THE MODERNIZATION AND REFORM OF THE OKLAHOMA JUDICIARY

PHILLIP SIMPSON
Cameron University

Between 1964 and 1970 trauma and fundamental change swept through the Oklahoma judicial system. In a state not known for its modernizing and reforming impulses, Oklahoma developed the outlines of a modern and effective judiciary. The state court system that prevailed when the scandals of 1964 broke into the open is not at all the state court system we have today. A political and historical analysis of that tumultuous period in Oklahoma judicial history will tell why court reform succeeded then when reform so often fails in Oklahoma. This paper examines the early judiciary and its critique, the push for judicial reform, the Supreme Court scandal of the 1960s, and the eventual reform of the Oklahoma judiciary.

THE ORIGINAL OKLAHOMA JUDICIAL SYSTEM

The judicial system for the new state of Oklahoma, established in the constitution of 1907 and by statute in 1908, retained many of the features of the court system of the Territory of Oklahoma (Gray 1910). This system remained essentially in effect until the new judicial articles were put in place in 1969 (Casey 1989). The first Oklahoma court system was decentralized, democratic, and prone to proliferation.

Though the state Supreme Court was given the power to superintend the state's judiciary, it was the legislature in the beginning and throughout the pre-reform period which played a central if not dominant role in judicial management. Given the politics of the state and the press of the democratic-populist political culture, this resulted in the evolution of a scattered and decentralized judicial system based upon the principle of local control. The democratic impulse was hard to resist in 1907 and it infused Oklahoma's government, including its judiciary. The Oklahoma Constitution "included most of the instruments of direct democracy that spoke to the delegates' faith in popular government" (Scales and Goble 1980). As figure 1 indicates, direct popular election on a partisan ballot was the central feature of judicial election in the state, a form not

to be changed until the 1960s. Even the clerk of the state Supreme Court at first was directly elected.

Democratization and decentralization led to proliferation and the unplanned and uncontrolled growth of various courts with multiple and often conflicting jurisdictions. The legislature was the driving force behind this proliferation, and it appears that log-rolling created local courts as individual legislators or delegations responded to local needs and pressures. The beginning of this proliferation could be seen in 1909 with the creation of superior courts. Established in counties of thirty thousand or more, these courts were limited to a county but had the same civil and criminal jurisdiction as the district and county court except for probate (*Revised Laws* 1910; Ch. 20:471). The need for judges could easily have been handled by increasing the number of county or district judges and by controlling workload and dockets. The legislature also followed its constitutional mandate and created a bifurcated court of last resort. It established a State Supreme Court with final power in civil matters and a Criminal Court of Appeals with final powers in criminal matters (*Revised Laws* 1910; Ch. 18:459).

THE OKLAHOMA JUDICIARY: AN EVALUATION

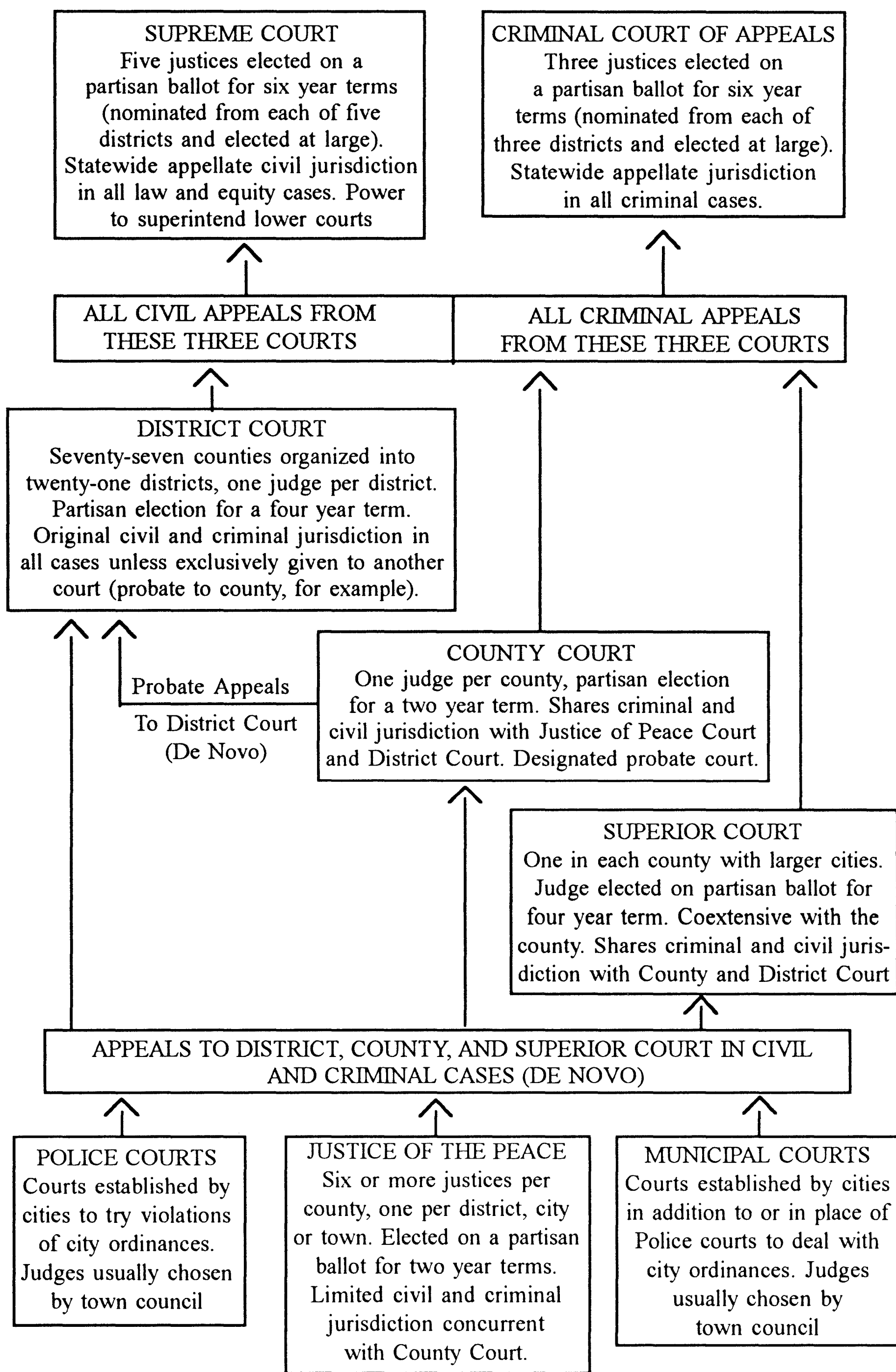
LAW REVIEW ANALYSIS

In 1951 the editorial staff of the *Oklahoma Law Review* (*Oklahoma Law Review* 1951) gave an excellent overview of Oklahoma's pre-reformed judiciary. This presaged the law school's leadership in developing the political and intellectual push for change in the system. The analysis compared Oklahoma's judiciary to the 1937 American Bar Association (ABA), minimum standards (Vanderbilt 1949). The 1951 evaluation of Oklahoma's judicial systems by ABA standards had several points of interest here.

Judicial Personnel: Judicial Selection, Conduct, and Tenure

The ABA strongly endorsed the Missouri plan of selection "which provides essentially for executive appointment of judges from a panel of three submitted by a non-partisan commission"; judges must then face voters in periodical non-partisan judicial retention in elections (*Oklahoma Law Review* 1951:252-3). The *Oklahoma Law Review* staff was highly critical of the partisan and political nature of state judicial selection. Given first and second primary requirements, Oklahoma judges could face three partisan elections. The ability to

FIGURE 1



raise funds and wage a winning campaign probably had "little relationship to judicial competency." The law review staff cited the ABA Canon of Judicial Ethics prohibiting judges from engaging in partisan politics and pointed out that Oklahoma judges "often make political speeches and hold membership in partisan political committees. . . and have campaigned for non-judicial office without resigning from the bench" (*Oklahoma Law Review* 1951:253).

Managing the Business of the Courts

The ABA model plan called for three major policies: (a) "a unified judicial system with power and responsibility in one of the judges to assign judges to judicial service so as to relieve congestion of dockets," (b) "judicial councils should be strengthened with representation accorded the bar and judiciary committees of the legislature," and (c) "quarterly judicial statistics should be required" (*Oklahoma Law Review* 1951: 255-7). In a broadside on state judicial structure that went far beyond the issues raised by the ABA, the staff described the uncoordinated "jungle" which had been developed in the state:

> The Court of Common Pleas and the Superior Court are the result of the haphazard growth of the judicial system in Oklahoma... there is duplication of jurisdiction, delay, excessive cost and waste of judicial manpower... these courts work with a great deal of independence without regard to the system as a whole... the Superior Court of Common Pleas should be abolished... (*Oklahoma Law Review* 1951: 256).

Rule-making: The Judicial Regulation of Procedure

The ABA recommended that "practice and procedure in the courts should be regulated by rules of court; and that, to this end, the courts should be given full rule-making power" (*Oklahoma Law Review* 1951:259). The law school staff wrote that "in the field of judicial administration the Supreme Court of Oklahoma has been most delinquent and the Legislature most active" (*Oklahoma Law Review* 1951:260). The Supreme Court had full rule-making power but had failed to assert it.

The Selection and Service of Juries

The ABA recommended "selection of jurors by commissioners appointed by the court" (*Oklahoma Law Review* 1951: 262). This system was designed to

minimize political influence and to raise the quality of juries. On this point, the law school staff disagreed with the ABA and asserted the commissioner system was inadequate. Oklahoma moved from the commissioner system to the jury wheel system in 1949. The wheel system randomly selects jurors and yields a representative sample, while the commissioner system selects a higher quality but less representative jury. The wheel system is still in use.

Trial Courts of Limited Jurisdiction

The ABA called for the abolition of the justice of the peace (JP) system and the upgrading of judicial professionalism for the lowest level courts. The law school staff agreed that the JP system should be abolished in Oklahoma. This step was taken in the 1960s reform (*Oklahoma Law Review* 1951:267-271).

Trial Practice

The ABA proposed that more power be given to the trial judge to control the conduct of the trial and thereby reduce the tendency to use the trial as a "sporting contest" (*Oklahoma Law Review* 1951: 369-71).

Appellate Practice

Finally, appellate practice was compared and Oklahoma's judicial system was given mixed reviews regarding procedure. For example, dollar limits should be placed on appeals, according to staff, so that the appeal would not cost more than the case involved. The time, labor, and costs of appeals should be reduced and their efficiency should be enhanced (*Oklahoma Law Review* 1951:381- 409).

Oklahoma made halting progress in some of these areas after 1951. However, the 1960s saw wholesale reform, as state policy makers responded to both scandal and a general push for change.

DEAN SNEED'S EVALUATION

A second critique of the pre-reformed Oklahoma Judiciary came from Dean Earl Sneed of the University of Oklahoma Law School. He stated: "Why in the world is Oklahoma continuing with such an ancient, creaky, inefficient, outmoded, complicated, costly, and antiquated judicial system — a system that was

not good in 1907, and has grown progressively worse in the fifty-eight years since statehood" (Sneed 1965:7).

The first problem, as he saw it, was the justice of the peace system. This system was a good example of the "denial of due process on the criminal side that is inherent in the fee system court." Sneed stated that JP means " judgment for the plaintiff." (Sneed 1965:8).

Sneed also had harsh criticism for the "jumble" of courts that had become the middle layer of the crazy-quilt Oklahoma system:

> In 1954, I asked my research assistant, a young man from Walters named Fred R. Harris, to prepare a "short" synopsis of the Oklahoma court system. Now Fred Harris is an exceptionally smart young man. He even began to part his hair in the middle, like his Dean and then boss. Fred produced seven pages of legal size, single spaced material with just the most basic facts about our court system. It would have been longer, but I told Fred that because of the virtual impossibility of the task, he should omit any detail about police and municipal courts and courts of specialized jurisdiction such as the juvenile court in Tulsa County, and that he should just mention the superior courts in Oklahoma. And of course, since Fred did that work in 1954, we have created small claims courts, the children's court in Oklahoma County, the aforementioned special session courts, and city courts. I have added three more pages to Fred's work (Sneed 1965:10).

At the appellate level, Sneed focused on the method of selection, judicial salaries, the lack of a court administrator and the need to centralize rule-making power in the Supreme Court. Sneed proposed to amend the Oklahoma constitution and replace the existing system with one modeled on an ABA plan (*Oklahoma Law Review* 1965:11-18). This model, with revisions, became the "Sneed Plan" for court revision which was placed before the voters in the late 1960s and which prodded the legislature to act on reform.

THE SCANDAL

In the mid 1960s, a Supreme Court scandal rocked Oklahoma politics and the state's judicial community. From the mid-1930s to the mid-1950s, one Oklahoma supreme court justice, N.S. Corn, and possibly four others (Earl Welch, N.B. Johnson, Wayne Bayless, and W.A. Carlile) took bribes to deliver Supreme Court votes, culminating in one huge bribe of $150,000 in 1956 in the Selected Investments case.

Justice Corn confessed that he shared bribes with fellow justices, the most notable being $7500 to Justices Earl Welch and N.B. Johnson. Corn testified that he had received $150,000 in one case. One attorney, a friend of Justice

Corn's for 50 years, had established a pattern of bribery since the 1930s (Hall 1967:417-418).

Justice Corn was sentenced to 18 months in prison in July, 1964. The income tax evasion trial of Justice Earl Welch was tried in mid-1964, and the impeachment trial of N.B. Johnson by the state legislature took place in mid-1965. Nap Johnson was impeached in March, 1965, by the House and convicted in a close vote by the State Senate. Welch was convicted and given a prison sentence (*The Daily and Sunday Oklahoman* April, 1964 - May, 1965; *Lawton Constitution* 28 April 1985:12A).

The scandal hit the Oklahoma Bar Association very hard. Many in state government blamed the bar for the scandal, citing the cozy relationship between it and the courts. As a result, the OBA appointed a special three person committee and supplied staff to investigate the Supreme Court. The Supreme Court gave this committee complete subpoena power. Governor Henry Bellmon appointed a "watchdog" citizen's committee to review the bar findings. The bar committee issued two short reports and one longer and more detailed report of its findings. The Bar committee heard 51 witnesses from November to January, 1965. The final report of Governor Bellmon's Citizen's Committee endorsed the OBA Committee work, and the American Bar Association gave the OBA an Award of Merit. The bar felt it had faced up to the challenge and "cleaned its own house." This included disbarment of several justices and attorneys and additional forced resignations from the bench. Further, the bar announced the creation of a "Standing Committee on Judicial Performance" to hear complaints. The OBA also renewed its support for the five-point legislative program adopted by its delegates in 1964: a court on the judiciary, a modified Missouri plan of selection, a general sessions court to replace the JP, a district attorney system, and a court administrator (*Oklahoma Bar Association Journal* 1965:215- 217; 601-615; 703-704; 1507-1514). Indeed, the OBA had been moving toward reform in the early 1960s before the scandal. The bar had joined forces with the law schools (Dean Sneed, for example) to hold conferences on reform and to build the Oklahoma Institute of Justice, a communication net to analyze reform issues.

OKLAHOMA GETS JUDICIAL REFORM

Calls for reform were heard all over the state as the scandal ran its course (Hays 1970). This was especially true in the metropolitan press. For people in the bar and law schools, this was "I told you so time", as they pressed forward with long advocated reforms. Many expected quick action in the 1965 legisla-

ture, but the only progress made was with the court on the judiciary. The Court on the Judiciary was voted down in 1964 but adopted in 1966 (*Oklahoma Elections: Statehood to Present*, Vol. II, July, 1988: D458-D471). A bill allowing the Supreme Court to create administrative districts and the district attorney system did pass, but reform of judicial selection and tenure failed. An office of court administrator failed to pass the House in the committee of the whole, and a general sessions court and reform of the justice of the peace courts were indefinitely postponed (*Oklahoma Bar Association Journal* 1965:1229).

The legislature failed to act for two basic reasons. Many legislators simply did not support reform, especially the Missouri plan of merit selection and nonpartisan judicial retention elections. Secondly, House Judiciary Committee chair John McCune decided to do a study of the issue of court reform. He wanted nothing less than a two-year study by the legislature, and warned against instant court reform. With a reputation for interim investigations that the Tulsa press called legendary, McCune launched his study through the vehicle of the Legislative Council (*Tulsa Tribune* 17 May 1965:1-2).

On the opposition side, one had to look no further than the Speaker of the House, J.D. McCarty. The debate on judicial bills in the 1965 session outlined this opposition, and the focus was almost always the method of selecting judges. Saying that McCarty must bear the blame for the death of judicial reforms, especially the Missouri plan and the JP bill, *The Daily Oklahoman* called for McCarty to put the reforms to a vote of the people. McCarty stated that he would rather trust one million voters than a commission, and called the Missouri Plan "asinine and silly". The paper retorted: if the voters are so smart, why not let them choose their system (*The Daily Oklahoman* 20 June 1965:1).

There were Senators who opposed the Missouri plan. Senator Gene Stipe stated that the bar needed reforming, not put in control. The plan would, he said, create "Hitler-type elections, with only one name on the ballot". Senator Young called the plan "the most diabolic scheme ever devised by man in the name of reform." Those supporting the system felt that judges should have to run on their record and not have to raise money to campaign from lawyers who practice in their courts (*The Daily Oklahoman,* 25 June 1965:6, 26 June 1965: 8, 7 July 1965:1).

In March, 1965, Governor Bellmon appointed a commission to study court reform. This was apparently an attempt to bridge the gap on reform as the panel had both Earl Sneed and John McCune as members. Sneed knew what he wanted but McCune did not, and these two later came to political blows over the Sneed plan. Sneed and McCune pretty well tell the tale of court reform from 1965-1968. Sneed, as stated in his 1965 law review article, was ready to go all the way with a petition drive if necessary. McCune wanted more study in the legis-

lature. A race for time developed as it became clear that whoever got his proposal to the voters first would win the court reform fight. Sneed had to go to the voters first for an initiative petition since the legislature itself was not willing to refer his plan to the electorate. That would take time. McCune had to study and study again, then get a legislative majority, and then submit proposals to the voters. That would take time.

The elections of 1966 occurred during all this activity, and the results sent a chilling signal to the anti-reformers. J.D.McCarty was beaten for re-election by a funeral director, and Dewey Bartlett defeated reform opponent Preston Moore for the governorship.

THE SNEED PLAN REFERENDUM

Earl Sneed, Leroy Blackstock, and Clark Thomas formed Judicial Reform Inc. in June, 1966 to organize a public effort behind an initiative petition that would embody the Sneed plan of court reform. The Sneed plan would have four levels of courts: one civil-criminal Supreme Court (the Court of Criminal Appeals would be abolished); intermediate appellate courts; a district court; and magistrate courts to replace JP courts. The Missouri plan would apply to the first three levels although county voters were given the option later of going to a non-partisan plan if they so chose on the district courts. District courts would appoint the magistrates and city courts would be exempt from the Missouri Plan. The Supreme Court would have almost complete superintending power over the judicial system (save for legislative appropriations) much like regents control Oklahoma's higher education (*The Daily Oklahoman* 14 June 1966:13; 19 July 1966:11; 31 August 1966:6).

The Sneed plan, with the help of the Oklahoma City press and the League of Women Voters, was ultimately placed on the ballot in the 1968 primary. The drive was marked by JP inspired legal challenges and spirited community efforts to get names on the petition. Marvin Cavnar, a JP, filed a legal challenge to the effect that the Sneed plan violated the U.S. Constitution by removing the public's right to vote for judges. The state Supreme Court dismissed the suit. Signs by petitioners read: "take judges out of politics, modernize Oklahoma court system, remove stain of court scandals." As the petition deadline neared, pro-Sneed people worked harder, driven by the press, especially *The Daily Oklahoman.* In Oklahoma City and Tulsa, the Parent Teacher Association (PTA) carried petitions in the evening on a "porchlight" drive. The opposition was given time through the spring of 1967 to check the validity of signatures. In late April, 1967, Judicial Reform Inc. won another ballot battle as Secretary of State John

Rogers ruled in their favor. The Supreme Court cleared away the last legal challenges in November, 1967, and Governor Bartlett set the vote on the Sneed reform for September 17, 1968 (*The Daily Oklahoman* 15 June 1966 - 15 November 1967).

THE LEGISLATURE ACTS

The politics of developing the legislative plan was much more complicated than the petition process. One can say a number of things about the legislative process that produced court reform in Oklahoma. The scandal was instrumental in moving the legislature as far as it did; the Sneed plan was forever in the mind of the legislature; and the more liberal Senate forced the issue on a modified Missouri plan for the appellate courts with the strong backing of Governor Bartlett.

Led by John McCune of Tulsa, the Judiciary Committee of the Legislative Council studied and hammered out a court reform proposal by the first half of 1967. The committee held hearings and traveled to Illinois to explore the new court system of that state. By August, 1966, the committee had settled on the Illinois plan of court organization for the trial courts and a court administrator. McCune also felt that the people in Illinois did not want to give too much power over the courts to the Supreme Court. The trial court plan finally became law in Oklahoma: an umbrella district court, one associate judge per county, and special judges chosen by district judges for minor matters (in place of the old JP system). The legislature later decided to keep the bifurcated system of final appeals for Oklahoma after hearing strong arguments from the Court of Criminal Appeals. But it inserted the possibility that intermediate appeals courts could be added by statute, which has been done in the area of civil appeals (*Tulsa World*, 9 July 1966:1; *The Daily Oklahoman* 21 August 1966 - 17 September 1966).

The real issue was selection, with proposals ranging from partisan election to a full Missouri plan. Illinois had a system which combined both — initial selection on a partisan ballot with a retention vote at the end of the term. Oklahoma never really considered this system, and McCune evidently favored non-partisan election of all judges save the special judges. He was forced to compromise with the Senate over the Missouri plan for appellate justices, leaving district and associate justices elective on a non-partisan ballot.

By the end of March, the McCune plan had been sent on to the Senate, where judiciary chairman Robert Gee and President Pro Tempore Clem McSpadden favored some form of the Missouri plan, as did Governor Bartlett. The combined senate-house judiciary committees, working under the Judicial

Council, had actually started a compromise on the issue in the fall of 1966. The conclusion then was to divide the issues for the public into separate referendum on organization and selection — in other words, put both issues up to the public for a vote. This is essentially what happened (*The Daily Oklahoman* 24 September 1966:1-2; 3 December 1966:17).

By April, 1967, Senator Gee and other pro-reform senators were locking horns with Senator John Young and his allies, who had endorsed non-partisan election of all judges. Young won the first round as the Senate backed away from the Missouri Plan. The governor applied pressure on the Senate to restore the Missouri plan for appellate judges, leaving trial judges elective on a non-partisan ballot. Fears were expressed that if the legislature failed to let the voters choose on the Missouri plan, the luster would be lost and the voters would turn to the Sneed plan. With leadership and gubernatorial pressure on the final conferees, a compromise was reached which stuck: let the people vote on organization with a built-in non-partisan election system on one ballot (a white ballot), but then let the voters also vote on a yellow ballot which contained appointment for the appellate court. In other words, the yellow ballot would amend the white ballot if passed, but the yellow ballot would not go into effect if the white ballot failed (*The Daily Oklahoman* 11 April 1967 - 9 May 1967).

What ensued was a McCune-led campaign to sell the legislative package to the voters before they got a chance to vote on the Sneed plan in 1968. The legislature's plan drew support from a wide range of sources, including organized labor and Governor Bartlett. Even the Sneed group endorsed the plan as a first step toward reform. The voter turnout was anticipated to be light as heavy opposition failed to materialize. The strongest opposition came from the JP's, but they had lost most of the battles up to this point. Shortly before the vote, the OBA endorsed the plan, as Jack Hays declared that a bar consensus was behind the legislative referendum. The press felt that the vote would turn on the voters' perception of the scandal — if they saw the scandal as being rooted in how judges run for office, the measures would pass. Both the white and the yellow ballot plans passed in part because of lopsided margins in Tulsa and Oklahoma City (*The Daily Oklahoman* 11 May 1967 - 12 July 1967).

The remainder of 1967 and most of 1968 was spent on debating the Sneed plan and passing enabling legislation under the new constitutional provisions. It was quite clear that Gee and McCune were not going to wait on the Sneed vote in order to put the new judicial system in place; in fact, McCune argued that the Sneed plan should be turned down because the handiwork of the legislature would have to be done all over again if the Sneed plan passed.

In speeches and debates across the state, McCune, Sneed, Gee, and Blackstock laid out the pros and cons of the Sneed plan. In Purcell, McCune

asserted that the plan would create chaos in the court system. In addition, the public would lose its right to elect local judges to an "army" of the governor's commissioners. Young judge's widows could, he said, draw big money under the Sneed plan, the Sneed plan would give the Supreme Court far too much power and take the legislature out of the balance of power picture; the Sneed plan would destroy the needed Industrial Court; and finally the Sneed plan would destroy the Court of Criminal Appeals and thereby put 450 new cases to the Supreme Court (*Purcell Register* 29 August 1968:1). In a Tulsa debate with McCune, Blackstock called voting for judges a myth. Most either get appointed or never draw an opponent; at least under the Sneed plan the voter would always get to vote on the judges's record. He also asserted that the legislature cannot get used to the idea that the courts should run their own business. McCune retorted that the Sneed plan would put so much power in the hands of the court that it could not handle issues like the recent scandal — the legislative check was needed. With the metropolitan press badly divided (Tulsa against, Oklahoma City for) and the public highly confused, the Sneed plan was defeated by a vote of 115,650 to 171,620 (*Tulsa Tribune* 6 September 1968:1; *The Daily Oklahoman* 18 September 1968:1-2).

CONCLUSIONS

One early force for court reform was the flow of judicial modernization theory from national and international sources into the Oklahoma judicial elite (Winters, 1965:115-126). As the legal elite modernized after statehood the older frontier legal order began to change. In the post World War II period the Oklahoma Bar Association made a definite commitment to reform, and by 1964 it had endorsed many ABA judicial administration guidelines, including the Missouri Plan for appellate courts. This period reflects an increasing immersion of the Oklahoma Bar in national bar activities and ideas. As the reform movement of the 1960s developed, several sub-bar groups formed to communicate reform impulses to the public and government, the Oklahoma Institute for Justice and Judicial Reform, Inc. being the two most visible.

The reform process eventually involved the formal structure of state government, public opinion, the mass media, and the political parties. A highly visible scandal on the state Supreme Court served as a strong catalyst for reform and deeply impacted the policy process and communication flow dealing with the issues of judicial reform. A sleeping public was suddenly awakened by the thud of the scandal, and the old frontier paradigm of judicial politics was fundamentally challenged. The bar became the locus for investigating the judiciary,

and legislators became conduits for bar reform proposals. State Representative John McCune of Tulsa was probably the most important of these. Judicial reform became an important issue in the 1966 race for governor, and interest groups such as the League of Women Voters became involved.

Extensive court reform, especially in package form, would have been a real uphill battle in the 1960s without the impetus of scandal. Yet the political process which produced court reform in Oklahoma was a healthy and predictable mix which demonstrates that the state is in the mainstream of state policy development in the country. The new court system comes closer to ABA models and approaches unified court theory, especially at the district court level.

The reform fight in Oklahoma was indeed a clash between democratic and legal subcultures, and these issues were joined in the fight over the Missouri plan in the legislature and in the public debate (both cultures won something). The democratic and traditionalistic subcultures also cross in the judicial system, producing demands on government for public control of the courts without corresponding ability to properly monitor that system. The legal culture has some strong selling points with the public, the strongest one being that almost everyone believes in objective justice in the courtroom.

Finally, the whole process of systemic reform at any level in this country is fraught with danger and difficulty, and success is unpredictable. The process of reform in Oklahoma was fed by the judicial reform movement in the rest of the country during this period, as a stream of ideas, people, and events flowed into the Oklahoma political process, but the scandal congealed the state's commitment to widespread reform.

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