



OPINION

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"Publish and set up a standard; publish and conceal not." Jeremiah 50:2

Eugene Lorton • 1869-1949

EDITORIALS

Bad antics

Four councilors attack acting city attorney

The four city councilors who are being sued personally after ignoring the advice of acting City Attorney Alan Jackere and their own lawyer, Drew Rees, attacked Jackere on Thursday but failed to pass a consensus condemning him.

It was another shameful show by the council, one that veteran observers of City Hall called a "new low" and the "worst yet" of the antics of the bloc formed by Councilors Chris Medlock, Jim Mautino, Roscoe Turner and Jack Henderson.

The proposal condemning Jackere was offered by Mautino who said he has lost confidence in Jackere.

"He has not performed as an attorney. It's not his ability, but his position and his ability to handle that position," Mautino said. But of course Jackere has performed as an attorney. His great failing is that Mautino and others don't like his advice. The objecting councilors continually referred to Jackere's legal opinions as if they were no better than their lay opinions on legal matters.

They clearly don't understand that the city attorney is the legal adviser for the corporate body of the city; for the mayor, the City Council, and all aspects of the city operation. It's his job to help the entire city, including the council, to follow the law, not flout it.

Councilors, as they have learned, ignore the city attorney's advice at their peril. Each has been sued individually in the F&M Bank zoning case at 71st Street and Harvard Avenue because they refused to approve the bank's plat after zoning had been approved by the council and district court. The councilors contended that a minor error in the phrasing, a "scrivener's error" in legal parlance, allowed them to rehear the entire matter. Jackere reminded that they had been told of the typographical error before and during the zoning hearings.

That lawsuit was made moot by another action Thursday. The four councilors have been walking out on meetings, leaving the council without a quorum and thus unable to act to approve the F&M plat. It was brought back on the agenda for the third time Thursday. This

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time, Henderson did not recuse, leaving a five-member quorum and the plat was approved, 4-1. Henderson's action, which finally allowed approval, was an indirect way for the objectors to give in on the matter. Sounds as if they know that Jackere is right on the F&M case but they can't admit it for fear of their followers.

The 71st and Harvard zoning, approved by a previous City Council, was a factor in the elections of Mautino and Turner and continues to be a bone of contention with homeowners in the area who vociferously support the continuing wrecking-ball tactics of the bloc.

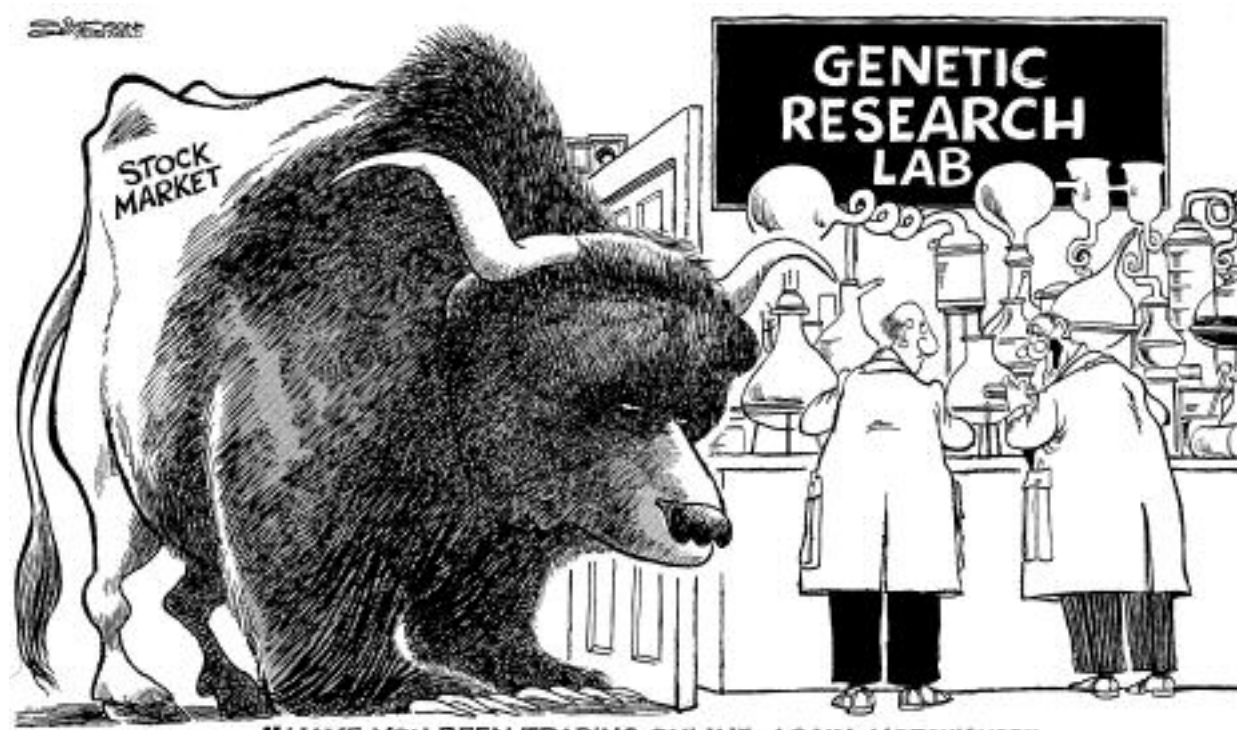
So far, the bloc has stopped an election on recall of Medlock and Mautino. They have challenged the recall signatures in district court and the recall forces have sued to force the council to call an election.

Charles Hardt, the veteran public works director, appeared before the council to vouch for Jackere on Thursday. Hardt said Jackere has always dealt fairly and professionally.

Jackere is one of several assistant city attorneys being considered for city attorney. That decision will be made by Mayor Bill LaFortune under the charter and city councilors have no role in a purely administrative decision.

The mayor has not appointed the new city attorney. Jackere might not be his choice. But the councilors' attempt to smear a respected public servant of more than 30 years once again demonstrated how ignorant and unthinking they are.

We hope Jackere realizes that the actions of the council Thursday had the effect of raising his stature as an attorney and public servant.



Reprint

The WRITE STUFF

Letters from our readers

Ignoring the facts

The Tulsa World, which has never met an illegal immigrant it didn't like, is at it again with an editorial by Associate Editor Mike Jones questioning the intentions of the Minuteman Project ("Good intentions?" April 10).

Jones makes fun of the individuals (who are trying to help patrol the border) with the words "Remember, this is a group whose motto is: Americans doing the jobs Congress won't do." He questions whether the volunteers can do a better job than the U.S. government, yet admits that the lack of manpower and funds make it impossible for the government to secure the border.

Jones says that the last part of the group's motto, "Operating within the law to support enforcement of the law," sounds like that of a vigilante group. Really? He says that "its actions seem to be targeting Mexicans," and "what it really wants is to keep those brown people out of the United States." A more honest observation would be that it wants to reduce the number of illegal immigrants entering the U.S.

Jones admits that illegal aliens "put a tremendous burden on the education and social systems" of some states, but excuses that with the remark that they do the work many Americans consider menial. He ignores the fact that they also depress wages, and put some citizens out of work.

Philip L. Essley Jr., Tulsa

Up the limit

The Tulsa World has reported much misinformation about Social Security. In the beginning the program was for workers' pensions, but politicians added the welfare which now overburdens it.

Only 42 percent of the payments go to workers' pensions. After 1935, politicians made other benefits go to many others. Survivors, spouses and children get another 42 percent. The disabled of all ages get 16 percent.

The pension is "quid pro quo," covering a lifetime of paying in and drawing out. Some actuarial persons would end workers' pensions upon death, consistent with many private pensions. Now, as in the beginning, the Social Security pension part is considered a right regardless of a retiree's income.

Since most is welfare, all remuneration (including much that is now exempt such as government workers and executive pay) should be taxed, and the rates adjusted downward accordingly.

For many years, the taxes were levied only for workers' pensions, but now low income and poverty-level workers bear most of the welfare burden. Those making more than the \$90,000 limit ought not to be exempt from this welfare payment.

Ben H. Payne, Bartlesville

Ways to pay less

Individuals, communities and the nation need to act

Letters should be addressed to Letters to the Editor, Tulsa World, Box 1770, Tulsa, Okla., 74102, or send e-mail to letters@tulsaworld.com.



MATT YORK / Associated Press

A Minuteman Project volunteer looks over the U.S.-Mexican border near Naco, Ariz.

to reduce oil prices, and corresponding gasoline prices at the pump. Oil prices continue to be driven higher by speculation based mostly on worse-case scenarios for the oil industry, i.e. increased consumption by the U.S., China and India, "possible" disruption of production due to strikes and terrorist acts and inadequate refining capacity. All these negative factors result in higher prices at the pump and reasonable profits for the oil industry.

It is time for all of us to reduce gasoline consumption so as to bring down pump prices. Some of the ways to do this would be:

1. Reduce pleasure driving by 25 percent.
2. Carpool to work.
3. Minimize trips to stores, doctors, eating out, etc., by combining as many as possible on each trip.
4. When trading in a car, buy one that gets better gas mileage.

If enough of us are serious, demand for oil will fall and so will prices.

Don Stacey, Broken Arrow

Letters to the editor are encouraged. Each letter must be signed and include an address and a telephone number where the writer can be reached during business hours. Addresses and phone numbers will not be published. Letters should be a maximum of 200 words to be considered for publication and may be edited for length, style and grammar.

Retaining judges

Change for Tulsa County sought

A bill changing how district and associate district judges are elected in Tulsa, Oklahoma, Pawnee and Canadian counties is a step in the right direction.

The proposed law would require judges elected or appointed before 2003 to be placed on a retention ballot starting next year. Judges elected or appointed after 2003 would stand for election one more time before going on a retention ballot.

A better approach would require all associate and district judges to stand for election in 2006 and then be up for retention at later elections. That way voters would know, going into the election, that if their candidate wins he or she would be on a retention ballot in the future. It is difficult to remove judges once they are on a retention ballot. Retention ballots are used in elections for appellate judges. So far, no judge on a retention ballot has been turned out of office.

Oklahoma district and associate judges run on nonpartisan ballots. The complaint in metropolitan districts is that voters often don't know who they're voting for, picking judges for arbitrary reasons. Judges are prohibited from actively campaigning. Another problem is that trial attorneys often, through their contributions, decide who will be elected.

House Bill 1807 is sponsored by Rep. Lance Cargill, R-Harrah, and Sen. Charles Laster, D-Shawnee. The measure passed the Senate and goes to conference committee. It must be approved by the House and the Senate if it is to make it to the governor's desk.

Tulsa County District Court has one associate judge and 15 district judges. At this point, only one judge, District Judge Gordon McAllister, who was appointed by Gov. Brad Henry in 2003, would be required to stand for election. Henry, however, soon will name a successor to District Judge Jane Wiseman, who was named to the Oklahoma Court of Civil Appeals. Her replacement also would have to stand for election next year.

When the conference committee considers the bill it should amend it to require all district and associate judges to stand for election at least one more time before Oklahoma goes to a retention ballot.

Attacks might shock judiciary into humility

WASHINGTON — Provocation is no excuse for derangement. And there has been plenty of provocation: decades of an imperial judiciary unilaterally legislating radical social change on the flimsiest of constitutional pretexts. But while that may explain, it does not justify the flailing, sometimes delirious attacks on the judiciary mounted by Rep. Tom DeLay, R-Texas, and others in the wake of the Terri Schiavo case.

DeLay is threatening judges involved in that case with unspecified retribution. He said that Supreme Court Justice Anthony Kennedy should be held "accountable" for using international law in deciding a recent (death penalty) case. He wants congressional hearings to reinterpret the "good behavior" clause of lifetime judicial tenure to make good behavior mean not what it has meant for two centuries — honesty and propriety — but good constitutional behavior. Do we really want Congress deciding that?

DeLay is wrong about the Schiavo case. I think the law was a bad law, but the trial judge applied it properly. I think the judge assessed the medical evidence incorrectly, but that is a mat-



CHARLES KRAUTHAMMER

ter of interpretation, not of judicial impropriety or denial of due process. There is nothing here with which to threaten this judge or the judicial system.

But at least DeLay was coherent. Sen. John Cornyn wandered somewhere off the Pacific Coast Highway when on the Senate floor he suggested a connection between "some recent episodes of courthouse violence" and judicial activism — as if courtroom gunmen are disappointed scholars who kill in the name of Borkian originalism. Even worse was a Washington meeting of over-the-top activists led by Phyllis Schlafly that issued a manifesto for the restoration of God to our constitutional system.

Let us have a bit of sanity here. One of the glories of American democracy is the independence of the judiciary.

The deference and reverence it enjoys are priceless assets. The Supreme Court is the only institution that could have ended the Bush-Gore fiasco of 2000 with the immediacy, finality and, yes, legitimacy that it did. (True, liberals, who for half a century employed judicial fiat to enact their political agenda, have been whining for five years about this particular judicial exercise. But the critical point is that, whine or not, the ruling was accepted as law.) Moreover, and more generally, judicial independence and supremacy are necessary checks on the tyranny of popular majorities.

Has that independence and supremacy been abused? Grossly. What other advanced democracy would radically legalize abortion by judicial decree rather than by democratic will expressed through legislatures or referendums? What sane democracy allows four unelected robed eminences in Massachusetts to revolutionize the very definition of marriage, the most ancient institution in society?

This is not just deeply undemocratic. It is politically crazy. Democracies work as stable social entities because

when people are allowed to settle issues themselves by debate and ballot, they are infinitely more likely to accept the results when they lose. To deny them that participation is to risk instability and threaten social peace.

It was Ruth Bader Ginsburg who said that Roe v. Wade "halted a political process that was moving in a reform direction and thereby, I believe, prolonged divisiveness and deferred stable settlement of the issue." Whenever such an obvious sociological truth is pointed out, proponents of judicial imperialism immediately resort to their trump card: Brown v. Board of Education and the courts' role in ending Jim Crow.

But Brown was different. The race cases were cases of a disenfranchised citizenry. The representative branches of government were legitimately superseded because they were not representative. Millions of blacks could not vote. Millions of blacks could not participate in civic life. The courts had to act to end this aberration and injustice, and, to their glory, they did.

And they have lived off that glory ever since. The prestige the courts inher-

ited from Brown fueled their arrogant appropriation of legislative power in areas radically different and suffering no disenfranchisement — abortion, gay rights, religion in the public square. For decades they have been creating law, citing emanations from penumbra of the Constitution visible only to their holinesses.

This is all true and deeply depressing. But the answer is not to assault the separation of powers. Certainly not to empower Congress to regulate judicial decision-making by retroactively removing lifetime appointees. The non-dereanged way to go about correcting the problem is to appoint a new generation of judges committed to judicial modesty.

Yet the recent eruptions of DeLay, Cornyn and some of their fellows may, like FDR's court-packing overreaching in 1937, have a salutary effect after all — scaring the bejesus out of judges, maybe even shocking them into a little bit of humility, something that does not seem to come to them naturally.

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