

# THE TEXAS OBSERVER

May 6, 1983

A Journal of Free Voices

75¢

## Tracking the Chemical Lobby

*By Joe Holley & Geoffrey Rips*

Dee Simpson, a lobbyist for the Texas Pesticide Project and the Farmworker Advocacy Project, knows as well as anyone that the men, women, and children who harvest our fruits and vegetables have rarely found friends in the Texas Legislature, so he was understandably elated when Hector Uribe's Senate Bill 1060, the Pesticide Victim Recovery Bill, made it out of committee. And he probably wasn't too surprised when fellow lobbyist Jon Fisher, who represents the Texas Chemical Council and other chemical lobbies, called him soon afterward. Since the bill survived its committee hearing, Fisher told Simpson, "If you are serious about that private cause of action, we'll have to go after workers' compensation. We might have to kill it." By "we," Fisher meant the Texas Chemical Council.

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Toxic Dangers



Workfare



Black Art Exhibit

# Sexual Assault Bill

A bill that began as an article in the *Observer* (12/15/78) attacking the state's rape laws stands a good chance of passage by this year's legislature. Sponsored by Rep. Debra Danburg, D-Houston, HB 1730 (and companion Senate Bill 966, sponsored by Sen. John Whitmire, D-Houston) would replace the term "rape" with "sexual assault" and, thereby, eliminate the questions of victim culpability or complicity that often arise in the defense against a rape charge. The bill would also make no gender distinctions. Currently, the perpetrator of a rape must be a man, and the victim must be a woman. In addition, the bill proposes to reduce the marital exemption from prosecution to only those couples legally living together in harmony.

The bill is the brainchild of former Assistant U.S. Attorney General Michol O'Connor. O'Connor's article in the *Observer* spawned a bill introduced by Rep. Hugo Berlanga, D-Corpus Christi, in the 1979 legislative session, which was narrowly defeated. Danburg, in reintroducing the legislation, told the House Judiciary Committee on April 19 that HB 1730 is designed "to move away from traditional and unrealistic notions of what

constitutes sexual abuse."

Testifying on behalf of the bill, Attorney General Jim Mattox said, "With the term 'rape,' it does not happen to be the criminal that gets branded with the stigma as it is the victim." Mattox recommended the additional deletion of the word "sexual" with all its "connotations" so that prosecution could be based simply on assault. Regarding the current marital exemptions, Mattox said, "I think we've reached a time in our society where an individual cannot be allowed to rape his wife. We cannot continue to treat our wives and children as chattel."

Susan Terrell of the Houston Rape Crisis Center reported to the committee that there was a 110% increase in reports of rape in Tallahassee, Florida, after a similar change in the law. There was also an increase in male reporting of sexual assault after the gender distinction was eliminated. More people are prosecuted under laws such as the one proposed by Danburg, and more people eventually receive counseling. In Michigan, there was a 90% increase in convictions in the year following a similar change in the law.

Representatives of several other

organizations, including Texas NOW, the Battered Women's Center of Austin, and the Montgomery County Sheriff's Department, were present in support of the measure. Assistant District Attorney Jeanie Coltrin of Nueces County told the committee, "Rape is the only crime that requires the victim to wage battle during the crime."

Only one person appeared to speak in opposition to the bill. Donna Muldrew of Lubbock, a delegate to the White House Conference on Families, criticized the bill's "invasion and critical attack on the sanctity of the family and the privacy of sexual conduct between husband and wife."

The bill was referred by the committee to a subcommittee chaired by Rep. Danburg, from which it stands a good chance of being reported favorably by the committee to the House. G.R.

## CORRECTION

The April 22, 1983, article on "Right to Know" legislation should have read: "According to Tani Adams of the Texas Pesticide Project, Texas is the second largest user of pesticides in the United States. 'Between ten and thirty pounds of pesticide per Texan is used,' she says, 'and among these are products known to cause birth defects, mutations, sterility, or cancer in humans or animals.'"

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# Recognizing Indians as a Political Entity

Austin

On March 14, 1981, Parks and Wildlife game wardens arrested two residents of the Alabama-Coushatta Indian Reservation in East Texas who were found butchering several deer near their homes. They had no hunting licenses. Both men were charged with hunting without a license, although the charges were dropped after Indian leaders complained that the Alabama-Coushatta had hunted the dense forests of their East Texas reservation for more than 130 years without restriction by the state.

Parks and Wildlife officials, concerned about unrestricted hunting on the 4,600-acre reservation and yet eager to maintain good relations with the tribe, requested an opinion from the attorney general on whether state hunting and fishing laws can be enforced on reservation land.

"The question could have been answered very simply," Ray Apodaca, executive director of the Texas Indian Commission, told the *Observer*. "They could have said federal and state laws apply to the reservation."

The AG's office did that — and more. While ruling that the state could enforce its game laws on the reservation, the opinion also held that state funding for the Alabama-Coushatta, or any group of Indians, violated the Texas Constitution. Citing a 1972 amendment to the state constitution which prohibits discrimination against any person or group because of "sex, race, color, creed or national origin," the attorney general's ruling said it is illegal for the state to single out Indian "people to be beneficiaries of a gratuitous trust relationship with the state."

"To say the least, we expected the attorney general's response to Parks and Wildlife's question to be a little more simple," Tony Byars, superintendent of the Alabama-Coushatta reservation told Glenn Smith of the *Houston Chronicle*.

The opinion could affect both the 530 members of the Alabama-Coushatta tribes and the 500-member Tigua tribe of El Paso. The state appropriated \$587,000 for the Tiguas for the 1982-83 biennium while the Alabama-Coushatta got \$269,000. For the 1984-85 biennium, the Legislative Budget Board has recom-

mended \$646,000 for the Tiguas and \$297,000 for the Alabama-Coushatta.

The state contribution is only 6½% of the total Alabama-Coushatta budget and 14% of the Tigua budget, but, in Apodaca's words, "it is the most important part because that percentage constitutes the match for all other funding. If the state were not providing the basic administration and management structure, then the tribes could not provide the base for all the other funding they get."

"What the AG's office didn't understand," Apodaca told the *Observer*, "is that the government does not deal with Indians as individuals; it deals with Indians as a political entity. The government is not providing services to a racial group, but to a political entity. An Indian who moves off the reservation, for example, loses all benefits he's entitled to while he's living on the reservation."

Apodaca noted that the Indian Tribal Governmental Tax Status Act, signed into law by President Reagan on Jan. 14 of this year, clarifies the right of tribes, as governmental bodies, to deal with other governmental bodies. The law provides tribes with essentially the same status under federal tax laws as that applying to other state, county, and local governments with regard to revenue raising and savings mechanisms.

House Bill 1263, sponsored by Rep. Allen Hightower of Huntsville, would bring state law and tax codes into line with the existing body of federal laws in these areas. Introduced on March 4, before the current controversy, the bill, in Apodaca's opinion, would solve the problem once and for all. "It was originally intended as a mechanism by which the tribal councils could have a better position from which to act as a tribal entity," he said. Sen. Tati Santiesteban of El Paso is sponsoring a companion bill.

Texas has provided money to the Alabama-Coushatta since 1929. At that time the reservation was placed under the

auspices of the State Board of Control. In 1949, it was designated a charitable institution and placed, along with state mental hospitals, under the control of the Texas Board of Mental Hospitals and Special Schools. In 1965, the legislature created the Texas Commission for Indian Affairs — the name was changed to the Texas Indian Commission in 1975 — to administer state funds and programs at the reservation.

Apodaca says he is confident some kind of understanding can be reached with the attorney general's office, whether or not the Hightower bill passes. (The bill was reported out of the Cultural and Historical Resources Committee by an 8-0 vote.) If the opinion is not revised, the Indians plan to sue.

Harley Spoon, an aide to Rep. Hightower, insists that the opinion was not the work of Attorney General Mattox — although Mattox certainly signed it. "Mattox's intentions are right," Spoon said. Spoon blamed the attorney in the AG's office, Bruce Youngblood, who wrote the opinion. "Youngblood sat on this 'til Mattox got there," Spoon charged. "In answering the question about hunting laws, he questioned transfer of trust, status of the reservation, tax status of the tribes, all kinds of things." (Youngblood told the *Observer* a response to Spoon's charges would not be appropriate.)

"The biggest problem in Youngblood's approach was that it was a negative approach rather than a positive approach," Apodaca said. "I think the end result of the whole deal is that it will lay to rest both present and future problems." J.H.

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# Chemicals

(Continued from Cover)

Representative Al Price (D-Beaumont) is also acquainted with the Chemical Council. On April 7, he told the *Observer* his "right-to-know" bill (HB 2117, co-sponsored by Rep. Ed Watson) was being held up by House Speaker Gib Lewis. Price pointed out that his bill was one of five out of the first 2,320 introduced that had not been referred to a committee. (HB 1660, the companion bill to Uribe's pesticide victim recovery bill, was another). Price said he thought he knew what was behind Lewis' delay. In his opinion, it was the Chemical Council (see "Chemical Industry Opposes Right to Know," *TO*, 4/22/83).

Rep. Ed Watson (D-Deer Park), sponsor in sessions past of occupational health and safety and environmental bills, also knows the Chemical Council. This session it's his hazardous waste siting bill (HB 487) that has aroused the council's ire. Watson's bill would provide legislative direction to those state agencies which develop and then implement rules for the regulation of hazardous waste.

Jon Fisher, whose title is director of research for the Texas Chemical Council, told the *Beaumont Enterprise* earlier this year that Watson's bill is "environmentally irresponsible." He explained that Gulf Coast industries prefer to dispose of their hazardous by-products closer to the plant to save on transportation, land acquisition, and insurance costs. The coastal-clay soil, Fisher said, offers "added protection," and, in his opinion, engineering design could turn a flood-prone area into an environmentally safe site for hazardous wastes. Banning waste sites along the coast, Fisher noted, "is something the Sierra Club has been after for a long time."

"The federal EPA [Environmental Protection Agency] has become a joke, and the Chemical Council of Industries has tunnel vision directed only at the profit line," Rep. Watson told the *Pasadena Citizen*. "They constantly assert there is no need for siting legislation. The marriage of these two groups is choking the state in its efforts to prevent occurrences such as Times Beach, Mo., and Love Canal."

Obviously, there is no love lost between Ed Watson, who is also president of his Oil, Chemical, and Atomic Workers Union local, and the Texas Chemical Council. He suspects that Gib Lewis' failure to reappoint him to the House Environmental Affairs Committee, where he had served five terms, was the result of chemical industry influence.

As a veteran legislative assistant put it, "Ed Watson got too effective."

## An Interest To Protect

So who is the Texas Chemical Council, this rough beast plodding through the Capitol, leaving in its wake angry environmentalists and labor advocates, thwarted lawmakers and public interest groups? How powerful is the council, and how does it work?

Officially, the Texas Chemical Council is an association of 85 chemical manufacturing companies doing business in Texas. The council claims to represent 90% of the industry in Texas. Members of the council include Dow, Shell, Monsanto, Du Pont — all the familiar names as well as names not so familiar. The

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*"If your son-in-law runs the Calendars Committee and determines what gets to the floor, and you've stacked the committees the way you want them, you can pretty much let things take care of themselves."*

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council is governed by a board of directors, elected annually; its president is veteran lobbyist Harry Whitworth. The larger companies have their own lobbyists in Austin, all of whom meet weekly with Whitworth to coordinate strategy. Also allied with the Chemical Council are the Texas Agricultural Chemical Association and the Agricultural Aviators Association, both represented by Jon Fisher.

In reality, the Texas Chemical Council is Harry Whitworth. The dean of Austin lobbyists, the 62-year-old Whitworth was a state representative from Bastrop County from 1947 to 1950. Although Whitworth refused to talk to the *Observer*, there was no dearth of opinions about him, though most respondents insisted that their comments remain off the record.

"I consider him a friend," a legislator-turned-lobbyist, a man of liberal tendencies, told the *Observer*. "He's unfailingly honest, even if he is just to the right of Attila the Hun."

"Harry Whitworth is able, single-minded in his purpose, affable, tough as a boot but realistic," a fellow lobbyist and former state official told the *Observer*. "He's immensely powerful."

"We hate them [the Chemical Council] because they always oppose us," a

former legislator from the Gulf Coast said, "and it's understandable why they do. They're just like any other lobby; they have an interest to protect. They just happen to have more money, more influence. They're not evil people. It's just that some of their interests are not in the public interest."

Whitworth, who takes favored lawmakers white-wing dove-hunting in Mexico every year, also indulges in personal vendettas, some observers say. "The last time their deal was that the only good candidate was a Republican," a former legislator observed. "That's what Whitworth does, and they [members of the Chemical Council] are getting tired of it. I hope that Don Adams [lobbyist for Monsanto] succeeds him. Whitworth, I couldn't ever talk to. He picks people he doesn't like, as well as bills he doesn't like."

Whitworth's Chemical Council was part of last year's Associated Research Group, the innocuous name for the gaggle of giant lobbies that invited candidates to Austin to be "interviewed" about various issues as well as about whether they supported Gib Lewis. Joining the Chemical Council were the Texas Medical Association, the Texas Association of Realtors, the Texas Automobile Dealers Association, the Texas Restaurant Association, Texas Motor Transportation, Texas Association of Business, Texas Savings and Loan League, Dairy Products Institute of Texas, and the Texas Retailers Association. By the end of last year's primary elections, members of the Associated Research Group had donated more than \$1 million to more than 150 political campaigns. Usually they all backed the same candidates.

## Campaign Contributions

More often than not, Whitworth and friends backed losers, usually Republicans. FREEPAC, the Chemical Council's political action committee, contributed for example, \$6,000 to Bill Meier, the Republican candidate for attorney general, and also supported the opponents of Reps. Watson and Price and state Sens. Bob Vale, Tec Lyon, John Montford, Chet Edwards, and Hugh Parmer. FREEPAC money also went to the opponents of state Reps. Billy Clemons, James Hury, Ernestine Glossbrenner, Bob Barton, Noel Grisham, Steven Carriker, Steven Wolens, Jesse Oliver, Jim Crockett, Richard Burnett, Dudley Harrison, Larry Don Shaw, David Hudson, Paul Colbert, and Ralph Wallace. Among FREEPAC's winners were state Sen. Buster Brown (R-Lake Jackson), who also received

contributions from Diamond Shamrock, Dow, AMOCO, and Union Carbide. It was Brown who defeated veteran state Sen. A. R. "Babe" Schwartz in 1980.

After Agriculture Commissioner Reagan Brown was defeated in the May 1982 primary — despite considerable backing from Dow, Monsanto, and AG-AIRPAC (the agricultural aviators' PAC) — the chemical people fell in behind Republican candidate Fred Thornberry. Monsanto, Dow, Diamond Shamrock, and Union Carbide all contributed to his campaign. (Monsanto also contributed \$500 to Jim Hightower.) Among the duties of the Texas Department of Agriculture is the inspection of pesticide use. Whitworth worked actively on Thornberry's behalf, even after it was obvious that Hightower would be the winner. One political analyst told the *Observer* that, while it would have been politically prudent for Whitworth not to oppose Hightower, the Chemical Council lobbyist apparently could not resist the temptation. "He's had it in for Hightower," the analyst said, because of Hightower's role with the Texas Consumer Association in hearings on the Agent Orange bill last session.

The rumored magnitude of the Chemical Council contributions, including contributions from individual chemical company PACs, is not borne out in election reports filed with the Secretary of State. Former Sen. "Babe" Schwartz believes he knows why. Alluding to contributions from the chemical industry to his election opponents during his more than two decades in the legislature, Schwartz told the *Observer*, "They operated on a cash basis. The all had cash coming out of every pocket of every suit they wore. Yet you could never find anybody's name [on contribution lists] associated with Dow Chemical. But I know the meetings they had, what was said, their phony lists."

Schwartz, now a lobbyist himself, said that many companies contribute indirectly to campaigns by paying extra fees to their attorneys, who are instructed to watch out for company interests. The attorneys then pass the money on as contributions from their law-firm PACs.

Some lobby watchers suggest that Whitworth's penchant for backing losers, usually Republican, has resulted in a loss of clout (though he was by no means alone in last year's election). They note that he is not as visible around the Capitol as in years past, that colleague Jon Fisher (who also declined to talk with the *Observer*) seems to be the foot soldier for the day-to-day work.

But it's not just Harry Whitworth that makes the Chemical Council a hefty lob-

by. As Whitworth rarely fails to point out, the chemical industry is indirectly responsible for more than 425,000 jobs in Texas. It provides either "the stuff or the stock" from which 15-18% of the U.S. economy is realized. And as the president of E. I. Du Pont de Nemours & Co. pointed out in a speech at La-Marque a few years ago, "Texas has become such a major center for chemical manufacturing because of an abundance of low cost oil and gas, combined with local and state policies . . . that have encouraged industrial growth. . . . Oil and gas are the starting materials for production of almost all the major plastics sold today, for all of the truly synthetic fibers, for many pharmaceuticals and agricultural chemicals, for all synthetic rubbers, and for basic chemicals, such as



Chemical industry huddles during "right-to-know" debate.

methanol and ammonia, essential to the manufacture of hundreds of consumer products. . . . The U.S. chemical industry uses about 6% of the country's oil and 12% of its natural gas for both feedstocks and fuel."

An industry of such magnitude naturally has no problem attracting a politician's attention, and Gib Lewis is certainly no exception. "It [the Chemical Council] doesn't have to do much," a lobbyist told the *Observer*. "If your son-in-law runs the Calendars Committee and determines what gets to the floor, and you've stacked the committees the way you want them, you can pretty much let things take care of themselves."

Harry Whitworth's son-in-law and Calendars chairman is Bill Messer, the wily 32-year-old Democrat from Belton, who is about as anti-environmental and anti-consumer as they come. Nor is it mere coincidence that Lewis appointed Republicans Tom Craddick and Fred Agnich to chair the House Committees on Natural Resources and Environmen-

tal Affairs. Neither are environmental champions. In addition, Lewis' new executive assistant, Buddy Jones, received a substantial campaign contribution from the Chemical Council when he ran last fall against state Sen. Chet Edwards, the Duncanville Democrat. Following his primary defeat, Jones stumped the state as a Democrat for Clements.

Lieutenant Governor Bill Hobby is not without his connections to the chemical industry. Hobby's campaign manager for the 1982 election was former state legislator Don Adams, who is a leading lobbyist for the Texas Association of Business and Monsanto, which is a member of the Chemical Council. Adams and Monsanto are known to distance themselves somewhat from the some of the more partisan and vengeful activities

of Whitworth and the Council. Hobby and Governor Mark White did each receive \$1,000 contributions from the Council's FREEPAC one month after the November, 1982, elections.

### **Pesticide Victim Bill**

Despite a cozy relationship with Lewis and the legislature, the Chemical Council seemed caught off-guard by the Senate Committee hearings on the pesticide victim recovery issue — SB 1060 by Uribe, co-sponsored by John Whitmire; HB 1660 by Roman Martinez and Matt Garcia. The bill provides for the right to a private cause of action by a person "who is aggrieved by another person's violation or threatened violation" of pesticide use regulations. That person can sue for damages or for an injunction against further violations. In addition, retaliation against any person who reports a violation of pesticide regulations is prohibited, and harassment of the person within six months of his or her report will be considered unlawful retaliation. The bill con-

Photo by Michael McCullar

tains a clause designed to prevent "bad-faith" claims filed under the act.

The Chemical Council came up with a summary of its objections to the bill a week prior to House hearings. Among the council's allegations are: "(1) There are already adequate remedies under state law; (2) Congress previously rejected private citizens' suits to enforce the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) because of the potential for baseless and harassing suits; (3) It could be used to obtain injunctions against the use of pesticides in a manner approved by the State of Texas and EPA. It could be used to stop the application of pesticides in public health programs and emergency applications; (4) [It] would be inconsistent with and interfere with enforcement actions and policies of the State of Texas and the federal EPA."

The Texas Pesticide Research and Education Project responded to the Chemical Council's allegations. In answer to the council's contention that adequate remedies already exist, the Pesticide Project pointed out that in 1982, only 10 violators out of 450 misuse complaints "were subjected to any administrative action." A 1982 Government Accounting Office (GAO) study and a 1982 Texas House Interim Study both found that the enforcement of pesticide laws were inadequate. While \$1,000 fines may be assessed in some cases, fines commensurate with violations are rare. "In 1982," the rebuttal states, "three farmworkers were hospitalized for a week due to illegal exposure to a pesticide; the defendant seed company was fined \$50."

Concerning the citizen's right to private cause of action under FIFRA, the Pesticide Project charged the Chemical Council with omitting the fact that, after a 1972 rejection of such an amendment, the U.S. House of Representatives, in the FIFRA reauthorization bill of 1982, added language to give citizens what one Congressman called the same rights as chemical companies have in court. The chemical industry also seems to have overlooked the "bad-faith" provision of the bill, which would protect law-abiding farmers and applicators from harassment suits. In addition, injunctions must be approved by the courts and would not apply to legal public health and emergency applications unless those applying the chemicals were breaking the law.

To the Chemical Council's contention that private cause of action would preempt EPA and TDA jurisdiction, the Pesticide Project document points to the testimony delivered by the TDA in favor of the bill, saying it would augment TDA efforts against illegal pesticide use. Dee Simpson of the Farmworker Advocacy

Center told the *Observer* there is only one state investigator for every 7,000 applicators and that only 5% of the complaints filed resulted in any official state administrative action.

Regarding the Chemical Council's EPA advocacy, Simpson said, "Texas has never exhibited such fealty to federal agencies before. Just because the EPA presents an expensive system, that doesn't make it effective, and it doesn't protect Texas. Texas must protect its citizens."

"A 1980 survey showed that 53% of the farmworkers questioned in South Texas had been sprayed directly while working in the field, and 61% had been sprayed with pesticides drifting from another field. This also hits people living near forests and people living in suburbs at the edge of fields."

"This law does not affect the law-abiding farmer or applicator. It protects them with the bad-faith provision. This law affects those culpable for breaking the law. We have a segment of an in-

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*"It always helps to have a private cause of action to back up regulatory requirements. The basic regulatory requirement [the label] . . . is not often seen by the injured party."*

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dustry breaking the law with impunity. If it's only 5%, that could mean millions of pounds of illegal toxic chemicals to which humans are exposed."

When the bill was heard by the House Labor and Employment Relations Committee on April 27, its sponsor, Rep. Roman Martinez of Houston, reported on a meeting he had that afternoon with David Sebree, lobbyist for Du Pont. Martinez understood Sebree to say he had no trouble with the bill as long as it included definitions that would give a cause of action only to an individual injured by illegal pesticide use. Sebree told the *Observer* the next day, however, that he had said he had no objection to the bill's language preventing retaliation against an individual who reports illegal pesticide use. He believes, however, that the cause of action section allows too much room for damage action. He was concerned "with the lack of definition as to who the individual is" and with the right to sue concerning illegal pesticide use even in cases "where there was no harm accruing." Sebree argues that he doesn't believe there is a need for cause of action legislation here. "Under the strict liability laws in Texas, I can't see why

a person — a person who is substantially hurt — can't recover substantial damages. The guy's got the right to a cause of action. I think the TDA — if they haven't been enforcing these regulations in the past — I bet the new fellow [Hightower] will enforce the regulations." An aide to Rep. Martinez believes there's been some sort of misunderstanding.

Tom McGarrity of UT Law School followed Martinez in testifying before the committee. He said there is a real lack of enforcement against pesticide abuse: "It always helps to have a private cause of action to back up regulatory requirements. The basic regulatory requirement is the label on the pesticide. The label is not often seen by the injured party."

Robert Looney, a lobbyist for the Texas Association of Business, then addressed the committee to voice his opposition to the bill. Looney said he was appearing on behalf of the TAB and at the request of his friend Harry Whitworth of the Chemical Council. Looney was joined for questioning by the committee by Jon Fisher of the Chemical Council. According to Looney, the Pesticide Victim Recovery Bill created "legalized bounty hunters." "While the agricultural chemical industry is not on the side of the pesticide violators," he said, "it would be naive to assume that only people with legitimate gripes would use this."

When Rep. Gonzalo Barrientos, D-Austin, told Looney and Fisher that the TDA took action on only 10 out of 450 cases last year, Looney replied, "That is inadequate. There should be enforcement of action in the TDA rather than letting every citizen in the state go to court to get enforcement of state laws."

Barrientos thinks one more vote is needed to get the bill recommended favorably out of the committee to the House. Martinez's aide thinks they have the vote.\*

### *Hazardous Waste*

On Ed Watson's hazardous waste bill (HB 487), the Chemical Council seems to have reached some sort of compromise and, as usual, the Council seems to hold the upper hand. Watson's original bill provided legislative direction to those state agencies which

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\*At this writing, a representative of the Chemical Council is scheduled to speak next week on the pesticide victim bill to a closed meeting of the Farm Forum, which is composed of agricultural association representatives, lobbyists, and agricultural policy makers. In the past, the right-wing Texas Farm Bureau and the Chemical Council have worked together on bills of mutual interest, and the Farm Bureau is on record as opposing bills regulating pesticides.

develop and then implement rules for the regulation of hazardous waste. (In Texas, which ranks first among the states in quantities of hazardous wastes generated, 60% of all hazardous waste produced is from chemical, petroleum, and refining activities.) Currently, the Texas Department of Water Resources (TDWR) and the Texas Department of Health (TDH) share responsibility for regulating solid-waste management in the state.

Watson's original bill would have required TDH and TDWR to: (1) use the technical expertise of other state agencies (the State Soil and Water Conservation Board, for example, or the Bureau of Economic Geology) in developing

rules governing the management of hazardous waste; (2) condition the issuance of a permit for a hazardous-waste facility on selection of a site where natural conditions minimize the risk of water-supply contamination; (3) define the characteristics that make an area unsuitable for the location of hazardous-waste facilities (areas subject to flooding, for example, or areas where groundwater aquifers are recharged as well as permeable-soil areas); (4) refuse permits for hazardous-waste facilities proposed for location in areas deemed unsuitable.

At present, hazardous-waste facilities in Texas may be located in areas which, for all the reasons mentioned above,

make them questionable sites. TDH and TDWR may encourage or require waste storage, processing, or disposal facilities to meet certain engineering design specifications (a levee around a facility located in a flood plain, for example), but there's nothing to prohibit the facility. Many experts, however, question whether engineering design alone is adequate to prevent problems from arising with hazardous-waste facilities. EPA, for example, has stated there is no such thing as a "secure" landfill.

The Chemical Council contended Watson's bill was unnecessary since TDWR has recently prepared revisions to its technical guidelines concerning

## Other Hazardous-Waste Legislation

**HB 1543** by Rep. Frank Collazo of Port Arthur would require the Texas Department of Water Resources (TDWR) to impose an annual fee on the owners or operators of hazardous-waste facilities at which groundwater monitoring wells are required. The fee would be used to pay expenses necessary for the TDWR to sample and analyze data from groundwater monitoring wells as a supplement to monitoring requirements established by the rules or permits issued by the Department.

**HB 1727** by Rep. Debra Danburg of Houston would strengthen the regulation of hazardous-waste transportation in Texas. It would require the TDWR to adopt regulations providing for the safe transportation of hazardous waste on highways and railways in the state. These regulations would have to be at least as stringent as those adopted by the U.S. Dept. of Transportation. Also under this legislation, the Railroad Commission would be required to conduct regular inspections of the track in the state to determine where a danger of derailment exists and to notify the TDWR.

At this writing, staff members for Rep. Danburg are trying to work out the coordination problems involved in the legislation. Because so many state agencies have some jurisdiction over waste materials, more sophisticated procedures are needed than those outlined in the bill. Rene Rabb, Danburg's aide, also said that some opposition has been voiced by chemical interests who object to lack of agency coordination. The chemical interests also wanted more

consistency between state and federal requirements. No hearing date has been set.

**HB 2048** by Rep. Tom Uher of Bay City would prohibit the issuance of a new permit or the extension or renewal of an existing permit for a hazardous-waste facility on an inland site within 100 miles of the shoreline of the Gulf of Mexico. In effect, it bans hazardous waste facilities in the Texas coastal area.

**HB 2049** by Uher would impose a disposal site cleanup fee on holders of waste discharge permits and would create a disposal site cleanup fund from that revenue.

Both of Uher's bills received public hearings on April 26 in the House Natural Resources Committee and were both referred to a subcommittee headed by Rep. Rodney Tow (D-Conroe). The committee substitute for HB 2048 added a grandfather clause allowing any company within 100 miles of the Gulf Coast now holding a permit to continue getting a renewal as long as it complied with all other regulations. The substitute also exempted from compliance those sites used to store or dispose of waste generated at the site where the facility is located.

The substitute for HB 2049 sets specific fees to be paid into the disposal cleanup fund, no longer provides for exemptions, and also leaves the way clear for a legislative appropriation to be made supplemental to the fund.

Although both bills met with some opposition from the Chemical Council and the National Solid Waste

Disposal Association, Uher aide Mario Martinez was optimistic. "We're very pleased," she said. "We didn't think that the subcommittee would be this favorable." In addition to Tow, the subcommittee includes Reps. Geistweidt (R-Mason) and Buchanan (D-Dumas).

**HB 1023** by Rep. Tony Polumbo of Houston would prohibit the siting of hazardous-waste facilities in areas where 500 people or more live within a one-mile radius of the facility.

**HB 1800** by Rep. Ralph Wallace of Houston would prohibit the issuance of new permits or the extension of existing permits for hazardous-waste facilities in Texas after Sept. 1, 1983. An existing permit for a hazardous-waste facility could not be renewed for more than two years, and no such permit could be renewed on or after Sept. 1, 1985. The bill, in effect, would ban hazardous waste facilities in Texas by 1985.

**HB 1809** by Rep. Mark Stiles of Beaumont is a companion to SB 990 by Sen. Carl Parker of Port Arthur. The bill is written so that it is only supposed to apply to Liberty County, where two disposal companies are proposing to locate disposal facilities. (See story, p. 10) These bills would ban the location of hazardous-waste facilities (both land facilities and injection wells) in the 100-year flood-plain areas of Liberty County.

All of the siting bills have been referred to the House or Senate Natural Resource Committees.

*Kay Gunderson*

the siting of hazardous-waste facilities, and Watson's bill would merely duplicate those guidelines. The Council's Jon Fisher, however, agreed not to oppose a reworded bill.

Watson's original bill included the following clause: "Each state agency shall adopt rules that: . . . prohibit issuance of a permit for a solid waste facility for processing, storing, or disposal of hazardous waste if the facility is located in an area determined to be unsuitable under rules adopted by the agency. . . ."

In the wording worked out with Fisher, the clause has been rewritten as follows: "Within one year after the effective date of this Act, each state agency shall adopt rules that: . . . prohibit issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules adopted by the agency *unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics . . .* [italics ours]."

It's that final clause of the compromise bill that seems to undercut the original intent of the bill; nevertheless,

Ken Kramer, legislative chairperson for the Lone Star Sierra Club, urged Watson to accept the compromise. (Watson's bill was a major piece of environmental legislation for the Sierra Club; Kramer, however, was as reticent as the Chemical Council about responding to *Observer* phone calls and requests for interviews, so we are unable to present his rationale.) Rep. Watson told the *Observer* that he thought the bill had been strengthened and that this was the best chance for passage.

A legislative insider, however, tells a different story: "Most people were surprised that the Chemical Council would agree to anything that would let this [hazardous waste siting] become statutory," he said. "In agreeing to this new bill, this is probably a public relations move on their part; it means they've probably already killed it down the line. The last thing they want is statutory regulation."

In discussing the influence of the chemical industry in the legislature and in state agencies over the years, Babe Schwartz told the *Observer*, "The question is: what has happened to Texas in that time? Why is there so much lung cancer in Houston and Texas City? How many estuaries, rivers, and lakes got polluted?" □

## Campaign Contributions

The following state senators received sizeable campaign contributions from chemical industry PACs: Howard, Henderson, Blake, Harris, Brown, Sims, Santiesteban, as did Buddy Jones and Tom Stolhandske, opponents of winners Chet Edwards and Bob Vale. Washington and Brooks received smaller contributions from FREEPAC.

Among the state representatives receiving FREEPAC money were: Short, Mankin, Presnal, Kemp, Kuempel, Gary Thompson, Horn, Coody, Polk, Pennington, Terral Smith, Khoury, Arves Jones, Stiles, DeLay, Simpson, Wieting, Staniswalis, Emmett, Pierce, and McKenna.

One month after the November, 1982, elections, FREEPAC made

\$1,000 contributions to Mark White and Bill Hobby and a \$500 contribution to Gib Lewis.

On a national level, chemical industry PACs gave over \$6 million in contributions during the 1980 elections. The March/April 1981 issue of *Sierra* reports that 168 PACs were formed by chemical companies and their trade associations.

Among the top recipients of 1980 chemical PAC money were the Republicans who defeated Senators John Culver (Iowa), Frank Church (Idaho), George McGovern (South Dakota), and Birch Bayh (Indiana). In the 1981 Congress, the 53 Republican Senators had received an average of \$28,878 in chemical PAC money apiece, while the Democratic Senators averaged \$7,882 apiece. □

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# IN

IT'S JUST AS YOU might picture it. As the bell sounds in the Capitol signaling representatives that the House is about to convene, they are already standing in the House anteroom or in the lobby outside the anteroom or they are milling around the pages' station or taking repeated sips from the water fountain, using the water as ellipses in their conversation or they are leaning against the second floor railing of the rotunda with their eyes always on the traffic of legislators coming up or down the stairs or getting off the elevators. With a hand on the arm of one representative, they reach out with the other hand to delay the progress of a second legislator passing by. They are mostly male, mostly middle-aged, mostly overweight. They wear three-piece suits into mid-April. Some let custom boots peak out from under their suit-pants legs. Most don't. The favorite grip is the thumb and forefinger on the collarbone with the full weight of the palm resting on the shoulder of a legislator summoned from the House Chambers. It says, "Do me this favor and we'll be good to you." Then there's the firm right-handshake with the left hand extended to grip the target's bicep. This is a signal of sincerity. All through and around and over and under the collar and shaking the talk never stops. There are hard stares and pleading looks and the words flowing around them in hushed tones or breaking out in laughter and loud shouts under the 20-foot ceiling.

This is the business lobby. They are not alone. Among them Sam Dawson of the Steelworkers lurks, ready to lasso the stray legislator; crewcut Charlie Sullivan circulates offering prison reform to cleanse the soul; Linda Team of the churches' IMPACT lobby appears and disappears, rounding up support for the poor, the neglected, the misused; lean John Duncan, holding newspaper clippings about the latest bill intent on the evisceration of a civil liberty, peers over the tops of his spectacles at the legislative marketplace.

Then there are the interest groups organized for a day-trip to Austin for



# Toxic-Waste Battle in Liberty County

By Louis Dubose

Liberty

**W**HEN LAMAR, LLOYD, David, Donald, and Arthur Maxwell informed their Southeast Texas neighbors of a \$20 million joint corporate venture with Envirosafe, Inc., to turn 590 acres of the Maxwell brothers' rice and soybean farm into a hazardous industrial waste disposal site, they anticipated some opposition. No one wants a toxic waste site in her back yard, and despite a paucity of environmentalists in this corner of the state, there would be public outcry from those whom Congressman Charles Wilson ten years ago described as "fern-fanciers."

Through an amateurish public relations effort, the Maxwells, in January of 1982, announced their decision to locate a waste-handling site some four miles east of their family home at Devers. Using fact-sheets and ads in Liberty's semi-weekly *Vindicator*, the Maxwells described the project as a benefit to the community "economically and environmentally," and a positive option to midnight dumpers and irresponsible corporations who had little interest in the community or environment.

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*"... enough pressure can be brought and enough money spent, that a hazardous waste site can be established."*

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Residents of Devers, from the beginning, weren't buying what the Maxwells were selling. Not a great deal goes on in a town of 600 without more than a few people hearing about it. Minta Theriot, a registered nurse, who, with her husband Sam and a 17-year-old daughter, lives on a 690-acre family ranch within two miles of the proposed site, learned of her neighbors' plan some time before it was made public.

Theriot, as she explains it, called Lamar Maxwell (who she has known

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*Louis Dubose is a teacher in the Liberty public school system.*

since childhood) at his office and was assured that there would be no waste dump but a recycling plant.

Devers' Mayor Charles Land, a local store owner, also "got wind of something going on with the Maxwells starting about two years ago." But, like most local residents, he was reluctant to believe that a toxic waste disposal site would be established on a piece of Maxwell property east of Devers, which most local residents describe as very flood-prone. When the Maxwells and the newly-created Envirosafe of Texas, Inc., went public with their plan to establish a Class I hazardous waste disposal site east of town, Land polled his six-man council and found them to be in unanimous opposition. In February, 1982, the council went on record as opposing the location of the Envirosafe facility in their community. Land, whose opposition to the site has cost him the trade of the Maxwells and their employees, insists that he speaks for 90 percent of the residents of Devers.

But the permit process for waste sites in Texas is technocratic rather than democratic. If a site is determined to be suitable, and the design of the facility meets agency standards, permits are awarded by the Texas Air Control Board, the Department of Water Resources, and the U.S. Environmental Protection Agency. Lloyd Maxwell, addressing Liberty's Commissioners Court on a day that commissioners unanimously passed a resolution opposing the location of any toxic waste disposal sites in the county, informed the court of several other variables in the permit equation. "I think it's been proved in the past that no matter what's happened, enough pressure can be brought and enough money spent, that a hazardous waste site can be established," affirmed Maxwell.

Maxwell's statement, quoted in *The Houston Chronicle*, has been given wide circulation by opponents, who cite it as an unabashed outline of the means that the wealthy farming and ranching family and their \$2.7 billion corporate partners will use to achieve their end. Of the commissioners' resolution, Maxwell was quoted in *The Vindicator* as saying, "It

was worth about as much as a warm glass of water."

## *Not Exposed to Facts*

As the Maxwell Bros. letterhead gave way to the ESI corporate logo, the volume and tone of public debate changed. Len Joeris, General Manager of Envirosafe of Texas, was in charge of shepherding the permit applications through state and federal agencies and assumed the responsibility of educating the public. To assuage opposition, Joeris used persuasion and education rather than court house confrontations. Joeris ex-

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*Stiles questions the fairness of establishing sites in areas where there are few generators of waste.*

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plained to this writer that dealing with organized opposition is a routine part of the siting process and conceded that a healthy majority of the people in the area are opposed to the location of the disposal site in the county. "But I also know," Joeris added, "that the majority of people in Liberty have not been exposed to the facts."

Joeris set out to convince the public, in the face of what he describes as a great deal of hysteria, that Envirosafe is a responsible and experienced waste disposal company, a ten-year-old subsidiary of a \$2.7 billion conglomerate, IU International.

To anyone who walks into his office, Joeris will outline his company's flawless record in operation of waste disposal sites in Utah and Pennsylvania. A Mason jar full of a sinister-looking, black, viscous liquid — a toxic industrial waste — is held in one hand. What appears to be a benign basalt disk about the size of a hamburger — the same product is in the jar in a stable form — is held in the other. The process by which liquid wastes are to be stabilized includes an admixture of fly-ash and dewatering in an on-site plant. The processed product is then spread over a sloped thickness of aggregate in

an open cell. Only one of the forty cells planned will be active at a given time. Other precautions include a plastic liner under the aggregate, double layers of compacted clay and the natural Beaumont Clay Formation. As the material cures in the open cells, some of the toxic leachate is washed through the aggregate by rainfall, to be collected in concrete sumps and disposed of in an injection well. Some of the material produced by the process can be "de-listed," but Joeris admits that because of the diverse nature of the wastes, which will include organic and non-organic solids, sludges, and liquids, it is not likely that anything will be "recycled" for use as roadbase or fill material. Joeris describes a system of redundant safety features and explains that the facility design surpasses recently drafted EPA guidelines. "There is no such thing as a perfect site," explains Joeris, "but this is as close to it as anything I've ever seen." And all of the design features are subject to agency revision during a long series of meetings and hearings required by the permit process. It is Texas' demanding permit requirements and process that Joeris believes protects the public interest and guarantees site and facility suitability. It will cost Envirosafe more than one million dollars to get the site permitted.

### **Flood-Prone**

Minta Theriot lives some three miles from Joeris' Devers office, two miles east on highway 90, then north on a mile-long sand road that twists through stands of oaks and pines, then through a marshy stretch, before it breaks into a clearing of several hundred acres. There sits the Theriot home and the home of her parents Kenneth and Maurine Ray. Theriot, 44, is still described by some older residents of Devers as "a real smart girl who finished at the top of her class in nursing school." Seated at her dining room table, she adjusts her reading glasses and surveys files, topographical maps, and notebooks. She also has a story to tell: not all of her facts, and even fewer of her conclusions, are in agreement with what Joeris and the Maxwells are trying to present to the public.

Theriot's most compelling argument concerns the regulatory agencies. Why, she asks, should anyone who lives in or around Devers, or downstream from the site, feel secure with their physical well-being in the hands of the Texas Depart-

ment of Water Resources and the federal Environmental Protection Agency? "The regulatory agencies failed in the East Texas road-oil case. If you ask them about monitoring [she has], you'll discover that the companies do most of their own monitoring. When you tell me that a regulatory agency will protect us, I don't accept it."

Joeris argues that his company is being judged by past performance of many "slop-pit" operators and that newly drafted EPA guidelines preclude the permitting of even marginal operators. Theriot and other local opponents remain skeptical.

As Theriot sees it, the TDWR should be regulating what they permit: "The company representatives go to Austin and meet with agency representatives who advise them and actually draft the permit. If the state is so short of time for regulation, why should they provide the companies with a consulting service? The agencies issue the permits and leave the companies to monitor their operations," she adds.

Captive regulatory agencies are standard fare in most government texts but a captive permit agency might be a horse of a different color. Theriot claims that TDWR has never flatly rejected an applicant who has begun the permit process. The agency cannot deny the claim. According to their office of public infor-

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*"They're not disposing waste, they're storing it."*

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mation, no records are kept on the number of applicants and the final disposition of permits. They will say that over the past five years, three or four Class I permits have probably been denied. The process, they add, discourages unqualified applicants, and it is not unusual for applicants to withdraw their application early when they see the handwriting on the wall.

Theriot also raises the issue of flooding. She produces a topographical map that illustrates that the land between her property, the Envirosafe site, and Willow Creek drops about ten feet in elevation. She concedes that she is neither a hydrologist nor a geologist, but she has lived on the site since she was a child. The Maxwells, although they have lived in the area for several generations, acquired the 585 acre site several years ago. Land, Theriot, and local farmers, including Sidney Hill, from whom the property was purchased, argue that it is flood-prone.

Theriot quotes, by volume and page, from the Envirosafe permit application: "For the Willow Creek Drainage Basin, no specific data exists which defines the 100-year flood plain."

Joeris has argued that the specific data that opponents are demanding is available on less than two percent of the land in the U.S., land where high density population or heavy industrial development is anticipated. According to the HUD maps displayed in his office, the 100-year flood plain is close to, but does not encroach on, the site.

Theriot believes that the Maxwells were "taken in" by Envirosafe. Her family and David Maxwell attend the same church in Devers. She believes that as long as the site is active Envirosafe and the Maxwells will assure its safe operation. The projected life of the site is 20 years. Theriot's concern is for what will happen to the site 50 years from now. She argues, requirements notwithstanding, that "it is silly to believe that the company will continue to monitor the site for 20 years after it is closed and sealed.

"Do you know," Theriot asks rhetorically, "that they are going to put some material directly into the landfill? According to their permit, dry solids will go from the truck into the landfill. If their treatment process is as important as they say it is, why don't they process all toxic material?"

Theriot has learned from local Class I plant managers and the TDWR office at Deer Park that waste volume is down and existing sites will not be filled for years. She argues that the legislature should take advantage of a depression in the industry to consider alternatives to landfills.

"Each of those cells," she observes, "is the size of six football fields, and, there will be 40 cells. They're not disposing waste, they're storing it."


### **Waste Legislation**

Envirosafe executives back in Horsham, Pennsylvania, might now be questioning the wisdom of launching into the permit process for a Class I waste disposal site during an election year in Texas. Mark Stiles, now the freshman Democratic representative for the 21st District, set the tone early in his campaign, coming out in unequivocal opposition to the location of toxic waste dumps in largely agricultural southern Liberty County. Thenceforth, every candidate who stumped through the county got square with his audience, not by stating his opposition, but by describing the magnitude of his opposition to toxic waste dumps.

While most candidates stressed the

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dangers associated with landfills, Jim Hightower, in his campaign for agriculture commissioner, raised the issues of the loss of valuable farm land and the threat to sources of irrigation. Ironically, depressed farm prices were probably a factor in the Maxwells' decision to convert part of their farm to a landfill.

Stiles has introduced a bill in the house that would prevent the location of toxic waste disposal sites in flood prone areas. As Stiles explains H.B. 1909, it would assure that "no permit would be issued in any county where a flood hazard would make it unsafe." Stiles considers the Envirosafe site a potential hazard to drinking water supplies in Jefferson County. Stiles also questions the fairness of establishing sites in areas where there are few generators of waste. Liberty County, according to Joeris (using TDWR figures), exports 180,000 gallons of waste annually, a nominal quantity and within the weekly capacity of the proposed plant.

Stiles' bill was heard in an April 18 meeting of the House State Affairs Committee. It was sent on to the subcommittee for technical changes. Stiles is optimistic about the bill's passage. He says Gib Lewis backs it and insists the powerful Texas Chemical Council has not shown any interest in lobbying against it.

The freshman representative enlisted the support of Senator Carl Parker, who introduced a similar bill, S.B. 990, in the Senate. Parker is considered by many environmentalists to be an unlikely ally, a knock that rankles the Port Arthur senator. Questioned about his role in deleting special floodplain restrictions from environmental legislation at the end of the last legislative session, Parker argued that the amendments that he deleted were a result of demagoguery of then South Texas Representative Arnold Gonzalez. Parker described one stricken amendment which would have allowed county commissioners to select alternate sites as "one of the most idiotic provisions ever heard of," adding that it would have opened the door to graft, cronyism, and corruption. "A lot of people took that article as Gospel" (TO, June 12, 1981), Parker complained, "and never looked at the substance of the issue." Stiles, observing that the senator has proven a lot of his critics wrong, gives Parker full credit for drafting both the house and senate bills.

Parker claims that there is no change in his course and that his hand in drafting and sponsoring the legislation is logical and circumstantial. "Right now I'm concerned for two reasons," Parker said. "One, we're at the end of four years of Clements appointments. Two, the state



Photo by Louis Dubose

Mayor Land fears contamination of Willow Creek and environs.

of the art is in flux, and the EPA hasn't finalized their guidelines. And the EPA is in complete disorder in Washington."

Similar legislation has been introduced in Washington with Ganado's Rep. William Patman serving as co-sponsor. The bill Patman is backing would ban disposal of toxic chemical wastes in landfills, forcing industry to use more costly incineration for disposal. Patman has become involved in a similar siting dispute in his district, where Waste Management, Inc., is considering locating a Class I landfill near Bay City. Patman is also working with organized opposition at Bay City.

### Fighting Rotarians

At Liberty, opponents of a Rollins' site and the Envirosafe site have formed People Against a Contaminated Environment (PACE). The group was organized in response to Rollins' acquisition of 1,000 acres at Dayton in the southwest corner of the county. When Envirosafe moved first into the permit process, it was there that PACE focused its effort. When in 1982 it became obvious that posturing and resolutions by local government were not going to make the companies go away, PACE retained the services of a consultant from Community Services Board of Dallas, who helped the group raise \$540,000 in local funds (a sum that Joeris questions) to oppose the permits.

Ralph Yarborough once described the environmentalists of Southeast Texas as "guerrilla fighters," clustered in small bands on the edges of the Big Thicket fighting the good fight against timber interests. Guerrilla fighters the PACE members are not. The movement is as patrician and Rotarian as the city of

Liberty can produce. PACE's leadership includes members of the most influential families in the south of Liberty County. Does this represent the "greening" of the upper and middle classes? Hardly. PACE members are at best situational environmentalists. A good number of its leaders make annual pilgrimages to Washington to lobby for funding for the Trinity River project, an ecological nightmare.

Despite a caveat from the Maxwells that "the less money a company has to spend on lawyers, the more that they will spend on community, and measures to assure that their site is the best and safest possible," a protracted series of public hearings are a goal of the public interest group.

Bill Daniel, the Liberty trial lawyer who is donating his services to PACE, has already won a few minor skirmishes, including retaining Stiles as a party to the air board hearings, then requesting and winning a legislative continuance. The air board hearings will, therefore, resume when the legislature adjourns. Similar procedural delays, along with the raising of substantive questions, will probably be employed when the Department of Water Resources hearings, considered to be far more important than the air board hearings, get underway.

Over a year has passed since the Maxwells went public with their plans. During that year both state legislators representing the county, the county judge and commissioners, the mayors of the two largest cities in the county, the mayor and council of Devers, the Chamber of Commerce, and a public interest group of several hundred have become actively involved in the fight to keep Envirosafe out of the county. □

# Toxic Chemicals on Trial

By Paul Sweeney

Austin

"In recent years, the fear of carcinogens and their effect on humans years after the original exposure has led to more sympathy for victims, both in court and in legislatures. Lawyers say the burden of proof is shifting from plaintiffs to generators and handlers of toxic waste."

— *New York Times*, March 13, 1983

**J**IM SALES, an attorney with Fulbright & Jaworski, the high-powered Houston law firm, often defends in court industries charged with pollution cases or injury to workers and community members by toxic chemicals.

Whether he's defending an oil company like Conoco or a major timber and wood products outfit like Temple Industries, however, the principle is always the same. "I tell the jury that, just as they have the Bill of Rights to protect them, my client has the presumption of innocence," Sales says. "The side that seeks to recover damages must do so by the preponderance of the evidence. That's what protects us all against the confiscation of our property and money."

While most attorneys agree that putting the burden of proof on the victim in, say, an automobile accident is reasonable, there is growing sentiment that the same principle is proving unfair in cases like Love Canal, Times Beach, Agent Orange exposure, and an ever-expanding list of environmental horror stories. And there is a rising feeling that, to fully make industries that deal with toxic chemicals more accountable, what's needed is a change in the rules of the legal game.

"With EPA and OSHA [the Occupational Safety and Health Administration] not regulating chemical exposures — with pesticides EPA just about abandoned ship — we have to resort back to the private tort system," says Thomas McGarity, a professor at the University of Texas School of Law and a former EPA attorney.

*Paul Sweeney, a frequent Observer contributor, is a free-lance journalist living in Austin.*

"I think that the courts are the place to do it," says Anthony Rosiman, founder of Trial Lawyers for Public Justice in Washington, D.C. "There are a lot of things you can do through the courts that you can't do legislatively. Plaintiffs don't have an organization with a political action committee."

What is needed, say attorneys and other concerned about industrial and occupational diseases and injuries, is a shift of the burden of proof from the victim to the manufacturer, toxic waste dumper, or party charged with causing the disease. This burden-shifting is seen as not just likely but inevitable.

"It's evolving," says Thomas McGarity. "It really depends on the outcome of several cases, including Agent Orange exposure and benzene."

The principal difficulty in these cases, attorneys say, is proving that an agent caused a disease — that the dioxin in Agent Orange caused cancer or that benzene exposure produced leukemia. "To get a medical doctor, no matter what his specialty, to say that a disease is caused by chemicals is almost impossible," says Richard Berger, a Niagara Falls, N.Y., attorney. Berger is pressing \$3 billion in damage suits against Hooker Chemical Co. on behalf of 700 Love Canal residents. "It's not like a broken arm in a traffic accident," he adds. "You can not identify the cause and effect. The best thing you can do is, on a statistical basis, say there's a high probability that a particular chemical caused the cancer."

Adds Marvin Legator, professor and director of environmental toxicology at UT-Galveston: "Look at the amount of money that went into studying the effects of tobacco smoke. We spent millions of dollars over 20 years. Yet we still can't prove a foolproof association."

Legator says that the Agent Orange issue, in which about 6,000 Vietnam War veterans and their families nationwide contend in the courts that the herbicide, made by Dow and other chemical companies, caused cancer, birth defects, miscarriages, and other health problems, is a classic example of the difficulties in proving such cause-and-effect relationships.

"If we could have done the study right after they were exposed to the compound," Legator says, "we could have shown the effects. We had gross indicator systems. But that was 15 years ago." Legator explained that genetic studies now identify chromosome breaks as a precursor of cancer. "We know that Benzene has chromosome breaks and that people go on to discover cancer," he explained. But he says that what chromosome breaks may have existed among Agent Orange victims have long since disappeared.

In the absence of such data, most causal links between a substance and cancer are done with epidemiological studies or animal tests. But because the origins of cancer are still not properly understood by scientists, these methods have their limitations in the courtroom — especially when the burden of proof is on the injured party.

"There's almost no research on birth defects among people in rural populations," adds Ralph Lightstone, an attorney with California Rural Legal Aid. "It would be very difficult if you waited for epidemiological studies to prove causality. So you have to extrapolate from animal tests. Of course, the chemical and pesticide industry has done a very good job making the public feel that everything is dangerous. The public is convinced that, if you take sugar in high enough doses, it causes cancer."

A 1980 report on compensation in pollution cases by the President's Council on Environmental Quality noted: "Often there is no scientifically valid method or study to establish a causal relationship between the pollutant and the disease. The high cost of conducting health effect studies, the absence of data on exposure levels, and some statutes of limitation requiring that a lawsuit be brought within two to four years of exposure — even though the disease is not evident until five or more years after exposure — may also prevent the bringing of a suit or raise substantial barriers to success."

This isn't true in all cases, of course. There are rare tumors, experience has shown, whose only known cause may turn out to be a particular chemical. This happened with angiosarcoma — a liver tumor found among vinyl chloride workers. And it happened with mesothelioma, a cancer of the chest lining linked to asbestos exposure. Victims of these diseases — if they survive — and their families are having increased success in court. But those contracting industrial diseases that mimic ordinary diseases of life aren't so lucky.

Even so, the hurdles faced over the

years in proving those cancers were due to exposures to toxic substances is hardly cheering. "Look how long it took to establish asbestos [as a carcinogen]," says Lightstone. "There still hasn't been a case yet in which a farmworker proved he or she got cancer from pesticides."

"I think what needs to be charted out is the type of evidence that a victim could present to be entitled to a presumption," says Bill Townsley, a Beaumont attorney. "It might be based on epidemiological studies or toxicological studies. Or it could be based on a compound, a process in manufacturing, or an occupation. You could say that in petroleum manufacturing there is a risk of leukemia and stomach cancer. Anytime a worker in that industry, who'd been there a given period of time, ends up with a disease, he gets a presumption."

Shifting the burden of proof is not likely to happen overnight. It won't happen uniformly, either. Courts in different states are already taking different tacks, for example, in the DES cases. And in New York the law still says that a court action should take place within two years of suffering damage — even if it takes

ten, twenty, or thirty years for a cancer to develop.

Industry attorneys are not likely to accept idly the burden of proof shift suggestion, to say the least. "I'm not a lawyer," observed Fred Mabry, health and safety director for the United Steelworkers Union's southern district, "but you'd have a hell of a time selling it to those who stand to lose."

Fulbright and Jaworski's Jim Sales, who has defended corporate clients in cases involving asbestos, polyvinyl chloride fumes, and formaldehyde, says: "I disagree with it [shifting the burden] totally and completely." He also attacked the DES decision in California as a "distorted concept." And he warns that there's "no free lunch." In other words, consumers will have to pay for the lawsuits with higher prices on manufactured products. And the effect may be to do harm to the American economy. Clients like General Motors "attract a lot of lawsuits," he said. "But the deep pocket gets shallower all the time."

However, the enormous social costs of cancer and environmental diseases are already absorbed by the public. A 1978

report by the Department of Labor, for example, found that only 2% of workers' compensation awards paid through state programs were for occupational diseases. Many of the remaining victims end up compensated by federal programs like the Black Lung Benefits Act, Medicare and Medicaid, Social Security, veterans benefits, or welfare.

Those who are concerned about the solvency of the Social Security system might be interested in this Department of Labor statistic: "In 1974, of the 652,000 long-term totally disabled adults who perceived their disability to be caused by occupational disease, 369,000 (57%) received Social Security benefits."

By contrast, "only 5% of those who perceived their disability to be caused by occupational disease received workers' compensation," according to the 1980 report of the Council on Environmental Quality. By 1978, the report says, 2.8 million disabled workers and two million dependents drew about \$13 billion in the Social Security Disability Insurance Program, although "how many were compensated for an environmentally related disease is unknown." □

# PCB Fires Smolder

By Hays Peterson

*Austin*

**T**HROUGH THE CITY of Houston a procession of eighteen-wheel trucks rolls day and night carrying every conceivable chemical to the southeast of town. There, the Houston Ship Channel winds, lined with jagged heights of smokestacks and narrow bayous draining strangely colored effluents into the channel. The nation's largest petrochemical complex straddles this arm of the Galveston Bay system.

Ten miles down the Gulf Freeway from the center of town, part of the round-bellied tanker parade exits onto State Highway 225 and heads east toward the famous San Jacinto Battleground. Discreet stickers placed low on the back of the tanks confess they are carrying polychlorinated biphenyls (PCBs).

*Hays Peterson is a free-lance journalist. She is currently living in Austin.*

Millions of pounds of this country's stockpiled embarrassment slosh past the city of Pasadena and roll through a dangerous intersection in Deer Park.

Nearby, Barbara Jenkins loads her two small children and bags of groceries into a station wagon pitted with rust, glares at the dull red body of a tank truck, and slams the door with anger. She glares at the clean company label: Rollins Environmental Services, Inc.

Barbara is accustomed to rust spots nibbling at each new car, black globs of unknown substances falling as periodic meteor showers to decorate its hood, and to breathing acrid odors from a hazy sky; that's the price she pays for her husband's good job in the Deer Park Industrial District. But she is angered by the Environmental Protection Agency's selection of her town as the place to dispose of the most dangerous chemicals ever produced by industry. There are too many unknowns, and the knowns weigh heavily as she wonders what might be

happening to her children's health and to their genes. With no college background, Barbara now speaks of biphenyls, dioxins, furans, and isomers with more expertise than the average chemistry teacher.

Over 70 chemical industries cast their shadows on the Deer Park area of 25,000 people, and little fanfare accompanies the announcement of a new permit. The community's reaction was mild when the EPA announced in January 1981 that it was approving Rollins Environmental Services, Inc., as the country's first commercial incinerators of PCBs, with burnings to start in March. So quietly did this newsworthy approval descend on Deer Park, it was as if it were shrouded by the Texas Chemical Council cloud hanging above the town and wrapped with a layer of bureaucratic gauze. To destroy the stockpiled PCBs would take seventy years of incinerations.

Residents started recalling that PCBs had made news in the 1970s when the

federal government banned their manufacture and caches of the dangerous chemicals were found in the Houston area. The flurry of excitement abated as drums of the liquid and old electrical transformers laden with the PCBs seemed to disappear. The *Deer Park Progress* ran an educational article on what had been learned about PCBs and the dioxins and furans which are burned off as by-products. Following the article, state Representative Ed Watson began getting calls with requests that he assess the situation.

### **PCBs on Main Street**

Watson lives in Deer Park and works as an operator for Shell Oil Company. He has worked with their chemicals for 35 years. He's also a union man, president of his Oil, Chemical and Atomic Workers Local 4-367 in Pasadena, and he is leery of industry giants. He knows the weaknesses of the "fail-safe" methods in their plants and the power they wield in the political factory.

"I resented the PCB incinerations compounding the polluting mixture already bathing Deer Park" Watson said, "and the smooth way by which it was accomplished reeked with industry influence and insult."

Watson is convinced that the Texas Chemical Council, in addition to its effective legislative lobbying, has enjoyed a certain protection from the Texas Air Control Board for years. He was incensed that the state agency did nothing to encourage a public hearing by the EPA before its approval of the incineration permit, treating the whole matter with indifference. Watson felt this smoothed the way for easy EPA approval.

Until Watson could get an investigation underway, he decided to contact then-Attorney General Mark White, a fellow Democrat; he would ask for an injunction to stop the permit. At the minimum, White would probably make some effort to show Watson's people back home that he was working on their behalf. Watson was concerned when his phone call to White was returned by a staff member; he knew there would be no injunction and that White chose to stay away from the subject.

The *Deer Park Progress* kept the PCB issue alive with weekly articles, and an irate citizen group challenged the EPA in a February 1981 public meeting. The EPA stated that the meeting was not a hearing and would have no effect on its decision. The burnings would start the week of March 4, 1981, as scheduled.

"I was haunted by two things," Watson said. "The most toxic man-made chemicals ever tested were being emit-

ted with EPA approval into an area of 25,000 people and the Galveston Bay marine food chain, and tons of PCBs from all over the country would be rolling through Texas and a main street of my town for years," Watson said.

With the 67th Legislature late in session, Watson took a longshot and attempted to pass a law which would prohibit PCB incinerations in Metropolitan Statistical Areas, or where they would endanger the food chain. In a succinct summary of the effort, Watson said: "The two chances that it would pass were slim and none, and it didn't, but I found out the chemical industries directly and indirectly control practically all the PCB experts, and the State of Texas has practically none to speak on behalf of the people. Even an international expert I considered using as a witness had his credibility discreetly destroyed on a personal matter after he consistently offered incriminating scientific information on dioxins and Agent Orange."

By the time Rollins fired up for their 24 hour-a-day burnings, three more area industries applied for EPA approval to incinerate the monster chemicals. For every letter Watson wrote to the EPA, he received a response praising the worst-risk assessment for the burnings, although it was based on the results of only one test burn at Rollins for dioxins and furans. The EPA said it was convinced that the emitted fractional parts of by-products posed no risk to human health. When pressed to consider the accumulated amounts already in the environment from multiple incinerations, and also from the wide-open burning of two million pounds of PCBs by Rollins in the 1970s, the EPA wrote Watson: "Up until now EPA has not had to consider multiple sources of by-products from PCB incinerators; however, we will consider your comments. . . ."

Watson believes that the EPA's disregard of the accumulation is probably the same kind of "oversight" that led to the recent exit of the agency's top administrators in Washington. What other excuse could there be for ignoring a Galveston Bay estuary on the grounds of the incineration site, into which had fallen dioxins and furans for seven uncontrolled years?

Commercial fishing in New York's Hudson River has been banned since 1976 because of PCB contamination. According to the Food and Drug Administration, permissible tolerances in fish is 5 ppm (parts per million), and new research prompted the Environmental Defense Fund to sue the FDA to require them to lower the level to 2 ppm. However, certain isomers of the dioxins and furans, contaminants in PCBs, are

the worst villains to health. Of the dioxins, Ronald D. Hinsdill, director of the Environmental Toxicology Center at the University of Wisconsin, says it is "fantastically active stuff," and he knows of no level below which the toxin ceases to damage the immune system.

Watson's two-year search for someone to study the marine life in adjacent Galveston Bay waters for dioxins and furans is encouraged by the toxicologists he consults. But the EPA says it isn't worth the money, the State Health Department says they don't have the capabilities, and the state medical schools lack the funds.

The legislator's investigation of the transport of PCB shipments crisscrossing Texas to reach Deer Park proved equally unsettling. None of the federal, state, or local officials are charged with the responsibility for enforcing transportation rules and regulations. Each group has jurisdiction, but it's called "authority without responsibility." There are only eight U.S. Department of Transportation inspectors for the entire state; the Texas Department of Public Safety acknowledges that its personnel lack proper training to understand the rules and regulations as well as they should, and city police are in worse shape.

In addition, persistent curiosity about who is actually hauling the PCBs to Rollins nags at Watson. To quell adverse reaction, Rollins stresses that they are the "primary" haulers. But the U.S. Department of Transportation names one other hauler, and the state attorney general's office cites yet a different sub-contractor. Aware of the track record of many professional waste-haulers, and the thousands of tons of the chemical being brought into Texas, Watson says he harbors grim thoughts of diluted accountability when the inevitable day of a major accident occurs.

### **EPA Drags Feet**

Two years into the PCB battle, Watson feels he has won few rounds. He watches the EPA drag its feet on approving and encouraging the new detoxifying methods as incineration applications continue. Since the furor over no public hearing in 1981, that token is accorded now for each application.

While the Texas Air Control Board asserted that they are pre-empted by the EPA in regulating PCBs, they busied themselves to upgrade their regulations so they could file suit for infractions instead of being dependent on the federal government for action. Knowing that state regulatory agencies seldom file suit for violations against the powerful

chemical industries, Watson remained skeptical.

According to the House Study Group, an in-house research team employed by a majority of the state representatives, the Texas Clean Air Act commits the state to safeguarding its air from pollution and the Act charges the TACB with carrying out this mandate. The TACB prefers to negotiate compliance schedules rather than seek penalties for violations.

Based on TACB records, the study group reported that from January, 1978, through June, 1980, the TACB issued more than 3,600 violation notices. Of the 15 facilities receiving the most notices in that period, none has been sued by the TACB. They referred only nine companies to the Attorney General for prosecution. The TACB said it would not favor the Council of State Governments' Model State Law recommendation of an automatic fine of up to \$25,000 per day for violations.

In their first six months of PCB incinerations, Rollins had a storage violation and burned PCBs for two days during an air stagnation alert. The EPA forgave them and reassured Rollins later with approval to burn solids as well as liquids and to add dioxin-laden Silvex to the list.

In a shift in direction, the TACB requested that the Attorney General's department file suit. The case was settled when Rollins paid a fine of \$2,000 — the maximum that the TACB could require. Watson views the fine as no deterrent for violations by an operation that is raking in many thousands a day because of its unique privilege. However, he finds encouragement in the TACB's new attitude toward studying chemical contaminants in Deer Park.

As the legislator-chemical operator sits in his union hall in a cotton jumpsuit, PCB trucks carrying the pale yellow liquid continue to roll down the busiest freeway in Houston at any hour Rollins chooses. Watson says he almost wishes he hadn't learned so much about PCBs, for thoughts of Love Canal and Times Beach mix with thoughts of hurricanes and flooding and the TACB's widened research since their recent finding of dioxins and furans in one of their Deer Park grass samples.

"Without a doubt, I know we're into serious problems here," Watson says. "I haven't given up — publicity is gaining support for a study of the seafood. But what shape is this state in when industry controls and pushes beyond the ability of government to monitor and control its fallout? And, good or bad, there might not even be an EPA ten or twenty years from now when people are asking 'Why did they let it happen?'" □

# A Work Bill That Doesn't Work

By Kay Gunderson

Austin

**I**N YET ANOTHER ATTEMPT to curtail entitlement spending, conservatives in the Texas legislature are pushing a plan which would reduce AFDC rolls by putting recipients in a job training and work experience program. The bill, HB 1299, is the brainchild of Rep. Gerald Geistweidt, (R-Mason); Sen. J. E. "Buster" Brown (R-Lake Jackson) has sponsored the companion bill in the Senate, CSSB 17. Proponents claim broad-based support and a 78% job-placement success rate. If you're a welfare mother with a high school education and some past experience in the job market, and you're only on AFDC to provide for a child in economic times that have affected you more than some others, this program may sound just fine — a guaranteed job. But a second generation welfare mother with no high school education or skills may look at her three children skeptically, wondering what

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*"... it ignores the facts of today's economic climate, where people who have been in the work force for years are being laid off."*

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kind of job she could be "trained" for. A careful lawmaker may look with skepticism at a bill that includes phrases like "mandatory participation," "no appropriation from general revenues," and "no pay for the first two months of training." But a corporate executive will look with favor on this bill because he stands to be the big winner; here is finally a way to circumvent federal minimum wage requirements.

The plan establishes a pilot job training and work experience program; except for a few exemptions, it would be mandatory for AFDC recipients in a pilot area.

The pilot will require that AFDC recipients whose children are over six years

old and who do not have some form of disability register for the program. Both DHR and potential employers will screen participants to make sure that they are assigned suitable positions. During the initial two-month training period, all AFDC aid would continue, the state would pay for day-care and transportation, and the client would work up to forty hours per week at a job. During the subsequent four-month work experience portion, the state would continue to pay for day-care and transportation, but the person's AFDC grant goes to the company as a subsidy for the salary, which the company must pay: a wage which is at least the federal minimum. The client continues to receive Medicaid benefits. At the end of the six-month period, all AFDC aid ceases and the participant, it is hoped, continues at the company as a permanent employee.

The real selling points of this Job Training and Work Experience Program (JeTWEP), according to Brown and Geistweidt, are that the pilot requires no appropriation from general revenues and that it aims at training the hard-core unemployed, a "concept" which commands almost universal support. The program will be funded by using existing grant money or through new grants which the Department of Human Resources is currently investigating; there is also the hope that the private corporations involved as employers will provide some help in the form of day-care or transportation.

The assumption appears to be that there are many people receiving AFDC who are capable of holding a job and that the State of Texas could better afford to give these folks a little push into the job market than to continue to give them a grant. The validity of the assumption is questionable — it is estimated that of the people in the U.S. who receive AFDC, 68% are children. The 3.6 million adults receiving aid are either single or disabled parents. For every ten AFDC mothers, four care for pre-school children, three are working, seeking work, or in a train-

ing program, one is disabled and two are not seeking work. Of the members of the last group, more than half have never been employed or are at least 45 years old. From these statistics, it is difficult to justify the claim that AFDC recipients are a bunch of sluggards.

There is also an assumption that Texas taxpayers are burdened with spending too much to care for the poor and are spending unwisely. Currently Texas, as the fourth wealthiest state, spends about \$10 million per month on AFDC payments made to a total of 270,000 people, 86,000 of whom are adults. The average family of three receives \$105 per month, a level which is less than 75% of a need standard which was calculated in 1969. According to a joint Brown-Geistweidt report, Texas can no longer afford to fund AFDC at such "expensive levels." The proposed legislation (CSSB 17 and HB 1299) would, according to the sponsors, save Texas \$18 million in a future biennium.

The sponsors of the bill claim widespread support. They say that both Lt. Gov. Bill Hobby and Sen. Chet Brooks (D-Pasadena), who chairs the Health and Human Resources committee to which the senate bill was referred, support the concept. In the House, Geistweidt aide Rocky Mountain said that both Speaker Gib Lewis and Appropriations Chairman Bill Presnal (D-Bryan) have indicated their support. The House Health and Human Services Committee voted unanimously in favor of the bill with chair, Rep. Mary Polk, as a co-sponsor. Mountain said, "I think the bill has a real good chance of passing. This is a plan which would move people off the welfare rolls in a very compassionate way."

**H**OWEVER, several legislators and citizen group representatives have expressed harsh criticisms of the proposal for several reasons. These include the vagueness of the bill's language, the unreliability of DHR's cost estimates, and the morality of forcing people to work for two months with no pay. And some analysts have said the bill is just plain bad. They say there are financial incentives for companies to hire participants for the wage subsidies and the tax deductions and then fire them and get another AFDC client. The fact that the program graduates become eligible for unemployment insurance, a payment which might exceed their AFDC grant, could provide an incentive to what is perceived as the target population — those who could work but don't work — to quit their jobs. The program may also funnel money from existing services.

Clarence Johnson, of the Poverty, Education and Research Association, who offered testimony at the committee hearing on the bill, told the *Observer*, "We have numerous problems with the bill. During the two-month training a person is unpaid. DHR never defined what the training would be like because they don't have the money; there is no assurance that this will really be quality training. I think there is also an ethical problem when someone is forced to work without wages. Employment involves a contract; if one side is being forced, they're being taken advantage of."

Because the day-care and transportation part of the program is funded by using grant money that could be or has been used elsewhere, the pilot could have a failure built into it, said LBJ Public Affairs School researcher Carl Reynolds. "The widespread support for HB 1299 is almost certainly contingent upon the claim that no additional appropriations will be needed. This posture fails to make explicit the cost of opportunities foregone for the funds involved," he said. In these tight economic times, when a lot of people are actively pursuing work, spending state money and worker hours to hire people who may not be able or want to work is bound to elicit some grumbling from those non-AFDC recipients who would welcome some assistance.

Senator John Whitmire (D-Houston), a former welfare caseworker, had the harshest criticism for the bill. "Their program is totally unrealistic; it ignores the facts of today's economic climate, where people who have been in the work force for years are being laid off," he said. "They are failing to look at the actual characteristics of AFDC recipients," added Whitmire. He went on to explain that the hard-core AFDC recipients at whom the program is directly targeted, and who are often second and third generation welfare recipients who maybe can't read and can't write, still won't be employable after the six months. "It takes years of training to learn the work ethic alone," he said. "We aren't just *born* with the motivation to go out and work; we learn it. Even something as basic as keeping eight to five hours is something that must be learned over time."

Whitmire also expressed doubt that Brown and Geistweidt have any real concern for the needs of recipients but are only interested in cutting off state support. "Knowing the politics of both those people, I'd be willing to bet that both sponsors voted against lifting the ceiling on AFDC grants passed last session. They don't have genuine concern for the recipient. We never do *enough* for those people to really help them get out of their situation; we only give them enough to

barely survive." At \$105 per month, it is clear that an AFDC grant does not provide subsistence, only a little assistance.

These numbers lend support to Johnson's claim that, "this is just a version of conservative thinking that the way to solve unemployment is to get rid of the federal minimum wage." They also indicate that it would be in a company's interest to have as many of these participants as possible. This poses a threat to the job security of the participant and also acts to drive non-AFDC clients at the minimum wage level out of the market because it is more expensive for the company to hire them. This formula, while it does eliminate state financial responsibility, shifts the burden to the federal government because tax revenues will decrease.

The idea of reducing AFDC rolls is certainly laudable, but mandatory participation is politically unrealistic and is simply not the most efficient expenditure of state dollars. There is evidence that a program can be quite successful on a voluntary basis. Lupe Anguiano, a San Antonio attorney, started one such program several years ago after a group of AFDC mothers showed up at the AFDC county offices, demanding jobs and not checks. The governor's office has drafted a rewrite of the bills which would implement the program on a voluntary basis. The governor's plan would also provide nine months of paid training, would not subsidize the company with the participant's AFDC grant, and would be funded with Job Training Partnership Act money. Making the program voluntary would also eliminate the major opposition to the bill and would probably result in a higher success rate.

Should this legislation pass, the really big winners would be the corporations, who would have a ready supply of subsidized workers. The state of Texas would win some because they would have fewer AFDC grants to pay each month. The federal government would lose out on some tax revenues because participating corporations can take advantage of tax deductions by hiring program participants. The participants themselves may gain valuable job experience, but because of the structure of the tax credits and the AFDC subsidy, they may find themselves unemployed sooner than they had hoped. The really big losers, should this bill pass, are the masses of men and women, recently laid off, who are out on the streets every day looking for work at the minimum wage level. These people, who would leap at the prospect of state assistance in job placement, would essentially be driven out of the minimum wage job market because they are not government-subsidized workers. □

# The Foxx Report:

## *In Which Wiley T. Foxx Remembers Denzel Ray Hines*

**H**OO DOGGIES! How to tell my dear old mama what I've been up to this week. Saturdays I drop her a line to let her know I'm surviving, pass along little Austin tidbits she can share with her friends at the hatchery. Since Papa died she's been an egg candler and she likes to be sitting on her stool next to the conveyer belt while the eggs toddle by and she'll say, "Well, Wiley was standing next to the governor in the elevator when the governor said . . ." or "Wiley tells me the Speaker'll probably last the session. . . ." But can you imagine my mama, reaching for an egg and holding it up to the light, saying in an off-hand sort of way, "Wiley tells me Bill Ceverha's sodomy bill don't have a chance this session"?

Look, I didn't come to town on a load of wood: I knew about gays and lesbians and homosexuals and all that, but to tell the truth, I had never heard tell of sodomy. If somebody'd asked me, I would've guessed sodomy was either a town somewhere in the Panhandle or a poem about Scotland ("O Sodomy, My Sodomy"). I'll tell you another thing: I always thought that if somebody said, "Anyone for handballin'?" you'd lace up your tennies, trot over to the gym, and whack a ball against a wall 'till your hand was black and blue. No way. After what I heard the other night, anybody mentions 'handballin'' to me, I'm gonna tuck tail and run.

So there I was in the old Supreme Court chambers in the Capitol listening late at night to this Dallas policeman Rep. Ceverha had brought in. You can bet I wouldn't have been there if the Chief hadn't sent me. I would have been taking Shoogy Red, my prized Allen Roundhead, for his nightly trot around the trailer court, but the Chief said he needed some background on the bill before he could "gauge the sodomy sentiment" back home.

The policeman — a 400-arrest veteran, he said — was telling about bathhouses and orgy rooms and homosexuals on the rampage at Dallas shopping malls — two hundred lunchtime public lewdness arrests in one day, he said — and my mind wandered back to Denzel Ray Hines.

Denzel I hadn't thought about in years. He had a degree in music education from North Texas State, and he taught junior high music, but that's not how I knew him. I knew him because he was my Sunday school teacher. He was a wonderful teacher — funny and bright and enthusiastic. You could tell he really and truly wanted us to learn, even in Sunday school. Once he got so excited when I answered a question about the Prodigal Son, he shouted "Hallelujah!" and said my eyes positively glowed with the spirit of the Lord. He said I reminded him of the boy Jesus talking to the elders in the Temple. Inside I was proud — I thought there might be hope for me yet — but a week later I had to punch W. M. Mertens in the mouth at a little league baseball game cause he wouldn't quit joshin' me about my "Jesus eyes."

**D**ENZEL WAS GAY. Everybody knew it because he wasn't married, and when you saw him out in public, his 57 Chevy would be packed with kids, or he'd be by himself. There were never any women in his life, except for pals. But nobody gave a fig. Even at school, people didn't make jokes like you'd expect, and at church . . . well, it just didn't come up. The church and children were Denzel's whole life, and everybody knew it. To church people, Denzel wasn't a homosexual; he was just Denzel.

As I was saying, nobody gave it a thought that Denzel was gay — except H. C. Buckalew, one of the elders at church. I was still in junior high that Sunday morning he stood up and announced that Denzel Ray Hines was being "disfellowshipped," kicked out of the congregation, because he was a homosexual and was corrupting the souls of youth. You could hear this low murmuring sound sweeping across the church, and you could see people shaking their heads no, but nothing could stop H. C. He was a big red-faced man, and he sounded like God Himself when he read what Paul said about fornicators and idolaters and adulterers and "the effeminate." At a gospel meeting in Fort Worth the week before, he said, Denzel had been seen consorting with the bass singer of a well-known gospel quartet.

Denzel was there that morning, as usual, but he didn't say anything. While H. C. was still talking, he stood up, and with tears running down his face, he sorta stumbled out the door and drove away. People were too stunned to try to stop him.

Sunday dinner that day was kind of quiet. Papa was off at a cockfight over around Canton, but I remember Mama saying, sorta to my brother Waylon and me and sorta to herself, "Lord, Lord, if I ever have to go through something like that again, I'd just as soon not go to church."

The next week Denzel lost his job at school, and some old biddy with a bun on her head started trying to teach his Sunday school class. Most Sundays after that, I went with Papa to the cockfights. Denzel didn't leave town. After a while he got a job at Barrett's Hardware — Homer Barrett was a member of our church — and when you'd see him drivin' around town, you wouldn't see any kids with him. He'd be by himself.

I guess it was about a year later when Denzel came back to church. He stood up after the sermon one morning and said he had something to say. The church, he said, was his life. There was a time, he said — and there were tears in his eyes — when he had wanted to kill himself, and he would have too, if it hadn't been for his friends from church. He said, for as long as he could remember, he'd had desires he didn't understand and couldn't tell anybody about. He had finally accepted himself, he said, and he hoped they would too.

And they did. Like Mama said, "There's not a one of us worthy to even pick up a stone, much less fling it at that boy." H. C. Buckalew was gone by that time. He was a manufacturer's representative for a line of ladies' lingerie, and a little scheme he had cooked up finally came to light. Seems he would pay high school girls to go over to Bower's Tourist Court out on the highway to model the lingerie for prospective buyers. If the buyers ordered a certain amount, H. C. had the girls spend the night. "I coulda told you that ol' boy was a two-bit phony," Papa said after he heard about H. C. "You come across a fanatic like that, and you can bet your blue nose he's scared of something inside hisself."

Bill Ceverha's HB 2138 is bottled up inside Wayne Peveto's Criminal Jurisprudence Committee, and that's where it'll stay most likely. What I'm hoping is that Ceverha'll get discouraged — he's been pushing this since 1977 — and turn his mind to his Sunday Blue Law bill. Now that's an idea that'll do the public some good. WTF

# • POLITICAL INTELLIGENCE •

✓ In a recent public hearing, the House Agriculture Committee considered legislation which would put a one-year moratorium on the farm foreclosures brought on by the depression in the agriculture market. The bill, HB 1696 sponsored by Rep. Tip Hall (D-Ponder), would legally enable bankers to extend the terms of existing loans before beginning foreclosure proceedings. Although some banks are already doing this, the legislation would give them a statutory right to do so, thereby eliminating any problems the bank could incur from bank examiners. Hall said, "We're not trying to let anybody get out of their financial responsibilities. Time is all we're looking for with this bill."

A companion measure, HCR 141, requests that Congress put a two-year moratorium on foreclosures by the Farmers Home Administration, which is the biggest agricultural lender. A similar measure has been introduced in the U.S. House of Representatives by Rep. Ed Jones, (D-Tenn.).

Walter Richter, of the Department of Agriculture, testified that of the 24,000 Farmers Home loans held by Texans, 69% are currently in default; at least 800 Texas farmers have already been forced to liquidate. Richter added, "The depression in the farm economy has long ago eliminated the inefficient farmers, the poor managers. Those who went under last year and who will go under this year are good, efficient farmers. This bill will give them time to dig themselves out of the hole the government has dug for them."

Opponents of the bill expressed doubts as to its constitutionality, contending that it violates the contractual agreement be-

tween lender and borrower. Larry Temple, of the Texas Mortgage Bankers Association, said the bill may also have a "chilling" effect on potential investors because of provisions added to allow a farmer to regain his land after a foreclosure. The bill provides for the farmer to maintain possession of his farm after foreclosure by paying the new owner 4% of the purchase price and also allows him to redeem his ownership by paying the purchase price plus 10% within one year. Temple said, "Our association is the chief importer of funds available for lending in this state. This bill will set a bad precedent; it will encourage potential investors to take their money elsewhere."

The committee voted to pass the resolution, but sent HB 1696 to a subcommittee until the constitutional questions could be resolved by the attorney general's office. As he closed the debate, Hall quipped, "I'm just thankful that I've got a dairy because there's not a banker in the world that wants to milk cows."

✓ Craig Foster of the Public Education Resources Equity Center doesn't have much hope for a legislative solution for education equalization aid this session. "I'm not optimistic," he told the *Observer*. "We expect too much of them [the legislators] when we expect them to vote an equitable system. You need the courts to do a decent job." Foster contends that the issue of educational funding is too complicated for most legislators to understand or deal with in a five-month session beset by all kinds of major issues.

According to Foster, recent legislation addressing education funding, including the hold-harmless and minimum aid laws, have erased equalization advances made since 1975. The gap between the have and have-not districts is now, in fact, larger than it was in '75.

"Past legislatures were successful in spreading some money around," Foster explained. That way they were able to placate all constituencies. Now, with the reduced state revenue, this is not possible.

State Sen. Bob Vale, D-San Antonio, has asked the state education commission to do impact studies on the twelve education packages proposed by Gov. White and the legislature. The studies have not been completed, but Foster does not think they will have much impact on the legislature anyway.

✓ Texas Agriculture Commissioner Jim Hightower has been named to head the Democratic National Committee's policy committee on agriculture, giving him a leading role in designing the Democratic Party platform for rural affairs in the '84 elections. Hightower plans to take his Texas message to the nation, promoting the small family farmer and alternative, independent marketing systems.

As a result of the appointment, Hightower is suddenly receiving a warmer reception from state House and Senate appropriations and finance committees. While the state agriculture budget for marketing seems to be making slow but steady progress through the legislative process, the department's budget for its regulatory functions has met considerable resistance. It may be that Hightower will find the clouds easier to bust in the coming weeks.

✓ Outside recent Senate hearings on agricultural development policy Texas Agricultural Chemical Association lobbyist Jon Fisher offered his congratulations on the ag marketing budget to a Texas Department of Agriculture official. When she lamented the fact that the regulatory budget wasn't doing as well, Fisher told her that everybody's going to have to do a little belt-tightening in the coming biennium. Agricultural pesticides are one of the areas regulated by the TDA.

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*Man and Large Dog by Bill Traylor.*



*Walking Stick with Figure by David Butler.*

## What Is a "Folk" Artist?

By Nancy Maniscalco

*"I didn't even know I was an artist until they told me."*

— *Elijah Pierce*

**E**LIJAH PIERCE, a black American artist, may also have been inclined to add, "And I didn't know I was folk until they told me."

The Corcoran Gallery in Washington, D.C., has curated a traveling exhibit, "Black Folk Art," currently on display at the Rice University Museum in Houston through May 15. The show, truly an eye-opener, is a display of some of the most enlightening and aesthetically formidable art works to hit the museum circuit in a long time.

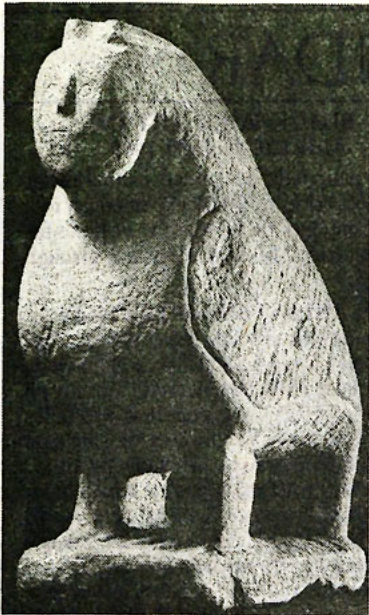
*Nancy Maniscalco is a painter living in Austin.*

The exhibition includes works by more than a dozen artists, a number of whom may be considered "naive" artisans. The works of most of the artists on display, however, transcend categorization. These include the evocative, monumental sculpture of William Edmundson, the politically and aesthetically sensitive sculpture of Texas artist George White, the eloquent, carved wood narratives of Elijah Pierce, the whimsically fantastic constructions of David Butler, the resilient montages of Steve Ashby, the emotive hieroglyphics of Bill Traylor, the delicately seductive drawings of Joseph Yoakum, and the inspired wood sculpture of Jesse Aaron.

Interestingly, folk art historians and "fine" art historians are having difficulty pigeonholing the work of these artists, many of whom are now dead. Folk

art experts have dismissed the work as not being genuine folk art, while, quite obviously, the works are not part of the mainstream world of "fine" art, as is indicated by the "folk" label attached to the exhibit. But, of course, there's a lot more to it than this.

The traditional view of the folk artist is that of an anonymous artisan, working out of a collective consciousness and tradition. Most of the men and women in this exhibition are obviously as eccentric, innovative, and aesthetically sophisticated as any contemporary artist. Form and content derive from experience, whether or not that experience includes formal schooling. And these works, like any other particularly enlightening works of art, are enhanced by the fact that they derive from very specific social and personal circumstances. Naturally, just as there is a



Photos courtesy of Rice Museum

*Speaking Owl by William Edmondson.*

relationship between Edward Hopper's paintings and Western Renaissance three-point perspective, there is a reference to tradition in the work of many of these black artists, and that tradition is African. The materials used are the materials at hand, the materials that surround the lives of mostly poor, mostly Southern rural black artists.

The way in which a person perceives is directly related to the way in which he or she lives. This is, of course, also true of the artist. If the experience of a young artist in New York's Soho is limited to the cultural confines of that community, is that person then a folk artist?

While viewing this show, you become acutely aware that the value of great art transcends capital value, that this experience cannot be appraised. At last these hidden works have been revealed to a large American audience, thanks to the curatorial intelligence and vision of the Corcoran Gallery. They can now take their place alongside the work of Marcel Duchamp; Picasso, Rauschenberg, Hopper, and other artists of this century.

However, their moment in the sun may be brief. It is tragic that we have not been as familiar with the artists in this exhibition as we are with every new wave of contemporary art promoted by the market. It is a grave injustice that we are deprived of certain cultural experiences, that a limitation is placed upon what we know as art by the manipulation of aesthetic value by market value. Take advantage of this opportunity. It is very possible that we won't have the chance again to see these works — either as a collection or alone — in public places. □

## An Open Letter to All Who Are Concerned About Central America:

Friends,

Recent public opinion polls taken all across this nation have repeatedly shown that an overwhelming majority of our people are firmly opposed to further military escalation of U.S. intervention in Central America. Congress has become very sensitive to our expressions of disapproval of a deepening U.S. involvement in the military stalemate in that area.

President Reagan, on the other hand, is now requesting another \$110 million dollars in "emergency" military aid for El Salvador alone. The Pentagon has announced that it wishes to expand the number of U.S. military "advisers" in El Salvador. And the administration is escalating the pressure on Congress by issuing veiled threats that it will "reprogram" military funds appropriated for other areas if the Congress fails to approve the "emergency" funds requested.

Have we forgotten so quickly how Vietnam tore this nation apart? Have we forgotten so quickly that no amount of military assistance from the United States will force a nation to support a brutal and unrepresentative government?

Pope John Paul II has criticized *all* foreign intervention in Central America. After spending a traumatic ten days visiting every Central American nation, the Pope urged the whole world to see that the terrible suffering in Central America has been caused first and foremost by "unjust social and economic conditions." But the response of our government is simply to pour in more weapons, more military training, and more American military advisers.

The Pope has called for negotiations to end the bloodshed and the foreign intervention, and the Mexican government has once again offered to mediate. The representatives of the guerrillas in El Salvador have accepted that mediation without conditions. The U.S. government appears to be the principal obstacle to negotiations in El Salvador.

This may be the best opportunity that we have ever had to reach out to our Congressional representatives and to say, quietly but firmly, "No more. Send no more weapons. Send no more American advisers. Insist upon negotiations."

How can the Reagan administration fail to see that once again we are placing all of our support behind a government which is embarrassing to even the State Department officials

who must testify on its behalf before Congress? The Salvadoran government has now developed a history of literally decades of human rights violations, fraudulent elections, and the total absence of criminal justice for the wealthy and powerful.

How can they ask us to forget that in just the past few months:

1. The United Nations issued a report which placed the blame for most of the "gross violations of human rights" in El Salvador upon government-controlled organizations and the right-wing groups which have been so successful in seeking U.S. support;

2. the Salvadoran government has once again claimed that it cannot prosecute the soldiers accused of murdering and raping the American churchwomen because the evidence is "insufficient" (our own embassy personnel have repeatedly stated that the evidence is "overwhelming");

3. the president of the Salvadoran Human Rights Commission was killed by government troops because they considered her a "leftist."

In the near future there will be several key Congressional votes to determine U.S. policy over the next months. Many observers believe that the administration is pressing for extra funding now so that it will not have to remind the voters of our involvement next year, during the presidential election campaigns. *Now is the time to express our objections! Now is the time to say "No More!"*

Call these congressional representatives. Their telephone number is listed below. Or write to them, in simple and straightforward ways, and tell them that we're tired of supporting brutal governments "just because they claim to be 'anti-communist.'" Tell them to use our scarce public funds for jobs, for support for our own poor, and to meet the obvious needs that we have here at home. Some of the key members to contact are:

Senator Lloyd Bentsen, Texas; Senator John Tower, Texas; Senator Charles Percy, Senate Foreign Relations Committee; U.S. Senate, Washington, D.C., 20510. Representative Clement Zablocki, House Foreign Affairs Committee, U.S. House of Representatives, Washington D.C., 20515. (Capitol telephone: 1-202-224-3121.)

Please write to them. Please call them. Do it today.

Co-signed:

Mickey Leland, U.S. Congress  
Lloyd Doggett, Texas Senate  
Gonzalo Barrientos, Texas House  
Larry Evans, Texas House  
Bob Barton, Texas House  
Ron Wilson, Texas House  
Alex Moreno, Texas House  
Billie Carr  
Sissy Farenthold  
Maury Maverick Jr.  
John Henry Faulk  
David Van Os  
Sam Dawson  
Jim Marston  
Rev. Tom Farmer

Rev. Monsignor Lonnie Reyes  
Father John Korcsmar  
Jeff Friedman, former Austin Mayor  
Larry Deuser, Austin City Council  
Richard Moya, Travis Co. Comm.  
Margaret Gomez, Travis Co. Constab.  
Austin AFL-CIO Central Labor Council  
AFSC, Austin  
Democratic Socialists of America, Austin  
Committee in Solidarity with the People  
of El Salvador, Austin  
U.T. Young Democrats, Austin  
U.T. Progressive Faculty, Austin  
Austin Peace and Justice Coalition

Austin Campaign for Peace with Justice in Central America  
1022 West Sixth Street, Austin, Texas 78703

(We welcome donations to defray the cost of this and future ads.)

# ◦ SOCIAL CAUSE CALENDAR ◦

Notices on upcoming events must reach the *Observer* at least three weeks in advance.

## SOUTHEAST TEXAS MUSIC FESTIVAL

A campfire with impromptu music, May 6, 7 p.m., at the Big Thicket Museum in Saratoga, Texas, will begin two full days of activities such as fiddling contests, folk and gospel music, and country and western dance at the Southeast Texas Music Festival. The public is invited.

## 'GODS OF METAL'

Austin Pax Christi, a chapter of the national Catholic peace organization, will show the Maryknoll arms race documentary, "Gods of Metal," May 9, 7:45 p.m., Our Lady of Guadalupe Church, Austin.

## MAGGIE KUHN BACK IN TEXAS

Maggie Kuhn, indomitable leader of the National Gray Panthers, will speak about the sweeping social changes of the demographic and technological revolutions, May 11, 8 p.m., Saengerrunde Hall, Austin. Call (512) 345-1869 or 458-3738 for details.

## ARMS RACE CONFERENCE

The Austin Conference of Churches and the Austin Peace and Justice Coalition are sponsoring a conference entitled "The Church and the Bomb: Faith in the Nuclear Age," May 13-14, University United Methodist Church. Speakers include Dr. Robert Drinan, Dr. James Forbes, and Dr. Lloyd Dumas. Call (512) 478-9387 for information.

## PANTEX VIGILS

Peace vigils at the Pantex plant outside Amarillo continue every Saturday from 4-5 p.m., sponsored by the Northwest Texas Clergy and Laity Concerned.

## BLACK FOLK ART IN AMERICA: 1930-1980

The nationally acclaimed exhibition of some 360 works by 20 Black American folk artists continues on view at the Institute for the Arts, Rice Museum, Houston, through May 15.

## SOLARFEST REGISTRATION

Applications are now being accepted for the Second Annual South Texas SolarFest, sponsored by the San Antonio Forum on Energy (SAFE), a group that promotes public education on the use of safe and economical energy in San Antonio. SolarFest, a fund raising event which drew over 5,000 last year, will be held on 40 acres of land near Helotes, May 29. Energy organizations, community groups, artists, craftspeople, and food vendors are invited to participate. Call Pat Coy at (512) 653-0543.

## PROGRESSIVE ORGANIZATIONS

The *Observer* has built up a list of progressive organizations in Texas. This list is now being updated, and we will resume publishing it when the updating is complete. We ask that all groups on the present list send us their current mailing address and phone number. We also plan to compile a mailing list with this information. We will send this list to any organization deemed progressive in purpose, in exchange for a \$5 fee to cover our time, copying, and mailing cost. We will respect the wish of any group who requests that information about it not be given out.

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# • PRIVATE INVESTIGATIONS •

By Geoffrey Rips

**N**EVER LET IT BE SAID that the importance of language is lost on the Texas Legislature. In this the year of the discouraging word — “short-fall” — that before was seldom heard, it is heartening to see that the traditional rhetorical power of understatement, so well honed throughout Texas oratory, has not gone the way of the 23¢ gallon of gas. Witness Grand Saline Rep. Bill Hollowell’s HB 1216, “relating to the designation of emergency interim successors to assume the powers and duties of unavailable legislators in the event of enemy attack.” “Unavailable,” as defined by the bill, means “dead.” Pure Texas understatement.

And in considering language, consider Gib Lewis, awash in a sea of allegation, innuendo, and misplaced modifiers. Had Gib been more glib, his problems would have been behind him like so much spilled milk money. But Lewis is beset by dangling participles in a world in which smooth politicians and lobbyists ride book-length similes and metaphorical embellishment to legislative glory.

Now the Speaker is trying to get a grip on things. Just the other day, Lewis, acting swiftly, managed to avert what he thought was another scandal hard upon him. It seems that on the morning of Good Friday one Clayboy Eldridge, a junior high English teacher from Plano, finding himself in the grip of a holiday with no lesson plan to follow, took it upon himself to lobby for the proposed 24% raise in teacher’s pay. Always having been an original thinker, Eldridge devised an original plan of attack. Thinking the teachers associations and organizations and federations had somehow fallen short in an area just burning for didactic invention, Clayboy Eldridge decided that there could be no better way to show the need for higher

teacher pay than to show the pitiful state of the education of the leading graduates of the Texas system. And what better example could he choose than that of the Speaker of the House himself, Gib “far and few between” Lewis?

Clayboy decided that during study hall (he observed the regimen even on holidays so as not to get rusty) he would call the Speaker, point out the rhetorical abuses and grammatical inexactitude of his public pronouncements, and thereby convince the speaker — who despite himself, Eldridge was convinced, was a good man — that there needed to be more money for more and better teachers across the land. Too excited to eat his ham and cheese, Clayboy Eldridge spent the lunch hour diagraming sentences he would use to sway the Speaker of the House.

When the bell for study hall would have sounded, had it not been a holiday, Clayboy picked up the phone and called the Speaker’s office. Now Gib Lewis just happened at that moment to be walking by his secretary’s phone, pacing out the distance of a putting green he was thinking of having installed as part of the renovation of his offices. Since the staff had already left for the day, Lewis decided, between strokes of an imaginary putter, to answer the phone himself.

“Hello, there,” said Gib.

A throat cleared itself at the other end, then Clayboy Eldridge’s voice came on, saying, “House Speaker Gib Lewis, please.”

“Why this here is the Speaker,” the Speaker said.

“Clayboy Eldridge here, Mr. Speaker,” the teacher said, using his most assertive voice. “I am a teacher of English, seventh and eighth grade, sir, here in Plano.”

“Yes, Mr. Eldridge, what can I do for you, sir?” Gib said, his toothy smile present in his voice.

Eldridge hesitated, screwed up his courage, then said, “Mr. Speaker, it’s about your dreadful syntax . . .”

“My what?” Gib was instantly enraged. “Now you listen here, my friend. It’s not my sin tax. That’s Governor White’s idea. I have never and will never have any part of sponsoring a tax on luxuries. Whoever told you such a thing was filling you up with lies. Which paper you readin’?”

Clayboy Eldridge tried to interrupt, saying, “But . . . but . . . but.” But it was no use. Gib finished his tirade and

hung up. Eldridge put down the receiver, went to his bookshelf, pulled out a worn copy of *Ivanhoe*, and began to develop his lesson plan for the following week.

**I**T MAY HAVE BEEN impossible for Clayboy Eldridge to cross the wide frontier of Gib Lewis’ brow, but elsewhere the issue of language is enjoying an importance in this legislative session that is unparalleled. Just recently state Rep. Bob Simpson testified on behalf of his bill that would establish a procedure by which the poet “lariat” (pronounced by Simpson as if he were describing a member of a pep squad — as clever a turn of phrase as there may be in all of legislative letters) is chosen by writers and legislators, as opposed to blue-haired members of poetry societies.

But why stop there? A state renowned for baroque invective and rhetorical flourish should have the temerity to go further. In 8th century China, applicants for coveted civil service positions were required to write poetry as part of their exams. A few centuries later, candidates for many high public offices in Japan engaged in poetry contests to determine the winner of such offices. Imagine a Li Po or a Tu Fu debating a tax increase. Those high school government classes so often seen sitting in disappointed silence in the legislative galleries would be joined by English classes whose emotions would rise and fall with turns of phrase.

Imagine the poetry of Governor Mark White:

*Peach blossom on Town Lake.  
So many currents  
to choose from.  
Blossoms cannot fight  
upstream.*

Or of Lieutenant Governor Bill Hobby:

*Gray clouds over  
Houston.  
No one to take tea with.  
Who will pour?  
I will pour.*

Or of Comptroller Bob Bullock:  
*So goes the year,  
goes the month.  
Every day less.  
My purse lighter,  
I drive more swiftly.*

Or of Speaker Gib Lewis:  
*Friends take leave too soon.  
Soon enough Berlanga with them.  
Will the great dome support me?  
A sea of paper now between us.  
What else  
have I forgotten?* □

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