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Interview with
Representative L. DeWitt Hale
September 3, 1975

Place of Interview: Austin, Texas

Interviewer: Dr. Ronald E. Marcello

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Approved: *L. DeWitt Hale*
(Signature)

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Oral History Collection

L. DeWitt Hale

Interviewer: Dr. Ronald E. Marcello

Place of Interview: Austin, Texas

Date: September 3, 1975

Dr. Marcello: This is Ron Marcello interviewing Representative DeWitt Hale for the North Texas State University Oral History Collection. The interview is taking place on September 3, 1975, in Austin, Texas. I'm interviewing Representative Hale in order to get his reminiscences and experiences and impressions while he was a member of the Sixty-fourth Texas Legislature. I might add as a sidelight to this interview that Mr. Hale has just come through a rather hectic first day in the preliminaries to the trial of Judge O. P. Carillo.

Mr. Hale, you had a new speaker this session, Billy Clayton. How would you compare and contrast the speakership of Billy Clayton with that of his predecessor, Price Daniel, Jr.? I'm speaking now in terms of procedure, in terms of fairness, in terms of the daily operations of the House.

Mr. Hale: It's extremely difficult to compare speakers. Let me start with that preface.

Dr. Marcello: Obviously the tenor of the two sessions was different. Daniel's speakership was devoted almost entirely to

reform. In the Sixty-fourth Session reform, as it was known in the Daniel tenure, was almost dead, isn't that correct? At least it wasn't a major issue.

Hale: Reform was not a major issue in the Clayton administration, except to the extent that there were organized efforts to relax some of the more rigid reforms of the Daniel administration. As far as their ability to preside over the House, the manner in which they presided, and the basic fairness of the individuals, I would say there is very little to choose between when you compare Daniel and Clayton. Both men were very capable. Both men did a very able job of presiding over the House of Representatives and directing its deliberations. The comparison, or perhaps you might call it contrast, would occur when you look at them in terms of their position on issues. But from a parliamentary standpoint, I think that both of these two speakers were very able presiding officers.

Marcello: Let's go back to the Constitutional Convention for a minute because I think that this is when a great deal of the maneuvering in the speakership race took place. At that time Fred Head, Carl Parker, and to a much lesser extent, Billy Clayton, had already made known their desires to become speaker. Now I gather there was a tremendous amount of rivalry that took place in

this Constitutional Convention between Head and Parker concerning the speakership. Isn't that correct? And then how did this work to Clayton's advantage? Clayton remained rather low key, as I recall.

Hale: From the outset of the convention, Speaker Daniel had contacted all of the known candidates for speaker of the House and had asked them not to do any campaigning during the convention. His thinking, and the thinking of a lot of the other leadership of the convention, was that if politics of the speaker's race were injected into the convention, it could well be fatal for the convention. For that reason all of us tried to encourage the candidates not to campaign during the convention and to forget the speaker's race until after the convention had concluded its labors.

At the start of the convention, as you may know, I, too, was a candidate for speaker, having lost a close race for speaker in the special election in March, 1972. When I accepted the chairmanship of the convention Judiciary Committee, I in effect abandoned my race for speaker at that time because I knew that I could not do a good job as a committee chairman and still maintain posture as a political candidate for speaker of the House.

To his credit Clayton observed the request of the president and the leadership of the convention, and to

the best of my knowledge Mr. Clayton did no campaigning for speaker during the convention.

Marcello: And would you say that this worked to his advantage?

Hale: I think that it definitely worked to his advantage. Many of the members of the convention were well aware that he had done so and commented on it to his credit. At the same time, Mr. Head and Mr. Parker both ignored the request of the leadership of the convention and actively pushed their campaign for the speakership. I think they did it to the detriment of both of their candidacies.

Marcello: Who did you support during that initial race or contest or whatever you wish to call it among the three?

Hale: I refused to take a stand in it during the life of the convention for the same reason that I didn't want any campaigning for speakership during the convention. I felt that my position of strength as chairman of the convention Judiciary Committee would be weakened if I took a stand in the speaker's race. By doing so I would automatically alienate the supporters of the other candidate. For that reason I refused to be involved in the speaker's race during the convention, even to the extent of refusing a pledge. And toward the end of the convention I was under a great deal of pressure primarily from the Parker camp to join forces with them.

Marcello: How would this pressure take place? What sort of pressure was it?

Hale: Different members who were supporting Mr. Parker would come to me and talk to me about it. I was invited to several group meetings where I was told in no uncertain terms that my support was crucial to the success of his campaign and that by delaying a decision I was in effect helping either Mr. Head or Mr. Clayton.

I tended to downgrade my role and influence in the speaker's race. I consistently took the position that I, like every other member, had only one vote and that no one else would be greatly influenced or swayed by what I did. But Mr. Parker and his leaders felt to the contrary, and they continued to pressure me throughout the convention in an effort to have me make a public commitment to Mr. Parker. This I never did.

Marcello: Ultimately, that is, immediately before the initiation of the Sixty-fourth Session, did you swing your support to Mr. Clayton?

Hale: I was planning to vote for Mr. Parker, and I would have voted for Mr. Parker had the race gone down to a final vote. In the sense of a real contest, the race was decided some months prior to the actual convening of the Sixty-fourth Legislature. And at that point I had indicated to Mr. Clayton that I would help him in any

way that I could as far as organizing the House and trying to get it in a good posture to do an effective job.

Marcello: What was it that leaned you initially more toward Mr. Parker than toward Mr. Clayton?

Hale: Primarily, it was a matter of politics.

Marcello: Was it philosophical?

Hale: Primarily philosophical politics. Mr. Parker represents an area of the state along the coast which is much more comparable to the area I represent. His constituency is more comparable to that of my district than is Mr. Clayton's. And his general approach to the problems of state government is probably more in keeping with my idea and my approach than is Mr. Clayton's. For that reason, philosophically I was inclined to support Mr. Parker.

Marcello: Well, evidently Mr. Clayton wasn't a man to hold grudges because you did retain your chairmanship of the Judiciary Committee, did you not?

Hale: No, I did not. I was replaced as chairman of the Judiciary Committee. Mr. Grant was named chairman of the Judiciary Committee, and I was named vice-chairman for this session of the Legislature.

Marcello: Do you see this as perhaps due to the fact that you did not initially support Mr. Clayton?

Hale: I don't think that it was due to the fact that Mr. Clayton was holding political grudges, if I may use your

expression. The chairmanships of House committees, and particularly the major committees, are based upon a desire by the speaker to have his team in control. He wants to appoint chairmen who are loyal to him and who have helped him win the race.

I talked with Mr. Clayton on several occasions about it. He told me, and I believed him, that he was giving serious consideration to keeping me as chairman of the Judiciary Committee if he could work it out in such a way that he didn't alienate a lot of his other leadership by making such an appointment. To his credit I think that he did make that effort, and apparently he was unable to satisfy his top leadership. They felt, I'm sure, that for him to name me as chairman of one of the key committees of the House would have been a slap in the face to a number of his loyal supporters who had been working for months to see him elected speaker while I had not even supported him. I think it was a matter of practical politics when it got down to the final decision. He felt compelled to name his key lieutenants to the top spots, and that's what he did.

Marcello: Okay, the Sixty-fourth Legislature convened. One of the first things that was facing that Legislature was a budget surplus or the possibility of a budget surplus.

How did that affect the immediate deliberations and activities of the House of Representatives?

Hale: Every legislator likes to come to Austin at a time when there will be no necessity to pass a tax bill in order to finance state government. The fact that we had revenue projections for the next two years that were substantially more than commitments certainly put everyone in a relaxed frame of mind from the very start of the session. I think that a huge anticipated budget surplus tends to make the members of the Legislature a little more liberal in spending programs than they would be if we were facing a deficit, and that attitude was certainly reflected in some of the actions by this Legislature.

Early in the session we passed several so-called emergency appropriation bills. These were efforts to utilize some of the surplus in areas that had been neglected in the past. For example, we gave pay raises to all state employees. We submitted a constitutional amendment, which was adopted, and then passed emergency legislation, to improve retirement benefits for all the teachers and the public employees. And several other minor appropriation bills along a similar vein were passed which probably would not have passed had there been a budget deficit.

But with money available, then it becomes a matter of establishing priorities, and many members of the Legislature felt that those were top priority items that needed our attention. So they received attention early in the session, even prior to the passage of the general appropriations bill.

Marcello: Comptroller Bob Bullock seems to have played a much more active role in this Legislature than did his predecessors. Is this an accurate observation? You seem to read more about Bullock than his predecessors.

Hale: Bullock is an activist. His predecessor was not. I think that's the difference in the personality of the two men. Mr. Calvert, who was comptroller for many years, operated his office on a very low profile basis and took the position that his job was primarily ministerial in collecting the taxes which the Legislature levied. He did not get too aggressive in collecting those taxes.

Mr. Bullock took over the office with the idea, and the campaign commitment, that he would not be lax in tax collections. Mr. Bullock, if elected, would pursue a much more aggressive policy. He has done that. I think the results have been evident from the news reports. He has been very vigorous in enforcing the tax laws and has been very courageous in closing down

businesses that have not been making their tax payments. I think that all of this is to his credit. He is perhaps over-dramatizing the entire procedure, and I assume he is doing that for the psychological effect it will have on all taxpayers in the future. So I think that Mr. Bullock is to be commended for his aggressive approach to the problem, and I think that his efforts will result in the collection of millions of dollars in taxes which otherwise might never have been collected.

Marcello: While we are on the subject of taxation and finances, once again Governor Briscoe made it quite clear that there were going to be no new taxes during this particular session. And I gather that everybody in the Legislature took him at his word.

Hale: After the session two years ago and the posture which he took then and the strong role he played in killing any substantial legislation on school finance because of a lack of available finances, no one in the Legislature underestimated his courage or his dedication to that campaign commitment this session of the Legislature. I think that every member of the Legislature recognized that we were going to adjourn this session without passing a tax bill. Therefore, we of necessity would have to limit the expenditures

of this session to revenue that was in sight according to the estimates of the comptroller.

Marcello: From the press reports that I saw, you seemed to feel that Governor Briscoe was a much more active governor than he had been during his first term. Or should we say that he was much more of an activist governor during this term than in his first term.

Hale: I think that Governor Briscoe really became governor of Texas during this term of office. He had held the title of governor of Texas for the first two years of his administration, but he was very deliberate in all of his actions, and he was very hesitant in making decisions. He operated the governor's office on what I considered to be a much too-low profile basis. I feel that the governor of Texas must be the chief executive in fact as well as in name. I think that the governor must take an aggressive role of leadership in state government. If he is going to influence policy, he must take an aggressive role in leadership in the Legislature because it is in the Legislature that policy is made and determined.

I have known Governor Briscoe for more than twenty years. He served in the House of Representatives in the early 1950's, and I had the pleasure of serving with him at that time. He and I had much in common, and we became

good friends. We have been good friends, in a remote sort of way, ever since his service in the House.

I think that he was feeling his way during the first two years of his administration. He had the basic ability, from the start, to be a good governor and to provide the leadership that we needed. But he had been out of government so long that he apparently thought he needed to get his feet on the ground and to feel his way in the early days of his administration for fear that he might make some bad mistakes. That he was definitely trying to avoid.

During this past session of the Legislature, he became a more vigorous governor. He provided more vigorous leadership. I told him this to his face. On occasion, several occasions, during this past session of the Legislature, he demonstrated by his actions that he had in fact become the governor as well as the titular head of the state government.

Marcello: Could you give a couple of examples to corroborate what you just said, that is, where he does become much more of an active governor.

Hale: The best example, although not the earliest example, had to do with higher education. Governor Briscoe felt that the higher education institutions in Texas were proliferating in number, in size, and in programming

to an alarming extent, and that there needed to be some coordination and some control of that proliferation from the top. The Legislature has been the only control in past years on this tendency of higher education to increase dramatically in size and cost. The governor's office can't do it.

Several years ago, during the Connally administration, similar recommendations were made. The result was a state agency known as the Coordinating Board for Higher Education. The Coordinating Board bill that was passed had to be watered down in order to get enough votes to pass, so the Coordinating Board actually had rather limited authority to control higher educational institutions.

Governor Briscoe decided that the Coordinating Board should be strengthened. In the face of organized resistance from the University of Texas, Texas A & M University and some thirty-odd other institutions of higher learning, he took an active role of leadership in trying to see that bill was passed. When it became apparent during the closing days of this session it was not going to be passed unless something dramatic was done, he really came out swinging. He started calling members of the Legislature. He had them in his office. He had his staff working on it. He put pressure

on them. He really exercised leadership from the governor's office, and because of that we were able to pass the Coordinating Board bill.

I use that as an example because I sponsored that bill in the House at the request of the governor, and I know the problems we had in the House. We did not have the votes to pass that bill until the governor himself became personally involved in the fight and started putting pressure on members of the House to vote for the bill. He was able to exert enough pressure that we were able to pass the bill in the closing days of the session. That's what I mean by vigorous leadership in the governor's office.

Marcello: As you look back upon that Sixty-fourth Session of the Texas Legislature, what would you consider to be the three most important topics or problems that that Legislature had to face?

Hale: The number one problem undoubtedly was public school finance.

Marcello: Give a little bit of a background as to why that was the number one problem. We probably have talked about it a little in previous interviews with the Rodriguez decision and so on.

Hale: I believe that we have in previous interviews. The three-judge federal court in San Antonio in Edgewood Independent School District vs. Rodriguez had handed

down a decision to the effect that the methods of public school financing in Texas were unconstitutional. That case went on appeal to the U. S. Supreme Court, and in a split decision the court reversed the trial court and held that the method of financing was not unconstitutional per se, but it did leave a lot to be desired. In its closing paragraphs, the majority opinion of the U. S. Supreme Court stated that the need for change in Texas was evident, but in their opinion it was a change that needed to be made through legislative rather than judicial channels. In effect they tossed the bill to the Legislature.

To achieve the equality of educational opportunity which the U. S. Supreme Court said was lacking in Texas, I introduced House Bill 946 in the 1973 session of the Texas Legislature. That bill passed the House in excellent shape. It made sweeping reforms in the entire method of financing public school education. It was designed to meet the challenge of the Rodriguez case and to meet the need that the Rodriguez case had indicated. However, the Senate gutted the bill, again primarily because there was inadequate money to finance it, and passed back to us an amended version that did nothing more than add a few million dollars to the minimum foundation

program, pinpointed primarily toward poor school districts.

The long and short of it was that in conference committee we could never work out of the situation because of Governor Briscoe's adamant stand against any new taxes. The Conference Committee, in the closing days of the session, was advised that we had only about seventeen or eighteen million dollars to spend. Otherwise, a tax bill would be required. So we ended with a watered-down version of the Senate amendment to the bill which would have put that much more money into the minimum foundation program. The conference committee report was adopted in the Senate but failed on a tie vote in the House of Representatives. So nothing was done in 1973 with respect to school finance or the Rodriguez case.

In this session of the Legislature, the problem was still with us in more aggravated form, and again we attempted to solve the problem. There were five or six major pieces of legislation introduced this time, whereas in the last session House Bill 946 was the only major piece of legislation on school finance. I re-introduced my bill with some modifications, the State Board of Education recommended its version, and minority groups came forward with a bill of their own.

Marcello: TSTA had a bill?

Hale: TSTA had a bill. There were about five or six major bills speaking to this problem. The House Education Committee came out with a bill drastically rewritten. It had been introduced by Representative McAlister and had originally been the recommendation of the State Board of Education. This bill was the vehicle which finally passed, with a large number of modifications. It put a large amount of new money into the public school system. It has provisions which will go a long way toward alleviating the situations pointed out in the Rodriguez case. But it still falls considerably short of total equal educational opportunity in Texas.

Marcello: I've heard other legislators rationalize by saying, "Yes, this is true that it didn't implement the Rodriguez decision, but at least it was a start or at least it was a beginning, and the Legislature can now proceed from this point."

Hale: Well, it is certainly an improvement over what existed prior to its passage. We have definitely improved the financing available to the poorer school districts, and so by this legislation we have considerably narrowed the gap between the better districts and the poorer districts. What I was fearful of in all of these bills

was the tendency on the part of many members of the Legislature, because of the cost involved, to want to tear down the better school districts rather than build up the poorer districts. I for one did not want to achieve equality in that way. I don't think that you are going to help anybody by destroying better school districts, so the approach which I took was to try to build up the poorer school districts rather than tear down those which had already achieved some degree of excellence.

Marcello: How do you do this? How do you feel you can do this?

Hale: You do it in two ways: one, of course, by money; and two, by programming. You must establish standards at the state level which these districts must meet in order to qualify for accreditation and for state funds. Then you must provide them the financial difference between their capability of supporting such an educational program and the actual cost of that program. So the equalizing of educational opportunity eventually gets back to an equalizing of the financial resources of the various districts. You equalize those by standardizing the procedures for them to levy their own taxes, that is, the procedures for appraising and assessing all the property in their district and procedures whereby they determine what their financial

capability is. Then the state must pay the difference. And that means the state would not be putting any money into the wealthy school districts. In the poorer school districts, it would mean that the state would be picking up a substantial portion of the costs.

Marcello: A great many observers were disappointed in some of those school finance bills in that more emphasis seemed to be placed upon teachers salaries than upon implementing the Rodriguez decision. This, of course, was especially true, I think, of that TSTA bill. I guess it was to be expected that there would be a great deal of emphasis here on teachers salaries.

Hale: Well, I sponsored the TSTA bill, and that is true. But keep in mind that a substantial part of your education dollar goes for salaries. It is personnel that operates the public school system, as is true of any organization. So that when you talk about financial needs of these poorer school districts, you speak of financial need for money to pay adequate teacher salaries. And when you pour money into teachers salaries, you are not necessarily ignoring the mandate of the Rodriguez case. You are in fact attacking one facet of it.

Marcello: How much pressure can an organization such as TSTA bring to bear on a state legislator? Is it a powerful lobbying group?

Hale: You would have to concede that it is a powerful lobbying group, yes. But even powerful lobby groups can meet their Waterloo, and the TSTA in a sense met its Waterloo in this session of the Legislature. The mandate of their convention was to agree to nothing less than a starting salary of \$10,000 for a B.A. degree teacher with no experience. The bill that finally emerged set that minimum figure at \$8,000 rather than \$10,000 despite all the pressure that the TSTA could bring to bear on members of the Legislature. Yet lobby groups serve a very useful function. TSTA serves a very useful function. But the final decision must be made by the elected representative of the people, and that is what was done in this session of the Legislature.

Marcello: How would the TSTA bill have fallen within the mandate of the governor that there would be no new taxes? It was perhaps the most expensive of the bills proposed, was it not?

Hale: Yes. If you kept the \$10,000 salary level, it would have been the most expensive. It, of course, violated the governor's guidelines, for when we put the minimum salary at \$10,000, a substantial tax bill would have been required. For that reason the \$10,000 salary was never given any real serious consideration in the committees or among the responsible leaders in the field of public education.

There were one or two votes taken on the floor where the House acted very irresponsibly. I don't believe we ever got a majority vote for a \$10,000 minimum. I believe there was one amendment adopted for a \$9,000 minimum. Yet many who voted for that did so knowing that it would never pass. It would have to be reduced substantially in order to come within the governor's guidelines of no new taxes.

Marcello: But at least they can go on record before TSTA and say, "Hey, I voted for your pay increase."

Hale: Well, there is a certain amount of politics played on some of those floor votes.

Marcello: Now something else that came up with regard to school financing was Governor Briscoe's weighted pupil approach. How did you feel about it?

Hale: The weighted pupil approach has a lot to be said for it. The main thing against it is that no one understands it. That was certainly true in the Legislature. My bill, the TSTA proposal, and the State Board of Education proposal both attempted to approach the problem within the framework of the existing minimum foundation program. It was my thinking that we could meet the problems as well that way as we could with the weighted pupil approach. To combine the tremendous reform that the Rodriguez decision generated

along with a total new concept in the method of allocating funds, I felt, was too much to undertake at one session of the Legislature.

What we should do, what we tried to do in this session, and what we finally did do, was to maintain the existing framework of fund allocation in the minimum foundation program but to change the basis for calculating the economic ability of each district to finance its public school system. Doing that necessitated a number of other things. One was redefining the guidelines for local tax assessment and collection. Another was redefining the economic index, which is the statutory measure of the ability of a local district to finance its own public school system.

Marcello: Is this where we get into the fair market value system?

Hale: Yes, and we did make fundamental changes in both of those areas. Even under the framework of the minimum foundation program, we really have a new ballgame in financing of Texas public school education. I think eventually we will come to a weighted pupil approach. But it needs to come at a time when it will be the only significant change being made. It must come at a time when other significant changes

have been digested, the bugs have been eliminated, and these new programs are operational to the extent that the local school administrators and school boards understand them and are familiar with them. Then we can go into this new concept and change the basic formula to that of the weighted pupil approach.

Marcello: Let's talk a little bit about that fair market value approach to a system of taxation. I'll let you explain it and give your views about it.

Hale: The Texas constitution requires that all taxes be equal and uniform. Having said that, you have said about all you can say about fair taxation in Texas. The constitutional mandate has been historically violated at every level of government, particularly in ad valorem taxation. The only major source of revenue available to local school districts is ad valorem taxation, primarily of real property although some school districts do make feeble efforts to apply ad valorem taxation also to personal property, such as automobiles. However, the administrative and mechanical difficulties in assessing and collecting ad valorem taxes on personal property are so tremendous and the cost of those collections are so high in terms of revenue yields that most school districts and most local taxing agencies have long since abandoned any effort to reach personal property with

their ad valorem taxes. So you are dealing primarily with real property: land and things that are permanently affixed to the land.

Each local unit of government under our system has authority to assess the real property within its jurisdiction in any manner it desires. It can use any method or formula it believes to be expedient to determine the value of that property and the value at which it should be assessed. So you have the inconsistent situation within a taxing jurisdiction where some property is on the tax rolls at, say, 50 per cent at what it would sell for, and other property maybe a few blocks away is on the tax rolls at possibly only 10 per cent of what it would sell for on the open market.

The fair market value approach is simply an effort to determine guidelines and to put restrictions on the local taxing agencies to the point that they are required to use a uniform method or a uniform formula for determining values of all real property within their jurisdiction. If a piece of land is going on the tax rolls in Dallas County at 50 per cent of market value, then an equivalent piece of land in Corpus Christi should go on the tax rolls at 50 per cent of market value. That is the fair market

value approach. The effort is to attempt coordination and supervision from the state level which will insure that all property throughout Texas is initially put on the records of the taxing agency at market value. What will property sell for on the open market? Having determined value, that is the figure that goes on the records of the taxing agency. Then depending on the revenue needs of that taxing agency, they can assess that property at 60 per cent of its market value, or 50 per cent or 40 per cent, and then apply whatever tax rates they want in order to produce the amount of revenue that the agency needs.

But the value and the importance of the fair market value approach is that once you ascertain the fair market value of all the property in Texas, you are in a position to compare school districts as to ability to finance local school systems. You can't compare districts today because of this lack of uniformity in their assessing and collecting procedures. So if we could ever get uniformity in assessing and collecting procedures, then you will be able to say this school district can produce X number of dollars by a given effort--tax effort--whereas this district can only produce half that much, and more state dollars need to be going to this poorer district.

Marcello: Well, ultimately, of course, a public school finance bill was passed, but I think that the final bill got through only after there was a reevaluation of the amount of revenue that would be available--a new estimate made by Comptroller Bullock.

Hale: That's true. Some adjustments had to be made in the bill in the closing days in order to adapt it to the guidelines of the governor of staying within available revenue.

Marcello: Did you see the governor applying pressure in the area of school financing, that is, asserting his authority as governor?

Hale: Not to the extent that he did on the Coordinating Board bill for higher education. But he certainly was much more evident and much more active in making his views known and attempting to influence the outcome that he had been two years ago.

Marcello: Okay, let's talk about another very important issue that came before the Sixty-fourth Legislature, and this was public utilities legislation, more specifically the formation of a public utilities commission. First of all, did you feel that there was a need in Texas for a public utilities commission?

Hale: Yes, I felt that there was. In answer to one of your earlier questions, I would have probably rated this the number two issue of this session of the Legislature.

Marcello: I'm glad we agree on that (chuckle).

Hale: I think it was evident that Texas needed some type of state regulatory body on public utilities. At the same time, having said that, let me say that I am basically reluctant for government to move into any other areas of regulation and control than we already have. I have the feeling sometimes that we have gone too far in this country on the theory that government is the answer to all of our social and economic problems. Yet, I did agree and so voted that we needed public utility regulation in Texas.

Marcello: Why did you feel that that was so?

Hale: Of course, we have always had regulation of utilities in Texas in a sense, but the regulation has been at the local level rather than at the state level. That fact is not brought out when you get into public discussion on this topic because the news media and the people who talk about it will tell you that Texas is the only state that doesn't have regulation of utilities. That is true if you mean an agency at the state level regulating them. But each locality can regulate utilities even under our existing system and will continue to do so under the public utility bill that was passed if they want to do so.

The public utility regulation bill which was finally passed gives this three-member commission,

appointed by the governor, the authority to regulate utilities and utility rates only in unincorporated areas of Texas. The incorporated areas still retain the right to do their own regulatory function if they care to do so.

Marcello: Is this true for telephones, also?

Hale: I'm not sure on telephones. Telephones possibly are the exception. I don't recall now the details of the bill. But in all other areas, if the cities want to continue the regulation, they can. They can call on the state regulatory agency for expert counsel and advice in performing their regulatory functions. If a city does not want to continue to do its regulatory function, it can abdicate that responsibility and authority in favor of the state regulatory agency, in which event the state agency will move in and do the regulation for them.

Marcello: Now according to the investigations and conclusions of Senator Clower's committee, there has been a great deal of abuse in Texas on the part of certain public utilities, again, more specifically, perhaps the telephone company. How do you feel about this? Do you feel that the public utilities have had a tradition of, shall we say, abusing the public welfare in Texas?

Hale: I don't believe that you can generalize by making a statement quite as strong as you put it. There have

been areas of abuse as was brought out by the Clower committee. Most of those areas of abuse were, as I recall, in the telephone industry, and you do have a rather unique situation where it's cheaper to make a long distance call across the state line than it is to make a much shorter call intrastate. That's one area on which there is apparent abuse.

But if you look at the electric industry, for example, you will find that most of these electric utilities have done a pretty good job in providing topnotch service to their customers at very economical rates. I'm reminded of advertisements in the newspaper that I've seen from time to time by various public utility companies comparing the increase in rates on electricity over a period of ten or fifteen years with the increase in the price of groceries or automobiles or any other commodity you are buying. And the thrust of those advertisements that electricity today, in terms of, say, what your dollar would buy fifteen years ago, is probably your cheapest commodity on the market. This is telling in its own way the story that private utilities have done a tremendous job in the field of electricity in holding their price down in the face of inflation and have done a good job in providing the people with excellent service at reasonable prices.

The tremendous jump in electrical rates within the last year or two has been brought about not so much by greed on the part of the electrical utility companies as it has been by sheer necessity because of the fact that the cost of the things that they are buying has taken such tremendous increases. They have had to raise their rates in order to stay in business.

Marcello: You brought up an interesting point here. I think that a great many people seem to feel that the establishment of a public utilities commission is going to mean lower rates. But that really isn't the case.

Hale: I don't think that you are going to see any reduced rates as a result of this utilities commission, possibly with the exception of some telephone rates in selected areas of long distance telephone calls. But beyond that I think that the only effect which the utilities commission can possibly have would be to slow down increases in the future. But I can't see how the utilities commission is going to be able to roll back the prices on the commodities which public utilities sell, such as electricity and gas, in the face of constantly increasing production costs, constantly increasing maintenance costs, constantly increasing fuel costs, and constant shortages in the natural gas area. I think that you are going to see, despite the public utilities commission,

probably a continual increase in these costs to consumers. This will simply reflect the inflationary trend of everything else in this country.

Marcello: As I recall, in Representative Wilson's original bill in the House, the proposed public utilities commission would have blanket authority over virtually all utilities. Did you want to see this type of public utilities commission, or did you want to see somewhat of a different version? You mentioned in your opening statement concerning public utilities regulation that you felt that perhaps the government was playing too much of a role in the regulatory process. I would like for you to kind of bring it together here.

Hale: I think that we went as far as we should have gone at this time.

Marcello: That is, giving the local areas a certain amount of leeway or the option whether they want to get in or not.

Hale: I think that would probably be the best solution at this time. I'm not at all sure that I would have voted for Wilson's original bill. And I'm not at all sure that he could have secured enough votes to have passed his original bill. On the contrary, I feel fairly certain he could not have secured enough votes to have passed his original bill, and that fact is

more or less established in my mind by the concessions that he did make. These concessions are made by a sponsor of a bill in an effort to secure support for it. I know that Mr. Wilson was a dedicated individual and was sincere in his efforts.

Yet there are not very many areas of human activity that government regulates that went overnight from a position of no regulation to a position of total regulation. It is always a developmental process. You phase in regulation in order to lessen the impact and to lessen the trauma of the change. I think that that is needed in the field of public utility regulation. I think that we need to move slowly in this field, and we have taken one big step in this session of the Legislature. Then if the need develops to go farther than that in future years, we will have the organization, we will have the government agency, we will have the mechanics, we will have the experts, and we will have the procedures already established and in operation. It will be a relatively easy job politically then to expand the area of their authority and give them more and more regulatory authority. That has been the history in all other fields of regulation.

Marcello: Did you favor an elected commission or an appointed commission, as ultimately came out in the bill?

Hale: My natural inclination is to go toward an elective position rather than an appointed one. And yet when I compare the way that our elective state agencies have operated compared to the appointive state agencies in those government agencies that have regulatory authority, it leads me to the conclusion that we would probably get a better type of regulation if it is an appointive agency. For that reason I supported on the utility regulatory bill the concept of an appointive commission rather than an elective commission.

Marcello: I may be going out on the limb here, but were you making reference to the Railroad Commission perhaps?

Hale: Well, the Railroad Commission is a good example. Although the members of the Railroad Commission are elected, I feel that the public really has less input into operations of the Railroad Commission than they do into the regulation of insurance, for instance, or the alcoholic beverage industry.

Marcello: Why do you feel that this is so?

Hale: The cost of making a statewide race for a regulatory agency is so tremendous that the people who successfully make those races must be either independently wealthy or they must depend on contributions to their campaign in order to have any hope of winning. As a

result, you find in an elective commission like the Railroad Commission that the businesses that are being regulated are the ones who pour the money into the campaigns. And as a result, they tend to have a strong voice in the decisions which that agency ultimately makes with respect to regulating their business or industry.

Marcello: Now another aspect of that public utilities bill concerned the process of rate-making. Again, there was this problem of original costs versus replacement costs, which quite frankly I don't understand very well. How did you feel about that? What procedures should be used in determining rates and so on?

Hale: The bill itself, as finally passed, included a compromise between those two extremes. There are arguments both ways. The utility companies have historically used original cost as a basis for input into their formula of rate-making. Now what that means is this. If you are agreed, for instance, that a public utility is, by its very nature a monopoly, entitled to earn say 10 per cent on its investment, then in order for them to set the rate, you must first determine several things. One, you must determine how much do they have invested? What are you taking 10 per cent of in order to determine your profit margin?

Then you must determine the cost of their operations. So you determine the cost of all their operations, and then you superimpose on top of that an additional amount to produce a rate which will yield 10 per cent on their investment. Now if you figure investment based on initial cost, it would make no difference from any other basis if you were in what I consider to be normal times. In other words, if the cost of an automobile, for instance, was \$2,000 ten years ago, and you can buy the same automobile today for \$2,000, then it's tweedledee and tweedledum.

In a time of inflation, it becomes very important whether you use cost or replacement. If you use replacement value in determining how much profit they can make, you come out with an entirely different set of figures in applying your formula. If an automobile costs them \$2,000 and they bought it five years ago and they are still using that piece of equipment that cost \$2,000, then they put \$2,000 in as their investment. However, if they come along now and they say, "Look, today to replace that \$2,000 automobile is going to cost \$3,500," then you would feed \$3,500 into your formula in order to apply your 10 per cent and arrive at how much profit you can make and what the rates should be.

So the battle between cost and replacement value was basically a fight between the utilities who said they were entitled to calculate this on what it cost them to replace it because that is how much they have to spend, as opposed to those who say from the consumer's standpoint that they really don't have that much invested yet and that they are only entitled to earnings on what they actually have invested, which is their original cost. The bill which came out is a compromise between those two. I've forgotten exactly the formula that was written into the bill, but it was a formula whereby it took a little bit from both of those positions.

Marcello: In the beginning at least, Speaker Clayton was opposed to a public utilities commission. How did this affect the deliberations and proceedings on this bill? Now I know, for example, that he did appoint a subcommittee which had some members that were not in favor of the bill that the House passed.

Hale: Mr. Clayton, of course, named all the committees of the House. In theory that gives him control over all the committees of the House, but that theory doesn't necessarily always hold true. There are times, by the very nature of the political animals that inhabit the Legislature, that they must yield to pressures

within their own district and their own constituency, and sometimes they can't support the speaker even if they would be inclined to do so. To the best of my knowledge, Mr. Clayton never did go all out in opposing a public utility bill. He gave lip service to his position that he was opposed to such a bill. He felt that it was unnecessary and that he was certainly not going to do anything to assist in its passage.

At the time that pressures for the bill began to build up, I never did see any evidence that Mr. Clayton was really going all out in an attempt to beat it. I think his posture was: "If it has got to come, it's not going to come by reason of anything that I've done. I'll just let the political processes play here, and if it develops, well, that's what we'll have."

Also, I think that Mr. Clayton's opposition to the bill probably was one of the big factors behind toning down some of the harsher provisions of the original Wilson bill. And his position probably resulted in some compromises which otherwise might not have been possible.

Marcello: Now this bill was sent to Mr. Uher's State Affairs Committee, isn't that correct?

Hale: That's correct.

Marcello: And I think that he was accused of dragging his feet on public utilities regulation.

- Hale: He definitely was. We ended up having to force the bill out of the committee almost by floor pressure. Mr. Uher was in a sense reflecting Mr. Clayton's feelings. As a committee chairman, he would tend to reflect the speaker's feelings.
- Marcello: And the State Affairs Committee is usually referred to as the "speaker's committee," is it not?
- Hale: That's true. I served on the State Affairs Committee last session. It was only the second time that I've ever been on it. When the session was well along, I was sorry that I had requested it because it was a time-consuming committee and it diverted a lot of my energies from other projects that I needed to concentrate on more than I did the mass of legislation which goes through the State Affairs Committee. But because of the utility regulation bill, it was a very crucial committee in this last session of the Legislature.
- Marcello: How could, or how would, Mr. Uher impede or hinder the process of that public utilities bill?
- Hale: The chairman of the committee has the authority to schedule all public hearings, and he determines the priorities which will be given to all the bills which are referred to his committee. He also names all the subcommittees to which bills are sent for amendment or further study or for whatever reason. And by

virtue of those two powers, he has a pretty strong voice in determining the outcome of a controversial piece of legislation, if he cares to exercise the powers which he has.

Marcello: And you are saying in effect that Mr. Uher did that or attempted to do that?

Hale: Mr. Uher did do that in a sense. He delayed public hearings on the bill for a long time until the pressures became overwhelming. After the bill was heard, he appointed what everybody considered a rather unfavorable subcommittee. But despite all of those handicaps, pressures had built up to the point that he couldn't hold it there any longer.

Marcello: How active were the public utilities during this session, that is, in terms of lobbying?

Hale: Well, believe it or not, I saw only a minimal effort on the part of the utility companies.

Marcello: Do you think that they perhaps were ready to face the inevitable?

Hale: I think that probably most of the utility companies recognized the handwriting on the wall and probably felt that they would be less likely to get a real harsh measure if they stayed out of the fight than they would if they became intimately embroiled in it. I know that several of the utility lobbyists

with whom I have a personal rapport took that position, and most of those indicated to me that while they weren't in favor of any of these regulatory bills, if we were going to pass one, they hoped that it would be a reasonable bill. That was generally their comments to me.

Marcello: At the same time I would assume that all of that unfavorable publicity involving the suicide of that former Bell official didn't help the position of the utilities any either with regard to this public utilities bill.

Hale: The publicity that the Bell situation generated certainly gave added importance to the need for a regulatory commission of some type in Texas.

Marcello: Okay, the third issue that came up during that legislative session--one that didn't take a great deal of time, but which nevertheless I feel that is an important one--was the approval of the new constitution. How do you explain that it was able to get through the Legislature so quickly this time after you had spent all that time and effort and money and so on in the Constitutional Convention? What happened?

Hale: I pointed out to you in my last interview about a year and a half or two years ago that I felt that the failure of the Constitutional Convention was built into its basic structure and organization at

the time that it was created. I said that then, and nothing has happened since, of course, to change my thinking. The Constitutional Convention was set up with what I considered to be two basic defects. One, it was composed only of members of the Legislature who are by their nature too political to be delegates to a Constitutional Convention.

Marcello: Especially going into an election year.

Hale: And secondly, the structure of the convention was framed in the original resolution creating it that it would require two-thirds of the total delegate strength to submit a proposition to a vote of the people of Texas. I know of no other Constitutional Convention that has ever been held in the Anglo-Saxon world that required a two-thirds vote for the convention to submit a document to a vote of the people. It was that two-thirds vote which was the real whipping boy in the Constitutional Convention, plus the overall handicap of having politicians making up the total membership of the convention. The final document that the convention worked out-- Convention Resolution 32--secured 118 votes. It needed 121, which means that it was three votes shy of the magic number.

Now you ask, in view of that historical background, how does the Legislature, which is basically

the same membership as the Constitutional Convention, go about passing a new constitution. Well, for three reasons. One, there were some changes in membership, some twenty new members of the House and one or two new members of the Senate. Secondly, the House and Senate voted separately in the Legislature, whereas in the convention they voted as a single unit. So when we passed this matter in the Legislature, we needed only 100 out of 150 votes in the House, and we needed twenty-one out of thirty-one votes in the Senate. But we didn't have to get 121 all at the same time. So you had a situation where it was possible to have 121 voting for it even though you couldn't get that same 121 during the convention.

And the third reason, I think, was the fact that there were a number of votes in the Constitutional Convention against the new constitution simply because they did not want Price Daniel, Jr., to get credit for the new constitution. He had antagonized a number of the members of the Senate, and those members were outspoken in their view that they would not vote for any document that he was supporting. So I think that those three things together had its effect on the Legislature.

Also, I think that everybody was shocked when the convention adjourned without submitting anything

to a vote of the people. I think that every member of the Legislature keenly felt the need for submitting the document to the people because of the tremendous amount of time and effort and money and dedication that had gone into that document. So by the time this session of the Legislature convened, most of the bitterness and antagonisms of the convention had sort of faded out, and everyone more or less took a new look at the entire situation. And the general feeling was that the convention had worked out a pretty good document and the least we could do in justification of all of the money and effort that had gone into it would be to pass it and let the people vote on it. So that's what happened.

Marcello: There was a feeling that there should not be another Constitutional Convention.

Hale: There was definitely a feeling that there should not be another Constitutional Convention at this time.

Marcello: How much flak did you receive back in your home district as a result of the Constitutional Convention not having come out with a document?

Hale: I received very little. I'm told that other members of the Legislature were not so fortunate.

Marcello: Isn't it also true that in the Legislature this time around that the amending process to that constitution was made a little more difficult? Wasn't a two-thirds

majority needed for the addition or the inclusion of any amendments? Are you familiar with that?

Hale: Yes, we changed the rules dealing with joint resolutions to provide that once the document reached the floor for debate that a two-thirds vote would be required for the adoption of amendments to it. But that was designed primarily to preserve the integrity of the basic document that the convention had spent seven months in working out. I don't know that that greatly helped in getting the required votes for passage. It did serve the purpose for which it was designed, and that is to preserve the integrity of the basic document. The basic new constitution that was finally passed this session was practically identical to the one that had failed on the last day of the Constitutional Convention, except for the omission therefrom of about three separate submissions, one of which was the right-to-work issue.

Marcello: Those are the three issues--school finance reform, public utilities regulation, and constitutional revision--that I singled out as perhaps being the more important issues that came before that Legislature. Do you have anything to add to these three?

Hale: I might comment briefly on so-called "reform legislation." You mentioned in one of your earlier remarks that the Price Daniel administration in 1973

was characterized as almost totally a reform session of the Legislature. And that was true. Unfortunately, many of us at that time felt that the Legislature was permitting the pendulum to swing too far in the direction of reform and that many of the so-called reform measures that were being passed were much too harsh in their provisions to stand the test of time. That has certainly proved true during the past two years.

This session of the Legislature from its inception was characterized by a feeling among the membership that we did not need more reform, but on the contrary we needed to soften the provisions of some of the reform bills that had been passed two years earlier. As a result, there were a number of efforts made in this session--some successfully, some unsuccessfully--to do that very thing.

I sponsored two of those bills myself, one having to do with the Lobby Registration Act, and the second having to do with the bribery sections of the penal code. In both of those areas, the 1973 session had written provisions so harsh and so narrow that it was almost a legal impossibility for members of the Legislature and other citizens of Texas interested in the Legislature to conceivably live within those provisions without violating the law. The net effect of those 1973 laws was to make criminals out of everybody

whether they wanted to be or whether they didn't want to be.

So our efforts this time were toward a more reasonable approach. We attempted to recognize the problems that the reform laws were designed to meet. We tried to solve those problems with provisions that were more relaxed and less demanding, yet would achieve the basic objective of the reform bills and at the same time permit enough discretion and leeway that people could live within those provisions and not become criminals inadvertently.

As an example, under the bribery sections of the penal code as passed in 1973, if you were interested in any matter pending before the Legislature and you came into my office and offered to buy me a cup of coffee, you had technically violated the law. And if I accepted that cup of coffee, I had technically violated the law. When I say "technically violated," I don't mean that that's a subterfuge. You had violated it; it was a technical violation of the law. I say "technically violated" because I don't think that any district attorney would ever prosecute you over a cup of coffee. But it was a violation. I could give you many other examples of provisions just as harsh as that.

We tried to soften all of that by creating exceptions and by drawing guidelines, definitive guidelines, and saying to members of the Legislature and all public officials that here is what you can do and here is what you can't do. And that was the original objective of the reform bills in 1973.

Then as far as people dealing with public officials, we attempted to draw equally definitive guidelines and also relax those guidelines to the point where they could do things which are normally done in the course of business contacts in this country, things which are a way of life, without those things being illegal.

For instance, it is a way of life in the business as well as the political world that you recognize somebody at Christmas, if he has done you some favors during the year, by sending him a fruitcake or giving him a bottle of whiskey or some other token of your appreciation. That would have been a violation of the law under the 1973 bribery section of the statute. We relaxed that so that that can be done now, recognizing what is the common and accepted method of operation in the business community and in the political world of the twentieth century.

So I think that, as a result, this 1974 session has gone a long way toward relaxing the stringent requirements of the reform laws without suffering the loss of any of the broad objectives which the reform laws were designed to achieve.

Marcello: How active was Common Cause during this session? Now I know they were rather active with regard to the public utilities regulation.

Hale: They were very obnoxious during the entire session with respect to reform bills. Common Cause likes to think that it was the moving force behind all of the reform bills of the Daniel administration. They acquired that feeling by reason of the fact that Mr. Daniel listened to them and relied to some extent upon their advice and counsel. As a result, on every effort that was made to relax the stringent requirements in any of the reform bills, Common Cause was in the forefront, not only fighting any change, but also being highly critical of the sponsors. Mr. Hannah spent a whole thirty-minute program on "Capitol Eye" criticizing me as an individual because of the two bills which I had sponsored. In effect, he accused me of trying to legalize bribery and corruption in Texas. I think it's the radical attitude which Common Cause took that caused it to lose several battles this

time. We were able, notwithstanding their opposition, to relax some of these stringent reform bills.

Marcello: Are there any other pieces of personal legislation that you would like to talk about and that you feel we need to get into the record?

Hale: It has been so long since the session. Here we are months away from it. I'm a little rusty on it now. When the session adjourned sine die on the second of June, I was in the middle of the impeachment hearings on Judge O. P. Carillo. Since that time, as chairman of the Select Committee on Impeachment, I have been devoting almost full-time to the work of that committee. As a result, while the session has only been adjourned a matter of two or three months--at this point today it must be about three months--it seems to me that it adjourned about a year and a half ago because I have been so involved in this impeachment work. I'm afraid that I am a little rusty now on some of the things that went on during the session.

Marcello: In summing up and in looking back upon that legislative session, what sort of marks would you give it in terms of its accomplishments or its failures?

Hale: Well, again, it is extremely difficult to evaluate and compare one session with another. I would have to say that this session was certainly a long way

from being the best session of the Legislature in the history of Texas. At the same time, it was a long way from being the worst. If I were having to evaluate it, I would say that this session was probably a little below average in its achievements.

Marcello: Where was it most lacking? In what areas?

Hale: Well, that depends upon your point of view.

Marcello: (Chuckle) Well, from your point of view, where was it most lacking?

Hale: Well, I have mentioned one. We didn't go nearly as far in the area of equalization of educational opportunity in the schools as I would have liked. I had hoped this session that we could pass a number of bills having to do with the reform of the judicial branch of government without waiting on the vote of the electorate on the new constitution. And we didn't do that. There were many other areas of reform legislation that did not receive attention during this session of the Legislature. And there are other areas, I'm sure, that you can find.

Marcello: Well, Mr. Hale, I want to thank you once again for taking time to talk with me for the Oral History Collection. As usual, you have been most cooperative, and I think your efforts here have been most satisfactory today. I think that we have covered

a great deal of ground, and we have gotten some pretty good insights into what happened during this Sixty-fourth Session of the Texas Legislature. We are looking forward to many more interviews.

Hale: Thank you.