearing. (A D.P.S. spokesperson acknowledged that all six D.P.S. divisions are headed by white men, but pointed out that the Chief of Legal Services — not a policy-making position — is a white woman.)

In that clubby atmosphere, another curious aspect of the D.P.S. ethos is occasionally evident. In August, senior officers told the Public Safety Commission of a \$3 million cost overrun on the \$7 million project to build new D.P.S. offices. For more than two years, the agency has been under the scrutiny of the state auditor for lax fiscal management. In most other areas of public or private business, the overrun would have cost someone his or her job. Yet at the August meeting, the ensuing discussion was brief. No one at the D.P.S. was reprimanded, disciplined, or put on probation. That was for a \$3 million mistake.

For tearing up three traffic tickets, however, Kevin Hodge lost his job. For the record, the vote of the Public Safety Commission to confirm termination was 3 to 0. □

Austin writer Lucius Lomax attends many state government hearings.

"Democracy," from page 20

over concentrated economic power...

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We will be back, and back, and back, to this, our Congress, until the verdict is in, for our United States of America. □

(Note: The address to Congress was written by Ronnie Dugger, with editing and additions from many other people. The entire address is available on the Observer web site, www.texasobserver.org.)



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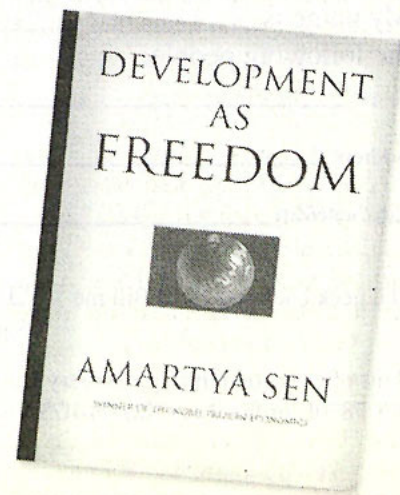
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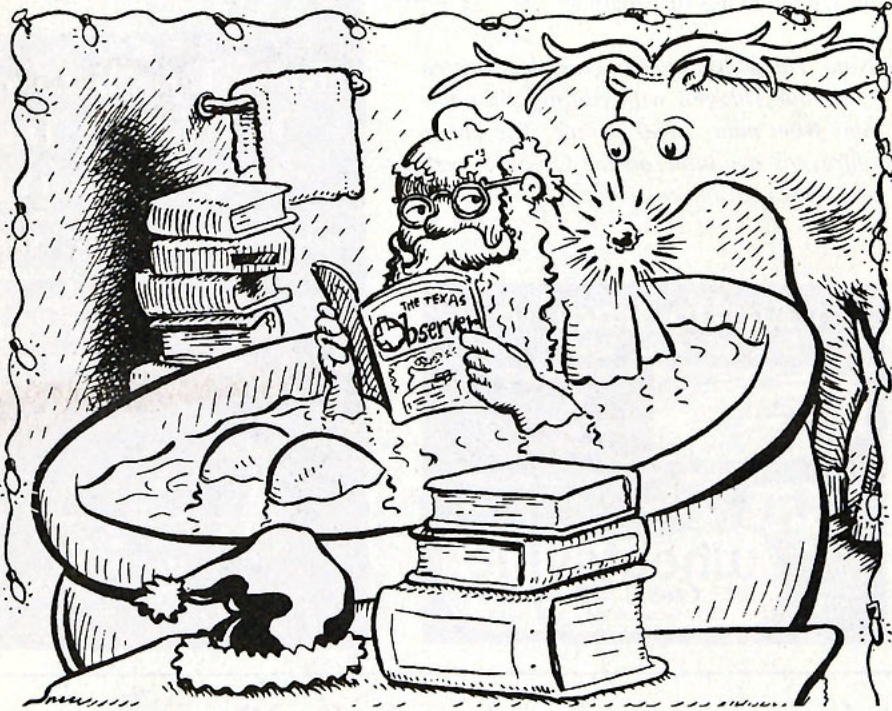
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