

November 1, 2013

## More Carbon than Keystone: Peabody Energy and Warren Buffett Ship Coal to China

by Lou Dubose

Bellingham, Washington

**A**T DUSK ON A WARM WEDNESDAY AFTERNOON in September, a Lummi couple in their sixties had just finished picking kelp out of a gill net they had stretched out into Bellingham Bay. The wind was calm and the water so clear that every stone on the bottom was visible. The incoming tide was flowing north along the peninsula that makes up most of the Lummi Nation, in the direction of the Nooksack River, the net straining against six long branches that anchored it to the bottom.

A dozen silver salmon were spread out on a pile of kelp. The man pulled a small shark out of the boat and dropped it on the bank. The woman climbed onto a log and

yelled at another fisherman who was tossing kelp into the current. She spotted a harbor seal swimming toward the shore.

“Look at that,” she said. “If they’re not eating the salmon, they’re playing in your nets.”

But for the weathered, '80s-vintage fiberglass boat powered by a small outboard, I might have been looking at a sepia-toned photograph of Coast Salish Indians fishing as they fished for a thousand years before 1885, when their chiefs accepted the inevitability of white settlement, signed the Point Elliot Treaty, and the tribes retreated to reservations.

The couple were subsistence fishers—filling their freezer with salmon and selling part of their catch out of an ice chest. But many of the Lummi earn their living fishing. The professionals were gill-netting in the river or working reef nets in the bay.

No one would describe these waters as pristine. A few miles



north of the spot where the gill netters were fishing, BP and Phillips 66 operate refineries and tanker terminals, and Alcoa produces 260,000 metric tons of aluminum a year.

But a coal-export terminal that will connect the strip mines of Wyoming's Powder River Basin to coal-fired electricity plants in China is a greater threat to these fisheries and the regional environment than two refineries and a smelter. The terminal is a threat that extends beyond the Pacific Northwest and beyond China. The Powder River Basin is a carbon reserve with the potential to heat the planet past the point that our civilizations can withstand.

On the drawing boards, and in the permitting process, the Gateway Pacific Terminal at Cherry Point will be more than twice the size of the largest coal port in North America.

The interests advancing the project are betting on a complex permitting process and against two governors—Washington's Jay Inslee and Oregon's John Kitzhaber—who are fiercely committed to environmental protection.

The corporate architecture behind the deal is elaborate.

Peabody Energy, the largest coal producer in the world, operates the strip mines in the Powder River Basin. Warren Buffett's Berkshire Hathaway holding company owns the Burlington Northern Santa Fe Railroad (BNSF), which will move the coal from Wyoming to ports in the Pacific Northwest. Goldman Sachs owns

### ALSO INSIDE

**5** Politics of Faith & Fusion  
**Moral Mondays in NC**

**9** GOP Held Captive  
**Curse of radical base**

**12** Shock in Detroit  
**Workers lose in court**

**12** Silencing Science  
**BPA's hidden history**

49 percent of Carrix Inc., which owns SSA Marine, which in turn owns Pacific International Terminals, the subsidiary that will operate the coal port. Buffett wins, or loses, on both ends of the deal. As investment banks were collapsing in 2008, Berkshire Hathaway bought \$5 billion in preferred Goldman Sachs shares.

The low price of natural gas, and tighter environmental restrictions, have made coal a hard sell in the U.S. But China is bringing one new coal-fired electricity plant on line each week, has minimal environmental standards, and is described by Peabody CEO Gregory Boyce as a “coal-fired miracle.” Without a Pacific outlet, Peabody’s coal is landlocked in a country that, for the most part, has little use for it. Gateway Pacific is one, and the largest, of three coal-export terminals looking for homes in Washington and Oregon.

To get some idea of what’s in store for Cherry Point, I drove an hour north from Bellingham to what is currently the largest coal port in North America. On Google Maps, the Westshore Terminals in southwest British Columbia appear as a black mountain covering a third of a man-made island near the mouth of the Fraser River.

A million and a half tons of coal can be piled in three parallel stacks that at times reach eight stories. The stacks are divided by three parallel tracks for three cranes, each fitted with a 30-foot-tall rotary wheel equipped with 12 buckets that shovel coal onto conveyor belts.

According to Oregon Public Radio, Westshore spent \$7 million upgrading water guns and misting systems to control coal dust. Yet dust remains a problem as far away as Point Roberts, a landlocked American town on the south end of a peninsula two miles from the coal terminal, where house painters advertise special deals on coal-dust removal.

On the last Sunday in September, the rain had let up, a 35-mile-an-hour wind was blowing hard out of the south, most of the machinery at the terminal was idle, and black dust swirled in vertices above the coal stacks. Seven million dollars has to have made some difference, but coal can’t be moved, or stacked, without creating dust.

Westshore ships 21 million metric tons to China each year. Gateway Pacific, when fully built out, will export 48 million metric tons each year.

And while Westshore sits at the end of a two-mile causeway, Gateway Pacific will be built on the mainland, adjacent to the Lummi Reservation and 10 miles west of downtown Bellingham.

The proposed Gateway Pacific Terminal will occupy 1,092 acres. When it begins shipping, its coal pile and machinery will be contained to 105 acres, which over time will expand to 350 acres.

As many as three ships will tie up at a 2,980-foot wharf, taking on coal from a 1,250-foot trestle that connects the stockpiles to the wharf. (Westshore had no major environmental catastrophes since it opened in 1970—until December, when a tanker veered off course, toppled a trestle, and dumped 30 tons of coal into the water.)

### **Mile-long trains and capesize ships**

The terminal is the stationary piece of the project.

“We’re in the position of having the terminal here,” Crina Hoyer told me. “But coal trains are a mile-and-a-half long and really dirty. They are a concern all along the rail route.”

Hoyer is the executive director of RE Sources for Sustainable

Communities, a Bellingham environmental non-profit that is coordinating more than 100 advocacy groups in a campaign to stop Gateway Pacific. Two coal trains move through the city of 81,000 every day, on their way to British Columbia then back to the Powder River Basin.

Gateway Pacific will add nine more trains (18 transits) to tracks that run along the Bellingham waterfront. (If a second coal terminal under consideration is approved, at Longview near the Oregon state line, 34 coal trains per day will travel through communities that lie between strip mines in the West and coal terminals in the Pacific Northwest.)

In July the Sierra Club, the Natural Resources Defense Council, and six regional environmental groups sued the BNSF railroad under a provision in the Clean Water Act. The groups claim that:

“According to BNSF testimony at hearings before the Surface Transportation Board, each rail car loses an average of 500-3,500 lbs. of coal dust. Coal trains are composed of approximately 120 rail cars, resulting in an average of 60,000-420,000 lbs. of coal per train each trip.”

Plaintiffs allege that BNSF is violating the Clean Water Act because dust ends up in waterways along the rail bed: the Columbia River, Puget Sound, the Spokane River and 90 other bodies of water.

“The point sources are the rolling stock,” Charlie Tebbutt told me. Tebbutt is a Eugene, Oregon, attorney who filed the suit. “The Clean Water Act requires them to have permits if they are discharging pollutants. And they don’t.”

The suit asks a federal judge to impose civil penalties of \$35,000 a day for each violation of the Clean Water Act and to enjoin the railroad from shipping coal without taking measures to contain the dust.

A BNSF spokesperson told Bloomberg News that the lawsuit is “a publicity stunt meant to stop the permitting of multi-commodity export terminals in the Pacific Northwest.”

The other moving pieces of the Gateway Pacific project are bulk cargo ships.

“They are adding 457 transits a year to these waterways,” said Matt Petryni, who is coordinating RE Sources’s “Power Past Coal” campaign. “And the coal will be shipped on cape-size and Panamax coal carriers.”

A Panamax bulk carrier—294 yards long and 45 yards wide—is the largest ship that can transit the Panama Canal. Capesize vessels are so large—317 yards long and 50 yards wide—that they sail around the southern continental capes, because the Panama and Suez Canals cannot accommodate them.

Bulk carriers burn bunker oil, cheap low-grade, high-sulfur fuel made from “resid” that remains after gas, kerosene, and diesel are refined. Ships leaving the Gateway Pacific Terminal

*Continued on page 3. **COAL***

**COAL**, continued from page 2

will be topped off with fuel for Pacific passage. And they will be navigating the already congested waterways of the San Juan Islands, Petryni said, where one navigational error can result in an ecological disaster.

The San Juans are an archipelago of 800 islands, reefs, and narrow waterways, where cleaning up after an oil spill would be a challenge. Rosario Strait, which connects Bellingham to the San Juan de Fuca Strait, is a half-mile wide. Haro Strait, which straddles the Canada-U.S. border, requires pilots to make a sharp turn in a channel less than two miles wide.

The capesize *Selendang Ayu* en route to Xiamen, China, from Seattle in November 2004, was carrying 1,000 tons of bunker oil when it lost power and broke in half in Unimak Pass in the Aleutians.

Hoyer said the project will also threaten fragile habitat that is protected by state law. Gateway Pacific will be located in the 296-acre Cherry Point Aquatic Reserve, where Pacific herring reproduce and five species of salmon lay over to adapt to salt water before returning to the sea.

**Dwarfs Keystone XL pipeline**

Perhaps because much of the infrastructure is in place—two rail lines that connect Wyoming to the Pacific Northwest—the coal ports have not engendered a national movement like the Keystone XL pipeline has. But the stakes are even higher.

“Powder River Basin dwarfs Keystone in terms of climate impact,” Denis Hayes told me. Hayes, who coordinated the national staff that organized the first Earth Day in 1970, directs the Bullitt Foundation, a Seattle-based environmental organization with a national reach. Hayes said there is less interest in coal because coal has traditionally been burned for fuel, while bitumen—or tar-sands oil—is a new fuel source. And because Keystone is the focal point of Bill McKibben’s 350.org campaign.

Eric de Place, at the Seattle-based Sightline Institute, used State Department and EPA figures to calculate that burning oil cooked out of Alberta’s tar sands will release 144 million tons of CO<sub>2</sub> per year. Burning coal that Peabody intends to ship to Asia will produce 199 million pounds of CO<sub>2</sub> per year.

Coal shipped from the Gateway Pacific alone will add 86.7 million tons of CO<sub>2</sub> to the atmosphere each year.

No one handicapping a green campaign against Peabody Coal and Warren Buffett would describe it

as an even match. Yet it is a fight that a coalition of local, regional and national environmental organizations, and the Lummi Nation, stand a fair chance of winning because the fight isn’t fixed.

Looking out over Puget Sound from his office in Seattle, Hayes described the political geography of the Coastal Western United States. “There are three governors—Jay Inslee, John Kitzhaber and Jerry Brown—who have the opportunity to make the West Coast a different sort of place regarding environmental issues,” Hayes said. “And on this issue, with these governors, it’s going to be difficult to turn the West Coast into ... the great carbon exporting axis of the world.”

In March, Washington Governor Inslee and Oregon Governor Kitzhaber collaborated in a remarkable letter to the President’s Council on Economic Quality. The Democratic governors warned of a threat far greater than the Pacific export terminals:

“We believe the decisions to continue and expand coal leasing from federal lands and authorize the export of that coal are likely to lead to long-term investments in coal generation in Asia, with air quality and climate impacts that dwarf almost any other action the federal government could take in the foreseeable future.”

The Army Corps of Engineers is pursuing what Hoyer described as “a very myopic” approach to its environmental assessment, considering only the local effects of the terminal.

But the Corps of Engineers cannot, on its own, make the project happen.

The Washington State Department of Ecology and the Whatcom County Council are conducting an assessment that complies with the Washington Environment Policy Act, studying the “impacts on earth, air, water, plants and animals, energy and natural resources, environmental health, land and shoreline use, transportation, and public services and utilities.”

Both the County Council and the Department of Ecology have to issue permits before the project can move forward. The state agency, Hayes said, reflects Governor Inslee’s values and is not likely to bend to outside political pressure.

The County Council is an elected body, and four of its seven incumbents face challengers this month. It is also non-partisan and quasi-judicial, so no candidate has taken a public position on the Gateway Pacific Terminal. But a \$20,000 contribution from Burlington Northern to the state Republican Party, followed by \$5,000 contributions to four candidates,

**Coal for the Furnaces of China**

*“In the end, what we are here is sort of a resource colony. From being the country that stretched out its tentacles to the Middle East to bring in the oil and bring in the oil from Venezuela, basically raw materials from anywhere, we have become a supplier of raw materials, in this particular instance to China, the great industrial, imperialist force of the future.”*

—Denis Hayes

**Join Us**

Be the first to hear about new features, multimedia, events, and Spectator news.



[washingtonspectator.org](http://washingtonspectator.org)



defines the positions of four candidates.

Lisa McShane, a Bellingham political activist who tracks political money, told me that some corporate contributors were holding back to avoid the appearance that a local race is being bought by outside interests. Washington votes by mail and ballots were not available until October 10.

“The big money will be spent late,” McShane said. “Most of the campaign will be evident in people’s mailboxes in October.”

After the November 5 election, seven members of a county council a continent removed from the corridors of power in Washington, D.C. and the markets in Lower Manhattan will shape the environmental policy in the United States and the People’s Republic of China.

### Seven generations

Then there is the Lummi Nation.

Its elected governing body, the Lummi Business Council, has opposed the terminal since 2010.

A lawsuit filed by RE Sources in 2012 appears to have stiffened its resolve. The Lummi knew that in 2011 Pacific International Terminals bulldozed roads and drilled test wells in an archeological site where pre-Columbian artifacts, and the remains of Lummi ancestors, were buried 3,500 years ago.

RE Sources’s Clean Water Act lawsuit revealed that the company knew that its site-assessment team was working in a designated archeological site.

“We think the evidence proves that the violations were intentional and motivated by profit,” said Knoll Lowney, the Seattle attorney who filed the suit. “They jumped the gun on the permitting process. The evidence proves that they lied to multiple government agencies.”

To settle the suit, Pacific International Terminals paid \$1.6 million to RE Sources, which turned the money over to a group that restores wetlands. But the willful desecration of a sacred site has become central to the narrative of Lummi leaders working to stop the coal-port permit.

“They took a bulldozer over a known site where human remains are known to lie,” Jay Julius said at a tribal meeting in February. “They knew and understood well before July 2011 the nature, extent, and



resources [contained in the site].”

Julius, a professional fisherman and secretary of the Lummi Business Council, is leading the tribe’s opposition to the terminal. (Julius was returning from a regional Indian Nations meeting where the export terminal was discussed when I was reporting on the story and was unavailable for an interview.)

At the February meeting, Julius described the coal port as a threat to 60,000 commercial fishermen and the state’s \$3 billion fishing industry. He said the bulk carriers will “come right through our ancestral waterways,” and moor “at Vendovi Island, where we fish.”

“They want to take 5.3 million gallons of water per day out of the Nooksack River to water down their coal piles,” Julius said. “How does that affect our ability to fish the Nooksack?”

In July, the Business Council wrote to the Corps of Engineers, declaring the “Lummi Nation’s unconditional and unequivocal opposition to the Gateway Pacific Terminal.”

The letter said coal port is an “impairment of the Lummi treaty fishing right.” The Corps usually defers to treaty rights, even if their response to the letter suggests they believe negotiations are still on.

The irony is exquisite.

A Native-American tribe of 5,000 telling the U.S. government that, “We must manage our resources for the seventh generation of our people.”

Then stopping the advance of a railroad baron moving his trains across the American West. ■

## Buffett’s Carbon Footprint

When Berkshire Hathaway bought BNSF railroad for \$34 billion in 2010, some analysts said the \$100 price iconic investor Warren Buffett paid for shares trading at \$75 was too high. But John Larkin of Stifel Nicolaus saw Buffett investing in growth: “intermodal [containerized freight], because of its inherent fuel efficiency and relative environmental friendliness; grain, because the industrialization of the Pacific Rim has turned Asia into a grain importer; and coal, because it’s key to America’s energy self-sufficiency.”

Buffett wasn’t a coal novice. Berkshire subsidiary MidAmerican Energy already owned 11 coal-fired plants. But America’s self-sufficiency had nothing to do with the BNSF deal. In acquiring the tracks and rolling stock to move coal from Wyoming and Montana to export terminals in the Pacific Northwest, from where it will be shipped to China, Buffett was betting on coal’s future as an export. The heat-trapping CO2 produced by Berkshire’s 11 coal-fired plants is modest compared to the volume of CO2 that will be produced when the coal moved in BNSF trains is burned in China.

Buffett has expressed concerns about climate change, yet the values investor saw value in coal. Principle and market capitalism rarely coincide—unless you are David Koch. —L.D.

January 1, 2014

# The Politics of Faith and Fusion: Moral Monday in North Carolina

by Lou Dubose

Releigh, North Carolina

**F**ROM A DISTANCE, NORTH CAROLINA'S Moral Monday Movement reads like a spontaneous reaction to Republican Governor Pat McCrory and the Republican supermajorities that control the General Assembly.

Before adjourning this past September, North Carolina's Tea Party-dominated General Assembly eliminated 5,200 teaching positions and 4,580 teacher assistants, they cut pre-K classes for 30,000 preschoolers and diverted \$10 million to a school voucher program. They terminated unemployment benefits for 170,000 out-of-work North Carolinians and denied Medicaid to 500,000 qualified recipients. They abolished the earned-income tax credit for 907,000 working-class residents of the state—and they reduced taxes for the top 5 percent. Then to insulate themselves from voters who might respond at the polls, North Carolina's Republican legislators passed the most restrictive ballot access law in the nation—specifically targeting minority voters.

In response, a charismatic African-American preacher rose up and led tens of thousands of aggrieved citizens to mass rallies at the Capitol in Raleigh, where 350 protestors were arrested for committing acts of civil disobedience.

That's a great story. It's what many news outlets reported. But it's not what happened.

"This movement began in 2005," Al McSurely told me, "when Rev. Barber decided he was going to run for president of the NAACP."

McSurely doesn't get into his personal history, but he joined the Congress of Racial Equality in Virginia in 1962. Then in 1967, he and his wife were charged with sedition in Kentucky in a political prosecution for their attempt to bring working-class whites into the civil rights movement. After the couple was exonerated and the state sedition statute ruled unconstitutional, Arkansas Senator John McClellan went after them, subpoenaing movement-related files that state investigators had illegally taken from the McSurelys' home.

Alan and Margaret McSurely sued McClellan and the staff of the Permanent Subcommittee on Investigations and won \$1.6 million. Al McSurely used some of these funds to go to law school in North Carolina and has been litigating civil rights cases there ever since. In 1986, he was one of the co-founders of the Chapel Hill branch of the NAACP.



McSurely was explaining the background of the Moral Monday Movement as we drove from Chapel Hill to Goldsboro to attend Sunday services at the Greenleaf Christian Church, the 120-year-old congregation where Rev. William J. Barber II serves as pastor.

"Rev. Barber said he wanted to move from banquets to battles," McSurely said. "He wanted the NAACP to focus to the state Legislature."

Barber envisioned an aggressive political agenda for an organization that spent too much time on social activities and was too invested in a single NCAAP Lobby Day at the Legislature.

When Barber won the election, he brought McSurely on to his executive leadership committee. McSurely remains one of two white advisors working closely with Barber. He also directs an NAACP program that investigates unfair convictions and sentences.

On the road to Goldsboro—a city of 37,000 that is 50 miles southeast of Raleigh and 54 percent African American—McSurely reminded me of something often ignored by reporters: the issue of race remains central to any progressive political movement in the South. Barber gets that, McSurely said. He also understands the importance of building broad coalitions with white progressives.

William Barber is an ordained minister with an undergraduate degree in political science and a Ph.D. from Drew University in New Jersey, where he studied pastoral care and public policy. In North Carolina, he had worked for Democratic Governor Jim Hunt, McSurely said, and had come to recognize the limitations of the traditional arrangement by which African Americans and white liberals cut deals with the Democratic Party on the four or five bills the leadership would allow each legislative session.

Barber believed that the NAACP, with established branches

across the state, could lead a broad progressive coalition that might change North Carolina's political culture—if the NAACP itself would change.

He told NAACP members at an Emancipation Proclamation Banquet in early 2006 that he was taking the organization in a different direction.

"We're not a social club," Barber said. "If you came here to smile at everybody, you're in the wrong organization."

He reminded them that they were celebrating the Emancipation Proclamation in Halifax County, once the home of iconic civil rights leader Ella Baker:

"She led the founding of the SNCC movement when young folks decided that the old folks were moving too slow."

### Social Justice Gospel

The Greenleaf Christian Church is a nondescript, low, brick-veneer structure with a small white steeple that looks like an afterthought attached to a composition roof. The interior, though, is warm and elegant: natural wood arches, a natural wood ceiling, rows of alabaster pews. (The church also has incorporated a community development center that buys and sells affordable homes in the Greenleaf community and operates its own retirement home and food-service job training center.)

Barber is a large imposing man with mobility problems that require him to use a cane. In sacerdotal garments, he is even more imposing.

He had been traveling. Early in the previous week he was in Mississippi, speaking to the NAACP about Moral Monday. On Friday morning, he addressed the Union Theological Seminary in upper Manhattan and that evening in New Jersey, he spoke at Princeton.

I had been told that this Sunday's sermon would be delivered by a visiting preacher.

Yet standing in center of the aisle rather than on the altar, and speaking into a hand-held microphone, Barber was leading his congregation through the liturgy.

The healthcare.gov site was still in the repair shop and under attack from some conservative politicians and preachers. In a homily informed by the Social Justice Gospel, Barber got his licks in.

"I say to my brothers and sisters in faith, I call them brothers and sisters though I deeply disagree with them ..." Barber said. "If you don't have your health, you can't make it. They are pro-life inside the womb and anti-health care outside the womb."

He defined health care as a fundamental moral issue and challenged conservative Christian leaders who "make abortion, prayer in school, and where

you stand on homosexuality the only moral issues."

He questioned politicians who "put their hand on the Bible and swear to uphold the Constitution."

"Do they know what's in that Bible? If Jesus did anything to challenge the domination of Rome—where people were left to die if they weren't in the 1 percent—the one thing Jesus did everywhere he went was to set up free health clinics.

"He would go to a pool where people were sick and he would heal them.

"He would find someone who had been lame for all of his life ... and he would heal him.

"How do you claim to be following Jesus if you don't want to see people get health care? Health care is one of the things Jesus majored in," he said.

To conclude, Barber turned to the Old Testament and quoted from the 103rd Psalm:

*Praise the Lord, my soul  
and forget not all his benefits  
who forgives your sins  
and heals all your diseases.*

"Heals all your diseases," he repeated.

Before turning the pulpit over to a seminarian who would deliver the sermon, Barber led the congregation in "Come by Here"—better known as "Kumbaya," the English corruption of the original Gullah, the slave creole language spoken on the southeastern Atlantic coast.

"Slaves sang that song," he said, "asking God to 'come by here.'"

"God comes through the back door of history because that's where his people are," Barber said. "Not a temple, a stable."

### Not a moment, a movement

After the service, I accompanied Barber to a potluck lunch in the home of a member of the Greenleaf congregation in a middle-class rural subdivision a few miles from the church.

Barber agreed when I suggested that the Moral Monday Movement is perceived to be a reaction to the hard-right Republican agenda in Raleigh.

"That's the biggest misnomer," he said.

"People don't understand this. They don't understand how we did this. How long we have worked to create a legal strategy, a legislative strategy, a social media strategy. The number of plannings and meetings. What we did to get people to trust this movement. What gives the movement integrity, so we can't be criticized by people who say

## North Carolina Legislation Sampler

- Earned Income Tax Credit for 907,000 low-income working taxpayers cut.
- Corporate and personal income tax rates lowered and sales taxes added to services previously untaxed.
- Estate tax that covered only estates larger than \$525 million eliminated.
- Concealed weapons legal on campuses (if locked in cars) and in restaurants, bars, and parks. Hunters can use silencers.
- Racial Justice Act repealed, reverting to criminal justice practices that historically sentenced a disproportionate number of blacks to death.
- Abortion coverage banned (in a motorcycle safety bill rider) in public-employee insurance policies and in health care policies purchased by the general public on Obamacare-mandated insurance markets.
- Voter ID required, one week cut from early voting, same-day registration eliminated, straight-ticket party voting ended, mandatory high school voter registration drives ended.

—NC Watch, Election Law Blog

Continued on page 7, **MORAL MONDAY**

**MORAL MONDAY**, *continued from page 6*

you're only doing this because of the Republicans."

"We started this when the Democrats were in power," Barber said. "We put out the word. The state had not complied with the *Leandro* decision [a 1994 public-education equity lawsuit]. We still had not given public employees collective bargaining rights. We didn't have a racial justice act."

"State legislatures have enormous power," Barber said. "They control the budget. They control redistricting. They control voting rights. So we said, let's focus on the Legislature."

"Hence, HK on J"—Historic Thousands (i.e., K) on Jones Street, where the Capitol is located. "Al came up with that idea," Barber said.

The NAACP became the organizing nexus for a coalition of progressive organizations ranging from organized labor to environmental advocacy groups.

At the first HK on J assembly in February 2007, 5,000 activists from across the state descended on Raleigh and produced a 14-point agenda with 84 specific action points.

"Education was key," Barber said. "And economic justice, voting rights—important issues."

At the time, Democrat Jim Hunt was governor and both chambers of the state's General Assembly were controlled by Democrats.

While Democrats were in power, the movement pushed the General Assembly to pass legislation that included same-day registration and early voting, and a racial justice law that protected against bias in capital cases.

"It's not like the Democrats handed that to us," Barber said. "We had to fight the Democrats *and* the Republicans."

When Republicans elected a governor in 2010, and supermajorities in both houses of the Legislature in 2012, Tea Party influence made a backlash inevitable—though few anticipated the extremism of the 2013 session.

"If you take the Tea Party's agenda and go right down it, and go right down our agenda, you will see that they are attacking everything that we won and everything that we did," Barber said.

Because Obama didn't win the popular vote in North Carolina in 2008 until the early-registration, same-day-vote tally was added in, election reforms pushed through the legislature by the HK on J coalition were an obvious target.

North Carolina's new voter ID law, the most extreme and restrictive ballot access legislation

in the nation, is being challenged in court by the NAACP, the League of Women Voters, and the Justice Department.

"Their goal has been to undermine and roll back those victories and to undermine and keep this sort of fusion political momentum from going on," Barber said.

Moral Monday would become the movement's response to a Legislature bent on dismantling the state's social-welfare safety net.

**A Third Reconstruction**

Spend any time in the company of Barber, or Tim Tyson, the Duke University historian who is part of Barber's inner circle, and you quickly get acquainted with the term "fusion politics."

Fusion politics brought together newly enfranchised blacks and progressive whites who drafted a constitution in North Carolina in 1868 during the First Reconstruction. Two years later, the General Assembly passed voting rights laws, criminal justice laws, labor laws, and created the first public school system in the United States.

"That was progressive legislation passed by blacks and whites working together," Barber said.

Until a backlash that, according to Barber's reading of history, anticipated what is happening in North Carolina today.

In 1872, the Ku Klux Klan was created—"as a political organization," Barber said—and North Carolina's planter class began to claw back the gains made by the fusion politics coalition.

In 1898, whites rioted in Wilmington, killing a still-unknown number of blacks. The Old South insurgents seized control of the General Assembly and re-disenfranchised black citizens who had been working in concert with progressive whites.

"By 1910, black voting power was virtually nothing," Barber said.

Barber and Tyson describe the history of the South as a Manichean struggle between progressives and retrogressives.

"When they saw what fusion politics was doing, they went after taxes, education, and most importantly voting rights," Barber said.

"It's an ongoing struggle between the spirit of slavery and the spirit of citizenship that's been going on in North Carolina for a century and a half or more," Tyson said at a Moral Monday meeting.

The Second Reconstruction began at about the time the Supreme Court handed down the *Brown* decision in 1954 and also involved fusion politics.

**"How do you claim to be following Jesus if you don't want to see people get health care? Health care is one of the things Jesus majored in."**

**A Coalition of the Willing**

*"Moral Monday never would have happened by us just going into the Legislature. It is rooted in the long term, rooted in history. It is probably the largest anti-racist, anti-poverty, pro-justice, pro-labor, multi-racial, fusion, agenda-based, state-based movement in the country. And for seven years, without electing a leader, this NAACP-led coalition in the South has made the issues of race and poverty central. And it continues to grow."*

—The Rev. William J. Barber II

**Join Us**

Be the first to hear about new features, multimedia, events, and Spectator news.



[washingtonspectator.org](http://washingtonspectator.org)



“Remember, it was blacks, whites, Jews and Gentiles,” Barber said.

The Second Reconstruction ended with the assassination of civil rights leaders and a programmatic assault on the same progressive laws that had been dismantled in the post-Reconstruction South: public education, fair criminal justice laws, equitable taxation and voting rights.

The election of Barack Obama, more specifically the demographic mix of voters who elected and reelected him, represents “the possibility” of a Third Reconstruction, Barber proposed. The extreme measures the extreme right is writing into law across the South, in particular the assault on voting rights, are aimed at suffocating that possibility.

“We are being attacked because of our success,” Barber said.

“They know that in North Carolina about 23 percent of the electorate is African American. So you get 26 to 27 percent of whites to vote their future and not their fear, add a percentage of Latinos, and you have a whole new day. Their Southern Strategy no longer works for them.”

### War clothes

The following day, there were five people in the sanctuary of the Gethsemane Missionary Baptist Church in Salisbury when I arrived, half an hour before the November 18 Moral Monday rally was scheduled to begin.

Barber was speaking to SiriusXM talk show host Mark Thompson and appeared unconcerned that the room was empty.

Half an hour later, the 500-seat sanctuary was filled and an overflow room was opened.

Gethsemane is located in Salisbury’s African-American community, directly across the street from Livingstone College (which was founded by J.W. Hood, a black state superintendent of schools during North Carolina’s First Reconstruction).

Salisbury, 100 miles west of Raleigh, is 38 percent black, and the crowd that came together in this African-American church was mostly, perhaps 85 percent, black.

The other 15 percent represented interests as broad as the movement Barber is building. Working my way through the sanctuary, I spoke to a UAW

Local president and half a dozen of his union brothers, all white; two white teachers who are members of the North Carolina Association of Educators; a Mexican-born college student advocating for immigration reform; a member of the North Carolina Nurses Association who wanted to make a statement about the governor’s decision on Medicaid; and a lesbian pastor of a Baptist Church who two years earlier was arrested for protesting an anti-gay measure enacted by a county school board.

(The movement can also draw a white crowd; five hundred white people, for example, turned out for an August 19 Moral Monday rally sponsored by the NAACP in Burnsville, a town of 1,600 in Yancey County, where blacks represent 1 percent of the population.)

The event in Salisbury lasted for three hours and included

three panels and a selective reading of the Moral Monday “Legislative Report Card.” Yet more than two-thirds of the crowd stayed until the end, waiting to hear Barber speak.

Barber walked to the pulpit and began quietly but forcefully with Isaiah 10:

“Woe unto those who legislate evil.”

Then, after a 17-minute breathless and breathtaking jeremiad that built in emotional and rhetorical intensity while defining the evil legislated in Raleigh, he concluded with the question asked in the 94th Psalm:

*“Who are the people who will stand up against iniquity?”*

And he answered:

*“I’ve got my war clothes on!*

*“I’ve got my war clothes on!*

*“I’ve got my war clothes on!”*

It was as powerful a speech as I have personally witnessed.

William Barber and more than 10,000 Moral Monday activists will again converge on the Capitol on February 8.

The Governor and his Tea Party allies can expect the Reverend to have his war clothes on. ■



## HK on J's Eclectic Coalition

- Association of Migrants in North Carolina
- AFL-CIO of NC
- United Food and Commercial Workers
- Teamsters Local 391
- AARP NC
- NC Aids Action Network
- Common Cause NC
- Clean Water for NC
- NC Public Interest Research Group (PIRG)
- Campaign4Change
- Durham MLK Steering Committee
- AME Zion Church
- American Friends Service Committee
- Community Church Unitarian Universalist
- General Baptist State Convention
- Chapel Hill Friends School
- Hip Hop Haven
- NCCU Student Graduate Association
- YMCA of the Greater Triangle
- All of Us North Carolina (LGBT rights)
- Feminists Students United
- ACLU of NC
- NC A. Phillip Randolph Institute
- Progressive Democrats of NC
- Stop Torture Now
- Masonic Lodge 21st District

Complete list:  
[hkongj.com](http://hkongj.com)



May 1, 2013

# A Republican Party Held Captive by Its Radical Base

by Lou Dubose

Washington, D.C.

**R**EPORTERS APPRECIATE THE ANNUAL Conservative Political Action Conference. It never fails to provide good copy.

Consider.

On the mid-March Monday morning when CPAC 2013 opened its doors, there was Congressman Louie Gohmert, trying to make his way to an interview with the Tea Party Network Radio host, a six-foot tall blond woman in a slinky red dress and leopard pattern stiletto heels. Gohmert was navigating a swarm of college students swapping smart phones so everyone could get a picture with the congressman.

Louie Gohmert? The short, bald Teabagger who has accomplished nothing in the six years as he has represented his East Texas district—other than establish himself as a cable news curiosity whose comments are so over the top that they go viral in 24 hours?

Less than 30 feet from Gohmert, in front of the NRA Radio booth, another pack of students has Allen West pinned against the wall, handing him programs to sign and jostling to snap photos with yet another CPAC rock star. West served one term in the House, where like Gohmert, he made his bones by making outrageous statements. It helped that he was a black Republican Congressman taking on Obama, “who uses welfare to keep us all on the plantation.” It also helps with this crowd that he was fined and discharged from the Army for shoving an Iraqi prisoner’s head into a barrel and firing his pistol beside the prisoner’s ear.

Across radio row from Col. West is Dr. Orly Taitz, Esq., the Russian-born naturalized citizen dentist and lawyer from Southern California whose *sui generis* second career is a campaign to prove that Barack Obama was not born in the United States.

Taitz is telling a TV news team that she has just tracked down the individual whose Social Security number Obama uses to pass himself off as an American citizen.

This abundance of low-hanging fruit distorts reporting on CPAC and its relationship with the party that controls the House and could be a majority in the U.S. Senate in 2015.

CPAC is a right-wing Brigadoon, where the Republican grassroots gather once a year to hear from party leaders and celebrities discuss public policy, and if you’re young and lucky, find someone to sleep with and a job on the Hill or at Heritage.

A slot in the speaker’s lineup is a requisite for every Republican elected official or candidate of national standing. (Reagan addressed CPAC 14 times.) Speakers (pick one: John Boehner,



Mitch McConnell, Eric Cantor, Lindsey Graham, Marco Rubio, Rand Paul, Ted Cruz, Bobby Jindal) establish their bona fides by dedicating themselves to the extreme policy positions that are canonical in this crowd.

After four days of immersion, 8,000 to 10,000 participants depart, convinced that anthropogenic climate change is a hoax; government warnings about BPA plastic bottles are a plot designed to create hysteria to drive the public into the arms of the Nanny State; and that Rand Paul is a viable candidate for the presidency of the United States.

Professional politicians leave with a list of positions they promised to support and a reading of which tropes get the best response. The 2012 Republican primary was rehearsed and crowd-sourced at CPAC 2011 and 2012. And you can consider Rand Paul placing first in the 2013 Straw Poll the beginning of the 2016 Republican primaries.

As CPAC grows extreme and more inbred each year (it just turned 40), it continues to move the GOP’s center of gravity further to the right.

All of this—underwritten by the American Conservative Union, whose non-profit IRS status designates it an “educational organization”—serves the interest of the Democratic Party. Compared to the political flat-earthers who show up in Washington every winter, Democrats come off as even more centrist and moderate than they actually are.

Yet if Republican extremism is good for the Democrats, it is bad for the country. That is the thesis of Thomas Mann and Norman Ornstein’s indispensable 2012 book: *It’s Even Worse Than It Looks: How the American Constitutional System Collided With the New Politics of Extremism*.

“When one party moves this far from the political center of American politics,” the authors write, “it is extremely difficult to enact policies responsive to the country’s most pressing problems.”

One factor that contributed to the Republican shift from the political center, according to Mann and Ornstein, is the movement conservatism that Newt Gingrich adopted when he realized that a radical political insurgency was the easiest route to a Republican majority in the House.

After Gingrich was elected House Speaker in 1994, moderation and compromise became anathema to the party. Once a year, the Republican base gathers in a convention hotel in Washington to ensure that doesn’t change.

Beyond the right-wing funhouse stories, the public that pays attention to politics sees CPAC as a series of political speeches delivered by the luminaries of the Republican Party. Mitt Romney delivered the concession speech he didn’t have prepared when he was “surprised” by Obama in November. Rand Paul and Marco Rubio began their presidential races. Rick Santorum kicked off his 2016 campaign for whatever (or the fundraising campaign for his non-profit foundation, which pays his salary and travel expenses) with a jeremiad that used the death of his adolescent nephew the previous day as a ghoulish set piece to attack “the left in government who for 100 years have made it their mission to have a government program that addresses every pain.” And the dimwitted but ruggedly handsome governor of Texas said that Republicans lost the last two presidential elections because their candidates were not conservatives.

The big-name speeches are half the story. CPAC is a right-wing politics *kindercamp*, where college students are flown in for four days of political indoctrination. Sarah Palin recognized them with a shout-out in her speech: “Yeah, you Young Republicans, especially you who went Greek. I’m so proud of you guys. All of you college Republicans there on campus. You are so bold.”

Fifty percent of this year’s CPAC attendees were between the age of 18-25, according to *The Washington Times*. All of them looked Greek to

me, dressed for fraternity or sorority pledge-class installations.

Blazers, khaki pants, buttoned-down shirts, ties (or bowties) for college-aged men; elegant dresses and heels for young women. (For four days sitting in hotels listening to speeches and panels?)

The curriculum is predictable. Among this year’s offerings:

- Former Apollo astronaut Walter Cunningham debunking scientific findings that human activity is causing global warming, while offering no scientific argument to counter what is accepted by 97 percent of climate scientists. (Walt’s work is underwritten by the Heartland Institute, which is funded by industrialist Barre Seid, ExxonMobil, Charles Koch, the Waltons of Walmart, and Pittsburgh billionaire Richard Mellon Scaife, to name a few.)

- The Competitive Enterprise Institute’s Angela Logomasini describing the virtues of Bisphenol A (BPA) plastic, despite FDA’s warnings that BPA can adversely affect “the brain, behavior, and prostate gland in fetuses, infants, and young children.”

- A Heritage Foundation panel that reframed environmental politics in free-market terms. For balance, the panel included Kathleen Hartnett White from the Texas Public Policy Foundation, which is funded by San Antonio billionaire James Leininger and the Koch brothers.

Other panels argued for increased military spending, a more focused campaign against women’s reproductive freedom, expanded Second Amendment rights, and Ayn Rand’s preeminence as a public intellectual.

CPAC enthusiasts refer to their event as “Mardi Gras for Conservatives” and maybe this is what some consider a good time. It is more accurately described as a Republican Youth League camp. It recruits and trains replacement voters for a party that the Pew Research Center profiles as “92 percent white...tends to be male, married, Protestant, well off and at least 50.”

## The Vanishing Republican Center

The Republican Party’s steady drift to the right can be tracked by the American Conservative Union’s ranking of U.S. Senators based on key Senate votes.

**17** The number of Republicans in 1990 who scored lower than 65, including moderates such as Missouri’s John Danforth (48) and Mark Hatfield and Bob Packwood of Oregon, both scoring 35.

**8** The number of Republicans in 2000 scoring below 65.

**6** The number of Republican in 2012 scoring below 65, three of whom are no longer in the Senate.

**20** The ACU’s percentage ranking of Maine Senator Susan Collins, an invitation to a primary challenge from the right.

**On the mid-March Monday morning when CPAC 2013 opened its doors, there was Congressman Louie Gohmert, trying to make his way to an interview with a six-foot tall blond woman in a slinky red dress and leopard pattern stiletto heels. Louie Gohmert? The short, bald Teabagger who has accomplished nothing in the six years as he has represented his East Texas district.**

Continued on page 11, **RADICAL**

**RADICAL**, continued from page 10

Obviously, many constituent groups make up today's Republican Party. The U.S. Chamber of Commerce and the American Petroleum Institute, the National Rifle Association, and the American Legislative Exchange Council, to name a few. But the party is captive to CPAC. And to Ralph Reed's Faith and Family Coalition, the Family Research Council Values Voter Summits, along with other ideological groups that book the same speakers, advance the same arguments, and bolster the same confirmation bias.

The result is a party so extreme that it is toxic. Pew reported in February that 62 percent of the public perceives the party as out of touch with the American people and only 33 percent of the public view Republicans positively. In *The Washington Post*, Pew director Andrew Kohut wrote that, "The outsize influence of hard-line elements in the party base is doing to the GOP what supporters of Gene McCarthy and George McGovern did to the Democratic Party in the 1960s and early 1970s—radicalizing its image and standing in the way of its revitalization."

Kohut describes "a party dominated by a highly energized bloc of voters with extremely conservative positions on nearly all issues...These staunch conservatives who emerged with great force in the Obama era represent 45 percent of the Republican base."

The Republican National Committee is trying to steer the party toward a more reasonable political center. A 98-page report the RNC released last month describes the party's demographic crisis, in particular its alienation of Hispanics, arguing that Republicans need to embrace immigration reform or risk further marginalization.

The report addresses the anti-gay positions and rhetoric that are creating a generational divide within the party.

It describes a lack of appeal among younger voters: "In 2012, Mitt Romney won individuals older than 30 by 1.8 million votes; he lost voters younger than 30 by 5 million votes."

And it describes the "Republican Party's 'women' problem."

"In 2012, President Obama won women by 11 points, whereas Governor Romney won married women by 11 points. However, it is important to note that 40 percent of female voters are single

and that Obama won single women by a whopping 36 percent."

The "Growth and Opportunity Report"—shaped by pragmatic conservatives, including former George W. Bush Press Secretary Ari Fleischer—is a near-complete catalog of deficiencies the party needs to address to win national elections.

Yet it avoids the rogue elephant in the room.

No mention of the extremist base working to defeat moderate incumbents, such as Indiana Senator Richard Lugar. No mention of Todd Akin and Richard Mourdock, Senate candidates so extreme and misogynistic that in one election cycle they converted Republican women into Democratic voters. And no examination of the extremist institutions that have redefined the party.

The "hard-line" elements represented by CPAC are too big to

confront.

The tail is now bigger than the dog.

So the race to the right continues.

Rand Paul tells an on-its-feet-and-screaming CPAC crowd that "the GOP of old has grown stale and moss-covered. I don't think we need to name any names here, do we?" He is referring to the moderate conservatives who on occasion vote with the Democrats.

The highly overrated Marco Rubio dismisses the argument that the party needs to reconsider some of its conservative positions: "We don't need a new idea. There is an idea called America and it still works."

Rick Perry describes John McCain and Mitt Romney as Republicans who are too moderate to win a national election.

Rick Santorum warns that President Obama is turning the United States into a country that is "godless and without faith, where the government is the center."

The Republican Party is at war with itself.

It appears to be losing. ■

**One factor that contributed to the Republican shift from the political center, according to Mann and Ornstein, is the movement conservatism that Newt Gingrich adopted when he realized that a radical political insurgency was the easiest route to a Republican majority in the House.**

## The Right and the Republicans

*"To understand where we are as a movement and our path forward, we must remember that there is a distinction between the Republican Party and the conservative movement. National Republican leaders have not advanced a conservative agenda for almost 20 years. Not since the first few years of the Republican revolution in the 1990s, when welfare reform and a balanced budget were passed, have Republicans in Congress seriously championed conservative ideas."*

—Former South Carolina Senator Jim DeMint



### Join Us

Be the first to hear about new features, multimedia, events, and Spectator news.



[washingtonspectator.org](http://washingtonspectator.org)

February 1, 2014

# Shock in Detroit: Workers Lose in Bankruptcy Court

by Lou Dubose

Detroit

**E**XACTLY ONE WEEK BEFORE CHRISTMAS, 18 lawyers huddled in front of a bankruptcy judge in a federal courtroom in downtown Detroit. All were white, one was a woman, most were from the Jones Day law firm. There was one African-American attorney sitting on the side of the bar reserved for counsel, principals, and the judge: Kevyn Orr, a Jones Day partner on leave while he serves as Detroit's emergency manager. Appointed by Michigan's Republican Governor Rick Snyder, Orr has vice-regal powers to reorganize the municipal government and distribute the city's assets to its creditors.

There was one other African-American man standing between Orr, the Jones Day legal team retained to represent the city, and attorneys representing the banks. A bodyguard: the emergency manager's private muscle providing him protection inside a federal courtroom.

Detroit is a black city—83 percent black, according to the U.S. Census—which made this tableau all the more remarkable. A pack of white bankruptcy lawyers picking over the carcass of the nation's largest majority-black city. The December 18 hearing focused on \$230 million the city had agreed to pay Swiss investment bank UBS AG and Bank of America. It was payment due on an interest-rate swap deal that had gone south.

The bar dividing the courtroom also served as a racial partition. In the section of the court open to the public, dozens of black and Hispanic municipal workers and retirees sat in silent witness to the court's disposition of their pensions.

"We here to see what they doing to us," a retired city worker who appeared to be in her sixties told me.

The retirees I talked to, including this woman, know what's being done to them. The court is overseeing a bankruptcy plan that has already converted retirees into creditors who will be paid pennies on the dollar for their pensions. They were in court waiting for Bankruptcy Judge Steven Rhodes to determine how many pennies.

This is "disaster capitalism," a neologism Naomi Klein coined in *The Shock Doctrine*: the rapid-fire corporate reengineering of societies reeling from shock. Judge Rhodes is managing the vertical redistribution of wealth from taxpayers and pensioners to bankers and lawyers. Jones Day, an international law firm based in Washington, D.C., is being paid \$18 million for its services.

## Winners (broke the rules)

Wallace Turbeville was scheduled to testify on December 18, but



Judge Rhodes abruptly adjourned the hearing because he objected to a plan that handed over \$230 million (borrowed from Barclays in London) to only two investment banks. Turbeville is a former Goldman Sachs investment banker, now working for Demos, a liberal research and policy foundation based in New York. He had done financial transactions with Detroit 20 years earlier, so he knows the territory. In a Demos report published a month before the hearing, Turbeville explained how the city became insolvent.

Municipal bankruptcies are about cash flow. Because unlike corporations, cities have no assets that can be liquidated to pay creditors.

Detroit has a cash-flow problem. The city has lost more than 53 percent of its population since 2000, with half that number leaving in 2008 when unemployment spiked to 30 percent. Declining population has resulted in fewer taxpayers, a glut of houses, declining property values, and a diminishing tax base.

The city council made dramatic cuts in its budget and municipal workforce. Last year, 10 percent of the city's 11,000 workers were either retired or dismissed, and pay was reduced by 10 percent for those fortunate enough to keep their jobs.

What couldn't be reduced was debt owed to investment banks. In 2005 and 2006, Detroit entered into a complex transaction when it borrowed \$1.6 billion at a variable interest rate and then used an interest-rate swap to convert \$800 million of the loan to a fixed rate.

*Continued on page 13, DETROIT*



**DETROIT**, *continued from page 12*

In rate swaps, parties exchange the interest due on debts (but not the principal) that each of them owe. Detroit did the \$800-million swap to lock in a fixed rate and protect against exposure to long-term interest rate fluctuation.

Swaps are always bets. But bankers rigged this bet to ensure that Detroit would lose. The contract included three triggers: if Detroit missed a payment, had its credit rating downgraded, or was placed under the control of an emergency manager, all the interest due on the 30-year debt would have to be paid immediately.

When Detroit's credit rating was downgraded, the city faced \$250-\$350 million in swap-termination payments.

According to Turbeville, ethical guidelines, and laws, prohibit investment bankers from selling complex financial deals that put buyers at risk.

"A strong case can be made," he writes "that the banks that sold these swaps may have breached their ethical, and possibly legal, obligations to the city in executing these deals."

Turbeville also makes a strong case that banks, and not the oft-cited pensioners, pushed Detroit toward bankruptcy. The city's financial expenses increased \$38.5 million between 2008-2013. At the same time, pension costs increased by \$2 million.

The newly elected GOP Legislature also pushed. While Detroit's annual revenue shortfall was \$198 million, legislators were cutting \$67 million in annual revenue sharing, funds that would have covered almost a third of the city's operating deficit.

Part of that \$67 million was an automatic reduction triggered by population loss. But legislators cut an additional \$48.2 million to balance the state budget—on the backs of pensioners and taxpayers in Detroit.

On December 23, Governor Snyder told the *Detroit Free Press* Editorial Board that he will not introduce a proposal to restore the revenue that Detroit lost.

"That's a legislative prerogative," Snyder said.

Yet there is nothing to suggest that the Legislature will restore the funding.

"This city has been sold out by the Legislature and the governor," Detroit School Board Trustee Elena Herrada told me. "Look at this courtroom. We live under apartheid rules. Every city in Michigan that has a black majority is run by an emergency manager the governor appointed."

**Losers (played by the rules)**

More than five inches of snow fell on Detroit in late December. Streets were plowed, but there are not enough municipal workers to remove the accumulated piles of snow.

The American Federation of State County and Municipal Employees building sits on the south side of Lafayette Boulevard, a half mile west of the federal courthouse and at the ragged border where downtown Detroit gives itself over to abandoned office buildings, gutted warehouses, and empty lots.

On the north side of the boulevard is the Romanesque *Detroit News* building. It was designed by Albert Kahn in 1916 and is now occupied by the *News* and its competitor, the *Detroit Free Press*. Both struggling papers are moving to cheaper accommodations in June.

Two dying institutions on the edge of downtown in a dying city. The slush bank on the north curb was lower, so I parked in front of the *Detroit News* building.

The AFSCME Local 207 office, where I had arranged to meet with several union members, is at the end of a warren of rooms in the dreary basement of the union's

building on Lafayette. The local represents workers at the city's Water and Sewerage Department, which Orr has indicated might be sold off.

Mike Mulholland retired from the city in 2012 after working 29-and-a-half years as a sewer plant operator. He is serving out his term as vice president of the local.

Mulholland is a slight, wiry man with brown hair, a close-cropped graying beard, and a militant streak lacking in organized labor these days. Local 207 was the only union to go on strike last year, when the city stopped negotiating and began dictating the terms of the union's contract.

The strike, intended to compel the city to negotiate "before Kevyn Orr showed up," ended as quickly as it began, when the leaders of the AFSCME Labor Council housed in the same building as Local 207 lost their nerve and refused to support it.

Like every other city employee or retiree I spoke with in Detroit, Mulholland referred to a clause in the state Constitution that defines public pensions as a contractual obligation that cannot be impaired.

Lawyers representing pension funds and city retirees were in state court on July 17, the day before Orr was scheduled to file bankruptcy. They were requesting a ruling that would block the governor from authorizing a bankruptcy they feared would put pensions at risk. As the hearing began at 4:11 p.m., the attorney general's office called

**Charitable Bailout**

*"Nine foundations, many with ties to Michigan—including the Ford Foundation, the Kresge Foundation, and the John S. and James L. Knight Foundation—have pledged to pool the \$330 million, which would essentially relieve the city-owned Detroit Institute of Arts museum of its responsibility to sell some of its collection to help Detroit pay its \$18 billion in debts. In particular the foundation would help reduce a portion of the city's obligation to retirees, whose pensions are at risk of being reduced in bankruptcy proceedings. ...*

*Even if the motion would proceed, it would not be enough to save the city's pension underfunding, but merely ease it somewhat."*

**—The New York Times, January 14, 2014**

*"Sometimes, I think they are more worried about the art than our pensions."*

**—Detroit Retiree Darwinia Williams (December 18, 2013)**

to inform the court clerk that Orr had filed for bankruptcy at 4:06 p.m. Below Orr's signature on the bankruptcy filing, the numeral "8" in "July 18, 2013," is written over in pen and replaced with a "7." The emergency manager's race to bankruptcy court didn't allow him time to print out a clean document.

The state district judge presiding over the hearing told the attorneys representing the retirees that she had intended to grant their request, according to CNN and other sources. Orr's filing rendered their request moot. He had said he needed to shed \$9.5 billion of \$11.5 billion in unsecured debt. And he knew that much of that debt was tied up in pensions and health care benefits for retirees.

"They say it's legal," a retiree from the Public Works Department told me. "But we don't see it as such. We look at it as not only lawfully wrong, we look at it as definitely morally wrong."



### Unbinding contracts

Mike Mulholland was earning \$41,000 a year before he retired after 30 years.

"I get \$1,650 a month now," he told me. "That comes to about \$20,000 a year." He could have drawn \$2,400 a month. But because his wife is 12 years younger, Mulholland opted for a lower payout that would allow her to continue receiving benefits after his death. Like an interest rate swap, it was a bet. A bet Mulholland appears to have lost.

And like many residents of the city where 70 percent of home loans are in foreclosure, Mulholland also lost on his house: a 1930s brick bungalow with cove ceilings, a carved fireplace, and hardwood floors. He sold it for "\$5,000 paid in \$20 bills," he told me.

"Everybody had left the neighborhood and scrappers were working in empty houses in the middle of daylight," Mulholland said.

City workers, as well as retirees, are losing ground. With unions boxed in by a bankruptcy judge and an emergency manager, the workplace is changing.

Aurelia Morgan, an African-American mother of five with a pleasant voice and a serene demeanor, has worked in water and sewers for 13 years. She described life under the Orr administration and

under a private consulting firm that has taken over operation of the sewer plant.

"What comes to mind first," she said, "is that they are going to change our titles and basically we are going to have to reapply for our jobs. They are also increasing our workload, because we have to work with fewer people."

Morgan started at \$12.75 an hour 13 years ago and had reached \$19.66 an hour until her most recent 10-percent pay cut. "That put me back down to around \$17," she said.

She estimates she has lost thousands of dollars to pay cuts, furloughs, and "dwops"—days without pay.

She said that Orr has discussed reclaiming matching funds the city has paid into employees annuities.

"He has said it three times," Mulholland interjected. "He's said there was too much interest paid."

"Right now, we can sign a contract with the city, and Kevyn Orr can override it tomorrow," Mulholland said. "We are negotiating with Jones Day. The city labor relations people are there, but they're scared shitless of Jones Day. They are looking over their shoulder and saying, 'Can I do this?'"

A former AFSCME member, who asked to remain anonymous because she has moved into a management position, said this is all carefully thought out. Jones Day and EMA—the Minnesota-based consulting firm brought in to manage the sewer plant—are part of a long-term plan to bust the union.

"That way if they privatize the sewer plant, it will be non-union," she said.

And if the city succeeds in "impairing" pensions, she believes the same model will be used by other cities that want to shed pension liabilities.

"We are their laboratory," she said.

"You hear about the war on the middle class," Mulholland said. "This is it."

Mulholland, who is white, said there is another story line and it involves race.

"Thirty years ago this all took on a particular racist tinge once we elected our first black mayor," he said. "We provide water and sewage service for much of Southeast Michigan. (The department serves 3

## The Art of the Deal

**Detroit Emergency Manager Kevyn Orr contacted Christie's of New York for an appraisal of art works the city owns in the Detroit Institute of Art collection, which could be liquidated to pay creditors. Christie's response is excerpted below.**

*Dear Kevyn,*

*Consistent with our mandate from your office, Christie's is in the final phases of its work appraising the City-purchased art that forms part of the Detroit Institute of Arts' (DIA) collection.*

*The total number of COD [City of Detroit] purchases in the Museum's collection of approximately 66,000 works was anticipated to be about 3,300 works ...*

*Based on FMV [fair market value] analysis, the aggregate estimated value of the COD purchases is \$452-\$866 million. As noted previously, the lower number represents a conservative price, the higher number represents the most advantageous price at which the property would likely change hands.*

*Included in city's collection are: Van Gogh's "Portrait of Postman Roulin"; "The Three Skulls" by Cezanne; Degas' "Violinist and Young Woman"; Bruegel's "The Elder's Wedding Dance"; Two Diego Rivera murals ("An Homage to Auto Workers").*

*Continued on page 15, DETROIT*

**DETROIT**, continued from page 14

million people; Detroit's population is 714,000.) The suburbs have been saying black politicians are corrupt and incompetent and we have to take over the Water Department."

"Detroit has been under attack. As an urban center with a legacy of black power, the right wing hates that. They have this sense that black people have some level of entitlement and empowerment and that unions are backed up by those folks," Mulholland said.

Lakita Thomas is Local 207's secretary-treasurer. Dressed in a blue security guard's uniform, she comes across as too amiable to work as the cop on the beat at the sewer plant. She said that a memory of black power is all that will remain after Detroit's new owners take charge. She pointed to the Whole Foods that recently opened in Midtown. Investors, she said, are buying property at huge discounts. Pockets of gentrification are expanding.

**Not asking for handouts**

The whole city, it seems, is for sale. The business press routinely reports on Japanese investors scooping up houses at fire-sale prices. The *Free Press* moved in with *The Detroit News* after a Chinese firm bought the *Detroit Free Press* building. Sight unseen and sold at an online auction, the building—another Albert Kahn monument—went for a deeply discounted \$4.2 million. It will be converted into retail space and 150 rental apartments. At the same auction, the same Shanghai firm bought a 38-story downtown building for \$9.4 million. The *Detroit News* building goes on the auction block in June, after the newspapers clear out.

"You can see the dynamic of the city changing," Thomas said.

"It will still be Detroit, but it will be a new Detroit.

"But it's not going to be a Detroit for blacks. It's going to be a new city for everybody else. We're not going to have a stake in it."

The following morning, I returned to the AFSCME building to meet with a retirees' committee. Fifteen retired city workers, ranging in age from 65 to 77, sat around a square table. They were mostly women, mostly black. Only one man, a retired mechanic, was white. Two women who ended their careers in management had pensions that paid them \$30,000 and \$32,000 a year. Everyone else in the room received the \$19,000 average. Or less. One man said his pension was "about \$15,000."

It is always difficult to interview a group and this

angry and bewildered gathering was more difficult than most.

Finally, Rose Roots, the 77-year-old president of the committee, said if everyone would calm down, she had something to say.

"We don't understand," Roots said.

"Our state constitution says that our pensions cannot be diminished. We put money into those pension funds while we were working. And now we're told that the city needs money. Well, a lot of years we did away with pay raises to help the city. And if we hadn't done away with pay raises, we would have higher pensions. So we helped the city. We are at the point where we need the city to help us. We're not asking for a hand-out. This is something we worked for."

Sitting in a windowless room in the basement of the AFSCME building, I concluded that Mike Mulholland is right. The Detroit bankruptcy is part of the war on the middle class, and here it's easier to wage because the losers are black. It's a zero sum game. Retirees lose; bankers and other secured creditors win.

**"Welcome to Walmart"**

Yet Mulholland had been sanguine the previous day, when I asked him what he intended to do.

"To be frank, next month I'm going to go to Florida for the first time in my life," he said. "I don't know what they are going to do to me, but for now, I'm going to retire like a regular guy retires. I'm going down there for a week. We got cheap tickets and we're staying in a little efficiency."

"If they hit me for 50 percent, or if they hit me for 80 percent, then I'm whacked."

"Maybe I'll find another job," he said.

"You know, 'Hello, welcome to Walmart.'"

I didn't ask Mulholland what he was paying for the efficiency in Florida. But Orr's downtown condo at the Westin Book Cadillac Detroit goes for \$4,200 a month, according to emails that local labor activist Robert Davis obtained and turned over to the *Free Press*.

The condo, Orr's security detail, and other expenses are covered by a nonprofit foundation set up by Governor Snyder.

Two distinct versions of the American Dream in the age of disaster capitalism.

The guy who showers before he goes to work in the morning gets the \$4,200-a-month condo.

The guy who kept the shit out of Lake Erie for 30 years and showers at the end of his workday gets a week in Florida.

And a roll of the dice on a pension he assumed would be waiting for him when he returned. ■

**Roadmap to Slash Pensions?**

"The goal of this plan was the impairment of pension rights through a bankruptcy filing by the City.

Its genesis was hatched in a law review article that two Jones Day attorneys wrote. This is significant because Jones Day later became not only the City's attorneys in the case, but also the law firm from which the City's emergency manager was hired. The article is by Jeffrey B. Ellman; Daniel J. Merrett, 'Pensions and Chapter 9: Can Municipalities Use Bankruptcy to Solve Their Pension Woes?' ... It laid out in detail the legal roadmap for using bankruptcy to impair municipal pensions.

The plan was executed by the top officials of the State of Michigan, including Governor Snyder and others in his administration, assisted by the state's legal and financial consultants—the Jones Day law firm and the Miller Buckfire investment banking firm."

—Opinion, Judge Stephen Rhodes December 5, 2013

The judge wrote that "this is not the Court's findings" but its characterization of the belief of parties objecting to the bankruptcy filing.

June 1, 2013

# Silencing Science: What You May Never Know about Baby Bottles

by Lou Dubose

**T**HIS SUMMER IN A FEDERAL COURTROOM in Texas, attorneys for a Tennessee corporation with \$9 billion in market capitalization will try to convince a federal judge to suppress the findings of a small, private lab in Austin. The lab, founded by a professor from the University of Texas, determined that resins produced by Eastman Chemical Company, and plastic consumer goods made from those resins, contain “estrogenic-active” chemical compounds that are a health risk, particularly to fetuses, infants, and children.

Eastman is asking a federal judge and jury to silence the professor and the small group of scientists who are co-owners of the two Texas labs.

The pre-trial phase of the lawsuit is being conducted under extraordinary suppression of information and documents, at request of the plaintiff, Eastman Chemical.

The *Spectator* has reviewed hundreds of pages of documents, vital to the public interest, about products consumed by millions of people every day.

As extraordinary as the secrecy surrounding the trial is the absence of a national debate about plastic products that—if results of the labs in Texas are valid—pose a health risk to hundreds of millions of consumers every day.

It is predictable that the manufacturer of the resin, and commercial interests that use its plastic in bottles and food containers, would prefer to avoid a debate about a product that represents “a substantial risk of causing adverse health effects in humans, particularly in the developing fetus, infants, and children.”

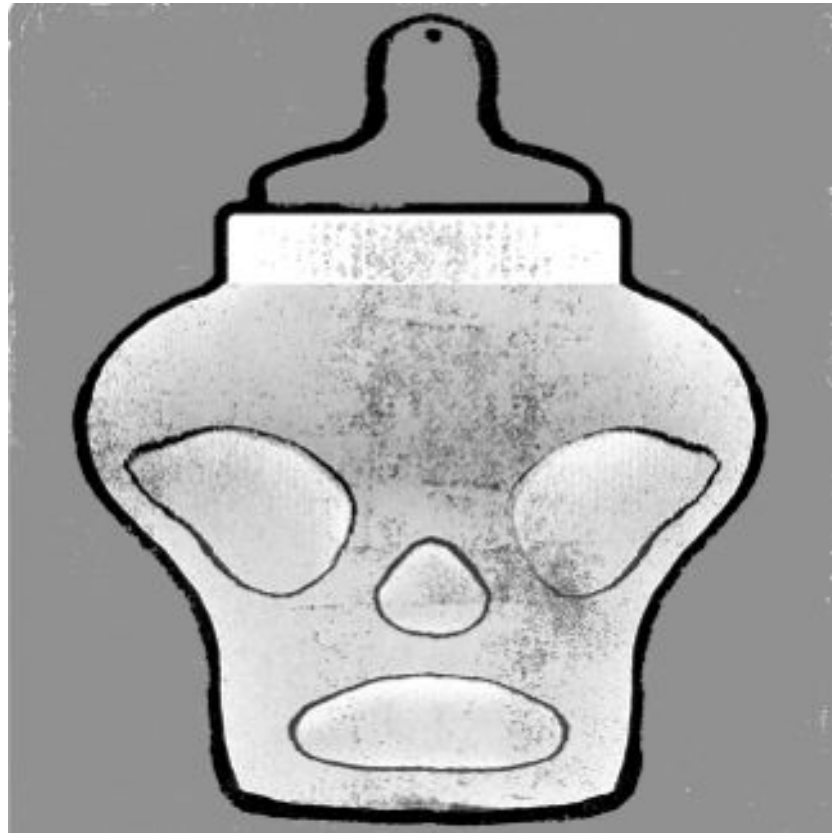
This red flag, raised by Christopher J. Borgert, an expert witness for Eastman in a report filed with the court, leads directly back to studies that found that plastic made from bisphenol A (BPA) is harmful to humans. The science on BPA is conclusive.

“BPA has been shown to be an estrogen,” said Laura Vandenberg in a deposition. “In my opinion, that’s a fact; that’s not an assumption.”

BPA and other estrogenic-active (EA) substances behave exactly like natural estrogen when inside the bodies of mammals, where they become “endocrine disruptors.”

Vandenberg is an expert witness for the two businesses sued by Eastman: CertiChem and PlastiPure. She has studied the connection between BPA and breast cancer. As a post-doctoral fellow at Tufts University, she is studying the effects of estrogenic-active chemicals on laboratory rats.

In a deposition, Vandenberg disclosed that her former professor and mentor, Dr. Ana Soto, who has developed her own test to detect



estrogenicity in chemicals, urged her to participate in the lawsuit. Soto is expert witness in the Eastman lawsuit. The defense has also called on Dr. Carlos Sonnenschein—a Tufts University professor with a background in childhood cancer, who now studies “the proliferation of estrogen-target cells.”

Scientific consensus regarding BPA is predictable, considering its effect on the body, particularly reproductive functions. Before it was used to make polycarbonate plastic, BPA was considered for pharmaceutical use as an artificial estrogen in the 1930s.

When the EPA conducted a “ToxCast” survey of 309 potentially harmful chemicals in 2007, BPA was included in third-highest toxicological priority index. In 2009, the U.S. National Toxicology Program warned that BPA could cause behavioral changes in infants and children.

Products for infants and children (and pregnant mothers) are particularly critical, as the adverse effects of estrogen-mimicking BPA are most acute from the fetal stage through puberty.

In 2009, research published in the *American Journal of Public Health* linked very-low-dose exposure to BPA to increased rates of breast and prostate cancer, chromosomal abnormalities, brain and behavioral abnormalities, and metabolic disorders.

In 2010, Walmart pulled BPA plastic baby bottles and sippy cups from their shelves. The world’s biggest retail chain was responding to a growing body of research on

Continued on page 17, **SCIENCE**



**SCIENCE**, *continued from page 16*

the health risks associated with BPA. In 2012, the Food and Drug Administration followed Walmart's lead, banning BPA use in baby bottles and cups for small children—in response to an American Chemical Council petition intended to defuse a national campaign to ban all use of BPA in liquid and food containers. X

**An alternative to BPA**

Eastman was perfectly positioned for a public health crisis in the plastic business. In 2007, it began marketing its trademarked Tritan plastic resins, advertised not only as BPA-free, but EA-free.

That is, a resin that is not only not BPA, but is free from the estrogenic health-risks associated with BPA. Consumers using bottles or food containers made from Eastman Tritan resin would not be ingesting a leachate of chemicals that bind to estrogen receptors in the body.

Producers of plastic containers shifted from BPA to the resins that Eastman advertised as the solution to health risks biologists and toxicologists found in polycarbonate products made from BPA.

Nalgene (water bottles), Thermos Foggo (sippy cups), Sonoma (wine glasses), to name a few brands, turned to EA-free Tritan as an alternative to plastics that leach EA chemicals.

Dr. Andrew Weil, a wellness brand unto himself, is marketing Weil Baby Tritan plastic baby bottles—from a four-ounce nurser up to a Weil Baby Tritan drinking cup. Whole Foods, the national high-end health food chain, uses Tritan display bins.

But what if plastic made from Eastman resin is not EA-free? In 2008, Dr. George Bittner, a University of Texas neurobiology professor and CEO of CertiChem, set out to answer that question.

Bittner's answer is the issue of contention in a lawsuit that Eastman filed against the two small commercial labs that he and several colleagues established in Austin, Texas, 12 years ago.

CertiChem tested three Tritan resins and 102 bottles and other containers made from Tritan and found they are estrogenic active, according to court documents. According to CertiChem, if Tritan is an estrogenic-active resin, and if it is leached from food and liquid containers as is BPA, then Tritan represents the same health threat that BPA does.

In other words, Tritan plastics will demonstrate the same properties as BPA plastics, according to what CertiChem will argue in court. When

ingested, the estrogenic-active chemical compounds in Tritan will attach to estrogen receptors and slightly change the way the body functions.

EA chemicals are also androgenic, attaching to androgen receptors in males and potentially altering men's reproductive function, including prostate and sperm count. Very-low-doses of estrogenic active chemicals—measured in parts per billion—can effect the biological functions of the body.

Bittner didn't use the phrase "adverse health risk," as Eastman witness Christopher J. Borgert did. However, when one of Eastman's attorneys asked if he considers Tritan safe for human consumption, Bittner said he is "agnostic at best."

"My bet would be that it probably has a high probability of having adverse health effects... [when] consumed by a particularly vulnerable population, which would be the fetus, the infant, or the juvenile."

The trial, scheduled for July of this year, will pivot on the assay that Bittner and CertiChem used to test the Tritan resins Bittner somehow obtained. (Products made from Tritan are easier to obtain than the resin. According to court records, Bittner was negotiating with Eastman

to obtain resin samples but stopped negotiating when Eastman demanded a non-disclosure agreement regarding test results.)

**Test and legal tests**

Bittner's "cell-proliferation" assay uses a line of cloned breast cancer cells that are responsive to estrogen. (Professors at other universities use different processes with different lines of cloned breast-cancer or ovarian-cancer cells.)

In Bittner's "in vitro" assay ("in vivo" tests use live animals), chemical media that includes Eastman monomers used to produce plastic were introduced into the carcinogenic cell culture. (Monomers are the chemical compounds from which polymer plastics are made.) If the carcinogenic cells, which are sensitive to estrogen, proliferate, it indicates the monomer is estrogenic active. To ascertain that the cell proliferation was caused by the monomer being tested, an anti-estrogenic chemical is added to the culture. If the anti-estrogenic agent stops the cell proliferation, it is further proof that the tested substance is estrogenic active.

There are control cultures, and additional steps and procedures, but the above paragraph describes the basic principles of CertiChem's assay.

When CertiChem CEO (and research Ph.D.-M.D.) Cathy Yang published the test results in

**Low BPA exposure** has been linked to increased rates of cancer, chromosomal abnormalities and metabolic disorders.

**Industry Science on BPA**

*Q. Do you believe that BPA poses a threat to human health?*

*A. You know, I don't believe Tritan poses a threat to human health. BPA, you know it's, it binds to estrogen receptors very weakly and will cause responses in a lot of these different types of assays, but, you know, the subject of whether it's really harmful, you know, there's a lot of studies that say yes, there's a lot of studies that say no. And so—I don't make it, I'm not like a super expert on the manufacturing of, and I'm not a real expert in polycarbonate, it's not a material that Eastman sells, so I don't know...*

**—Eastman Senior Chemist Emmet O'Brien in a January 2013 deposition**

**Join Us**

Be the first to hear about new features, multimedia, events, and Spectator news.



[washingtonspectator.org](http://washingtonspectator.org)

2011 in the National Institutes of Health's *Environmental Health Perspectives*, Eastman decided CertiChem had gone too far.

From Eastman's perspective, there were several transgressions, which are listed in the complaint filed against the Texas labs.

A representative of PlastiPure contacted a client described by Eastman in court pleadings as the "the Korean company" and described Tritan as estrogenic active. In a brochure prepared for distribution at the 2010 ABC Kids Expo in Las Vegas—billed as "the premier juvenile products show in the world!"—PlastiPure described Tritan monomers and products made from them as estrogenic active.

Eastman argues that the two labs are doing what might be described as a Texas two step, one lab declaring Tritan monomers unsafe, the other lab selling a process to make them safe. CertiChem tests products for EA toxicity. PlastiPure designs and markets processes that companies can use to retool and create plastics that are EA-free.

Eastman concluded that both companies are a threat to its business, if not a competitor. (CertiChem and PlastiPure rent space in a commercial strip mall in north Austin. Eastman is traded on the NYSE and has \$9.4 billion in market capitalization.)

But there is a larger issue on trial in the courtroom of Judge Sam Sparks, a George H.W. Bush appointee with a reputation for an iron fist and fair-handedness.

The scientific method is on trial in Texas.

Vandenberg has studied in the Tufts University lab of Ana Soto, one of a half dozen stars in the small universe of biologists studying estrogen active chemical agents and endocrine disruptors. Vandenberg described what Soto had told her regarding Eastman v. PlastiPure and CertiChem lawsuit:

"She told me that there was a dispute between two companies about what is the nature of an estrogen and that this is a scientific dispute that has moved into a legal venue, and that she felt an obligation as a scientist to get involved because the definition of an estrogen in a legal venue could potentially affect a huge body of already published scientific work as well as work going forward."

Scientists resolve disputes through peer-reviewed research, Vandenberg wrote. If Eastman contests the results, it could contract with a university lab, or an another independent testing facility, and replicate the experiment. Scientific findings, she argued, cannot be proved out in a courtroom.

#### **Silencing the messenger**

Eastman's attorneys have asked the court to enjoin PlastiPure and CertiChem from ever saying that

Tritan "exhibits any measurable level of EA," and from representing that the MCF-7 test PlastiPure used to measure the estrogenicity of Eastman's Tritan resin "is sufficient, standing alone, to establish that any tested chemical or substance has EA."

Nowhere in Eastman's pleadings are the results of those tests refuted.

Asking Bittner and PlastiPure to refrain from claiming that their test is adequate to showing that a chemical or substance exhibits EA would put the company out of business. It could also pose a threat to other labs arriving at similar conclusions.

For years, in-vitro testing for estrogenic activity has provided useful data on chemicals. Soto wrote about the process in *Environmental Health Perspectives* in 1995, describing in-vitro assays as a valid and efficient measure of evaluating the safety of chemicals: "Rodent bioassays are not suited for the large-scale screening of chemicals before their release in to the environment, because of their cost, complexity, and ethical concerns." Like the tests run by CertiChem, Soto's E-Screen assay uses cloned MCF-7 cells, although from a different line of cells.

And the results of Bittner's tests were confirmed after Eastman filed suit. Michael Denison is a professor of environmental toxicology at the University of California, Davis. Brought in as an expert witness by attorneys representing the defendants, Davis supervised tests of Tritan resins in his own lab.

He used a different assay, a BG1-Luc test which uses firefly luciferase to determine if cancerous ovarian cells respond to estrogenic chemicals. Davis found that Tritan "contains compounds with EA," according to results he filed in court.

The assay that Denison uses has been validated by the U.S. Health Department's Interagency Coordinating Committee on the Validation of Alternative Methods (an evaluation process that can take as long as 10 years after a test is nominated; Bittner's MCF-7 assay has been in ICCVAM's evaluation process for six years.)

#### **Blowback from a lawsuit**

Denison's test results, of course, are not the end of the story. The legal and scientific dispute is now left for judge and jury to decide, and Eastman certainly could prevail in court in July.

Yet because the discovery process works two ways, Eastman has exposed itself to public scrutiny that corporations work very hard to avoid.

Not only did tests done in an independent lab

## **Academic Science on BPA**

*When fetuses are exposed to it, we now know that it is related to increasing body weight. Also obesity, diabetes, heart disease, immune dysfunction including asthma and allergy, damage to every part of the reproductive system, including uterine fibroids, ovarian cysts in women, breast cancer. In men, low sperm counts, prostate cancer, abnormalities of the urethra that as they age, men can't urinate normally—a major reason men go to the doctor. We are talking about billions of dollars of medical costs. ... This chemical is related to many of the epidemics in the world—diabetes, obesity, neural behavioral problems, reproductive abnormalities, decreases in fertility, early puberty in girls.*

**—Fredrick vom Saal of the University of Missouri Endocrine Disruptors Group in Yale Environment 360 (e360.yale.edu).**

*Continued on page 19, **SCIENCE***

**SCIENCE**, continued from page 18

reveal that Eastman's monomers have EA properties, while Eastman was fighting over the estrogenicity of its product, it was revealed in court documents that Eastman monomers include a *plasticizer* that also possesses EA properties.

Triphenyl phosphate (TPP), which is found in Eastman resins, is a known estrogenic-active chemical compound. Test results that mention TPP were not included in a paper that Eastman paid a toxicologist to write for a peer-reviewed journal, according to court records.

That the paper has become an issue of contention in the trial presents another problem for Eastman. Thomas Osimitz is a Ph.D. toxicologist and the "founder and Principal of Science Strategies, LLC a consulting firm that helps companies of all sizes navigate the turbulent intersection of science, policy, and product development."

According to court documents, Eastman paid Osimitz \$10,000 to serve as lead author of a paper published in *Food and Chemical Toxicology* entitled: "Lack of androgenicity and estrogenicity of the three monomers used in Eastman's Tritan™ copolyesters."

"There would be no Eastman author, nor mention of Eastman," an Eastman consultant wrote in an e-mail described in Osimitz's deposition.

Although Eastman solicited and paid for the academic paper, and the co-authors recruited by Osimitz provided him disclosure forms indicating they were paid by Eastman, the disclosure that is *de rigueur* in scientific publishing and required by the journal never appeared in print or online. The journal is aware of the conflict of interest but had not made that public as of press time.

Osimitz's deposition also revealed the extent of Eastman's influence in shaping the paper. And its central position in the legal proceeding now brings into focus the flaws in testing commissioned by Eastman, according to expert witnesses for the defense.

Test data involving TPP appears to have been intentionally excluded from the paper. And the rodent testing that Eastman relied on to refute CeriChem's findings was so flawed it has no predictive value, according to court reports. "The uterotrophic assay presented in the Osimitz paper (2012) is an example of how not to run an in vivo assay correctly," Denison wrote in submitted testimony.

Vandenberg is more specific. She writes that the rodent study that Eastman commissioned was performed in a way that "does not allow for any

conclusion regarding the presence—or absence—of estrogenic properties in the monomer mixture."

The tests exposed lab rats to levels she could find nowhere in peer-reviewed scientific literature. "[R]elatively high doses (usually ranging from 50-1000 mg/kg/day) are typically required" to detect "known weak estrogens," according to Vandenberg.

Eastman's dosages, Vandenberg wrote in her report to the court, were 10/mg/kg/day—far below what's required daily to illicit a response. Eastman's test, she concluded, was incapable of detecting estrogenic activity.

False advertising, tortious interference, and unfair competition are the heart of Eastman complaint. But the scientific method, a definition of what estrogen is, and the validity of tests that detect invisible chemical compounds that are a proven health risk are a corollary to the complaints in Eastman's legal pleadings. These corollary issues are also on trial.

Most critically, testing. And who controls testing.

When Frederick vom Saal of the Endocrine Disruptors Group at the University of Missouri surveyed 115 tests for estrogenicity in BPA conducted between 1997 and 2005, he

found that 90 percent of the 104 studies funded by government detected chemicals that would effect "mammary gland development, disruption of chromosomal alignment in developing eggs in females, altered immune function, metabolic abnormalities, and changes in the brain and behavior."

None of the 11 tests funded by industry detected any estrogenicity in BPA.

It could be that industry doesn't believe that there is a problem.

When one of the defendants' attorneys asked Eastman's Chief Toxicologist Jim Deyo if he believed the FDA reacted to "consumer hysteria" when it banned BPA, Deyo didn't miss a beat.

"Yes," he said.

The *Spectator* asked Eastman's lead attorney for a response to issues raised in the lawsuit and was told a company representative would call.

At press time, Eastman had not responded. ■

**The adverse effects of estrogen-mimicking BPA are most acute from the fetal stage through puberty.**

## Companies That Use Eastman Tritan™ in Their Plastic Products

Diamond Ware  
Napa  
Rubermaid  
Nalgene (Thermo Fisher Scientific)  
Schott Swiesel  
BarLux Drinkware  
Clarus Beverageware  
CamelBak Products  
Carlisle Food Service Products  
Vita-Mix Corp.  
Sonoma  
Drinique Custom Drinkware  
Nordic Company  
Debco Solutions  
Weil Baby Products  
Thermos Foggo  
Aladdin  
Whole Foods  
Nestle

—Research by William Shaub



### Join Us

Be the first to hear about new features, multimedia, events, and Spectator news.



[washingtonspectator.org](http://washingtonspectator.org)