

Sarah

from

Diana

the trouble maker!

2-A LUBBOCK AVALANCHE-JOURNAL, Thursday, July 21, 1988

## Missing 6-year-old winds up at camp

LOS ANGELES (AP) — Some see J.B. McNickles as a 6-year-old con artist who assumed an alias, outfitted himself for the part and eked out a six-day outing at an amusement park and Salvation Army camp in trendy Malibu.

Others say a somewhat-timid J.B. wanted to go camping and when opportunity knocked, he quietly answered.

Police, parents and the agencies involved say the whole incident should never have happened. The boy's foster parents believed he was missing and a massive search was launched.

Odell Williams, J.B.'s foster father, dropped him off July 13 at the Boys and Girls Club in Pacoima. He was not there a few hours later when Edna Williams arrived to pick him

up.

While J.B. spent a day at Knott's Berry Farm and five days at the Salvation Army camp, police conducted door-to-door searches, posted hundreds of pictures of the boy and alerted other jurisdictions about his disappearance.

"These various agencies need to be alerted that their checks and balances didn't work and they got outsmarted by a 6-year-old," said police Detective Nancy Lyon.

Leroy Chase, director of the Boys and Girls Club, said J.B. boarded a van without the driver's notice.

"I never had been to camp before," J.B. explained. "I wanted to see what it was like."

The newly hired driver took the van full of kids to a Salvation Army pickup point.

6-A—LUBBOCK AVALANCHE-JOURNAL, Thursday, July 21, 1988



AP Laserphoto

## Let me tell you

Massachusetts Gov. Michael Dukakis, just hours before receiving the Democratic presidential nomination,

talked to a group of children at the Conyers, Ga., Girls and Boys Club Wednesday.



## ALMOST RECORD

# Indictments Name 106 Persons Here

### FROM PAGE ONE

two days before she was abducted as she arrived for work, forced to drive onto a country road near the Hayloft Theater and assaulted.

#### Out On Bond

Price was out of county jail on \$3,000 bond when the April 30 attack occurred.

The indictments in the drug and narcotics cases stemmed from a police crackdown earlier this spring. Many of the suspects were arrested during a rock music festival south of the city Easter weekend.

Other indictments included:

Other indictments were:  
Embezzlement—Melvin Johnny Yowell, 26, of 2114 38th St.  
Passing a worthless check—Eugene McCown of Seminole; Joe B. Sifuentes, 42, of 2718 Bates St.; Louis Daniel Fendergraph, 21, of 520 Ave. C; Billy Bob Lenz, 23, of Lamesa.  
Forgery—Don Claborn, 20, of 4402 20th St.  
Passing a forged instrument—Bobby Lee Johnson, 38, of Lubbock; Lloyd Green, 23, of 1509 14th St.; Benjamin F. Craft; Raymond L. Cullum and Linda Sue Cerver Smith Doshier, 24, of 309 Hub Homes.  
Attempting to pass a forged instrument—Auray Mae White, 40, of 2502 Weber Dr.  
Burglary of a motor vehicle—Farrar Garza, 36, of Lubbock.  
Theft over \$50—Robert G. Sanders, 17, of 605 Ave. F; Milton Pace, 26, of Rt. 1, Lubbock; Thomas William Evans, 20, of 2514 38th St.; Tommy Lee Brown, 18, of 2708 Teak Ave.; Chauncey Houston Jr., 18, of 1706 Teak Ave.; Horace Hood, 13, of 2605 Weber Dr.; and Wilson Carl Nash, 18, of 5813 Life Ave.  
Theft by larceny—James W. Devours, of Shallowater.  
Theft by false pretext—Maurice Johnson, 23, of 2221 Quilt Ave., Apt. D.  
Burglary—Lewis G. Walker, 17, of 315 Ave. V; Jose Rangel Maria, 23, of 2801 Colgate St.; Tommy Buzeman, 18, of 3517 E. 1st Place; Lonnie Moore, 20, of 2511 Weber Dr.; Curtis Dell Belcher, 18, of Waukegan, Ill.; Ruben Wayne Johnson, 18, of 1320 E. 28th St.; Lewis Charles Jenkins, 19, of 3506 Life Ave.; Jerry Hart, 25, of Fort Sumner, N.M.; Richard Hart, 23, of Fort Sumner; Felix Penn Deleon Jr., 24, of 308 N. Ave. G (two counts); Reynaldo Deleon, 22, of 111 N. Ave. F (two counts); Delfino Mendez, 24, of 3413 Cedar Ave.; Esandio Torres Nava, 24, of 4505 Ave. D; and Franklin Sanders, 24, 616 Ave. F.  
Attempted burglary—Carl Williams, 27, of 1919 E. 15th St.  
Assault with intent to commit rape—Billy Croft, 23, of 3425 Ave. E.  
Burglary accomplice—Myrtle Alexander, 24, of 711 Ave. E.  
Receiving and concealing stolen merchandise—Nadim Maden, 36, of 2717 E. 8th St. (two counts); Emma Lee, 20, of 2602 Weber Dr.; Helen Morris, Ervin Anderson; Joe Carl Maden, 17, of 2717 E. 8th St.; Jack Hawkins, 37, of Buffalo Lakes.  
Shooting—Vergil Merriweather, 25, of 1813 E. 25th St.  
Driving while intoxicated, second offense—Douglas Wood, 39, of Snyder; Arthur June Taylor, 63, of Post; John H. Martinez, 35, of Elgin; Harold Leach, 35, of 1321 25th St.; Julian King Lawson, 47, of Lamesa; Cleddy Burene Harris, 58, of Searsville; Elrick Thomas Hooker, 31, and Leroy Wallace, 55.  
Driving without owner's consent—Rudy Silva Hernandez, 17, of 2131 13th St.; Mike Glendall, 25, of 2501 Elm St.; and Robert Bocanegra, 18, of 3102 Emerson St.  
Possession of a narcotic drug—Rex W. Williams, 36, of Amarillo; Charles Northcutt, 18, of Garland; Bob Elbert, 18, of Amarillo; Larry Higgins, 26, of Amarillo; Doyle E. Lindsey, 21, of Houston; Mark Craig Copeland, 20, of Houston; Larry Voigt, 21, of Houston; Richard D. Killough, 18, of Dallas; Dennis Hunt, 21, of Houston; Glenn Collins, 19, of Santa Fe; Charles Collins, 19, of Santa Fe; Martin L. Colson, 19, of Houston; Charles Collins, 19, of Houston; Philip Angel, 26, of Fort Worth; David P. Anderson, 18, of Tyler; Robert McDaniel, 21, of Alexandria, Va.; Rocio Conlon, 21, of Sarasota, Fla.; Cynthia Stone, 18, of Dallas; Barbara Morgan, 21, of Albuquerque; Phillip Jackson, 18, of Abilene; Hoyt Sessions, 21, of 2004 5th St.; Beverly Ann Socha, 20, of Clintwood, Mo.; David Goolsbee, 20, of 1812 Ave. K; Vernon Ray Gilmora, 20, of 8023 68th St.; Arthur Marcus Hansen, 20, of 2211 15th St. (rear); Chuck Croley, 22, of 1625 Ave. K (rear); Phillip Sansone, 23, of 1625 Ave. K (rear); Lester Martin, 18, of Livingston, N.M.; John Boggsman, 19, of Bowie; Andrew S. Hale, 18, of Dallas; Steve Clark, 17, of 1337 East St.; Beriah Magdon, 18, of Houston; Robert L. Brown Jr., 22, of Little Rock, Ark.; and James Halka, 21, of 2904 5th St., Apt. 105.  
Possession of a dangerous drug—John Lym Sons and Steve Clark.  
Sale of a narcotic drug—John H. Simmons, 28, of Fort Worth; Rocio Conlon, 21, of Sarasota, Fla.; Olga Casares, 24, of El Paso; Coame Tilleria, 40, of 410 14th St.; Joe Casares, 42, of 21 Paso (two counts); Joe Lema, 46, of 907 E. 8th St. (six counts); Juanita Vera Cruz, 25, of 10514 Broadway Ave. (seven counts).  
Sale of a dangerous drug—Robert Steven Crabbe Owens, 37, of 1906 45th St. and C. W. Bullard, 18, of Amarillo.  
Possession of narcotic paraphernalia—Sandra Caldwell, 19, of Bismarck, N.D.; James Cary Gossett, 27, of 2253 19th St. (rear).  
Assault with prohibited weapon—Tommy Van Giory, 27, of 805 E. 52nd St.; L. M. Jones Jr., 26, of Liberal, Kans.  
Robbery by firearms—Morris Garza Cardenas, 21, of 1911 9th St.  
Attempted rape—Thomas F. Diaz, 41, of 2409 Colgate St.  
The jury returned 16 no-bills: They were:  
Passing a forged instrument—Charles Edward Dodson, 20, of Rt. 3, Lubbock.  
Theft over \$50—Roberto Orsco, 25, of 313 Ave. W. and Gilbert A. Lepper, 32, of Indianapolis, Ind.  
Burglary—Ernie Nelson, 20, of 2816 E. 5th St.; Marvin Edward Lea, 18, of 3824 E. 15th St. and Cosimiro Quintero, 19, of 411 Ave. D.  
Receiving and concealing—Morris Garza Cardenas, 21, of 1911 9th St.  
Possession of a narcotic drug—Albert W. Smith, 25, of Portland, Me.; Landon Kent Roberts, 18, of Amarillo; Tom Norman, 18, of Amarillo; Oleta Gayle Goodrich, 19, of Amarillo; Lesliet Fike, 19, of Portland, Me.; Jack Ardis, 21, of Ardmore, Okla.; O. T. Lack, 22, of Wynne-wood, Okla.; and Jim Sons, 19, of Ardmore.

## 106 Indicted In City By Grand Jury

By JACK GOLDING  
Avalanche-Journal Staff

A 13TH District Court Grand jury returned a near-record 127 true bills against 106 persons Wednesday, including two indictments against a Lubbock man charged with forcible rape and 59 in drug and narcotics cases.

The panel met May 11 to consider 166 felony cases but recessed the remainder of last week because of the tornado.

The 127 indictments ran a close second to the April 3, 99th District Court grand jury that returned 123 true bills, a record number for one month in Lubbock County.

#### Two Murder Indictments

Two murder with malice indictments were returned.

Elsie Jane Baker, 35, was indicted for the March 28 shooting of her husband, Joe Royce Baker, 34, of Rt. 5, Lubbock. Investigators said Baker was shot with a .22-caliber derringer at the couple's trailer home about one-half mile west and one-half mile south of Loop 289.

Henry Frank Johnson, 35, of 3509 Vanda Avenue was indicted for the shooting death of Johnny "Slim" Allen, 30, of 2708 E. 8th Street. A man walked into Heath Trucking Co. at 2909 Ave. C April 6 and shot Allen point-blank with a 20-gauge shotgun.

#### Accused in Two Rapes

In the rape cases, Eddie Dean Price, 21, of 1314 E. 17th St. was named in two indictments. He is accused of raping a 24-year-old Slaton woman the night of April 30 in a doctor's office where she worked as a secretary.

She was raped and severely beaten as she worked late at the office in the 3800-block of 22nd St.

Price, who was identified as a cleaning man at the office, has been held in county jail without bond since the attack.

Price was also indicted for the March 26 rape of a 24-year-old Levelland woman who had been employed at an office here only

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## Letters to the Editor

## ACLU's 'Big Lie' Repeated Religiously

This is a rebuttal to the letter from Norman Dobsen, president of the American Civil Liberties Union ("Our Framers Instituted Neutrality on Religion," Jan. 7). First, let me point out the following basic facts about the so-called "separation of church and state": The Framers' words in the First Amendment, "Congress shall make no law respecting an establishment of religion," originally forbade merely Congress from establishing a national religion; individual states, such as Connecticut, had official state religions well into the second half of the 19th century.

The ACLU's "big lie," of course, is that "the Framers also intended to prohibit the government from favoring religion over non-religion." This ACLU-tenet-masquerading-as-historical-fact, however, is belied by the facts that: George Washington's first official act as president was a prayer to Almighty God; Congress, the president, the Supreme Court and most state governmental bodies to this day regularly invoke the guidance of the Supreme Being; and, frustrating as it may be to the ACLU, the solicitor general's position that "a Sunday mass sponsored by a town on public property would be constitutional" is no more disturbing to most Americans today than George Washington's first official act as

## Loathing in Lithuania

Your Jan. 17 article about hard-liners in Lithuania expresses the frustrations of a Russian labor organizer, Galina Mkhitarian. She is angered that Lithuanian is the official language and does not like the democratically elected government there, which she and the KGB-controlled Soviet troops have tried to overthrow.

Lithuania's people abhor Russian colonists like Mrs. Mkhitarian, because they represent the legacy of the bloody, 50-year Soviet oppression. More than 300,000 Lithuanians were deported to the Siberian death camps by the Communists. These colonists were then brought into the homes and farms of the deportees. They displaced them from their homes and now they're are trying to displace their language.

LIUTAS K. JURSKIS

Red Bank, N.J.

## A Higher Price For a Higher High

In your Jan. 10 article "U.S. Cracks Down on Marijuana Growers," you reported: "Retail marijuana prices have doubled to as much as \$6,000 a pound. . . . John Peoples, the DEA's marijuana chief, claims the jump indicates that enforcement has hindered traffickers and that demand now outstrips supply." However, it was explained that much of today's marijuana is up to 250% stronger than the pot of the mid-1970s.

For Mr. Peoples to conclude that the doubling of marijuana's retail price is due to the DEA's enforcement fails to consider the change in product quality. It seems that if the product is twice as strong, a "high" would require only half as much

president was to the other Framers 200 years ago.

The beauty and strength of the American system is that the "church" and the "state" are in fact the same people. And, just as the men and women of our 13 Colonies codified the Ten Commandments in their respective statute books (some actually citing chapter and verse), the current laws of all 50 states still include each of the Ten Commandments in one form or another. For example, every state still recognizes the existence of one God; every state penalizes perjury; and every state recognizes the Sabbath.

Whether the ACLU likes it or not, as long as we remain "one nation under God," total separation of church and state in America will be at best a myth. Unfortunately, the more the ACLU repeats its big lie, the more people actually believe it.

JOSEPH B. SCHMITZ

Washington

## U.S.-Czech Venture In Embryonic Stage

Your Jan. 23 coverage of our second phase of "Chix-in-Space" provides valuable exposure of this space-science project. I would like to add three points. First, our research benefits from the nurturing provided by NASA's Center for Commercial Development of Space program. Through this program our chick-embryo model and our flight hardware for microgravity research are available to the commercial sector for studies directed at product development. Examples of these studies might include motion-sickness medication, the bone cell and osteoporosis, hormone and drug action, vaccine development and immune-system function.

Second, our most important first-phase observation was that none of the 16 two-day-old embryos survived space flight. This suggests that gravity may be essential for very early embryonic development of chicks and other species, including humans. Third, we recently have established what may become a very productive cooperation with a team of space biologists of the Slovak Academy of Sciences in Czechoslovakia (CSFR). They have conducted similar bird-development projects using Russian space vehicles. This new collaboration bodes well for the future of space-biology research and U.S.-CSFR relations, both given new impetus by the November signing of the most-favored-nation tariff legislation.

RONALD L. HULLINGER, D.V.M.  
School of Veterinary Medicine  
Purdue University

West Lafayette, Ind.

## They're the Top, And the Bottom

Your Jan. 11 article on advertising by Baldrige Prize winners was excellent. The intent of the Baldrige Award to reward corporate America for significant efforts to improve quality is indeed laudable. The

If the Middle East had been oil-poor, would we have put half a million of our sons and daughters in harm's way? Would we have dropped more than a million tons of high explosives to dislodge, say, India if it had invaded Bhutan? Or if Zaire were in Rwanda, or Argentina threatening Paraguay? Among the real and purported justifications offered for the U.N.'s punitive Middle East expedition, the one that makes the most sense is oil—and the prospect that some 40% of the world's oil supply might be in the hands of an uncooperative or even hostile nation.

And so we have deployed astonishing technical wizardry—low-flying missiles

## Counterpoint

By Carl Sagan

that follow the terrain's every contour, munitions that can enter an air duct and demolish the innards of a building, ground-launched missiles that shoot down other missiles in mid-flight. At least thousands of people have already been killed, including many women and children who certainly themselves had no designs on the oil supply of the industrialized world. Huge numbers more will die if the war proceeds to its next phase, ground combat. Meanwhile, a discernible instability is growing in Muslim nations that support the coalition, one of the worst oil spill in human history is oozing down the Gulf, and some of the Kuwaiti oil fields are ablaze. (These fires may presage the Iraqis' threat to torch all the oil wells there; the smoke from such fires could lead to a crop-destroying cold and drought in South Asia.)

If all or much of this is to protect the economies of the U.S., Western Europe and Japan, dependent as they are on imported oil, it is reasonable to ask what efforts are being made to cure us of this wretched de-

pendency. Moreover, in peacetime, the burning of oil—along with coal and natural gas, the other principal fossil fuels—generates a steadily increasing quantity of the main greenhouse gas, carbon dioxide. All state-of-the-art computer climate models project, over the next decades, warmer temperatures, more drought in continental interiors and rising sea levels. Since the six hottest years of the 20th century were in the decade ending in 1990, some experts think the "signature" of increased greenhouse warming may be already here. Others are more cautious. But the chief area of debate is not whether, but when.

You might have thought the dangers of dependence on foreign oil, apparent since the early-1970s, would have provided adequate reason for moving to alternative energy sources. You might have thought the threat of global warming would have led to the same conclusion, and that the concatenation of the two arguments would have been persuasive. Western Europe and Japan are convinced. They've announced long-term programs to wean themselves, at least in part, from the fossil-fuel economy and reduce their carbon dioxide emissions. But the U.S.—the chief carbon dioxide polluter—has not.

How much money does the federal government spend each year for research and development into non-nuclear alternatives to fossil fuels? Roughly as much as is spent on the Gulf war in an hour. This disproportion is staggering. We are willing to pay out vast sums to deter others from depriving us of our overseas oil, and to punish them if they do; but hardly anything at all to free us from the debilitating necessity of deterring and punishing.

Along with an energy policy that looks as though the federal government doesn't believe Americans have much of a future is our near abandonment of effective education, including education in science and technology; our soaring homelessness; our collapsing infrastructure; an infant-mor-

tality rate still the highest of all major industrial nations; the largest prison population of any nation on the planet; and the conversion of the U.S. from the world's largest creditor to largest debtor.

The one alternative to fossil fuels that has been vigorously pursued and handsomely subsidized is nuclear power. Nuclear-power plants, whatever else you might say about them, certainly do not produce greenhouse gases and do not contribute at all to global warming. They might provide an acceptable alternative if the following criteria were satisfied:

- 1) Economic competitiveness (remember, to do this fairly, you must allow for all subsidies).
- 2) Long-term operational safety.
- 3) Absolutely reliable containment or disposals of radioactive wastes, over the multithousand-year half-lives of the longer-lived radioisotopes.

4) Guarantees against diversion of weapons-grade uranium and plutonium to nuclear weapons.

To the best of my knowledge, the simultaneous fulfillment of these four criteria has not been accomplished.

In contrast to the free-spending government support for the nuclear-power industry—justified partly by the overlap with the nuclear-weapons industry—other alternatives to fossil fuels have had to go it pretty much on their own. Nevertheless, there are a range of alternative technologies ready or nearly ready to move into large-scale application—including solar and wind power, biomass conversion, and hydrogen fuel. When we take account of the real cost of oil—including what it costs to protect sources of supply and to clean up the environmental damage—some of these technologies are already cheaper than oil, as well as clean, nonpolluting and inexhaustible.

A wide range of new technologies could greatly increase the efficiency with which we use fossil fuels—including safe automo-

biles with good acceleration that get twice or even three times the mileage efficiency typical on American highways. Some practical alternative-energy technologies and cost-effective ways to use fossil fuels more efficiently are described in last September's Scientific American. There probably are other technologies, yet to be invented, that would supply still greater fossil-fuel efficiency or even more compelling alternatives to fossil fuels. Where is that old-fashioned Yankee ingenuity?

With any sensible redistribution of national priorities—by tax incentives, say, or sales-tax rebates—the entrepreneurial opportunities in these new technologies should be breathtaking. But present U.S. policy seems better symbolized by the sale of one of the leading U.S. solar energy companies, a subsidiary of Arco Petroleum, to an overseas corporation.

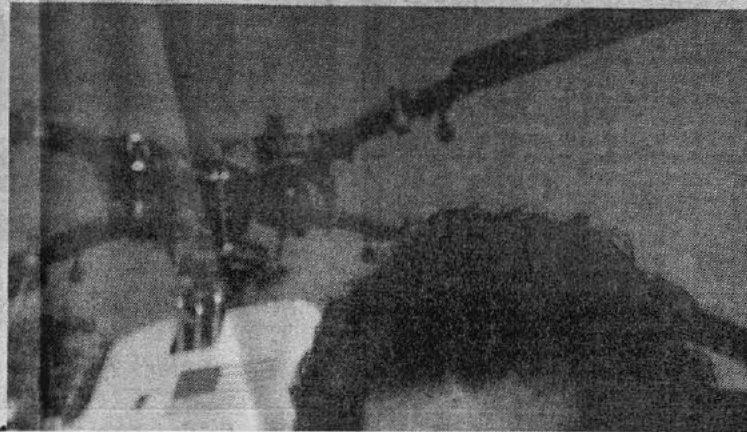
Besides technical innovation, there are other ways in which corporations can contribute. For example, Applied Energy Services, an Arlington, Va., company, estimated the amount of carbon dioxide that would be emitted to the atmosphere during the operational lifetime of its new coal-fired power plant, and is planting a forest in Guatemala that will remove more than that amount of carbon dioxide from the atmosphere. This is responsible corporate behavior.

Sooner or later even the U.S. will have to come to grips with the twin perils of energy dependence and global warming. As in the Darwinian paradigm of the free enterprise economy, some nations and corporations will be more ready than others. They will survive and prosper.

Mr. Sagan is director of the Laboratory for Planetary Studies at Cornell University. His most recent book (with Richard Turco) is "A Path Where No Man Thought: Nuclear Winter and the End of the Arms Race" (Random House, 1989).

"Baptist Medical Center is an acute care hospital with 572 beds...and we treat about 100,000 patients a year. Our medical records department works 24 hours a day to transcribe doctors' reports and keep our patient records up to date."

"So we can't afford to be out of service for even a few hours. Which is why we were looking for a dictation system that was reliable... that offered us room for growth...and that gave us the service we needed. Dictaphone was





covers 21 counties of the Texas its fight against birth defects,"  
Panhandle. said Mrs. Hering.

turns.  
"Honey, I Shrunk The Kids" has  
since been watered down to the point tur

## Independence Day reminds ex-Marine of freedom's cost

Continued

women with any respect," Mrs. Shelton said.

Margaret Henderson is no women's libber. But the 23-year veteran of the U.S. Marine Corps believes in women's rights.

The former director of Marine Corps women has seen a lot of changes in the corps since she joined in 1943. Now, she said, women can progress to the highest of ranks. And pregnant women don't have to resign.

"I think women in the military have done more for working women and equal rights than anyone else. We got equal pay right from the beginning.

"I enjoyed my time in the Marine Corps; it taught me about the workings of government. Recently, I was on a clipper cruise to Chesapeake Bay and there was (a U.S. Naval Academy) graduation. I was surprised to see so many women in the class.

"I'm thankful I was born here, and I can't imagine anyone giving it up for something else," she said.

Each Fourth of July, she flies a flag outside her home.

"What does our flag symbolize in the future? Frankly, just what you and I, and the people of this nation make it," she said. "As President Wilson said in a 1917 Flag Day message: 'It has no other character than that which we give it from generation to generation. The choice is ours,'" she said.

"If we choose to rededicate ourselves to uphold the ideals for which Americans have fought, ideals of truth, justice, individual liberty, equality, human dignity — then we have in our flag a promise for the future, not only for the United States but for humanity," she said.

"On the Fourth of July, you think about the many

hardships people have gone through. To get this nation into shape today, you think about the many lives lost trying to get our freedom. We can enjoy freedom of the press and read and write what we like. We can enjoy freedom of speech to petition the government, and do so without fear of reprisal or arrest, and that our home is just that, ours. We are free of unreasonable search or seizure," she added.

\* \* \*

Haynes Baumgardner, a former U.S. Air Force bomber pilot, said that to him the flag symbolizes ultimate world freedom.

"Canada, England and the U.S. are about the only free countries in this world where a life has meaning. That Supreme Court decision means flying the flag on the high seas does not have the power it used to have, and not the respect. We're seeing that through the world — a lack of respect," he said.

\* \* \*

Whatever corner of the world Norma Keen is in, she finds Americans realizing their own patriotism.

"You know the American citizens — when they come to a foreign country, they say, 'I've never felt so patriotic in my life.'"

And she treasures her own love for the United States, the country she said she considers if not her first then certainly her second homeland.

"One of my duties (at Beijing's American Embassy) is to raise the flag in the morning and lower it at night. To me, that's the most significant part of my day.

"I'm an emotional person. But I have a right to be. Because to me, America is such a special country," she said.

"My heart is very American."

## Actors portray immigrant families in museum's exhibit for children

BOSTON (AP) — Last week, Buddhist monks and the elders of the Cambodian community came to bless a wobbly, two-story house. They squatted on a mat in the living room and while incense burned, they chanted.

But the "house" was really an exhibit at the Boston Children's Museum and a crowd was watching the opening of the last phase of "From Time to Time: Celebrating 75 Years at Our House."

The exhibit, a realistic-looking two-story house built in a high-ceilinged part of the museum, has during the past nine months been the "home" to four families portrayed by actors representing the city's shifting immigrant tides over the last seven decades.

The latest to move in last week is a Cambodian family, the Soks,

played by Cambodian-American actors.

Before the Soks, whose fictional biography has them as refugees who arrived in America in 1981, there were actors portraying the Robinsons, a black family who moved into the "neighborhood" during the 1960s.

Before that, other actors from the City Stage Company portrayed the Gutermans, Jewish immigrants who lived in the house in the 1940s and 1950s, and the Fitzgeralds, a boisterous Irish clan that first inhabited the home in 1913.

"We're trying to make Irish families, Jewish families — all the different ethnicities — familiar," said Dorothy Merrill, who helped develop the project. "We want to make the arena comfortable for the kids so they can ask questions and better understand lives different from their own."

Wander through the plywood home and you're drawn in. The same Oriental hall rugs that the Fitzgeralds once trod now wind upstairs toward two bedrooms where 10 of 11 Sok family members sleep and share a single bathroom.

In place of the Gutermans' Victrola is a VCR showing tapes of festivals and dances that have been sent to area Cambodians from the folks back home.

"It's a way for the kids in America to stay in touch with their Cambodian culture," said museum spokeswoman Gail Eaton.

It's also a way for natives of this country to get in touch with unfamiliar cultures. The \$120,000 exhibit, which its creators believe is the first of its kind, has drawn thousands of kids into the day-to-day experiences of generations past.

# What patriotism means to Lubbockites

By ELIZABETH KAUFMAN  
Avalanche-Journal

With all the exuberance of a child, eyes cast upward at skies raining fireworks, another Fourth of July has come and will go.

But for Lubbockites, this year's ball-playing and parade-watching will be supplemented by a thoughtfulness stretching beyond the lighthearted antics.

Last week's Supreme Court decision to support flag-burning as a constitutional right and China's ensuing crackdown on the Democracy movement have caused local residents to reflect on what the flag, patriotism and democracy mean to them.

Rod Schoen was a Naval Reserves officer for 20 years. He was also president of the Texas chapter of the American Civil Liberties Union (ACLU) for three years.

The Texas Tech University School of Law professor is a soft-spoken powerhouse of thought. He said that, above any societal labels or job titles, he is a patriot. His love for his country ushered him into the reserves.

And although many misunderstand the ACLU, he said, his reverence for the Constitution brought him to that organization.

"I think if we hadn't had an organization like the ACLU, that probably in America today we would enjoy fewer rights. The ACLU, from time to time, advertises they are the most conservative group in the U.S. because we uphold the Constitution," he said.

The 54-year-old St. Louis native said he is absolutely sympathetic with the feelings of outrage and revulsion associated with flag burning.

"However, I do not endorse a constitutional amendment designed to overturn the Supreme Court's decision, although I am offended by anyone who burns the flag. I do consider the flag a symbol. But the irony is, to me at least, under the first amendment, our constitution guarantees the right to be offensive — to be obnoxious."

"And it is that liberty that makes it worth fighting for," he said.

"However you phrase it or look at it, very few people desecrate the American flag. I wish our politicians could get as hot over issues like the ERA and civil rights."

From his classroom and beyond, he finds that feelings on patriotism go in cycles.

"I think that during our experience in Vietnam — in which a war turned sour — patriotism declined. Many people felt we made a bad mistake. I think recently patriotism has become more acceptable. I think it is governed by socio-economic factors," he said.

"The things that frighten me most are the economic problems in which Americans are faced with future problems of economic well-being," Schoen said. He believes that the world has become interdependent — socially, politically and economically.

While he called more unity for the nation "a wonderful thing," he said it's not government's job to enforce



**Norma Keen**  
Communism taught her lessons in human suffering

or create unity.

And he said it's not government's job to stop dissenters from using what has been called symbolic speech to destroy the flag. It is up to the schools, he said, to teach children why they should not want to do it.

"Don't forget we don't have a real democracy in the U.S. The Bill of Rights protects the minority against the majority. If we had true democracy, the majority would prevail. You know if the majority ruled, we wouldn't need a First Amendment. Pluralism, to me, is the strength of our nation."

Dario Rendon is Hispanic. He always stands to sing the Star-Spangled Banner.

"I'll tell you about my patriotism. All the time, growing up, as a boy and teen-ager, I wanted to be an American. I was told all my life I was a Mexican," said the native Lubbockite.

He is a Korean War veteran who chose to fight. Yet,



**Rod Schoen**  
Love for his country sent him to Naval Reserves

when he came back from the war, some restaurants still wouldn't serve him a cup of coffee.

But these experiences haven't left the 57-year-old embittered. Instead, he puts his experiences to work in his job for Catholic Family Services. He coordinates basic English and civics classes for Mexican immigrants.

"The majority of the people we deal with are here for the reason of economics. But the opportunity to educate your children, and to have them advance, is in the minds of these people also," he said.

"We have seen our system work in even the worst of times. Look at Watergate. I always say, 'Look, you will never hear me say our system is perfect.'"

What system, he says, is better?  
Rendon prefers to concentrate on human flaws.

"I have a tremendous amount of respect for the flag. But as much as I hate for people to burn our flag, why do we make such a big deal about flag-burning but ig-

nore other humans' needs?" Rendon said.

In her 22 years as the wife of a State Department employee, Norma Keen has had lessons in human suffering gleaned from visiting and living in Communist countries.

"In Bulgaria, there is such hostility," she said. "Also in Moscow. In the hotels, they bug the rooms. They don't trust each other. They don't trust anyone. They don't even smile. That's why I liked China. They smile."

For the past three years, the Filipino-born Mrs. Keen, her husband, Stuart, and their 10-year-old son had lived in Beijing, where her husband was stationed as the officer in charge of the security engineering office.

She got to know and love the Chinese through working at the embassy.

"My heart goes to the Chinese people. They love democracy, and it's their God-given right. Ninety-eight percent want to come to America. There is no justice in communism," she said.

She learned the extent of "no justice," she said, during the massacre of students at Tiananmen Square.

"My diplomatic apartment is 10 minutes by car from Tiananmen Square. We live near the bridge the army tanks drove over. I went out to my balcony. You could hear the gunshots like they were in my home."

"What touched me, around the students in that place, (were other) students joining hands, in a circle, as if to protect them," she said.

Although she is now in Lubbock, Mrs. Keen's husband will remain in Beijing until next month. She said he told her that Chinese plainclothesmen are guarding the embassy — evidently watching for a sign of famed Democratic leader Fang Lizhi, who is being protected by the U.S. embassy — but she said she thinks he is safe.

She said she worries about her friends there — the man she worked with who became a Democratic movement leader, for example. And she worries about the Christians whom she had Bible study with, Christians whose names are on lists kept by the government.

She and her Lubbock host, Ernie Shelton, talk a lot about their Christian friends in China. Mrs. Shelton is a nurse and missionary. She met Mrs. Keen at a St. Louis-based missionary convention. But she has been to China. And if she hadn't been a patriot to begin with, she said what she saw there was enough to make her one.

"You can feel a difference, an oppression there," she said. She said she took medicine to a doctor outside Beijing and found out that only Communist Party members are privy to asthma and kidney medicine.

"The nominal Chinese have no sinks, no bathroom. They have a faucet outside in the courtyard. I have been to many places. But I have never seen a government treat their people so badly. They don't treat their

See INDEPENDENCE 9B



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## 'ACLU Objectives'

Editor, Avalanche-Journal:

We have an organization called the American Civil Liberties Union (ACLU), and if it is not stopped, our churches and youth are ruined.

Here are some of their deadly poisons, as I understand their agenda: support legalization of child pornography, legalization of drugs, tax exemption for satanists, legalization of prostitution, abortion on demand, mandatory sex education, busing, ideological testing of court appointees, automatic entitled probation, demonstrations for Nazis and Communists, legalization of polygamy.

Here is what they oppose, as I understand it: school prayer, sobriety check points, parental consent laws, educational vouchers and home schooling, government ethics committees, prison terms for criminal offenses, public demonstrations for direct action pro-lifers, teaching monogamous heterosexual intercourse within marriage, halt the singing of Christmas carols, deny the tax exempt status of all churches (yet maintain it for themselves), and remove "In God We Trust" from coins.

Jodie Boldin, Lubbock



President Bush  
To host drug summit

## San Antonio for upcoming

SAN ANTONIO (AP) — Civic leaders for years.

They wanted the 1990 Economic Summit got it.

They wanted an Olympic Festival, a big one. In 1993.

But now, this Wednesday and Thursday at last will grasp a coveted prize — an event that will draw world attention. It takes the form of a summit hosted by President Bush for six Latin American presidents.

"It will be dateline San Antonio that a national event is here. The exposure is tremendous," says Steve Moore, executive director of the San Antonio Convention and Visitors Bureau.

Since the summit site was announced, city leaders have worked feverishly to

## Internal squabble brewing at ACLU

HOUSTON (AP) — A rather un-  
civil war is rocking the American  
Civil Liberties Union in Houston and  
across Texas, pitting the national  
ACLU against some Texas members.

Barry Steinhardt, the ACLU's as-  
sistant national director, said the  
conflict stems from the fundamental  
question of how the organization will  
protect civil liberties in Texas.

Steinhardt said the national office  
is moving to curb damaging infight-  
ing among its Texas members and  
resurrect a state organization de-  
stroyed by an "implosion."

The ACLU's old state affiliate, the  
Texas Civil Liberties Union, col-  
lapsed under the weight of contro-  
versy and debt. It has been replaced  
by a new organization, the ACLU of  
Texas, and the state headquarters  
has been moved from Austin to Hous-  
ton.

Some local ACLU leaders contend  
the national organization wants to  
centralize its control just when the  
times are demanding that it build  
greater grass-roots support.

In a legal skirmish spawned by  
the conflict, the Houston-based Clark  
Read Foundation, which provides fi-  
nancial support for the local ACLU  
chapter, is battling to keep the na-  
tional ACLU from gaining control of  
its assets.

The foundation has asked a state  
district court to rule that neither the  
national ACLU nor the newly recon-  
stituted state affiliate has a legal  
right to take its property, which in-  
cludes an old house that serves as  
ACLU headquarters and an undis-  
closed sum of cash.

Those directly involved in the  
case declined to discuss the issues,  
the Chronicle reported.



Spring 1993



# Liberty Gazette

Eternal  
Vigilance is the  
Price of Liberty

Rec'd 4/21/93

Quarterly Newsletter of the ACLU of Texas

## ACLU Lobbies for Liberty

*Having retained veteran lobbyist, Shelia Cheaney, the Texas affiliate has a major presence in the legislature the session. The following report lists the more significant legislative proposals this session, but by no means all of the bills Ms. Cheaney and interns, Claire Lewis and Paul Radous, are tracking. Anyone who is interested in helping with the lobbying effort (you don't have to live in Austin) should contact the Central Regional Office at (512) 477-5849.*

### Death Penalty Bills

The Texas Legislature is once again distinguishing itself in the area of death penalty expansion efforts. Members of the 73rd Legislature filed a slew of bills to try to add new and different crimes to the current list of those for which the state can now ask the death penalty.

The following is a list of the bills we've noticed, and their status as of the time the newsletter went to press. Calls or letters to express your opposition to the bill sponsors, chairmen of the committee the bills are in, and/or your own representatives would greatly bolster our lobbying efforts.

**S.B. 13 / H.B. 1606. "Relating to the murder of an individual under six years of age as a capital offense."**

The Senate Bill is sponsored by Sen. "Buster" Brown (R, Clear Lake); its House companion authored by Austin's own Rep. Susan Combs (R). This is the same "child-killer" bill that failed last session but, because of support from some unlikely quarters, may have a better chance this time around. This is a particularly pernicious death penalty masquerading as a legitimate anti-child abuse effort. If the Legislature really wanted to do something about children being beaten to death by family, it would fund Child Protective Services and the other services needed to truly prevent domestic violence.

(Tragically, S.B. 13 passed the full Senate (with only Sen Carl Parker publicly recognizing the absurdity of the Senate's vote) on March 15 and went to the House Criminal Jurisprudence Committee. H.B. 1606 was referred to the House Criminal Jurisprudence Committee on March 9, where it will be heard, presumably with its Senate companion, April 14.)

**H.B. 1203. "Relating to the murder of an individual under four years of age."**

This House bill is sponsored by Rep. Ron Wilson (D, Houston).

(It was filed and referred to the House Committee on Criminal Jurisprudence March 1.)

**H.B. 1222. "Relating to capital murder by a peace officer, jailer, or guard of a person in custody."**

Another bill filed by Rep. Wilson (D, Houston).

(Referred to the Criminal Jurisprudence Committee March 1.)

**H.B. 25 / H.B. 1640. "Relating to murder committed in retaliation against certain persons as a capital offense."**

H.B. 25, by Rep. Eddie de la Garza (D, Edinburg), seems to have come out of his work on the Gangs Task Force, a subcommittee of the House Criminal Jurisprudence Committee which held hearings throughout the state last year. It is an attempt to punish individuals who commit murder in retaliation for an informant, prospective witness or a witness in a court proceeding.

It was reported favorably from the House Urban Affairs Committee on March 23.

(H.B. 1640, by Rep. Moffatt (R, Southlake), was referred to the House Criminal Jurisprudence Committee on March 9.)

continued on page 6

## Progressive Leaders and the Death Penalty

by Jordan Steiker

There are televisions on death row, and it seems likely that many of them were turned to election coverage on the night in 1990 when Texas voters chose Ann Richards as the state's 42nd governor. Richards had campaigned as a staunch death penalty supporter, but given her well-documented liberal background, it was reasonable to hope that her administration might exercise more judiciousness and greater moral responsibility in deciding just which people the state would and would not kill. Halfway through Richards' first term, it hasn't worked out that way. Indeed, Richards has almost completely abdicated her constitutional role in the review process.

The campaign leading to her victory had been hard fought, and in an era of unseemly tactics, the early stages of the Texas gubernatorial race had marked a new low. During the Democratic primary, former Texas Governor Mark White and former Attorney General Jim Mattox trumpeted their personal involvement in the enforcement of the death penalty, with White going so far as to appear in a television ad that included larger-than-life sized photographs of inmates who had been executed during his stewardship. At one point during the campaign, Richards was the embarrassed recipient of an endorsement by *Endeavor*, the Texas Death Row newsletter. Although Richards did not embrace the endorsement ("I

don't know what possibly could have engendered it") and repeatedly stated her support for the death penalty ("My view on the death penalty is that it's the law of the land and the law should be carried out"), progressive Texans had hope to believe that a Richards' administration would be different than her predecessors. Before Richards took office, Texas led the nation in executions (37 since 1976), and Texas could surely do no worse with Richards than with White and Mattox, on the one hand, who seemed to view imposition of the death penalty as the highest function of state government, and Republican Clayton Williams, on the other, whose sole contribution to the criminal justice debate was a rehabilitation plan under which first-time drug offenders would be sentenced to hard labor "bustin' rocks."

Two years into Richards' term, Texas remains the death penalty capital of the United States, carrying out a third of the executions nationwide—18 of 52 since Richards took office. If the current pace of executions continues, Richards will preside over more executions than any other governor (Texas or otherwise) during the last 30 years. During Richards' term, the State has executed two retarded inmates, an inmate with severe brain damage, an inmate paralyzed by a stroke a week before his execution, a juvenile, two inmates who did not themselves kill (but participated in felonies with others who killed), and an arguably innocent inmate.

Over half of the inmates executed were black or Latino, and the victims of all but two of the executed inmates were white. Few death row inmates received adequate representation at trial (there is no coordinated criminal defense service), and the state does not provide indigent inmates with post-conviction counsel.

As these executions have been carried out, Richards has not been just a reluctant overseer of the state criminal justice system. By refusing to provide any meaningful executive review of individual cases, she has allowed executions to go forward with little public scrutiny. She has failed to establish regular procedures that would even permit review in compelling cases. As it stands, the clemency process in Texas consists of a series of *ex parte* communications between Richard's office, defense counsel, and the state attorney general's office, almost invariably culminating in a private communication from Richard's legal counsel that the governor declines to be involved.

Richard's uncompromising position that all condemned prisoners should be executed—regardless of age, mental status, or failures in the judicial process—must rest on a view that any executive involvement in capital punishment will inevitably appear obstructionist or abolitionist. This political judgment, even if accurate, cannot justify Richards'

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# Faces of the ACLU



**Jay Jacobson, Executive Director**

Jay grew up in Pensacola, Florida, went to high school at The Baylor School in Chattanooga, Tennessee, and attended the University of North Carolina at Chapel Hill where he was a three year letterman in wrestling and a member of the student senate.

After graduating from UNC in 1967, he was commissioned as a 2nd Lieutenant in the Marine corps. He served in the Seventh Marine Regiment as an infantry platoon commander in Vietnam where he was wounded twice.

In 1969, he was medically retired as a result of his wounds and enrolled in the Georgetown University Law Center in Washington D.C., graduating in 1972. While in law school he became an editor of *Law and Policy International Business*, Georgetown's international law review.

After leaving law school, Jay moved to Brooklyn, N.Y. where he served on the Congressional campaign staff of Allard Lowenstein. In 1973 he became one of the program directors for the Bushwick Community Corporation, an anti-poverty agency in Brooklyn where he worked with tenant organizations.

Joining the Brooklyn District Attorney's Office as a trial attorney in 1974, Jay worked in the Narcotics and Rackets Bureau. He left the D.A.'s office after three and a half years to become the Inspector

General for several agencies in City government, including the Community Development Agency, the Department of Corrections, and the Department of Personnel. While Inspector General at the Department of Personnel he was appointed to serve as one of the City's trustees on the Police and Fire Pension Boards.

In 1980 he was appointed Director of the New York City Criminal Justice Coordinating Council. In 1982, Jay left government employment and started a micro-computer consulting business, contracting with the American Management Association to put on nation-wide seminars on the electronic spreadsheet Lotus 1-2-3. In 1985 he wrote a book on spreadsheet applications which was published by John Wiley and Sons in New York.

Jay moved to Russellville in Arkansas in May of 1985 where his in-laws have business interests. He became the Executive Director of the Arkansas American Civil Liberties Union on July 1, 1987. He is married to the former Ann Krane and has four children.

Since becoming Executive Director of A.L.C.U. of Texas last fall, Jay has spent his time between Houston, Austin, Dallas and points beyond working to back a strong state and local A.C.L.U. presence in Texas.

## Joe Cook, Northern Regional Director

*Dallas*

Joe Cook serves as the Northern Regional Director for the ACLU of Texas in Dallas. Joe assumed that job in June of 1991, after working from November of 1990 as the director of the Dallas chapter.

As Regional Director in North Texas, Joe coordinates the chapter programs of Dallas, Fort Worth and Denton. Mike Fawer, an attorney and board member in Dallas, describes Joe as the "linchpin" for the ACLU program in North Dallas. That comes as a high compliment to one who dreamed 20 years ago of working for the ACLU.

Joe has provided much of the glue to keep fundraising, litigation, and public education intact in North Texas over the past three years. Those efforts, along with a core of volunteers, make the Northern Region a model worthy of replicating over the rest of the state.

After joining the ACLU in 1971, Joe became active with the Dallas chapter in 1985. He rapidly assumed leadership positions as vice-president, president, and treasurer.

Prior to employment with the ACLU, Joe worked as a

partner and business manager of an advertising design firm from 1985 until 1990; founded a youth and family counseling agency called RAP in 1980; volunteered for a year's service in VISTA in 1977; and toiled in the electronics industry from 1968 until 1977.

Joe grew up on a farm in south Arkansas near Camden, a town of 17,000 persons and 50 miles from "a place called Hope." He graduated with honors from Camden High School and received a man-

agement degree from the University of Arkansas in 1968.

Joe, the delighted grandfather of a baby girl named Clair as of March 22, 1993, has one son named Clay.

Joe lives with Christy Ann Krough, whom he met in Clearwater Beach, Florida on Valentine's Day, 1992, during an ACLU conference. They reside in Dallas along with their five "fur babies"--three dogs (Ginko, Nubbers and Trixie), a cat named Tiggers and a horse named T-Boy.



**Joe Cook**



## Joyce E. Hanson, Southern Regional Director

Joyce Hanson, director of the ACLU Southern Region since January 1, was a volunteer for the San Antonio Chapter for a year and a half before taking the newly created position. She prepared cases to be reviewed by the case committee, answered the phone, and handled the phone log for the Chapter.

Joyce spent two years in the Army in Germany, then with the Army Reserve in Nevada where she set up and ran an emergency shelter for battered

women and children, and she has held other miscellaneous jobs while pursuing a college education and raising two children.

Joyce attended Boston State College taking courses toward a degree in Psychology Human Services, and later was a student at the Southern Career Institute working toward a Legal Assistant Certificate.

"My work here has allowed me the opportunity to network within the legal system. My

interests are in the areas of special education needs and AIDS treatment/education. This special education issue is due to my own personal interests, my own children, and AIDS education is vital to everyone," Joyce said.

Currently the Southern Region is dealing with a case regarding the San Antonio curfew ordinance, as well as the usual civil liberties complaints that must be dealt with daily.

★★★★★

**The ACLU -**

*Keeping the Government Off  
the Backs of the People*



## Margaret Walker, Central Texas regional director

*Austin*

Margaret Walker joined the ACLU of Texas staff on January 1 as the director of the Central Texas Regional office in Austin. She is a native of Minnesota, but grew up in North Dakota. After receiving B.A. she went on to get a Masters in history/political science at the University of North Dakota, taught college at Concordia Lutheran College and Austin Community College.

Margaret is married to Dr. Tom T. Walker, a retired education administrator, and together they raise and show Finnish Spitz dogs in the United States, Mexico, and Canada. This interest in dogs developed when the Walkers lived in Afghanistan where Tom worked for UNESCO and Margaret taught social sciences at the USAID school in Kandahar. A departing nurse gave them a Siberian Husky-type dog, Bear, that became the family pet but could not be brought back to the United States due to a lengthy stay in Paris where Tom worked at UNESCO Headquarters. Also enjoying the dogs are their granddaughters--April, Misty, Taylor, Chloe, and Shila--when they come to Bastrop to visit.

Margaret has been an ACLU volunteer and local/state board member for years before



Margaret Walker

becoming regional director in January. "There are few surprises and most of the old battles need to be refought every couple of years. Our work will never be done; only done over and over again," she said.

The office handles calls and mail from the Cen-Tex region

which translate into complaints that Margaret presents to a monthly legal panel made up of three lawyers: Patrick Wiseman, Larry Sauer, and Lamar Hankins. Administering the office and assisting the Central Texas Chapter keep her involved in ACLU issues at all levels.

## Charles Groh, Assistant to the Director

Charles was born, raised, and attended school in Lebanon, Pennsylvania. He attended New York University in New York City where he received a B.A. degree in 1979 with a major in international politics and a minor in history. He subsequently took courses at NYU in France after graduation.

In 1981 Charles began studies at South Texas College of Law in Houston. While a student he participated in moot court competition and was a member of Phi Delta Phi. After successfully passing the Texas Bar Exam in 1985 he

entered solo practice. From 1990 to 1992 he worked as an associate with a small law firm handling family law, personal injury, and debt collection cases.

After leaving the law firm in early 1992, he went to work with Suzanne Donovan in the newly emerging ACLU of Texas and stayed on when Jay Jacobson recently became the affiliates director. He manages the day to day administration of the office and supervises volunteers and interns as well as acts as a resource for the regional office personnel.



## ACLU Volunteer: Loan Doa

Loan Doa (phonetically it is Lu Won Dow) was born in Vietnam where she lived until age three when her family fled to America so that her father could escape the communist concentration camp. She has spent most of her life in Texas which may explain her Texas accent. She is a third year psychology major at The University of Texas. She decided to enter the field of public interest law, which is what brought her to ACLU. "I became a volunteer to find out if this is what I really wanted to do. I now realize that there is a great need out there for legal assistance for the uneducated, the underprivileged, and those whom society tends to forget. I know now that I would like to help these people defend the basic rights that we take for granted daily."

Program. Her internship includes monitoring and charting the bills being tracked by ACLU, preparing information to be used by Ms. Cheaney or Jay Jacobson when testifying at hearings or lobbying individual lawmakers, doing bill analysis or drafting amendments. Claire has a house in Austin which she shares with Barney, the dog, and Felix, the cat.

## Intern: Claire Lewis

Claire is a legislative intern assisting Shelia Cheaney to lobby the 73rd Texas Legislature for ACLU of Texas. She lives in Austin where she attended The University of Texas, graduating with a major in philosophy and now is a student at Southwest Texas State University studying in the graduate Lawyer's Assistant

## Shelia Enid Cheaney: Texas ACLU lobbyist

To quote Molly Ivins, "They've hired a terrific lobbyist, Shelia Cheaney.... a lawyer who knows the Legislature and its arcane rules and practices well. She also has a really sneaky secret weapon--charm."

Ms. Cheaney is a native of Pharr, Texas where she attended school, graduating from the San Juan-Alamo High School. Following a Bachelor of Business Administration degree from The University of Texas in 1967, Shelia earned a Doctor of Jurisprudence from University of Texas Law School in 1972 and was admitted to the State Bar the same year.

Public interest law became a part of Shelia's life when she worked as law clerk/bookkeeper while in law school for the law offices of Sam Houston Clinton and David R. Richards. Her legal

history is a good background for lobbying. She has also worked as executive director, Texas Public Interest Research Group; Hidalgo County Juvenile Defender; Administrative Law Judge, Public Utility Commission; Assistant Attorney General, Director, Paternity Litigation, child Support Division; private practice; and law professor, St. Mary's University School of Law.

Shelia began at the Texas Legislature as A.A. to Representative Ben Z. Grant in 1973. By 1975 she was the lobbyist for the Texas Public Interest Research Group which developed the structure for the Public Utility Commission legislation. Lobbying for Common Cause, Texas Women's Political Caucus, Texas Abortion Rights Action

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Shelia Enid Cheaney

## Intern: Paul M. Radous

Paul Radous, another legislative intern comes to us from Trinity University, San Antonio, where he expects to receive his B.S. degree in Mathematics this May. He has garnered some prestigious honors and awards at school: Mortar Board; Blue Key; Alphas Lambda Delta, Treasurer; National Collegiate Mathematics Association; Murchison Scholar; Moody Scholar; and Rotary Club Scholar.

Paul has done much community volunteer work, including Big Brothers/Big Sisters; HyLyfe Youth Camp where he

supervised activities for at-risk children from urban communities; served as Co-president of the Trinity University Chapter of Amnesty International; and has served on the case committee for the San Antonio Chapter.

During the past four summers Paul has worked for Exxon Company, U.S.A. in Houston performing pre-trial discovery work, document review, and deposition summarization. One memorable case he worked on conducting pre-trial discovery work was the Exxon Valdez defense.

★★★★★



# From the Docket



## Texas ACLU Will Help KKK On Membership Subpoena

by Evan Mahaney

Protecting civil liberties for everyone, including the Ku Klux Klan, is like the old story of the grizzled U.S. Marine called into action again. First hurdle is a young drill instructor teaching new recruits how to field strip an M-16. The drill instructor looks at the old Marine and says, "You've done this before?"

Marine: "Only about 250,000 times"

Instructor: "How fast can you do it?"

Marine: "Just under two minutes."

Instructor: "That's not fast."

Marine: "Blind folded."

The ACLU State Legal Committee has given the go

ahead to answering a request for help from Michael Lowe, Grand Dragon of The Knights of the Ku Klux Klan, Texas Realm, regarding events in Orange County (Vidor, TX). Integration of government housing has been ordered by both the federal government and the Texas Human Rights Commission. The Klan has engaged in activities protesting this. In addition there have been reports of intimidation by people wearing Klan robes.

The Texas Commission on Human Rights initially issued a subpoena for the membership rolls of the KKK involved with the rallies and protests. The ACLU Legal Committee

says the principal involved is virtually identical to a landmark case of the NAACP vs. Alabama where the state subpoenaed NAACP membership names, and which Alabama lost.

The ACLU has been in contact with the Texas Commission on Human Rights and the Texas Attorney General's office spelling out ACLU's stance on civil liberties, regardless of whom they apply to. The commission offered to change the subpoena, but it was merely a change in form rather than substance. Anthony Griffin, of Galveston, will be the cooperating attorney for the ACLU in the case.

## Amicus Brief Filed by ACLU of Texas in Abortion Rights Case

An ugly abortion rights battle in Dallas has brought the ACLU into the court proceedings through an Amicus Curiae brief filed by the ACLU Foundation of Texas. Cooperating attorney Michael Linz, who sits on the State Legal Committee, initiated the action and authored the brief.

The case has potential life-threatening implications because of the aggressive tactics followed by the pro-life, fundamentalist group called Dallas PLAN. Members of PLAN picket the private residence of Dr. Norman Tompkins weekly. In a suit initiated by Dr. Tompkins and his family and neighbors, Plaintiffs are seeking a temporary injunction against the PLAN group and its tactics. Dr. Tompkins is alleging unlawful conduct and asking for "time, place and manner" restraints on Thomas Cyr, et al., the Defendants.

The Tompkins suit charges the Defendants with engaging in a civil conspiracy "to force Dr. Tompkins to stop performing abortions by organized harassment of him at home, at work and at church." Tompkins suit says, "Defendants are alleged to keep Plaintiffs under constant surveillance, to follow them day and night, to place offensive calls to Plaintiff's home and place of work, to defame and slander Dr. Tompkins and to picket at Plaintiff's home, work and church."

The ACLU Amicus brief says, "Because of the fundamental free speech

issues raised by the facts underlying this case, some of the injunctive relief requested by Plaintiffs, the ACLU submits this brief in the hope that it will aid the court in fashioning relief which both protects the Plaintiffs and does not offend the Free Speech guarantees of the Texas and United States Constitution."

The ACLU brief notes that many of the "activities which Defendants are alleged to have engaged in are not protected speech but rather conduct which enjoys no constitutional protection (coming on Plaintiffs' property, blocking access to and egress from their property, threatening or intimidating calls or harassing)." The ACLU brief says, "To the extent that Plaintiffs seek such relief, their suit presents no free speech problems and the ACLU supports their applications." The Amicus Brief goes on to say that free speech does not shield bad "conduct" where the type of unprivileged conduct is found to have occurred and where there is a likelihood that it will occur again if not enjoined.

However, the ACLU feels that to the extent that the suit seeks to enjoin protestors from being within 1,000 feet of his home, from picketing on the sidewalks at his church and from mailing anything to his family or employees, then it does implicate First Amendment freedoms and should not be enjoined.

The judge in the Tompkins v. Cyr case has promised a ruling on the suit by mid-April.

## Church and State Issues Dominate Recent ACLU Legal Activities

by Evan Mahaney

Looking at the myriad cases being handled around Texas by the ACLU Legal Committee shows a high predominance of issues involving student-led prayers and separation of church and state.

Much activity is the result of Christian right-wing groups who are pushing the envelope of the U.S. Supreme Court's latest decision on student-led prayers. How the fundamentalists in a Bible-belt state like Texas view the Supreme Court decision and how the courts view the decision vary greatly. But throughout the state the envelope is being pushed constantly.

A case in point which the ACLU is investigating concerns one Texas school board officially "bringing prayers back to the school--if students ask for it." The ACLU will monitor this case and take appropriate action when something concrete happens.

The ACLU was delighted with news from the U.S. Circuit Court of Appeals in New Orleans on March 29, 1993, when the court upheld a ruling barring coaches and teachers from leading or participating in prayers at school or school-related events, like basketball games. The ruling came about as a result of a suit filed against the Duncanville ISD in 1991 by the ACLU. Duncanville appealed the preliminary injunction after U.S. District Judge Robert Maloney ruled in favor of the ACLU position. Now that the Court of Appeals has upheld the District Court deci-

sion, school district officials are keeping mum on their next step.

Eliot also reports a favorable settlement in February regarding a school prayer case with Southlake/Carroll school district regarding student prayer. The settlement and agreement with the ACLU position came about after a temporary injunction was granted against the school.

One case awaiting further action and being shepherd by the Dallas chapter involves the Midlothian ISD in Ellis County. The Midlothian case encompasses not only student prayer but also distribution of Bibles and Christmas prayer programs in the schools. The case was non-suited in State District Court and refiled in Federal District Court because state Judge Gene Kinze refused to grant a hearing date.

The ACLU is still deeply involved in the Dallas Youth Curfew case which involves five cooperating attorneys who won a clear victory in Federal District Court only to have the City of Dallas appeal it. Briefs went to the Fifth Circuit Court of Appeals in February with a decision expected by summer.

Texas is not alone in being inundated with such cases. The religious right throughout the country, as reported in several leading news magazines and papers, is launching a concerted effort to "bring prayer back" to schools.

The influence of the fundamentalist does not stop at the school boards, however. There's another case being in-

vestigated by the ACLU of Texas where a Houston juror was excused from duty because he was an atheist. Both judges and school board members are elected; and the far right is targeting these areas as places where their influence and funds can be used to change basic civil rights to something more acceptable to their way of thinking.

One thing the pressure from these groups does is strain the funding capabilities and pool of cooperating attorneys for all of the ACLU affiliates. As the case load on separation issues and school prayer issues swells, public education campaigns will need to be highly intensified during this year if the ACLU is to keep pace.

## San Antonio Curfew Suit Will Test State Constitution

by Evan Mahaney

As the Dallas curfew case works its way through the Fifth Court of Appeals, ACLU cooperating attorney Michael Bernard, who is also president of the San Antonio ACLU chapter, is giving curfew restriction suits a new twist in Texas.

Bernard authored a suit against the San Antonio City Council, its members and the Chief of Police, which is purportedly based entirely on state law. The ACLU did not file in federal court, or cite federal law or cases. Michael says "the Texas State Constitution is very, very ex-

plicit," on many issues, even more so than the U.S. Constitution. The curfew suit asks for declaratory relief and an injunction against the curfew law. A hearing date has not yet been set.

Michael feels one of the strongest arguments will be the state Constitution's right of assembly. He says the constitution spells out everything, in contrast to the Bill of Rights which is "a little vague at times."

The research was done by Michael with the help of several students from Trinity University and St. Mary's

College. When the ACLU first became involved in the curfew law in San Antonio, they approached the City Council and asked them to back off until the Dallas curfew case was decided. The City Council refused. The ACLU then filed its case, based solely on state law.

Michael says, "broad hints" have been dropped often by several different judges that the State Constitution should be examined and looked at intently.

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★★★★★



# Around the State

Page 5

The ACLU keeps stirring the pot in North Texas. Some people ask me why. I respond by saying, "If we don't keep stirring the pot, then the folks on the bottom of the pot will stick and get burned."

This stirring touches many issues every month in the Northern Regional Office, for example—homeless people sleeping in public, police brutality, jail and prison conditions, false arrests, prayer and religion in the public schools and universities, wrongful and drug related terminations, freedom of speech by citizens (including police officers), school dress codes—boys wearing earrings.

Working together (contributors, volunteers and staff) in the Northern Region, we have overturned a teen curfew in Dallas and caused the repeal of one in Fort Worth. The Northern Regional Office also assisted in the repeal of the only city sponsored Movie Classification Board in the nation; stopped school sponsored prayers and other religious promotions in Southlake-Carroll, Duncanville, Fort Worth and Sulphur Springs; ceased the promotion of religion by the postal service in Nazareth, Texas through a nativity scene postal imprint; motivated the city of Dublin to move a nativity scene from the public library lawn to private property; and established free speech for the Young Conservatives of Texas at Stephen F. Austin University.

Complaints in process that may call for legal action include: the alleged race related beating of an African-American man by Dallas police officers, free speech complaint by two police officers; denial of right to hand out pamphlets at El Centro College; denial of freedom of assembly at Bush rally in Dallas (similar to suit ready to file in Joplin, MO); sexual assaults by Dallas police officers; removal of city council members in Balch Springs; and the ban on solicitation at DFW Airport.

Things are happening fast in Dallas, in part because so many suits are ongoing in the ACLU of Texas Northern Region, but also as a result of the Dallas chapter's committee structure.

Eliot Shaven, the new president for 1992-93, reports that Phyllis Guest will be heading up the Membership Committee and is placing special interest on an outreach campaign to Dallas' large gay community. Fund raising is a challenge to all chapters of the ACLU and the Dallas Chapter

has tapped the talents of Mike Fawer to head the Fundraising Committee. He plans for some effective initiatives to help North Texas reach its goal of \$50,000 in 1993.

Looking far down the calendar, Eliot says the North Texas Region will have Molly Ivins speaking to members at the November 5th Thomas Jefferson Dinner. Further details will be available as the event draws nearer. But, he says, "mark your calendars."

On May 7, 1993, the Dallas, Ft. Worth and Denton Chapters of the Northern Region will host a reception for the Honorable Frank Maloney, Judge of the Court of Criminal Appeals, at the Belo Mansion in downtown Dallas from 4:30 to 6:30 p.m.

The reception will afford local attorneys the chance to honor Judge Maloney and will also be used to introduce Jay Jacobson, executive director of the ACLU of Texas to both the judge and attending attorneys.

Joe Cook, who heads the North Texas Region, says the reception will provide an opportunity to recruit additional cooperating attorneys to work on ACLU legal cases. Furthermore, and of equal importance, Joe reminds us, "The event is to raise funds for the protection of individual liberties in Texas. We must pave the road on which the Bill of Rights must move with more than good intentions."

The Denton Chapter's new president, Cristen Conley, reports a flurry of activity in Denton. The current board is focusing on Public Education and has set up a speaker's bureau to speak to schools and churches on civil liberties issues. In fact, they are making a special effort to reach churches. Denton's school district now pays more attention to separation of church and state since the success of the

ACLU's Denton Marching Band suit in 1991. Cristen also says the Denton Chapter will have a booth at the Fry Street Fair April 17 (this is a big annual event in Denton) where both fund raising and education will be employed by handing out ACLU pamphlets and information and also selling memberships, T-shirts and other souvenir pieces.

Denton's Spring Meeting is scheduled for May 2—although a locale has not yet been selected. A large, general mailing is expected soon, giving full details. If you want to become more active or make suggestions, please call the ACLU general number, (817) 382-3028 or one of the current board members for 1992-93: Dorothy Adkins, Pat Cheek, Mike Cochran, Cristen Conley, Collette Franklin, Norm Foster, Bullitt Lowry, Tony Mares, Bob Thomas, Lloyd Odle, Patty Park, Teel Sale, Ingrid Scobie, Marshall Smith, Don Smith and Paul Thetford.

Also, please help in all efforts to double the number on the roads by recruiting new people to the ACLU. One of the best ways to do this is through gift memberships on special occasions like birthdays and marriages. Please generously to the ACLU in support of civil liberties.

About half of the complaints that come to the Central Texas Chapter are employment related, reported Ruth Epstein, chapter president. These are referred to EEO. Volunteer Loan Doa is preparing a comprehensive report on jail complaints.

Margaret Walker, Central Regional Director, and chapter board members are asked to contact public officials whose actions are seen to be contrary to civil liberties. The chapter often gets good resolution, without confrontation or expensive litigation. In one in-

stance, Austin's mayor apologized for a proclamation published in the newspaper which honored a couple and hoped that they would "continue to uplift the name of Jesus Christ throughout the Capital City."

The chapter continues their noon forums on the last Friday of every month at Wyatt's cafeteria, 41st and Red River. "Y'all come!" says Epstein. Recent speakers include the new Austin police Chief, all the Travis County sheriff candidates, Travis County Legislators and our own Jay Jacobson. The Rodney King case, and most recently, the Branch Davidians, have been discussed.

The forums, besides being educational and social, link the chapter with like-minded groups who send representatives if the subject attracts them. During the five minutes before the program begins, there is a call for announcements, demonstrating that the chapter is receptive to messages and missions of others. Thus, coalitions and lobbying partnerships are enhanced.

The newsletter picks up highlights of the forums and ties local issues to national ACLU policy whenever possible. An example of the local-national connection occurred when board members lobbied the Austin city council for a "just cause" rather than an "at will" employment policy followed by lobbying the city manager to create rules to implement the policy.

The chapter issued a strong statement supporting Austin Police Chief Elizabeth Watson's stand against excessive force.

A big fund-raising musical affair is in the planning stage. Anyone interested in helping out should contact Ruth Epstein.

The Central Texas Chapter's Annual Meeting is scheduled for

April 30th. All Chapter members are urged to attend.

William Main, Brazos Valley Chapter reports: We are a group of less than 100 members with about 10 in Huntsville (at Sam Houston State University) and one or two in other neighboring counties. We did have a strong member in Robertson County—but he died. Robertson County is the hot bed of civil liberties abuse in our part of Texas! We usually refer all Robertson County cases to Houston. There is a prison south of Navasota but then again, we have no members in that county either. Those letters also get sent to Houston. We have no ready lawyers to call on to cooperate in all cases. One local person will work on First Amendment cases, however.

At present, we are maintaining some visibility in the community. We have an answering device (409-779-ACLU); we gave an award to the local paper on the Bicentennial of the Bill of Rights; we have received at least 231 entries from high school writers in our Bill of Rights Essay Contest; and we have had picnics and garden parties in good weather.

We are planning for a sturdy Annual Meeting to elect more officers, and to structure ourselves in a practical way this to be held this spring. A visit from Jay was a morale boost a month or so ago.

The major problem in Brazos County is the lack of constitutional protection and due process for students and graduate students at Texas A&M University. If we ever get our heads together, maybe we can nudge the University into the 20th Century! No that's not a misprint—it will be a shock to their system when they encounter the 21st.

The work of the ACLU could not possibly get done without the many people who volunteer their time. We would like to thank the following people from the North Texas Region.

**Office:** Ellen Barfield, Christy Krogh, Sheila Lynn, Florence Schulze, Yolanda Smith, Suzanne Wills.

**Interns and Legal Researchers:** David Levy, Kris Jarman, Chris Sanchez, Vic Chaagen.

**Public Relations:** George Gravely, Dick Gentry, Phyllis Guest, Evan Mahaney.

**Attorneys:** Christen Conley, Don Jackson, Terry Casey, Mike Fawer, Jeffie Massey, Michael Linz, Frank Chandler, Eliot Shavin, Jim Deatherage, Joan Kennerly, Carla Dolce,

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## ACLU Biennial Meeting

The ACLU Biennial meeting will be held in

Atlanta, Georgia,

June 16 to July 20

to which Texas may send five delegates.

Chapters and/or members are asked to send nominations for delegates to Jay Jacobson at the Houston Affiliate office.

ACLU pays for travel for each delegate but hotel, meals, etc. expenses are paid by the delegate. Hotel rooms will range from \$49 to \$86. A fee is also paid by each delegate to attend the Biennial. This fee can be waived if a delegate is unable to pay it.

For complete information, call Charles Groh at the Affiliate office, (713) 942-8966.



## Death Penalty Bills

continued from page 1

### H.B. 427. "Relating to the punishment of attempted capital murder."

This brilliant bill is authored by Rep. Jim Horn (R, Denton).

(It was referred to the House Criminal Jurisprudence Committee on February 4.)

### S.B. 42. "Relating to the murder of a judicial officer or a participant in a court proceeding."

Sponsored by Sen. David Sibley (R, District 9) (one of the killer wasps).

(Referred to the Senate Criminal Justice Committee on January 13.)

### S.B. 818 / H.B. 727. "Relating to the punishment as a capital offense of certain murders committed by individuals incarcerated in penal institutions."

Sen. Jim Turner (D, Crockett), sponsored the Senate version and Rep. Allen Place (D), Gatesville, its House companion.

These bills are an attempt to expand the threat of the death penalty to gang members who commit murder while in prison for a life sentence. There are minor differences in the bills, which will need to be worked out, but a House Committee Substitute passed on March 4 from the Criminal Jurisprudence Committee and a Senate substitute was reported favorably from committee April 6, and placed on the Senate intent calendar for April 13.

### S.B. 984 / H.B. 1562. "Relating to procedures for petitioning for a writ of habeas corpus by persons sentenced to death and procedures for the compensation and appointment of counsel to represent persons sentenced to death."

The Senate bill, sponsored by Sen. Jim Turner (D, Crockett), was referred to the Criminal Justice Committee. Rep. Pete Gallego's (D, Alpine), House version is scheduled for hearing in the House Criminal Jurisprudence Committee April 14. The positive side of this legislation is a push to get some compensation for attorneys who handle state habeas appeals in capital cases. Unfortunately, this necessary change is coupled with an effort to fold direct appeals into the state habeas process, and to create a "unitary" review system.

Perhaps even more frightening is an attempt to change how capital murder cases are appealed in this state. Some call these bills state habeas "reform" measures, but they're really an effort to speed up state executions, pushed by several prominent district attorneys, a handful of judges, and the Attorney General's office in the background.

## Progressive Leaders and the Death Penalty

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continued abdication of responsibility for Texas' current death penalty practices.

### When to Intercede

Texas law does not grant broad clemency powers to the governor; it permits the governor to stay an inmate's execution for a single 30-day period, and to direct the Board of Pardons and Paroles to consider whether commutation to a life sentence would be appropriate. If a majority of the Board so recommends, the governor may commute a capital sentence to life imprisonment.

Virtually every inmate facing execution approaches the governor seeking a stay and review before the Board of Pardons and Paroles. Counsel for the second inmate executed during Richards' term, Ignacio Cuevas, presented such a petition on the grounds that the jury which had sentenced him to death was unaware of his mental retardation. At the time of Cuevas' sentencing, the now-repealed Texas sentencing scheme did not permit a jury to consider mental retardation as a basis for withholding the death penalty. Rather, a defendant's mental retardation offered an affirmative basis for the extreme sanction, because the Texas sentencing scheme focused the inquiry almost exclusively on a defendant's "future dangerousness." In another case, the United States Supreme Court had held the Texas sentencing scheme invalid as applied to a mentally retarded defendant: although the Constitution's

prohibition against "cruel and unusual" punishment does not preclude executing the mentally retarded, the Court ruled that a state must give the sentencer an opportunity to reject the death penalty by considering the defendant's limited mental capacity as a mitigating circumstance. The courts reviewing Cuevas' conviction in light of this decision held that Cuevas could not benefit from the ruling because of his attorney's failure to develop evidence of his mental retardation at trial.

Despite the fact that no actor within the system had ever considered whether Cuevas' extremely limited mental capacity reduced his responsibility for his crime, Richards refused to direct the Board of Pardons and Paroles to consider whether Cuevas' retardation warranted a sanction less severe than death. Richards has been consistent in this position: Billy White, another retarded inmate whose jury did not (and could not) consider his retardation at sentencing, was likewise executed after Richards declined to seek review; so was Justin May, whose jury did not learn of his brain damage at trial because of the Texas scheme.

The Texas scheme similarly restricted capital sentencing juries from considering a defendant's youth at sentencing, and the Supreme Court is presently considering whether such a restriction also violates the Constitution. Just before the Supreme Court agreed to address this issue, Jesus Romero, a teenager at the time of his crime, argued that his sentence was invalid because his jury was unable to reject the death penalty on the basis of youth. Richards rejected Romero's plea, and he was executed just weeks before a similarly situated defendant, Gary Graham, obtained review (and a stay of execution) from the Supreme Court. Both the Supreme Court and the governor's office were fully aware that Graham's case might be heard, and Justices Stevens, Blackmun and Kennedy, dissenting from the denial of Romero's request for a stay of execution, argued that it was unjust to let Romero die before the court ruled on his legal claim.

In a bizarre and unsettling case, another Texas inmate, Leonel Herrera, sought relief in the state courts when his attorneys discovered new

evidence that cast doubt on his guilt (including evidence from a former Texas judge that Herrera's deceased brother had confessed to the murder). The Texas courts refused to consider Herrera's evidence because of a state procedural rule that bars bringing newly-discovered evidence claims more than 30 days after trial. The Federal Court of Appeals likewise dismissed Herrera's claim on the ground that the federal courts are reserved for constitutional claims and that the execution of an "innocent" defendant, absent prosecutorial misconduct or error at trial, does not constitute a constitutional violation. The Supreme Court agreed to hear Herrera's claim but refused to stay his execution (four votes are required to hear a case; five are needed to stay an execution). Herrera sought a reprieve from Richards, who declined to issue a stay to permit thorough review of the evidence by the Board of Pardons and Paroles. Herrera would have been executed (and his case dismissed as "moot") but for the last minute grant of a stay by the Texas Court of Criminal Appeals.

The Supreme Court has recently rejected Herrera's claim. Ironically, the Court's central justification for refusing to address claims of innocence is that "executive clemency has provided the 'fail safe' in our criminal system." According to the Court, "history shows that the traditional remedy for claims of innocence based on new evidence...has been executive clemency." Recent history, in Texas anyway, suggests otherwise.

Of the numerous requests for executive intervention, Richards has temporarily stayed only one execution. Johnny Garrett, who at the age of 17 raped and murdered a nun, was himself repeatedly raped and abused as a child by various members of his family. Garrett developed a multiple personality disorder and experienced auditory and visual hallucinations both before and after his murder conviction. Although the Constitution requires that a defendant be sane at the time of his execution, the Texas courts had made the required finding on the ground that at least one of Garrett's personalities understood why he was being executed. Pope John II, member of the victim's religious order, and members of the victim's own

## Central Texas Chapter - ACLU Events

Central Texas Civil Liberties Union  
1004 West Avenue Austin, Texas 78701  
(512) 477-4335 or 477-5849

### Annual Meeting and Party Friday, April 30th 7 - 10 pm

at the home of  
Alice and Ed Sherman  
2622 Wooldridge Drive  
Music by the Austin Banjo Club  
Cash bar - Munchies

Shelia Cheaney, our state lobbyist, will present our legislative priorities, answer questions, and direct your enthusiasm toward productive lobbying, if that is your choice. Awards of appreciation for their contribution to civil liberties will be presented to District Judge Scott McCown and District Judge Paul Davis of Travis County.

Stars of the evening: All Texas legislators and officials

### FRIDAY FORUM

April 30th Noon  
Wyatt's Cafeteria  
41st and Red River

#### Speaker:

Professor Derek Davis  
Church-State Studies Dept.  
of Baylor University, Waco.

#### Topics:

1. Religion in public schools
2. The Branch Davidians  
Siege in Waco



family called on Richards to commute Garrett's sentence. Richards directed the Board of Pardons and Paroles to consider Garrett's case but the resulting hearing was a sham. At the hearing, the district attorney falsely informed the Board that Garrett had committed an additional murder while in prison (A claim which Garrett's counsel was not permitted to rebut). During the Board's subsequent deliberations, the state assistant attorney general communicated privately with the Board. The Board unanimously recommended against commutation (with one abstention), and Garrett was executed 30 days after the initial stay.

#### What Richards Could Do

Richards' central failing in her approach to the death penalty is her unwillingness to examine in a careful and public way the claims that come before her. It is simply not enough to say that the death penalty is "the law, and the law should be carried out" when the executive power of clemency is also the law and must be appropriately exercised. Indeed, much of the Supreme Court's recent jurisprudence limiting federal court review of state convictions rests on the premise that state courts and state executives will independently review death sentence to ensure they are just. When the court rejected categorically bans on the execution of 16-year old defendants and the mentally retarded, the decisions were premised on the promise that state criminal justice systems will carefully review individual cases on their merits and winnow out the least culpable and most vulnerable defendants from those who are selected for execution.

To this end, Richards should establish the criteria that she regards as relevant to the clemency process. She could, for example, insist on a searching review of cases involving juveniles, the mentally retarded, or abused defendants. She might screen cases for potential racial bias, lack of adequate counsel, prosecutorial misconduct, or other breakdowns in the adversary process. To fulfill her legal role, she need not review sentences on the basis of all of these variables, but her willingness to stand by as a parade of young, retarded, and minority defendants are led to execution because the courts have shut their doors, often for procedural reasons, is inconsistent not only with her avowed political commitments,

but also with her legal obligations as the state's chief executive. Fundamental notions of due process require Richards to conduct her own inquiry (with sufficient procedural safeguards to ensure that the decision rests on adequate information), and to issue a public statement explaining the grounds of her ruling. Currently, Texas clemency procedures are the same under Richards as they were under former Republican Governor Bill Clements. As in Clements' reign, Richards' "blackbox" decisions, communicated during a flurry of last-hour phone calls, are both unreviewable and unaccountable.

#### Political Consequences

The political costs of exercising such a role are uncertain. Undoubtedly, a decision by Richards to prevent the execution of an inmate convicted of a notorious crime will be understood as weakness (perhaps even as civil disobedience) by some segment of the population, regardless of the surrounding circumstances. But Richards need not blindly assume that popular support for capital punishment as an available mode of punishment entails popular support for each particular execution. Polls in Texas reveal that support for capital punishment drops precipitously if the sentencing alternative is life imprisonment without possibility of parole. Polls likewise reveal public ambivalence regarding the execution of juveniles and the mentally retarded. That Texas juries have sent so many juveniles and mentally retarded defendants to death row does not reliably indicate public opinion, given that Richards has inherited a regime that systematically deprived jurors of the opportunity to consider age and mental status as mitigating evidence bearing on the choice of punishment. Indeed, Richards can justify undertaking searching review of particular cases on the ground that some of those currently on death row were sentenced under procedures which have since been declared unconstitutional.

In fact, Richards is uniquely situated to exercise her clemency powers responsibly. In most states, notably California, the rarity of executions transforms each one into a popular referendum on the appropriateness of the penalty. The political stakes of scrutinizing (much less opposing) any execution in such states are thus inevitably high. The increasing number

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## Mental Retardation and the Death Penalty

H.B. 1784 by Rep. Ron Wilson, (D, Houston), would prevent the execution of individuals with mental retardation.

ACLU position: Favor

Referred to House Criminal Justice.

### FREQUENTLY ASKED QUESTIONS

**Why prevent the execution of people with mental retardation?** Under Texas law, and under the U.S. Constitution, only a very small percentage (one or two percent) of the persons convicted of murder are ever sentenced to death, and far fewer are executed. The Supreme Court has made clear that the only criterion that can be used for selecting that one out of a hundred is the individual's level of personal blameworthiness and understanding of his crime. A person with mental retardation, whose intelligence is in the lowest 3% of the population in intelligence, is never in the top 1% or 2% in blameworthiness and understanding.

**Is there a consensus against executing people with mental retardation?** Yes. Every state and national poll shows between 70 and 75% of the people oppose executing people with mental retardation. A clear majority of those people who support the death penalty oppose it for individuals with mental retardation.

**Have other legislatures enacted such provisions?** Yes. Georgia was the first state to pass such a law; they did so after the public outcry that followed the execution of Jerome Bowden, a person with mental retardation. Maryland, Kentucky, Tennessee, and New Mexico have passed similar bills. Last month, legislation protecting the mentally retarded passed in Arkansas; this month in Colorado. In 1988, congress passed, and President Reagan signed, a law banning the death penalty for people with mental retardation in Federal prosecutions.

**Is such a law really needed in Texas?** Yes. Without such a law, there can be no guarantee that individuals with mental retardation will not be executed in our state.

**Aren't there sufficient protections in our laws on incompetence and the insanity defense?** No. Every state that has executed a person with mental retardation had the same "protections" in their laws. Since 1976, at least eight of the 145 people executed in this country have had mental retardation. The most recent were Horace Dunkins in 1989 (Alabama), Dalton Prejean (Louisiana) in 1990, and Billy Dwayne White in 1992 (Texas). Individuals with mental retardation are now on death row in at least three states—Texas, Florida, and Arkansas.

**Can't we just leave this question to the jury and trust them not to sentence a retarded person to death?** No. For a variety of reasons, the jury sentencing process does not and cannot adequately protect people with mental retardation. We need to have a law setting a floor, just as we need a law preventing jurors from sentencing children to death.

**Isn't the definition somewhat vague?** No. This is the standard clinical definition, which includes only those persons in the bottom 3% of the population. Persons with mental retardation are not "somewhat slow" or "slow learners". They have a serious mental disability. When the measurement of "mental age" is used, all adults with mental retardation have a mental age of 12 or less.

**Can a defendant successfully "pretend" to have a mental retardation?** No. There is no recorded case in the clinical literature of any person ever successfully "faking" mental retardation by intentionally doing poorly on IQ tests. Another factor is that today almost all defendants who do have mental retardation will have a "paper trail" in special education and social services. The burden of persuasion is on the defendant. A judge certainly would be skeptical of a defendant without such a record even if he could somehow "malingering" on the tests and clinical evaluation.

**Won't this bill create a "battle of the experts" at trials?** No. Unlike the insanity defense, mental retardation is measured by objective psychometric tests. There is no parallel on any legal issue involving mental retardation in cases in which psychiatrists disagree in court about insanity or mental illness.

**Hasn't the U. S. Supreme Court said that it is acceptable to execute people with mental retardation?** No. The Court said that it believed that there may be a national consensus against executing people with mental retardation, making the practice unconstitutional, but it would wait to see what state legislatures would do to reflect the consensus in their states.

Karyne Conley, D, San Antonio, has filed HB 2735, the Mentally Impaired Defendant's Act, which was referred to House Criminal Jurisprudence.





## ACLU Lobbies for Liberty

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### Anti-Choice Legislation

#### H.B.1330 by Rep. John Longoria (D, San Antonio), Regulation of Abortion:

The bill prohibits the use of public funds to perform or assist in the performance of abortion. Public funds are defined as:

- federal, state or local taxes,
- gifts or grants from public or private sources,
- federal grants or payments, and
- intergovernmental transfers

(Referred to the House State Affairs Committee)

#### H.B. 1435 by Rep. Fred Hill (R, Richardson), Parental Notification:

The bill requires that one parent, a guardian or court-appointed managing conservator be notified 48 hours before an abortion. The bill does allow for judicial bypass in probate or district court, an exception for a medical emergency and an exception for an affidavit by the teen stating that she is in fear of physical, sexual or emotional abuse. An offense would be a Class A misdemeanor.

(Referred to the House State Affairs Committee)

#### H.B.2635 by Rep. Warren Chisum (D, Pampa), Omnibus Regulation of Abortion:

(The bill is 42 pages in length) Provisions include the following:

-Requires attending or referring physician to determine the abortion is necessary by exercising their best clinical judgement in light of all factors including well-being of the woman (physical, emotional, psychological, familial) and her age. (3rd Degree Felony)

-Requires at least 24 hours prior to the abortion, the physician or referring physician must inform the woman orally of nature of procedure, risk, alternatives, gestational age and risks of continuing the pregnancy. Requires physician, physician assistant, health care practitioner or social worker that THD has materials available at no charge describing fetus (at two week intervals) and alternatives to abortion. These same individual must tell woman that prenatal care, childbirth and neonatal care are available and that the father is liable for child support. (Class C misdemeanor)

-Requires further regulation of abortion facilities including a provision opening the records of facilities which receives state monies for inspection and copying. (\$500 per day fine for violation)

-Prohibits the state from interfering in the use of medically appropriate methods of contraception.

-Prohibits abortion after 24 weeks of gestation except to save the women's life or the possible impairment of major bodily functions. Then the method must be used which provides the best opportunity for the fetus to survive, and a second physician must be present to take charge of the fetus. (3rd Degree Felony)

-Requires a fetus surviving to receive treatment commonly and customarily provided any person. (3rd Degree Felony)

-requires that all tissue removed during an abortion be examined by a pathologist who must file a report no later than the 15th day of the analysis. (Class C misdemeanor)

-Requires persons involved in vitro fertilization to file quarterly reports which would include the number of eggs fertilized and fertilized eggs destroyed or discarded. (\$50 per day fine)

-Prohibits nontherapeutic experiments on fetuses (3rd Degree Felony) and requires all involved in use of fetal tissue use to be informed of the source of the tissue (stillbirth, abortion, miscarriage). (\$5000 fine per violation)

-prohibits the coverage of abortion in any insurance coverage in the state except to save the life of the woman or in cases of rape or incest.

-prohibits abortion referral fees. (Class A misdemeanor)

-Requires the posting of a "Right of Conscience" notice in facilities which are not exclusively abortion facilities. (\$5000 fine for each violation)

-Requires parental notice and consent similar to H.B. 1435, but also allows a relative (brother, sister, stepmother or grandparent) to give consent if she files an affidavit stating fear of abuse.

-Expands the reporting requirements to include the name of the physician, preexisting conditions which would complicate the pregnancy, weight of the fetus after 24 weeks, etc. Allows access for public inspection and copying if the facility receives state funds. Requires the reporting of maternal death from pregnancy, childbirth and abortion. Requires reports of complications resulting from abortion.

-Prohibits abortions in state owned or operated facilities, including leasing to anyone who provides abortion; and prohibits state or federal funds appropriated by the state being used for abortion. Exception are made for victims of rape or incest.

-Requires victims of rape or incest to report to law enforcement agencies personally.

-Prohibits the use of state or state appropriated federal funds, directly or indirectly, to advocate for the freedom to choose abortion or the prohibition of abortion, and provides legal assistance for litigation to procure or prevent abortion or the use of state/federal funds for abortion.

(Referred to Senate Health and Human Services Committee)

### Anti-Choice Bills in Sheep's Clothing

#### H.B. 1546 by Rep. John Longoria (D, San Antonio), Disqualification of Judges:

The bill would require judges to disqualify themselves if:

- her impartiality might reasonably be questioned,
- she has a personal bias or prejudice concerning a party,
- she has personal knowledge of disputed evidentiary facts, or
- her spouse or relative is an attorney in the case.

(Referred to the House Criminal Jurisprudence Committee)

#### H.B. 2121 by Rep. Steve Ogden (R, Bryan), Injury to a Pregnant Woman:

The bill creates an offense (1st Degree Felony) if someone intentionally causes a miscarriage or stillbirth or causes injury resulting in miscarriage or stillbirth. (This same bill was introduced in 1989 by Sen. Bob McFarland, and clearly establishes the "personhood" of fetuses by making it a 1st Degree Felony.)

(Referred to the House Criminal Jurisprudence Committee)

### Pro-Choice Legislation

#### H.J.R.1 by Rep. Ron Wilson (D, Houston), Freedom of Choice Constitutional Amendment:

The resolution prohibits the state from requiring that a woman continue a pregnancy.

(Referred to the House State Affairs Committee)

#### H.J.R. 30 by Rep. Harold Dutton (D, Houston), Right to Privacy, Constitutional Amendment:

The resolution recognizes a personal right of every individual to privacy.

#### H.B. 1777 by Rep. Debra Danburg (D), Houston, Clinic Protection:

The bill increases the penalties for criminally trespassing on the premises of a health care facility to a Class A misdemeanor. However, if the violator has a previous conviction or is in violation of a court order the penalty would be a 3rd Degree Felony.

(Referred to the House Criminal Justice Committee)

#### S.B. 948 by Sen. Jeff Wentworth (R, San Antonio), Clinic Protection:

The companion to H.B.1777

(Referred to the Senate Criminal Justice Committee)

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### Curfew Suit

continued from page 4

The Texas Constitution is often referred to (by author James Michener for one) as a better written and more detailed document than the U.S. Constitution. The ACLU case in San Antonio will test that theory.

In other developments regarding curfew cases, both El Paso and Fort Worth have intervened in behalf of the City of Dallas to fight the ACLU's first victory in federal court in Dallas. Both cities have joined with Dallas in the case now being decided by the Fifth Circuit of Appeals in New Orleans.



### Around the State

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Bruce Anton, Bruce Morrow, Tona Trollinger, Emmett Colvin, Richard Aguire, David Kern, Candace Carlson, Doug Skemp, Chad Baruch.  
Observer Corps: Kurt Albach, Don Thompson.

We would also like to thank Joel Ephross, a third year law student from South Texas School of Law for his assistance in Houston.



### ACLU of Texas

Executive Director  
Jay Jacobson  
Director Northern Region  
Joe Cook  
Director Central Region  
Margaret Walker  
Director Southern Region  
Joyce Hansen  
Legal Panel  
Michael Linz  
Lamar Hankins  
Michael White

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# Interview with Jay Jacobson

March 10, 1993



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Edward Kozek recently talked with Jay Jacobson about the reformation of the ACLU of Texas, and his organizational priorities.

**EK:** How is the Texas affiliate different from the Arkansas affiliate, besides being bigger?

**JJ:** Well, its size is the most obvious and also the most profound difference. No one person can cover it in the way that most states can be covered. In Arkansas most chapters could be reached within three hours.

**EK:** Does the Texas affiliate have a board of directors now?

**JJ:** There is a management committee and I'm still not sure how I'm supposed to relate to them. What I would really like to do is bring them in and treat them like they are a board. And then they can make decisions. I am rather uncomfortable doing it on my own. But there is no state board now. There will be one as soon as we can put together elections. I think we are OK everywhere except Houston. We'll be doing more work in Houston if we can find players there who are interested in playing. Hopefully we can have elections within a year. I'd like to have a board in place this time next year if that's possible.

**EK:** Once a board is established, how will responsibility be delegated?

**JJ:** Well, the way it's always been. The board sets policy and the staff carries it out.

**EK:** How many chapters are there now in Texas?

**JJ:** Well, I'm not sure how many are active or not. There is one in Nagadosha but they don't ever have meetings. And there is one in Amarillo. They

have a board and they are doing things but they only have about 63 members. Awfully small for a chapter.

**EK:** As executive director will you be mainly an administrator or will you be involved in litigation?

**JJ:** I won't be involved in cases. I will make public statements about the cases. My role is to be the spokesperson for any cases that come up with any public value. When we get a legal director that person will take care of the litigation aspects of this. Right now I'm doing most of those as well as a substantial amount of administrative work. The spring is always very tough on administrators because they have to put in their financial reports. At the end of March the revenue report is due and I can't do that until I get information from the chapters. I haven't gotten anything yet, except from the Dallas/Ft. Worth/Denton chapter. That has to be corrected. So I have no idea how much the ACLU has spent or raised in the state.

**EK:** What is your budget?

**JJ:** \$250,000, but of that we have to raise \$150,000. The problem in Texas is that people are overly concerned about local interests when in fact they should be concerned about one pot of money. A lot of people are concerned that if they raise x amount of money at x location that it stay there. The Lubbock and Amarillo chapters, for instance, just don't have the numbers to have the kind of program that you could have in Denton and Dallas, or even Austin for that matter. They are sort of out of luck and they ought not be. Those are the kind of decisions

"I want to make sure that we're out there with a coherent and singular message. Our core issues in this state are church/state separation, freedom of speech, and freedom of association. The death penalty is something that always requires our presence."

that need to be made at the state level. I constantly get the question that if we raise this much money how much of it will we be able to keep. People should be rewarded for doing good fundraising and membership drives. An active chapter gets more money because it needs it. Less active chapters don't need as much.

**EK:** Is this reorganization your main priority?

**JJ:** I want to assuage people's fears that I'm going to take and not give back. I view chapters as the eyes and ears of the affiliate. When a chapter finds someone who has written a particularly good letter to a newspaper, the chapter should have the author contacted. One of the reasons I was able to build membership was through stuff like that. You can't do that as a one person show, but you can do that if there are a lot of one person shows. If every board of every chapter were to recruit 3 or 4 people a year the membership would go through the roof. Last year the state recruited 140 people. National recruited close to 700.

**EK:** Is the ratio more even in other states?

**JJ:** There are very few states that have brought in more members than national. One year in Arkansas we recruited the same number of people, but national usually out recruited us by 10-15%. We need Texas to expand to the 350-400 people a year that we have recruited in the past.

**EK:** Why has membership in Texas fallen?

**JJ:** National membership is down, but in Texas membership has decreased because of organizational problems. We have fallen off nationally because we now have a democratic president and everybody thinks everything is fine. The more an affiliate is doing the more people are aware of ACLU presence in their community. Then, when they get a letter from national, they are more likely to join. Our presence has not been felt for the last few years. Something

that people need to understand is that if it were left to the state resources there would be a very tiny ACLU, less than 1500 people.

**EK:** What are the main objectives of the ACLU in Texas now?

**JJ:** The first line of defense is public education. Every chapter should have plenty of literature and be encouraged to get out and speak to clubs and try to get invited to speak at schools. I want to make sure that we're out there with a coherent and singular message. Our core issues in this state are church/state separation, freedom of speech, and freedom of association. The death penalty is something that always requires our presence. We also have to have a constant and growing lobbying presence. Litigation doesn't change the face of the landscape in the way that public education and legislation can.

**EK:** Are objectives set more by the state affiliate or more by national?

**JJ:** Both, but national has spoken programmatically of the importance in eliminating racism as the largest cause of civil liberties violations. I am trying to put together a forum that would take place next year which will concentrate on helping people to understand and define what structural racism is. I don't think most people who are even intellectually aware can give you a thesis definition of it.

**EK:** What is your definition of structural racism?

**JJ:** Structural racism is racism that simply exists because of all the historical ramifications that have developed over the course of the years. There are no more laws involving where you can live, go to school, or work, but past laws have caused a pattern of racism in our society that is not now perceived as racism. To understand structural racism you have to understand

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## God Pod Concerns



11 February 1993  
Mr. Marvin Collins  
Civil Division  
Tarrant County District Attorney's Office  
Fort Worth, TX

Re: "Christian Rehabilitation Pod"

Dear Mr. Collins:

This is to follow up on our telephone conversation of yesterday afternoon. I enclose a copy of a memo to our local board written by Ron Flowers. Professor Flowers is an ordained minister in the Christian Church (Disciple of Christ) and co-author of the principal text on church-state relations presently in use in American colleges and universities. The enclosed memo is exactly as presented to our board. As I said, our interest is strictly that of ensuring that the program is in compliance with the applicable constitutional rulings.

As I have been explaining to the media during the past week, my view is that the "pod" is in violation of the establishment clause for the following reasons:

1. The program apparently was conceived and implemented by a county employee. Programs created at the behest of inmates or of religious persons working with inmates would be a different matter.
2. The program is segregated by religion. I really can't conceive of any basis on which such segregation can be sustained.
3. The program is preferential and exclusionary. It is available to certain "Christian" inmates (however defined) and offers privileges to those inmates not available to the general inmate population.

Presumably, one answer to these objections would be to allow religiously inclined inmates (of whatever religious point of view) the equal opportunity to meet and work with religious volunteers from the outside. As long as such opportunity is generally available to all inmates, and as long as no single group is singled out for special privilege, our constitutional objections would be answered, provided that whatever programs may be conducted are not segregated and favored over others.

Please be assured that it is our wish to resolve this matter in an appropriate manner without filing suit. Getting into conflicts in the courts is seductively easy. It takes greater wisdom to engage in conflict resolution. Professor Flowers and I stand willing to meet as you may wish to resolve this matter.

Sincerely,

Donald W. Jackson  
President, Greater Fort Worth  
Civil Liberties Union

## God Pod

### Tarrant Jail Should Accommodate All Faiths

This editorial appeared in the *Dallas Morning News*, on March 11, 1993

The newest strategy for rehabilitating criminals has turned out to be the oldest: religion. The Tarrant County Jail has set up a special 48-prisoner unit where inmates attend Bible classes and worship. The inmates apply for admission to the unit, which has been dubbed the "God Pod" and the religious teaching is sponsored by an outside group. Still, reasonable questions have been raised about whether the facility discriminates against non-Christian prisoners.

From all indications, the unit seems to be doing some good. Although there is always the possibility that some inmates may be feigning their new faith in hopes of impressing a judge or jury, others insist that the religious instruction has helped them see the error of their ways. During a media tour of the facility this week, several testified to its effectiveness. As one said, "It's not only saving us, it's saving a lot of innocent people, too."

Nevertheless, a number of local organizations, including the American Civil Liberties Union and several Jewish groups, have expressed valid concerns about whether they would be willing to donate their services to inmates. If they are, the county should provide a place for those faiths to study as well. If one "God Pod" is good, presumably a few more would be even better.





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## ACLU Lobbies for Liberty

### Miscellaneous Bills

#### H.B. 1915 by Glen Maxey, (D, Austin)

This legislation deals with three major components: employment, housing, and public accommodations discrimination.

The bill is modeled on statutes that have now passed in a number of states including California, Wisconsin, Massachusetts, Connecticut, New Jersey, Hawaii and Vermont.

This bill grants no new rights, no special rights, and no rights specific to homosexuality. This bill only gives remedy to those who are denied their right to employment, housing, and public accommodation who denied simply because of their sexual orientation.

ACLU position: Favor

#### H.B. 2314 sponsored by Diane White Delisi (R, Temple), Drug Testing

The Texas Department of Health will determine the substances for which there will be testing and the testing levels of the substances.

The Health Department will also provide an employee assistance program educating employees about dangers of substance abuse in the workplace; informing employees of policies and procedures; providing counseling; administering treatment; and providing training and resource information for supervisors.

The Health Department will adopt policy to prohibit being under the influence; or using, possessing, transferring, or selling drugs, or drug-related paraphernalia. Every state agency employee when hired must sign a drug abuse policy statement, which states that violations of the policy are subject to disciplinary action up to and including termination; and that it is the supervisor's responsibility to counsel employees whenever they see changes in performance or behavior that suggests a drug problem.

Drug testing may be done: after first being hired; when the employee has been involved in a wreck-related accident; when there is reasonable suspicion that the employee is abusing drugs; in relation to treatment of a person identified as having a drug abuse problem; and as part of a random drug testing program. The bill also allows the Health Department to conduct searches of state property or premises and to confiscate any prohibited substance or paraphernalia found during a search.

ACLU Position: Oppose

(Referred to House State Affairs)

### Jacobson Interview

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that, because of the laws that developed, the housing patterns developed and that, because these developed, the racial patterns in housing and schools developed.

EK: And this is why you focus more on education than litigation?

JJ: Sure. That whole thing feeds into jobs, into why affirmative action is appropriate and necessary. You have to get people to understand and appreciate that that is the problem--and it is incredibly deep, ground into the bedrock of our society. A forum can start talking about these issues. We could get someone like John Powell, who is the national legal director, to come up with a 15 second sound bite that people can understand. This would be one more glimmer.

EK: So people who object to affirmative action just don't understand structural racism?

JJ: Largely. Affirmative ac-

tion is hurting the people who have traditionally gotten more of the good jobs. Yes, it is true that there is a finite number of jobs, and a larger percentage of those jobs will go to minorities under affirmative action. Our job is to make people understand that affirmative action is fair. The common perception is that it is all about quotas. We had an administration for 12 years that said this. We hope to pop that bubble.

EK: What are some specific cases that the ACLU in Texas is involved in now?

JJ: The major, single thing we're doing is the Klan case. I think it has overarching significance. Not only is it a transitional case for us to handle--here's a group on the periphery of politics that is frowned upon by government--but it also is a very sensitive issue in terms of the nuances that are involved.

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#### C.S.S.B. 25 by Mike Moncrief, (D, Ft. Worth), Stalking

In the last two years the issue of "stalking" has gained national attention. In Texas, all major newspapers have reported accounts of victims being stalked and/or eventually attacked. The situation is similar in other states. Since 1990, when the first anti-stalking law was passed in California, 25 other states have added the offense to their penal codes.

There are no statistics on the number of stalking victims in Texas. However, numerous victims' organizations claim to be referred large numbers of cases every year. Stalking's close connection to domestic violence cannot be overlooked. According to the U.S. Department of Justice, 31% of all female murder victims are killed in domestic violence, with many of the victims enduring long term abuse. Before the stalking legislation passed in Texas, the only remedy was a protective order issued by the court. The protective order is a crime to come within a set distance of the person's residence or work place. Protective orders, however, have limitations: they are only effective if the offender respects the order, and they are issued only when family members or live-in mates are involved.

Under the legislation, a first offense of stalking would be a Class A Misdemeanor, punishable by up to one year in jail and a \$3000 fine. Repeat offenders or stalkers who have violated a court order could be found guilty of a third degree felony, punishable by up to 10 years in prison and a \$10,000 fine.

An amendment added in the House requires that on at least one occasion the person being stalked had reported the conduct to a law enforcement agency. The House also added a section to protect First Amendment rights making it an affirmative defense to prosecution that "the actor was engaged in conduct that consisted of activity in support of constitutionally or statutorily protected rights" (Passed the House and Senate and the bill was signed by the governor on March 19, 1993)

#### H.B. 295 sponsored by Warren Chisum (D, Pampa), Drug Testing

Requires applicant for an original driver's license to undergo a controlled substance abuse test within 30 days preceding the date of the application. The applicant would be required to pay for it.

ACLU Position: Oppose

(Referred to House Public Safety)

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### Progressive Leaders

continued from page 6

of executions in Texas, however, makes any particular case less noteworthy, with reports of executions often relegated to one-paragraph, back-page summaries in the state newspapers. Historically, when executions have been commonplace in the United States, commutations

were also relatively common. As executions become ordinary occurrences in Texas, Richards' policy of abdication becomes less defensible.

Ultimately, we cannot expect the death penalty to disappear any time in the near future. And partly for that reason because the national

debate is not whether to have the death penalty but under what circumstances it should be imposed--progressive leaders may have more latitude today than in the past 20 years to speak out against particular executions.

Assuming, though, that Richards faces real political costs by exercising any independent judgment in reviewing capital cases, should progressives insist that she accept those costs? One perspective would defend Richards' record on the ground that we should not allow all progressive leaders to be "Willie Horton-ed" from office. After all, politics requires compromise, and "flexibility" on the issue of capital punishment may enable progressive politicians to secure more important victories in other, perhaps more pressing areas, such as health-care reform, insurance regulation, reproductive freedom, and civil rights generally. Bill Clinton, on this model gained office in part by his enthusiastic support for the death penalty, at one point rushing back to his home state during a primary to demonstrate his personal involvement in one of the executions.

If we accept this model, we should at least recognize that there are special costs of having a "progressive" leader administer decidedly unprogressive policies. If Clayton Williams were governor, much more national attention would be paid to the grisly execution of Texas' young, retarded, and insane inmates. But the national image of Texas has surely changed. In the wake of Clinton's victory, progressives outside of the state are likely to identify Texas politics with Richards' colorful and folksy barbs directed at George Bush. Given Richards' national persona, non-Texans may also assume that a greater measure of procedural scrupulousness pervades Texas' capital punishment practices. Just as Richards has insulated capital sentencing decisions from local review by refusing to formalize executive clemency proceedings, she has also insulated such decisions from national review by projecting a progressive albeit misleading image of Texas outside of the state. But in terms of capital punishment, the "new" Texas is much like the "old". When Richards runs for re-election, she will be able to parade in front of a great many more photographs of executed inmates than her predecessors.

Reprinted with permission from Jordan Steiker and *The Austin Chronicle*, March 26, 1993.



Ken Gjemre, (far right) long-time civil liberties activist and Dallas board member, celebrates with Karen Danard, recipient of the 1992 Jefferson Liberty Award in October of last year. Mutual friend, Ed Bush, stands in the middle.





## ACLU Lobbies for Liberty

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### H.B. 858 sponsored by Sherri Greenberg (D, Austin), Privacy:

This bill prohibits releasing information concerning a vehicle owner's address if the owner has:

- filled out a form to restrict public access to the address
- provided an alternate mailing address for public access
- consented to accept service of process at alternate address
- and paid \$5.00.

#### ACLU Position: Favor

(The bill has been approved by a subcommittee of State Affairs and is expected to pass the full committee this week. From there it would go to the full House for debate and a vote. If it passes, it would be sent to the Senate for consideration. There is no companion legislation in the upper chamber.)

### H.B. 859 sponsored by Sherri Greenberg, (D, Austin), Privacy

A government owned utility may not disclose a customer's home phone number and address if a customer requests the information be kept confidential.

#### ACLU Position: Favor

(The bill has been approved by a subcommittee of State Affairs and is expected to pass the full committee this week. From there it would go to the full House for debate and a vote. If it passes, it would be sent to the Senate for consideration. There is no companion legislation in the upper chamber.)

### S.B. 360 sponsored by Kenneth Armbrister (D, Victoria)

### H.B. 934 sponsored by Sue Schechter (D, Houston), Privacy

As proposed, these bills would make confidential a record that would identify a person who requested, obtained, or used a library material or service.

Texas became the first state to have any measure of specific protection for the privacy of library users with the issuance of ORD 100 (John Hill, 1975), an opinion sought under the provisions of Section 7 of the Open Records Act. In that opinion, Attorney General Hill ruled that library records were protected from disclosure under Section 3(a)(1) as information deemed confidential by constitutional law.

Since the Texas opinion in 1975, forty four other states have passed specific legislation protecting the confidentiality of library user records; however, Texas library users have, at best, uncertain protection due to the unpredictable interpretation of Open Records Act by individual courts and local authorities who are aware of ORD 100.

#### ACLU Position: Favor

(The measure has passed the Senate and has been heard in House State Affairs.)

### S.B. 73 sponsored by Teel Bivins (D, Amarillo).

### H.B. 1159 sponsored by Robert Saunders (D, LaGrange), Caller ID

As proposed Committee Substitute SB 73 (CSSB 73) provides for the installation or use of pen register or a trap and trace device by a communications common carrier or a customer or a subscriber of the carrier.

On July 29, 1992, Southwestern Bell Telephone Company (SWB) filed an application for the introduction of Caller Identification Services (Caller ID). Caller ID is a service which would allow telephone subscribers, for a monthly service fee, to see the name and/or phone number of the person calling before they pick up the phone. The service uses a display device that is either built into or plugged into the telephone. The Caller ID device must be purchased by the customer through various retail outlets.

On December 15, 1992, the Public Utility Commission (PUC) voted 2-1 to dismiss SWB's application to provide Caller ID service, contending it violated the state's trap and trace laws.

As long as certain privacy safeguards contained in CSSB are maintained, the ACLU will not oppose the legislation. The safeguards, added after a Senate hearing, include a requirement that the PUC require that a provider of caller identification service offer per-call blocking at no charge to

each telephone subscriber in the specific area in which the service is offered and a requirement that the provider offer per-line blocking at no charge to a particular customer if the PUC receives from the customer written certification that the customer has a compelling need for per-line blocking.

Although the ACLU feels the requirement to show a "compelling need" in writing is cumbersome, we would not oppose the compromised bill solely on this ground. The PUC has stated that any written request will be granted and that there will be no requirement to show a compelling need.

Finally, the ACLU of Texas feels that the section of the bill which contains the prohibition of a person from using a caller identification service to compile and sell specific local call information without the affirmative consent and approval of the originating telephone customer is of fundamental importance in maintaining a customer's privacy.

(The measure has passed the Senate and has been heard in House Economic Development.)

### S.B. 482 sponsored by Judith Zaffirini (D, Laredo).

### H.B. 418 sponsored by Debra Danburg (D, Houston), Polygraphs

This bill prohibits law enforcement authorities from requiring rape victims to submit to a polygraph examination before their cases are prosecuted.

#### ACLU Position: Favor

(SB482 has been reported from the Senate Criminal Justice Committee as substituted. HB 418 has been referred to House Criminal Jurisprudence.)

### H.B. 2309 sponsored by Sylvester Turner (D, Houston), Polygraphs

This bill prohibits subjecting state employees to involuntary polygraph examinations.

#### ACLU Position: Favor

(HB 2309 was referred to House State Affairs.)

### H.B. 1560 by Sherri Greenberg, (D, Austin), Discrimination

This bill amends the Commission on Human Rights Act to protect an employee from being discriminated against because of her/his weight. The only exception is for an employer who can show on the basis of a medical examination approved by the employer and employee that the employee's weight would most likely prevent the employee from performing duties safely and efficiently.

Americans have long accepted that employers have a certain degree of control over what we do while at the work place. But increasing numbers of employers are dangerously broadening the sphere of their control to include what employees do in their own homes. Many employers now refuse to hire people whose private lives are deemed "unhealthy." A few even fire current employees who do not change their life style to meet new company demands. The most common victims of this type of discrimination are smokers and fat people. Anecdotal evidence collected by The National Association for the Advancement of Fat Acceptance (NAAFA) suggests that discrimination against fat people is more common than against smokers. Other employers refuse to hire people who drink alcohol, have high cholesterol levels, or ride motorcycles.

The early Americans adopted the Bill of Rights to limit the government's involvement in their lives and modern Americans demonstrate the same unwillingness to tolerate intrusion whether by government or by employer.

According to a 1990 poll by The National Consumer's League, 81% of Americans believe that an employer has no right to refuse to hire an overweight person. 73% believe employers have no right to require an employee or applicant to change their diet.

The methods used to enforce lifestyle discrimination certainly raise independent civil liberties issues.

#### ACLU position: Favor

(The bill was referred to House State Affairs)

### H.C.R. 47 by Senfronia Thompson, (D, Houston), Convention on the Elimination of All Forms of Discrimination Against Women.

This measure encourages the President and the U.S. Senate on Foreign Relations to ratify the Convention, which was adopted by the United Nations General Assembly in 1979 and has been ratified by 119 nations.

#### ACLU position: Favor

(The resolution has been heard in House State Affairs.)

## Shelia Cheaney, Lobbyist

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League, Texas Music Association, Lesbian-Gay Rights Advocates, and legislative analyst for the Office of the Attorney General of Texas rounded out Shelia's education to the point that there are no surprises lobbying the Legislature, just new numbers on old ideas.

Shelia lives in Central Austin with her dog, CoCo Lopez. There are other activities that have and do occupy Shelia's life such as the fact that she was the national baton twirling champion in 1957. Now to express her artistic abilities she has become an accomplished artist whose work has been shown in Austin at Cowgirls and Flowers and Mercedes Pena's; in Santa Fe at the Trading Company; presently on display at La Zona Rosa in Austin. And finally, she is the proud mother of one son Mathew, who is 25 years old.

## Jacobson Interview

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It is perfectly clear that we are going to have to defend Michael Lowe (the head of one KKK chapter in Texas) on some of these questions. There are also a series of church/state cases that are on the periphery. One of which involves female high school basketball players who, before each game, go out to the middle of the court, on their own, and pray. This is a school sponsored event and here the public arena is being used in a way that it is not designed to be used. Our message should be that this is not about prayer but about power. This is not about chatting with the creator, but about forcing other people to chat with your creator. We have to change the perception that we are the bad guys trying to whip people into doing what we want them to do to them being the ones trying to get people to do what they want. That means they're the bad guys.

EK: Are you trying to get together with other organizations now?

JJ: I had a meeting with all the chapter presidents. I believe in working with coalitions, but it is very difficult. It takes years to develop strong relationships with other organizations.

EK: Have you met Bill Clinton?

JJ: Everybody in Arkansas has met Bill Clinton.





1-713-555-1212  
Houston, TX 77019  
ACLU of Texas  
1236 West Grey

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## ACLU MEMBERSHIP FORM



### Keep the First Amendment First. Support the ACLU.

713-942-8146 (TCHU) ACLU of TX.

#### The Office Has Moved--Again (For the Last Time For a Long Time)

Moving from 600 West Seventh to 1004 West Avenue is only a few blocks but it has taken us the whole month of March to get everything in its place. As of April 1 it looks like an office where serious work goes on and one can move from one office to the other without bodily injury from things being where they don't belong.

The office is rented from Wiseman, Durst, and Tuddenham on the second floor of a gracious house/office building with lovely views from every window and almost enough parking. Some of the furniture from the East First office had to be put in storage but there is space enough to provide working areas for five persons if we all get along well.

Margaret Walker's main function is to assist the executive director, Jay Jacobson with matters in the Central Region which includes helping our lobbyist, Shelia Cheaney, in her work at the Legislature and with other like-minded lobbying groups as well as supervising volunteers. The intake for this region from letters and telephone calls keeps everyone involved in trying to aide those who believe their rights have been violated. Loan Dao prepares many of the complaints that go to the legal panel and she then does the follow up work of talking to clients, contacting attorneys, and writing letters.

Margaret and Shelia are responsible for this newsletter and will work with Jay Jacobson on fundraising events that are coming up. Each regional office is responsible for coordinating a coherent fundraising policy. Jay will meet with each regional director to help plan how this can best be done. Although few people actually enjoy this, it is what keeps the ACLU a viable organization and allows us to protect civil liberties throughout the state.

Do come by whenever you can.

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# 'Civil Liberties,' Beyond the Anecdotes

By MARK S. CAMPISANO

The American Civil Liberties Union has become a political issue with a life of its own, apart from the presidential campaign. The goals and ideals of the ACLU are undergoing a long-overdue examination, and most of the public doesn't like what it sees. The ACLU, for its part, complains that the critical depictions of it are distorted and merely anecdotal in nature. Executive Director Ira Glasser concedes the organization takes controversial positions, but insists they don't represent "the bulk of what the ACLU does."

Well, is most of its work done on Bill of Rights cases that aren't "out of the mainstream"? Not today. A detailed examination of changes in the ACLU's caseload over time indicates that a new agenda of left-wing causes now occupies most of its time. The ACLU's new agenda is fundamentally hostile to the processes of American constitutional democracy.

## The Old Agenda

The ACLU was founded in 1920, and spent its first 35 years defending fundamental civil liberties and civil rights. The *Scopes* case (1925) saw it defend the right of a public schoolteacher to discuss the theory of evolution with his students. In 1933, it secured a ruling that James Joyce's "Ulysses" was not obscene, and thus could be imported into the U.S. In *Hague v. CIO* (1939), it established the right of labor organizers to assemble, distribute literature, and speak in public streets. The ACLU protested the internment of Japanese-Americans during World War II, carrying the *Korematsu* case (1944) to the Supreme Court. It also joined in the now-famous *Barnette* case (1943), which invalidated state laws requiring Jehovah's Witness schoolchildren to salute the flag despite their religious objections. And in 1954, it helped win the historic desegregation decision in *Brown v. Board of Education*.

These cases typify the "old agenda" of the ACLU: the rights of free speech, free press, free exercise of religion, freedom of assembly and association, and freedom from official acts of racism. Defending these rights used to take up almost all of the ACLU's energy. For example, a look at its caseload as detailed in its annual report for 1943 (selected because of the recent interest in the *Barnette* case of that year) shows 94% of its participations or interventions to be in that type of matter.

The ACLU's old agenda was beneficial to American society, because it helped to improve the operation of our constitutional democracy. By pressing the political arena to open itself to all viewpoints and all groups of citizens, the union helped to provide, in its own words, "the missing ingredient that made our constitutional system finally work."

Regrettably, the interests of the ACLU have changed radically. The shift was already clear in its annual report for 1965, which shows only 66% of the cases pursued that year belonging to the organization's old agenda. And by 1987, the difference was stark. By that year, the ACLU no longer published details of its caseload in its annual report. But through Lexis, a legal database, it is possible to obtain a list of all cases heard by the Supreme Court, and decided in 1987, in which the ACLU filed a brief. Of these, only 45% belong to the organization's old agenda.

These figures give the ACLU the benefit of every doubt. Cases involving obscenity, sexual discrimination, and acts of private racial exclusion have been counted as part of the old agenda, though it's questionable whether the ACLU would have taken up all of those cases in its earlier years.

What is the ACLU doing with the rest of its energies? It has added a new agenda, which includes support for racial quotas and a virtual elimination of religion from public life. It also calls for substantial expansion of abortion rights, prisoners' rights, criminal defendants' rights, rights of the mentally ill, and so on.

Many may object to the substantive positions of this new agenda, but more important, the ACLU's recent thrust has a

pernicious underlying theme: hostility to the processes of constitutional democracy. This appears in three basic forms: first, in attempts to override democratic processes, and replace them with judicial decrees, in ever larger spheres of public life; second, in attempts to expand individual "rights" without regard for countervailing public interests; and third, in attempts to prevent certain viewpoints from being heard in the public arena.

Overriding democratic processes. The premise of the old ACLU was that if politics were opened to all citizens and all viewpoints, then the process would generate tolerably fair results. The ACLU's old agenda sought merely to "level the playing field" before the game was played. That's why the ACLU used to advocate "non-discriminatory treatment on the basis of individual merit, blind to race, color or religion." But that all changed in 1973, when it decided to reverse its earlier position and support racial quotas.

Now, the ACLU is in the Supreme Court supporting a racial-quota program that would force the city of Richmond, Va., to award 30% of all public works contracts to businesses owned by blacks or members of other racial minorities. "Individual merit" no longer matters, and the ACLU certainly doesn't want Richmond to be "blind to race." Equal opportunity is not enough. Now specified results are demanded, despite the openness (thanks in part to the old ACLU) of existing political processes. And the arm it seeks to use is the least democratic branch of government.

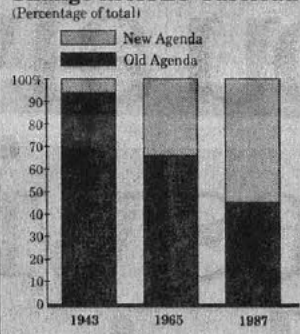
Unbalancing individual rights. In the ACLU's old agenda, there was little con-

flict between enhanced individual rights and legitimate public interests. On the contrary, the individual rights that were promoted generally made the democratic process work better. But the ACLU's new agenda exalts the desires of individuals without serious regard for genuine countervailing interests of society as a whole.

The ACLU's views on criminal defendants' rights illustrate this unbalanced attitude. The ACLU always had a few genuine criminal cases, but in earlier years they usually involved due-process violations motivated by a desire to suppress unpopular viewpoints or groups—for example, labor organizers or blacks. In recent years, the ACLU has greatly broadened its focus in this area, subordinating the legitimate public interest in social order.

For example, everyone knows that evidence obtained in an unconstitutional search is inadmissible in a criminal trial. But today's ACLU seeks to stretch that principle beyond recognition. In the recent *Oliver* case, two Kentucky state policemen received reports that a man was raising a crop of marijuana on his farm. They went to the farm and observed entire open fields of marijuana under cultivation, over a mile from the man's home. He was arrested, but at trial he claimed that the policemen's "search" of his fields had violated his rights. The ACLU supported this claim, arguing that such "broad-scale, arbitrary intrusions" violated a "legitimate expectation of privacy." The Supreme Court rejected this argument, but a question remains: If "privacy" takes in an open field, how does the ACLU expect the police to do their job?

Change in ACLU Caseload  
(Percentage of total)



## Confessions of an ACLU Lawyer

By BURT NEUBORNE

Please allow me to express my gratitude to the tribunal for permitting me to expose my errors of libertarian deviationism.

As the tribunal well knows, I served for more than 20 years as a lawyer for the American Civil Liberties Union, most recently as its National Legal Director from 1982 to 1986. I stand accused by Leader Bush of excessive zeal in the defense of individual liberty. It is true that I defended the rights of accused criminals. I defended the rights of political extremists. I defended the rights of bigots and atheists. I defended books that I would never read and speakers whom I loathed; religions that I did not understand and unsavory individuals whom I understood all too well.

When I look back over the hundreds of ACLU cases that I handled, I can recall only a handful of clients I would have had to dinner and relatively few that I would have welcomed as a close friend. In many of those cases, I was protecting people whose ideas or actions were as far from my relentlessly middle-class life style as one can imagine.

Why then, as Leader Bush so artfully puts it, did I devote so much of my career to the defense of a "criminals lobby"? What is the hidden "liberal political agenda" that explains why I fought so fiercely and so long against so many policies favored by the people?

I beg the tribunal to understand that my zeal did not flow from sympathy with the goals or behavior of most of my clients. While I was privileged to represent an occasional saint, many of my clients were thoroughly unpleasant, hopelessly foolish or painfully incompetent. Sometimes all three. I fought their battles as an ACLU

lawyer in the hopelessly naive belief that the continued existence of individual freedom for average people depends on protecting the rights of everyone, even the most despised among us. I believed that individual freedom is not a natural phenomenon. I believed that left to itself, the government would inexorably expand its power to control people's lives and that only an organized defense of individual freedom could hope to preserve a tolerable degree of liberty.

I viewed the ACLU as the institution with the responsibility for defending every inch of personal liberty guaranteed in the Bill of Rights. I feared that unless an organized (if you can call the ACLU organized) group spoke up for the rights of individuals—even unpleasant individuals—our personal liberties would erode to the point where the government would always defeat the individual. I did not expect to win all my cases. I did not even want to win all my cases. But I feared that unless the argument in favor of the individual and against the government was raised vigorously every time the government sought to restrict individual freedom, the government would win by default.

I've already told the tribunal that I would not want to live in a world where the ACLU won all its cases. But I would not want to live in a world where there was no ACLU to bring the cases. By stubbornly defending every inch of personal freedom as vigorously as we knew how, we believed that the final equilibrium would come to rest at a point somewhere in the middle; a point where the interests of the individual and the group would be harmonized.

Until very recently, I believed that the system was working. We had achieved a degree of personal liberty in this country that is the envy of the entire world. Our geopolitical rivals like Russia and China

Restricting access to the public arena. The ACLU once emphasized opening up participation in American public life. But now it seeks to exclude certain perspectives, conspicuously those of various Christian groups, from that process. In the *Barnette* case the ACLU had stood against school officials who tried to restrict the religious freedom of students. But by the 1980s, the organization had come to supporting school officials who tried to prohibit voluntary meetings of students interested in religious discussions. In the *Bender* case (1986), high-school students in an evangelical Christian club had sought permission to meet on school premises during designated activity periods. All other student clubs were allowed to do so, but in this instance the answer was no. And the ACLU agreed, saying that to do otherwise would violate the Establishment Clause (against advocating and endorsing religion). On the same theory, the ACLU regularly seeks to stop public schoolchildren from singing "Silent Night" at Christmas time.

## Card-Carrying Chameleons

Indeed, it is time to move beyond anecdotes. It's not enough to attack the ACLU simply by reciting its 10 most eccentric opinions, nor is it enough to defend the ACLU by recalling its occasional defense of unpopular groups and viewpoints.

An accounting of the ACLU's caseload for the years 1943, 1965 and 1987 suggests that the organization is an ideological chameleon—that beneath the protective coloration of "civil liberties," the ACLU of today is pursuing a very different agenda, one contrary to basic principles of American constitutional democracy. The "marketplace of ideas" awaits a meaningful rationale for this transformation.

Mr. Campisano, who once clerked for Supreme Court Justice William J. Brennan Jr., is a New York lawyer. A related article by him appears in the current *New Republic*. Jack Goldsmith and David Flathum of Yale Law School helped in research.

looked enviously at the way our respect for the dignity of the individual made us a vibrant and innovative society. All over the globe, people turned to us as the symbol of freedom.

But freedom isn't an accident. It is the result of painstaking work to maintain the structure of liberty against inevitable erosion at the hands of the government. I thought that my work for the ACLU was an integral part of maintaining freedom for everyone. I now confess my error and embrace Leader Bush's perception that the ACLU is a politically suspect liberal conspiracy.

In mitigation, I ask the tribunal to note that I did not understand that defending Nazis or Ku Klux Klan members was part of a liberal conspiracy. Neither did I realize that defending the free-speech rights of tobacco companies was high on the liberal agenda. I doubt it occurred to any ACLU lawyer that the defense of Rupert Murdoch or Oliver North or Meier Kahane was part of the liberal ideology. I confess that I was misled by the words of former Leader Goldwater when he said that "moderation in the defense of liberty is no virtue."

I now realize that the ACLU interferes with the will of the people as expressed in the views of our current Leaders. I realize that my concern with the individual interferes with the desires of the group. I thought I was a civil libertarian. I now learn that I was really a liberal. I accept Leader Bush's criticism and ask only that I be permitted to merge my individual concerns into the greater needs of the group. I await Vice Leader Quayle's guidance.

Mr. Neuborne is a professor at the New York University School of Law.

## Notable & Quotable



## viewpoint

# Campus should beware of student censor group

Texas Tech is the perfect nest for a fledgling academic watchdog group called Accuracy in Academia (AIA). Tech's apathetic outlook on any issue that has even a passing effect on a student's education makes Tech a prime candidate for AIA scrutiny.

AIA is a conservative group that monitors college professors for liberal biases. An offshoot of Accuracy In Media, which fights liberalism in the American press, AIA officials say their intent is to make sure that only the facts, and not a teacher's individual beliefs, are taught in the classroom.

According to the group's executive director, Les Csorba, "any professor right or left will be reported and exposed if they are distorting the facts."

The group's goals all seem very noble, but what gives them the right to police the classroom? Many educators understandably are upset.

Even more scary is the fact that AIA easily could make inroads on the Tech campus. Taken as a whole, the Tech student body is apathetic on all issues. The faculty and administration constantly are bickering among one another. It seems as though Tech would be a perfect place for AIA to sneak in the back door.

In the past Tech has proven itself an extremely qualified candidate for hard-line conservatism. One of the reasons given by a Tech regent a few years ago for not approving a campus pub was that such an institution would be a breeding ground for socialism.

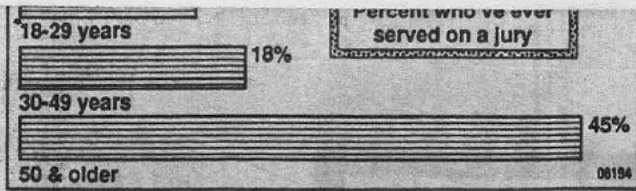
The AIA operates through conservative students who sit in on lectures and, well, snitch on the professor if he/she thinks that professor is giving a one-sided lecture.

At Tech there probably are professors who give one-sided lectures. It is even more probable that there are conservative students who disagree with what some of their professors have to say.

The best way to keep groups like AIA from gaining power is through a cooperative effort between students and professors during the education process. A classroom should be a forum for education, not a soapbox for one man's biases.

Tech does not deserve to have any group policing its classrooms, but that situation easily could become a reality. Avoiding such a situation is easy. The students and faculty at Tech should shut the door on such groups by concentrating on the process of education with an open mind.

—The University Daily Editorial Board



Source: The Gallup Organization

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## LETTERS TO EDITOR:

# What The Readers Of A-J Are Saying

## Reader Says: Prepare For 'Enemy'

Editor, Avalanche-Journal:  
We read and hear that the improved satellites and other spying instruments are all directed at the Soviet Union.

I wonder if it would be more in keeping with reality to say, "The Enemy," rather than "The Soviets." After all nations come and go, but the Enemy apparently stays.

Those whose mature life has been the period of the Cold War are naturally most aware of danger from the Soviets. But we need to remember that it is the boys and girls who are in junior high now who will be making the decisions in the 21st Century.

During my lifetime, Russia has been our staunch ally in two world wars. Germany has been our very

aggressive enemy in the same wars. Japan was perhaps our most dangerous enemy in one of them.

Now Germany and Japan are our most trustworthy allies, we assume.

It might be wise to give some attention to the few billions east of Suez. Early in the 20th Century they were the underdeveloped peoples waiting to be taught and redeemed by western religion and industry. But things have changed.

If these people do turn out to be the enemy it might be good to keep these things in mind.

First, they outnumber us considerably. I do not know how much.

Second, they have a great deal of the world's money, since they control the price of oil.

Third, even if they are backward industrially, they have plenty of the most advanced and sophisticated weapons of war that the industrial nations, including Korea and Taiwan can produce.

Fourth, they are not hampered by these western ideas of justice, mercy and compassion, that frequently slow down our military endeavors.

No one has asked for my advice, but I suggest that it might be wise to prepare for "The Enemy" rather than just for the Soviets.

Alan C. Lynch, 1920 48th St.

## Late, Late Show

Editor, Avalanche-Journal:  
The Ayatollah Khomeini bit the dust and the way Iranians bounced him on the ground during the drawn-out funeral looked like scenes from a late-night movie: "The Marx Brothers Bury Khomeini."

I don't know if they finally planted the bearded old geezer or just sundried him like a Dromedary date.

Now Iran has a new chief, Hashemi Rafsanjani, who seems ready to ax certain hard-liners.

Being as how he looks a lot like Lou Costello playing the part of an Iranian chief, I was hoping he would do some one-liners.

An Iranian leader with a sense of humor would be a welcome change, and Ali Akbar Mohtashemi could be the straight man.

Hashemi appears considerably more rational than Khomeini - at least he isn't senile - and surely he realizes the futility of trying to turn the clock back to the sixth century.

Let us not forget the words of Jimmy Carter's No. 1 buddy: (Speaking of Khomeini) "...that man must be a saint." He's a lot closer to it now, for sure.

## Enough Is Enough!

Editor, Avalanche-Journal:  
What was the degree or level of taxation per capita imposed on the colonists of America, which led up to the American Revolution?

Jack E. Grady, 2212 18th St.

(NOTE TO READERS: A-J readers are encouraged to express their views on public issues. To be published, the letter must include the true name and address of the writer, bear his or her written signature and include a daytime telephone number for verification. We reserve the right to edit letters for length.)

particularly legislative. The Texas constitutional traditions of a distrust of the Legislature and a weak governor are enduring elements of the state's political culture...."

Further, the 1876 Constitution was adopted when Texas was predominantly an agricultural economy with a rural population of about 800,000. Many of the constitutional delegates were involved in agriculture and it is therefore hardly surprising that they would draft provisions on fence laws, the regulation of livestock, prohibition of occupational taxes on agriculture and protection of the frontier.

IT IS FAR from clear that the drafters of our Constitution did a good job even for their time. Certainly there were numerous contemporary critics of the document.

But even if the 1876 Constitution were well drafted for its time, it would be ill-suited for today's Texas. In 1876 there were fewer than one million Texans; today there are almost 17 million Texans.

In 1876, we were an agricultural society with 80 percent rural population; today we are a city society with 80 percent urban population supported by a complex economic structure. While we all share nostalgia for the Lone Star State of yore, we all realize that the foundation for our future simply cannot rest on a document as badly dated as our 1876 Constitution.

The severe limitations of our Constitution have manifested themselves over the years, of course. To date, the Texas Constitution has been amended over 200 times.

Far from correcting the fundamental flaws, the amendments have become a separate and compounding problem. Texans have practiced a piecemeal approach to constitutional revision with unacceptable results.

A comprehensive and general revision cannot be achieved in small steps. The Legislature has been encouraged to take a short-term view of the Constitution, resulting in increasing pressure to further amend the Constitution and its amendments. A too lengthy Constitution has been made even longer by after-the-fact individual changes.

A complete examination of our current Constitution reveals three distinct sets of problems. Each problem set negatively impacts the Texas political system. One constitutional scholar simply says "in the language of systems analysis, the Texas Constitution is dysfunctional."

Of course we cannot blame all of our state ills on the Constitution. But all Texans can see that the Constitution is to blame for many wrongs of the system. Undue restrictions placed on state and local governments limit their capacity to act effectively and efficiently.

In 1876, Texans reacted in fear of excessive, inefficient and spendthrift governments. But in a time when po-

handicaps a legislature and a governor could hardly be worse. But the Texas Constitution meets this formidable challenge. It also presents serious obstacles to effective local government. Restrictions on county government may or may not have been appropriate in 1875.

But in 1989, urban counties in Texas suffer not only the problems common to population concentrations throughout the U.S., they also labor under archaic sections on structure, taxation and borrowing authority.

FINALLY, THE Texas Constitution should be revised because it is filled with poor and uninspired draftsmanship.

reviewed either by a constitutional convention or a legislature.

In 1919, Texas voters refused to call a constitutional convention. In 1949, Gov. Beauford Jester sought unsuccessfully to initiate revision. A

considered by a convention (which was not dominated by the Legislature).

Without a sound constitution our future growth and development will be unduly difficult. Texas Needs A New Constitution.



(EDITOR'S NOTE: Dr. W. Frank Newton is professor of law and Dean of the Texas Tech Law School. He holds degrees from Baylor University, New York University and Columbia University. Dean Newton is involved in law reform efforts, both nationally and in the state of Texas. Nationally, he is involved in a project of the American Law Institute to reform the Law Governing Lawyers. In Texas, he serves as a director of the Texas Equal Access to Justice Foundation, which provides free legal assistance to poor Texans.)

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# A New Texas Constitution--Why It's Needed

BY W. FRANK NEWTON

CITIZENS OF Texas are accustomed to substituting new for old. New cars replace old cars; new clothes, old clothes; even new friends for old.

Constitutions could never be replaced so easily, nor should they be replaced so frequently.

But is the opposite extreme appropriate? Should we never replace a Constitution?

Common sense tells us that there may be times to consider replacing even constitutions.

I believe the time has come to replace the Texas Constitution.

Two major recent developments force us to examine the continuing validity of the Texas Constitution.

First, the basic federal-state balance of political power has shifted toward the state side.

was advocated by President Carter. President Reagan regularly urged a restoration of state rights.

President Bush campaigned for his presidency on a promise of continuing the revitalization of state power begun in the Reagan era. In large measure this shared presidential agenda favoring greater state participation in the federal-state partnership has been successful.

State political organs are increasingly expected to address pressing problems such as crime control, prison construction, economic development and education. Moreover, the U.S. Congress has taken the unusual step of increasing revenue sharing through block grants to the states.

Not only is the federal government willing to send federal dollars to the states, it does so with fewer restrictions. Clearly this represents a

Sunday, September 3, 1989

## Perspective

On Opinions, Analysis

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tion, and in criminal law attest to the success of that strategy.

This change in approach to exercise of federal judicial power creates more state options.

These options must be tested against our Texas Constitution.

Some Texans applaud the growth of state power — others decry it. There is clearly reason for concern for those Texans who favor greater federal power or who dislike the change of existing rules on abortion, civil rights or criminal law.

But we must all concede that growth in state power requires us to review the validity and strength of our state Constitution.

OUR TEXAS Constitution is a Reconstruction document drafted in 1875 and approved by voters in 1876.

Texas had previously adopted four other constitutions as a state and two other constitutions as an independent republic.

It is important to recall the historical setting for our current Constitution because the document is very decidedly reflective of what was happening in America at that time.

State constitutions drafted and ratified during the time from 1860 to 1900 were very long. Texas has one of the half dozen longest state constitutions. The median length of state constitutions is three times that of the United States Constitution, whereas the Texas Constitution is six times as long.

Texas and other southern states which adopted constitutions after the Civil War reacted vigorously to what they regarded as excesses of government. Long constitutions were drafted which contained numerous restrictions and detailed limitations designed to curb government power.

Dr. Janice May characterizes our present Constitution in this way: "In Texas, the reaction to the very unpopular regime of Gov. E.J. Davis (1869-73) bore fruit in the Texas Constitution of 1876..."

"The constitution fairly bristled with restrictions on finances and on governmental powers in general.

litical power is moving from the federal to the state level, Texans cannot afford to have an ineffective, inactive, pennywise-but-pound-foolish state government.

Our great state cannot afford a Legislature designed to be a part-time amateur body. The legislative business of Texas cannot be transacted in one 140-day session held once every two years. Nor can we expect legislators to be effective when they have low fixed salaries and insufficient funds to properly staff their offices.

What happens under these circumstances is that the Legislature cannot do all of its work during the regular session. Further, because legislators are poorly paid and lack support, they are forced to rely on talented lobbyists.

These lobbyists, many of whom are former legislators, wield an unhealthy influence on the public affairs of Texas. If we had any doubts about the inadequacy of the Texas Legislature as a product of our 1876 Constitution, they were stilled by the failure to deal with the workers' compensation in the regular session and the spectacle of a special interest dominated called session.

IN POSITION, if not in person, Texas has a notoriously "weak" governor. The power of the governor is determined directly by the Texas Constitution. According to Prof. Schlesinger, Texas is tied with three other states for the "weakest" governor in the United States based on formal, mostly constitutional powers.

The Constitution grandly declares that the governor is responsible for faithfully carrying out the laws of the state. But that same document fails to give the governor the powers necessary to fulfill the mandate.

Students of state government are uniformly critical of the lack of business principles in either organization or operation of state executive branches. Texas has one of the most fragmented administrative organizations in America.

A state constitution which unduly

Our constitution is hard to read and hard to understand. We are all embarrassed by the fact that there are instances in which two sections have the same number, or no number at all.

Hopelessly dated sections should be eliminated. We no longer need an authorization for the governor to call out the militia to put down rampaging Indians on the frontier.

While these changes may not be as important as those dealing with the Legislature, the governor and local governments, they are important to constitutional interpretation. We increasingly call on our courts to give meaning to the constitution; it should not be full of nonsense.

Since the Texas Constitution is so obviously flawed we wonder why it has not already been revised. The main reason there has been no revision

vigorous campaign by the League of Women Voters caused the 1957 Texas Legislature to direct the Legislative Council to study the Constitution.

Ten years later Gov. John Connally urged submission of a call for a convention to the voters. The Legislature refused to submit the question of a call to the voters but did approve a commission which produced a complete draft of a new Constitution in 1968. The Legislature chose to largely ignore this draft.

Of course an extensive effort was begun in 1971 which produced a new Constitution which Texans rejected in 1975. The 1971-1975 effort was dominated by the Texas Legislature.

WE CAN learn a great deal from what has happened in Texas and other states which have attempted, and in some cases successfully completed,

## More Effective Government Needed To Meet Challenges

sion is politics. Constitutions distribute political power. Distribution of political power is achieved through specific constitutional policies which grant advantages to some and withhold them from others.

Current political leaders, lobbyists, labor leaders and business leaders are wary of changing rules that favor them. They are familiar with the existing rules and the existing rules help them exercise control. Many of these leaders recognize the weakness of the Texas Constitution.

Several have even suggested that it be revised. But most of our leaders are unwilling to surrender the control they currently enjoy.

General constitutional revision may follow two basic approaches.

THERE IS the convention method and the commission method.

In earlier times revision generally took place through the work of specially elected constitutional conventions. Delegates to these conventions were chosen to represent the people in their highest sovereign capacity — the drafting of the basic document of governmental powers.

More recently constitutional commissions have been utilized. These commissions, which may be elected or appointed by the legislature, prepare complete redrafts or revisions of substantial parts of a constitution.

ed, constitutional revision.

Prof. John E. Bebout, a leading expert on state constitutions, sets certain clear lessons before us.

- "The revision body ... must so behave as to justify a public belief that it is acting primarily for the public good, not that of the members and their personal or political allies."

- "The (revision body) must be organized, staffed and run with a specific view to accomplishing the object of constitutional revision, which is something quite different from ordinary legislation."

- "There is no substitute for time: time for preparation, time for deliberation and careful drafting, time for consulting, involving and informing the public ...."

- "There must be extensive involvement of the citizens at all stages, which must be planned for by official agencies, including the preparatory commission and the convention, and by the citizens."

- "Positive campaigns to sell the idea of constitutional revision and to sell the new or revised constitution in the end are a must."

- "If at first you don't succeed, try, try again!"

Individual Texans must press their senators and representatives to appoint a Constitutional Revision Commission (which is not dominated by members of the Legislature) to

## States' Growing Influence In Citizens' Lives At Stake

Second, the Supreme Court of the United States has enabled, and therefore encouraged, primary protection of citizen rights at the state level.

These developments dramatically increase the importance of state government. If our state government functions well these developments hold bright promise for Texans. But if our state government cannot function as well as it should, then these developments portend trouble.

PRESIDENT JOHNSON made a plea in his State of the Union message in 1967 for "creative federalism" involving "a total working partnership among federal, state and local governments."

President Nixon called for a "new federalism." Full state partnership

shift of political power from the federal government to individual states.

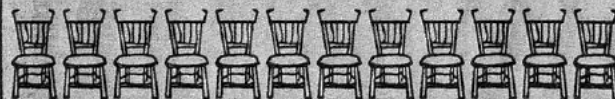
THE U.S. Supreme Court has also contributed to the growing importance of state government.

During the time when Earl Warren served as Chief Justice of the United States Supreme Court, there was some popular public perception that too much authority had been assumed by the Court.

Opponents of the "Warren" Court urged restraint and a return of judicial control to the various states. Some national political leaders, and especially President Reagan, sought to change Supreme Court decisions by nominating justices who favored "judicial restraint." Recent decisions in civil rights cases, on abor-

## Gallup Graphics

### A Jury Of One's Peers



All adults

14%