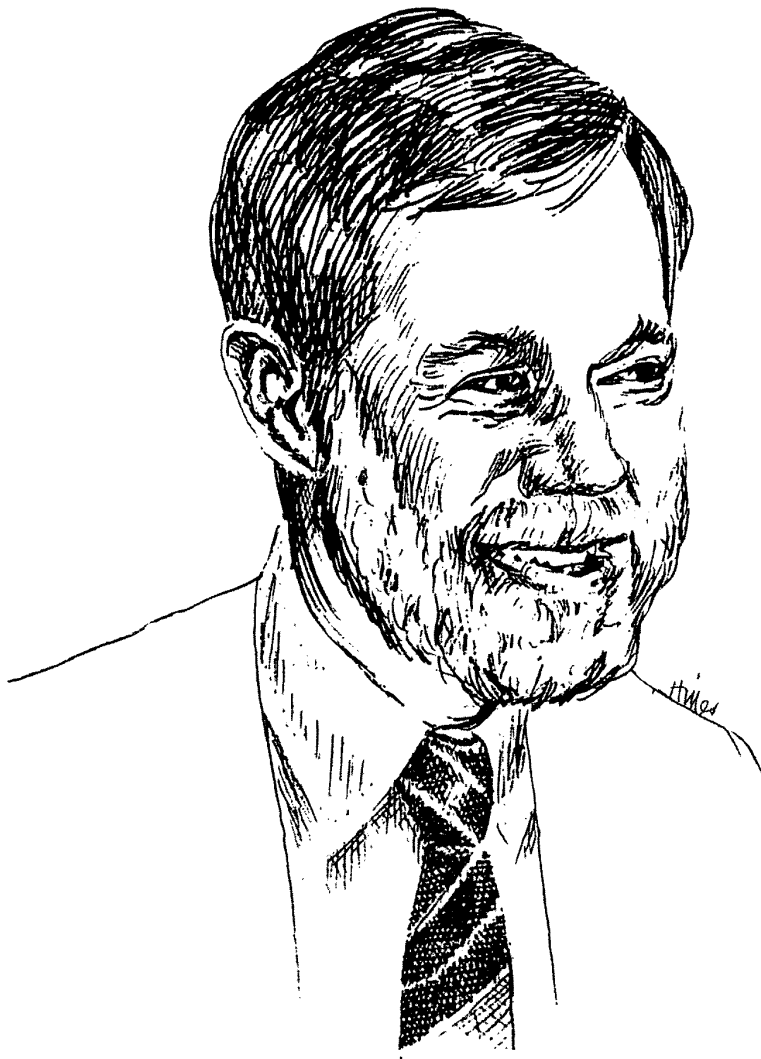


Environmental

Byron Sher

The ideological tension between jobs is personified in Sacramento from Palo Alto and a conservative

By Mark Simon



Byron Sher is first and foremost a law professor. A Stanford law professor by way of Harvard Law School. He used to teach contracts, that great first-year equalizer by which many law schools drive students out of the profession.

This is worth remembering when you consider Sher as the Legislature's leading environmentalist and author of most of the state's landmark environmental law in the last two decades.

His passion is more for the law than the object of the law.

He is less committed to trees than to the idea of trees.

"I'm not a big mountaineer," says Sher. "But I enjoy the outdoors and I think I just realized it provides a lot of benefits to us that we need."

He said he recalls being heavily influenced by the landmark environmental treatise "Silent Spring," by Rachel Carson.

Then, lest he appear to be pouring his guts out, Sher adds. "It's not a

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Opposites

the environment and protecting
two men — a liberal senator
assemblyman from the High Desert

**Keith
Olberg**

by Sigrid Bathen

Even among his critics — and there are many — Assemblyman Keith Olberg (R-Victorville) has a respectful, albeit cautious, following. Elected in 1994 to represent the largest, doubtless most desolate Assembly district in California — encompassing the High Desert regions of Kern, Inyo and San Bernardino counties and including Death Valley — the 36-year-old Ph.D. in constitutional law and political policy has rapidly earned himself a key role in the contentious, highly partisan lower house.

Often mentioned as a possible successor to Assembly Republican Leader Curt Pringle (R-Garden Grove) — who is one of Olberg's two roommates in Sacramento (the other is another major player in Assembly leadership circles, Republican Charles "Chuck" Poochigian of Fresno) — Olberg in many ways defies simplistic categorization. Though well-known for his long-standing desire to change California's near-sacrosanct Endangered Species Act — a position which earns him the instant animus of the state's powerful environ-



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— Olberg

mental and wildlife protection groups — even his critics say he is extraordinarily well-read and neither rigid nor unapproachable.

"In terms of style, Olberg is very impressive," says longtime environmental political consultant Leo McElroy, a former TV reporter who has managed several high-profile environmental campaigns, including successful opposition to the 1995 initiative to relax the ban on mountain lion hunting. "At the time he was a freshman but obviously knew how the Legislature worked, the rules of order, legislative procedure. He had obviously taken the time to read the bills and asked some tough, probing questions."

Environmentalists on the opposite side of legislative issues sometimes liken him, oddly enough, to two diehard legislative liberals, former Assemblymen Lloyd Connelly and Phil Isenberg, both known for their keen intellects and thorough preparation. "Isenberg always knew where all the i's were dotted and the t's crossed," says McElroy. "I see that in Olberg. I also see the ability to be tough without being showy. We've got guys in that place who believe that being tough means bellowing. Olberg doesn't need to. He can be

tough, but it's a well-informed toughness."

Some say with an edge of irony that Olberg may, like Isenberg, be, well, *too* bright, too exhaustively well-prepared, for long-term leadership success in the upper reaches of the lower house — the theory being that the *really smart* legislators like Isenberg, who could become impatient with lesser folk when they didn't pick up on his command of the details, sometimes alienate friends as well as foes. And, they say, while legendary Speaker Willie Brown was clearly no intellectual slouch, he was also wily, a master of high-stakes, behind-the-scenes political game-playing. Olberg, they say, may lack the necessary caginess to rise to the heights of political power in the lower house. "He may just be a little too sharp," says one experienced political observer who, like others, is intrigued by Olberg's straightforward, what-you-see-is-what-you-get persona. "I'm not sure what winds his clock. He may be an ideologue down underneath, but he doesn't betray his ideology with his rhetoric. His actions seem basically well-grounded. Motives are another thing."

Dominating one wall of the reception area in Olberg's fourth-floor Capitol office is a huge, striking, sepia-toned photograph of an 1890s-era 20-mule team hauling borax through the Mojave Desert near Barstow. In a smaller photograph, Ronald Reagan, narrator of the popular 1950s television show, "Death Valley Days," is pictured in the foreground, a TV version of the 20-mule team stirring up desert dust behind him. They are appropriate mementoes of Olberg's vast 34th Assembly district, where the harsh surroundings spawn a self-reliant brand of conservative voters who tend to be pro-gun, anti-abortion, fundamentalist Christian, partial to a government that stays out of their business and off their property.

Olberg has a long history of involvement in conservative politics locally and in Washington, D.C., where he worked for the Reagan and Bush administrations — and did a stint as a staffer in the House of Representatives, working for a deposed U.S. congressman with the unfortunate name of Pat Swindall (R-Georgia). Swindall was indicted in 1988 for taking an illegal contribution. Olberg left Swindall's employ before the latter's legal problems.

Of reports that he has "mellowed" in his first years in the Assembly — tempering his initial impatience with the glacial pace of legislative processes — Olberg expresses frustration that "so many disingenuous games are played in Sacramento. That is not new to me, but it was foreign. It became more obvious to me that politics are relationships. If I erred early-on, it was in that way."

And clearly, with a Democratic majority in both houses, Olberg recognizes that, as one Senate Democratic staffer put it, "he isn't going to get anything done" if he is intractable on the issues. "In the beginning, you had the sense that he was frustrated with the Democratic process, which involves compromise," says that staffer. "He smolders over the difficulty of getting things done, one of those guys who came in and thought everybody would roll over. Some of this is simply freshman hubris."

Freshman hubris or not, Olberg, a quick study, saw his bill proposing changes in the Endangered Species Act killed in the Democrat-controlled Senate at the close of last year's session. This year, with Democratic majorities in both houses, Olberg relinquished the vice-chairmanship of Assembly Natural Resources, which he chaired last session, to serve on Assembly Rules — a sign, some say, that he is focusing this session on leadership issues. "I'm focused," Olberg says, "on regaining a majority in the Assembly."

When Olberg chaired the resources committee, his formidable adversary was longtime former chair Byron Sher (D-Palo Alto), a staunch environmentalist who was elected to the Senate last year and now chairs the Senate Environmental Quality Committee. Needless to say, the two often disagreed on environmental issues. "Olberg was kind of a Johnny one-note on the Endangered Species Act," observes one longtime legislative staffer familiar with the committee debates. "That's not to say that he didn't have influence."

In some ways, Sher and Olberg have a lot in common. They both hold advanced academic degrees — Sher is a lawyer and Stanford law school professor — and both have reputations as articulate and well-read. Olberg says Sher has expressed interest in "continuing the dialogue" on endangered species issues and calls Sher "a significant legislator."

Perhaps signaling his interest in broadening his reach, Olberg also has ventured legislatively into other issues such as welfare reform and public safety. He insists he has never been a "Johnny one-note," and that his interest in modifying the Endangered Species Act — including the protection of property owners who inadvertently "take" an endangered species in the course of, say, ploughing their fields — is consistent with his general views about constitutional protections for private property rights. His doctoral dissertation at Claremont Graduate School was on the constitutional right to privacy, and the theme of individual rights is fundamental to his political philosophy.

"My interest in obtaining the Ph.D. was understanding the Constitution as it was written," says Olberg, who also holds a Master's degree in comparative politics from American University and a B.A. in political science from Bethel College. He said he focused on "the whole question about what private and privacy means and what the pursuit of happiness really meant during the founding [of the country], what the concept of liberty meant, and how all of that related to the question of virtue ... Central to the dissertation and to self-government in the democratic sense of the term is the whole concept of private property."

Born in Chicago, Olberg is one of four children of parents who are both college professors — his father teaches educational psychology at Northern Illinois University, and his mother teaches nursing in a community college. "My folks think I'm insane for venturing into the political world," says Olberg. He moved to the High Desert — his home is in Victorville — in 1990, serving as governmental relations director for the High Desert Division of the Building Industry Association. His wife Lisa and their two young children, a 5-year-old daughter and 7-year-old son, join him in Sacramento as often as possible. "It's a daily struggle," he said of the pressures of political life on families. "I am constantly aware that they are not with me... There are times when we certainly pull back. There has to be a balance."

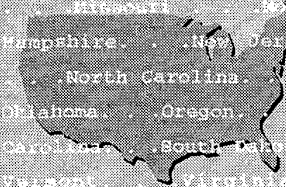
Stung at times by the anti-environmentalist label, Olberg says he is "no more interested in living in a dirty environment than the next guy... I've always been an avid outdoorsman, a hiker, a swimmer. I appreciate a clean

environment and want it to be preserved." He recalls a cable television forum on environmental issues with state Resources Agency Secretary Doug Wheeler and Senator Tom Hayden (D-Los Angeles): "Tom and I have a completely different perspective, but I find his approach to public policy interesting." When the subject of smog-choked Calcutta, India, was raised, Olberg used it as an example of how a poor economy begets a lousy environment: "To have a

relatively clean environment, you have to have a sound economy. Obviously, restrictions are required, but there has to be a balance."

A difficult subject, he adds ruefully, to address with any thoroughness in a 30-minute commercial-laden TV show. "It was an interesting dialogue," he mused, sounding more like the Claremont Ph.D. than the politician. "But you can only scratch the surface." ■

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religious philosophy. I believe the planet and the diversity of the species are important for a lot of reasons, and we need to try to preserve that diversity."

Sher, 69, a Democrat from Palo Alto, has been preserving his view of planetary diversity for nearly 17 years. Elected to the Assembly in 1980, he assumed the chairmanship of the Assembly Natural Resources Committee in 1985, holding the post until 1995, when Republicans finally gained con-

trol of the lower house.

Last year, he was elected to the state Senate in a special election to replace Republican Tom Campbell, who had been elected to Congress. He represents the 11th District, which takes in southern San Mateo County and northwestern Santa Clara County, including a sizeable chunk of Silicon Valley.

Re-elected to a full term later in the year, Sher chairs the newly formed Senate Environmental Quality Committee, which gives him oversight over the California Environmental Quality Act, a law he fought to preserve from Republican inroads during the recession of the late 1980s and the short-lived period of Republican Assembly control in the mid-1990s.

There isn't a single significant environmental law approved since 1980 that he didn't author or considerably shape.

He wrote the California Clean Air Act, the Safe Drinking Water Act and the Integrated Waste Management Act, which opened the way for curbside recycling. Sher once described the waste management bill as the one with the widest impact on the state.

He wrote the state's first law setting standards for underground storage of toxics, a bill authored with the cooperation of the high tech industry, and has written legislation to add several waterways and streams to the state Wild and Scenic River system.

In 1990, he wrote the "Sierra Accord," which established restrictions on clearcutting, protected ancient forests and imposed requirements on the timber industry that they engage in logging practices that will sustain the forests. Governor Pete Wilson vetoed the bill, and Sher says he'll introduce it again.

For all of this, Sher says he thinks he's somewhere in the middle of the spectrum on environmental issues — that he has been sensitive to the fears of business that environmental laws make it hard for them to stay alive.

The Clean Air Act, for example, tried to take into account that most of the air pollution is caused by cars, not factories, and that some parts of the state are cleaner than others and should be allowed to exist under less stringent restrictions, Sher said.

"When we finished with that bill, we had a lot of industry support," Sher said.

The "Sierra Accord," for another example, included a provision giving lumber companies long-term permits "to give the industry certainty as to what logging they were permitted to do," Sher said.

"If you talk to my constituents in Silicon Valley, they know I don't want to make these things expensive or hard to understand. I think my industry shares my objective of protecting the air and the water and the land. They just want to know what's expected of them and not have it be a lot of busywork paperwork," Sher said.

Sher also noted that many of his landmark bills had Republican support and most of them were signed by Republican Governor George Deukmejian.

He noted that even during the brief Republican majority, he continued to win passage of bills with bipartisan support and that every bill of his that was passed in 1996 was signed by Governor Wilson.

But Sher's tenure has not been all environmental initiatives.

During the recession of the late 1980s, he said he spent most of his time beating back efforts by industry to undo much of the legislation already on the books.

"When the recession was deep, that's the kind of period when people try to make changes they think will allegedly help the business community," Sher said. "A lot of bills were introduced to undo some of our landmark bills. We were in a defensive mode. Some of the interest groups thought it was a good time to get rid of these laws in the first place and blame it on the recession."

But it's a falsehood to believe strong environmental bills hamper business, Sher said, quoting from a favorite Bank of America study showing that the states with the strongest environmental laws tend to have the strongest economies.

That idea ran directly counter to the driving philosophy of Assemblyman Keith Olberg (R-Victorville), the vice chairman of the Assembly Natural Resources Committee during the latter days of Sher's tenure, and then chairman in 1996 when the GOP finally gained control of the lower house.

"There was a lot of tension that year," Sher said, little of it personal, but most of it philosophical.

Olberg wrote a doctoral thesis on

the negative effects on business of the Endangered Species Act and came to the committee, according to Sher, determined to do something about it, even though "that issue was not within the jurisdiction of the committee. ... He is really a strong advocate of views I don't share on that subject."

Among them, the belief that Sher's pet recycling laws ought to be industry driven, not mandated by state government.

But when Sher left the Assembly, Olberg gave him an Ansel Adams photo, and it hangs in Sher's Capitol office.

"I like him," Sher said. "He's on one end of the spectrum and I like to regard myself as in the middle."

Such equanimity may be born of Sher's current stature — back in a chairman's seat with a chance to control the agenda.

When he first arrived in the Senate in March 1996 he caught up with many of the Assembly bills he had opposed just weeks and months before.

"There were a lot of anti-environmental bills which I voted against and lost," Sher said. In the Senate, he said, most of those bills "were either changed into acceptable form or died."

He insists that his Senate committee is not a place where he'll bottle up bills, "but I think there are a lot of bills introduced by people who just as soon would never see these things enacted in the first place," Sher said.

Still, the chairmanship is a place to stake out new ground, and Sher has a long list of things he'd like to do — update the forestry laws and take another run at the "Sierra Accord"; succeed in putting together a plan for the preservation of the Headwaters forests; revisit his landmark underground tank law; revise and improve the fee structure for hazardous waste disposal so that it's fairer to industry; press forward on cleaning up the state's many Superfund sites; and author some new parkland acquisition bonds.

"It remains to be seen what we can do this year," Sher said. "I plan to try at least in some areas to be pro-active."

"I see opportunities here, but we do still have a narrow majority in the Assembly. In the Senate, I'm learning here. We do have a Democratic majority, but that doesn't necessarily mean we have a majority who want to make major changes in the environmental laws."

So Sher will push and prod and

quietly make his case, a case that often is listened to entirely because it lacks fiery passion.

"I don't regard myself as a confrontational kind of person and I try not to be that way," said Sher.

It's a style he learned on the Palo Alto City Council, where he got his start in politics in the 1960s, including his first taste of grappling with environmental issues. It's a liberal community and people there proudly claim Palo

Alto as the birthplace of the environmental movement.

"The most successful people here have had the local government experiences, which are consensus driven," said Sher. "I've tried to bring that to Sacramento and learn to work with all the people up here." 🏛️

Mark Simon is a reporter who works in the Peninsula Bureau of the San Francisco Chronicle.

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