

## COMING MONDAY

■ A "backstop" fund that insurers could draw on to pay claims following a major catastrophe is a bad idea for Texas.

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AID TO MEXICO

## Beware drug-cartel corruption

■ U.S. must take care to protect intelligence

By JOAN NEUHAUS SCHAAN

**A**DDITIONAL U.S. law enforcement officers and assets will soon be headed to the Mexican border, as part of a broader initiative announced by President Obama to deter the escalating violence related to drug trafficking. The administration's decision, which includes a more than 50 percent increase in funding for the multiyear, anti-crime Merida Initiative, is significant, but only a small step toward resolving a breakdown that threatens Mexico's viability and our long-term security.

The magnitude of the problem is difficult to comprehend, and, even more so, to consider next door. In 2008, approximately 5,600 people were killed in organized crime-related violence. For comparison, as of early January, 2009, 4,222 U.S. military members had been killed in Iraq since the inception of hostilities in 2003.

Drug proceeds are believed to be \$10 billion to \$45 billion annually, and far exceed legitimate forms of hard currency transmitted to Mexico from the United States.

But the violence is not just in Mexico; it has already crossed the border. Phoenix experienced 368 kidnappings last year. Cartel hitmen have carried out executions within the United States, and anecdotal evidence indicates cartel families already live in the United States.

While the violence in Mexico, and increasingly in the United States, is symptomatic of much broader issues for both countries, true progress in combating the cartels cannot be achieved without acknowledgment and recognition of the central role played by corruption. An estimated 62 percent of Mexican law enforcement forces are on the payroll of the drug cartels. Likewise, cartels have infiltrated U.S. law enforcement agencies as well. Corruption is an unpalatable subject, and in some circles it is considered politically incorrect to acknowledge its existence. Nonetheless, a bright light



ALEANDRE MENEGHINI : ASSOCIATED PRESS

**GUN TROVE:** Army officers look at weapons seized during operations against drug trafficking gangs at a military base in Reynosa, Mexico. The United States has pledged to provide assistance to Mexican law enforcement agents, including granting access to the Bureau of Alcohol, Tobacco and Firearms' eTrace database on weapons ownership.

needs to be shone into this dark corner, and its ramifications must be given full consideration.

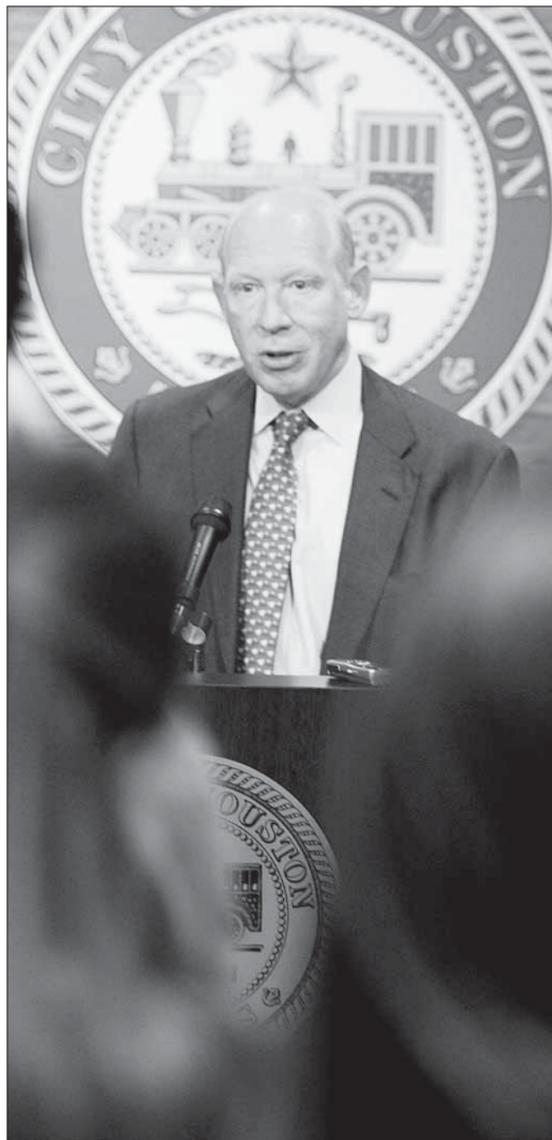
The United States and Mexico must be vigilant that any proposed bilateral training and intelligence sharing is not exploited by the cartels. For example, the most feared of the cartel enforcers are Los Zetas. The Zetas organization is responsible for intimidation, kidnappings and assassinations on a weekly basis. The founding members of Los Zetas were trained by the United States for counternarcotics special operations and intelligence. After a few years working for the Mexican government, Los Zetas defected and joined the cartels. Our brave men and women deserve more than to face opponents who have received their training from the U.S.

Similarly, the new policy envisions sharing U.S. residents' weapons ownership data maintained by the Bu-

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### EDUCATION

## Give mayor a role in hunt for HISD chief



CHRONICLE FILE

**HISD ROLE?:** Mayors in New York, Los Angeles and Chicago are involved in the oversight of school districts in those cities. Should Mayor Bill White or his successors play a similar role with HISD?

■ Other big-city chief executives help run schools

By JAY K. AIYER

**T**HIS past week the Houston Independent School District Board of Education met to select a search firm to assist in the selection of a new superintendent. The importance of this cannot be overstated. With all due respect to the myriad elected and appointed officials we have in the Houston area, no one other than the mayor of Houston more directly affects the lives of all Houstonians than the superintendent of schools of HISD.

The success or failure of HISD has the largest single impact on the economy and stability of our region — affecting business location, property values and crime. The role a superintendent plays has always been critical, but in this time of great uncertainty, it is crucial that the next superintendent be the right person. Reform has been the rallying cry of the HISD board for several years and members should be given high marks for it. But in order to continue driving reform, they should consider two ideas in the selection and management of a superintendent.

First, HISD leaders need to take a page from our sister cities — Los Angeles, New York and Chicago — and directly involve the mayor of Houston in the selection and oversight of the next superintendent.

Reforming large school districts requires a great deal of support from business, civic and political leaders across communities. Many major ur-

ban areas across the U.S. have turned to mayors to help superintendents lead the effort for reform, correctly concluding that their unique vantage point as the most accountable elected official in a community gives them a special perspective. Moreover, the success of a mayor is often more driven by the success of schools than anything else.

Here in Houston, Mayor Bill White's involvement in education has been limited but critical. He has assisted in some dropout prevention programs and his support was key to the passage of the last HISD bond election. But unlike his peers in other big cities, Mayor White and his successors will have no role in coordinating operations between the district and the city, or enforcing accountability measures. Mayoral expertise and acumen could be critical to managing resources and ensuring that the entire community is behind the school system.

Secondly, in an era of public outcry about out-of-control executive compensation, the HISD board should consider directly tying superintendent salaries to student performance and teacher compensation. HISD superintendents traditionally have been among the highest paid public executives in Texas. As difficult as the job is, salaries, benefits and other perks have now grown so far out of proportion that it creates a barrier to accountability. Contracts are now laden with buyout provisions, deferred compensation and retirement agreements that limit the board's actions for fear of putting taxpayer dollars at risk.

One possibility is to establish a multiplier related to the

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### COURTS

## Keep California out of Texas court cases

■ Anna Nicole started trend of forum shopping

By HORACE COOPER

**M**ARSHALL v. Marshall, the decade-long litigation surrounding the estate of Texas oil tycoon J. Howard Marshall II and Playboy playmate Anna Nicole Smith, is back in the news, and new questions are arising. Curiously, thanks to some clever manipulation by Howard K. Stern, Smith's former lover and

continual lawyer, the ruling that once settled the case right here in Harris County may now, it seems, ultimately be decided by federal bankruptcy courts — in California.

Even more curious, the trend has continued. After Smith's mother, Virgie Arthur, sued Bonnie Stern (sister of Howard K. Stern) and others for defaming her in an orchestrated series of blog posts, Bonnie Stern may have avoided a defamation case in Harris County by filing for bankruptcy in California. Once again, Harris County's courts and their search for

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### EDITORIAL

#### Pondering the 'Ike Dike'

Walling off most of Galveston Bay to protect against storm surges would be better than doing nothing. **PAGE B13**

### FOREIGN AFFAIRS

#### Obama celebrates U.S. decline

Charles Krauthammer says the president gave away the store during his first major international trip. **PAGE B12**

### TALIBAN, THE SEQUEL

#### Women victims of political gambit

Ellen Goodman says the decision to legalize marital rape was a huge step backward for Afghanistan. **PAGE B12**

ECONOMICS

# Reform retirement and restore confidence in U.S.

■ President Obama has opportunity to secure America's financial future

By A. HAAG SHERMAN

PRESIDENT Barack Obama and most economists argue that the \$787 billion stimulus bill is necessary to avert a deeper economic crisis. However, the stimulus package will do little to stave off further declines in housing and stock market values. Further, the package does not address the most pressing matter confronting the U.S. economy — namely, restoring the confidence of consumers and foreign lenders.

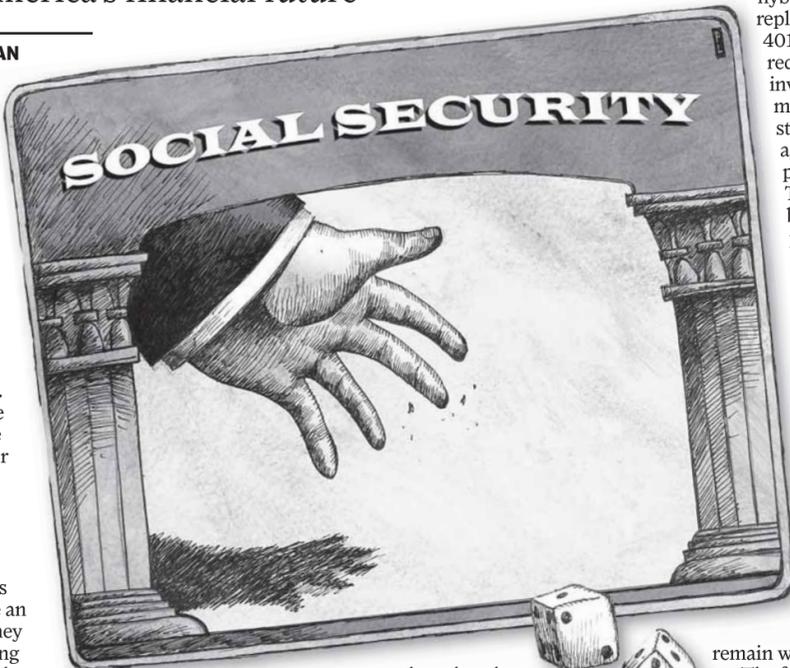
Today, consumers (like our banks) face an uncertain future. They see asset values falling and are hoarding cash to pay down historic levels of debt. Until American consumers feel more confident, they will continue to save and asset values will continue to fall — a phenomenon that noted Depression economist John Maynard Keynes called the “paradox of thrift.”

Worse yet, foreign lenders are nervously watching America's mounting national debt. At some point, foreign lenders may stop financing America's ballooning deficits, resulting in a run on the U.S. dollar, higher interest rates and inflation.

To avert this calamity, President Barack Obama should develop a plan to provide American consumers and foreign lenders with confidence about this nation's economic future.

He should start with a dramatic reformation of Social Security and how Americans save for retirement. This has the dual benefit of putting Social Security on more viable footing and providing Americans with a more stable financial future.

The measures needed to reform Social Security are not new. First, Social Security benefits should be “means” tested. The higher a retiree's income level, the lower her benefits from Social Security. This would turn Social Security into a retirement insurance regime, rather than a pension system, and eliminate trillions of dollars of future obligations. Second, retirement age



should be indexed to life expectancy to take into account the fact that Americans are living longer and drawing more in benefits. Third, benefit increases should be indexed to inflation rather than wage increases (the current norm). Wage increases include both an inflation and a productivity increase component. However, retirement benefits should provide a beneficiary with the ability to maintain purchasing power (i.e., keep up with inflation) rather than reap the productivity gains of current workers.

By making these simple changes, Social Security could be placed on sound economic footing without a dramatic increase in taxes. Further, this would improve America's future budgetary picture, a plus for foreign lenders.

But this is just part of the equation. The second — and most important — aspect would be to create a new savings regime for Americans. The new regime should be a cross between traditional pension plans and the 401(k) system, with the government providing a \$1,000 annual tax credit for participation.

In the past, many Americans saved for retirement through a combination of Social Security and traditional pension plans. Pension plans offer a sound way to invest for retirement. They benefit from professional management, diversification, economies of scale and lower costs. But,

they also place the risk of investment loss on their corporate sponsors, a cost not shared by many foreign competitors. Accordingly, American corporations have moved away from pension plans and many now have their employees rely on 401(k) plans for retirement. 401(k) plans offer some benefits — one being portability. However, 401(k) plans also have severe drawbacks, such as high fees. More significantly, many participants manage their own accounts, though they often lack the skill or time to do so. Due to high fees and lack of professional management, 401(k) plan returns have trailed those of pension funds by 1 percent to 2 percent per annum including fees and costs.

The new plan would be a cross between 401(k) plans and pension plans. The “hybrid” plan would replace the current 401(k) system and require employees to invest in large commingled asset pools structured and managed like traditional pension funds. These pools would be managed by professionals and have the necessary economies of scale to provide more stable long-term investment returns with lower fees and costs. These are the best features of traditional pension funds. However, the plan would also have critical aspects of 401(k) plans — namely, portability and the risk of loss would remain with the employee.

The federal government would fund \$1,000 per annum per employee. Consistent with current 401(k) plans, the employee could add to this amount on a “tax deferred” basis up to a maximum of \$15,000 per annum. Assuming only the annual \$1,000 government contribution over 40 years, a participant would have approximately \$280,000 (assuming an 8 percent return) compared to a typical 401(k) participant at \$165,000 (assuming a 6 percent return).

Based on 100 million workers, the net total cost of the plan to the U.S. Treasury would be less than \$100 billion per annum. Though this is a sizable sum, the benefits would be incalculable. The nation would be diversifying away from the U.S. govern-

ment as the chief provider of retirement benefits (through Social Security) and would offer a much more comfortable and secure retirement for many Americans.

This long-term solution would give Americans a greater sense of financial security, which will be much more helpful to an economic recovery than a one-time tax break or stimulus plan. Further, since the assets would be portable and “owned” by the participant, American wage earners could build wealth for themselves and their heirs. Finally, the tax dollars will not be spent, but will be invested — largely in America. These investment dollars will provide support to the markets and foster greater economic growth, a much more efficient use of “stimulus” dollars than

the current plan. And while the near-term cost might be high, the plan might be cost neutral or even accretive to the federal government over time by promoting economic growth from greater consumer spending and investment.

In short, President Obama has a splendid opportunity to provide a secure future for Americans very much like President Franklin D. Roosevelt did more than seven decades ago, incorporating the best elements of Social Security and private savings to put Americans on a stable economic footing for the next 75 years.

*Sherman is chief investment officer of Salient Partners in Houston. His is the author of “Shattering Orthodoxies,” a business plan for America.*

## AID: Two-man system key to corruption fight

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reau of Alcohol, Tobacco and Firearms. While this eTrace system is invaluable in identifying and dismantling weapons trafficking organizations, unfettered access by Mexican law enforcement should not be permitted, given the percentage of law enforcement personnel on the cartel payroll.

Outside of investigations and prosecution, how can corruption be minimized? Those in security recognize the value of two-man accountability when handling highly sensitive or valuable material, i.e. having two persons involved at all times diminishes the risk

of malfeasance. This concept could prove valuable in border operations by using dual agencies when appropriate.

As relates to databases, queries into systems should carry a trace of the requesting agency and contact information for the individual making the request.

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LUIS ACOSTA : AFP/GETTY IMAGES

**BORDER TALKS:** U.S. Secretary of State Hillary Rodham Clinton spoke with Mexican Foreign Minister Patricia Espinosa in Mexico City last month on a trip to discuss border drug violence.

## EDUCATION: Tie success to students, teachers

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salary of the average teacher, thereby eliminating the need for lengthy negotiations as well as tying the success of teachers and students directly with superintendents.

HISD has already emerged as the finest urban school district in the nation, but there is room for improvement. Mayoral involvement and limiting

compensation are steps that the HISD board should consider.

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## COURTS: ‘Forum shopping’ a dangerous trend for all

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justice are undercut by a leap to California bankruptcy court. Why is this happening? And what does it portend for our legal system?

While we ought not be too surprised, the pattern is quite curious as person after person connected with Smith has made a habit of jumping from Texas to California. This practice, called “forum shopping,” uses jurisdictional peculiarities unique to a court or geographical locale as a basis for seeking out a court more likely to render a favorable verdict for one's case.

In the first case — far more famous than the others — tabloid queen Smith attempted to undo her husband's written will and estate plan after his death. After a 14-month marriage, Smith decided to challenge her husband's will on the basis that Marshall had verbally promised to include her in his will. While the claim would fail abysmally in a Harris County probate court, Smith's legal team was able to accomplish a remarkable feat. In a textbook case of forum shopping, they went to a bankruptcy court in the state of

California, and there they got a federal bankruptcy judge to award her nearly half a billion dollars from her husband's estate. While this judgment was dramatically reduced by a federal district court in California and later completely set aside by the 9th Circuit Court of Appeals, it was an audacious legal maneuver.

The second case involved J. Howard Marshall II's son, J. Howard Marshall III. Like the Smith case it, too, started in Harris County. In fact, J. Howard Marshall III joined Smith in the probate case against his father's estate because, like Smith, he too had been provided millions during his father's life and expressly left out of the written will.

At the conclusion of the trial, in which his claims — like hers — failed, the jury took the additional step of imposing a \$35 million damages judgment against him for bringing what they viewed as a meritless lawsuit using fraud and malice. Although this amount would ultimately be reduced to \$10 million, J. Howard Marshall III's legal team responded to the judgment in a very curious way. They filed his bankruptcy application in California before the very same judge that oversaw Smith's bankruptcy case. Ultimately the bankruptcy judge accepted Marshall's reorganization plan and thereby eliminated the multimillion dollar judgment that a Harris County jury had awarded. That case too is under review in the U.S. Court of Appeals for the 9th Cir-

cuit.

The most recent instance of bankruptcy litigation strategy involved Bonnie Stern, sister of Howard K. Stern. Last year Virgie Arthur, Smith's mother, filed a defamation suit naming Bonnie Stern along with other defendants.

Where was Arthur's case filed? Harris County. Curiously, now Bonnie Stern has filed for bankruptcy and yes, you guessed it, she did so in California. As a result, all activity on the Harris County case has come to a halt, and Stern will either have to be severed from the case (and protected from orders and judgments) or potentially have the entire case removed to the bankruptcy court in California.

Either outcome will likely stymie Arthur's legal efforts and the rights of Harris County jurors to decide the matter. Coincidence? Not likely. It looks more and more like a clever legal gambit.

With this latest move, there are now at least three instances in which litigants related to Smith litigation have sought the refuge of bankruptcy courts in California.

Remarkably, in each instance the cases started in state courts in Harris County and yet the bankruptcy filings took place and are adjudicated in California once the litigants perceived they face negative outcomes in Texas.

This result looks more like the “sentence first, verdict afterwards” approach of the Queen of Hearts in the story *Alice in Wonderland*, as the California bankruptcy courts appear to give little or no cre-

dence to the interests and legal obligations of courts in Harris County.

By taking these cases from Texas courts to a bankruptcy court in California, litigants appear to obtain several advantages.

Whether it's libel, probate or tort, these litigants avoid verdicts issued by a jury of their peers and gain the benefit of having a bankruptcy judge in California who is likely to be less knowledgeable about the legal issues being disputed, especially those unrelated to bankruptcy.

To seek out a favorable forum before a case begins is unethical at best. To engage in forum shopping once a case is already being pursued — or, in this case, nearly decided — is an intentional attack on justice.

Finally, because these cases are tried in California, litigants can potentially raise legal claims that may not even be recognized by the state of Texas.

This type of forum shopping is pernicious and if allowed to proceed unchecked, it will not be just Harris County or the state of Texas affected. No citizen of any state can ever be sure of the rights provided to them by their own states.

While the Queen of Hearts may love this outcome, for the rest of us it's a dangerous trend that is getting more and more curious.

*Cooper is a legal commentator and an adjunct fellow with the Institute for Liberty. www.horacecooper.com*



**ESTATE BATTLE:** Anna Nicole Smith went to court in Harris County to contest the will of J. Howard Marshall. The case wound up in California bankruptcy court.