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LEE ARTHUR CARD
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SCANDAL AND REFORM: A HISTORICAL STUDY OF CORRUPTION AND REFORM IN OKLAHOMA'S COURT SYSTEM, 1956-1967

A DISSERTATION APPROVED FOR THE
DEPARTMENT OF HISTORY

BY

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Dr. Ben Keppel, Chair

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Dr. Warren Metcalf

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Dr. Ronald K. Gaddie

_____
Dr. James S. Hart, Jr.

_____
Dr. Roberta Magnusson

DEDICATION

This dissertation is dedicated to my wife Debbie. She has encouraged me in this quest, has proofread my writings, and has put up with messy papers and documents all over our house. She has been a source of inspiration to me, and I can never thank her enough. This book is also dedicated to the Oklahoma lawyers and lawmakers of the 1960s, who skillfully guided the process of reforming a broken judicial system. They overcame the humiliation the legal profession experienced in the scandal and created a judiciary of which Oklahoma can be proud. Finally, the dissertation is dedicated to my dad, William L. Card, and my uncle, G.M. Fuller, examples of Oklahoma lawyer-legislators who served the state honestly and well.

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I am grateful to my family and friends. My wife Debbie, to whom this dissertation is dedicated, has been my inspiration for this quixotic adventure. My children, Sarah Humphreys, Matt Card, and Dan Card, as well as their spouses Scott, Hailey, and Jenny, have provided encouragement and support. I know my grandchildren, Kate, Braden, Lauren, Madelyn, Will, Andy, and Brody will grow up with a strong sense of the importance of the past. My former colleagues, Christine Morgan, Holly Oakley, and Lora Stevens provided me with invaluable technical and proofreading help. Finally, I thank my late parents, William L. Card and Alva Card, for their encouragement and their interest in education, history, and government.

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ABSTRACT

In the years 1964 and 1965 Oklahomans learned the shocking details of corruption in the Oklahoma Supreme Court. At least three justices had accepted substantial bribes in exchange for their votes. In the case of at least one justice, this practice had been ongoing for a generation, and rumors of corruption had stained the Court's reputation for years.

Oklahoma's judicial framework had been established at statehood and had remained unchanged since that time. All judges were elected in partisan elections, running as members of their political party, which made them political as well as judicial officeholders. No system existed to hold judges accountable for their conduct, other than the ballot box or the unlikely threat of impeachment. At the lowest level of the judiciary, unqualified justices of the peace worked under a system which gave them a vested interest in the outcome of the cases they heard. Oklahoma judges were therefore vulnerable to public pressure yet immune from personal accountability.

I argue that Oklahoma's domination by one political party and the control of the legislature by conservative rural legislators helped to prevent reform of Oklahoma's judicial system, even after the graft had been exposed. It was only after the Republican Party began to establish a foothold and the legislature had been reapportioned that meaningful changes to the court structure became viable. Oklahoma's governor and legislators displayed considerable political acumen in

presenting a court reform proposal acceptable to the state's voters. These reforms created a considerably more professional and competent judiciary in Oklahoma.

INTRODUCTION

Between 1963 and 1967, Oklahoma experienced a catastrophic bribery scandal at the highest level of the state's court system. Oklahomans learned to their horror that, in exchange for large amounts of cash, justices of the Oklahoma Supreme Court decided cases in favor of the highest bidder. Exposure of the scandal led to the successful prosecutions of those responsible and, after considerable skillful political maneuvering, to significant reform in Oklahoma's judicial system. These events have not yet received full historical study.

As time has passed, the judicial scandal and reform have faded from political memory. To the extent they are remembered at all, the events bring a picture of the outrageous, brazen nature of the crimes and the enormous, long-standing criminality committed by men who were equally outrageous and brazen. In this dissertation I propose to analyze the impact of the scandal and evaluate the nature of the reform which resulted from it. Looking past the surface drama of the scandal, the corrupt events conform to a narrative of corrupt politics which are a part of Southern history in the mid-twentieth century. Large personalities and extravagant demonstrations of theatrical skill are important in one-party systems where issue debate is seldom heard and many important policy decisions are made by an economic and political elite behind closed doors and with little connection to voters.

At the time the crimes were committed, Oklahoma had been a state for only a half-century. White immigration to Indian Territory had commenced only after the Civil War, while Oklahoma Territory had been open for white settlers for less than twenty years before statehood came in 1907. Like all frontiers, Oklahoma reflected the backgrounds and cultures of its new inhabitants. Its political leadership particularly reflected influences of the West, the South, and Native Americans.

We nostalgically think of early Oklahoma as a western frontier but overlook its position as a geographic, political, and cultural borderland of the South. Despite the presence of the distinctive feature of a Native American population involuntarily assigned to federally designated "Indian Country", many of the new white settlers, natives of the South, envisioned the new state in which "white over black" was the strongest assumption. Early Oklahoma was also a place in which people of energy and intelligence could improve their lot in life. However, the absence of established governmental rules offered opportunities for devious, outsized personalities to exploit others for their own benefit. Thousands of Native Americans and freedmen lost their allotments to hucksters and embezzlers. A generation later O.A. Cargill, Hugh Carroll, N.S. Corn, and others would continue this practice of exploiting innocent workers and governmental weakness.

For the most part, Oklahoma's constitution was written by white men with Southern roots. In writing Oklahoma's constitution, the drafters relied enormously on the advice of populist Democrat William Jennings Bryan.

Populism, a political movement which was fading in other sections of the country, still thrived in Oklahoma in 1907, and the constitution reflected that school of political thought. Oklahoma's judicial framework also reflected this. One of populism's features, the long ballot with many elected officials, played a significant role in the scandal which came a half-century later. To this we must add an attitude toward public institutions and public spending on them. The great Southern historian C. Vann Woodward described the propensity of Southern Reconstruction-era political leaders to pay public employees penuriously, thus being penny-wise and pound-foolish. This occurred in Oklahoma as well.

The judicial scandal and subsequent reform had a permanent effect on Oklahoma's political and legal landscape, and they deserve serious historical attention. First, this work will explore the weaknesses of the political and legal system which allowed the scandal to occur. Secondly, I will explore the efforts to expose graft in the highest level of Oklahoma's court system, the resistance to the enactment of reform, and the demonstration of extraordinary political skill and leadership in the eventual passage of the constitutional amendments achieving judicial reform.

Lawyers dominated the state's political structure. Many of the legislators who championed and ultimately enacted judicial reform were attorneys, who comprised the largest single occupation in the legislature. Reform was led by Oklahoma lawyers, hundreds of whom acted bravely and capably in fixing a corrupt and broken system. However, this work will also discuss the inherent potential conflict between being a part-time legislator and a full-time lawyer.

Most lawyer-legislators served their districts honorably and capably, using their legal training to draft and pass legislation which benefited the state and their districts. Some, certainly not most, lawyer-legislators abused their state office for the gain of their clients and themselves, blurring or obfuscating the line between representing their clients and representing their constituents.

The magnitude of the bribery scandal gradually became clear during the years between 1963 and 1965. By the time the scope of the corruption was known, the men who had committed them had become elderly and infirm. The bribery scandal involved five central figures: Justices Nelson S. Corn, Earl Welch, and N.B. Johnson; attorney O.A. Cargill; and businessman Hugh Carroll. All five men had come to maturity in the challenging frontier world of statehood-era Oklahoma. All were self-educated and had, through intelligence and perseverance, achieved positions of power, public respect, and responsibility. All five, however, descended into the ugly business of influence peddling and bribery, betraying those who had trusted them. This study will discuss some of the defects in Oklahoma's political and judicial systems, which helped provide the opportunity for these men to perpetrate these offenses.

Although corruption certainly occurred in many other Supreme Court cases of the time, officials conclusively proved bribery in only three cases: Oklahoma Tax Commission v. Selected Investments, Marshall v. Amos, and Oklahoma Company v. O'Neal. Marshall and Oklahoma Company both involved oil and gas production; in the latter case, O.A. Cargill's daughter and son-in-law were litigants with an enormous stake in the outcome. A fourth case, the Meadors

will case, almost certainly involved misconduct as well. Of these cases, the most spectacular and egregious was *Selected Investments*, which involved financial and legal misconduct on a monumental scale.

Reform came in 1967. The changes were far-reaching and completely changed Oklahoma's court system. Voters narrowly approved the establishment of the Judicial Nomination Commission and the creation of the Court on the Judiciary to deal with judicial misconduct. It also centralized the state's court system, placing district courts under the control of the Supreme Court and a statewide court administrator.

The reforms also greatly changed judicial selection. Like many states, Oklahoma elected its judges on a partisan ballot, in which the candidate identified himself by political party. In a one-party state like Oklahoma, this meant the winner of the Democratic Party's nomination nearly always won the election. This was particularly true in judicial elections, which had few issues and generated little voter interest. The 1967 constitutional amendments changed the electoral process, initiating a referendum for appellate judges in which the electorate decides whether or not an appellate judge should be retained in office but does not have the choice of another candidate for whom to vote. The reforms also significantly modified the electoral process for trial judges. Post-reform trial judges now ran in contested elections, but with their appearances on the ballot nonpartisan, without disclosing party affiliation.

Structurally, the reform also abolished the obsolete and ineffective office of justice of the peace and replaced the antiquated county attorney system with the district attorney system. Oklahomans replaced justices of the peace with the position of special district judge, a nonelected professional jurist with considerably more power, prestige, and professionalism than the JPs. With a few changes, this system remains in place today. As of this writing, however, some of these reforms, especially Oklahoma's retention system for appellate judges and the Judicial Nomination Commission, are under fire from critics. A strong possibility exists that change may come again.

CHAPTER ONE

A SYSTEM IN NEED OF REFORM

BACKGROUND

In 1967 Oklahoma's voters approved an ambitious and far-reaching reform of its court structure, whose basic framework remains in place today. The reform came as a result of a shocking scandal, in which at least three justices of the Oklahoma Supreme Court accepted substantial bribes in exchange for their votes on cases before the Court. After some halting attempts at reform failed, skeptical Oklahoma voters finally enacted the changes to the court structure. The purpose of this dissertation is to explain this sequence in a historical context; the specific events will be discussed in detail in later chapters. However, in order for the reader to understand the historical perspective and the importance of some historical works, a brief outline of events is necessary.

In 1964 and 1965 Oklahomans learned the gravity of the Supreme Court scandal. At least three justices, N.S. Corn, Earl Welch, and N.B. Johnson, had accepted bribes in exchange for their votes on at least three cases. For thirty years Corn, the judicial leader of the bribery scheme, had carried on a corrupt relationship with Oklahoma City attorney O.A. Cargill, in which Cargill would telephone Corn and instruct him how to vote on cases identified by Cargill. One of the cases in which bribery was proven involved an Oklahoma-based investment

company called *Selected Investments*, in which Corn accepted the then-staggering sum of $150,000 from Hugh Carroll, the company's president, in order to change the result of the case.

Oklahoma's judicial system had been established at statehood and had remained unchanged since then. All judges were elected in partisan elections, running as members of their political party. Other than the ballot box or the unlikely event of impeachment, no system was in place to hold judges accountable for their conduct. Appellate judges were nominated from specific geographical districts but subject to statewide general elections, thus tilting the wheel in favor of the dominant political party. Trial courts consisted of district judges with wide jurisdiction, county judges, who normally handled probate and juvenile cases, and justices of the peace. The justice of the peace system was a particularly weak link; non-lawyer JPs were compensated in part by the revenue they generated, giving them an inherent conflict of interest.

The movement for court reform came in the mid-1960s, a time in which Oklahoma, along with the rest of the country, was rapidly evolving politically and demographically. Oklahoma was beginning to develop a viable Republican Party, including the election of the state's first two Republican governors. Additionally, the federal courts forced Oklahoma's legislature to reapportion itself on the basis of population, greatly diminishing rural Oklahoma's ability to control legislation. Without both of these developments, the 1967 enactment of reform would have been unlikely.

LEADING WORKS ON SOUTHERN POST-WAR HISTORY

The development and reform of Oklahoma's courts, like its other political issues, must be viewed through the prism of a larger fact of life: both Oklahoma Territory and Indian Territory were born and matured in the midst of a clash of cultures among Native Americans, African-Americans, and whites. The state reflects these influences today. As historian David A. Chang, whose work will be discussed later, has said, "Here, just as cotton fields abutted ranchlands, southern history collides with western history."[1] The accuracy of this observation is undeniable. I argue, however, that the state's political system borrowed more from the South than from the other surrounding political cultures.

Oklahoma's racial makeup differed from the Old Confederacy. Thousands of Native Americans, many of whom had been forcibly exiled from the South, lived in the state. Oklahoma's African-American population comprised only about eight percent of the state's population, a fraction of the numbers for states in the Deep South.[2] Despite this, the state's political leaders in the early statehood years, many of whom came from the South, had the racial attitudes of post-Civil War southern whites. Fear of "takeover" by blacks was alive and well.

For this reason it is important to keep the facts of Southern history, especially Reconstruction and its Redeemer aftermath, close at hand. Looking back now, it is clear that, like the rest of the South, Oklahoma developed a one-party political system in which public institutions were weak and could be

[1] David A. Chang, The Color of the Land: Race, Nation, and the Politics of Landownership in Oklahoma, 1832-1929, (Chapel Hill, University of North Carolina Press, 2010), Introduction.
[2] 1910 United States Census, Oklahoma, p.7.

manipulated for private gain. Until the 1960s, even though the state was becoming more urban, rural interests held a disproportionate amount of political power, especially in the legislature.

The work of C. Vann Woodward is especially useful here, because Woodward first identified the economic motives and interests behind the creation of a weak and dysfunctional state government. To Woodward many of the South's issues had to do with economic class.[3] In Oklahoma, as well as the rest of the South, the real fear was of democratic participation with a broad base and the inclusion of African-Americans and lower-class whites into the decision-making process.[4] The illusion of a robust democracy was facilitated by politics in which personality and showmanship were particularly valued, and scandal and self-dealing came with the territory.

Joel Williamson, another historian of the South, sees Oklahoma as "the most curious of Southern states in race relations. In some aspects of racial activities, it is also the most revealing precisely because of its peculiarities." In particular, Williamson notes the large number of settlers who entered northern and western Oklahoma from the North, especially Kansas, and that federally-

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[3] C. Vann Woodward, Origins of the New South, 1877-1913, (Baton Rouge: Louisiana State University Press, 1951, 1971, 1997). C. Vann Woodward, Tom Watson: Agrarian Rebel, (New York: Oxford University Press, 1948, 1955, 1963).

[4] For the first half of the twentieth century, events of the post-Reconstruction period had been interpreted by the Dunning theory of Southern history, which taught that the region had been victimized during the Reconstruction years by scheming Southern whites and out-of-state charlatans who, combining with newly freed and unprepared African-Americans, created a disorderly society whose integrity was saved by white Redeemers. This theory was furiously refuted by African-American historian and journalist W.E.B. Dubois in his 1935 book Black Reconstruction in America. Unfortunately,scholars did not take Dubois' work seriously until the 1960s and 1970s. See also Eric Foner, Reconstruction: America's Unfinished Revolution, 1863-1877, (New York: Harper & Row Publishers, 1988).

appointed Republicans had governed Oklahoma Territory, although the majority of its population had immigrated from the South, especially Mississippi, Arkansas, and Texas. In that respect, according to Williamson, Oklahoma was a "Southern state with a large Yankee colony" and, in that sense, was "the last state to be redeemed from Reconstruction."[5] The fact that Oklahoma did not become a state until 1907 allowed the state to "make up an official position on race relations out of materials already formed, to utilize the ready-made fabric that painful experience had woven in states east and south of them. Oklahoma had only to cut and sew, and then slip smoothly into its racial garments."[6]

As later chapters will demonstrate, advocates of Oklahoma court reform had to travel a very tangled route, meeting resistance every step of the way. In this respect Oklahoma politics closely resembled the backwater Southern politics described by political scientist V.O. Key, Jr. in 1949. Key's extensive comments on the pitfalls of one-party states are extremely important and apply to the Oklahoma of the 1950s and 1960s. To Key, the lack of a viable two-party system led to factionalism, lack of interest by the electorate, and disposition toward

[5] Joel Williamson, The Crucible of Race, (New York and Oxford, Oxford University Press, 1984), pp. 241-245.

[6] Ibid., p. 241. For one influential writer's view of Southern thinking in the Depression Era, see W.J. Cash, The Mind of the South, (New York: Vintage Books, 1941, 1991). For a more optimistic view of the South in general, acknowledging its problems but also stressing the development of literature and music in the region, see Edward L. Ayers, The Promise of the New South: Life After Reconstruction, (New York and Oxford: Oxford University Press, 1992).

favoritism. All of these problems entered into the Oklahoma Supreme Court scandal.[7]

Finally, I found Robert A. Caro's multi-volume biography of Lyndon Johnson useful because it demonstrates remarkable similarities between the political cultures of Texas and Oklahoma during the mid-twentieth century. The second book in the series, Means of Ascent, particularly describes an environment of favoritism and underhanded friendliness to moneyed interests, a theme which runs throughout this study as well.[8] As we shall see, a number of Oklahoma's leaders were very familiar with this style of governing: decisions were made behind closed doors, with little or no sense of where private interests ended and the public interest began.[9]

LEADING WORKS ON OKLAHOMA HISTORY

We must now turn to the history of Oklahoma as it evolved as part of the American borderland between the West and the South. In their 1924 text A History of Oklahoma, former University of Oklahoma president James Shannon Buchanan and prominent Oklahoma historian Edward Everett Dale provided an explanation of the complicated post-Civil War events which occurred in

[7] For an account of the effect of the one-party system on the preparation of Oklahoma's Constitution, see Danney Goble, Progressive Oklahoma: the Making of a New Kind of State, (Norman: University of Oklahoma Press, 1980).
[8] Robert A. Caro, Means of Ascent, (New York: Vintage Books, 1991).
[9] For an description of the use of favoritism in Alabama politics during this time period, see Dan T. Carter, The Politics of Rage: George Wallace, the Origins of the New Conservatism, and the Transformation of American Politics, (Baton Rouge: Louisiana State University Press, 1995, 2000).

Oklahoma Territory and Indian Territory. Despite the fact that the book is nearly a century old, their version of the sequence of events of the Oklahoma land runs remains quite sound. Dale was a Harvard student and close friend of Frederick Jackson Turner, whose "Frontier Theory" argued that the lure of free land led to constant white settler movement which promoted individuality and led every American generation to "primitive conditions on a continually advancing frontier line."[10] This concept of advancing in the face of "primitives" is similar to the way Southern Redeemers saw their mission. Turner's influence is evident in Dale's explanation of the Dawes Act. Both Dale and Oklahoma historian Grant Foreman argued that the Dawes Commission, which abolished common ownership of tribal land and allocated individual allotments of land to individual tribal members and their freedmen, became necessary because of corruption in tribal governments and inequities in tribal land occupation. The Turner thesis also appears in Grant Foreman's 1942 work, also entitled A History of Oklahoma.[11]

In his 1965 survey of Oklahoma history, Oklahoma: a History of Five Centuries, University of Oklahoma professor Arrell M. Gibson argued that Congress deemed the Dawes Act as a necessary condition to preparing Indian Territory to join Oklahoma Territory as a state. Gibson also provided insight into the influences of big business into both territories in the pre-statehood years, especially railroads, coal and cattle. Gibson emphasized the differences in the

[10] James Shannon Buchanan and Edward Everett Dale, A History of Oklahoma, (Evanston, Illinois: Row, Peterson and Company, 1924.
[11] Grant Foreman, A History of Oklahoma, (Norman: University of Oklahoma Press, 1942), pp. 273-309. "Grant Foreman," Encyclopedia of Oklahoma History and Culture, Oklahoma Historical Society, www.okhistory.org.

politics and infrastructure of the two territories, with Oklahoma Territory developing businesses, roads, and schools far more quickly than Indian Territory.[12] The reader senses Turner's influence on Gibson as well. More recent historians now argue that the allotment system constituted a successful attempt to move Native Americans out of the way in order to make room for white settlement.[13]

In 2000 Murray R. Wickett published his study of the tension among whites, Native Americans, and African-Americans in Oklahoma between the Civil War and statehood.[14] As pressure for opening territory for settlement increased, the greatest source of racial conflict was the ownership of land, especially after four of the Five Civilized Tribes reluctantly granted tribal citizenship to their freedmen. Oklahoma African-Americans encouraged Southern blacks, increasingly suffering under Jim Crow laws, to emigrate to Oklahoma in sufficient numbers to make a political and economic impact, a prospect which panicked many whites. In the end, the massive African-American immigration did not occur; Wickett attributes this to the probability that destitute Southern blacks lacked the financial means to come to the new state.[15] Wickett also documents conflicts between whites and Native Americans on issues such as education and the legal system. Whites, who often saw Indians simply as Indians,

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[12] Arrell Morgan Gibson, Oklahoma: a History of Five Centuries, (Norman: University of Oklahoma Press, 1965).
[13] Patricia Nelson Limerick, "What on Earth is the New Western History?", Trails Toward a New Western History, ed. Patricia Nelson Limerick, Clyde A. Milner II, and Charles E. Rankin, (Lawrence: University of Kansas Press, 1991), pp. 81-88.
[14] Murray R. Wickett, Contested Territory: Whites, Native Americans, and African-Americans in Oklahoma, 1865-1907, (Baton Rouge: Louisiana State University Press, 2000).
[15] Ibid., pp. 54-59.

could not understand the reluctance of the relocated Plains tribes to embrace agriculture, as the Five Civilized Tribes had done. Many Indians were completely mystified by the white concept of private ownership of land, an idea totally contrary to their experience.

In 2010 David A. Chang published his account of the conflict among the races in the Creek Nation, The Color of the Land: Race, Nation, and the Politics of Landownership in Oklahoma, 1832-1929.[16] Chang describes the brutal relocation of the Creeks to present-day Oklahoma, their becoming established in the new land, their alliance with the Confederacy, and the trauma of allotment. To Chang the most important divisive issue among the races was land, which became a raw contest for power. Chang argues, "Washington made land a divisive force in the nation: not something Creeks had in common but something to be fought over."[17] The result was that everyone lost. As Chang says, "In the first decade of statehood, rural east-central Oklahoma became a society dominated by landlords and landless tenant farmers. This outcome resulted largely from the workings of American federal, state, and local government policy--the law, the way it was applied, and even the way it was broken in swindles that benefited from official complicity, corruption, and neglect."[18]

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[16] David A. Chang, The Color of Land: Race, Nation, and the Politics of Landownership in Oklahoma, 1832-1929, (Chapel Hill: University of North Carolina Press, 2010).
[17] Ibid., p.67.
[18] Ibid., p.94. This may be contrasted with the compromises between whites and Native Americans described in Richard White's The Middle Ground: Indians, Empires, and Whites in the Great Lakes Region, 1650-1815, (New York, Cambridge University Press, 1991, 2011). In the Great Lakes the parties were in relatively equal bargaining positions, a circumstance not present in 1890s Oklahoma.

Chang points out an inherent conflict in the political philosophy of the allotment. As he says, "The reformers who had initiated allotment were attached to two contradictory ideals: the profit-seeking liberal individual and the Jeffersonian yeoman farmer. ..The liberal individual was the central figure in the mythology of Gilded Age capitalism, a free actor in the 'free market.' As such, he..had the right to sell his allotment and spend or reinvest the proceeds as he saw fit. Creating yeomen, however, required tying allottees to the land. After all, the yeoman emerged from a different, agrarian strand of American mythology and was defined by his relationship to the land he owned and worked."[19]

The Congress felt pressure from white leaders to allow the sale of allotments; future Oklahoma governor Robert Lee Williams, for example, argued that if allottees could not sell or mortgage their land, it would be, in Chang's words, "impossible to create a class of autonomous, landowning white yeomen."[20] In 1904 the government solved the issue in a peculiar way. Congress created three tiers of allottees: those "not of Indian blood," those of at least half but less than three-quarters Indian ancestry and no Indian ancestry, and full-blood Indians. Blacks were allowed to sell their allotments first, then Indians of mixed blood, then full-bloods. As Chang argues, "The legislation presumed that the higher the degree of one's indigenous heritage, the less capable one was of looking out for

[19] Ibid., Chapter 3.
[20] Ibid., Chapter 3.

one's own interests in property, and the longer one needed to retain one's allotment to learn the life of the idealized white farmer."[21]

OKLAHOMA POLITICAL BACKGROUND

Oklahoma's entry into the union in 1907 came from the combination of Oklahoma Territory and Indian Territory. Indian Territory consisted of land owned by what were then known as the Five Civilized Tribes: the Cherokee, Choctaw, Creek, Seminole, and Chickasaw nations. After the Civil War, which divided and devastated the tribes, the United States government punished the tribes for their assistance to the Confederacy by forcing them to sell nearly half their land in the western half of what is now Oklahoma. The federal government then used this land, which constituted most of what became Oklahoma Territory, to relocate other tribes and, beginning in 1889, opened it to white settlement. Since the occupants of the White House in the late nineteenth century were Republicans, the territory's appointed governmental posts were Republican patronage positions. Many of those seeking new opportunities in Oklahoma Territory came from the North; many more were African-Americans seeking opportunity which had been previously unavailable to them.

The quest for land brought thousands of white settlers into Indian Territory as well. The construction of the railroad, the discovery of minerals, the

[21] Ibid., Chapter 3. For an account of the disgraceful theft of Native American and African-American allotment land by businessmen, lawyers, and judges, see Angie Debo, And Still the Waters Run, (Princeton: Princeton University Press, 1940).

availability of grazing land, and the prospect of cheap land provided opportunity. Although the tribes still owned the land, by the 1880s and 1890s the number of white immigrants greatly outnumbered the Indians. In 1860, for example, forty-three white residents lived in the Cherokee Nation. By 1890, thirty years later, the population of Indian Territory consisted of about 110,000 whites, 50,000 Indians, and 19,000 African-Americans. The influx of outsiders continued; by statehood in 1907 only nine percent of the residents of Indian Territory were members of Indian tribes.[22]

Those who came to Indian Territory entered a place unprepared for the huge increase of population, governed in what one historian called a "crazy-quilt manner among various federal bureaus, fading tribal regimes, and scattered town governments," resulting in a "fractured, incoherent political system."[23] Land being communally owned by tribes, new arrivals could own neither farms nor town lots. The only public schools existed for tribal members. In the early postwar years, law enforcement was virtually non-existent; even after the establishment of courts in Muskogee, Ardmore, and McAlester, it was spotty and unreliable. Persons in civil disputes had no convenient legal venue for resolving their problems.[24]

Under pressure from white settlers and despite fierce opposition from Indian tribes, Congress passed the Dawes Act and the Curtis Act, abolishing the

[22] Danney Goble, Progressive Oklahoma: the Making of a New Kind of State (Norman: University of Oklahoma Press, 1980), pp. 43-68.
[23] Goble, p. 187.
[24] Goble, p. 71.

tribal practice of communal land ownership, establishing allotments for individual tribal members, and setting the stage for abolishing tribal governments.[25] As historian Angie Debo proved in her classic 1940 work And Still the Waters Run, over the next years the Oklahoma legal system allowed hundreds, if not thousands, of Indians and freedmen to be swindled out of these allotments through such mechanisms as fraud, embezzlement, and specious guardianships.[26] For others the one hundred sixty acre allotments proved to be too small for profitable farming in Oklahoma's climate, and they moved on. Pressure was mounting for statehood, and by 1907 it became clear that Oklahoma Territory and Indian Territory would be admitted to the Union as one state.

The delegates of Oklahoma's 1907 constitutional convention shaped the state's government in the mold provided by the Southern Progressive movement. In the election for delegates to the convention, Democrats trounced the disorganized and fractious Republicans, electing ninety-nine Democratic delegates to twelve for the stunned Republicans.[27] Led by the convention's president, William H. Murray of Tishomingo, and heavily influenced by William Jennings Bryan, the delegates passed a constitution remarkable for its length and its hostility to corporations, including railroads. The article regulating corporations was longer than the entire United States Constitution. Nearly every state office, including such routine positions as assistant mining inspector and

[25] For an account of tribal resistance to allotment, see Chang, The Color of the Land: Race, Nation and the Politics of Landownership in Oklahoma, 1832-1929, (Chapel Hill: University of North Carolina Press, 2010).
[26] Angie Debo, And Still the Waters Run, (Princeton: Princeton University Press, 1973, original edition 1940).
[27] James R. Scales and Danney Goble, Oklahoma Politics: a History (Norman: University of Oklahoma Press, 1982), pp. 16-19.

clerk of the supreme court, became elective, making Oklahoma's ballot burdensomely long.[28]

Culturally, the delegates also made statements on social issues. Unlike some states in the West and Midwest, the delegates voted not to recognize women's suffrage, although they made an exception for school board elections. The constitution also prohibited the sale of alcohol, a ban which remained in place for fifty years. The framework of the judiciary, which will be discussed later in this chapter, was largely drafted by Ardmore attorney W.A. Ledbetter, and seems to have generated little controversy at the convention.

Racial segregation was another theme of the convention. The constitution provided for the segregation of schools. Although the body's overwhelming sentiment was in favor of segregation of transportation and disenfranchisement of African-Americans as well, fear of a veto by President Theodore Roosevelt forced them to defer that issue until the constitution had been adopted, and Oklahoma was in fact a state. The state's first legislature, still overwhelmingly Democratic, submitted a constitutional amendment requiring a literacy test for voting, which had the effect of depriving blacks of the franchise, and mandating segregation of transportation through "separate but equal" trains and waiting rooms in stations. [29] By this point, of course, such a policy was not only an article of faith among white southerners, it was backed by the U.S. Supreme Court. Finally, the fact that

[28] Ibid., pp. 21-23.
[29] Danney Goble, Progressive Oklahoma: The Making of a New Kind of State, (Norman: University of Oklahoma Press, 1980), pp. 202-227. Scales and Goble, pp. 20-58. See also Joel Williamson, The Crucible of Race, p.241.

southern oriented Democrats predominated as the political architects of the new state meant that Oklahomans missed an opportunity to avoid the misery of segregation.

OKLAHOMA'S POLITICAL ESTABLISHMENT AFTER FIFTY YEARS OF STATEHOOD

For the next fifty years certain common themes recur in Oklahoma's political history. First, Oklahoma was a one-party state, with the Democratic Party dominating the political landscape. Until Republican Henry Bellmon's 1962 election, every Oklahoma governor had been a Democrat. Three Republicans were elected to the United States Senate, each of whom served only one term. With the exceptions of setbacks in 1920 and 1928, in which the Democratic ticket was led by unpopular Presidential candidates, Democrats dominated lesser down-ballot offices as well. While Republicans were competitive in northwestern Oklahoma and, in later years, in Tulsa, Democrats outnumbered Republicans overwhelmingly.

Writing at approximately the same time as Oklahoma's court scandal occurred, political scientist V.O. Key, Jr. discussed the effect a one-party system has on the party in power. Key argued, "Lacking opposition, no external pressure drives the party toward internal unity and discipline. ..The party organization, therefore, becomes merely a framework for intraparty factional and personal

competition. It has the usual complement of conventions, committees, and officials, but the resemblance to genuine party organization is purely formal."[30] This occurred in Oklahoma in its first half-century. Democrats, the dominant party, fought bitterly with each other. Being a Democrat meant little in terms of sharing a political philosophy or a common platform.

Some of the tension came from conflict between the legislature and the governor. In their 1982 study of Oklahoma's first half-century, James R. Scales and Danney Goble analyzed each gubernatorial administration.[31] Governors, legally limited at that time to one term in office, invariably entered office with great voter popularity and ambitious agendas. With very few exceptions, the governors met vociferous resistance from the legislature, whose members were not term-limited; most left office disappointed. Two governors, Jack Walton and Henry S. Johnston, were impeached and removed from office by legislators. Walton, who fell victim to a combination of his own abusive and bizarre behavior and a legislature dominated by the Ku Klux Klan, was removed in 1923 after less than a year in office. Johnston, who had unnecessarily created enemies in the capitol by ignoring legislators, was removed in 1929 by a combination of Democratic enemies in the legislature and an unusually high and effective number of Republican legislators, elected as a reaction to Al Smith's wildly unpopular 1928 Democratic presidential nomination. Although Johnston was indeed a poor

[30] V.O. Key, Jr., Southern Politics in State and Nation, (Knoxville: University of Tennessee Press, 1984, original edition 1949), pp. 387-388.
[31] James R. Scales and Danney Goble, Oklahoma Politics: a History, (Norman: University of Oklahoma Press, 1982). The authors based much of their analysis of earlier Oklahoma politics on Scales' 1949 University of Oklahoma Ph.D dissertation, Political History of Oklahoma, 1907-1949.

governor with little executive ability, his removal from office was unnecessary and is an example of the excessive power of Oklahoma's legislature.[32]

The membership of the legislature itself was disproportionately rural. Although the state constitution required the legislature be reapportioned every ten years, in fact the House of Representatives had not reapportioned itself since 1921, and the Senate had never done so. Each county, regardless of population, was guaranteed one representative. Although the state became considerably more urban in the post-World War II years, rural legislators retained a power far disproportionate to the population of their districts. By 1962, when the U.S. Supreme Court addressed the issue in Baker v. Carr, only three state legislatures were apportioned more disproportionately than that of Oklahoma.[33] In the state's voting patterns, the disparity between rural and urban manifested itself again and again.

A high percentage of legislators were lawyers. Most of these lawyer-legislators were young attorneys seeking to serve the public, gain experience, and increase name recognition in their communities. For some, however, a seat in the legislature provided an opportunity to craft and enact legislation favoring their private legal clients, thus creating an incentive for private companies desiring some assistance from the legislature to hire lawyer-legislators as their attorney.

Oklahoma's demographics were indeed changing drastically, as its citizens abandoned agriculture for the cities. In 1910 Grant County, located on the Kansas

[32] Scales and Goble, pp. 118-153.
[33] Richard D. Bingham, Reapportionment of the Oklahoma House of Representatives: Politics and Process, (Norman: Legislative Research Series, Bureau of Government Research, 1972), pp. 2-3.

border, had a population of more than 18,000 people. By 1950 the number had dropped to 10,461; by 1970 only 7,117 people lived there.[34] Statewide, the percentage of people employed in agriculture plummeted from 33 percent in 1940 to five percent in 1970. During the 1950s alone, the number of family farms dropped from 142,000 to 95,000.[35] By contrast, Oklahoma's cities were growing exponentially. Between 1920 and 1950 the population of Oklahoma County grew from 116,307 to 325,352; over the next twenty years, the county's numbers increased to 526,805. Tulsa County, Comanche County, and Cleveland County all experienced similar increases. [36]

Scholars have described the brutality, inequities, and humiliations of segregation, a practice which Oklahoma adopted and maintained. As we have seen, the constitution mandated segregation of schools, and the first legislature had ordered separate public facilities, and transportation, "which shall be equal in all points of comfort and convenience."[37] Courthouses were segregated, making the iconic symbol of the blindfolded Lady Justice ironic. In the 1920s the Ku Klux Klan became a leading force in Oklahoma politics, dominating the state's legislature and leading to the impeachment of a governor. In 1921 an attempt to lynch a black rape suspect in Tulsa led to the bloodiest riot in state history. During the 1950s, when most of the scandal occurred, segregation still gripped Oklahoma. By the mid-1960s, when the corruption in the courts was exposed and

[34] "Grant County," Oklahoma Historical Society, www.okhistory.org
[35] "Oklahoma Economy," Oklahoma Historical Society, www.okhistory.org.
[36] U.S. Bureau of the Census, "Oklahoma: Population of Counties by Decennial Census, compiled and edited by Richard L. Forstall.
[37] Scales and Goble, p. 36.

reform enacted, the federal government had abolished segregation throughout the country, and the insidious practice was beginning to fade in Oklahoma as well. The issues of segregation and disproportionate legislative representation would help lead to closer federal oversight of Oklahoma's political climate.

FRAMEWORK OF THE COURT SYSTEM

Consistent with early-twentieth century Southern practice, the state's constitutional authors had structured the courts in a way designed to minimize the expenditure of tax dollars, especially at the level closest to the average citizen, the trial judges. The state government had three levels of trial judges: district judges, county judges, and justices of the peace. The JPs, as justices of the peace were known, were the lowest rung of the judicial ladder and eventually became the most controversial part of the trial court system.

JPs were hardly unique to Oklahoma. The office of justice of the peace had been established in fourteenth century England and had been an important part of the English legal structure. Although the higher-ranking assize judges in Elizabethan and Stuart England sometimes questioned the competence, integrity, and work ethic of the local justices of the peace, they performed necessary day-to-day routine work of the courts. This allowed the assize judges, who travelled a

circuit and were therefore not routinely present, time to hear the more important cases.[38]

Britain's American colonies inherited the JP system, which initially worked well enough that into the early twentieth century every state had adopted some form of the system.[39] In a world where travel was limited and communication was primitive and slow, the office of justice of the peace provided a low-cost, quick method of settling minor disputes and keeping the public peace. Especially in rural areas, a capable justice of the peace, regardless of his lack of legal training, could use common sense and good judgment to keep and restore order in the community. When Oklahoma became a state in 1907, the drafters of its constitution established the office, apparently without serious controversy or debate.

In Oklahoma JPs adjudicated traffic offenses, low-level misdemeanors, the early stage of felony cases, and, unlike their English predecessors, very small civil suits. Despite their judicial function, JPs were not lawyers and were primarily responsible for the collection of fees, a portion of which they then paid to the state. The JPs also received part of the fines and fees as their compensation, which meant the person deciding the guilt or innocence of the accused had a vested interest in the outcome; if the accused were found not guilty, no fine would result, thus less income for the JP. The JP, after collecting the funds, was

[38] J.S. Cockburne, A History of English Assizes, 1558-1714, (Cambridge, Cambridge University Press, 1972), pp. 155-176.
[39] Chester H. Smith, "The Justice of the Peace System in the United States," 15 California Law Review 118, 1927.

responsible for deducting his portions and paying the balance to the county, a system which occasionally led to embezzlement charges when the JP failed to pay the county the funds which it was due.[40]

JPs also performed marriages, a source of significant income, especially for JPs living in counties bordering other states. One JP in Bryan County, which borders Texas, became well-known for performing weddings at all times of the day and night and on every day of the year. Procedurally, a disgruntled litigant had the right to a new trial, which meant that no decision from a JP was final unless the parties agreed it would be final.[41]

One of the advantages of the JP system was in the collection of small debts for local businesses, who could collect unpaid accounts through the JP courts with minimal cost.[42] A legal scholar of the 1920s described this aspect of the JP's job, stating "If the reader were to attend a session of these courts, he would probably observe the disposition of a run of cases somewhat as follows: first, there would be an attorney representing a merchant or a collection agency, who would present in rapid succession the claims of his clients for merchandise sold and delivered, and the amounts of the various claims would be $2.75, $12.50, $65.10, and $99.50. Next, there would be a landlord suing for a month's unpaid rent; then, a housewife demanding satisfaction from a cleaner for ruining her evening dress; then, the neighborhood capitalist asking for judgment on a

[40] This occurred in the case of Paul Powers, an Oklahoma County JP who was forced to resign. Oklahoman, February 17, 1965, p.4.
[41] 4 Oklahoma Law Review 267-271.
[42] Letter from Henry Bellmon to Bill Johnson, a Hobart businessman, May 28, 1965, Henry Louis Bellmon papers, Box 39, File 6, Oklahoma State University.

promissory note; and, finally a man demanding the value of his lawn mower from a neighbor who had borrowed it and failed to return it."[43] With the exception of the amounts of money in controversy, this procedure was similar to Oklahoma's small claims court as it exists today.

By the 1920s, serious legal scholars were questioning the desirability of the JP courts, especially the fee system.[44] The advent of the automobile and, in particular, the traffic ticket greatly diminished the office. Traffic fines and small-town speed traps often led to a hapless driver being brought before a JP, who had a financial stake in fining the driver. In the words of one historian of the office, "this practice created a public conception of the Justice of the Peace as a small-town tyrant and sharp dealer whose only purpose was to harass the motoring public, or preside over the marriage of couples eloping from jurisdictions where more stringent regulations governed entrance into the state of marital bliss."[45]

By the 1960s, the existence of JPs had drawn fire nationwide, and states were beginning either to modify the office or to abolish it altogether.[46] Nearly every state which still had JPs began to take a skeptical look at the office. A study conducted by the New York University Law School outlined the system's shortcomings, which, according to its writers, made the system "notorious."

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[43]Clarence Callender, American Courts: Their Organization and Procedure, (New York: McGraw-Hill Book Company, 1972), pp. 52-53.

[44] Chester H. Smith, "The Justices of the Peace System in the United States," 15 California Law Review 118 (1927).

[45] Sir Thomas Skyrme, History of Justices of the Peace, vol. 3, (Chichester, England: Countrywise Press, 1991), p. 125.

[46] As of 1965, fourteen states had abolished the office of justice of the peace. The Justice of the Peace Today, New York University study, Institute of Judicial Administration (New York: Institute of Judicial Administration, 1965, p.2.

These included lack of legal training, part-time service, compensation by fee, inadequate service, archaic procedures, and makeshift facilities.[47]

All of these deficiencies applied to Oklahoma. In both 1963 and 1965 the Oklahoma House of Representatives had passed legislation lowering the JP civil jurisdiction to one dollar; in both cases the measure was rejected by the Senate. In short, by the time of the exposure of the Oklahoma Supreme Court scandal, the office of JP was seen nationwide as obsolete and as part of a system with dubious ability and integrity. Although justices of the peace had nothing to do with the bribery scandal, the enactment of court reform would sweep justices of the peace out of existence in Oklahoma.

In addition to JPs, Oklahoma's judicial framework guaranteed to each county one county judge, who usually decided probates, adoptions, juvenile cases, and other routine matters. County judges rarely heard hotly contested criminal or civil matters. These officials were paid from county funds and were considered county employees. Often, especially in rural counties, the county judge's workload and pay were minimal.[48]

Serious disputed cases were reserved for district judges, who adjudicated felonies, large-scale civil cases, and divorces. In rural areas district judges sat in more than one county, which meant that important judicial business often had to wait for the judge to come to town. District judges and county court clerks also set the budgets for the local courts, which gave them enormous power over

[47] Ibid., pp. 2-3.
[48] Interview of Marian P. Opala, June 9, 2009. Opala archives, Oklahoma Hall of Fame.

personnel and courthouse improvements. Neither the Supreme Court nor any other agency had oversight power over district court spending, which spent local funds as they saw fit.[49] While district judges received their paycheck from the supreme court office, they actually received part of their salary from the state and the rest from the counties they served.[50]

Each of the seventy-seven counties had a county attorney, who was responsible for criminal prosecutions and legal advice for the county government. Low pay for county attorneys and county judges made the offices attractive primarily to young lawyers seeking to establish a community reputation or to gain courtroom experience; lawyers in mid-career simply could not afford to serve. County attorneys therefore routinely ceded courtroom experience to opposing lawyers. The county attorney system was so unsatisfactory that even the Oklahoma Association of County Attorneys recommended the office's abolition, arguing the establishment of a district attorney system would provide more efficient law enforcement, especially in rural counties.[51]

Courtrooms were busy places, but whether the litigants routinely received justice is debatable. [52] With few discovery rules, the parties learned, often for the first time, the relative strengths or weaknesses of their cases in the courtroom itself. The legal system encouraged only minimal pretrial discovery or pleadings; without meaningful discovery, many cases which should have been resolved

[49] Bob Burke and Ryan Leonard, Opala: in Faithful Service to the Law, (Oklahoma City: Oklahoma Heritage Association, 2012), pp. 130-131.
[50] Opala Interview, Oklahoma Hall of Fame.
[51] Oklahoman, January 3, 1958, p.5.
[52] In a 1933 speech, Justice Fletcher Riley had described Oklahoma as "the most litigious place in the English speaking world." Ibid., August 30, 1933, p.4.

outside the courtroom went to trial. Without adequate pretrial procedures and strong, enforceable court rules, the system was subject to manipulation by argumentative, forceful attorneys who relied as much on the strength of their personalities as the facts and the law. Trials often became a spectator sport more notable for their entertainment value than the achievement of justice.

Unlike most states, Oklahoma had two appellate courts of last resort: the Court of Criminal Appeals, which heard only criminal cases, and the Supreme Court, which heard all other appeals. The Court of Criminal Appeals, until 1959 unfortunately named the Criminal Court of Appeals, had been created by the first legislature. Its three members, expanded to five in 1988, served from three nominating districts.[53]

The Supreme Court consisted of nine justices, each elected from a geographically designated district.[54] No intermediate appellate courts existed, so every non-criminal appeal, regardless of size, importance, merit, or legal complexity, went to the Supreme Court. Even with the Court of Criminal Appeals hearing criminal cases, this created a high workload for the Supreme Court.[55] Except for the extremely rare case involving interpretation of the United States Constitution, the decision of the Supreme Court (or the Court of Criminal Appeals in criminal cases) was final; a party losing its case at that level had nowhere else to go. The final winners and losers of civil litigation in Oklahoma

[53] Scales, p. 103.
[54] In 1915 the number had been increased from five to nine.
[55] In 1932, for example, about 1,100 civil appeals were filed with the Supreme Court, or approximately five every working day. Justice Fletcher Riley, quoted in Oklahoman, August 30, 1933, p.4.

were therefore determined by its Supreme Court. Both the Supreme Court and the Court of Criminal Appeals also set precedent; its published decisions were binding authority for lower courts.

Justices and judges were elected officials, answerable only to the will of the voters. Appellate justices and judges ran from specific nominating districts as representatives of their political parties, as Democrats or Republicans. Since they were secondary officials on long ballots in issueless races, to a great extent the judge's job tenure depended on his political affiliation. Usually, although not always, this meant the Democratic nominee won. In 1928, however, the unpopularity of Democratic presidential candidate Al Smith doomed many Democratic judges to defeat, even though they had nothing to do with Smith. In the 1930s the strength of Franklin Roosevelt's candidacy swept Democratic judges back into office, even though they likewise had no affiliation with the New Deal.

As James R. Scales, a future president of Oklahoma Baptist University and Wake Forest University, noted in his University of Oklahoma doctoral dissertation, the nominating district was a very peculiar political creation. A judge ran for his party's nomination from his own geographic district, but the nominees were then subject to a statewide general election. This allowed every voter in the state to cast a ballot for a candidate representing a different district, a practice which clearly benefited the majority party. [56]

[56] Scales, pp. 50-51.

Although it is impossible to determine with certainty, Justice N.S. Corn probably benefited from existence of the nominating district. Corn, a Democrat, came from Republican-oriented northwest Oklahoma. In 1934, as Democratic a year as can be imagined in Oklahoma, Corn ran for his district's Supreme Court seat against the incumbent Republican. He obtained the nomination and was elected in the statewide election, then was reelected, still as a Democrat in a Republican-leaning district, in 1940, 1946, and 1952.

Since judges were partisan elected officials, they felt comfortable and, in some cases, obliged, to make partisan political speeches and to endorse other candidates. A judicial candidate had the possibility of facing the electorate in three elections: the primary, the runoff, and the general election. Some judges campaigned for non-judicial office without leaving the bench. A judge, therefore, not only represented the judicial system; he also represented his political party.[57]

The experience of Justice Harry Halley illustrates this point. In 1946 Halley, a Democrat, occupied the post of district judge in Tulsa County. In the postwar election that year, Tulsa County voters swept all Republican candidates into office, and Halley therefore lost his post. Two years later, in 1948, Halley was elected as a Democrat to the Oklahoma Supreme Court, where he served until 1967. Halley, who became a strong proponent of court reform, later remarked on the irony of his apparent improvement as a judge in his two years out of office.[58]

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[57] Phillip Simpson, "The Modernization and Reform of the Oklahoma Judiciary," Oklahoma Politics, October, 1994, pp. 1-4.

[58] Jack N. Hays, "Selection of Judges in Oklahoma," 2 Tulsa Law Review 128 (1965).

The ballot box constituted the only means for the public to express approval or disapproval of judicial performance. Other than the cumbersome and impractical legislative impeachment process, no mechanism existed for removing corrupt, incompetent, or infirm judges. Judicial retirement did not exist, so once a judge left office, his income stopped. Judges therefore had every incentive to hang onto their jobs as long as they could.

DISTRUST OF THE COURT

By the late 1950s, the Oklahoma Supreme Court had become a focus of public suspicion. Both members of the legal community and of the general public have a natural, innate reluctance to speak badly of the courts. Despite this, in his successful 1958 campaign for a seat on the court, William A. Berry constantly ran into voters and officials who expressed distrust of the Supreme Court. One of his personal friends, whose father had been a successful highway contractor, worried about Berry's becoming contaminated by the "crooks on that thing." Among lawyers, a highly publicized will contest in which the judges had reversed their own ruling, In Re Meadors Estate, had created considerable controversy and was

the source of rumors. A newspaper publisher showed Berry a cartoon which depicted the justices in the hands of a puppeteer.[59]

One of the few scholars of the court scandal is former University of Oklahoma law professor Judith Maute. In her article about Peevyhouse v. Garland Coal Company, an Oklahoma Supreme Court case of the time which became notorious among scholars of legal remedies for its poor legal reasoning, Maute discusses the Court's questionable reputation.[60] In addition to suspicions about the financial integrity of the justices, Maute also outlines the system's tolerance of unprofessional practices, particularly the tendency of judges to engage in ex parte discussions of cases with attorneys and to decide cases based on the identity of lawyers, not the facts of individual cases.

At the time of the scandal, Oklahoma had been a state for only two generations, and it still retained much of its rural, informal flavor. It was common practice for lawyers to drop by a judge's chambers to discuss a case with him; many lawyers considered this to be good practice, not unethical or inappropriate behavior. Judges had limited support staffs, and stopping in to see the judge was a simple affair. Although this practice was common knowledge in the legal community, lawyers were reluctant to complain. Since no mechanism existed for investigating or removing a judge, any complaint would have been futile; nobody had the authority to receive or investigate a complaint, much less act on it.

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[59] William A. Berry and James Edwin Alexander, Justice For Sale: the Shocking Scandal of the Oklahoma Supreme Court, (Oklahoma City: Macedon Press, 1996), pp. 70-78.
[60] Peevyhouse v. Garland Coal Company, 382 P.2d 109 (Okla., 1962).

Professor Maute closely investigates the relationship between Ned Looney, a prominent and well-connected Oklahoma City attorney whose firm represented Garland Coal in Peevyhouse, and Justice Earl Welch. While she doubts any financial impropriety in Peevyhouse, where the financial stakes were relatively low, she is able to track a remarkably close voting correlation between Welch's judicial vote and the cases in which Looney's firm was involved. In Peevyhouse, for instance, Welch did not participate in the original opinion, which reversed a district court in Looney's firm's favor. However, when another justice changed his mind about the case, Welch cast the deciding vote to leave the decision alone. Using Welch's voting pattern, Professor Maute concludes that Welch's close relationship with Looney's firm made him available to the firm when he was needed.[61] While Peevyhouse has been criticized by scholars for its poor legal reasoning, Maute argues the decision had as much to do with favoritism as with legalities.

The judicial habit of allowing ex parte discussion of cases gave the advantage to lawyers who violated the rules. Justice Berry wrote that the practice had become so accepted that lawyers came to expect it and were surprised if judges refused to participate. Lawyers who played by the rules ran a risk; if the lawyer failed to discuss the case with the judge outside the courtroom, the other side might have done so and defeated him before the trial even began. Litigants also had a choice to make. If they did not hire a lawyer with political

[61] Judith Maute, Peevyhouse v. Garland Coal & Mining Co. Revisited: the Ballad of Willie and Lucille, 89 Northwestern University Law Review 1341 (1995).

connections, the other side might. Litigation therefore often became a race to the politically-connected lawyer's office.

In 1937 the Judicial Administration Section of the American Bar Association published the results of its work on minimum suggested standards on efficient judicial administration in state courts. While the ABA obviously could not mandate anything to the states, their guidelines set out the feelings of scholars, judges, and attorneys on how state courts could most fairly and efficiently administer justice. In 1951, fourteen years after the study, the students of the University of Oklahoma's law review studied the ABA recommendations and compared them to Oklahoma's practices. With one exception, the fair selection of jurors, Oklahoma's court system failed all the standards. Oklahoma's practices of judicial selection, judicial partisanship, the lack of a judicial retirement program, the judiciary's lack of organization and supervision, its failure to keep meaningful statistics, the existence of justice of the peace courts, and the lack of meaningful pretrial conferences all fell woefully short of ABA recommendations.[62]

In the pages that follow, I introduce and analyze the major players in the court scandal. This review demonstrates that the court scandal did not simply arise out of the corruption of a few greedy and politically connected people. The conduct and environment which encouraged such double dealing extends back to the state's earliest years and exposes the corruption which was integral to the developing political culture of a new state. The details and personalities of the scandal should cause us to reflect back on what Oklahoma politics owed to its

[62] 4 Oklahoma Law Review 251-265 (1951).

southern influences, best expressed in the domination of a Democratic Party whose members freely opposed reforms, such as the New Deal, which were key to the national Democratic Party's reputation and agenda. It should also demonstrate the state's unfortunate tendency, also inherited from the South's political tradition, of looking the other way while important decisions are being made behind closed doors and without public knowledge or input.

SELECTED INVESTMENTS

One of the most important factors in explaining Oklahoma's judicial scandal is an explanation of the deep-seated relationship between powerful private interests and public figures. The largest and most notorious example of this is *Selected Investments*, a company founded in 1929 by Hugh A. Carroll, a businessman and former schoolteacher from northwest Oklahoma. For the most part, *Selected Investments* began with small consumer loans; its advertisements during the 1930s urged customers to "borrow to save money" and advertised loans "from $50 to $350" at the company's office in downtown Oklahoma City. *Selected* routinely lent on "diamonds, cars, furniture, or other personal property" and asked its customers to "get rid of money worries--use our loan plan."[63]

[63] Oklahoman, June 22, 1944, p.16 and February 29, 1944, p.13. Dozens of similar advertisements appeared in the Oklahoman during this period.

By the 1940s *Selected Investments* had become wildly profitable and had begun to diversify. Taking advantage of the Roosevelt-era programs of VA and FHA financing, *Selected* opened a real estate office in growing northwest Oklahoma City, selling and renting "good homes, all northwest."[64] In 1948 the company opened a new corporate headquarters across the street from the Oklahoma County courthouse, inviting potential investors to visit.

While *Selected* advertised its small loan and real estate businesses heavily, the company's most profitable and controversial enterprise involved its investment bond program for small investors. Charging a two per cent per year management fee, the company's offer to potential investors was simple: *Selected* guaranteed a six per cent return on the investment. Regardless of war, depression, market variances, or other economic calamity, a participant who invested $10,000 was guaranteed an annual dividend of $600, plus immediate return of the full investment on demand.

In hindsight, the idea that an investment company could offer guaranteed profits at no risk to the customer seems preposterous; one could wonder why anyone would fall for such a proposal. However, a reading of *Selected's* advertising helps explain the company's appeal. As the advertisements pointed out, by 1947 *Selected* had delivered on its promises for seventeen years without any investor losing a penny. *Selected* falsely claimed that all funds were held in trust, they were subject to regular audits by public accountants, and that all their

[64] Ibid., November 7, 1948. At that time the population of northwest Oklahoma City was almost exclusively white, while nearly all African-Americans lived in northeast areas of the city.

bonds were collateralized. The company emphasized the security of the investment, claiming "it's safe--it's cashable--it earns 6%."[65]

However, not everyone was enamored with *Selected Investments*. Under Oklahoma's regulatory system securities were regulated by the office of the bank commissioner, which had only two investigators to cover the entire state. One of those investigators was Herschal K. Ross, a former Greer County court clerk who had been employed by the banking department for only a few months and lacked regulatory experience. Ross would later become entangled in the affairs of *Selected Investments*. The other investigator, unfortunately for *Selected*, was Milton B. Cope, a stubborn and persistent lawyer who had worked at the agency for several years and was, according to his boss, an "experienced analyst of values of securities."[66] Cope intensely distrusted *Selected Investments* and, to the extent of his limited resources, made it his mission to get to the bottom of the company's financial affairs.

In February of 1950, the banking commissioner, at Cope's urging, suspended *Selected Investment's* authority to sell securities. *Selected*, represented by State Senator James Rinehart, immediately went to Oklahoma County district court and obtained a temporary restraining order preventing the commissioner from acting. For a year the case simply sat dormant with the restraining order in place. *Selected Investments* retained its ability to sell securities, but the company's position remained precarious.

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[65] Ibid., January 26, 1947, p.33.

[66] Letter from Banking Commissioner O.B. Mothersead to Governor Johnston Murray, February 1, 1951. Johnston Murray papers, Box 1, Folder 12, Oklahoma Department of Libraries.

One of the candidates to succeed outgoing Governor Roy Turner was Johnston Murray, the son of Oklahoma's eccentric and controversial former Governor William H. "Alfalfa Bill" Murray, a man whose style and politics symbolized the strength of Southern political culture in Oklahoma. William H. Murray had chaired the Oklahoma constitutional convention, served as the first Speaker of the Oklahoma House of Representatives, served in Congress during the Wilson administration, founded a failed colony in Bolivia, and become a folksy national figure during a term as governor during the Great Depression. With his appeal to rural white voters, his odd mannerisms, his unpredictable and volatile behavior, and his hatred for big business, Alfalfa Bill Murray became the best-known Oklahoma political figure of his time.[67]

Alfalfa Bill's son, Johnston, had taken a circuitous route to the 1950 governor's race. After he graduated from what was then known as Murray School of Agriculture (named after his father), Johnston and his family joined his father's colonial expedition to Bolivia. After the colony failed, he returned to Oklahoma and pursued business ventures in newspapers, cattle, and oil. In 1946 the forty-three year old Murray graduated from the Oklahoma City University School of Law.[68] Although he lacked political experience, he entered the field as a candidate for governor.

Although Murray began as a dark horse, he captured the voting public's imagination as the son of Alfalfa Bill and as "just plain folks." As in other states

[67] Keith L. Bryant, Alfalfa Bill Murray (Norman, University of Oklahoma Press, 1968), pp. 151-172.
[68] Biographical Note of Governor Johnston Murray, Oklahoma Department of Libraries.

on the southern part of this borderland, Murray's campaign also drew strength from conservatives, anti-New Deal Democrats, and forces opposed the legalization of alcohol.[69] After a bitter and ugly runoff, Murray won the Democratic nomination and then narrowly defeated his Republican opponent in the general election. [70]

Murray's campaign had needed money, and *Selected Investments*, under attack from the banking commissioner, had helped provide it. In exchange for Murray's promise to get rid of Milton B. Cope, Hugh Carroll had put "four figures" into Murray's campaign through William Doenges, a Bartlesville auto dealer and former Democratic national committeeman. [71] Once in office, Murray did not directly fire Cope; instead, that spring Senator George Miskovsky of Oklahoma City, who was also an attorney for *Selected Investments*, introduced a bill establishing an Oklahoma Securities Commission and stripping the banking commissioner of his securities regulations responsibilities.[72] Carroll, given the chance to address the legislative committee considering the bill, argued that Cope was a director in a building and loan company and was therefore prejudiced against Carroll. The solution, therefore, according to Carroll and his supporters, was to legislate Cope out of state government.[73] Miskovsky, who had senatorial privilege over appointments in his Oklahoma County district, increased the

[69] Otis Sullivant, Oklahoman, June 19, 1950, p.1.
[70] Scales and Goble, pp. 267-288.
[71] Oklahoman, August 28, 1958, p.1.
[72] *Selected Investments* was not licensed by the federal Securities and Exchange Commission. Its only license came from the State of Oklahoma. Oklahoman, December 24, 1957, p.1.
[73] Although Carroll, who was not a member of the legislature, was allowed to speak before the committee, two representatives who were not committee members were not initially allowed to speak against it.

pressure by refusing to move to confirm his constituent O.B. Mothersead, Cope's boss, as head of the state banking department.[74] Senator James Rinehart, *Selected*'s lawyer in the litigation with the banking department, continued to back the bill eliminating Cope's job, which of course would end the lawsuit in Rinehart's client's favor. Dissenters pointed out the troublesome promises made in *Selected's* advertising, with one representative comparing the literature to an advertisement for patent medicine and arguing, "no banking institution in the world can pay six percent as advertised here...This company could go busted." Senator Roy Grantham, later the presiding officer in N.B. Johnson's impeachment trial, prophetically warned that passage of the bill would "return to haunt the senators in a decade."[75]

The securities bill became the last bill considered by the 1951 legislature, and it was the object of bitter debate. For unclear reasons, Miskovsky suddenly withdrew from the discussion and unsuccessfully moved to kill his own bill. Governor Murray publicly took a hands-off approach but strongly supported the bill behind the scenes. Although Doenges denied sponsoring the bill, he and Carroll were seen together in Murray's office after the bill passed. Led by Representatives J.D. McCarty and Paul Harkey in the House and Rinehart in the Senate, the bill passed both houses in the legislature's last act before adjourning. Cope was out of a job, and the investigation of *Selected Investments* died on the

[74] Oklahoman, May 10, 1951, p.8.
[75] Oklahoman, May 19, 1951, p.1.

vine.[76] Herschal Ross assumed Cope's duties; within a few years, Ross's son was an employee of *Selected Investments*, an entity his father regulated.

Selected Investments had successfully thrown its money around. By buying influence with the governor and employing lawyer-legislators to represent the company, *Selected* had used the power of the legislature and governor to end a governmental investigation into its finances.[77] Very few people seemed to have asked the appropriate questions: how was the company paying a guaranteed six per cent return, and had Cope correctly smelled a rat? *Selected* continued to do business as usual, expanding into real estate and other areas, creating so many subsidiary corporations that eventually even Carroll could not keep track of them.[78] The company's corporate interests included ventures in real estate, mortgage lending, apartments, home furnishings, automobiles, publishing, variety stores, farm stores, a dairy and a factory.[79] By the time of its fall, *Selected* itself had about ten thousand investors, most of them Oklahomans, with a declared value of about forty million dollars. About a thousand of those investors came from Oklahoma City.[80]

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[76] Cope, by then a semi-retired private attorney, continued to hector Murray with demands that he resume the probe. Murray answered Cope's letters but continuously found funding or personnel reasons to explain the investigation's stall. Letters from Cope to Murray and Murray's responses, January 1, 1952, January 9, 1952, February 27, 1952, and February 29, 1952. A notation on the bottom of one of Cope's letters bears the pencil notation, "Tuesday, April 8, 1952 at 11:00 a.m." It is unclear whether a meeting took place. Johnston Murray papers, 8-N-1-1, Box 21, Folder 15, Oklahoma Department of Libraries.

[77] The author's father, William L. Card, was a member of the 1951 legislature.

[78] Oklahoman, December 24, 1957, p.1.

[79] Ibid., January 9, 1958, p.8 and February 18, 1958, p.1.

[80] Testimony of Julia Carroll, United States v. Cargill, vol. 1, p.184, United States Archives.

O.A. CARGILL

O.A. Cargill was born in 1885 in rural northern Arkansas. Cargill spent his early years living the challenging life of the child of a subsistence farmer. When he was sixteen, Cargill left Arkansas for Stroud, Indian Territory.[81] A huge and physically imposing young man, Cargill worked variously as a muleskinner, ranch hand, and storekeeper for a general store which catered almost exclusively to members of the Sac and Fox tribe. He also became a justice of the peace, which made him interested in the study of law. He and his wife moved to Oklahoma City, where he worked as a streetcar conductor and a police officer until he passed the bar in 1916.

Sixteen months after becoming a lawyer, Cargill was appointed to the office of Oklahoma County Attorney. While Cargill served as Oklahoma County's chief prosecutor, he participated in a horrific lynching. In August of 1920, two Oklahoma County police officers , who were outside of their jurisdiction, and the owner of a whiskey still were killed in a gun battle in neighboring Logan County. The still owner's son, a young African-American man named Claude Chandler, was arrested for the murder of the officers. Although his office had no jurisdiction over homicides which had occurred in another county, Cargill, claiming the Logan County officials were treating the bodies of the deceased officers inappropriately, forcibly seized control of the

[81] O.A. Cargill, My First 80 Years. (Oklahoma City: Banner Books, 1965), pp. 1-29.

scene, probably at gunpoint.[82] He allegedly claimed that a jury composed of Logan County residents, which had a higher percentage of African-Americans than Oklahoma County, would have acquitted Chandler. He then ordered Chandler placed in the Oklahoma County jail, even though the crime had occurred elsewhere.

That night Claude Chandler was forcibly taken from the Oklahoma County jail and lynched. The jailer claimed to have been overpowered by three armed, unidentified men after the employee had mistakenly unlocked the outside door. A modern-day journalist who has studied the Chandler lynching concluded that the person who removed Chandler from the jail was actually a deputy sheriff, and Ned Looney, then an Assistant Oklahoma County Attorney and later to be Cargill's lifelong friend, colleague, and sometime rival, provided the deputy with a phony alibi. After the disappearance, someone entered the words "N***** lost" on the jail log.[83] The journalist also located a postcard photo of the lynching; the card was signed by a person named Ned.

Cargill's tenure as county attorney occurred at a terrible time for race relations in Oklahoma. In the 1920s the Ku Klux Klan was one of the leading political forces in the state; the organization had an enormous influence on the legislature and the governor's office. Vigilante justice occurred frequently; the day before Chandler's murder, a white man accused of murdering a cab driver had

[82] The Oklahoman quoted Cargill as claiming he had brandished a pistol at the Logan County officers. A few days later, Cargill contradicted his previous story and denied pulling a weapon.
[83] Bobby Dobbs, "1920 Lynching of Claude Chandler: Shedding Light on a Painful Past," Oklahoman, February 21, 2016, p.1A.

been lynched in Tulsa. The next year saw the horrendous Tulsa race riot, which killed at least 79 people and destroyed the Greenwood neighborhood of the city.[84] In Claude Chandler's case, no one was ever brought to justice for his death. Claude Chandler's murder was an awful episode in an ugly time; the evidence shows Cargill allowed it to happen.

In 1923 Cargill was elected mayor of Oklahoma City. Three years later he entered the race for the Democratic nomination for governor. Although his gubernatorial campaign began well, Cargill alienated voters with his heavy-handed, personal style and his flip-flopping on issues, especially on the subject of the Ku Klux Klan. He finished a poor third in the Democratic primary, ending his political career.[85]

Cargill became an extremely successful and wealthy attorney, handling important and highly-publicized civil and criminal litigation. He retained his reputation for bombastic behavior in the courtroom, once earning himself a one day jail sentence from his future ally Judge Ben Arnold. He purchased a large ranch north of Oklahoma City, which he enjoyed with his family. The ranch produced oil, from which he acquired substantial income.

Although he was extremely successful financially, his standing among his peers was shaky. Cargill's reputation took a serious blow in 1939, when he accused a shadowy acquaintance, Roy Alford, of using a false name to break into

[84] Scales and Goble, pp. 106-134.

[85] Oklahoman, July 7, 1926, p.1, July 8, 1926, p.1, and July 10, 1926, p.1. Cargill publicly affiliated himself with the Klan on some occasions and denied it on others. The Daily Oklahoman clearly identified Cargill as a Klansman in its July 22nd edition.

Cargill's safety deposit box and steal $5,000. Alford testified at trial that Cargill claimed to have bribed two of the three members of the Criminal Court of Appeals to hold the state's liquor permit unconstitutional. Alford also claimed to have copies of checks implying Cargill had bribed five Oklahoma City councilman to approve settlement of a pollution case. Although Alford was acquitted, he obviously was not very credible, and no investigation ensued. However, both the judge and prosecutor indicated they agreed with the jury's verdict, which showed that neither of them believed Cargill's testimony.[86] They did not know that by the time of this incident, Cargill had already developed an illegal financial relationship with Justice Corn of the Oklahoma Supreme Court.

N.S. CORN

Nelson Smith Corn was also a product of the frontier. In 1894, when Corn was ten years old, his family moved to Taloga in what is now Dewey County, a place which at that time had been open to white settlement for only about ten years.[87] Corn taught school for a few years, then was elected Dewey County Clerk in 1922.[88] Corn wanted to become a lawyer, and through the use of

[86] Oklahoman, October 12-15, 1939.
[87] At the time Corn's family moved to the area, Dewey County was simply named "D County." Although present-day Dewey County has a population of less than five thousand people, at the time of statehood about 13,000 people resided there. "Dewey County," Oklahoma Historical Society, okhistory.org.
[88] Corn would have kept the county's records in a wood frame building in Taloga. The Dewey County Courthouse was not built until 1926. Ibid.

borrowed books and an extension course he passed the bar examination, a method of becoming a lawyer which was common at the time. In 1926 he became Dewey County Attorney, an experience which did not go well. Soon thereafter Corn resigned and entered private practice in Taloga.[89]

In 1934 Corn announced his candidacy for the Democratic nomination for the Oklahoma Supreme Court from the state's fourth district. State law allowed each party to nominate a candidate for each of the nine Supreme Court seats, which were divided into geographic districts. The candidate was required to live in that district. Voters from the entire state then voted on the nominees in the general election. Justices were elected for six year terms, with the terms staggered so that three seats were open each election.

Corn's qualifications for the job were questionable. Although he was fifty years old, he had been a lawyer for only about eight years, and he had never been a judge. His experience as a public official included only short periods as Dewey County Clerk and Dewey County Attorney. Nonetheless, Corn won the Democratic nomination in a runoff.[90] In the general election, Corn faced Republican incumbent Charles Swindall, who had defeated the Democratic incumbent six years earlier in the backlash against the unpopular presidential candidacy of Al Smith.[91] The Supreme Court race drew little public interest and had no legal or political issues. This did not matter; in 1934 the Democrats won

[89] Oklahoman, June 1, 1926, p.9 and June 9, 1926, p.10. Corn had lost a highly publicized vehicular manslaughter case. During N.B. Johnson's impeachment trial, Johnson's attorney implied Corn's resignation as Dewey County Attorney had resulted from bribery allegations against Corn. Johnson impeachment trial, May 7, 1965 p.91.
[90] Oklahoman, July 25, 1934, p.1.
[91] Ibid., November 8, 1928, p.1.

every single statewide race, including Corn's.[92] The Great Depression, so terrible for so many, had provided an opportunity for Corn.

A year after he assumed the bench, Justice Corn and O.A. Cargill began a corrupt business relationship. As Corn later testified, Cargill called Justice Corn and asked him to come to Cargill's law office in downtown Oklahoma City. At the meeting Cargill told Corn he wanted to win his appellate cases by a "fair margin" and wanted Corn to act as the sixth vote on opinions. From that point on, according to Corn, Cargill routinely called Justice Corn and told him to "get your pencil out." He then told Corn what case he was calling about and then told him to "follow the crowd." In the early years, Cargill routinely gave Corn $1,000, especially at campaign time; Corn later estimated the total amount he received early in the relationship to be about $4,500.[93] In one case, American Savings Life v. Loomis, Cargill remarkably called Corn and instructed him to vote against Cargill's position. According to Corn, Cargill explained that he had an agreement with the lawyers for the opposing side for the opponents to win.[94]

Corn's shocking testimony about his experience with Cargill raises questions which will almost certainly never be answered. Why would Cargill call Corn, whom he apparently did not know well, and demand that he come to his

[92] Ibid., November 7, 1934, p.1.
[93] Testimony of Corn, United States v. Cargill, CR 65-27, vol. 5, p.26 and Berry and Alexander, pp. 133-140.
[94] Testimony of Corn, U.S. v. Cargill. American Savings Life v. Loomis, 131 P.2d 65 (Okla. 1942). A life insurance company had refused to pay a claim after the insured's death, claiming he had failed to disclose he had syphilis at the time he bought the policy. The Supreme Court reversed the trial court and sent it back to the trial court, holding the judge should have instructed the jury on the defendant's theory. Corn and Welch voted with the majority, reversing the verdict in favor of Cargill's client.

office to discuss bribery? When he needed only five votes out of nine, why would Cargill risk exposure and imprisonment to get a sixth? Why would Cargill spend money just to get an unnecessary sixth? On the cases in which he only wanted a sixth vote, how did he know he already had five? How did Cargill know when the Court would hear cases and to whom they were assigned? The conclusion is inescapable that Cargill had sources other than Corn inside the court.

In the 1940s, in addition to his work as a justice on the Oklahoma Supreme Court, Corn also operated short-term small loan companies, similar to those run by *Selected Investments*. These businesses charged what Corn himself later termed "usurious interest." Corn did not publicly disclose his interest in these businesses, the propriety of which was very questionable for a full-time judge.[95] Corn also displayed considerably more cash than would seem appropriate for a salaried state employee. From World War II until the banker changed jobs in 1952, Corn's banker broke large bills for Corn as often as three or four times per month; the source of the money is unclear.[96]

Corn successfully ran for re-election in 1940 and 1946, easily defeating Republican opponents in the overwhelmingly Democratic general elections. In 1952 he survived a scare in the Democratic primary, in which two of his colleagues were unseated, before beating his Republican opponent. Even though he won four statewide elections, Corn's work ethic was questionable. After the

[95] At N.B. Johnson's impeachment trial, the defense implied that Hugh Carroll had helped Corn capitalize the small loan business. Carroll's testimony was vague on that point. When asked if he had lent Corn the money for the business, Carroll said, "Not to my knowledge." Testimony of Carroll, Johnson impeachment trial, May 6, 1965, p.58.

[96] Testimony of Felix Simmons, U.S. v. Cargill, vol. 8, pp. 150-152.

exposure of the scandal, Corn's former judicial colleagues discussed his office habits. According to them, Corn "never worked and appeared never to know where he was headed." This is consistent with his later testimony to authorities; Justice Corn, despite more than two decades on the state's highest court, seemed to have only vague concepts of legal issues and to have little curiosity about the cases he was deciding.[97]

In April of 1957, N.S. Corn announced his decision to retire from the Court. He had health problems; in early 1957, Corn had undergone surgery for colon cancer and had spent three weeks in the hospital, then a substantial period of time recovering at home.[98] At age 73, he faced a re-election fight the next year against a younger candidate. His DUI arrest and other negative publicity he had received over the years were problematic. His re-election campaign would have been grueling, with a very good chance that Corn would lose.

Corn's decision not to run was made easier by a recent change to the law. Until the previous year, a retiring or defeated judge, regardless of age or years of service, was simply out of a job and therefore without income. In 1956, however, at Justice Earl Welch's urging, the legislature created a position called supernumerary judge, in which a retired judge could accept a reduced salary and an office in return for part-time service. The supernumerary position was available only to judges who voluntarily retired from office, not to those who had been defeated for re-election. Had Corn lost his re-election bid in 1958, he

[97] Report of Investigating Committee of Examiners, Oklahoma Bar Association, Oklahoma Bar Association Journal, Vol. 35, p. 603.
[98] Testimony of Corn, Johnson impeachment trial, May 6, 1965, p.84.

therefore would not have been eligible for supernumerary status.[99] Corn accepted the supernumerary position, and his term expired in January of 1959. So far as the public knew, Corn had ended a long, if unspectacular, career as a jurist. His involvement with *Selected Investments*, which had suffered a very public fall the previous year, went temporarily unexposed.

CONCLUSION

For its first sixty years of existence as a state, Oklahoma's political framework closely traced those of the American South. Although the constitution was billed as Progressive, it was the rural, Southern Progressivism of William Jennings Bryan that its authors, influenced by the previous decade's Populist movement, sought to achieve. The more urbane version of Progressivism offered by Theodore Roosevelt had little appeal for the delegates to the convention. By allowing itself to fall into the ugly trap of segregation, the state's constitutional delegates and early legislators squandered an opportunity to create a more modern and responsive state government.

For the six decades after statehood, the legal system had failed to progress. Although the office of JP had long since become obsolete, Oklahoma continued to employ JPs; the fee system and lack of professionalism created a black eye for the entire judiciary. Poor pay for county judges and county attorneys led to constant turnover for a job with little appeal for experienced lawyers. The system of down-ballot election of justices and judges provided little or no accountability, making a

[99] Berry and Alexander, pp. 73-74. In Corn's case the supernumerary position paid $9,000 per year, about sixty percent of his salary on the Court. Oklahoman, April 17, 1957, p.1.

seat on the bench just another political position, in which the judge owed his loyalty to the political party and campaign supporters. The lines between routine legal behavior and favoritism became blurred. This made the state ripe for corruption and its legal system easily exploited by men like Cargill and Corn.

The rigid nature of the state's constitution and the conservative nature of its officeholders and electorate made reform difficult. As we shall see in later chapters, even after it became obvious that Oklahoma's court system had serious flaws, efforts at reform repeatedly failed, despite the fact that the proposals were hardly drastic. Eventually, both parties provided united leadership which led the electorate, however grudgingly and hesitantly, to approve needed, meaningful improvements to the state's judicial framework.

CHAPTER TWO

THE STATE OF THE COURT

CARGILL, CORN, AND THE INFLUENCE-PEDDLERS

By the 1950s the Oklahoma Supreme Court had become a center of institutionalized corruption. It was widely believed in the legal community that favorable rulings went not to the litigant with the better case but instead to the one who had bribed the court. Most, but by no means all the rumors, involved Corn and Cargill in some aspect. The common thread of the cases was not simply the identity of the actors; instead, it was the general atmosphere of illicit, backdoor influence on the court by lawyers willing to pay for inappropriate access and judges willing to sell it.

In 1954 the Supreme Court decided Johnson v. Johnson, a will contest involving the large estate of Oklahoma City attorney Dexter G. Johnson.[1] Johnson had left a sheet of paper, partly typed and partly in his handwriting, in which he had apparently disinherited his brother. Oklahoma law interprets wills strictly. Written wills must be signed and dated in front of witnesses; holographic (handwritten) wills must be entirely in the hand of the person writing the will and

[1] Johnson v. Johnson, 279 P.2d 928 (Okla., 1954).

must be dated and signed. Johnson's will did not meet either requirement, and the Oklahoma County probate court denied its admission to probate.

The Supreme Court had unanimously affirmed the trial court's decision and had denied a petition for additional review. However, in February, 1954, after the time for rehearing should have expired and the case final, Justice Ben Arnold presented a substitute opinion reversing the trial court and admitting the will to probate. Three months later Fred Suits, the attorney representing the family members opposing the will, received a disturbing call from Justice Harry Halley. Halley told Suits that he would lose the Johnson case, explaining that O.A. Cargill, who had not previously been involved in the Johnson matter, had been "hanging around" Arnold's office on most mornings. On October 15th a substitute opinion admitting Johnson's will, approved by Arnold, Corn, Welch, and Johnson was released; on that same day, Arnold, accompanied by his friend O.A. Cargill, purchased a new Cadillac at an Oklahoma City dealership.[2] That same week Corn also bought a used Cadillac at a dealership in Coffeyville, Kansas.[3] Only one thing had changed from the time of the opinion denying the admission of the will to the release of the revised opinion admitting it eight months later: the undisclosed, private involvement of O.A. Cargill.

An earlier example of Cargill's way of doing business had occurred in 1948. Laura Fleming and her husband had become involved in a dispute over an

[2] Oklahoman, August 11, 1965, p.1. Testimony of Corn in deposition regarding Johnson will case, July 13, 1965, Maurice Merrill papers, Western History Collection, University of Oklahoma. Two months later, Arnold, apparently short of money, mortgaged the Cadillac.

[3] Testimony of Corn, Johnson will contest, July 13, 1965, Merrill papers. Corn's later explanation for a $3,000 cash payment on the car was that it came from the *Selected Investments* bribe money. However, that event had not yet occurred.

oil and gas lease with D.L. Kelly, who claimed to be a silent partner of Cargill's on the lease. The Flemings lost their case at the trial level. After the trial, Kelly approached the Flemings, saying that Cargill, who had not participated as an attorney in the case, wanted to speak to them without their lawyer being present. When they attended the meeting alone, Cargill told them he had "fixed" the district judge and also had the supreme court fixed. Cargill offered the Flemings $1,200 for their lease. The Flemings filed an affidavit detailing the conversation with Cargill, then repudiated their own affidavit. After they repudiated their story, Cargill paid the Flemings $4,000 for their lease, then drilled two oil wells on the land.[4]

Cargill was by no means the only influence-peddler doing business at the Supreme Court. Oklahoma City attorney Wayne Bayless, a former justice who had been defeated for re-election in 1948 by N.B. Johnson, also took advantage of chances to make money for judicial votes. In 1953 Bayless and Tulsa attorney John Wheeler approached Font Allen, a Tulsa lawyer representing a plaintiff in a medical negligence case.[5] Bayless and Wheeler told Allen that he and his client needed help with Justices Corn and Arnold. After the case was affirmed and the defendant paid the $73,000 judgment, Bayless and Wheeler demanded $10,000 from Allen, which Allen paid with $500 bills.[6] In another instance five years

[4] Oklahoman, June 15, 1965, p.1, Berry and Alexander, pp. 48-51.
[5] Woodson v. Huey, 261 P.2d 199 (Okla., 1953). Justice Johnson wrote the opinion affirming the trial court; Corn, Welch, and Arnold concurred.
[6] Oklahoman, February 18, 1966, p.9.

later, Bayless paid Cargill $10,000 for a favorable result in an oil and gas case, which Cargill apparently split with Oklahoma City attorney Ned Looney.[7]

In 1955 the Court considered the confusing Meadors will case, officially styled Battle v. Mason.[8] In the 1890s, C. F. Meadors, a father of two young daughters, had divorced in Arkansas. Meadors later moved to Oklahoma, remarried, and became wealthy. In 1950, in failing health, Meadors signed a will which left $75,000 each to his two daughters, leaving most of his estate to his brothers and sisters. The issue before the court was whether Meadors was competent at the time he signed the will. Ned Looney's firm, which had a close relationship with Justice Welch, represented the Meadors brothers and sisters , while Cargill represented the Meadors daughters. At trial Oklahoma County District Judge W.A. "Lon" Carlile, later to be on the Supreme Court himself, ruled Meadors had been incompetent and refused to admit the will. Looney appealed.

As it had the previous year on the Johnson will case, the Court made a fool of itself. Early in 1955, the justices issued an opinion affirming the trial court. Later that year, however, the Court reconsidered. In the meantime, two new justices, including Justice Floyd Jackson, had joined the Court. Cargill drove to Purcell to visit Jim Nance, a newspaper publisher and state legislator, and offered Nance $10,000 for Jackson's vote. Nance declined, but for some reason did not

[7] West Edmond Hunton Lime Unit v. Young, 325 P.2d 1047 (Okla., 1958). Oklahoman, February 18, 1966, p.9.
[8] Battle v. Mason, 293 P.2d 324 (Okla. 1955).

tell Jackson or anyone else about the conversation for several years.[9] Ten years after the case was decided, Justice Ben T. Williams testified an unnamed person had offered his father, a Stratford mail carrier, a $25,000 "campaign contribution" for Williams' vote.

Williams and Justice Harry Halley also noticed an inordinate interest in the case from both Corn and Justice Ben Arnold.[10] At approximately this time, Arnold and Corn became involved in a physical altercation during a Supreme Court conference, an event which became well-known at the capitol. [11] Arnold had complained that someone was "trying to do something to a friend (Cargill)." In the event, Jackson's swing vote changed the result, and, to considerable public disgust, the Court reversed its own ruling. Cargill got the votes of Corn, Welch, and Johnson, but lost the case to Looney.

MARSHALL V. AMOS AND THE WESTCOTTS

At approximately the same time, the Court was considering Marshall v. Amos, a Cleveland County case which involved eight producing oil wells worth several million dollars. H.G. Marshall, an unsavory Nocona, Texas oil promoter, had lost his case in the trial court. Through Cargill's daughter and son-in-law, Marshall had become casually acquainted with Cargill, who convinced Marshall

[9] U.S. v. Cargill, vol. 12, pp. 709-716.
[10] Transcript of Johnson impeachment trial, pp. 98-100, 262.
[11] Transcript of Johnson impeachment trial, pp. 98-100, 262.

he needed "insurance" with the Supreme Court.[12] Through Titus Haffa, a Chicago oilman who was Marshall's financial backer, Marshall and Cargill arranged a $30,000 fee for Cargill, payable to Cargill only upon reversal by the Supreme Court. On April 20, 1956, Haffa wrote a letter to Cargill confirming the arrangement. On July 13th Haffa wrote a second letter, stating the $30,000 was to be paid in cash.[13] Cargill's interest in Marshall v. Amos was not disclosed; he made no court appearance, nor did he write a brief or do any other legitimate legal work.

Cargill called Corn at his office and told the justice he had $25,000 to be divided six ways if Corn would vote for an opinion reversing the trial court. Cargill told Corn he already had the votes of "the two Indians" (Welch and Johnson), Davison, Halley, and Blackbird. According to Corn, Cargill claimed he had an attorney from Tulsa taking care of Halley, a lawyer from Bristow for Blackbird, and that Cargill himself would take care of Davison, Welch, and Johnson.[14] If Cargill indeed made this statement to Corn, he was lying; no credible misconduct claims were ever raised against Justices Blackbird, Halley, and Davison. On June 5, 1956, the Court issued its opinion reversing the trial court and awarding the oil and gas interests to Marshall.[15]

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[12] Marshall's testimony was confusing on this point. Cargill had once represented Marshall in oil and gas litigation in Noble County. U.S. v. Cargill, Vol. 8, pp. 7-19.
[13] Testimony of Henry Grant Marshall, U.S. v. Cargill, Vol. 7, pp. 70-84. Testimony of Marshall, State ex rel Harlan G. Grimes, SCBD 1794, July 25, 1966, Oklahoma Department of Libraries, 29-10, Box 1, Folders 31-33 (Grimes attempt for reinstatement to Oklahoma Bar Association).
[14] Testimony of Corn, U.S. v. Cargill, June 6, 1965, Vol. 4, pp. 10-11.
[15] Marshall v. Amos, 300 P.2d 990 (Okla., 1956). Justice Davison did not join in the opinion.

Shortly after the release of the opinion in Marshall v. Amos, Harlan Grimes, a lawyer who had not been involved in the case to that point, published a pamphlet claiming Cargill and Marshall had conspired to bribe various members of the Court.[16] In 1959 Grimes filed a $5 million federal court suit on behalf of Amos, alleging Haffa and the Marshalls had paid Cargill $30,000 for the bribery. Cargill responded by calling the case an "unfortunate joke," adding that he hoped the Court would not get any unfavorable publicity from Grimes's claims. Although his allegations later proved to be relatively accurate, Grimes had no evidence with which to support his claim, and within six weeks U.S. District Judge Ross Rizley had dismissed it, deeming it frivolous.[17]

Within four months, Grimes found himself the subject of a highly publicized disbarment proceeding, in which the final decision on whether Grimes would keep his law license would be made by the same Supreme Court Grimes had accused of bribery. At first Grimes seemed to be going down fighting; he demanded a public hearing and vowed to resist disbarment. However, Grimes apparently changed his mind before the hearing; on August 1, 1959, he failed to appear at the hearing, instead offering his resignation by phone. On March 8, 1960, the Supreme Court, disregarding the proffered resignation, disbarred

[16] Grimes had a history of suing judges and lawyers. In 1946 he had sued his client and an Oklahoma City attorney for conspiring to "cheat and defraud" him out of his fee in a federal court case. In 1948 he had sued Cargill and a Creek County judge over unpaid fees, alleging a conspiracy among Cargill, the judge, his clients, and other attorneys to misappropriate his fee. Oklahoman, May 26, 1946, p.5 and July 23, 1948, p.33. He had also accused Tom Gibson, a justice defeated for re-election in 1953, of distributing $20,000 in bribe money in a case involving the Oklahoma City school system. Berry and Alexander, p.45.

[17] Oklahoman, March 10, 1959, p.5 and April 21, 1959, p.4.

Grimes, citing his history of "evil and ungrounded attacks" on judges and lawyers.[18]

In 1958 Cargill also became involved in an appeal involving his daughter, Otha Westcott, and her husband Harold. The Westcotts owned Oklahoma Company, an oil company through which Harold had allegedly defrauded his investors by overcharging for drilling and leasing expenses. The credibility of the company and its officers deteriorated so badly that a Washington County judge appointed a receiver to take over its management. Florida law enforcement were also investigating the company's business practices.

Cargill intervened, once again calling Corn and offering him $7,500 for a reversal of the trial court's order. Corn, in separate conversations with Welch and Johnson, agreed to buy their votes for $2,500 each. The embattled but indiscreet Westcott offered to sell a lucrative oil and gas lease to a family friend, saying he needed the money to purchase votes from Justices Welch, Johnson, and Carlile.[19] On December 2, 1958, just a month before the terms of Corn and Carlile expired, the Court reversed the trial judge.[20] The Court's vote was five to four; the majority consisted of Corn, Welch, Carlile, Johnson, and Davison. After the ruling became final, Cargill again phoned Corn, who had moved to a

[18] Ibid., March 9, 1960, p.12. After the scandal was exposed, Grimes unsuccessfully sought reinstatement to the Oklahoma Bar Association.
[19] Opening statement of Representative Burke G. Mordy and testimony of Mrs. R.D. Farmer, Johnson impeachment trial, p.35., pp. 116-125.
[20] Oklahoma Company v. O'Neil, 333 P.2d 534 (Okla., 1958). Corn had not run for re-election, and Carlile had been defeated by William Berry.

supernumerary judge office in the state capitol. Corn picked up the money from Cargill and delivered $2,500 each to Welch and Johnson.[21]

BRIBERY AND THE *SELECTED INVESTMENTS* DECISION

Although Governor Murray had ended the banking commissioner's inquiry into the affairs of *Selected Investments*, the company continued to battle another state agency, the Oklahoma Tax Commission, over the corporate status of the companies. *Selected* claimed the primary company consisted of two different entities, one for the management of the trust and a separate company managing the rest of the company and its income. The commission took a different view, contending *Selected Investments* was in truth only one company. The financial stakes were tremendous; a loss in the Supreme Court would cost *Selected* about $560,000. Oklahoma County Judge Albert Hunt ruled in favor of the tax commission, a result which threatened ruin for *Selected*.[22] The Internal Revenue Service was also watching the case; if *Selected* lost, it would also face a backbreaking debt to the federal government.

Selected appealed Judge Hunt's ruling to the Supreme Court. After the appeal was filed, Hugh Carroll called Justice Corn, whom he had known from

[21] U.S. v. Cargill, 65-27-CR. In 1961 Otha Westcott, Cargill's daughter, died in an auto-pedestrian accident near Cargill's ranch.

[22] Hunt had an unusual career on the bench. He had been district judge from Tulsa, then served a term on the Supreme Court from 1925 to 1931. He later reentered the judiciary in Oklahoma County. In 1955 he returned to the Supreme Court after the death of Justice Ben Arnold but died in August of 1956. His seat was filled by Lon Carlile and, later, William A. Berry.

their years in Taloga, and told the justice he wanted to discuss something, a comment Corn undoubtedly took to mean his pending case. Corn and Carroll went to dinner at Glen's, a steakhouse in northwest Oklahoma City. After dinner they returned to Corn's house and discussed Carroll's problem in Carroll's car. When Justice Corn asked Carroll how much a favorable result meant to him, Carroll told him it was worth $150,000. Corn expressed interest in fixing the case, telling Carroll he would "see some of the other boys." Corn declined Carroll's offer of a down payment.[23] Corn was so staggered by the amount of money Carroll had offered that a few days later he wrote the $150,000 down on a piece of paper, went to Carroll's office in downtown Oklahoma City, and showed Carroll the number. When Carroll again confirmed the figure, Corn agreed to the proposal.[24]

The offer was indeed astounding; $150,000 in 1956 was worth more than $1,300,000 in 2016.[25] Corn had not told Carroll how he proposed to accomplish the reversal, nor did Carroll ask. Corn agreed to commit this serious crime with no down payment from Carroll; both men agreed to act entirely on faith. Corn had no way of knowing if Carroll even had access to that amount of money. The conspirators never offered an explanation regarding why Carroll approached Corn in the first place; the public record shows Corn and Carroll had only been casually acquainted from their mutual Taloga ties many years previously. As we have seen, however, the word was out regarding corruption in the Supreme Court.

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[23] Testimony of Carroll, U.S. v. Carroll, vol.2, pp. 11-12, June 2, 1965.
[24] Testimony of Corn, Johnson impeachment trial, May 6, 1955, p.77.
[25] www.data.bls.gov.

Having accepted Carroll's proposal, Corn visited N.B. Johnson at Johnson's office in the capitol. Corn told Johnson that he had known Carroll for many years, and that he could get Johnson $7,500 in exchange for his vote on an opinion favorable to *Selected.* Johnson told Corn that he did not know if an opinion reversing the trial court could be written, but Johnson indicated he would go along if he could do so.[26] Corn then called on Justice Welch separately and had a similar conversation with Welch, who also agreed to the scheme. At no time did Corn, Welch, and Johnson discuss the plan together; all of Corn's conversations were one-on-one talks with the other participants. Corn did not tell the other justices the amount of money he was to get from Carroll, implying that he was to get $7,500 as well.

Still unsure of how many votes he had, Corn called O.A. Cargill, who had not been involved in the *Selected Investments* case up to that point. Corn believed Cargill could influence the vote of Justice W.A. "Lon" Carlile, who had been appointed to the Court's Oklahoma County seat after the deaths of Justice Ben Arnold and, shortly thereafter, Justice Albert Hunt. After Hunt's death, Ned Looney had recommended to Governor Raymond Gary that he appoint Carlile to fill the vacancy.

William A. Berry, who defeated Carlile in 1958, described Justice Carlile as a "nice old man, genuine and outgoing, well-liked by everybody, but not really much of a factor on the court." According to Berry, Carlile's major weakness as a

[26] Testimony of Corn, Johnson impeachment trial, p. 79.

judge was his tendency to be loyal to old friends, which colored his objectivity.[27] Corn offered $2,500 to Cargill if he could persuade Carlile to vote for reversal. Cargill told Corn that Carlile would vote any way Cargill told him to vote.[28]

A few days after their conversation about Carlile's vote, Cargill phoned Justice Corn and told him Carlile would vote for reversal. Corn and Carlile never discussed *Selected Investments* privately. No hard evidence exists of any financial irregularity by Carlile; it is likely that Cargill duped Carlile into voting for reversal, then pocketed the $2,500 for himself. Carlile apparently did not become curious why Cargill had contacted him about a case in which he was not representing anyone; Cargill certainly would not have told Carlile he was being paid by, of all people, another justice. Carlile's conduct is a textbook example of the dangers of the then-common practice of judges allowing ex parte discussion of cases pending before them. Although he violated judicial rules, it is unlikely that Carlile committed a crime. Nevertheless, Corn now was assured of four votes; on a court of nine justices, he only needed five.

Carroll and Corn had concocted a lucrative scheme. For the promise of $17,500 ($7,500 each to Johnson and Welch and $2,500 to Cargill for Carlile's vote), Corn stood to receive $150,000, a profit of $132,500. Carroll also expected a profit. Having paid Corn nothing before the Court's opinion, Carroll had nothing to lose. If he lost the case, *Selected* owed the tax commission what it had

[27] Berry and Alexander, pp. 70-71.
[28] Testimony of Corn, U.S. v. Cargill, Vol. 4, p. 15.

already been ordered to pay. If *Selected* won, Carroll had promised $150,000 to save $560,000.

Selected's appeal remained undecided for several months. Although no witness specifically said so, this time frame coincides with Corn's hospitalization and recovery from colon cancer.[29] As the Chief Justice, Earl Welch would have set the court's calendar.[30] It therefore seems probable that Welch held the case until Corn's return.

On March 12, 1957, the Oklahoma Supreme Court handed down its ruling on *Selected Investments* v. Oklahoma Tax Commission. The majority opinion was written by Chief Justice Earl Welch and was supported by five other justices, including Corn, Johnson, and Carlile. While the opinion is very difficult to understand, the author and the concurring justices held that *Selected Investments Corporation* and *Selected Investments Trust Fund* were separate, although closely related entities, and therefore should not be treated as one large taxpaying company.[31] The Tax Commission requested a rehearing, which was denied on April 2nd. *Selected Investments* had won.

On April 20, 1957, Corn called Hugh Carroll at his office and told him the mandate to the district court ordering the reversal was coming down. Carroll told Corn he was unprepared to pay the entire $150,000. Corn asked Carroll if he

[29] Carroll visited Corn in the hospital. Testimony of Carroll, Johnson impeachment trial, p.65.
[30] In Oklahoma the Chief Justice and Vice-Chief Justice serve two year terms, then rotate out of the position and return to their normal duties. By tradition the Vice-Chief Justice becomes Chief Justice. In January of 1957, the Supreme Court had bypassed Vice-Chief Justice and heir-apparent Ben T. Williams in favor of Welch, with Corn becoming the Vice-Chief. Johnson's term as Chief Justice had expired. Oklahoman, January 15, 1957, p.1.
[31] *Selected Investments* v. Oklahoma Tax Commission, 309 P.2d 267 (Okla., 1957).

could pay $25,000, which Carroll agreed to pay from his personal account. Corn then called Johnson and Welch and asked them to remain at the capitol after working hours. Corn drove to Carroll's office; Carroll entered Corn's car, then placed $25,000 in Corn's glove compartment.[32] Corn then drove directly back to the capitol, went to Johnson's office, and handed him $7,500 in $100 bills, which Johnson counted in Corn's presence. Corn then did the same thing at Welch's office.[33]

On April 24th Carroll, without corporate authorization, borrowed $200,000 from the *Selected Investments* trust fund, the fund which had the duty to pay investors. A vice-president of the First National Bank wrote to Brinks, authorizing them to deliver $200,000 cash to Carroll's office; Carroll signed a receipt from the Brinks driver that morning.[34] Carroll then called Corn and told him to come to his office, where he paid the remaining $125,000 to Corn. Carroll then used the rest of the investor money to repay himself the $25,000 he had previously paid Corn and retained $50,000 for himself.[35]

Thanks to O.A. Cargill, Corn had been illegally supplementing his income for years. However, he had never handled anything approaching this amount of money, which created a new problem. The $132,500 he had cleared from the *Selected* bribery was nearly ten times his annual salary; what could he do with the

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[32] Carroll had drawn $23,000 from his personal account and $2,000 from a safety deposit box. Testimony of Carroll, impeachment trial of Johnson, pp. 54-55.
[33] Testimony of Corn, impeachment trial of Johnson, pp. 78-80, May 6, 1965.
[34] Testimony of Paul S. Copeland, Johnson impeachment trial, May 6, 1965, pp. 41-44.
[35] Testimony of Carroll, U.S. v. Cargill, June 2, 1965, Vol. 2, pp. 13-15 and Johnson impeachment trial, May 6, 1965, p. 67. On his endorsement of the check, Carroll wrote "Drew that $200,000 out for the purpose of purchasing 20,000 of *Selected Investments* stock."

money without raising suspicion and exposing his own graft? For obvious reasons he could not pay cash for a home, a car, or other tangible personal property. Corn therefore stashed the money in all sorts of unusual places; he hid some in his locker at the Lincoln Park golf course, some in filing cabinets in his home and his office, and still more in a fruit jar in his backyard.[36]

Corn gambled much of the money away. He also lent at least $6,000 to his son Lonnie. He went to Las Vegas, where he lost about $10,000, and to a racetrack in Phoenix. In the summer of 1957, Corn returned to Las Vegas with his family and lost about $15,000 on that trip. The next winter he went to Hot Springs, Arkansas with $15,000 to $20,0000 and lost much of that money as well.[37]

THE BANKRUPTCY OF *SELECTED INVESTMENTS*

The expensive and illegal resolution of its litigation with the Oklahoma Tax Commission did not end the financial problems of *Selected Investments*. The federal tax court was about to rule against the company, making it liable for indebtedness to the IRS.[38] The combination of the impossible promises the company had made, the lavish lifestyles the executives maintained, and embezzlement took their toll. On December 8, 1957, only eight months after he had paid the bribe money, Carroll wrote his investors a letter notifying them the

[36] Oklahoman, June 5, 1965, p.1.
[37] Testimony of Corn, U.S. v. Cargill, vol. 6, pp. 13-17, June 7, 1965.
[38] Oklahoman, January 21, 1958, p.1.

company would not be able to honor its pledge of six percent return and proposing an unspecified "reorganization." Carroll's letter put certificate holders on the defensive, giving them until January 8th to accept or reject the company's vague plan. In the meantime the dividends were not paid, and certificate holders were in peril of losing their entire investment.[39]

Besieged by calls from panicked constituents and alarmed by Carroll's arbitrary January deadline, the Oklahoma legislature, which had previously turned a blind eye to the shortcomings of *Selected Investments*, sprang into action with a vengeance. On December 23rd, disregarding the holiday season, a hastily convened legislative committee met to discuss the matter. Although they had promised to appear at the meeting, Carroll and two of the company's top executives, J. Phil Burns and Linwood Neal, did not show up. Carroll sent Paul Washington, his attorney and son-in-law, to appear in his stead, leaving the hapless Washington to try to explain the absence of the corporate officers by claiming they were waiting on an audit and, of all things, processing an application with the U.S. Securities and Exchange Commission to sell securities throughout the country.

At the December 23rd meeting, legislators concentrated their fire on the beleaguered Herschal K. Ross, the director of the Oklahoma Securities Commission and the man who had replaced Milton Cope six years previously. Under Ross's leadership the securities commission had become the epitome of a regulatory agency captured by those it was charged with regulating. Claiming

[39] Oklahoman, December 24, 1957, p.1.

lack of investigators, Ross had simply sat on his hands. Ross's son Ronald worked for *Selected's* small loan department, and Carroll and Ross were social friends. Although Ross claimed his agency had little authority, legislators pointed out that he had never complained to them about this problem. To make things worse, the securities commission's attorney member had resigned several years previously, but Ross had not reported this fact to Governor Gary, so the post had remained vacant.[40] Ross was on his way out, as he had obviously not done the job of protecting Oklahoma investors from unsound or unscrupulous business practices.

However, there was something disingenuous about the criticism Ross was receiving from the legislature. Ross had seen what had happened to M.B. Cope six years earlier; Cope's active and aggressive criticism of *Selected Investments* had bought him a one-way ticket out of state government, courtesy of the legislature. On the *Selected Investments* case, Ross had done what he undoubtedly thought the legislature had expected him to do--very little.

Although its authority to issue subpoenas was questionable, the legislative committee issued orders to appear on January 2nd to Carroll, corporate sales executive J. Phil Burns, trustee Linwood Neal, and corporate auditor Harold Hedges. Governor Gary appeared at the meeting, but the corporate officers did not, claiming the legislature lacked authority to issue subpoenas outside of a regular legislative session. Washington tried to buy time, suggesting his client would give its investors more time to decide on how to vote on the company's

[40] Oklahoman, December 24, 1957, p.1.

reorganization proposal.[41] The next day, at Gary's insistence, the securities commission suspended *Selected Investment's* authority to sell securities.[42] Ross then issued new subpoenas for the four corporate officers to appear in front of his commission.[43]

With *Selected's* legal situation deteriorating daily, Corn had been talking separately with Cargill and Carroll. At Corn's insistence Carroll hired O.A. Cargill, whom he had never met, as the company's attorney.[44] Carroll also asked Corn to return the bribe money, presumably to help cover up the shortage to investigators. The next day Corn returned $33,000 in $100 bills, explaining to Carroll that sum was all he had left, and that he "didn't feel like calling on the others."[45]

When the securities commission hearing convened on January 7th, Cargill accompanied Carroll and Linwood Neal to the hearing. Cargill told the two commissioners, one of whom was Herschal Ross, his clients needed more time to prepare their testimony. When the commissioners refused, Cargill and his clients walked out of the hearing. At Governor Gary's insistence, the commissioners then cited Carroll and Neal for contempt, an action the commission would be required to urge in Oklahoma County district court.

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[41] Ibid., January 3, 1958, p.1.
[42] Ibid., January 4, 1958, p.1.
[43] Ibid., January 5, 1958, p.1. Less than a week later, Gary forced Ross to resign. Oklahoman, January 11, 1958, p.1.
[44] Testimony of Carroll, U.S. v. Cargill, vol. 2, pp. 20-22, June 2, 1965.
[45] Ibid., vol. 2, pp. 17-19.

Cargill beat them to the punch. He walked directly to the Oklahoma Supreme Court and urged them to order the district court to give him more time. Although Cargill had not even filed his appeal until after 3:00 p.m., Chief Justice Welch called an immediate hearing, which occurred late that afternoon. Ignoring the inconvenient fact that the shareholder certificates had already been dishonored by his client, Cargill told the Court the commission's actions would cause panic, comparing it to a run on a bank. After a short recess, the Court granted Cargill ten days in which to file a brief and the opposing side five days to respond. Cargill had thus, without any testimony, achieved from the Supreme Court what he wanted--delay.[46]

The next day an Oklahoma City couple who were investors in the company filed a suit in Oklahoma County district court, asking the court to appoint a receiver for the company.[47] An order granting receivership would have legal significance in two ways. First, it would take control of the corporation away from Carroll, Burns, and the other top executives and replace them with someone appointed and supervised by the judge. Second, under federal bankruptcy law the appointment of a receiver constituted an act of involuntary bankruptcy. Once a receiver had been appointed, the company's creditors could force *Selected Investments* into federal bankruptcy, regardless of whether the corporate directors agreed with the decision. There were two advantages for creditors to be in bankruptcy court: the greater likelihood of some return on the creditors' investments under court control, and, with federal courts having priority

[46] Oklahoman, January 8, 1958, p.1.
[47] Ibid., January 9, 1958, p.1.

over state courts, the ability to bypass state courts, including state appellate courts. If *Selected Investments* went into bankruptcy, neither the district court nor the Oklahoma Supreme Court could protect the company any longer.

On January 9th an Oklahoma County judge appointed Oklahoma City attorney George Shirk as receiver for *Selected*.[48] Shirk's appointment infuriated the plaintiffs, as he had represented *Selected* at one time; the next month Shirk disclosed that *Selected* was also financing a proposed shopping center in which Shirk held stock. The judge appointed three additional receivers, who hired Luther Bohanon, a future federal judge, to represent them.[49] Bohanon remained in the case throughout and proved to be a capable match for *Selected Investments*.

On Thursday, February 27th, the other shoe dropped for *Selected Investments*. Six creditors filed a petition in involuntary bankruptcy. The case was assigned to U.S. District Judge Stephen Chandler, who scheduled a hearing for the following Monday, leaving *Selected* one business day and the weekend to prepare for federal court. At the hearing on March 3rd, attended by numerous contentious attorneys representing angry investors, Chandler declared the companies bankrupt and appointed Oklahoma City attorney Paul Duncan as trustee of the companies. Because federal courts have priority over state courts, the bankruptcy brought the state district court litigation to a halt. At the hearing, Judge Chandler expressed great concern for the investors, worrying openly about

[48] Shirk later became mayor of Oklahoma City and a prominent Oklahoma historian.
[49] Ibid., January 14, 1958, p.1 and February 11, 1958, p.1. As a federal judge Bohanon proved to be a judicial activist, ordering students bussed to integrate the Oklahoma City schools and forcing reform in Oklahoma's prison system. For more information on Bohanon's career, see Jace Weaver, Into the Rock Let Me Fly: Luther Bohanon and Judicial Activism, (Norman: University of Oklahoma Press, 1993).

certificate holders who were "widows and orphans" and about investors who needed the money to buy food.[50]

Cargill and Carroll had excellent reason to be leery of Judge Chandler. Even in the eccentric Oklahoma legal world of the 1950s, Chandler stood out. Chandler had been nominated to the federal bench in 1940 to fill one of three Oklahoma federal judgeships which happened to be open at the same time. The Justice Department took exception to Chandler's nomination; he had little courtroom experience, he had a shaky reputation as a business operator, and he had settled a civil assault case leveled against him by a stenographer. When the objections to Chandler threatened the other two nominations, A.P. Murrah, who had just been promoted to the Tenth Circuit Court of Appeals, intervened and persuaded U.S. Senator Elmer Thomas to consider Chandler's candidacy separately. This caused a delay of nearly two years in Chandler's confirmation and led to a bitter, lifelong feud with Murrah.[51]

By the time of the *Selected Investments* case, Judge Chandler had developed a perpetual and irrational fear for his life. He was convinced his enemies were tapping his phones, trying to poison his water carafe, or bomb his car. The only person allowed to have Chandler's personal phone number was the U.S. District Court Clerk. A caller wishing to contact Chandler would call the clerk, who would then call Chandler's phone and allow the phone to ring a predetermined number of times. She would then call back, tell Chandler who was

[50] Oklahoman, February 28, 1958, p.1. and March 4, 1958, p.1.
[51] Judge Lee R. West, "Biographical Sketch for the Historical Society of the Tenth Circuit on Judge Stephen S. Chandler," (tenthcircuithistory.org), pp. 2-4.

calling, and Chandler would return the call.[52] In later years Chandler would bar the United States Attorney and his assistants from practicing in the Western District, have his caseload temporarily removed by the Tenth Circuit, and be unsuccessfully prosecuted for conspiring to build a private road with public funds for a subdivision he was building. Chandler's behavior took him to the highest levels of the federal government; the U.S. Supreme Court considered and overturned his suspension by the Tenth Circuit, and his feuds with his fellow judges brought investigation by the U.S. House Judiciary Committee.[53]

After the exposure of the Supreme Court scandal, Chandler became convinced that W.H. "Pat" O'Bryan, one of *Selected Investment's* attorneys, had tried to perpetrate a fraud on the court in submitting a claim in excess of $1 million for services rendered. Chandler denied the claim, disbarred O'Bryan from practicing in the Western District of Oklahoma, and began a campaign to persuade prosecutors to indict O'Bryan. In August of 1965, Chandler, a sitting judge, inaccurately told a newspaper that O'Bryan was "an accomplice if not the mastermind" of the *Selected Investments* bribery. O'Bryan retaliated with a libel suit against Chandler, which resulted in a judgment in favor of O'Bryan. The parties battled each other in a succession of federal and state appellate courts for years, until the Tenth Circuit eventually ruled in Chandler's favor.[54]

Carroll and Cargill now had serious problems. The company was in bankruptcy court with an unpredictable, volatile, and vindictive judge who had

[52] Berry and Alexander, pp. 2-3.
[53] New York Times, Chandler obituary, April 29, 1989 and West, pp. 11-17.
[54] West, pp. 6-15.

already publicly expressed his disdain for them. Bad news kept coming. On March 7th, at trustee Paul Duncan's request, Chandler froze all the assets of the corporate officers, including Hugh and Julia Carroll, and ordered them into a hearing on March 17th. Duncan also fired all the corporate officers. [55]

Cargill and Carroll faced court on March 17th. Over the weekend, Hugh and Julia Carroll went to Cargill's ranch north of Oklahoma City to discuss the case.[56] Carroll told Cargill about the $150,000 bribe to Justice Corn the previous year. Cargill, without telling Carroll about his role in obtaining Carlile's vote, simply told his client that Cargill could have handled the bribe for less money.

Somehow Carroll would have to explain the $200,000 expenditure in court. Cargill refused to allow Carroll to consider taking the Fifth Amendment on the subject and instead insisted that Carroll testify to a different, more creative version of the facts. Apparently after discussing a vacation home the Carrolls owned in Canada, Cargill and Carroll concocted a lie about Carroll's lending the money to Pierre Laval, a fictional French-Canadian oilman who then disappeared with the money. Julia Carroll, who had taken a serious dislike to Cargill, strongly objected to this preposterous story, but the overbearing Cargill, using his forceful personality, insisted.[57]

At the hearing on March 17th, Carroll indeed testified that he gave the money to one Pierre Laval, an oil speculator whom he had met at Lake of the

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[55] Oklahoman, March 8, 1958, p.1. and March 9, 1958, p.1.

[56] Julia Carroll, who had been a longtime employee of *Selected Investments*, had married Hugh in 1952 after the death of Carroll's first wife. Testimony of Julia Carroll, U.S. v. Carroll, vol.3, June 4, 1965.

[57] Testimony of Hugh Carroll, U.S. v. Cargill, vol. 2, pp. 23-24, June 2, 1965.

Woods in Canada.[58] Because the transaction took place in Canada, according to Carroll's testimony, a check was not acceptable, so he had cashed a check in Oklahoma and then flown to Canada to meet with Laval. Laval did not sign a promissory note, and no paperwork was exchanged. Carroll testified he did not get an address or phone number for Laval; he had given the Canadian man the money, and Laval had simply disappeared, leaving Carroll to feel he had "bought the Brooklyn Bridge." At the same hearing, *Selected's* sales director admitted that he had withdrawn his own money from *Selected Investments* the previous July, even though he and the company were still advertising *Selected's* services to the general public.[59]

The next week the public heard more about the financial affairs of *Selected Investments*. Paul Duncan, the bankruptcy trustee, subpoenaed Robert O. Cunningham, an Oklahoma City legislator who had opposed the company in the 1951 dispute with Cope. Things had changed, however, in the subsequent years; Cunningham had borrowed over $600,000 from the company to finance a telephone directory business. The business had failed, and *Selected* had written off about $400,000 of Cunningham's debt without making a serious effort to collect it. The trustee also established that Carroll and his son-in-law William Rigg, who was a vice-president of *Selected*, had pocketed payments from the City of Oklahoma City intended for *Selected* on a residential development.

[58] The name Pierre Laval may have been taken from a French politician from the Vichy years, who was executed after World War II for Nazi collaboration. Weaver, p.52.
[59] Oklahoman, March 18, 1958, p.1.

By March 27th the bankruptcy hearings had confirmed what everyone had suspected. The corporate officers of *Selected Investments* had taken investor money and not invested it at all. Instead, they had paid the promised returns with money from new investors, squandering hundreds of thousands of dollars on exorbitant compensation for employees, personal expenses, and ill-advised and sleazy business ventures. By the next year Carroll and Burns were in a federal penitentiary. Even while incarcerated, Carroll stuck to the Pierre Laval fiction and kept the secret of the bribery. Fortunately, through the efforts of the bankruptcy attorneys, the investors of *Selected Investments* recovered about two-thirds of their money.[60]

CONCLUSION

The shocking corruption in the Oklahoma Supreme Court reveals critical problems with Oklahoma's governmental structure in the 1950s, which originated in the weak architecture provided in the state's constitution. The delegates of the constitutional convention, who had provided such detail in the regulation of railroads and corporations, had created a governmental structure which was minimal in its design and substance. This made it all too easy for private parties to manipulate or avoid public institutions vested with oversight responsibility.

At the Supreme Court level, cases were decided by who was the higher bidder, not who had the better case. As the *Selected Investments* case illustrates,

[60] Oklahoman, July 17, 1964, p.3.

the trial courts allowed unreasonable delay; in the face of investigation, *Selected* had only to go to the district court. The case would just stop, and *Selected* would proceed with business as usual. The Supreme Court scandal reveals the worst aspects of Oklahoma's government of the time, where corruption, indolence, and lack of responsiveness were allowed to exist.

CHAPTER THREE

PROSECUTION AND THE SEEDS OF REFORM

INTRODUCTION

The years 1965 through 1967 were a period of shock for Oklahoma's body politic, especially its legal community. The Supreme Court scandal gradually came to public light. With each new disclosure, the magnitude of the corruption became more and more obvious. Although proposals for large-scale reform initially met with vociferous resistance from the legislature, it gradually became obvious that something must be done. In 1967, through imaginative and politically astute legislating, voters approved judicial reform. The next three chapters will describe the slow, contentious, and halting process through which Oklahoma finally improved its judicial system.

REFORM GOVERNORS AND LEGISLATIVE RESISTANCE

After the late 1950s, the controversy over *Selected Investments* gradually fell out of the public eye. Hugh Carroll and Phil Burns went to federal prison and served their sentences; so far as the public knew, the case was over. Although the

Selected Investments case itself no longer occupied the public's attention, Oklahomans had become disillusioned and dissatisfied with the insider-friendly nature of their state government. The state also became more urban, and residents of the more populous areas resented the control rural politicians exhibited at the capitol.

In 1958 thirty-three year-old J. Howard Edmondson, astutely and effectively employing the new medium of television, swept into office on a reform platform. Edmondson advocated modernization in nearly every aspect of state government, including reform in highway administration, a merit system for selection of state employees, central purchasing of state equipment and supplies, the abolition of prohibition, and removal of secondary offices from the ballot.[1] The new governor's platform and the election of a young outsider like Edmondson constituted important breaks with the rural Southern populism which had dominated the state for its first half-century. In addition to his platform, Edmondson's urbane style contrasted greatly with his immediate two predecessors, Raymond Gary and Johnston Murray.

Surprisingly, Edmondson's gubernatorial papers show little or no discussion of judicial reform.[2] Edmondson was an attorney and would have been aware of the rumors regarding the Supreme Court. However, the scandal would not be exposed until after Edmondson left office, and Edmondson already had a lot on his plate. Edmondson was only able to achieve the repeal of prohibition by,

[1] Oklahoma Politics: a History, James R. Scales and Danney R. Goble, (Norman: University of Oklahoma Press, 1982), pp. 301-313.
[2] J. Howard Edmondson papers, Oklahoma Department of Libraries.

among other things, well-publicized raids of country clubs, which were illegally selling alcohol to members and their guests. This and his battle for passage of a merit system for hiring state employees took an enormous political toll. It therefore seems likely that Edmondson allowed court reform, which had not yet captured the public imagination, to take a back seat to his other proposals.

Although Edmondson had entered office with high hopes and riding a wave of public approval, neither he nor the electorate had anticipated the Oklahoma legislature's power to resist his plans.[3] While Edmondson was able to enact the repeal of prohibition, central purchasing, and the merit system, he quickly lost control of the Democratic party to the rural, conservative majority in the legislature. Edmondson could blame himself for part of the problem; he and his aides had unnecessarily alienated legislators and others with their brash style, youthful arrogance, and disregard for tradition and protocol. By the end of his term, the conservative legislature had completely overwhelmed Edmondson, who survived the repeal of the newly-passed merit system only with the assistance of House Speaker J.D. McCarty.[4] Despite his overwhelming election victory and early successes, Governor Edmondson could not overcome the resistance to reform in the legislature. However voters felt about Edmondson's administration, they remained restive and receptive to the possibility of major change.

In 1962, traditionally Democratic Oklahoma voters again expressed their dissatisfaction with their state government by electing Billings farmer Henry

[3] J. Howard Edmondson papers, Oklahoma Department of Libraries.
[4] Scales and Goble, pp. 313-325.

Bellmon as the state's first Republican governor, providing another chink in the armor of the dominance of rural Democrats. As the state chairman of the Oklahoma Republican party, Bellmon had energized his troops by naming new leadership and appealing to younger, urban voters. Bellmon exploited hostility and contention among the Democrats, swamping W.P. Bill Atkinson, the millionaire developer of Midwest City, who had narrowly defeated former Governor Raymond Gary in a bitter runoff for the Democratic nomination.[5] In his term Bellmon would also encounter frustration with the Democratic legislature and clash bitterly with Speaker McCarty.

PROSECUTION OF N.S. CORN

Although the public controversy had died down as a public issue, the federal government had not forgotten about *Selected Investments*, the missing $200,000 at the hands of the mysterious and elusive Pierre Laval, and the Supreme Court's bewildering and suspicious decision in favor of *Selected.* Spurred by a tip that two justices were evading federal income taxes, B. Andrew Potter, the United States Attorney for the Western District of Oklahoma, and the IRS continued to investigate.[6] Although he originally had insufficient evidence with which to justify a prosecution, Potter continued to pursue Hugh Carroll, who had been released from federal prison. In March of 1964, enticed with the

[5] Ibid., pp. 327-333.
[6] How Bad It Was, How Good It Is: The Value of an Independent Oklahoma Judiciary, (Oklahoma City: Commonwealth Press, 2015). The source of the tip was never revealed.

possibility of a pardon from the Justice Department, Carroll finally spoke with the IRS. Potter began to present his case to a federal grand jury the next month.[7]

N.S. Corn and Earl Welch were feeling pressure from the IRS and Potter. Corn had quietly dealt with the IRS since at least 1962, and had privately indicated to the authorities that, if indicted, he would not contest criminal charges. Between the summers of 1962 and 1963, Corn, still serving as a supernumerary judge for the Oklahoma Supreme Court, paid the government nearly $20,000 in overdue tax, penalties, and interest while preparing for bad news from the federal authorities.[8]

In the meantime, the relationship between Corn and Cargill finally ruptured. At Cargill's suggestion, Corn had retained Oklahoma City tax attorney John Speck to represent him in his troubles with the IRS. According to Corn, Speck and Cargill contacted Corn and indicated his problems with the IRS would go away for $20,000, implying they had bribed an IRS agent. Corn concluded Speck and Cargill were trying to scam him. Corn later claimed he had angrily refused the offer and ended his attorney-client relationship with Speck. Whatever the true facts were, Corn and Cargill's long-standing, corrupt friendship ended in bitterness and acrimony.[9]

U.S. District Judge Roy Harper of St. Louis presided over the grand jury. Harper, a former small-town lawyer, was a veteran of Democratic Party politics in Missouri, where he had been the chairman of the state party. In 1947 President

[7] Interview with B. Andrew Potter, Oklahoman, June 25, 1965, p.1.
[8] U.S. v. Corn, Western District of Oklahoma, 64-5CR, July 1, 1964.
[9] Corn statement to authorities, December 9, 1964, pp. 75-77. Maurice Merrill papers.

Truman, a fellow Missourian, appointed him to the federal bench. After the local judges recused themselves, Harper was sent to Oklahoma in January, 1964, to hear what he thought would be one case: W.H. "Pat" O'Bryan's libel suit against Judge Chandler, which had arisen from O'Bryan's claim for a million dollar fee in the *Selected Investments* bankruptcy. As it happened, Harper was assigned to most of the litigation which developed from the scandal and spent many months in Oklahoma.[10]

On April 6, 1964, the federal grand jury began hearing from witnesses who knew about the financial affairs of Corn and Welch, including Hugh Carroll and Welch's ex-wife Fern. The next day Welch himself appeared and testified for about two hours, then continued his testimony for most of the next day. After Welch's testimony concluded, the grand jury indicted both Corn and Welch on five charges each of income tax evasion. The next day Welch released a statement strongly denying his guilt and any inappropriate involvement with *Selected Investments.*[11] Two weeks later, Corn and Welch appeared in Oklahoma City federal court; Welch pleaded not guilty and successfully demanded his trial be moved to the Eastern District of Oklahoma, where he officially lived. When Justice Corn's turn came before the bench, Corn and his attorney attempted to plead "no defense," citing concerns for the eighty year-old defendant's health.[12]

[10] Oklahoman, January 21, 1964, p.5.
[11] Oklahoman, April 7, 1964, p. 1, April 8, 1964, p. 1, April 9, 1964, p. 1, 7, April 10, 1964, p.1.
[12] In addition to his 1957 cancer surgery, Corn had suffered a serious heart attack in 1962.

Judge Harper refused to hear Corn's plea of "no defense", and Corn's attorney then entered a not guilty plea for his client.[13]

On July 1st, Corn reappeared before Judge Harper, this time pleading nolo contendre to evading taxes for the years 1956, 1958, and 1959 and to filing false returns for two of those years. Corn's lawyer, James Eagleton, insisted to the judge that Corn was guilty only of technical violations of the law. Eagleton stuck to Corn's statements to the IRS agents: that he had earned his undeclared income from winnings on poker with players he declined to identify and from gambling on horse races. According to Eagleton, the only reason for his client's no contest plea was his ill health and his physical inability to stand trial.[14] This was too much for U.S. Attorney B. Andrew Potter; after clearing the action with U.S. Attorney General Robert F. Kennedy, Potter responded by telling the Court that Corn had taken a $150,000 bribe.[15] This bombshell announcement was the first notice to the general public of corruption allegations against the Supreme Court. After Potter's statement Harper immediately sentenced Corn to a term of eighteen months but set another hearing to determine whether Corn was physically able to withstand incarceration.

N.S. Corn was now a convicted felon sentenced to prison. He was also a supernumerary judge for the Oklahoma Supreme Court, drawing a salary of $9,374 per year from the Oklahoma taxpayers. This fact illustrated a glaring weakness in Oklahoma's political structure which would be exposed in the cases

[13] Oklahoman, April 24, 1965, p.1.
[14] United States v. N.S.Corn, 64-85CR, July 1, 1964.
[15] Oklahoman, June 25, 1965, p.1. Interview with B. Andrew Potter.

of all three justices: the inability to discipline or terminate corrupt or incompetent officials. N.S. Corn, no longer an elected justice, was a salaried supernumerary judge appointed by the governor with case assignments determined by the supreme court. Nevertheless, neither the governor nor the justices had the power to terminate him. Only the legislature, which would not convene until the next year, could remove Corn by the expensive and time-consuming avenue of impeachment.

Chief Justice W.H. Blackbird telephoned Corn on the day of his plea and demanded his resignation. Corn stalled Blackbird, stating he would think about the subject for a few days. Blackbird admitted to an interviewer that he did not know what the court would do if Corn refused to resign. In the meantime, Potter's disclosure, with the implication that other justices, still unnamed, may have been involved in a bribery scheme, cast an intolerable shadow on the reputation of the Supreme Court and those justices who were innocent of any wrongdoing.[16]

Even before Corn's plea, reform groups had been calling for greater judicial accountability. In November of 1963, a group led by lawyers and University of Oklahoma law professor Maurice Merrill formed Oklahoma Institute for Justice, Inc., a nonprofit corporation dedicated to the enactment of a court on the judiciary and judicial selection reform.[17] By April the group had hired an Oklahoma Baptist University professor as its fulltime director and had prepared State Question 415, a constitutional amendment directing the

[16] Oklahoman, July 2, 1964, p.1. and July 3, 1964, p.5.
[17] Ibid., December 1, 1963, p. 1.

establishment of a court on the judiciary.[18] The movement gained momentum after Corn's highly publicized plea and sentencing.[19]

On July 4th, Corn finally resigned his position as supernumerary judge.[20] His failure to resign from the Oklahoma Bar Association led to a chaotic and hastily-called meeting of the leadership of the bar association and the Supreme Court. Wielding a cigar, Justice Welch, who had himself been indicted the previous week, attended the meeting, claiming it was "best to lay these things on the table."[21] Justice Johnson, whose involvement in the scandal was not yet public knowledge, also attended.

After the meeting ended with a general agreement that the OBA should begin disbarment proceedings against Corn, Justice Welch called Floyd Rheam, a Tulsa attorney who had chaired the meeting, and told Rheam that Corn would resign from the bar. Rheam went directly to Corn's home. When Rheam entered the residence, he noticed Earl Welch standing in a back room. Corn handed Rheam a handwritten resignation letter. In a voice that Welch could easily hear, Corn then told Rheam "to tell the Executive Council (of the OBA) that I never gave money to a judge or any member of the Supreme Court for any purpose."[22]

Investigations of judicial misconduct now came from everywhere. In addition to Welch's criminal case scheduled for trial in October, Governor

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[18] Ibid., April 13, 1964, p.27.
[19] Ibid., July 3, 1964, p.5.
[20] Ibid., July 5, 1964, p. 1.
[21] Ibid., July 8, 1964, p.1.
[22] Testimony of Floyd Rheam, Impeachment trial of N.B. Johnson, May 10, 1965, pp. 209-211. See also testimony of Rheam, United States v. O.A. Cargill, Vol. 10, June 11, 1965.

Bellmon, calling Corn's plea "sickening and despicable corruption in the highest judicial court of our state," directed Dale Cook, his legal aid and a future federal judge, to undertake his own inquiry. Oklahoma County Attorney James Harrod announced the possibility of a grand jury probe into the matter. The Oklahoma Bar Association appointed a committee of three attorneys to investigate the case as well.[23] Over the Harrod's objection, who pointed out the inconsistency of the Supreme Court granting subpoena power to investigate itself, the Supreme Court granted subpoena power to the OBA investigators.[24] In September Governor Bellmon appointed still another panel, this one composed of non-lawyers and charged with serving as a watchdog over the bar committee.[25]

On July 29th, having received an inconclusive medical report on Corn's physical ability to withstand incarceration, Judge Harper ordered the defendant transported to prison. A veteran of the tough world of Missouri politics, Harper seemed not to be particularly shocked by Corn's crimes and demonstrated considerable sensitivity to Corn's medical condition. Even though he admitted he had no judicial authority to select where Corn would be incarcerated, he did it anyway. Judge Harper arranged for Corn to be housed at the federal facility for infirm inmates in Springfield, Missouri, and ordered the federal marshal to bypass transporting Corn to the county jail, having the marshal pick up his prisoner at Corn's home. Harper also told the parties that if there was any change in Corn's

[23] Oklahoman, July 19, 1964, p.1.
[24] Oklahoman, August 25, 1964, p. 1 and August 26, 1964, p.1. Both Welch, who had been indicted, and Johnson, not yet a publicly-named suspect, voted for extending the subpoena power to the committee.
[25] Oklahoman, September 5, 1964, p.1 and September 9, 1964, p.1.

medical condition within the next sixty days, that the parties should let him know and he would "return this man to his home... Because as I said, this isn't the death penalty." He also authorized the federal parole board to parole Corn at any time it deemed appropriate. Corn cryptically told a reporter that the result of the hearing was "the best thing."[26] The marshal took Corn to Springfield, and he began his term on that day.

It was true that Corn was eighty years old. He was also frail, having survived a serious heart attack and colon cancer. Nevertheless, the undisputed facts were that an Oklahoma Supreme Court justice had drastically understated his income to the IRS, then failed to disclose the source of the money. Corn neither confirmed nor denied the government's alarming assertion that he had received a large bribe; instead, he remained silent. Under these circumstances, Judge Harper's solicitous attitude toward Corn, the chief suspect in a huge bribery case, seems unusually accommodating. Had Harper pressured Corn harder, the truth might have come out more quickly.

[26] U.S. v. N.S. Corn, 64-85CR, July 29, 1964. Oklahoman, July 30, 1964, p.1.

THE TRIAL OF EARL WELCH

Judge Harper's next Oklahoma assignment was the trial of Justice Welch, which began on October 5, 1964, in Muskogee.[27] Born in 1892, Earl Welch had grown up in small towns in the Choctaw Nation, in what is now southeastern Oklahoma. Welch's father and grandfather had been lawyers, and Welch spent much of his childhood around their small town law offices. Although he had attended law school at the University of Oklahoma, financial reasons forced him to leave prior to graduation. Instead, he read for the bar privately at his father's and grandfather's offices, then successfully sat for the bar examination. In 1911 Welch became a lawyer and established his practice in his home area of Antlers, a small town in southeastern Oklahoma.[28]

During his years in private practice, Welch became involved in the murky and morally questionable business of trading in Indian land.[29] Much of this business was conducted in cash, a practice which, along with Welch's excessive spending financed through mysterious infusions of currency, would become an issue at Welch's trial fifty years later.[30] Despite his claims many years after the fact, Welch and his wife Fern lived frugally during their twenty years in Antlers. While Welch was in private practice, he did his own janitorial and stenographic work. The family lived in a modest, sparsely furnished home, where they raised

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[27] Although the grand jury which indicted Welch and Corn had sat in Oklahoma City, which is in Oklahoma's federal western district, Welch provided proof that he had been a registered voter in Pushmataha County since 1913. At Welch's request the trial was moved to the eastern district, which is based in Muskogee.

[28] Oklahoman, November 13, 1969, p.39.

[29] For a description of the exploitative nature of Indian land sales in the days after statehood, see Angie Debo, And Still the Waters Run, (Princeton: Princeton University Press, 1940).

[30] Muskogee Times-Democrat, October 15, 1964.

their own vegetables. For several years, especially in the 1920s, they did not own a car. They never entertained.[31] It seems clear that during Welch's private practice years in Antlers, he was only moderately financially successful.

In 1926 Welch was elected district judge for his district in southeastern Oklahoma. Six years later, he announced his candidacy for the Democratic nomination for the Oklahoma Supreme Court, opposing incumbent Earl Lester for the southeastern Oklahoma seat. The 1932 campaign proved to be an exception to the rule that judicial races were issueless: the issue in this election was Governor William H. Murray, whose megalomania, eccentric behavior, intolerance of dissent, and misuse of martial law had exhausted his goodwill with Oklahoma voters. Murray endorsed Lester; in a rebuke of Murray, incumbents statewide were defeated for reelection.[32] Lester was among the incumbents to fall, and Welch became a member of the Oklahoma Supreme Court in January, 1933. As a member of the Chickasaw nation, Welch became the first enrolled Native American to sit on any state's highest court.[33]

There is no evidence of extraordinary spending by Welch in his early years on the court.[34] In the late 1940s, however, Welch began an intimate relationship with Ruby Myers, and Justice Welch became the primary, if not sole,

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[31] Testimony of Fern Welch and Martha Ann Ellis, U.S. v. Welch, appeal summary, pp. 75-77.
[32] Oklahoman, June 15, 1932, p.4 and July 8, 1932, p.4. See also Scales and Goble, Oklahoma Politics: a History, pp. 167-175.
[33] 1958 interview of Earl Welch, Oklahoma Historical Society Oral History Living Legends, Oklahoma Historical society. Welch later became president of the Inter-Tribal Council of the Five Civilized Tribes.
[34] One of Welch's sons developed a debilitating mental illness. Welch and his wife also spent considerable money on another son's education. However, domestic situations like these were hardly unique to the Welch family.

source of financial support for Ruby. Ruby rented an apartment next to her sister and brother-in-law, Ophia and W.S. Taylor, on North Robinson in Oklahoma City. Welch was a frequent visitor to Ruby's apartment; although Ruby had no employment or other source of income, her rent was always promptly paid.[35] In 1953 Ruby and the Taylors bought a home in that same neighborhood; Welch had looked at the home with the potential buyers and later attended the closing on the property.[36] Taylor paid $6,000 down for the home, although the retired airline employee's income was only $76.80 per month from social security. Ruby Myers also paid about $1,800 as a down payment, the money having come from an unexplained source. During the late 1950s, the Taylors moved to Arizona for two years; despite their absence, Ruby, although she was unemployed, was able to make the payments on the home.[37]

In December of 1958, Fern and Earl Welch divorced. On June 27, 1959, one week after the divorce became final, Welch and Ruby Myers married in Las Vegas.[38] Investigators later learned that during the late 1950s, Ruby spent approximately $3,800 at Balliet's, a fashionable Oklahoma City women's clothing store. Most of the bills were paid personally by Ruby's sister, Ophia Taylor, in one hundred bills, with no explanation being provided for the source of the money.[39] Suspiciously, for many years Welch had kept a safety deposit box at the First National Bank of Oklahoma City. Between 1956 and 1960 Welch entered

[35] Defendant's summary of case, U.S. v. Welch, quoting Tulsa Tribune, October 8, 1964.
[36] Testimony of William Strawbridge, U.S. v. Welch, trial summary, p.58. In 1962 Welch called Strawbridge to assess Strawbridge's interest in repurchasing the home.
[37] Oklahoman, October 8, 1964, p.1.
[38] Oklahoman, December 18, 1958, p.39 and July 7, 1959, p.21.
[39] Oklahoman, October 9, 1964, p.1. and transcript of trial, U.S. v. Welch, p.476.

the safety deposit box ten to twelve times per year, activities which Welch could not explain several years later.[40]

In 1962 the Internal Revenue Service began looking into Welch's finances. An investigator scheduled an interview with Welch for May 17th. Bank records later revealed that Welch entered his safety deposit box on that very day. The agent made another appointment with Justice Welch on August 29th; Welch opened the box on the next day, August 30th.[41] Like the unusual number of entries into the safety deposit box, Welch later had no explanation for his entries into the box at times so closely related to his appointments with the IRS.

Welch's criminal trial, which began in Muskogee on October 5, 1964, was a strange event, which became more notable for the evidence which the jury did not hear, rather than what the jury heard in court. Everyone knew the true issue: the government believed Welch had been supplementing his income by accepting bribes, including in the *Selected Investments* case. He had been using the bribe money, according to the government, to maintain both his households in a relatively comfortable, although not elaborate, way. However, the jurors never heard any testimony to prove this theory.

The prosecution's case had serious flaws. Hugh Carroll, fearful of further prosecution, had made a complete statement to the authorities regarding his role in the *Selected* bribery. However, Carroll had never dealt with Welch; his only knowledge of Corn's purchase of Welch's vote came from Corn. Carroll could

[40] U.S. v. Welch, trial transcript, p.478.
[41] Oklahoman, October 9, 1964, p.1.

testify that he had bribed Corn; he could not testify that he had bribed Welch, only that he had ultimately received Welch's vote. As for Corn, he had been sentenced to prison after his no contest plea to tax evasion; he had admitted only to the tax improprieties, not bribery. Corn had not been charged with accepting the bribes, nor had he yet made any admission to law enforcement authorities on that subject.

The case against Welch which the jurors heard amounted to this: Welch had overspent his income without a valid explanation, had given misleading statements to investigators, had suspiciously entered his safety deposit box, and had made an inordinate number of expenditures in cash, especially one hundred dollar bills. The government's case was methodical and tedious, going all the way back to Welch's opening his law office in 1911, using business records to demonstrate the extent to which Welch had overspent his income.[42] V.P. Crowe, Welch's tough and capable lawyer, implied that Welch had earned large sums of cash dealing in the unethical and immoral business of early Oklahoma Indian land titles. According to Crowe's theory, Welch had simply taken the cash with him when he moved to Oklahoma City in 1932, leaving it in his safety deposit box and taking some of the money from time to time.

Outside of the jury's hearing, completely different issues arose. On the fifth day of the trial, the government called Corn, who had been returned to Muskogee from the federal prison in Springfield, Missouri to testify. Judge Harper sent the jury out of the courtroom and heard Corn's testimony by himself. The feeble and disheveled Corn, who had not been prosecuted or charged directly

[42] Norman Transcript, October 6, 1964, p.1.

for any bribery case, invoked the Fifth Amendment seventeen times.[43] The next day Hugh Carroll, the former president of *Selected Investments*, testified, also outside the presence of the jury. For the first time, the story of the *Selected* bribe came out publicly in the words of a participant. However, since Carroll had not dealt directly with Welch in any way, Judge Harper ruled his testimony inadmissible against Welch. [44]

On October 19th, after deliberating less than two hours, the jury convicted Welch on all counts.[45] When he appeared for his sentencing three weeks later, Welch strongly denied taking any bribe at any time in his career and pleaded for leniency on behalf of his wife and his disabled son. Judge Harper sentenced Welch to three years imprisonment on each case, with the sentences to run at the same time, and to pay fines totaling $13,500. Harper authorized prison authorities to parole Welch at any time they deemed appropriate and allowed Welch to remain free on bond pending his appeal of his conviction.[46]

The judge took the opportunity to blast Welch's supporters, who had been contacting the jurors in an attempt to obtain information with which to impeach the jury's verdict. Curiously, Harper stated from the bench that he had "never seen a simpler tax case" or "seen one with less actual defense."[47] Unfortunately, Harper did not require Welch to resign his judicial post in order to remain free on

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[43] Citing Corn's precarious health, Harper allowed Corn to stay in a hotel, rather than being housed in jail. Oklahoman, October 10, 1964, p.1.
[44] Oklahoman, October 13, 1964, p.1.
[45] Oklahoman, October 20, 1964, p.1
[46] U.S. v. Welch, 27158-CR, Eastern District of Oklahoma, sentencing hearing, November 13, 1964.
[47] McAlester News-Capital, November 13, 1964, p.1.

bond, which would have avoided considerable expense and misery for Oklahoma's legislature.

THE FAILURE OF STATE QUESTION 415

On October 21st, the day after Welch's conviction, Governor Bellmon announced that he was considering calling a special session of the legislature to impeach Justice Welch, who, despite having been found guilty of a felony, remained a duly elected member of the Oklahoma Supreme Court.[48] Bellmon qualified his remarks by endorsing State Question 415, the proposed constitutional amendment establishing a court on the judiciary, which was set to be voted on by the electorate on the November 3rd general election ballot.[49] The governor indicated that the special session would not be necessary if the voters passed the constitutional amendment.

Supporters of the state question establishing the court on the judiciary had reason to be cautiously optimistic. Bellmon spoke strongly in favor of it.[50] Almost every newspaper in the state heartily endorsed the measure, with the powerful Daily Oklahoman and Tulsa Tribune being particularly forceful in backing the amendment. The Tribune, the newspaper which probably most enthusiastically supported the measure, entitled one editorial, "If Not Now,

[48] Oklahoman, October 21, 1964, p.1.
[49] Oklahoman, October 23, 1964. p.1.
[50] Norman Transcript, October 20, 1964, pages 1 and 2.

When?"[51] Smaller papers, like the Norman Transcript and the Daily Ardmoreite, also urged their readers to vote in favor of SQ 415.[52] The Cleveland County Bar Association sent speakers to civic clubs urging the amendment's passage, with one local trial judge pointing out to his audience the logic of a reform which "is free," the only expense to taxpayers being mileage and meal expense.[53] The Garfield County Bar Association purchased a full page advertisement in the Enid newspaper endorsing the proposal.[54] It was difficult to find a good reason to support the idea of retaining convicted judges in office, so SQ 415 encountered no significant opposition from the general public or the statewide press.

However, SQ 415's backers also recognized two significant problems with its passage. The first roadblock, which proved to be overwhelming, was the silent vote. All political pundits predicted a heavy turnout for the 1964 election, which featured the presidential election between Lyndon Johnson and Barry Goldwater and a hotly contested U.S. Senate contest between Democrat Fred R. Harris and Republican Bud Wilkinson.[55] Oklahoma's constitution provided that any amendment must pass by a majority of all votes cast, not simply those voting on that particular measure. If a voter voted for president or U.S. senate and failed to vote on SQ 415, that vote therefore counted as a "no" vote. In a year like 1964, this "silent vote" could kill the state question.

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[51] Oklahoman, July 7, 1964, p.12 and October 6, 1964, p.13. Tulsa Tribune, October 22, 1964 and October 26, 1964, p.8.
[52] Norman Transcript, October 20, 1964, pages 1 and 2 and October 30, 1964, pages 4 and 20. Daily Ardmoreite, November 1, 1964, p.26.
[53] Norman Transcript, October 13, 1964, p.1.
[54] Enid Daily Eagle, November 2, 1964.
[55] Neither Harris nor Wilkinson campaigned on the issue of SQ 415. The Senate campaign focused more on personalities than issues, with Wilkinson emphasizing his people skills and Harris his close ties to the Democratic president.

SQ 415 also happened to have been placed on the ballot with six other state questions. The questions appeared on the ballot in numerical order, with 415 appearing just behind a spectacularly unpopular proposal to increase legislative salaries. Two controversial education measures also appeared, strongly endorsed by the Oklahoma Education Association and Speaker McCarty and vociferously opposed by Governor Bellmon. In order to secure approval of SQ 415, its backers would have the burden of educating voters about the pressing need to remove corrupt judges and to navigate through the minefields of the federal elections and the distraction caused by the other state questions.

Oklahoma's 1964 general election turnout was indeed very high. Oklahoma voters voted 56 percent for Johnson; Goldwater only narrowly carried traditionally Republican Tulsa County while losing conservative Oklahoma County. Johnson's margin of victory in the state, which exceeded 110,000 votes, helped carry the young and energetic Fred R. Harris, who had campaigned on his close relationship to the White House, to a victory over Bud Wilkinson, the articulate and popular former Oklahoma Sooner football coach.[56]

State Question 415 failed. Although 397,823 voters approved the measure and 370,604 voted against it, the high turnout and the silent vote defeated SQ 415.[57] Since 949,330 Oklahomans went to the polls, 474,666 votes had been necessary in order to obtain a majority of all votes. State Question 415, although it did better than all the other state questions on the ballot and won majorities in

[56] Oklahoman, November 4, 1964, p.1.
[57] Oklahoman, November 11, 1964, p.2.

nineteen counties, including the most populous ones, therefore came nowhere close to passage.

The failure of SQ 415 also illustrates the instinctive and inherent opposition of Oklahomans to political change. Even in the midst of an enormous judicial scandal and without organized opposition, forty-eight percent of those who actually voted on the proposal cast their ballots against it. A combination of Oklahoma's anti-reform constitutional structure and general public skepticism killed State Question 415, and the court on the judiciary was not approved.

After the election, the Tulsa Tribune, the newspaper which had pushed so hard for 415's enactment, blamed the proposal's defeat on the confusing nature of the ballot and on the silent vote, reasonably arguing, "Who could possibly have opposed State Question 415?" State Senator Dewey Bartlett, who was to be elected governor in 1966, also advocated the elimination of the silent vote.[58] Oklahoma voters finally abolished the silent vote in 1974.[59]

Governor Bellmon, frustrated by the fact that Justice Welch remained in office and on the public payroll, strongly considered convening a special session of the legislature for the purpose of impeaching and removing Welch. Both McCarty and incoming Senate Pro Tempore Clem McSpadden opposed the idea, pointing out that by the time the special session could be called the regular session would be only six weeks away. In this case McCarty and McSpadden proved to be the cooler heads, and Bellmon did not call the legislature into special session.

[58] Tulsa Tribune, November 10, 1964, p.10
[59] Oklahoman, August 28, 1974, p.1.

The future of Justice Welch as a member of the court would become the reapportioned 1965 legislature's problem.[60]

On December 10th the Oklahoma Supreme Court took the symbolic, if superfluous, step of suspending Welch's law license, finding that Welch's felony conviction barred him from practicing law. As Welch himself pointed out, he had been legally barred from practicing law since 1927 by the fact of his holding judicial office. Under Oklahoma law, therefore, even though Welch was no longer even a licensed attorney, he remained a member of the Oklahoma Supreme Court, the same body which had suspended his license. He received his salary and remained a full, if inactive, justice.[61]

Meanwhile, N.S. Corn was using his testimony as a bargaining chip for his release from prison. On December 2nd, at the suggestion of IRS attorney Willard McBride, outgoing Oklahoma County Attorney James Harrod and an assistant drove to the federal prison for infirm inmates in Springfield, Missouri to speak to Corn about the possibility of Corn's making a statement to the authorities. Corn told Harrod he would cooperate on the conditions that his statement remain confidential with no copies made, and that his family be protected. Harrod agreed to those conditions, although he almost certainly had no legal authority to agree to

[60] McAlester News Capitol, November 12, 1964, p.1, Tulsa Tribune, November 10, 1964, p.1. and November 18, 1964, p.1.

[61] Oklahoman, December 11, 1964, p.1. For the most part, Welch did not participate in court business after his indictment. However, he continued to receive his salary.

the confidentiality provision and would prove to have trouble living up to that commitment.[62]

On December 9th, U.S. Attorney B. Andrew Potter, Harrod, several government attorneys, Corn's attorney Dick Fowler, and a court reporter traveled to Springfield. Corn gave the lawyers an exhaustive, eighty-two page statement, in which he outlined the details of the bribery scandal. Nine days later, having served only four months in prison, Corn was released on parole. In exchange for Corn's statement and anticipated testimony, Harrod, who was leaving office in three weeks, assured Corn of immunity from state prosecution.[63]

While the fact that Corn had given a statement to law enforcement soon became public, the authorities originally honored their confidentiality agreement with Corn, and the specific contents of his confession remained undisclosed and unavailable.[64] On January 5th, Corn testified before a closed Oklahoma Bar Association committee investigating the scandal. This testimony also remained private.[65] Harrod later considered his confidentiality promise to be moot when a law school classmate employed by O.A. Cargill showed him a letter Corn had written Cargill, which said in part, "Dear O.A., Don't mess with my family. I've told them everything." Corn, who had demanded the confidentiality, had violated

[62] Burke, pp. 10-14.
[63] Affidavit of James H. Harrod, December 31, 1964, Maurice Merrill papers.
[64] Oklahoman, December 20, 1964, p.1.
[65] Oklahoman, January 6, 1965, p.1.

the requirement himself. [66] As it happened, Corn's statement remained confidential for only a few weeks.

CONCLUSION

By the end of 1964, therefore, the story of the scandal was gradually unfolding, and it was now obvious Oklahoma had a serious problem with the integrity of its judiciary. Corn and Welch had been convicted. Carroll had told authorities about his part in the *Selected Investments* bribery. Corn had also given a statement to the authorities, although its contents remained secret. Those voters who had chosen to vote on State Question 415 had narrowly approved the measure, although the silent vote had assured the defeat of the proposal for a court on the judiciary. Although no one realized it at the time, the 1965 legislative session would prove to be critical in exposing the extent of Oklahoma's problems with its judicial system.

[66] Burke, p.14.

CHAPTER FOUR

THE 1965 LEGISLATURE AND THE IMPEACHMENT OF JOHNSON

THE REAPPORTIONED LEGISLATURE

On January 5th, the 1965 Oklahoma legislature convened. Governor Bellmon delivered his State of the State address, proposing a program he called Operation Giant Stride, which included an extensive list of proposed reforms, including highways, education, mental health, welfare, congressional redistricting, and public safety. Bellmon, who only two months earlier, had wanted to call a special session for the express purpose of impeaching Justice Welch, for some reason did not mention Welch's curious status, nor did he give any attention to the state's court system.[1] Bellmon may have been trying to avoid early conflict with Speaker McCarty, who had predicted tough sledding for the movement to impeach Welch, noting that Welch's case remained on appeal and citing a general lack of legislative enthusiasm for the project.[2]

Because of recent rulings from the United States Supreme Court, the makeup of the Oklahoma legislature differed drastically from previous

[1] Oklahoman, January 6, 1965, p.1.
[2] Oklahoman, January 8, 1965, p.1.

legislatures. As the country became more and more urbanized in the mid-twentieth century, state legislatures, which were dominated by rural areas, had become less representative of the population. Although many states, including Oklahoma, had constitutional or statutory requirements that the legislature reapportion itself periodically, state legislators tended to ignore those mandates, which would diminish the power of rural legislators and, in many cases, reallocate their seats to urban areas. By the 1940s, legislative reapportionment had become a major issue in American politics and law.

In 1946 the United States Supreme Court considered the matter in Colegrove v. Green, which involved a challenge to the apportionment of the Illinois legislature.[3] The Court determined that apportionment of legislatures was a political issue to be determined by the states and not an issue which could be determined by the courts. Justice Felix Frankfurter, the conservative author of the opinion, famously declared, "Courts ought not to enter this political thicket." Sixteen years later the Supreme Court entered the thicket with a vengeance.

By 1962 the political times had changed, as had the makeup of the Court. The 1960 election of John F. Kennedy also meant that a more liberal Department of Justice took an active and aggressive role in challenging failure to reapportion; the Department of Justice assigned future Watergate prosecutor Archibald Cox to take the lead for the government. The case at issue was Baker v. Carr, in which well-financed and aggressive attorneys for the plaintiffs challenged the makeup of

[3] Colegrove v. Green, 328 US 549 (1946).

the Tennessee legislature.[4] Following the precedent of Colegrove, the district court and the circuit court of appeals had ruled that the courts had no jurisdiction in the matter. Under the U.S. Supreme Court rules, four justices were required to accept the case for argument in order for it to be heard at that level. When liberal Justices Earl Warren, Hugo Black, William O. Douglas, and William Brennan voted to accept the case, the subject of reapportionment was again before the Court.

Baker v. Carr proved to be extremely controversial and saw bitter infighting within the Supreme Court itself, with Justice Frankfurter forcefully lobbying his colleagues to rule the courts did not have jurisdiction. The Court was so divided that at the request of Justice Potter Stewart, who was undecided, the Court heard oral argument twice. The pressure grew so great that Justice Charles Evans Whittaker, who had been suffering from severe depression, entered the hospital and retired from the Court before the vote. Justice Tom Clark told Frankfurter he would prepare an opinion denying jurisdiction, then changed his mind about the case and voted for the plaintiffs. Eventually, in an opinion written by Brennan, the Court ruled that legislative apportionment involved the Fourteenth Amendment guarantee of equal protection of the law and was therefore subject to the jurisdiction of the courts.[5]

As Frankfurter had predicted, Baker v. Carr opened the floodgates to Supreme Court litigation, and the Court received petitions from cases involving

[4] Baker v. Carr. 369 US 186 (1962).
[5] On Democracy's Doorstep: the Inside Story of How the Supreme Court Brought "One Person, One Vote" to the United States, J. Douglas Smith, (New York: Hill and Wang, 2014), pp. 52-98.

several states, including Colorado, Delaware, Alabama, Maryland, New York, and Virginia.[6] In 1964 the Court considered a resolution to these cases with the Alabama case, Reynolds v. Sims. On June 15, 1964, Chief Justice Warren read the Court's opinion. Warren compared malapportionment to the practice of allowing some residents to vote five or ten times, then famously stated "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests." According to the Supreme Court, the Fourteenth Amendment required that state legislatures be apportioned according to population. The opinion also barred the practice of some states, including Oklahoma, of guaranteeing at least one representative per county.[7]

The Court's decision forcing reapportionment of state legislatures met with considerable resistance from those who objected to the expansion of federal power, especially judicial power, at the expense of the states. Presidential candidate Barry Goldwater vociferously objected to the ruling. The Republican Party registered their objection to the ruling in the party's 1964 platform, endorsing the idea of a constitutional amendment allowing states to apportion one house of bicameral legislatures "on bases of their choosing, including factors other than population."[8] A proposal to support the Court's decisions in the Democratic Party platform was killed by Representative Carl Albert, the majority leader of the U.S. House, who represented elected a rural Oklahoma district.[9]

[6] Smith, p. 213.
[7] Reynolds v. Sims, 377 US 533 (1964).
[8] Smith, p.225.
[9] Smith, p.235.

The leader of the opposition to the apportionment decisions was Illinois Senator Everett Dirksen, the minority leader of the U.S. Senate. At considerable political cost, Dirksen had just helped end a filibuster to the 1964 Civil Rights Act and negotiated the successful passage of the civil rights bill which was acceptable to most Senate Republicans. However, to a native of the small town of Pekin, Illinois, the reapportionment cases constituted a threat to the political power and autonomy of rural America. The issue also provided Dirksen an opportunity to mend fences with the Goldwater wing of the Republican Party.

Dirksen introduced a proposed amendment to the U.S. Constitution, allowing each state to apportion one house of their legislatures in a manner they deemed appropriate. He also proposed a bill to delay the implementation of the reapportionment decision, a constitutionally dubious move which came very close to passage but was eventually killed by a filibuster led by liberal Democrat Paul Douglas, Dirksen's fellow Illinois senator.[10] Dirksen then proposed new legislation which would allow state voters to decide the composition of their own legislature, a bill which also nearly passed the Senate.[11] Eventually Dirksen refocused his efforts on states calling for a constitutional convention to remedy the problem, an effort which came within one state of ratification of adoption. Dirksen died in 1969, and the resistance to reapportionment gradually disappeared after his death.[12]

[10] Smith, pp. 218-140.
[11] Ibid., pp. 241-262.
[12] Ibid., pp. 263-280.

Oklahoma's experience with legislative apportionment had been bitter. Although the state's constitution required the legislature to be reapportioned every ten years, the House of Representatives had not reapportioned itself since 1921, and the Senate had never done so.[13] Political scientists ranked Oklahoma forty-seventh of the fifty states in terms of malapportionment, leaving only three states more unrepresentative.[14] In 1956 the legislature considered reapportionment, but its passage was blocked by the rurally-oriented Governor Raymond Gary. Gary's successor, J. Howard Edmondson, favored reapportioning one legislative house on area and the other on population, but the proposal did not become law.

In the early 1960s two separate reapportionment measures were submitted to Oklahoma voters; both proposals failed. Until ordered to do so by the courts, the State Election Board, led by an Edmondson appointee and a Republican, refused to accept legislative filings for the 1962 election, claiming the unconstitutionality of the body's makeup. In the general election of that year, Edmondson submitted a proposal creating an administrative commission to handle reapportionment. Edmondson had planned to call a special election for the reapportionment proposal, but the idea of a special election was killed by the courts. Although a majority of voters cast their ballots in favor of the proposal in the general election, the measure was killed by the silent vote.

The pressure from the U.S. Supreme Court finally led to reapportionment in Oklahoma. The federal court ordered the Oklahoma legislature to reapportion

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[13] Oklahoman, June 18, 1963, p.32.
[14] Robert B. Bingham, Reapportionment of the House of Representatives: Politics and Process, (Norman: Legislative Research Series, Bureau of Government Research, 1972), pp. 2-3.

itself equitably by March 8, 1963, a deadline the legislature met with a half-hearted effort which still allowed for disproportionate representation and was overturned by the federal courts. The state Supreme Court then issued a plan, which deviated only slightly from the original legislative plan. In May, 1964, the state voted for legislators running for office under the Supreme Court's plan.

The next month the United States Supreme Court upheld the power of the federal court to supervise reapportionment in Oklahoma. The federal court vacated the May election results and ordered a new election for September under districts apportioned under a plan it approved.[15] The urban districts in the plan were drawn by Patience Latting, a future Oklahoma City mayor who had an advanced degree in statistics and had been active in the reapportionment movement through her involvement with the League of Women Voters.[16] This plan prevailed, and the 1965 legislature was composed of these districts.

As a result, the 1965 legislature differed drastically from its predecessors. More than half of the 1963 legislature did not return for the next session.[17] The guarantee of one representative per county in the House of Representatives was gone, replaced by numbered districts which often included more than one county. The previous legislature had been composed of 119 members of the House of Representatives and 36 senators; the 1965 version contained 99 members of the House of Representatives and 46 senators. In 1963 Oklahoma County and Tulsa

[15] Samuel A. Kirkpatrick, The Legislative Process in Oklahoma: Policy Making, People & Politics, Norman, University of Oklahoma Press, 1972, pp. 35-39.
[16] Bingham, pp. 2-6, Scales and Goble, pp. 328-330.
[17] Scales and Goble, p. 337.

County had been represented by only one senator each, with Oklahoma County having seven members of the House. The 1965 version had nine senators from Oklahoma County and seven from Tulsa. Eighteen members of the House of Representatives represented Oklahoma County, with fifteen from Tulsa. For the first time since 1910, the legislature contained African-American members.

From the standpoint of representation by political party, the legislature barely changed. The 1963 session had been composed of 86.4 percent Democratic Party membership in the Senate and 79.8 percent in the House. The 30th legislature convened in January of 1965 with 85.4 percent Democratic membership in the Senate and 77.8 percent Democratic affiliation in the House. In a 1987 study political scientists Gary W. Copeland and Jean G. McDonald studied the effects of reapportionment on the Oklahoma legislature. Copeland and McDonald concluded that although Republicans entered more races, became more competitive, and garnered more votes in 1964, their efforts did not result in a significant increase in wins for Republicans.[18] In a 1972 study, another scholar, Samuel A. Kirkpatrick, expressed surprise that urban legislators did not have a more immediate impact on the legislative process, attributing this to the fact that most legislative leadership remained in rural hands.[19] Nevertheless, the conclusion is inescapable: the legislature had become more urban and less friendly to rural interests. The entry of new membership into both houses, who

[18] Gary W. Copeland and Jean G. McDonald, "Reapportionment and Partisan Competition: When Does Reapportionment Matter?" Political Behavior, vol.9, no.2, (1987), pp. 160-173.
[19] Kirkpatrick, pp. 35-39.

by the fact that they had obtained seats in the legislature had benefited from change, enlarged the constituency for reform.

PRESSURE FROM OUTSIDE THE LEADERSHIP

Although it was clear the Democratic legislative leadership wanted nothing to do with the issue of Justice Welch's removal from the Court, events were moving beyond leadership's control. On January 4th, the Oklahoma Supreme Court had begun its new term. Although he had not been participating in court business since his indictment, Earl Welch appeared in the Court's conference room and cryptically announced, "I don't think I had better attend the conference, but I will tell you how you can dispose of cases where you won't need my vote." Welch's unsolicited appearance and breezy attitude infuriated Justice William A. Berry, who had defeated Lon Carlile for the Oklahoma County seat on the court six years earlier. Berry stormed out of the meeting, announcing that he would not participate in conferences attended by Welch. A reporter for the Oklahoma City Times heard about the confrontation and wrote about the incident.[20]

On the evening of January 12th, eight days after the incident with Welch, Berry received a telephone call at his home from U.S. District Judge Stephen Chandler, the eccentric judge who had heard the *Selected Investments* bankruptcy case and had heard the preposterous Pierre Laval testimony from Hugh Carroll.

[20] Berry and Alexander, pp. 18-19.

Chandler, whom Berry considered an acquaintance but by no means a friend, asked Berry to come to Chandler's home in northwest Oklahoma City immediately. When Berry arrived, he found a nervous Chandler waiting for him. Upon Berry's entering the residence, Chandler, known for being obsessed with security, bolted several locks, then handed Berry a copy of the eighty-four page statement N.S. Corn had given to U.S. Attorney B. Andrew Potter and Oklahoma County Attorney James Harrod the previous month. Although the statement's existence had become public knowledge, its contents had remained undisclosed. Chandler did not explain where he had received a copy of Corn's statement, but it was obvious to Berry that it was indeed from Corn. Corn's statement included his involvement with O.A. Cargill, his solicitation of the bribe in the *Selected Investments* appeal, and his acceptance of a bribe in Marshall v. Amos. He also described his sharing the bribe money with Welch and Justice N.B. Johnson, who was still sitting on the court and whose name had not yet been linked to the scandal.

After Berry had read and digested Corn's claim, Chandler asked Berry what he intended to do about the statement. Berry responded with the obvious, asking the judge why Chandler himself couldn't do something. Chandler told Berry that as a federal judge his hands were tied; the federal court had no jurisdiction, and that any action would have to come from the state courts. This explanation was nonsense. Not only did the federal courts have jurisdiction over the scandal, the federal courts had been asserting it all along; both Welch and Corn had been convicted in federal court of evading federal income taxes. The

prosecutors, most of whom were federal employees, had taken Corn's statement at a federal correctional facility from a federal prisoner.[21]

A question not addressed by Justice Berry in his memoir on the scandal is how and why Chandler obtained the statement in the first place. It was extraordinary that a sitting judge had obtained, much less accepted, a sensitive document from a prosecutor's file. Chandler was no friend of prosecutors, and whoever had leaked the statement to him had done so surreptitiously and in violation of government policy. Although it is hard to decipher the unusual mind of Stephen Chandler, it seems probable that he passed the statement on to Berry in order to remain anonymous and to protect the source of the document. It also seems logical that he picked Berry because of Berry's well-publicized antipathy toward Welch.

Having been handed a hot potato, Berry now debated what to do with the statement. He decided that if the statement were to be made public knowledge, the person releasing it must be someone who had legal immunity from a libel suit.[22] This led Berry to the legislature, whose members were immune from suit for any statement made on the floor during a legislative session. After the first legislator failed to return his calls, he turned to G.T. Blankenship, a Republican legislator-attorney from Oklahoma City. Berry called Blankenship and asked him to come to his home. Blankenship read the statement; astounded and horrified,

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[21] Ibid., pp. 1-6. The roles of Berry and Chandler did not become public knowledge until the 1996 publication of Berry's memoir.

[22] New York Times v. Sullivan, the United States Supreme court case which required plaintiffs who were public figures to prove actual malice in libel and slander suits, had been decided the previous year, but the libel and slander laws were still considered powerful weapons.

Blankenship immediately agreed to announce its existence on the House floor and to summarize its contents. [23]

On Thursday, January 21, 1965, after the House Rules Committee had again announced a delay in the Welch impeachment, Blankenship rose and asked for the floor for a matter of personal privilege. Blankenship began his remarks by stating his concerns as a legislator and lawyer for what he was going to say. Next to a house of worship, he said, courtrooms were the epitome of sacred institutions. He declared that honest judges deserved to have the tarnish to their reputations removed and outlined the importance of public confidence in the judicial process. Blankenship then told the House he had seen a copy of Corn's statement, that Corn had admitted to accepting bribes in *Selected Investments* and Marshall v. Amos, and that Welch and N.B. Johnson had also been involved. Blankenship did not name O.A. Cargill, instead stating that "a certain lawyer" he called "Mister X" had been involved in the illegal relationship with Corn. While Blankenship did not vouch for the truth of Corn's statement, he pointed out that there was no question that Corn had made these claims. It was therefore, according to Blankenship, the duty of the legislature to investigate, renew the public's faith in the court, and clear the innocent.

G. T. Blankenship had made a great speech at enormous personal risk. Legislative immunity notwithstanding, a practicing attorney had just accused three Supreme Court justices and a lawyer of paying and accepting bribes. In addition to their other duties, the Oklahoma Supreme Court handled lawyer

[23] Berry and Alexander, pp. 22-25.

licensing matters. Although the situations were admittedly different, Blankenship would have been aware of the fate of Harlan Grimes, who had questioned the integrity of the Supreme Court in Marshall v. Amos and had been disbarred. Governor Bellmon, worried about Blankenship, summoned him to his office and warned him of stormy seas ahead.[24]

Blankenship's speech stunned the Democratic House leadership and ruined Speaker McCarty's plan to let the Welch matter die a natural death. One minority member of the legislature, armed with an explosive statement from a corrupt judge, had changed the entire legislative session. As Justice Berry later put it, "The genie was out of the bottle."[25] Oklahoma County Attorney Curtis Harris, who had held the statement since assuming office from Harrod on January 4th, was furious with Blankenship, calling him a "yellow belly" for not naming Cargill publicly.[26] U.S. Attorney B. Andrew Potter also criticized Blankenship, citing the "inordinate curiosity" of "certain people" and claiming Blankenship's speech had jeopardized the investigation.[27]

Blankenship's disclosure also marked the first public identification of Justice N.B. Johnson as a suspect in the briberies. The next morning Chief Justice W.H. Blackbird called a meeting of the Supreme Court. All of the justices, including Welch and Johnson, attended. Welch, whose tax returns were already in the record in his criminal case, for some reason objected to Berry's suggestion

[24] Ibid. ,p.39.
[25] Ibid., p.36.
[26] Oklahoman, February 5, 1965, p.1.
[27] Oklahoman, June 25, 1965. p.1.

that all justices release their income tax returns. Justice Johnson seemed stunned, shaking his head and cursing an unnamed person. It was unclear to Berry whether Johnson was referring to Corn or Blankenship.[28] Publicly, Justice Johnson denied the charge, calling it "false, positively false."[29]

Had Blankenship indeed jumped the gun, as the prosecutors claimed? Corn had only made his statement the month previous to Blankenship's speech, so law enforcement authorities had had little time to verify it; Harris, the new Oklahoma County Attorney, had only been in office since the first of the year. Corn had provided the first hard evidence against N.B. Johnson, with whom Hugh Carroll had never dealt. In order to prosecute Johnson successfully, testimony coming from a doubtful source like N.S. Corn would have to be corroborated and supported by documentary evidence. This would take time, so the reluctance by law enforcement to make the matter public is understandable.

On the other hand, Oklahoma was faced with the completely unacceptable situation of having one former justice making claims of bribery and a second justice, now a convicted felon and named bribery suspect, still on the bench. An allegation of bribery against Justice Johnson, also still in office, had been made by Corn. The fact that Corn had made a statement was already in the public realm; the only question was what the statement contained. On the whole, it was probably unrealistic for Potter, Harrod, and Harris to expect to be able to keep Corn's statement confidential. The information the statement contained was so

[28] Berry and Alexander, pp. 37-38.
[29] Oklahoman, January 22, 1965, p.5.

sensational that its disclosure was inevitable. A political emergency existed; two sitting Supreme Court justices were accused by a former justice of accepting bribes. Blankenship and Berry would have been derelict not to bring the facts to the public's attention.

On February 15th, a federal grand jury, which had heard O.A. Cargill's testimony ten months previously, indicted Cargill on three counts of perjury, ending Blankenship's poorly kept secret of the identity of Mr. X. Cargill's indictment spelled out the incidents in which it said he had lied. Cargill had told the grand jury that he did not know where the unexplained $150,000 *Selected Investments* expenditure had gone, and that he had no idea Pierre Laval was a fictitious person. When asked whether he had had any financial transactions with any member of the Oklahoma Supreme Court, Cargill had coyly responded, "None that I know of at all."[30] By their indictment of Cargill, the grand jurors had indicated their disbelief of all of these statements. On February 19th Cargill appeared for his initial hearing in front of Judge Harper. Astonishingly, even after all that had occurred, Cargill had not hired a lawyer, so his son and law partner Buck represented him at the initial hearing.[31]

Cargill should never have allowed himself to be in this sort of legal peril. Even in April of 1964, he had known he was required to appear before a federal grand jury. He would have either known or suspected that his former client, Hugh Carroll, was cooperating with the government. He knew he, Corn, and Welch

[30] Oklahoman, February 16, 1965, pages 1, 24.
[31] Ibid., February 20, 1965, p.4.

were suspects. An objective lawyer with even minimal criminal law experience, given this situation, would have advised his client to take advantage of the Fifth Amendment. If he had asserted his Fifth Amendment privilege, Cargill would not have been required to testify, and thus would not have committed perjury. As a former prosecutor and experienced criminal defense attorney, Cargill would have known this. Even talented attorneys are subject to error, though, when it comes to their own legal problems; Cargill's hubris and overconfidence had worked to his disadvantage.

On February 22nd, Oklahoma County Attorney Curtis Harris announced a grand jury investigation into the activities of the Supreme Court, issuing subpoenas for Carroll, Corn, various associates of O.A. Cargill, former justice and attorney Wayne Bayless, and nearly everyone involved in Marshall v. Amos. While it was difficult to understand why another investigation was necessary, this was the first official law enforcement inquiry since Corn's statement had become public knowledge. At Harris's recommendation, the district court gave immunity from prosecution to Carroll and Corn, both of whom testified on February 25th.[32]

IMPEACHMENT PROCEEDINGS

In the meantime, legislative efforts to impeach Justices Welch and Johnson were gathering steam. On March 10th, Welch testified for four hours in an overcrowded conference room before the House impeachment committee, the

[32] Ibid., February 23, 1965, p.1 .

first time he had told his story in public. Appearing confident, Welch emphatically denied taking bribes from anyone. He refuted Corn's statement, stating simply Corn was a "sick man," who must have wanted "out of that place (prison) in the worst sort of way." Welch engaged in a double-talking sparring match with Representative Burke Mordy of Ardmore regarding Welch's willingness to take a polygraph test; Welch repeatedly insisted he would only take a polygraph approved for use in the courts, knowing in fact the results of polygraphs were not admissible in court.[33] Welch did make the offer to resign if his conviction were affirmed by the Tenth Circuit Court of Appeals, an empty offer since Welch would then be headed to prison.[34]

On March 16th the committee went to the home of R.O. Ingle, who had been Johnson's legal assistant for twelve years. Ingle, who was suffering from a serious respiratory illness and awaiting admission to a hospital, testified while wearing his bathrobe and lying on a sofa. Ingle claimed that in 1956 he had seen Pat O'Bryan, then the attorney for *Selected Investments*, and another man, possibly Hugh Carroll, enter Johnson's office. After the conversation ended, according to Ingle, Johnson, who had apparently been drinking, placed a brief on Ingle's desk and suggested the case be reversed. Generally, Ingle spoke highly of Justice Johnson but did claim he was too easily influenced by his friends, especially Earl Welch.[35]

[33] The next day Justice Johnson also declined the polygraph offer .
[34] Oklahoman, March 11, 1965, pp. 1, 10.
[35] Ibid., March 17, 1965, p.1.

It is hard to know what to think of Ingle's account. This was the only direct link between Johnson and *Selected Investments*; all other testimony clearly showed the bribes were handled strictly between Hugh Carroll and N.S. Corn. Ingle, a native of Spiro in Welch's eastern Oklahoma district, had unsuccessfully run against Welch three years earlier, and had no great regard for Welch.[36] However, Ingle obviously liked Johnson, had worked for him for twelve years, and had no apparent reason to harm him. The ailing Ingle did not testify in Johnson's impeachment trial before the senate the next month, so the accuracy of Ingle's story therefore was never verified or tested in court.

O.A. Cargill had finally employed nationally prominent criminal defense attorney Percy Foreman from Houston. Appearing by telegram, Foreman predictably and appropriately instructed his client to invoke the Fifth Amendment before the House impeachment committee. Cargill's side of the story therefore went temporarily untold.

The House investigations committee was set to recommend impeachment and removal of both Welch and Johnson on the afternoon of March 21st. That

[36] Ibid., May 2, 1962, p.1. Ingle also discussed a disturbing conversation he had had several years previously with Tom Waldrep, a former state senator and disbarred attorney, regarding a completely different case, Independent-Eastern Torpedo v. Price, 258 P.2d 189 (Okla., 1953). Waldrep claimed to have paid Welch $10,000 for a favorable result in the case, which involved liability for an oilfield injury. Johnson wrote the opinion, with which Welch concurred. Corn and Arnold dissented. The impeachment committee also looked at a separate incident involving Waldrep and Welch's brother Lee, who was an attorney in Antlers. Lee Welch had obtained a substantial verdict for a plaintiff in a personal injury case but could not account for the money. He claimed to have paid Waldrep, who had been disbarred for many years, $10,000 for Waldrep's assistance with a brief on the case. During his career, Waldrep, who died in 1959, had been jailed for selling state jobs as a state senator, disciplined for embezzling from a guardianship estate, and charged with attempting to bribe the Pottawatomie County Attorney to allow gambling at a Shawnee club. Oklahoman, August 5, 1955, p.1.; October 9, 1959, p.8; July 9, 1942, p.1; August 5, 1955, p.1.

morning Earl Welch finally resigned his post on the Oklahoma Supreme Court, submitting a lengthy, self-serving letter to Governor Bellmon. The resignation made Welch's impeachment moot. The investigations committee recommended the impeachment of Justice Johnson and outlined for the record the evidence it had gathered against Welch.[37] On March 24th, the House of Representatives, by votes of 90-6 and 88-8, voted to impeach Justice Johnson on two counts.

The articles of impeachment accused Johnson of taking a $7,500 bribe in the *Selected Investments* case and a $2,500 bribe in Oklahoma Company v. O'Neil, the oil and gas case which involved O.A. Cargill's daughter and son-in-law. The other cases in which the parties suspected corruption were not mentioned. Johnson, who still had not retained a lawyer, immediately moved to suspend himself. Although Johnson's authority to suspend himself was doubtful, the Senate accepted his offer and formally suspended Johnson from office pending his impeachment trial.[38] Two days later the Oklahoma County grand jury indicted Cargill, Welch, and Johnson in state district court, charging them with bribery. Cargill took advantage of his initial hearing on the bribery charge to proclaim his innocence and call the grand jury a "star chamber."[39]

In the meantime, the Senate, which had never expected to be sitting as a court of impeachment, had taken its job very seriously. Each senator had solemnly raised his right hand and sworn to perform his duty as a member of the

[37] Oklahoman, March 22, 1965, p.1 and March 23, 1965, pages 1, 12. In his letter Welch complained of the use of hearsay evidence against him and what he perceived as the unfairness of the impeachment process. He did not mention his federal criminal conviction.
[38] Ibid., March 25, 1965, p.1. and March 30, 1965, p.1.
[39] Ibid., March 28, 1965, p.1.

court. The Senate named Roy Grantham, an attorney from Ponca City, as the trial's presiding officer and enacted rules for the impeachment proceedings, by and large adopting Oklahoma's district court rules on admissibility of evidence. After considerable debate the members decided to allow television into the chamber, so long as the lights did not interfere with the dignity of the proceedings. Under the rules, the Senate as a body had the right to overrule the chair on evidentiary issues.[40]

No one had much experience in the matter of impeachments, although this had not been the case in previous generations. The first years after Oklahoma's 1907 statehood had seen fifteen impeachment trials. Four early-statehood officeholders, including two governors, had been removed from office. The chaotic year 1929 alone had seen efforts to impeach six officials, including Governor Henry S. Johnston, four members of the supreme court, and the president of the state board of agriculture. While the four justices and the board president had either had their cases dismissed or been acquitted, Johnston had been convicted and removed.[41] After the bloodletting of 1929, however, public and legislative enthusiasm for impeachment had dwindled. Since 1929, only one serious effort at impeachment, an unsuccessful 1945 attempt to remove the state superintendent of public instruction, had occurred.[42]

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[40] Ibid., April 6, 1965, p.1 and April 7, 1965, p.1.

[41] Johnston had lost control of the legislature, been unresponsive and aloof to the legislature, and had alienated conservative senators with his endorsement of Al Smith in the 1928 Democratic presidential race. He was convicted of one count of general incompetence in office. Scales and Goble, pp. 135-153.

[42] Oklahoman, March 23, 1965, p.13.

Like Cargill, N.B. Johnson had waited until the last minute to hire an attorney. Even after Corn's conviction and statement, the grand juries, Blankenship's speech on the House floor, the impeachment committee, and Carroll's testimony, Johnson had hidden his head in the sand. Only three days before his first mandatory appearance before the senate, Johnson finally hired attorneys George Bingaman from Purcell, a former justice, and Fred Green from Sallisaw, a respected lawyer active in Democratic politics.[43] Green and Bingaman would be opposed by the House-appointed members of the Board of Managers: Representatives Lou Allard of Drumright, Burke G. Mordy of Ardmore, James W. Connor of Bartlesville, Phil Smalley of Norman, and Nathan S. Sherman of Oklahoma City. After appearing before the senate and entering his plea of not guilty, Johnson told the press "the most important thing is to clear my name." At Green's request, the trial was continued until May 6th.[44]

Like Corn, Welch, and Cargill, Napoleon Bonaparte Johnson, a member of the Cherokee nation, had grown up on the frontier. Born in 1891, Johnson moved in early childhood from his father's home near Locust Grove, a mountainous, wooded area with only Cherokee cabins and few white people present, to the home of his mother's family in present-day southern Oklahoma. Since there were no public schools in the Chickasaw Nation, Johnson attended a Presbyterian school for underprivileged children in Anadarko. He graduated from the ninth grade, went into the navy for a short time, then attended college. After a few years working for the United States Indian Service, he decided to become a

[43] Ibid., April 9, 1965, p.3.
[44] Ibid., April 13, 1965, p.1.

lawyer, attended law school in Tennessee, and was admitted to the Oklahoma bar in 1922.[45]

Johnson and his family settled in Claremore, where he worked as a prosecutor and practiced law. In 1934 Johnson was elected district judge, where he served for fourteen years. Johnson became very active in Native American affairs, serving on various boards supporting Native American interests. In 1948, supported by Senator Elmer Thomas and Governor Robert S. Kerr, he became a serious candidate for appointment as U.S. Commissioner of Indian Affairs.[46] When President Truman eventually named another candidate, Johnson ran for the Oklahoma Supreme Court against the incumbent, Wayne Bayless. He narrowly defeated Bayless and became a member of the Supreme Court. From all appearances N.B. Johnson represented the American Dream: he had risen from a mission boarding school to the Supreme Court of his native state and a national leadership role among Native American people.[47]

The senate constituted a unique group of jurors. Approximately half of them were lawyers, some with years of courtroom experience.[48] All were men. One, E. Melvin Porter of Oklahoma City, was African-American.[49] By virtue of their being in the senate at all, they had achieved high office, were competitive, and were politically astute. All felt a responsibility to their constituents and knew they would have to explain their votes. Most would have had at least a casual

[45] Testimony of N.B. Johnson, Transcript of Johnson impeachment trial, pp. 223-224.
[46] Papers of N.B. Johnson, Oklahoma Historical Society.
[47] Testimony of N.B. Johnson, Transcript of Johnson impeachment trial, p. 225-228.
[48] Opening statement of Representative Burke Mordy, Johnson impeachment trial, p.32.
[49] Porter, a lawyer, had become the first African-American to be elected to the Oklahoma State Senate with court-ordered redistricting the previous year.

acquaintance with Justice Johnson, who had worked for sixteen years in the state capitol, the same building which housed the senate.

Under the body's rules of impeachment, a majority of the members could overrule Grantham, the presiding officer, on evidentiary or procedural issues.[50] This rule was put to the test almost immediately, after Grantham barred the prosecution from alluding to the other cases in which the authorities suspected corruption. The senate supported the chair by a vote of 27 to 19, so evidence of those cases would not come before the senate.[51] Under the senate procedure individual senators also had the right to submit questions to the chairman, who would then relay the question to the witness.

The prosecution's first significant witness was Hugh Carroll. Carroll related his shared northwest Oklahoma background with Corn, the potential disastrous effect the Oklahoma Tax Commission ruling would have had on the company, his dinner with Corn in which they made the arrangement for the $150,000 bribe, the favorable ruling, and his eventual payment of the money to Corn. In his cross-examination, Bingaman implied that Carroll had subsidized Corn's small loan company in the 1940s, inquired about the fictitious Pierre Laval testimony in bankruptcy court, and alluded to Carroll's extravagant withdrawals from his various companies. Bingaman was unable to cause Carroll significant damage, although he did point out Carroll's previous contradictory stories.[52]

[50] Transcript of impeachment proceedings, pp. 36-42.
[51] Ibid. ,pp. 40-42.
[52] Ibid., pp. 56-69.

Corn's testimony also did Johnson considerable harm. Under questions from Representative Burke Mordy from Ardmore, Corn calmly relayed the stories of the briberies in *Selected Investments* and Oklahoma Company v. O'Neal. He outlined his bribery proposals with both Welch and Johnson, his delivery of the bribe money to each of them at their offices in the capitol, and Johnson's counting the money. Grantham, the presiding officer, severely limited Bingaman's cross-examination of Corn, but Bingaman was able to establish Corn's colon cancer at the time of the bribes, his hostility toward O.A. Cargill, and his insistence on immunity from prosecution at Welch's Muskogee trial. Corn also admitted he had told Floyd Rheam, who had accepted Corn's letter of resignation from the bar, that no other justices had taken a bribe. Corn did point out that Welch was in his home and able to overhear his conversation with Rheam.

The questions from the senators primarily involved why Corn had thought Welch and Johnson could be bribed. Corn's answers to these questions were evasive, and the senate voted not to force the witness to be more specific. Corn simply stated that his reasons for approaching the two justices would be based on hearsay, but eventually testified that he based his feeling on his experience in Marshall v. Amos.[53]

Like Corn and Welch, Johnson's financial records proved to be his undoing. Johnson had banked at two banks in Claremore and had accounts and a safety deposit box at Citizens National Bank (earlier Citizens State) in Oklahoma City. Johnson's Oklahoma City banker testified Johnson had entered his safety

[53] Ibid., pp. 76-115.

deposit box eleven times between December of 1959 and March of 1962. He had also purchased about $6,900 in cashier's checks, which he used to pay various expenses, including his $89.51 house payment and loans at the Claremore banks.[54]

On May 10th, the most important witness of the trial, Johnson himself, began his testimony. In Johnson's direct testimony, Bingaman went into considerable detail about Johnson's background, his professional awards, and his success as an attorney. Bingaman largely avoided the elephant in the room: his client's votes in *Selected Investments* and Oklahoma Company v. O'Neil. Instead, he simply asked, without elaboration, whether Johnson had taken bribes from Corn on the two cases; Johnson simply said, "That testimony was false."[55] Bingaman's strategy was dangerous: the only reason for the trial was to determine whether Johnson had accepted bribes from Corn. Bingaman's failure to elicit Johnson's side of the story from his client simply left the door open to force the witness to tell it in unfriendly and unsympathetic cross-examination.

Under Representative James W. Connor's questioning, Johnson denied directing his legal assistant, R.O. Ingle, to draft an opinion reversing *Selected Investments*. Connor forced Johnson to admit having had several friends contact their senators on his behalf before the impeachment trial, stating all he wanted was a "fair deal."[56] Johnson testified he had kept large amounts of cash, often about $2,000, hidden at his home, which he had obtained from cashing routine

[54] Ibid., pp. 143-161.
[55] Ibid., p. 234.
[56] Ibid., pp. 240-241.

checks and keeping leftover money. Johnson admitted he had opened a safety deposit box at his Oklahoma City bank on June 10, 1957 and had entered the box on September 10th, September 21st, November 13th, December 19th, and December 27th of the same year. Connor was able to prove Johnson had purchased nineteen cashier's checks totaling $3,400 on the same dates he entered the box. Johnson had stopped this practice after April of 1961, when he had received a letter from Harlan Grimes accusing him of bribery in the *Selected Investments* decision.[57]

In total, between July of 1956 and March of 1962, Johnson bought cashier's checks totaling $6,909.89 from Citizens National Bank of Oklahoma City, the same bank in which he had the safety deposit box. This established the prosecution's argument that Johnson had put the $7,500 *Selected Investments* bribe into the box, removing cash and buying cashier's checks when he needed the money. He had made seventeen house payments with cash.

Johnson had no valid explanation for his frequent entries into the box, where he admitted keeping about $800 in cash.[58] Justice Johnson simply could not account for his financial expenditures and had no valid or comprehensible explanation for the source of the money. Questions from senators repeatedly asked Johnson to explain the financial discrepancy, but Johnson did not have

[57] Ibid., p.262.
[58] $800 in 1958 is worth approximately $6,691. in 2016. $2000 is worth approximately $16, 728. $7500 is worth approximately $62, 532. www.data.bls.gov.

one.[59] By failing to provide a reasonable hypothesis other than guilt, Johnson had harmed himself with his testimony.

After seven days of trial and closing arguments, on May 13th the senate went into private session to discuss the evidence.[60] After four hours behind closed doors, Grantham called for a vote, and the clerk began to call the roll, which was conducted in alphabetical order. Under the rules, the prosecution was required to obtain a two-thirds majority of the senate in order to oust Justice Johnson from office. With three votes left, the count stood at 29 to 15 in favor of conviction; unless all three of the remaining senators voted to convict, Johnson would be acquitted. Senators Al Terrill from Lawton, G.W. Williams from Gore, and John Young from Sapulpa all voted in favor of conviction; Johnson had been removed from office by one vote. The vote on the now superfluous second count, the bribe in Oklahoma Company v. O'Neil, was identical. Johnson became the first supreme court justice in Oklahoma to be removed from office.[61]

More than a half-century later, the case against N.B. Johnson appears to have been overwhelming. Corn, who seemed to have no particular grudge against Johnson, had testified he had personally bribed Johnson and handed him the money on both occasions. Hugh Carroll had confirmed most of Corn's story, although he had never dealt with Johnson personally. Johnson's own financial records had proven he had outspent his income, he had hoarded inordinate

[59] Transcript of impeachment trial, questions from Senators Ted Findeiss, Richard Stansberry, and John Garrett, May 11, 1965, p.286.
[60] In his argument Green called Corn "an evil old man who admits he has lived a life of corruption." Oklahoman, May 9, 1965, p.1.
[61] Transcript of impeachment proceedings, pp. 401-403.

amounts of cash, and that, although he had a checking account, he had often visited his safety deposit box and inexplicably paid his bills with cashier's checks. Both direct and circumstantial evidence pointed to Johnson's guilt, and very little evidence exonerating him had been presented.

Nevertheless, Johnson still received fifteen votes for acquittal. Of the fifteen, all but Richard Romang of Enid were Democrats. All four of the senators from overwhelmingly Democratic southeastern Oklahoma voted to exonerate Johnson.[62] Clem McSpadden, the powerful president pro tempore of the senate, was from Johnson's hometown of Claremore and supported Johnson. E. Melvin Porter of Oklahoma City, the first African-American to serve in the senate, voted for acquittal, as did Charles Pope from Tulsa. The other eight senators from Oklahoma County and six from Tulsa County voted to convict.[63] It is therefore reasonable to conclude that if the 1965 legislature had not been reapportioned and had remained disproportionately rural, the result may have been different for N.B. Johnson.

On July 22nd, having been delayed by congressional redistricting and the Johnson trial, the second-longest legislative session in Oklahoma history finally limped to a close. Although it was criticized for its slow and cumbersome work, the session generally received good marks. In the legal world, the legislature had removed Johnson and replaced the county attorneys with a district attorney

[62] These included Clem Hamilton from Poteau, Leroy McClendon from Atoka, Gene Stipe from McAlester, and John Massey from Durant. Southeastern Oklahoma was so heavily Democratic that Republican Governor Bellmon could not find a suitable Republican from the district to replace Earl Welch. He eventually appointed Democrat Ralph Hodges from Durant, who served for many years.

[63] Impeachment transcript, pp. 401-403.

system. It had failed, however, to address the subject of judicial reform, including justices of the peace.[64] The next legislature and next governor would have to deal with that issue.

THE O. A. CARGILL PERJURY TRIAL

The perjury trial of O.A. Cargill began on June 1, 1965 before Judge Harper. Percy Foreman, the nationally-known and flamboyant criminal defense attorney representing Cargill, immediately irritated Judge Harper, alluding to his busy schedule and telling him at an April 30th pretrial hearing that he "to this good hour" had not devoted any time to Cargill's case and had filed "canned motions" prepared by his secretary .[65] Harper expressed surprise that a lawyer would admit to filing boilerplate motions.[66] Harper and Foreman would continue to clash throughout the trial.

Cargill had been charged with three counts of perjury; the grand jury claimed he had lied when he denied knowing anything about the *Selected Investments* bribe, when he denied authoring the phony Pierre Laval story in bankruptcy court, and when he denied having financial dealings with any Oklahoma Supreme Court justices.[67] After the jury had been selected, Harper immediately ordered the jurors sequestered in an Oklahoma City hotel, where

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[64] Oklahoman, July 22, 1965, p.3.
[65] Foreman had represented high profile criminal defendants for years. A few years later, he would represent alleged Martin Luther King assassin James Earl Ray, persuading Ray to plead guilty. The wisdom and propriety of that decision remain in question today.
[66] Oklahoman, May 2, 1965, p.1.
[67] Indictment of Cargill, Cr-65-27CR.

they were placed under armed guard, without access to telephones, radios, or televisions.[68]

Hugh Carroll became the prosecution's first significant witness. Carroll related his story of meeting Cargill at Corn's insistence in the days before his bankruptcy hearing in March of 1958. Carroll described his conspiracy with Corn, his payment of the $150,000, Cargill's comment that Cargill could have bribed the judges for less money, and Carroll's obvious reluctance to reveal where the $200,000 *Selected* expenditure had gone. Carroll testified that he had planned to take the Fifth Amendment when asked about the $200,000, but Cargill persuaded him to testify to the Pierre Laval story instead, which Cargill apparently made up on the spot after learning Carroll had a cabin in Canada.[69] Carroll told the jury he had finally told the truth to federal investigators and County Attorney James Harrod in April of 1964 and had received immunity from prosecution.

On cross-examination George Miskovsky, a former senator now helping to represent Cargill, repeatedly quizzed Carroll on his memory but was unable to shake Carroll's basic story of what had occurred seven years previously. However, Miskovsky did establish that Carroll had also told others he had needed the money to buy stock in *Selected Investments* and to pay lobbyists to resist tax measures pending in the legislature which were unfavorable to *Selected*. Carroll's wife Julia testified as well, verifying her husband's testimony about Cargill's

[68] Oklahoman, June 2, 1965, p.1.
[69] Oklahoman, June 3, 1965, p.1.

invention of Pierre Laval and relating her disapproval of Cargill, his forceful and overbearing manner, and his invention of such a preposterous lie.[70]

Corn began his testimony on June 4th. Corn described his long and corrupt relationship with Cargill, his accepting small amounts of money over the years from Cargill, Cargill's calls telling him to "get your pencil out," and his belief that Cargill had similar relationships with other justices. Corn told the jury about his hiding $97,000 in his golf shoes in his locker, in fruit jars in his backyard, and in filing cabinets. He admitted that when Carroll asked for the return of the money after the company had gone into receivership, he only returned $33,000, even though he still had more of the bribe money left. Corn also testified he had received $4,000 from Cargill in Marshall v. Amos, the Cleveland County oil and gas case, and $2,500 in Oklahoma Company v. O'Neil, the case involving Cargill's daughter and son-in-law. He admitted that because of his previous payments from Cargill, he would have voted Cargill's way regardless of the extra bribe. Corn testified Cargill had told him he had "taken care of" the other justices in Marshall v. Amos.[71] He then described his break with Cargill over Corn's tax troubles in February of 1961.[72]

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[70] Ibid., June 4, 1965, p.1.

[71] Justices Harry Halley, Denver Davison, and W.H. Blackbird immediately called a press conference to deny Corn's claim. The next day the Oklahoma Bar Association issued a statement announcing it had cleared the three justices, pointing out Corn had previously testified he had no knowledge of any wrongdoing by them, and noting this statement had allegedly come from Cargill, who was being prosecuted for lying under oath. Other than Cargill's dubious statement to Corn, no evidence exists of any inappropriate conduct by these justices. Ibid., June 5, 1965, p.1. and June 6, 1965, p.1.

[72] As noted earlier, at Cargill's suggestion Corn had retained Oklahoma City tax attorney John Speck to represent him in his tax troubles. For undisclosed reasons, Corn had a bitter argument

In his lengthy and detailed cross-examination, Foreman meticulously pointed out many cases in which Corn had voted against Cargill's clients. According to Foreman, of a dozen cases involving Cargill which he had lost, Corn did not vote in five, voted against Cargill in four, and authored the opinion against him in yet another case. Corn explained that Cargill often had similar arrangements with opposing attorneys to lose cases, and that sometimes Cargill did not call him at all. Foreman also noted that Corn, while he was still incarcerated in Springfield, received immunity from further federal prosecution from Acting Attorney General Nicholas D. Katzenbach and also received an oral promise of immunity from state prosecution from James Harrod, Oklahoma County Attorney.[73] Corn, turning toward the judge, said "I violated my oath and I ruined myself...I ruined myself completely, disgraced my family, disappointed my friends... The only thing to do now is come in and tell the truth, and that's what I'm doing."[74]

H.G. Marshall, the former Oklahoma City oilman at the center of Marshall v. Amos, related his background with Cargill, stating that he had known Cargill since 1928, had been a friend of Cargill's daughter and son-in-law, and had talked to Cargill about his case. Although Cargill had not done any legal work on Marshall's case, Cargill, according to Marshall, told him he had a "dangerous lawsuit," and that he could guarantee a win "with the boys on the hill" for

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with Speck and Cargill and discharged Speck. Testimony of John Speck, U.S. v. Cargill, vol. 10, pp. 296-299.

[73] Harrod had visited Corn's home on December 31, 1964, during Harrod's last week in office. It is unclear whether Harrod's promise was enforceable, but no state charges were filed against Corn.

[74] U.S. v. Cargill, 65-27CR, vol. 7, pp. 62-65 and Oklahoman, June 5, 1965, p.1.

$30,000. Titus Haffa, Marshall's Chicago colleague, then prepared a letter guaranteeing Cargill $30,000 upon reversal of the case.

On cross-examination Foreman was able to harm Marshall's credibility significantly, exposing him as a prevaricating, profane man, who had more than forty judgments against him and had been prosecuted for driving under the influence and bogus checks. Foreman forced Marshall to admit he had told Ardmore attorney Earl Grey, who was investigating the matter for the Oklahoma Bar Association, that he had hired Cargill solely for his legal ability. Foreman also noted contradictory stories Marshall had told to private investigators and mentioned other cases in which Cargill had represented Marshall, implying the $30,000 was for past services, not a bribe.[75] Titus Haffa followed Marshall to the stand; Haffa did so badly that Harper warned him of the penalties for perjury.[76]

Foreman began the defense case with Merle Zwifel, who had been convicted of mail fraud and been assigned to Carroll's cottage at the federal penitentiary in Seagoville, Texas. Zwifel testified Carroll had been extremely worried about money and about pending charges in state district court. Carroll allegedly told Zwifel he had $150,000 stashed at a secret location near his cabin in Canada. The next day Cargill's wife testified, recalling the visit Hugh and Julia Carroll had made to their ranch prior to the federal court hearing in March of 1958. She remembered driving with the Carrolls to see the ranch's buffalo but

[75] U.S. v. Cargill, 65-27CR, vol. 7, 8, 9, and 11, and Oklahoman, June 9, 1965, p.1.
[76] Oklahoman, June 12, 1965, p.1. The next day Haffa was served with a million dollar lawsuit filed by two Oklahoma City attorneys who had represented Amos. The lawyers claimed they would have received large fees if Amos had won. They said they had lost the fees because Haffa helped bribe the justices. Oklahoman, June 12, 1965, p.1.

denied that there had been any discussion of Pierre Laval.[77] Foreman then presented a succession of justices and attorneys who had prevailed in cases against Cargill; all denied having any financial dealings with him.

It now became Cargill's turn to testify. Appearing nervous initially, Cargill related his biography to the jury, telling them of his background in Arkansas, his migration to Oklahoma, his becoming an attorney and mayor of Oklahoma City, his religious work, the death of his daughter, and his successful law practice. With the exception of small campaign contributions, Cargill denied any financial dealings with Justice Corn or any other member of the court. He denied receiving $2,500 from Corn for securing Lon Carlile's vote in the *Selected Investments* case and insisted the $30,000 he received from Haffa was for his earlier representation of Haffa and Marshall in a Noble County case.

On the subject of *Selected Investments*, Cargill admitted meeting the Carrolls at his home but denied concocting the Pierre Laval story. Cargill claimed he had anticipated receiving a continuance from "Steve" (Judge Chandler) and was stunned when the judge denied his request. He said he had heard the name Pierre Laval for the first time in court. As to N.S. Corn, Cargill claimed he had not been particularly cordial with Corn since the early 1940s, when Cargill had backed Corn's rival Ben Arnold for Chief Justice. Cargill said he had offended Corn by suing Corn's small loan companies in the 1940s.[78] He denied meeting Corn on the street with money, denied ever being in Corn's office in the capitol,

[77] Ibid., June 12, 1965, p.1.
[78] U.S. v. Cargill, vol. 11, pp. 500-503.

denied underwriting Corn's campaigns, and denied telling Corn to "grab your pencil."[79]

In his cross-examination of Cargill, Assistant U.S. Attorney David Kline established Cargill's familiarity with the business affairs of *Selected Investments* at the bankruptcy court hearing. He also pointed out that Hugh Carroll, Julia Carroll, and N.S. Corn had all given similar testimony. According to Cargill, Hugh Carroll had actually employed Ned Looney to represent him but made the check for $25,000 to Cargill. Kline established the lack of logic of receiving a $25,000 fee from Carroll, then hearing about Pierre Laval for the first time in the courtroom. [80] In rebuttal, the prosecution called James Nance, a former legislator and publisher from Purcell, who testified Cargill had offered him $10,000 to obtain Justice Floyd Jackson's vote on the Meadors will case. Nance admitted, however, that he did not share this information with Justice Jackson for two or three years. The government also called Laura Fleming, who accused Cargill of trying to purchase an oil and gas lease from her, claiming he had the Supreme Court fixed against her.[81]

After lengthy closing arguments, in which Foreman attacked the credibility of the government's witnesses, the case went to the jury. After nine hours of deliberation, the jury returned its verdict at 1:00 a.m.: guilty on all counts. On his way out of the courtroom, Cargill ironically told the press he had been "convicted on perjured testimony." The next month Judge Harper sentenced

[79] Ibid., vol. 11, pp. 588-602.
[80] Ibid., vol. 11, pp. 588-602.
[81] Oklahoman, June 15, 1965, p.1.

Cargill to five years imprisonment and a $3,000 fine. As he had done with Corn, he ordered him to be immediately eligible for parole.

CONCLUSION

In 1965 Oklahomans had learned the sordid details of corruption at the highest levels of their court system. Prosecutors had done their jobs, bringing Corn, Welch, Johnson, and Cargill to justice. All had been disgraced; three had been sentenced to prison. The prosecutions had ended; what remained was to change the system, so that something like this would not occur again.

Why did it take so long to expose the scandal, and what allowed it to occur in the first place? One factor was Oklahoma's lack of a viable two-party system, a political trait which Oklahoma has had for most of its history. As we have seen, the Democratic legislative leadership ignored the scandal, and it was only through the intercession of the minority Republicans that the scandal came to public light. Without court-ordered redistricting and the greater empowerment of the minority party, it is doubtful whether the enormous scope of the crimes would ever have become known, and whether court reform would have come to Oklahoma.

In 1949, writing before most of the Oklahoma court scandal had even occurred, political scientist V.O. Key illustrated how one-party rule made governments exceptionally vulnerable to favoritism, with shared loyalty between

the officeholder and the business seeker. [82] The Supreme Court scandal uncovered Oklahoma's version of what Lyndon Johnson biographer Robert Caro describes as having occurred in Texas at approximately the same time: "the role and significance of favoritism in a democratic government."[83] In the case of the Oklahoma Supreme Court scandal, outside forces had brought the extent of the extent of the corruption to public attention, and the responsible parties had been brought to justice. In the next two years, 1966 and 1967, Oklahomans would learn whether their broken judiciary would be reformed.

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[82] V.O. Key, Jr., Southern Politics in State and Nation, (Third Edition: Knoxville, University of Tennessee Press, 1984), pp. 298-311. Original edition published in 1949.
[83] Robert A. Caro, Means of Ascent: the Years of Lyndon Johnson, (New York, Vintage Books, a Division of Random House, Inc., 1990), (Kindle edition, 3%, location 2501).

CHAPTER FIVE

THE FALL OF MCCARTY, THE SNEED PLAN, AND THE ELECTION OF 1966

In 1966 three events occurred which helped lead to enactment of reform the next year. First, J.D. McCarty, the conservative Speaker of the House, astoundingly fell from power. Second, Senator Dewey Bartlett, a state senator from Tulsa friendly to the idea of reform, unexpectedly became the state's second Republican governor. Third, the state's judiciary, bar, and political establishment continued to embarrass itself with scandal and impropriety.

THE FALL OF MCCARTY

As we have seen, Speaker McCarty had ruled the Oklahoma House of Representatives with an iron hand. Tough, smart, and energetic, he almost singlehandedly determined the passage or failure of legislation. A generation later, a still-frustrated Henry Bellmon described his feelings about Speaker McCarty, calling him the "Oklahoma prototype of the worst kind of politician...As Speaker of the House, he became loud, fat, power-mad, and heavy-handed in his dealing with those over whom he could exert either influence or authority."

According to Bellmon, McCarty's control over the House of Representatives "was absolute. Anytime he took the rostrum and pointed his thumb upward, the matter under consideration passed with a huge majority. Anytime he made the opposite gesture, the measure failed."[1] Little or nothing in Oklahoma's state government took place without McCarty's approval.

Although he represented an Oklahoma City district, McCarty had an ability to "think rural," which meant being able to protect the members of his rural Democratic caucus.[2] McCarty generally allied himself with Democratic, conservative legislators, many of whom came from the southern half of the state. He tended to see issues, including judicial reform, along party lines and dragged his feet on proposals which changed the status quo. The legislature's huge Democratic majority allowed him to avoid accountability from the questioning of a strong minority party. As judicially-mandated reapportionment changed the legislature's demographics to allow greater urban participation, McCarty remained loyal to his rural, conservative power base.

In late 1964 and early 1965 McCarty considered running for governor or a seat on the Corporation Commission. He also considered abandoning politics altogether and entering private business full time. Eventually, he decided instead to run for a fourth term as Speaker of the House. Even before he had definitely made up his mind whether to seek to remain as Speaker, he had pledges of

[1] Henry Bellmon, The Life and Times of Henry Bellmon, (Tulsa: Council Oak Books), 1992, pp. 201-202.
[2] Oklahoman, November 9, 1966, p.1.

seventy votes, well more than he needed for re-election.[3] Although McCarty stated he favored "modernizing, streamlining, and updating" the court system, he reiterated his strong opposition to tampering with the system of electing judges.[4] Barring an unforeseen event, Bellmon's successor would have to deal with Speaker McCarty on all issues, including court reform.

The first rumblings of trouble for McCarty appeared in September of 1964. Muriel Luther "Jack" Woosley, a pilot with a minor criminal history, claimed to have flown two legislators, not yet identified as McCarty and Senator Everett Collins, a lawyer, and a state crime bureau agent to Memphis, where proponents of dog racing had allegedly bribed the legislators to sponsor a bill legalizing dog tracks in Oklahoma. Woosley had told the story to his next door neighbor, who was an assistant county attorney, who then arranged for Woosley to meet with County Attorney James Harrod. When Harrod did not react with the speed Woosley thought appropriate, Woosley contacted the Oklahoma Journal, a daily newspaper founded by wealthy 1962 Democratic gubernatorial candidate Bill Atkinson, who blamed the Daily Oklahoman and Oklahoma City Times for his loss to Bellmon and had therefore begun a competing daily paper.

The Journal printed the story but did not name any names, leaving the reader to guess the respective identities of the parties.[5] After the story came out, the Daily Oklahoman published the fact that Woolsey had made the complaint,

[3] Oklahoman, April 16, 1965, p.1.
[4] Oklahoman, February 10, 1966, p.1.
[5] Oklahoma Journal, September 12-13, 1964, p.1. Until the previous week, Atkinson had been actively pursuing his own defamation suit against Oklahoma Publishing Company, which he was forced to dismiss after the Supreme Court's decision in New York Times v. Sullivan. Oklahoma Journal, September 4, 1964, p.1.

insinuated that Woolsey had ruined the investigation by failing to cooperate with Harrod, and included Woosley's arrest record.[6] The matter might have died on the vine, but the next day Woosley sued the Oklahoman for two million dollars, claiming he had been defamed by the article. [7] Woosley's lawsuit, although it was frivolous, forced the newspaper to defend itself in court and to inquire into Woosley's claims. The discovery process in the lawsuit would help lead to the end of McCarty's political career.

The attorneys for the Oklahoman had sent written inquiries to Woosley's lawyer. After normal courthouse business hours on July 28, 1965, the last permissible day to respond, Woosley's attorneys filed their client's response to the newspaper's questions. Woosley claimed under oath that in late 1960 he had flown Whit Pate, a former Howard Edmondson aide and an attorney practicing in Poteau and Oklahoma City, and Forest Castle, a former head of the Oklahoma Crime Bureau to Memphis, Tennessee. The trip's purpose was for Pate to pick up $30,000 from Tennessee racing interests, who were seeking legalization of horse and dog racing in Oklahoma. After the group returned to Oklahoma, Pate called McCarty and Collins, who met Pate in Pate's Tulsa hotel room. Pate then delivered $10,000 each to McCarty and Collins, kept $5,000 for himself, and paid the other $5,000 to Castle. According to Woosley, in January of 1961 Pate returned to Memphis, this time by commercial plane and without Woosley. Pate then reportedly returned with another $30,000. After his return to Oklahoma, Pate, Collins, and McCarty met at the Turner Turnpike gate, where McCarty took

[6] Daily Oklahoman, September 15, 1964, p.1.
[7] Oklahoman, September 17, 1964, p.3.

$10,000, Collins took $10,000, and Pate kept the other $10,000, later giving $5,000 to Castle.

Woosley also claimed he had learned that an individual named Bob Lewis had paid McCarty $5,000 to kill the horse and dog racing legislation, with a promise of another $45,000 to the speaker when the bill was finally killed. When he was asked about this, McCarty had reportedly told Pate he had indeed taken the $5,000 from the opponents of racing. McCarty allegedly had said that this had simply been an easy way to make $5,000, and that Pate and the others had nothing to worry about. [8]

Woosley's story was indeed alarming. Assuming the truth of what Woosley was saying, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Senate had accepted $20,000 each to influence the passage of important legislation.[9] McCarty had also accepted $5,000, with the promise of $45,000 more to kill that same legislation, thus accepting large sums of money from both sides of the issue.[10] However, there were significant problems with Woosley's story. First, even according to Woosley, he had seen very few of the events firsthand. He had flown the plane to Memphis with Pate and Castle and returned with the money. He had had little or no interaction with McCarty and Collins; almost all of his information had come from Pate. Moreover, Woosley had little credibility. He admitted misleading Harrod about

[8] Oklahoman, July 29, 1965, p.1.
[9] Collins was defeated for reelection in 1962. Oklahoman, Collins obituary, September 28, 1988, Archive ID 361807.
[10] The racing bill did not pass the House of Representatives in 1961.

the source of the bribe money, telling the county attorney the money came from dog breeders, not gamblers.[11] If prosecutors were to prove a bribery case against McCarty and Collins, the information would have to come from Pate and Castle.

Pate was having a highly publicized, if not overly productive, career. After graduating from law school at the University of Arkansas, Pate began practicing law in Heavener. Pate campaigned for the 1958 election of Governor J. Howard Edmondson and became the governor's first legal aide after Edmondson's inauguration. Pate, whose political ties were to the conservative forces in southeastern Oklahoma, was a poor fit in Edmondson's office, and he resigned after three months.[12] Pate then opened a law office in Oklahoma City and was a law partner of former governor Johnston Murray for a few months in 1960.[13] Pate ran unsuccessfully for the Corporation Commission twice, coming in third in the Democratic primary in 1960 and second in 1962.[14] He acquired a reputation for mercurial conduct; as an acting county judge in Leflore County, he once ordered his own brother Pat, the Leflore County Attorney, to jail for five days.[15]

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[11] Oklahoman, July 29, 1965, p.1.
[12] Oklahoman, April 2, 1959, p.1.
[13] Murray had returned to Oklahoma after living in Fort Worth, Texas for a few years, where he had worked for an oil well servicing company and a limousine service. State Senator Gene Stipe suggested Murray come back to Oklahoma, where he finished his career as an attorney for the Oklahoma Department of Public Welfare. Johnston Murray, Oklahoma Historical Society, okhistory.org. Oklahoman, April 26, 1960, p.4.
[14] In 1966, at the height of his legal troubles, Pate changed parties and ran unsuccessfully as a Republican for Carl Albert's Congressional seat. His campaign was not taken seriously, and he was resoundingly defeated.
[15] Oklahoman, September 5, 1965, p.1. and September 6, 1965, p.19.

Pate told a bar investigating committee that he and Senator Gene Stipe had split a $150,000 bribe from industrial firms wanting inside information on a water pipeline being built between Oklahoma City and Lake Atoka, calling the day they received the money as "the day we shot the elephant."[16] Weeks later, he signed an affidavit denying that very claim. Pate was constantly in debt and was often sued by his creditors. In trouble with the Oklahoma Bar Association as a result of his contradictory affidavits, in March of 1965, Pate ignored a subpoena from the OBA committee investigating his fitness to practice law.[17] Whit Pate, in short, was unreliable and not credible.[18] He was certainly not appropriate company for the Speaker of the House and the President Pro Tempore of the Senate to be keeping.

The Oklahoman story caused public outrage and demands for investigation into the conduct of McCarty and Collins. Curtis Harris, the Oklahoma County District Attorney, announced his office would investigate the claim and, if necessary, request a grand jury.[19] Within a few days two Oklahoma City women, asking help only from their friends and neighbors, had obtained the necessary number of signatures to form a grand jury. Oklahoma City radio

[16] Oklahoma City Times, June 8, 1965, p.1.
[17] Oklahoman, March 11, 1965, p.10.
[18] Pate also probably was impaired by drugs. In 1971 Pate sued a New Jersey drug manufacturer, claiming that an arthritis drug caused him to behave bizarrely. Among other things, he claimed he could not remember why he left the employ of Governor Edmondson and could barely remember the events of 1966. The arthritis drug trial ended in a hung jury. Oklahoman, February 29, 1972, p.29.
[19] Oklahoman, August 3, 1965, p.3.

station KTOK joined the drive for signatures, soliciting its listeners to visit the station to sign the petition for a grand jury.[20]

The grand jury began to investigate the McCarty issue on November 8th. The first subpoenaed witness was Whit Pate. Curtis Harris, the prosecutor, wanted to ask Pate about the affidavit he had given to a reporter confirming the payoffs, then retracted with another affidavit prepared by an Oklahoma City lawyer representing McCarty's interests contradicting denying the events had ever occurred. Harris had evidence that the lawyer obtaining Pate's second affidavit had paid Pate $2,500 in exchange for his signing the document.

Pate could not possibly reconcile his stories. He refused to testify, citing the Fifth Amendment. Judge Jo Ann McInnis, at Harris's request, granted Pate immunity from prosecution.[21] Pate, despite being granted immunity and being ordered to testify, still refused to do so. McInnis ordered Pate to jail for contempt of court, but the sentence was stayed pending Pate's appeal to the Court of Criminal Appeals; eventually the Court of Criminal Appeals reversed Pate's conviction. Harris also subpoenaed Pate's tax records from the Oklahoma Tax Commission, which refused to release the documents until ordered to do so by the Supreme Court.[22]

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[20] Oklahoman, August 10, 1965, p.1. Oklahoman, August 20, 1965, p.1.

[21] Judge McInnis, a Democrat, was defeated by her Republican opponent in the 1966 election. The next year she was tragically murdered by her estranged husband at her downtown Oklahoma City law office. Oklahoman, June 20, 1967, p.1.

[22] Pate had the dubious distinction of being the subject of two simultaneous grand jury inquiries. In a less important case, a Leflore County grand jury investigated claims that Whit Pate's brother Pat, the Leflore County Attorney, had required his secretary to do secretarial work for Whit and

McCarty and Collins each appeared before the grand jury, each testifying for about three hours. Although the testimony remained secret, presumably each of them denied any involvement in legislative bribery. Eventually, with their statutory time for grand jury investigation expiring, the grand jury indicted only Pate for evading state taxes. The grand jury decided, absent Pate's testimony, that it did not have sufficient evidence with which to indict McCarty or Collins. The grand jury did issue a scathingly critical report on the Oklahoma legislature, pointing out the existence of what it called "money bills." The grand jury said it was "not at all uncommon for funds to be gathered for the purpose of passing or killing legislation." They also found that "in many of our business community the payment of money to secure passage or defeat of legislation has come to be considered a normal business expense." [23]

Although the dog racing incident had resulted in no indictments of officeholders, the grand jury had exposed a serious defect in Oklahoma government. Like some members of the appellate judiciary, the votes of certain members of the legislature appeared to be available to the highest bidder. Moreover, this system had become such an integral part of the political fabric that buying influence or votes was taken for granted by many of those who wanted to accomplish anything requiring government approval. In 1966 the voters would have the opportunity to demonstrate their displeasure with their state government.

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another private attorney on county time. No indictment resulted. Oklahoman, December 7, 1965, p.1.

[23] Oklahoman, December 31, 1965, p.1.

PROPOSALS FOR REFORM

In May of 1966, voters decided that 1966 would be the last year in Oklahoma history without a session of the legislature. In a constitutional amendment placed on the runoff ballot, Oklahomans unexpectedly approved a constitutional amendment requiring the body to meet annually.[24] In the absence of a legislature, reform forces took advantage of the year to prepare plans to change Oklahoma's judiciary.

The most ambitious of these was the Missouri plan, which became known in Oklahoma as the Sneed plan. The Missouri plan, which that state had enacted in 1940 as a response to the excesses of the Pendergast machine, called for judicial vacancies to be filled by the governor from a list of three submitted by a judicial nominating commission, then a retention ballot to determine whether the judge remained on the bench. The American Bar Association had supported judicial nominating commissions for many years.

By 1966 several states had demonstrated considerable interest in some form of this mechanism. Kansas, reacting to an event in which the governor resigned in order to be appointed chief justice by the lieutenant governor, enacted a nominating commission in 1958. The next year Alaska constitutionally established its commission with its admission to the union. Nebraska and Iowa established their versions in 1962. Colorado followed suit in 1966, and Utah, Idaho, and Vermont established their procedures in 1967. By 1977 nineteen states

[24] Oklahoman, May 25, 1966, p.1.

had established some form of the Missouri plan, although some of those states used judicial nomination commissions only for appellate judgeships.[25]

Earl Sneed became the leading voice in Oklahoma for adoption of the Missouri plan, and the proposal for Oklahoma took his name. For fifteen years, Sneed had been deeply interested in reforming Oklahoma's judiciary. Sneed had graduated from the University of Oklahoma Law School of Law in 1937. After graduation he worked for the Tulsa Chamber of Commerce until World War II service interrupted his career. After the war and with OU's law school expanding to accommodate returning servicemen, acting Dean Maurice Merrill invited Sneed to teach at the school. In 1950 the thirty-seven year-old Sneed was named the school's dean.[26]

The next year OU's law review published a study of the Oklahoma judicial system. As has been mentioned in an earlier chapter, using American Bar Association standards, the study found Oklahoma's system wanting and endorsed the Missouri plan, eventually adopted by Sneed. In 1954 Sneed asked his student Fred Harris, later a United States senator, to prepare a short synopsis of Oklahoma's confusing and overlapping court system. Harris came up with seven single-spaced pages just to describe Oklahoma's byzantine judicial setup. Sneed

[25] Charles H. Sheldon, "Influencing the Selection of Judges: the Variety and Effectiveness of State Bar Activiites," Western Political Quarterly, vol. 30: no.3 , (September, 1977, pp. 397-400).
[26] Mary Lyle Weeks, "Chapter Four," Sooner Magazine, Summer, 1994, pp. 12-16.

was particularly outraged by the fee-based nature of the JP system; in Sneed's mind JP stood for "judgment for the plaintiff."[27]

Sneed began to look at entering electoral politics. He served from 1960 to 1964 as mayor of Norman and considered running for governor in 1962, eventually deciding not to run. In October of 1964, he told the press he would announce his political plans by February of the next year, strongly indicating that he would enter the 1966 gubernatorial race.[28] In September of 1965, Sneed resigned from OU, taking a position with Liberty National Bank in Oklahoma City.[29] Although he opted not to run for governor, he was a serious figure in Oklahoma's political and legal community.[30]

Rather than becoming a candidate himself, Sneed apparently decided to pursue his passion of reforming Oklahoma's judiciary. After the Supreme Court scandal broke, Governor Bellmon appointed a commission to study judicial reform. He named Sneed as the chairman and also appointed Representative John McCune of Tulsa.[31] Sneed and McCune had very different ideas on the subject and would later clash over which path judicial reform should take.

The central feature of the Missouri plan involved the selection of judges by a judicial nominating commission. When a vacancy occurred, a commission

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[27] Phillip Simpson, "The Modernization and Reform of the Oklahoma Judiciary," Oklahoma Politics, October 1994, p.6.
[28] Norman Transcript, October 6, 1964, p.1.
[29] Oklahoman, November 16, 1966, p.1.
[30] Sneed also was a candidate to succeed George R. Cross as president of OU and had the backing of outgoing Governor Bellmon. J. Herbert Holloman was selected instead. Oklahoman, November 16, 1966, p.1.
[31] Henry Bellmon letter to John McCune, February 17, 1965, Bellmon papers, Oklahoma State University, Box 39, file 3.

composed of lawyers and lay persons would consider the application and nominate three candidates. The governor would appoint one of the three. The appointed candidate would then be subject to a retention election, in which the voters were allowed to vote whether or not to retain the judge in office. Judicial elections, whether partisan or nonpartisan, would be abolished, with the exception of the retention vote.

At the insistence of Representative McCune, the legislative council had undertaken a comprehensive study of judicial reform, with an eye toward presenting a substantive and cohesive plan to the 1967 legislature. The council was originally composed of all fifty-two legislators who were also lawyers and three laymen.[32] Some were more active than others, and eventually thirty legislators remained on the subcommittee through its conclusion.[33] The council took its job very seriously, holding numerous hearings and meetings and even traveling to Illinois, whose structure utilized nonpartisan election, to study the judicial structure there.[34]

The Sneed plan forces, who had little legislative support and were therefore required to get their proposal before the people by initiative petition, struck first. On June 15, 1966, Sneed, Oklahoma Bar Association president Leroy Blackstock, and Oklahoma City Times editorial writer Clarke Thomas announced the formation of Judicial Reform, Inc., an organization dedicated to the adoption of the Sneed plan, and stated they would file an initiative petition calling for a

[32] Oklahoman, December 3, 1965, p.1.
[33] Oklahoman, October 29,1966, p.1.
[34] Simpson, p.10.

vote on their proposed constitutional amendment on August 26th.[35] The petition drive began with a sputtering and embarrassing start. On July 29th Blackstock, on behalf of Judicial Reform, Inc., obtained official numbers from the Secretary of State for an initiative petition and state question amending the state constitution with the Sneed plan, an action which proved to be a serious mistake. Blackstock's intention had been merely to obtain numbers; however, under Oklahoma's initiative petition procedure the act of receiving a number automatically began the ninety day period for obtaining the 140,000 signatures necessary to put the petition on the ballot. The plan had been to organize, then file the petition on August 26th, so Blackstock's error might have cost the reformers a month of organizational time.[36] Eventually, however, after consulting with the Attorney General, Secretary of State James Bullard allowed Judicial Reform to withdraw its petition, which the group re-filed on August 23rd. Although the organization's competence came into temporary question, no permanent harm came to the petition drive.[37]

The Sneed plan proposed major changes to the judiciary. It called for four levels of courts: the Supreme Court, an intermediate-level appellate court, district courts, and appointed magistrates. The appellate judges and district judges would be selected by a judicial nominating commission, which would select three candidates. The governor would then appoint one of those three candidates to the position. With the exception of funding, the legislature would take little or no

[35] Oklahoman, June 15, 1966, p.3.
[36] Oklahoman, August 4, 1966, p.1.
[37] Oklahoman, August 24, 1966, p.1.

role in the judiciary. Decisions on personnel, assignments, and rulemaking would be made by the chief justice. Justices of the peace would be abolished, as would the Court of Criminal Appeals. After six years, the appointed judge would be subject to a retention vote, in which the voter would answer the question, "Should Judge John Doe be retained in office?"

The Sneed plan signature drive immediately ran into trouble. Despite enthusiastic participation by the League of Women Voters, by mid-October it became obvious the petition drive was stalling at substantially less than the required 140,000 signatures. Over the next month, urban Oklahoma's newspapers, led by the Daily Oklahoman and Oklahoma City Times, launched editorial onslaughts urging voters to sign the petition. On October 19th, the Oklahoman, in a front page editorial entitled "Have We Forgotten?", the editors reminded its readers of the humiliation of the scandal and urged the adoption of the "well thought out" Sneed plan.[38] Two days later, the paper quoted Clarke Thomas, its own editorial writer and secretary-treasurer of Judicial Reform, Inc., as tying the plan to industrial growth, claiming Oklahoma's demonstrating that it had abolished "justice for sale" would help attract new industry to the state. [39] The next week, in an editorial entitled "We Need Best Judges," the paper heartily endorsed the Sneed plan, pointing out the need for taking judges out of politics. The writer, probably Thomas, argued that until 1846 judges were selected by appointment, not election, and therefore judicial appointment is the traditional

[38] Oklahoman, October 19, 1966, p.1.
[39] Oklahoman, October 21, 1966, p.3. Thomas left Oklahoma in 1971 to write editorials for the PIttsburgh Post-Gazette, where he worked for thirty years. Pittsburgh Post-Gazette, February 23, 2009.

American way. Dramatically, the author told the readers that only two countries elect judges: "the United States and Communist Russia."[40] Other newspapers, including those from Tulsa, joined in the campaign for signatures.

One of the problems was the high number of signatures required by Oklahoma's constitution for a constitutional amendment to be placed on the ballot, a number which had been established by the delegates of Oklahoma's constitutional convention. In the early twentieth century the concepts of initiative petition and referendum were relatively new; in 1898 South Dakota had become the first state to enact this reform, so at the time of statehood the concept had been law in any of the states for less than a decade. Initiative petition and referendum became important ideas in Populist and Progressive movements of the 1890s and early 1900s. Populists, generally rural and provincial, distrusted corporate control over farmers and workers. The more urban, educated, and affluent Progressives co-opted many of the Populists issues, in their desire, as Woodrow Wilson put it, "to let the majority into the game."[41] As Richard Hofstadter states in The Age of Reform, his classic work on the Progressive movement, "By 1900 Populism and Progressivism emerge, although a close student may find in the Progressive era two broad strains of thought, one influenced by the Populist inheritance, the other mainly a product of urban life."[42]

[40] Oklahoman, October 28, 1966, p.1.
[41] David S. Broder, Democracy Derailed: Initiative Campaigns and the Power of Money, (New York, San Diego, London: Harcourt, Inc., 2000), p. 31.
[42] Richard Hofstadter, The Age of Reform, (New York: Vintage Books, a division of Random House, 1955), p.133.

The Populist influence had an enormous effect on Oklahoma's constitutional convention. The largely self-educated and agrarian delegates, most of whom had emigrated to the area in the last few years, had little in common with urbane Progressive political figures like Woodrow Wilson or Theodore Roosevelt. Instead, the convention's rural Democratic leadership, including its chairman William H. Murray, was advised by William Jennings Bryan. The Democratic platform for the convention stated, "We endorse the plan of legislation known as the Initiative and Referendum and agree with the Honorable William J. Bryan when he says,' The principle of the Initiative and Referendum is Democratic. It will not be opposed by any Democrat who endorses the declaration of Jefferson that the people are capable of self-government.'"[43] Oklahoma's enactment of initiative and referendum was also the first plank in the Shawnee Demands, a document which resulted from a coalition of the new state's farmer and labor organizations.[44]

The use of initiative petition eventually passed the constitutional convention by the vote of eighty-one to five. The measure required the signatures of eight percent of the voters in order to initiate legislation but required fifteen percent of the eligible voters to sign a proposal amending the state constitution.[45] This higher requirement for constitutional amendments, which exceeded the requirements in the Oregon law backers used as a baseline, seems to have drawn little public attention at the time, nor did it receive criticism from progressive

[43] Danney Goble, Progressive Oklahoma: the Making of a New Kind of State, (Norman: University of Oklahoma Press, 1980), Appendix B, p. 231.
[44] Ibid., p. 164, 228.
[45] Oklahoma Constitution, Article V, Section 2.

historian Charles A. Beard in his 1909 article on Oklahoma's constitution. [46] Instead, the agrarian Democrats were excited to have enacted this procedure, which they believed allowed citizens to bypass the legislature and corporation interests. The historical evidence indicates that the relatively high number of signatures required by Oklahoma's constitutional framers was probably a coincidence and was not intended to deter citizen participation. Instead, it was in all likelihood a good faith mistake.

Even with the assistance from the metropolitan press, the Sneed plan signature campaign struggled.[47] On November 4th, with twelve days left before the deadline, Sneed announced the petition had between 40,000 and 50,000 signatures, much less than one-half of the required number. Sneed announced a massive push to obtain the signatures. Judicial Reform, Inc., assisted by the League of Women Voters and PTA groups, put 7,000 petitions in the hands of circulators, with 8,000 more to be supplied.[48]

Despite the distraction of the November 8th general election, the final days before the petition's deadline saw a tremendous increase of public interest in the petition promoting judicial reform. In the relatively small city of Chickasha, fourteen volunteers from the League of Women Voters obtained six hundred signatures in one day.[49] In Oklahoma City and Tulsa, members of the PTA

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[46] Charles A. Beard, "The Constitution of Oklahoma," Political Science Quarterly 24.1 (March, 1909), pp. 95-114.
[47] With their requirements of fifteen percent of the total votes cast, Oklahoma and Arizona have the highest threshold number of signatures in the country. "Initiative Petition Signature Requirements," National Conference of State Legislatures, retrieved from ncsl.org.
[48] Oklahoma City Times, November 4, 1966, p.10.
[49] Oklahoman, November 8, 1966, p.3.

conducted a door-to-door petition drive called "Light Up for Justice," which urged homeowners wishing to sign the petition to leave their porch lights on, so that a volunteer could easily identify a potential signer.[50] Eventually, the petition's backers presented the Secretary of State's office with 142,377 signatures.[51]

Although backers of the Sneed plan did not know it then, it would be nearly two years until their judicial reform plan went to the voters for their consideration. Under Oklahoma's demanding procedure for initiative petitions, backers of a petition were required to obtain signatures from fifteen percent of the "last" general election vote. Once the petition was turned in, Oklahoma Secretary of State John Rogers had the duty to verify the signatures and to determine if the requirement had been satisfied. The Sneed plan petition had been begun before the 1966 election but been turned in after the election. The 1966 election had drawn a considerably smaller turnout than the 1964 election, which had featured a presidential election as well as the hotly contested U.S. Senate election between Fred R. Harris and Bud Wilkinson. If the "last" general election meant 1964's election, the petition drive had fallen twenty-three votes short. If "last" were interpreted as the 1966 election, the petition would go to the voters.[52]

Rogers obtained an opinion from Attorney General Charles Nesbitt, who advised him to follow the numbers in the 1966 election. On April 25th, Rogers approved the petition; opponents immediately appealed this decision, which put the election on hold pending an appellate ruling. In the meantime, 1967 was an

[50] Oklahoman, November 1, 1966, p.1.
[51] Oklahoman, March 10, 1967, p.42.
[52] Oklahoman, April 26, 1967, p.1.

off-year for elections, and Governor Bartlett did not call for a special election. The Sneed plan was not to go before the voters until 1968, nearly two years after its being turned in to the Secretary of State.

In the meantime, the legislature had taken advantage of the time between sessions to study and debate the issue. As the 1966 election approached, the legislative subcommittee came up with the bare bones of a plan to be presented to the entire legislature in January. By August, the council had agreed on a proposed reorganization of the trial courts. Under the legislative proposal, municipal, county, and justice of the peace courts would be abolished. The position of associate district judge would be created as an elective post, guaranteeing one judge for each of the seventy-seven counties. The associate district judge would have general jurisdiction, meaning that judge had authority to hear any type of case. The plan also included the creation of the post of special district judge, who would be appointed by the district judges, to handle smaller civil cases, misdemeanors, and preliminary felony matters. Courts of common pleas and special sessions would be abolished, as would the positions of county judge and juvenile judge. In an issue of enormous importance to the legislature, control of the creation of courts, allocation of judicial resources, and the number of judges would be decided by the legislature, not the chief justice, as in the Sneed plan.[53] The committee rejected the idea of placing near-total control of the courts in the hands of the chief justice.[54]

[53] Oklahoman, August 13, 1966, p.1.
[54] Oklahoman, August 27, 1966, p.3.

In September the subcommittee revealed its proposal for reforming the appellate courts. Although most states did not have an appeals court specifically for criminal cases, the legislature proposal retained the Court of Criminal Appeals, which would be abolished under the Sneed plan. It also created intermediate civil courts of appeal and the office of court administrator, as well as directing that the office of clerk of the Supreme Court be an appointed, rather than elected, position.[55]

At the suggestion of Senator Anthony Massad of Frederick, the committee decided to submit the proposal to the voters in two separate questions: one on streamlining the court system and the other on judicial selection. Massad thought court reorganization would probably pass easily, unless it were to be tied to judicial selection. The two questions would therefore be submitted separately. On October 28th, only eleven days before the general election, the committee approved its plan for judicial selection, which called for non-partisan election of judges at the appellate and trial levels; the only exception would be the newly created special district judges, who would be appointed by trial judges. Two senators, Massad and Roy Grantham, dissented; each preferred some version of a system in which appellate judges were appointed and trial judges elected. [56]

[55] Democrat Andy Payne had been elected statewide to the office of Clerk of the Supreme Court eight times and had held the office for thirty-two years. In 1928 Payne had become a national media sensation by winning the Trans-Continental footrace from Los Angeles to New York, averaging running sixty miles per day. Oklahoman, September 16, 1966, p.4. and OKSPORTSHOF.org/hall-of-famemembers.

[56] Oklahoman, October 29, 1966, p.1. Only nine of the thirty members were present for the vote, which took place at approximately 10:00 p.m. on a Friday evening.

Oklahoma now had two competing court reform proposals on the table, either of which would constitute a vast improvement over the existing structure. Both plans fixed the state's confusing and contradictory jurisdictional issues by establishing one district court. Both abolished partisan judicial elections and the justice of the peace system. Each called for administration of the courts by a court administrator. Only the legislative plan called for a separate Court of Criminal Appeals, while only the Sneed plan authorized the continuation of municipal courts.

Although both plans called for substantial reform, there were substantial differences between the proposals. The first involved how judges would be selected. The cornerstone of the Sneed plan was appointment of judges.[57] Under Sneed's plan all judges would be appointed, with all judges except magistrates being screened by the judicial nominating commission, then selected by the governor. The legislative plan called for all judges but special district judges to be elected on a nonpartisan ballot.

The second difference was irreconcilable. With the exception of appropriations, the Sneed plan gave entire authority for creation of judgeships, creation of judicial districts, and assignment of personnel to the chief justice. The legislature's plan specifically reserved that right to itself. It seems unlikely that Oklahoma's legislature would ever have voluntarily surrendered that right.

[57] Oklahoman, September 17, 1966, p.1.

Under the legislative plan, the Oklahoma constitution would provide for the office of one associate district judge for every county, regardless of the county's population. The concept of not having at least one judge per county was anathema to rural voters, who were already apprehensive about their diminishing role in state politics with the state's increasing urbanization. The legislative plan therefore guaranteed that every courthouse would have a judge. The Sneed plan, which provided for judicial assignments from Oklahoma City, had little to offer rural voters.

Debating the merits of the two plans overlooked another question about court reform. Oklahoma law required any change to its constitution to be approved by the electorate. Nobody knew whether conservative Oklahoma voters would support any sort of serious change to their legal structure. The respective merits of the Sneed plan and the legislature's plan were moot if voters did not see the need to change the system at all.

THE 1966 CAMPAIGN

Republican Henry Bellmon's gubernatorial victory in 1962 was widely seen to be an aberration, and the governor's race drew intense interest, especially from Democrats. Thirteen Democrats, including former governor Raymond Gary, Attorney General Charles Nesbitt, Oklahoma City attorney Preston Moore, Tulsa District Attorney David Hall, Oklahoma state senator Cleeta John Rogers, and Oklahoma City publisher J. Leland Gourley filed for the party's nomination.

Three Republicans filed; Tulsa state senator Dewey F. Bartlett and Waukomis banker John N. Happy Camp were the two serious candidates for the GOP nomination.[58]

We now know that 1966 was a year of enormous progress for the Republican Party, in the South and nationally as well, showing the party's recovery from the 1964 debacle. Signaling the change was the reemergence of former Vice-President Richard Nixon and the unexpected landslide election of former actor Ronald Reagan as governor of California. In the South, U.S. Senator John Tower from Texas, whose surprise 1961 victory had been seen as a fluke, was reelected, and Howard Baker of Tennessee defeated a former governor for a seat in the U.S. Senate. The political scene in Oklahoma conformed with these national trends.

The Oklahoma judiciary and bar received another black eye when Judge Kirksey Nix, who was serving on the Court of Criminal Appeals, filed for the Democratic nomination as Attorney General.[59] Nix refused to give up his seat on the Court of Criminal Appeals, completely ignoring an Oklahoma statute which clearly required a judge running for a non-judicial office to resign. The Oklahoma Bar Association, at the instance of OBA president and judicial reformer Leroy Blackstock, took Nix to the Supreme Court, which then referred the matter back to the OBA.[60] Nix explained his refusal to resign by explaining that Governor Bellmon would fill a vacancy with a Republican. Judge Nix

[58] Oklahoman, February 28, 1966, March 5, 1966.
[59] Oklahoman, March 1, 1966, p.1.
[60] Oklahoman, March 2, 1966, p.23.

remained on the ballot; he came in second in the Democratic primary, then withdrew before the runoff.[61]

Most of the gubernatorial candidates favored some version of court reform. Of the Democrats, Nesbitt and Rogers favored the Missouri plan. Several other Democrats, including Gary, supported appointment of appellate judges and non-partisan election of judges at the trial level. Moore opposed an appointive system and favored continued election of all judges. On the Republican side, Bartlett favored the Sneed plan, while Camp supported continued election of judges. [62]

In the May 3rd primary, former governor Gary took a substantial lead, which eventually grew to 56,000 votes. Oklahoma City attorney Preston Moore narrowly made the runoff, set for three weeks later, against Gary, edging out Tulsa prosecutor David Hall. Bartlett narrowly led Camp in the voting for the Republican gubernatorial nomination, but the race was so close the few votes for a third candidate forced Oklahoma's first Republican gubernatorial runoff.[63]

Voters in the May 3rd election also approved the establishment of a Court on the Judiciary, finally providing a practical vehicle to remove corrupt, incompetent, or infirm judges from offices. State Question 431 had met with little or no opposition, and it passed easily. The formidable and time-consuming task of removing judges by impeachment would not happen again. Oklahoma voters

[61] Oklahoman, May 10, 1966, p.1.
[62] Ibid.,, March 7, 1966, p.1.
[63] Ibid., May 5, 1966, p.1.

also approved a constitutional amendment allowing governors to serve two terms, ending the requirement that a governor leave office after four years.[64]

In the Democratic runoff, Gary's campaign, which was based almost solely on his appeal in rural Oklahoma, lost steam. Moore, helped by low pro-Gary rural turnout, easily overcame his 56,000 vote deficit in the primary and defeated Gary by about 30,000 votes. [65] Thanks in part to a huge majority in Tulsa County, Bartlett defeated Camp for the Republican nomination.

A veteran of the Pacific theatre in World War II, Preston Moore was a lawyer. His real interests, however, were politics and the American Legion. While he was still in law school, Moore became the Legion's state commander in 1948 and then national commander in 1958. His Legion work allowed him access to national politics, and in 1960 he directed Lyndon Johnson's presidential campaign in Oklahoma. Two years later he became a Democratic gubernatorial candidate, finishing third to Bill Atkinson and Raymond Gary.[66] Moore endorsed Atkinson in the runoff, a decision which caused bitter feelings with Gary. This fact would become significant four years later.

Moore's legal career had not taken the traditional path. He never really developed a large private practice, nor did he have the patience for developing clientele, drafting documents, and the tension of litigation. Instead he concentrated on labor-management railroad arbitration.[67] In the 1966

[64] Oklahoman, May 4, 1966, p.1.
[65] Oklahoman, May 25, 1966, p.1.
[66] Oklahoman, September 2, 2004, Moore obituary.
[67] Oklahoman, October 14, 1966, p.8.

gubernatorial campaign, Republicans were able to use this against him, running ads cryptically asking "What does Preston Moore really do for a living?" [68]

Dewey Bartlett was a fitting representative of a more urban and urbane postwar Oklahoma. He had grown up in Ohio, then graduated from Princeton University in 1942, then served in the Marine Corps during World War II. After the war Bartlett moved to Tulsa, joining his father's oil company. He successfully ran for the state senate in 1962 and had served one term when he entered the governor's race. A Roman Catholic, he would become the first person of that religion to become governor of Oklahoma. Unusually for a politician, Bartlett was a publicly solemn, shy man with little small talk.[69]

Moore entered the general election campaign with a huge lead, and it became obvious that his strategy was, in the words of an Oklahoma City Times reporter, "Don't rock the boat."[70] An aggressive Republican campaign quickly became a serious problem for Moore. Moore became his own worst enemy, as he repeatedly evaded being pinned down on issues, therefore allowing Bartlett to portray him as a flip-flopper. As the Tulsa Daily World put it, "Republicans say they are attacking Preston Moore on all the firm stands he took before he wised up and changed them."[71]

This was true of court reform. On that subject, Moore clearly established himself as an advocate of judicial elections and an opponent of the Missouri plan;

[68] Tulsa Daily World, November 3, 1966, p.2 and November 5, 1966, p.3. The ads were sponsored by an organization calling itself the Citizens for Good Government Committee.
[69] Oklahoma City Times, November 7, 1966, p.1.
[70] Oklahoma City Times, November 1, 1966, p.24.
[71] Tulsa Daily World, November 1, 1966, p.6.

other than that, it was hard to tell what Moore's position was.[72] Moore vaguely said he was for "modernization and streamlining of the courts," but he never explained exactly what he had in mind.[73] He took the vague, indecisive, and evasive action of appointing his own committee to study the court reform issue.[74] In early October, Moore sent his Oklahoma County campaign chairman to a meeting of justices of the peace; the purpose of the meeting was to discuss defeat of the Sneed plan. He also tried to persuade the legislative committee to back away from the idea of abolishing JPs and wrote the JP organization a letter telling them he would use his power as governor to retain them.[75] Moore's only specific proposed reform was to abolish the JP fee-based compensation system.[76] On the whole, although Moore said he was for court reform, his actions stated otherwise. Without the abolition of the JP system, no meaningful reform was possible.

Bartlett strongly endorsed the concept of appointment of appellate judges. He impractically suggested that "local units" could decide on the appropriate system for selecting trial judges.[77] This led Oklahoman columnist Ray Parr to comment that Bartlett was "neither for nor against the Sneed plan," while Moore was "all for judicial reform as long as we don't change anything."[78]

As the campaign progressed, Moore began to lose ground to Bartlett. Gary, avenging Moore's endorsement of his opponent four years earlier, declined

[72] Oklahoman, May 10, 1966, p.1.
[73] Oklahoman, October 14, 1966, p.8.
[74] Ibid., October 21, 1966, p.1.
[75] Ibid.
[76] Tulsa Daily World, November 3, 1966, p.3.
[77] Oklahoman, October 14, 1966, p.9.
[78] Ray Parr, "Parr for the Course," Oklahoman, September 11, 1966, p.12.

to endorse Moore, stating simply that he and Moore didn't "see eye to eye on governmental problems."[79] Republicans were able to tie Moore's campaign to questionable efforts by the nursing home lobby to persuade nursing home patients of dubious competence to vote for Moore.[80] The Daily Oklahoman and Oklahoma City Times ran strong editorials opposing Moore, calling him a "political backslapper" and an "arranger."[81] Bartlett also exploited the declining popularity of the Democratic Party nationwide, asking voters, "If my opponent is elected governor, who will really be the governor-LBJ or J.D. McCarty?"[82] Republicans also repeatedly questioned Moore's qualifications to be governor, challenging voters to ask themselves exactly what they knew about Preston Moore.

In the meantime, J.D. McCarty was having his own problems with his reelection campaign. A Republican, Oklahoma City funeral director Vondel Smith, had entered the race for McCarty's seat in the legislature. Reapportionment had changed McCarty's district; instead of being largely confined to Capitol Hill in southwest Oklahoma City, it now included parts of Midwest City and Del City, municipalities which had barely existed when McCarty entered the legislature. The remapped district was near Tinker Air Force Base and contained many newer voters and homes.[83] Eager to get rid of McCarty, Republican activists used crisscross directories for the entire district, drawing up

[79] Oklahoman, November 1, 1966, p.1.
[80] Oklahoma City Times, November 4, 1966, p.13.
[81] Oklahoman, November 2, 1966, p.1.
[82] Oklahoma City Times, November 4, 1966, p.3.
[83] Oklahoman, November 9, 1966, p.8.

lists of every family, where they worked, what church they attended, how many children they had, and other pertinent information. They then made personal contact with every voter they could find.[84] In his advertisements, Smith chose not to name McCarty or mention his legal difficulties, simply running his own photograph, name, and the legislative district he sought to represent.[85] By the week before the election, Smith claimed to have contacted everyone in the district, and Republicans were very optimistic about their chances of ousting Speaker McCarty from the legislature. [86] Although little or nothing was said publicly, the unresolved grand jury investigation into McCarty's financial dealings with the racing interests was undoubtedly in the back of many voters' minds.

Always the astute political strategist, McCarty realized that he was in trouble and had expressed his worry to his political allies.[87] No friend of the Oklahoma City daily newspapers, he nevertheless heavily advertised in them, describing his political and philanthropic accomplishments and telling readers, "When there's work to be done...J.D. McCarty is Oklahoma's Man of Action."[88] The Saturday before the election, McCarty ran a full-page ad in the Oklahoma City Times, citing his awards for contributions to mental health and cerebral palsy, claiming "McCarty gets things done for his district and all Oklahoma too."[89] McCarty also arranged for a train carrying Democratic candidates from Oklahoma City through southern Oklahoma to stop in his district, where those

[84] Ibid.,p.1.
[85] Oklahoma City Times, November 4, 1966, p.11.
[86] Oklahoma City Times, November 5, 1966, page 5.
[87] Tulsa Daily World, November 9, 1966, p.1.
[88] Oklahoman, October 25, 1966, p.4.
[89] Oklahoma City Times, November 5, 1966, p.5.

attending heard from Senator Fred Harris, Moore, Congressman John Jarman, and other Democratic candidates.[90] McCarty told his audience, "Those boys in their ivory tower at Fourth and Broadway (the Oklahoman and Times) have stayed up nights trying to do two things--slanting the news columns and writing editorials to take away the power of Oklahomans to elect their judges, and trying to destroy Preston J. Moore."[91]

Election Day featured good weather, and voter turnout was heavy. The 1966 Oklahoma election resulted in overwhelming victories for Republicans and a debacle for Democrats, making the result the best for Oklahoma Republicans since 1928.[92] Bartlett, aided by huge majorities in Oklahoma and Tulsa Counties, easily defeated Moore by a final total of 377,078 to 296,328.[93] In Tulsa County, Bartlett's margin was an overwhelming 67,080 to 28,673 for Moore.[94] G.T. Blankenship, who had exposed the scandal on the House floor, became the first Republican Attorney General in Oklahoma history. Blankenship had campaigned on a slogan of "He uncovered the court scandals," publishing a cartoon of Blankenship pointing his finger at three fleeing judges in robes.[95] Republicans also elected the state labor commissioner, making three statewide victories for the party.

U.S. Senator Fred Harris, who had expected a huge victory against token Republican opposition, struggled but was reelected, although by a much closer

[90] Tulsa Daily World, November 3, 1966, p.1.
[91] Oklahoman, November 4, 1966, p.3.
[92] Otis Sullivant, Oklahoman, November 19, 1966, p.2.
[93] Tulsa Daily World, November 12, 1966, p.18.
[94] Tulsa Daily World, November 9, 1966, p.1.
[95] Oklahoma City Times, November 7, 1966, p.12, Tulsa Daily World, November 2, 1966, p.3.

margin than he had expected. Over the next six years, Harris would move sharply to the left, even in relation to the national party and certainly far away from his conservative constituents in Oklahoma. He found himself unable and unwilling to stand for reelection in 1972, opting for a short-lived and quixotic campaign for the Democratic presidential nomination. In southwestern Oklahoma, Republican James V. Smith unseated Democratic Congressman Jed Johnson. Republicans picked up seven seats in the state legislature.

One of those seven legislative seats changing parties was McCarty's. After McCarty's thirteen terms in the legislature, Vondel Smith overwhelmingly defeated the speaker by almost a two-to-one margin. McCarty had indeed been an ironfisted speaker with a fearsome temper and a fierce resistance to change.[96] However, as Travis Welsh, the state government writer for the Tulsa Daily World pointed out, McCarty also had his good points. McCarty had an encyclopedic knowledge of state government and state politics. He could get things done. He had been a friend to Oklahoma's schools and colleges and had demonstrated enormous empathy for Oklahoma's mentally ill people, mentally challenged children, and children suffering from cerebral palsy.[97]

[96] In 1967 McCarty was indicted and convicted on federal charges of income tax evasion and served eighteen months in prison. The charges of which he was found guilty involved undeclared income from entities, including the Oklahoma City Chamber of Commerce paying McCarty in exchange for political favors. He was acquitted of charges involving the horse and dog-racing bills. After his release from prison, he continued to be involved with politics but never held public office again.

[97] Travis Walsh, Tulsa Daily World, November 13, 1966, p.1. After McCarty's 1981 death, the Oklahoma legislature renamed its Norman center for children with developmental disabilities for McCarty.

It is tempting to speculate on what might have happened to court reform if McCarty had remained speaker. McCarty had declared his implacable hostility to Sneed's plan for appointed judges and his unwavering support for judicial elections. On the other hand, with McCarty as speaker, the legislative council had for two years publicly studied the issue. While McCarty had not publicly participated in the council, there is no evidence that he interfered with their work or tried to stop the meetings. Had McCarty intended to kill court reform outright, he had no reason to allow the legislature to give the issue momentum. He also had the referendum on the Sneed plan, which he hated, hanging over his head, pending the outcome of litigation. McCarty would have wanted to deflect Sneed's plan. If McCarty had remained in office, he probably would have allowed some sort of court reform, probably nonpartisan election of all judges, to be submitted to the people.

Had Moore been elected governor, his embrace of the justices of the peace would have made court reform more unlikely. Abolition of the office of justice of the peace, with its inherent amateurism and conflicts of interest, was the cornerstone of any meaningful improvement in Oklahoma's judicial system. Substantial change in the judiciary, therefore, would have had to have been enacted without the support of the governor.

As Oklahoma political writer Otis Sullivant noted at the time, the 1966 election validated the Republican party in Oklahoma and proved that Bellmon's

1962 election was not a fluke.[98] Oklahoma Republicans had capitalized on public satisfaction with Governor Bellmon's term and offered a better and larger slate of candidates than it had offered previously.[99] The Oklahoma results were also representative of the 1966 election nationwide. It is safe to say that national issues and disillusionment with the national Democratic Party contributed greatly to the Republican victories in Oklahoma.

During the two years after his landslide 1964 victory, President Johnson had seen his public support decline precipitously. Americans recoiled from huge increases in public spending, the expansion of the federal government, the passage of civil rights legislation, the expansion of the Vietnam War, and enactment of social welfare legislation. As noted previously, California elected Ronald Reagan as governor of California, who quickly became an icon for conservative Republicans. The campaign also brought renewed legitimacy to the political fortunes of Richard Nixon, who campaigned tirelessly and effectively for Republican candidates across the country, acquiring political capital for his race for the presidency two years later.

[98] Otis Sullivant, Oklahoman, November 10,1966, p.3.
[99] Oklahoma City Times, November 9, 1966, p.26.

CONCLUSION

With the removal of Johnson, prosecutions of those responsible for the Supreme Court scandal ended. However, scandal and favoritism still existed in Oklahoma's state government; the allegations against McCarty led to his surprising defeat at the polls. With their votes in the 1966 election, the electorate demonstrated its weariness with business as usual in state government and their desire for honesty and integrity in the capitol.

The election of Bartlett and the defeat of McCarty helped create a political climate in Oklahoma friendly to reform of the courts. If either election had gone differently, it is almost certain that any change in Oklahoma's judiciary would have taken a different course. The looming referendum on the Sneed plan weighed heavily on the Oklahoma legislature as it prepared for its 1967 session. If the legislature were to create a plan which met its own criteria, the time was at hand.

CHAPTER SIX

THE ENACTMENT OF LEGISLATIVE REFORM AND THE DEFEAT OF THE SNEED PLAN

NEW LEADERSHIP AND THE DEVELOPMENT OF A PROPOSAL

The Oklahoma electorate had signaled its desire to change from the rural conservative politics of the state's first decades. With the elections of Edmondson, Bellmon, and Bartlett, Oklahomans had selected governors three times in succession who had no ties to the legislative establishment. McCarty's defeat, coming amid the allegations of scandal, also indicated that voters were fed up with their state government. However, the growing public disillusionment with the state's politics should not be seen in terms of liberal versus conservative. Oklahomans in the 1960s remained very politically conservative and by their votes in 1966 had resoundingly rejected the big government politics of Lyndon Johnson. Instead, the changing trend represented two themes: the state's changing demographics and voter resentment at being excluded from governmental decision making by special interests, who were meeting behind closed doors.

J.D. McCarty's defeat at the polls meant the position of Speaker of the House had unexpectedly opened. Rex Privett of Maramec immediately became a candidate. Although Representative Jerry Sokolosky of Oklahoma City claimed

to have obtained the support of younger, urban legislators for another candidate, Privett moved quickly and almost immediately clinched the position, securing the support of sixty-nine out of a possible seventy-four Democratic representatives. In his acceptance speech, Privett turned the page, saying, "I do not condemn the past speaker, but I realize that the past is gone and the future is ahead. It is our duty to change the image of the legislature."

Privett quickly established his control of the House of Representatives, keeping some of McCarty's team but not consulting with McCarty.[1] Promising a greater role for urban legislators, Privett outlined five problems the legislature need to address: education, court reform, congressional redistricting, penal reform, and improvements in mental institutions.[2] On the subject of court reform, Privett expressed his preference for non-partisan election of all judges and the submission of proposed state questions on one ballot, not two ballots as proposed by the legislative commission.[3]

Dewey Bartlett was inaugurated as governor on January 10, 1967. In his inaugural address, Bartlett stated, "I have prepared for introduction a constitutional amendment for the selection of appellate judges by appointment, rather than election." Bartlett then showed his seriousness on the subject of a judicial nominating commission by announcing his own voluntary judicial nominating commission to make recommendations on vacancies occurring during

[1] Otis Sullivant, Oklahoman, January 22, 1967, p.4.
[2] Oklahoman, November 10, 1966, p.1, November 11, 1966, p.1., and Tulsa Daily World, November 11, 1966, p.1.
[3] Oklahoman, December 20, 1966, p.4.

his term under the existing law. Bartlett's voluntary plan called for a commission consisting of six attorneys elected by the Oklahoma Bar Association and seven lay people, four from one party and three from the other, to nominate three candidates for judicial openings. Bartlett would then select one of those three candidates for the position.[4] One of the first two bills Bartlett caused to be introduced during the session called for making appellate judges appointive.[5]

As the parties continued to negotiate judicial reform, the state government and the legal community faced yet another embarrassing and troubling scandal involving attorneys and undue influence. This one involved the Corporation Commission, a regulatory commission composed of three commissioners elected in statewide elections, which governs, among other things, utility rates and portions of the oil and gas industry. In March and April, the legislature and public learned the late Clyde Hale, Sr., who had been an attorney and lobbyist for Oklahoma Natural Gas, had regularly paid fees to James Welch and William L. Anderson, fulltime attorneys for the commission, while the utility had rate increase cases pending before the commission. Welch, during the time he was chief counsel for the Corporation Commission, had received more than $12,500 from Hale.[6] In one instance Welch, who was making $10,000 per year as a salaried attorney for the commission, received a fee of $5,375 from ONG shortly

[4] Dewey B. Bartlett, January 10,1967 State of the State Address, Bartlett Papers, Oklahoma Department of Libraries.
[5] The other bill established the Oklahoma Department of Corrections, a measure which became law.
[6] Oklahoman, April 12, 1967, p.1.

after he wrote an order approving ONG's request for $4,300,000 per year rate increase.[7]

Hale's son Clyde, Jr. also claimed that ONG had, through his father, made significant cash contributions to the campaigns of commissioners Ray Jones and Harold Freeman, a practice which violated Oklahoma's law barring corporations from giving political donations. The commissioners had also allegedly accepted lavish entertainment from ONG, including annual trips to the Oklahoma-Texas football game and trips to the horse race track at Hot Springs, Arkansas.[8] Attorneys practicing before the commission had routinely made cash contributions toward political campaigns, a policy which Freeman explained by arguing "if they all kick in, that must mean we are doing a good job."[9]

Freeman and Jones had also purchased shares in a Pauls Valley oilfield supply company. Freeman had then solicited and received business for the company from ONG and Sunray DX, both regulated by the Corporation Commission.[10] A legislative committee headed by Senator Roy Grantham investigating the commission's affairs eventually found the testimony of the witnesses, including lawyers Welch and Hale, Jr., so unworthy of belief that the committee was unable to determine with precision exactly what had happened. The panel also found that Hale, Jr., Welch, Anderson, and a fourth attorney all had violated legal ethics and referred the matter to the Oklahoma Bar

[7] Oklahoman, July 9, 1967, p.1.
[8] Ibid., April 12, 1967, p.1.
[9] Ibid., March 22, 1967, p.1.
[10] Ibid.,, April 28, 1967, p.1. and May 2, 1967, p.1.

Association.[11] The scandal eventually gradually drifted out of public attention, but the bar and the state government still suffered further damage to their reputations.

Since the legislature now met annually, legislators had personal financial incentive to minimize the length of the session. As one legislator put it, "I used to have eighteen months to go home and make some money. With annual sessions, we'll have to keep them short or we'll have to get out." Senate President Pro Tempore Clem McSpadden announced a goal of adjournment by May 1st, which would mean the session would last less than four months.[12]

By the end of March, judicial reform had stalled in the state senate. The House of Representatives passed a bill abolishing justices of the peace and electing all judges on a non-partisan ballot. The Senate expected to call for appointment of appellate judges. Political prognosticators expected the process to take a few weeks.[13]

Both houses of the legislature were able to agree on some concepts, while others were more controversial. Both agreed on reorganization of the courts, with the creation of district judges, associate district judges, and special judges. The houses agreed that each county would be guaranteed an associate district judge. The Court of Criminal Appeals, a court which did not exist in most states, would continue to exist as an institution. Oklahoma's common pleas courts, superior courts, and other specialized courts were to be abolished.

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[11] Oklahoman, August 20, 1967, p.1.
[12] Muskogee Times-Democrat, January 3, 1967, p.1.
[13] Otis Sullivant, Oklahoman, March 26, 1967, p.26.

The two houses were unable to agree on the process for selection of appellate judges. The idea of a judicial nominating commission held very little appeal in the House of Representatives, which overwhelmingly favored direct election of all judges on a non-partisan ballot. The concept of a commission had considerably more support in the Senate, but even in that chamber appellate judge appointment met serious opposition. [14]

By late April, the idea of appointive appellate judges was in such trouble that the entire issue of court reform was threatened. The House passed a package authorizing a vote on reforming the courts with all judges elected on a nonpartisan ballot. Although McSpadden, the Senate's leader, favored appellate judge appointment, the Senate voted in favor of all judges being elected. Speaker Privett was an opponent of the idea of the judicial nomination commission, and he declared that he had no reason to believe the House would ever vote in favor of it. Surprisingly, Bartlett, the leading proponent of the idea of the judicial nominating commission, went more than three months in office without discussing the proposal with Privett.[15]

The parties finally began to make progress when Bartlett, McSpadden, and Privett discussed the subject over breakfast on April 24th. The constant threat of the Sneed plan made the formation of a legislative plan acceptable to the voters essential, which provided motivation to reach a solution. The Sneed plan vote became even more problematic for legislators the next day, when Secretary of

[14] Otis Sullivant, Oklahoman, April 11, 1967, p.4.
[15] Sullivant, Oklahoman, April, 21, 1967, p.3.

State John Rogers upheld the validity of the signatures on the Sneed plan initiative petition, leaving an appeal to the Oklahoma Supreme Court as the last barrier to the plan's being submitted to the voters.[16] Court reform was also the last remaining issue in the legislative session, so the desire to go home also added a sense of urgency.

Although the breakfast by no means settled the dispute, the leaders generally agreed to submit both issues, appellate appointment and non-partisan election of all judges, to the voters and allow the electorate to decide which proposal, if either, it wanted.[17] The legislature's primary opposition to the idea of a judicial nominating commission was the governor's power to appoint six members of the commission. Some legislators were reluctant to cede so much power to the governor, leading Senator Robert Gee to suggest that the governor appoint two members, with the other four to be named by the Speaker of the House and the President Pro Tempore of the Senate.

On Sunday, May 7th, the conference committees reached an agreement on most of the legislation. Bartlett's insistence on a judicial nominating commission overcame the legislature's general distaste for the concept, and the commission remained in the proposal. Privett's insistence on a quick election resulted in a special election date of July 11th, only two months away. Bartlett agreed to nonpartisan election of trial judges and the three-tiered court system consisting of district judges, associate district judges, and special judges at the trial level, a civil

[16] Oklahoman, April 26, 1967, p.1.
[17] Sullivant, Oklahoman, April 25, 1967, p.7.

court of appeals, and a court of criminal appeals. The Supreme Court would have the final word on civil appeals and court supervision. The office of court administrator, which would administer budgets and manpower from Oklahoma City, would also be created. For the moment, however, the question of who would be responsible for naming the members of the nominating committee remained unresolved.[18]

A final agreement on the proposal came from the conference committee and the governor the next day. Court reform would be submitted to the people on colored ballots. Court reorganization would appear on a white ballot, while the judicial nominating commission would be placed on a yellow ballot. If court reorganization failed, the judicial nominating commission would automatically fail as well. The nominating commission would be composed of thirteen members, six elected from the Oklahoma Bar Association and six appointed by the governor. The thirteen commissioner would be appointed by the twelve existing members.[19] Three days later the legislature adopted the proposal, authorized the July election, and adjourned.[20]

The passage of the proposed constitutional amendments reflected very well on the legislative process. If the plan were approved by the voters, the legislature had abolished the antiquated and ethically suspect justice of the peace system. They had modernized and centralized the court structure, as well as taking a strong step toward professionalizing the judiciary. Despite the

[18] Oklahoman, May 8, 1967, p.1.
[19] Oklahoman, May 9, 1967, p.1.
[20] Ibid. , May 12, 1967, p.1.

differences in political parties, the legislature and the governor had successfully compromised and reached a workable proposal. Bartlett had gotten his nominating commission, if only for appellate judges and mid-term trial court vacancies, while the House had been able to limit the use of the commission to those instances. Representative McCune told his fellow conference committee members, "This is a better way to beat the Missouri plan...If both resolutions pass, appointment of judges will stop at the appellate level."[21]

THE 1967 SPECIAL ELECTION

One of the legislation's problems was its complexity. With the broad nature of the proposal and the contingent nature of the yellow and white ballots, the danger of confusing and boring the electorate was very real. Because of its lower number, State Question 447, the yellow ballot which was contingent on the passage of SQ 448, would appear on the ballot before SQ 448. For the huge majority of Oklahomans not normally involved in the details of politics and law, the proposal was puzzling; only a motivated voter would take the time to analyze the issues. The complicated nature of the proposals would prove to be problematic on July 11th.

Voters had less than two months in which to consider State Questions 447 and 448. This proved to be plenty of time for reform advocates. The only really organized opposition to the questions came from the Oklahoma AFL-CIO, which

[21] Oklahoman, May 9, 1967, p.1.

endorsed the idea of nonpartisan elections but strongly opposed the concept of the judicial nominating commission. Jack Odom, the executive vice-president of the organization, stated he did not "trust the Republican administration" to name nonpartisan judges. The state organization of the Oklahoma Democratic Party listened to Odom's request for assistance but took no action on SQ 447 and 448.[22] The Oklahoma League of Women Voters, leading backers of the Sneed plan, considered the legislative plan an improvement over the existing system, endorsing the state questions while still maintaining their strong preference for the Sneed plan.[23]

In the days after the legislature's adjournment, the proponents debated what to do. Bartlett had pushed for court reform, and he was seen as laying his prestige on the line for the issue. The Oklahoma Republican party favored the reform, but its leaders were unsure, considering their status as a minority party, about whether to campaign publicly for the questions. The Oklahoma Democratic party was also unsure of what course it should take. The Democrats were trying to shed their image of portraying, as Otis Sullivant put it, an "old guard, rural dominated opposition to progress" but had no wish to enhance Bartlett's standing with the state's voters.[24]

As the date for the election drew closer, the parties began to back away from the issue of court reform. The campaign, such as it was, fell between the cracks. State Question 448, which reorganized the courts and made judicial

[22] Oklahoman, May 20, 1967, p.4.
[23] Durant Daily Democrat, May 18, 1967, p.6.
[24] Sullivant, Oklahoman, May 14, 1967, p.3.

elections nonpartisan, met virtually no organized opposition. The only real exception came from some county officials, who feared a loss of revenue generated by the JP courts. The legislative council quickly agreed to support legislation guaranteeing that counties would not lose revenue, and the public objections faded away.[25]

State Question 447, the proposal for the judicial nominating commission for appellate judges and for filling openings on the trial bench, drew considerably more fire than SQ 448. Senator John Young of Sapulpa, a vociferous opponent of the commission, wrote, "The vested interests in the name of reform are trying to sell the people on the yellow ballot, wherein they would be deprived of their right of electing judges...The judicial reformers are telling the people that the lawyers of the Oklahoma Bar Association and heavy campaign supporters of the Governor, who are named on the commission, are better citizens than the rest of us and should have the exclusive right of selecting the people's judges."[26]

For the most part, though, the campaign was very quiet. With the exception of one sparsely-attended public meeting at the Oklahoma Bar Center, Bartlett, who probably had the most to lose if the state questions failed, remained out of the fray.[27] On July 5th, six days before the election, Bartlett spoke at a large civic luncheon in Duncan, which was celebrating its 75th anniversary as a city. His remarks centered persuading his audience to "sell Oklahoma"; the newspaper account of his speech did not mention the pending court reform

[25] Oklahoman, June 22, 1967, p.17.
[26] John Young, letter to the editor, Oklahoman, May 22, 1967, p.14.
[27] Oklahoman, July 7, 1967, p.8.

election.[28] Bartlett's absence from the nonexistent campaign was also noted by Oklahoman columnist Ray Parr, who noted in his folksy-styled political column , "I got to admire Governor Bartlett's technique in this campaign. He is for 'em just enough so he can claim credit if they are adopted but is not out in front far enough that folks can claim he suffered a political defeat in case they lose."[29] The co-publisher of the Durant Daily Democrat, Bob Peterson, noted in his column, "The Governor says he's supporting it...although he hasn't been hollering too loudly the last few days. As a matter of fact, none of its other supporters haven't been heard, either.."[30] The Oklahoma Bar Association did hold at least the one public forum and provided speakers to civic clubs endorsing the state questions.[31]

It is unclear why Bartlett did not take a more active role in the campaign. Although Bartlett's papers are silent on the subject, it is obvious from the context that Governor Bartlett was very cognizant of his status as a Republican governor in a solidly Democratic state. It is likely that Bartlett thought his taking the lead would make the issue more partisan, making its defeat more likely.

The state's press saw its role primarily as educating the public on the nature of the issues on which it was scheduled to vote. Most newspapers printed articles explaining the state questions and the respective meanings of the yellow ballot and the white ballot. Only in the few days just before the election did it receive editorial coverage. The Oklahoman and the Duncan Banner urged their

[28] Duncan Banner, July 6, 1967, p.1.
[29] Ray Parr, "Parr for the Course," Oklahoman, July 9, 1967, p.25.
[30] Bob Peterson, "Keeping in Step," Durant Daily Democrat, Monday, July 10, 1967, p.2.
[31] Letter from Joseph Culp, Oklahoma Bar Association president, to Bartlett, July 3, 1967, Bartlett papers, RGP-R-17, Box 12, Folder 5.

readers to vote in favor of the issue while the southeastern Oklahoma Durant Daily Democrat, citing the complicated nature of the proposals, recommended against it. In rural Grant County in northern Oklahoma, at the local legislator's suggestion the Medford Patriot-Star published a long story explaining the questions. The author ended the article by commenting, "In summary, if you want court reorganization but wish to ELECT judges, vote yes on 448 and no on 447."[32]

Most of the news coverage revolved around the general lack of public interest in the special election. The Duncan Banner reported, "Spot polls have indicated a majority of citizens do not even know there is a statewide election, let alone what will be on the ballot."[33] In his column Parr expressed skepticism about the entire measure. Referring to the lack of public interest, he wrote, "You suppose there is any chance of this judicial reform election ending in a scoreless tie? Wonder whatever to all the indignation over our present system a while back?" He added that "Not many legislators are going out on a limb for the amendments, on account they weren't very enthusiastic about 'em in the first place when they submitted 'em. It was just something to get the people's mind off the Sneed plan. " Finally, Parr expressed doubt about the wisdom of submitting constitutional amendments at a special election, when "such a small minority can change or refuse to change Oklahoma's fundamental law."[34]

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[32] Medford Patriot-Star, Thursday, June 20, 1967, p.1.
[33] Duncan Banner, Sunday, July 9, 1967, p.1.
[34] Parr, "Parr for the Course", Oklahoman, July 9, 1967, p.25.

The frustrated Parr had overstated his case; legislators like McCune, Gee, and Massad had worked countless hours on the state questions and had given the subject enormous study and thought. Although the questions were unquestionably designed as an alternative to the Sneed plan, the legislators and governor had a lot of which to be proud. However, it was true that the plan, achieved through compromise, had no real author, thus no real champion to plead the proposal to the public.

In the last few days before the election, a small number of political advertisements appeared in some newspapers. An unsigned ad, which appeared in the Marietta Monitor in southern Oklahoma and several other Oklahoma newspapers, argued, "If you are capable of electing your Governor, you are certainly capable of electing your judges...Do you want more taxes? Would you like to support a system of courts that in all probability you will never use?...The so-called Judicial Reform plan will cost the taxpayers of Oklahoma $1,450,000 per year."[35] The day before the election, sixty Oklahoma County lawyers signed an advertisement opposing the state questions. The attorneys objected both to the abolition of the justice of the peace courts and the appointment of judges.[36]

Predictions of a light turnout on July 11th proved to be correct. Only about 165,000 Oklahomans voted in the special election. Aided by huge majorities in the Oklahoma City and Tulsa areas, both state questions passed.

[35] Marietta Monitor, July 7, 1967, p.7.
[36] Oklahoman, July 10, 1967, p.19.

State Question 448 was approved with 55 percent of the vote, while State Question 447, the judicial nominating commission, received 52 percent approval.

Two facts stand out from the election returns. First, the vote margin in favor of court reorganization, State Question 448, was surprisingly slim. The legislature and governor had stacked the deck in favor of the measure, setting it for a quick special election in which the courts were the only issue on the ballot and providing a separate, contingent ballot for the judicial nominating commission. Nevertheless, with these advantages, only fifty-five percent of the voters, all of whom had made a special trip to the polls just to vote on these issues, voted for it.

Secondly, the special election of July 11th illustrates the enormous fissure between the urban and rural areas of Oklahoma. In Oklahoma County, out of nearly 29,000 votes cast, State Question 447 received 74 percent of the vote. Oklahoma County voters approved SQ 448 by 78 percent. Tulsa County's numbers were similar. Out of approximately 27,000 votes cast, about 75 percent of the voters approved SQ 447 and about 78 percent approved SQ 448. SQ 448, the court reorganization question, carried only eleven counties: Canadian, Cleveland, Garfield, Muskogee, Oklahoma, Ottawa, Payne, Pontotoc, Stephens, Tulsa, and Washington. SQ 447, the judicial appointment measure, passed only nine counties, as Canadian and Pontotoc County voters narrowly voted it down. SQ 447 failed in sixty-eight counties, while SQ 448 failed in sixty-six.

Some of the vote totals are noteworthy. In staunchly Democratic Love County in southern Oklahoma, sixty-two people voted in favor of SQ 448 and 642 against it; only nine percent of Love County voters approved of court reorganization. In Grant County, a northern Oklahoma county which tended to support Republicans, 370 people voted in favor SQ 448 and 945 against. In neither case did the local newspaper take an editorial position. Both measures failed in well-populated counties like Comanche, Creek, Kay, Leflore, Pottawatomie, and Sequoyah.[37]

It is not clear why the questions did so poorly in rural Oklahoma. The questions were complex and far-reaching; SQ 447, which had the lower number, was contingent on the passage of SQ 448. No one had led an effective statewide campaign in favor of the questions, and Governor Bartlett had, for the most part, remained quiet on the issue in the month before the election. Oklahomans obviously were skeptical about giving up their right to elect judges. Proponents of the state questions simply had not made a convincing case for change to conservative rural Oklahomans.

Moreover, the period of the 1960s was a time of great concern for rural Oklahomans. While the population of the state had increased only slightly, from 2,233,351 to 2,328,284 during the period from 1950 to 1960, the demographics had changed enormously. Seeing opportunity in the cities, Oklahomans were moving to urban areas in enormous numbers. Between 1950 and 1960, Oklahoma City grew 33.2 percent, from a population of 243,504 to 324,253; Tulsa 's

[37] Oklahoma State Election Board, official records.

population grew from 182,740 to 261,685, an increase of 43.2 percent. The Oklahoma City suburbs of Midwest City, Del City, and The Village, which did not exist until after World War II, now housed 36,058, 12,934, and 12,118 people respectively. Smaller cities grew exponentially as well; Lawton grew 77.3 percent, from 34,737 to 61,697 people, while the population of Altus increased from 9,735 to 20,184, an ten year increase of 118 percent. Bartlesville saw an increased population of 45.1 percent.

Rural counties saw declines in their population, some of which were precipitous. Cotton County, in southwest Oklahoma, saw a thirty percent decrease in its population between 1950 and 1960. Grant County, located on the Kansas border, lost 22.2 percent of its population, while McIntosh County, in the eastern part of the state, saw a 30.6 percent decline. Overall, rural Oklahoma's population declined 21.1 percent during the 1950s, while urban Oklahoma's population increased 28.6 percent.[38] The same trend continued throughout the 1960s. Communities of less than ten thousand saw their population decline about ten percent, while cities of more than ten thousand saw a proportionate increase.[39] Nearly every city above 10,000 experienced a substantial population increase, with some, especially suburbs of Oklahoma City and Tulsa, increasing dramatically. Tulsa's population increased twenty-six percent, while the Tulsa suburb Sand Springs grew forty-eight percent in the 1960s.

[38] 1960 United States Census, Oklahoma, 38-11, found at dougloudenback.com
[39] 1970 United States Census, Oklahoma 38-8, found at dougloudenback.com

Rural Oklahomans, therefore, found themselves in crisis. The state's urbanization meant that rural Oklahomans were losing businesses and access to medical care. If they chose to sell their home, few buyers were available to purchase them. Judicial reform had little to offer rural Oklahomans. Further, as with the judicially-mandated reapportionment of the legislature, the centralization of judicial authority in Oklahoma City constituted another nail, however small, in the coffin of rural Oklahomans.

In small communities, abandoning the JP system also had limited appeal. The JP process, however flawed, was cheap and business-friendly. In a small community, a vote to abolish the JP system would also be a vote to put a neighbor and acquaintance out of a job. Although the legislative plan guaranteed at least one judge per county, rural counties already had that with the county judge system. For rural counties, therefore, the legislative plan was another step toward urbanization with little or no advantage for rural communities.

THE 1968 LEGISLATURE

Despite the rural opposition, the state questions had passed, and the legislative reform had become part of Oklahoma's constitution. It now became the duty of the 1968 legislature to enact the necessary statutes and make the necessary appropriations to implement the reform. While the 1967 session had featured bipartisanship, the 1968 version quickly became rancorous.

Public education, which had largely been ignored by the earlier session, became the focal point of the legislature's 1968 business. Even as the previous session ended, McSpadden had criticized Bartlett for his lack of an educational funding plan.[40] In the first days of the session, Bartlett, who had campaigned on a platform of opposing new taxes, proposed to raise teacher salaries by a total of $1,000 over three years, with the increase to be financed from funds then allocated from county road funds. This proposal infuriated both teachers, who were angered by the paltriness of the proposal, and the county commissioners, who would be losing road revenue.[41] Despite Bartlett's furious opposition to the idea, the political climate was ripe for a tax increase, with the legislature reluctantly supporting an increase and the Oklahoman editorializing in favor of a higher sales tax.[42]

At the end of February, the legislature passed a bill calling for a $500 raise for teachers in 1968 and a similar raise in 1969, with the increase to be financed by a rise in cigarette and liquor taxes. Bartlett vetoed the measure. Oklahoma teachers, on the verge of striking, called for a one-day statewide teachers rally to take place in Oklahoma City. On March 5th, one day before the statewide meeting, the legislature and the governor agreed on a $1,300 teacher pay increase over three years, with the pay raise to be financed by a five cents per pack increase in cigarette taxes. This temporarily settled the salary issue, but the problem of teacher retirement remained unresolved and a matter of hot debate

[40] Durant Daily Democrat. May 11. 1967 , p.1.
[41] Oklahoman, January 3, 1968, p.1.
[42] Ibid.

until the end of the session. The rift with Governor Bartlett led Privett to tell a meeting of school administrators, "The chief executive thinks the school problem is solved for the next three years, but we legislators know better."[43]

Even with the distraction of the education crisis, the legislature still had to deal with other matters of governing the state, including legislation reestablishing a court system complying with the voter-mandated court reforms. They set salaries for trial judges, establishing a pay scale for associate district judges which depended on the population of the county in which the judge sat.[44] Some legislators were offended by the conduct of some of the justices of the Supreme Court, who personally lobbied legislators, especially those who were also attorneys, for pay raises for themselves.[45]

Legislators established the post of Special District Judge in counties with at least 24,000 people, lowering the requirement from 25,000 in order to accommodate the population of Canadian County. Special judges served at the pleasure of the district judges, and their duties were limited.[46] The legislature also established a six-member Court of Appeals, composed of two three-member panels, as an intermediate appellate court for civil cases.[47] Since justices of the peace had been abolished, the legislature established a meaningful and efficient small claims procedure, authorizing court clerks to assist litigants with pleadings

[43] Oklahoman, March 19, 1968, p.39.
[44] Ibid., March 1, 1968, p.15.
[45] Ibid., March 6, 1968, p.1.
[46] George B. Fraser, "Oklahoma's New Judicial System," 21 Oklahoma Law Review 373-410 at 380 (1968).
[47] Oklahoman, March 8, 1968, p.3. The Court of Civil Appeals has since been expanded to twelve judges, six in Oklahoma City and six in Tulsa.

in order to avoid the burdensome cost of attorneys on small cases.[48] They barred judges from seeking any political office other than another judicial office, avoiding another incident like Judge Kirksey Nix's distasteful bid for elective political office a few years previously.[49]

At the end of the session, the progress made on court reform was jeopardized by party politics. Bartlett, after pondering the issue for a week, vetoed a bill disabling straight party voting on voting machines. The legislature had passed this legislation, purportedly to comply with the directive that judges be elected on a non-partisan ballot. However, in 1968 only Oklahoma County and Tulsa County, both Republican strongholds, even had voting machines, so the effect of the bill was to weaken Republican candidates. [50] On the last full day of the legislature, both houses overrode Bartlett's veto. It is unknown what would have happened to judicial elections without the veto override. However, it was reckless of all parties to risk such great progress on such a small partisan issue.[51]

Terms for district judges did not expire until 1970, and the legislation had extended their terms until that time. The newly-created position of associate district judge was open for election in 1968. Sixty-nine county judges filed for election as associate district judge; of those, forty-four were unopposed. Backers

[48] Fraser, p. 402.
[49] Oklahoman, August 1, 1968, p.17.
[50] Oklahoman, April 30, 1968, p.6.
[51] Republicans circulated an initiative petition in an attempt to get the straight party voting ban reversed. Democratic Secretary of State John Rogers attempted to defeat the effort by closing his office, thus trying to prevent the proponents from filing the petition. It took an order from the Oklahoma Supreme Court to force Rogers to open his office and accept the petition. Oklahoman, August 3, 1968, p.3.

of the Sneed plan claimed this development demonstrated an inherent weakness in the legislative plan, the difficulty of getting rid of entrenched rural judges.[52]

THE SNEED PLAN SPECIAL ELECTION

On September 17th, four months after the 1968 legislature adjourned and more than a year after the submission of the initiative petition, State Question 441, the Sneed plan, finally made the Oklahoma ballot. Because of the number of state questions already on the primary election ballot, Bartlett had ordered SQ 441 placed on the runoff ballot. As it happened, a runoff was necessary only for a few races, the most significant being for the Democratic nomination for Corporation Commission. Political forecasters therefore anticipated a light turnout.

Governor Bartlett, calling both plans "excellent," announced his neutrality on SQ 441.[53] Elsewhere in the state, however, the question drew heated debate. The Oklahoman, whose chief editorial writer Clarke Thomas had been instrumental in the plan's petition drive, printed editorials supporting the measure. The Oklahoman writers recalled Corn and Cargill's specious claims that bribes were campaign contributions and argued that without judicial elections, no campaign contributions would be necessary.[54] In a separate editorial, entitled "Lest We Forget," the author called the scandal "the worst black eye Oklahoma

[52] Oklahoman, August 4, 1968, p.16.
[53] Oklahoman, September 6, 1968, p.1.
[54] Ibid., September 12, 1968, p.1.

ever had" and argued, "Courts must be established by laws that will absolutely prevent judges being bought like sheep."[55]

Endorsements for the Sneed plan came from newspapers and individuals. The Tulsa Tribune backed SQ 441, asking where the "naysayer" lawyers critical of the question were when "the little old ladies in tennis shoes (the League of Women Voters and PTA)" were circulating petitions to put it on the ballot.[56] Urban newspapers like the Norman Transcript and the Oklahoma Journal backed SQ 441, as did some rural newspapers like the Pawnee Chief , the Hughes County Times, and the Beaver Herald-Democrat. [57] Former OU coach and U.S. Senate candidate Bud Wilkinson endorsed the Sneed plan, as did former Governor and U.S. Senate candidate Henry Bellmon, who backed the plan despite his reluctance to offend Republican legislative plan opponents like James Connor and Denzil Garrison during his own senatorial campaign. Cleveland County District Judge Elvin Brown wrote a strongly-worded memo to the local bar favoring the state question, claiming increased judicial independence would make experienced lawyers more interested in a judicial career.[58] Conservative Oklahoma County District Attorney Curtis Harris also backed the proposal, seeing it as a vehicle for abolishing the Court of Criminal Appeals, with which Harris was at odds.[59]

[55] Ibid., September 12, 1968, p.1.
[56] Tulsa Tribune, September 13, 1968, p.52.
[57] Tulsa Tribune, September 14, 1968, p.24.
[58] Ibid., September 12, 1968, p. 56.
[59] Oklahoman, September 15, 1968, p. 23.

Victor J. Reed, the Roman Catholic bishop of Oklahoma City and Tulsa, endorsed SQ 441, as did the suffragen bishop of the Episcopal Diocese of Oklahoma.[60]

The Sneed forces commissioned a poll, the results of which they released about two weeks before the election. Out of a sampling of 600 voters, 50.7 percent claimed to be in favor of the Sneed plan, with only 24.7 percent opposing the plan and the rest undecided. In Tulsa 57.3 percent of the sampling claimed to support the plan, with 15.7 percent opposed and the rest unopposed. In the rest of the state, including Oklahoma County, northern Oklahoma, eastern Oklahoma, and western Oklahoma, voters claimed to favor the Sneed plan by margins varying from 54 percent to 46 percent. Only 39.6 percent of those sampled claimed to have voted in the last judicial election; only 30 percent of that number knew for whom they had voted. Five percent felt their judge was "very honest," while another 52.7 percent felt their judge to be "somewhat honest." Sixty-five percent claimed to be in favor of reform. Based on their own poll, the backers of SQ 411 therefore had great reason for optimism.[61]

However, the Sneed Plan also encountered strong and vocal opposition. One of the leading critics was the Tulsa World, which editorialized against the plan several times. A week before the election, the World told its readers the plan "would vest all the power over Oklahoma's judiciary in the hands of the Supreme Court and its Chief Justice. That's too much power for any individual...In truth, the plan voted by the people last year provides checks and balances on the court

[60] Tulsa Tribune, September 16, 1968, p. 13.
[61] Tulsa Tribune, September 5, 1968, p.1.

system, through the elected Oklahoma legislature."[62] On the Sunday before the election, an editorial appearing on page one told readers, "Reform isn't limited to one idea...Oklahoma has a plan approved by the Governor and the Legislature and the people."[63]

Republican legislators Denzil Garrison and James Connor, the Republican floor leaders of their respective houses, strongly campaigned against SQ 411. Garrison argued that rather than taking the politics out of the judiciary, the plan "merely concentrates the politics in a few hands."[64] In Bartlesville, the hometown of both Garrison and Connor, the Washington County Republican and Democratic organizations purchased adjoining advertisements in the Bartlesville Examiner opposing the proposition.[65] Four of Tulsa County's six district judges publicly opposed the Sneed plan, arguing the legislative plan should be granted an opportunity to work.[66]

In drafting the plan, the Sneed forces had overlooked the state's Industrial Court, which heard workmen's compensation cases. Adoption of SQ 411 therefore would have abolished the Industrial Court and forced those cases back to the district courts. Opponents of the Sneed plan gleefully jumped on this mistake, claiming the district courts would be overburdened.[67] In a Tulsa debate with Leroy Blackstock, John McCune, the principal author of the legislative plan, mentioned this flaw in Sneed's proposal. Blackstock emphasized the difficulty of

[62] Tulsa World, September 9, 1968, p.6.
[63] Ibid., September 15, 1968, p.1.
[64] Ibid., September 6, 1968, p.1.
[65] Ibid., September 15, 1968, p.1.
[66] Ibid., September 12, 1968, p.1.
[67] Ibid., September 14, 1968, p.6.

ridding the system of substandard rural judges, pointing out that Bryan County Judge Glenn Sharpe, who had become the first judge to be removed by the new Court on the Judiciary for accepting improper fees, had been unopposed.[68]

The Oklahoma electorate was voting for the second time in fifteen months on two remarkably similar proposals. After all, the legislative plan had been specifically created to deflect SQ 441, and each greatly changed the system which had existed since statehood. Although there were other differences between the plans, the voters would be called upon to decide two major issues. First, would the state's trial judges be selected by appointment or election? Second, would the legislature or the judiciary itself allocate and assign judicial resources?

On September 17th the voters answered those questions. Although they approved the four other state questions on the ballot, the electorate overwhelmingly rejected the Sneed plan by a margin of 115,650 in favor to 171,620 opposed. SQ 441 carried only three counties: Oklahoma, Cleveland, and Payne. While Oklahoma County's support had been more than two to one in favor, the plan narrowly failed in Tulsa County. In some counties the vote was as much as ten to one against the Sneed plan. [69] Sixty percent of the voters statewide voted against SQ 441.

Sneed blamed the defeat in part on the unpopularity of the U.S. Supreme Court, then in the midst of a series of liberal rulings on constitutional criminal procedure. He also pointed out the progress made by the legislative plan, stating

[68] Tulsa Tribune, September 6, 1968, p.2.
[69] Tulsa Tribune, September 18, 1968, p.38.

"The legislative plan is so much superior to what we had in 1966." When asked if he would try to bring the matter back at a later time, Sneed replied, "Not at this time." [70] The Sneed plan was dead.

The Sneed plan failed for two reasons. First, the legislative plan had preempted the field. The electorate had, only fifteen months previously, adopted a new judiciary; it therefore made sense to see if it would work before scrapping it. Second, conservative Oklahomans, skeptical of governmental authority, questioned the wisdom of turning over judicial assignments and personnel to a largely unknown central figure like the Oklahoma Supreme Court; the Supreme Court, of course, was the same entity whose scandal had begun the process for reform in the first place.

The primary reason for the failure of the Sneed plan was simpler, though. Oklahomans, who had a political tradition of a long ballot with many elective offices, simply were unwilling to give up the right to elect local judges. The legislative plan, supported by nearly everyone in state government, had nearly fallen victim to the same problem. The electorate failed to see the correlation between electing judges and judicial corruption .

In September, 1968, Chief Justice Jackson appointed Marian Opala as the state's first court administrator. Opala, a man of enormous intellect and energy, had quietly assisted Senator Roy Grantham in the N.B. Johnson impeachment trial.[71] He now faced the formidable task of reorganizing the state's court system,

[70] Oklahoman, September 18, 1968, p.1.
[71] Marian P. Opala interview with Karen E. Kalnius, p.6., Opala Archives, Oklahoma Hall of Fame.

centralizing budgeting and personnel in Oklahoma City. Opala compared his job to being the executive director of a large corporation, with the board of directors being the state's nine justices and judges as shareholders. Opala later said, "When I took over as administrator there were 77 separate kingdoms, each independent, each comprising but one county, and it was difficult to recruit people for that new philosophy." His plans met resistance from judges in Tulsa, some judges from rural Oklahoma, and from court clerks, who had not previously had to account to anyone but the taxpayers for the court's money. He also met resistance from Republican officeholders, especially in northern Oklahoma, who rejected the non-partisan approach of the new court system and resented what they saw as Democratic control.[72]

CONCLUSION

The enactment of legislative reform had taken a circuitous route. At any time reform could have failed, and its success was aided by several events. The general public disgust with the court scandal certainly played a significant role, as did the embarrassing and obsolete justice of the peace system. The defeat of McCarty was critical; it is hard to imagine a judicial nominating commission proposal passing the legislature with J.D. McCarty running the House of Representatives. Governor Dewey Bartlett held his ground with the legislature and insisted on the appointment of appellate judges; this would not have happened

[72] Opala: In Faithful Service to the Law, Bob Burke and Ryan Leonard, (Oklahoma Heritage Association, 2012), pp. 123-135. Opala later served for more than thirty years as a justice on the Oklahoma Supreme Court.

had Bartlett lost to Preston Moore in 1966. Finally, the energy of the Sneed plan backers in getting their proposal before the voters forced the legislature to propose a stronger plan than the legislators otherwise would have passed.

At the time of the failure of Sneed plan, its backers saw the victory for the legislative plan as a win for the conservative legislature. Over time, though, it has become clear how far Oklahoma's judiciary came from 1963 through 1968. The question is not what Oklahoma could have done, but what it actually accomplished. Oklahoma rid itself of the justice of the peace system. The institution of the nonpartisan election of trial judges made the job more professional and less political. The establishment of the office of court administrator centralized court funding. The creation of the judicial nominating commission helped insure that only qualified lawyers, not just political candidates, filled judicial vacancies.

CONCLUSION: OKLAHOMA AFTER COURT REFORM

Oklahoma's court reform system has now been in effect for nearly fifty years. In two generations more than enough time has elapsed to examine the strengths and weaknesses of Oklahoma's reformed judicial system. This chapter will outline some of those strengths and weaknesses, beginning with an examination of how the Court on the Judiciary, the mechanism created for removing corrupt, incompetent, abusive, or disabled judges from the bench has operated.

THE COURT ON THE JUDICIARY

In 1968, two years after its establishment, the Court on the Judiciary removed Glenn Sharpe, a Bryan County judge who was found to have accepted nearly $13,000 in exchange for approving marriage licenses.[1] Sharpe fought his case all the way to the United States Supreme Court, unsuccessfully arguing that he was entitled to a jury trial, rather than the trial by eight sitting judges and one attorney authorized by the constitutional amendment.[2] Sharpe's case established the authority of the Court on the Judiciary and ended any doubt about the legitimacy of its existence.

[1] Oklahoman, October 30, 1968, p.8.
[2] Oklahoman, March 11, 1969, p.7.

However, a flaw in the system quickly became apparent. No statutory mechanism existed to investigate judicial complaints; a person with a grievance against a judge had no convenient agency charged with receiving the complaint and investigating its validity. In 1974, Senator Grantham successfully authored a bill which established a Council on Judicial Complaints, which consisted of three attorneys. The Speaker of the House, the President Pro Tempore of the state senate, and the president of the Oklahoma Bar Association each had the responsibility of appointing one member of the body.[3] The Council on Judicial Complaints immediately became very busy; in the first year of its existence, the council investigated thirty-six judicial complaints, dismissing nineteen of them.[4]

Grantham's legislation also directed that the Council on Judicial Complaints should operate in secrecy, a practice which the Oklahoma legislature strengthened in 1998.[5] In addition to requiring that any proceedings of the Council on Judicial Proceedings be held "in secrecy to the same extent as proceedings before a grand jury," Oklahoma's statute now directs a fine of up to a thousand dollars for witnesses or complainants who reveal any information about the complaint to the public, while judicial officers who reveal any information about judicial complaints are liable for a public reprimand by the Court on the Judiciary.[6]

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[3] Oklahoman, January 29, 1974, p.4.
[4] Oklahoman, April 4, 1975, p.51.
[5] This strengthening of the statute apparently was in response to the actions of Richard Hovis, an Associate District Judge from Hobart, who was found guilty of inappropriate sexual conduct toward female employees and removed from the bench. Hovis repeatedly discussed his case with the media. Oklahoman, August 30, 1997, p.1.
[6] 20 O.S. sec. 1658.

This level of confidentiality is a two-edged sword. Demanding secrecy protects judges, whose credibility relies on public respect, from scurrilous and frivolous complaints. It also provides comfort to lawyers, court personnel, litigants, or other interested parties who wish to complain about a judge without fear of public condemnation or intimidation. However, there is something draconian about requiring fines or judicial reprimands for those people who are simply reporting facts about the investigation of a public official.

The Court on the Judiciary became very active in the 1970s and 1980s. In 1975 the Court undertook the difficult case of Judge Bill Haworth, a district judge, former legislator, and longtime political figure from Muskogee. After a fierce legal battle, the Court found Haworth had operated a loan company from his judicial chambers, had tampered with jury selection, and had promised lenient treatment to a felon in exchange for political assistance to a candidate for district attorney.[7] After Haworth was removed from the bench, he established a law practice with Gene Howard, the president pro tempore of the state senate. He and Howard maintained a substantial criminal defense practice.[8]

In 1976 the Court heard the case of Judge Sam Sullivan of Durant, another longtime local political figure who had been elected to the district court bench.[9] Sullivan was accused of and ultimately found guilty of outlandish and abusive activities, including threatening to kill anyone who tried to have him disbarred or

[7] Oklahoman, November 23, 1975, p.1. Records of Court on the Judiciary, CJTD 75-2.
[8] Oklahoman,, November 1, 1977, p.51.
[9] Sullivan had been a judge from 1946 until 1958, then had been reelected in 1974. He was represented in his Court on the Judiciary case by Whit Pate, who had regained his law license.

removed from office, suggesting escaped prisoners should have been killed, suggesting a couple kill their son and throw his body into a lake, jailing a litigant for not knowing his social security number, and holding a contempt hearing against a bailiff and refusing to allow him to have an attorney. After the Court on the Judiciary removed Sullivan and disqualified him from further judicial service, he unsuccessfully ran for election as District Attorney, even though he was the subject of a pending disbarment case.[10]

In that same year, the Court tried Gar Graham, an Associate District Judge from Oklahoma County. Graham had publicly feuded with nearly everyone in the Oklahoma County courthouse, using the press to vent his complaints about other judges. He also clashed with the legislature, eventually posting a sign outside his courtroom door banning lawyer-legislators from practicing in his courtroom. The Court suspended Graham for four months without pay and ordered him publicly reprimanded but did not remove him from office.

Not all cases resulted in conviction. In 1977 the Court on the Judiciary tried Judge Elvin Brown, a hardworking but autocratic district judge from Norman. Brown was accused of using his office to oppress the prosecution in criminal cases, inappropriate language, and intimidating behavior. Brown was acquitted, becoming to this date the only judge to come before the Court for trial not to be sanctioned in some way.[11]

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[10] Oklahoman, July 12, 1978, p.19.

[11] Oklahoman, October 21, 1977, p.13 and October 27, 1977, p.13. Records of the Oklahoma Court on the Judiciary.

The common thread of the Haworth, Sullivan, and Graham cases is the continued participation in partisan politics by sitting judges. Haworth, Sullivan, and Graham all saw their positions as judges as vehicles with which to wield political power, not to adjudicate disputes.[12] The reforms of the 1960s had made it clear that judges were to act as independent interpreters of the law, not as advocates for themselves or other partisan or personal interests. Eventually, cases of political interference by judges dwindled after the 1970s. Litigants gradually came to see courthouses as places where they could expect fair treatment, regardless of who their lawyer was, their political persuasion, or their station in life. Judges who saw themselves as partisan political figures or saw the bench as a steppingstone for non-judicial political office began disappearing. The Oklahoma bench was no longer a place for political power-brokering.

The Court on the Judiciary also began to use its constitutionally authorized power of compulsory retirement to force judges off the bench. By using this less onerous tool, which allowed the Court to retire judges with "a mental or physical disability preventing the proper performance of official duty, or incompetence to perform the duties of the office," the Court retired several judges whose health issues had clouded their ability to do their jobs.[13] These included, in 1971, Kirksey Nix, the former state senator who had run for Attorney General without resigning his judgeship, and, in 1998, Joe Cannon, a former legislator and aide to Governor Edmondson who had served controversially as an Oklahoma County

[12] Haworth's obituary claimed that as judge he was "well-known for the political power he wielded throughout the entire state and, ultimately, for the political friends and enemies he made." Tulsa World, September 10, 2013.
[13] Oklahoma Constitution, Article 7-A, Section 1.

district judge for a number of years.[14] Cannon accepted the medical retirement shortly before facing trial before the Court on charges of gross partiality. In 1994 the Court approved the medical retirement of Judge Melinda Monnet of Oklahoma County, who, although she was only thirty-three years old, claimed numerous job-related illnesses, exhibited strange behavior, and had not appeared for work for several months.[15]

As of 2002, the Court on the Judiciary had removed six judges, suspended three, retired eleven, and one had resigned before trial. Since that year, no judges have been removed by action of the Court on the Judiciary; no trials have even taken place. That does not mean, however, that judges have not been subject to discipline. In 2004 Judge Donald Thompson resigned shortly before trial in the Court on the Judiciary after being accused of bizarre sexual behavior on the bench and in the courthouse. Thompson later was convicted and sentenced to prison. In 2005 Judge Steve Lile of the Court of Criminal Appeals became the only appellate judge since court reform forced out of office by scandal. Lile, who had filed false travel claims and abused his judicial authority in order to help his incarcerated son, was later disbarred.[16] Two other trial judges, Tammy Bass-Lesure and Wayne Olmstead resigned rather than face the Court on the Judiciary; both eventually pled guilty or no contest to crimes.[17] Several Special District Judges have been terminated or forced to resign over the years; however, these

[14] Oklahoman, July 31, 1988, p.87 and September 9, 1988, p.1. Records on Court on the Judiciary.
[15] Oklahoman, June 28, 1994, p.1.
[16] State ex rel Oklahoma Bar Association v. Lile, 194 P.3d 1275 (Okla., 2008).
[17] Oklahoman, January 13, 2002, p.11A, Oklahoman, February 11, 2012, p.1A.

judges are appointed officials and are subject to firing by district judges, without the involvement of the Court on the Judiciary.

THE JUDICIAL NOMINATING COMMISSION AND JUDICIAL SELECTION

In recent years the concept of the Judicial Nominating Commission has come under serious fire, especially from conservative Republican legislators. In recent years the court has declared several legislative acts unconstitutional, including a tort reform act which had broad legislative support. It also ordered the removal of a statue reciting the Ten Commandments removed from the capitol grounds. These actions have angered some members of the legislature.

The legislature has repeatedly considered giving more power in judicial appointments to the Governor and legislature and less to the Judicial Nominating Commission.[18] During the winter of 2010-2011, an incident involving a Supreme Court vacancy saw the relationship between the legislature and the committee deteriorate substantially. In October of 2010, longtime Supreme Court Justice Marian Opala died. In November voters approved changes to the makeup of the Judicial Nominating Commission and also elected Republican Mary Fallin to replace outgoing Democrat Brad Henry as Governor. Fallin's term was to begin in January. Over furious Republican protests, who wanted to fill the seat after the constitutional changes to the committee had been made and Fallin had been inaugurated, the Judicial Nominating Commission quickly took applications and

[18] Oklahoman, March 14, 2013, p. 16, Oklahoman, March 20, 2016, p. 5A.

recommended three candidates to Governor Henry. Three days before his term ended, Henry appointed Judge Noma Gurich to the post.[19]

The 2010 constitutional amendment changed the membership of the Judicial Nominating Commission to fifteen members. Of those fifteen members, six are to be appointed by the Governor. None of those six may be members of the Oklahoma Bar Association or have any immediate family members who are OBA members; those six gubernatorial appointees must be divided equally by political party. Six lawyer members are elected by the Oklahoma Bar Association. Three at-large members comprise the balance of the commission; one selected by the President Pro Tempore of the Senate, one by the Speaker of the House, and one by at least eight members of the commission. These three members may not be lawyers or have immediate family members who are lawyers, and no more than two of the at-large members may be members of the same political party. At least nine of the fifteen members, therefore, must be non-lawyers, and those members may not have a lawyer in the member's immediate family.[20] This seems to this writer to be a necessary change; while input from lawyers is important in selecting judges, it is also vital that the qualifications of aspiring judges be viewed by impartial outsiders, and that the public not have the perception that judges are selected by an exclusive group of lawyers.

The purpose of this dissertation has been to provide a historical description of the political and legal atmosphere which led to scandal and

[19] Oklahoman, February 16, 2011, p. 13W.
[20] Constitution of the State of Oklahoma, Article VII-B, section 3.

subsequent reform of the Oklahoma's judiciary in the 1950s and 1960s. Having said that, it is useful to discuss current thinking on the question of judicial selection. In 2002, the United States Supreme Court changed the playing field for judicial candidates with its decision in Republican Party of Minnesota v. White.[21] In a 5-4 decision authored by Justice Antonin Scalia, the Court held that Minnesota's provision prohibiting judicial candidates from announcing their views on disputed legal and political issues violated the candidate's First Amendment right to free speech. This ruling opened the doors for candidates for elected judicial office to announce their views on issues which would come before them as judges.

Although admittedly it is now established law, Republican Party of Minnesota v. White seems to this writer to be playing with fire. Judicial candidates are now free to run for office on platforms such as being hard on drug offenders or taking a hard line against insurance companies or personal injury plaintiffs. Assuming, for example, a judge has been elected on a platform of being favorable to defendants in personal injury cases, most plaintiffs would feel uncomfortable appearing in front of that judge and skeptical about the idea of fair treatment before the court. This problem is exacerbated by the U.S. Supreme Court's ruling in Citizens United v. Federal Election Commission, which bars the government from restricting independent political expenditures, opening the door for those with a stake in judicial races to spend massive amounts of money on

[21] Republican Party of Minnesota v. White, 536 US 765 (2002).

judicial campaigns.[22] The U.S. Supreme Court, composed of the nation's highest judges, has ironically proven to be a barrier to maintaining decorum and propriety in judicial elections.

In recent years the subject of judicial selection has become a subject of serious study by political scientists. Distinguished political science professors James L. Gibson, Chris W. Bonneau, and Melinda Gann Hall all make forceful and persuasive claims in favor of partisan judicial elections, in which the candidates identify themselves by political party. They argue that judges, like legislators, are public officeholders, whose decisions should reflect the values of the community in which they serve. The candidate's party affiliation, according to them, gives the voter some information regarding the potential judge's ideas. To Bonneau, Gann, and Hall, the public benefits from expensive, partisan judicial races, which help educate the public on their judges and insure that judges rule as their constituencies expect.[23]

Professor Gibson, responding to an article entitled "Why Judicial Elections Stink" by Charles Gardner Geyh, colorfully compared judicial elections to anchovies on a Caesar salad, pointing out that this may ruin the salad for some people while enhancing its enjoyment for others. Gibson concludes, "Still, for most constituents of courts, the predominant essence of judicial elections is not foul. Because it is not, holding judges accountable, with its messiness and fuss,

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[22] Citizens United v. Federal Election Commission, 558 US 310 (2010).

[23] James L. Gibson, Electing Judges: the Surprising Effects of Campaigning on Judicial Legitimacy, (Chicago and London: University of Chicago Press, 2012), Chris W. Bonneau and Melinda Gann Hall, In Defense of Judicial Elections, (New York: Routledge, 2009), Melinda Gann Hall, Attacking Judges: How Campaign Advertising Influences State Supreme Court Elections, (Stanford, California: Stanford University Press, 2015).

still serves to make courts more legitimate and hence more efficacious, which cannot help but bolster democracy and the rule of law."[24]

These scholars make good points. Within the boundaries of the law and reason, judges should reflect the values of the communities in which they serve. Also, to some extent a candidate's party affiliation can provide an indication of the potential judge's philosophy on political issues.

However, I argue that the disadvantages of partisan elections far outweigh their advantages. Judges and legislators have entirely different governmental roles. A legislator is expected to represent his or her district in the legislature, making sure that the best interests and desires of his constituents are represented and reflected in an entire state. Judges, on the other hand, have a duty to analyze the facts of the case at hand and apply the law to those facts. Judges should not make decisions based upon what is best for a locality or what results the judge's constituents want. A judge who simply responds to public opinion without considering the facts and the law is not doing his or her job.

Advocates of partisan judicial elections should take careful note of what happened in a contested appellate judge election in West Virginia. In 2002 a West Virginia jury had found A.T. Massey Coal Company, a huge local coal mining company led by Don Blankenship, liable for fraud and awarded the plaintiffs fifty million dollars in damages.[25] Massey appealed to the West

[24] Gibson, p.141.

[25] Blankenship has since been convicted in federal court of a crime related to the deaths of twenty-nine Massey employees in a coal mining accident. He was sentenced to a year in prison and has appealed his sentence. New York Times, April 6, 2016.

Virginia Supreme Court of Appeals. In 2004 a partisan judicial election occurred, and Republican Brent Benjamin challenged the Democratic incumbent. Blankenship, whose case was pending before the court, formed a political organization entitled "And for the Sake of the Kids," and donated almost $2.5 million to the organization, which endorsed Benjamin. Blankenship also spent just over $500,000 on direct mailings and letters soliciting donations and television and newspaper advertising supporting Benjamin's campaign. Blankenship spent more on the election than the committees of the two candidates combined and more than three times the amount spent by Benjamin's own committee. As Chief Justice Roberts points out in his eventual dissent, a group called "Consumers for Justice," which received large contributions from plaintiffs' attorneys, spent about $2 million in support of Benjamin's opponent, who was the incumbent. Benjamin won the election and became a member of West Virginia's five member Supreme Court of Appeals.

The plaintiff asked Justice Benjamin to recuse from hearing the case. After deliberating for about six months, Benjamin denied the motion but stated that he found "no objective information" that he had prejudged the case, had a bias for or against any litigant, or that he would be anything but fair and impartial. In 2007, by a three to two vote, the court reversed the case, setting aside the $50 million verdict; Justice Benjamin voted with the majority, in favor of Massey. Shortly thereafter photos surfaced of one of the two other justices who had voted in Massey's favor, Justice Elliott Maynard, vacationing on the French Riviera with

Blankenship, an activity Maynard had not previously disclosed.[26] The court granted a rehearing. Maynard recused, as did another justice who had been publicly critical of both Blankenship and Benjamin, leaving two slots out of five open. Benjamin, who by then was the court's chief justice, appointed two judges to fill the vacancies and rehear the case. In April of 2008, the West Virginia court again reversed the jury's verdict, once again by a three-to-two decision in which Benjamin provided the deciding vote in favor of Massey.[27]

The case eventually went to the United States Supreme Court. In a five-to-four decision, the Supreme Court, in an opinion written by Justice Kennedy, held that Benjamin's refusal to recuse himself violated the Due Process clause of the Constitution. Chief Justice Roberts dissented, joined by Justices Alito, Thomas, and Scalia. Justice Roberts argued the majority had opened a Pandora's box on the question of judicial recusal, listing forty separate questions now raised by the majority decision with which judges may now have to deal. Scalia also wrote a separate opinion, accusing the majority of continuing "its quixotic quest to right all wrongs and repair all imperfections through the Constitution" and agreeing with Roberts that the majority had simply added confusion to the issue.

The Massey case embodies all that is wrong with partisan judicial elections. In a race for the highest court in a relatively small state, two non-profit corporations spent $5 million attempting to get their candidate into office. One of those corporations was financed by someone with a direct interest in a case

[26] New York Times, January 15, 2008.
[27] Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009).

pending before that court, while the other was funded by attorneys with regular business there. When Justice Benjamin won, he twice cast the deciding vote in favor of the party who had donated $3 million to his campaign. It took a five-to-four decision by the United States Supreme Court to correct such an obvious miscarriage of justice.

This trend of pouring enormous sums of partisan money into appellate judicial races continues. As of April 2016, approximately $2.6 million, much of it from ads sponsored by out of state groups from both the left and right, had been spent on a Wisconsin supreme court campaign. Television spending on two seats in Arkansas reached $1.2 million, with candidates being defeated who were seen as too cozy with trial lawyers. In Pennsylvania labor unions and plaintiffs' trial lawyer groups spent about $2.9 million on television advertisements which helped elect Democratic candidates to three supreme court seats.[28]

If we are to have judicial elections, especially at the appellate level, it is worth discussing how they will be financed in a political and legal climate in which the freedom to spend money is equated with free speech. As this dissertation has discussed, judicial elections are "down ballot," meaning that they do not draw the public interest that races for governor, attorney general, and other high-profile offices have. Other than friends and family members of the candidate, there are four likely sources of donations: insurance companies, plaintiffs' personal injury attorneys, large businesses, and other attorneys,

[28] New York Times, "Outraged by Kansas Justices' Rulings, GOP Seeks to Reshape Court," April 1, 2016.

especially large law firms. All these sources have considerable business before the courts, creating inherent conflicts for judges who have received contributions. When one of the attorneys or parties has contributed to a judge's campaign, it is hard to see how the judicial playing field can be level; it is even harder to imagine a litigant who has lost to a contributor thinking he has received fair treatment. In this writer's view, the drawbacks to partisan judicial elections far outweigh the advantages outlined by Hall, Bonneau, and Gibson.

THE RETENTION BALLOT AND NON-PARTISAN TRIAL JUDGE ELECTIONS

As we have seen, Oklahoma voters adopted the retention ballot for appellate judges in 1967. Since that time, no Oklahoma judges have been unseated by the voters; all have been retained. In the first judicial retention election in 1968, the Oklahoma Bar Association endorsed the retention of the three Supreme Court justices on the ballot but opposed a new term for the controversial Judge Kirksey Nix of the Court of Criminal Appeals. Nix bought advertising and responded in the press and was retained by the voters.[29] Since then, the bar has taken a hands-off approach to retention of specific judges.

In 2014 nine justices and appellate judges were on Oklahoma's retention ballot. The lowest-performing judge, Justice John Reif, received fifty-nine percent of the votes to retain him; the highest-performing judge, Justice Tom

[29] Jack N. Hays, "Oklahoma Moves Forward in Judicial Selection," 6 Tulsa Law Review 2: 97-98 (1970).

Colbert, received sixty-two percent. In 2012 twelve justices and judges appeared on the retention ballot. With a higher turnout because of the 2012 presidential election, no judge received less than 65.6% of the retention vote. In 2010 the favorable votes ranged between 61.60% and 65.02%.[30]

Nationwide, judicial retention remains very high, and Oklahoma's experience is relatively consistent with other states with the same system. Between 1936 and 2009, 637 state supreme court justices faced retention votes; only eight lost. However, in 2010, Iowa voters, disgruntled by a Supreme Court decision which made Iowa the first state to legalize same-sex marriage, voted three judges who supported the decision out of office.[31] In that same year hotly contested judicial retention votes took place in Alaska, Colorado, Florida, Illinois, and Michigan, with all the incumbents being retained in office.[32]

The issue therefore is whether the judicial retention ballot is an effective tool with which to judge judicial performance. In Oklahoma voters have no frame of reference with which to determine the performance of a particular judge. The average voter, who has little to no experience with the courts and even less with appellate courts, simply has no information with which to vote. While some states have some sort of mechanism for judicial evaluation, Oklahoma does not. Certainly over a half-century Oklahoma has had some appellate judges who did not deserve to remain on the bench, but the electorate has no way to know

[30] Records of the Oklahoma State Election Board.
[31] New York Times, November 3, 2010.
[32] Michael Curriden, "Judging the Judges: Landmark Iowa Elections Send Tremor Through the Judicial Retention System," ABA Journal, January 1, 2011.

whether judges are doing a good job.[33] The state should develop a meaningful tool for assisting voters in determining which judges do their jobs effectively.

Oklahomans now have approximately fifty years of electing trial judges on a nonpartisan ballot. Although there have been some exceptions, for the most part the system has run smoothly. In rural areas of the state, it is relatively common for judges, especially incumbents, to be unopposed; after all, the potential talent pool is limited to lawyers living in the judicial district, which may be a relatively low number. In contested elections the incumbent unquestionably has a significant advantage, although this is probably no more true in judicial elections than legislative or Congressional elections. In the 2014 election ninety-eight percent of all incumbent judges in Oklahoma retained their office. One hundred eight candidates were unopposed. Three judges were voted out.[34] Two of those three defeated candidates had been appointed to the bench after a vacancy occurred during the term and thus faced the voters for the first time. In 2010 at least three long-serving incumbent judges were unseated. [35]

This writer served for twenty-eight years as Associate District Judge for Carter County, Oklahoma, a county which has a population of approximately 50,000. I served seven terms and was never opposed for election until I opted not to be a candidate for re-election in 2014. I can therefore claim some expertise in

[33] The Oklahoma Civil Justice Council, an arm of the Oklahoma Chamber of Commerce, evaluates justices and judges of the Supreme Court and Court of Civil Appeals on their perceived friendliness toward business. See www.okciviljustice.com. In 1998 Chief Justice Yvonne Kauger established a judicial evaluation commission for appellate judges. It was disbanded in 2000. Oklahoman, October 23, 1998 and November 3, 2000.
[34] Ballotpedia.com, Judicial Election Coverage.
[35] Oklahoma State Election Board records.

the field of nonpartisan judicial elections, although admittedly my objectivity is compromised by my experience. In my view Oklahoma's establishment of nonpartisan elections for trial judges was then and still remains a healthy thing. Like any other office-holder, judges must be accountable to someone for the way they conduct their office. It is unfair and unacceptable to tie judicial decisions to partisan political parties; as I have argued earlier, legislators and judges have completely different duties. However, everyone, including judges, should have someone to whom he or she must answer.

From my observation most Oklahomans respect their state judicial system. Most people do not expect every case to turn out the way they think that it should, and they realize that every case is different. They understand that judges are bound by the law. However, they also believe they have the right to be treated courteously and respectfully by judges and their staffs, that cases should move expeditiously, and that judicial decisions should be made openly and not behind closed doors or for political reasons. Most litigants understand that, unlike legislators, judges are barred from discussing their cases with them without the other side being present. A prudent Oklahoma judge should explain controversial decisions, preferably in writing or in the presence of a court reporter.

THE RESULTS OF REFORM AND THE FACTORS IN ITS PASSAGE

The Oklahoma Supreme Court scandal exposed significant deficiencies in Oklahoma's judicial framework. First, the system encouraged favoritism and doing business through the back door. Litigants were in danger of having their cases decided on who their lawyer was, not the merits of their case. In the last half-century the legal industry has become considerably more professional in this aspect; although some ex parte communication no doubt occurs, it now is the exception, not the rule.

Second, judges have become considerably more professional. Judges are no longer identified by political party, so they are not seen as just another political office-seeker. Most judges see their jobs as separate from other political jobs. While they may seek to move up the judicial ladder, it is a rare judge who sees his or her job as a gateway to non-judicial political office. The existence of the Judicial Nominating Commission for appellate judgeships and mid-term trial vacancies also increases the professionalism of the judiciary and increases public faith in the courts.

The absence of a meaningful way to discipline judges certainly helped contribute to the scandal. Until it was finally exposed, corruption in the Supreme Court had been rumored for years. However, no convenient or practical mechanism for investigating or removing judges had existed. The establishment

of the Court on the Judiciary cured this problem. In addition to accountability to the voters, judges know that they can be held accountable for their actions.

In writing the state's constitution, Oklahoma's founders relied on their Southern and Populist roots, which led to the creation of an inordinate number of elected offices. This philosophy, along with the state's relative poverty and the limiting of office-holding to white and Native American men, led to a government on the cheap which was not responsive to the needs of its citizens. Oklahoma's legal structure of the first fifty years featured a lack of prosecutorial resources, the ineffective county attorney system, a dearth of statewide law enforcement investigative officials, the scandalous justice of the peace system, and the confusing and incomprehensible trial court framework. It also led to appointment or election of at least three, and almost certainly more, corrupt Supreme Court justices who accepted bribes and allowed undue, backdoor influence by dishonest, power-brokering lawyers and businessmen. Once the corruption had been exposed, no mechanism existed to investigate or prosecute the offenders.

A number of factors led to the exposure of the scandal and the reform. The huge amount of money offered by Hugh Carroll and accepted by N.S. Corn involved so many people and was so suspicious that discovery of the crime became easier, if not inevitable. Although corruption on the court had been rumored for many years, the *Selected Investments* case simply was too big and complicated to keep quiet forever. Nevertheless, without the persistence of determined authorities who continued to look into Corn's tangled finances and the *Selected Investments* bankruptcy, the scandal may never have been exposed.

The scandal occurred at a time when the Republican Party was finally gaining a foothold in Oklahoma politics. Although their numbers in the legislature were still small, those Republicans who were in office consistently advocated for reform. Without G.T. Blankenship's courageous publication of Corn's statement on the House floor, it is hard to say what would have happened, but the chances of Democratic legislators choosing to challenge Speaker McCarty publicly on such an incendiary issue seem slim. Governor Bellmon made sure the scandal remained in the public eye and helped force Welch and Johnson from the bench. Governor Bartlett remained steadfast in his advocacy of the Judicial Nominating Commission. Without Bartlett's tenacity, the commission and retention voting for appellate judges would not have become a reality.

The electorate also played a significant role. Since the election of J. Howard Edmondson in the 1958 gubernatorial election, voters had signaled their impatience with the insider-oriented politics of the state's first half-century. The next two elected governors were Republicans; one of the issues in Bartlett's 1966 campaign against Preston Moore had been court reform. Against all odds, the voters in J.D. McCarty's reapportioned district unseated the powerful Speaker, who was encountering legal troubles of his own. Had McCarty remained Speaker, court reform, if it had occurred at all, would have taken a completely different form. The reapportioned legislature of 1967 was considerably different from legislatures of previous years and less entrenched in the politics of the past.

In their development of the court reform plan in 1967, the state's leaders demonstrated leadership, political skill, and ability to compromise. Spurred by

the necessity for court reform but wary of the far-reaching Sneed Plan, the legislative leadership and governor created a plan palatable to the state's conservative voters. They then set the matter for a special election, which drew voters educated on the issue and motivated to express their opinion. Even with the advantages the authorities gave to the propositions, they still only narrowly met with the approval of the voters, demonstrating the political acuity of the authors of the reforms.

Finally, the Oklahoma bar deserves credit for helping create the atmosphere for the institution of reform. Humiliated and mortified by the scandal, most lawyers pitched in to try to insure that something like the Supreme Court scandal would not happen again. The federal officials who doggedly pursued the original investigation were lawyers. The principals in the legislature's movement to impeach Welch and Johnson and the judicial reform plan were lawyer-legislators. The leadership of the Oklahoma Bar Association took a very active role in investigating the scandal, preparing the reform plan, and persuading the voters to adopt it. Although his reform proposal was not adopted, Earl Sneed's activism on the issue of court reform gave urgency and energy to the crisis in the court system. Without pressure from the Sneed plan, legislative reform would have been far less extensive.

Oklahoma is once again a one-party state. As of 2016, all statewide offices and overwhelming majorities of both houses of the legislature are occupied by Republicans. Republicans hold both United States senate seats and all five congressional posts. In the absence of a healthy Democratic party, the

state is in danger of falling victim to the same problems it had fifty years ago: factionalism, lack of voter interest, absence of a viable loyal opposition, and domination by incumbents. As V.O. Key, Jr. put it in 1949, "A loose factional system lacks the power to carry out sustained programs of action, which almost are thought by the better element to be contrary to its immediate interests."[36]

Oklahoma's judicial system is by no means perfect. Judicial decision-making by definition is an inexact science subject to critical interpretation, and much of it is subjective and discretionary. However, Oklahoma's reforms have led to an experienced, professional judiciary, in which a judge is no longer considered just another party official. Instead, most Oklahomans consider their judges to be independent of special interests and seekers of appropriate results to litigation. The credit for this improvement belongs to the reformers of the 1960s.

[36] Key, p. 308.

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