By John Dentinger

The Man They Hate At City Hall

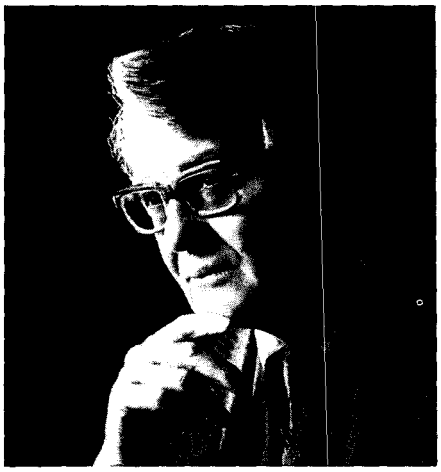
If a man may be judged by the quality of his enemies, Oakland attorney Harold Farrow must be doing a lot of things right. Local governments hate him. Even the city of Oakland, whose current mayor has been a law partner of Farrow's for nine years, isn't nuts about him.

Originally, Farrow's law firm worked for cable television firms that were trying to win municipal franchises. Later, Farrow began litigating to *end* the monopolistic practice of licensing cable TV operators—a practice he calls "the fattest porkbarrel for local government in a long time."

In Oakland, the problem for cable operators was access to poles. General Telephone and Pacific Telephone were making access very difficult, even though both used easements that had been obtained for them by the government. Farrow's firm won a decision in the late '70s that essentially forced the phone companies to grant access on reasonable terms. "If they weren't public utilities," says Farrow, "forcing access could amount to a taking [of property]; but they are."

What about aggressive competitors coming into the market and "cream skimming"—a standard worry? He counters: "Every magazine, every First Amendment publisher, has a targeted audience—that is, it tries to skim the cream of readers. One of the freedoms of the First Amendment is to publish wherever you want, rather than where you're told. The only publication that isn't 'cream-skimming' is *Pravda*."

Farrow won another landmark cable case, in Boulder, Colorado. In the late '70s, the cable firm there was operating only in the "shadow areas" of the city, serving customers with bad broadcast reception. When more diverse programming came in from satellite transmission, the cable operator wanted to expand to serve the whole city. Some local residents wanted the franchise themselves, however, and offered to compete—so the city passed an ordinance taking away the first firm's right to build at all. After several years of the old juridical back-and-forth--injunction, counterinjunction,



Harold Farrow

remanding to lower court—the Supreme Court ruled in 1982 that municipalities are not immune from suit under antitrust laws. More importantly, says Farrow, the lower court affirmed his First Amendment argument and the city signed a consent decree, giving First Amendment stature to cable "publishers."

Farrow, a 1953 graduate of the prestigious Boalt Hall Law School at the University of California at Berkeley, notes the parallel between modern-day regulation of cable and the regulation of the press during England's Tudor and Stuart monarchies. "When the printing press came to England, it was a novelty. Henry VIII recognized the value of it, so he limited the number of presses and the right to be a printer. Franchisees tried to protect their 'rights' by forming a stationers society (like today's National Cable Television Association [NCTA]). Printing was cheap; people learned to read. There was an underground of illegal presses, and a Beadle would search out and destroy them for a bounty. Freedom of the press did not refer to publishers being able to print whatever they wanted, but rather to being able to print *at all*—exactly the situation cable operators find themselves in today."

Congress took Henry VIII's approach in passing the 1984 Cable Act, which not only allows municipalities to license cable operators but also gives operators no presumptive right to renewal of their licenses. Municipalities and the NCTA supported the bill, while Farrow and others fought it. "The worst thing about the Cable Act," says Farrow, "is the franchising concept itself. The idea that you have to buy the right to be a speaker is an intolerable concept. The second worst thing is the concept of programming control. Cable is in a natural position to be a primary reporter on the activities of local government. But it has to be able to report without threat of blackmail, without fear of losing the entire business because it says something that puts the mayor in an unfavorable light."

A later case of Farrow's, *Preferred Communications* v. *City of Los Angeles*, limited the damage of the Cable Act. When the time came to award the cable franchise plum in the largely black south central Los Angeles area, the city preferred someone other than the black-run Preferred Communications. In 1983 Farrow filed suit on First Amendment and antitrust grounds, and the Ninth Circuit Court of Appeals agreed on the First Amendment grounds. The city appealed. The Supreme Court refused to hear the city's appeal, but in a footnote it said that interpreting the cable law to allow only one franchise was an overbroad interpretation of the city's powers. Congress, added the Court, was well aware that such a limit would be unconstitutional.

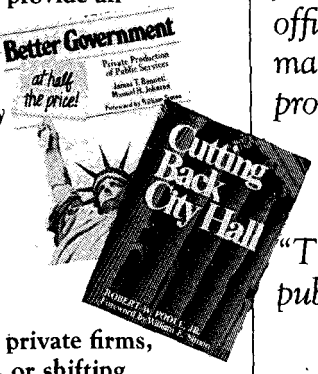
Farrow, a native Texan, notes, "I went into the army when they first put blacks and whites into the service together. In that sort of situation, you develop a feel for the need for free speech to settle the irritations of society with something other than shotguns."

The legal victories are never final ones, Farrow cautions. "The desire to control the press is a human desire. Through most of society it's been controlled, and it's likely to happen again if you don't watch out." Thanks to Farrow's work, "watching out" for such power grabs should be a great deal easier: we'll be able to watch them on cable channels. *Competing* ones.

John Dentinger is a freelance writer and a columnist for the LA Daily News.

LOWER TAXES WITHOUT CUTTING PUBLIC SERVICES?

Face it. The special interests and liberal media are rebounding from the tax revolt. The big spenders are ready for a comeback. Taxes will go up unless concerned citizens provide an alternative to new bureaucratic programs that throw more money at local problems.



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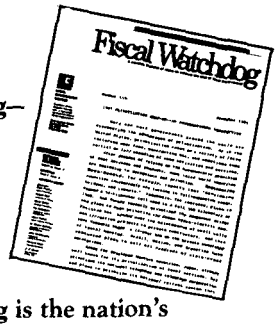

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Getting Back to the Country

By Bill Kauffman

DAVID NECKER

Every generation or so, the artistic and intellectual mandarins of New York, Washington, and Hollywood rediscover the 2,900 miles and couple hundred million people that compose the rest of this country. A spate of books and movies and congressional resolutions celebrating the land and the salt-of-the-earth types who tend it are sure to follow, until everyone gets bored and goes back to worrying about the trade deficit or snorting cocaine or claiming they buggered Tennessee Williams, or whatever the local fashion may be.

We are now in the middle of such an epoch, which incarnation Ann Hulbert of *The New Republic* has accurately labeled "rural chic." Rustic kultur bombards us from all sides: Garrison Keillor's folk-yuppie Prairie Home Companion on the radio, Establishment-approved hicks-are-cool-too books like Bobbie Ann Mason's *In Country* and Carolyn Chute's *The Beans of Egypt, Maine,* and a passel of three-hanky, farmers-are-struggling-against-all-odds movies, courtesy of various Malibu populists. Much of this is just a bit too reverent for me, and I detect in it a hint of earnest condescension, but you gotta admit Jessica Lange sure beats the hell out of Ma Joad.

The most offensive rural tripe is coming, as usual, from politicians. Indeed, a congressional Populist Caucus, dedicated to "a strong government that fights for the economic rights of all Americans," has sprung up on Capitol Hill. The Populists of the 1880s and '90s had their problems, but at least they were authentic backwoods firebrands. By contrast, the 27 members of the well-scrubbed Populist Caucus include 11 lawyers, 0 farmers, and a grand total of 4 non-college graduates. Predictably, its ideological commitment is indistinguishable from every other special interest that festers on our body politic—more government spending, more regulation, more bureaucracy, blah blah blah. Wanna bet on how many of these ersatz hayseeds would give up an evening at the Kennedy Center for a Saturday night square dance?

These embarrassingly phony tributes to the heartland are depressing because small-town America *is* worthy of praise and attention. The values and attitudes that distinguished this land from the Old World—a healthy, self-reliant individualism tempered by an appreciation of the bonds of family and community, skepticism of centralized authority and a belief in localism and grass-roots democracy—survive still in rural America.

Yet the sturdy values of a simpler, agrarian America are enjoying respectful and inspiring treatment these days—and from a pretty unlikely source. For some of rock and roll's most interesting figures are examining modern America by working within and reshaping its most homespun musical idiom—country music.

These new country artists have burst upon the scene not a moment too soon, for the establishment country music industry is in bad financial shape. Country's troubles are largely due to rock and roll's penetration into the hinterlands—after all, how you gonna keep the young 'uns down on the farm once they've seen MTV? But country artists are also at fault for forgetting their roots and churning out bland, glitzy pap (Kenny Rogers, Barbara Mandrell) that's about as down home as a Las Vegas stage show. As a result, says Nashville manager Bill Carter, "a lot of established country stars...are so caught up in conforming to what...radio stations will play, the new records don't have any life to them."

The new country movement consists of two wings: mainstream rock stars (Neil Young, John Cougar Mellencamp, maybe even Bruce Springsteen) who, to varying degrees, have adopted country arrangements or country-populist themes; and cowpunks—underground artists who've found a kinship between punk rock's anti-authority stance and the ridin'-the-rails, lonesome-heart spirit of the best country music. (Has there ever been a cooler punk than Johnny Cash?)

Now all this might be written off as just another spasm of trendiness, much like the pitiable hipsters who "discovered" reggae music a few years ago