



INSIDE

CHAIRMAN'S COLUMN

Pg 2

MERIT ELECTION OF JUDGES

Pg 3

LAWSUIT ABUSE CAMPAIGN

Pg 3

NATIONWIDE TORT REFORM

Pg 4

TIC SURVEY RESULTS

Pg 5

Bullock Strategy Produces Tort Reform Results

When the 1992 elections caused an historic shift of power in the Texas Senate, many wondered how the traditional way of doing the state's business might change.

Under Senate rules that require two-thirds of the senators to vote in favor of bringing a bill up for debate, a determined minority of 11 can block a vote on almost anything. This is precisely how tort reform efforts have failed in the past. However, as Democrats have always held more than two-thirds of the votes, minority voting was often based on philosophical differences, not partisan ones.

"With more than one-third of the seats now in Republican hands, a lot of people thought that important issues in the Senate would polarize along partisan lines," according to J.P. Word, Chairman of the TCJL Executive Committee. "Republican members could use the two-thirds rule as a stick to gain concessions on issues of significance to them. It was even rumored that the Senate would break with tradition and abandon the two-thirds rule." Clearly, how the leadership would respond was the key to resolving serious problems, such as school finance, the state budget, and tort reform.

"Bob Bullock decided that partisanship was not the answer," said Louis Austin, Chairman of the Jobs for Texas coalition. "Rather than discarding traditional Senate procedures, he placed Republicans in key leadership positions. Even before the legislative session began in January, he decided that the most controversial and difficult issues would be resolved through negotiation and compromise, not confrontation. While a lot more remains to be done in tort reform, for example, we are in much better shape to encourage more jobs and economic development as a result of his work."

Lieutenant Governor Bullock's strategy was first used on two of the most critical business issues facing the Senate in 1993: products liability reform and forum non conveniens (Alfaro). As you well know, negotiations

personally sponsored and supervised by the Lieutenant Governor produced agreements on both issues that benefit Texas businesses and consumers alike. "Getting the

parties to negotiate seriously has always been extremely difficult on tort issues," said Ralph Wayne, President of TCJL. "Not only did the Lieutenant Governor bring the parties together, he made them stay at the table until an agreement was reached."

Since that time, the same strategy has produced agreement in the Senate on the tangled issues of school finance (more on this below) and trucking reform, and is at work in resolving the Edwards Aquifer dispute, the reauthorization of the Public Utility Commission, and the constitutional amendment requiring voter approval to impose a personal income tax.

"There is no question in my mind that Lieutenant Governor Bullock broke the logjam on tort reform, trucking reform, and some other hot issues," commented Larry Milner, President and Chief Executive Officer of the Texas Chamber of Commerce. Dane Harris, President of the Texas Association of Business, agreed. "The Lieutenant Governor has been extremely sensitive to the needs of Texas employers and employees, not only on tort reform but on taxes, employment issues, and environmental regulation." S.M. True, President of the Texas Farm Bureau, added, "Bob Bullock is getting a lot of things done that have needed doing for a long time. We applaud his leadership."

Bullock also receives high marks from businesspeople across the state. "Not since the passage of workers' compensation reform has the legislature—and especially the Lieutenant Governor—taken such strong action to improve the business climate of the state," noted Dick Grisham, Vice President of Halliburton Energy Services, Inc.

Luis de la Garza, Vice President of Valero Energy Corporation, adds, "We are already seeing the benefits of the changes initiated by the Lieutenant Governor in helping to retain Texas businesses and attract new businesses to the state."

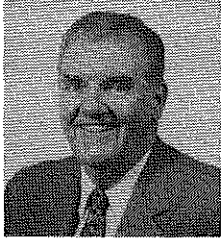


Bob Bullock, Lt. Governor

Attorney General Tries to Settle Judicial Election Case

Attorney General Dan Morales has entered into a proposed settlement agreement with the plaintiffs in the LULAC case, which challenges the countywide election of state district judges in nine urban counties. The defendant-intervenors—Judge Sharolyn Wood of Houston and Judge Harold Entz of Dallas—are not signatories to the agreement and have vowed to fight on. Chief Justice Tom Phillips, also a defendant in the case, has hired independent counsel as well. Governor Richards, Lieutenant Governor Bullock, and Speaker Laney, as well as the Attorney General, all signed the agreement on behalf of the state.

continued on page 2



Chairman's Column

by J.P. Word

Senators to Run From New Districts in 1994

All 31 members of the Texas Senate will run for re-election in 1994 under new district boundaries, according to a three-judge federal court panel. As you recall, the 1992 Senate elections were held under a court-ordered plan instead of under a redistricting plan passed by the legislature. The three-judge panel rejected the court plan and deferred to the legislatively mandated districts, which previously have been approved by the U.S. Department of Justice.

What are the major differences between the two plans and what is the impact likely to be? The plan "pairs" two sets of incumbent senators: Ike Harris (R-Dallas) and Florence Shapiro (R-Plano), and Bill Sims (D-San Angelo) and Jeff Wentworth (R-San Antonio). It also substantially changes the districts

currently represented by Frank Madla (D-San Antonio), Eddie Lucio (D-Brownsville), Jerry Patterson (R-Pasadena), David Sibley (R-Waco), and Dan Shelley (R-Crosby). Of this group, Senator Shelley is most disadvantaged, since his district becomes heavily Democratic.

While it is too early to tell how the 1994 races will line up, one thing is clear: it is time to start building the TCJL PAC in readiness for 31 Senate races, 150 House races, three Texas Supreme Court races, and races for Governor and Lieutenant Governor. Remember, TCJL's future effectiveness depends upon its ability to play a major role in the election process. We have seen the results in 1993—let's do even better in '94.

Attorney General continued...

The agreement is contingent on approval by a majority vote of the Texas House and Senate. A resolution recommending approval of the settlement has been adopted by a majority the House (generally along party lines, though some key Democrats did oppose the settlement), but not by the full Senate. The agreement subdivides the following counties into electoral subdistricts: Dallas, Harris, Bexar, Tarrant, Travis, Jefferson, Midland, Ector, and Lubbock Counties. Each subdistrict elects one or more judges, who would exercise countywide jurisdiction. Some judges—including the defendant-intervenor—would continue to run at large.

TCJL has taken a strong position against the proposed settlement. The text of TCJL's letter to the legislature reads as follows:

"The Texas Civil Justice League, an association of more than 4,000 Texas businesses, trade and professional associations, chambers of commerce, and individuals, opposes H.R. 477, embodying the proposed settlement agreement entered into by the Attorney General in *LULAC v. Attorney General of Texas*.

"Texas voters should make the final decision to change our method of electing state district judges. The Texas Constitution (Article V, Section 7a) clearly provides that a county may be subdivided into judicial districts that are smaller than entire counties if approved by the voters of the county. H.R. 477 does not provide for voter approval, nor does it propose a constitutional amendment changing Article V, Section 7a."

"A decision of such fundamental importance to the citizens of Texas and the effected counties should only be made with direct voter input, either through a statewide election on a constitutional amendment or in local elections in each of those counties. If single-member districts for the election of trial judges are truly what the citizens of Texas want, then the proponents of such a plan have nothing to fear from allowing the people to vote."

Please register your support for the voting rights of all Texans by voting against H.R. 477 and rejecting the proposed settlement agreement. Thank you for considering our appeal."

It is up to the Fifth Circuit Court of Appeals whether to approve the proposed settlement. Oral arguments are scheduled on May 24.

Lawsuit Abuse Campaigns Working

A Hidalgo County jury has ordered a plaintiff to pay the defendant's attorney's fees and court costs in a lawsuit it found to be frivolous. According to reports in the McAllen Monitor and Valley Morning Star, a woman sued the company she hired to move her mobile home when the home fell apart in transit.

The company had told her that the 14-year old, termite-infested mobile home would not survive the move. She went ahead, and when the home collapsed, she sued. The jury found that not only was the moving company not negligent or guilty of deceptive trade practices, but that the suit was groundless and brought in bad faith. It assessed more than \$13,000 in attorney's fees and costs against the woman.

Bill Summers, CEO of the Valley Chamber of Commerce and president of Citizens Against Lawsuit Abuse (CALA), is quoted as saying, "I would like to see more of these things happening. I, too,

think everyone should have access to the courts and I have seen some cases where people should have gotten compensation and didn't. But a case like this should never have been filed." The lawyer for the defendant was noted in the articles as saying that publicity from CALA has made juries more aware and that awards are becoming less substantial.

The Monitor also editorialized, "Such rulings undoubtedly will have a chilling effect on filing of questionable suits. There are some suits which should never see the light of day and if plaintiffs, not defendants, get hit in the pocketbook, perhaps people will think twice before resorting to the courts."

This case underscores the critically important grassroots work being done by lawsuit abuse groups across the state. We need to support these groups in every way we can.

Poll Shows Texans Support Merit Election of Judges

Sixty-nine percent of Texans think the state's judicial election system should be changed and 61 percent favor non-partisan merit election, according to the Texas Poll.

Fifty-five percent believe judicial elections should be nonpartisan while 33 percent want candidates for judgeships to continue running as Democrats or Republicans, the survey found.

The proposal to divide large counties into subdistricts for judicial elections, in order to get more minority lawyers elected, was favored by 46 percent with 36 percent opposing and 18 percent saying they had no opinion.

The survey of 1,012 Texans was conducted April 2-12 by the Public Policy Research Institute of Texas A&M University for Harte-Hanks Communications, Inc. The judicial selection questions were part of a larger poll and were commissioned by Texans for Judicial Election Reform, a non-profit group organized in 1988. Its president is former Chief Justice John L. Hill, Jr., who also served as Attorney General of Texas.

Hill noted that only 19 percent of those surveyed favor the present system and only 26 percent would be opposed to the merit election system he advocates.

"This reinforces our belief that if the legislature were to submit merit election to the people as a constitutional amendment and let them vote on it, it would be adopted by an overwhelming margin," said Hill.

The complete questions and results (numbers in percentages, rounded to nearest whole number):

1 - Texas judges now have to run for election as Democrats or Republicans. To do this, they must finance their campaigns with large campaign contributions from lawyers who practice in their courts. Do you favor this system or would you like to see it changed?

Favor current system, 19%; like to see it changed, 69%; no opinion, 12%.

2 - Do you think judges should be nonpartisan, or should they continue to run as Democrats or Republicans?

Nonpartisan, 55%; run as Democrats or Republicans, 33%; no opinion, 12%.

3 - One proposal, designed to get more minority lawyers elected to district judgeships, calls for election of judges from small districts

within a county. In large counties, people would be able to vote for only a few of their judges but these judges would have county-wide jurisdiction in civil and criminal cases. Would you favor or oppose this system?

Favor, 46%; Oppose, 36%; no opinion, 18%.

4 - Under another system, called merit election, people would vote on all judgeships but only after the candidates' qualifications had been screened in public hearings by broad-based commissions. A commission would recommend three candidates to the governor for each judgeship. The governor would pick one of those to go on the ballot as a nonpartisan, unopposed nominee. Periodically thereafter, the judge would go before the voters again for reelection or rejection. Would you favor or oppose this system?

Favor, 61%; Oppose, 26%; no opinion, 13%.



School Finance Amendments Fail; Special Session Possible

The overwhelming rejection by the voters of Proposition 1 means that the school finance dilemma is no closer to being resolved. The proposal would have allowed "limited recapture" of property tax revenue from wealthy school districts and redistribution of that revenue to poor districts. Voters turned it down by almost a 2-1 majority.

There are few options left to the legislature. They include:

- consolidation of some school districts in order to equalize property wealth;
- caps on local school district expenditures for public education;
- local option elections in each county to consolidate the school tax base in the county or to share wealth with another district; or a statewide tax, such as an income tax, or other dedicated revenue source to fund public education.

In view of the extreme controversy surrounding each of these options, there is a growing likelihood that the legislature will have to meet in special session this summer so that the schools can open next fall.

Nationwide Tort Reform Efforts Alive and Well

According to the American Tort Reform Association, Texas is not the only state that has adopted significant tort reform legislation in 1993. Here is a brief rundown of tort reform enacted in other states:

Mississippi—Major reforms in punitive damages and products liability, including a clear and convincing evidence standard, bifurcation of trials on the issue of punitive damages, prohibition of punitive damages in the absence of compensatory damages and against an innocent seller, rules for the jury to follow in establishing the amount of punitive damages to be awarded, protection for innocent retailers and wholesalers in products liability cases, and clear standards of liability for defective designs and inadequate warnings.

• **North Dakota**—Limitations on punitive damages, bifur-

cation of trials on the issue of punitive damages, prohibition of evidence of the defendant's financial worth in the punitive damages portion of the trial, conversion from pure comparative fault to modified comparative fault in products liability cases, and allowing the defense of product alteration or modification.

Arizona—A comprehensive tort reform package, including periodic payments, collateral source reforms, volunteer immunity, modified comparative fault, a 12-year statute of repose, and assumption of the risk.

Maryland—Medical liability reforms are included in a health care reform package, including a physician defense based on community training and practice standards.

Lawsuit Abuse Campaign Spreads

Locally-based groups flying the banner of Citizens Against Lawsuit Abuse are spreading throughout Texas. Latest is San Antonio, while others are organizing in Cleburne, Corpus Christi, Eagle Pass, El Paso, and Wichita Falls. CALAs in Beaumont, Houston, Longview, and Weslaco are already operating.

Recent comments from these independently governed groups:

Derrith Bondurant, executive director of East Texans Against Lawsuit Abuse: "Our job is education — teaching others about the problems caused by lawsuit abuse and an out-of-control legal system. The system is broken, and it's important that we all realize what it means to us personally."

Jon Opelt, executive director of the Houston CALA: "This is by no means a lawyer bashing campaign, that every use of the legal system is not an abuse and that every large jury award may not be excessive."

Bill Summers, who spearheaded the state's first CALA in the Rio Grande Valley: "All we're asking is fairness."

Since the Valley CALA was launched in 1990, Summers and local CALA supporters have carried their lawsuit abuse message — "Fair Yes, Greed No" — to more than 400 groups and organizations.

In the Valley, for example, a survey of area grocers conducted for the local CALA found that on the average some \$280 of a family of four's annual grocery bill goes to cover liability expenses, lawyers' fees and court costs.

TORT/LEGAL REFORM

The Texas Interested Citizens (TIC) 1993 Statewide Public Opinion Survey

was conducted April 7 through 17, 1993

The overall sample included 902 randomly chosen registered voters. The statistical margin of error for the TIC poll is $\pm 3.30\%$.

“And do you favor or oppose a cap or legal limit on the amount of money a court might award in a liability lawsuit?”

71% Favor
20% Oppose
9% Undecided

“And in general, do you approve or disapprove of lawyers advertising for customers?”

35% Approve
58% Disapprove
7% Undecided

“And do you favor or oppose limiting lawyer’s fees in liability lawsuits?”

71% Favor
20% Oppose
9% Undecided

TCJL Executive Committee and Board of Directors

Executive Committee

Chairman of Executive Committee

J. P. Word,
Executive Director
Texas Chiropractic Association

Vice Chairman Executive Committee

Robert G. Mickey,
Executive Vice President
Texas Medical Association

President

Ralph Wayne
Texas Civil Justice League

Vice President

Bill W. Barton,
General Counsel
Texas Railroad Association

Secretary-Treasurer

George Christian
George Christian, Inc.

Joe DaSilva,

Senior Vice President
Texas Hospital Association

Ron Kessler,

Managing Partner
Jones, Day, Reavis, & Pogue

Frank Sturzl,

Executive Director
Texas Municipal League

Ron C. Dipprey,

Manager, Governmental & Public Affairs
Dow Chemical – Texas Operations

James W. Durr,

Government Relations Manager
Ciba Geigy

Philip Elam,

Executive Director
Texas Rental Association & Affiliates

Cathy Obriotti Green,

Vice President of Public Affairs
H. B. Zachry

Richard B. Grisham,

Vice President, Secretary & General Counsel
Otis Engineering Corporation

Sally Hanners,

Director of Governmental &
Legislative Affairs
Texas Dental Association

Dane Harris,

President
Texas Association of Business

Lyle Johansen,

Executive Vice President
Texas Association of Builders

Jack Kyle, III,

Vice President
Union Pacific Railroad

David Lancaster,

Executive Vice President
Texas Society of Architects

Robert L. Looney,

President
Texas Mid-Continent Oil & Gas Association

John Marks,

Past President
Texas Association of Defense Counsel

Jimmie Lee Mason, CPA

Past President,
Texas Society of CPAs

Benny Mc Mahan,

Executive Vice President
Texas Association of Realtors

Larry Milner,

President and CEO
Texas Chamber of Commerce

Harold E. Reagan,

Texas Public Affairs Manager
Aluminum Company of America

Gerhardt Schulle, Jr.,

Executive Director
Texas Society of Professional Engineers

Jim Sewell,

Executive Director
Associated General Contractors,
Building Branch

Bobby L. Schull, M.D.,

Past President
Texas Association of Obstetricians &
Gynecologists

Freeman E. Smith,

Manager, Texas Area Public Affairs
Exxon Company, U. S. A.

Des Taylor,

Attorney at Law
Mark J. Hanna, P. C.

Byron Tunnell,

Former Vice President
Tenneco, Inc.

Timothy J. Von Kennel,

Director of State Relations
Enserch Corporation

Harry Whitworth,

President
Texas Chemical Council

Jay Wood,

Past President
Texas LP Gas Association

Tim Word,

Past President
Associated General Contractors –
Highways, Heavy Utilities Branch

Jim Yates,

Board Member
Texas Food Industry Association

Board of Directors

George B. Allen,

Executive Vice President
Texas Apartment Association

Bob Anderson,

Past President
Texas Oil Marketers Association

T. Louis Austin, Jr.,

Former Chairman and CEO
Texas Utilities

Luie E. Curto,

Manager, State Government Relations
Shell Oil Company

Louis De La Garza,

Vice President of Corporate Relations,
Valero Energy Corporation



American Tort Reform Association

1212 New York Avenue, N.W. • Suite 515 • Washington, D.C. 20005 • (202) 682-1163

The AMERICAN TORT REFORM ASSOCIATION was established in 1986 to be the national advocate of tort reform. Today ATRA represents a very large and diverse membership of non-profits, municipal agencies, professional societies, trade associations, large corporations and small businesses. They are united in their commitment to bring greater efficiency, fairness and predictability to the civil justice system through public education and legislative reform.

ATRA works to achieve these goals in three ways:

- o **By coordinating and supporting the activities of legislative coalitions.** ATRA's primary focus has been on the states. It serves as a resource center for about 40 state tort reform coalitions. It assists in setting their legislative agenda and provides them with data, news of current developments, briefing materials, model bills, witnesses and speakers. Its Leaders' Handbook for state coalition leaders and other activists is supplemented by a semimonthly letter, Leaders' Update. ATRA holds regional planning conferences each fall in Chicago, New Orleans, New York and San Francisco, in which state tort reform leaders meet to develop plans and strategies for the coming year's legislative session.
- o **By keeping its members and others informed of tort-reform developments and mobilizing them for action.** When legislation is pending in a state legislature, ATRA attempts to marshall resources behind its local supporters. Each week ATRA sends its members Legislative Watch, an alert to pending legislative developments and action opportunities. It also publishes The Reformer, a monthly newsletter, Tort Reform Outlook, an annual legislative forecast and Tort Reform Record, a semi-annual legislative summary. At the start of each year, in Washington, ATRA hosts a legislative conference of its members at which current issues are discussed and the legislative outlook for the year is presented.
- o **By focussing public attention on the shortcomings of the tort litigation system and the need for tort reform.** ATRA has an intensive communications program. It routinely carries the tort reform message to local and national press, radio and TV and provides speakers in a great variety of forums. ATRA holds regular press briefings which address current liability developments or discuss the liability problems of a particular

Membership Application

American Tort Reform Association
1212 New York Avenue, N.W., Washington, DC 20005

Please accept my organization's application for membership in the American Tort Reform Association.

Enclosed is payment of our first year's dues in the amount of \$ _____.

Name _____

Title _____

Organization _____

Address _____

City _____ State _____ ZIP _____

Phone _____

Minimum Dues Schedule

Associations with revenues:

Less than \$500,000: \$250
Less than \$1,000,000: \$500
Less than \$2,000,000: \$750
Less than \$5,000,000: \$2,000
Less than \$10,000,000: \$3,000, or
Over \$10,000,000: \$5,000

Corporations with gross income:

Less than \$25,000,000: \$250
Less than \$100,000,000: \$500
Less than \$500,000,000: \$1,000
Less than \$1,000,000,000: \$1,500
Less than \$5,000,000,000: \$5,000, or
Over \$5,000,000,000: \$10,000

*Associate Members: \$50, \$100 or \$250

*Associate membership is open to any interested *individual* who is interested in supporting ATRA's efforts. ATRA Associates are not voting members and do not receive the weekly Legislative Watch but are entitled to all other membership benefits.

Since ATRA has 501(c)(6) tax status, dues may be tax deductible as a business expense but not as a charitable contribution.