

GREED, GHOSTS, AND GRAND JURIES: THE FORMATION OF NURSING HOME LAW AND OKLAHOMA'S HEALTH DEPARTMENT SCANDAL

Jason S. Ulsperger, Southeastern Louisiana University

ABSTRACT

This work examines the creation of law and the Oklahoma Health Department scandal. It uses an integrative conflict model of law formation to analyze structural foundations, perceptions of crime, and triggering events leading to the passage of nursing home legislation. A content analysis of news reports and reform group documents shows that a new law for quality long-term care emerged after the disclosure of bribery allegations against a high-level health department official and a nursing home operator. Findings suggest the efficacy of the legislation is questionable based on cultural issues concerning negative images of the elderly, interest group influence, and continued reports of substandard care.

On May 2, 2000, officials arrested the acting state Health Department Commissioner of Oklahoma. Federal and state agents also served 13 search warrants at the health department and five other Oklahoma City locations on that day. They arrested the commissioner for violating a federal statute involving theft or bribery from programs receiving federal funding. An investigation of Oklahoma's nursing home industry prompted the arrest. Officials close to the probe revealed that the inquiry centered on "alleged kickbacks" (Hinton, English, & Greiner 2000 1-A). The commissioner solicited bribes from nursing home owners in exchange for information on surprise government inspections (Ellis 2000a; Hinton 2000a). Owners would send patients with serious conditions related to poor care to local hospitals before inspections started. They would also bring in extra medical equipment, housekeepers, and nurses until inspectors left (Killackey 2000a).

After the scandal broke, public concern escalated. Official complaints against Oklahoma's nursing homes increased (Tatum 2000). Reform groups made their presence known. Consider the Oklahomans for the Improvement of Nursing Care Homes – OK INCH. Following the scandal, one member declared "people just don't care about the elderly anymore" while others stated that lawmakers were at fault (Killackey 2000b). In response, Oklahoma lawmakers passed a law designed to strengthen the oversight of nursing homes and deter corruption. This work examines processes leading to the creation of the law. It uses an integrative conflict model of law formation to analyze events leading to the passage of legislation concerning the Oklahoma Health Department

scandal.

CONCEPTUAL FRAMEWORK: THE INTEGRATIVE CONFLICT MODEL

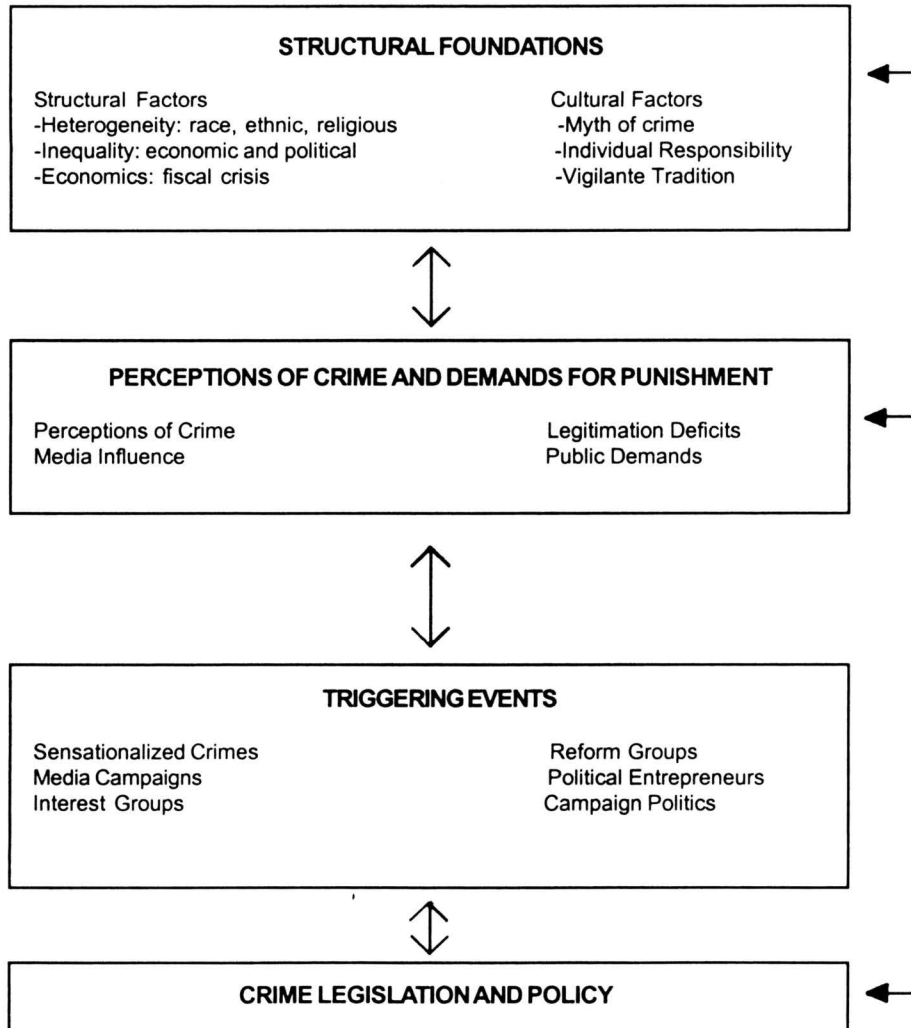
Multiple factors form the integrative conflict model of law formation. Figure 1 indicates that the model operates on three basic levels. These levels include structural foundations, perceptions of crime/demands for punishment, and triggering events (McGarrell & Castellano 1991).

Structural foundations include structural and cultural factors. Structural factors have an effect on lawmaking in a number of ways. High levels of heterogeneity, inequality, and declining economic conditions influence social conflict. With this, the most powerful actors determine what is criminal. In relation to cultural factors, ideological assumptions influence perceptions of criminal behavior. Values of a culture help to shape lawmaking and the efficacy of laws. If the values indicate that a certain behavior is inadmissible, the public will demand restrictions. If values indicate issues surrounding the activity are acceptable, people will tolerate the behavior (Scheingold 1984; McGarrell & Castellano 1991).

In terms of perceptions of crime and demands for punishment, exposure of a deviant behavior creates an elevated sense of public awareness. This leads to public outcries for punishment, which creates a dilemma. It is possible a law exists that addresses the activity. If it does not, lawmakers will face pressure to craft one (Scheingold 1984; McGarrell & Castellano 1991).

Triggering events produce an intense demand for action and new public policy. Triggering events, which can occur simulta-

Figure 1: The Integrative Conflict Model



Note: Figure adapted from McGarrell and Castellano (1991).

neously, include interest group, moral entrepreneur, media, and political activity. They also involve sensationalized crimes and court decisions. Whereas media exposure sets the stage for action, triggering events set the lawmaking process in motion (Galliher & Cross 1983; McGarrell & Castellano 1991).

Unfortunately, analysts have neglected to focus on the integrative conflict model (for exceptions see Castellano & McGarrell 1991; Becker 1997; Oreskovich 2001). This research contributes to the integrative conflict

perspective. It uses news reports and reform group documents to explore structural foundations, punishment demands, and triggering events leading to a new nursing home law following the Oklahoma Health Department scandal.

THE HISTORY OF THE SCANDAL

In early 1999, Oklahoma State Senator Penny Williams, a Democrat from Tulsa, helped to shape a committee to look into nursing home conditions. The task force was

supposed to find ways to cut costs and reduce employee shortages (Peterson 1999a). It was apparent that the main concern was lowering operating costs and increasing the quality of lower level staff. These two goals contradicted each other and problems in the nursing home industry got worse.

News reports discussing severe concerns emerged. The media implied lower level employees, such as nursing aides, were the problem. In March of 1999, articles appeared in the *Daily Oklahoman* revealing that authorities charged four women, some nursing aides, for abuse. The state attorney general's office said the Medicaid Fraud Control Unit of the office was investigating (*Daily Oklahoman* 1999a).

After the reports, the House of Representatives passed a bill that required all of Oklahoma's 80,000 nursing home aides to have state certification (Peterson 1999b). The legislation did not help. It raised tensions between low-level workers and upper-level staff. In August of 1999, an uprising erupted at a nursing home in Atoka, Oklahoma. Employees walked off the job en masse, leaving the administrator, a licensed practical nurse, and a nurse's aide to take care of over 80 residents. The Deputy Health Commissioner Brent VanMeter, the state official in charge of nursing home investigations, indicated concern. A news report showed that the walkout was prompted by low wages and understaffing (Jones 1999).

Other reports were more severe. In November of 1999, authorities found an aide guilty of raping a 75-year-old female resident. The judge sentenced the man to seven years in prison. Coverage of the event showed issues related to nursing home abuse did not only exist on the individual level. News reports indicated that the staff of the home knew about the offense, but failed to report it (Baldwin 1999). In turn, it seemed criminal issues of the industry were not limited to low-level employees. In fact, only a few months later, on May 2, 2000, officials arrested Brent VanMeter. He was the same state official that voiced concerns over the walkout in Atoka the previous year (Hinton et al 2000).

Authorities arrested VanMeter for violating a federal statute involving theft or bribery from programs receiving federal funding. Specific allegations included bribery, Medicaid fraud, and favorable treatment of certain nursing home owners (Hinton et al 2000).

VanMeter, a department employee for 20 years, solicited bribes from nursing home owners in exchange for information relating to surprise government inspections. He used the money to gamble on horse races (Ellis 2000a). Governor Frank Keating ordered Jerry Regier, his Cabinet Secretary of Health and Human Services, to immediately assume the role of interim department commissioner (Hinton et al 2000).

Two days after the arrest, Regier fired VanMeter. He determined that enough evidence was present before a trial even occurred to release VanMeter from his duties. The evidence Regier referred to involved taped telephone conversations between VanMeter and nursing home owners. During a conversation wiretapped by the FBI, VanMeter solicited and demanded payments from nursing home operators. In return, he agreed to back-date documents so a nursing home could receive about \$50,000 in illegal funds (Hinton 2000a).

Ten days after the scandal broke, a federal grand jury demanded the Oklahoma Health Department disclose how its officials influenced legislation for using temporary managers at nursing homes. It appeared that VanMeter was not only allowing information to leak before surprise inspections but also giving inside information to companies that take over nursing homes following government closures. Regardless, news reports indicated that the investigation was not just for VanMeter. Nursing home owners such as E.W. "Dub" Jiles of Oklahoma City and John Smart and Jim Smart of Wewoka were under review (Clay & Ellis 2000).

The ongoing investigation revealed that several health department employees received pay but did not perform any work. These "ghost workers," which included former state politicians, a used car salesman, and a college student, were all tied to the health department scandal (Killackey 2000c 1-A). Considering the impact of the scandal, state officials quickly adopted House Bill 2019 in the summer of 2000. The legislation provided more than \$260 million in state and federal money for health care in Oklahoma. It set out a plan for improvements in nursing homes by adding more structure to the oversight process. It also enabled nursing homes to increase wages and staffing, and allow the state health department to hire additional nursing home inspectors. The bill also made

Table 1: Nursing Home References by Category

Issue	Number	Percentage
Structural Foundations	11	2
Perceptions and Punishment Demands	172	35
Triggering Events	275	56
Legislation	31	7
Totals	489	100

Note: Numbers based on rounding methods.

it a felony for any health department worker to accept anything of value in return for information and favors relating to nursing home services (Greiner 2000a).

METHODS

The Examination of Articles

This analysis used documents produced by the Oklahomans for the Improvement of Nursing Care Homes - OK INCH. However, the primary data involved a content analysis of Oklahoma's statewide newspaper, the *Daily Oklahoman*. Using Newsbank's online records as a search tool, this project focused on articles using the search term "nursing home" (for elaboration see Newsbank 2002). It examined articles from January 1, 1999 to December 31, 2001, focusing on events relevant to nursing home lawmaking. This includes the years prior to, during, and after the Oklahoma Health Department scandal. The search revealed 1,745 articles. A review of each article provided insight on themes. It was not necessary to include all articles. The excluded articles focused on topics including obituaries, guidelines for census procedures, flu shots, and community fundraising. Table 1 identifies 489 newspaper articles about nursing homes that were relevant to this study.

Content Categories

In relation to the integrative conflict model, the first category included 11 articles (2%) on structural foundations. In this research, this included articles looking at age as a structural factor and perceptions of the elderly as a cultural factor. The second category included 172 articles (35%) on perceptions of crime and demands for punishment. Any article focusing on the exposure of nursing home problems fell into this category. This included articles questioning existing regulations and articles discussing public demand for new regulations. The third category in-

cluded 275 articles (56%) involving triggering events. This involved articles focusing on political entrepreneurs, moral entrepreneurs, political campaigns, interest groups, and reform group activities. Articles discussing specific criminal acts in nursing homes and subsequent articles covering these acts were also included. The large count for this category reflects the broad definition of triggering events provided in the literature (see McGarrell & Castellano 1991). The final category of legislation focused on articles covering laws proposed and passed in the nursing home law formation process. This included 31 articles (7%).

GENERATING LEGISLATION FOLLOWING SCANDAL:

THE INTEGRATIVE CONFLICT MODEL AND NURSING HOME LAW

Oklahoma's Health Department scandal had a significant impact on the state and its people. The most significant impact involved legislation passed following the scandal to improve the nursing home industry and deter criminal behavior. Regardless of the scandal's impact, the process of lawmaking involves more than the influence of one event. Explaining the passage of legislation involves multiple factors. This section will analyze those factors with the integrative conflict approach.

Structural Foundations

Structural factors. Advancements in technology have decreased death rates and increased the number of elderly (Riekse & Holstege 1996). Consider the last century. In 1900, the elderly population was 3,080. In the year 2000, it was 34,991,753 (U.S. Census Bureau 2001a). Americans can now expect to live until they are 77, and in the year 2025, life expectancy will reach 81 (U.S. Census Bureau 2001b). These structural changes set the stage for changes in elder

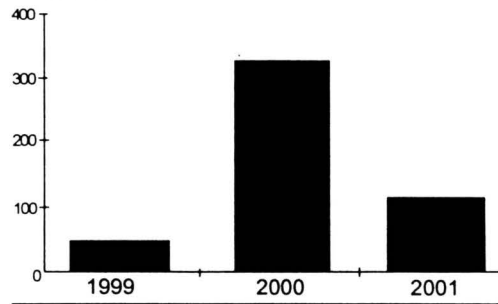
care. This study shows they are also influencing government policy.

News reports examined from the *Daily Oklahoman* focused on structural factors before the health department scandal occurred. In early 1999, a news report indicated one rural Oklahoma community, Alva, was tired of watching their aged population move away in search of housing for seniors. Aware of age as a structural factor, the city built their own long-term care facility (Bittner 1999). Another report revealed that the number of elderly would soon exceed the number of children and that issues of elder care should be not be overlooked (Peterson 1999c). Reports in the *Daily Oklahoman* also explained the increased need for elderly housing (Peterson 1999d; Cato 2000). In turn, it seems the people in the state of Oklahoma were aware of structural factors and nursing home issues even before the Health Department scandal. However, acts relating to cultural factors can make us question their level of concern.

Cultural factors. Continued reports of nursing home crime appeared in the *Daily Oklahoman* following the passage of House Bill 2019. It is possible to attribute the lack of efficacy surrounding House Bill 2019 to cultural attitudes of the aged. For decades, analysts have explained that our culture emphasizes the quality of youth and expects the aged to play a decreasingly active role in social life (see Tuckman & Lorge 1953; Drake 1957; Perril 1963; Weinberger & Millham 1975). These cultural perceptions lead to misconceptions concerning the elderly and help to develop the dominance of negative stereotypical images of the aged (Palmore 1990). With this in mind, it is possible to argue that cultural attitudes devalue the aged.

Consider that only one letter to the editor concerning nursing homes appeared in the *Daily Oklahoman* during 1999. The letter discussed nursing homes in relation to Medicaid costs. No discussion of fraud or abuse occurred. However, the number of letters to the editor did increase substantially in the year 2000. Part of this increase is attributable to the exposure given to the health department scandal. However, many of the articles defended the actions of the industry and downplayed the significance of the scandal. One contributor demanded to know "when will the witch-hunt end" (Sparks 2001 6-A). Another explained the occurrence of

Figure 2: Articles Referencing Nursing Homes



fraud was only natural because of the "pitiful reimbursement rates" provided by the federal government (Ames 2000 9-A). Those who did criticize the abuse of the aged were often repeat contributors (see Bennett 2000a, 2000b). These findings indicate a sense of apathy surrounding the treatment of the elderly and care for the aged in Oklahoma regardless of atrocities uncovered through the scandal investigation. Though structural factors concerning the aged and housing for the elderly set the stage for nursing home legislation, there does not seem to be a consensus of cultural values indicating new laws were absolutely necessary.

Perceptions of Nursing Homes and Crime

Views of nursing home problems. Issues surrounding nursing homes before the health department scandal were oriented toward low level staff. News reports indicated the largest concern to be staff training. The *Daily Oklahoman* had a series of articles dealing with a bill focused on certification requirements for nursing aides. The House Human Services Committee passed the bill unanimously requiring 75 hours of training time and supervised work for all nursing aides (Peterson 1999b, 1999e). Reports of criminal activities focused on lower level staff as well (*Daily Oklahoman* 1999a, 1999b; Jones 1999).

Media influence and legitimation deficits. Figure 2 indicates that in 1999, 48 articles on nursing homes existed in the *Daily Oklahoman*. In the year 2000, the year of the scandal, 319 articles focusing on nursing homes existed. In the final year reviewed, 122 articles were present. The reports from the *Daily Oklahoman* were predominately negative following VanMeter's arrest. They painted a critical picture of the industry. Reports indicated

that the health department manipulated inspections for years, and one-eighth of nursing homes were on a watch list (Killackey 2000d; Ellis 2000b). These reports aided in the perception that the government was not doing enough. They shifted concern away from low level staff to issues concerning owners and state officials.

Other reports increased awareness by providing information. The reports detailed how to choose a good nursing home, demographic data on who lives in nursing homes, and a description of the nursing home resident bill of rights (Killackey 2000e; *Daily Oklahoman* 2000a, 2000b). One article even provided the hotline telephone number for complaints (Killackey 2000f).

Public demands. Following the presentation of the information, the number of complaints given to the health department increased. By the end of May 2000, complaints quadrupled (Tatum 2000). In early 2001, a backlog of 800 complaints were waiting to be reviewed (Killackey 2001a). Regardless of the aforementioned limited interest from the public by way of letters to the editor, families of nursing home members demanded improvements. In this study, one report indicated complaints went from 989 in 2000 to a projected 4,000 in 2001 (Killackey 2001b).

Triggering Events

Sensationalized criminal behavior and media campaigns. When coupling the occurrence of the scandal with media coverage of nursing homes following VanMeter's arrest, a powerful call for legislative action is evident. With the integrative conflict perspective, the emergence of crime legislation is rarely the result of a fully developed legislative program. It is more often the result of the media sensationalizing particular crimes and bringing issues surrounding the crime to public attention (McGarrell & Castellano 1991). Thus, VanMeter's heinous crime and subsequent media attention acted jointly as triggering events helping to produce a new nursing home law. As a headline from an Oklahomans for Improvement of Nursing Care Homes newsletter stated: "The Stage is Set for Real Reform" (OK INCH 2000).

Reform and interest group activities. Here we can consider news reports involving reform groups. Even before the scandal broke, these groups were active. In the summer of 1999, one article detailed the activities of the

state Council on Aging. The group, headed by long time activist Bill Anderson, was pressuring the Oklahoma Health Department to evaluate its internal activities before the VanMeter incident. The Council on Aging was also pushing for increased levels of staffing in nursing homes. Anderson explained that his group had been lobbying the state legislature for several years to increase requirements for staff ratios but continued to be unsuccessful (Peterson 1999f).

Following the scandal, pressure from reformers intensified. Consider the work of Oklahomans for the Improvement of Nursing Care Homes - OK INCH. News reports for this research indicated that this group worked hard to pull together stories related to the worst nursing home complaints on record to increase public concern. One member, Monty Boxell, argued that lawmakers needed to accept some of the blame. She stated, "I wish our legislators would spend a month in a nursing home" (Killackey 2000b 4-A). Other influential groups, such as the Silver Haired Legislature, a body of 22 senators and 44 representatives, pushed for changes in nursing home law. The group, which since 1981 has evolved into a major advocacy group, submitted five bills to Oklahoma's legislature in the year 2000. One of the bills actually laid the foundation for House Bill 2019 (Killackey 2000g).

Though nursing home reform groups had a considerable influence, interest groups had just as much. Reports for this study showed that the nursing home industry funneled over \$300,000 into political campaigns from 1995 to 2000. Scott Adkins, a Republican legislator from Broken Arrow, received \$14,850 since 1995. Coincidentally, he authored a bill to eliminate the state fire marshal's role in making fire safety inspections of nursing homes. The breakdown of contributions did not fall along party lines. State Representative Mike Mass, the chairman of Oklahoma's Democratic Party, even received \$5,800 from the nursing home lobby (Greiner, English, & Hinton 2000).

The leading lobby group for the industry is the Oklahoma Nursing Home Association - ONHA. Reports for this research indicated that ONHA spent over half a million dollars on political related activity from 1997 to 2000. They showed that previous numbers relating to contributions from the nursing home lobby were underestimates. Consider that

in 1998, ONHA alone spent \$319,761 on activities related to politics and lobby efforts. The ONHA executive director stated money spent was

a reflection of us trying to get our rates up in nursing homes and trying to take care of the severe financial problems affecting the viability of the industry. (Ellis 2000c 9-A)

The struggle for power between reform and interest groups peaked in 2001. One year after the Oklahoma Health Department scandal, a group designed to discuss long-term care options for the elderly was still meeting. The Continuum of Care Task Force included nursing home owners, bureaucrats, and advocates. The nursing home lobby was running the group. One physician from Tulsa quit the group in the summer of 2001. She claimed that the nursing home industry was dominating the Continuum of Care Task Force's activities. In fact, reports for this work showed that nine of the 27 task force members had significant ties to Oklahoma's nursing home lobby (Killackey 2001c).

The situation became so intense that one reform group, A Perfect Cause, sent a letter to Governor Frank Keating demanding resignations. In addition, they voiced concern that many of the members on the committee that owned nursing homes had facilities with deficiencies well below the national average (*Daily Oklahoman* 2001a). Despite the exposure of corruption and abuse in Oklahoma's nursing homes the previous year, it appeared that the nursing home owners were still in control. The power of reform groups was waning. Almost two years after the scandal, OK INCH discontinued their educational meetings held four times a year. Their newsletter explained that for fourteen years they had many members and friends. It implied that they hoped their efforts were not wasted (OK INCH 2002).

Political entrepreneurs and campaign politics. Oklahoma State Senator Penny Williams, a Democrat from Tulsa, discussed the nursing home scandal and its implications with the *Daily Oklahoman* after Van-Meter's arrest. She pointed out that she was grateful that the scandal occurred because it allowed for needed reform to continue occurring in the state (*Daily Oklahoman* 2000c). However, other Democrats involved in the

scandal could not claim its benefits. The ghost employee issue involved in the scandal created benefits for Republicans looking for Democratic flaws. Many of the alleged employees taking pay without work had connections to the Oklahoma Democratic Party. One news report indicated connections between the party and the scandal would significantly influence campaign politics (*Daily Oklahoman* 2000d).

Democrats complained that the scandal was less about reforming the industry and more about politics. Mike Mass, Oklahoma's Democratic Party leader, explained that the governor wanted his interim Department of Health Commissioner Jerry Regier to target problems relating to Democrats. He was referring to ghost employees. Mass implied that the targeting of ghost workers was ironic since many of them were connected to the Democratic Party. He exclaimed that Regier

went into the health department and in two days, his focus was off nursing homes... he quickly shifted focus to the Democratic Party. (Greiner 2000b 3-A)

Governor Keating stated that

Mike Mass needs to join the cleanup, not contribute to the cover-up... I really don't have any influence over him, but I suspect he will regret the day he took a stand for corruption and waste and against the determined efforts of Secretary Jerry Regier to clean up this mess. (Greiner 2000b 3-A)

Regardless of political debates, one politician reaped serious benefits from the scandal – Brad Carson. Reports related to Carson first emerged concerning a Democratic primary runoff for the U.S. 2nd District congressional seat. Carson defeated his opponent, Bill Settle, with 57 percent of the vote. Settle had support from the ONHA while Carson did not (Hinton 2000b). In fact, Carson criticized the nursing home industry and then eventually won the overall election. In February of 2001, he spearheaded a move to get federal investigators to start new investigations into the Oklahoma nursing home industry. Using the Oklahoma Health Department scandal to his advantage, he stated that his agenda was to

make this not the last, but instead only the

first step in a personal crusade to make sure we take better care of those loved ones when they are at the last stages of their lives. (Casteel 2001 1-A)

The *Daily Oklahoman* (2001b 10-A) explained that Carson was merely "carrying out a campaign promise" to reform nursing homes in his state.

CONCLUSIONS

On October 11, 2000, jurors began hearing testimony on acting Oklahoma Health Department Commissioner VanMeter's illegal actions (Clay 2000a). The following day, jurors heard FBI tapes in which VanMeter discussed payments and sexual promiscuity with nursing home owner Jim Smart. On the tapes, VanMeter demands "2%" to fix some of Smart's problems. This was followed by a conversation about getting together to "whore around a little" (Clay 2000b 1-A). A few days later, the jury found VanMeter and Smart guilty of bribery (Clay, Ellis, & Killackey 2000).

The judge sentenced both VanMeter and Smart to three years in prison and fined them each \$50,000. Smart, whose net worth before the sentencing was \$9 million, simply paid his fine on the spot. VanMeter denied he did anything wrong. He stated that the comments heard on the FBI tapes were him only joking around. Esther Houser, long-term care ombudsman for the Oklahoma Department of Human Services, stated that VanMeter had some time to find out what it was like to be confined to a nursing home. She stated,

This now gives Mr. VanMeter some measure of comparison...He won't be in charge or have control over his day's activities - someone else will. (Clay & Killackey 2000 1-A).

VanMeter and Smart entered federal prisons in January of 2001 to begin their sentences (Killackey 2001d).

This analysis examined processes contributing to nursing home legislation in relation to the Oklahoma Health Department scandal. Findings indicate more than a heinous crime led to a recent Oklahoma nursing home law. They reveal the significance of structural foundations and media influence. Recent nursing home legislation in Oklahoma seems to be a result of an increase

in the aging population, media exposure to nursing home issues, and interest group influence. The efficacy of the legislation remains questionable considering cultural issues concerning the elderly and continuing reports of substandard elder care in Oklahoma (see Killackey 2002a).

Legislation on nursing home problems continues to focus on nursing aide training just as it had before the scandal (Killackey 2002b). This gives the impression that strict penalties connected to nursing home crimes, in the wake of the Oklahoma Health Department scandal, were more symbolic than instrumental. As Gusfield (1967 177) explains, often the state appears to be "utilizing law to proclaim one set of norms..." and using "another set of norms" in actually controlling behavior.

Regardless of efficacy issues, the findings of this analysis add to literature examining the origins of law (see for example Sutherland 1924; Becker 1963; Chambliss 1964; Taylor, Walton, & Young 1973; Galliher & Cross 1982, 1983; Cross 1991; McGarrell & Castellano 1991). They specifically build on the integrative conflict model in several ways. First, they extend the model to include issues specifically related to elder care law. Second, though findings are limited to this study, they provide a seminal foundation for the origins of law considering age as a structural factor. Third, the findings indicate that the lack of effectiveness surrounding laws to protect the aged may be limited based on cultural perceptions of the elderly.

Analysts should continue to use other methodologies to explore lawmaking processes in elder care. It would be beneficial to review the lawmaking process in terms of national laws regulating care for the aged. It would also be interesting to examine legislation on other forms of elder care besides nursing homes. Options such as assisted living and home health care are increasing in popularity (Montgomery 1992). As elder care laws continue to evolve and the elderly population rises, analyses involving the origins of law shaping these industries will be important.

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