

VIGIL AT TREATY OAK

[CONTINUED FROM PAGE 133] tone of voice that betrayed his own emotional attachment to the patient. Two years earlier, Giedraitis had proposed to his wife beneath Treaty Oak's branches.

"There was never any question in my mind that Treaty Oak was where I would propose," he said. "That's the power spot. That's the peace spot."

"This is a magnificent creature," he said, standing back to survey the ravaged tree with its startling network of life-support equipment. A series of screens 55 feet high guarded the tree from the sun and made the site look from a distance like a baseball stadium. A system of plastic pipe, carrying Utopia Spring Water donated by the company, snaked up its trunk, and every half hour the spring water would rain down upon the leaves.

"You know," Giedraitis went on, "it's hard to sit here over the last six weeks like I have and think it doesn't have some sort of spirit. You saw those roots. This thing is pressed to the earth. This thing is *alive*!"

Giedraitis said he thought the tree might have been poisoned as long as five months before the crime was discovered. He first noticed something wrong on March 2, when he took a group of visiting urban foresters to see Treaty Oak and happened to spot a few strips of dead grass near the tree. The dead grass was surprising but not particularly alarming—it was probably the result of a city employee's careless spraying of a relatively mild chemical edger at the base of the tree.

Treaty Oak seemed fine until the end of May, when a period of heavy rains caused the water-activated Velpar that was already soaking the roots of the tree to rise from its chemical slumber. On the Friday before Memorial Day weekend, Connie Todd, who worked across the street from the tree, noted with concern that its leaves were turning brown. She thought at first it must be oak wilt, which had been decimating the trees in her South Austin neighborhood. But when she looked closer at the leaves, she saw they were dying not from the vein out—the classic symptom of oak wilt—but from the edge inward. Todd called Giedraitis, who looked at the leaves and knew that the tree had been poisoned.

But by what, and by whom, and why? Whoever had applied the poison had poured it not only around the base of the tree but also in a peculiar half-moon pattern to the east. Giedraitis called in tree experts from Texas A&M and the Texas Forest Service. Samples were taken from the soil to see what kind of poison had been used. Eight inches of topsoil were removed. Amazonian microbes and activated charcoal were injected into the ground.

When the lab reports came back on the poison, Giedraitis was stunned. Vel-



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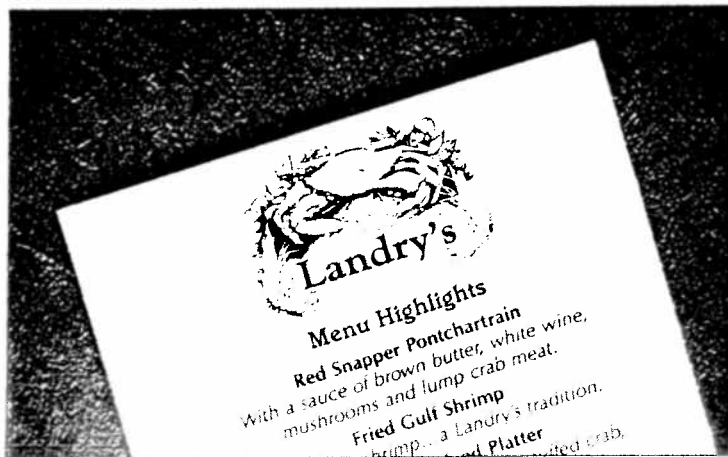
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par! Velpar is the sort of scorched-earth herbicide that is used to eliminate plants and competing trees from pine plantations and Christmas-tree farms. Velpar does not harm most conifers, but it kills just about everything else. The chemical is taken up into a tree by its roots and travels eventually to the leaves, where it enters the chloroplasts and short-circuits the chemical processes by which photosynthesis is conducted. The tree's reaction to these non-functioning leaves is to cast them off and bring on a new set. But in a Velpar-infested tree, the new leaves will be poisoned too. The tree dies by starvation. It uses its precious reserves of energy to keep producing new leaves that are unable to fulfill their function of turning sunlight into food.

When Giedraitis and his colleagues discovered that Velpar was the poison, they immediately realized that Treaty Oak was in a desperate condition. As its tainted leaves fell to the ground and a deadly new crop emerged to replace them, outraged citizens called for the lynching of the unknown perpetrator from the very branches of the ailing tree. They suggested that he be forced to drink Velpar. Du Pont, the maker of Velpar, offered a \$10,000 reward for information leading to the conviction of the person who had so callously misused its product. The Texas Forestry Association chipped in another \$1,000. Meanwhile a 26-person task force bankrolled by H. Ross Perot con-

vened in Austin and considered courses of treatment. The sun screens were erected, and the tree's upper branches were wrapped in burlap to prevent them from becoming overheated because of the loss of the leaf canopy overhead. Samples showed that the soil was contaminated to a depth of at least 34 inches, and so the dirt around the base of the tree was dug out, exposing the ancient roots that had bound the earth beneath the oak for hundreds of years. When the root system became too dense to dig through, the poisoned soil was broken up with high-pressure hoses and sluiced away.

A Dallas psychic named Sharon Capehart, in Austin at the invitation of a local radio station, told Giedraitis that the workers had not dug far enough. The tree had spoken to her and told her what their samples confirmed—that there were still six inches of poisoned soil.

Capehart took off her shoes and crawled down into the hole and did a transfer of energy to the tree.

"It was a tremendous transfer," she told me. "But she needed it so much. It was like she was drawing it out of me."

Capehart had determined that Treaty Oak was a female. In another lifetime—when the tree was in human form—it had been Capehart's mother in ancient Egypt. The tree had a name, which it passed on to Capehart, stipulating that she could release it only to the person her spirit guides had revealed to her.

Meanwhile the vigil in front of the Treaty Oak continued. Sharon Capehart wasn't the only one beaming positive energy to the tree. To the protective chain that now cordoned off the Treaty Oak, visitors attached all sorts of get-well exotica: holy cards, photographs, feathers, poems ("Hundreds of you/Fall everyday, /The Lungs of the World,/by our hands; taken down./Forgive us, Ancient One."), even a movie pass to the Varsity Theatre, made out in the name of Treaty Oak. People had set coins into the brass letters of the historical marker, and on the ground before it were flowers, cans of chicken soup, crystals, keys, toys, crosses, everything from a plastic unicorn to a bottle of Donnagel diarrhea medicine.

All of this was so typical of Austin. Looking at this array of talismans, I was convinced anew that Austin would always be the never-never land of Texas. What other city would take the plight of an assaulted tree so grievously to heart or come to its rescue with such whimsical resolve?

There was a suspect. Sharon Capehart had an intimation of a "sandy-haired gentleman with glasses, around the age of thirty-eight," and that was about what the police turned up, though the man was 45. His name, Paul Stedman Cullen, had been put forward to the police by several different informants. Paul Cullen worked in a feed store in the nearby suburb of Elroy and lived alone in a truck trailer, where he read science fiction and books on occult magic with solitary fervor. According to the police, his arrest record—for drunken driving, for drug possession, for burglary—dated back more than twenty years. He had lived in California in the sixties in the salad days of the drug culture, and now he drove a truck with a sign in the rear window that read "Apollyon at the Wheel" and was a self-confessed member of the Aryan Brotherhood.

Everything about Paul Cullen suggested a hippie who had gone over to the dark side. He had poisoned the tree, the informants told the police, because he wanted to entrap its spiritual energy to win the love of a woman or to ward off a rival. They described the poisonous circle he had drawn at the base of the Treaty Oak and mentioned the books—including one called *The Black Arts*—that he might have used as ritualistic manuals.

"Any pagan knows better than to kill a tree," an outraged Austin pagan known as Bel told me. "And *The Black Arts* is nothing but metaphysical masturbation. The reaction of the pagan community to this act is one of disgust."

Before Cullen could be charged with a crime, the tree had to be coolly appraised, using a complicated formula devised by the Council of Tree and Landscape Appraisers. The formula takes into account a tree's species, location, condition, historical value, and trunk size. (According to the guidelines, the current value of a "perfect specimen shade tree" is \$27 per square inch of [CONTINUED ON PAGE 180]

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Photo by Mark Noll

[CONTINUED FROM PAGE 168] trunk cross section: "The cross section area is determined by the formula $0.7854D^2$ where D equals the diameter measured.") When all the figures were applied, the mighty entity of Treaty Oak was judged to be worth \$29,392.69. Because the tree's value was more than \$20,000, Cullen was charged with second-degree felony mischief.

"It's tree worship!" Cullen's attorney, Richard C. Jenkins, shouted at me over the phone as he proclaimed his client's innocence. "In my opinion, Paul is a political prisoner. He's being sacrificed in a new kind of witchcraft rite. He could go to jail for *life*! People have really jumped off the deep end on this one. Usually this kind of treatment is reserved for murder victims. Rape victims! Child-molestation victims! But a tree? Come on! I mean, it's a tree!"

Though the poisoned soil had been removed from the base of Treaty Oak, the tree was still full of Velpar, and the chemical crept slowly up its trunk and branches, killing off the leaves flush by flush. As a last desperate measure, the tree scientists drilled holes in the trunk of the tree and injected 35 gallons of a weak potassium-chloride solution, hoping that this salty flood would help the tree purge itself of the poison.

Sharon Capehart, in Abilene for a radio talk show, felt the tree weeping and calling out to her for another energy transfer. As soon as she was able, she got in her car and headed toward Austin. "Around Georgetown I could really feel her weeping and wanting me to hurry. I told her, 'Just wait. I'm putting the pedal to the metal. I'm getting there.'"

Capehart arrived at Treaty Oak wearing high heels, a tight black skirt, and a red jacket. Her blond hair was teased in a manner that made it look as if it were flaring in the wind. There were four or five other women with her, students and assistants, and they made a circle around the tree, holding out their hands and drawing the negative energy—the Velpar itself—into their bodies and then releasing it into the atmosphere. I was told I would be able to smell the poison leaving the tree, and I did detect an ugly gassy smell that may have been Velpar or may have been fumes from the Chevrolet body shop next door.

Capehart and her team did one transfer and then took a break, smoking cigarettes and waiting for their bodies to recharge their stores of positive energy.

During the second transfer the women each held a limb of the tree, and then they all converged on the trunk, laying their hands flat against the bark. Capehart's head jerked back and forth, and she swayed woozily as a couple of squirrels skittered around the trunk of the tree just above her head.

"Are we not doing it, or what?" she called from the tree in triumph. "Two squirrels!"

Capehart's spirit guides had told her that I was the person to whom she should reveal the name of the tree. "Your name was given to me before you ever called," she told me in her hotel room after the transfer. "They let me know you'd try to understand."

She dabbed at her lipstick with a paper napkin and tapped the ash off her cigarette.

"Her name is Alexandria," she said. "Apparently Alexander the Great had started the city of Alexandria in the Egyptian days, and she was named after that. She was of royalty. She had jet-black hair, coal-black, very shiny. She was feminine but powerful. She had slate-blue eyes and a complexion like ivory."

Alexandria had been through many lifetimes, Capehart said, and had ended up as a tree, an unusual development.

"None of the guides or spirits I've communicated with have ever come up in a plant form before," Capehart said. "This is my first as far as plant life goes."

The energy transfer, she said, had gone well. Alexandria had told Capehart that when she began to feel better, she would drop her leaves upon the psychic's crown chakra. Sure enough, as Capehart stood at the base of the tree, she felt two leaves fall onto her head.

"There ain't no way that tree is dead. That spirit has not left that tree. She is a high-level light being. They never leave without letting everybody notice."

Entrusted with the name of the tree, I felt compelled to visit it once again. She—I could not help but think of it as a female now—did not look to me as if she could ever recover. There was a fifth flush of poisoned leaves now, and the tree's branches seemed saggy and desiccated. There was not much cause for optimism. At the very best, if Treaty Oak survived, it would not be nearly the tree it had once been.

But even in its ravaged state it remained a forceful presence, a hurt and beckoning thing that left its visitors mute with reverence. And the visitors still came, leaving cards and crystals and messages. All of the attention paid to the tree had created, here and there, a discordant backlash. An anti-abortion crusader had left a prophecy, saying that, because of all the babies "slaughtered without mercy" by the city of Austin, "the tree that she loved will wither and die. Tho' she care for it night and day forever, that tree will not survive." Others complained, in letters to the editor, in press conferences, in editorials, that the money and resources that had been bestowed on the tree should have been used for the poor, the mentally ill, the Indians. They saw the circus surrounding the tree as a sign of cruel indifference, as if this spontaneous display of concern subtracted from, rather than added to, the world's store of human sympathy.

I talked for a while to a man named Ed Bustin, who has lived across the street

from Treaty Oak for years and who used to climb it as a boy, working his way up its steady branches to its spreading summit. Another neighbor, Gordon Israel, had gathered up some of Treaty Oak's acorns with his children a year before and now had some eighty seedlings that in another five or six hundred years might grow to rival the parent tree. A local foundry operator had put forth the idea to cast the tree in bronze, so that in years to come a full-size statue would mark the spot where Treaty Oak lived and died. And there were other memorial acts planned: The Men's Garden Club of Austin would take cuttings from the dying tree, and corporate sponsors were being sought out to pay for an expensive tissue culture that would ensure genetically identical Treaty Oak clones.

"I hope you live so I can bring my children to see you," read a note left at the tree by J. J. Allbright, of La Grange, Texas, age 9. There were innumerable others like it—from other children, from grown-ups, from mystics, from bankers, from pagans and Baptists, all of them talking to the tree, all of them wanting in some way to lay their hands upon its dying tissue and heal it. Perhaps this was all nonsense and I had just been living in Austin too long to realize it or admit it to myself. But I was enough of a pagan to believe that all the weirdness was warranted, that Treaty Oak had some message to deliver, and that no one could predict through which channel it would ultimately be received.

My own sad premonition was that the tree would die, though not in the way Sharon Capehart had predicted, in an ascending glory of light. I felt that at some point in the months to come its animate essence would quietly slip away. But for now it was still an unyielding entity, mysteriously alive and demanding, still rooted defiantly to the earth.

Standing there, feeling attuned to the tree's power and to the specter of its death, I recalled with a shudder a ghastly incident I had not thought of in years. When I was in college, a young woman I knew slightly had burned herself to death at the foot of Treaty Oak. I remembered her as bright and funny, carelessly good-looking. But one day she had walked to the tree, poured gasoline all over her body, and struck a match.

According to a newspaper report, a neighbor heard her moan and rushed to her rescue with a half-gallon wine bottle filled with water. By the time he got there she was no longer on fire, but her hair and clothes were burned away and she was in shock, stunned beyond pain. Waiting for the ambulance, they carried on a conversation. She asked the man to kill her. He of course refused, and when he asked her why she had done this to herself, she would not respond. But why here? he wanted to know. Why do it here at the Treaty Oak? For that she had an answer.

"Because," she said, "it's a nice place to be."

Treaty Oak Tribute

Flowers, letters, and blankets — all part of the effort to show support for the Treaty Oak. And now a group gravely concerned about the prognosis of the tree, plan a new tribute with music, song, and dance. On Oct. 6 at 8 p.m., this performing arts event, *Treaty Oak - An Evening of New Age Music and Modern Dance*, features the talents of Austin new age composer Fred Mitchim and Austin modern dancer and choreographer Ann Mary Carney.

"This is not a wake, because I don't believe this tree will die, it's a tribute," says Mitchim. "It's a living tree, not just a plant, and any gesture of positive energy towards the tree can affect the Treaty Oak."

Because of his strong feeling about the tree, and because of his desire to work with Carney, Mitchim put together a 43 minute array of new age music, half instrumental and half not, commemorating the Treaty Oak. Six modern dancers (Carney, Pat Stone, Cari Kerkhofs, Katherine Mattia, Deah Gulley, and Mary Ganzon) choreographed continual dancing that complements the music, and Gina Evins Doyle, an Austin photographer, provides a slide show of the tree through the years, serving as the backdrop for the dancers.

To prepare for the show, the group went to the Austin History Center, both for pictures and to do some research on the tree. "It was so easy to compose because we found so many interesting facts about the tree.

"Indians have been hanging around the tree for 100 years. I think the Treaty Oak has a lot to do with why Austin is the capital. It (the Treaty Oak) has been a place of politics for 100 years, even before settlers," says Mitchim about his findings.

Mitchim is no newcomer to producing tributes of Austin. His locally-produced new age album *River City*, features song titles such as "Laguna Gloria," "Barton Springs," and "Mount Bonnell."

The tribute, presented by EuroExport Entertainment and co-sponsored by New Texas Magazine, is at the Hillside Theatre in Zilker Park at sunset. Admission is free to the public. For additional information, contact Larry Evans or Laura Smith at 452-2701.

Mystery witness fails to show for 3rd time in Treaty Oak case

Judge gives defense one more chance

By Berta Delgado
American-Statesman Staff

A man who allegedly knows who poisoned the Treaty Oak remained a mystery Friday when he failed to appear to a court hearing for the third time.

But the judge overseeing the bond hearing for the man charged with the crime said he will give the defense one more chance to produce the long-promised mystery witness.

"If he (the witness) knows something about this case, we want to make sure he comes in with the information," District Judge Bob Perkins said.

Defense attorneys for Paul Stedman Cullen, who has been charged in the poisoning, have said the witness will testify that Cullen is not guilty.

Attorney Terrence Kirk said the witness told Travis County sheriff's deputies that he would be at Friday's hearing.

When the witness had not arrived by 11 a.m., Perkins rescheduled the hearing for Tuesday morning.

Perkins said the remaining evidence will be heard Tuesday, regardless of whether the witness

appears in court.

Perkins will decide after the hearing whether to reduce Cullen's bail from \$20,000 to \$5,000.

The initial hearing was held Sept. 22 in Perkins' court.

Perkins rescheduled the hearing for Sept. 25 when the witness failed to appear. Then, the hearing was reset for Sept. 29.

Cullen, 35, of Elroy has been in the Travis County Jail since his arrest June 29.

He was charged with criminal mischief, a second-degree felony, for causing more than \$20,000 damage.

Police say Cullen poured Velpar, a herbicide, around the tree during a ritual.

Chances for survival of the tree at 507 Baylor St. will not be known until next year.

Kirk has argued that Cullen should be charged with desecration of a venerated object, a misdemeanor that carries a maximum punishment of one year in the county jail and a \$2,000 fine.

A conviction on the felony charge could mean a sentence of up to life in prison and a \$20,000 fine.

SCHOLASTIC News.

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Photo: Ziggy Kaluzny/Gamma-Liaison

Get Well Soon, Treaty Oak!

AUSTIN, TX — Why would someone poison a tree? That is what people asked when the Treaty Oak, a historic, 400-year-old tree, was poisoned last spring. Now tree experts are doing all that they can to keep the Treaty Oak alive. Many people have even sent get-well cards to the tree. No one knows yet if it will survive.

Tuesday, September 26, 1989 Austin American-Statesman

Treaty Oak 'mystery witness' fails to show for 2nd time

By Berta Delgado
American-Statesman Staff

A "mystery witness" again failed to appear in court to testify in a bail reduction hearing Monday for the man charged with poisoning the Treaty Oak.

The hearing to determine whether Paul Cullen's bail should be reduced from \$20,000 was rescheduled for Friday.

Defense attorneys said they be-

Nature lover wants Treaty Oak site made into a park

B4

lieve the person they have described as a mystery witness will testify that Cullen did not poison the centuries-old oak tree. But court officials said Monday that police could not find the witness, who also failed to show up for a hearing last week after being subpoenaed.

At Monday's hearing, defense attorney Terrence Kirk told state District Judge Bob Perkins that Cullen should have been charged with a misdemeanor — desecration of a venerated object — rather than felony criminal mischief.

Kirk said that when two laws can be applied to the same crime, the defendant generally must be charged with the more specific statute. He argued that the misdemeanor charge is more appropriate

in the Treaty Oak case, because it deals specifically with damage to public monuments.

The criminal mischief law deals with the destruction of "tangible property of (an) owner," according to the Texas penal code.

Assistant District Attorney Kent Anschutz declined to comment on Kirk's argument. The judge said he would not rule on that issue until later.

If convicted of the felony charge,

Cullen could face up to life in prison and a \$20,000 fine. The misdemeanor carries a maximum punishment of one year in the county jail and a \$2,000 fine.

Kirk's arguments came during the second day of a hearing in which Perkins has been asked to decide if Cullen's bail should be reduced. Defense attorneys are seeking \$5,000 bail for their client. Cullen's family said they could afford the \$750 cash bond that would

be necessary to secure Cullen's release from the Travis County jail while awaiting trial if the bail were cut to \$5,000.

Cullen, 45, of Elroy, has been jailed since June 29, when he was arrested and charged with causing more than \$20,000 damage to the historic tree at 507 Baylor St.

Tree specialists say they will not know until next spring if Treaty Oak will survive the dose of the herbicide Velpar.

Nature lover wants lot near Treaty Oak turned into park

By Enedella J. Obregon
American-Statesman Staff

A self-professed nature lobbyist is in Austin to persuade the city to buy the parking lot next to Treaty Oak to turn it into a memorial park or shrine for the centuries-old tree.

Caroline P. Killeen said she left her home in Tucson, Ariz., on her 10-speed bicycle July 14 to get public support for her project. She arrived in Austin three weeks ago.

Killeen promoted the idea at a press conference the same day that Paul Cullen of Elroy was scheduled for a bond reduction hearing. Cullen, 45, has been in jail since June 29 on a felony criminal mischief charge for allegedly causing more than \$20,000 damage to the tree by pouring the herbicide Velpar around its roots.

The hearing was rescheduled for Friday after a witness for the defense failed to show up.

Killeen, who gave her age as in "the 60s" and has been cycling cross-country for 24 years promot-

ing various environmental issues, said she expected a sylvan setting or some type of park around the tree when she arrived in Austin and was shocked to find none.

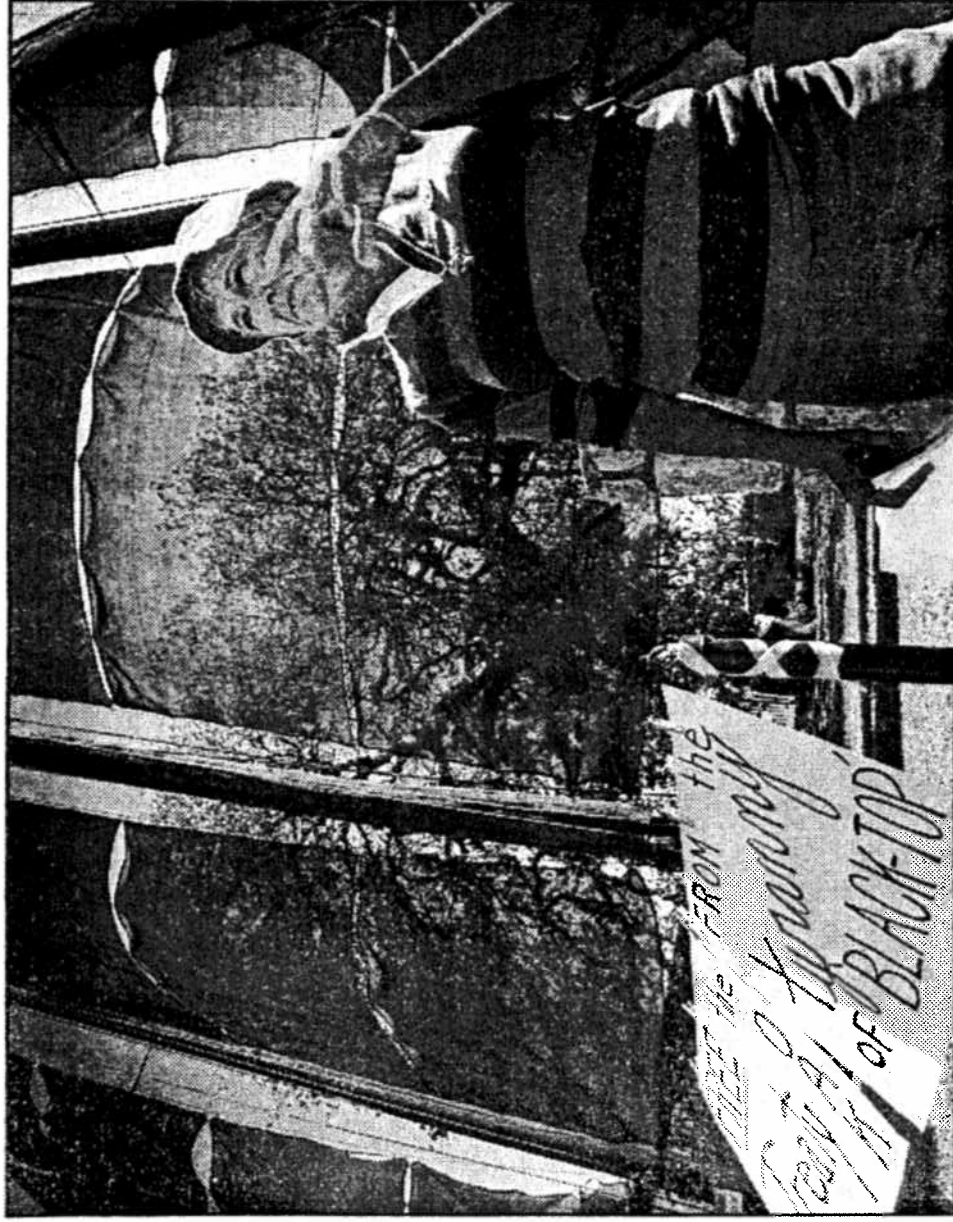
"What hit me first was the chain link fence and parking lot encroaching upon this magnificent specimen of a tree," she said. "Dignify the tree" with a park, instead of the "sacriligious car lot."

Killeen said she will begin lobbying Austin City Council members to buy the land around the tree, and she said public cooperation could make her dream a reality.

"People are so traumatized by what happened," she said. "People won't forget it."

Killeen said the tree has become a rallying point for people who are concerned about the environment and has raised people's resolve to "get back to nature."

"Whether the roots die is immaterial," she said. "It will remain alive in our hearts. But I myself don't see it succumbing."



Staff photo by Taylor Johnson

Caroline Killeen says she left her home in Tucson, Ariz., on her 10-speed bicycle July 14 to seek support for her project. She arrived in Austin three weeks ago and says

she will lobby members of the Austin City Council to buy the 'sacriligious' parking lot next to the historic Treaty Oak and turn the space into a park.

Poisoned Treaty Oak Still Hanging On

Venerable Texas Tree's Fate May Not Be Known Till Spring

By Elizabeth Hudson
Special to The Washington Post

AUSTIN—Treaty Oak, the venerable Texas landmark poisoned earlier this year, is keeping a fragile hold on life as it puts out a fifth set of leaves to rid itself of the poison soaked into its roots, but the fate of the 500-year-old tree may not be known until next spring.

Just how sick Treaty Oak is "depends on who you talk to," said Jerry Brand, professor of botany at the University of Texas and a member of the task force of tree experts attending Treaty Oak. "The people who make the herbicide that was used to poison the tree seem quite negative. But others working to save it are optimistic."

"No one has ever had any experience with this before," Brand said, "so there is no log of information for evaluation."

Treaty Oak was poisoned last March. In June Austin police arrested Paul Stedman Cullen, 45, and charged him with second-degree felony. Police allege Cullen poured the herbicide Velpar around the 60-foot tree, apparently as a

ritual to protect a woman from a man.

Thanks to a blank check from Dallas billionaire H. Ross Perot and other anonymous donors, the city has spent more than \$100,000 trying to save the dying tree. This month tree specialists injected it with 70 gallons of sucrose—table sugar—in one of several experimental treatments that have been used. It was injected earlier with salt water to try to flush out the herbicide, and a dozen 65-foot telephone poles have been placed to support plastic panels that block the sun and will add protection from winter winds.

The extraordinary efforts to save Treaty Oak have drawn some criticism, particularly from Texas Indian leaders who have said there are more important things in life than a tree. But the tree has also been inundated with visitors. Well-wishers from around the world have left cars and letters in Spanish, French, Latin and Chinese. A large yellow ribbon is tied around the trunk and flowers and candles decorate the area. The most popular get-well gifts of

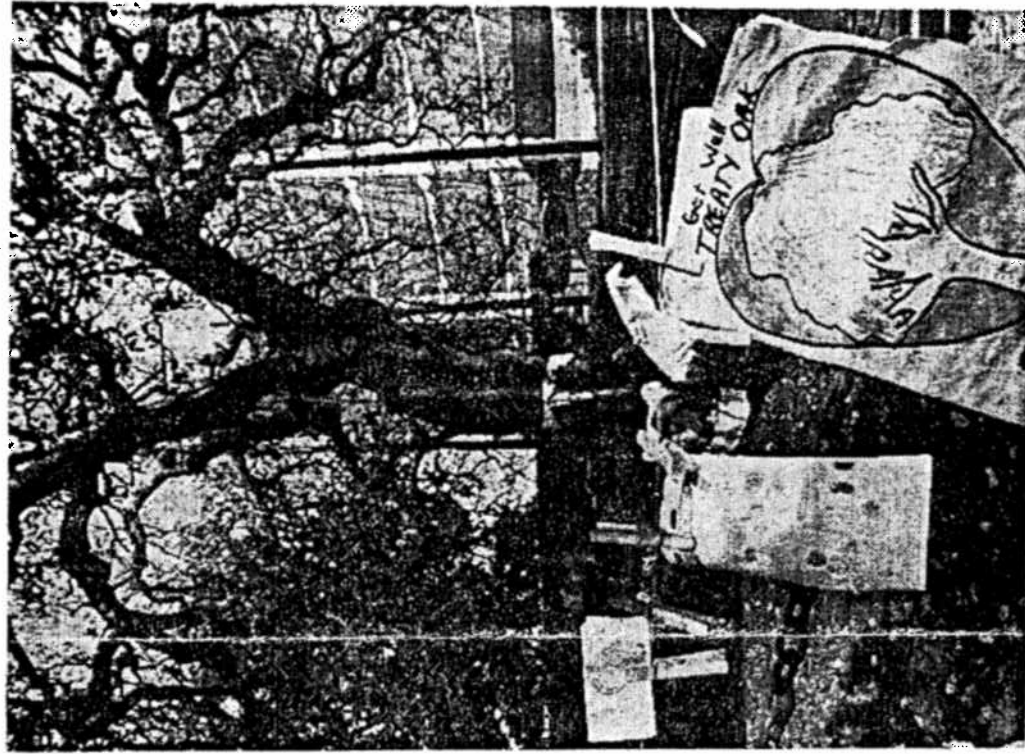
all—cans of chicken soup—are stacked up in front of the tree.

Treaty Oak legend says that Stephen F. Austin signed a peace treaty with the Indians in its shade in 1824. Although the legend's historical accuracy is questionable, Treaty Oak has become a significant part of local lore.

The tree has more than just historical significance, Brand said. "It's the cultural significance and what that means to Austin that makes it worth the work" to save it, he said.

Clippings have been taken from the tree to begin raising Treaty Oak offspring. City forester John Geidraitis said the clippings will be used to make genetically identical Treaty Oak clones.

Meanwhile, Cullen, a drifter with prior burglary convictions, has remained in Travis County Jail in lieu of \$20,000 bail. Prosecuting attorney Kent Anschutz dismissed criticism of the bail amount. "Considering his prior convictions, it's not unusually high at all," he said. Cullen was indicted in August by the Travis County Grand Jury. He faces a life sentence if convicted. No trial date has been set.



Treaty Oak is receiving experimental treatments as well as get-well cards. ASSOCIATED PRESS



Staff photo by Larry Kokkord
Paul Stedman Cullen, left, leaves Judge Bob Perkins' courtroom Friday after his bail hearing was recessed.

Surprise witness promised in Treaty Oak hearing

By Berta Delgado
American-Statesman Staff

A Friday hearing to reduce the bail for the man charged with poisoning Treaty Oak was recessed until Monday when a mystery witness is expected to testify.

State District Judge Bob Perkins ordered the recess when the unnamed witness failed to show up for the hearing. Paul Stedman Cullen, who is charged with felony criminal mischief, has been held in Travis County jail since his arrest June 29 on \$20,000 bail.

The indictment against the 46-year-old Elroy man alleges that he damaged the tree at 607 Baylor St. by applying le-

Bail reduction hearing recessed

thal amounts of a herbicide during what police said was a ritual.

Officials do not expect to know until next spring if the landmark will survive.

Defense attorney Richard Jenkins of Dallas filed a motion for the bail reduction in Perkins' 331st District Court, asking that the \$20,000 bail be reduced to \$5,000.

Cullen, his father and his former employer testified at Friday's hearing but the defense said there was another witness who is expected to testify that Cullen did not commit the crime.

Jenkins said the witness, who was hand-delivered a subpoena earlier this week, will tell the court that he knows who poisoned the historic, centuries-old tree.

Travis County Assistant District Attorney Kent Anschutz said this was the first he had heard of another witness.

"I don't know him from Adam," said Anschutz, lead prosecutor in the case. "We're interested in hearing what he has to say."

After the hearing, Larry Bussert, a friend of Cullen's, said he met the wit-

ness at a pool hall less than a month ago and referred him to Jenkins.

"The guy says, 'You know this fellow?' " Bussert said, recalling the conversation. "I said, 'Yes,' and he said, 'Well, you know this guy didn't do it.' "

Bussert would not discuss any particulars of what the man told him.

Cullen testified that he had talked to family and friends and had been unable to come up with the \$20,000 bail.

Ret. Col. Paul S. Cullen, of Lawton, Okla., the defendant's father, testified that he would be able to post the \$750 bond required if the bail were reduced to

See Mystery, B5

Mystery witness due in Treaty Oak case

Continued from B1
\$5,000.

Before his arrest, Cullen testified, he lived in a truck that he had converted into an apartment. He said Friday that he would live with Bussert or a girlfriend if released on bond.

Cullen's truck had been parked on property in Elroy belonging to his former employer Edsel Nelson

Pearson, 52, who also testified that he would welcome Cullen to his home if released.

Cullen said he had a steady income of about \$10 to \$20 per day before his arrest.

Asked by Anschutz what his personal possessions were, Cullen said, "I've got my truck, clothes, books, of course, a guitar, and that's about all at this time."

Cullen said his criminal record

dates back to 1964, when he served time in a Virginia penitentiary for burglary.

In 1968, he was convicted in Los Angeles for possession of marijuana and driving while intoxicated. Cullen admitted to violating his probation in that charge by leaving the state.

In 1986, his probation was revoked in a DWI conviction in Mineral Wells and a burglary conviction in Travis County.

Only time will tell

Fate of Treaty Oak in winter's hands

By Dick Stanley
American-Statesman Staff

More than \$100,000 in donated money has been spent since June to save the poisoned Treaty Oak, but its scientist rescuers say the historic live oak's fate may not be known until late spring 1990.

Arthur Costonis, a Florida specialist in plant diseases, may be the most optimistic member of a loose task force of about 20 plant scientists recruited from around the country to advise the city. Costonis visited the tree last week as the season's first cold front pushed through Central Texas.

He was impressed by the thousands of green leaves remaining on the tree and its vibrant reaction to the sudden temperature plunge.

"I'm much encouraged by what I saw," he said. "I was impressed that there's leafing throughout the whole crown. My feeling is it's going to make it."

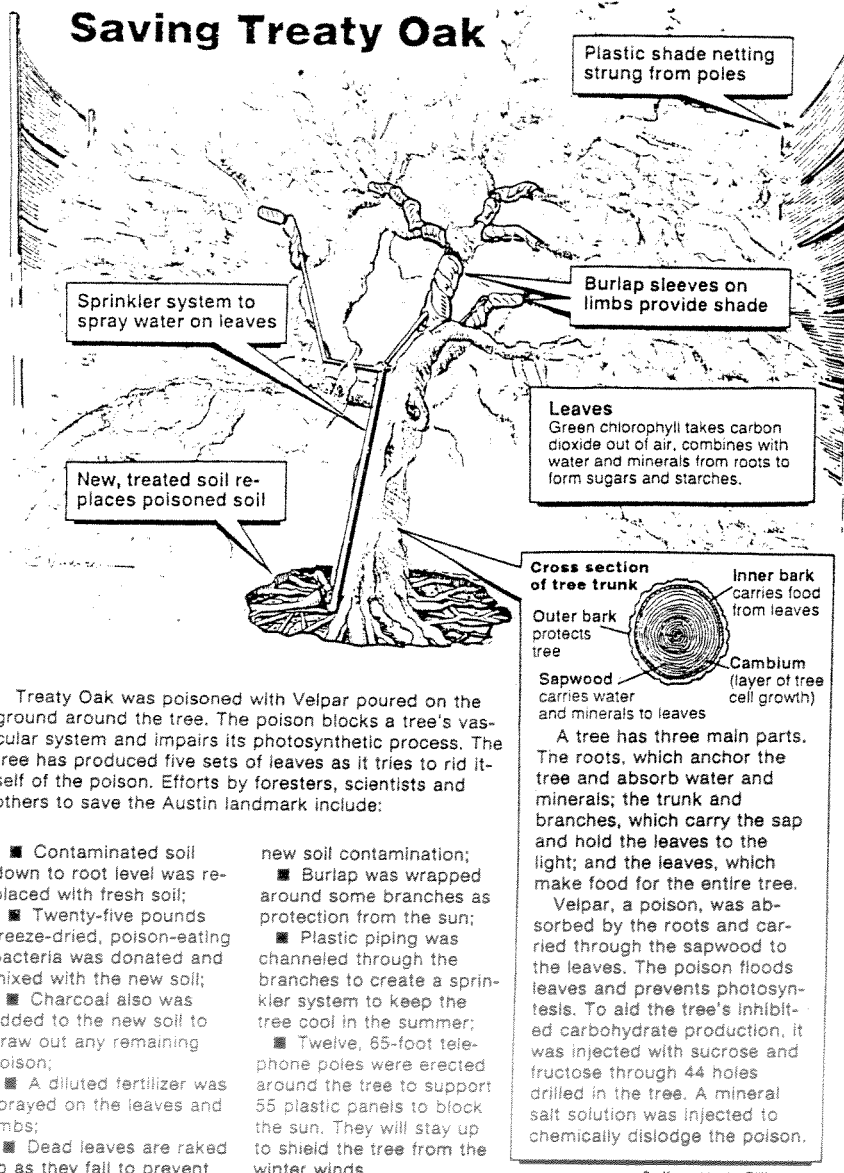
Costonis is one of a few task force members who periodically visit the 60-foot-tall, centuries-old tree. All are regularly consulted on measures to combat the commercial herbicide Velpar with which the tree was intentionally poisoned in March.

Even when the consensus judgment is optimistic, however, it is tempered by the innate caution of John Giedraitis, the city forester charged with saving Treaty Oak. Giedraitis knows he and the city will be blamed if it dies.

So the forester draws careful conclusions about the apparent results of the rescue effort funded with a blank check from Dallas billionaire H. Ross Perot and others who want to remain

See Treaty Oak, B8

Saving Treaty Oak



Staff graphics by Cliff Vancura

Treaty Oak

From B1

anonymous.

"We're hoping the tree lives and we fully expect it to," Giedraitis said. "But the fifth set of leaves is not showing any decline in Velpar concentration. And the latest tissue samples show there's still a high concentration in the tree. So our activities have not been completely successful. We'll have to try something new. If we don't lower the poison, it's a dead tree."

Task force members with the U.S. Forest Service predict Treaty Oak will put out unprecedented sixth and seventh sets of leaves by the end of the year.

The leaf sets are the tree's effort to rid itself of the poison. Velpar was designed by its manufacturer, the Du Pont Co., to fill a hardwood tree's vascular system and flood its leaves. That blocks photosynthesis, the chemical process by which all plants make the carbohydrates they use for food.

When the seventh set of leaves has been made, the experts expect the tree — named for a treaty Stephen F. Austin is said to have signed with Indians under its branches in the 1820s — to become dormant for the winter. Then, the outcome will not be known until late spring.

Meanwhile, the scientists will continue to worry as they have all along.

"All I can say is the tree is in critical condition," said Jerry Brand, a professor of botany at the University of Texas. "It's so weakened that it's necessary for the city to be cautious."

A major concern is that Treaty Oak is taxing its energy reserves by putting out so many sets of leaves in such a short time. The annual norm is one set.

"No one has ever seen a live oak do seven sets of leaves in one year," Giedraitis said.

So he is working with scientists at Texas A&M University to take living cells from the tree's tissues to try to create genetically identical Treaty Oak clones.

"We're hoping for the best and planning for the worst," he explained.

Despite the tree's green leaves, the worst would seem to be inevitable, considering Costonis' assessment of laboratory analysis of tree twigs, leaves and sample borings. He said Treaty Oak seems to have received enough Velpar to kill it 200 times over.

But Costonis, who owns a tree consulting service near Sarasota, Fla., is quick to point out that the experts don't know everything. He said Treaty Oak's rescue is a unique event. Scientific literature offers almost nothing to use as a guide.

"Essentially, we're creating the literature as we go," he said.

It was Costonis who recommended Treaty Oak's latest treatment: injection earlier this month through 44 holes in the base of the tree of almost 70 gallons of sucrose, a high-powered carbohydrate made from vegetable and fruit sugars.

In July, the tree received 35 gallons of milder fructose, a fruit sugar.

The injections, a controversial idea even among task force members, were meant to aid the tree's production of the natural carbohydrates Velpar inhibits.

"But these attempts in other kinds of experiments don't always lead to success," Brand said.

"Many times, if the tree can't make its own carbohydrates, it can't get the artificial ones to the cells where they need to be."

David Appel, who administered the injections, agreed. But Appel, a microbiologist at the Texas Agriculture Experiment Station at Texas A&M University, was encouraged by the speed with which the sugars were consumed by Tre-

ty Oak's vascular system, the conductive cells that transport water and minerals.

"The tree was very easy to inject," he said. "We find only trees in good health are easy to inject. It indicates the vascular system is working well."

Appel also agreed with Costonis that Treaty Oak seems to be thriving.

"There's been no major die-back of the crown yet," Appel said. "All the twigs are still green, the buds are still tight and the leaves have good color. It just shows that prognosis in trees is difficult in any circumstance, whether it's oak wilt or bulldozer damage."

The sugar injections were not the only controversial treatment the task force has tried. In late July, when the tree was stronger, it received 35 gallons of a mild solution of potassium chloride on the advice of Du Pont.

Brand explained that Velpar attaches by natural electrical charge to the transport cells of the tree. Because the particles of potassium chloride, a mineral salt, also contain electrical charges, it was hoped they would dislodge the Velpar. The treatment seemed to help.

"The concentration in the stems went down slightly and there was a burst of concentration in the leaves," Brand said. "However this did not remove all the Velpar and the tree is too weak now to risk doing it again."

Risk is one thing the task force has tried to avoid. They have resisted their temptation — and the periodic demands of a host of self-appointed experts — to do too much to Treaty Oak.

"We've been very careful to try not to love it to death," Giedraitis said.

Since the city learned of the poisoning in late May, when a citizen complained of a chemical burn on the leaves, rescue workers have replaced the soil, applied freeze-dried, poison-eating bacteria and erected a sun-shade on 12 65-foot telephone poles around the tree.

Now that summer is ending, the task force must worry about the effects of the coming winter's cold.

Oaks normally keep many of their leaves during the winter. Their reproductive systems lie dormant until the return of spring warmth, when new leaves push the old ones off the branches.

But Treaty Oak is so weak, the experts say, a hard winter could kill it.

"Two weeks of 20-degree weather would be very hard on it," said Appel.

Sunday, September 17, 1989.

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LOCAL & STATE

Spoonfuls of sugar is medicine for oak

ASSOCIATED PRESS

AUSTIN — Tree experts have now turned to doses of sugared water to rescue the poisoned Treaty Oak.

Dozens of gallons of a mixture of sucrose and water have been injected into the base of the centuries-old live oak that is struggling to fight off the effects of the potent herbicide Velpar.

The live oak has been using stored energy while it repeatedly puts out new leaves to replace those killed by the Velpar, experts said. The tree is now putting out its fifth set of leaves since March, and will die if its energy reserves are exhausted.

The tree's energy is maintained as carbohydrates, so experts decided to inject the mixture in an effort to replace the lost reserves.

"The tree can't make energy," said Austin city forester John Giedraitis, "so we're giving it energy. We are giving it a little boost to get it over the hump."

Up to 70 gallons of the mixture were injected into 44 holes at the base of the tree Wednesday and Thursday.

David Appel, a plant pathology expert at Texas A&M University, said Treaty Oak's energy level was "dangerously low. It's gone through five years of growth" in the six months or so since it was poisoned.

"As long as it's shedding leaves, it's shedding Velpar," Giedraitis said. "The question is whether it can shed enough before it dies."

Treaty Oak was poisoned by someone who poured the liquid herbicide around the base of the tree. The attack received international news coverage and \$11,000 in rewards were offered for the conviction of those responsible.

Paul Stedman Cullen, 45, of Elroy in southeastern Travis County, has been charged with felony criminal mischief. Police say the attack was part of a ritual. Cullen remains in the Travis County Jail awaiting trial.

Sapped of strength, Treaty Oak gets lift

Experts hope sugar, water restore energy

By Jim Phillips
American-Statesman Staff

In another attempt to help Treaty Oak survive its battle with the herbicide Velpar, dozens of gallons of sugared water were injected into the centuries-old tree Thursday to replace its depleted energy reserves.

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Staff photo by David Kennedy

David Appel, a plant pathology expert at Texas A&M University, left, and city forester John Giedraitis inject the sugar solution into the Treaty Oak.

"As long as it's shedding leaves, it's shedding Velpar," Giedraitis said. "The question is whether it can shed enough before it dies."

The scientific-grade sucrose,

which Appel obtained at Texas A&M, was mixed with spring water at 15 grams per liter and pumped into the tree at low pressure. A

See Treaty Oak, B4

Treaty Oak

From B1

much smaller amount of fructose was injected into the tree in July, when saltwater was forced into the tree to try to counteract the poison.

Treaty Oak, on Baylor Street between Fifth and Sixth streets, was poisoned by someone who poured the liquid herbicide around the base of the tree and in a circle next to it. After the attack received international news coverage, \$11,000 in rewards were offered for

the conviction of those responsible.

Paul Stedman Cullen, 45, of Elroy in southeastern Travis County, has been charged with felony criminal mischief in what police said was an attack on Treaty Oak as part of a ritual. Cullen remains in the Travis County Jail awaiting trial.

Appel said he was encouraged that Treaty Oak was accepting the sugared water rapidly. "It's taking

up the sucrose very well," he said. "A sick tree in very bad shape does not take up a compound very well, and (Treaty Oak) has been coming along well."

Appel also said the fact that Treaty Oak has not lost any large limbs indicates that it still may be strong enough to get through the year and start producing new leaves in the spring.

Thursday, September 7, 1989

Austin American-Statesman

Felony for all

It's a shame Austin's Treaty Oak was poisoned. but if it's a felony to kill old trees, then a lot of city workers should be in jail. Remember when they cut down trees while fixing drainage ditches? Trees that weren't even condemned? All they did was replace the man's trees.

One of our neighboring city councils was asked by the public to save 300-400-year oaks being removed for a watershed.

You remember, request denied.

Two sets of standards? A felony for one should be a felony for all.

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West Austin News

Volume 3, Number 45
September 7, 1989
Fifty Cents

Gardeners hope cutting project will produce clones of Treaty Oak

By Piper Lowell

Like an old man trying to sweat off a fever, Treaty Oak is budding its fifth set of leaves, only to shed them in an effort to rid itself of the poison.

The City of Austin and other groups are doing all they can to save the tree, but members of the Men's Garden Club and John Giedraitis, city forester with the Parks and Recreation Department, are experimenting with cuttings from the oak—just in case.

Five members of the gardening club took between 250 to 300 cuttings Thursday morning. Each cutting is dipped in a growth-stimu-

"With a healthy tree, the odds are against us. These odds against us (referring to the poison in the cuttings) are even greater," he says. However, if one of the cuttings does take root the cutting will be a clone of the tree, not just an offspring like an acorn.

Mr. Giedraitis called Mr. Miller for the project because, "if and when the tree dies, we want to have something to fall back on." The Men's Garden Club decided to take it on.

Because of public interest in the tree and the funding of H. Ross Perot, who is footing the bill for Treaty Oak, Mr. Giedraitis could have asked one of the several experts he has consulted in this project. But he wanted practical knowledge, he says.

"These men have been gardening for 40 years. If anybody can do it, these guys can," he says.

The tree was poisoned with Velpar, which prohibits it from making the sugars it needs for energy. If it has enough energy to keep flushing the poison from its system, the tree will live, Mr. Giedraitis says.

"Experts say four or five sheddings and the tree is dead. This is its fifth, and its not dead yet," he says.

Treaty Oak looks like a forlorn patient. It is surrounded by dark screens for shade, wrapped in burlap to act as leaves for sun protection and watered with a fine mist every half hour to cool it down.

And Mr. Giedraitis is willing to go to even more experimental methods to save the tree. No one has ever tried to feed a tree the sugars that it needs for growth, but he would try it. "I would never experiment to risk the tree, but (at last effort) I could try," he says.

It has changed him, he says, to see Treaty Oak suffer and die.

"This tree has a magnificent spirit—it wants to live. And as long as it wants to live, I'm going to help it."



Otto Ludwig places hormone-dipped cuttings into soil. (Photo by Piper Lowell)

lating hormone, and the five men will use different watering techniques to increase the chance of getting a cutting to take root.

Ron Miller, 51, is not overly optimistic about the cutting project, he says, because oak trees usually do not take root from cuttings.



The Treaty Oak continues to get constant support and care. (Photo by Piper Lowell)

Sunday, September 3, 1989

Treaty monument

Re: Treaty Oak.

It has been said by experts that it will not live. Perhaps so, but it can be enshrined for life. A beautiful tree is still beautiful after death. With its arms outstretched towards the heavens.

My suggestion is to build a marble collar around its base, with a few lights to shine on the tree and its branches. Write the story of the signing of the treaty and the participants. Also, the efforts of the people to save the tree.

An oak tree is very hardy, and the wood will last for a long time, maybe for a lifetime, if sprayed with wood preservative once a year.

The individual who poisoned this important and beautiful tree should be sentenced to a life of planting trees, wherever they are needed, without pay, except for the necessities of life. A clean, bright red uniform should be worn for the rest of his life. This is in my estimation a fair price to pay for the destructiveness of God's gift to mankind.

JOSEFINA WISSMAN
P.O. Box 1024

LANDSCAPE MANAGEMENT

TREES

Popular 'Treaty Oak' faces uphill struggle for survival

AUSTIN, Texas — The probable destruction of a 500-year-old oak tree has caused an outpouring of sympathy from 48 states and 18 countries.

"Cards and letters from all over the world cross my desk," says Austin city forester John Giedraitis. "They all have the same theme: get well soon."

Those affections, however, apparently have not been enough to save the venerable "Treaty Oak."

The tree rests in Caldwell Treaty Oak Park. Paul Cullen, an alleged occultist, is awaiting trial for its poisoning. He faces a possible sentence of up to 10 years in jail and a fine of up to \$10,000 for criminal mischief, a felony.

"All over the world, people are watching this," says Giedraitis, who—more than anyone—has been flooded with phone calls from newspapers, magazines and the electronic media. "Right now, this is the most famous tree in the world."

The tree's plight has been followed by the New York Times, USA Today and the Associated Press. Giedraitis himself has appeared on ABC-TV's "Good Morning America."

Unfortunately, the tree is dying a slow death.

Soil samples indicate a massive poisoning from an overdose of DuPont's Velpar herbicide, which penetrated as far as three feet under the soil surface.

Giedraitis has worked on advice from scientists at DuPont and tree experts from all over the country (including Dr. Jack Siebenthaler of the American Society of Consulting Arborists) to save the tree. Most recently, 18 irrigation heads that pump spring-water around the crown were installed to sterilize the soil.

"Tissue samples indicate the level of poison going down," Giedraitis says, "but it's not going down fast enough. It's kind of like a race we're losing."

"The tree is dangerously close to the end, even though we really won't know until next spring."

He notes that tests indicate good starch reserves in the root system. "We're hopeful the carbohydrates will move up the stem into the remaining buds," he says.

More than \$63,000—most of it donated by billionaire industrialist H. Ross Perot—has been spent to save the massive tree. The total bill is expected to reach \$75,000, Giedraitis says.

The City of Austin bought the Treaty Oak from Earl Caldwell Sr. in 1937 with donations from the city's schoolchildren.

Since that time, Caldwell's Landscape Service Company has pruned it free of charge. The company is now under second-generation ownership.

The original Caldwell's



John Giedraitis has done everything possible to save the "Treaty Oak," an endangered Austin historical landmark. (Photo by Mike Boroff of the Austin Statesman-American)

son, Earl Jr., says he's kept his company out of the media spotlight because of its love for the tree.

"It's a very sad thing," notes Earl Jr. "It was a magnificent tree. Now it's dead, the victim of a demonic

act by a mentally deranged person."

Adds Giedraitis: "That shadowy figure sealed the fate of the tree. But the real story is the outpouring of love and affection by people all over the world." □

TREATY OAK

an evening of
new-age music and modern dance

Friday, October 6, 1989

8:00 p.m.

Hillside Theatre
at Zilker Park

FREE



Conceived by
Fred Mitchum

Choreographed by
Ann Mary Carney

Music and Lyrics by
Fred Mitchum

Slide Images edited by
Gina Davis Dodge

Produced by
L. A. Lewis

Dance Ensemble

Ann Mary Carney
Mary Gorman
Deak Gully
Cari Kerkhoff
Kathlene Matus
Pat Stone

Musical Ensemble

Fred Mitchum flute, cava, guitar
percussion
Aro Dettis bass guitar
Alan Peters synthesizer, percussion
Larry Peters slide guitar
Dennis Bruden drums, percussion
Rick Calabrese percussion
Rich Winkelman guitar

Vocalists

Fred Mitchum
John David Bartlett
Lynn Carter
Theresa Hask
Cindy Turton
Saffron Turton
Nicole Turton

Photo by Terry Lakin, Arts

Choreography by T. M. Dodge

TREATY OAK

an evening of new age music and modern dance

FRED MITCHIM, known to many for his video work shown on ACTV, presents his unique performance and vocal concepts in Austin, Houston, Fort Worth and Los Angeles. He is a prolific composer and lyricist, and has founded several bands, including THE ZONE and ATOMIC ENERGY COMMISSION. His locally produced New Age album, RIVER CITY, captures the spirit and feel of Austin with songs named after Austin landmarks such as Barton Springs and Mount Bonnell. His music has been used by NASA in bio-feedback and brainwave research, and has been shown to produce the same calming effect on people as does the sound of the sea.

ANN MARY CARNEY has produced and performed her solo choreography around Austin and in Houston, San Diego and Vermont. In Austin, she has worked with the Texas National Dance Theatre, Migration Dance Theatre and Jimmy Turner, to name a few. This evening's performance is her first experience with group choreography. Ann Mary is finishing her B.S. degree in Dance and will begin a master's program at Mills College in California this January.

GINA EVINS DOYLE is a professional photographer whose work has appeared in several publications, including MUSICIAN magazine and AUSTIN WOMAN. Her work has been shown at numerous photography shows and exhibits throughout Texas, and she has been the official photographer for special events, including the Austin Marine Corps Ball and the Driskill Hotel's Centennial Anniversary. Gina is a member of Professional Photographers of America, and she owns and operates Gina Doyle Photography here in Austin.

L. A. EVANS is an entertainment industry professional involved primarily with the music industry. Although he has a strong background in theatre arts, having worked in educational and community theatre here in Austin during the 1970s, this is his first dance event. Larry is president of EuroExport Entertainment, an international music firm based here in Austin.

This presentation is dedicated to the Treaty Oak, with love and hope for its survival, and for its symbolic role in raising the awareness in this city, nation and world about trees and their value to the inhabitants and environment of this planet. We feel that a couple of humans deserve recognition, too: John Giedraitis, for his dedication to Treaty Oak and all of Austin's trees; and H. Ross Perot, for his fast action and financial support of the efforts to save Treaty Oak.

We wish to thank the following people and organizations for their support of this project: Austin History Center, Cedar Creek Recording Studios, Saturn Sound, Advanced Audio, Red Bluff Dance Studios, Synergy Dance Studios, Dance Umbrella, Ballet Austin, Deep Eddy Arts, The Live Oak Festival Committee, Fred Remmert, Ken Avant, Daniel Llanez, Phyllis Slattery, Eve Larson, Steve Dodds and New Texas Magazine, Mary Jo Galindo, Chris Dunham, Roy Rodan, John and Cindy Giedraitis, Rebecca, Alex and Nathan Bass, Eric Beggs, Lorrie Price, Sean Hare, Hare, Susan Bell, Laura Smith and Charles M. Lang, plus all the others too numerous to mention in this limited space.

This event is a presentation of EuroExport Entertainment and is co-sponsored by New Texas Magazine.

Bail stands in tree case

Defense witness claims cult poisoned Treaty Oak

By Berta Delgado
American-Statesman Staff

Long-awaited testimony from a "mystery witness" who said Tuesday that a group poisoned Treaty Oak during a cult ritual was not enough to persuade a district judge to reduce bail for the man accused in the crime.

State District Judge Bob Perkins denied the request by defense attorneys, saying he did not believe the \$20,000 bail set for Paul Stedman Cullen was unreasonable.

Attorneys were seeking a \$5,000 bail for Cullen, who has been jailed since June 29 on a charge of felony criminal mischief in connection

with the poisoning of the centuries-old Austin landmark.

Perkins said he considered the charge against Cullen, 45, as well as his criminal record and evidence presented during the hearing.

The hearing began Sept. 22, and was rescheduled three times because a defense witness failed to appear for testimony.

The witness, David Owen Harpster, 46, appeared in the courtroom Tuesday wearing a green jail uniform. He was arrested Saturday on a charge of driving while intoxicated.

Harpster's attorney, Janet Stockard, said the DWI charge was his second in two months.

Harpster, of 1702 W. 34th St., testified Tuesday that he went to the Travis County Courthouse annex when he was supposed to appear in court last Friday. But he said he never made it into Perkins' courtroom.

"I stood out front for an hour or so waiting for someone to tell me where I was supposed to be," said Harpster, an unemployed cook.

Harpster said he overheard in two different Austin bars that "Treaty Oak was not poisoned by one, but by several people living somewhere in the University of Texas area."

He said he heard on several occa-

See Ball, B6



Witness David Owen Harpster says he heard that a group of people living in the UT area poisoned the tree.

Bail stands in tree case

Continued from B1

sions at The Back Room and The Warehouse Saloon and Billiards that the group poisoned the tree during a "ritual activity."

But when Assistant District Attorney Kent Anschutz asked Harpster for the names of the people involved in the poisoning, Harpster said he did not know.

Cullen's attorney, Richard Jenkins, asked Perkins to reduce the bail amount because the offense Cullen is accused of committing was non-violent. Jenkins said that none of Cullen's previous brushes with the law were violent, and that Cullen had showed in those cases that he never forfeited on his bond.

But Perkins said Cullen violated the terms of his probation in the late 1960s after being arrested in California for DWI and possession of marijuana. Cullen also was sent to the Texas Department of Corrections in 1986 after his probation was revoked for a burglary charge in Travis County in 1983.

Jenkins told Perkins that the criminal mischief charge — which carries a maximum punishment of 20 years in prison and a \$10,000 fine — is only one of three charges that could have been filed against Cullen.

Jenkins said the other two charges were both misdemeanors — reckless damage or destruction, a Class A misdemeanor, and desecration of a venerated object, a Class C misdemeanor.

Perkins said he would consider the other charges during a pretrial hearing Nov. 21.

Oct. 4 - 10, 1989

Tree And Music Lovers Unite At Live Oak Festival Oct. 14 - 15

By John T. Davis

The third annual Live Oak Festival holds a special poignance for lovers of Austin's arboreal beauties. This year's South Austin-based neighborhood celebration is subtitled "Treaty Oak: A Tribute," in memory of the civic landmark which was endangered in a malicious attack this summer.

The Live Oak Festival, which is scheduled for Stacy Park on Oct. 14, has always been dedicated to drawing attention to one threat to Austin trees, namely Oak Wilt Disease. According to Save the Oaks Fund, Inc., which administers the monies raised by the Festival, Oak Wilt Disease (which is actually a fungus) is killing thousands of oak trees in South Austin. Add to that the totemic importance of Treaty Oak, and you have a celebration which can't help but heighten the awareness of its participants.

Which isn't to say the weekend won't offer generous quantities of entertainment. Festivities kick off with a Halloween costume style show and street party on, appropriately enough, Friday the 13th.

The style show will be held in front of the Cen-Tex Nissan dealership at 1400 S. Congress Ave. The show will begin at 7:15 p.m. and is being presented by the Zachary Scott Theatre Center, with models from the St. Edward's University Drama School. The emcee is David Arnsberger of Z-102. Prior to the show at 6 p.m. there will be a musical

presentation by ACC's Jazz Vocal Group.

Proceeding south on the Avenue, the Magnolia Cafe, at 1920 South Congress, will host a party to which various prefixes like "Get-Acquainted," and "Kickoff" have been appended. Whatever you call it, the idea is to get together on Friday between 5 and 9 p.m. Music will be provided by Mooncoup.

The Live Oak Festival proper kicks off with a day of activities in Stacy Park at 11 a.m. Saturday. The Fulmore Middle School Honor Band will get things started. They will be followed by folksinger and environmental activist Bill Oliver, who will introduce a song dedicated to the Treaty Oak, "Hard Times For Oaks."

The opening ceremonies at noon will include comments by Festival chair Sheryl McLaughlin, and the introduction of guests including Cong. J.J. "Jake" Pickle, State Rep. Lena Guerrero, County Commissioner Hank Gonzalez, Mayor Lee Cooke, members of the Austin City Council, and City Forester John Giedraitis.

The entertainment component of the Festival commences at 1:00 p.m. with Esther's Follies, who will be followed during the course of the afternoon by (in order of appearance): Al Dressen and His Super Swing Revue, Suzuki, Bechtol and McBride, Austin On Tap, Rosie Flores, Isla Mujeres, Jump Start, and Tomas Ramirez and Tejjazz, who will take the stage at 6 p.m.

Meanwhile, in another corner

of the park, various speakers and debaters will be indulging in a venerable American tradition - al fresco democracy.

Beginning at 1:30 p.m., this celebration of free speech will feature debates over the future of Austin's airport, news coverage by the local media, and the city's future energy policy. Winners of essay and poetry contests will also be feted, and an open mike session caps the afternoon off at 4:30 p.m.

Other elements of this day-long celebration include food and drink booths, children's rides and games, arts and crafts, and an art auction.

The weekend itself concludes on Sunday, with a tour of historic homes in South Austin.

From 2 until 6 p.m., participants will have an opportunity to tour five historic homes. The homes range in style from Italianate Victorian to AIA award-winning contemporary.

The rest of the Live Oak Festival is free to all, but the Homes Tour will cost \$5. Tickets will be available on Saturday in Stacy Park, or in the parking lot of the Austin Opera House the day of the tour. Ticket prices include a brochure, entrance to all the homes, and transportation courtesy of the Capital Metro "Dillo." The Homes Tour is being co-sponsored by the Heritage Society of Austin.

For more information concerning the Live Oak Festival, contact Sheryl McLaughlin at 444-2610.

Live Oak Trees Inspire Poets

Three adults and three children won cash prizes in the Live Oak Festival Poetry Contest sponsored by The Austin Light and Austin Nature Center. "Trees, the Future and Me" was the theme of the contest.

In the adult division, John Wright took first prize of \$50 with his poem, "Alphabet of Trees." Eleanor Crockett was chosen for the second prize of \$25, and Kelly Neal won the \$15 third prize.

In the student division, Erin Macaulay, a third grader at Barton Hills

Elementary School, took the first prize of \$25. Second prize of \$15 went to Sara Wimberley, a student at Patton Elementary School, and third prize of \$10 went to Kimberly Wied of Summit Elementary School.

The six winning entries are reprinted here, and will be read by the winners at the Free Speech Stage at the Live Oak Festival at 1:30 p.m. Saturday, Oct. 14.

What Is A Tree?

I think a tree is for shade, animal homes, and other things.

Trees are helpful.

If we didn't have trees the earth would be hot, dry, and awful! I feel sorry for one poor, old tree.

Treaty Oak.

Someone deliberately poisoned Treaty Oak.

People are giving money to save Treaty Oak.

People have paid more than 100,000 dollars for Treaty Oak.

I really feel sorry for Treaty Oak, the future, and me.

— Kimberly Wied

Among Leaves

to W. Walt Rinehart, age two months

If I had time
I would speak
of light's manner
upon leaves. Yet,
language has not
mastered time
for me:
no memory
past the present.

Light is green
upon a darker green
that shifts, not again,
but now
where once
has never been.

The wind and light are leaves.
No cause to think,
simply watch
what is:

light
among
leaves.

— Kelly Neal

Alphabet of the Trees

live oak, whitman-bearded patriarch
tree
spanish oak with crimson leaves on
fire

post oak, short-branched, cross-
shaped leaves

long-limbed ash, mighty weapon in
Clemente's hand

white-trunked aspen, shimmering
hallucination

river woman willow of flexible wicker
rough-barked cottonwood, alamo
tree

slash pine feeds the amber resin
loblolly pine, holy tree of Mississippi
juniper, called cedar, stubborn to the
axe and saw

pecan scatters meat on the ground
in October

bois d'arc twanging at the deer's
heart

hackberry, short-lived, full of
drunken birds

cypress swamps, smooth trunks,
green and copper shadows

saw-toothed maple in November
canyons

glossy magnolia leaves make total
shade

spike-headed palm, trying to creep
north
territorial elm throwing seeds to the
wind

— John Wright

The Most Beautiful Thing

You ask me the most beautiful thing
I say a tree

You chop it down to make a house
I turn away

The house falls apart but
the stump sprouts

You wait and see, the most beautiful
thing
is not a house

Give me a spreading oak
The birds and shadows of its boughs
— Eleanor E. Crockett

A Tree

It is a green tree.
It sounds like butterflies.
It tastes like water.
It smells like the rain.
It looks like a nice bear.
It makes me feel safe.

— Erin Macaulay


What Is A Tree?

A tree, a tree
is almost like me!
Its branches are arms,
Its leaves the hair.
The bark the skin,
The roots the legs.
The holes eyes, and
The twigs fingers and toes!

With beauty like a lady,
Handsome like a man.
The tiny trees, babies,
and the old ones tall and grand.
Now I know why they call it
A Family Tree!

— Sara Wimberley


AUSTIN LIGHT
Oct. 11-17, 1989



Tribute to Treaty Oak ..
*Great Oaks
from Little Acorns
Grow!*

MAX NOZIGER
City Councilmember

Pd. by Max Noziger Council, P.O. Box 402281, Austin, TX 78704



Keep Oaks Alive!
Celebrate and Protect Austin Trees
Attend the 3rd Annual Live Oak Festival.

State Representative
Lena Guerrero

Paid by Lena Guerrero Campaign, 3302 Santa Fe, Austin, TX 78741, RAULIN DALL, Treasurer

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**Hank
Gonzalez**

I proudly salute the Treaty Oak
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Travis County Commissioner • Precinct 4
473-9444

Travis County Courthouse Annex
P.O. Box 1748, Austin, TX 78701

Pd. Pol. Adv. by Hank Gonzalez Campaign, 512 E. Riverside Dr., Suite 207, Austin, Texas 78704, (512) 441-8148


HURRAH
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*A CELEBRATION OF
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Robert Barnstone
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Paid pol ad Robert Barnstone Campaign, Gilbert Martinez Treas.



I'm proud to help support the
Live Oak Festival, '89!

**U.S. Congressman
J. J. "Jake" Pickle**

Pol. ad paid by the J.J. "Jake" Pickle Re-election Committee, John Bart, Treasurer, P.O. Box 717, Austin, Texas 78767

Treaty Oak defendant sues

By John Harris
American-Statesman Staff

The man jailed for eight months while awaiting trial on charges of poisoning Treaty Oak has filed suit alleging that Travis County sheriff's officials have improperly taken his money to pay his medical bills.

Paul Stedman Cullen, 46, who said he has diabetes, is asking a judge to order Sheriff Doyme Bailey and Woody Simmons, director of programs for the county jail, to return money seized to pay his medical expenses.

The lawsuit, filed in state district court by Cullen on his own behalf, says the officials have used money from Cullen's personal jail account to pay medical bills rather than allow him to seek assistance as an indigent.

Prisoner's families may contribute money to inmate accounts, which are used to buy personal items from the jail commissary.

Cullen's lawsuit contends state law requires the county to help indigent inmates apply for reimbursement from public agencies.

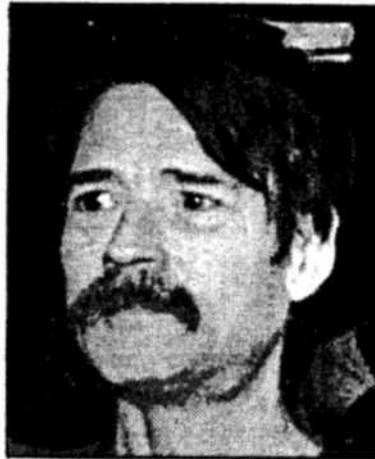
But Simmons said a 1987 law allows counties to dip into the account to cover medical expenses. Cullen, who he said cannot stay on his diet because of a weakness for candy bars, is the first inmate to take such action against the county, according to Simmons.

"It's one way to recoup our money and defray some of our medical expenses," said Simmons, who estimated the county spends more than \$1 million a year on inmate medical expenses.

Sheriff's office spokesman Curtis Weeks said county officials have told Cullen's family how much they would take out of the account before relatives make a deposit.

Cullen has been jailed since June 1989 and is charged with felony criminal mischief in the poisoning of the historic live oak tree.

According to the hand-written lawsuit, Cullen was taken to Brack-



Staff file photo
Paul Stedman Cullen, 46, is seeking return of money seized by the county to pay his medical expenses.

enridge Hospital on Sept. 26 and diagnosed as having "newly developed diabetes."

Cullen contended that his \$30 commissary account at the jail was confiscated to pay a medical bill of about \$42. On Dec. 11, Cullen received \$30 from home, which was seized, and Cullen was told he had a negative balance of \$546 at the commissary, the lawsuit said.

Cullen has been treated at Brackenridge Hospital six times, hospital spokesman Larry BeSaw said. BeSaw said he could not divulge the nature of Cullen's illness.

Terence Kirk, one of Cullen's lawyers, said he was unaware that Cullen had filed the suit. He said attorneys last year wrote a letter to Bailey expressing concern about Cullen's health and food at the jail, but the matter had been resolved.

"I'm not going to say anything against the sheriff's office or anyone else," Kirk said. "But on the other hand, I'm not going to say Paul doesn't have a legitimate complaint. I will say I don't think Paul's health has been as closely monitored as the Treaty Oak's health."



Staff photo by Larry Kolvoord

With several of its major limbs dead and its ability to survive the damage of the December freeze in doubt, the Treaty Oak may be approaching the point 'nature takes over,' one expert said. Tests for Velpar levels will be conducted this week.

Treaty Oak prognosis worsens

By Jim Phillips
American-Statesman Staff

No one is ready to pronounce Treaty Oak dead, but the poisoned live oak tree was hurt by the severe freeze in December and has not shown signs of being able to rejuvenate itself from the massive dose of Velpar it received last year.

Samples of the landmark tree's tissue will be taken this week to determine if the level of Velpar, a herbicide designed to kill hardwood trees, has remained high through the winter.

"We will see if the levels have gone down any," said Austin City Forester John Giedraitis. "What's probably a more likely situation is the Velpar is

pretty much at the same level it left off last year, which is very, very high.

"This tree doctor hasn't given up yet, but at some point nature takes over, and I think that point might be coming up pretty quickly," Giedraitis said.

Repeated efforts last year by Giedraitis and a team of experts to reduce the level of Velpar in the tree did not have much effect, but did help see the centuries-old tree through the summer and fall. Unless the tree has found some way to eliminate some of the poison over the winter, the main question remaining is how much energy remains in Treaty Oak.

"It looks terrible," said Bill Edelbrock, a forestry technician for the city.

"It looks about nine-tenths out of gas."

"The energy levels are very low," Giedraitis said. "I'd say it's reading close to empty."

Treaty Oak was poisoned about a year ago when a large quantity of liquid Velpar was poured around the base of the tree and just east of the tree in a small city park on Baylor Street between Fifth and Sixth streets.

The attack sparked worldwide publicity and offers of \$11,000 in rewards for information leading to the arrest of the poisoner. In June, 45-year-old Paul Stedman Cullen of the Travis County community of Elroy was arrested and charged with felony criminal mischief.

See Treaty Oak, B4

Continued from B1

Cullen, who remains jailed under \$20,000 bail, has denied involvement with the poisoning.

At a hearing Friday, District Judge Bob Perkins is expected to rule on defense motions asking that the charge be reduced to a misdemeanor, and asking that searches of Cullen's home and truck be ruled unconstitutional.

After the poisoning was discovered in early June, Treaty Oak, trying to fight off the Velpar, shed six sets of poisoned leaves before winter.

The severe freeze in December knocked off the last of the sixth set of leaves, Giedraitis said.

Treaty Oak should put out new leaves in the next few weeks, but if the leaves are still laced with Velpar, the tree could continue to put out new sets until it runs out of energy and dies.

Giedraitis said Thomas Perry, a nationally known tree expert from North Carolina who has examined Treaty Oak several times, was unusually pessimistic after seeing the tree earlier this month.

"He has always been optimistic on the whole project," Giedraitis said. "Dr. Perry does not hold the same opinion anymore. He thinks it's suffered some major damage."

Several major limbs on the south and east side of the tree appear to be dead, Giedraitis said.

"Part of that tree is not going to leaf out again. We're still looking at preserving some part of the tree. What condition it's going to be in is the big question. Right now we've got our fingers crossed. The prospects are dimmer."

The hard freeze compounded Treaty Oak's problems because it killed the newer growth the tree had produced.

"We're hopeful that the tree has some sort of mechanism... to try and detoxify" itself he said. "If not, the tree is still loaded with this stuff."

Austin American-Statesman

COMMENTARY

EDITORIALS

Jail term

I can't believe the City of Austin has kept some poor soul in jail for almost a year for allegedly poisoning Treaty Oak.

Now our great leaders at the Capitol are planning to bulldoze several oak trees that are more than 100 years old, to build a parking garage and building on the grounds. How long are they going to be held in jail for this crime of spoiling the Capitol grounds and killing these old trees?

W.G. ROESLER
HCR 4, Box 217, Canyon Lake

Texas Monthly

1 9 9 0

JANUARY 1990

THE ROAR OF THE CROWD

AUSTIN'S MIGHTY OAK

After reading Stephen Harrigan's "Vigil at Treaty Oak" [TM, October 1989], I was overwhelmed not only with a sense of pride but also with a tremendous amount of disgust. The measures that the people of Austin took to save the historical Treaty Oak are a perfect example of how Texans are their own rare breed.

The Treaty Oak is not "just a tree," as Mr. Jenkins, Paul Cullen's attorney, so significantly referred to it. It is a monument, and it deserves to be protected.

LIEUTENANT CATRICIA L. MILLS
U.S. Air Force

Suwon Air Base, S. Korea

Having to make the decision to move away from my native Texas (and particularly Austin) was at best difficult. The islands of Bermuda, where I now live, are covered with beautiful foliage, but it all pales in comparison to the Treaty Oak and the spirit that it embodies. Upon reading Mr. Harrigan's article, I was appalled at the selfish act of one person. It must not go unpunished. Long live the Treaty Oak!

SUZANE WESTPHAL DANIELS
Paget, Bermuda

I was disappointed that space limitations did not allow mention of the wonderful spirit of the people at the Permian Corporation who transported the water from Utopia Water Company's well to Austin for the Treaty Oak. During the past several months, Permian has, at its own cost, hauled more than 200,000 gallons of Utopia water to Austin.

SAM W. RUSSELL
State Representative
Austin

I read about the Treaty Oak and how the tree had been poisoned. I am in fifth grade, and I go to school in Miami, Florida. My teacher and I read about the tree, and we are very sorry that it happened.

ELENA SANCHIS
Key Biscayne, Florida

JANUARY/FEBRUARY 1990

ARBOR DAY

AN OFFICIAL PUBLICATION OF THE NATIONAL ARBOR DAY FOUNDATION

by James R. Fazio

World of Trees

Vandals Pick On Wrong Trees

Tree vandals, always a problem, picked on the wrong trees last fall. In one case, a large dose of herbicide was dumped over the roots of Austin, Texas' famous, 500-year-old Treaty Oak. Outraged citizens, including billionaire H. Ross Perot, raised enough reward money to ferret out a suspect who is being charged with the crime. A team of 20 experts are also sparing no expense to save the ancient oak. Next came a sapling planted by President Bush in Spokane's Riverside Park. Within a week, the tree had been uprooted and mutilated. Again, rather than sitting back, local folks promptly raised reward money and launched a search for the culprit(s). The president's tree has also been surgically treated and replanted.

The New York Times


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MONDAY, JANUARY 1, 1990

American Journal

'89 Glimpses: Cubs Fall, Mighty Oak Still Stands

By SUSAN JO KELLER

 It has been a year of hurricanes and housing scandals, but also of quieter tales of American people and places. Here are the last, or at least the latest, chapters from the journals of 1989:

The prognosis for the Treaty Oak, the 500-year-old tree in Austin, Tex., that was poisoned last spring, is dim but not hopeless. Over the months

tree doctors have ringed the patient with screens to prevent sunstroke and injected sugared water to provide energy. The total cost of care is already more than \$100,000, most of it paid by the billionaire H. Ross Perot.

John Giedraitis, the city forester, says the fate of the tree will not be clear until spring, when it attempts to put out new leaves.

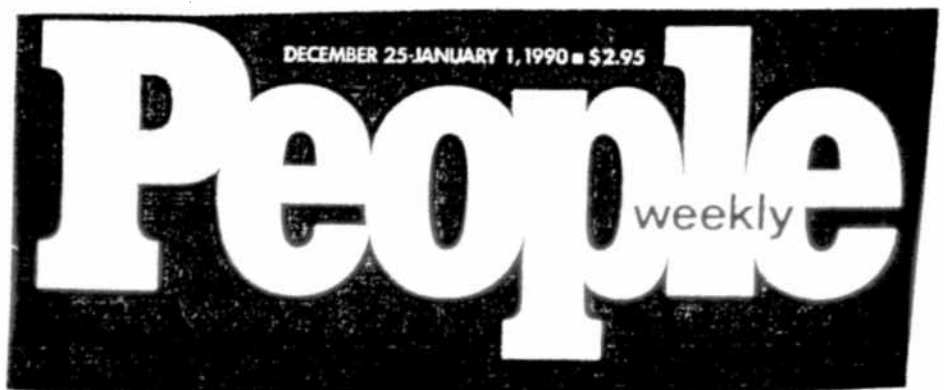
Since its fate became known, the tree has stirred interest from around the world. Said Mr. Giedraitis: "Think of it: all these people praying for a vegetable. Well, a member of the vegetable family."



Even if the Treaty Oak survives, experts fear it will be prey to fungus infections and other ailments in its weakened state.

▲ Nine months after a vandal soaked Austin's Treaty Oak with herbicide, the man responsible is awaiting trial, and the fight to save the venerable Texas tree continues. A long-revered landmark (local lore holds that Stephen Austin once negotiated a land agreement with the Indians under its branches), the 600-year-old oak has been given sugar-water injections into its roots, new topsoil and heavy doses of antitoxins. After sprouting and losing six sets of leaves, it has now entered a period of winter dormancy, and its long-term fate won't be known until spring. "Most of the experts seem to think the tree will die," admits John Giedraitis, the urban forester directing the resuscitation efforts. "Personally, I think it will survive, but I don't know in what condition." Giedraitis does note that more than 700 cuttings from the tree have taken root and that there is now talk of a cloning effort to create some genetically identical offspring. At

this point, "this is more than a tree," says Giedraitis. "It is a symbol of hope for a lot of people."



Thursday, December 14, 1989

Treaty Oak defendant ends bid to move trial

By Berta Delgado
American-Statesman Staff

After months of publicly doubting that Paul Stedman Cullen could receive a fair trial in Travis County on charges that he poisoned the Treaty Oak, defense attorneys took a 180-degree turn Wednesday by withdrawing their motion for a change of venue.

Saying that he believed the "lynch mob mentality" in Austin has faded significantly, defense attorney Terrence Kirk told reporters that he was sure a local jury would be fair-minded enough to provide an unbiased trial — if the case gets that far.

Kirk and Richard C. Jenkins, also an attorney for Cullen, said they took into account their client's feelings when withdrawing their motion before state District Judge Bob Perkins.

"Ever since I've been on the case I've urged for a change of venue, but he (Cullen) resisted," Jenkins said. "I've come around his way of thinking, and his way of thinking is that the people of Travis County can be fair toward him."

When asked by the judge whether he agreed with his counsels' decision, Cullen answered, "Absolutely."

The 45-year-old Elroy man accused of poisoning the historic live oak tree has been jailed since June 29 under \$20,000 bail. Police allege that Cullen poured the herbicide Velpar around the centuries-old tree during a ritual.

Prosecutors said they were a "bit surprised" by the defense's change of mind about a trial.

"This confirms our position all along that Travis County is as fair a county to be tried in as there is in the state of Texas," said Kent Anschutz, an assistant district attorney.

Perkins, who is expected to rule Dec. 20 on a motion to quash the felony indictment against Cullen, said the earliest possible date for a jury trial would be Jan. 22.

Because of a prior felony conviction, Cullen faces up to life in prison if convicted of felony criminal mischief causing damage in excess of \$20,000.



Staff photo by David Kennedy
Paul Stedman Cullen, accused of poisoning the Treaty Oak, heads for a pretrial hearing Wednesday.

But defense attorneys have argued that Cullen should have been charged with desecration of a venerated object, a Class A misdemeanor. The misdemeanor carries a punishment of a year in jail and a fine up to \$2,000.

According to the Texas Penal Code, a venerated object is a public monument, or a place of worship or burial.

John Giedraitis, the city's urban forester who has been caring for the tree since its poisoning last spring, agreed under questioning by defense attorneys Wednesday that Treaty Oak is considered a landmark.

Defense attorneys also filed a motion Wednesday asking that evidence from Cullen's pickup be suppressed because it was obtained without his consent.

Kirk said that he and Jenkins learned Monday that prosecutors had test results that indicated traces of Velpar were found in dirt samples obtained from the bed of their client's pickup.

According to testimony Wednesday by Sgt. John Jones, lead investigator in the case, a Du Pont official who developed Velpar collected soil samples from the truck in August and conducted tests.

Defense attorneys argued that the samples were taken while the truck was impounded several days after a search warrant was executed. They argued that the search warrant did not authorize police to impound the truck, much less allow their client's property to be submitted for testing.

Wednesday, December 13, 1989

Assured, weary suspect awaits trial in Treaty Oak poisoning

By Jim Phillips
American-Statesman Staff

It has been six months since Paul Stedman Cullen was jailed on a charge of damaging a tree. He bides his time, reading an Isaac Asimov book on physics, but he is weary of waiting to be tried for the poisoning of Treaty Oak.

Cullen, in his first interview since his arrest June 29, said he is confident that he will be found innocent of the attack on the centuries-old landmark.

"I do have faith in the people of Travis County, if the trial is held here, that I'll get a fair trial and be found not guilty," Cullen said during a jail interview Monday night.

"I'm eager to go to trial."

Cullen, 45, has been held under a \$20,000 bond and his pre-trial hearings are expected to end today. District Judge Bob Perkins will rule on whether to move Cullen's trial to another county because of extensive publicity, and on whether the felony charge against him should be reduced.

Speaking in an unemotional drawl and choosing his words carefully, Cullen denied the main points of the state's case. He declined to reveal his thoughts about why an acquaintance would fabricate the story that led to his arrest.

Police have said Cullen poisoned the tree in a ritual, and sources have said that he is believed to have been trying to cast a spell or curse. Police have said they have heard a recorded conversation in which Cullen admits poisoning Treaty Oak.

"No, I've never claimed to have done it," Cullen said.

And he described the allegation of occult activity as "total nonsense."

Asked why he had a sign in the back of his truck that said "Apollyon at the Wheel," Cullen replied: "That has a very simple explanation." He would not reveal

See Assured, A5



Cullen

Assured, weary suspect awaits trial in Treaty Oak poisoning

Continued from A1

the explanation.

"Not right now," he said. "I'll explain nothing right now. To do so would put the explanation in the hands of the prosecution."

Apollyon, from a word meaning "to destroy," was a name given to the angel of the bottomless pit in the Book of Revelation. The name has since become another name for the devil.

Asked about the fact that his prior record means he could be sentenced to life in prison if convicted of the poisoning, Cullen replied: "I look upon this whole thing as just being part of someone else's dream."

"I'm caught up in it, but none of it is of my own doing." He verbally checked off his arrest, incarceration and indictment, then added, "All of it is out of someone else's imagination."

Cullen said he has tired of awaiting his trial, but has not complained about the repeated delays.

"I'm getting quite tired of the whole thing. It's very wearying, to say the least."

But, he said, "I have not made a big deal out of it. It's not my doing. I'm not in any position to pass judgment."

"When one suffers an outrage on a daily basis, day after day, it's hard to keep a peak of ... annoyance."

Although the charge against Cullen is basically vandalism, the alleged amount of damage to Treaty Oak — more than \$20,000 — raises the crime to a second-degree felony, just as theft of more than \$20,000 would fall in the same category. Attempted murder, sexual assault that is not aggravated and indecency with a child by contact also are second-degree felonies, which are punishable by up to 20 years in prison.

Cullen's record — he has served time in prison and jails on and off for 25 years — raised the possible punishment to life.

John Downes, a former landlord and employer of Cullen, said, "I think it'd be a pretty bad

deal for something that, in effect, is no more serious than that. My own sentiment says if he is found guilty, give him some punishment, but nothing that severe."

Terrence Kirk, one of Cullen's attorneys, said Tuesday that Cullen has grown depressed waiting for his trial.

"He's obviously depressed that he's going to have to wait until next year for a trial date," Kirk said. "He was hoping to have a trial date before Christmas."

Kirk said he also had hoped for a quicker trial, but said it was understandable that suspects who had been in jail for a longer period would get the first crack at a jury trial.

"There have been people in the jail waiting for trial longer than he has, which is fair enough, but it's hard on him," he said.

Kirk said he did not expect Cullen to receive a trial until late January at the earliest.

Both Kirk and prosecutors said they know nothing that would affect Cullen's case concerning the similar case of a live oak tree that is a city landmark in Baytown that has been poisoned with Velpar.

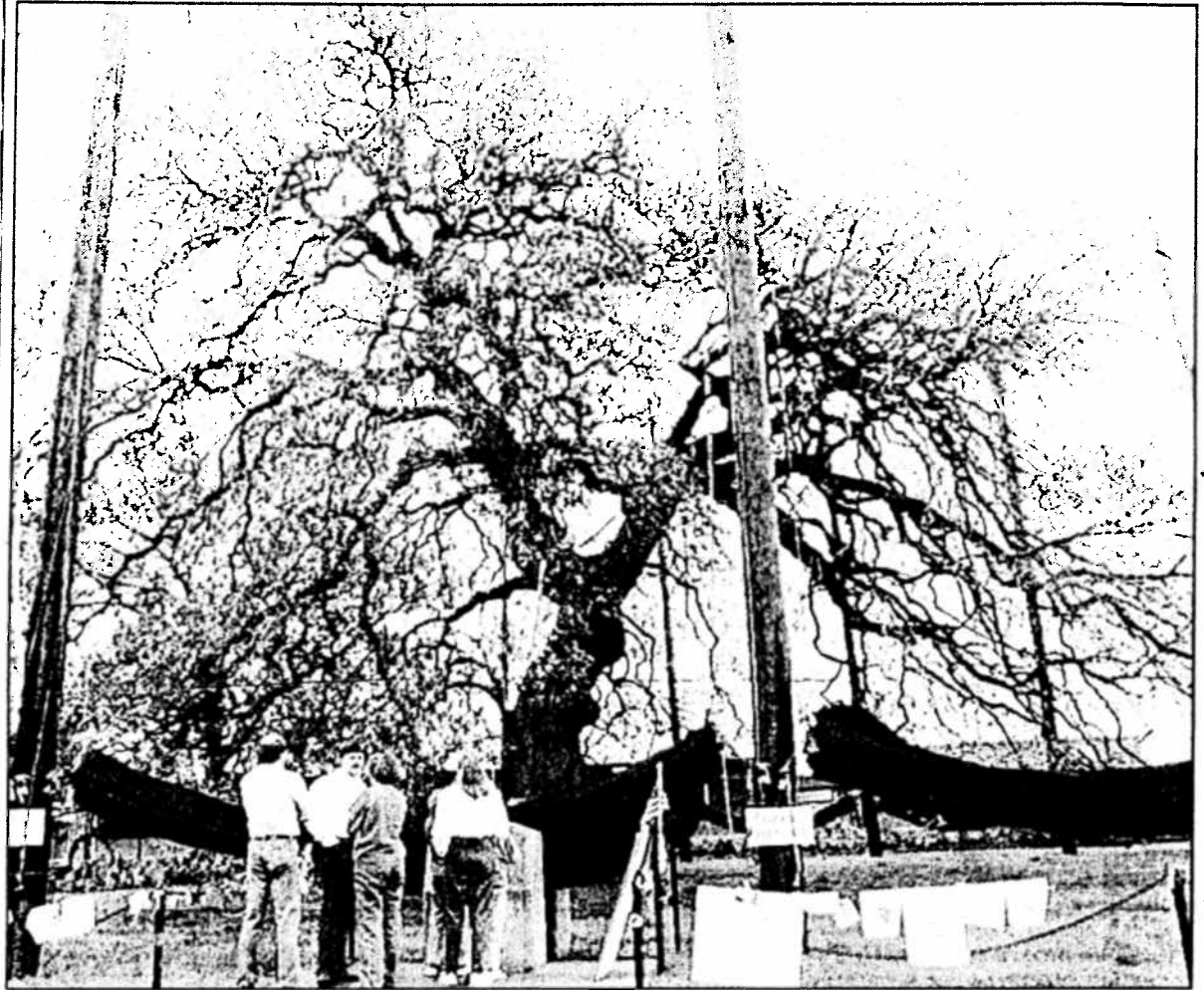
"I don't think right now that ... anybody has anything positive for the state or the defense as far as Baytown," Kirk said.

Cullen said Monday night that he has not been to Baytown and does not know if information about the poisoning of the tree there would help his defense.

After the Treaty Oak poisoning was discovered in early June, an outpouring of sentiment resulted in nationwide publicity, thousands of visitors to the tree in the 500 block of Baylor Street and hundreds of get-well cards and letters.

City officials, with advice from a team of national tree experts, have tried numerous treatments to save the tree, including injecting it with solutions, erecting barriers to protect it from the sun and severing some poisoned roots.

The nation



ASSOCIATED PRESS

Visitors look at the historic Treaty Oak, a poisoned landmark tree in Austin, Texas.

Poisoned Treaty Oak gets well-wishers

ASSOCIATED PRESS

AUSTIN, Texas — People no longer leave chicken soup beneath the branches of the historic Treaty Oak, but well-wishers still send support from as far as West Germany for its struggle to survive a poisoning attack.

Since the May 31 discovery that it was poisoned with a powerful herbicide, the centuries-old live oak has shed five sets of leaves. The sixth is sparse.

It will be spring, though, before experts know the fate of the tree where legend has it that Stephen F. Austin, the father of Texas, signed a treaty with the Indians. The *Handbook of Texas* says there is little foundation for that tale, but that hasn't diminished the popularity of the landmark.

The oak is 50 feet tall and has a limb spread of about 120 feet.

Throughout the summer, well-wishers brought cans of chicken soup, flowers and cards, and rock crystals that some believed would transmit healing powers. Visitors still pin get-well messages, woven friendship bracelets, ribbons and beads on a line

strung around a barrier surrounding the tree.

A West German company recently shipped organic fertilizer for the tree, which has undergone several treatments. Contaminated soil was replaced, and some roots were cut in a move to keep the tree from absorbing more poison. Shade screens were mounted on telephone poles to protect it from the summer sun, and it was misted with water to ease heat stress.

Recent tests show the level of the herbicide, Velpar, has been reduced, city forester John Giedraitis said. If leaves that bud next spring stay on the tree, he said, "We're in luck, and the tree will survive."

Paul Stedman Cullen, 45, of Elroy, has been in jail since his June 29 arrest in the poisoning. He is unable to make his \$20,000 bail or get it reduced. Because of a prior felony conviction, he could face life in prison if convicted in the poisoning, which authorities say may have been done in some sort of ritual.

While spring growth on the tree will be a milestone, Giedraitis said, it could be two years before the tree is "out of the woods." Even if it lives, it always will bear the effects, he said.



Tourism Div./Texas Dept. of Commerce

Texas Memorial Museum

This four-story museum on the University of Texas campus is dedicated to the study and interpretation of natural and social sciences, including geology, paleontology, zoology, botany, ecology and anthropology, with an emphasis on Texas. Permanent and temporary exhibits display native Texas and North American culture, artifacts, wildlife and more. 2400 Trinity Street. 471-1604 or 471-1605.

Texas State Capitol Complex

Encompassing nearly 26 acres in downtown Austin, these immaculately landscaped grounds contain many important state buildings, historic sites, statues and memorials.

** Treaty Oak*

Legend has it that treaties with Indians and other historic agreements were formulated beneath the giant spread of this 500- to 600-year-old tree. 503 Baylor Street.

The Old Locomotive

The last steam engine to operate on the Southern Pacific Railroad is located at Trinity and Fourth Streets.

University of Texas Tower

This landmark is the central administration building for the school. Between 24th & 25th Streets.

Wild Basin Wilderness Preserve

This 220-acre nature preserve contains several rare and endangered species of plants, animals and birds, as well as hundreds of commonly found species. More than four miles of trails, including one designed for mobility-impaired people, pass through woodland, grassland and streamside ecologies. Education programs and classes are also offered. Loop 360, 1.5 miles north of Bee Caves Road. 327-7622.

Zilker Park & Gardens

Austin's largest park has many amenities: Barton Springs, a spring-fed natural swimming pool which is always 68°; Zilker Hillside Theatre, which presents summer outdoor performing arts shows; a playscape for youngsters; a miniature train; and several picnic areas. Zilker Gardens is a small botanical facility which includes an Oriental garden, rose garden, meditation trail, garden center, Esperanza School Building and an 1840s Swedish log cabin. 2100-2200 Barton Springs Road. 477-PARD. Pool: 476-9044. Gardens: 477-8672.

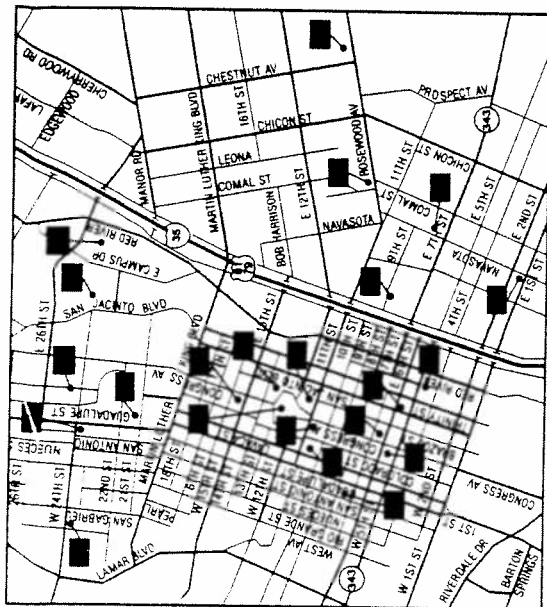
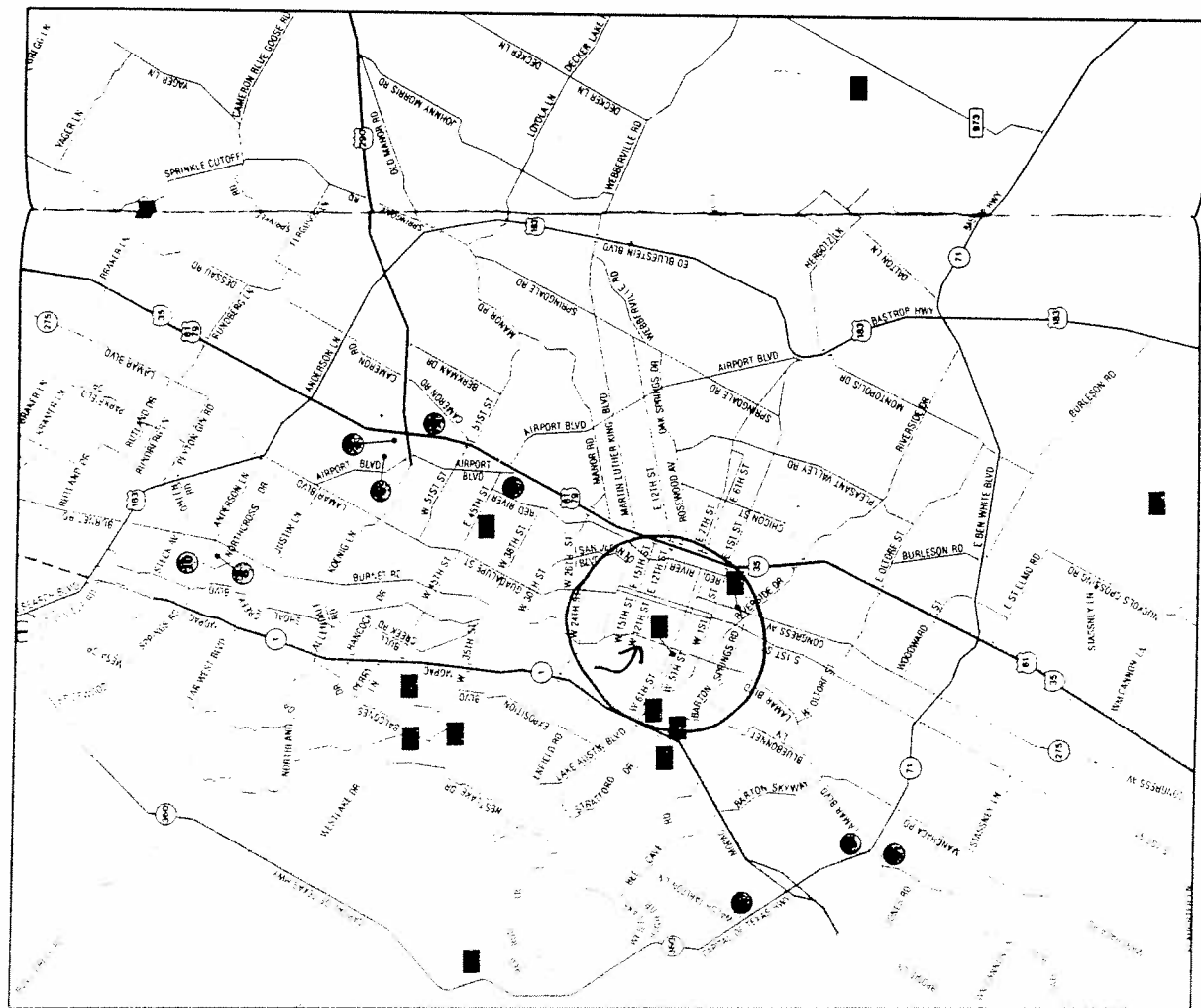
Southwestern Bell

Greater Austin

December 1989-90 Directory Area Code 512



Area Map



Attractions

- Austin Children's Museum
- Austin Nature Center
- Barker Texas History Center
- Lyndon B. Johnson Library & Museum
- Bremond Block
- Camp Mabry
- George Washington Carver Museum
- Congress Avenue
- Discovery Hall
- Lorenzo de Zavala State Archives & Library
- The Drag
- Driskill Hotel
- French Legation Museum
- Gettsman Lutheran Church
- Governor's Mansion
- O. Henry Home & Museum
- Old Locomotive
- The Archer M. Huntington Art Gallery (Harry Ransom Center)
- Jourdan Bachman Pioneer Farm
- Laguna Gloria Art Museum
- Lone Star Riverboat
- LUCHA! Museo del Barrio
- Henry G. Madison Cabin
- McKinney Falls State Park
- Mount Bonnell
- National Wildflower Research Center
- Neill-Cochran House

- Elisabet Ney Museum
- Old Bakery & Emporium
- Old Land Office Building
- Old Pecan Street/Sixth Street
- State Capitol Building
- Texas State Capitol Complex
- State Cemetery
- Texas Memorial Museum
- Archer M. Huntington Art Gallery (The Art Building)
- Treacy Oak
- University of Texas Tower
- Wild Basin Wilderness Preserve
- Zilker Park & Gardens

Shopping

- The Arboretum & Arboretum Market
- Barton Creek Square
- Brodie Oaks
- Capitol Plaza Shopping Center
- Dobie Mall
- Hancock Shopping Center
- Highland Mall
- The Lincoln Village
- Northcross Mall
- Westgate Mall
- The Village

AUSTIN TELEPHONE
BOOK - 1990

Tree case to include suspect's felonies

By Berta Delgado
American-Statesman Staff

A state district judge overruled a motion Tuesday to quash inclusion of prior felony convictions in the indictment against the man accused of poisoning the Treaty Oak.

Defense attorneys Terrence Kirk and Richard Jenkins also argued during Tuesday's pretrial hearing for Paul Stedman Cullen that evidence seized during a search of Cullen's trailer should be suppressed, contending that there was no search warrant.

Judge Bob Perkins' decision not to quash mention of previous convictions means that Cullen, 45, could face life in prison if convicted of felony criminal mischief causing damage in excess of \$20,000.

A grand jury indicted Cullen in August on the charge, which carries a maximum punishment of 20 years in prison and a \$10,000 fine. But prior felony convictions enhance the maximum punishment to a life sentence.

Perkins is expected to decide on a separate motion to quash the indictment against Cullen, and to rule on the defense's allegations about the search warrant Dec. 13.

Police Sgt. John Jones, lead investigator in the case, testified Tuesday that he presented two search warrants and an arrest warrant to state District Judge Jon Wisser on June 29. The search warrants, one for the trailer Cullen lived in and one for the property on which the trailer sits in Elroy, were all signed, Jones said.

Because the search warrant for Cullen's trailer has never made it to the case file in the Travis County district clerk's office, defense attorneys say the search was illegal.

Jenkins objected to the presentation in court of a copy of the original search warrant by Assistant District Attorney Kent Anschutz.

Anschutz and LaRu Woody, co-prosecutors in the case, were unable to call State District Judge Jon Wisser to the stand Tuesday because the hearing was running late. Wisser is expected to testify when the pretrial hearing resumes Dec.

See Suspect's, B4

Austin American-Statesman

Wednesday, November 22, 1989



Staff file photo

Lawyers for Paul Stedman Cullen say a fair trial is impossible.

Suspect's crimes to be listed in tree poison case

Continued from B1

13.

Perkins is also expected to rule on a change of venue motion by defense attorneys, who claim that Cullen is unlikely to receive a fair trial in Travis County.

Cullen has been jailed since his arrest June 29. An attempt by defense attorneys to reduce his \$20,000 bail failed last month.

Police say that Cullen poured the herbicide Velpar around the tree's trunk while performing a ritual act. Sources had said that a rivalry between Cullen and another man over a woman may been the motivation behind the ritual.

After the Velpar was discovered in June, the case garnered national attention and generated an outpouring of support for the tree.

In attempts to save the historical landmark, several tons of sugared water have been injected into the tree's base to restore its depleted energy reserves. Last month, city workers severed five of the tree's roots believed to have had the highest concentration of the chemical.

SECTION B



Anaheim, California

Irrigation News

November 14, 1989

Saving the Texas Treaty Oak

By Steven Hamrick

IA members' irrigation systems are just one of a cast of thousands in the attempted rescue of Texas' poisoned historic Treaty Oak.

The Treaty Oak is a living oak tree in the state capital of Austin.

Its 600-year history has been filled with lore and tales of mystic power.

The tree was named for one of these stories. It is believed that Stephen Austin, the "Father of Texas," signed a boundary treaty with the indigenous Native Americans under the tree's canopy.

Trans-generational stories also hold that Native American maidens believed that drinking tea from the tree's leaves would return their lovers to them, and that sharing a potion made from the tree's acorns with a lover under a full moon would insure true love with that person.

Unfortunately, the latest episode of the Treaty Oak's association with mystic powers may have cost the tree its life.

Paul Stedman Cullen has been charged with criminal mischief for allegedly applying lethal amounts of Velpar, a potent herbicide used to kill hardwood trees, to the Treaty Oak's base, probably in February 1989.

News reports from Austin have all carried the same message - that the Velpar was dumped as part of an occult ritual used to protect someone or unite two people.

The poisoning of the Treaty Oak has stirred deep and powerful emotions from many Texans, and especially generations of Austinites who have frolicked under the 120-foot canopy of the tree.

The story of the Treaty Oak has also received a wave of publicity, as the tree has been featured in the *New York Times*, *USA Today*, the *Washington Post*, and ABC's "Good Morning America" and "Prime Time Live."

But while the Cullen case hinges on one surprise witness after another, and editorials are being written about the tree and its news value as compared to other social issues, and as Texans call for the hanging of the guilty from the tree's tallest limb, the Treaty Oak is battling for survival.

Austin Urban Forester John Giedraitis and City Irrigator Dick Finnegan are trying to accomplish a

Continued on page 3

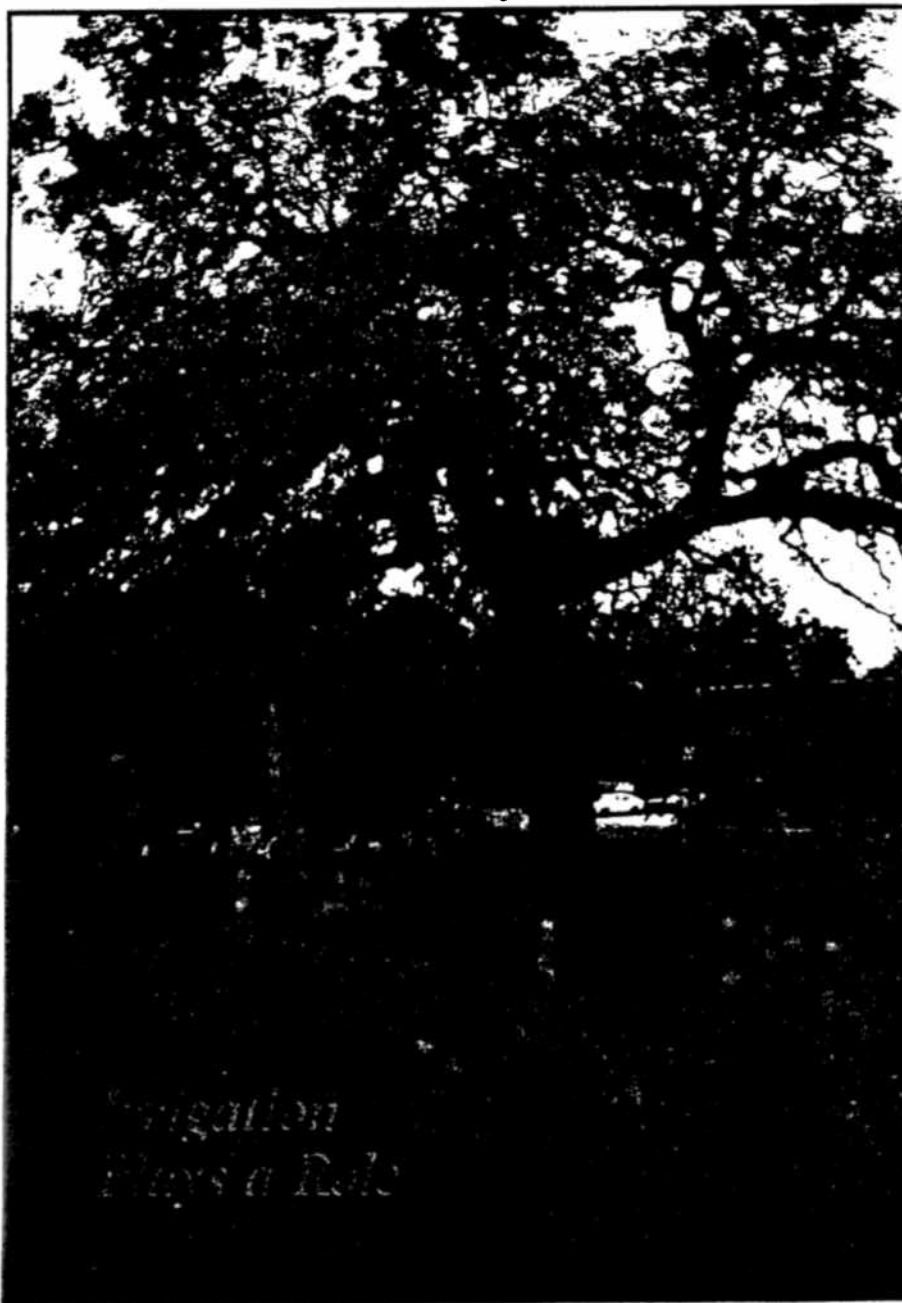


Photo courtesy of Jack Sauerthaler and Arthur Costonia

Saving the Texas Treaty Oak

Continued from page 1

first - saving a tree from the ravages of Velpar.

"Velpar is applied to kill hardwoods and remove them from areas, such as a nursery trying to grow Christmas trees or clear an area where they are trying to build railroad tracks," said Giedraitis. "No one's tried to save a tree from Velpar."

After local residents noted the tree looked ill in May, Giedraitis ordered tests on the tree which discovered the presence of Velpar.

The first move was to inject the earth around the Treaty Oak with a mixture of charcoal and experimental microbes.

They used a truck-mounted bean sprayer, and injected 100 gallons of charcoal and 100 gallons of microbes 18 to 24 inches into the earth at 150 psi.

The idea was that the activated charcoal would attract and bind with the poison, and the microbes, or bacteria, would break down and consume the chemicals.

However, this effort failed, as the Treaty Oak shed its second set of leaves in attempt to flush the Velpar out of its system.

After additional soil testing showed the Velpar had penetrated three feet into the earth, Giedraitis and Finnegan gave the order for Austin Public Works employees to grab some shovels.

Right after Memorial Day, city foresters removed a six-inch-deep layer of soil at the Treaty Oak's base, replaced it with clean soil and injected microbes through two-inch holes three feet down to break down the poison.

After the tree did not show dramatic improvement, excavation was the name of the game.

City workers dug even deeper, down to the roots in a 30-foot circle around the tree.

The workers hit a sprinkler system that is used for the adjoining turf area while they were digging.

However, Finnegan ordered that it not be repaired for fear that it was contaminated with Velpar and would spread the deadly herbicide if used again.

Workers then sprayed the roots with a liquid mixture of micro-nutrients.

The mixture created a slurry, and then a sump truck backed up to the worksite sucked the slurry off of the roots, which was taken to a treatment plant.

New soil replaced the old, and the outer roots were fertilized six to eight inches deep with a pressure injector at 300 psi.

City Irrigator Dick Finnegan expressed cautious optimism at this point.

"I was pleased with the results, since the tree tested at a lower parts per million of Velpar," Finnegan said.

But, he added, "even a lower ppm than this can kill a tree."

But as the Treaty Oak's chances

were looking dimmer, a cowboy from Dallas rode into town with a big money-sack in his saddle.

On June 23, billionaire H. Ross Perot began assembling a panel of tree experts, who would fly into Austin at Perot's expense. In fact, Perot offered Giedraitis a virtual blank check to aid in the efforts to save the historic Treaty Oak.

The panel's first suggestion to Giedraitis was a process termed "foliar feeding."

Using a spray rig truck from Bartlett Tree Experts in Austin, Giedraitis had the tree sprayed with 100 gallons of a foliar fertilizer called Rapid-Gro.

The process was designed to carry water and nutrients directly into the leaves and twigs.

At the time, Giedraitis said the idea was "a good suggestion."

Four months later, he feels the same way. "Did it help the tree?" said Giedraitis. "Let's put it this way - it didn't hurt it."

By June 26, Perot's expert panel was in Austin and analyzing the tree.

However, one of the best suggestions for reducing the Treaty Oak's stress was given by Perot himself.

The financial wizard thought using dechlorinated water to mist the tree's foliage would reduce stress from the oppressive Austin sun without activating the Velpar.

The experts agreed with the theory, and Finnegan was hard at work with this latest project.

First, he had to locate a spring water donor, and he found one in the Utopia Spring Water Company.

Cleaning dirty sprinkler heads was next for the city irrigator.

After that came the designing of a most unique irrigation system - one that actually had to climb up to the top of the 50-foot tree and spray the top foliage, since that was the area of greatest heat stress.

"We had to use such a unique system because we needed something to keep it cool to aid in photosynthesis," said Finnegan.

Finnegan's first call was to Alex Garza, the owner of GPM, an irrigation consulting firm in San Antonio, TX.

After listening to Finnegan's plight, Garza recognized a number of problems.

"First, he needed a pump that would work at 115 volts and accomplish these sprays that are 50 feet up in a tree," Garza said.

"We calculated the hydraulics, and determined the least pressure for the most dispersal," Garza continued.

"Installation looked like a problem," Garza said. "It's very difficult to install a sprinkler considering the length of the branches (127 feet) and the height."

Finnegan remembered looking at these problems as well.

"Figuring out how many heads I was going to need was another problem," Finnegan told *Arbor Age* magazine. "It was just not like we learned in school! I figured it out on paper, but that wasn't the answer. What we had to do was actually get up into the tree and determine where the heads needed to be placed and, from that, decided how many heads we needed."

"But," Garza acknowledged, "we wanted to keep it cool since heat would only add stress to the tree."

Finnegan's next call was to Mike McClung, a salesman at Austin Pump and Supply who had worked with the city irrigator on previous projects.

Since Austin Pump and Supply is a Weather-Matic distributor, McClung and Finnegan decided on a Weather-Matic 200 Series sprinkler system with plastic nozzles and a plastic 95P shrub adapter.

Plastic was chosen for its non-corrosive qualities, which would be important if Giedraitis and Finnegan decided to run chemicals through the system.

They also agreed the best way to install the system would be to employ cherry pickers to hoist the workers to the tree-top.

McClung says the misting will end after this autumn, when the tree becomes dormant. At that time, there is no photosynthesis to assist, and no threat of heat stress from the sun.

What was left was to figure out was a way to pump the spring water to the upper reaches of the Treaty Oak.

Finnegan turned to David Torres of Alamo Machinery in Austin for that problem.

Torres believed that a Sta-Rite five horsepower pump would get the job done, so he ordered one for next day delivery from their warehouse in San Antonio.

"They needed to flow at a high psi to get it to the top of the tree - a lot of pressure," Torres said.

When the pump arrived, Torres, Finnegan, and McClung worked to place the PVC lines in the tree to deliver water to the shrub heads for a dose of top-down irrigation.

Torres was moved by two observations he made that day.

The first was the tree's worsening condition.

"The tree had just lost its second set of leaves," Torres said.

"The Treaty Oak is usually in full bloom at that time of year (June), and you could tell it was really struggling."

Torres was also impressed with the heartfelt devotion that the Austin city workers gave to the Treaty Oak.

"Finnegan put an incredible amount of time in to care for the tree," Torres said.

"And then there was (Austin city worker) Blas Rodriguez, who was manning the tree and its new sprinkler system from 5 p.m. right through the next morning."

Finnegan was just as impressed with the service he received in acquiring the systems.

"It was really neat how the manufacturers and wholesalers came to-

gether," Finnegan said. "They got everything right away, and just bent over backwards."

While the complex irrigation system was being rigged, the Treaty Oak received its first piece of good news, as soil samples taken in the last week of June showed no signs of Velpar.

The trenching, root-spraying, and microbe and charcoal injections had effectively cleansed the soil.

But Finnegan kept a new turf sprinkler running to provide water to the root area of the tree, so that the tree would continue to send Velpar into the third set of leaves before they fell off.

Giedraitis called this third set of leaves the "sacrifice set."

As the nation celebrated its 213th birthday, making the U.S. less than half the age of the Treaty Oak, the decision was made to sprinkle the sickly oak with spring water at half-hour intervals.

On July 7, the amount of water dripped on the tree was set at 1500 gallons per day, which was increased to 16,000 gallons per week by September.

By the middle of July, the city had erected 50-foot polypropylene closed-weave screens around the Treaty Oak, using telephone poles as a support system. This maneuver was designed to further protect the tree from the damaging sun.

Finnegan also used these screens as new sources for irrigation.

"We noticed that the outer perimeter of the tree was not being covered, so I put sprayheads on the six telephone poles to mist the tree some more," Finnegan said.

By July 20, Finnegan had meters set to monitor soil moisture.

Then, on July 26, the first tests on the Treaty Oak's wood showed the ancient tree to be massively poisoned.

Giedraitis was desperate at this juncture, and he ordered the injection of 35 gallons of a saltwater solution into the Treaty Oak in more than 100 places.

It took workers about 90 minutes using a low-pressure water pump to inject the solution through a system of pipes attached to the tree.

This action, which Giedraitis acknowledged as drastic, was a source of controversy among "tree experts."

While Giedraitis was supported by most of Perot's panel of experts, self-described tree "wizard" Stephen W. Redding vehemently disagreed, citing the last-ditch effort as the final straw in the tree's demise.

Redding claimed that Giedraitis and company used an ineffective sprinkler system, failed to properly protect part of the tree from "sun scald," and used sludge as a compost - a compost so lethal that he said it killed two earthworms he put in a sample.

The final blow, said Redding, came when Austin officials drilled more than

Continued on page 8

Saving the Texas Treaty Oak

Continued from page 6

100 small holes in the tree to inject what was later reported to be a salt and sugar solution.

Giedraitis countered this public criticism (Redding's comments were published in the *Philadelphia Inquirer* on August 2) by saying that the compost was a mild fertilizer, and the injections were an effort to neutralize the Velpar.

But Redding pressed on with his attack of Austin's efforts.

In the August 11 edition of *The Austin Chronicle*, Redding claimed that the tree died on July 25 at 5:20 pm.

He said the Treaty Oak died after being punctured by over 100 "painful" 5/16-inch holes in the injection process.

Redding found further discontent with a lack of leaf-raking by the Austin

group.

The leaves are full of Velpar when they fall off the tree. Then, when the leaves are showered with water that is piped into the tree's branches, Redding said, "after two days, 90% of the Velpar would have leached out - back into the soil around the tree, where the process begins all over again."

Redding added that a light mist should have been applied to the tree's canopy instead of dripping water down the Treaty Oak's branches and trunk.

However, an article in the August 1989 issue of *Texas Forest Service News* indirectly refuted many of Redding's claims.

The article claimed that the poisoned area under the tree was kept dry under plastic when rain threatened so the tree would not absorb any more

Continued on page 9



The Treaty Oak - witness to ancient tribal rites and the settlement of Texas.

Continued from page 8

poison.

And Dr. Brad Barber of the Texas Forest Service said that workers were continually raking leaves so that any herbicide that was in the leaves would not be recycled into the tree.

Yet, it still remains unclear as to whether the leaves were quickly raked up in the beginning of the treatment process.

A tree loses energy every time it drops leaves. The Treaty Oak normally loses two sets of leaves a year.

By Labor Day, the tree had lost four.

The Treaty Oak's energy is maintained as carbohydrates, so the panel of experts opted to inject a mixture of sucrose and water for energy.

This latest treatment was recommended by Arthur Costonis, a Florida plant disease specialist.

The scientific-grade sucrose was obtained by David Appel from Texas A&M University.

The sucrose was mixed with spring water at 15 grams per liter and pumped into the Treaty Oak at low pressure.

This mixture contained a much higher percentage of sugar than the July injections, which employed milder fructose, a fruit sugar.

Seventy gallons of the mixture were injected through 44 holes on September 5th and 6th.

On September 7, dozens of gallons of sugared water were injected into the Treaty Oak to help replace the tree's depleted energy reserves.

This was the first time a living oak tree had been injected with sucrose.

Costonis acknowledged that the injections were controversial even among the Perot panel, but he agreed they were necessary to aid the tree's production of the natural carbohydrates the Velpar inhibits.

Appel expressed encouragement that the tree was rapidly accepting the sugared water.

Like Appel, Costonis was encouraged as a result of these latest injections, although his optimism was for different reasons.

Costonis found the tree to be healthier than he expected.

"The tree was very easy to inject," he said. "We find only trees in good health are easy to inject. It indicates the vascular system is working well."

The Treaty Oak faced more than injections in September. It was also the site of 18 new irrigation heads that pump spring water to sterilize the soil.

By October, the fatigued Treaty Oak was working on its sixth set of leaves, and foresters were predicting that the tree's fate will not be sealed until next spring, when the tree is slated to produce its first set of leaves for the year.

For now, the efforts to save the tree continue. Perot's financial contribution has exceeded \$100,000, the Cullen case has become entangled in technicalities, and Texans mourn the approaching demise of a beloved landmark.

Texas Tech University's Dr. David Morgan has taken 200 twig cuttings and 50 root cuttings from the Treaty Oak in an effort to obtain tissue cultures which he will use to attempt to "clone" the Treaty Oak, and perpetuate its gene for the ages.

Giedraitis summed up the feelings of his fellow Texans and expressed his own frustration when he told *The Washington Post*, "People love trees. They are the most benevolent things in our environment. In primal ways, people relate to trees, in their souls. That's why this crime offends people so much. They are disgusted that a human would do this to a tree that had withstood so many centuries against astronomical odds. From millions of acorns comes one tree, and from millions of trees comes one Treaty Oak. It stood here for centuries, a venerated object. And it died on our watch in 1989."

"Why?"