

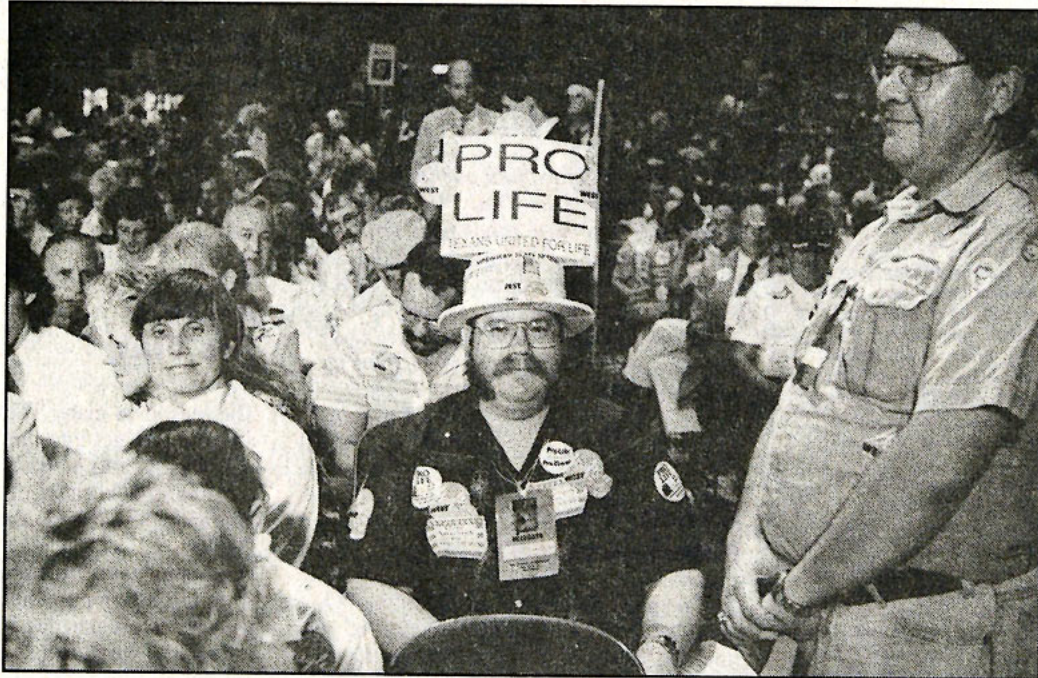
THE TEXAS Observer

A JOURNAL OF FREE VOICES

JULY 13, 1990 • \$1.50

**G.O.P.
REALITY**

Pg. 3



Republican Choices

Convention Delegates Grapple with the Abortion Question

First World Justice

Third World Plaintiffs in Texas Courts

Full House

A Solution to the Reapportionment Dilemma

*Also: A Review of Dick Reavis's
Conversations With Moctezuma*



A JOURNAL OF FREE VOICES

We will serve no group or party but will hew hard to the truth as we find it and the right as we see it. We are dedicated to the whole truth, to human values above all interests, to the rights of humankind as the foundation of democracy; we will take orders from none but our own conscience, and never will we overlook or misrepresent the truth to serve the interests of the powerful or cater to the ignoble in the human spirit.

Writers are responsible for their own work, but not for anything they have not themselves written, and in publishing them we do not necessarily imply that we agree with them because this is a journal of free voices.

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SUBSCRIPTIONS: One year \$27, two years \$48, three years \$69. Full-

time students \$15 per year. Back issues \$3 prepaid. Airmail, foreign, group,

and bulk rates on request. Microfilm editions available from University

Microfilms Intl., 300 N. Zeeb Road, Ann Arbor, MI 48106. Any current

subscriber who finds the price a burden should say so at renewal time; no

one need forgo reading the *Observer* simply because of the cost.

THE TEXAS OBSERVER (ISSN 0040-4519/UPS 541300),

©1990, is published biweekly except for a three-week interval

between issues in January and July (25 issues per year) by the

Texas Observer Publishing Co., 307 West 7th Street, Austin,

Texas 78701. Telephone: (512) 477-0746. Second class postage

paid at Austin, Texas.

POSTMASTER: Send address changes to THE TEXAS

OBSERVER, P.O. Box 49019, Austin, Texas 78765

DIALOGUE

A Gap In Coverage

I am not renewing because I am tired of your complete ignorance of the health care and human services budget problems this year. You write page upon page about other topics of much less direct impact on our children and poor families, yet not a single article about a \$500 million deficit.

Why?

If you have an answer, I'd like to know and reconsider, since I've been a reader since 4th grade.

*De Ann Friedholm
Austin*

Too factors might explain our lack of attention to this issue. Daily newspapers around the state have thoroughly covered the DHS budget crisis, and during the special legislative sessions our coverage focused on school finance. Perhaps you will allow us the fall semester to refocus our coverage on what we recognize as an important issue.

—The Editors

Check Your News Sources

I am responding to your article in the POLITICAL INTELLIGENCE section of your June 15, 1990 publication. Reference was made to a song rewrite of Don Henley's "The End of the Innocence."

You reported that Texas Utilities threatened to pull their \$150,000 advertising schedule if KVIL played the song again and that KVIL did play the song and consequently Texas Utilities cancelled their advertising.

This statement is absolutely false. Texas Utilities never threatened KVIL. In fact, we continue to have a good relationship with Texas Utilities and their agents.

I suggest you check your news sources before reporting false information to your subscribers.

*Jerry Bobo
Vice President/General Manager KVIL
Dallas*

We are waiting for a response from our source, Los Angeles-based music critic and journalist Dave Marsh, in whose publication the story originally ran. As the Observer went to press, Mr. Marsh had not returned phone calls.

—The Editors

Retrograde Sexism

Steven Kellman's review of the Almodovar film "Atame" is an apologia for sadistic kidnapping and woman bashing. The character Rickie in so many words says that if Marina were to leave him he would slit her throat and then his. Kellman's drivel: "being untied is another kind of bondage ... abduction is the most successful form of seduction," is real retrograde sexism. Just how many times per day in the United States is this scenario repeated in real life? Why not quote Kate Millet instead of Sylvia Plath or Clayton Williams ... "I will never love a man who ties me up 10 seconds."

*Mark Muhich
Galveston*

Protect The Flag

The reason so many Third World peoples are trying to get into the United States, both legally and illegally, is not because of our flag. It is because of the freedom that is guaranteed by our Constitution and Bill of Rights.

Of course we must protect the flag — from those few publicity-seeking idiots who desecrate our flag by burning it — but especially, we must protect it from desecration by those numerous publicity-seeking politicians who wrap themselves in the flag to deflect attention from the very real problems facing our nation, while they ignore the issues that they could remedy: poor education, low wages, lack of housing, hunger, disease, population, health care, deficit, etc.

*Wm. H. Darby
Corpus Christi*

Write Dialogue:
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Conventional Reality

Fort Worth

TWENTY FEET above me, using a format borrowed from the Academy Awards ceremony, Wendy Gramm and state party chairman Fred Meyer are standing behind a lectern and together introducing the Republican ticket, their descriptions of candidates (forgive me, Strunk and White) segueing into one another, and like Cela's *Cristo versus Arizona*, their entire monologue one long sentence, punctuated by pauses, which might be commas, or then again might be semicolons; it's just hard to tell. Behind me, the crowd, which occasionally appears in front of me on the screen suspended behind Wendy and Fred, cheers after each oppositional clause: "Rob Mosbacher, the man Phil [Gramm] describes as one of the rising stars in the Republican Party. ... Rick Perry, who is certainly the most handsome candidate on our ticket ... Judge Louis Sturns, our candidate for the Court of Criminal Appeals, all six feet and five inches of him ..." With each introduction the candidate's live image appears on the screen behind him (and in front of me), and the crowd, though by the third day of the convention surely tired, dutifully responds.

Phil and Claytie have come and gone, Bill Clements has read his script, the potential floor fight over abortion rights, which might provide this convention with its one moment of authentic drama, is hours away, the klieg lights are blinding, and I, who was standing on this same spot three weekends earlier with the Democrats, am almost doubled up with déjà vu and inclined to drift over to the press room and make one more sandwich of orange cheese spread on white bread, and perhaps read again the story about the toesucker who was finally apprehended in Arkansas, a man whose sad oral obsession with women's toes, according to a wire-service story in today's *Dallas Morning News*, came to an unfortunate end in a shopping mall in Conway. Or perhaps to read again in that same paper Wayne Slater's account of the convention midway, where the Christian Anti-Communist League is raffling off a tire labeled "Mandela's ANC Necklace," while 15 booths away an earnest anti-abortion activist, standing in front of a life-size poster of an aborted fetus, is explaining to a young woman how, at the moment of conception, a heart begins beating, while at the booth to the immediate left a representative of the Tiltrotor Team of Bell Helicopter awaits the end of a video on the vertical-take-off Osprey. ("No terrorist will ever be safe," video voiceover says.) "And if we don't build it, the Japanese will," the live pitchman adds.

Is there no better way for us to organize our political lives? The networks have cut back on their coverage of the Presidential conventions and perhaps, now, it is time for the print medium to consider diminished coverage of state conventions. Because nothing really happens here, at least nothing to interest the event-driven cadre of daily reporters, whose job it is to relate that something newsworthy did happen.

With the ascendance of the primary election, the political convention has, of course, outlived its usefulness. No more floor fights or back-room brokered deals to pick a candidate. No truly great oratory to win uncommitted delegates. All that remains is the postmodern techno-spectacle, in which reality is amplified, distorted, and reverberated around a large hall — and, of course, filmed.

CONSIDER THE PRESS corps, seated to the right of the huge platform and waiting for something to happen. Everyone has interviewed George W. Bush twice and he's charming and articulate. But what they really want — and one reporter from a Houston daily shouts it at him as he passes — is some "press availability" with gubernatorial candidate Clayton Williams, who, as the press corps sits and waits for what will not occur, is shaking hands and slapping backs in a VIP suite behind the stage. All that separates the Press from the Candidate is a wall — and two young convention sergeants-at-arms, each wearing a yellow badge and carrying a cellular phone. The wall is not a real wall, but rather, a series of panels made from a petroleum-derivative fabric, all stretched vertically across a metal tubular frame.

Step around one wall, separate two of the panels, step forward, and, like David Letterman leading the camera on a romp behind the set, there you are. In the VIP suite with Claytie, who at the moment is trying out his rancher's Spanish on squeaky Roy Barrera Jr. Here, the lighting is subdued and the pace less frenetic. Then, after Williams releases Roy from an *abrazo*, and turns toward Congressional candidate Dick Waterfield, part two panels again and step back into the convention, which is another component of the same reality.

Out here in the arena it is again a choreographed reality, manipulated by a man in a small elevated booth on the left of the hall and his two collaborators, seated at a console on the floor. From these two centers, house lights, spot lights, a sound system, the video screen, and the delegates are controlled. If this doesn't look like Kansas, well, it's not supposed to.

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If it were, someone might question Wes Gilbreath when he says that he is a veteran and: "We love this land. We died for it and we're not going to let someone give it away." Or someone might notice that Rick Perry confused Bo Diddley with Bo Jackson — or did he confuse Bo Jackson with Jesse Jackson? Or perhaps someone might have the presence of mind to ask Rob Mosbacher, after his speech deriding Austin professional politicians, how someone who worked as an aide to former U.S. Senator Howard Baker, then went on to serve as chairman of the board of the Texas Department of Human Resources, can present himself to the public as a political outsider. Or, perhaps after Buster Brown stood under the video screen, on which he (or was it his image?) actually threw away a jail key while a Houston police officer applauded him, someone would have remembered that the Attorney General in

Texas has almost nothing to do with criminal justice.

In the political novel *Palabras Mayores*, Luis Spota's protagonist, a cabinet member who is unexpectedly designated to become Mexico's next president, is disturbed the first time his limousine arrives with its windows darkly tinted. As the car moves through the streets of Mexico City, the candidate briefly lowers a window. "I can't see the people," he says to his driver. It's a fairly accessible

metaphor and the reader understands that reality, for Spota's protagonist, will never again be quite the same.

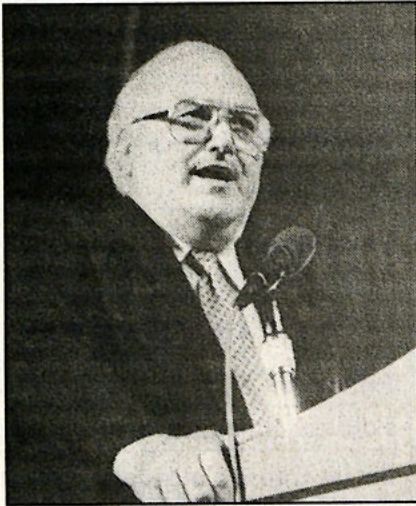
After two days on stage, with their own larger-than-life images reflected in the video screen above them, I wonder about those candidates. Perhaps Wes Gilbreath believes that he died for his country. And maybe Rob Mosbacher has come to see himself as the outsider, poised to run a Ronald Reagan campaign against government. And the most

handsome man on the Republican ticket — it could be that he can no longer tell where he ends and the Marlboro Man begins.

Outside of the convention hall on Saturday afternoon, in the honest Texas sunlight that illuminated Commerce Street, I walked toward the parking lot. Like the members of the press corps and the hired hands who move the walls around, I understood where one reality ended and another began.

I said, "Hey, Bo Jackson." — L.D.

On the Electronic Hustings



LOUIS DUBOSE

Wes Gilbreath: Died For His Country

Complete remarks of Wes Gilbreath, candidate for land commissioner.

I am Wes Gilbreath and I want to be your land commissioner. And you know the land commissioner presides over 22 million acres of state-owned land, most of that dedicated to generating revenue for our permanent school fund. I believe you know we had a problem recently in Austin, relative to insufficient funds to educate our children. Now, I want to let you know that we have a problem in that area, and that problem is Garry Mauro. We want to solve that situation for our children. We want to preserve the land that our forefathers handed down to us. I want to be a portion of that solution. I want you to be a portion of that solution. You can be. And I can be — on November the fifth.

I'm like you. I've worked hard. I've raised a family. Raised my children. Sent 'em to school. Took a small investment — into a successful enterprise. I need your commitment and I need your vote — for a change. I encourage you to vote. To vote for the citizens of Texas who cannot vote — the children.

You can be a portion of this solution. This is our land. We fought for it. We died

for it. And we're not going to let anyone give it away. I appreciate the opportunity to visit with you today. Time is short, may God bless you. Thank you.

RADIO STATION DOCUMENTS GILBREATH'S GAY BASHING IN BRENHAM

Even the faithful at the Republican convention might consider Gilbreath something of a rogue elephant if they heard the comments that he made before the Republican Club of Brenham a week after the convention.

In his speech to the Brenham group, which was reported by KWHI/KTTX of Brenham, Gilbreath suggested that he will purge the land office ranks of gays, and that those gays who are open about their sexual preference will be in greatest danger if he is elected. Gilbreath framed it as a family issue, saying that he wanted to make the agency safe for his grandchildren.

"I plan on taking my grandchildren up there into that office, and getting them acquainted with it. And the first one of those guys I see hitting on my grandchildren, I may consider getting rid of them [the guy] right there," Gilbreath said.

Gilbreath's characterization of one land office employee as a "professed homosexual" was specific enough to identify the target of his criticism as one of two or three land office employees.

Gilbreath warned that gays who work for the state should keep their sexual preference confidential or risk termination. "If they can keep it clean and keep it personal and not let me know that we've gotta keep the restrooms locked up and so forth, that's one thing."

Gilbreath said that his opposition to homosexuality is personal and religious in nature. "That's [homosexuality] appalling to me and an abomination to God," Gilbreath told Brenham Republicans and at least one radio reporter.



LOUIS DUBOSE

Clayton Williams: Has Heart Trouble

Excerpted remarks of Clayton Williams, GOP nominee for governor.

You know, the greatness of Texas isn't just a state of mind, it's a state of heart. People praise the land we walk on and the sky we walk under, but nothing is better than the heart of a Texan. Especially when it reaches out to the heart of another Texan. Our hearts reach out today to every Texan who has felt the pain and suffering caused by drug abuse; to every child who can't get a quality education, to every worker who can't get a job, to every African-American, Asian-American, and Hispanic who've had their dreams trampled by prejudice and bigotry.

Texans wear our hearts on our sleeves. So, let those who would threaten or harm our children be warned: We know where to draw the line. Let the criminals and the drug dealers be warned: We Texas Republicans have drawn the line.

Let anyone who would harm or abuse a child understand this: When we catch you, you're history. If you steal from a neighbor, attack a woman, rob a store or preach hate, we won't allow you to run loose. ...

Thank you very much. God bless Texas. God bless you all.

Republican Choices

Walking the Plank on Abortion

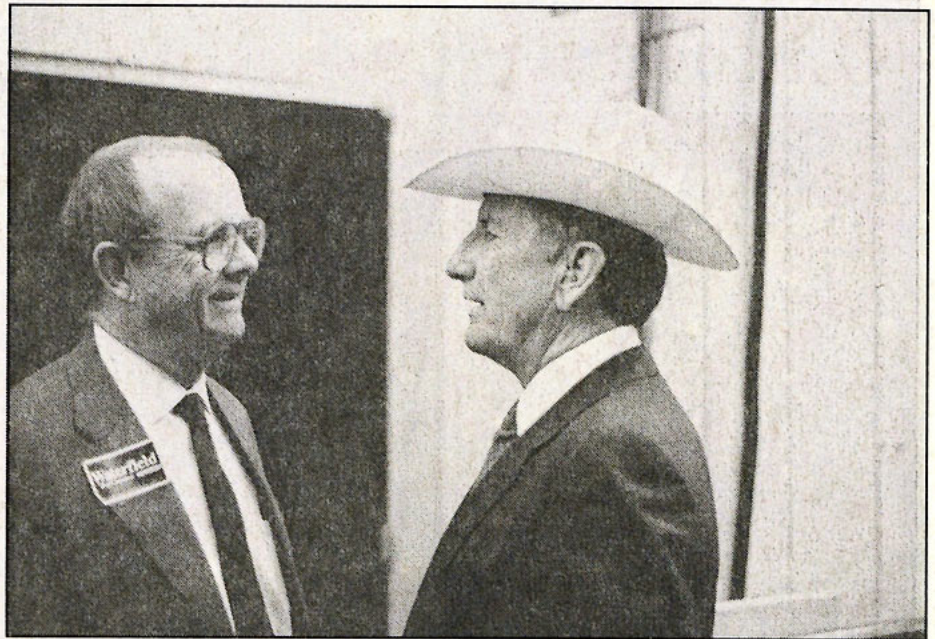
BY MARSHALL SURRATT

WHEELING ON THE HEELS of his boots out of the door from the Crystal Ballroom at the Hyatt Regency, in the town "where the West begins" and where he had just promised the Republican National Hispanic Assembly that if he might sometime lift a beer he would sing a Mexican song, Clayton Williams explained his position on the "pro-life" platform plank that delegates at the state convention had been wrangling over for two days.

Williams brushed aside questions about whether he would support his party's platform if it remained faithful to the 1988 language that called for a constitutional amendment to prohibit abortion. And before his youthful handlers could say a second time that the candidate needed to leave, Williams repeated his support for a seven-point plan he and other GOP candidates were trying to substitute for the 1988 provisions. The new plan would in some cases allow abortions up to the fifth month of a pregnancy. Williams said he expected delegates to go along with whatever he did. "First, I don't think they will reject it [the seven-point plan]. Even if they do, I'm the guy who got elected," Williams said.

The Midland businessman, punctuating his sentences with a wide grin, suggested to reporters that what the ranch hands do isn't as important as what the range boss thinks. That same message was expressed differently by other Republican candidates at the June 29-30 GOP state convention. While the rank and file argued among themselves about who was the truer Republican, candidates showed a willingness to ignore certain issues in order to try to be all things to all voters.

While, in behind-the-scenes committee work, party regulars fought over the standard Republican litmus tests — how much a person opposes abortion and whether a person is truly anti-government — candidates publicly tried to avoid commitments. That pragmatic streak was especially evident in their handling of the abortion issue. Following the March primaries, Texas Republican Party Chairman Fred Meyer had released a plan supported by U.S. Senator Phil Gramm, Williams, and other GOP candidates, that would



LOUIS DUBOSE

Clayton Williams and State Representative Dick Waterfield

have backed away from the state party's 1988 platform.

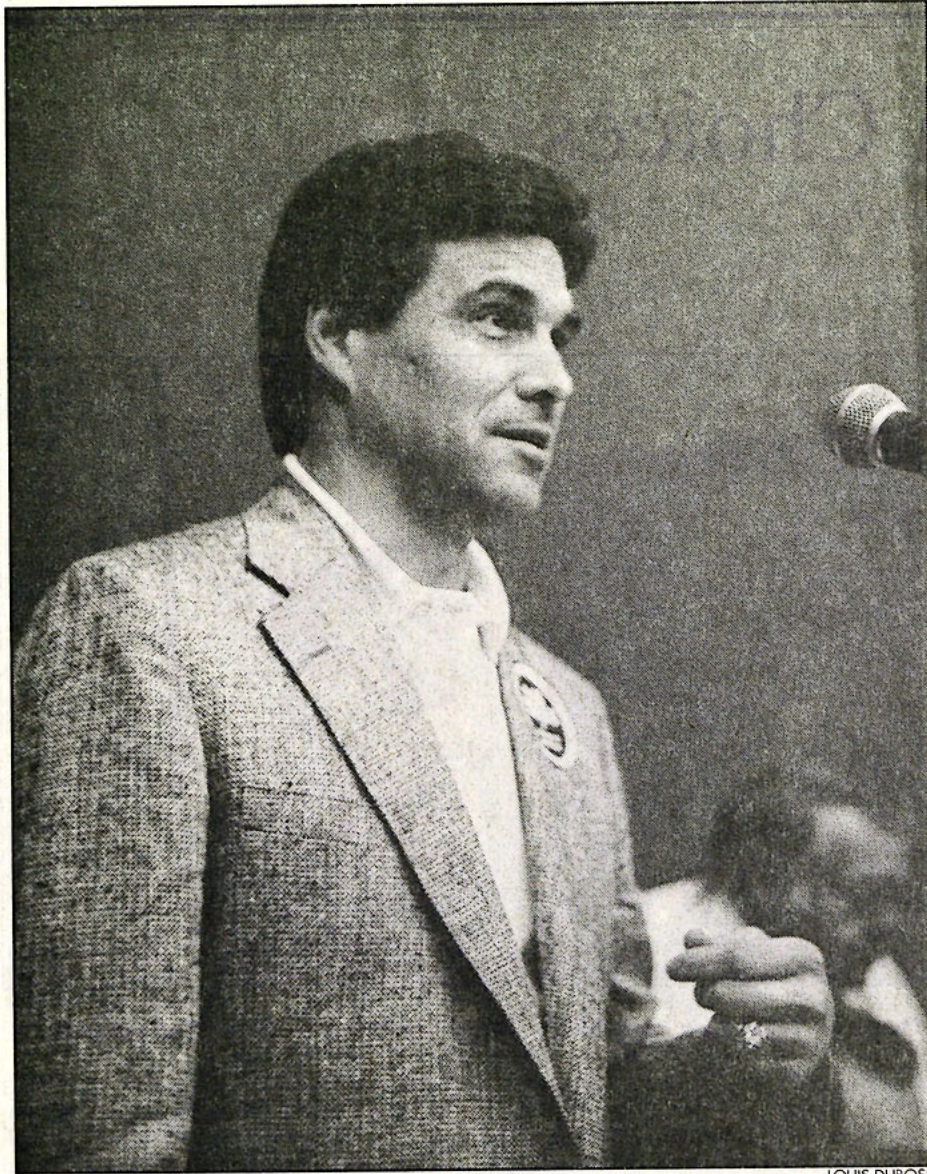
The pro-life plank passed two years ago called for a constitutional amendment banning abortion. The seven-point plan Meyer announced this April would require parental consent before a minor could have an abortion, prohibit abortions for sex selection, regulate abortion clinics, and stop the payment of commissions for abortion referrals. But it also would tacitly accept some abortions up to the fifth month of pregnancy. The plan would require testing for viability outside the womb after 20 weeks and would only outright prohibit abortion if viability were then established.

STATE REPUBLICAN LEADERS called it the "legislative action plan," describing it as what is now possible under the U.S. Supreme Court's 1989 *Webster* decision. That was how Republican leaders had sold the plan to abortion opponents, and that compromise seemed to be holding together going into the convention. Bill Price, president of Texans United for Life, who had done the most to pitch the legislative action plan to abortion opponents, later confirmed that he had acted at the behest of Republican insiders. "This was an idea that was gener-

ated by the party brass," Price said. "I didn't walk into anybody's office and lay this out and say, 'Hey, I've got a great idea.'" Though before the convention GOP candidates had tried to work out a compromise with abortion opponents, in a slam-dunk move on the final day of the convention the party moved to keep the other side from speaking on behalf of more liberal abortion rights. A quick "call for the question" on the final night of the convention prohibited abortion-rights advocates from debating the party platform.

By then, party leaders already had succeeded in preventing a "pro-choice" minority report from being brought to the convention floor. Saturday, while speeches continued out front, party chair Meyer met behind the convention stage to talk strategy with Republican National Committeeman Ernest Angelo, like Williams a Midland businessman, and with platform committee chairman Joe Barton, a U.S. Congressman from Ennis. Angelo, and perhaps others, had worked behind the scenes, pressuring some of the seven platform committee members — who had signed the minority report — to withdraw their support. Without seven signatures, the report could not get to the floor for a vote — and a potentially divisive and embarrassing debate.

Marshall Surratt is a freelance writer living in Frisco.



LOUIS DUBOSE

Agriculture Commissioner Candidate Rick Perry

In convention speeches and caucus appearances, too, most GOP candidates attempted to part a sea of abortion opponents and abortion-rights advocates and walk unscathed on the dry land between. For example, Railroad Commissioner candidate Beau Boulter told nearly 2,000 people who packed a theater Friday morning for a "pro-life" caucus, "Y'all are dear friends. I have a lot of friends who aren't in the room and they're friends too. But I just want to tell you that y'all are friends."

Conspicuously absent from the pro-life caucus, by far the largest gathering at the convention, were gubernatorial candidate Williams and top-of-the-ticket GOP candidate Phil Gramm. In his Saturday keynote address, Williams avoided mention of abortion except for two sentences about parental rights. Williams told delegates, "In the 'new Texas' envisioned by Ann Richards you won't have the right to know if your 13-year-old daughter is about to receive an abortion.

Don't let Ann Richards tell you that your child's future is none of your business."

Gramm, whose faces a Democratic challenger, state Senator Hugh Parmer, who is working to use abortion rights as a wedge issue with voters, played down the issue in his Friday keynote address. Gramm also skirted charges he has aggressively pursued billions of tax dollars for new programs in Texas, such as a Navy port for Corpus Christi, while at the same time openly criticizing government spending. After assuring delegates that he remains as skeptical of government as he was when he entered politics a decade ago, Gramm said, "But I think I [now] know a little more how government works and a little more how to make it work for Texas."

Off stage, while he denied Republicans were trying to have it both ways, George W. Bush, the President's son, called the legislative action plan "a brilliant idea." Like Williams, Bush suggested that GOP candidates

would be politically wise to campaign on that plan. "I'm personally in favor of making sure that the seven-step legislative platform becomes the main thing on which candidates run," Bush said. "Now whether or not this convention says that or not, the good candidates are going to go out and run on it."

The behind-the-scenes maneuvering at the convention might have delayed a public assessment of national Republican Party chair Lee Atwater's description of the party as a "big tent," with room enough for everybody. By Saturday morning, a chagrined Bill Price was criticizing party leaders who had supported the legislative action plan but failed to show up at the pro-life caucus. "Gramm should have been in here or Clayton Williams, to reassure these people," Price said. "All I've heard all week is 'you pro-lifers behave yourselves,' and we didn't get any help from the leadership of this party in trying to do that." Earlier, delegate Deborah McClelland had accused the Republican Party of "trading votes for babies."

ON THE OTHER SIDE of the issue, delegates who favored a more liberal position on abortion were angered by tactics used to stifle debate. By Saturday evening, when it became evident that the abortion plank would not be debated on the floor, platform committee member Maurice Angly Jr. of Austin was openly attacking party leaders for the strong-arm tactics and parliamentary maneuvering they had used to silence debate. The minority report, which would have asked people to follow their own moral guidelines in deciding whether to seek an abortion, had been dubbed "the big tent." "This platform plank can be a healing factor that can elect our candidates," former state Representative Angly said. "I do not believe it is the role of this party or the government to make that decision for a woman who may be facing the question of should she or should she not have an abortion." Angly was particularly critical of Ernest Angelo, whose late-night telephone calls, Angly claimed, left one woman on the platform committee minority "badly shaken." Shortly before it became evident that the issue would not be brought to the floor, Angly told a group of reporters that Angelo, after promising not to pursue the issue, had spent much of Friday night and Saturday morning on the telephone, intimidating supporters of the minority report. (Like most of the convention delegates who supported abortion rights, Angly wore the green "Big Tent" sticker on his jacket lapel.)

The final language included in the platform is somewhat contradictory. In the end, the platform committee accepted the legislative action plan, but changed 20 weeks to the second trimester and added a preamble stating that the seven points represent the party's position only until tougher measures pass constitutional muster. But gubernatorial candidate Williams has shown no willingness to run on that preamble.

The Fort Worth fight over abortion reveals a contradiction within a party that claims to be dedicated to as little government as possible. It also suggests that candidates, given the choice between commitment to a moral principle embraced by the majority of their party and a compromise measure devised to get them elected, are willing to compromise.

THE MEASURE of a political convention is not just what is said but what is not said, the trends that suggest who may be on the way out or in, and the range of positions allowed in the sideshows. The state Republican convention in Fort Worth was no exception. Phil Gramm may have signaled that Republicans will try to rewrite President Bush's campaign slogan of "No new taxes." Speaking only three days after Bush admitted he might need to raise taxes, Gramm added a one-word modification to the campaign promise. Of Democrats, Gramm said, "They can talk until they're blue in the face or until Jesus comes back, but we are not going to raise *income* taxes in America." Gramm said Republicans in the White House, in part, were responsible for recent freedom movements in Eastern Europe, which "would not have happened if Jimmy Carter or Michael Dukakis had been in office."

- Gramm also described Democrats as out of step with most of the world and indirectly compared them with Communists elsewhere. "You can go to Cuba and find Castro and come to the United States and find the Democratic Party, and they're the only two who still believe in government. The rest of mankind has discovered freedom," Gramm said.

- In their platform Republicans continued support of Texas's anti-sodomy law. Gubernatorial candidate Williams was asked whether the Republican Party has room for gays and lesbians. "We reach out to anyone who comes with good will," he replied. "Having said that, I have not modified my philosophy that the laws against sodomy are correct and that these laws do represent the values and the heartbeat of the mainstream of the people of Texas."

- A hot potato at the convention was a resolution that suggested that Democratic gubernatorial candidate Ann Richards has "accepted contributions from lesbian and homosexual groups." Furthermore, it said, Richards had been given the title of "honorary lesbian." Republicans on the platform committee were quick to point out that Richards had not accepted the title, and candidates, though they might have enjoyed the controversy, would not comment directly about the resolution, which was not passed.

- Robert Estrada, a Hispanic attorney and investment banker from Dallas, was the convention secretary and a member of the platform committee. He tried to steer Republicans away from issues that might categorize the party as racist. "Why make it harder for ourselves by giving the Democrats an issue



LOUIS DUBOSE

Austin Delegate Maurice Angly

they can beat us over the head with?" he asked of an "English only" resolution, which ultimately was defeated. "I personally resent this kind of language in the platform, and I think I represent the feelings of a lot of other Hispanics around the state who see this as a veiled threat to the existence of people who are Spanish-speaking in this country," Estrada said. "This is a slap in the face of the Hispanic community." A subcommittee already had rejected one resolution that would have required adults who enter the country to speak English within a year or leave the country and another that would have stopped printing of bilingual ballots. However, the full platform committee voted to replace bilingual education with the "immersion" process of education.

- In the ones-that-got-away category, the full platform committee rejected a subcommittee recommendation that Texans should have the right to carry firearms. And by a 14-13 vote the committee deflected a move to do

away with the National Endowment for the Arts. The committee voted to withhold NEA funds from support of "any art that is considered obscene or pornographic by prevailing community standards."

- Five delegates who are members of Groups Allied to Stop Pollution succeeded in inserting language into the platform that the Republican Party stands for "stewardship of the land." Carried over from the 1988 platform is language that calls for recycling. The platform also supports "ecologically sound" oil exploration on federal lands. And a subcommittee that studied resolutions on the environment rejected a proposal to prohibit people with industry ties from sitting on state boards that regulate those industries. They also voted down a resolution that would have classified pollution under trespassing laws.

- Rick Perry, the Republican candidate for Agriculture Commissioner, called incumbent Democratic Commissioner Jim Hightower "the most dangerous, the most

ambitious Democrat on their ticket." Perry described Hightower as a liberal with an out-of-control agency. "Hightower," Perry said, "says government's function is to, quote, transfer wealth to the little people, to share the wealth, that politics is a class battle, and that he's, quote, taking a hardcore anti-business appeal as usual. Hightower's ideal of a perfect President, other than himself of course, is Jesse Jackson." Perry was introduced by George W. Bush, the President's son who owns an interest in the Texas Rangers baseball team (formerly owned by Eddie Chiles, a delegate who had a front-row-right seat at the convention). A Bush employee, Rangers pitcher and offseason rancher Nolan Ryan,

earlier had been asked by the Texas Farm Bureau to run against Hightower but said no — at least not this time.

• Had there been one, the poorest taste award would certainly have gone to the Christian Anti-Communism Crusade for its display booth. For \$1 one could enter a raffle for a tire labeled "Mandela Necklace," a reference to the burning, gasoline-soaked tires that some black South Africans have used to execute publicly other blacks they claim were traitors to the anti-apartheid cause. At the convention, the labeled tire was prominently displayed to get attention for the conservative political group's opposition to sanctions against the South Africa apartheid

government and to Nelson Mandela's nearly exclusive leadership role as leader of the opposition. The display coincided with Mandela's tour of the United States. Black delegates were observed either arguing with the Christian Anti-Communism representatives at the booth or walking by with eyes averted.

• Ollie North's ratings among Republicans could be in decline. At one booth, the American Freedom Coalition played its 1987 production "Oliver North: Fight for Freedom," replete with North's Senate testimony against a backdrop of Central America war footage. The videotape was marked down from \$25 to \$15. □

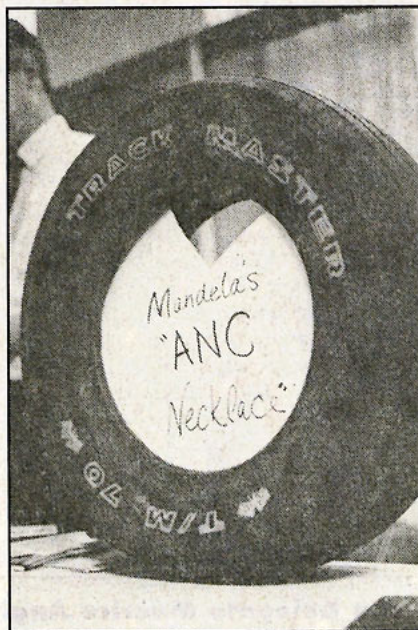
A Dime's Worth of Difference

Is there, to use one politician's phrase, "a dime's worth of difference" between platforms drafted by Texas Republicans and Texas Democrats in Fort Worth last month? Both parties met in the same convention center, booked the same hotels, and staked out the same restaurants (though Republicans, waiters will usually tell you, tip less). But party professionals and political junkies doing side-by-side comparisons of the two party platforms will get their money's worth if they are looking for differences in either style or substance.

Texas Republicans adopted an eight-page, tightly-worded list of general policies. The Democratic platform is 27 pages long, contains more criticism of the other party's programs and policies as well as more, and more-specific, recommendations. Republicans approved their leaner document on the final day of their convention, while Democrats ran out of time and approved only about a half-dozen of the planks before adjournment. Final adoption was deferred until the State Democratic Executive Committee meets later this month in Austin. What follows is a less-than-comprehensive survey of some key points in the two parties' platforms.

CRIMINAL JUSTICE AND LAW ENFORCEMENT

Republicans: support "the constitutional right of citizens to keep and bear arms." Support mandatory sentences for crimes committed with weapons. Support the Crime Victims' Bill of Rights. Support capital punishment for especially heinous and severe crimes. Oppose the repeal of Section 21.06 of the criminal code, which declares sodomy illegal. Call for public health inspections of health clubs, adult bookstores, and restaurants for the presence of communicable diseases. Would convert abandoned military bases into prisons. Support election of judges on a partisan basis.



LOUIS DUBOSE

Convention Exhibit

Democrats: support severe punishment for repeat and violent offenders. Support the Crime Victims' Bill of Rights. Support stronger punishments for and enforcement of laws against white-collar and corporate criminals. Support increasing the number of law enforcement officers. Support stronger laws on ethics of government officials. Support adequate prison space. Call for passage of "strong laws to end hate crimes of violence." Criticize the Bush Administration's "War on Drugs" and call for a more effective program. Call for mandatory sentences without parole for drug suppliers and manufacturers. Regarding AIDS and HIV infection, oppose "legislative actions which pander to irrationality, bigotry and ignorance." Support election of judges on a partisan basis.

BUSINESS

Republicans: oppose a state income tax. In tort reform, support a cap on "non-economic" damages. Support the Texas right-to-work law. Would remove legal and economic barriers to working at home. Support lower capital gains taxes. While saying Republicans believe in equal pay for equal work, oppose "the concept of comparable worth."

Democrats: oppose a state income tax. Criticize Republicans' "'trickle-down taxation,' which simply dumps the bill on local property taxes." Support "a government fiscal policy that leads to long-term economic development." Support government policies that encourage fair trade, and that give preference to U.S. and Texas products and services in government contracts. Call for good-faith contracts between employers and employees. Encourage government contracts that reflect local wage standards. Support improved wages and working conditions for farmworkers.

EDUCATION

Republicans: encourage parental and local control of public schools. Call for the Texas Education Agency to be abolished. Support a federal income tax deduction and/or voucher system for families to choose either public, private, or home education. Support full funding of the career ladder and would limit administrative duties that prevent teachers from teaching. Support teaching "a balanced view of the origin of life" in public schools. Would prohibit any teaching about AIDS that portrays homosexuality as an acceptable lifestyle. Support adult literacy and vocational education. Would replace bilingual education with immersion methods or a combination of English as Second Language and immersion methods. Urge passage of a school prayer amendment.

Democrats: Criticize Governor Bill

Clements's handling of school finance reform. Call for state responsibility for quality education for all children. Call for full funding of the career ladder plus a health insurance program for teachers. Criticize standardized tests for teacher accountability or state funding of local districts. Call for health education that includes prevention of AIDS and drug and alcohol abuse. Call for a specific level of equity in public school finance.

FAMILY ISSUES

Republicans: "The Republican Party of Texas believes that the family is a God-ordained institution, and should be defined as those persons related by blood, heterosexual marriage or adoption. ... Marriage between a male and female is the foundation of our society and promotes the general welfare of our nation and should be protected in every way possible. ... No homosexual, male or female, should have the right to custody or adoption of a minor child." Visitation would be limited to supervised periods. Urge a state commission to find ways to make adoption easier. Until a human life amendment passes constitutional muster, the Texas Legislature is encouraged to enact laws "which provide for but are not limited to" the following:

- Prohibiting abortions in the third trimester of pregnancy except when medically necessary to save the life of the mother;
- Prohibiting second-trimester abortions except when medically necessary to save the life of the mother if a licensed physician determines the child could not survive outside the womb;
- Prohibiting abortions for sex selection;
- Strengthening penalties for injuring or killing an unborn child or injuring the child's mother;
- Requiring appropriate parental consent for minors seeking abortions;
- Regulating abortion facilities;
- Requiring professional standards for abortion practitioners;
- Prohibiting "financial kickbacks" for abortion referrals.

Democrats: "The Democratic Party trusts the women of Texas to make their own decisions about such personal matters as whether or not to have an abortion. No government, no politician, no bureaucrat should interfere in such private decisions. We support full reproductive rights and full access to choice and family planning services and information for all citizens. "Texas has the highest rate of adolescent pregnancy among young teenagers in the nation, which poses a wide range of potential societal problems. Strong, compassionate guidance is critically important to these unfortunate girls and boys,

and especially for those victims of rape and incest. We support access to confidential reproductive health care and family-life education to prevent this tragic occurrence of our children having children."

FEDERAL

Republicans: support a federal balanced budget law. Support a constitutional amendment prohibiting the desecration of the U.S. flag. Would require the National Endowment for the Arts to withhold funds from "any art that is considered obscene or pornographic by prevailing community standards."

Democrats: condemn "Republican efforts to raid" Social Security funds "for the purpose of 'balancing the budget.'" Support protection of civil rights and voting rights.

ENERGY AND ENVIRONMENT

Republicans: support restoring the full oil-depletion allowance and call for an oil-import fee. Encourage "ecologically sound" oil exploration on federal lands. Support continued research and development of alternative energy sources. Support "a quality environment and urge responsible stewardship of our land." Support recycling as an alternative to dumping and burning.

Democrats: encourage recycling and water conservation measures. Seek reduction in the use of pesticides. Support strong "right-to-know" laws, strong federal clean air legislation, the right of citizens to seek redress for all damages caused by polluters, and increased funding for the Environmental Protection Agency. Oppose incineration of toxic waste. Seek reduction of emissions that cause acid rain. Oppose clearcutting in national forests and "indiscriminate and widespread leasing of parklands which results in depletion of natural resources." Support exploring an oil-import fee and tax incentives for "risk-takers to find new oil and gas reserves." Call for negotiation of a comprehensive regional energy policy with Mexico, Canada, Venezuela, and Trinidad.

FOREIGN POLICY

Republicans: call for a worldwide effort against communism. Support the right of self-determination for Lithuania, Latvia, and Estonia. Applaud the "Nicaragua Freedom Fighters," as well as "President Bush's decision to liberate Panama." Criticize the U.S. Congress's involvement in foreign policy. Support the national Republican Party platform section on the Middle East.

Democrats: support the rights of peoples around the world to politically organize and to work through free and democratic

processes. Praise the United States's common heritage with Mexico and call for a mutual economic development plan. Condemn the "violence, oppression and poverty" inflicted on Central America and call for the federal government to play a positive role in promoting peace and encouraging economic development and social justice. Support the emergence of democracy in Eastern Europe and Central America. Oppose the apartheid system in South Africa. Call for the U.S. Congress and the Bush Administration to keep the peace process alive in the Middle East and call for direct negotiations among Israel, Arab states, and Palestinians, while reaffirming a commitment to "a secure and thriving Israel."

SOCIAL PROGRAMS

Republicans: would restrict welfare to "the aged, handicapped and the actual needy" and encourage "workfare." Oppose any universal health care program. In child care, oppose "a comprehensive, taxpayer-funded, federally controlled and regulated system of educational, psychological, and physical development for all children from birth." Support "privatization of government services whenever feasible at all levels of government." Call on local communities and private groups to provide for the homeless and poverty stricken.

Democrats: support the Women, Infants and Children (WIC) nutrition program. Encourage family leave and on-site child care facilities by employers. Support public-private cooperation to improve the quality of daycare centers. Support use of public resources for programs and centers for battered women and children. Support rape crisis centers (with no mention of using public resources). Support community-based Mental Health/Mental Retardation facilities. Support a variety of programs that assist low- and middle-income Texans in securing affordable housing. Support a private-public partnership to end hunger in Texas. Call for a universal health-care program. Support health care to provide for independent living at home. Support creation of a comprehensive state and national program to coordinate public-sector activities regarding AIDS.

OTHER

Republicans: oppose a state lottery. Say nothing about pari-mutuel gambling. Support limiting to 12 the number of consecutive years a person may serve in the Texas Senate or Texas House of Representatives.

Democrats: say nothing about either a state lottery or pari-mutuel gambling at horse and dog tracks.

— M.S.

First World Justice

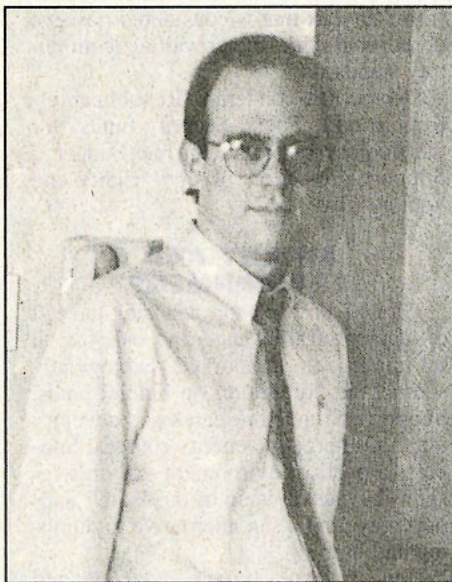
Costa Rican Farmworkers in Texas State Courts

BY ELLEN HOSMER

DIBROMOCHLOROPROPANE must have seemed like a miracle pesticide when it was introduced on the banana plantations of Costa Rica. Injected into the ground, DBCP eradicated the nematode worm that persistently ate the roots of the banana plants. For companies like Standard Fruit, the dibromochloropropane (DBCP) produced by Shell Oil and Dow Chemical meant huge harvests and healthy profits. For farmworkers, trudging through the banana fields and applying DBCP was a way to feed their families. But dibromochloropropane had another effect, one that Shell and Dow were less than eager to have associated with their popular and deadly efficient substance. Not only did DBCP eliminate the nematode, it caused sterility in humans who were exposed to it. As early as the 1950s, animal studies of the health effects of DBCP produced disturbing results. In tests conducted by both Shell and Dow, sperm counts in animals were lowered and testicles shriveled up and atrophied when lab animals were exposed to the pesticide.

In the United States, workers who handled the product at the manufacturing end unwittingly provided the human specimens for tests of the pesticide's safety. Workers in several plants that manufactured DBCP found that after working with the product, they became sterile. Although Shell, Dow, and other companies acted quickly to limit the damage to U.S. workers and thereby stop the multi-million dollar lawsuits that the allegations had spurred, the companies allegedly continued to ship the product overseas for use by Third World farmers. Environmental activists describe DBCP as one of the "Dirty Dozen" pesticides. And it is not only environmentalist groups that have been concerned about the chemical. DBCP has been on the U.S. Environmental Protection Agency hit list since 1977, when the agency ordered a phase-out of the pesticide's use on food. Later, the EPA ordered off the U.S. market all pesticides that contained DBCP. Yet selling DBCP, and other similar products overseas, was and is not prohibited by U.S. law.

In Costa Rica and many other Third World countries it took much longer to get the pesticide out of use. By the time public con-



LOUIS DUBOSE

Attorney Charles Siegel

cern resulted in some action, a thousand workers allegedly had been sterilized in Costa Rica alone, and many face elevated risks of stomach cancer from exposure to the pesticide.

That would have been the end of the story, simply another tragic example of Third World workers or consumers exposed to hazardous products or processes no longer acceptable in the United States. But Domingo Castro Alfaro and 81 other Costa Rican workers and their spouses decided to challenge the U.S. corporations that they claim had drastically changed the course of their lives. They took their case to the courts of the country where the product had been produced. Thrown out of courts in California and Florida, on grounds of the legal doctrine *forum non conveniens*, they persisted and brought their case to Texas, home of Shell's world headquarters and of a Dow-owned chemical plant that is the largest in this country.

At first, the farmworkers and their attorney, Charles Siegel of the Dallas law firm Baron & Budd, found that Texas was less than receptive to their cause. Their suit against Shell and Dow was dismissed in a Houston state district court, on the grounds that the court was not a convenient (that is, "proper" in legal terminology) forum in which to try the case. At the appeals court, however, the farmworkers convinced the judge that their

case should be heard in Texas. Dow and Shell quickly appealed that decision to the Texas Supreme Court.

ON MARCH 28, 1990, the Texas Supreme Court handed down a landmark decision that shocked the business community and bucked the national trend restricting foreigners from suing U.S. corporations in U.S. courts for injuries caused overseas. The court's 5-4 decision served notice to U.S. companies that if they hawk their hazardous wares overseas they may find themselves hauled into U.S. courts, at least in Texas.

The opinion in *Dow Chemical Company and Shell Oil Company v. Domingo Castro Alfaro et al.* struck down a doctrine known as *forum non conveniens*, which allowed judges to dismiss suits by foreign plaintiffs on the grounds that the forum or court that the plaintiff had chosen to sue in was not convenient or proper because the injury or death took place elsewhere.

The Supreme Court's decision, though not a ruling on the merits of case itself, was nevertheless a victory for the farmworkers and a setback for Dow and Shell and other corporations who apply different health and safety standards to products and processes they ship overseas.

The ruling provoked an outcry from the business community. The Texas Association of Business warned that it could spell disaster for the Lone Star State. "[A]llowing foreign workers to sue Texas companies could drive industry from the state or keep new companies from moving in," the association noted in a brief statement. It is, they wrote, a "significant blow not only to Texas business but to future economic development."

Dissenting Supreme Court justices had equally ominous predictions. Why "should Texas be the only state in the country, perhaps the only jurisdiction on earth, possibly the only one in history, to offer to try personal injury cases from around the world?" asked Justice Nathan Hecht in his dissenting opinion. "As the courthouse of the world, will Texas entice employers to move here, or people to do business here, or even anyone to visit?"

Lawyers from Shell were astounded by the decision. "We thought the law was well established that the doctrine of *forum non conveniens* was available in Texas," said James Evans, an attorney with Shell. "We

Ellen Hosmer is a writer living in El Paso.

were really disappointed at the decision." Shell attorneys contend that bringing the case to the U.S. courts will be much more than inconvenient. "The problem that you have is that all the incidents took place elsewhere in the world; how can we get discovery, how can we get the medical records, how can we know what doctors examined the plaintiffs, how can we know what exposures the plaintiffs had, how can we even know what products the plaintiffs dealt with?" asked Evans. The Texas courts can't force relevant witnesses to come forward from Costa Rica or doctors to release their records, he said. "We think we're put in an extreme disadvantage to defend our case."

David Robertson, a professor at the University of Texas Law School, disagrees. According to Robertson, the problems that Shell or Dow would have in trying the case cannot fairly be compared to the plaintiffs' difficulty in trying it in Costa Rica. "There's no question but that these things are logistical nightmares wherever you have them but the fact is that it can be done here and mostly it can't be done anywhere else," Robertson said.

Siegel maintains that the forum non conveniens argument was a device to keep the case out of U.S. courts, a point noted by Texas Supreme Court Justice Lloyd Doggett in his concurring opinion. "Shell Oil Company is a multinational corporation with its world headquarters in Houston, Texas. Dow Chemical Company, though headquartered in Midland, Michigan, conducts extensive operations from its Dow Chemical USA building located in Houston," wrote Doggett. "The chemical allegedly rendering the workers sterile was researched, formulated, tested, manufactured, labeled and shipped by an American company in the United States to another American company. The decision to manufacture DBCP for distribution and use in the Third World was made by these two American companies in their corporate office in the United States. Yet now Shell and Dow would argue that the one part of this equation that should not be American is the legal consequences of their actions."

THE REAL REASONS for removing the case to Costa Rican courts, however, are clear to both plaintiffs and defendants. A costly trial would be impossible in Costa Rica, since the total compensation that could be received there wouldn't cover even a fraction of the costs associated with suing a major multinational corporation. Even Evans recognizes that there is a disadvantage in workers' filing such suits in Costa Rica. "The laws in Costa Rica provide for a set scheme of recovery. It provides with great specificity the amount of money that the plaintiffs are able to recover where in Texas we have a far wider range of recovery," he said.

After damaging evidence surfaced showing that the manufacturers of DBCP had had information on the health risks of the pesti-

cide for many years, workers alleging sterility from exposure to the pesticide in the United States received settlements in the high six figures, according to Siegel, while typical compensation for a worker sterilized on the job in Costa Rica is \$1,500. Since Alfaro and the other farmworkers earn only a little over a dollar an hour, they would be unable to pay for a lawyer in Costa Rica nor would a settlement of this size be sufficient to cover costs for both lawyers and personal compensation.

"We have been fighting Dow and Shell for six years now just on the issue of where the case is going to be tried," Siegel said. "Our firm has spent a good deal over \$100,000 on the case so far. As a practical matter, the only place in the world where workers can manage to take on companies like this is the United States." In the United States, plaintiffs' law firms try such cases on contingency, which allows them to collect a percentage of the damages, and to recover expenses, if they prevail. That arrangement is not available in Costa Rica or much of the Third World, where workers often find it impossible to even get into the courthouse.

By the time the lawsuit comes to trial in mid- to late-1991, Siegel said, his firm will have spent hundreds of thousands of dollars. All the workers, their doctors, and their co-workers will have to be flown in for depositions, at the plaintiffs' expense. And the trial may be put off once again, since lawyers from Shell and Dow are working on an appeal to the U.S. Supreme Court on the grounds that they have been denied due process of law.

THE FORUM NON conveniens doctrine was originally intended to weed out cases that were clearly not appropriate for U.S. courts. Until the 1970s the doctrine was rarely used, except where the plaintiff was abusing the process or attempting to harass a defendant. But in the federal court system dominated by Reagan appointees, where most such cases were tried, the doctrine conveniently allows judges to shrink their dockets and to dismiss cases that they opposed on ideological grounds.

"The appointments that have been made, particularly in the Reagan years, [were] of judges who were screened for an ideological bent that would predispose them to align with major U.S. corporations rather than Costa Rican farmworkers" said Tommy Jacks, president of the Texas Trial Lawyers Association. Reagan appointees had been looking for a new way to deal with the growing number of foreign personal injury and death cases, and forum non conveniens fit the bill perfectly. It allowed judges to dismiss cases when the traditional rules of jurisdiction would have allowed such cases to remain in U.S. courts. "The federal courts began dusting off and using that old doctrine more and more readily," said David Robertson. "This doctrine says we admit that rules of jurisdiction say the case is properly

here but we think we have discretion to decline to hear it."

The shift of focus from abuse of the system to the judge's discretion has allowed the federal judges to dismiss almost any case filed by a foreign plaintiff, since the other forum is almost always more convenient. Judges bow out, not on a case's merit, but rather its complexity, the number of plaintiffs, the judge's disposition toward the issue, and the size of the court dockets. "America, as far as I know, is the only place in the world where it's legitimate for a court to say, 'part of the reason we're declining to hear this case is our dockets are crowded,'" said Robertson.

As the federal courts became more assertive in their use of the forum non conveniens doctrine, and increasingly closed off access to foreigners, foreign plaintiffs started looking to the state courts. But at the state level, many courts had already followed the feds' lead. Forty states and the District of Columbia have recognized forum non conveniens. Some states, though, held out. Texas, although allowing some cases to be dismissed on forum non conveniens grounds, left in place a state law giving foreigners access to Texas courts in certain cases. The Supreme Court decision, however, eliminated the judicial discretion that had allowed forum non conveniens to be applied on an *ad hoc* basis.

For many multinational corporations, the absence of forum non conveniens in Texas is particularly worrisome. Texas is home to 39 of the Fortune 500 corporations, according to *The New York Times*. And so many corporations conduct business in the nation's third most populous state, that most plaintiffs might claim that a corporation has significant enough ties with the state to mandate that lawsuits be heard here.

The importance of Texas's cooperation in the battle to limit corporate liability is not lost on the business community. Business leaders are already predicting repercussions that the *Alfaro* decision will cause. They claim that without the forum non conveniens doctrine, Texas will be seen as too inhospitable to multinational corporations and that companies won't locate where they're not wanted. Their opponents describe such claims as scare tactics. Safeguards, they argue, are still in place to ensure that cases brought to Texas courts have both merit and standing in the state. Jurisdictional rules still apply and the statute itself only allows plaintiffs from countries that maintain equal treaty rights with the United States. A majority of countries apparently do not have such treaties with the United States. And cases can still be removed to federal court, where forum non conveniens is alive and well, unless there is a local defendant in the case.

But dissenting justices argue that despite such protections, cases by foreigners will clog the docket, forcing Texans to wait for justice. The state, charges Associate Justice Raul Gonzalez, will be an "irresistible forum for all mass-disaster lawsuits," while Hecht charges that it will bring "personal injury

cases from around the world." Jurisdictional rules, however, require that defendants have substantial ties to Texas. It is not enough that they do business here, Jacks said, they have to have a heavy presence. And, as Doggett points out, the nine other states that do not have forum non conveniens have not been deluged by foreign plaintiffs.

The publicity that the case has generated will almost certainly mean that some new cases will find their way to the Texas courts and that cases put on hold while the Supreme Court deliberated will now be rushed to the bench. Lawyers for the Bhopal victims are already considering refiling their case in Texas courts and Siegel is representing another 220 plaintiffs in similar suits against Dow, Shell, and Standard Fruit Company. (In the original *Alfaro* case Standard Fruit was left out for fear that workers still employed by the company would face retaliation.)

But supporters of the decision have history on their side when arguing that the state will not be overwhelmed by new cases. The state has had a statute in place since 1913 which, in essence, said that in personal injury and death cases, forum non conveniens could not be applied, yet foreign plaintiffs haven't swamped the courts nor have corporations given up their residency. The decision by the Texas Supreme Court was merely the first time that the court clearly stated that the statute meant what it said, period.

Without the risk of facing lawsuits in U.S. courts, companies can often not only evade responsibility but also evade any kind of accountability for their business decisions overseas. "It's a great tool for them to evade accountability," Siegel said. "They have this whole sphere of profit — which is sales to foreign countries — without any corresponding liability for the injury they cause."

In his concurring opinion, Doggett agreed. "The refusal of a Texas corporation to confront a Texas judge and jury is to be labelled 'inconvenient' when what is really involved is not convenience but connivance to avoid corporate accountability," wrote Doggett. This is especially true in Third World countries, where worker and consumer health and safety laws are often nonexistent, as well as in many countries where the absence of contingency fees, and limited recoveries discourage plaintiffs from taking corporations to court. Despite the magnitude of their injuries, when taking on multinational corporations, such plaintiffs face impossible odds in the courts of their own countries.

One of the reasons that forum non conveniens is so popular with corporations is that once such cases are thrown out of U.S. courts, the victims rarely find their way to any other forum. In a study of federal litigation, Robertson found that less than four percent of cases dismissed on grounds of forum non conveniens make it to courts

overseas. Robertson said: "If the cases don't get brought here they don't get brought."

The export of hazardous pesticides alone is said to be responsible for a million poisonings and 20,000 deaths each year in the Third World. Although Congress is currently considering legislation to regulate the export of hazardous pesticides, it will be a difficult battle. Twenty-five percent of all pesticides exported from the United States are banned or unregistered, said a spokesman for Pesticide Action Network. The country's largest producers of these products will not stand by while their profits from Third World sales are decreased.

The Texas Supreme Court's decision will not be the last word on the doctrine in the state. Already there is talk that during the next regular session of the Legislature, the local, national, and international business communities will attempt to pass a forum non conveniens law designed to close the state's courthouse doors to foreigners. "Big business is back and wants to overturn the decision in the Texas Legislature and reinstate the protection," Robert Mokhiber, editor of the Washington-based *Corporate Crime Reporter* said. "The eyes of multinationals are on Austin and the betting is that the state of Texas will once again live down to its reputation of being like a Third World country — owned, controlled, and refined by the petrochemical giants." □

Inconvenient Justice

An excerpt from the concurring opinion of Texas Supreme Court Justice Lloyd Doggett on the *Alfaro* case:

IN THEIR ZEAL to implement their own preferred social policy that Texas corporations not be held responsible at home for harm caused abroad, these dissenters refuse to be restrained by either express statutory language or the compelling precedent, previously approved by this very court, holding that forum non conveniens does not apply in Texas. To accomplish the desired social engineering, they must invoke yet another legal fiction with a fancy name to shield alleged wrongdoers, the so-called doctrine of *forum non conveniens*. The refusal of a Texas corporation to confront a Texas judge and jury is to be labelled "inconvenient" when what is really involved is not convenience but connivance to avoid corporate accountability.

The dissenters are insistent that a jury of Texans be denied the opportunity to evaluate the conduct of a Texas corporation concerning decisions it made in Texas because the only ones allegedly hurt are foreigners. Fortunately Texans are not so

provincial and narrow-minded as these dissenters presume. Our citizenry recognizes that a wrong does not fade away because its immediate consequences are first felt far away rather than close to home. Never have we been required to forfeit our membership in the human race in order to maintain our proud heritage as citizens of Texas.

The dissenters argue that it is inconvenient and unfair for farmworkers allegedly suffering permanent physical and mental injuries, including irreversible sterility, to seek redress by suing a multinational corporation in a court three blocks away from its world headquarters and another corporation, which operates in Texas this country's largest chemical plant. Because the "doctrine" they advocate has nothing to do with fairness and convenience and everything to do with immunizing multinational corporations from accountability for their alleged torts causing injury abroad, I write separately. ...

As a reading of Tex.Civ.Prac. & Rem.Code Ann. § 71.031 (Vernon 1986) makes clear, the doctrine of forum non conveniens has been statutorily abolished in Texas. The decision in *Allen v. Bass*,

[1932]... approved by this court, clearly holds that, upon a showing of personal jurisdiction over a defendant, article 4678, now section 71.031 of the Texas Civil Practice & Remedies Code, "opens the courts of this state to citizens of a neighboring state and gives them an absolute right to maintain a transitory action of the present nature and to try their cases in the courts of this state. ..."

Displeased that *Allen* stands in the way of immunizing multinational corporations from suits seeking redress for their torts causing injury abroad, the dissenters doggedly attempt to circumvent this precedent. Unsuccessful with arguments based upon Texas law, they criticize the court for not justifying its result on public policy grounds.

Both as a matter of law and of public policy, the doctrine of forum non conveniens is without justification. ...

A forum non conveniens dismissal is often, in reality, a complete victory for the defendant. As noted in *Irish Nat'l Ins. Co. v. Aer Lingus Teoranta*, [1984] ...

[i]n some instances, ... invocation of the doctrine will send the case to a jurisdiction which has imposed such severe

monetary limitations on recovery as to eliminate the likelihood that the case will be tried. When it is obvious that this will occur, discussion of convenience of witnesses takes on a Kafkaesque quality — everyone knows that no witnesses ever will be called to testify. ...

Empirical data available demonstrate that less than four percent of cases dismissed under the doctrine of *forum non conveniens* ever reach trial in a foreign court. A *forum non conveniens* dismissal usually will end the litigation altogether, effectively excusing any liability of the defendant. The plaintiffs leave the courtroom without having had their case resolved on the merits. ...

Such a result in the name of "convenience" would undoubtedly follow a dismissal under *forum non conveniens* in the case at bar.

The plaintiffs, who earn approximately one dollar per hour working at the banana plantation, clearly cannot compete financially with Shell and Dow in carrying on the litigation. More importantly, the cost of just one trip to Houston to review the documents produced by Shell would exceed the estimated maximum possible recovery in Costa Rica. Assuming such a recovery were possible, no lawyer, in Costa Rica or elsewhere, could afford to take such a case — against two giant corporations vigilantly defending themselves in litigation. Further, Costa Rica permits neither jury trials nor depositions of non-party witnesses. Attempting to depose a Dow representative concerning the company's knowledge of DBCP hazards will prove to be an impossible task as Dow is not required to produce that person in Costa Rica.

It is not unlikely that Shell and Dow seek a *forum non conveniens* dismissal not in pursuit of fairness and convenience, but rather as shield against the litigation itself. If successful, Shell and Dow, like many American multinational corporations before them ... would have secured a largely impenetrable shield against meaningful lawsuits for their alleged torts causing injury abroad. ...

The dissenting members of the court falsely attempt to paint a picture of Texas becoming an "irresistible forum for all mass disaster lawsuits" ... and for "personal injury cases from around the world" ... They suggest that our citizens will be forced to hear cases in which "[t]he interest of Texas in these disputes is likely to be ... slight ..."

[But] a state's power to assert its jurisdiction is limited by the due process clause of the United States Constitution ...

Due process mandates that these requirements be satisfied before a Texas court may assert jurisdiction over a defen-



ALAN POGUE

Texas Supreme Court Justice Lloyd Doggett

dant. The personal jurisdiction-due process analysis will ensure that Texas has a sufficient interest in each case entertained in our state's courts. ...

Specifically, Texas has a substantial interest in the case at bar. As stated previously, this suit has been filed against Shell,

The plaintiffs, who earn ... one dollar per hour working at the banana plantation, clearly cannot compete financially with Shell and Dow ...

a corporation with its world headquarters in Texas, doing extensive business in Texas and manufacturing chemicals in Texas. The suit arose out of alleged acts occurring in Texas and alleged decisions made in Texas. The suit also has been filed against Dow, a corporation with its headquarters in Michigan, but apparently having substantial contacts with Texas. Dow operates the country's largest chemical plant in Texas, manufacturing chemicals within

sixty miles of the largest population center in Texas, where millions of Texans reside. Shell and Dow cannot now seek to avoid the Texas civil justice system and a jury of Texans. ...

The next justification offered by the dissenters for invoking the legal fiction of "inconvenience" is that judges will be overworked. Not only will foreigners take our jobs, as we are told in the popular press; now they will have our courts. ...

It is the height of deception to suggest that docket backlogs in our state's urban centers are caused by so-called "foreign litigation." ... Ten states, including Texas, have not recognized the doctrine. Within these states, there is no evidence that the docket congestion predicted by the dissenters has actually occurred. The best evidence, of course, comes from Texas itself. Although foreign citizens have enjoyed the statutory right to sue defendants living or doing business here since the 1913 enactment of the predecessor to Section 71.031 of the Texas Civil Practice and Remedies Code, reaffirmed in the 1932 decision in *Allen*, Texas has not been flooded by foreign causes of action. ...

Some United States multinational corporations will undoubtedly continue to endanger human life and the environment with such activities until the economic consequences of these actions are such that it becomes unprofitable to operate in this manner. At present, the tort laws of many third world countries are not yet developed. ... When a court dismisses a case against a United States multinational corporation, it often removes the most effective restraint on corporate misconduct.

The doctrine of *forum non conveniens* is obsolete in a world in which markets are global and in which ecologists have documented the delicate balance of all life on this planet. The parochial perspective embodied in the doctrine of *forum non conveniens* enables corporations to evade legal control merely because they are transnational. This perspective ignores the reality that actions of our corporations affecting those abroad will also affect Texans. Although DBCP is banned from use within the United States, it and other similarly banned chemicals have been consumed by Texans eating foods imported from Costa Rica and elsewhere. ... In the absence of meaningful tort liability in the United States for their actions, some multinational corporations will continue to operate without adequate regard for the human and environmental costs of their actions. This result cannot be allowed to repeat itself for decades to come.

As a matter of law and of public policy, the doctrine of *forum non conveniens* should be abolished. ...

Full House

A 10-Percent Solution to the Redistricting Dilemma

BY DAN CARNEY

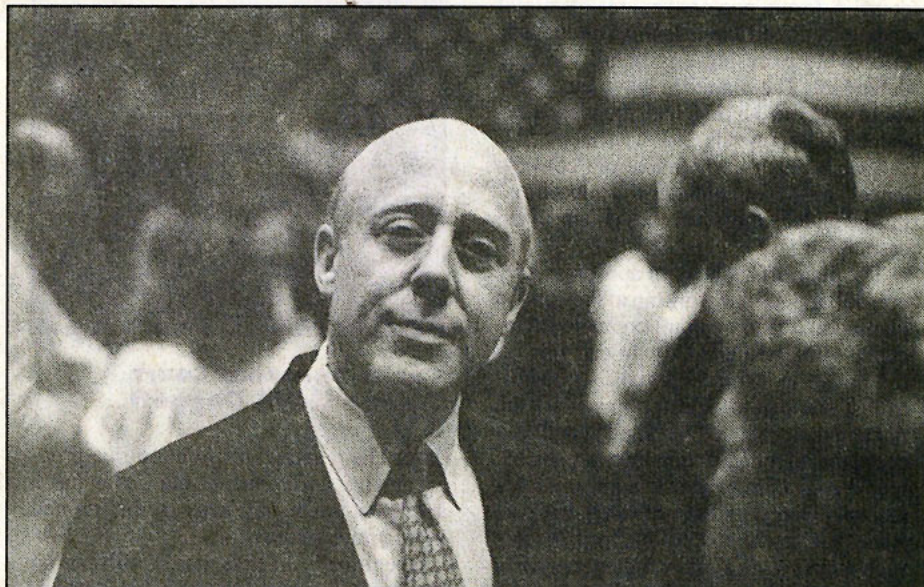
Washington, D.C.

CONGRESSIONAL redistricting is going to be a mess. Consider the Dallas area, where Democrats John Bryant and Martin Frost might have their districts dissected to create the minority seat both Republicans and blacks have been clamoring for for 10 years. Or how about Republican Representative Joe Barton, whose district stretches from suburban Dallas to suburban Houston? In order to run in the district that includes most of his current constituents, he might have to migrate 200 miles south.

What's more, all this incumbent grief is in a state that will *gain* three or four seats in Congress. Pity poor New York or Ohio, both of which will have incumbents running against each other because there will not be sufficient Congressional seats to go around after the 1990 census.

Worry no more. Along has come a plan that will not only work out tenure and turf problems in Congress, but will also make members more responsive to constituent needs and return representative government closer to what was intended by our founding forefathers. The remedy is to increase the number of seats by 10 percent or more. It's not as crazy an idea as it may sound. Contrary to popular belief, the number of seats was not fixed by the Constitution but by a Congress intent on keeping turn-of-the-century immigrants out of the political process.

It was in 1920 that Congress froze the number of Congressional seats at 435. That number had increased from the original 105 established in 1790. The 435 limit was imposed during a period when Congress was passing legislation to reduce drastically the number of immigrants allowed into the United States — from 1.1 million in 1905 to fewer than 100,000 by 1935. Eugenics was in fashion, the country was about to embark on a program of sterilizing hundreds of thousands of "criminally-minded and insane," and the Ku Klux Klan was in its heyday. In Congress, anti-immigrant sentiment was widespread. John Trevor, an influential advocate of restrictive immigration, argued that immigrants were not disposed toward supporting good government. "With full recognition of the material progress which we owe to the races



LOUIS DUBOSE

Representative Jim Chapman

from Southern and Eastern Europe," Trevor said, "we are conscious not only that these people tended to depress our standard of living, unduly change our institutions for the care of the socially inadequate and criminal, but also that they cannot point during a period of seven centuries since the Magna Carta to any conception of successful government other than a paternal autocracy." Trevor was quoted in an article written by political scientists John and Charles Kromkowski.

TODAY, the sentiments that contributed to freezing the number at 435 are no longer accepted. Furthermore, districts have grown so large that representatives have less time to devote to the ordinary people there. In 1790, each Congressman represented 37,100 constituents. By 1960, population in the average Congressional district had reached 410,100. Today it is 563,200. James Madison, in his *Federalist Paper* number 57, said the purpose of a decennial census is not only to draw new districts but to augment them — based on the growth in population. He suggested one district for every 30,000 people.

Increasing the number of districts would also reduce the population disparity between districts. While the average is 563,200, Representative Dick Arney's district, which includes much of the suburban sprawl of

Dallas and Fort Worth, has grown to be the largest in the nation with 845,000 residents. Meanwhile, Don Young, who represents the entire state of Alaska, has only 537,000 in his district. Vermont, Wyoming, Delaware, and both Dakotas, all of which are guaranteed one House seat by the U.S. constitution, have populations that aren't keeping up with the growth in the average size of districts.

If it weren't for the fact that it would seem self-serving to back legislation to expand the House, Congress would likely be out in front of the issue. As it is now, the only ones making such noises are a small group of political scientists and editors.

But there are those in Congress who are sympathetic to the idea. John Bryant of Dallas likes it, though he has not come out and openly recommended it. His aides, however, say Bryant might endorse the idea if someone else were to sponsor it and if it had a chance of going somewhere. "It would certainly make redistricting easier everywhere," said Bryant spokesman Carlton Carl. "If he sees it going some place he might be interested."

...

TEXAS Congressman Jim Chapman gained sudden notoriety last month when the House passed his amendment to the Americans with Disabilities Act. Chapman's amendment would allow restau-

Dan Carney is a writer for *States News Service* in Washington, D.C.

rants to bar AIDS victims from food-handling jobs. Dubbed by some "the gay-waiter amendment" it was criticized by San Francisco Representative Nancy Pelosi and by public health officials who cite research data finding no documented cases of AIDS being transmitted by food handling.

The Sulphur Springs Democrat is by no means the only one in Congress interested in making the act a platform for statements on homosexuals. The bill's author, Representative Steny Hoyer of Maryland, included

language to appease conservatives who thought "disabled" might be construed to mean homosexual. His language, however, was not inclusive enough for North Carolina Senator Jesse Helms, who noticed that transvestites were not on the list of those who were not to be considered disabled and added it himself.

After proceeding through both Houses, the bill resembles a list of the people least likely to be invited to a Republican fundraiser. Those not to be considered disabled now

include homosexuals, bisexuals, transvestites, transsexuals, pederasts, exhibitionists, voyeurs, gender-identity-disorder sufferers, compulsive gamblers, kleptomaniacs, and pyromaniacs.

The legislation is not so specific when it comes to rapists, bank robbers, or triple axe murderers. But presumably no one ever would have thought they would have been beneficiaries of legislation directed at the handicapped. □

POLITICAL INTELLIGENCE

✓ **THE LAW FIRM** that would include as partners Jim Mattox, Senator Tati Santiesteban, Larry Bales, and Ed Wendler is something more than a rumor but something less than a reality. Asked about the story, which was big talk at the Democratic state convention, Wendler, an Austin lawyer and city hall lobbyist, said that it is "a probability" that he and Santiesteban would put together a law practice and "do across-the-board work, not just lobby."

Wendler said that Mattox is not, "at the moment," involved in the plans. "But I don't want to say anything that would discourage Mattox," Wendler said in response to a question in Houston. Wendler said that he and Mattox are close friends and that he would welcome the Attorney General to join with him and Santiesteban — if the two of them can make the Austin-based law firm a reality.

✓ **THE AMERICANS WITH** Disabilities Act has passed the U.S. Senate and House of Representatives — without the anti-homosexual language inserted by Sulphur Springs Congressman Jim Chapman (*TO*, 6/15/90). The so-called "gay waiter" provision, which would have permitted restaurants to reassign AIDS victims from food-handling duties, was expunged by a House-Senate conference committee. The House then rebuffed an attempt to restore it when the bill came up for a final vote, but acceded to a compromise that would allow reassignment if the Department of Health and Human Services determines that AIDS can be transmitted through food — a position the agency's chief, Dr. Louis Sullivan, and every other medical organization has already denied. The "clean" ADA now goes to the President, who is expected to sign it.

✓ **HE MAY NOT** have Phil Gramm's special-interest bankroll, but state Senator Hugh Parmer's quixotic campaign to unseat the Republican Senator is attracting attention far out of proportion to its financing. The Fort Worth Democrat's new series of television commercials exposes Gramm's record on education and help for the elderly. (Gramm, the ads note, has several times voted against such budget-busters as the Meals on Wheels

program). The ads also contrasted Parmer's pro-choice record with Gramm's far-right stance on abortion; unlike most state GOP candidates, including Clayton Williams, Gramm opposes all abortions for whatever reason. And they protected Parmer's right flank by touting his sponsorship of the death-penalty-for-serial-murderers law. The spots end with an innovative twist: a 900 telephone number that allows viewers to phone in a contribution to Parmer's campaign, which so far has raised around \$1.5 million — about a quarter of Gramm's total. Still, studies show that incumbent spending doesn't help much after a certain threshold has passed; the crucial figure is how well the challenger is able to get his message across, and since almost every big-city daily picked up the Parmer ad story, the Fort Worth Democrat seems to be boosting his chances.

✓ **TEXAS RURAL LEGAL** Aid, which has been under severe fire from its parent, the Reagan/Bush-dominated Legal Services Corporation Board, finally got some good news from Washington. U.S. District Judge Gerhard Gesell ruled in a lawsuit by TRLA against LSC that the LSC illegally barred aid programs like TRLA from challenging new legislative and Congressional districts. If the decision stands up on appeal, and Congress doesn't intervene, Gesell's ruling could clear the way for TRLA to continue its efforts to enforce the Voting Rights Act in South and West Texas.

✓ **TEXAS DOESN'T COUNT.** That was the message delivered by Texas elected officials to the U.S. House Subcommittee on Census and Population. Land Commissioner Garry Mauro, Attorney General Jim Mattox, State Senator Rodney Ellis, State Representative Alex Moreno, and Austin Mayor Lee Cooke all appeared before the panel, which included three Texans — Austin's Jake Pickle and Dallas's Martin Frost and John Bryant. The state officials told the subcommittee that they feared undercounting of Texans by the Census Bureau would deprive the state of Congressional representation and federal funds. Moreno accused the bureau of discriminating in favor of Republicans by bias-

ing the count toward single-family, owner-occupied dwellings, and not exerting sufficient effort in harder-to-count rural areas with migrant workers. This conflict is part of a long-running battle over the issue of undercounting minorities and illegal aliens, who are required by law to be counted, but who are often missed by the census takers. The Bush administration has resisted efforts by states with high minority populations to compensate for the undercount. Ironically, the Census Bureau, under fire for cheating Texas of its proper representation, is part of the Commerce Department — which is headed by a Texan, Robert Mosbacher.

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A Real Education President

BY RALPH L. LYNN

All reflective people must agree with Winston Churchill that democracy is the worst form of government — except all the rest.

Unhappily, the one thing a democracy must have to prosper is the most elusive: leadership characterized by intelligence, integrity, charisma, wisdom, and political courage.

Such leadership is necessary because the voters must be educated to support only intelligent policies. And, the point cannot be too emphatically stressed: only the president can educate the voters.

For several reasons, education which will equip the voters to support intelligent policies cannot be accomplished in the public or private elementary and secondary schools. One, too few teachers — even of the social studies — are accomplished students of the problems. Also, the students are too immature to have much interest or understanding no matter how capable the teachers might be. Third, most of our current adult population, uneducated by the kind of president we need, would oppose effective teaching in these schools.

Nor can the colleges and universities educate the voters in vital public matters. Too few of the eligible voters go to college. Moreover, relatively few college students do significant work in history, political science, and economics. Third, the evidence is that the college experience is ineffective in changing the minds of significant numbers of students. Most graduates of any college or university leave the school still cherishing the ideas and prejudices they brought from home — which is precisely what their parents hope for.

In short, an educator president with the requisite characteristics is necessary because only he can command the attention of all the voters. Only he has sufficient clout to persuade the voters to choose intelligent policies.

In practice, the presidency is a "bully pulpit" from which to bamboozle the voters. For the democracy to prosper, it must become a lectern from which the voters can learn to support wise policies. In an earlier, simpler, less-crowded world we did not need to be so careful.

Obviously, democracies seldom come up with educator presidents. In a kind of parenthesis: our chances of finding educator presidents would likely be just as good with an hereditary presidency. At any rate, an hereditary president could go against public opinion without fear of losing the next election for himself and his party.

Part of the difficulty of getting an educator president is that our traditions in political campaigning discourage civilized people from exposing themselves to the cheapen-

ing inevitable in a successful presidential campaign.

Since presidential campaigns attract such large audiences, it is clear that the education we get from presidents comes largely from the campaigns in which the voters are confirmed in their ignorance by demagogic, flag-waving, Willie Horton types of appeals which worked so well for President Bush. It is fatal for a candidate to discuss either the problems which must be solved or the policies which will solve them.

Thus, even a person of intelligence, integrity, wisdom, and physical courage like President Bush is trapped by the terms of his election campaign. He is most unlikely to find the political courage to become the educator president we must have to deal with the staggering problems we face.

This is not a politically partisan diatribe against President Bush and the Republican Party. The Democrats have done the same kinds of things although not so well here of late. The Bush campaign is the best example both because it was so effective and because it is recent enough that voters may remember it.

Thus we have arrived at the chicken-and-egg dilemma: How do we get the requisite educator president until we get voters educated to demand serious campaigning?

President Bush showed that he understands the problem somewhat when he tried, after assuming office, to dismiss his disgraceful performance during the campaign by saying, "That [the campaign] was politics; this [exercising the power of the Presidency] is governing." But his performance as a politician seems to prevent him from becoming a statesman. The means have determined the end.

Perhaps the only solution is to find a candidate with the requisite qualities who will reluctantly and consciously, but not cynically, commit himself self-sacrificially to the management of poll-takers and political sharpies who will package him to please the gullible voters. He would make himself say and do all the stupid, contemptible things necessary to be elected.

Then, (perhaps not so) safely in the White House, he would get on television and admit that he had deliberately misled the voters. He would describe our problems and announce wise policies which the facts of life prevented him from discussing in the campaign.

After this, the agonizing question would be: How long could all our security forces save him from assassination in this land populated by so many gun worshippers?

Ralph L. Lynn is Professor Emeritus of History, Baylor University.

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571 Communities in Need!

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Moctezuma's Remains

BY BARBARA BELEJACK

CONVERSATIONS WITH
MOCTEZUMA

By Dick J. Reavis

New York: William Morrow,
1990, 296 pages, \$19.95

WE ARE SOMEWHERE in the air between Tampico and Mexico City and the man sitting next to me begins to talk about death. If this is going to be one of those Octavio Paz kind of conversations about the difference between Mexican and American attitudes about death, I don't want any part of it. Not in an airborne 727. My traveling companion, however, is feeling especially morose. He is a reporter for a leading daily and we are on our way back from a junket sponsored by the Ministry of Fishing. He is embarrassed by the behavior of his colleagues in the Mexican press, embarrassed by the chummy relationship between them and the government agencies they are supposed to cover. He is embarrassed because his wife is an executive with Teléfonos de Mexico. (I'm not sure if that's latent *machismo* or the normal reaction of any self-respecting person to one of the most obnoxious businesses on the planet.) He is depressed because he thinks his government is giving the country away. Too many leaders want to be gringos, he says. Every once in awhile he gives me one of those "it's 3 a.m. and this is the real dark night of the soul" looks, and asks if I understand him. I nod my head. "No you don't," he responds. "You don't understand. You never will."

He's right, of course. When I lived on the border and traveled to Mexico I used to think I knew a lot about the place. Now I know better, which is why I am basically suspicious of books purporting to contain deep insights into the Mexican "psyche," "emotional core," or God forbid, "soul," as the gratuitous dust-jacket comments hailing Dick Reavis's *Conversations with Moctezuma* would indicate.

The former *Texas Monthly* senior editor spent a year in Mexico at the end of the de la Madrid administration. He lived in Jalapa, the capital of Veracruz state, and traveled throughout the country. *Conversations with Moctezuma*, however, is also the product of more than a decade of occasional travel and



ALAN POGUE

Community School in Tamaulipas

reporting in Mexico. What Reavis concludes is that "Mexico lives on two planes, that of Western or European-American civilization, and that of Indo-American civilization, its own." "The evidence of wounded Indianhood is everywhere in Mexico," he writes. "It's what the country is about. Indo-American values show themselves in a preference for art over technology, for local over national affairs, and for family duties over the call of wealth." When Americans ask what makes Mexico tick, or in Reavis's words "what makes Mexico work," we fail to take into account that dual reality: "Our academics and our newspapers are full of answers. They tell us about Mexico's foreign debt, about oil prices, balance of trade, currency shifts and electoral campaigns. But these reports speak only of the life of Westernized Mexico, about the lives of Carlos Salinas, and Cuauhtémoc Cardenas. To ask Indo-American Mexico 'what makes Mexico work' is to ask how the oppressed culture survives."

TO ADVANCE HIS thesis Reavis begins with four isolated moments—a highway blockade in protest of the nuclear power plant at Laguna Verde, "Return to Palma Sola;" election monitoring in Monterrey in the company of a 53-year-old insurance salesman/civic activist, "Return to Monterrey;" making rounds with a 30-year-old ambulatory photographer (a former guerrilla supporter and former carpenter from the

mountains of Oaxaca), "Return to Macuiltianguis;" and a down-and-out VW somewhere in the Yucatan near an abandoned Mayan site, "Return to Xtampak." After setting the scene, Reavis weaves lengthy accounts of Mexican history, politics, religion, and culture into the story and then manages to spiral back to his original image.

Reavis is a first-rate storyteller and when he is content to write about the people he meets on the road or those he's known for years, *Conversations with Moctezuma* is worth the price of admission. The foreign press can and will write endless articles about Carlos Salinas, the PRI, the debt and free trade, yet much reporting about Mexico is devoid of any sense of place. We get a better idea of what the country is about from Reavis's account of the young couple, Ramon Perez, the photographer, and his wife, Mary. Perez was a supporter of a rural guerrilla leader whom Reavis met in the late '70s. The guerrilla leader was eventually killed and Perez discovered that you can't go home again. Mary was a graduate student from the University of Veracruz doing field work in the sierra of Oaxaca when she met Ramon. After trying life in Los Angeles, they settled in Jalapa and discovered that ambulatory photography and *artesanía*-vending were more lucrative (though not much), than carpentry and academia. The former guerrilla supporter joins the government-aligned photographers' union and assumes a hundred other everyday

Barbara Belejack is a journalist living in Mexico City.

compromises that define life in Mexico and which help explain the question — why do they put up with it? — so often posed by outsiders.

REAVIS'S ACCOUNT of the 1988 presidential election (which he followed with reporters from Monterrey's *El Norte* and Herminio Gomez, the insurance salesman who founded a citizens' rights movement), is an accurate telling of the high drama and *surrealismo* that marked Carlos Salinas de Gortari's ascendance to the presidency. The historical background on the PRI (Institutional Revolutionary Party) and the Revolution is useful, although much of this is available in every other book written about Mexico.

Throughout this book, however, Reavis lets his thesis get away from him and overshadows his reporting. His opening chapter, "Return to Palma Sola," is the most obvious example. He never manages to take a stand

on Laguna Verde, but is content to use the nuclear power plant as a metaphor in his "technology and progress versus mythical Indo-America values" argument. The protestors on the highway blockade at Palma Sola represent "the fears of Mexico's ancients, and probably the consensus of its present. The protestors are the Aztecs and the nuke forces, conquistadores from the West," he writes. The comparison is unfortunate.

By dragging Cortez and Moctezuma into the picture, Reavis does a real injustice to Mexico's fledgling anti-nuclear movement. For all its imperfections, Mexico's anti-nuclear movement represents not the past — whether Aztec or conquistador — but one of the country's best hopes for the future. Reavis is too often seduced by fatalism and clichés about Mexican fatalism. Along the way he misses the significance of a persistent minority unwilling to escape into the fatalism of "ni modo," "pues, así es," and unwilling to believe that this is the way life is, there's noth-

ing you can do about it. The nuke forces do not represent technology, progress, and the European way of life, as Reavis would have us believe, but authoritarianism pure and simple.

I don't fault Reavis for his attempt to get at the big picture and figure out why Mexico works one way and the United States another. Most of us here have had the same kind of 3 a.m. conversations at some point and kicked around some of the same conclusions that he does. But it's always a losing proposition. His attempts at actual analysis detract from what he has to offer. For those with a craving for an analysis of the essence of *Mexicanidad* there's still Octavio Paz. Despite those reservations, despite the pretentious title, *Conversations with Moctezuma* is still worth reading. There are wonderful stories of everyday life in Monterrey, the Oaxacan sierra, Jalapa, and say, did anyone ever tell you about the Doctor Boy Jesus? □

Cinema X-Murderers

BY STEVEN G. KELLMAN

INTOLERANCE is what D. W. Griffith called his sequel to *The Birth of a Nation*. Almost 200 years after ratification of the Bill of Rights, the incorporating principles of an infant republic, intolerance is back for reruns.

"Like writing history with lightning" is the way Woodrow Wilson described *The Birth of a Nation*, but, throughout their 95-year history, movies have served as the lightning rod for forces intent on social and cultural repression. The House Un-American Activities Committee spent more time investigating Hollywood than Detroit or Wall Street or any other industrial center. From its first feature production, the androgynously titled *The Squaw Man* (1914), the motion picture capital was scorned as the American Babylon, a sump of foreigners, Jews, leftists, sybarites, and homosexuals.

Following the manslaughter trial of actor Fatty Arbuckle, the murder of director William Desmond Taylor, and the drug overdose of actor Wallace Reid, movie producers were forced to defend their industry against charges of depravity. Civic and religious groups were organizing theater boycotts, and the federal and state governments were poised to impose legal restrictions on what movies could show.

In response, the Motion Picture Producers

and Distributors of America in 1922 hired Will Hays, postmaster general under Warren G. Harding and a Presbyterian elder, to clean house and save their business. The result, the prudish Production Code, prohibited studios from releasing movies in which characters said "damn" or slept in double beds. The righteous, right-wing Hays reigned as movie czar until 1945, and his puritanical regulations remained in force until the 1960s.

In 1968, under Jack Valenti, the Lyndon Johnson aide who succeeded Hays's successor, self-censorship was replaced by a system of ratings. By assigning every release to one of four categories — G (general audiences), PG (parental guidance suggested for children under 17), R (restricted to those 17 or older unless accompanied by an adult), and X (prohibited to those under 17) — the reorganized Motion Picture Association of America (MPAA) replaced taboos with descriptions. (A fifth classification, PG-13 — parental guidance suggested for children under 13 — was added in 1984, as a result of complaints that *Indiana Jones and the Temple of Doom* was too violent for pre-teens.) The MPAA label merely tells you what to expect, allowing you to decide for yourself what to see.

In its 22 years, the rating system has generally succeeded in deflating pressures for government censorship and vigilante embargoes. However, because of the stigma attached to both ends of the spectrum, producers have avoided scripts that seem either G or X. G has become associated with sanctimonious blandness, and filmmakers will go out

of their way to add a bit of violence or profanity to earn a PG and more box-office revenue. And, because many municipal ordinances, zoning codes, and property leases proscribe the exhibition of X-rated movies and because many newspapers and radio and TV stations will not run advertising or even reviews of them, scripts that are too violent or erotic for an R have been voluntarily expurgated.

At their best, the MPAA ratings, which are determined by the MPAA's Classification and Ratings Administration — an anonymous group of 10 Southern California parents — and subject to review by a 22-member appeals board, are merely a matter of truth in packaging. As long as they are accurate, consistent, and fair, it is hard to fault them as a guide for solicitous parents or squeamish patrons. It is true that the MPAA labels do not indicate whether sex, violence, nudity, or profanity was responsible for a particular designation. But, to most in the movie business, the alternatives to the rating system — a reimposition of the Production Code with Jesse Helms as Hays redivivus — have been as unpalatable as cow chips in the popcorn box.

"I have the utmost respect for the MPAA rating system," insisted David Whitten, whose Greycat Films distributes *Henry: Portrait of a Serial Killer* and who unrespectfully declined to accept the X that the MPAA assigned it. Because the review system is voluntary, Greycat can, and did, choose to bypass it. Indignant over charges of immorality, because psychopathic Henry is never

Steven Kellman, a professor of comparative literature at the University of Texas at San Antonio, regularly reviews films for the Observer.

brought to justice, Whitten calls *Henry* "one of the most moral films dealing with violence I've ever seen." He contrasts its honesty with the macho fantasies of action-adventure epics whose underlying message is a contempt for the rule of law and whose comic-book mayhem desensitizes us to everyday dangers. "I consider films like *Rambo* truly immoral," Whitten said. The *Rambo* films were released with an R.

Though Whitten might respect the rating system, he does not disguise his disdain for those who administer it, particularly Valenti. "The MPAA," he contends, "is a trade organization whose function is to protect the interests of the eight major studios." Valenti is their paid employee, and Whitten accuses him of discriminating against *Henry*, an independent feature made on a budget of \$120,000.

Later this summer, lawyers for Maljack, the film's producers, are scheduled to bring arguments against the MPAA in federal court in Washington, D.C. They intend to prove that, in assigning ratings, the MPAA gives preferential treatment to releases from the major studios.

Similar litigation against the MPAA has already advanced to the New York State Supreme Court. Representing Miramax, distributor of *Tie Me Up! Tie Me Down!*, lawyer William Kunstler is arguing that a sex scene that apparently provoked the MPAA to assign Spanish director Pedro Almodóvar's film an X is less offensive than scenes in *The Postman Always Rings Twice*, *9 1/2 Weeks*, *Fatal Attraction*, *No Way Out*, *The Accused*, *Body Heat*, *Lethal Weapon 2*, and *Blue Velvet*. Each of those was arbitrarily designated R, contends Miramax, because each was produced by a major American studio. "The only reason *Tie Me Up!* is rated X," claims Whitten, "is because the MPAA is ticked off at Miramax." The distributor had promoted

an earlier film, *Scandal*, by bashing the MPAA. Another current Miramax release, *The Cook, the Thief, His Wife and Her Lover* has been exhibited without ratings after the MPAA assigned it an X.

"They're interfering with my right to do business," complained Ben Barenholtz, an executive of Circle Films, which is distributing *The Killer*, a Hong Kong export that offers more blood than *Lawrence of Arabia* has sand. Barenholtz arrived in San Antonio on June 29, the day after local police served a warrant against David Risher, owner of Hogwild Records and Tapes, for selling 2 Live Crew's *As Nasty as They Wanna Be* to a 20-year-old man. Barenholtz was in town to gauge audience reaction before releasing *The Killer* — unrated, but with the caveat "No one under 18 admitted" — elsewhere. Known in the business as "Ramboville," on account of its fondness for action-adventure flicks, the Alamo City, like Norfolk, Virginia, often serves a test market for sanguinary spectacles.

Written and directed by John Woo, *The Killer* is the very gory but sentimental story of a professional assassin who has a soft spot for the beautiful woman he accidentally blinded and an arsenal of bullets for the gang that double-crossed him. Starring baby-faced Chow Yun-Fat, the hottest actor in Hong Kong, *The Killer* is a tale of love, loyalty, and vengeance in which blood cascades out of bodies every time someone is shot, which happens so often you have to relax and accept the proceedings as a kind of madcap Busby Berkeley ballet of mutilation.

Barenholtz, whose other projects have included *Thérèse*, *Raising Arizona*, and *Cousin, Cousine*, is not a merchant of sleaze. He acknowledges that *The Killer* is not for every taste, but he challenges Valenti to tell him how *Total Recall*, which was rated R, is any less violent than his film, which received an X. Because his resources are more limited than Miramax's, he is not doing so in court. I have not counted corpses in *Die Hard 2* or *Robocop II*, both rated R, but they, too, could fill a fair-sized cemetery. The difference, claims Barenholtz, is that they were produced by one of the eight major studios that constitute the MPAA and pay Valenti's salary.

A further challenge to the rating system will come with the American release of *Wild at Heart*, which captured hearts at Cannes and which is signed by one of the few directors whose name alone draws business to the box office: David Lynch. *Wild at Heart* will probably be distributed unrated rather than accept an X from the MPAA. If *Wild at Heart* is anything like Lynch's *Blue Velvet*, which, after some tinkering, appeased the MPAA enough to receive an R, or like *The Cook, the Thief, His Wife and Her Lover*, *Henry: Portrait of a Serial Killer*, *The Killer*, and *Tie Me Up! Tie Me Down!*, one would not recommend it for tender minds, faint hearts, or queasy stomachs.

Let the viewer beware, but also let in-

formed adults be free to see what they please. None of these films could be confused with *Mary Poppins*, and a meaningful rating system ought to be able to separate the wheat from the wild rice. Though the threshold of offense fluctuates over time — *Midnight Cowboy*, which received an X in 1969, most certainly would not if released today — contemporary standards ought to be applied equitably and consistently. Because those letters have been copyrighted by the MPAA, producers cannot unilaterally advertise their films as G, PG, PG-13, or R. However, X was not copyrighted, and, without any authority from the MPAA, peddlers of porno and snuff films proudly proclaim their products X, XX, and XXX.

Distributors of serious independent and foreign films, who claim discrimination by a rating administration that favors the American majors, feel tarnished by an X that associates them with hard-core sleaze. A new rating, argue many, would distinguish between *Rampaging Nurses* or *The Devil in Miss Jones* and *Last Tango in Paris* or *Clockwork Orange*. Without any apparent homage to Hester Prynne, they would call the new category A (adult). If *Wild at Heart* were rated A, it could be advertised in "family" newspapers and screened in neighborhood theaters off-limits to X.

The MPAA ratings are designed as descriptions not evaluations, and, even with an A, it is not clear on what grounds, other than the genius of its director, Pier Paolo Pasolini's *Salo*, which features generous displays of frontal nudity, sodomy, pederasty, masturbation, coprophagia, torture, dismemberment, and murder, would be distinguished from crude exploitation flicks. In a small group of cases, the difference between X and A would not be self-evident to the anonymous non-professionals who serve as MPAA jurors. But then, there are not enough letters in the alphabet to capture the distinctive quiddities of all the thousands of movies.

Valenti is on record as firmly opposed to adding an A, though he also resisted introduction of PG-13 until capitulating to pressure from exhibitors. "I believe that the true reason for Valenti's intransigence has nothing to do with moral issues," declares Greycat's Whitten. "It's totally monetary. The status quo has worked for the MPAA. The majors have nothing to gain by embracing a new rating. But they do have something to lose — market share. Right now, the summer is theirs."

Right now, branded as salacious and offensive, artists are on the defensive throughout the United States. The controversy over movie ratings cannot be separated entirely from attacks on Robert Mapplethorpe and 2 Live Crew. Deprived of a foreign policy initiative by an epidemic of disarmament and democratization in the Warsaw Pact, many ideological conservatives seem intent on pursuing an agenda of domestic repression. Others would limit our choices because it is better for their business. □



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Banal Murder and Common Beauty

BY STEVEN G. KELLMAN

HENRY: PORTRAIT OF A SERIAL KILLER

Directed by John McNaughton

TOO BEAUTIFUL FOR YOU (TROP BELLE POUR TOI)

Directed by Bertrand Blier

YOU'RE good to talk to," says Becky (Tracy Arnold) to Henry (Michael Rooker), a man she has just met. "I know you're not judgmental or anything like that."

Director and co-author John McNaughton might wish the same of his viewers. When *Henry: Portrait of a Serial Killer* was screened at last September's Telluride Film Festival, more than 10 percent of the audience stalked out in disgust. Though this low-budget slice of low life was completed in 1986, national release was delayed because of distribution disputes and because the Motion Picture Association of America was judgmental enough to assign it an X rating. McNaughton was unsuccessful in challenging the label, and independent Greycat Films is now distributing *Henry: Portrait of a Serial Killer* without any rating but with the warning that the work is not intended or recommended for children under 17.

What is most disturbing about *Henry* is its placid amorality. Henry holds a part-time job as a pest exterminator, but McNaughton's film lacks the febrile carnage of *The Exterminator*. Even the affectless killers in *River's Edge* and *Drugstore Cowboy* seem positively zesty in comparison with Henry, who methodically stalks, slashes, and slays women for no apparent reason except that they are there. From the opening shots of a nude and bloody corpse to the final image of an abandoned suitcase whose reddish stains betray human remains within, *Henry* impassively recounts a few days in the life of a lethal psychopath who takes no joy in his work.

As Henry, Rooker, who plays a flashy NASCAR racer in *Days of Thunder*, lowers his key so far he could open a footlocker to embody the banality of evil here. None of his grisly murders brings any hint of catharsis to

victim, killer, or viewer. "I got a new Visa card I wanna try out," he tells Becky to explain why he is inviting her to a steak dinner. "Who do you think you're associating with anyway?" It is a question that is never resolved, perhaps because, in tracking an elusive human identity, portraiture is inevitably caricature. McNaughton keeps us as detached from Henry, who is said to be inspired by Henry Lee Lucas, as Henry is from everyone else.

Despite its title, the film is less a portrait than it is a series of powder burns from which we are asked to infer combustion and cause. A promiscuous mother who humiliated her son by clothing him in dresses and forcing him to witness her sexual escapades apparently made Henry into both a misogynist and a matricide. He claims to have murdered his mother on his 14th birthday, but the weapon — was it a gun, a knife, or a baseball bat? — changes with each calm recitation. Most often, the camera encounters Henry's victims after they have had the life sliced out of them, with only a sound montage providing us access to the moments of horror themselves. When Henry and fellow con Otis (Tom Towles) pick up a pair of streetwalkers, we do witness their liquidation, with an efficient snap of the necks, but we do so through a car's rear window.

The most appalling sequence in *Henry: Portrait of a Serial Killer* occurs when Henry and Otis invade a suburban household and murder the husband and teenage son while molesting the wife. McNaughton shows it all through the lens of a camcorder the men have stolen. Like *sex, lies and videotape*, much of *Henry: Portrait of a Serial Killer* has the contradictory feel of immediacy and abstraction that seeing the world through a home VCR provides. It is as foolish to attack a TV screen as to smash a mirror if you do not like the image. When his television picture goes fuzzy, Otis smashes the set with his foot. "I guess I got carried away," he explains, in a rare attack of eloquence.

Otis attacks his sister Becky, who has fled to Chicago, without her daughter, after her husband was sent to prison for murder. "I never liked my daddy," she tells Henry, after she moves into the apartment that Otis shares with Henry. From the age of 13, Becky had been sexually abused by her father. Though she has had no better luck with other men, pert and pretty Becky maintains her confidence that she will find a better job and a

better man. She finds work in a beauty parlor and what seems to be love with *Henry*. Though love in *Henry* might be myopic, justice is not particularly blind; it is simply non-existent, whether of the poetic or legal sort. The closest thing to a policeman in this story of multiple brazen murders is the apathetic parole officer Otis visits once a month.

Crime in *Henry* does not pay very generously, but neither does it get punished. One evening, Otis interrupts Henry and Becky after she has lured him into her bedroom. Confused, Henry flees outside to buy some cigarettes. "How 'bout those Bears?" asks the friendly store clerk, in an attempt at using sports to establish some of the few social bonds we have. "Fuck the Bears," replies Henry. Beyond the F-word and the scorn for a Super Bowl champion, *Henry: Portrait of a Serial Killer* shocks with the recognition that people walk this world who refuse to be of it.

I'M NOT CRAZY!" shouts Bernard Barthelemy (Gerard Depardieu), a BMW dealer, into the phone at an obnoxious customer. Yet events in *Trop Belle Pour Toi (Too Beautiful for You)* soon provide reason to doubt the accuracy of this initial diagnosis. Writer-director Bertrand Blier (*Going Places, Get Out Your Handkerchiefs*) has created a perverse inversion of *She-Devil*, in which we are asked to imagine a sane man willingly jilting Meryl Streep for Roseanne Barr. Only a herpetologist would choose a frog over a princess.

Bernard has been married for 14 years to Florence (Carole Bouquet), a woman of such regal, fine-boned beauty that Bernard's male friends are consumed by envy. The couple lives in an exquisitely elegant antique house with two lovely, intelligent children. However, Bernard is willing to sacrifice it all for a supremely ordinary woman, a temporary secretary named Colette (Josiane Balasko) who shows up at his office while he is affirming his lucidity into the telephone. During the course of a torrid affair, Colette demonstrates certain sexual talents, but why does Bernard, within days of hiring her, give her the opportunity in the first place? "What's so special about her?" asks Florence, and the viewer has a right to wonder, too. "You're common and ugly," exclaims Florence to Colette during one of several ugly confrontations throughout the film. The description is a bit mean, but, certainly in contrast to

Steven Kellman is a professor of comparative literature at the University of Texas at San Antonio.

Florence's stunning mien, Colette's appearance is unremarkable. "She's like my sister," explains Bernard, "the one I never had."

Depardieu's hulking Bernard, who seems maladroit among the fine furniture in which Florence is at home, might mean that he feels more comfortable with Colette than with Florence, with the real than the ideal. The lower-middle-class Colette seems more akin than the thoroughbred Florence to Bernard, an overachieving mechanic. Aphrodite is probably less seductive than most mortal women. Men seldom make passes at voluptuous asses; they prefer the reassurance of what is at hand.

All of this makes *Too Beautiful for You* sound more like a dissertation on beauty than a fully realized narrative, and it is, in fact, more of an essay than a believable story. For all of her function as mundane imitation of

Florence's Platonic Form, Colette remains an idea, a stage device to precipitate Bernard's midlife crisis. Beyond the transient allure of illicit sexuality, Bernard's temporary secretary has little to sustain his interest.

Blier's characters express their thoughts to the camera, to total strangers, and to themselves in blithe disregard of the illusion that they are living beings we are spying upon. His camera is forever circling and tracking back from his characters, as if too restless in his meditations on beauty to settle on any conclusion. "A man wants to live several lives," says Bernard, ambivalent over continuing with Florence or running off with Colette. And Blier seems impatient with mere plot to resolve the question of whether physical beauty is worth all the trouble. Sequences — like Colette's life with an undistinguished husband and two kids — are inserted as

alternative lines of development or as comic fantasies.

Except for a mischievous echo from the maudlin theme to *Love Story*, *Too Beautiful for You* is accompanied throughout by the achingly beautiful music of Franz Schubert. Schubert so pervades the film that even the characters notice. Bernard complains about the *Impromptu* that his son, assigned to write an essay on the composer, plays on a CD; the piece is too sad. "Your Schubert is a pain in the ass," he later announces to the camera, in his parting words. A dozen different Schubert works — including *Death and the Maiden*, *Rosamunde*, and the *Mass in E Flat Major* — accompany Bernard in his decisions and indecisions. But the most famous of all Schubert compositions — *The Unfinished Symphony* — is notably absent from Blier's open-ended film. □

SOCIAL CAUSE CALENDAR

OBSERVANCES

July 13, 1908 • Women first competed in the Olympic Games.

July 14, 1912 • Woody Guthrie born.

July 17, 1979 • Nicaraguan tyrant Anastasio Somoza flees to Florida.

July 19, 1848 • First women's rights convention held at Seneca, New York.

July 21, 1864 • *New Orleans Tribune*, a black-run daily newspaper, commences publication.

July 22, 1910 • Twenty blacks lynched in Palestine, Texas.

July 23, 1829 • First typewriter patented.

July 24, 1925 • John Scopes convicted of teaching the theory of evolution.

July 25, 1963 • The United States, Soviet Union, and Great Britain sign the atmospheric nuclear test ban treaty.

July 27, 1974 • House Judiciary Committee votes to impeach President Richard Nixon.

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PANTEX PROTEST IN AMARILLO

The seventh annual protest by peace and justice activists at the Pantex nuclear weapons plant outside Amarillo will be held at the Peace Farm adjacent to the plant from **Friday, August 3-Sunday, August 5**. The theme of this year's Pantex Pilgrimage and Peace Camp will be "Celebrating a World Without Walls." Bicycle pilgrims will ride across the state, speaking about Pantex and the arms race in the towns they visit and will reach the Peace Farm on



August 3. Saturday morning features workshops on the techniques of peace activism, and will include a speaker from Eastern Europe. A Peace Festival and Progressive Cause Gathering will be held in Amarillo Saturday afternoon, and folk singer Odetta will wind up the festival with a concert at 8 p.m. There will be an ecumenical service and action at the Pantex main gate Sunday morning. The event is sponsored by the Red River Peace network, a coalition of Texas, Oklahoma and New Mexico activists. For information, contact the Peace Farm, HCR 2 Box 25, Panhandle, Texas 79068 or call (806) 335-1715.

NATIVE AMERICAN ART IN HOUSTON

Houston's Museum of Fine Art will present *Color, Form, and Line: Spanish Colonial and Native American Art from Houston*

Private Collections from **June 23 - October 7**. The display features indigenous art from Native American cultures, with half the works coming from the American Southwest.

AMERICAN DRAWINGS AT AMON CARTER

Training the Hand and Eye: American Drawings from the Cooper Hewitt Museum, will be on display at Fort Worth's Amon Carter Museum from **June 25-July 22**. The exhibit features the work of artists such as Church, Homer, and Vedder.

FAULK TRIBUTE

The Man Who Beat the Blacklist, Bill Moyers' biography/appreciation of John Henry Faulk filmed last year, will air in many Texas markets around **August 1st**. Check local listings for the airdate in your area.

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