

THE SAN DIEGO UNION  
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# 2 Doctors Charged With Murder In Patient's Death

By REX DALTON  
Copy News Service

LOS ANGELES — In a case expected to set legal and medical precedents, two Kaiser Foundation physicians were charged yesterday with murder for allegedly denying a comatose patient food and water when he did not die after the plug was pulled on his respirator.

Doctors Neil Leonard Barber, 49, of Rancho Palos Verdes and Robert Joseph Nejdil, 52, of Long Beach, who practice at the Kaiser Hospital in Harbor City were charged in the Sept. 6, 1981, death of Clarence LeRoy Herbert, 55, of Carson.

The case is expected to produce legal precedents on the rights of comatose patients and what actions physicians can take in treating such patients.

Nejdil surrendered to San Pedro Municipal Court Judge Michael J. Yelovich and was released on his own recognizance.

Barber reportedly is out of the country on vacation until Sept. 7.

Yelovich issued a \$25,000 bench warrant for Barber, but stayed its execution until Sept. 14 when both physicians are scheduled to be arraigned.

The charges followed an investigation by the district attorney's office into events that occurred after Herbert had a routine intestinal operation on Aug. 26 of last year. The probe was launched after a former nurse complained to health officials about Herbert's treatment.

Records indicate the hospital didn't have specific guidelines for discontinuing life-support systems. Records show that what general rules it had were violated when the plug on Herbert's respirator was pulled, and Herbert's wife — Patsy — wasn't consulted about the termination of food and water.

Attorneys for the physicians, however, have said the family was consulted on all aspects of Herbert's care.

Court documents and interviews with Kaiser personnel revealed the following series of events leading to Herbert's death:

After the operation, Herbert stopped breathing in the recovery room. Nurses began resuscitation efforts, placed him on a breathing apparatus.

Authorities had been unable to determine exactly why he suffered the respiratory arrest. However, they have found that there apparently was an insufficient number of staff members in the recovery room at the time.

On Aug. 28, two days after the operation, Barber, according to nurses, attempted to cancel an order to do a test to determine if Herbert's brain was dead. He also requested that Herbert's respirator be stopped.

The brain test was reordered by physicians and performed. Authorities who have examined the test results say they indicate considerable brain damage, but the patient wasn't "brain dead."

A copy of a document from the legal division of Kaiser's Oakland office was placed in Herbert's chart on Aug. 28 stating, "that no decision be made to 'pull the plug' before con-

sultation with legal counsel."

Mrs. Herbert and other members of the family, who have been described as "unsophisticated," signed a document agreeing to have the respirator unplugged.

Mrs. Herbert said Barber told her "all his brain cells are dead... (that) he was only a shell," records say.

On Aug. 31, Barber wrote an order to eliminate the intravenous tubes used to provide Herbert with water and liquid sustenance. Nejdil wrote the order to discontinue the nasogastric tube through which Herbert was fed.

Mrs. Herbert has told investigators she had no discussion with the doctors about what would happen if her husband wasn't fed through intravenous tubes.

Herbert died without regaining consciousness. An autopsy showed dehydration contributed to death, along with pneumonia. His death certificate, signed by Nejdil, listed neither of those maladies. It blamed the death on respiratory arrest and a lack of oxygen.



The Associated Press

Dr. Robert Nejdil

## Court Refuses Attorney Fees For GOP Leader

SAN FRANCISCO — The California Supreme Court yesterday refused to award \$225,068 in attorney fees to the state Republican chairman for successfully blocking a Democratic effort to keep reapportionment measures off last June's election ballot.

The brief order signed by Chief Justice Rose Bird denied the fees sought by State Republican Party Chairman Tirso del Junco, and Thomas Bader and Bader Associates, a professional petition circulation company employed to help place initiative measures on the ballot.

The Legislature passed a reapportionment bill last year based on the 1980 census, carving out districts which generally favored Democratic candidates.

The Republicans then launched a drive to place three referendum measures on the ballot and voters rejected all the plans. The Democrats had filed an unsuccessful suit to keep the measures off the ballot.

## S.F. Area Quake

SAN FRANCISCO — A moderate earthquake jolted Northern California early yesterday and caused little damage, but it was felt for at least a hundred miles along the Pacific Coast.

Broken dishes and windows were the only reported casualties, but the tremor swayed skyscrapers in San Francisco for five or six seconds.

The quake, recorded at 1:45 a.m., measured 4.5 on the Richter scale at the University of California seismographic station in Berkeley. It was felt from Santa Cruz County in the south to Marin County in the north. There were no injuries reported.

The epicenter was located about 60 miles southeast of Berkeley, near Santa Cruz.

## Teachers Lobby

SACRAMENTO — An estimated 1,500 public school teachers descended on the Capitol yesterday to lobby for a \$400 million school-finance bill, but apparently came away from meetings with legislators and their aides with few new commitments.

Even before the teachers showed up, there appeared to be enough support in the Assembly to pass, by the two-thirds majority required, increases in liquor and cigarette taxes to provide more money for schools.

But the Senate has been the sticking point, and several legislative sources indicated the intense lobbying by the California Teachers Association did not change many positions yesterday.

Superintendent of Public Instruction Wilson Riles told the teachers, "It means getting money to educate our children. I say, let's raise our taxes."

## Reagan Greeting

Big financial contributors to Attorney General George Deukmejian's Republican campaign for governor will get to greet President Reagan at a private reception Tuesday, the Deukmejian campaign staff said yesterday.

Mr. Reagan is scheduled to appear in the receiving line at the 6 to 8 p.m. reception at Los Angeles' Century Plaza Hotel, Deukmejian press secretary Kevin Brett said.

The President is to attend a fund-raising dinner for San Diego Mayor Pete Wilson, GOP nominee for the U.S. Senate, Monday in Los Angeles.

Brett said guests invited to the private presidential reception include about 90 people who either bought or sold tables — at \$10,000 each — for a Sept. 9 Deukmejian fund-raising dinner.

## Wilson Asks Probe

San Diego Mayor Pete Wilson, GOP nominee for the U.S. Senate, is asking the Federal Election Commission to investigate fund-raising activities of Gov. Edmund G. Brown Jr., Wilson's Democratic opponent, for possible violations.

Wilson spokesman Otto Bos yesterday said the campaign is questioning a recent invitation mailed by television producer Norman Lear and his wife, Frances, to a joint fund-raiser for Brown and for the political action committee of U.S. Rep. Morris Udall, D-Ariz.

Brown and Udall spokesmen said no impropriety was intended, but that the invitation was worded incorrectly. It suggested that people who had contributed the maximum allowed to the Brown campaign could funnel more money to Brown through the Udall committee.

From staff and wire sports.

## Reagan Urged To Reprimand VA's Nimmo

LOS ANGELES (UPI) — The Veterans of Foreign Wars yesterday urged President Reagan to reprimand Robert Nimmo, head of the Veterans Administration, who appeared at their convention to counter charges he insulted veterans.

Nimmo denied calling Vietnam veterans pampered, or disparaging one-legged veterans, saying the comments were wrongly attributed to him by what he called the liberal media.

Before Nimmo's arrival, convention delegates passed by voice vote a resolution asking the President to reprimand Nimmo and assure them measures would be taken to halt his allegedly indiscreet public statements.

In his speech, given a polite reception, Nimmo said the VA plans to increase research into the effects of Agent Orange, a defoliant used in the Vietnam War which some veterans blame for lingering ailments, and remains committed to the health and welfare of veterans.

He told delegates an ongoing review of VA programs is not a prelude to eliminating or reducing them, but instead a means of assuring they are operating at maximum efficiency.

Nimmo vowed he would ask Mr. Reagan and Congress to approve, in future years, more than \$138 million budgeted for VA medical research for 1983, which he called inadequate.

He admitted spending public funds — reportedly as much as \$4,000 — to refurbish his Washington office, but insisted the work was necessary.

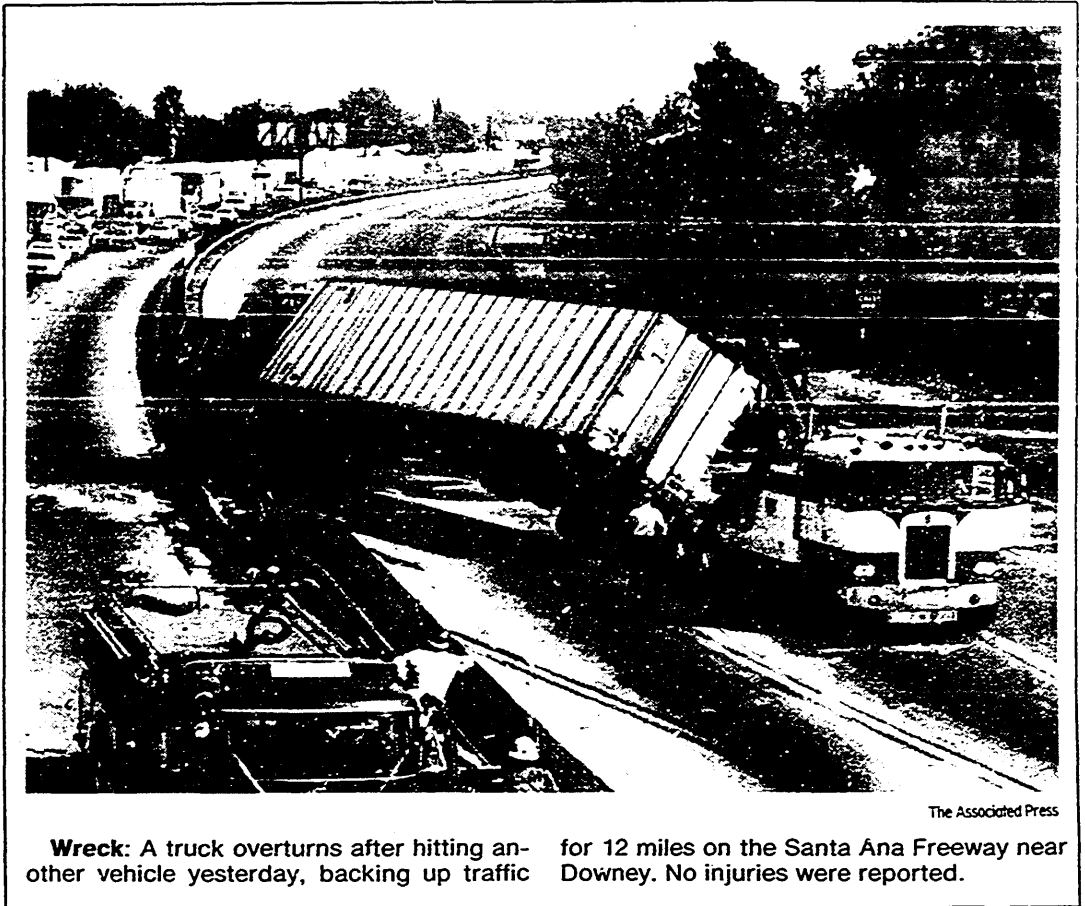
"I don't have to apologize for cleaning that mess up and making it a habitable place for people to work," Nimmo said, adding the office had dingy walls and stained carpeting before the renovation.

Nimmo also said he has repaid the \$6,411 paid in overtime wages to the driver of his government limousine and said his wife is now driving him to work.

The run-in with the veteran's group was the most recent for Nimmo, a former California state senator.

In May 1982, Nimmo was criticized by American Legion officials for suggesting the VA medical system was built on politics rather than patient need, and new construction was unneeded.

In June, Rep. Allen Ertel, D-Pa., urged Mr. Reagan to fire Nimmo for his "willful violations of the law."



The Associated Press

Wreck: A truck overturns after hitting another vehicle yesterday, backing up traffic for 12 miles on the Santa Ana Freeway near Downey. No injuries were reported.

## Brown Gets Housing Bonds Bill

San Diego Union Staff Dispatch

SACRAMENTO — The Assembly yesterday passed and sent to Gov. Brown two bills that would authorize the sale of \$550 million in bonds for construction or renovation of housing for low- and moderate-income residents.

By a 55-10 vote, the Assembly sent to Brown a measure that would grant the California Housing Finance Agency authority to sell an additional \$350 million in bonds for construction of housing for low- and moderate-income residents.

By a vote of 42-13, the Assembly sent to Brown a separate measure authorizing sale of up to \$200 million in bonds by cities or counties for the renovation of residential hotel or apartment buildings — also for low- and moderate-income residents — which do not meet state earthquake-safety standards.

Neither bond sale requires voter approval.

Assemblyman Leo McCarthy, D-San Francisco, author of the \$350 million bond-sale bill, said, "Interest rates have virtually shut down the state's housing industry and worsened California's housing shortage." He said his measure means "we're going to put some construction work-

ers back to work."

Also yesterday, a bill that would give a tax break of up to \$80 million a year to the computer industry won passage to the Senate.

The bill by Assemblyman John Vasconcellos, D-San Jose, would reverse a 10-year-old state policy of taxing custom computer programs based on their intrinsic value.

The bill, returned to the Assembly on a 27-0 vote, would exempt specially designed computer programs from sales taxes and would be retroactive.

In other legislative action yesterday: — The Assembly passed and sent to the governor a bill that would make it more difficult to force out older trailers from trailer parks. Under the bill by Assemblyman Richard Floyd, D-Hawthorne, such trailers could be forced from a park only if they are in "significantly run-down condition or in disrepair."

— Assembly Minority Leader Robert Naylor, R-Menlo Park, announced a last-minute legislative effort to prohibit local government agencies from increasing taxes without two-thirds voter approval. The authors of the 1978 property tax-cutting Proposition 13 claimed their

measure imposed such a ban, but the California Supreme Court ruled Aug. 5 that the two-thirds requirement did not apply to taxes for general government purposes.

— The Senate Rules Committee revived and approved by a 3-1 vote a bill by Sen. Barry Keene, D-Mendocino, that would establish a unicameral legislature.

— The Senate voted 29-0 to authorize the Department of Social Services to contract with public and private agencies for programs to prevent child abuse. The Assembly had previously approved the measure by Assemblyman Louis Papan, D-Millbrae, but must vote again on amendments to give the bill final passage. The bill would cost the state Treasury \$10 million.

— The Senate rejected a call for a bilateral nuclear weapons freeze but passed a measure urging Congress to establish a national peace academy.

— The Assembly approved a measure by a Republican state Board of Equalization candidate that would tell that board to collect sales tax on illegal drug sales. A voice vote approved the resolution by Assemblyman William Ivers of Flintridge. It goes to the Senate.

— Daniel C. Carson

## THE POLITICAL BEAT

# First Brown-Wilson Debate: Both Score Points, Claim Victory

By RAY KIPP  
Staff Writer, The San Diego Union

To some, it seemed a little much that the candidate insisted on having his own makeup man for a radio debate.

But San Diego Mayor Pete Wilson left little to chance in his first formal U.S. Senate campaign debate with Gov. Brown last week in Fresno.

The first face-off was a tightly-controlled affair, negotiated so even the most minute of details would not favor one or the other candidate.

For example, the possibility of a candidate being pressed for more than a prepared political response was reduced by eliminating the opportunity for follow-up questions from the panel of reporters.

And it was no accident that Wilson's camp had held out for Fresno, an area where Brown is not particularly popular, or that the first debate was a radio event.

"It's a good way to warm up for television," said Otto Bos, Wilson's

campaign communication director. What a Wilson camera recorded of the event will be studied and restudied for pointers for later televised debates.

Both sides claimed victory after it was over.

And, in fact, both candidates scored points and showed differences on major issues.

Both also ducked questions. Brown, the Democrat, seemed more relaxed, the better speaker and better prepared on many of the issues.

Wilson, the Republican, was the more aggressive of the two, attacking Brown's record on crime, his judicial appointments, his record as governor.

From the beginning, Wilson's strategy has been to try to control the campaign agenda and attack Brown.

freeze initiative, his shift from opposition to support to qualified support for the AWACS sale and recent statements about reducing Social Security

contributions for those under 45.

And despite Wilson's aggressiveness on the podium last week, he was to find himself on the defensive once

again. And it was on the defense about crime, although there never was any doubt that Wilson would try to make Brown's record on crime a major issue in this first debate.

Despite the governor's claim that twice as many people are being sent to jail now than when Ronald Reagan was governor, he has had little success in trying to dissolve a charge that he has been soft on crime and appointed too many liberal judges.

But when Wilson launched his expected attack, the governor countered with his own statistics to question Wilson's claim that San Diego is the safest of the nation's 20 largest cities.

He produced figures from the office of the state attorney general that show the city's major-crimes rate has doubled during Wilson's administration. He also cited figures from an FBI report that lists San Diego with the seventh-best, not first-best, crime

per person ratio among the nation's 20 biggest cities.

He took some of his information from the same FBI report Wilson cites.

Wilson blasted Brown the next day for taking a "cheap shot... at the city" and defended his claim that San Diego is the safest big city in which to live.

But Brown was not attacking San Diego. He was attacking Wilson for using questionable statistics.

It would appear that, as is so often the case, statistics can be found to prove both Wilson's and Brown's claims.

A Wilson aide wrestling with the new Brown attack remembered the quotation attributed to Benjamin Disraeli that, "There are three kinds of lies — lies, damned lies and statistics."



COMMENTARY