

SACRAMENTO SPECTATOR

The lobbyist community has been one of the groups slowest to adjust to the new reality of a Republican majority in the Assembly. Part of this is due to the fact that Democrats have been moving ex-staffers into key "Third House" jobs at a regular rate for many years now. Part of this is also due to the fact that the lobbyist community has its share of dim bulbs in positions of authority.

Unfortunately, part of this phenomena is also due to a new factor: lobbyists and large companies who are officially "Republican," but are self-consciously "moderate." These folks just have no patience for the great unwashed of the conservative movement. These major corporations and their lobbyists as often as not feel "embarrassed" by conservative ideas and are mortified by conservative successes. They take the typical liberal attitude that "they" know what is best, and we common folks should just get out of the way and let the enlightened and elite run our pitiful little lives for us.

This has been especially noticeable in Silicon Valley, a prime example being the Hewlett-Packard Corporation. While this company has been tilting left in recent years, the death of David Packard apparently removed the last obstacle to the full scale emergence of HP as a major factor

in the Democrat and liberal onslaught in California.

Item: Executives or paid lobbyists for HP have apparently taken the lead in forming a self-described "counter-force" to Assembly Speaker Curt Pringle and his efforts to elect more Republicans to the lower house. According to very well informed sources in Sacramento, the plan was to raise at least \$1 million to put at the disposal of Democrat Assembly Leader Richard Katz and Senate President Bill Lockyer. HP



and the other corporate socialists in Silicon Valley simply can't deal with a Legislature made up of people who would never be admitted as members to their country clubs.

Item: HP's government relations folks led the successful effort to have the company withdraw from membership in the California Manufacturers Association (CMA). CMA, along with the Chamber of Commerce and other pro-business groups, had just concluded the most successful legislative session from a free market perspective in at least 25 years. However, that wasn't

good enough for HP. Rumor has it they quit CMA in a whiney snit because CMA wouldn't support an increase in the gasoline tax!!! CMA's not unreasonable position was that since both the Silicon Valley folks (who wanted the tax increase), and the petroleum companies (who opposed the increase) were CMA members, the organization would stay neutral on the matter.

Well, the pip-squeak wanna-be power brokers inside HP held their breath, threw a tantrum, and quit CMA because this organization, whose job is to represent business in California, opposed raising taxes.

Your Spectator's own view is that the CMA is better off without the jelly-backed mealy-mouths at HP mucking up CMA's own internal workings. However, I would also suggest giving HP a dose of its own medicine next year. CMA and the petroleum companies ought to support a special 30 percent tax on computer chips ... with the money going to put computers in schools for the aged, blind, and disabled. We can only presume that HP's public spiritedness will lead it to support such a program enthusiastically.

And briefly on the legislative elections: hold your breath and light a candle. Several races around the state are very close, but at the moment the tea leaves indicate continued GOP control of the Assembly and even possibly the addition of one or two seats in the Senate.

— A.P.C.

The Emperors Wear No Robes

Bring on your arguments, your briefs, your opinions, you public — just, please, not too loudly, not too soon.

M A R K S . P U L L I A M

IN PAST issues of *CPR*, this column has criticized — sometimes harshly — certain decisions of the California Supreme Court and the rudderless “moderate” judicial philosophy that produced them. The politics of the Court is not the only problem, or, in some critics’ view, even the main problem. A well-respected “court watcher,” University of California, Berkeley, law professor Stephen Barnett, recently pointed out that the Court’s internal procedures are “fundamentally flawed,” regardless of its ideological orientation. Writing in the September issue of *California Lawyer* (a publication directed at the legal profession), Barnett, a Democrat who once clerked for U.S. Supreme Court Justice William J. Brennan, threw down the gauntlet with this charge: “[T]he California Supreme Court has become too bureaucratic and operates in ways that compromise its judicial character and reputation.”

Among the complaints lodged by Barnett in his article, entitled “The Bureaucourt,” are these:

- Pursuant to the Supreme Court’s internal rules, six of the seven justices generally receive a draft opinion with which they decide whether to agree or disagree *before they even read the parties’ written legal briefs*. Most litigants (not to mention members of the public) assume that the justices would not make up their minds until carefully studying all the briefs. Surprise.
- Even more jarring is the revelation that the Court votes on cases and drafts minority and dissenting opinions (if any) *before* hearing oral argument from the parties.
- The Court’s decisions are too long. The average non-death penalty decision of the California Supreme Court is 58 percent longer than the average decision of the U.S. Supreme Court. Moreover, the average de-

cision issued by the California Supreme Court in the 1995 term is more than *three times longer* than the average decision issued 30 years ago. The result is a veritable Tower of Babel. Legal rules should be clear and concise, not obtuse and imponderable. University of Pennsylvania law school professor Geoffrey Hazard recently remarked that the “proliferation [of legal rules]” results in “slicing legal distinctions finer and finer. The ancient philosopher Zeno identified a paradox, for which he is named, in the fact that a given length can be divided in half an infinite number of times. So with a given rule.” And, in helping prove Zeno’s Law of Infinite Judicial Rules Divisibility, the California Supreme Court apparently is also proving judicial decisions can be of infinite length.

THE REASON for these gargantuan decisions, in Barnett’s view, is that the Court’s internal staff has grown on an absurd and unprecedented scale. Each justice has five full-time staff attorneys (the chief justice has eight) in addition to the Court’s “central staff” of 25 attorneys (now being increased to 28). No other state supreme court (or even the U.S. Supreme Court) comes close. More significant is the *type* of staff the Court employs. The U.S. Supreme Court and most state supreme courts use “law clerks”: recent law school graduates who serve a year or two and are then replaced. In contrast, the staff attorneys at the California Supreme Court are long-term civil servants. In Barnett’s words,

These are all settled insiders, unlike the rotating law clerks of yore who brought to the court fresh ideas, enthusiasm, changing personal styles, bridges to the law school world, perhaps irreverence, and other proceeds of youth and recent law school experience.

Instead, the Court’s present staff “is notable for its

Mark S. Pulliam, California Political Review’s legal issues correspondent, is an attorney in private practice in San Diego.