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“Don't Buy Another Vote. I Won't Pay for a Landslide”: The Sordid and Continuing History of Political Corruption in West Virginia

Allen Hayes Loughry II

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"DON'T BUY ANOTHER VOTE. I WON'T PAY FOR A LANDSLIDE."

The Sordid and Continuing History of Political Corruption in West Virginia

By

Allen Hayes Loughry II

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of American University

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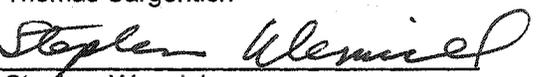
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2003

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**“Don’t Buy Another Vote. I Won’t Pay for a Landslide.”
The Sordid and Continuing History of Political Corruption in West Virginia**

By Allen H. Loughry II, S.J.D.

Abstract

This study documents the long and sordid history of corruption—both perceived and corroborated—in the West Virginia political process. The researcher explores the considerable amounts of money spent by wealthy individuals for election or re-election. It documents the effect of high-cost elections, an effect which in many instances has spawned criminal activity. The author relates ostensibly ceaseless measures of corruption at the executive, legislative, and judicial levels. The findings indicate the existence of problems in West Virginia politics since the State’s inception in 1863, including vote buying, vote rigging, undue geographical barriers, and lawlessness leading to numerous declarations of martial law. The research chronicles a weak, ineffectual Ethics Act as well as a lack of statewide prosecutorial power and illuminates a lack of accountability for numerous criminal actions. The data attests that the ongoing practice of corruption has not been confined to one level of government as city, county, state, and even federal candidates have been subject to well warranted scrutiny including the nationally pivotal 1960 West Virginia Primary involving victorious candidate John F. Kennedy, Jr. The author examines *Clean Money* legislation as one potential avenue to reform providing that no reform will be successful without the elimination of the many advantages available only to incumbents. The researcher obtained information from books, magazines, state and federal cases, national and state newspapers, personal interviews of current and former candidates, elected officials, campaign workers, and citizens. Moreover, the author garnered information from his personal employment history in a governor’s office, a United States Congressional office, two state supreme courts, a county prosecuting attorney’s office, his work as a Senior Assistant Attorney General, as well as his experiences in campaign work on the county, state, and national levels. The principal initiative of this body of work is to serve as an educational tool promoting a grass roots effort to clean up the State’s unfortunate political problems and mitigate voter apathy and cynicism.

PREFACE

The greatest price of refusing to participate in politics is being governed by your inferiors.

–Plato,
The Republic

Few will have the greatness to bend history itself, but each of us can work to change a small portion of events and in the total of all those acts will be written the history of this generation.

–Robert F. Kennedy

From the rushing waters of Blackwater Falls to the healing waters of Berkeley Springs—West Virginia is a breath of fresh air that breathes life into the very soul of all who experience her. From its rolling green hills to its majestic State Parks, it is easy to see why the State is known as “Wild, Wonderful West Virginia.” People all over the world have heard of the State through John Denver’s *Country Roads*, which begins, “Almost Heaven, West Virginia.” In spite of its wealth in beauty, the citizens of West Virginia have been subjected to never-ending political corruption and money dominance of government that have pervaded the culture of national, state, and locally elected officials.

People of the State are known as Mountaineers. A Mountaineer, by definition, is not only a native of a mountainous region, but also one who climbs mountains. West Virginians are a strong, hard working, proud people who have emerged from the dark and dirty coal mines and have risen to the top of the Blue Ridge Mountains. They deserve better from their government.

West Virginians have a cynical view of politics and after reviewing the history of political corruption in the State it is not hard to see why. If political corruption were an Olympic event, West Virginia would be a strong contender for the Gold Medal. Notwithstanding such a dismal past, recognizing and accepting the State's history of plutocracy and corruption help provide the impetus and framework for reforming our politics.

Nonetheless, there is much good to build on in West Virginia. With the countless examples of corrupt politicians throughout West Virginia's history, the State has also had its share of nationally recognized and exceptional politicians who have worked diligently to improve the lives of many of its citizens. For instance, United States Senator Robert C. Byrd has been a champion for constitutional rights while former United States Senator Jennings Randolph authored the twenty-sixth amendment to the Constitution which gave eighteen-year-olds the right to vote.

Corrupt politicians are not unique to West Virginia as many other states have seen their fair portion of elected officials spending time in federal prisons. I often try to imagine the opportunities that have been lost by citizens of West Virginia in so many areas of concern such as education, health care, and infrastructure as a result of a long line of corrupt elected officials. The people of this State who proudly

call themselves Mountaineers have not been truly free from the depredations of political and financial corruption.

I grew up near Parsons, West Virginia, a town of approximately 1,200 people. Recently, while visiting my parents, I also revisited my past by going through drawers and boxes that still hold childhood memories and mementos of school accomplishments. I could not help but feel the veil of pride being lifted as I sifted through piles of certificates presented to me by numerous West Virginia elected officials for my participation in activities such as school fairs, sports, and graduation. Now, as a state taxpayer, I realize that I have joined the ranks of the generations before me who paid for such campaigning tools cleverly disguised as tokens of recognition. As a voter, I wonder who I have helped keep in office who was using my hard earned money to pay for, not only certificates, but also pill boxes, combs, pencils, magnets, and key chains.

Moreover, throughout the many years that I have been involved with West Virginia politics, I have heard the plea from teachers who requested salary increases, more money for adequate computers, and other progressive educational supplies for their classrooms. I have learned of the issues surrounding a failing healthcare system, a worker's compensation system that has plummeted to a debt of billions, and a state retirement system in distress.

As I drive the picturesque country roads outlined with redbud and aging hardwoods, my attention is drawn to the potholes and general signs of neglect from town to town. When I hear of schools that struggle to provide adequate heating and air conditioning or meet even the most basic safety requirements for their students,

I question why we continue to have no money for these necessities, however, we can spend a staggering amount of valuable tax dollars on certificates and trinkets for these children.

It is time to re-examine the basic assumptions of our campaign financing laws and consider election reform in general. We often talk of empowerment of the people and nothing empowers people more than effective voice in government. But how do you tackle such an immense problem in a state that has been plagued with corruption since its beginnings? Before confronting the issue or even the question itself, one must understand the events surrounding the State's inception, the circumstances of its people and the effect of geography on its political growth.

As will be explained throughout this book, West Virginia has had an interesting past to say the least. For a State that broke free from Confederate Virginia and took a stand against slavery, it is ironic that it began enslaving its own. The owners of the early coal companies became like the plantation owners of the South, keeping workers uneducated, underpaid and isolated, while at the same time, controlling elections and even the very culture of its people.

West Virginia is unique in that it is the only state to be completely within the boundaries of the Appalachian Mountains or "Appalachia." It's very geography, in addition to the fact that there was no infrastructure in place, was what made the State such a beautiful and untouched haven for those who traveled there to start a new life. Unfortunately though, the land made the isolation of its people all too easy for the lingering control by coal companies. And since the coal barons controlled

everything in that era, even the elections, promoting roadways and development in order to decrease alienation was not an important issue on their agenda.

But it is the very history of the State that is the reason why it should take the lead in the reform process. To go from being one of the worst to one of the best in the nation would be the greatest way to prove that true change can occur. The fight to reform the role of money in campaigns will not revitalize the democratic process overnight, but the end result, once the big money is actually removed from the system, will provide hope for a decent democratic future. For reasons that will become apparent, states must take the lead with reform. They must develop creative legislation with the teeth necessary to insure that politicians comply with the election laws and there must be an enforcement mechanism with effective incentives and sanctions.

A recurring theme from the many individuals with whom I spoke while developing this book explained that they had often given to candidates because they felt they had to contribute to campaigns or else they “would pay the price.” Of course, for the very same reasons—fear of political revenge and retribution—those individuals wished to remain anonymous. Many West Virginia citizens fear that if they do not contribute to various campaigns, or if they support the losing candidate, it will be detrimental to their businesses, jobs, and friendships.

The real people of power in campaigns today are the fund-raisers and campaign donors. Money buys name recognition, for unless you already have name recognition (or have recently won a state lottery or are a nephew to Bill Gates), then you have to raise big money early if you plan to be competitive as a

candidate. When you do not fall into one of the categories enumerated above then you have to ask people wealthy enough to risk their money at the early stages of your speculative venture.

Today, massive amounts of money must be collected in order to buy television, radio, and newspaper advertisements. In years past, cash had to be funneled to every precinct captain in southern West Virginia. Recognizing the constant need for campaign funds, special interest groups contribute generously to campaigns and use their funds to build relationships with lawmakers that give them access to influence legislation. The average citizen without bags of cash to hand out is often left outside the realm of elite political access.

Moreover, with the scandal of strings attached to campaign money, campaign reform is the most important issue in politics as money continually funds legislative favors, such as loopholes and advantages for certain groups. Furthermore, it is nearly impossible to attract the best people to serve in public office when special interest groups constantly undermine the integrity of legislative politics. It is fine to buy a business, but it should not be permissible to buy a political office. Clearly, when someone donates thousands and thousands of dollars to a political campaign it is naive to believe that the recipient of such cash will not take their phone calls. Money clearly buys access that the average person is unable to attain. What it really amounts to is a few hundred lobbyists and wealthy individuals who have a bigger voice than 1.8 million West Virginia citizens as ordinary citizens are largely absent from the lists of donors to political campaigns. Conversely, campaign donor lists read like a who's who among corporations and wealthy

individuals. For an entrenched politician in Congress, it is likely they will receive money from companies such as tobacco, oil and gas, telephone utilities, real estate, securities and investments, computer/Internet, an abundance of law firms, and numerous airlines.

Citizens believe that government is a process that cannot be effectively accessed and that they cannot affect. After countless indiscretions, the appearance is that everything is for sale. West Virginia must consider all possible changes to reform the system. Some have suggested a federal holiday for voting to ensure higher voter turnout, while others suggest that we allow voting by mail. Changing election day to Saturday, utilizing the Internet for voting, and even make an election a two-to-three day period are other possible small steps to improving voter turnout. None of these changes, however, will make the slightest difference unless the causes of corruption in West Virginia are recognized and changed.

In its starkest terms, applied to this State, do we view West Virginia as a place whose politicians are so corrupt that the system "victimizes" honest businessmen by requiring payments from them, or is it a place where corrupt businesses have initiated a corrupt system by forcing vulnerable politicians into accepting bribes? It may be that both descriptions have some validity. However, bribe payers have been traditionally viewed as "victims" not subject to prosecution in the context of law.

I will never forget the words of one of my political science professors while I was attending undergraduate school at West Virginia University. He theorized that voters have *only* three choices when voting for candidates. He proclaimed that

voters must either choose an honest politician who accomplishes nothing for his constituents, a corrupt politician who accomplishes nothing for his constituents, or a corrupt politician who accomplishes something for his constituents after first taking care of himself and his family. I remember thinking how much I disagreed with his statement and that it seemed so jaded and completely without merit. I also found it troubling that this was a person in a position to shape the opinions of many of his undergraduate students for years to come.

Many years later—after personally working for a Governor, a Congressman, a State Supreme Court, an Attorney General, a Prosecuting Attorney, two newspapers and the Associated Press, as well as campaigns on national, state, county, and city levels—the views espoused by my former professor are at the very minimum more easily understandable. Moreover, it is difficult not to become discouraged after observing the high number of West Virginia Governors, Attorneys General, Treasurers, Auditors, Delegates, Senators, Judges, and county and city officials committing egregious violations of federal and state law. As such, merely creating new laws, while still an important factor, is not sufficient in solving all the problems of West Virginia’s political corruption.

Nonetheless, it is time to reexamine and learn from our past and concentrate on the future. It is equally important to recognize the great costs borne by others in providing the very foundation of our democracy. The undermanned and outgunned troops we have to thank for our many liberties, the men who took to task two-and-a-quarter centuries ago a fight against the most powerful and influential empire in the world, proved valiant and visionary. From the gelid knolls of Valley Forge to the

bloody outskirts of Boston they stared the long odds of a lost cause square in the eye and scoffed at would-be trepidation.

One must ask—what drove these brave souls to such a fight? With their eye toward the future and their hand clasping a powder horn, one can only wonder about the whimsical hopes for a more promising tomorrow that these men conceived as they drove forward to repulse a powerful enemy. Something was indeed worth fighting for to these men: freedom. Most certainly they envisioned freedom to be represented in government, the freedom to have their voices heard, and freedom to have their bidding done by those they elected. It is inconceivable that they would have intrusted the future of their new nation to business giants whose financial stakes could manipulate the mechanism of Congress or State Legislatures with a mere signature on a check.

West Virginia must reform its system of elections and provide some hope to a fatigued electorate. One clear step forward in reforming West Virginia elections is public funding of campaigns as discussed in Chapter Thirteen. Such a so-called *Clean Money* system would no longer force candidates to be beholden to wealthy special interest groups or wealthy individuals. Furthermore, support for *Clean Money* reform would undoubtedly cost many upstanding political leaders their jobs as they would be threatening the very foundation of a corrupt system by which so many groups survive. Nevertheless, as it was once said: “You can’t plow a field without plowing the ground.”

Clean Money alone, however, will not change a long and sordid history of political corruption. A more effective change will occur only after individuals step

forward and demand more from their government and from elected officials. Positive change cannot occur as long as those who are a part of the problem are also in charge of enacting reform. It is comparable to having the fox guard the hen house.

This book is a wake up call not simply for West Virginia citizens. Unless change occurs state by state it is not reasonable to expect drastic campaign reform at a national level. Citizens across the country should become activists in politics and take every vote seriously beginning at the municipal level as mayors later become county commissioners, governors and congressmen. Each day the system goes unchanged a new generation of dispassionate and unenthusiastic voters come of age. Likewise, the cycle of political corruption continues to flourish. It has appropriately been stated, "The only thing necessary for the triumph of evil is for good men to do nothing."

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I. "THE ARISTOCRACY OF THE MONEY BAG"

We must crush in its birth the aristocracy of our moneyed corporations, which dare already to bid defiance to the laws of our country.

–Thomas Jefferson, 1812

There are two things you need for success in politics. Money . . . and I can't think of the other.

–United States Senator Mark Hanna (R-OH), 1903

As the amounts of money pumped into campaigns continue to grow to a staggering sum, this elegant system of quasi-bribery—also known as campaign financing—proceeds to undermine political democracy. In the words of West Virginia United States Senator Robert C. Byrd (D-WV)

[u]nless you win the lottery, or unless you strike oil in your backyard, or unless you are plugged into the political money machines, unless you actively compete to be part of the 'aristocracy of the money bag,' you are a long shot at best to win election to the United States Senate.¹

¹Karin Fischer, *Sen. Byrd Pushes Campaign Finance Reform, Champion of The Constitution Backs New Amendment*, Charleston Daily Mail, Feb. 14, 2001, at A1.

Through the years, Senator Byrd has co-sponsored a bill in the United States Senate that would implement a constitutional amendment guaranteeing Congress' right to regulate campaign spending that would effectively overturn United States Supreme Court precedent that currently restricts many legitimate campaign finance reforms.² The fact that Senator Byrd has often made clear his opposition to *any* amendment to the document that he loves so dearly—the Constitution of the United States—only underscores the critical nature of campaign finance reform.³ Former United States Senator Fritz Hollings (D-SC) and United States Senator Arlen Specter (R-PA), in a letter to other Senators pushing for their support of the bill, proclaimed: “A constitutional amendment is the only remedy to the never-ending cycle of fund raising, spending and public cynicism that infects our political system.”⁴ To date, the proposed amendment has languished.

Such an amendment sets caps on giving and spending in federal elections and empowers states to set similar limits in state and local races. Senator Byrd declares that “out-of-control spending” prompted him to push for such a

²Id; see Chapter Three for a more detailed discussion of United States Supreme Court limitations on campaign finance reform.

³147 CONG. REC. S2853 (daily ed. Mar. 26, 2001) (statement of Sen. Hollings); (visited Mar. 14, 2001 <<http://thomas.loc.gov/cgi-bin/query>>.) (introduced by Senator Hollings and co-sponsored by, Senators Specter (R-PA), Cleland (D-GA), and Byrd.) (As an amendment to the Constitution, the article must be passed by two-thirds of each House and then it must be ratified by the legislatures of three-fourths of the several states within seven years after the date of final passage by Congress.).

⁴Karin Fischer, *Sen. Byrd Pushes Campaign Finance Reform, Champion of The Constitution Backs New Amendment*, Charleston Daily Mail, Feb. 14, 2001, A1.

constitutional amendment.⁵ Byrd called the record \$975 million spent by United States House and Senate candidates in 2000 “outrageous.”⁶ In addition, Byrd noted that winning House candidates spent an average of \$816,000 during the 2000 election while Senate candidates, on average, spent more than \$7 million.⁷ He further commented this figure represents 140 times the \$50,000 he spent when he was first elected to the Senate in 1958.⁸

The surprising fact is that, during each election cycle, voters elect candidates they know little or absolutely nothing about to become their representatives in Congress, to lead their states as governors, and to represent them as members of their state legislatures. With their massive campaign *War Chests*, candidates run stealth campaigns ignoring the issues while refusing to debate or even answer the most basic newspaper questionnaires. Often, the only people with whom candidates choose to communicate are the political strategists who shape, form, hone, and filter every word before it reaches the public.

Consequently, those same candidates are winning campaigns by spending millions of dollars on thirty-second television advertisements instead of attending

⁵Lawrence Messina, *Spending ‘obscene,’ Byrd says*, Charleston Gazette, Mar. 13, 2001, at A1.

⁶*Id.*

⁷*Id.* (Byrd states that the pressure to raise large sums of money detracts from the time that he and other Senators could be spending on issues for their constituents and instead forces them to focus on raising massive amounts of money for the high cost of television advertising.).

⁸*Id.*

editorial meetings and actually communicating with the voters. Unfortunately, citizens seem willing to cast ballots for people who run from the real issues and thus reward a candidate for such behavior. Candidates running for office, in turn, respond by spending significant portions of their time raising every possible dollar buying television advertising and less time listening to those who are actually casting the ballots. Recognizing the constant quest for the generation of revenue, many well-intentioned and capable people will never get involved in the system.

Year after year, candidates speak of campaign finance reform. Newspapers write editorials, law professors compose articles for law reviews, and special interest groups cite reasons against changing a system that provides unlimited and unfettered access for the issues they support at the moment. Nevertheless, such talk and recognition of campaign finance reform rarely results in altering the status quo of a system which, by its very nature, rewards candidates more for the size of their pocketbook than their stance on the issues.

On a national level, a slight suggestion of hope may come in the form of the McCain/Feingold campaign finance reform legislation that passed the United States Senate in 2001,⁹ the United States House of Representatives in 2002,¹⁰ and was

⁹Helen Dewar, *Senate Passes Historic Overhaul of Campaign Finance Rules*, Washington Post, Mar. 20, 2002, at A6; David Espo, Associated Press, *Election finance reform passes*, Charleston Gazette, Mar. 21, 2002, at A1.

¹⁰David Espo, Associated Press, *Election finance reform passes*, Charleston Gazette, Mar. 21, 2002, at A1 (The House vote was made possible only after the bill was forced to the House floor in a rarely successful procedural maneuver where 218 members of the House signed a discharge petition to remove the bill from committee for a floor vote. On July 12, 1001, the House of Representatives could
(continued...)

signed by President Bush on March 27, 2002.¹¹ Two important dimensions of the McCain/Feingold measure are banning *soft money* and restricting certain political advertisements in the final days of an election. While its passage was lauded by campaign finance reformists, it is only a small step toward reforming the electoral process. States must begin to take the lead with campaign finance reform by enacting strong legislation to reform their systems and restore the faith of their citizens in local government.

While West Virginia's United States Senators Byrd and Rockefeller voted for the reform legislation, their Democratic counterparts in the United States House—Nick Rahall and Alan Mollohan—were two of only a dozen Democrats to vote against the bill.¹² Conversely, West Virginia's sole Republican Representative Shelley Moore Capito, in a courageous move, voted in support of the campaign finance legislation and against the heavy pressure applied by Republican House

¹⁰(...continued)

not reach a consensus on the rules of debate and the bill did not come to a vote.); see Associated Press, *Supporters predict campaign finance revival*, Charleston Gazette, July 16, 2001 at A2; Editorial, *Dirty money: Enron Cash to Politicos*, Charleston Gazette, Jan. 29, 2002, at A6; David Espo, Associated Press, *House GOP to expedite campaign finance reform bill*, Charleston Gazette, Jan. 30, 2002, at A11; Associated Press, *Supporters predict campaign finance revival*, Charleston Gazette, July 16, 2001, at A2; Editorial, *Armageddon*, Washington Post, Feb. 11, 2002, at A24.

¹¹David Espo, Associated Press, *Bush signs campaign finance bill; NRA first to sue*, Charleston Gazette, Mar. 28, 2002, at A1.

¹²Editorial Roundup, *Capito* (The Herald-Dispatch, Huntington, WV), Charleston Daily Mail, Feb. 23, 2002, at A4.

Leadership.¹³ In fact, United States Speaker of the House Dennis Hastert expressed his distaste for the campaign legislation, calling the House vote on the legislation “Armageddon.”¹⁴ As Senate Majority Leader in the late 1980s, Byrd pushed for a vote on legislation to overhaul the campaign finance system eight times, more than any other Senate leader.¹⁵ Byrd has called raising money “the most demeaning thing” he has had to do in his half-century of public service.¹⁶

In a letter to the editor, Charleston resident Tom Rhule proclaimed his frustration with the current fashion in which campaigns are financed and expressed his doubts as to the success of the McCain/Feingold legislation. Rhule writes: “American politicians are as evil and greedy as can be. And not just some of them, but apparently enough to prevent any change to the current political system that requires them to be that way.”¹⁷

Some inroads with campaign finance reform have been forged at the state level. In Maine, the so-called *Clean Money* initiative has resulted in higher voter

¹³*Id.* (“Capito successfully inserted an amendment in the bill that would raise contribution ceilings for candidates running against wealthy opponents spending their own money. Her concern is understandable given her bitter 2000 election battle with Charleston attorney Jim Humphreys, who spent \$6 million of his own money in his unsuccessful race for the House seat she won.”).

¹⁴Juliet Eilperin, *Hastert Pledges to fight Campaign Finance Bill*, Washington Post, Feb. 7, 2002, at A1.

¹⁵Karin Fischer, *Campaign bill goes to Bush*, Charleston Daily Mail, Mar. 21, 2002, at A1.

¹⁶*Id.*

¹⁷Tom Rhule, letter to the editor, *Their cash trumps your free speech*, Charleston Gazette, June 27, 2001, at A4.

turnout, as well as a larger number of people running for office. Unfortunately, however, many state officials feel they are unable to enact meaningful campaign finance reform because of the 1976 United States Supreme Court decision of *Buckley v. Valeo*¹⁸ that prohibited caps on electoral spending. In many situations they have a right to be weary of change, as many popular and worthy initiatives that would have improved the vitality of our democracy have been struck down in light of the *Buckley* decision.

Nonetheless, in a classic paradigm of the “haves and have-nots,” the result of little or no restrictions on the amount of money pouring into elections is that the wealthy have more rights than the poor. Something must necessarily be done to curtail the special interest groups who donate large sums of money and thereby are more and more able to dictate policy for everyone else. The primary imperative must be to reduce the flow of money and ensure it is not simply redirected.

Many of the unfortunate events that have played out in the history of West Virginia demonstrate that the corruptive influence on the election process transcends the simple campaign donation. The one common thread with election corruption is that money is almost invariably the mechanism behind such corruption. People have lost faith in their system of government. Likewise, since the ages preceding Machiavelli, the exercise of politics has been synonymous with public distrust. As history demonstrates, the formation of government almost without fail ignites the most suspicious sensibilities and misgivings of the populace over which

¹⁸Buckley v. Valeo, 424 U.S. 1 (1976).

it holds dominion. The rank-and-file masses have always, it seems, regarded their governmental bodies with one leery-eye open.

Perhaps nowhere has distrust in government been more pervasive in the United States than in West Virginia. State citizens have grown cynical of both state and national politics after continuous and often recurring political conspiracies and malefactions. As mainstream public assumptions have long held that the arena of government is the province of political collusion, frequent scandalous exploits by multiple public officials have served to reinforce these notions.¹⁹ Citizens have witnessed unconscionable amounts of money pouring into campaigns followed in suit by the various convictions of their public officials.

As the practice of lavishing cash on Senators and Representatives, as well as Presidents and Governors, edges alarmingly closer to becoming the rule rather than the exception, the appearance of corruption becomes more palpable. The escalation of money in political campaigns places in jeopardy a fundamental ideal espoused by our founding fathers—a government established which functions *for* and answers *to* its citizens.

It is unclear whether this ideal has been retained or whether the financial shoulders upon which our leaders are hoisted into office have clouded what we know as the political process. It appears that many of today's public representatives truly answer to the few who are able to donate to their campaigns instead of the

¹⁹See L. Berg, H. Hahn & J. Schmidhauser, *Corruption in the American Political System* 14-21 (1976) (background of corruption in America); Leventhal, *Courts and Political Thickets*, 77 Colum. L. Rev. 345, 362-65 (1977) (history of corrupt practices legislation).

majority of their constituents. Public opinion polls have illustrated that people do not believe they will see meaningful reform at a national level. One such poll reveals that more Americans believe they stand a better chance of seeing Elvis than witnessing genuine campaign finance reform.²⁰

In the name of the First Amendment, the United States Supreme Court has contumaciously placed obstacles in the path of society's attempts to enact campaign finance regulations that would result in equality through law.²¹ The constitutional process, through campaign finance reform, is essential to serve the purpose of Freedom of Expression. However, under the rubric of the *Buckley* decision, only limited reforms are permissible.²² To some degree the likelihood of a more effectual means of reform being realized rests on the Court's willingness to re-examine long-established, but unfortunate, precedents.

Nearly 100 years ago, in 1906, the West Virginia Supreme Court, in recognizing the importance of fair elections, proclaimed:

The object of an election, in a popular form of government, is to obtain a free, fair, and untrammelled

²⁰An April 15, 1997, survey conducted by OPINION DYNAMICS sponsored by Fox News, asked 927 national registered voters whether they thought they were more likely to see Elvis or to see real campaign finance reform. Forty-eight percent said they were more likely to see Elvis while only thirty-one percent said campaign finance reform (visited Mar. 18, 2003 <<http://www.publiccampaign.org/pubop.html>>.).

²¹See *Buckley v. Valeo*, 424 U.S. 1 (1976).

²²Many legal scholars have attacked the reasoning in the *Buckley* decision. Twenty-six State Attorneys General led by Tom Miller of Iowa filed a friend-of-the-court brief on October 19, 1998, asking the United States Supreme Court to reconsider its 1976 ruling that mandatory campaign spending limitations are unconstitutional.

expression of the will of the people with whom the elective franchise has been placed. Every qualified voter has the right to freely cast one ballot, and to have that ballot express his choice, and to have it counted as cast. Without the freedom and purity of the ballot, the experiment of self-government fails. When it becomes apparent that an election is subversion, rather than an expression, of the will of the people, or that the result is attended with such uncertainty that it may not be ascertained, the election should be set aside. Elections being necessary to the existence of a popular form of government, the police of the law is to uphold them when it can be done consistently with legal principles.²³

The primary concern of legislators introducing campaign finance legislation must be the potentially corruptive influence of money on politics. With the cost of campaigns at an inconceivable high, there seems no more opportune time than the present to enact more rigid reform legislation. Furthermore, it is important to act now as each election season gives rise to a renewed interest in the subject of reform as the amounts spent on campaigns reach startling new heights and fresh scandals are exposed. Such interest, however, ultimately wanes before meaningful reform is achieved.

Few will dispute that electoral campaigns are very costly, requiring exorbitant sums of money to hire staff, conduct polls, defray travel expenses, and prepare advertisements to be disseminated throughout newspapers and across the airwaves. Clearly, expensive campaigns force elected officials to invest substantial amounts of time raising funds rather than performing the job for which they were

²³Williamson v. Musick, 53 S.E. 706 (W. Va. 1906).

elected.²⁴ Senator Christopher Dodd (D-CT) estimates that a United States Senator needs to raise an average of \$16,000 to \$20,000 per week for a period of six years in order to be competitive in a bid for re-election.²⁵ Moreover, challengers must raise the same amount without the benefit of the valuable incumbency status.²⁶

This idea is reasonably expressed in a 1924 *Charleston Gazette* editorial that is equally applicable today. The editorial maintains:

In fact, the politicians, the little megaphones of the big interests, just pipe out the platitudes supplied them by the best minds of the [political] party, and if one disagrees with the theories, no matter how versed one may be, no matter what devotion they show for the public weal, one is lashed out with whips of hate or crucified upon a cross of attempted ostracism.²⁷

Furthermore, in light of former President Clinton's complicity in controversial fund-raising activities, followed by the large amounts raised by President George W. Bush and his challenger former Vice President Albert Gore during the 2000 Presidential campaign, the support from the public for such reform appears to be

²⁴FDCH Congressional Hearing Summaries, Webwire-Campaign Finance Reform, April 17, 1996.

²⁵*Id.*

²⁶Campaign 2000-2-: *Buchanan's Ideas On Center Stage*, Wall St. J., Jan. 22, 1997, available in Westlaw, Dow Jones News Service File (outlining the vast sums of money that contemporary campaigns must raise, adding pressure to lay the groundwork early).

²⁷Editorial, *The Fallacy of Going Back*, Charleston Gazette, Jan. 4, 1924, at A6.

on the rise.²⁸ Moreover, the numerous questionable dealings by the major political parties and various members of the United States House and United States Senate have also demonstrated the immediate need for reform.

Advocates for reform balance the crux of their argument upon the altar of public belief asserting that in the realm of government public perception equals political reality. In essence, reformists warn that the line dividing actual impropriety and the mere appearance thereof, as viewed through the lens of the public eye, is a narrow one. Consequently, the idea that the public perceives expensive campaigns as being corrupt; namely, that money buys favor and influence, is often cited by reformists as evidence that change is needed.²⁹

The costs of financing a campaign have risen more than 300 percent since 1980, while during the 1996 election cycle the average winning United States Senate candidate spent \$3.6 million and the average winning United States House of Representatives candidate spent \$660,000.³⁰ As illustrated by Senator Byrd, the

²⁸See Warren P. Stobel, *President Concedes "Mistakes" in Fundraising; But He Says Donors Got Only His Ear*, Wash. Times, Jan 29, 1997, at A1.

²⁹"[T]he public by a huge 77% to 18% says that campaigns are excessively influenced by special interests and wealthy contributors and, thus, the way they are financed needs to be changed." Albert R. Hunt, *Campaign Financing Overhaul Is Wanted But Not Passionately*, Wall St. J., Sept. 19, 1997, (American Opinion), at R6.

³⁰Public Citizen, 1996 Campaign Finance Facts and Figures (Sept. 18, 2000 <http://www.citizen.org/congress/reform/ctr/public_speaking/facts.html>.) (compiled from Federal Election Commission Reports). See also *Buckley v. Valeo*, 424 U.S. at 57 (The Court stated that although it did not impact its decision, it acknowledged that campaign costs had increased 300% between 1952 and 1973. See e.g., Hearings on Campaign Finance Reform Before the Senate Committee on Rules (continued...))

cost of electing a United States Senator almost doubled to \$7 million during the 2000 election cycle. Voter apathy, demonstrated by fewer than fifty percent of all registered voters casting ballots in 1996, could be attributed to the influence of money in political elections.³¹

An essay written by United States Senator Russell D. Feingold (D-MN), a staunch advocate for campaign finance reform and co-author of the McCain/Feingold bill,³² encapsulates the problem of money and politics.³³ In his essay, Feingold states:

(...continued)

and Administration, 104th Cong., 2d Sess. 91-100 (1996) (statement of Joan Claybrook, President of Public Citizen) (noting that the average winning candidate spent \$1.2 million in 1980 and \$4.6 million in 1994—a 383% increase).

³¹A survey of national voter turnout in federal elections over the last thirty-six years suggests that voter turnout has ranged from a high of 63.06% in 1960 to a low of 36.40% in 1986, with 1996 at 49.06%. Federal Election Commission, National Voter Turnout in Federal Elections: 1960-1996, (last modified Feb. 28, 1997) <<http://www.fec.gov>> (data drawn from Congressional Research Service reports, Election Data Services, Inc., and State Election offices). See also *Campaign Finance Reform and Free speech*, 1997: Hearing Before the House Judiciary Subcomm. On the Constitution, 105th Cong., 1st Sess. (1997) (C-SPAN2 television broadcast Feb. 27, 1997). See also Ruy A. Teixeira, *The Disappearing American Voter* 9 (1992).

³²The first campaign finance legislation introduced by Senators McCain and Feingold died in a filibuster in June 1996. See Senate Campaign Finance Reform Act of 1996, S. 1219, 104th Cong. (1996). The legislation was reintroduced as Senate Bill 25 on January 21, 1997. See Bipartisan Campaign Reform Act of 1997, S. 25, 105th Cong. (1997). On March 27, 2001, the United States Senate passed the McCain-Feingold legislation; see David Espo, Associated Press, *Bush signs campaign finance bill; NRA first to sue*, Charleston Gazette, Mar. 28, 2002, at A1.

³³Senator Russell D. Feingold, *Representative Democracy Verses Corporate Democracy: How Soft Money Erodes The Principle Of "One Person, One Vote*, 35 Harv. J. on Legis. 377 (1998).

I learned about the difference between representative and corporate democracy at an early age. When I was thirteen years old, a relative gave me a gift of one share of stock in the Parker Pen Company, an economic fixture in my hometown of Janesville, Wisconsin. My relative wanted me to learn something about how the stock market worked. My one share was probably worth about \$13 then, but my father told me that because I owned a share of stock, I owned a small piece of the company. Therefore, I was entitled to a vote at the company stockholders' meeting.

By that age, I was already excited about the political process, and I thought voting at a shareholders' meeting was like voting in an election. I was anxious to exercise my new power so I asked my father when I could go to the shareholders' meeting to vote.

My father explained that I could go to the meeting but my vote would not count for much, because the number of votes you get at a shareholders' meeting depends on how many shares you have. Needless to say, my enthusiasm was somewhat dampened, but I quickly came to understand how power in a corporation is apportioned according to the size of the stake held in that corporation by various investors.³⁴

Senator Feingold's essay reflects how countless average citizens must feel when they see the wealthy individuals and special interest groups giving large sums of money to candidates or potential candidates for office—no money, no voice.

Today's system of elections is no less corruptive or damaging to the political system than the briefcases of campaign cash that purchased votes in years past. The same money spent in previous elections—just a lot more of it—continues to pour into political campaigns; however, it is channeled to different places. For example, instead of the local sheriff or the county chairman receiving a stack of cash to buy

³⁴*Id.* at 378-79.

votes, money is now funneled directly to television, radio, and newspapers to pay for expensive advertising. While it is true that local political factions still receive illegal monies from candidates, the advent of television has shifted those amounts received.

Spending on television reaches staggering new heights with each successive election. During the 2001 election, political advertisers spent more than \$771 million to broadcast their messages to potential voters.³⁵ According to a study by Alliance for Better Campaigns, there has been a fivefold increase in spending since 1980, even after an adjustment for inflation.³⁶ The study concluded that much of the increase in cost was a result of “price gouging” by local television stations.³⁷ While money may not be traded directly for votes in the way that it once was, it clearly buys access and influence, which translates into votes.

The *Charleston Gazette* asks: “Have bags of cash merely been replaced with legal donations, fund raisers, receptions and other methods of gaining favor with politicians?”³⁸ This same editorial proceeds to assert that when special interest

³⁵ *Spending on TV political ads soars*, USA TODAY, Mar. 6, 2001, at A8.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Editorial, *Ethics law needs more teeth*, *Charleston Gazette*, July 27, 2000, at A4 (The article argues that the question is difficult to answer in light of West Virginia’s very weak ethics laws. One fault is that legislators are not required to release information about their clients, real estate holdings or their spouses’ investments. The article reported that:

“The state lags behind others in reporting requirements for lobbyists, as well. For instance, lobbyists in Maryland reported spending more than \$23 million in 1999.

(continued...)

groups have a need, they no longer send someone to the legislature with a bag of cash, as a group of mine inspectors did in 1974 when they were seeking a raise.³⁹

Instead, special interests will

host a reception for lawmakers. They contribute generously to campaigns. They use money to build relationships with lawmakers that give them access to influence legislation - often in ways detrimental to the general good. Ordinary citizens, or citizen group lobbyists who lack deep pockets, are left out in the cold.⁴⁰

Senator Feingold postulates that with the current election system, politicians “conspire to stay in office by selling the country to the highest bidder.”⁴¹ As such, if the system is ever going to be “cleaned up,” the amount of money must be limited throughout campaigns. The determination by millions of Americans is needed to stifle the corruption of our democratic system by organized money. Laws create social norms and unrestrained and unregulated activity such as the influx of the large amounts of money that donors provide creates the “belief” that everything is

³⁸(...continued)

If Maryland were operating under West Virginia’s rules, the lobbyists would have had to report only \$757, 356 of that spending.”).

³⁹See also Scott Finn, *Ethics law falling short of promise to clean up government, critics say*, Charleston Gazette, July 23, 2000, at A1 (mine inspectors wanted a pay raise and put hundreds of dollars in a brown paper bag to deliver to Delegate T.J. Scott, D-McDowell, who sponsored legislation to increase their salaries); Editorial, *Ethics law needs more teeth*, Charleston Gazette, July 27, 2000, at A4.

⁴⁰ Editorial, *Ethics law needs more teeth*, Charleston Gazette, July 27, 2000, at A4.

⁴¹Peggy Brown, Bill Zimmerman, *Reforming Campaign Finance*, Newsday, May 11, 2000, at A37.

for sale. Of course, it naturally follows that such an attitude will carryover in decisions after the election and while serving in office.

With such colorful West Virginia examples such as a Governor arrested for taking bribes to put the money in his campaign for re-election,⁴² a State Senator selling his "influence" for a paltry \$2,750,⁴³ or a group comprised of nearly every elected official within an entire county enduring arrest for rigging an election,⁴⁴ not to mention congressional, senatorial, and gubernatorial races becoming "millionaire clubs,"⁴⁵ it becomes just a string from a big ball of yarn. In the eyes of the electorate, each crime or act of corruption becomes just another expected act from a corrupt governmental actor.

Moreover, United States Senator John McCain, a Republican maverick from Arizona who openly defies his own partisan affiliations, has cited on many occasions a national poll that was taken in 1961 where seventy-six percent of the people said that they trusted government, while in 2001 only nineteen percent of the

⁴²Associated Press, *Ex-Gox. Moore Faces 36-Year Term, Fines*, The Washington Post, May 9, 1990, at A11.

⁴³L.T. Anderson, *Someone must be discounting the price on state senators these days*, Charleston Gazette, Feb. 1, 2000, at C1.

⁴⁴Associated Press, *Political Briefs from the 2000 campaign trail*, Charleston Gazette, May 3, 2000, at A1.

⁴⁵Karin Fischer, *TV war has two fronts: Capito, GOP outspending Humphreys in recent weeks*, Charleston Daily Mail, Sep. 22, 2000, at A1; Lawrence Messina, *House race in dead heat: Expensive fight for 2nd Congressional District goes down to wire*, Charleston Gazette, Nov. 8, 2000, at A1; Charles H. Moffat, *Ken Hechler: Maverick Public Servant 267* (Mountain State Press: Charleston, WV, 1987)(citing the \$12 million spent by then-Governor Rockefeller for his re-election).

people sampled said they trusted government.⁴⁶ Without real campaign finance reform, elected officials become indistinguishable from one another. Bear in mind, the one common element to all or nearly all of the corrupt or perceived to be corrupt activities is money.

The flow of money irrespective of the incident is always pervasive. Of course, campaign finance reform is not a cure-all for the problems that exist with our democratic system, but it is the first step in a long process of reform. While elected officials may fear changing a system that they have learned to manipulate and navigate like a ship through a narrow canal, such reform is necessary to restore the faith of citizens in government.

When people talk about the power of the pen, they typically are referring to a newspaper's ability to effectuate change with its coverage of a story or through its editorials; however, to a politician, the power of the pen stands for the number of \$1000 checks that can be procured from wealthy individuals toward their campaign. Money is the conduit to votes. Companies contribute hundreds of thousands of dollars to garner favorable results with issues important to their interests. For instance, a chief executive officer of a large company cannot go to the board of directors to solicit hundreds of thousands of dollars and suggest that it be given to specific candidates merely out of the benevolence of their nature.

The nexus between campaign contributions and public policy must be disengaged. If a lawyer handed each Justice a \$1,000 check just prior to an

⁴⁶Interview of John McCain by Author, August 5, 2000, Barboursville Veterans Home, Barboursville, West Virginia.

argument before the West Virginia Supreme Court, it summarily would be called a bribe. Curiously, however, when a lobbyist hands a key legislator a check for \$1,000 just prior to a big vote, that act is euphemistically considered a legitimate campaign contribution. Understandably, an average citizen may believe the message is that money buys elections, influence after the election, and, in some cases, that the entire office is sold or up for bid.

With an increased level of federal prosecutions and an improvement in statewide communications in general, it is simply not as acceptable to openly give a pint of whisky, cash, or some other promise to buy a person's vote. Unfortunately, television advertising has stepped up to fill the void. Equally important, advertising cannot be separated from television because advertising subsidizes television. Thus, the millions of dollars spent on television advertising has transformed campaigns into big business. Moreover, the high television costs have spawned an entire industry dedicated to raising every possible dollar and creatively advising candidates and political parties on how to "technically" evade the campaign finance rules in their state.⁴⁷

Simply stated, the system is broken and it must be repaired. Many of the problems that plague West Virginia elections are equally pervasive in other states and the common concern in those states is most commonly money. Reform is not

⁴⁷An example of technically avoiding campaign finance rules is the common practice of ignoring the section of the West Virginia Code that prohibits candidates from soliciting money from public employees. Candidates have completely disregarded this law by mailing political solicitation after solicitation and including a disclaimer on the political solicitation that provides, "disregard if you are a public employee."

popular with special interest groups because they currently have a competitive advantage over the average citizen. Although change is necessary, it is not always popular with everyone involved.

The money that gushes into the campaign coffers of politicians and political parties is often responsible for deciding what primary issues get introduced in Congress and to State Legislatures and whether or not they get signed by the President or a Governor. Money from special interest groups contribute to the increasing costs of cable and utility bills and even to the rising costs of gasoline as special interest groups control such issues and legislation. Without wealth or being politically well-connected, the odds of winning an election can become astronomical.

For example, during the 2000 election cycle, current United States Senator Jon Corzine spent more than \$62.8 million to win a New Jersey United States Senate seat.⁴⁸ In 1998, Charles Schumer and Alfonse D'Amato combined to spend more than \$40 million which equaled almost \$8 per vote in a United States Senate

⁴⁸Michael Saul, *Bloomberg: Go For Broke! Candidate vows to spend what it takes*, Daily News (New York), July 18, 2001, at A23; Associated Press, *Billionaire says 'sky's limit' in N.Y. mayor race*, The Deseret News (Salt Lake City, UT), July 29, 2001, at A2; Lauren Foster, *Bloomberg's costly tilt at City Hall: Lauren Foster and Richard Waters on the man who wants to bring inexperience to bear as New York mayor*, Financial Times (London), Sept. 11, 2001, at A23 (Corzine amassed a fortune of millions at Goldman Sachs before entering the New Jersey Democratic Primary as a Senatorial candidate.); Adale Simmons, *The Best Political Candidates Money Can Buy*, Chicago Tribune, Sept. 25, 2000, at A11 (noting that Corzine spent \$35 million in his successful Primary bid against former governor Jim Florio, outspending him 14 to 1.); Wayne Slater, *Sen. Phil Gramm's seat could cost \$20 million Candidates should expect to spend big bucks*, The Seattle Times, Sept. 17, 2001, at A12.

race in the neighboring State of New York.⁴⁹ To continue, current United States Senator Hillary Clinton and former Congressman Rick Lazio spent a stunning combined \$80 million in their 2000 election quest for the Senate seat.⁵⁰ Even more incredible was the most recent New York City Mayor's race that hit a new high as billionaire Michael Bloomberg vowed to spend as much as it would take to win the race.⁵¹ Bloomberg concluded his campaign by spending more than \$76 million in his successful bid.⁵² One last portrayal of a system that is tarnished would be the 103 donors who gave \$250,000 or more to President George W. Bush's 2000 campaign. As a result of such high-dollar donations, his policy proposals are often shadowed by the suspicion that they are designed to reward big donors.⁵³

The average West Virginia citizen—who has among the lowest average income in the country—would have to attend countless county fairs and festivals and wear out several pairs of tennis shoes to reach the same number of individuals as

⁴⁹Phil Keisling and Paula Krane, *Clean-Money campaign heads to Salem Oregon should become fifth state in United States to alter role of political donations*, Portland Oregonian, Feb. 10, 1999, at B9.

⁵⁰Alan C. Miller, *Election was decisive in arena of spending: Ever-higher sums*, Los Angeles Times, Dec. 8, 2000, at A1.

⁵¹Michael Saul, *Bloomberg: Go For Broke! Candidate vows to spend what it takes*, Daily News (New York), July 18, 2001, at A23; Associated Press, *Billionaire says 'sky's limit' in N.Y. mayor race*, The Deseret News (Salt Lake City, UT), July 29, 2001, at A2.

⁵²Associated Press, *Bloomberg's Final Tab In N.Y. Race:\$76 Million*, Mar. 31, 2002, at A2 (Bloomberg spent \$2.5 million on his transition and inaugural ceremony.).

⁵³Editorial, *The Billion-Dollar Problem*, Washington Post, Mar. 4, 2001, at B6.

that of an opponent who can buy millions of dollars worth of television advertising. This lack of personal wealth or the existence of a large campaign account filled with high-dollar campaign contributions places a burden on a potential challenger that must seem insurmountable.

According to Ellen Miller, former director of *Public Campaign*, candidates for the United States Senate and United States House “who spent the most money won their elections ninety-four and ninety-five percent, respectively, in 1998 elections.”⁵⁴ Such realities further disenfranchise voters and potential candidates. Many well-qualified potential candidates will never get involved in a system where they have to amass a fortune only for the *chance* to participate. Consider the frustrated plight of voters in a state such as Illinois where corporations are able to contribute an unlimited amount to a candidate running for a statewide office.⁵⁵ Undoubtedly, voters unable to donate such large sums of money are left with their voices silenced by big business.

One result of the money race for candidates has been disenfranchised citizens who feel they lack the capacity to influence public policy and participation by them is either impossible or an exercise in futility. To some potential voters, the act of casting a vote in favor of one or the other of two candidates who have financed their respective campaigns from big donations by special interest groups

⁵⁴Adale Simmons, *The Best Political Candidates Money Can Buy*, Chicago Tribune, Sept. 25, 2000, at A11.

⁵⁵*Id.*

or wealthy individuals becomes a superfluous endeavor. It has been remarked that “if you pick the lesser of two evils—you are still picking evil.”

Senator McCain maintains the money chase has become a problem that intensifies each year.⁵⁶ McCain feels that the government ends up buying many expensive items that are unnecessary and unwanted, such as out-of-date military equipment, in order to reward campaign contributors. It is not that people do not want reform; instead, it may be that they merely do not believe it will ever occur. McCain continues to struggle for reforms even when the majority of his party seems to fight him at each opportunity. McCain said, “Maybe Samuel Adams was correct when he said “[i]t does not require a majority to prevail, but rather an irate, tireless minority keen to set brush fires in people’s minds.”⁵⁷

McCain asserts that political parties are much weaker because they spend a majority of their time raising money instead of organizing grass roots campaigns that involve average citizens.⁵⁸ McCain said, “When I first ran, I went to barbecues, knocked on doors, and went to editorial meetings.” McCain asserts that such days of campaigning are remnants of the past. McCain illustrated the current problem with raising campaign contributions by referring to a situation in the past where

⁵⁶Interview of John McCain by Author, August 5, 2000, Barboursville Veterans Home, Barboursville, West Virginia.

⁵⁷*Id.*

⁵⁸*Id.*

Congressmen solicit \$100,000 contributions to the Republican National Committee and—in turn—they could watch the Super Bowl with their favorite representative.⁵⁹

People often articulate that anyone can form a special interest group and that there are both wealthy and poor interest groups. Nonetheless, reality is that the special interest groups such as those of tobacco and oil with bottomless pits of funds, simply overwhelm the special interest groups who lack financial resources. Removing the colossal sums of cash from campaigns would allow politicians to be questioned on the substance of a vote or stance on an issue rather than on whether they voted *for* or *against* an issue based on campaign donations.

A government that people perceive as corrupt will ultimately become corrupt. Challenging political corruption is an issue that transcends political affiliation. A letter to the editor published in the *Los Angeles Times* demonstrates both the frustration of the citizens as well as the constant push by the candidates for money. The letter expressed:

So far in 1997, I have received six requests for campaign contributions from both the Republicans and Democrats. I have not sent either party one dollar. Instead, I wrote in large, bold letters, across the contribution return card: 'Not one dollar more until we have real campaign finance reform!

I enclosed it in the return envelope they furnished and mailed it back to them. Some envelopes were postage paid. The others I gladly put a 32-cent stamp on.

The special interests are buying the votes of our senators and congressmen. Why should we help any

⁵⁹*Id.* (referring to the Super Bowl of January of 2001).

senator or congressman get re-elected with our hard-earned money? They no longer represent us.⁶⁰

Senator McCain has proclaimed that “[p]eople can only have a voice if they are on equal footing and one way to accomplish that is to rid the system of the huge corruptive checks.”⁶¹ Not only are the voices of the people being muted, but it seems with the increasing number of dollars pouring into political campaigns we have experienced a decrease in innovative ideas about important issues such as health care, education, social security, unemployment, minimum wage reform, gun safety, and universal preschool.

One wealthy individual, Roger Tamaraz, was asked if he was disappointed that he did not get to privately meet with President Clinton after he donated \$300,000 to the Democratic Committee. In response, he declared that he was not disappointed and that the next time he simply would contribute \$600,000.⁶² When massive quantities of money are given to candidates or to political parties, the resemblance is an act of bribery. Notwithstanding the negative perception, many people still believe that reform efforts are useless as candidates and their big-dollar donors will always find ways to circumvent the system. This just means the system

⁶⁰Ralph Hillman (letter to the editor), *Campaign Fund Reform Bill*, Los Angeles Times, May 20, 1997, at B6.

⁶¹Interview of John McCain by Author, August 5, 2000, Barboursville Veterans Home, Barboursville, West Virginia.

⁶²<<http://more.abcnews.go.com/sections/us/tamraz918/>> (Visited Feb. 14, 2003 .).

will always need changing if young people are going to ever believe that their dreams are achievable.

Former Logan County political boss Raymond Chafin recalls past elections in southern West Virginia when political candidates, “came out to where you lived . . . [and] found you in your cornfield and told you what they stood for.”⁶³ Today, those images are figments of the imagination. During typical statewide campaigns of recent years in West Virginia, campaigning has transformed into an all out battle for television time, while face-to-face politics is becoming but a faded memory.

An article in *Time* magazine asks the question: “Is it possible that an industry in one state can stymie legislation sought by community leaders in the other 49?”⁶⁴ The question refers to a 1992 law passed by Congress that restricts betting on collegiate sports in every state, while creating an exception for Nevada’s \$30 billion-a-year gambling industry.⁶⁵ The article declares that “[g]ambling on college sports is a case study of how big money runs Washington.”⁶⁶ From 1994 to 2000, gambling interest contributions to both the Republican and Democratic political

⁶³Raymond Chafin & Topper Sherwood, *Just Good Politics, The life of Raymond Chafin, Appalachian Boss* at xiii (Univ. Of Pittsburgh Press 1994).

⁶⁴Donald L. Barlett and James B. Steele, *Big Money & Politics Who Gets Hurt? Throwing The Game*, *Time*, Sept. 25, 2000, at 52.

⁶⁵*Id.* at 54.

⁶⁶*Id.* at 52.

parties in Congress have exceeded \$16 million which is four times as much than during the previous six years.⁶⁷

The writers of *Time* express that there is a clear lesson when it comes to money and politics. They suggest:

If there is an object lesson here, it is this: Money talks in Washington, and it talks loud enough to drown out supporters of the most well-meaning legislation, no matter how large their numbers, no matter how influential they might seem to be. It's almost as if the gamblers are keeping prominent lawmakers of both parties on retainer.⁶⁸

A leader willing to step forward and unselfishly fight for real change with the support of the people and total disregard for re-election is the only way real change can occur. Otherwise, we will continue to be mired in a corrupt system that only gets worse as time progresses. As Shakespeare observed, "The evil that men do lives after them, the good is oft interred with their bones."⁶⁹

When asked why United States Senator John Kerry (D-MA) raised nearly \$2.2 million from January through June of 2001 for his 2002 re-election campaign, Kerry spokesman David Wade said, "He's fund raising early and aggressively to guarantee he'll have the resources modern campaigns demand to talk about his

⁶⁷*Id.*

⁶⁸*Id.*

⁶⁹Sylvan Barnet, *The Complete Signet Classic Shakespeare: The Tragedy of Julius Caesar* 825 (Harcourt Brace Jovanovich, Inc.: San Diego, CA).

record with Massachusetts voters.”⁷⁰ In addition, United States Senator Arlen Specter (R-PA) had \$3.4 million in his campaign account on June 30, 2001, and does not face re-election until 2004.⁷¹ When asked about his early campaign fundraising efforts, Specter said it is necessary because of the cost of running campaigns and the possibility of a self-financed candidate entering the race. Specter also said that he is not worried about any specific challenger, “but when someone like (Sen.) Corzine (D-NJ) spends \$55 million to win a seat, it is a source of concern.”⁷²

On May 17, 2000, United States Senator Chuck Hagel (R-NB) with regard to campaign finance reform legislation told the United States Senate Republican Conference:

The American People see a political system controlled by special interests and those able to pump in millions of dollars much of it essentially unaccountable and defend it by technicality and nuisance. As our citizens become demoralized and detached because they feel they are powerless they lower their expectations and standards for government and our office holders. We are losing the trust and confidence of the American people and unaccountable forces within the system are corrupting our campaign finance system. We need to fix the system.⁷³

⁷⁰Associated Press, *Reports show congressional fund-raising well under way*, Herald-Standard (Uniontown, PA), Aug. 1, 2001 at D3.

⁷¹Associated Press, *Specter banks millions for re-election campaign Reports*, Herald-Standard (Uniontown, PA), Aug. 1, 2001 at A2.

⁷²*Id.*

⁷³Chuck Hagel, May 17, 2000, speech to United States Senate Rules (continued...)

Hagel continued:

We introduced this bi-partisan legislation because we felt it was a common sense, relevant and realistic approach to campaign finance reform, it is imperfect, it does not address every problem in the current system but we do believe it's a good solid beginning to accomplish meaningful campaign finance reform.

Despite Hagel's apparent commitment to reforming the system, during the tumultuous McCain/Feingold campaign finance debate in the United States Senate in 2001, he introduced legislation that some believe was intended to kill campaign finance reform efforts.⁷⁴

One of the problems in fighting for campaign finance reform is the lack of attention given to the issue on the national level. Nevertheless, one citizen, Doris Haddock, has attained such attention. Haddock, who is known as "Granny D," embodies the yearning of average citizens that recognize the problems with the present day system and the need for change. During her 89th and 90th year, Granny D walked 3,200 miles from Pasadena, California, to Washington, D.C., to carry the message that campaign finance reform is a major issue of concern to the people of this country. Rain or shine, she walked ten miles a day. Granny D postulates:

⁷³(...continued)

Committee, quote obtained from Senator Hagel's United States Senate web (visited Feb. 14, 2003 <<http://hagel.senate.gov/>>.).

⁷⁴Interview of John McCain by Author, August 5, 2000, Barboursville Veterans Home, Barboursville, West Virginia.

Campaign finance reform is the answer to solve our problems, the fact that we have no longer access to our Representatives or to our Senators because they have been bought by corporations, by unions, and by special rich men. Today a man has to sell his soul in order to run for office if he is poor or he has to be a multi-millionaire and that is not a Democracy and we have got to change it.

Campaign finance reform is the answer because it gives everybody a level playing field, you don't spend your money, you don't spend anybody else's money, you spend the taxes or some of the taxes that have been now given to corporations to make them rich while we are getting poorer and poorer.⁷⁵

Jim Wright, former Speaker of the United States House of Representatives, calls the current state of contributions in Congress, "sad. How sad!"⁷⁶ Wright emphasizes that "[s]erious observers worry lest the deluge of big campaign gifts cross that invisible line between buying preferred 'access' to legislators and actually buying votes."⁷⁷ Wright concludes:

No longer do legislators talk so much of what their constituents want. Now it's what their contributors want. They speak unhesitantly. The focus is on the money, pure and simple. With enough money for TV blitzes, voters will come around, they feel. Without it, they feel endangered.⁷⁸

⁷⁵Interview of Doris Haddock (Granny D) by Author, at the Kanawha County Senior Center, 2428 Kanawha Boulevard, Charleston, December 14, 2001, at 2:00 p.m.

⁷⁶Jim Wright, Knight Ridder Newspapers, *Who Really controls Congress?*, Charleston Sunday Gazette-Mail, June 11, 2000, at C1.

⁷⁷*Id.*

⁷⁸*Id.*

Wright also argues that the current system will not change without serious campaign finance reform. Wright states:

As for legislators who solicit and accept big contributions, conveniently embracing the dicta of their sources because they're so necessary to electoral success, about all that can be said is that they've been compliant in the subtle erosion of their time-hallowed institution (and of their own relevance) by practices, now rampant, which they either cannot or will not change.⁷⁹

The two major political parties collected and spent at least \$1.1 billion in the 2001-2002 election cycle.⁸⁰ Of that collected—at least \$622.3 million in hard money was raised while at least \$495.8 million was raised in soft money.⁸¹ The spending during the 2000 elections totaled \$1.2 billion, while the amount during the 1998 non-presidential election cycle surpassed \$649.5 million.⁸²

Citizens have questions about money in politics as politicians consistently create negative impressions with their actions. For example, despite never being officially charged, former Congressman Gary Condit faced public scrutiny after an office intern—with whom he was having an affair—turned up missing and was later

⁷⁹*Id.*

⁸⁰Sharon Theimer, Associated Press, *\$1.1 billion spent electing Dems, GOP*, Charleston Gazette, Dec. 19, 2002, at A8.

⁸¹*Id.* (“The analysis covered only contributions and spending reported to the FEC. That included hard money that the state and local parties raised for their federal accounts, hard money raised by the national party committees, and soft money collected by the national parties.”).

⁸²*Id.*

pronounced dead.⁸³ Condit, who later decided not to run for re-election, ended his campaign by paying his two children, Chad and Cadee Condit, \$209,500 with funds raised for his re-election campaign.⁸⁴ Such activity only illuminates the controversial liberties politicians often assume with political funds.

President Roosevelt was on point when he said, "Those who oppose all reform will do well to remember that ruin in its worst form is inevitable if our national life brings us nothing better than swollen fortunes for the few and the triumph in both politics and business of a sordid and selfish materialism."⁸⁵ Our current political campaign fund-raising system is sordid and will continue to test our capacity to reform it.

United States Senator Christopher J. Dodd (D-CT) concludes that "[t]he system is broke, it is a failed system," while Senator Russell Feingold has stated, "It's a system that cheapens us all."⁸⁶ Senator Byrd, who has referred to our current state of elections as "[t]he aristocracy of the money bag," has declared that "[b]oth parties are enslaved to those who give campaign funds. We're beholden to the special interests when we go around the country holding out a tin cup, saying,

⁸³Sari Horwitz, *Chandra Levy Ruled A Homicide Victim*, Washington Post, May 29, 2002, at A1.

⁸⁴Howard Kurtz, *The Clinton Chronicles, Continued*, Washington Post, Feb. 5, 2003, at A16.

⁸⁵E. J. Dionne Jr., . . . *How the Money Talks*, Washington Post, Mar. 20, 2001, at A27.

⁸⁶Helen Dewar, *Senate starts freewheeling finance tussle*, Washington Post, Mar. 20, 2001, at A1.

'Gimme, gimme, gimme.'⁸⁷ In West Virginia spending for the Second Congressional House seat during the last election totaled nearly \$10 million.⁸⁸

Senator McCain has stated:

As long as the wealthiest Americans and richest organized interests can make the six and seven figure donations to political parties and gain the special access to power that such generosity confers on the donor, most Americans will dismiss the most virtuous politician's claim of patriotism.

Recently, United States Sen. Zell Miller (D-GA) wrote an opinion piece in the *Washington Post* on his deep misgivings about the current fund-raising system. He wrote that:

I locked myself in a room with an aide, a telephone, and a list of potential contributors. The aide would get the 'mark' on the phone, then hand me a card with the spouse's name, the contributor's main interest, and a reminder to 'appear chatty.' I'd remind the agribusinessman that I was on the Agriculture Committee; I'd remind the banker I was on the Banking Committee. And then I'd make a plaintive plea for soft money--that armpit of today's fundraising. I'd always mention some local project I had gotten--or hoped to get--for the person I was talking to. Most large contributors understand only two things: what you can do for them and what you can do to them. I always left that room feeling like a cheap prostitute who'd had a busy day.⁸⁹

⁸⁷Associate Press, *Senate helps candidates facing wealthy foes*, Charleston Gazette, Mar. 21, 2001, at A1; 147 CONG. REC. S2541 (daily ed. Mar. 20, 2001) (statement of Sen. Byrd).

⁸⁸Karin Fischer, *Race may have been different, campaign reform could have altered race for Congress*, Charleston Daily Mail, Mar. 21, 2001, at A1.

⁸⁹147 CONG. REC. S2445 (daily ed. Mar. 19, 2001) (statement of Sen.

Senator Byrd who has stated that candidates' hands are "manacled by the shackles of money"⁹⁰ expounds:

If 55 years ago, when I started out in politics, we had had the current system of funding campaigns, somebody else would be standing at this desk. It wouldn't be I. I came from the very bottom of the ladder. There were no lower rungs in my ladder. There weren't any bottom rungs in my ladder. I came out of a coal camp. What did I have? If I might, for a moment, tinker with grammar, "I didn't have nothing," as they would say. "I ain't got nothing." All I had was myself and my belief in our system. I believed in a system, then, in which a person who didn't have anything, a person who was poor, a person who came from lowly beginnings but who could pay his filing fee, could run for office. . .

⁹¹

Byrd also states:

The current system is rotten, it is putrid, it stinks. The people of this country ought really to know what this system is giving to them and what it is taking from them. This system corrupts political discourse. It makes us slaves, makes us beholden to the almighty dollar rather than be the servants of the people we all aspire to serve. . . . It already costs tens of millions of dollars to run an effective campaign for the Senate in many States. What do we tell a poor kid from the hollows? What do we tell a poor kid from the coal camps? Forget it. Yet, that person may have the capacity and the drive to be a good Senator. A campaign for the Senate will be

⁸⁹(...continued)
Feingold).

⁹⁰Karin Fischer, *Race may have been different, campaign reform could have altered race for Congress*, Charleston Daily Mail, Mar. 21, 2001, at A1.

⁹¹147 CONG. REC. S2856 (daily ed. Mar. 26, 2001) (statement of Sen. Byrd).

beyond his or her personal means and beyond the means of friends and associates.⁹²

As Byrd illustrates, it is past time to restore sanity and accountability to our system of financing elections. Moreover,

No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.⁹³

⁹²147 CONG. REC. S2857 (daily ed. Mar. 26, 2001) (statement of Sen. Byrd).

⁹³Wesberry v. Sanders, 376 U.S. 1, 17 (1964) (Black, J.).

II. BUYING ELECTIONS IN WEST VIRGINIA

Money! It is money! Money! Money! Not ideas, nor principles, but money that reigns supreme in American politics.

–United States Senator Robert C. Byrd
(*N.Y. Times*, 3/20/97, at A26)

A. The 2000 and 2002 Election to the Second Congressional District

By June 30, 2001, just six months after being elected to her first term as a member of Congress, Representative Shelley Moore Capito (R-WV),⁹⁴ had already raised nearly \$500,000 in campaign contributions.⁹⁵ Of the contributions, \$305,650 came from Political Action Committees (PAC) while \$160,040 stemmed from

⁹⁴See Lawrence Messina, *GOP money, mud beat him, Humphreys says*, Charleston Gazette, Nov. 10, 2000, at C1; Randy Coleman, Associated Press, *Will Arch hurt Shelley's chances? Some state Republicans think convicted ex-governor should stay in background*, Charleston Gazette, June 13, 2000 at C1 (Representative Capito is the daughter of convicted Governor Arch Moore, Jr. Her sister Lucy Moore Durbin also pleaded guilty to drug dealing charges in a 1993 federal cocaine case.) ; Tom Miller, *Under the Dome: A look back*, Charleston Gazette, Dec. 26, 2000, at A5 (Moore was also the first Republican to hold a West Virginia Congressional seat in nearly twenty years.).

⁹⁵Associated Press, *Capito Piling Up Cash for Next Race*, The Inter-Mountain (Elkins, WV), Aug. 2, 2001, at A6.

individual donors.⁹⁶ During 2001, Capito cultivated more cash than 419 of her fellow 434 members of the House of Representatives.⁹⁷ According to the *Charleston Gazette*, Capito “gathered three times the typical amount of PAC contributions raised by House members in 2001, and two-and-a-half times the typical amount of overall contributions.”⁹⁸

Capito was also successful at using the power of the presidency to benefit her 2002 re-election campaign. On April 12, 2002, Vice President Dick Cheney held a \$500 per ticket fund-raiser for Capito in Charleston, West Virginia.⁹⁹ Cheney’s speech amassed \$250,000 for Capito’s re-election as some attendees paid an extra \$500 to get their picture taken with him.¹⁰⁰ Capito also had the help of the Office of the President as George W. Bush has made eight trips to West Virginia since 2000—including five trips as President and a large July 4th Celebration in Ripley, a critical vote-rich Capito area. President Bush’s last trip to West Virginia

⁹⁶*Id.* (As of June 30, 2001, West Virginia’s Third District Congressman Nick Joe Rahall had 1.5 million in his campaign fund while First District Congressman Mollohan listed \$46,615 in his campaign fund, and United States Senator had \$936,000 in his campaign fund.)

⁹⁷Lawrence Messina, *Facing re-election, Capito challenged on soft-money issue*, *Charleston Sunday Gazette-Mail*, Feb. 10, 2002, at A1.

⁹⁸*Id.*

⁹⁹Tara Tuckwiller, *Cheney stumps in city*, *Charleston Gazette*, Apr. 13, 2002, at A1.

¹⁰⁰*Id.*; Josh Hafenbrack, *Cheney gives Capito a boost*, *Charleston Daily Mail*, Apr. 13, 2002, at A1.

was just days prior to the General Election, thus receiving live extended coverage from all of the surrounding television stations and front page news coverage.¹⁰¹

While Capito's unsuccessful Democratic opponent Jim Humphreys spent approximately \$7 million for the entire 2000 election contest, Capito, along with others spending on her behalf, may have actually spent more money overall during the final critical months of the campaign.¹⁰² Humphreys spent the majority of his money during a crowded May Primary, while Capito was able to save her \$1.29 million for the General Election.¹⁰³ West Virginia's Second Congressional District election was the third most expensive House race in the country out of the 435 congressional races during the 2000 election cycle.¹⁰⁴

Despite his unsuccessful 2000 race, Humphreys elected to challenge Capito again in 2002. The 2002 Capito/Humphreys match-up continued the high-dollar

¹⁰¹Phil Kabler, *Bush urges voters to re-elect Capito*, Charleston Gazette, Nov. 1, 2002, at A1; see also Fanny Seiler, *Bush to visit July 4*, Ripley mayor says, Charleston Gazette, June 28, 2002, at A1; Phil Kabler, *Bush visits city today*, Charleston Gazette, Oct. 31, 2002, at A1.

¹⁰²Karin Fischer, *TV war has two fronts: Capito, GOP outspending Humphreys in recent weeks*, Charleston Daily Mail, Sep. 22, 2000, at A1; Lawrence Messina, *House race in dead heat: Expensive fight for 2nd Congressional District goes down to wire*, Charleston Gazette, Nov. 8, 2000, at A1 (Campaign finance filings indicate that Humphreys is worth at least \$43 million, most of which he gained by handling thousands of asbestos claims by his law firm.).

¹⁰³Phil Kabler, *2nd District race will be among most costly*, Charleston Gazette, Sept. 28, 2002, at A1.

¹⁰⁴Lawrence Messina, *House race in dead heat: Expensive fight for 2nd Congressional District goes down to wire*, Charleston Gazette, Nov. 8, 2000, at A1; Lawrence Messina, *GOP money, mud beat him, Humphreys says*, Charleston Gazette, Nov. 10, 2000, at C1; Lawrence Messina, *Capito is already running for 2002*, Charleston Gazette, May 23, 2001, at D6.

trend and was the most expensive House race in the nation. A year before the election, Capito had already raised \$733,155.¹⁰⁵ On June 30, 2002, just six months later, Capito and Humphreys had raised \$5.29 million and had spent \$3.94 million.¹⁰⁶ At that time, it was the second highest of all congressional races.¹⁰⁷

While Capito raised large sums of money from individual contributions and PACs, she also benefitted from independent expenditures on her behalf during both the 2000 and 2002 races. Although by federal law the Capito campaign and the National Republican Committee are not permitted to work in tandem, the television spots with a \$750,000 total television buy from the Republican Committee endorsing Capito were extraordinarily similar to the footage and language contained in the Capito campaign spots.¹⁰⁸ Humphreys, who put more than \$6 million of his personal money into the 2000 race, had more difficulty than Capito in raising money from outside sources.¹⁰⁹

Although Capito raised \$1.3 million for her 2000 race, the help she received from her friends at the National Republican Campaign Committee assisted her in

¹⁰⁵Karin Fischer, *Capito leads race for cash*, Charleston Daily Mail, Feb. 1, 2002, at A1.

¹⁰⁶Phil Kabler, *2nd District race will be among most costly*, Charleston Gazette, Sept. 28, 2002, at A1.

¹⁰⁷*Id.*

¹⁰⁸Karin Fischer, *TV war has two fronts: Capito, GOP outspending Humphreys in recent weeks*, Charleston Daily Mail, Sep. 22, 2000, at A1.

¹⁰⁹Lawrence Messina, *Capito is already running for 2002*, Charleston Gazette, May 23, 2001, at D6.

achieving a narrow victory of approximately 5,000 votes.¹¹⁰ It is almost impossible to accurately quantify the exact amount that national Republicans spent on Capito's behalf, but some estimates reach as high as \$2.5 million for television announcements, mailings and other get-out-the-vote activities.¹¹¹

Moreover, the millions of dollars spent on thirty-second television advertisements were plenty to plaster the broadcast and cable airwaves with a constant affront of negative advertising. Capito's spots communicated Humphreys connections to a racetrack scandal, illegal campaign contributions during the 1992 Presidential Campaign, and stated that no less than eighteen ethics complaints were filed against him.¹¹²

Another Capito campaign spot featured a former employee of Humphreys who alleged that someone in his office attempted to wrongfully obtain her medical

¹¹⁰Lawrence Messina, *GOP money, mud beat him, Humphreys says*, Charleston Gazette, Nov. 10, 2000, at C1; Lawrence Messina, *Out-of-state funds drop into political coffers*, Sunday Gazette-Mail, June 25, 2001, at A1.

¹¹¹Karin Fischer, *Race may have been different, campaign reform could have altered race for Congress*, Charleston Daily Mail, Mar. 21, 2001, at A1; Lawrence Messina, *House race in dead heat: Expensive fight for 2nd Congressional District goes down to wire*, Charleston Gazette, Nov. 8, 2000, at A1; Lawrence Messina, *GOP money, mud beat him, Humphreys says*, Charleston Gazette, Nov. 10, 2000, at C1.

¹¹²Lawrence Messina, *2nd District ads heat up airwaves: Humphreys answers Capito attack within day*, Charleston Gazette, Oct. 4, 2000, at A8; Lawrence Messina, *Capito and Humphreys continue to attack: Back taxes? Patients' rights? Corruption? Here's the background on the candidates ads*, Charleston Gazette, Oct. 13, 2000, at A16.

records.¹¹³ Capito explained that her campaign advertisements simply documented “the truth about Jim Humphreys’ questionable conduct, deceit, repeated violations of personal and professional trust.”¹¹⁴ One of the spots went so far as to state that Humphreys “demanded immunity under the Organized Crimes Act” before testifying in “a political corruption case” and that he had “made illegal campaign contributions in violation of federal law.”¹¹⁵

During the 2000 campaign, United States Senator John McCain made two campaign stops to West Virginia on behalf of Capito.¹¹⁶ After the United States Senate passed the McCain/Feingold campaign finance reform bill, attention quickly turned to the House and to freshman Representative Capito whose vote would become critical to whether or not the bill would survive a House vote.¹¹⁷ In an editorial, the *Charleston Gazette* asked “Campaign finance – What will Capito

¹¹³Lawrence Messina, *2nd District ads heat up airwaves: Humphreys answers Capito attack within day*, *Charleston Gazette*, Oct. 4, 2000, at A8; Lawrence Messina, *House race in dead heat: Expensive fight for 2nd Congressional District goes down to wire*, *Charleston Gazette*, Nov. 8, 2000, at A1.

¹¹⁴Lawrence Messina, *2nd District ads heat up airwaves: Humphreys answers Capito attack within day*, *Charleston Gazette*, Oct. 4, 2000, at A8; Lawrence Messina, *Capito and Humphreys continue to attack: Back taxes? Patients’ rights? Corruption? Here’s the background on the candidates ads*, *Charleston Gazette*, Oct. 13, 2000, at A16.

¹¹⁵*Id.*

¹¹⁶Lawrence Messina, *Common Cause urges Capito to join reform push*, *Charleston Gazette*, June 1, 2001, at C1.

¹¹⁷Editorial, *Campaign finance: What will Capito do?*, *Charleston Gazette*, June 5, 2001, at A4.

do?”¹¹⁸ The *Gazette* questioned how Capito would vote, noting contributions of \$10,000 to Capito’s campaign by House Majority Whip Tom DeLay who promised to do anything he could to stop the campaign reform legislation.¹¹⁹ It also noted that House Speaker Dennis Hastert’s PAC donated \$9,999 to Capito, while about forty percent of the PAC money Capito received came from GOP groups.¹²⁰ The *Gazette* posed the question: “Capito needs to decide who she will side with: A man who gave her moral and political support by appearing on campaign stages with her, or the Republican leadership who showered her with cash.”¹²¹

B. Money in State Politics

For a small and financially destitute state, West Virginia spends a lot of money electing those who represent them. In fact, “[o]nly three other states spent as large a share of their Gross State Product on candidates, Political Action Committees, and parties as the Mountain State did in 2000.”¹²² West Virginia, known as a Democratic stronghold, even contributed large amounts to President Bush during his 2000 Presidential Campaign. More than 400 West Virginians

¹¹⁸*Id.*

¹¹⁹*Id.*

¹²⁰*Id.*

¹²¹*Id.* (The article was referring to John McCain providing moral and political support by appearing on Capito’s behalf in several West Virginia locations.).

¹²²Lawrence Messina, *Campaign finance bill means changes here*, *Charleston Gazette*, Mar. 24, 2002, at A1 (Only three states—Montana, Virginia, and Louisiana—saw such contributions equal a larger share of their Gross State Product as West Virginia, whose GSP ranks 40th overall.).

contributed a total of \$277,363 to Bush, while Democratic challenger Al Gore amassed less than \$53,000 from one-fourth as many voters.¹²³ Interestingly, Bush won the General Election in West Virginia.

Even before the May 2000 West Virginia Primary Election, the leading Republican and Democratic candidates had raised more than \$1 million. Then-sitting Governor Cecil H. Underwood, who faced little Primary opposition, had collected \$1.2 million, while eighteen-year West Virginia Congressman Bob Wise had amassed \$1.1 million.¹²⁴ Both Underwood and Wise easily won their Primary races.

By April 2003, Wise had already raised \$1.087 million for his 2004 gubernatorial campaign.¹²⁵ Wise's 2000 campaign political consultant Mike Plante remarked, "There is no such thing as too early for fund-raising in politics."¹²⁶ Plante continued, "The governor has laid down a marker to any would-be challenger and has elevated the bar by raising and not spending a significant amount of money this early in the game."¹²⁷

The *Charleston Daily Mail* points out:

¹²³*Id.*

¹²⁴Associated Press, *Political Briefs from the 2000 campaign trail*, *Charleston Gazette*, May 3, 2000, at A1.

¹²⁵Associated Press, *Wise sets high bar in fundraising, Governor's coffers 5 times more than potential opponents*, *Charleston Daily Mail*, Apr. 21, 2003, at A1.

¹²⁶*Id.*

¹²⁷*Id.*

By this time before the 2000 election, incumbent Republican Gov. Cecil Underwood had raised about \$693,000 and had about \$560,000 in his war chest. Wise's report suggests that not only has the incumbent amassed more this time around, but he has raised it from some of the same people who supported the man he beat.¹²⁸

Though House of Delegates races are typically not as expensive as their counterparts in many states, West Virginia still has its share of high-priced seats. For example, Carrie Webster spent \$40,481 as of June 2, 2000, to garner 616 votes to win the Primary against challenger Perry Bryant, who after spending \$24,894, finished second with 568 votes.¹²⁹ Webster spent about \$65.72 per vote. In her 2002 campaign, Delegate Webster spent \$84,000 in defeating opponent Mark Sadd who spent \$40,890.¹³⁰

The West Virginia People's Election Reform Coalition report declares that from the 1996 to 1998 elections: "state legislative campaign contributions from the tobacco industry rose by 830 percent, by 429 percent from corporate lawyers, by 223 percent from gambling interests and by 157 percent from the coal industry."¹³¹ The report further delineates that just four-tenths of one percent of every West

¹²⁸*Id.*

¹²⁹Fanny Seiler, *Airport contract criticized*, Charleston Gazette, June 19, 2000, at C1.

¹³⁰Associated Press, *Nearly \$6 million raised for races*, Charleston Daily Mail, Jan. 2, 2003, at A1.

¹³¹Paul J. Nyden, *PACs' role increasing in races for Legislature*, Charleston Gazette, Aug. 14, 2000, at A1.

Virginia citizen was responsible for the \$5.2 million in contributions given to legislative candidates in 1998.¹³²

Furthermore, contributions to the average State Senate candidate rose by eighty-four percent, from \$51,159 to \$93,989 between the 1996 and 1998 elections.¹³³ Contributions to House candidates also rose, but by a smaller amount of thirty-two percent.¹³⁴ In addition, the average House candidate received \$17,486 in 1996, while they received an average of \$23,142 in 1998.¹³⁵

The report also illustrated who was responsible for contributing to the 117 successful House and Senate candidates in 1998. The breakdown is as follows: "Candidates personal funds, 22 percent; Health-care providers, 10 percent; Coal, 7 percent; Consumer-oriented lawyers, 6 percent; Gambling, 5 percent; Labor unions, 5 percent; All other businesses, 29 percent; and Other contributors, 10 percent."¹³⁶

After the huge sums of money spent during the May 2000 West Virginia Primary, which included more than \$3 million by United States Congressional Candidate Jim Humphreys, some citizens expressed their frustrations.

¹³²*Id.*

¹³³Paul J. Nyden, *Political contributions rose sharply*, Charleston Gazette, Aug. 12, 2000, at A1.

¹³⁴*Id.*

¹³⁵*Id.*

¹³⁶Paul J. Nyden, *PACs' role increasing in races for Legislature*, Charleston Gazette, Aug. 14, 2000, at A1.

Summersville native Dale Jones stated that “[t]hey are buying the office. They are not being elected by the people.”¹³⁷ Jones said that there were so many campaign advertisements that he stopped listening to them and grew immune to them each time they appeared on television and the radio.¹³⁸

Former legislator and current lobbyist Michael Queen wrote a commentary in *West Virginia Executive* magazine entitled: “Political campaigns are BIG business in West Virginia—and the future looks even better.”¹³⁹ The article mentioned that \$10.3 million was spent by six different candidates in seeking the congressional seat vacated by current Governor Bob Wise. It also informed that \$6.4 million of that was spent by congressional candidate Jim Humphreys.¹⁴⁰

Ken Hechler, a longtime West Virginia politician, has often been critical of the amount of money involved in West Virginia elections.

But, Hechler acknowledged, ‘The system of politics in the Appalachian region was probably the most corrupt in the nation.’ What disgusted him even more was that it was tolerated so blithely by the people. He said that the only newspaper in the region that dared to sound the tocsin against the ‘establishment’ was the *Charleston Gazette*. He felt that college professors were entirely too reticent and passive, but even more appalling, the churches, he said, were apathetic toward political corruption. Hechler

¹³⁷Jennifer Bundy, *Too much money in primary, some voters say*, *Charleston Gazette*, May 23, 2000, at A5.

¹³⁸*Id.*

¹³⁹Editorial, *Politics: \$20 million enterprise?*, *Charleston Gazette*, Aug. 19, 2001, at A4.

¹⁴⁰*Id.*

considered it downright 'obscene' that a candidate is allowed to spend nearly three million dollars to capture the governorship of a state of fewer than two million people. (Of course he was four times as exercised when John D. 'Jay' Rockefeller IV spent 12 million dollars in 1984 to capture a Senatorial berth.)¹⁴¹

Hechler deplures, "the increasing number of millionaires and candidates financed by privilege-seeking special interest groups who cynically expend their money to buy elections" and said it "pollutes the very well-springs of democracy."¹⁴²

As recently as February 2003, the State Republican Party raised enough money to close on the purchase of a large building in South Charleston that will become its headquarters. The 3,800 square-foot building has two conference rooms, eight offices and a kitchen.¹⁴³ The party still owes \$50,000 on the \$187,000 building, but sources say Massey Coal donated \$100,000; Mingo County businessman Buck Harless contributed \$25,000; and Clay County oil and gas businessman Jim Reed gave \$10,000.¹⁴⁴ Two \$1,000 donations were also received.¹⁴⁵

¹⁴¹Charles H. Moffat, *Ken Hechler: Maverick Public Servant* 267 (Mountain State Press: Charleston, WV, 1987).

¹⁴²*Id.* at 268.

¹⁴³Fanny Seiler, *Warner wrangles with Dems over GOP group*, Sunday Gazette-Mail, Feb. 9, 2003, at C4.

¹⁴⁴*Id.*

¹⁴⁵*Id.*

During the 2002 campaigns for state legislative candidates, a stunning \$6 million was raised.¹⁴⁶ Senate Finance Chairman Oshel Craig spent the most of any Democratic candidate, dispensing \$405,555 against challenger Lisa Smith who spent \$294,000.¹⁴⁷ In the House of Delegates, newcomer Dan Foster spent more than \$118,000 to win his seat.¹⁴⁸ Foster said he spent the money wisely and “that much money is not appealing.”¹⁴⁹

The State Senate race between Jesse Guills and Mary Pearl Compton cost nearly \$285,594.¹⁵⁰ Lagging close behind was the Senate race between Evan Jenkins and Dr. Tom Scott who spent \$273,347.¹⁵¹ Senator Ed Bowman raised \$122,952 despite the fact that he was unopposed in the election, while House Majority Leader Rick Staton who also ran unopposed in the General Election spent \$41,183 of the \$61,840 he raised.¹⁵²

Gubernatorial Inauguration contributions also reach high limits in West Virginia. Governor Underwood raised \$1.07 million and spent \$801,000 for his

¹⁴⁶Associated Press, *Nearly \$6 million raised for races*, Charleston Daily Mail, Jan. 2, 2003, at A1.

¹⁴⁷*Id.*

¹⁴⁸*Id.*

¹⁴⁹Fanny Seiler, *Campaign cost high, Foster says*, Charleston Gazette, May 21, 2002, at C1.

¹⁵⁰Associated Press, *Nearly \$6 million raised for races*, Charleston Daily Mail, Jan. 2, 2003, at A1.

¹⁵¹*Id.*

¹⁵²*Id.*

January 1997 festivities.¹⁵³ Underwood used the remaining \$225,000 from his inauguration to establish "Mission West Virginia," his church-based charity.¹⁵⁴ In 2001, Governor Wise had \$440,000 remaining from his inaugural funds and donated that amount to finance 100 students to attend the Governor's Honors School for Math and Science.¹⁵⁵ Wise raised nearly \$952,000, while \$690,000 came from 138 corporate sponsors who bought \$5,000 tables at the Inaugural Ball.¹⁵⁶ As there are no restrictions on how the surplus funds can be spent, it is argued that this is yet another way to circumvent campaign finance laws. As demonstrated, candidates are able to take large sums of money and contribute to causes in their names or to individuals who will most certainly remember them during the next election cycle.

C. Money Buys Campaign Perceptions

Citizens who try to decide on a candidate during elections are usually bombarded with millions of dollars worth of television advertisements which are mostly negative. In describing the time just prior to the November 2002 election day, the *Charleston Gazette* believes: "Traditionally, this is the time when

¹⁵³Todd C. Frankel, *Once again, the inaugural cash flows: Celebration costs expected to be half of 1997 event*, Charleston Daily Mail, Jan. 17, 2001, at A1.

¹⁵⁴*Id.*

¹⁵⁵*If a governor gives \$440,000...*, Charleston Gazette, June 14, 2001, at A3; Todd C. Frankel, *Once again, the inaugural cash flows: Celebration costs expected to be half of 1997 event*, Charleston Daily Mail, Jan. 17, 2001, at A1.

¹⁵⁶Todd C. Frankel, *Once again, the inaugural cash flows: Celebration costs expected to be half of 1997 event*, Charleston Daily Mail, Jan. 17, 2001, at A1.

candidates squander great sums on mean-spirited, distorted, over-expensive, TV 'attack ads' designed to make their opponents seem repulsive. 'Going negative' is the common label for it."¹⁵⁷ The *Gazette* continues: "This unseemly process disgusts many Americans. No wonder vast numbers of adults don't bother to vote."¹⁵⁸

Exactly one year prior to that editorial, the *Gazette* proclaimed: "Political attack ads during election campaigns are so dishonest they make millions of Americans contemptuous of politicians in general. The TV and radio spots twist facts to make opponents seem unpatriotic, immoral, corrupt or worse."¹⁵⁹ The *Gazette* cited several examples from the 1996 gubernatorial election. Advancing the issue, it proclaimed:

Because then-Democratic nominee Charlotte Pritt previously had voted in the state Senate for 'human growth and development' classes in public schools, the GOP ads said she 'proposed teaching first-graders about condoms.' What a distortion. Such sex-education courses merely teach boys and girls at the grade-school level to be nice to each other.

Because Pritt had supported the right of adults to choose any movies they wanted, the ads declared that she 'voted to permit the sale of pornographic videos to children.' Another gross distortion.¹⁶⁰

¹⁵⁷Editorial, *Smears: Campaign 'attack ads'*, Charleston Gazette, Oct. 9, 2002, at A4.

¹⁵⁸*Id.*

¹⁵⁹*Id.*

¹⁶⁰*Id.*

During the 2000 gubernatorial election, then-Governor Underwood exclaimed that challenger Bob Wise had missed 73 of 245 votes in Congress as of June 6, 2000.¹⁶¹ Underwood's spokesman said that Wise missed several key votes including major trade and Internet legislation and that, "West Virginians should be outraged that Bob Wise has chosen to leave our congressional district unrepresented in three out of every ten votes this year."¹⁶² Conversely, one of the Wise camp televised campaign charges was that Underwood was responsible for illegal aliens working at West Virginia University.¹⁶³

During the 2002 race for the Senate seat in Mingo County, the *Gazette* noted: "If ever the adage that elections are about choosing the lesser of the two evils rang true, the 6th Senatorial District Primary is proof."¹⁶⁴ The *Gazette* charged:

Incumbent Sen. Truman Chafin's political career includes dodging two indictments: One state charge, over a scheme to 'sell' the Mingo County sheriff's seat. (It was dismissed on a technicality). The other was federal, over wiretapping the phone of ex-wife Gretchen Lewis, former state Health and Human Resources Secretary.

The *Gazette* continued:

¹⁶¹Associated Press, *Campaign for governor pulls Wise away from Congress, floor votes*, Charleston Gazette, June 12, 2000, at A1.

¹⁶²*Id.*

¹⁶³Rod Blackstone, *Ads that help candidate Wise contain false statements*, Charleston Gazette, Sept. 22, 2000, at A5.

¹⁶⁴Phil Kabler, *Bitter fight in Mingo*, Charleston Gazette, May 13, 2002, at A1.

Chafin's challenger: Dr. Diane Shafer has a rap sheet of her own, including a conviction in Kentucky for bribery (later overturned), and the suspensions of licenses to practice medicine in Kentucky and West Virginia for workers' compensation fraud. (She got her West Virginia license back in 2000, when the state Supreme Court overturned the revocation.)¹⁶⁵

During the 1996 West Virginia Gubernatorial Primary, Charlotte Pritt's campaign charged that C. MacClain Haddow, who was previously convicted of federal corruption charges, "played a key role in the campaign" of her opponent Joe Manchin, III.¹⁶⁶ Manchin, however, explained that the man in question was simply one of thousands of volunteers involved with his campaign.¹⁶⁷ Manchin said he "does not do background checks on unpaid volunteers or quiz them about their political party affiliation" and that he did not screen or scrutinize everyone who offered to help because he was extremely pleased "when people want to volunteer for us."¹⁶⁸

¹⁶⁵*Id.*

¹⁶⁶Paul Owens, *Pritt Camp Says Manchin's Consultant A Felon*, Charleston Daily Mail, Feb. 21, 1996, at A1.

¹⁶⁷*Id.*

¹⁶⁸Paul Owens, *Pritt Camp Says Manchin's Consultant A Felon*, Charleston Daily Mail, Feb. 21, 1996, at A1 (The news article also stated that during the previous year, Manchin was picked up at the airport for a campaign stop in Huntington "by a man convicted of bank robbery and a woman convicted on drug charges and income tax evasion." Manchin said that he "had no idea about their backgrounds.").

Despite Manchin's explanation with regard to his association with Haddow, the *Charleston Gazette* in an editorial criticized then-gubernatorial candidate Joe Manchin's campaign. The *Gazette* wrote:

IT HAS COME to light that Joe Manchin's Democratic campaign for governor was guided partly by C. MacClain Haddow, a former Reagan administration official who went to prison for corruption in the 1980s. After getting out of jail, Haddow became a Washington lobbyist for Mylan Laboratories of Morgantown, headed by Milan Puskar, Manchin's chief backer. Frankly, we wish crooked Reagan Republicans would stay in their own party – West Virginia Democratic ranks already contain enough tarnished characters.¹⁶⁹

Manchin's successful Primary Election opponent Charlotte Pritt drew her own negative attention. Pritt filed a libel suit against Republican officials based upon television advertisements sponsored by several Republican organizations that aired throughout the State during her 1996 gubernatorial campaign.¹⁷⁰ Some of the campaign spots claimed that Pritt voted as a State Senator to permit the sale of pornographic videos to children and to allow convicted drug abusers to work in public schools.¹⁷¹ In 1997, Pritt sued the Republican National Committee, the National Republican Senatorial Committee, the West Virginia State Victory

¹⁶⁹Editorial, *Potpourri*, *Charleston Gazette*, Feb. 26, 1996, at A4.

¹⁷⁰Susan Williams, *Workman is co-counsel for Pritt in GOP ad suit*, *Charleston Gazette*, May 2, 2001, at A5; Associated Press, *Court reinstates Pritt's ad lawsuit: GOP accused of running false ads with actual malice*, *Charleston Daily Mail*, Dec. 13, 2001, at A2; *Pritt v. The Republican National Committee*, 1 F. Supp. 2d 590 (S.D. W. Va. 1998).

¹⁷¹Susan Williams, *Workman is co-counsel for Pritt in GOP ad suit*, *Charleston Gazette*, May 2, 2001, at A5.

Committee, and others stating that she did not cast votes for anything resembling the subjects in the campaign advertisements and that those groups “committed common-law libel, slander and defamation by publishing false and injurious statements against her.”¹⁷²

The Fayette County Circuit Court dismissed the suit; however a unanimous Opinion by the West Virginia Supreme Court reversed the dismissal and sent the case back to the circuit court for a trial.¹⁷³ Former West Virginia Supreme Court Justice Margaret Workman, who represented Pritt with her lawsuit, called the advertisements outrageous and said maybe this case could help to reform campaigning in West Virginia elections.¹⁷⁴ During oral argument before the Supreme Court, the GOP attorney said that “America’s freedom of speech is so open that erroneous information may be published out of ignorance.”¹⁷⁵ He then

¹⁷²Pritt v. The Republican National Committee, 1 F. Supp. 2d 590 (S.D. W. Va. 1998); Susan Williams, *Workman is co-counsel for Pritt in GOP ad suit*, Charleston Gazette, May 2, 2001, at A5.

¹⁷³Associated Press, *Court reinstates Pritt’s ad lawsuit: GOP accused of running false ads with actual malice*, Charleston Daily Mail, Dec. 13, 2001, at A2; Susan Williams, *Workman is co-counsel for Pritt in GOP ad suit*, Charleston Gazette, May 2, 2001, at A5.

¹⁷⁴Susan Williams, *Workman is co-counsel for Pritt in GOP ad suit*, Charleston Gazette, May 2, 2001, at A5.

¹⁷⁵Editorial, *Smear: Campaign hatchet job*, Charleston Gazette, Oct. 9, 2002, at A4.

added that “[i]n a political campaign, the adverse party is going to try to inflict damage.”¹⁷⁶

Pritt’s gubernatorial General Election challenger, Cecil H. Underwood, was chastised for running similar campaign spots against Pritt. The Underwood advertisements accused Pritt “of publicly supporting the legalization of marijuana, voting to allow the sale of drug paraphernalia to children and voting to pay workers’ compensation benefits to jailed convicts.”¹⁷⁷ Underwood’s Republican Primary challengers were not without similar headlines.

As previously discussed, the 2002 Second Congressional District race was plagued with controversy. Jim Humphreys, a millionaire whose personal worth is estimated at between \$50 and \$200 million, criticized Primary Election opponent Margaret Workman for loaning her campaign \$500,000 from joint accounts between her and her husband Ty Gardner.¹⁷⁸ Workman’s financial disclosure listed family

¹⁷⁶*Id.*

¹⁷⁷Paul Owens, *Underwood Fires Back With Anti-Crime Ad: Miffed Over Pritt Claim, GOP Hopeful Launches Counter Ad*, Charleston Daily Mail, Nov. 4, 1996, at A12. Pritt explained that she was not calling for the legalization of marijuana. She insists that she merely said that West Virginia could grow marijuana for sale if the federal government were to legalize it for medicinal uses. Pritt states that she voted against a bill that would have banned the sale or advertisement of drug paraphernalia, because it was overly broad and probably unconstitutional. Pritt’s campaign consultant called the bill “fatally flawed.” Pritt states that she voted against a bill that reduced workers’ compensation benefits for hearing loss saying that supporters of the bill said the benefits were too liberal. The bill also happened to include a provision that denied workers compensation benefits to state prisoners. Pritt campaign consultant, Mike Plante, said that the provision was added by supporters of the bill to discourage opponents from voting against it.

¹⁷⁸Lawrence Messina, *Questions arise about Workman loan*, Charleston (continued...)

assets between \$13 million and \$35 million.¹⁷⁹ Workman called it “hugely ironic” that Humphreys who contributed \$785,000 of his own money for the 2002 campaign and \$6 million of his own money for his unsuccessful 2000 campaign would be complaining about her using her own money.¹⁸⁰

The *Charleston Gazette* editorial, “Cash, Political Bonanza,” states: “Many Americans think politics is a sleazy business, tainted by special-interest money. We wonder where they got such an idea.”¹⁸¹ The editorial charged that the Republican victor, Lisa Smith, in a heated State Senate race was holding an alleged illegal fundraiser to attempt to erase her \$254,000 campaign debt that she loaned herself.¹⁸² The newspaper further portrayed that newly appointed Republican United States Attorney Kasey Warner, brother of the State Republican Party Executive Chairman Kris Warner, was uninterested in investigating this incident “although he previously probed a different campaign finance problem involving Democrat Craig [Smith’s General Election opponent].”¹⁸³

¹⁷⁸(...continued)
Gazette, Apr. 20, 2000, at A1; Karin Fischer, *Workman says loan came from joint account: Candidate says \$500,000 is eligible for campaign loan*, Charleston Daily Mail, Apr. 25, 2002, at A1

¹⁷⁹*Id.*

¹⁸⁰*Id.*

¹⁸¹Editorial, *Cash, Political bonanza*, Charleston Gazette, Dec. 19, 2002, at A4.

¹⁸²*Id.*

¹⁸³*Id.*

D. The Power of the Incumbency

1. Taxpayer paid-for trinkets

In 1976, then-Governor Arch A. Moore, Jr., asserted that he had a right to run for a third consecutive term in spite of a State Constitutional prohibition. One of Moore's arguments was that not allowing him to run for another term was a deprivation of votes for members of the public who wanted to vote for him.¹⁸⁴ In 1970, however, the voters of West Virginia approved a Constitutional Amendment allowing a Governor to serve a second consecutive term and Moore benefitted from that with his 1972 gubernatorial campaign and subsequent victory.¹⁸⁵ The West Virginia Supreme Court held the term limitation constitutional and noted:

In addition it has long been felt that a limitation upon succession of incumbents removes the temptation to prostitute the government to the perpetuation of a particular administration. *Gorrell v. Bier*, 15 W. Va. 311 (1879). While elections are won by 51% of the vote, all of the people of a state must be served. Meretricious policies which sacrifice the well-being of economic, social, racial, or geographical minorities are most likely where a political figure, political party, or political interest group can rely upon electorate inertia fostered by the hopelessness of encountering a seemingly invincible political machine.¹⁸⁶

The 1976 Supreme Court recognized the power of incumbency even without the level of today's so-called *trinkets* and *giveaways*. In an effort to promote their chances for re-election, it is clear that many incumbent politicians are able to gain

¹⁸⁴State ex rel. Maloney v. McCartney, 223 S.E.2d 607, 611 (W. Va. 1976).

¹⁸⁵*Id.*

¹⁸⁶*Id.*

enormous advantages by spending their state budgets to develop stronger name recognition. As recently as 1999, West Virginia Supreme Court Chief Justice Larry V. Starcher provided that: "Of course incumbency does not assure victory. But the significant weight that 'being in office' brings to a popular electoral contest undoubtedly makes incumbency a rich asset and prize."¹⁸⁷ An example of Justice Starcher's comments are encapsulated by the actions of former Governor Underwood who left office on January 14, 2001, leaving a balance of \$20,000 in the Governor's Contingency Fund that previously had a balance of \$22.36 million on July 1, 2000.¹⁸⁸ Underwood was accused of illegitimately handing out more than twenty-two million dollars in the Governor's Contingency Fund Grants to cities, counties, and civic groups throughout the State during the months leading up to the November 7, 2000 Election where he faced challenger and current Governor Bob Wise.¹⁸⁹ A Senior Deputy in the Auditor's office said, "I've never seen a fund get so mangled in my life as the governor's contingency fund."¹⁹⁰

Governor Wise stated: "What we're not going to do is make the contingency fund a candy store, and we're not going to make it one of the largest publicly funded

¹⁸⁷Rist v. Underwood, 524 S.E.2d 179, 200 (W. Va. 1999) (Justice Starcher concurring).

¹⁸⁸Phil Kabler, *Governor's contingency fund running on fumes: 'It looks like they spent the whole budget,' Wise aide says*, Charleston Gazette, Jan. 17, 2001, at A2.

¹⁸⁹*Id.*

¹⁹⁰Phil Kabler, *Governor's contingency fund running on fumes: 'It looks like they spent the whole budget,'* Charleston Gazette, Jan. 17, 2001, at A2 (quote from Paul Mollohan).

campaigns.”¹⁹¹ The *Charleston Gazette* declared that Underwood’s use of the contingency fund was “shameless campaigning with taxpayer money—giving government funds to get votes. There’s no other way to describe it.”¹⁹² State Auditor Glen Gainer, III, called the Governor’s actions “insanity.”¹⁹³ Mike Plante of the Wise campaign quipped, “Governor Underwood may be the first Republican to support public financing of campaigns.”¹⁹⁴

The *Charleston Daily Mail* quips “Who says West Virginia doesn’t have public financing for political candidates?” referring to incumbents in statewide-elected offices who “turn their offices into taxpayer-funded political strongholds.”¹⁹⁵ The article points to the Agriculture Commissioner who unsuccessfully ran for Governor in 1988 and 1992, as well as the State Treasurer who ran for Governor in 1996.¹⁹⁶

¹⁹¹Phil Kabler, ‘*Stop the insanity, Underwood told, Wise, Gainer blast governor’s election-season use of contingency fund*, *Charleston Gazette*, Oct. 25, 2000, at C1.

¹⁹²Editorial, *Handouts, Campaigning with tax money*, *Charleston Gazette*, Oct. 25, 2000, at A4.

¹⁹³*Id.*; Phil Kabler, ‘*Stop the insanity, Underwood told, Wise, Gainer blast governor’s election-season use of contingency fund*, *Charleston Gazette*, Oct. 25, 2000, at C1.

¹⁹⁴Editorial, *Handouts, Campaigning with tax money*, *Charleston Gazette*, Oct. 25, 2000, at A4.

¹⁹⁵Paul Owens, *Bring that idea up again*, *Charleston Daily Mail*, Mar. 27, 1998, at C1.

¹⁹⁶*Id.*

The *Charleston Gazette* writes: "Campaign money is an American disgrace—and it's distressing to see tax funds being used, as well as special-interest money."¹⁹⁷ The *Gazette* continued:

The brazen nature of the giveaways was illustrated last month when Sen. Vic Sprouse, R-Kanawha, stupidly left a recorded telephone message at the Quick Community Center, saying an \$18,000 gift to fix the center's roof might be withheld because a photo of Democratic gubernatorial nominee Wise was on a center wall. If the center's leaders renounced support for Wise, Sprouse implied, Underwood would give them \$18,000 of taxpayer money for their roof.¹⁹⁸

In addition to the actual cash given to groups and individuals by Legislators and Governors for various projects, the distribution of so-called *trinkets* has "started to get somewhat out of control for the last couple of years," according to Speaker of the House of Delegates Bob Kiss.¹⁹⁹ The *Charleston Daily Mail* reports that: "As common as the items are, the personalized pens, pencils, key chains and other trinkets offered for free by various state officers—but paid for with taxpayer funds—are considered by some to be an important public relations tool that constituents have come to expect."²⁰⁰ It is also argued these trinkets—that often

¹⁹⁷Editorial, *Handouts, Campaigning with tax money*, *Charleston Gazette*, Oct. 25, 2000, at A4.

¹⁹⁸*Id.*

¹⁹⁹Stacey Ruckle, *Many officials hand out trinkets, Tax money often pays for personalized items*, *Charleston Daily Mail*, Apr. 16, 1998 (Kiss admits that he does keep some West Virginia flags on hand in his Capitol office because that's a common request among civic groups.).

²⁰⁰*Id.*

prominently display the name of the elected official—are also used merely as a re-election tool or incumbency protection plan.

In a 1998 editorial, the *Charleston Daily Mail* noted: “West Virginians are the second-poorest people in the nation. They devote a higher percentage of their meager incomes to state government than people in twenty-seven other states. What do they get for their money?”²⁰¹ The editorial listed numerous other taxpayer paid-for trinkets distributed by various elected officials—all of which prominently display the name of the elected official—that are commonly provided to the citizenry.²⁰²

The editorial called the giveaways “self-promotional nonsense [that] is an assault on taxpayers’ wallets and an affront to common decency.” It also asks: “How dare these politicians have their next campaign subsidized by taxpayers?”²⁰³ Among some of the giveaway items—while certainly not an inclusive list from the statewide elected officials—paid for with taxpayer money consist of the following:

Treasurer John Perdue—pens and pencils displaying his name along with pictures included on informational packets; Agriculture Commissioner Gus Douglass—pens with his name displayed; Governor’s Wise, Underwood, and Caperton—pens, key chains, flags; Attorney General McGraw—key chains, magnets.²⁰⁴

²⁰¹Editorial, *Trinkets: For the money they pay in taxes, people deserve more than key chains*, *Charleston Daily Mail*, Apr. 18, 1998, at A4.

²⁰²*Id.*

²⁰³*Id.*

²⁰⁴See Stacey Ruckle, *Many officials hand out trinkets, Tax money often pays* (continued...)

State Auditor Glen Gainer, III says that he uses campaign money instead of taxpayer money to purchase paperweights and pens with his name on them.²⁰⁵ Gainer, however, did spend between \$400 and \$500 of taxpayer money on coffee cups emblazoned with his name that he handed out at an informational seminar.²⁰⁶ While many of the state constitutional officers differ in their “giveaways,” they all distribute brochures that contain their names.²⁰⁷

Another example of so-called self promotion by elected officials is their appearance at fairs and festivals throughout the state. One such fair is the State Fair held each year in Fairlea, West Virginia. During the 2001 State Fair, Gainer had about thirty employees at the fair and spent an estimated \$26,705.²⁰⁸ Gainer's office spent nearly \$9,500 on lodging for his employees and another \$14,157 in

²⁰⁴(...continued)

for personalized items, Charleston Daily Mail, Apr. 16, 1998; Associated Press, *McGraw magnets attract detractors: High court candidates say attorney general trying to help brother's campaign*, Charleston Gazette, Apr. 14, 1998, at A1; Editorial, *Trinkets: For the money they pay in taxes, people deserve more than key chains*, Charleston Daily Mail, Apr. 18, 1998, at A4; Stacey Ruckle, *McGraw giving out 160,000 magnets*, Charleston Daily Mail, Apr. 9, 1998, at A1; Ken Thomas, *Magnets attract criticism: Court candidates say McGraw using mailings, TV ads to help brother*, Charleston Daily Mail, Apr. 13, 1998, at A1.

²⁰⁵Stacey Ruckle, *Many officials hand out trinkets, Tax money often pays for personalized items*, Charleston Daily Mail, Apr. 16, 1998.

²⁰⁶*Id.*

²⁰⁷*Id.*

²⁰⁸Editorial, *No Fair: Gainer, Perdue and McGraw spent your money to promote themselves*, Charleston Daily Mail, Sept. 10, 2001, at A4; Fanny Seiler, *Gainer spends more than \$26,000 at State Fair*, Charleston Gazette, Sept. 9, 2001, at C1.

promotional material including yardsticks, coin purses, fans, pencils, and kits designed to promote “financial literacy.”²⁰⁹

Similarly at the State Fair, State Treasurer John Perdue’s expenses totaled \$13,189 “promoting himself at the fair.”²¹⁰ State Attorney General Darrell McGraw spent about \$10,000 “ostensibly to obtain relief on behalf of consumers.”²¹¹ State Agriculture Commissioner Gus Douglass spent \$4,450 at the fair on employee expenses and for re-usable banners.²¹² The *Charleston Daily Mail* professes that “[t]he No. 1 problem in West Virginia is poverty[,]”

[y]et Auditor Glen Gainer, Treasurer John Perdue, Attorney General Darrell McGraw used the money at their disposal to promote themselves – to further their own interests.

Voters should by all means commit those names to memory.

These guys play West Virginians for fools – funding their constant campaigns for public office with money obtained from or for some of the poorest people in the nation.

²⁰⁹Editorial, *No Fair: Gainer, Perdue and McGraw spent your money to promote themselves*, Charleston Daily Mail, Sept. 10, 2001, at A4 (“\$3,960 worth of yardsticks, \$3,600 in coin purses, \$1,540 in fans, \$1312 in pencils and – do not grind your teeth – \$2,745 in kits he says were designed to promote ‘financial literacy.’” Gainer also spent \$2,712 for staff meals and \$1,335 for four different colored shirts for employees handing out the goodies.).

²¹⁰Editorial, *No Fair: Gainer, Perdue and McGraw spent your money to promote themselves*, Charleston Daily Mail, Sept. 10, 2001, at A4; Fanny Seiler, *Gainer spends more than \$26,000 at State Fair*, Charleston Gazette, Sept. 9, 2001, at C1.

²¹¹*Id.*

²¹²*Id.*

Disgusting.²¹³

2. Budget Digest

The West Virginia Legislature has developed a nearly \$35 million dollar “slush fund for local projects that help incumbents get re-elected.”²¹⁴ The Budget Digest, often referred to as a “corrosive charity,” is money set aside by the Legislature to fund special projects chosen by legislators. The Budget Digest allocates millions of dollars for home-district fairs, festivals, athletic fields, economic development projects and other such programs. The allocations occur after the Legislature is out of session and without open debate.

It is argued that the Budget Digest almost guarantees poor policy as millions of dollars go to projects that the entire Legislature would not pass if they had to do it under the light of day. To simplify, Delegates and Senators can get a lot of photo opportunities in their local newspapers for bringing back hundreds of thousands of dollars, one project at a time. It is a re-election tool that most challengers simply cannot compete against. Others say that the Budget Digest is a tool of coercion used by House leaders to keep Delegates in line by controlling how they vote.²¹⁵ The *Charleston Daily Mail* argues: “Legislators should stop playing Santa Claus with

²¹³Editorial, *No Fair: Gainer, Perdue and McGraw spent your money to promote themselves*, Charleston Daily Mail, Sept. 10, 2001, at A4.

²¹⁴Editorial, *Budget Digest*, Charleston Daily Mail, May 8, 2002, at A4.

²¹⁵Dan Radmacher, *Budget Digest simply a tool of coercion*, Charleston Gazette, Oct. 6, 2000, at A4.

taxpayers' money. Local causes should be supported locally" and that "Legislators should be ashamed and voters should demand better."²¹⁶

One such example was funding for the creation of a new community college in House Finance Chairman Harold Michael's home district even though the Legislature did not decide that West Virginia needed another community college.²¹⁷ The *Charleston Gazette* argues that it "isn't right" and "certainly can't be legal" when "one legislator [can] appropriate \$2 million to his pet college without a single vote being taken?"²¹⁸

Furthermore, an example of improper allocations cited by the Budget Digest was the \$2,950 sent to the town of Davis in 1995, 1998, 1999, for a Blackwater 100 festival. The problem is that the Blackwater 100 was a motorcycle-ATV race that was last run in 1992.²¹⁹ Nonetheless, the town of Davis knowingly cashed the checks and used the money for other purposes. The total amount given away statewide during the 2001-02 fiscal year was \$37.33 million, up from \$37.15 million in 2000-01, and \$38.6 million in 1999-2000.²²⁰

The *Gazette* provides:

²¹⁶Editorial, *Budget Digest*, Charleston Daily Mail, May 8, 2002, at A4.

²¹⁷Editorial, *Eastern College never approved*, Charleston Gazette-Mail, July 2, 2000, at A4.

²¹⁸*Id.*

²¹⁹Fanny Seiler, *Manchin wants new doorway*, Charleston Gazette, Apr. 10, 2001, at A4.

²²⁰Phil Kabler, *Budget Digest no record: Allocations slightly larger than last year's*, Charleston Gazette, June 29, 2001, at A1.

The distribution of \$38 million or more in public funds by a handful of legislators is hardly a simple political matter. The Budget Digest subverts the democratic process in countless ways. It usurps executive spending authority established by the state constitution. It concentrates power in too few hands. It shuts the public out of the decision-making process.²²¹

In 2001, former Delegate Arley Johnson from Cabell County joined several civic and citizens' action groups in a lawsuit challenging the constitutionality of the Budget Digest process.²²² The case had been heard by the Supreme Court of Appeals of West Virginia and a decision rendered said the process is constitutional so long as the procedures set forth by the Supreme Court are followed such as open discussion and debate of the Budget Digest.²²³

Those bringing the lawsuit believe that the Budget Digest allows a few powerful legislators to allocate millions for home-district projects even after the legislative session ends and the budget has already been approved. Johnson has argued that House of Delegate leaders use the Budget Digest as a strong-arm tactic controlling rank-and-file Delegates with the threat of withholding digest funds.²²⁴ Basically, millions of dollars, approximately \$37 million for the 2001 fiscal year, is

²²¹Editorial, *Budget Digest: Court should order reform*, Charleston Gazette, July 18, 2000, at A4.

²²²Phil Kabler, *Johnson doesn't plan to quit budget lawsuit*, Charleston Gazette, Feb. 13, 2001, at A1.

²²³Brad McElhinny, *Court upholds Budget Digest in 3-1 ruling*, Charleston Daily Mail, Mar. 26, 2001, at A1.

²²⁴Interview of Delegate Johnson by Author, August 5, 2000, Barboursville Veterans Home, Barboursville, West Virginia.

divided among legislators to decide how to spread the wealth after the actual budget is passed.²²⁵

West Virginia Supreme Court Justice Larry V. Starcher referred to the Budget Digest as “a mechanism whereby millions of dollars for local projects and jobs are annually passed out like holiday gifts by the West Virginia legislative leadership.”²²⁶ When the Court first considered a challenge to the Budget Digest in 1991, dissenting Justice Miller provided:

What a true laboratory of horrors the majority has concocted with this lineage of back-room documents that will transform what was originally pronounced as dead and having no force and effect of law into something alive. The Igors of the world may rejoice at the majority’s concoction. I do not, because it takes the legislative process out of the clear light of day where matters are voted on by the entire legislature and condemns it to that subterranean realm where memoranda of negotiations, compromises, and agreements exist and discussions in committee are used to validate the specific expenditure of funds through the Budget Digest.²²⁷

After the West Virginia Supreme Court 2001 Decision, the House and Senate budget conferees met for “a total of 11 minutes” to approve the 241-page 2001-2002 Budget Digest that totaled \$37.33 million.²²⁸ The Supreme Court held that the

²²⁵Tom Miller, *Under the Dome: A look back*, Charleston Gazette, Dec. 26, 2000, at A5.

²²⁶Rist v. Underwood, 524 S.E.2d 179, 181 (W. Va. 1999).

²²⁷Common Cause of West Virginia v. Tomblin, 413 S. E.2d 358, 401 (W. Va. 1991) (Miller, J., Dissenting).

²²⁸Phil Kabler, *Chemical plants among winners in Budget Digest: Despite high* (continued...)

Budget Digest must be the result of “discussion, debate, and decision” by the budget conferees.²²⁹ In reference to the eleven-minute meeting, Senate Finance Chairman Oshel Craigo, D-Putnam, noted “[w]e’re here a little bit because of the Supreme Court.”²³⁰

The money spent by politicians is usually well publicized by media outlets; however, readers are often provided with mixed messages. On the one hand the media criticizes politicians for their “bribery” and “taxpayer giveaways,”²³¹ while on the other hand, they reward them and even measure their worth by the amounts of so-called *pork barrel* projects those same politicians bring to their area.²³²

²²⁸(...continued)

court ruling, allocation of state funds differs little from past, Charleston Gazette, June 28, 2001, at A1; Phil Kabler, *Budget Digest no record: Allocations slightly larger than last year’s*, Charleston Gazette, June 29, 2001, at A1; Phil Kabler, *Legislators pick up Budget Digest draft*, Charleston Gazette, June 27, 2001, at A1.

²²⁹*Id.*

²³⁰*Id.*

²³¹Editorial, *Bribery: Taxpayer giveaways*, Charleston Gazette, May 29, 2001, at A4.

²³²Phil Kabler, *Legislature, Wise honor Byrd: U.S. Senator named West Virginian of the 20th Century*, Charleston Gazette, June 1, 2001 at A1.

III. WEST VIRGINIA—A NATIONWIDE APPEARANCE OF CORRUPTION

In an age that is utterly corrupt, the best policy is to do as others do.

—Marquis de Sade,
18th-century French nobleman and novelist

*Regard your good name as the richest jewel you can possibly be possessed of -
for credit is like fire; when once you have kindled it you may easily preserve it,
but if you once extinguish it, you will find it an arduous task to rekindle it again.
The way to gain a good reputation is to endeavor to be what you desire to
appear.*

—Socrates
(469 BC - 399 BC)

A. A Constitutional Stumbling Block

In 1976, the United States Supreme Court proclaimed that giving money to a politician was in effect a form of expression and thus granted protection under the First Amendment to the Constitution. It is known as *Buckley v. Valeo*.²³³ *Buckley*, however, is poorly understood. The Court did not end all efforts toward reforming campaigns. While the Court was extensively restrictive on direct expenditures by candidates or individuals, they did say that Congress could limit contributions to

²³³*Buckley v. Valeo*, 476 U.S. 1 (1976).

campaigns to reduce the risk and reality of corruption. The Court also noted that a voluntary system of public financing of campaigns is legitimate so long as it does not forbid private expenditures.

Nearly 100 years ago, Congress banned corporations from giving money to individual federal campaigns and banned unions from giving contributions to individuals more than 50 years ago. It has only been during the past twenty years that special interest groups began to funnel massive amounts of money to circumvent the campaign finance laws with their unlimited, unregulated contributions for "party building." In 1907, President Theodore Roosevelt pushed through a ban on political contributions from corporations in response to the corruption of the Gilded Age.²³⁴ The second was in 1947, when the government banned contributions from labor unions to curb their fast growing clout.²³⁵

The laws regulating campaign financing prior to 1971 were generally ineffective and largely ignored.²³⁶ The early campaign regulations were designed to prevent flagrant abuses by restricting spending and limiting contributions. Nevertheless, the early laws were riddled with loosely enforced loopholes that resulted in little more than candidates avoiding both the regulation and the reporting

²³⁴Steven Thomma and Fames Kuhnhenh, Knight Ridder Newspapers, *Campaign finance reform chances too close to call*, Charleston Gazette, Mar. 16, 2001, at A6.

²³⁵*Id.*

²³⁶See Herbert E. Alexander & Brian A Haggerty, *The Federal Election Campaign Act: After A Decade Of Political Reform*, at 13 (Joyce J. Bartell, ed., 1981).

of campaign dollars.²³⁷ An antiquated system of political finance that was simply no longer effective frustrated reformers who witnessed years of congressional neglect and inaction.²³⁸

Consequently, Congress enacted sweeping campaign finance reform in the 1974 amendments to the Federal Election Campaign Act of 1971 (hereinafter collectively "FECA").²³⁹ FECA imposed a comprehensive scheme of limitations on the amount of money that can be given and spent in political campaigns. FECA capped contributions made to candidates and their campaigns, as well as expenditures made to affect public issues, including those that arise during a campaign. It also required public disclosure of money raised and spent in federal elections.

The FECA amendments were enacted in an effort to remedy the appearance of a corrupt political process in the wake of the Watergate scandal.²⁴⁰ The irony of the Watergate reforms was that loopholes were created opening the way for donors to eventually funnel unlimited amounts of so-called *soft money* to political parties,

²³⁷*Id.* at 13.

²³⁸*Id.* at 19.

²³⁹See Pub. L. No. 93-433, 88 Stat. 1263 (1974) (codified as amended at 2 U.S.C. §§ 431-56 (1994)). See also, David Cole, *First Amendment Antitrust: The End of Laissez-Faire in Campaign Finance*, 9 Yale L. & Pol'y Rev., at 236 (1991).

²⁴⁰"Watergate" is the term commonly used to refer to the political events and judicial proceedings that began with the break-in at the Democratic National Committee headquarters in the Watergate complex in Washington, D.C., on June 17, 1972, and continued through the resignation of Richard Nixon as President of the United States on August 8, 1974.

which is spent promoting their candidates.²⁴¹ The parties and their leaders covet this ready cash as the fastest growing bankroll available.²⁴² Some of this practice will change because of the passage of the McCain/Feingold legislation; however, many political observers believe the money will now be funneled directly to state political parties.

The FECA amendments created the Federal Election Commission (FEC), a new federal agency to enforce these laws and to supervise campaign finance reporting and disclosure.²⁴³ Among other contributions, the FECA amendments placed limits on direct contributions to political campaigns and independent expenditures.²⁴⁴ The passage of the amendments was Congress' ambitious attempt to level the playing field by reducing campaign costs, thereby easing the tension of a highly volatile political climate.²⁴⁵

The efficacy of the 1974 reform plan was never tested because it was challenged in court prior to implementation. Senator James L. Buckley, a

²⁴¹Steven Thomma and Fames Kuhnenn, Knight Ridder Newspapers, *Campaign finance reform chances too close to call*, Charleston Gazette, Mar. 16, 2001, at A6.

²⁴²*Id.*

²⁴³2 U.S.C. § 437c (1976 & Supp. IV 1980) (powers of Federal Election Commission). The 1971 Act had established extensive reporting and disclosure requirements for candidates and committees, including periodic reports of the sources and amounts of contributions and expenditures. 86 Stat. 3, 11-19 (1972) (current version at 2 U.S.C. § 434 (Supp. IV 1980)).

²⁴⁴*Id.*

²⁴⁵See Buckley v. Valeo, 424 U.S. at 25-27 (stating the purpose of FECA).

conservative Republican from New York, Eugene McCarthy, a liberal Presidential aspirant from Minnesota, and various political parties and civil liberties organizations challenged most of FECA's major provisions on First Amendment grounds.²⁴⁶ In *Buckley v. Valeo*, the United States Supreme Court upheld the FECA's limits on campaign contributions; however, the Court struck down the limits on independent expenditures.²⁴⁷

The Court drew a line between expenditure restrictions and restrictions on direct contributions, holding that expenditure restrictions were direct restraints on speech while limiting contributions left communication significantly unimpaired. Differentiating between expenditures and contributions, the Court concluded, "expenditure limitations contained in the Act represent substantial rather than merely theoretical restraints on the quantity and diversity of political speech."²⁴⁸ The

²⁴⁶The Petitioners included the Conservative Party of the State of New York, the Mississippi Republican Party, the Libertarian Party, the New York Civil Liberties Union, the American Conservative Union, the Conservative Victory Fund, and Human Events. See *Buckley v. Valeo*, 424 U.S. at 8. The Respondents included the Secretary of the United States Senate and the Clerk of the House of Representatives, in their official capacities, the United States Attorney General, and the Comptroller General of the United States. *Id.*

²⁴⁷*Buckley*, 424 U.S. at 23-25 (upholding a \$1,000 limit on contributions by individuals and groups to candidates and authorized campaign committees); *id.* at 35-36 (upholding a \$5,000 limit on contributions by political action committees); *id.* at 38 (upholding a \$25,000 limit on total individual contributions during any calendar year); *id.* at 39-51 (striking down a \$1,000 limit on expenditures relative to a clearly identified candidate); *id.* at 51-54 (striking down a limit on expenditures by candidates from personal or family resources); *id.* at 54-59 (striking down a limit on overall campaign expenditures by candidates seeking nominations for election and election to federal office).

²⁴⁸*Id.* at 19.

Buckley Court held that the \$1,000 FECA limit on contributions to candidates for federal office did not violate protected First Amendment interests in political expression and association.²⁴⁹

Specifically, the Court found that the contribution limitation was sufficiently tailored to serve “the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging on the rights of individual citizens and candidates to engage in political debate and discussion.”²⁵⁰ As a consequence, the power of some individual contributors to influence elections has diminished, while others have turned to sizeable independent expenditure campaigns, ostensibly beyond regulation under *Buckley*.²⁵¹ Thus, it is likely that the *Buckley* decision has affected the outcome of numerous elections that followed.²⁵²

²⁴⁹*Id.* at 25-26.

²⁵⁰*Id.* at 58.

²⁵¹Contributors often avoid individual limits by making additional contributions in the name of spouses or children; see Peter Montgomery, *Secret Admirers, Common Cause*, May; June 1991, at 8, 9 (“Nearly 27,000 contributors to [1990] congressional campaigns were identified as ‘housewife,’ ‘home manager’ or such, and more than 1,000 ‘student’ contributions were logged.”); see also The Federalist No. 57, at 305 (J. Madison) (J. Cooke, ed. 1961) (“Who are to be the electors of the Federal Representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States. . . . Who are to be the objects of popular choice? Every citizen whose merit may recommend him to the esteem and confidence of his country. No qualification of wealth, or birth, of religious faith, or of civil profession is permitted to fetter the judgment or disappoint the inclination of the people.”).

²⁵²See generally Frank Sorauf, *Politics, Experience, and the First Amendment: The Case of American Campaign Finance*, 94 Colum. L. Rev. 1348 (continued...)

B. “Corruption or the perception of corruption”

During a speech in 1839, future President Abraham Lincoln—who signed the proclamation creating the state of West Virginia—recognized the existence of corruption. Lincoln decreed:

I know that the volcano at Washington, aroused and directed by the evil spirit that reigns there, is belching forth the lava of political corruption in a current broad and deep, which is sweeping with frightful velocity over the whole length and breadth of the land, bidding fair to leave unscathed no green spot of living thing; while on its bosom are riding, like demons on the waves of hell, the imps of that evil spirit, and fiendishly taunting all those who dare resist its destroying course with the hopelessness of their effort.²⁵³

To determine whether there is an appearance of corruption in West Virginia elections, one will find it is only necessary to read a newspaper. Year after year and in state after state, West Virginia’s history of political corruption is illuminated in the press. Unfortunately, when one news story dissipates, another corrupt West Virginia politician steps forward to continue the regrettable tradition of convictions, indictments, and disgraceful resignations.

If the negative news stories do not convince the leery reader, then the number of convictions that West Virginia elected officials have received will provide the necessary proof as the list of convicted Governors, Attorneys General, State Treasurers, State Senators, State Delegates, and county elected officials is clearly

(...continued)
(1994) (discussing reform possibilities in 1994).

²⁵³Archer H. Shaw, *The Lincoln Encyclopedia* 64 (The Macmillian Company: New York 1950); (Abraham Lincoln Speech, given in Springfield, Dec. 20, 1839.)

astonishing. Former United States Attorney for the Southern District of West Virginia, and two of his Assistant United States Attorneys delineated in a West Virginia Law Review Article the problem that exists in the southern part of West Virginia. They announced that between 1984 to 1991:

In the Southern District of West Virginia, over seventy-five public officials have been convicted of corruption offenses in the last six years. During that period, six sheriffs, eleven deputy sheriffs, three county commissioners, eight police officers, three mayors, two members of county school boards, two county prosecuting attorneys, four members of the West Virginia Legislature (including two senate presidents), four lobbyists, three housing officials, a former governor of the state, and a multitude of other public officials and related persons have been convicted for abusing the trust of their office. The West Virginia cases have involved a variety of crimes including extortion, fraud, arson, drugs, tax evasion, and others.²⁵⁴

In discussing the enormous amounts of corruption in West Virginia politics, The *Los Angeles Times* reported, "There have been 18 months of scandals in high places, a fireworks of sex, stupidity and greed extraordinary even for this notoriously corrupt state" and "[i]t seems there has been a for-sale sign up at the Legislature for some time. And at the governor's office the sign was a blinking neon."²⁵⁵ The article with regard to the number of convictions stated, "It is as if a conveyor belt has been installed to carry slag from the Capitol building itself, hauling off the treasurer,

²⁵⁴Michael W. Carey, Larry R. Ellis, Joseph F. Savage, Jr., *Federal Prosecution of State and Local Public Officials: The Obstacles To Punishing Breaches of the Public Trust And A Proposal For Reform, Part One*, 94 W. Va. L. Rev. 301, 302-303 (1992).

²⁵⁵Barry Bearak, *Corruption in West Virginia: Scandals as Thick as Coal Dust*, *Los Angeles Times*, July 8, 1990 at A1.

the attorney general, two state representatives, the Senate majority leader and two Senate presidents.”²⁵⁶

The article quoted then-Governor Gaston Caperton as calling the state of the state “a total mess” just more than a year after becoming Governor. Caperton cited as an example the fact that the gas company was about to shut off the gas at the Governor’s Mansion because of unpaid bills. Readers also heard that the West Virginia Legislature was problematic in that “[n]ot all of it is corrupt, but enough of the wormy apples were at the top to make the whole barrel look bad.”²⁵⁷ Even well-known *Charleston Daily Mail* reporter L.T. Anderson was quoted as saying the state legislators would “take hemorrhoids if they were being given away.”²⁵⁸

In his recent book, *At Home in the Heart of Appalachia*, John O’Brien writes “since the 1880s, coal companies have been financing political campaigns and then rewarding elected officials after their terms. This has created an atmosphere in which corruption flourishes.”²⁵⁹ A *Charleston Gazette* editorial said, “During the Barron and Moore administrations, bribery investigations, indictments and convictions were so continuous they were like a major state industry.”²⁶⁰ Author

²⁵⁶*Id.*

²⁵⁷*Id.*

²⁵⁸*Id.*

²⁵⁹Michael Shannon Friedman, *Elusive Appalachia: Writer wrestles with what it means to be from here*, *Charleston Gazette-Mail*, Aug. 19, 2001 at F4.

²⁶⁰Editorial, *Bribery: World cleanup effort*, *Charleston Gazette*, Dec. 10, 1998, at A4.

Theodore White depicts West Virginia politics as “sordid” and among “the most squalid, corrupt and despicable in the nation.”²⁶¹ Moreover, the *Logan Banner*, after the 1960 Presidential Primary election, described the West Virginia politicians and election circumstance as “[l]ike hungry hogs going to the trough.”²⁶²

In describing a history of voting corruption in southern West Virginia, the *Charleston Daily Mail* reported: “Dead people voting, cash and liquor-bought ballots, a process controlled by the slick political party machine.”²⁶³ The article described “decades-old scandals that have sullied the region’s reputation” and “years of purchased votes and coercion by county officials who would actually escort people into the [voting] booths and push buttons for them.”²⁶⁴ It detailed the lasting effect of the illegal election practices that plagued the region in years past and depicted that those old enough “who still remember what it was like in those days and [still] remain wary of their government.”²⁶⁵ For example, eighty-two-year-old Herb Smith of Williamson, West Virginia explained, “People would come in and vote and you’d have to vote them under somebody else’s name because they’d already voted.”²⁶⁶

²⁶¹Theodore White, *The Making of the President, 1960* 97 (Atheneum 1961).

²⁶²Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 101 (McFarland 1992).

²⁶³Stacey Ruckle, *Southern West Virginia’s history of voting corruption is a long tale*, *Charleston Daily Mail*, Aug. 5, 1999, at A1.

²⁶⁴*Id.*

²⁶⁵*Id.*

²⁶⁶*Id.*

During the 1968 Primary Election, then-Secretary of State candidate Jay Rockefeller called the situation in southern West Virginia—particularly in Mingo County—a “national disgrace and a local tragedy.”²⁶⁷ Rockefeller won the Democratic nomination in every West Virginia county except Mingo.²⁶⁸ In one precinct, 511 people cast votes despite the fact that it was estimated that approximately 200 people lived in that precinct.²⁶⁹

Furthermore, in 1968, registered voters outnumbered eligible voters in thirty-three of the state’s fifty-five counties.²⁷⁰ In fact, in 1960 there were 19,879 eligible voters in Mingo County, while registered voters in Mingo County totaled 30,331.²⁷¹ Illustrating how the so-called “posthumous ballotings” contributes to the corrupt political situation, Mingo County resident Oakey Hatfield reported that although his brother had been killed in a car accident in 1964, he was recorded as voting in a Mingo County election months later.²⁷²

A few years later, in 1971, seven Democratic officials were charged with vote buying during the 1968 General Election.²⁷³ Four of them, including Delegate T.I. Varney, former State Senator Noah Floyd, Sheriff Harry Artis and Mingo Assessor

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

Arnold Star, were charged with spending approximately \$50,000 on vote buying for “conspiring to control the outcome of the 1968 general election.”²⁷⁴ All four of the accused were acquitted after a seven-day federal trial in which forty witnesses testified.²⁷⁵

Three years later in 1974, a group of men that became known as the “Logan Five” were convicted of new election-related crimes.²⁷⁶ The five men were convicted of election rigging for “bribing and threatening precinct officials to cast illegal votes in the 1970 Democratic Primary to ensure the nomination of Okey Hager for Logan County Court.”²⁷⁷ Those convicted included William Anderson, former Logan County Clerk; John Browning, former Circuit Clerk; Earl Tomblin, former Sheriff; Ernest Hager, former deputy; and Bernard Smith, former Logan State Senator.²⁷⁸ All five served short jail sentences.

One of the “Logan Five” members, former Sheriff Earl Ray Tomblin, again faced federal charges in 1992 as he plead guilty to bribery charges related to the election of former Logan County Sheriff Oval Adams.²⁷⁹ Also involved in the corrupt

²⁷⁴*Id.*

²⁷⁵*Id.*

²⁷⁶*Id.*

²⁷⁷*Id.*; Tom Searls, *Week in Review*, Sunday Charleston Gazette-Mail, Apr. 23, 1995, at B4.

²⁷⁸Stacey Ruckle, *Southern West Virginia’s history of voting corruption is a long tale*, *Charleston Daily Mail*, Aug. 5, 1999, at A1.

²⁷⁹*Id.*

plot was then-sitting circuit judge Ned Grubb who was sentenced to more than five years in prison for bribery, obstruction of justice, mail fraud, tampering with a witness, and racketeering.²⁸⁰

Throughout the years, election fraud in certain counties has been scandalously common and the 1980 West Virginia General Election was no exception to the rule. Just after the election, NBC nationally aired a tape which showed alleged vote-buying in Logan and Mingo counties.²⁸¹ Then-Secretary of State, A. James Manchin, who was later impeached as State Treasurer, charged that NBC "either contrived the vote-buying story or staged it."²⁸²

Charges of voting irregularities that year were visible in Kanawha, Clay, Jackson, Putnam, Boone, Cabell, McDowell, Wayne, Wirt, Wyoming, Roane, Logan, Marion, and many other West Virginia counties.²⁸³ In Boone County, for example, Boone officials went to the United States Attorney's office charging that the election results as reported by the computer provided impossibly inaccurate

²⁸⁰*Id.*

²⁸¹Associated Press, *Grand jury to see NBC videotape*, Charleston Gazette, Jan. 8, 1981, at A1.

²⁸²UPI, *Miffed Manchin vows to meet NBC officials*, Charleston Gazette, Nov. 28, 1980, at A1.

²⁸³Associated Press, *Marion Man Faces Ballot Charge*, Charleston Gazette, June 4, 1980, at A1; UPI, *4 indicted for alleged vote fraud*, Charleston Gazette, Jan. 8, 1981, at A1; Associated Press, *Boone election OK'd, despite prosecutor's plea*, Charleston Gazette, Nov. 21, 1980, at A1; Fanny Seiler, *Grand juries may investigate Logan, Mingo election charges*, Charleston Gazette, Nov. 6, 1980, at A1, UPI, *Witness list leaked*, Charleston Gazette, Oct. 2, 1980, at A1; Associated Press, *McDowell vote complaint prompts investigation*, Charleston Gazette, June 6, 1980, at A1.

results. Cited as an example was that some Democratic candidates received no votes in two precincts where 250 straight-ticket Democratic votes were cast.²⁸⁴ Also noted was that one vote print-out gave 7,787 votes to Assessor Robert Totten while another tally credited Totten with 6380 votes.²⁸⁵ Boone County Commissioners certified the results even though "gross discrepancies [had] appeared."²⁸⁶

In 1989, the *Washington Post* reported that Dan Tonkovich, the West Virginia State Senate President pleaded guilty to charges of taking a \$5,000 payoff from a casino company in an attempt to pass a legalized gambling bill. The story continued that "[s]ince July, the state's treasurer, attorney general, a former Senate majority leader and Tonkovich's successor as Senate President also have resigned, pleaded guilty or agreed to plead guilty in various investigations."²⁸⁷

One should not conclude that West Virginia is an anomaly when it comes to political corruption and convictions. In fact, convictions of Governors, Attorneys General, State Senators, Representatives, and other public officials from throughout

²⁸⁴Associated Press, *Boone officials' evidence may show election fraud*, Charleston Gazette, Nov. 20, 1980, at A1.

²⁸⁵Associated Press, *Boone officials' evidence may show election fraud*, Charleston Gazette, Nov. 20, 1980, at A1; Associated Press, *Voting error or rigging suspected*, Charleston Gazette, Nov. 13, 1980, at A1.

²⁸⁶Associated Press, *Boone election OK'd, despite prosecutor's plea*, Charleston Gazette, Nov. 21, 1980, at A1.

²⁸⁷Staff Reports, *Around The Nation*, The Washington Post, Sept. 15, 1989, at A18.

the United States have been prevalent in recent years.²⁸⁸ Nonetheless, it must be made clear that there is much evidence of political corruption in West Virginia and there are many dark spots in the historical account of such corruption. As such, it would be a faulty assumption to conclude that every act of wrongdoing by an elected official bearing the public trust was discovered. In fact, it is more likely that few were caught and even fewer were convicted of any wrongdoing.

²⁸⁸News Reports, *Other Officials With Criminal Convictions*, St. Louis Post-Dispatch, Dec. 22, 1999 at A12; Elizabeth Kolbert, *Indictments: Just A Part of the Alboy Routine*, N.Y. Times, Dec. 23, 1990, at E12, (ten sitting New York legislators indicted in last five years); Terry Ganey, *Tearful Griffin Gets 4 Years In Prison: Former Speaker Of House Apologizes For Bribery KC Labor Figure Gets 39 Months*, St. Louis Post-Dispatch, Dec. 5, 1997 at A1; Max Brantley, *Clark talks as if facts soaking in*, The Arkansas Gazette, June 15, 1991 at B1; *Carolina Inquiry Indicts 18th Lawmaker*, N.Y. Times, Aug. 22, 1991, at A24, (Two-year investigation of vote-buying scheme leads to eighteen current or former legislators being charged with bribery and related offenses.); Mark Oswald, *IRS looks into back expenses: Lawmakers' per diem, mileage costs checked*, The Arkansas Gazette, Nov. 16, 1990 at A1; Gregg Jones, *Arkansas attorney general convicted*, The Dallas Morning News, Nov. 2, 1990 at A29; Larry Weintraub, *Old Story' New Names: City's long history of corruption is tough to top*, Chicago Sun-Times, Jan. 30, 1986 at A8; Associated Press, *Ex-Neb. Atty. Gen. Sentenced*, Los Angeles Times, Mar. 8, 1985 at A1; Tom Beal, *To the disenchanting who work for Perot, issues don't matter*, The Arizona Daily Star, June 7, 1992 at F1; Associated Press, *Mecham can run again despite impeachment, attorney general says*, The Orange County Register, Apr. 23, 1989 at A4; Larry Tye, *A tide of state corruption sweeps from coast to coast*, The Boston Globe, Mar. 25, 1991 at A1; Simon Lee, *Scandals, investigations plague political landscape*, Arkansas Business, Dec. 29, 1997, Vol. 14, Iss. 52, at 18; News briefs, *Former La. Governor Edwards convicted*, Charleston Daily Mail, May 10, 2000, at A3; *United States v. Jenkins*, 943 F.2d 167 (2d Cir. 1991) (affirming conviction of former New York state senator Andrew Jenkins on charges arising from money-laundering scheme); *United States v. Davis*, 967 F.2d 516 (11th Cir. 1992) (affirming bribe-taking conviction of Alabama legislator Patricia Davis); *United States v. Ruiz*, 894 F.2d 501 (2d Cir. 1990) (affirming conviction for loan fraud of New York state senator Israel Ruiz; later developments described in note 61, *infra*); *United States v. Aimone*, 715 F.2d 823 (3d Cir. 1983) (affirming RICO convictions of New Jersey state senator William V. Musto and numerous local officials); M. Charles Bakst, *Glib Dick Morris takes cheap shot at Rhode Island*, The Providence Journal-Bulletin (R.I.), Nov. 25, 1997, at B1.

The idea of a perception of corruption in West Virginia politics is not new to the national scene. Harold L. Ickes, the Secretary of Interior during President Franklin D. Roosevelt's Administration, included on February 14, 1937, an entry in his secret diaries regarding West Virginia.²⁸⁹ During a particular entry that day, Ickes recalls a discussion that he had with President Roosevelt concerning his proposed constitutional amendment that would have increased the number of United States Supreme Court Justices.²⁹⁰ Roosevelt, in recognizing that it only takes thirteen states to block a Constitutional Amendment, noted that there were enough purchasable legislatures available to equal thirteen.²⁹¹ According to Ickes, "[t]he President told me the other day that Senator Neely of West Virginia, had said that \$25,000 would do the trick in his state."²⁹²

West Virginia's reputation for a history of corrupt politicians is well-deserved. In a light-hearted column in the *Charleston Gazette*, reporter Rick Steelhammer sarcastically suggests that West Virginia should take advantage of its troublesome corrupt past by building a shrine flaunting the events that have shaped the State's political image. Steelhammer outlines:

The West Virginia Politics Hall of Shame—Located in Pruntytown, this museum would feature prison garb worn by the state's convict-

²⁸⁹Harold L. Ickes, *The Secret Diary of Harold L. Ickes: The Inside Struggle* 71 (New York: Simon and Schuster, 1954).

²⁹⁰*Id.*

²⁹¹*Id.*

²⁹²*Id.*

governors, replays of the federal wiretaps used to send them to prison, and the cheap, government-issue tennis rackets they were forced to use when doing their time.²⁹³

The *Charleston Gazette*, in an editorial “Payola? Cash to Legislators,” declares that “[t]he huge flood of campaign cash to lawmakers always rouses suspicion that the legislators are being bribed.”²⁹⁴ It included examples of special interest money from gambling groups being given to undecided legislators just prior to the controversial video poker vote. In calling big money lobbying a “curse upon American Democracy” the *Gazette* noted that when the wavering, undecided legislator “later votes the way the special interest desires—it raises suspicions.”²⁹⁵

In 1996, the *New York Times* reported West Virginia’s Attorney General Darrell V. McGraw, Jr. as saying in response to the state being involved in stock investments: “West Virginia is a sordid, crooked state and pots of money are attractive to politicians. I don’t believe government should be sitting on giant sums of money and playing the market.”²⁹⁶ News of West Virginia’s political reputation and the myriad convictions of high ranking elected officials have continued generating headlines from coast to coast. The *Phoenix Gazette* reported:

²⁹³Rick Steelhammer, *It’s time to get to the root of the hall of fame issue*, Sunday Gazette-Mail, Feb. 4, 1996, at C1.

²⁹⁴Editorial, *Payola? Cash to Legislators*, *Charleston Gazette*, May 2, 2001, at A4.

²⁹⁵*Id.*

²⁹⁶Leslie Wayne, *Where playing the stock market is really risky*, *New York Times*, May 1, 1995, at D5.

Many West Virginia politicians have either become involved in corruption scandals or resigned recently. Since December 1988, a state attorney general, a state treasurer, two state Senate presidents, a Senate majority leader, a top aide to a Senate president, a House member and two lobbyists have lost their jobs.²⁹⁷

The *Washington Post* detailed:

Shortly after he left office early last year, it became widely known that [Governor] Moore was again under investigation as part of a wide-ranging federal probe of corruption of state and local officials that began in 1984. As part of the plea arrangement, Moore agreed to help federal prosecutors in the investigation. Two Democratic legislators, presidents of the state Senate, the state's No. 2 political office, were among the more than 50 officials who had pleaded guilty to various corruption charges in the probe.²⁹⁸

In a bizarre twist, John A. Field, III, a former United States Attorney for the Southern District of West Virginia from 1972 to 1977 and top enforcement officer of the Commodity Futures Trading Commission from 1977 to 1980, pleaded guilty to racketeering and conspiracy charges in a telemarketing plot that bilked so-called investors out of more than \$80 million.²⁹⁹ Field had been highly regarded as a prosecutor, "who won national attention and a reputation for integrity in 1975 when

²⁹⁷Jill Wilson, Associated Press, *W. Virginia indicts former governor*, The Phoenix Gazette, Apr. 13, 1990, at C2; See, *Ex-West Virginia Governor Admits Corruption Schemes*, New York Times, Apr. 13, 1990, Abstracts at 8; Bill McAllister, *Ex-Gov. Moore Agrees to Plead Guilty; W. Virginian Charged With Fraud, Extortion*, The Washington Post, Apr. 13, 1990, at A1.

²⁹⁸Bill McAllister, *Ex-Gov. Moore Agrees to Plead Guilty; W. Virginian Charged With Fraud, Extortion*, The Washington Post, Apr. 13, 1990, at A1.

²⁹⁹David M. Herszenhorn, *Ex-U.S. Attorney Admits Investor Fraud*, New York Times, Dec. 17, 1998, at C4.

he obtained an indictment of Arch A. Moore Jr., the Governor of West Virginia, on conspiracy and corruption charges.”³⁰⁰

In 1996, another former southern West Virginia Assistant United States Attorney told tales of West Virginia’s political woes that reached Massachusetts residents and others throughout the nation. The *Boston Globe* reported “in both West Virginia and Chelsea the corruption was systemic” in the words of the former thirteen-year career Assistant United States Attorney Joseph F. Savage, Jr.³⁰¹ Savage recounted how “former Gov. Arch Moore, two Senate presidents and the House majority leader were convicted of taking bribes from a racetrack owner.”³⁰²

Savage also told of how he was quickly introduced to the crooked ways of Mingo County, West Virginia. He recalled “Wig Preece, his wife, Cooney, and several of their 13 children sold drugs from a trailer parked across from the police chief’s office.”³⁰³ Savage said that business was at times so good that they would run out of drugs and the family would hang a handwritten sign on the front of the trailer denoting—“out of pot, back in 30 minutes.”³⁰⁴

In 1997, the *Los Angeles Times* reported:

³⁰⁰*Id.*

³⁰¹Patricia Nealon, *Prosecutor ends a job of conviction*, *Boston Globe*, Nov. 23, 1996, at B1.

³⁰²*Id.*

³⁰³*Id.*

³⁰⁴*Id.*

A federal probe of corruption in the West Virginia Legislature uncovered a state delegate who had pressed a group of foreign doctors, who were practicing medicine under temporary permits that the lawmaker had helped arrange, to give him money for his campaign. They responded by delivering envelopes with \$3,200 in \$100 bills to his office.

But the Supreme Court overturned his federal bribery conviction in 1991 and set a standard that bars most prosecutions over campaign contributions.³⁰⁵

A large spread in the *Sunday Magazine* from the *Washington Post* advances the negative depiction of West Virginia politics. In describing West Virginia, it noted that corrupt politics is a part of the State's system of government. The story illustrates:

West Virginia is only an hour's drive from the Beltway, but not much news from the Mountain State reaches Washington. And what does can usually be classified as grim or Gothic. Bloody coal mine accidents and bloody coal mine strikes. Floods of near-biblical proportions. Towns with air so badly polluted that it rots out screens and peels the paint off cars. A governor and two former state Senate presidents convicted in corruption cases. A coal county that the Reader's Digest recently called "the most corrupt place in America." A millionaire who hears God tell him to erect clusters of crosses along the highways of America. A feud between two families, over a woman who'd dated members of both, that erupts in a shootout that leaves one dead and nine wounded. A fundamentalist Christian who dies after being bitten by a three-foot-long rattlesnake during a snake-handling ceremony.³⁰⁶

³⁰⁵David G. Savage, *Clinton, Gore held unlikely to face prosecution*, Los Angeles Times, Oct. 27, 1997, at A1.

³⁰⁶Peter Carlson, *The Magic and the Misery*, Washington Post Sunday-
(continued...)

Even seemingly positive stories of West Virginia often have a negative undertone focusing on its corrupt political past. For example, a Syracuse University study on state governments lauded West Virginia's efforts to improve its financial management in spite of "a \$200 million scandal in its investment portfolio 10 years ago."³⁰⁷ However, the article added: "Long saddled with a reputation for financial management that ranged from the inept to the corrupt, West Virginia is making a commendable effort to get its house in order."³⁰⁸ Another example of a so-called backhanded compliment comes from then-state poet laureate and Barbour County, West Virginia, resident Irene McKinney. McKinney promotes West Virginia's wilderness, but notes that "[a] tradition of corrupt and inefficient government is the only reason so much of West Virginia remains pristine."³⁰⁹

In 1999, the *Chicago Sun-Times* informed its readers about West Virginia corruption within the West Virginia State Police Crime Lab. In discussing one of the innocent men who spent time in prison, the *Sun-Times* provides:

Wilbert Thomas is now a famous man in West Virginia. His is the latest case connected to widespread corruption in the State Police crime lab there, including evidence tampering, officers falsifying test results, lying on the witness stand and generally tampering with

³⁰⁶(...continued)
magazine, Nov. 22, 1992, at W9.

³⁰⁷John Raby, Associated Press, *Study says West Virginia government worse than average*, Charleston Gazette, Feb. 2, 1999, at A1.

³⁰⁸*Id.*

³⁰⁹Associated Press, *Poet Laureate praises state wilds*, Charleston Sunday Gazette-Mail, Oct. 16, 1994, at A13.

evidence in whatever way would guarantee a conviction. Even if all signs pointed to a suspect's innocence.³¹⁰

The *Charleston Gazette* maintains that because of the small size of the Republican Party in West Virginia, they are rarely able to draw serious candidates and “mostly get[s] oddballs from the fringe.” It intimates that the small crop of candidates only serves to breed corruption. The *Gazette* then cited an example of candidates who were—at that time—running for Congressional seats in West Virginia. It observed:

Two current GOP nominees for Congress are from the fevered camp of TV evangelist Pat Robertson. One of them, Sam Cravotta, sickened Martinsburg leaders by visiting peep shows as an undercover agent to collect masturbation evidence. Another, Ben Waldman, is a former Robertson aide who moved to West Virginia as a partner of a Reagan administration official who recently pleaded guilty to corruption.³¹¹

In April 2002, the Sunday *Charleston Gazette-Mail* described the political system in southern West Virginia as follows:

POLITICS in Southern West Virginia's coal counties usually follow a predictable pattern: Entrenched Democratic machines, composed of hundreds of party minions holding local government jobs, decide who gets elected. And if the machines

³¹⁰Leslie Baldacci, *Justice's scales a delicate balance*, Chicago Sun-Times, May 21, 1999, at A47.

³¹¹James A. Haught, *Gop Oddballs: is Klos goofy, or what?*, Charleston Gazette, Aug. 26, 1994, at A4.

don't prevail, the outcome is decided by big unions like those of miners and teachers.³¹²

In an article criticizing legislators for opposing a proposal by State Senator Mike Oliverio to force elected officials and cabinet secretaries to wait two years before they make a living lobbying the Legislature, the *Charleston Daily Mail* professes:

[w]ith West Virginia's history of political corruption – former Gov. Arch Moore, former Senate President Dan Tonkovich, former Senate President Larry Tucker—who isn't? The fact that former legislators don't see the potential for conflicts of interest in this arrangement is troubling indeed.³¹³

In 1988, readers of the *Chicago Tribune* learned about Mingo County and southern West Virginia politics. The *Tribune* reported:

The sheriff in corruption-plagued Mingo County pleaded guilty Monday to buying his job for \$100,000, while the man who sold the post was sentenced to 14 years in federal prison for conspiracy and tax evasion.

.....

Fifteen [Mingo] county officials were charged last week with conspiring to control the county elections of 1984 with Owens, who was county Democratic chairman at the time.

³¹²Editorial, *Outsider: David v. Goliath*, *Charleston Gazette*, April 28, 2002, at A4.

³¹³Editorial, *Lobbying: W.Va.'s elected officials ought to wait a year before lobbying*, *Charleston Daily Mail*, Feb. 27, 1997, at A4.

Nearly 50 public officials or employees in southern West Virginia have been charged or convicted in corruption or drug cases over the past three years.³¹⁴

Dick Morris, Fox News television consultant and former political consultant to President Clinton, said that West Virginia was among six states that are "completely and thoroughly corrupt."³¹⁵ Morris explained that to survive in politics in West Virginia, Rhode Island, Nevada, Arizona, Louisiana, or Kentucky, an honest person has to at least tolerate corruption.³¹⁶

In 1988, the front page of the *Wall Street Journal* depicted West Virginia as a "state of despair" and "a poor and politically corrupt state with scant hope for its shrinking population."³¹⁷ In addition, West Virginia gained an international reputation of political corruption when in 1992, an article published in a London, England newspaper, *The Sunday Telegraph*, noted:

West Virginia is easily the poorest and probably the most corrupt of the country's non-southern states (Mississippi, Louisiana and Arkansas vie for the national title), with a recent governor currently behind bars, an attorney general, state treasurer and former state president disgraced, and scores of local officials

³¹⁴Chicago Tribune wires, *Sentencing, guilty plea latest in a county's corruption saga*, Chicago Tribune, Apr. 19, 1988, at A14.

³¹⁵M. Charles Bakst, *Glib Dick Morris takes cheap shot at Rhode Island*, The Providence Journal-Bulletin (R.I.), Nov. 25, 1997, at B1.

³¹⁶*Id.*

³¹⁷Paul Owens, *Caperton Tells 'Real Story' to N.Y. Paper*, Charleston Daily Mail, June 22, 1994, at A1.

indicted. The state's senior senator, Robert Byrd (Democrat), was briefly a Klan member.³¹⁸

Furthermore, even within a national article discussing radio shock jock Howard Stern, who announced his candidacy for Governor of New York, West Virginia's reputation was highlighted.³¹⁹ The *USA TODAY* article intimated that a Stern candidacy may not be that far fetched in light of some of the other governors who have served in various states.³²⁰ It provided:

We've had governors who've done everything from taking kickbacks to fathering illegitimate children, to selling pardons to jailed mafia leaders. Arch Moore, West Virginia's corrupt three-term governor who was sentenced to more than five years in prison, nearly got re-elected while under indictment.³²¹

The *Charleston Daily Mail* depicts:

Politics in West Virginia personify corruption and are rotten to the core. The current session of the Legislature offers further proof. Sleaze runs wild and rampant in every sector of state government. House leader Chuck Chambers and Senate leader Keith Burdette are classic, slick manipulators of self-serving interests to enhance their personal gains and agenda. They continually abuse the law and state constitution.

³¹⁸Xan Smiley, *Who killed the newsman who shamed Klan?*, The Sunday Telegraph (London, England), May 17, 1992, at A18.

³¹⁹Joe Urschel, *Shock jock for high office? He'll fit right in*, USA TODAY, Mar. 24, 1994, at A12.

³²⁰*Id.*

³²¹*Id.*

Their clones follow like sheep to the detriment of the electorate.³²²

Another article in the *Plain Dealer*, a Cleveland, Ohio newspaper, discussing that state's lack of campaign finance regulations dealing with contributions, calls it a "ridiculous position of having no-no-limits on the amounts anyone can donate to any Ohio candidate."³²³ The *Plain Dealer*, in comparing its neighboring state of West Virginia contends:

But, for Pete's sake, even 'wild, wonderful' West Virginia, sometimes derided as corrupt, forbids anyone to give the campaign of anyone - from dogcatcher to state legislator to governor - more than \$1,000 per primary and \$1,000 per general election.

(Of course, twice in 20 years, two recent ex-governors of West Virginia have gone to the slammer as the result of corruption-related offenses. That suggests that even if Ohio passes a campaign-reform law, we won't have reached the New Jerusalem.)³²⁴

Some legislators argue that the role of the West Virginia media is to promote the positive image of the State and that the stories of corruption are only damaging to West Virginia's advancement as a State. Dan Radmacher, News Editor of the *Charleston Gazette* counters: "Sorry, but that's not our job. We're not in public

³²²Charles J. Buhl, *Politicians Dare Voters to Challenge them*, *Charleston Daily Mail*, Mar. 11, 1994, at A4.

³²³Thomas Suddes, *Expect Effort At Campaign Finance Reform*, *Plain Dealer* (Cleveland, OH), Aug. 18, 1993, at B3.

³²⁴*Id.*

relations. Our duty to the people of this state is not to make it look good. Our duty is to inform the public about what's going on, good or bad."³²⁵

Radmacher said the *Gazette* has performed an "unparalleled public service" in exposing the misdeeds of corrupt former Governor Arch Moore as well as uncovering other corrupt actions keeping the citizens well-informed. He adds that the *Gazette* cannot keep the citizens informed "by becoming cheerleaders" and: "[t]he role of a free press is to ensure that government is accountable to the people. We do that by digging out information . . . not by rolling over, wagging our tail and waiting for someone to rub our belly."³²⁶

³²⁵Dan Radmacher, *Press a watchdog, not cheerleader*, *Charleston Gazette*, July 13, 2001, at A4.

³²⁶*Id.*

IV. WEST VIRGINIA POLITICS: FORMING A STATE AMID TUMULTUOUS TIMES AND PERIODS OF CONSTANT TURMOIL

I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. As a result of the war, corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed.

—President Abraham Lincoln,
(Nov. 21, 1864 in letter to Colonel William Elkins)

The government, which was designed for the people, has got into the hands of the bosses and their employers, the special interests. An invisible empire has been set up above the forms of democracy.

—President Woodrow Wilson

On June 20, 1863, West Virginia's first Governor, Arthur Boreman, declared in his first inaugural message to the Legislature:

In the midst of the great rebellion we all deplore so much, we rejoice in the fact accomplished of separate statehood.

For 30 years and more, the people west of the mountains in Virginia have justly complained of bitter

wrongs done them by the governmental majority, in the East.³²⁷

In light of the turmoil during that time period, Governor Boreman, recognizing future troubles proposed:

citizens organize themselves into squads of 12 or 15 armed men 'on duty in every neighborhood in the state all the time . . .' to 'keep down guerilla warfare or major raids by the rebels.'³²⁸

West Virginia was a State born during the Civil War as the Union side was carved from the western counties of Confederate Virginia. Its unique and fascinating history goes as far back as 1747 when its present day territory was surveyed by President George Washington himself.³²⁹ Nearly sixty years later, in 1805 to 1806, Blennerhassett Mansion, near present-day Parkersburg, West Virginia, was the site of meetings between Aaron Burr and Harman Blennerhassett where plans were developed to break away from the United States and build their own empire which would have included western sections of the United States and

³²⁷*What Was The First Inagural Day in 1863 Like?*, The West Virginia Hillbilly, Jan. 16, 1961 at 5.

³²⁸*Id.*; Phil Conley, *A.I. Boreman named first State Chief*, Grafton News (Grafton, WV), Dec. 16, 1938, at A1.

³²⁹Virgil A. Lewis, *History of Government: West Virginia* 48 (New York: American Book Company 1913); On August 18, 1747, GW surveyed lands for Lord Fairfax on the Upper Potomac River. Washington not only surveyed much of the West Virginia Lands, he also owned a 2,233-tract of land in the Eastern Panhandle. In fact, Charles Town was named for Washington's brother Charles Washington. He also owned land in Wood County.

some of the Mexican territory.³³⁰ The militia invaded the island December 11, 1806 after President Thomas Jefferson announced that Aaron Burr and his supporters were plotting treason.³³¹ Burr was arrested and charged with treason while Chief Justice of the United States, John Marshall, presided at the trial.³³²

On October 16, 1859, just four years prior to becoming a state, John Brown led his infamous raid on Harpers Ferry. Brown, whose neighbors knew him as Isaac Smith (known throughout the country as "Old Brown of Osawatomie"), seized the federal arsenal and the rifle works and had blocked all bridges leading to the town.³³³ A few years later, this historic town would be included in the Eastern Panhandle of the newly formed State of West Virginia.³³⁴

Brown claimed to be God's agent in freeing the slaves and began his failed attempt to start a national insurrection against the inhumane activity of slavery.³³⁵ On December 2, 1859, Brown, who some considered "one of the most dangerous

³³⁰Otis K. Rice, *West Virginia: The State and Its People* 107 (Parsons: McClain Printing Company, 1971).

³³¹UPI, *Blennerhassett letter reminder of family's last days*, Charleston Gazette, Dec. 9, 1985, at A3; Mary Cobb, *Island history, Ruins hold view of past Blennerhassett culture*, Sunday Gazette-Mail, Sept. 20, 1981, at H1; Forrest Hull, *Hamilton Lost Duel, Won In Long Stretch Over Burr*, Charleston Daily Mail, Feb. 17, 1957, at A1.

³³²*Id.* at 108 (Although Burr was found not guilty, his political life was ruined. Blennerhassett was arrested, but after Burr was cleared of the charges, Blennerhassett was not prosecuted.).

³³³*Id.*

³³⁴*Id.* at 156.

³³⁵*Id.* at 160-61.

men in America,” was executed in Charles Town (located in present-day West Virginia) for murder and treason against the Commonwealth of Virginia.³³⁶ This is just one example of the intense emotions and opinions of the Virginia region at the time.

A few years later on May 13, 1861, just two months and nine days after President Abraham Lincoln was inaugurated, the first Wheeling Convention met.³³⁷ They voted to hold a general election on June 4, 1861 to formally elect delegates for a second Wheeling Convention if Virginia approved the Ordinance of Secession.³³⁸ After the Virginia delegates approved Secession from the Union by a vote of eighty-six to fifty-five, and a May 23, 1861 statewide referendum confirmed the notion, the creation of a new “western” state was now a possibility.³³⁹ Members of the convention from present-day West Virginia voted thirty-two to eleven against the Commonwealth of Virginia’s Convention approved Ordinance of Secession, with four not voting.³⁴⁰

³³⁶*Id.* at 156; Charles Shelter & Michael M. Reynolds, *Milestones of West Virginia History* (Parsons: McClain Printing Company 1963).

³³⁷Wheeling at the time was the largest city in present day West Virginia.

³³⁸V.B. Harris, *Great Kanawha: An Historical Outline* 112 (Jarrett: Charleston, WV 1974) (Abraham Lincoln became the 16th President of the United States on March 4, 1861).

³³⁹*Id.* at 111 (Virginia voters approved the Virginia Ordinance of Secession by a vote of 137,911 to 23,607).

³⁴⁰*Id.*

Just days later, on June 3, 1861, Philippi, present-day West Virginia, was the site of the first land battle of the Civil War between the North and South.³⁴¹ It is difficult to imagine any area that faced as much of a dilemma as the citizens of the Commonwealth of Virginia and the citizens of the newly formed territory known as the Restored Government of Virginia.³⁴² Neighbors and family members were simultaneously faced with dissension over loyalty to Virginia and loyalty to the Federal Government.

On June 11, 1861, the second Wheeling Convention met with thirty-nine counties being represented.³⁴³ By a unanimous vote on June 20, 1861, the second Wheeling Convention authorized the establishment of the Restored Government of Virginia, also known as the Pierpont Government.³⁴⁴ On August 20, 1861, the

³⁴¹Arthur C. Prichard, *An Appalachian Legacy: Mannington Life and Spirit* 24, (McClain; Parsons, WV 1983); Otis K. Rice, *West Virginia: The State and Its People* 174 (Parsons: McClain Printing Company, 1971)..

³⁴²Otis K. Rice, *West Virginia: The State and Its People* 173 (Parsons: McClain Printing Company, 1971) (West Virginia became the 35th state of the Union on June 20, 1863. Created in the midst of the Civil War, West Virginia provided to the Union Army 31,872 regular army troops, 133 sailors and marines, and 196 United States Colored Troops, during that terrible conflict of 1861-1865. It is also estimated that somewhere between 16,000 and 20,000 men served in the Confederate Army in this war of brother versus brother.).

³⁴³V.B. Harris, *Great Kanawha: An Historical Outline* 112 (Jarrett: Charleston, WV 1974); Otis K. Rice, *West Virginia: The State and Its People* 193 (Parsons: McClain Printing Company, 1971).

³⁴⁴V.B. Harris, *Great Kanawha: An Historical Outline* 112 (Jarrett: Charleston, WV 1974); *Virginia v. West Virginia*, 78 U.S. 39 (1870).

Wheeling Convention passed an ordinance providing for the formation of the “State of Kanawha,” and on October 24, 1861, the voters ratified the ordinance.³⁴⁵

On November 26, 1861, a convention assembled in the City of Wheeling and framed a Constitution with a view of becoming a separate and independent State.³⁴⁶

On April 4, 1862, voters in the “State of Kanawha”³⁴⁷ approved, by a vote of 18,062 to 514, a new Constitution as well as a name change to “West Virginia.”³⁴⁸ On May 13, 1862, the soon-to-be State of West Virginia petitioned the United States Congress for admission to the Union.³⁴⁹

On December 10, 1862, the United States House of Representatives approved a United States Senate bill to create the State of West Virginia, which was to take effect sixty days after the President’s approval and his proclamation pertaining thereto.³⁵⁰ On April 20, 1863, President Lincoln issued a proclamation making West Virginia the thirty-fifth state in the Union, sixty days thereafter.³⁵¹

³⁴⁵V.B. Harris, *Great Kanawha: An Historical Outline* 113 (Jarrett: Charleston, WV 1974); *Virginia v. West Virginia*, 78 U.S. 39 (1870); Otis K. Rice, *West Virginia: The State and Its People* 194 (Parsons: McClain Printing Company, 1971).

³⁴⁶*Virginia v. West Virginia*, 78 U.S. 39, 43 (1870).

³⁴⁷Elizabeth Cometti & Festus P. Summers, *The Thirty-Fifth State* 654 (Morgantown: West Virginia University Library, 1966).

³⁴⁸V.B. Harris, *Great Kanawha: An Historical Outline* 114 (Jarrett: Charleston, WV 1974) (The 1863 Constitution was mostly patterned after the Commonwealth of Virginia Constitution and thus a second Constitution was approved in 1872.).

³⁴⁹*Id.*

³⁵⁰*Id.*

³⁵¹*Id.*; see also, Otis K. Rice, *West Virginia: The State and Its People* 206 (continued...)

Lincoln's mother, Nancy Hanks, interestingly was born within the boundaries of what soon would become the new State. Even Rutherford B. Hayes and William McKinley, two men who later become Presidents of the United States, took part as Union soldiers in Civil War activities which centered around Charleston, present-day West Virginia.³⁵² Moreover, Arthur I. Boreman became the first Governor of West Virginia on June 20, 1863, exactly two years after the first Wheeling Convention convened to discuss the prospects of breaking away from the eastern segment of Virginia.³⁵³

From its controversial beginning as a State to its regrettable reputation of political corruption, West Virginia has had a rich and unique history. A group of Lewis County historians re-enacting the "Great Gold Robbery of 1861" assert that if \$27,000 in gold coins had not been stolen from a bank in Weston in June of 1861, two months after Virginia seceded from the Union and joined the Confederacy, West Virginia may not have become a State.³⁵⁴ The money was obtained following a telegraph from Union General George B. McClellan, then chief of Western Virginia command and later the leader of the Army of the Potomac, to Colonel Erastus Tyler,

³⁵¹(...continued)
(Parsons: McClain Printing Company, 1971).

³⁵²Staff Reports, *Two Presidents Help Construct Fort Here, Hays and McKinley Officers With Army*, Charleston Gazette, Nov. 22, 1925, at A1.

³⁵³V.B. Harris, *Great Kanawha: An Historical Outline* 116 (Jarrett: Charleston, WV 1974).

³⁵⁴Rick Steelhammer, *Seized coins helped fund our wartime government*, Charleston Gazette, June 20, 2001, at A1.

commander of the 7th Ohio Infantry, dictating: "Get your troops to Weston, Lewis County, at once. Confiscate all the gold in the Weston Bank, by force if necessary. Ship it to Governor Pierpont at Wheeling. Hurrah for New Virginia!"³⁵⁵

The day after the twenty-seven drawstring-fastened leather pouches containing \$1,000 each were obtained from the bank, they were transferred under military guard to Clarksburg where the gold coins were then placed on a train to Wheeling.³⁵⁶ This money, with a present day value of \$540,000 was used to finance the activities of the Restored Government of Virginia with necessary expenses such as payment of salaries, and renting of buildings or in buying office supplies. The money was essential to the formation of the new State given the fact that tax collections were disrupted by the outbreak of the Civil War.³⁵⁷

While many believe that the Civil War was the reason for the split of Virginia, differences between eastern and western Virginia were present long before the war.³⁵⁸ Geographical differences played a significant role. In eastern Virginia, the flat landscape with its deep rivers connected with the Atlantic Ocean making for

³⁵⁵*Id.*

³⁵⁶*Id.*

³⁵⁷*Id.*

³⁵⁸Otis K. Rice, *West Virginia: The State and Its People* 147 (Parsons: McClain Printing Company, 1971).

easy and cheap transportation, and the farming land was more suitable for growing tobacco and accommodating large plantations worked by slave labor.³⁵⁹

Conversely, western Virginia was vastly mountainous with small farms not suited for slavery.³⁶⁰ The rivers were also useful for transportation, but many costly improvements were necessary.³⁶¹ Moreover, while most of the eastern Virginians' were of English backgrounds, those of western Virginia were of German, Scotch-Irish, Dutch, and Welsh, as well as English, and had never been to eastern Virginia.³⁶² There were also abundant political differences between the two regions that existed long before and after 1861.³⁶³

Elected West Virginia's ninth Governor in 1892, William Alexander MacCorkle once wrote of his State:

A vision of mountains, dark wilderness, the beetling crag, some smiling valleys, wild deer, and the mountain people, the latter living in their one room, punch and daub log cabin, cultivating on the hillside a patch of yellow corn for food, raising the razor-back hog or shooting the squirrel' or of the fox pulling down the wild grape and muscadine; or the possum making his muddy footprints in the soft bands of the streams as,

³⁵⁹*Id.*

³⁶⁰*Id.*

³⁶¹*Id.*

³⁶²*Id.*

³⁶³*Id.*

he hunts for crawfish or stains his fur with the juice of the pokeberry.³⁶⁴

Governor MacCorkle also maintained:

It is true that we are of the mountain and valley, but our mountains are filled with coal and clothed with timber, rich enough for a king's heritage, and our wildernesses are active with the whirr of wheels, with the thunder of the locomotive, and the stroke of the pick and ax, while our active, happy and intelligent people attest our determination to more than equal the old time glory of the Mother State in all the acts of peace.³⁶⁵

While President Lincoln's 1863 signature officially legitimized the State of West Virginia, the actual boundary lines would not be settled for several years. One boundary line battle between Virginia and West Virginia ended with an 1870 decision by the Supreme Court of the United States.³⁶⁶ In 1906, Virginia sued West Virginia once again for payment of debts owed by Virginia at the start of the Civil War in 1861.³⁶⁷ It was not until July 1, 1939, that the debt of \$14,562,867.16 was finally paid by West Virginia to Virginia.³⁶⁸

³⁶⁴*MAC Loved The State To Mushiness*, *The West Virginia Hillbilly*, Jan. 16, 1961 at 16.

³⁶⁵*Governor Championed Our Mountains*, *The West Virginia Hillbilly*, Jan. 16, 1961 at 16.

³⁶⁶*Virginia v. West Virginia*, 78 U.S. 39 (1870); Otis K. Rice, *West Virginia: The State and Its People* 210 (Parsons: McClain Printing Company, 1971); Elizabeth Cometti & Festus P. Summers, *The Thirty-Fifth State* 654 (Morgantown: West Virginia University Library, 1966).

³⁶⁷Otis K. Rice, *West Virginia: The State and Its People* 210 (Parsons: McClain Printing Company, 1971).

³⁶⁸*Id.*

During the early years, West Virginians also experienced indecision with regard to the location of where their Governor's and Legislators would meet to do the work of the people. From 1863 to 1870, West Virginia's first State Capitol was located in Wheeling.³⁶⁹ On February 26, 1869, the legislature passed a law making Charleston the permanent seat of government effective April 1, 1870, and important records were transferred from Wheeling to Charleston by steamboat.³⁷⁰ In February of 1875, the legislature reversed itself as the State's Capitol was again moved to Wheeling.³⁷¹ Just five years later, on May 21, 1875, the Capitol would once again be relocated to Wheeling.³⁷² Twenty-two years after becoming a State, it was not until a statewide referendum with choices between Charleston, Clarksburg, and Martinsburg, that Charleston became the permanent political Capital of the State of West Virginia on May 1, 1885.³⁷³

³⁶⁹Slack v. Jacob, 8 W. Va. 612 (1875) (This case involved a bill of injunction to prohibit the capitol from being moved back to Wheeling.); V.B. Harris, *Great Kanawha: An Historical Outline* 173 (Jarrett: Charleston, WV 1974).

³⁷⁰V.B. Harris, *Great Kanawha: An Historical Outline* 173 (Jarrett: Charleston, WV 1974) (According to Harris, there was much "fanfare" in receiving the physical transfer of office paraphernalia and records which was made by boat from Wheeling to Charleston.); Otis K. Rice, *West Virginia: The State and Its People* 215 (Parsons: McClain Printing Company, 1971).

³⁷¹*Id.*

³⁷²V.B. Harris, *Great Kanawha: An Historical Outline* 173 (Jarrett: Charleston, WV 1974); Slack v. Jacob, 8 W. Va. 612 (1875) (1875 WL3439 (W. Va.)).

³⁷³V.B. Harris, *Great Kanawha: An Historical Outline* 175 (Jarrett: Charleston, WV 1974); see also Phil Conley, *West Virginia Encyclopedia* (Charleston: West Virginia Publishing Company, 1929) (An act was passed providing for a referendum on the permanent location of West Virginia's Capital.); see Virgil A. Lewis, *History* (continued...)

From the State's origination in 1863 to 1873, the Governor's Office was in the control of the Republicans while the Democrats were in power for twenty-four continuous years thereafter, from 1873 to 1897.³⁷⁴ The gubernatorial office went back to the Republicans from 1897 to 1933, with the exception of only one Democrat.³⁷⁵ Democrats controlled the Legislature in West Virginia from 1863 to 1896, while the Republicans then controlled until the election of Franklin D. Roosevelt in 1932. Since 1932, Democrats have held strong domination, leaving few Republicans becoming elected to any statewide offices.

Even after becoming a State, not all of West Virginia's citizens had a right to vote as with the close of the Civil War in 1865, the young State Legislature passed laws requiring voters and officeholders to swear that they had never aided or fought for the Confederacy.³⁷⁶ While citizens could register, they could not cast their ballot unless they took the prescribed oaths.³⁷⁷ The law was next to impossible to enforce,

³⁷³(...continued)

and Government: West Virginia 258 (New York: American Book Company, 1913); see also Charles Shelter & Michael M. Reynolds, *Milestones of West Virginia History* (Parsons: McClain Printing Company 1963); Otis K. Rice, *West Virginia: The State and Its People* 215 (Parsons: McClain Printing Company, 1971); The distance between Charleston and Wheeling is not insignificant. Even by today's standards using the interstate highway system it is still a four hour drive between the two cities.

³⁷⁴*Id.*

³⁷⁵Otis K. Rice, *West Virginia: The State and Its People* 302 (Parsons: McClain Printing Company, 1971).

³⁷⁶*Id.*

³⁷⁷*Id.*

therefore, the West Virginia Constitution was amended so that ex-Confederates would be kept from voting and holding office.³⁷⁸

The turbulence and uncertainty of the young State was evident for many years. One example of such turmoil was a telegram sent to President Rutherford B. Hayes in 1877 by Governor Henry Mason Mathews requesting that the President send at least 200 to 300 soldiers from "the U.S. military to protect the law-abiding people of this state against domestic violence and to maintain supremacy of the law."³⁷⁹ Governor Mathews said that troops were necessary:

Owing to unlawful combinations and domestic violence now existing at Martinsburg and at other points among the line of the B&O railroad, it is impossible with any force at my command to execute the laws of the state.³⁸⁰

In light of the dangers of the day due to mining confrontations and strikes, on September 2, 1912, Governor William E. Glasscock declared the entire strike district under *martial law*, bringing 1200 state militia into those areas of southern West Virginia.³⁸¹ Governor Glasscock ordered a proclamation disallowing

³⁷⁸*Id.*

³⁷⁹*Id.*

³⁸⁰*Mathew's Telegram Relates History*, The West Virginia Hillbilly, Jan. 16, 1961 at 16 (Later, in 1880, Governor Mathews sent troops to Hawks Nest in southern West Virginia, to stop the States first major coal strike.).

³⁸¹Howard B. Lee, *Bloodletting in Appalachia* 31 (Parsons: McClain Printing Company, 1969) (Governor Glasscock declared *martial law* on three separate occasions.).

“congregating” of the miners.³⁸² A military court was set up and a freight house was converted into a temporary jail; the “military prisoners” were held in this stockade until their cases were disposed of by the military court.³⁸³

The judges of the military courts acted without knowledge of law and prescribed penalties for various offenses while completely ignoring the State and Federal Constitutions.³⁸⁴ For instance, long sentences were imposed for misdemeanors that were only punishable by small fines under state law.³⁸⁵ When two victims of the military courts sought their release from the penitentiary in *habeas corpus*, the West Virginia Supreme Court of Appeals upheld their convictions on the theory that the Governor “in the event of invasion, insurrection, rebellion, or riot [the Governor may] declare a state or war.”³⁸⁶

The military courts ruled southern West Virginia even though the state civil and criminal courts remained unclogged and available to address the very same charges being made against the miners. The military courts also operated notwithstanding Sections 4 and 12 of Article III of the West Virginia Constitution. Those sections provide:

³⁸²*Id.*

³⁸³*Id.* at 32.

³⁸⁴*Id.* at 35; see also Richard D. Lunt, *Law and Order vs the Miners—West Virginia 1907-1933* (Hamden, Conn.: Archon books, 1979).

³⁸⁵Howard B. Lee, *Bloodletting in Appalachia* 35 (Parsons: McClain Printing Company, 1969).

³⁸⁶*Id.* at 41.

Section 4: The privilege of the *writ of habeas corpus* shall not be suspended. No person shall be held to answer to treason, felony, or other crime not cognizable by a justice, unless on a presentment or indictment of a grand jury.

Section 12: The military shall be subordinate to the civil power, and no citizen, unless in the military service of the State, shall be tried or punished by any military court, for any offense that is cognizable by the civil courts of the State.³⁸⁷

Years later, during *another* interval of *martial law*, one union organizer named Mr. Lavender was successful with his petition for *habeas corpus* and was released from jail.³⁸⁸ The West Virginia Supreme Court of Appeals said, "Martial law cannot exist . . . where the State fails to employ its military arm to enforce it."³⁸⁹ The Courts ruling sparked the Governor to ask the President for immediate military aid which resulted in 1000 "battle-equipped army troops into the strike district."³⁹⁰

On February 10, 1913, Governor Glasscock issued a third proclamation placing parts of certain counties in southern West Virginia under *martial law* and military forces once again occupied the territory.³⁹¹ It was reported that "much

³⁸⁷W. Va. Const., Art. III, § 4, § 12 (1872).

³⁸⁸Howard B. Lee, *Bloodletting in Appalachia* 77 (Parsons: McClain Printing Company, 1969).

³⁸⁹*Id.*

³⁹⁰*Id.*

³⁹¹*Id.* at 40.

rioting and lawlessness existed” in southern West Virginia at the time.³⁹² The West Virginia Supreme Court of Appeals found “that many lives and much property had been destroyed, and that riot and bloodshed was then rampant and pending, and that the state had spent about one-half million dollars in trying to restore peace and order and due execution of the laws.”³⁹³

Much of the unrest was due to attempts to unionize miners. Mary Jones, better known as “Mother” Jones, ignited many of the miners and other laborers in strikes and uprisings against their employers.³⁹⁴ Jones was arrested and sentenced to twenty-one years in prison, but was pardoned a few weeks later.³⁹⁵ Jones, who refused the attorneys appointed for her said, “I don’t recognize the jurisdiction of a military court. I am not a soldier. Don’t you feel like idiots sentencing me to prison for 20 years.”³⁹⁶ The coal companies strongly opposed unions which often led to

³⁹²Hatfield v. Graham, 81 S.E. 533 (W. Va. 1914); see also Otis K. Rice, *West Virginia: The State and Its People* 239 (Parsons: McClain Printing Company, 1971).

³⁹³Hatfield v. Graham, 81 S.E. 533 (W. Va. 1914).

³⁹⁴Otis K. Rice, *West Virginia: The State and Its People* 237 (Parsons: McClain Printing Company, 1971); see also Mary Harris Jones, *Autobiography of Mother Jones* (New York: Arno Press, Inc., and the New York Times, 1969); Dale Fetherling, *Mother Jones, the Miners’ Angel* (Carbondale: southern Illinois University Press, 1974).

³⁹⁵Otis K. Rice, *West Virginia: The State and Its People* 239 (Parsons: McClain Printing Company, 1971).

³⁹⁶Edwin D. Hoffman, *Miners at War*, Sunday Gazette-Mail, Mar. 5, 1978, at M2.

them forcing union miners to move from their homes while many of them were forced to live with their families in tents along public highways.³⁹⁷

In a 1912 speech on the steps of the State Capitol, during the Cabin Creek and Paint Creek strikes, Mother Jones called West Virginia's Governor "a goddamned dirty coward" and proclaimed:

But I warn this little Governor [Governor William E. Glasscock] that unless he rids Paint Creek and Cabin Creek of these goddamned Baldwin-Felts mine-guard thugs, there is going to be one hell of a lot of bloodletting in these hills.

Arm yourselves, return home and kill every goddamned mine guard on the creeks, blow up the mines, and drive the damned scabs out of the valleys.³⁹⁸

Consequently, the West Virginia State Police was established in 1919, under the reign of Governor John J. Cornwell, "ostensibly to help enforce State laws in violent coal mining disputes. . . ." ³⁹⁹

Former West Virginia Attorney General Howard B. Lee described the southern West Virginia coalfields as a place of deplorable living conditions and upheaval. Lee wrote:

At the peak of production the industry employed in excess of 125,000 miners. These workers and their families made up a population of 750,000 people who huddled in the grimy mining camps, and lived in

³⁹⁷*Id.* at 237.

³⁹⁸Howard B. Lee, *Bloodletting in Appalachia* 27 (Parsons: McClain Printing Company, 1969).

³⁹⁹V.B. Harris, *Great Kanawha: An Historical Outline* 239 (Jarrett: Charleston, WV 1974).

company owned houses, which were little better than cow stables in many camps. These deplorable living conditions, starvation wages, illegal, oppressive, and often dishonest practices of many of the early coal operators frequently brought on bloody uprisings that bordered on civil war; and on four occasions required the presence of United States regular army troops to restore order in the troubled mountains.⁴⁰⁰

Many of the workers were enticed from Europe to these same West Virginia coalfields by pamphlets portraying glowing conditions and economic advantages of working in the coalfields.⁴⁰¹ Expert writers and translators were employed by coal companies to prepare the brochures in the language of the numerous countries.⁴⁰² With little to no restrictions on immigration, thousands of new workers migrated to New York and then traveled by labor trains to the West Virginia coalfields.⁴⁰³

In 1920, the famous Mingo County *Matewan Massacre* occurred when the Mayor of Matewan, two miners and seven armed coal company strong-arm men were killed in a shootout.⁴⁰⁴ Given the pervasiveness of corruption in West Virginia, it was unusual for a local police chief and a mayor to side with the Union miners as the coal company operators also dominated West Virginia politics,

⁴⁰⁰Howard B. Lee, *Bloodletting in Appalachia* ix (Parsons: McClain Printing Company, 1969).

⁴⁰¹*Id.* at 6.

⁴⁰²*Id.*

⁴⁰³*Id.*

⁴⁰⁴Otis K. Rice, *West Virginia: The State and Its People* 240 (Parsons: McClain Printing Company, 1971); see also <http://www.wvculture.org/history/minewars.html>.

controlling both the Republican and Democratic parties. Often, elected officials were also executives of the coal companies and were paid directly by the companies.

Before the coalfields were unionized, the coal companies used a variety of devices to oppress the miners. They paid the miners in scrip instead of legal tender currency. As such, miners were forced to accept scrip as payment to buy food, clothing, and tools. Interestingly, the only stores that accepted the scrip were owned by the coal companies, who capitalized on the miners with inflated prices. In addition, the companies owned all of the housing and would evict "trouble makers." In addition, they employed thugs to beat and kill workers that they did not like as laws restricting child labor and mine safety were usually not obeyed.

Matewan was only one battle in the *Great Coal Field War* in which the mining companies sent thousands of armed guards and strikebreakers (scabs) to West Virginia. These company thugs killed coal miners and their supporters. The Matewan Police Chief, Sid Hatfield, was "shot down like a dog on the Court House steps at Welch . . . in front of [his wife]" by company operatives after he was indicted for his role in the *Matewan Massacre*.⁴⁰⁵ The *Wheeling Intelligencer* called the murder "the most glaring and outrageous expression of contempt for law that has ever stained the history of West Virginia."⁴⁰⁶

⁴⁰⁵Lon Savage, *Thunder in the Mountains: The West Virginia Mine War, 1920-21*, 55 (Univ. Of Pittsburgh Press 1990); Howard B. Lee, *Bloodletting in Appalachia* 68 (Parsons: McClain Printing Company, 1969).

⁴⁰⁶Lon Savage, *Thunder in the Mountains: The West Virginia Mine War*,
(continued...)

The coal miners, for their part, blew up mines and other coal company property. In 1921, no fewer than 10,000 miners fought a pitched battle with company forces at Logan, West Virginia, gaining the upper hand for the moment.⁴⁰⁷ It was then that President Warren G. Harding declared *martial law* in West Virginia and sent in federal troops to break the strike.⁴⁰⁸ This era of strife in Mingo County, causing federal troops to attempt to restore calm to *Bloody Mingo* and surrounding counties, only continued to spark confrontations and violence between operators and miners .

On March 4, 1921, E.F. Morgan was inaugurated Governor and once again part of West Virginia was declared under *martial law* as troops were sent into West Virginia to enforce his proclamation.⁴⁰⁹ Attorney General Lee delineates:

‘A state of war, insurrection, and riot is, and has been for some time, in existence in Mingo County,’ said the proclamation, ‘and many lives and much property have been destroyed as a result thereof, and riot and bloodshed are rampant and pending.’ Even freedom of the press was suspended. ‘No publication,’ continued the decree, ‘either newspaper, pamphlet, handbill, or

⁴⁰⁶(...continued)
1920-21, 56 (Univ. Of Pittsburgh Press 1990).

⁴⁰⁷*Id.* at 23.

⁴⁰⁸Otis K. Rice, *West Virginia: The State and Its People* 240 (Parsons: McClain Printing Company, 1971); Charlotte Sanders, *Man recalls Matewan Massacre*, Williamson Daily News, Sept. 20, 1996, at C10; Grant Parsons, *Lost Case: Discovery of Tom Felts’ records provide new view of ‘massacre,’* Sunday Gazette-Mail, Aug. 11, 1991, at C1; Associated Press, *Matewan Massacre was 70 years ago Saturday*, Clarksburg Telegram, May 18, 1990, at B1.

⁴⁰⁹Howard B. Lee, *Bloodletting in Appalachia* 74 (Parsons: McClain Printing Company, 1969).

otherwise, reflecting in any way upon the United States, or the State of West Virginia, or their officers, may be published, displayed, or circulated within the zone of martial law.⁴¹⁰

Governor Morgan, who sent the telegram to President Harding calling for the federal troops, said "Nothing short of 100 percent martial law" could restore order.⁴¹¹ Calling Mingo County a "smouldering volcano," Governor Morgan said that no fewer than 500 troops would be necessary "to prevent wanton slaughter of innocent citizens."⁴¹² The Secretary of War John W. Weeks was wired by a Huntington, West Virginia man proclaiming, "In the name of GOD, please hurry Federal aid to Matewan. Our citizens are being shot down like rats."⁴¹³

President Harding, recognizing insurrection in West Virginia, issued a proclamation giving miners less than forty-eight hours to disband:

Now, therefore, I, Warren G. Harding, President of the United States, do hereby make Proclamation and I do hereby command all persons engaged in said insurrection to disperse and retire peaceably to their respective abodes on or before 12 o'clock, noon, of the first day of September, 1921, and hereafter abandon

⁴¹⁰*Id.* (The United Mine Workers Union was not able to organize the coalfields until the early 1930s when President Roosevelt came to power); see Otis K. Rice, *West Virginia: The State and Its People* 240-41 (Parsons: McClain Printing Company, 1971); see also Joseph E. Finley, *The Corrupt Kingdom, the Rise and Fall of the United Mine Workers* (New York: Simon and Schuster, 1972); Heber Blankenhorn, *The Strike for Union* (New York: H. W. Wilson Company, 1924).

⁴¹¹Lon Savage, *Thunder in the Mountains: The West Virginia Mine War, 1920-21*, at 39, 43 (Univ. Of Pittsburgh Press 1990).

⁴¹²*Id.* at 39.

⁴¹³*Id.*

said combinations and submit themselves to the laws
and constituted authorities of said State . . .⁴¹⁴

President Harding later signed a second proclamation establishing *martial law* in the disturbed areas of West Virginia, but it was to be used only if necessary.⁴¹⁵ The battle at Blair Mountain in Logan County that followed was referred to as a civil war and depicted as:

Fully ten thousand men—and some estimates go to twice that number—were involved as the two armies began exchanging shots along a ten-mile front. George Washington had fewer soldiers at the Battle of Trenton, the engagement which changed the course of the American Revolution.⁴¹⁶

In April and May of 1922, United Mine Workers Organizer Billy Blizzard was tried for treason in Charles Town located in West Virginia's Eastern Panhandle, in the same courthouse where John Brown was convicted of treason and hanged in 1859.⁴¹⁷ Blizzard, after a thirty-day trial was found not guilty.⁴¹⁸ In September and October of 1921, Logan County Grand Juries returned 1,217 indictments for complicity in the insurrection, which included 325 murder charges and 24 indictments for treason against the State of West Virginia.⁴¹⁹

⁴¹⁴*Id.* at 102.

⁴¹⁵*Id.* at 135.

⁴¹⁶*Id.* at 107.

⁴¹⁷*Id.* at 143.

⁴¹⁸*Id.*

⁴¹⁹*Id.*

Prior to the *Matewan Massacre*, and not long after the Civil War, Mingo County was also the site of the world famous feud of the Hatfield and McCoy clans.⁴²⁰ The Hatfields of West Virginia had engaged in the long and well-known feud with the McCoys from nearby Kentucky.⁴²¹ In August 1882, at the Blackberry Creek voting precinct in Pike County, Kentucky, the Hatfields and McCoys had one of their first encounters. On election day, Ellison Hatfield, with his brother Elias, had a confrontation with Tolbert, Dick and Bill McCoy; Ellison died two days later from cuts and gunshot wounds caused by the McCoys.⁴²²

In light of the Hatfield/McCoy confrontation, Historian Altina Walker describes election day during that same time period as “the most important social event of the year” and explains that “[e]veryone in the community was fully aware, not only of everyone else’s political beliefs, but of their status as landowners or tenants and their families connections. Men came to the elections prepared to state and defend their politics as well as their reputations, if necessary.”⁴²³

⁴²⁰Altina Walker, *Feud: Hatfields, McCoys, and Social Change in Appalachia, 1860-1900* 16 (University of North Carolina Press 1988).

⁴²¹Don Seagle, ‘*They’ve Said Too Much Already, Son Of Devil Anse Hatfield Refuses to Talk About Clash With McCoys in Late 1800’s*, Charleston Daily Mail, Feb. 10, 1952, at A8.

⁴²²Byron Crawford, *Niece trembled when visiting Devil Anse*, The Courier-Journal (Louisville, KY), Aug. 19, 1988, at B1; Otis K. Rice, *West Virginia: The State and Its People* 324 (Parsons: McClain Printing Company, 1971)..

⁴²³Altina Walker, *Feud: Hatfields, McCoys, and Social Change in Appalachia, 1860-1900* 16 (University of North Carolina Press 1988); see also Virgil Carrington Jones, *The Hatfields and the McCoys*, (Chapel Hill, NC: The University of North Carolina Press, 1948); Shirley Connelly, *The Hatfield-McCoy Feud Reader*,
(continued...)

The Hatfield and McCoy Feud even involved the Governors of both Kentucky and West Virginia. The Kentucky Governor, Simon Bolivar Buckner, sent an agent across the Tug River into West Virginia and arrested some of the Hatfields.⁴²⁴ West Virginia Governor Emanuel Willis Wilson demanded their release and Governor Buckner refused.⁴²⁵ West Virginia carried the case to the United States Supreme Court, but Kentucky prevailed.⁴²⁶

It has been argued that newspapers were responsible for the widespread negative image of Appalachia during the late 1800s. Newspapers across the nation screamed headlines such as "Dark and Bloody Ground" describing "family feuds" where victims were hanged from trees and sprawled across courthouse steps.⁴²⁷

Sensational stories appeared nationally about conflicts such as the famed Hatfield-McCoy feud along the Kentucky-West Virginia border. Murder was so commonplace that Kentuckians didn't view it with 'the horror with which it is regarded in civilized communities,' the New York Times wrote in 1878.⁴²⁸

⁴²³(...continued)
(Parsons, WV: McClain Printing Company, 1971).

⁴²⁴Otis K. Rice, *West Virginia: The State and Its People* 324 (Parsons: McClain Printing Company, 1971).

⁴²⁵*Id.*

⁴²⁶*Id.*; *In re Mahon* 34 F. 525 (D.C. Ky. 1888).

⁴²⁷Jane Gibson, *Feud researchers find few poor, dumb hillbillies*, *Sunday Gazette-Mail*, Sept. 15, 1991, at A3.

⁴²⁸*Id.*

When a relative to the original Hatfield clan ran for Governor in 1928, opponents were exceptionally critical. Much to their disfavor, Hatfield was successful in becoming the fourteenth Governor of West Virginia. One campaign advertisement printed in the *Charleston Daily Mail* proclaimed:

Many thousand loyal Republicans in Kanawha County are thoroughly convinced that the best interests of the Republican party demand the overwhelming defeat of Dr. Hatfield on next Thursday. Their reasons are numerous. Their minds are made up,.....To elect Dr. Hatfield unmistakably means not only the return to Hatfieldism...the greatest political menace to WV...but it surely and definitely gives to Hallanan the political domination and control of the Rep. organization of WV.⁴²⁹

West Virginia was a state conceived from another state during the Civil War. Some scholars even today still argue that it was created illegally, calling its formation "a mere illegal breakaway province of the Commonwealth of Virginia."⁴³⁰ It has also been said that the people of present-day West Virginia capitalized on a national crisis to acquire statehood. The legality of West Virginia's creation and admission as a State to the Union was obviously in doubt even by President Lincoln, who signed the Proclamation creating West Virginia. President Lincoln declared:

We can scarcely dispense with the aid of West Virginia in this struggle, much less can we afford to have her against us, in Congress and in the field. Her brave and good men regard her admission into the

⁴²⁹Political advertisement, *Charleston Daily Mail*, November 1, 1928 at A2.

⁴³⁰Lawrence Messina, *W. Va. not a state: Maybe, law article opines*, *Charleston Gazette*, May 22, 2002, at A1.

union as a matter of life and death. They have been true to the union under many severe trials. The division of a state is dreaded as a precedent but a measure expedient by a war is no precedent for times of peace.

It is said that the admission of West Virginia is secession, and tolerated only because it is our secession. Well, if we call it by that name, there is still difference enough between secession against the constitution and secession in favor of the constitution. I believe the admission of West Virginia into the union is expedient.⁴³¹

Furthermore, even after West Virginia was admitted to the Union, United States Senator Garrett Davis of Kentucky objected to seating any of West Virginia's chosen United States Senators. Senator Davis argued:

I hold that there is, legally and constitutionally no such state in existence as the state of West Virginia and consequently no senators from such a state. My object is simply to raise a question to be put upon the record, and to have my name as a Senator recorded against the recognition of West Virginia as a state of the United States. I do not believe that the Old Dominion, like a polypus, can be separated into different segments, and each segment become a living constitutional organism in this node. The present state of West Virginia as it has been organized, and as it is seeking representation on the floor of the Senate, is a flagrant violation of the Constitution.⁴³²

Moreover, Jefferson Davis in his memoirs wrote, with considerable bitterness, on the creation of West Virginia:

⁴³¹John C. Nicolay, *Abe Lincoln, ed.* Vol. II at 286 (New York: The Century Co., 1894).

⁴³²U.S., *Congressional Globe*, 38th Cong., 1st sess., 1863, Part 1, p. 1 (Senator Davis died in office in 1872 the same year in which West Virginia approved its present-day Constitution.).

When the state convention at Richmond passed an ordinance of secession, which was subsequently ratified by a 60,000 majority, it was as valid an act for the people of Virginia as was ever passed by a representative body. The legally expressed decision of the majority was the true voice of the state. When, therefore, disorderly persons in the northwest counties assembled and declared the ordinance of secession "to be null and void," they rose up against the authority of the state. . . . The subsequent organization of the state of West Virginia and its separation from the state of Virginia were acts of secession. Thus we have, in their movements, insurrection, revolution and secession. . . . To admit a state under such a government is entirely unauthorized, revolutionary, subversive of the constitution and destructive of the Union of States.⁴³³

The United States Constitution provides that a new state must gain approval from the original State, which never occurred in the case of West Virginia becoming a State. However, since the Restored Government of Virginia was recognized as the legal government of Virginia, when it granted permission to itself in 1862 to the formation of the new State, West Virginia was on its way to becoming a reality. It is difficult to imagine the formation of the State of West Virginia during such tumultuous times of fierce struggle which was only magnified by the bitterly divided sympathies of its populace as a result of the Civil War.

⁴³³ Jefferson Davis, *The Rise & Fall of the Confederate Government*, 2 vols., Vol. II at 306 (New York: D. Appleton and Co., 1881).

**V. ELECTION MISGIVINGS FROM THE BEGINNING:
DO THE VOTES OF WEST VIRGINIANS COUNT?**

The time to guard against corruption and tyranny is before they shall have gotten hold of us. It is better to keep the wolf out of the fold, than to trust to drawing his teeth and talons after he shall have entered.

—Thomas Jefferson
Notes on Virginia, 1782.

With West Virginia still two years from statehood, from the First Wheeling Convention in May 1861, to the Second Wheeling Convention in June 1861, to the referendum on separation from Virginia, uncertainty in the region's election process undeniably existed. For example, Boone County resident Mr. Hagar, an elected representative to the First Constitutional Convention, observed problems with the way in which he and his fellow delegates were selected. Hagar states:

If . . . Cabell County, which borders on the Ohio River, had to have a military force to hold an election there; if Boone had to have a military force to hold an election at two points [out of the usual eight]; if a detachment went up and got into a corner of Raleigh and held an election there, with what difficulty are the counties represented!"⁴³⁴

⁴³⁴James C. McGregor, *The Disruption of Virginia* 268-269 (New York, NY: Macmillon Company 1922).

It was also clear that Civil War disturbances interfered with the vote in Calhoun, Clay, Fayette, Logan, McDowell, Mercer, Nicholas, and Wyoming counties, while Webster and Monroe counties sent no delegates to the First Constitutional Convention in Wheeling.⁴³⁵ “For instance, Dr. D.W. Gibson of Pocahontas County was elected [to the Convention] by refugees at Buckhannon in Upshur County.”⁴³⁶ Furthermore, Wyoming and Fayette Counties never even held elections to select delegates, but were instead represented by delegates who came to the convention bearing petitions signed by residents of their counties.⁴³⁷

With such early questionable election practices it is not surprising that some assert that the first Constitution of this State by the people, “was adopted by the suspiciously large majority of 20,442 to 440.”⁴³⁸ It was also noted that Greenbrier, Logan, McDowell, Mercer, Monroe, Raleigh, and Wyoming counties did not even report returns *for* or *against* the first Constitution.⁴³⁹

From the first election as a recognized State, many West Virginia citizens were prohibited from even participating in the young State’s government. So-called

⁴³⁵Otis K. Rice & Stephen W. Brown, *West Virginia, A History* 140-41 (Lexington: The University Press of Kentucky 1993).

⁴³⁶*Id.* at 141.

⁴³⁷James C. McGregor, *The Disruption of Virginia* 258 (New York, NY: Macmillon Company 1922).

⁴³⁸Richard Orr Curry, *The Virginia Background for the History of the Civil War and Reconstruction Era in West Virginia: An Analytical Commentary*, 20 W. Va. History 215, 244 (State Department of Archives and History, Charleston, West Virginia: 1959).

⁴³⁹*Id.*

“test oaths” or “loyalty oaths” became mandatory for many positions which rewarded those loyal to the Union and prevented any ex-confederate from taking office. The required oath provided:

I, A.B. (Name of affiant) do solemnly swear that I have never voluntarily borne arms against the United States, the reorganized government of Virginia, or the State of West Virginia; that I have never voluntarily given aid, comfort or assistance to persons engaged in armed hostility against the United States, the reorganized government of Virginia, or the State of West Virginia; that I have not at any time sought, accepted, exercised, or attempted to exercise any office of appointment whatever under any authority or pretended authority, hostile or inimical to the United States, the reorganized government of Virginia, or the State of West Virginia; that I have not at any time yielded a voluntary support to any government or pretended government, power or Constitution within the United States, hostile or inimical thereto, or hostile or inimical to the reorganized government of Virginia, or the State of West Virginia; that I will support the constitution of the United States and the constitution of the State of West Virginia; and I take this oath freely without any mental reservation or purpose of evasion.⁴⁴⁰

The author of the bill that required the oath, James H. Fergusson of Cabell County, made clear his intentions by the required oath: “I do not want the rebels to have any share in government. If they do I shall be defeated by five hundred votes.”⁴⁴¹ Merely three years after becoming a State, the West Virginia Supreme Court upheld the constitutionality of the “test oath” in the context of William Stratton,

⁴⁴⁰1865 W. Va. Acts ch. 56.

⁴⁴¹Milton Gerofsky, *Reconstruction in West Virginia*, 6 W. Va. History 295, 302 (State Department of Archives and History, Charleston, West Virginia: 1945) (quoting Charles H. Ambler, *Disfranchisement in West Virginia*, 14 Yale Rev. 38 (1905)).

a former Confederate who was elected Circuit Clerk of Logan County.⁴⁴² The circuit judge would not qualify Stratton for office when he refused to take the oath.⁴⁴³

The oath was also responsible for removing from office John McCraw, who was chosen by the voters of the Sixth Delegate District in the election of 1868.⁴⁴⁴ The Legislature of 1869 unseated him concluding that “John McCraw, the sitting member from the sixth delegate district, is not entitled to his seat in this House. . . .”⁴⁴⁵ On February 2, 1869, the House of Delegates voted thirty-five to sixteen to remove McCraw.⁴⁴⁶

The situation which prevented ex-confederates from becoming full participants in the political process prevailed until August of 1871 when West Virginians voted 30,220 to 27,658 in favor of a constitutional convention. According to a 1999 Opinion of the West Virginia Supreme Court, authored by Justice McGraw: “Preventing the abuses and self-dealing of the ‘carpetbaggers’ of the

⁴⁴²Ex. parte William Stratton, 1 W. Va. 304, 305-6 (1866).

⁴⁴³The Court also upheld, oaths for jurors, *Lively v. Ballard*, 2 W. Va. 496 (1868); lawyers, *Ex parte Hunter*, 2 W. Va. 122 (1867); *Ex parte Quarrier*, 4 W. Va. 210 (1870); *Ex parte Charles James Faulkner*, 1 W. Va. 269 (1866); litigants or potential litigants, *Higginbotham v. Gaselden*, 3 W. Va. 17 (1868); and even voters in public elections, *Randolph v. Good*, 3 W. Va. 551 (1869).

⁴⁴⁴*Journal of the House of Delegates of the State of West Virginia*, 7th Sess., 46-47 (1869).

⁴⁴⁵*Id.*

⁴⁴⁶*Id.* (McCraw is the grandfather of current West Virginia Attorney General Darrell V. McGraw, Jr. and State Supreme Court Justice Warren McGraw.).

Reconstruction period must have been foremost in [the] minds” of the men who drafted the 1872 Constitution.⁴⁴⁷

Further delineating the point, Justice McGraw advanced:

As an example of the evil they sought to prevent, one may examine the story of Judge Nathaniel Harrison of what was the 7th Judicial Circuit, which encompassed Greenbrier, Nicholas, Monroe, and Pocahontas Counties—an area that was substantially pro-Confederate during the war. Among various abuses, Judge Harrison ejected all former Confederates from office, even though they had been popularly elected in the elections of 1865; enforced the ‘test oath’ and ‘forfeiture’ acts relentlessly; demanded that all legal ads be placed in a paper that he owned; suggested parties use a particular lawyer, from whom Harrison received a percentage of the fees; sat in cases in which he, himself was an interested party; and charged cash for approving pardon applications for ex-Confederates.⁴⁴⁸

Justice McGraw continued:

When a former confederate officer sought Harrison’s impeachment in the House of Delegates in February of 1866, members or staff of the House beat him, ejected him from the chamber, and called his formal request for Harrison’s impeachment “a paper which was deemed by this House a malicious attempt to publicly slander one of the Circuit Judges of this State. Journal of the House of Delegates of the State of West Virginia, 4th Sess., 115 (1866). Others attempted to remove Harrison from office, but he managed to hold on to his position until the Legislature of 1870 adopted articles of impeachment against him.⁴⁴⁹

⁴⁴⁷Rist v. Underwood, 524 S.E.2d 179, 189 (W. Va. 1999).

⁴⁴⁸*Id.* at 208, fn. 17.

⁴⁴⁹*Id.*

Consider the inherent problems in conducting elections under conditions as tumultuous as those which ushered in West Virginia's statehood. In some respects, the Mountain State has endured an ungainly history marred with many episodes of discomfiture, notwithstanding the Mine Wars in Mingo County between labor activists and union-busting mine owners during the 1920s. West Virginia received national attention during the early 1900s when the largest armed insurrection in America since the Civil War was waged at Blair Mountain in Logan County.⁴⁵⁰

Former West Virginia Attorney General Howard Lee, who served from 1925 to 1933, maintains that the early voting procedures and elections in the West Virginia coalfields were controlled entirely by the coal operators:

Under non-union conditions, the operators could say, and many did say, to their workers: 'You vote for the candidates we have selected, or get off the job.' In many camps, free primary elections were most favorably disposed toward their interests and required their miners to vote for them. Under the caption 'I WANT TO VOTE FOR THE FOLLOWING CANDIDATES,' they printed the names of all approved candidates on slips of paper called 'THE SLATE' and, on election mornings, company-paid deputy sheriffs handed a copy of THE SLATE to each voter as he approached the polls. The voter in turn passed the list to the election officials, also company employees, who marked his ballot accordingly.⁴⁵¹

⁴⁵⁰Lon Savage, *Thunder in the Mountains: The West Virginia Mine War, 1920-21* (Univ. Of Pittsburgh Press 1990).

⁴⁵¹Howard B. Lee, *Bloodletting in Appalachia* 9 (Parsons: McClain Printing Company, 1969).

As Attorney General Lee explained, this was but one illustration of the political influence of the early coal "oligarchy."⁴⁵² Lee further contends that after the 1928 General Election the coal operators held dominion over not only the Governor's Office, but both branches of the West Virginia Legislature as well.⁴⁵³ Lee stated that in order to maintain control, coal operators directed much of their focus toward electing the county sheriffs and assessors. He expounded that sheriffs had the authority to appoint deputy sheriffs who could suppress union activities, while the assessors were responsible for fixing the value of the coal properties at a minimum for taxation purposes.⁴⁵⁴

In 1919, Governor Cornwell appointed a commission to investigate conditions in Logan County coalfields and determined that the "treasurer of the Logan County Coal Operators Association paid the Logan Sheriff the sum of \$32,000, and in 1920, the sum of \$46,630, for salaries of deputy sheriffs."⁴⁵⁵ In discussing the deputy sheriff system in Logan County, the United States Senate Kenyon Committee provided:

The system of paying deputy sheriffs out of funds contributed by the operators, as the testimony shows has been done in Logan County . . . is a vicious and un-American policy. Public officers should be paid out of the public treasury. It is freely admitted that the purpose of the plan is to prevent men from coming into

⁴⁵²*Id.*

⁴⁵³*Id.*

⁴⁵⁴*Id.* at 10, 11.

⁴⁵⁵*Id.* at 92.

the county to organize the United Mine Workers. Men have been driven out of the county who attempted to do so. . . . It would be just as logical to have members of congress paid by certain interests, or to have judges paid by other interests.⁴⁵⁶

Nonetheless, it should not be concluded that election problems existed only within the confines of the coalfields. Instead, it is clear that this was a statewide problem. For example, while only a State for nine years, questions about the West Virginia electoral process arose north of the coalfields as George Loomis contested the August 1872 election of James M. Jackson to circuit judge for the Fifth Judicial Circuit.⁴⁵⁷ Loomis, in the first documented case in the history of the state to challenge before the State Supreme Court the election of a judge of the circuit court, contended that he had received more votes, that there was “malconduct at the respective voting places” on the part of the officers conducting the election, and that there was an unlawful destruction of many ballots that directly affected the result of the election.⁴⁵⁸

Loomis also contended that certificates in various counties were incorrectly certified with regard to the number of actual votes received, ballot boxes were opened several times and ballots were handled, examined, and tampered with by

⁴⁵⁶*Id.*

⁴⁵⁷*Loomis v. Jackson*, 6 W. Va. 613 (1873) (1873 WL 2836); At the time, the 5th Judicial Circuit was composed of the counties of Tyler, Pleasants, Ritchie, Wood, Wirt, and Calhoun.

⁴⁵⁸*Id.*

persons having “no authority to do so.”⁴⁵⁹ Among Loomis’ other accusations were claims that minors and nonresidents voted, polls were closed in some areas at 4:00 p.m., “and not kept open until sun down of that day as required by the law.”⁴⁶⁰

In response, Jackson declared that he received more votes and was fairly elected.⁴⁶¹ He further lodged allegations of his own asserting that Loomis or his agents “had access to said ballots, and have handled and examined and counted the same contrary to law. . . . Leading to well grounded suspicions of unfairness and fraud” and that voting places were held in places not specified by law.⁴⁶² He further alleged that the officers conducting the election committed numerous violations such as opening ballot boxes inappropriately while the election was ongoing, counting ballots without the presence of the election supervisor, failing to close the polls at sundown as required by law, and the failing of election officers to be legally and properly sworn to perform their duties.⁴⁶³ Jackson called the allegations “negligence and misconduct amounting to fraud” and further charged that minors, non-residents of the voting district, non-residents of West Virginia, and non-citizens of the United States cast votes for his opponent.⁴⁶⁴

⁴⁵⁹*Id.*

⁴⁶⁰*Id.*

⁴⁶¹*Id.*

⁴⁶²*Id.*

⁴⁶³*Id.*

⁴⁶⁴*Id.*

In 1882, Bassel Branen was charged with distributing pure liquor to various voters on election day during the Gilmer County general election.⁴⁶⁵ Furthermore, Branen was accused of being intoxicated and that he “rode his horse recklessly about and made a great deal of noise.”⁴⁶⁶ Edward Miller was later charged with perjury for his testimony against Branen and was found guilty and sentenced to one year imprisonment and a five dollar fine.⁴⁶⁷

In 1884, the Fayette County elections were questioned as the candidates for prosecuting attorney, circuit clerk, and the county commissioner challenged the election returns.⁴⁶⁸ It was argued that voters throughout Fayette County who were not qualified to vote had indeed cast ballots in the election.⁴⁶⁹ The 1884 election returns were also questioned in Nicholas County as an election commissioner at a voting precinct failed to take the required oath and as a result, the courthouse commissioners rejected and refused to count the votes cast at the precinct.⁴⁷⁰ The failure to count the votes shifted the victory from one circuit clerk candidate to the other candidate.⁴⁷¹

⁴⁶⁵State v. Miller, 24 W. Va. 802 (1884), 1884 WL 2829 (W. Va.).

⁴⁶⁶*Id.*

⁴⁶⁷*Id.*

⁴⁶⁸Brazie v. Fayette County Commissioners, 25 W. Va. 213 (1884), 1884 WL 2706 (W. Va.).

⁴⁶⁹*Id.*

⁴⁷⁰Halstead v. Rader, 27 W. Va. 806 (1886), 1886 WL 1888 (W. Va.).

⁴⁷¹*Id.*

Even when the legitimacy of the election itself was not in question the propriety of those elected was often suspect. For instance, in 1887 the West Virginia Supreme Court found that the council of the town of Clarksburg possessed the power to try the Mayor and remove him from office if they deemed such action appropriate.⁴⁷² The charges stemmed from a report provided to the Mayor detailing that several individuals, including Martin Feemy, would attend the circus being held on June 23, 1887, and would assault Wm. Maphis at the circus. The Mayor allegedly instructed the police force:

to make no arrests of any person or persons who might attempt to make such assault while they had life in them; meanings and intending thereby that said members of the police force and others should either kill or inflict great bodily injury upon such persons, including Feemy, who might assault or attempt to assault said Maphis, but to club such persons as might attempt to assault or injure said Maphis, but to club such persons as might attempt to make such assault while they had life in them (kill them).⁴⁷³

West Virginia elections were also challenged beyond the borders of the state as the election of United States Senator Faulkner was contested in the United States Senate in 1887. The complication began on March 5, 1887 when West Virginia Governor Emanuel Willis Wilson appointed Daniel B. Lucas to fill the seat in the Senate left vacant two days earlier by the death of Senator Johnson N.

⁴⁷²Richards v. Town of Clarksburg, 4 S.E. 774, 782 (W. Va.1887).

⁴⁷³*Id.*

Camden on March 3, 1887.⁴⁷⁴ The Governor had the authority to temporarily appoint someone “until the next meeting of the legislature” who then would have the authority to fill the vacancy of Senator Camden’s term.⁴⁷⁵

Soon after Lucas’ March 5, 1887 appointment, the Governor called the Legislature to meet for a special session to consider eight specific objects, none of which was the election of a United States Senator. Despite this fact, the State Senate elected Charles A. Faulkner. The Governor challenged that the Constitution of West Virginia provides that “[t]he Governor may, on extraordinary occasions convene, at his own instance, the Legislature; but when so convened, it shall enter upon no business except that stated in the proclamation by which it was called together.”⁴⁷⁶

While Lucas argued that the State Senate had no authority to appoint Faulkner, the United States Senate held the State Senate appointment of Faulkner to be valid. The United States Senate report said the West Virginia Constitution could not have intended to “prohibit the performance of duties imposed upon it by the supreme authority of the Constitution of the United States.”⁴⁷⁷

Another election of interest was the 1888 gubernatorial election sometimes referred to as “A Tale of Four Governors.” The result of the November 6, 1888

⁴⁷⁴Wise v. Chandler, 108 S.W.2d 1024 (Kent. App. 1937).

⁴⁷⁵*Id.* at 1031.

⁴⁷⁶*Id.* at 1032.

⁴⁷⁷*Id.* at 1032-1033.

gubernatorial election remained in limbo until February 6, 1890.⁴⁷⁸ The gubernatorial contest between A.B. Fleming and Nathan Goff was not the only afflicted circumstance of this infamous election with which the West Virginia Legislature had to contend. No fewer than four men claimed the Governor's Office including E. Willis Wilson, A. B. Fleming, Nathan Goff, and Robert S. Carr.⁴⁷⁹

Goff took [the] oath of office, claiming election by 110 votes, Fleming laid claim to the governorship, Carr insisted that the Senate president should be in charge, and the outgoing governor, Wilson, refused to step out of office until his successor was legally determined.⁴⁸⁰

The new Governor was scheduled to take office on March 4, 1889. The certificate of returns showed Goff with 78,714 votes, while Fleming received 78,604 votes.⁴⁸¹ Fleming contested the election, charging various irregularities which resulted in a recount in three counties.⁴⁸² On March 4, 1889 with the contest incomplete, Goff took the oath of office and went to the Governor's Office where E. W. Wilson, who had been elected Governor in 1884, refused to yield the Governor's Office to Goff arguing that the contest was incomplete.⁴⁸³

⁴⁷⁸Todd C. Willis, Editor, West Virginia Blue Book, Vol. 64 at 267 (1980).

⁴⁷⁹Carr v. Wilson, 9 S.E. 31 (W. Va. 1889); Goff v. Wilson, 9 S.E. 26 (W. Va. 1889); Fleming v. Commissioners, 8 S.E. 267 (W. Va. 1888).

⁴⁸⁰Aretus Brooks, *Four Claimed Governorship In 1889*, Beckley-Post Herald, Oct. 1, 1970, at A2.

⁴⁸¹Goff v. Wilson, 9 S.E. 26 (W. Va. 1889).

⁴⁸²Fleming v. Commissioners, 8 S.E. 267, 268 (W. Va. 1888).

⁴⁸³Goff v. Wilson, 9 S.E. at 27.

Wilson called out the West Virginia National Guard and stationed the men in the capitol with rifles and live ammunition. They had orders to resist attempts of any man or group of men to take forcible possession of the governor's office.⁴⁸⁴

As a result, Governor E. Willis Wilson served the extra year in office until the dispute could ultimately be settled.⁴⁸⁵ The contest occurred in 1889 when Fleming disputed the lead held by Goff, amounting to some 110 votes. "Some contended the election had been stolen or bought, and ex-Confederate soldiers and sympathizers who had just regained their right to vote with the adoption of the 1872 Constitution were especially bitter."

On March 7, 1889, Goff petitioned the West Virginia Supreme Court of Appeals to declare him Governor of West Virginia and force Wilson to leave the office as the Legislature would not take action as the contest continued.⁴⁸⁶ The Court held that such power was exclusively retained by the West Virginia Legislature and "beyond the control or interference of the courts in any manner."⁴⁸⁷

Meanwhile, Robert S. Carr, President of the State Senate, filed a petition with the West Virginia Supreme Court of Appeals stating that as of March 4, 1889, the office of Governor remained vacant and that he, not Wilson, Goff, nor Flemming,

⁴⁸⁴Aretus Brooks, *Four Claimed Governorship In 1889*, Beckley-Post Herald, Oct. 1, 1970, at A2.

⁴⁸⁵Staff reports, *One Governor of State had 5-year term*, Clarksburg Exponent, Apr. 9, 1939, at A24.

⁴⁸⁶Goff v. Wilson, 9 S.E. 26, 27 (W. Va. 1889).

⁴⁸⁷*Id.* at 31.

should be declared Governor until the contest was complete.⁴⁸⁸ Carr, like Goff, asked the Supreme Court to compel Wilson to surrender the office to him and to declare that Goff's taking of the oath of office was void, therefore having absolutely no effect.⁴⁸⁹

Holdover Governor Wilson filed a response stating that there simply was no vacancy in the office and that he was bound by a constitutional duty to "continue in the discharge of the powers of the office until his successor should be declared elected and qualified."⁴⁹⁰ Conversely, Carr argued that neither Fleming nor Goff had been declared elected and thus were ineligible to take the office. As a result, Carr asserted that he should be declared Governor as the state constitution provides "in case of the death, conviction on impeachment, failure to qualify, resignation, or other disability of the governor, the president of the senate shall act as governor."⁴⁹¹

The Court held that the provision of the Constitution—for which Carr argued—did not apply to this situation.⁴⁹² Carr also declared that Wilson was ineligible to remain for the term succeeding his elected term of office as the State Constitution provided that a Governor could not succeed himself.⁴⁹³ The Court held

⁴⁸⁸Carr v. Wilson, 9 S.E. 31 (W. Va. 1889).

⁴⁸⁹*Id.* at 31.

⁴⁹⁰*Id.*

⁴⁹¹*Id.*

⁴⁹²*Id.* at 31, 36.

⁴⁹³Otis K. Rice, *West Virginia: The State and Its People* 309 (Parsons, WV: (continued...))

that Wilson was not starting a new term in office, but was simply a holdover under his old term.⁴⁹⁴

The Legislature formed a Joint Contest Committee to consider the evidence presented by Fleming and Goff and to decide who would be declared Governor.⁴⁹⁵ On February 19, 1889 the Senate chose Republicans Presley W. Morris of Ritchie County and Goff's old law partner Edwin Maxwell of Harrison County as its two members allotted under the Constitution.⁴⁹⁶ The following day the House of Delegates chose Democrats William L. Kee of Randolph County, William E. Lively of Lewis County, and Joseph Sprigg of Hardy County.⁴⁹⁷

With the Legislature so closely aligned to favor the Democrats by a single representative, one vote could select the Governor. The political pressure in the Capitol was without precedent. As such, on February 6, 1890, more than eleven months after the term of the next Governor was scheduled to commence, the Democratic candidate, Fleming, became West Virginia's eighth Governor despite Republican candidate Goff initially being declared to have received more votes.⁴⁹⁸ Governor Wilson's extended term finally ended.

⁴⁹³(...continued)
McClain Printing Company, 1971).

⁴⁹⁴Carr v. Wilson, 9 S.E. 31, 36 (W. Va. 1889).

⁴⁹⁵*House Journal*, 1889 at 47-93, 184-308.

⁴⁹⁶Atkinson and Gibbens, *op. cit.*, at 226; *House Journal*, 1889, at 557-558.

⁴⁹⁷*House Journal*, 1889 at 560-561.

⁴⁹⁸Todd C. Willis, Editor, *West Virginia Blue Book*, Vol. 64 at 267 (1980).

The 1888 elections, however, were replete with problems beyond the gubernatorial contest the West Virginia Legislature was forced to examine. Another controversial issue which roused acrimony involved contested seats in the House of Delegates in Mercer and Putnam Counties and in the Third Delegate District, comprising McDowell and Wyoming Counties.⁴⁹⁹ Moreover, there were two contested seats in the State Senate, culminating with a legislative committee investigation which was launched when the certificate of election from Webster County for Attorney General and the certificate of election for Auditor in Wood County were incomplete.⁵⁰⁰

That same year, another investigation resulted after misdeeds were alleged in two southern West Virginia counties. A. B. Shelton, a delegate of Lincoln County, charged that A.C. Ray, a Republican of Hamlin, Lincoln County, had attempted to bribe him to be absent from the assembly, and that Henry Poteet, a Republican controlled Democrat of Barboursville, Cabell County, had similarly approached him after that body was organized. Both attempts, he claimed, were aimed to facilitate Goff's selection as United States Senator.⁵⁰¹

Questions of elections and those elected seemed to travel throughout West Virginia from its most southern border to the northern panhandle of the young state. A letter to the editor printed in the *Wheeling Intelligencer* in December 1888

⁴⁹⁹*House Journal*, 1889 at 11-22, 23-30, 32-38, 42-46, and 96-97.

⁵⁰⁰*Id.* at 392, 893, 396, 426-428; Staff reports, *Contested Senate Seats*, The Preston County Journal, January 24, 1889, at A1.

⁵⁰¹*House Journal*, 1889 at 148, 585-606.

illuminates such problems. D.W. McClaugherty, an attorney, charged that 260 were individuals indicted for illegal voting and that all of them voted at the two strongest Republican precincts in the county. The charge continued that although “the number of votes cast at the other precincts in the county were largely in excess of the number of names upon the assessors’ books, nowhere else [referring to Democratic Precincts] was the vote questioned in the same way.”⁵⁰²

In 1889, H.B. Griggs and N.B. Floyd were found guilty for betting on an election.⁵⁰³ The statute preventing betting is said to have two effects—“one to prevent betting; the other to promote purity in elections, and prevention of betting which may affect the result, not only by corruption of voters while the polling is going on, but by promoting, or tending to promote, a false ascertainment of the result.”⁵⁰⁴ Four years later, in 1893, a special election was called in Tucker County for the purpose of deciding whether to move the county seat from St. George to Parsons. Various arguments were made that the election was illegally held in violation of West Virginia law.⁵⁰⁵ Several other election violations were argued as well.⁵⁰⁶

⁵⁰²State v. McClaugherty, 10 S.E. 407, 408 (W. Va. 1889).

⁵⁰³State v. Griggs, 11 S.E. 740 (W. Va. 1890).

⁵⁰⁴*Id.*

⁵⁰⁵Miner v. Tucker County Court, 20 S.E. 659 (W. Va. 1894).

⁵⁰⁶*Id.*

In 1898, J.H. Strickling, the Prosecuting Attorney of Tyler County was found guilty of gross immorality by the circuit court for dissolute conduct and removed from office.⁵⁰⁷ The charge against Strickling provided:

That he did on divers occasions visit a certain house of ill fame in the town of Sistersville, county of Tyler in the state of West Virginia, then and there kept by one Nellie White; that on several occasions during the year 1897 he remained in the said house of ill fame all night, drinking excessively, and conducting himself in a grossly immoral manner with a number of lewd men and women living and associating together in the said house.⁵⁰⁸

The West Virginia Supreme Court found:

It is shown that during the year 1897, while prosecuting attorney, he visited the house of ill fame kept by Nellie White, in the town of Sistersville, not on business, but for the purpose of prostitution, that he drank, caroused, and slept with the inmates, and promised the mistress immunity from prosecution, or that he would let her know when the house was to be raided. He denies this, but admits that he visited and drank there, and slept with one of the "girls," before he was elected prosecuting attorney.

The Court continued:

If frequenting a house of ill fame, for the purpose of drinking and sleeping with the unfortunate inmates, more sinned against than sinning, by a prosecuting attorney of the county, whose duty it is to prosecute the keeper of such house and the inmates and patrons thereof, is not gross immorality, then such a thing is not known to the law. On the question of immorality, although the punishment is not so severe, almost any other crime is preferable. It is the most debasing and

⁵⁰⁷Moore v. Strickling, 33 S.E. 274 (W. Va. 1899).

⁵⁰⁸*Id.*

harmful to society, as it tends to destroy all respect for decency and virtue, and drags womanhood down to the lowest depths of degradation, and its demoralizing influence for evil upon the young is beyond computation, and the aged offender finds it the pit of destruction. While it is a harsh measure to remove an incumbent from office, yet he accepted the office on condition of upright behavior, as required in the constitution and laws, and he has no one to blame but himself.⁵⁰⁹

In 1902, the Berkeley County General Election results fell under scrutiny as many of the ballots were debated. The results of the election left I.L. Bender the victor in the circuit clerk race by a mere four votes over challenger Frank W. Doll.⁵¹⁰ A recount gave Bender a victory by eleven votes, while the circuit court later found Bender the winner by five votes.⁵¹¹ Two years and three months later, the West Virginia Supreme Court of Appeals gave Bender a three vote triumph.⁵¹² In 1903, the validity of the Fayette County elections were once again called to question as the legitimacy of "scores of ballots" was challenged.⁵¹³

Moreover, in 1904, the election of the judge to the Twelfth Judicial Circuit was contested where sundry charges were made including fraud, corruption for

⁵⁰⁹*Id.* at 279.

⁵¹⁰*Doll v. Bender*, 47 S.E. 293 (W. Va. 1904).

⁵¹¹*Id.*

⁵¹²*Id.* at 297.

⁵¹³*Kirkpatrick v. Board of Canvassers*, 44 S.E. 465 (W. Va. 1903); *see also* *Morris v. Board of Canvassers*, 38 S.E. 500 (W. Va. 1901); *Daniel v. Simms*, 39 S.E. 690 (W. Va. 1901); *Dunlevy v. County Court*, 35 S.E. 956 (W. Va. 1900); *Marcum v. Ballot Commissioners*, 26 S.E. 281 (W. Va. 1896); *Snodgrass v. County Court*, 29 S.E. 1035 (W. Va. 1897).

allegedly buying votes, bribing poll clerks and election commissioners, and providing alcohol for votes.⁵¹⁴ It was not until 1905 that the West Virginia Supreme Court upheld the November, 1904 election of J.C. McWhorter as circuit court judge for the Twelfth Circuit.⁵¹⁵ The challenger, J.B. Morrison, brought twenty-one separate charges of bribery and corruption of the general electorate by McWhorter in order to win the election.⁵¹⁶ Among the charges were that money was paid directly to individuals for votes or to influential individuals to secure other votes.⁵¹⁷ Morrison also charged that poll clerks in Upshur County were paid to “secure the votes and influence” and that \$5,000 was used by McWhorter to secure votes.⁵¹⁸

The 1904 Mingo County Sheriff’s election swung back and forth like a pendulum. H.H. Williamson was declared the winner after the tabulated ballots were canvassed, while E.E. Musick was then declared the winner after a recount.⁵¹⁹ A trial of the election contest then declared Musick the victor, while an appeal to the Mingo County Circuit Court found in favor of Williamson.⁵²⁰ The election confusion was then presented to the West Virginia Supreme Court.

⁵¹⁴McWhorter v. Dorr, S.E. 838 (W. Va. 1905); Morrison v. McWhorter, 52 S.E. 394 (Special Court of W. Va., Twelfth Judicial Circuit 1905).

⁵¹⁵Morrison v. McWhorter, 52 S.E. at 395.

⁵¹⁶*Id.*

⁵¹⁷*Id.*

⁵¹⁸*Id.*

⁵¹⁹Williamson v. Musick, 53 S.E. 706 (W. Va. 1906).

⁵²⁰*Id.*

At the heart of the contest was the Matewan Precinct, where charges of “fraud, trickery, corruption, and irregularity” including guns present in the election room, whisky provided and consumed by election commissioners and candidates, a wager by an election commissioner on the outcome of the election, a hole in the top of the ballot box, and the refusal to allow certain individuals to vote.⁵²¹ The West Virginia Supreme Court reversed the circuit court’s decision declaring Musick the winner.⁵²²

The following year, with just three hours remaining in the 1905 regular session of the West Virginia Legislature and with just nine days remaining in his term as West Virginia’s Governor, Albert B. White sent a message to the House of Delegates requesting that it investigate the charges made by a member of the State Senate a few days prior.⁵²³ It was charged that Governor White appointed a Secretary of State only after agreeing to a payment for the appointment from said Secretary of State.⁵²⁴ White was also accused of inappropriate involvement with a proposal to reduce taxes on non-resident domestic corporations.⁵²⁵

The House of Delegates appointed a committee to investigate the charges and began compelling the attendance of witnesses and documents and employing

⁵²¹*Id.* at 708-09.

⁵²²*Id.* at 712.

⁵²³Ex. parte Caldwell, 138 F. 487, 491 (Circuit Court, N.D. W. Va. 1905).

⁵²⁴*Id.*

⁵²⁵*Id.*

the necessary people to conduct the investigation.⁵²⁶ When one individual was summoned as a witness and failed to appear, he was arrested and jailed in Wood County.⁵²⁷ A subsequent petition for a *writ of habeas corpus* was then heard in federal court. The federal court held that the Legislature was without power to investigate as Governor White was out of office and thus beyond the powers of impeachment or removal possessed by the Legislature.⁵²⁸ The Court provided that “the only tribunals under the Constitution where these things can be legally investigated are the courts of the state.”⁵²⁹

In W.S. Laidley’s 1911 book *History of Charleston and Kanawha County*, he states that both Republicans and Democrats were answerable for the fact that Kanawha County had become a “by-word for political infamy” and that the odors of Kanawha County political practices “would drive a polecat into bankruptcy.”⁵³⁰ Laidley writes that the evils practiced by one party in obtaining power—irrespective of the methods—were quickly adopted by the other party.⁵³¹

In 1915, a county commissioner from Tyler County sued the ex-county clerk and ex-commissioner to recover monies unlawfully paid by the commissioner to the

⁵²⁶*Id.* at 491-92.

⁵²⁷*Id.* at 492.

⁵²⁸*Id.* at 495.

⁵²⁹*Id.*

⁵³⁰W.S. Laidley, *History of Charleston and Kanawha County* 163 (Chicago, Illinois: Richmond-Arnold Pub. Co. 1911).

⁵³¹*Id.*

clerk.⁵³² In 1916, the soundness of the election of the Cabell County Sheriff was placed in question.⁵³³ That same year the validity of the West Virginia Primary Election was called to question particularly with the nomination of candidates for the United States Senate.⁵³⁴ It was argued that voter fraud during the election amounted to conspiring to “injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States. . . .”⁵³⁵

Among the charges was a contention that as many as 1,000 unqualified voters voted in the election and that 400 voters were able to vote twice.⁵³⁶ The United States Supreme Court upheld the lower court in providing that the term “election” in federal law was in reference to a general election and not a state’s nominating Primary.⁵³⁷ As such, the Court found no violation of federal law.⁵³⁸ In addition, the validity of the general election was challenged with allegation of “election money or other things of value in excess of the amount allowed . . . sufficient to influence materially the result of the election” in violation of West

⁵³²County Court v. Duty, 87 S.E. 256 (W. Va. 1915).

⁵³³Love v. McCoy, 94 S.E. 954 (W. Va. 1918)

⁵³⁴United States v. Gradwell, 243 U.S. 476 (1917).

⁵³⁵*Id.*; United States v. O’Toole, 236 F. 993, 994 (1916).

⁵³⁶*Id.*

⁵³⁷*Id.*

⁵³⁸*Id.*

Virginia law.⁵³⁹ The West Virginia Supreme Court held that the West Virginia Legislative restriction was “wholly beyond its legitimate jurisdiction.”⁵⁴⁰

In 1924, Mr. Thompson, a Logan County voter challenged the process by which elections had been held during the previous twelve years and presumptively in future elections.⁵⁴¹ Thompson challenged that Logan County officials had “failed and refused to provide election booths furnished with proper counters or shelves and supplies, together with guard rails, for the proper conduct of the numerous elections.”⁵⁴² Among other grounds, the petition charged that the secrecy of the ballot had been prevented, multiple election frauds had been committed, and that partisan workers remained in election rooms observing how the voters cast their ballots.⁵⁴³

Thompson sought a *writ of mandamus* to force Logan County officials to comply with state law by the November 1924 General Election and to have proper voting booths in which voters could cast their votes without the intimidation that usually existed.⁵⁴⁴ The Court granted Thompson’s writ, providing:

⁵³⁹Sutherland v. Miller, 91 S.E. 993 (W. Va. 1917).

⁵⁴⁰*Id.* at 998.

⁵⁴¹State ex. rel. Thompson v. Logan County Court, 124 S.E. 664 (W. Va. 1924).

⁵⁴²*Id.*

⁵⁴³*Id.*

⁵⁴⁴*Id.*

A persistent public demand for the performance of a duty designed to preserve free and unbiased expression of the voters will be met, so far as this court can do so. The purity of our elections should be preserved. They are designed to insure our liberties and promote the general welfare. All persons, especially public officers, should heartily join in any step designed to preserve the purity of the ballot. One who by acts, or omissions of duty, seeks to corrupt the electorate, defeat the will of the voters, and destroy public confidence in our system of government makes a dagger thrust at the heart of liberty.⁵⁴⁵

Early in 1924, Don Chafin, known nationally as the “Indomitable Sheriff of Logan County” received positive news coverage in West Virginia’s largest newspaper by virtue of becoming a candidate for a Delegate-at-large to the Democratic National Convention.⁵⁴⁶ Conversely, a 1926 West Virginia Supreme Court decision presents Chafin in a different light. Just two years after the Court issued an Opinion requiring Logan County to comply with state election regulations, the Court found “a clear case of intimidation of the voters by Chafin and his armed deputies, so far reaching as to render doubtful what the result of the vote at this precinct would have been had there been no intimidation” with regard to their conduct during the 1924 General Election in Logan County.⁵⁴⁷

Chafin, Logan County Sheriff and acknowledged Democratic Party Leader, “was running [the Mud Fork Precinct polling] place that day” along with seven or

⁵⁴⁵*Id.* at 665.

⁵⁴⁶*Chafin to Run for delegate to Convention*, Charleston Gazette, Jan. 4, 1924, at 7.

⁵⁴⁷*Hatfield v. Scaggs*, 133 S.E. 109, 113 (W. Va. 1926.); *State ex. rel. Thompson v. Logan County Court*, 124 S.E. 664 (W. Va. 1924).

eight armed deputy sheriffs.⁵⁴⁸ Hugh Deskins, a Republican and a Deputy United States Marshal, was at the polls that day in an attempt to prevent violations of the law.⁵⁴⁹ Sometime between the hours of 9:00 a.m. and 10:00 a.m., Sheriff Chafin arrived at the precinct and announced that he was in charge, which was followed by Chafin striking Deskins in the face in the presence of potential voters and while some of his deputies stood with their weapons drawn.⁵⁵⁰

Deskins did not resist Chafin, but later deputized four citizens and gave each a pistol.⁵⁵¹ The four appointed deputies were arrested and jailed by Chafin.⁵⁵² Consequently, the vote totals for Democratic candidates increased significantly after the arrival of Chafin.⁵⁵³ The Court also found that Chafin's actions inside the election room destroyed the opportunity for secret balloting.⁵⁵⁴

The Court ruled that Logan County officials violated the State Constitution in requiring voters to cast open ballots in the Shamrock Precinct. Voters were brought in pair and forced to sit at school desks located one in front of the other while the

⁵⁴⁸Hatfield v. Scaggs, 133 S.E. 109, 112 (W. Va. 1926.).

⁵⁴⁹*Id.*

⁵⁵⁰*Id.*

⁵⁵¹*Id.*

⁵⁵²*Id.*

⁵⁵³*Id.*

⁵⁵⁴*Id.* at 109, 113.

ballots were marked openly at the desks.⁵⁵⁵ W.F. Butcher, one of the Democratic Commissioners, testified that “practically all the ballots were marked by the clerks; that when the voters came in they would either call for a ticket or would be handed one, and then the clerks would complete the ballots [instead of the voters].”⁵⁵⁶ The Court rejected the precincts entire vote, finding that it was “conducted in such a way as to prevent the free expression of the will of the voters.”⁵⁵⁷

Chafin was known as “The Czar” in Logan County and exercised his control in the area to prevent unionizing and the controlling of elections. Chafin had converted one room of the courthouse “into an arsenal in which he kept scores of pistols and high-power rifles, and a half-dozen machine guns, all ready for instant use.”⁵⁵⁸ Chafin, a Democrat, would also arrest Republican election officers the night before an election on false charges replacing them on election morning with “Chafin Democrats.”⁵⁵⁹ In other instances, he would not permit predominately Republican

⁵⁵⁵*Id.* at 109, 111.

⁵⁵⁶*Id.*

⁵⁵⁷*Id.*

⁵⁵⁸Howard B. Lee, *Bloodletting in Appalachia* 89 (Parsons: McClain Printing Company, 1969).

⁵⁵⁹*Id.* at 90; see also, e.g., *United States v. Ramey*, 336 F.2d 512 (4th Cir. 1964) (In 1964, a Wayne County constable and candidate for re-election in the November 6, 1962 General Election used a fictitious warrant issued by his wife, a Justice of the Peace, to arrest and jail Homer Fraley on election day. Fraley was an election official in the largest precinct in the Grant District and was arrested because he “had become active in an effort to challenge registrations in the precinct and had consulted the County Prosecutor and Circuit Clerk, requesting of the latter blanks to use in challenging voters.” Fraley was arrested on the fictitious charge of
(continued...)

precincts to open or he would seize and burn the ballots after they had been cast.⁵⁶⁰

Interestingly, Chafin, whose Sheriff salary was only \$3,500, reported in 1921 a net worth of \$350,000.⁵⁶¹

A reporter for the *Washington Star* who was covering the 1921 bloody coalfield battle in southern West Virginia sent a dispatch to his paper maintaining:

Everywhere one goes down in this country he hears the name Don Chafin, high sheriff of Logan County. One can see that he struck terror in the hearts of the people of the union fields. Although a state officer, they do not trust him. Every kind of crime is charged to him and his deputies. He is king of the 'Kingdom of Logan.' He reigns supreme by virtue of a state machine backed by the power of the operators. It is Don Chafin upon whom the miners and the people of this section place the blame for this latest blot in the State's history.⁵⁶²

Even when Chafin was finally convicted and sentenced to a fine of \$10,000 and two years in the penitentiary, he used his powerful influence and received a Presidential parole cutting short his sentence by several months.⁵⁶³ Moreover, after being released from the penitentiary, Chafin returned to a homecoming celebration

⁵⁵⁹(...continued)
rape at 3:30 a.m. election morning and kept in jail until noon and thus, did not serve as an election official.)

⁵⁶⁰Howard B. Lee, *Bloodletting in Appalachia* 90 (Parsons: McClain Printing Company, 1969).

⁵⁶¹*Id.* at 91.

⁵⁶²*Id.* at 102-03.

⁵⁶³*Id.* at 118.

in Logan County in his honor that included “a parade, band music, and welcoming speeches by leading Democratic politicians of the city and county.”⁵⁶⁴

Logan County was not the only county with questionable election results in 1924. The ballots in four Boone County precincts were placed into question as they “had been handled in such a way as to lose their integrity.”⁵⁶⁵ An examination of the ballots, aided by a magnifying glass, showed ballot tampering as the marks used to cast votes in three different precincts were made by the same hand and pencil as were the markings on several of the ballots.⁵⁶⁶

On election day of May 19, 1925, citizens of Kermit in Mingo County were met with more than 200 gun shots as they attempted to vote.⁵⁶⁷ Minutes before the shooting, election official Floyd E. Morris had returned to his home for some election supplies, avoiding the shots that left two men dead, two men critically wounded, and left others with flesh wounds.⁵⁶⁸ Later, in 1934, Circuit Judge B.F. Howard appealed from the bench for an orderly election in Williamson, Mingo County, referring to it as the “hell hole of creation.”⁵⁶⁹

⁵⁶⁴*Id.*

⁵⁶⁵State ex rel. Banks, 128 S.E. 301, 302 (W. Va. 1925).

⁵⁶⁶*Id.*

⁵⁶⁷Howard B. Lee, *Bloodletting in Appalachia* 51 (Parsons: McClain Printing Company, 1969).

⁵⁶⁸*Id.*

⁵⁶⁹*Id.*

In 1938, Lincoln County Board of Education President George W. Walden and County Board Members S.S. McClure and J.E. Harless were the subject of a petition requesting their removal from office.⁵⁷⁰ Among the allegations was a charge that they had accepted money in exchange for the promise that they would hire Dennis Roy as Superintendent of Schools.⁵⁷¹ There were also several charges of illegal expenditures of county money for unauthorized purposes.⁵⁷²

In 1943, the *Charleston Daily Mail* criticized Governor Neely's Administration for the purchase of a bridge that connected West Virginia and Ohio.⁵⁷³ They argued: "[a]mong the abounding scandals of the Neely administration is the one concerning the 'Silver Bridge.'"⁵⁷⁴ The editorial denounced the purchase of the bridge from a prominent politician who had just purchased the bridge for \$50,000 less than he had earlier sold it to the state.⁵⁷⁵ The State then issued revenue bonds which then were sold privately to the same prominent politician without competitive bidding for an undisclosed amount of profit.⁵⁷⁶

⁵⁷⁰Wysong v. Walden, 52 S.E.2d 392, 396 (W. Va. 1938).

⁵⁷¹*Id.*

⁵⁷²*Id.* at 396-399.

⁵⁷³Bailey v. Charleston Mail Ass'n, 27 S.E.2d 837 (W. Va. 1943) (An action for libel was brought against the newspaper. The Court found in favor of the newspaper.).

⁵⁷⁴*Id.* at 838.

⁵⁷⁵*Id.* at 839.

⁵⁷⁶*Id.*

It must be noted that the problems which burdened early West Virginia elections have not subsided. In fact, technology of innovative voting procedures designed to prevent corrupt practices of the past sometimes only perpetuated new types of fraud. Decade after decade—to present day—citizens still witness many of the same disconcerting election violations. For instance, in 1968,

In Lincoln County, north of Mingo . . . voters had been threatened with guns at two polling places. An armed state employee, who was not even a law enforcement official, ordered an elderly couple to 'vote the way I told you to, or you will get hurt.' At another precinct, a man drew his pistol and held it close to the chest of a poll watcher who was carrying a camera. 'If you take any picture,' he warned, 'you will get shot.'⁵⁷⁷

During the same election, Republican Sheriff William Abraham charged, "'a good majority' of some 1,200 absentee voters were cast illegally."⁵⁷⁸ He continued: "The Democratic organization, he charged, tried to vote absentee 'every known drunk, wino, or otherwise human derelict in our county If the Justice Department doesn't send its investigators, our case down here is hopeless."⁵⁷⁹

Furthermore, the results of the 1970 Logan County Primary Elections again brought distrust in the races for the United States Senate, the United States House of Representatives, and various state and county public offices.⁵⁸⁰ In this case the

⁵⁷⁷K.W. Lee, *Test of Power*, Sunday Gazette-Mail, Apr. 27, 1969, at M2.

⁵⁷⁸*Id.*

⁵⁷⁹*Id.*

⁵⁸⁰*United States v. Townsley*, 843 F.2d 1070, 1079 (8th Cir. 1988).

vote fraud scheme involved the use of voting machines to cast an entire slate of votes, including votes for federal candidates, and for all offices on the ballot.

Voting machines were once again at issue ten years later as the soundness of the 1980 Kanawha County and Boone County elections was called to question as allegations of conspiracies by elected officials and others to fix the election were disclosed.⁵⁸¹ The so-called scheme to fix the election charged that the results were predetermined due to a conspiracy perpetrated through the use of new electronic voting equipment.⁵⁸² The Kanawha County Commission denied one candidate's request for a recount of all computer ballots and the West Virginia Supreme Court further refused the recount.⁵⁸³

Among those charged for election violations were Kanawha County Clerk Margaret Miller and her employees Carolyn Critchfield, Ann Carroll, Darlene Dotson, and Clayton Spangler; James Roark, the Kanawha County Prosecuting Attorney; Boone County Clerk employee Bernard Meadows; David Staton, the successful Congressional candidate in the 1980 election; John Cavacini, who was associated with the campaign of Governor John D. Rockefeller, IV; and Computer Election Systems, Inc. which provided the computer vote tabulating systems in Kanawha

⁵⁸¹Hutchinson v. Miller, 797 F.2d 1279 (4th Cir. 1986); Hutchinson v. Staton, 994 F.2d 1076 (4th Cir. 1993).

⁵⁸²*Id.*

⁵⁸³State ex rel. Underwood v. Silverstein, 278 S.E.2d 886 (W. Va. 1981).

County.⁵⁸⁴ It was charged that Miller manipulated computer toggle switches during the election count in an attempt to alter vote counts.⁵⁸⁵ Carl Clogh was also seen placing a phone receiver into his briefcase, an activity charged to be consistent with the use of a portable modem, perhaps in an effort to change vote totals.⁵⁸⁶

It was further asserted that "numerous irregularities occurred after the election, including improper handling of the ballots and release of exact returns prior to the canvass, and destruction of ballots" in violation of West Virginia Code.⁵⁸⁷ Stephen Miller was also accused of removing computer cards from his coat pocket, giving them to his wife, Margaret Miller, who in turn fed the cards into the computer.⁵⁸⁸ The Kanawha County Commission initially agreed to pay Margaret Miller's \$216,126 legal bills, however, they later refused to make the payments.⁵⁸⁹ The Kanawha County Jury cleared Margaret Miller of all charges.⁵⁹⁰ Nonetheless, the significance of manipulating ballots in one or two counties cannot be overstated. For example, Kanawha County has a population of more than 207,000, which is

⁵⁸⁴Hutchinson v. Miller, 797 F.2d at 1280; Hutchinson v. Staton, 994 F.2d 1076 (4th Cir. 1993).

⁵⁸⁵*Id.* at 1279, 1281.

⁵⁸⁶*Id.*

⁵⁸⁷*Id.*

⁵⁸⁸*Id.* 2d at 1281.

⁵⁸⁹Kay Michael, *County Willing to Pay Miller Defense Costs*, Charleston Daily Mail, Aug. 25, 1983, at A1.

⁵⁹⁰Kay Michael, *Jury Clears Miller of all charges*, Charleston Daily Mail, June 2, 1983, at A1; Chris Knap, *Miller reflects on unsuccessful 'witch hunt,'* Charleston Gazette, June 4, 1983, at A1.

significant considering the entire population of West Virginia is only an estimated 1.8 million.

Even as recently as the 2002 election cycle the use of slating was still prevalent. Numerous State Senate and House of Delegate candidates illegally paid money to be included on a list of candidates (a slate) where those controlling the slate asserted that they controlled a certain number of votes. Candidates are fearful that if they are not included on the slate that their opponent will be included and thus, the election could be swayed in favor of that opponent.

One congressional candidate spent several thousand dollars on slating during the 2002 election.⁵⁹¹ It has also been alleged that it cost as much as \$7,000 in 1984 to be included on Kanawha County Primary Election Slates that recommended them as "outstanding candidates" or "good Democrats worthy of your vote."⁵⁹² While times have changed considerably in West Virginia from the days of Sheriff Don Chafin, remnants of the past are notably present with each election.

⁵⁹¹This fact was confirmed anonymously by several campaign 2002 congressional staff members. One such campaign worker said that "it was a disgusting process, but felt compelled to participate for fear of losing critical votes."

⁵⁹²Chris Knap, *Kanawha political slates cost as much as \$7,000*, Charleston Gazette, Sept. 26, 1984, at A1.

VI. FIFTY YEARS OF WEST VIRGINIA GUBERNATORIAL QUANDARIES

The problem of power is how to achieve its responsible use rather than its irresponsible and indulgent use - of how to get men of power to live for the public rather than off the public.

—Robert F. Kennedy,
'I Remember, I Believe,' The Pursuit of Justice, 1964

A. Governor Arch A. Moore, Jr *(1969-1977, 1985-1989)*

"Corruption—with a Capitol 'C'"⁵⁹³

Bob Brunner, a Charleston-Huntington television celebrity for most of his twenty-nine years in West Virginia, said of Governor Moore:

I covered four governors. Arch Moore is one of the most brilliant and yet most flawed people I've ever met. In his heart, he doesn't believe he's a crook. He believed he needed to accumulate money to maintain his political life and he did it by any means possible. He had a phenomenal memory for faces and an incredible ability to know every detail of state government. I don't think we will ever have again a governor who has his pulse on so much of state government as Arch Moore.⁵⁹⁴

⁵⁹³Barry Bearak, *Corruption - with a Capitol 'C'*, *Newsday*, July 8, 1990, at 13.

⁵⁹⁴Sandy Wells, *'My adviser said to take the job in West Virginia'*, *Charleston Gazette*, Jan. 10, 1997, at C1.

In 1990 and 1996, respectively, Arch A. Moore, Jr., West Virginia's only three-term Governor, was convicted by both federal and state authorities.⁵⁹⁵ Still today, many West Virginians have an old state road map in their automobile featuring a prominent picture of Moore declaring, "West Virginia represents the best of America's timeless traditions—home, family, community."⁵⁹⁶ Unfortunately the picture of Moore only reinforces West Virginia's more unsavory timeless traditions of "bribery investigations, indictments, and convictions"⁵⁹⁷ in State politics.

According to Moore, who was also a six-term United States Congressman, his 1968 decision to run for Governor "was an attempt to clean up corruption in state government following a decade of political scandal."⁵⁹⁸ With that, Moore declared:

⁵⁹⁵State ex rel. Maloney v. McCartney, 223 S.E.2d 607, 611 (W. Va. 1976); see also Richard Grimes, *Old Money, Old Politics* 77 (1984) (Prior to the 1972 election, West Virginia's Governors had been restricted to one four-year term. Moore began pushing for the Governor's Succession Amendment early after his election in 1969 which allowed him as well as future Governors to serve two consecutive terms. While Moore was constitutionally barred from seeking a third consecutive term, he filed for re-election anyway in 1976 arguing that the term limitation violated "the Fourteenth Amendment to the Constitution of the United States by denying equal protection of the laws to those persons who would wish to elect Arch A. Moore, Jr. as Governor for a third successive term." The Supreme Court of Appeals of West Virginia prohibited Moore from entering the 1976 gubernatorial election. Eight years later, in 1984, Moore was re-elected Governor.).

⁵⁹⁶A copy of the road map is in the Governor Moore Clippings File held at the State Archives and History in the Cultural Center located on the State Capitol Complex in Charleston, West Virginia.

⁵⁹⁷Editorial, *Bribery – World cleanup effort*, Charleston Gazette, Dec. 10, 1998, at A4.

⁵⁹⁸Tom Miller, *Moore's legacy one of highs and lows*, Charleston Gazette, Aug. 1, 1999 at C1.

'I've had supporters plead with me, 'Don't get involved in state government. It's dirty. It's corrupt'...' he said in a speech to the South Charleston Rotary Club soon after filing for the office. 'I'm in the race to try to restore public confidence.'⁵⁹⁹

Soon after Moore defeated Democratic Candidate James M. Sprouse for the 1968 gubernatorial election, Sprouse filed a lawsuit against the State's second largest newspaper, the *Charleston Daily Mail*, for publishing a series of articles just prior to the election that implied that Sprouse had engaged in corrupt real estate transactions.⁶⁰⁰ In a 1975 Decision upholding the \$250,000 award for actual damages from the Fayette County Circuit Court Jury, the Supreme Court of Appeals of West Virginia provided "the evidence in this case demonstrates that the statements of Arch A. Moore, Jr. were closely coordinated with the story generated by the [*Daily Mail*] as part of an overall plan or scheme, the purpose of which was to discredit [Sprouse]."⁶⁰¹

The Court held that the *Daily Mail* capitalized on the public's particular sensitivity to "allegations of political graft" in impugning Sprouse's integrity, in light of the numerous prison terms served by corrupt West Virginia politicians including a Governor and numerous high-ranking officials.⁶⁰² The Court further maintained that the evidence supported a jury verdict that the *Daily Mail* "knowingly used the

⁵⁹⁹*Id.*

⁶⁰⁰*Sprouse v. Clay Communications, Inc.*, 211 S.E.2d 674 (W. Va. 1975).

⁶⁰¹*Id.* at 699.

⁶⁰²*Id.* at 687.

pretext of a legitimate business transaction to lead the electorate to what it again knew to be a false conclusion” and employed “grossly exaggerated and patently untrue assertions embodied primarily in headlines, to destroy the character of Sprouse.”⁶⁰³

Governor Moore’s first Inaugural Address expressed his intent to be honest and dedicated to the public trust of which West Virginia citizens elected him. Moore professed:

The oath prescribed by law and to which I have submitted signifies, in my judgment, the commencement of a new beginning for all West Virginians.

The people of West Virginia have now committed to one of their fellow citizens a supreme trust, and I here and now, dedicate myself to their service. I firmly believe that he who takes this oath only assumes in public ceremony the solemn obligation which every West Virginian must share with him.

The Constitution which prescribes the oath of office is your constitution. The government which you have chosen one to administer is your government. The laws which your elected representatives enact and I must enforce are your laws. So it should be emphasized that every citizen owes to his State a vigilant watch over the fidelity of its public servants.

⁶⁰³*Id.* at 685, 687, 699-705 (Some of the headlines from the *Daily Mail* series included: Seneca Rocks Tourist Project Property Enriching Candidate Sprouse; Pendleton Realty Bonanza By Jim Sprouse Disclosed; Cleanup of Nearly \$500,000 in View; Moore Asks Federal Probe Into Sprouse’s Pendleton Land Grab; ‘Dummy Firm’ Seen Proving Corruption; Where Governor Candidate ‘Cleans Up’; Fortune To Jim Sprouse But Pittance For Seneca; Sprouse Owns Choice Land Beside \$30 Million U.S. Resort.).

When this is done, the will of the people is impressed upon the function of government.⁶⁰⁴

Governor Moore further declared:

Furthermore, when the people have bestowed their confidence upon a chief executive, they have a right to expect the type of leadership and action which will make the man and the office effective instruments of their government. This leadership - this action, I shall provide.

We must make integrity in state government a tradition in West Virginia, and the time to begin to build such respect is now. Like an individual, a state can have no asset more valuable than a reputation for honesty. West Virginians deserve honorable government, and I will demand it.

Through public trust, we must provide a fresh stimulus for improved government. Society is built upon trust, and without trust, there can be little more than discouragement. Without trust, hope is small and we must understand distrust and progress are incompatible⁶⁰⁵

Early in the first term of Governor Arch Moore, the *Charleston Daily Mail*, the State's largest Republican newspaper, came to the defense of the Governor for a story published nationally by the *Chicago Daily News Service* and *Knight Newspapers*. The *Daily Mail* editorial chastised the news services for putting

⁶⁰⁴West Virginia Archives and History, (Visited Mar. 16, 2003 <<http://www.wvculture.org/history/mooreia1.html>>.).

⁶⁰⁵*Id.*

Governor Moore's "name under a cloud in a cruel way that once again damaged the reputation of the State of West Virginia."⁶⁰⁶ It continued:

Through no fault of the governor's, that his reputation the last two or three years has been sullied by charges against public officials and convictions of public officials, all of which were reported nationally.⁶⁰⁷

Governor Moore also garnered headlines for fighting to defend the State's reputation by urging the State Legislature to support more stringent laws by passing "a conspiracy law that will stand up in court and make it a crime for a state employee to accept a bribe or for anyone to offer such a bribe."⁶⁰⁸ Moore said, "We have slept far too long in regard to abuses and excesses relating to honest handling of the business of our state."⁶⁰⁹ Moore added that "official chicanery in the past" has accounted for more than \$100 million that has been stolen from the state in just a

⁶⁰⁶Editorial, *Nobody Knows Damage Caused By Knight Story On Governor*, Charleston Daily Mail, Apr. 11, 1970 at A4.

⁶⁰⁷*Id.*

⁶⁰⁸Bob Mellace, *State Robbed Of More Than \$100 Million By Political Chicanery, Governor Avers*, Charleston Daily Mail, July 28, 1970 at A1; William Barrett, *Wild, Wonderful West Virginia Has Charmed-Gov. Arch Moore*, Mineral County News-Tribune, Nov. 26, 1971 at 5; *3rd Time Moore Back As Governor*, Mineral County News-Tribune, Jan. 14, 1985 at 8.

⁶⁰⁹Bob Mellace, *State Robbed Of More Than \$100 Million By Political Chicanery, Governor Avers*, Charleston Daily Mail, July 28, 1970 at A1.

few years.”⁶¹⁰ In addition, Moore maintained: “If politics is to be the order of the day, you lose, I lose as governor, but, tragically, the people of West Virginia lose.”⁶¹¹

Governor Moore, however, was soon the target of additional negative headlines. In 1973, Moore was investigated for tax evasion, but was never convicted.⁶¹² Later, in 1975, Moore and his 1972 campaign manager were indicted on federal charges of extorting \$25,000 from a company that wished to obtain a bank charter in West Virginia.⁶¹³ The trial revealed that Moore had once kept \$180,000 in cash “crammed” in his desk drawer.⁶¹⁴ Both were acquitted in 1976 by a federal court.

News of Moore’s actions were apparent beyond the border of West Virginia. A 1990 front page story in the *Los Angeles Times* proclaimed “CORRUPTION IN WEST VIRGINIA: Scandals as Thick as Coal Dust.” It commenced:

West Virginia is suffering from an extraordinary run of corruption. But perhaps more unusual is that politicians are finally getting caught.

Charleston, West Virginia – As governor, Arch Alfred Moore, Jr. may have been dirty through and through, but he knew how to keep his fingernails clean.

⁶¹⁰*Id.*

⁶¹¹*Id.*

⁶¹²Barry Bearak, *CORRUPTION IN WEST VIRGINIA: Scandals as Thick as Coal Dust*, *Los Angeles Times*, July 8, 1990 at A1.

⁶¹³*Id.*; Associated Press, Moore sentenced to 5 years, 10 months, *Times-West Virginian* (Fairmont, WV), July 11, 1990 at A1.

⁶¹⁴Barry Bearak, *CORRUPTION IN WEST VIRGINIA: Scandals as Thick as Coal Dust*, *Los Angeles Times*, July 8, 1990 at A1.

“Arch” was always a well-barbered sort, with nary a lick of silver hair out of place and the proper neckties to match the \$1000 suits that hung just so.

His manner was so unruffled and respectable that even West Virginians suspicious of his failings are shocked at the sleaziness suggested by a recent indictment – among the allegations: that he bought votes with fistfuls of cash and hid out back of a municipal incinerator concocting stories to give the slip to a Federal grand jury.⁶¹⁵

In addition, Moore pleaded guilty on May 8, 1990 in the United States District Court for the Southern District of West Virginia to criminal charges against him including mail fraud, extortion, filing false tax returns and obstruction of justice.⁶¹⁶ Specifically, Moore admitted that he obtained the Office of Governor of the State of West Virginia in 1984 by defrauding the state of its salary and benefits by accepting illegal cash contributions (funneling \$100,000 into his 1984 campaign fund) and by illegally distributing cash to influence the election; extorting \$573,000 from a coal operator, H. Paul Kizer, in 1985 in exchange for Moore’s illegal promise to help secure a refund from West Virginia Black Lung Fund; filing false income tax returns in 1984 and 1985 by failing to report as income, money which he received through his illegal actions; and obstructing justice by lying and arranging for others to lie to cover up his unlawful acts. Moreover, as his term as Governor was ending on

⁶¹⁵*Id.*

⁶¹⁶United States v. Moore, 931 F.2d 245 (4th Cir.1991) (rejecting challenge to guilty plea entered by Arch A. Moore to charges that he committed bribery and extortion while Governor of West Virginia); Former West Virginia Governor Is Sentenced to 5 Years for Graft, N.Y. Times, July 11, 1990, at A10, col. 4 (describing case, noting that Moore had been tried and acquitted on extortion charges while serving previous term as Governor).

January 16, 1989, Moore even attempted to block the federal grand jury that was investigating him.⁶¹⁷ Moore was sentenced by a federal district judge to five years and ten months in prison and fined \$170,000.⁶¹⁸ He served three years in prison and was paroled one year after serving the last four months of his sentence in home confinement in Glen Dale, West Virginia.⁶¹⁹

Moore's campaign violations were yet another instance of a West Virginia politician demonstrating a manifest lack of respect for both the law and the citizens. In one example, Johnnie Owens, former political boss in Mingo County who was convicted for selling his job as Sheriff for \$100,000,⁶²⁰ said that "Arch [Moore] laid

⁶¹⁷Associated Press, *Ex-Gox. Moore Faces 36-Year Term, Fines*, The Washington Post, May 9, 1990, at A11; Maryclaire Dale, *Kizer Will Testify Against Moore In State*, Charleston Gazette, July 29, 1995, at A1.

⁶¹⁸Associated Press, *Ex-Gox. Moore Faces 36-Year Term, Fines*, The Washington Post, May 9, 1990, at A11; Maryclaire Dale, *Kizer Will Testify Against Moore In State*, Charleston Gazette, July 29, 1995, at A1 (Moore could have been sentenced to 36 years in prison and could have been forced to pay fines totaling \$1.2 million.); Associated Press, *Moore answers suit, denies defrauding state*, The Herald-Dispatch (Huntington, WV), June 23, 1995 at B3; Associated Press, *Taylor: Moore records may be blocked by court*, Bluefield Daily Telegraph, Aug. 16, 1995, at A1; see also, Indictment, *United States of America v. Arch A. Moore, Jr.*, Criminal Action Number 2:90-00078, United States District Court for the Southern District Court of West Virginia, Charleston Division, filed April 12, 1990; Plea, *United States of America v. Arch A. Moore, Jr.*, Criminal Action Number 2:90-00078, United States District Court for the Southern District Court of West Virginia, Charleston Division, filed May 8, 1990; *State v. Moore*, 895 F.Supp. 864 (S.D. W. Va. 1995).

⁶¹⁹Cheryl Caswell, *Ex Politicos Rebound after Fall from Grace*, Charleston Daily Mail, Sept. 6, 1994, at A1; Lawrence Messina, *Moore wants his law license back, files secrecy motion: Questionnaire should be public, lawyer says*, Charleston Gazette, Dec. 23, 1998 at A1..

⁶²⁰Cheryl Caswell, *Ex Politicos Rebound after Fall from Grace*, Charleston Daily Mail, Sept. 6, 1994, at A1.

down in the back seat of my car holding \$12,000 up in his hand like a common criminal and he begged me to take it" to buy votes in Mingo County.⁶²¹

H. Paul Kizer, a millionaire coal executive, said that his company was expecting a \$2.3 million refund from the state Black Lung Fund and he says Governor Moore promised to "slice through a lot of red tape, for a twenty-five percent cut of the dough."⁶²² Coal companies often were given great deference by West Virginia politicians. For example, one large body of opinion exists that during Moore's reign as Governor some mine disasters could have been avoided had the Governor forced coal companies to abide by the law. *The Nation* submits:

The disaster at Buffalo Creek (Logan County) in February 1972 should be called murder, or at least manslaughter, according to the article. The disaster which leaves 103 dead & 79 missing a month later is being called "an act of God" by the vice president of the Pittston Company. The Pittston Company owns the mine & dam which broke. The dam was actually a dump that contained 5 million cubic feet of water held back by a mine refuse pile of slate, slag, sludge, coal dust, low-grade coal, silt & other debris. State law forbids the erection of any structure more than 15 feet high across any waterway without approval of the State Public Service Commission. The Pittston Coal dam was 70 feet high. Federal coal regulations required that hazardous impoundments be inspected at least once a week. In 1966, William Davis of the Geological Survey, found at least 75 poorly constructed waste piles at coal

⁶²¹Barry Bearak, *CORRUPTION IN WEST VIRGINIA: Scandals as Thick as Coal Dust*, Los Angeles Times, July 8, 1990 at A1.

⁶²²Barry Bearak, *Corruption - with a Capitol 'C'*, Newsday, July 8, 1990, at 13 (The article proclaimed that the public thought Moore was a better Governor than then Governor Gaston Caperton even though eighty-one percent believe Moore belonged in jail.); Maryclaire Dale, *Kizer Will Testify Against Moore In State*, Charleston Gazette, July 29, 1995, at A1.

sites in five different states including the dam at Buffalo Creek. As a member of Congress, now Governor Arch A. Moore, Jr., received a copy of the report but failed to heed its warnings. Sentiment is that the government has failed to consider that Appalachians are people who are human.⁶²³

The Buffalo Creek tragedy referenced in the article resulted in the deaths of 125 people and destroyed a fifteen-mile valley.⁶²⁴ After the tragedy, Governor Moore's Office requested that the Army Corps of Engineers perform recovery work at the State's expense.⁶²⁵ The Army Corps of Engineers incessantly submitted bills to the State in the amount of \$3.7 million; however, Governor Moore not only failed to pay the invoices, but he also kept them hidden.⁶²⁶

Five years after the tragedy and just three days before the end of Moore's 1977 term as Governor, Moore signed a settlement agreement with Pittston Coal Company for \$1 million which absolved the coal company of any further liability.⁶²⁷ Just one week prior to the signed settlement, the Army Corps of Engineers had sent

⁶²³*Murder in the Appalachians*, The Nation, Mar. 20, 1972, Vol. 214, Issue 12, at 357.

⁶²⁴*Decisions on Disaster Puzzling*, Charleston Gazette, Mar. 1, 1997, at A1.

⁶²⁵*Id.*

⁶²⁶*Id.*

⁶²⁷*Id.*

the State a bill in a registered letter for the \$3.7 million that it owed [on behalf of Pittston] as well as notification that it would sue the State to recover the money.⁶²⁸

Moore testified during a deposition that he had in fact received the letter regarding the debt; however, he then testified at trial that he did not receive the letter.⁶²⁹ Then-Senate President William T. Brotherton said that Moore was aware of the corps' efforts to recover the money because he and former House Speaker Lew McManus "had discussed it with him on many, many occasions."⁶³⁰ Brotherton continued: "There is no excuse for Governor Moore to say that he did not know about the U.S. Army Corps of Engineers' claim."⁶³¹

The total debt was not revealed to the public until after Governor John D. Rockefeller, IV had taken office and discovered the bills.⁶³² By 1987, after losses in the United States District Court, the United States Fourth Circuit Court of Appeals, and the United States Supreme Court, West Virginia was ordered to pay the \$3.7 million plus an estimated \$10 million in interest.⁶³³ In 1989, as reparation,

⁶²⁸*Id.*

⁶²⁹*Id.*

⁶³⁰Robert Morris, *Brotherton Raps Moore, Calls Bentley Incapable*, *Charleston Gazette*, Feb. 15, 1980, at A1.

⁶³¹*Id.*

⁶³²*Id.*

⁶³³*Id.*

West Virginia paid a reduced amount of \$9.5 million to the Corps of Engineers after then-Attorney General Charlie Brown's successful negotiations.⁶³⁴

In 1995, the state filed a civil suit against Moore in an attempt to recover the \$2 million it claimed he had pocketed through illegal acts of defrauding the State of West Virginia.⁶³⁵ As part of the \$2 million, the state was specifically seeking the return of \$100,000 that Moore was accused of illegally using in his 1984 campaign for Governor as well as a \$30,000 illegal contribution he received in 1988.⁶³⁶ The contributions were not reported in Moore's campaign disclosure forms and were used toward an underground campaign "to buy votes and influence voters."⁶³⁷

While Moore, in a nine page affidavit, admitted he violated state election laws, he contended that the illegal cash did not influence the election and thus he

⁶³⁴*Id.*

⁶³⁵Associated Press, *Moore answers suit, denies defrauding state*, The Herald-Dispatch (Huntington, WV), June 23, 1995 at B3; see also Complaint, *State of West Virginia v. Arch A. Moore, Jr.*, Civil Action Number 2:90-0747, United States District Court for the Southern District Court of West Virginia, Charleston Division, August 2, 1995; Amended Complaint, *State of West Virginia v. Arch A. Moore, Jr.*, Civil Action Number 2:90-0747, United States District Court for the Southern District Court of West Virginia, Charleston Division; Order, *State of West Virginia v. Arch A. Moore, Jr.*, Civil Action Number 2:90-0747, United States District Court for the Southern District Court of West Virginia, Charleston Division, July 20, 1995.

⁶³⁶Associated Press, *Moore answers suit, denies defrauding state*, The Herald-Dispatch (Huntington, WV), June 23, 1995 at B3; Jennifer Bundy, Associated Press, *If negotiations fail, Moore goes on trial: Case scheduled for Tuesday as state seeks money back from convicted ex-governor*, The Dominion Post (Morgantown, WV), July 30, 1995 at B5; Associated Press, *Moore set to face state suit*, Bluefield Daily Telegraph, July 30, 1995.

⁶³⁷Jennifer Bundy, Associated Press, *If negotiations fail, Moore goes on trial: Case scheduled for Tuesday as state seeks money back from convicted ex-governor*, The Dominion Post (Morgantown, WV), July 30, 1995 at B5.

could not have defrauded the State.⁶³⁸ Moore said the money was distributed in four southern counties where politicians did not want it known that they were using money from Republicans and that, "I failed to carry those four affected counties anyway, so I won the election wholly irrespectively of these actions."⁶³⁹

On July 31, 1995, the State settled the lawsuit against Moore for \$750,000.⁶⁴⁰ Deputy Attorney General Silas Taylor, who was instrumental in settlement negotiations, stated, "although the amount of the settlement was not the most important aspect of this case, it was a fair settlement in light of the myriad circumstances. Most importantly, the State received compensation from Governor Moore for his breach of duty to the State of West Virginia."⁶⁴¹ Moore fought to have all of the documents involved in the case against him kept secret.⁶⁴²

While the West Virginia Supreme Court annulled Moore's law license in 1991, he has been fighting to have it returned to him.⁶⁴³ Justice W.T. Brotherton,

⁶³⁸Associated Press, *Moore answers suit, denies defrauding state*, The Herald-Dispatch (Huntington, WV), June 23, 1995 at B3.

⁶³⁹*Id.*

⁶⁴⁰Jennifer Bundy, Associated Press, *Moore settles lawsuit: Agrees to give back \$750,000*, The Dominion Post (Morgantown, WV), July 31, 1995 at A1; Associated Press, *Moore must pay up: State settles ex-governor's lawsuit*, Bluefield Daily Telegraph, Aug. 1, 1995 at B1.

⁶⁴¹*Id.*

⁶⁴²Jack McCarthy, *Records in Moore corruption case remain closed to the public*, Charleston Gazette, Aug. 2, 1995, at A1.

⁶⁴³Committee on Legal Ethics v. Moore, 411 S.E.2d 452 (W. Va. 1991); A.V. Gallagher, Associated Press, *High court annuls Moore's law licence*, Charleston (continued...)

Jr. said in the Opinion that he authored to annul Moore's license that: "[t]he respondent [Moore] was entrusted with the right to practice law and the privilege to govern this state."⁶⁴⁴ Brotherton also noted that Moore: "violated both oaths of office. Can there be any more serious breach of trust than the violation of these two oaths?"⁶⁴⁵

In 1998, Moore, dubbed "as crooked as a pretzel" by one West Virginia legislator,⁶⁴⁶ filed a petition in the West Virginia Supreme Court and began a letter writing campaign in his quest for return of his law license. Moore's petition contained various names supporting his cause including such prestigious West Virginia names as Secretary of State, Ken Hechler; retired State Supreme Court Justice, Richard Neely; current State Supreme Court Justice, Joseph Albright; former State Bar President, Thomas Flaherty; additional prominent attorneys and West Virginia University Law Professors Franklin Cleckley and Forrest J. Bowman,

⁶⁴³(...continued)

Gazette, November 1, 1991 at D5; Jim Cochran, *Arch Honored to Honor the Fallen: Ex-governor much decorated WWII vet*, Wheeling Intelligencer, May 27, 1997 at A1 ("Gov. Moore has received the Bronze Star Medal, Military Order of Public Heart, Combat Infantry Badge with three battle stars, and the Grand Cross of Homage, the Military Order of Ardennes in recognition of his service to his country.").

⁶⁴⁴Committee on Legal Ethics v. Moore, 411 S.E.2d at 456; see also, A.V. Gallagher, Associated Press, *High court annuls Moore's law licence*, Charleston Gazette, November 1, 1991 at D5.

⁶⁴⁵*Id.*

⁶⁴⁶Peter Carlson, *The Magic and the Misery*, Washington Post Sunday-magazine, Nov. 22, 1992, at W9.

as well as Reverend Thomas S. Acker, President of Wheeling Jesuit University.⁶⁴⁷

More than sixty lawyers and non-lawyers, who support Moore's crusade to retain his license, were listed in the petition's opening pages.⁶⁴⁸

The *Charleston Gazette* said "there are some crimes that can't be overlooked. The violation of the public trust by an elected official is atop the list."⁶⁴⁹

Moore filed a motion stating he did not want his petition for reinstatement to become a public document.⁶⁵⁰ Sherry Goodman, then-State Bar Chief Disciplinary Counsel, called Moore's reasoning for secrecy "completely spurious."⁶⁵¹ Goodman explained that "reinstatement proceedings are public proceedings as set forth in the rules promulgated by the Supreme Court."⁶⁵²

Additional details of the sordid Moore circumstance surfaced during the attorney discipline proceeding against Moore's former executive assistant Thomas L. Craig, Jr.⁶⁵³ Craig reported that while working in the 1984 campaign, Moore

⁶⁴⁷Lawrence Messina, *Moore wants his law license back, files secrecy motion: Questionnaire should be public, lawyer says*, *Charleston Gazette*, Dec. 23, 1998 at A1.

⁶⁴⁸*Id.*

⁶⁴⁹Editorial, *Arch Moore: Committing felonies is inconsistent with the privilege of practicing law*, *Charleston Daily Mail*, Dec. 28, 1998 at A4.

⁶⁵⁰Lawrence Messina, *Moore wants his law license back, files secrecy motion: Questionnaire should be public, lawyer says*, *Charleston Gazette*, Dec. 23, 1998 at A1.

⁶⁵¹*Id.*

⁶⁵²*Id.*

⁶⁵³*Committee On Legal Ethics Of The West Virginia State Bar v. Craig*, 415 (continued...)

counted out \$100,000 in \$100 bills and instructed Craig to give the money to Richard Barber to distribute to campaign workers in violation of the election laws.⁶⁵⁴ After winning the election, Moore gave Craig \$5,000 in cash which was not reported as income.⁶⁵⁵

As reparation, the West Virginia Supreme Court suspended Craig's license to practice law for three years.⁶⁵⁶ Justice Brotherton dissented in the opinion and stated that the three year suspension "reduces the ethical standards of our profession to a level that is embarrassingly low and encourages the image of the law, not as a profession, but as a business with limited accountability to the public we are meant to serve."⁶⁵⁷

⁶⁵³(...continued)
S.E.2d 255 (W. Va. 1992).

⁶⁵⁴*Id.* at 256.

⁶⁵⁵*Id.*

⁶⁵⁶*Id.* at 260.

⁶⁵⁷Committee On Legal Ethics Of The West Virginia State Bar v. Craig, 415 S.E.2d at 263 (W. Va. 1992); Paul J. Nyden, *Failed Bank Linked To Beer Distributorship*, Sunday Gazette-Mail, July 28, 1996, at A11; see also Gillespie v. Wood, 175 S.E.2d 497 (W. Va. 1970) (Ed Gillespie was accused of bribing Governor Moore employee Dale Curry, a buyer in the Purchasing Division of the Department of Finance. The so-called bribe was an attempt to gain "favor and award business to the Debs Hospital Supplies, Inc.." Gillespie convinced the West Virginia Supreme Court that although Curry was working in State government that he was a mere employee and not "an executive and ministerial officer of the State" as contemplated by the statute. Gillespie was successful and the indictment was declared void." Barber, Arch Moore's liquor commissioner from 1970-1976, was convicted on twenty federal charges of racketeering, mail fraud and extortion in 1979 for "shaking down liquor companies for cash and liquor during Arch Moore's first two terms as governor." Barber was sentenced to three years in prison; (continued...)

Moore, unfortunately, was not the only West Virginia elected official involved in corrupt activities. The *Phoenix Gazette* reported:

Many West Virginia politicians have either become involved in corruption scandals or resigned recently. Since December 1988, a state attorney general, a state treasurer, two state Senate presidents, a Senate majority leader, a top aide to a Senate president, a House member and two lobbyists have lost their jobs.⁶⁵⁸

Moreover, the *Washington Post* provides:

Shortly after he left office early last year, it became widely known that Moore was again under investigation as part of a wide-ranging federal probe of corruption of state and local officials that began in 1984. As part of the plea arrangement, Moore agreed to help federal prosecutors in the investigation. Two Democratic legislators, presidents of the state Senate, the state's No. 2 political office, were among the more than 50 officials who had pleaded guilty to various corruption charges in the probe.⁶⁵⁹

⁶⁵⁷(...continued)

however, he only served nine months in an Allentown, Pennsylvania federal correctional facility, then performed eighteen months of public service for the Kanawha County Board of Education.)

⁶⁵⁸Jill Wilson, Associated Press, *W. Virginia indicts former governor*, The *Phoenix Gazette*, Apr. 13, 1990, at C2; See, *Ex-West Virginia Governor Admits Corruption Schemes*, New York Times, Apr. 13, 1990, Abstracts at 8; Bill McAllister, *Ex-Gov. Moore Agrees to Plead Guilty; W. Virginian Charged With Fraud, Extortion*, The *Washington Post*, Apr. 13, 1990, at A1.

⁶⁵⁹Bill McAllister, *Ex-Gov. Moore Agrees to Plead Guilty; W. Virginian Charged With Fraud, Extortion*, The *Washington Post*, Apr. 13, 1990, at A1.

**B. Governor Gaston Caperton
(1989-1997)**

Cleaning up the mess

Governor Arch Moore was defeated in 1988 by political newcomer Gaston Caperton. After Caperton was elected, "he discovered millions of dollars in unpaid bills, many of them stuffed in boxes under desks in the Governor's Office."⁶⁶⁰ Caperton called the state of the state "a total mess," denoting that the gas company was poised to shut off the gas at the Governor's Mansion because of unpaid bills.⁶⁶¹ In addition, he found that the teacher's retirement fund was insolvent and millions more in state income tax refunds had gone unpaid for lack of cash. As a result, Caperton was forced to raise taxes in what was reported as "the largest tax increase in the state's history."⁶⁶²

"The West Virginia Poll" taken by three news organizations in the midst of a teacher's strike and after the tax increase, found that only one percent of those surveyed rated Governor Caperton's performance as excellent.⁶⁶³ Only thirteen percent considered his job performance as good and twenty-nine percent felt it to be fair, while fifty-three percent considered his job rating as poor. It was the lowest overall score any governor had received since the poll began rating the state's chief

⁶⁶⁰Bill McAllister, *W. Virginia Politics Gets 'Soap Opera' Spin*, Washington Post, Mar. 25, 1990, at A1.

⁶⁶¹Barry Bearak, *Corruption - with a Capitol 'C'*, Newsday, July 8, 1990, at 13.

⁶⁶²*Id.*

⁶⁶³Bill McAllister, *W. Virginia Politics Gets 'Soap Opera' Spin*, Washington Post, Mar. 25, 1990, at A1.

executive in 1981.⁶⁶⁴ Caperton, however, left office eight years later as a popular governor.

Governor Caperton campaigned as an outsider and not as a part of the state's colorful corrupt past. In 1990, however, a *Washington Post* article discussing ex-wife Dee Caperton's accusation that Caperton and his campaign manager defrauded her of millions of dollars' worth of stock in the family insurance company, left many West Virginians with the impression of politics as usual. The article asserts:

In West Virginia, where the numbers after a governor's name have come more often from federal prosecutions than years in office, where two of the past Senate presidents were convicted in Gaston Caperton's first year in office of extorting bribes and where the state attorney general and state treasurer were run out of office for misconduct, the allegations caused a sensation. Despite his denials, the charges seemed to contradict Gov. Caperton's carefully nurtured image as a newcomer with no ties to the state's often corrupt past.⁶⁶⁵

The allegations concerned the Governor's private life as opposed to the misuse of public funds and were never substantiated. Such articles—regardless of truth or falsity—continue to instill cynicism in the citizens of West Virginia based on a well-deserved history of corruption. In addition, the misdeeds of the people who work or who have worked for a Governor are often attributed to that Governor. For

⁶⁶⁴*Id.*

⁶⁶⁵*Id.*

example, under Caperton's reign, the State Lottery Director Butch Bryan and Lottery Attorney Edward ReBrook, were both convicted for violating federal laws.⁶⁶⁶

For Caperton's involvement with the state lottery, according to Bob Brunner, a former Communications Director to Caperton and a twenty-nine year local television celebrity, "Rumors abounded that Republican United States Attorney Mike Carey was 'after' Gov. Caperton. Still, I believed this was a tempest in a teapot and related more to election-year politics than any actual wrongdoing."⁶⁶⁷ Bryan's close friends describe him as a political prisoner, persisting that he served a prison term because he would not deliver "Caperton's complicity to federal prosecutors."⁶⁶⁸ Bryan, however, asserts that "if he could have avoided years in prison by implicating Caperton, he would have."⁶⁶⁹

On the other hand, ReBrook, commenting on Caperton's testimony before the Grand Jury said:

All of a sudden, he couldn't remember anything. He couldn't remember meetings. He couldn't remember what he knew. He couldn't remember if he read it in the newspapers. He couldn't remember anything that happened with video lottery when, in fact, we had numerous meetings with him about video lottery.⁶⁷⁰

⁶⁶⁶Bob Brunner, *Lottery plans turned out unlucky for Caperton*, Charleston Gazette, Jan. 26, 1997, at A1.

⁶⁶⁷*Id.*

⁶⁶⁸*Id.*

⁶⁶⁹*Id.*

⁶⁷⁰Phil Kabler, *ReBrook disputes Brunner's story*, Charleston Gazette, Jan. (continued...)

Moreover, as late as August of 2001, former Caperton top aide Tom D. Rice, was sentenced for using the Internet in an attempt to have sex with a thirteen-year-old boy.⁶⁷¹ While Caperton clearly had nothing to do with the sex scandal, he nonetheless is mentioned in every story involving former employees. Headlines such as "Former Caperton Official Sentenced in Internet Sex Case" filled the newspapers and broadcast airwaves.⁶⁷²

C. Governor Cecil H. Underwood
(1957-1961, 1997-2001)

Leaving a mess: Draining the Coffers

Governor Caperton was followed by the 1996 election of Governor Cecil H. Underwood. Underwood's 1996 election made him the oldest Governor while his gubernatorial 1956 victory solidified his place as the youngest. Underwood, however, was no stranger to controversy. As the State's youngest elected Governor, during a farewell address for his first term Underwood stressed the importance of government honesty. He proclaimed:

In reviewing the last four years, four concerns appear with overriding importance. This first is honesty in Government.

In recent months, the pressing nature of other problems has abated the intensity with which this issue was paramount in 1956. I believe that my

⁶⁷⁰(...continued)
28, 1997, at A2.

⁶⁷¹Associated Press, *Former Caperton Official Sentenced in Internet Sex Case*, Charleston Daily Mail, Aug. 8, 2001, at A1.

⁶⁷²*Id.*

administration established and has maintained fair practices, honest dealings and personal integrity in Government as a matter of course. The very lack of this issue in 1960, in spite of petty recriminations, is evidence of our success.

These qualities of public honesty and personal integrity are little recognized when we have them, slowly realized when they are going, and missed only when they are gone. I hope that the standards which have been set will be maintained.⁶⁷³

Winding the clock forward to the year 2000, as the State's oldest elected Governor, Underwood left office under a cloud of controversy. Just prior to his departure from office, the road that dead-ends at Underwood's Tyler County farm was graveled with 100 tons of gravel.⁶⁷⁴ Interestingly, a spokesman for the Division of Highways contended that thirty tons would have been adequate for the 1.6 mile road named Governor's Road.⁶⁷⁵

Marc Rich, billionaire fugitive financier who was indicted in 1983 for tax evasion and buying oil from Iran while that country was under trade sanctions for holding Americans hostage, was pardoned by President Clinton.⁶⁷⁶ Just as

⁶⁷³*Ex-Governor Cecil Underwood Makes His Farewell Address*, The West Virginia Hillbilly, Jan. 16, 1961 at 13.

⁶⁷⁴Fanny Seiler, *Logan neighbors wrangle over paving of road*, Charleston Sunday Gazette-Mail, June 24, 2001 at 3C.

⁶⁷⁵Fanny Seiler, *Weirton office site considered*, Charleston Gazette, Aug. 20, 2001, at C1.

⁶⁷⁶Paul Owens, *Pardon causes anger*, Charleston Daily Mail, Jan. 25, 2001 at C1; Michael Duffy and Karen Tumulty, *Pardon Me, Boys*, Time, Mar. 5, 2001, at 28, 29 (United States Senator Hillary Clinton, D-NY, also received criticism as many of those pardoned had connections to New York. News also surfaced that Hillary's
(continued...)

President Clinton faced controversy for his actions in exercising his power to pardon just prior to leaving office, the corruption or appearance of corruption in eleventh hour decisions is not limited to executives on a national level.

On January 12, 2001, Governor Underwood's last day in office, he signed an order commuting the sentence of a convicted kidnapper, murderer, and arsonist, making him eligible for immediate parole.⁶⁷⁷ Paul Ferrell, who was convicted in 1989 by the Grant County Circuit Court for the above mentioned crimes had been denied relief in a signed Opinion by the West Virginia Supreme Court as well as the United States Supreme Court.

Ferrell's counsel filed briefs in the Grant County Circuit Court, the West Virginia Supreme Court, the Federal District Court in Elkins, West Virginia, and the Fourth Circuit Court of Appeals in Richmond, Virginia, requesting relief in the form

⁶⁷⁶(...continued)

brother Hugh Rodham made \$400,000 for helping broker a commutation for a Los Angeles drug dealer and a pardon for a Florida swindler." It has also been suggested that Senator Clinton may have had a hand in the commutation of the sentences of four Hasidics, who stole more than \$30 million governmental grants. It was known that the community from which they hailed often voted as a bloc in the past. "Jimmy Carter, the perfect ex-President, broke the cardinal rule of the brotherhood and called Clinton's pardon of Marc Rich 'disgraceful.'" Rich, who fled to Switzerland could have faced a prison sentence of 325 years. Additional controversy surrounds possible quid pro quo between individuals seeking pardons and the President's brother and the First Lady.)

⁶⁷⁷Lawrence Messina, *Second murder's sentence was commuted: Man who killed Nicholas county woman in 1980 robbery is now eligible for parole*, Charleston Gazette, Feb. 7, 2001, at C1.

of a *writ of habeas corpus*. Ferrell was denied relief by all courts and the final order from the Fourth Circuit was entered September 12, 2000.⁶⁷⁸

Despite such activity by the courts, Governor Underwood issued an order commuting the sentence of Ferrell, thus making him eligible for parole immediately, stating simply "there was no evidence to convict him."⁶⁷⁹ The appearance of corruption and abuse of power is present based on the fact that Underwood did not follow the regular process of hearing both sides. In fact, Underwood did not contact the county prosecutor, the State Attorney General's Office, the parole board, any of the victim's family members, or any of the law enforcement officials involved with the case.⁶⁸⁰ Top Underwood aids who would only speak with a condition of

⁶⁷⁸Ferrell v. Duncil, 230 F.3d 1352 (4th Cir. W. Va. 2000); Ferrell v. Duncil, No. CA-97-79-2 (N.D. W. Va. Aug. 16, 1999).

⁶⁷⁹Lawrence Messina, *Underwood decision draws criticism: Ex-governor acted rashly in changing murderer's sentence, officials say*, Feb. 6, 2001, at A1; Associated Press, *Former governor defends changing sentence: Man convicted of murder to be eligible for parole*, Charleston Daily Mail, Feb. 6, 2001, at A1.

⁶⁸⁰Telephone interview by Author with Grant County Prosecuting Attorney Dennis DiBenedetto (February 5, 2001) DiBenedetto, who tried the original criminal appeal, had spoken with the family members of the Victim as well as to members of the West Virginia Parole Board and concluded that not a single person had been contacted by the Governor's Office with regard to the commutation of Paul Ferrell's sentence. The author of this dissertation, Allen H. Loughry II, Senior Assistant Attorney General, filed the brief for the Appellee, State of West Virginia in the Ferrell case in the Federal District Court for the Northern District of West Virginia as well as the brief filed in the United States Fourth Circuit Court of Appeals, in Richmond, Virginia; see also, Lawrence Messina, *Underwood decision draws criticism: Ex-governor acted rashly in changing murderer's sentence, officials say*, Feb. 6, 2001, at A1; Associated Press, *Former governor defends changing sentence: Man convicted of murder to be eligible for parole*, Charleston Daily Mail, Feb. 6, 2001, at A1; Lawrence Messina, *Second murder's sentence was commuted: Man who killed Nicholas county woman in 1980 robbery is now eligible for parole*, Charleston (continued...)

anonymity, conceded that this was nothing more than “a political payoff that had absolutely nothing to do with the merits of the case.”⁶⁸¹

When pressed about being soft on crime during the 1996 election, Underwood campaign officials stated that Underwood always followed proper procedure before making a decision. Underwood stated in 1997 that in order to get a pardon a criminal must contribute “extraordinary service” to the prison that housed him, demonstrate motivation toward rehabilitation, or face a life-threatening illness.⁶⁸²

Unfortunately, Governor Underwood failed to follow his own prescribed proper procedures when he commuted Paul Ferrell’s sentence. The last-minute decision to change this convicted killer’s sentence was referred to as “a terrible miscarriage of justice” by Grant County Prosecuting Attorney Dennis DiBenedetto, who tried the case against Ferrell.⁶⁸³ Had Underwood followed the process of hearing both sides he would have at least created the appearance of a proper

⁶⁸⁰(...continued)

Gazette, Feb. 7, 2001, at C1 (Governor Underwood also commuted the sentence of Clarence Bertchell Hall, who was in prison for killing a Nicholas County woman during a 1980 robbery.).

⁶⁸¹Anonymous interview by Author held at the State Capitol on January 31, 2001; Second anonymous interview by Author, held the same day at the State Capitol in Charleston, West Virginia.

⁶⁸²Editorial, *Pardons*, Charleston Gazette, Dec. 23, 1997, at A4.

⁶⁸³Lawrence Messina, *Underwood decision draws criticism: Ex-governor acted rashly in changing murderer’s sentence, officials say*, Charleston Gazette, Feb. 6, 2001 at A1; Telephone interview by Author of Grant County Prosecuting Attorney Dennis DiBenedetto, Feb. 2, 2001.

exercise of the Governor's power. Newspaper reports surfaced during the 1996 election disclosing that Governor Underwood had used his pardon power often during his first term as Governor when he pardoned ninety individuals, while forty of whom were convicted murderers.⁶⁸⁴ Underwood did not deny the reports, nor did he attempt to explain them.⁶⁸⁵

Another last minute Underwood act was leaving a balance of \$20,000 in the Governor's Contingency Fund that had a balance of \$22.36 million just six months earlier.⁶⁸⁶ Underwood was accused of using the fund to illegitimately hand out millions of dollars in contingency fund grants to cities, counties, and civic groups throughout the State during the months leading up to the November 7, 2000

⁶⁸⁴Editorial, *Pardons*, Charleston Gazette, Dec. 23, 1997, at A4.

⁶⁸⁵Editorials, *Pardons: Maybe governors don't use the power to pardon because they don't need to*, Charleston Daily Mail, Dec. 23, 1997 at A4; Paul Owens, *Ads Called Untrue: Pritt Campaign Implies Underwood Soft on Crime*, Charleston Daily Mail, Nov. 1, 1996, at C1; Paul Owens, *Underwood Fires Back With Anti-Crime Ad: Miffed over Pritt Claim, GOP Hopeful Launches Counter Ad*, Charleston Daily Mail, Nov. 4, 1996, at A12. (During Underwood's predecessor who served from 1989 to 1997, Gaston Caperton had granted a total of fourteen pardons.); Lawrence Messina, *Second murder's sentence was commuted: Man who killed Nicholas County woman in 1980 robbery is now eligible for parole*, Charleston Gazette, Feb. 7, 2001 at C1 (Underwood addressed five other criminal convictions on his last day in office including commuting the sentence of Ferrell, Underwood also commuted the sentence of convicted murder Clarence Bertchell Hall, who was imprisoned for slaying a Nicholas County woman during a 1980 robbery. Moreover, according to records in the Secretary of State's Office, Underwood intervened in 48 criminal cases since 1998, which included pardons, commutation of two murderers sentences, and granted 12 medical respites or reprieves to seriously ill or older inmates to either receive treatment or to die outside of the prison walls.).

⁶⁸⁶Phil Kabler, *Governor's contingency fund running on fumes*, Charleston Gazette, Jan. 17, 2001, at A2; Phil Kabler, *Underwood's top-ranking aides cash in: Late payments put Wise administration in bind*, Charleston Gazette, Jan 18, 2001, at A1.

election where he faced challenger and current Governor Bob Wise.⁶⁸⁷ A senior deputy in the Auditor's office said, "I've never seen a fund get so mangled in my life as the governor's contingency fund."⁶⁸⁸

The Charleston Gazette declared that Underwood's use of the contingency fund was "shameless campaigning with taxpayer money—giving government funds to get votes. There's no other way to describe it."⁶⁸⁹ The editorial suggested that the Governor could have used thirty-three cent stamps to deliver the more than \$20 million to recipients instead of "day after day . . . visits [to] courthouses, senior centers and other local facilities to hand state checks to smiling recipients, while news cameras record the happy event."⁶⁹⁰

State Auditor Glen Gainer, III said it was "insanity" for Governor Underwood to distribute millions of dollars from the contingency fund while state tax collections were running below estimates.⁶⁹¹ Current Governor Wise exclaimed that his office

⁶⁸⁷Phil Kabler, *Governor's contingency fund running on fumes*, *Charleston Gazette*, Jan. 17, 2001, at A2.

⁶⁸⁸*Id.* (quote from Paul Mollohan).

⁶⁸⁹Editorial, *Handouts, Campaigning with tax money*, *Charleston Gazette*, Oct. 25, 2000, at A4.

⁶⁹⁰*Id.*

⁶⁹¹*Id.*; Phil Kabler, 'Stop the insanity,' *Underwood told, Wise, Gainer blast governor's election-season use of contingency fund*, *Charleston Gazette*, Oct. 25, 2000, at C1.

will not operate the contingency fund like a “candy store” or use it to make “one of the largest publicly funded campaigns.”⁶⁹²

Underwood said, “faced with Democratic majorities in the Legislature, he was forced to split the funds in thirds among his office, the House of Delegates and the Senate.”⁶⁹³ Underwood continued: “Except for emergency relief funds, the Legislature influenced and directed the spending of most of the taxpayer dollars earmarked for the Governor’s Contingency Fund. As legislative leaders made numerous demands for these funds, they assured us that any shortfall would be corrected during the next legislative session.” In response to newly elected Wise’s criticism of his Administration, Underwood added, “I think it’s destructive and confusing to the public. It displays a negative image and reflects on the morale of state employees.”⁶⁹⁴

Governor Underwood also depleted a \$1.76 million budget item intended to cover personnel salaries for the Governor’s Office through June 30, 2001, leaving a gaping hole for newly elected Governor Wise to calculate how to pay his employees for the first six months in office.⁶⁹⁵ As a result, Wise had to have a

⁶⁹²Editorial, *Handouts, Campaigning with tax money*, Charleston Gazette, Oct. 25, 2000, at A4.

⁶⁹³Sam Trantum, *Former governor lashes out*, Charleston Daily Mail, Oct. 19, 2001, at A1.

⁶⁹⁴*Id.*

⁶⁹⁵Phil Kabler, *Governor’s contingency fund running on fumes*, Charleston Gazette, Jan. 17, 2001, at A2.

special supplement from the Legislature just to pay his staff.⁶⁹⁶ Moreover, Underwood's payroll averaged \$70,000 per pay period during the months of July to October 2000, while that amount for November, when Underwood lost his re-election bid, increased to \$192,000 per pay period and ballooned to \$286,000 per pay period in December while the final payroll dropped to \$167,000.⁶⁹⁷

Reports also surfaced that just prior to leaving office, top officials in Governor Underwood's office cashed in more than 5,400 hours of compensatory time totaling more than \$208,626.⁶⁹⁸ It was later discovered that the Underwood employees were overpaid a total of \$186,749, of which \$169,553 was overpaid as compensation time while \$12,782 was overpaid for unused annual leave, or vacation time.⁶⁹⁹ Governor Wise conveyed that it is common sense that as "a senior

⁶⁹⁶Phil Kabler, *Underwood's top-ranking aides cash in: Late payments put Wise administration in bind*, Charleston Gazette, Jan 18, 2001, at A1.

⁶⁹⁷Phil Kabler, *Governor's contingency fund running on fumes*, Charleston Gazette, Jan. 17, 2001, at A2.

⁶⁹⁸Fanny Seiler, *Underwood staff overpaid more than \$186,000*, Sunday Gazette-Mail, Apr. 1, 2001, at C3.; Phil Kabler, *Underwood documents 'sequestered', Former chief of staff won't discuss comp time; auditors secure records*, Charleston Gazette, Jan. 24, 2001 at A1; Fanny Seiler, *Former Underwood aides owe \$136,476*, Charleston Gazette, June 14, 2001, at A1; Fanny Seiler, *Wise's office to decide on Underwood staff overpayments*, Charleston Gazette, July 10, 2001, at A3 (The article reports that Wise's office determined that \$136,476 was the total after deductions for taxes, Social Security and Medicaid, while Legislative auditors arrived at a total of \$186,749 that was overpaid.); Fanny Seiler, *Underwood staffers owe thousands*, Charleston Gazette, Apr. 9, 2001, at C1; Editorial, *What a mess: Underwood fallout*, Charleston Gazette, July 27, 2001, at A4; Phil Kabler, *Underwood's top-ranking aides cash in: Late payments put Wise administration in bind*, Charleston Gazette, Jan 18, 2001, at A1.

⁶⁹⁹Fanny Seiler, *Underwood staff overpaid more than \$186,000*, Sunday
(continued...)

executive working for the people of West Virginia, you don't ask for comp time."⁷⁰⁰

The payments staff members received ranged from \$39 to \$25,866.⁷⁰¹ After much negative press coverage of the payment of compensatory time to senior administrative staff members, many of those payments were returned to the state.⁷⁰² However, of the twenty-four members of Underwood's staff who received the payments, several of those individuals never returned the payments.⁷⁰³ State Auditor Glen Gainer called the payment "unprecedented" saying it warranted an investigation.⁷⁰⁴ Underwood calls the charges against his administration a "continuous barrage of blame" and argues that Wise's financial problems derive from his increase in staff payroll."⁷⁰⁵

⁶⁹⁹(...continued)

Gazette-Mail, Apr. 1, 2001, at C3.

⁷⁰⁰Phil Kabler, *Underwood documents 'sequestered', Former chief of staff won't discuss comp time; auditors secure records*, Charleston Gazette, Jan. 24, 2001, at A1.

⁷⁰¹Associated Press, *Most comp money still not returned*, Charleston Gazette, June 18, 2001, at A5.

⁷⁰²Randy Coleman, Associated Press, *Out of prison, ex-senator builds new life*, Charleston Gazette, June 18, 2001, at A1; Fanny Seiler, *Underwood staffers owe thousands*, Charleston Gazette, Apr. 9, 2001, at C1.

⁷⁰³Associated Press, *Most comp money still not returned*, Charleston Gazette, June 7, 2001, at A5; Fanny Seiler, *Underwood staffers owe thousands*, Charleston Gazette, Apr. 9, 2001, at C1.

⁷⁰⁴Phil Kabler, *Underwood's top-ranking aides cash in: Late payments put Wise administration in bind*, Charleston Gazette, Jan 18. 2001, at A1.

⁷⁰⁵Sam Trantum, *Former governor lashes out*, Charleston Daily Mail, Oct. 19, 2001, at A1.

Governor Underwood was also criticized for his decision not to pursue lawsuits against major coal companies—who donated heavily to his campaign—for unpaid premiums owed by contractors in the amount of more than \$200 million.⁷⁰⁶ It had been reported that the state had spent more than \$3 million on legal fees to prepare the cases for trial.⁷⁰⁷ The *Charleston Gazette* surmised that “Vieweg—a former coal executive—seemed to spend most of his time helping coal mine owners escape part of their state obligations.”⁷⁰⁸

William Vieweg, Commissioner of the Bureau of Employment Programs for the Underwood administration, “made secret deals with at least eight coal companies” just prior to leaving office according to current Commissioner Robert Smith. Smith told members of the Performance Council that the deals “could cost the agency millions of dollars and be spread out among all the other employers in the state.”⁷⁰⁹ Smith said that “Vieweg violated agency rules by not asking the Performance Council for its approval before making the agreements, which allow

⁷⁰⁶Editorial, *Handouts, Campaigning with tax money*, *Charleston Gazette*, Oct. 25, 2000, at A4 (It has later been determined that the amount may be as high as 450 million.).

⁷⁰⁷*Id.*

⁷⁰⁸Editorial, *What a mess: Underwood fallout*, *Charleston Gazette*, July 27, 2001, at A4.

⁷⁰⁹Paul J. Nyden, *Secret Coal Deals Made, Official Says, Approval of Workers' comp agreement was not sought by Vieweg, successor says*, *Charleston Gazette*, Mar. 28, 2001, at A1.

companies to change from being self-insured to regular subscribers.”⁷¹⁰ Smith furthered by calling Vieweg’s sworn statements “deceptive, misleading, and false” tactics to attempt to get rid of lawsuits for \$400 million worth of Workers’ Compensation premiums.⁷¹¹

Smith charges that Vieweg, who worked as an executive for Island Creek Coal Company for ten years between 1976 and 1986, allowed the coal companies (which included Island Creek Coal Company) to pay between \$35 million and \$40 million to buy out their future liabilities as self-insured companies.⁷¹² Similar to Governor Underwood’s ballooning payroll after his November 7, 2000 election defeat, Vieweg apparently approved most of the deals with the coal companies after the results of the election were finalized.⁷¹³ Vieweg filed a motion to have his testimony in his depositions remain confidential.⁷¹⁴

⁷¹⁰*Id.*

⁷¹¹Editorial, *Probe? Ugly allegations*, Charleston Gazette, June 14, 2001, at A4; Paul J. Nyden, *Vieweg ‘deceptive’ in dismissing suits, official says*, June 7, 2001, at C1.

⁷¹²Paul J. Nyden, *Secret Coal Deals Made, Official Says, Approval of Workers’ comp agreement was not sought by Vieweg, successor says*, Charleston Gazette, Mar. 28, 2001, at A1 (Buyouts by self-insured employers should cover all long-term disability and medical benefits that will be paid to injured workers in the future.).

⁷¹³*Id.*; Paul J. Nyden, *Arch Coal says Vieweg deals saved firm \$21 million*, Sunday Gazette-Mail, May 6, 2001, at B1.

⁷¹⁴Paul J. Nyden, *Vieweg wants his coal suit testimony kept secret*, Charleston Gazette, June 22, 2001, at A5; Editorial, *What a mess: Underwood fallout*, Charleston Gazette, July 27, 2001, at A4 (Vieweg was also charged with buying a \$13 million state computer that “doesn’t work properly” and that has
(continued...)

In addition, Governor Underwood wrote off as uncollectible, \$41 million in unpaid fines for coal mine environmental violations.⁷¹⁵ The money would have gone into a fund that is currently millions of dollars in the hole to clean up abandoned strip mine sites including hundreds of polluted and untreated streams.⁷¹⁶ According to the Department of Environmental Protection, the write-offs involved more than 300 mining operators.⁷¹⁷

Governor Underwood was also criticized for spending \$259 million in road bond funds for various highway construction projects without waiting for four-to-one federal matching funds.⁷¹⁸ Governor Wise asserted that Underwood's actions were "not financially prudent" because without the use of federal matching funds the life-span of the road projects would be far exceeded by the time it would take to retire the bonds.⁷¹⁹ Also the subject of criticism was Governor Underwood's transportation

⁷¹⁴(...continued)

triggered lawsuits and forced a grand jury probe. In addition, \$3.6 million was paid to Connecticut consultants at nearly \$200 an hour "to coach Workers' Compensation employees on how to do their jobs." Current Commissioner Robert Smith fired the consultants saying that "the experts did little of value.").

⁷¹⁵Ken Ward Jr., *\$41 million in mine fines tossed: Underwood administration wrote off in 2000*, Sunday Gazette-Mail, May 26, 2002, at A1.

⁷¹⁶*Id.*

⁷¹⁷*Id.*

⁷¹⁸Editorial, *Handouts, Campaigning with tax money*, Charleston Gazette, Oct. 25, 2000, at A4.

⁷¹⁹*Id.*

division after employees set up false accounts and embezzled state funds.⁷²⁰ It was also reported that the United States Attorney's Office was investigating "activities under the administration of former Governor Cecil Underwood."⁷²¹

Furthermore, Underwood left office in a manner similar to his Republican predecessor, Governor Arch Moore. Newly elected Governor Wise found that the State owed millions of dollars in unpaid telephone bills though the exact amount owed to Verizon, AT&T, and Citizens Communications was not readily agreed upon.⁷²² Verizon officials claimed that the State owed them as much as \$5.3 million.⁷²³ It took more than a year to settle the debt and reach agreements with the various phone companies. Many of Underwood's actions are still being discovered years after his November 7, 2000, unsuccessful run for re-election for Governor.

⁷²⁰Stephen Singer, *Allegation doesn't surprise Jemiola: Ex-transportation chief says agency is filled with abuses*, Charleston Daily Mail, Apr. 16, 1998, at C1 (After a transportation department employee and his wife, a former transportation department employee, were arrested on charges of embezzlement, former transportation chief Richard Jemiola, said "the department is plagued by numerous other instances of fraud" and that "there are many other instances of waste, fraud, and abuse." Jemiola also declared that corruption can be cleaned up at the Transportation Department as long as those performing the crimes do not have political connections.)

⁷²¹Fanny Seiler, *U.S. is looking at DOH*, Charleston Gazette, July 16, 2001, at C1.

⁷²²Fanny Seiler, *Unpaid phone bills probed: Audit finds problems that led to over \$5 million being owed by state*, Charleston Gazette, May 8, 2001, at C1.

⁷²³Fanny Seiler, *Verizon: state owes millions*, Charleston Gazette, Mar. 20, 2001, at C1; Editorial, *What a mess: Underwood fallout*, Charleston Gazette, July 27, 2001, at A4; Phil Kabler, *Unpaid phone bills under Underwood total nearly \$4 million*, Charleston Gazette, Jan. 18, 2002, at A1.

D. **Governor Bob Wise**
(2001-present)

The Perception of Others

"That little weasel-faced bastard Typical Democrat" were the words of Philip Frye in the *Charleston Daily Mail* on May 12, 2003 describing Governor Bob Wise.⁷²⁴ Frye, said that his divorce case includes allegations that Wise and Frye's wife, Angela Mascia-Frye, had been having an affair for some time.⁷²⁵ Governor Wise released a statement saying he was "not faithful to [his] family."⁷²⁶

Frye said, "I had private detectives all over this thing. I've got pictures and documents—all kinds of hard evidence."⁷²⁷ Even though thirty-five-year-old Mascia-Frye, who oversees European operations for the West Virginia Development Office is Wise's subordinate, Wise stated, "I apologize deeply to the people of our state for my actions. In my private life, I have let many people down."⁷²⁸ Mascia-Frye,

⁷²⁴Chris Stirewalt and Jim Wallace, *Wise: "I Was Not Faithful,"* *Charleston Daily Mail*, May 12, 2003, at A1.

⁷²⁵*Id.*

⁷²⁶*Id.*

⁷²⁷*Id.*

⁷²⁸*Id.*; Phil Kabler, *Governor admits to affair: He 'absolutely' won't resign, aide says; alleged accuser denies naming Wise*, *Charleston Gazette*, May 13, 2003, at A1; Scott Finn, *An unlikely couple behind Wise affair*, *Charleston Gazette*, May 13, 2003, at A1; Deanna Wrenn, *Reactions fly, details stall, What are their stories?*, *Charleston Daily Mail*, May 13, 2003, at A1; Toby Coleman, *Details often murky: Like many cases, Frye divorce may be out of public eye*, *Charleston Daily Mail*, May 14, 2003, at A1; Deanna Wrenn, *Analysts say Wise should face fallout: Governor advised to remain in public, answer questions*, *Charleston Daily Mail*, May 14, 2003, at A1.

accompanied Wise on a visit to Spain, Italy and Germany in 2002 and travel records indicate the two were in several other cities for overnight stays during the same time periods including Detroit, Huntington, Clarksburg, Lewisburg, and Windsor, Ontario.⁷²⁹

In 1998, when Wise was a United States Congressman, he said it was important for Congress to recognize that President Clinton was wrong when he lied about having sex with Monica Lewinsky "and take some action of punishment" against him.⁷³⁰ Wise called Clinton's actions "indefensible personal conduct."⁷³¹ During Bob Wise's first Inauguration on January 15, 2001, he said, "My fellow West Virginians. Sacred to every West Virginian is the concept of home and the home place. The word 'home' is more than just a place. . . . It also means caring about

⁷²⁹*Id*; Phil Kabler, *Not much unusual in Wise trips: Governor's travel plans often matched alleged paramour's*, Charleston Gazette, May 14, 2003, at A1; see also, Rebecca Cantley-Falk, *Admission's effects on Wise's 2004 re-election bid uncertain*, The Herald-Dispatch (Huntington, WV), May 13, 2003, at A1; Jim Wallace, *Political implications of situation still unclear to many lawmakers*, Charleston Daily Mail, May 13, 2003, at A1; Deanna Wrenn, *Talk, opinions swirl over Wise*, Charleston Daily Mail, May 13, 2003, at A1; Jim Wallace, *Gainer says "everything looks appropriate: on Wise trip: Official says records show Wise, woman together in Spain*, Charleston Daily Mail, May 13, 2003, at A1.

⁷³⁰Deanna Wrenn, *Admitting affairs seems to be key move: Kentucky's Patton, President Clinton first denied affairs*, Charleston Daily Mail, May 13, 2003, at A1; see also Associated Press, *Sandy Wise's actions vital to governor's political future, consultants say*, Charleston Daily Mail, May 15, 2003, at A1; Jim Wallace, *Wise troubles affect campaigns: Candidate says it's too early to tell if issue alters race*, Charleston Daily Mail, May 15, 2003, at A1.

⁷³¹WVAH Fox 10:00 p.m. News Broadcast, May 12, 2003 (airing Wise's September 14, 1998 comments).

and caring for each other."⁷³² Senator Robert C. Byrd said he was "saddened" while Senator John D. Rockefeller, IV, said, "I'm disappointed. . . . I'm shocked, because it's wrong" with regard to Wise's admission.⁷³³

The *Charleston Daily Mail* asserts:

Make no mistake: Wise's actions were wrong. The hurt goes beyond the injury to his family, which includes his children. American society is built on trust. This affair undermines the public's faith in the governor.

West Virginians have far more serious problems than Wise's personal life. They deserve a government that focuses on and solves those problems.

Wise has taken the focus off those problems.⁷³⁴

During the monologue on "The Tonight Show," Jay Leno discussed Wise's unfaithfulness.⁷³⁵ Leno communicated:

"It's Wednesday, or as the people of West Virginia know it, hump day," Leno said.

Leno also referenced former University of Alabama football coach Mike Price, who was fired after reports surfaced about him spending hundreds of dollars at a Pensacola, Fla., topless bar.

⁷³²See West Virginia Archives and History, (visited May 15, 2003, <<http://www.wvculture.org/history/wiseia.html>>).

⁷³³Karin Fischer, *Wise situation shocks senators Byrd, Rockefeller react: to reports of unfaithfulness*, *Charleston Daily Mail*, May 14, 2003, at A1.

⁷³⁴Editorial, *Wise: The governor should go further to restore people's trust in him*, *Charleston Daily Mail*, May 14, 2003, at A4.

⁷³⁵Jim Wallace, *Former leader sorry for Wise: Caperton feels empathy for Wise's personal problems*, *Charleston Daily Mail*, May 15, 2003, at A1.

"Good thing he (Wise) was just governor and not the football coach of Alabama," Leno said. "He could have lost his job."

Leno then made one more comment about Wise.

"Wise said he was sorry for letting his wife down, his children down . . . and his pants down," he said.⁷³⁶

During the 2000 election, Governor Wise was questioned with regard to his relationship to convicted Mingo County felon Johnie Owens. Owens was convicted in 1988 of selling his Mingo County Sheriff's Office for \$100,000.⁷³⁷ Wise denied that Owens was a formal part of his campaign and added that "the Bible teaches forgiveness and Owens has served his prison sentence."⁷³⁸

Governor Wise's 2000 Primary Opponent, Jim Lees, was also questioned as to his connection to Larry Hamrick, former director of the Mingo County Economic Opportunity Commission, who served two-and-a-half years in prison in the 1980s for embezzling \$60,000 from the anti-poverty agency funneling it into his political campaign.⁷³⁹ Lees issued a press release stating that Hamrick was not a part of his

⁷³⁶*Id.*

⁷³⁷Associated Press, *Political Briefs from the 2000 campaign trail*, Charleston Gazette, May 3, 2000, at A1.

⁷³⁸*Id.*

⁷³⁹*Id.*; Associated Press, *Underwood, Ex-official Seek State Pensions*, Inter-mountain (Elkins, WV), Jan. 9, 2001, at A6.

Mingo County campaign and asked his Mingo County campaign coordinator “to make sure Hamrick plays no part in the campaign.”⁷⁴⁰

Incidentally, Hamrick, who volunteered in Underwood’s re-election campaign as a “Democrat[s] for Underwood” was hired as a special assistant to the Division of Highways commissioner on December 6, 2000, for \$46,800, approximately a month before Governor Underwood left office following his November defeat to current Governor Bob Wise.⁷⁴¹ The *Charleston Gazette* proclaimed:

Conscientious state employees must have felt tainted last week when they learned that a good-paying state job and free state car were given to a convicted political crook who led a Democrats-for-Underwood drive in the election campaign. This sordid appointment spawns public cynicism by implying that state employment isn’t based on merit, but on shady political factors.⁷⁴²

On January 16, 2001, the first day on the job, Wise’s newly appointed Commissioner of Highways Fred VanKirk fired Hamrick.⁷⁴³ Hamrick, “a veteran of Mingo County political corruption”⁷⁴⁴ who had been jailed twice in the late 1980s,

⁷⁴⁰Associated Press, *Political Briefs from the 2000 campaign trail*, *Charleston Gazette*, May 3, 2000, at A1.

⁷⁴¹Fanny Seiler, *Board upholds DOH dismissal*, *Charleston Gazette*, at A8; Associated Press, *Underwood, Ex-official Seek State Pensions*, *Inter-mountain* (Elkins, WV), Jan. 9, 2001, at A6.

⁷⁴²Editorial, *Shame: Bad appointment*, *Charleston Gazette*, Dec. 12, 2000, at A6.

⁷⁴³Fanny Seiler, *Board upholds DOH dismissal*, *Charleston Gazette*, at A8; Fanny Seiler, *New transportation chief fires Hamrick from DOH position*, *Charleston Gazette*, Jan. 17, 2001, at A1.

⁷⁴⁴Editorial, *Shame: Bad appointment*, *Charleston Gazette*, Dec. 12, 2000, (continued...)

appealed his dismissal to the West Virginia State Employees Grievance Board, claiming he was dismissed for his political affiliation.⁷⁴⁵ Hamrick's first conviction resulted from threatening witnesses while he was under a federal investigation where he later pleaded guilty to "defrauding the government, drug racketeering, jury tampering and the like."⁷⁴⁶

Possibly as a result of the last minute Paul Ferrell sentence commutation by his predecessor Governor Underwood, Governor Bob Wise vetoed a bill passed by the Legislature that would have changed the length of time people receiving a pardon must wait before having their criminal records expunged.⁷⁴⁷ While current state law provides that an individual must wait twenty years before records can be expunged, the legislation that Governor Wise vetoed, Senate Bill 261, would have reduced the time to seven years.⁷⁴⁸ "A review of other states reveals a wide range

⁷⁴⁴(...continued)
at A6.

⁷⁴⁵Fanny Seiler, *Board upholds DOH dismissal*, Charleston Gazette, at A8.

⁷⁴⁶Editorial, *Shame: Bad appointment*, Charleston Gazette, Dec. 12, 2000, at A6; Fanny Seiler, *Board upholds DOH dismissal*, Charleston Gazette, at A8 (Commissioner VanKirk testified that Hamrick did not "have the public trust" and his "integrity was questionable." In denying Hamrick's claim, the opinion issued by Administrative Law Judge Mary Jo Swartz on May 24, 2001, proclaimed that Hamrick "had been convicted of racketeering, jury tampering and obstruction of justice, stemming from defrauding [a federally funded anti-poverty agency--the Mingo County Economic Opportunity Commission] and a drug conspiracy.).

⁷⁴⁷Associated Press, *Veto keeps criminals' record on file*, Charleston Gazette, Apr. 4, 2001, at A1.

⁷⁴⁸*Id.*

of time periods allowed for expungement," Wise said.⁷⁴⁹ "However, I do not believe that seven years after the discharge of a sentence is a sufficiently long enough qualification period to ensure that society sends a strong message condemning, and thus, deterring criminal behavior."⁷⁵⁰

The legislation was reportedly tailored by lawmakers to fit the needs of one man, Mario Perito, a Weirton man convicted of malicious wounding who would have become immediately eligible for the reduction in the wait for his criminal expungement.⁷⁵¹ According to the *Charleston Gazette*:

Mario Perito was pardoned in 1996 by former Gov. Gaston Caperton in the waning months of Caperton's term. Perito had been convicted four years earlier in Hancock County Circuit Court on two counts of malicious wounding. He ran over with a car and then shot a man during a dispute. Perito said the incident was partly an accident and a case of self-defense.

A search of state archives and state parole board records failed to turn up Perito's pardon application or any supporting documents. Also, the prosecutor who tried Perito's case said neither his office nor police was ever asked about granting the pardon.

....

⁷⁴⁹*Id.*

⁷⁵⁰*Id.*

⁷⁵¹*Id.* (This was the first substantive rejection of legislation by the governor in his first term.)

And the official pardon document stated that Perito served one year in jail. He really spent only six days in jail.⁷⁵²

The bill's sponsor, Senator Ed Bowman, D-Hancock, said he understands why Wise vetoed the measure, describing the bill as "a bad piece of luck." Bowman also stated that he does not plan to re-introduce the bill during a future legislative session stating, "No, no, no. I live and learn with my errors."⁷⁵³ A *Charleston Gazette* editorial praised Wise for his veto stating, "We don't understand why the state Legislature passed this bill in the first place, but we're glad Wise vetoed it."⁷⁵⁴ The same editorial urged Wise to veto two additional bills being debated at the time. The editorial continued:

If lawmakers pass a similar bill to restore the license of a pharmacist busted for a drug offense, Wise should stand ready to veto that also.

This bill was introduced to help a Shinnston pharmacist regain the license he lost after pleading guilty to felony distribution of the painkiller Hydrocodone. He sold 1,811 Hydrocodone pills to one person without a prescription.

. . . .

Yet another bill apparently aimed at a single person - a state senator's grandson, no less - also deserves a veto should it pass. Sen. Shirley Love, D-Fayette, introduced a bill that would allow his grandson, who was educated in a private military school in

⁷⁵²*Id.*

⁷⁵³*Id.*

⁷⁵⁴Editorial, *Wise Veto, one down, two to go*, *Charleston Gazette*, Apr. 6, 2001, at A4.

Virginia, to receive a West Virginia high school diploma.⁷⁵⁵

As perceived by the public, the actions of Governor's employees also leave a negative impression on the Governor himself. For example, when Bradford Keller, an assistant to Governor Wise's Chief of Staff Mike Garrison, was arrested on a prostitution charge, headlines and television reports consistently identified him as a Wise Aide.⁷⁵⁶ Governor Wise called the charges "incredibly disappoint[ing]" while gubernatorial spokesman Bill Case said, "the governor expects all of his staff to conduct themselves in a way that reflects the trust placed in them by the people of West Virginia."⁷⁵⁷

Wise received a great deal of negative press for the \$50 million settlement paid by mining contractors concerning unpaid Workers' Compensation premiums. The agreement forgave approximately \$295 million in interest and penalties.⁷⁵⁸ Steve White, Affiliated Construction Trades Foundation Executive Director, said, "we are disappointed the state is settling for so little, for less than 15 cents on a

⁷⁵⁵*Id.*

⁷⁵⁶Charleston Daily Mail, *Wise Staffer faces prostitution charge*, Charleston Daily Mail, Jan. 12, 2002, at C6.

⁷⁵⁷*Id.*

⁷⁵⁸Paul J. Nyden, *Workers' Comp deal blasted*, Charleston Gazette, Jan. 11, 2002, at A1; Editorial, *\$50 million Coal contractor mess*, Charleston Gazette, Jan. 11, 2002, at A4.

dollar. And we are concerned that the settlements send the wrong message to businesses that faithfully paid their premiums.”⁷⁵⁹

The perception is that once again, *King Coal* wins. It is a cyclical pattern that has existed since the very beginning of West Virginia’s statehood. It seems that one administration after another is faced with the challenges of coal companies who donate large sums of money to candidates. In 1989, when Governor Caperton was elected:

he made a horrifying discovery: Coal companies were getting hundreds of millions of dollars in Super Tax Credits for ‘creating jobs’—but the firms reaping the giveaways actually were cutting payrolls. Some earned credits by investing in machines that eliminated jobs. In 1993, the Legislature reformed Super Tax Credit to halt this abuse.⁷⁶⁰

**E. Governor John D. “Jay” Rockefeller IV
(1977-1985)**

West Virginia Campaign spending reaches new heights

From 1976 to 1984, the West Virginia Governor’s mansion became the transplanted home to an heir to one of the world’s greatest fortunes as John D. Rockefeller, IV became the State’s twenty-ninth Governor. During Rockefeller’s first inaugural address, which lasted only seventeen minutes in sub-zero temperatures, he spoke of new jobs, new roads and new politics. Rockefeller advised his audience, “[t]he free rides are over” as he pledged an honest government and

⁷⁵⁹Paul J. Nyden, *Workers’ Comp deal blasted*, Charleston Gazette, Jan. 11, 2002, at A1.

⁷⁶⁰Editorial, *Giveaways, Are they worth it?*, Charleston Gazette, Nov. 16, 2001, at A4.

directed citizens to “[r]each out, reach out West Virginia, for your fair share of the American Dream.”⁷⁶¹

Unfortunately for Rockefeller, his transition to Governor was not a seamless one as his unsuccessful opponent Governor Moore fled the state’s highest office in disgraceful fashion. According to former *Charleston Daily Mail* reporter Richard Grimes, author of the novel *Jay Rockefeller, Old Money, Old Politics*, “[t]here sat Jay Rockefeller, probably the state’s most prestigious governor, with hardly any lights, no phones, no paper, no pencils, no files, no toilets, no coffee and a room-full of furniture he was too big to use.”⁷⁶² Grimes asserts:

[Governor] Moore took most of the furniture and left Rockefeller with odd pieces from surplus that didn’t match. The desk was far too small for Rockefeller. The pictures were stripped from the walls. Moore didn’t even leave a scratch pad for his predecessor. All the file drawers were empty. There weren’t any pencils. Even the lightbulbs in the outer offices were unscrewed. It was like someone had taken a ladder and loosened them.⁷⁶³

Grimes continues:

The governor’s office had a 10-line phone system. But even it was disconnected. Everytime Jay wanted to talk to his secretary, he had to get up and walk out of the room. Jay said that he had never felt so isolated in his life. There is an elaborate emergency

⁷⁶¹Richard Grimes, *Jay Rockefeller, Old Money, Old Politics* 12, 16 (McClain 1984); see West Virginia Archives and History (Visited Mar. 16, 2003 <<http://www.wvculture.org/history/jayrock.html>>.).

⁷⁶²Richard Grimes, *Jay Rockefeller, Old Money, Old Politics* 173 (McClain 1984).

⁷⁶³*Id.*

alert system that sounds off if an unauthorized person enters the corridor leading to the governor's office. Even that had been disconnected. When some of the Rockefeller staffers tried to plug in a coffee pot, they found that someone had stuffed the outlets, so that an electrician had to be called to clean them out. Female employees complained that the toilets had been stuffed with newspapers, so they overflowed when flushed.⁷⁶⁴

Summing this disgrace, Grimes declares: "Government in the 1960s had not been good to West Virginians. One governor had gone to prison [Governor Wally Barron] and several other state officials also had served time. Politics and scandal were synonymous."⁷⁶⁵ Rockefeller, in an effort to promote his honesty to citizens proclaimed that, "he was too rich to steal."⁷⁶⁶ Some argue that Rockefeller's arguments are accurate as such a candidate would be less likely to be controlled by special interests.

In an article published in major newspapers across the country including the *Los Angeles Times*, *Pittsburgh Post-Gazette*, and *Arizona Republic*, reporter Bruce Shulman argues:

great wealth inoculates candidates against charges of corruption. In West Virginia, a state with a long history of petty corruption that has sent more than its share of office holders to jail, Sen. John D. 'Jay' Rockefeller IV campaigned as a politician immune to the blandishments of lobbyists and special interests.

⁷⁶⁴*Id.*

⁷⁶⁵*Id.* at 17.

⁷⁶⁶*Id.* at 17, 69 (After the 1968 Valentine's Day indictments for bribery and conspiracy by a grand jury of former Governor Walley Barron and five other democratic officials Rockefeller went on record for the first time proclaiming that he was too rich to steal.) .

Everyone may have theirs, but who could afford a Rockefeller? In an age of White House coffees and shakedowns at Buddhist temples, Checchi's candidacy taps this same faith in the incorruptibility of the super-rich. With a cool \$550 million in the bank, he does not need to sell access.⁷⁶⁷

In 1972, during Rockefeller's unsuccessful first bid for Governor, he spent approximately \$1.5 million (a state record) while incumbent opponent Arch Moore spent about \$700,000.⁷⁶⁸ During the 1976 election, Rockefeller spent as much as \$2.8 million to capture the Governor's seat by defeating former Governor Cecil Underwood.⁷⁶⁹ Rockefeller's run for re-election in 1980, however, cost approximately \$12 million in a state with fewer than two million people, while opponent Moore spent nearly \$1.1 million.⁷⁷⁰ Rockefeller spent \$28.92 per vote in a statewide election, most of which was his own money.⁷⁷¹

Grimes describes:

⁷⁶⁷Bruce J. Shulman, *Politics; Anyone can be President, but it helps to be rich*, Los Angeles Times, Oct. 12, 1997, at M1; Bruce J. Shulman, *President Moneybags; the wealthy have long occupied command posts in American government*, Pittsburgh Post-Gazette, Oct. 26, 1997, at E4; Bruce J. Shulman, *Today's breed just pretenders to historically noble throne*, Arizona Republic, Oct. 19, 1997, at H5.

⁷⁶⁸Richard Grimes, *Jay Rockefeller, Old Money, Old Politics* 111 (McClain 1984) (Moore received 423,817 votes while Rockefeller received 350,462.).

⁷⁶⁹*Id.* at 120, 155.

⁷⁷⁰*Id.* at 40, 42, 241; Jim Ragsdale, *Jay spending to hit \$12 million?*, Charleston Gazette, Nov. 1, 1980, at A2..

⁷⁷¹Richard Grimes, *Jay Rockefeller, Old Money, Old Politics* 244 (McClain 1984).

He bought every conceivable kind of ad. His face was everywhere. Major West Virginia television stations were running his ads as often as 18 times a day. He cranked out so much mail that the Post Office started complaining it was having to work its people overtime. He published newspapers and magazines about himself. He set up telephone banks around the state. Just about everybody got a call, a letter and a personal invitation to one of Jay's picnics. It well may have been the only campaign where every household in the state was reached.⁷⁷²

Grimes proclaims that Rockefeller's "campaign spending reports, when stacked together, resembled the federal budget."⁷⁷³ When confronted with the large amounts of money Rockefeller spent for re-election, he frequently proclaimed that "West Virginians don't sell their votes. West Virginians can't be bought."⁷⁷⁴ In a surprising twist, after being re-elected, Rockefeller traveled around the country announcing that, "Democrats had to do something to offset the outrageous campaign spending by the Republicans."⁷⁷⁵

Grimes also asserts that while Rockefeller traveled the state lecturing on clean elections as Secretary of State, his staff had "set up a trailer in southern West Virginia and was handing out dollar bills to aid local politicians."⁷⁷⁶ Another high

⁷⁷²*Id.* at 243.

⁷⁷³*Id.* at 42.

⁷⁷⁴*Id.* at 53; Robert Morris, *Election buying charge is an 'insult to state,' Jay says*, *Charleston Gazette*, Nov. 1, 1980, at A1.

⁷⁷⁵Richard Grimes, *Jay Rockefeller, Old Money, Old Politics* 248 (McClain 1984).

⁷⁷⁶*Id.* at 70.

ranking Rockefeller aide was quoted as saying, "It became general knowledge among members of the Rockefeller staff that money was being passed out" and "[h]eck, our man [Rockefeller] told me he was passing out money."⁷⁷⁷

Another Rockefeller associate explained, "the buying and selling of an election was just another business for him. He simply didn't want to be bothered with the details."⁷⁷⁸ Others had claimed that Rockefeller had contributed to select groups and that he would not disclose some of those contributions because it would be too embarrassing for him to report that he had given to these organizations.⁷⁷⁹ It has also been insisted that promises to some precinct captains were fashioned that "if their areas produced enough voters on election days, they could keep the cars given them to haul voters to the polls."⁷⁸⁰

Another source expressed:

Jay pays out a lot of what is called up front money. It's not the money that directly goes into an election, or the money that is reported. But it has an effect on the outcome. It goes to organize the outlying areas. We used to sit around and calculate that Rockefeller probably reported about 70 cents on the dollar. He couldn't really report the other 30 percent. It was ground money. There was always a buffer.⁷⁸¹

⁷⁷⁷*Id.*

⁷⁷⁸*Id.*

⁷⁷⁹*Id.* at 180, 81.

⁷⁸⁰*Id.* at 243.

⁷⁸¹*Id.* at 71.

Shortly after being elected to serve as West Virginia Secretary of State, Rockefeller attempted to promote his clean elections campaign by holding a seminar in Mingo County on “how to steal an election and get away with it.”⁷⁸² During the seminar, citizens described events of the previous election, such as one housewife who said “only 54 of 294 voters in her precinct had voted on their own and the rest asked for assistance in the voting booths.”⁷⁸³ It is widely known that many times when a voter was asking for assistance, they were in fact selling their votes and getting confirmation from the poll clerk assisting them in order to get paid for voting a certain political slate.

Grimes writes:

Polling official Okey Spence told Jay that nobody in the county knew where the precinct boundaries were and that people who took cameras to the polling places had them taken away by Mingo County law enforcement officials. An elderly man advised Jay, as the state’s chief election officer, that a justice of the peace had been defeated and later bought the job back from the winner. And a former circuit clerk told him that 90 percent of the people had sought assistance in November absentee voting. He said 15 of the 397 voters went into secret voting quarters. The others voted openly, oftentimes with someone looking over their shoulders. After hearing their stories, Jay called it a “national disgrace,” and promised he would correct it.⁷⁸⁴

⁷⁸²*Id.* at 83.

⁷⁸³*Id.*

⁷⁸⁴*Id.*

Interestingly, many county officials denounced Rockefeller's assertions and "accused him of doing what they were doing: buying off elections."⁷⁸⁵ During a May 1970 speech to students at Matewan High School, Congressional candidate Hawey Wells declared: "Mr. Rockefeller is screaming clean elections in Mingo County and yet, by his own admission, is financially supporting a notorious group of ballot burners and a rigged machine in McDowell County."⁷⁸⁶ While Rockefeller's administration did not face the same scandalous accusations as previous administrations, his campaigns of 1972, 1976, 1980, and his United States Senate campaign in 1984 did introduce West Virginia to a new level of political spending.

**F. Governor William Casey Marland
(1953-1957)**

From Governor to Cab Driver

Thirty-four year old Governor William Casey Marland won the gubernatorial election in a very tight race despite Republican charges of statehouse corruption.⁷⁸⁷ Though Marland received praise for taking on the big industries by proposing a severance tax and foraging the country for industries inclined to relocate in West Virginia, his term as Governor was not without controversy and a continued sense of a violation of public trust.

⁷⁸⁵*Id.*

⁷⁸⁶Richard Grimes, *Jay Rockefeller, Old Money, Old Politics* 97 (McClain 1984).

⁷⁸⁷Paul F. Lutz, *From Governor To Cabby: The Political Career and Tragic Death of West Virginia's William Casey Marland 1950-1965* 2 (Marshall University Library Associates; Huntington, West Virginia 1966).

Paul Lutz writes in his book illustrating the life of Governor Marland:

On the other hand, Marland's actions on smaller matters were sometimes obviously unpopular and politically unwise. Some examples of his actions that irked the public were: his father was given the St. George wine account, worth an estimated \$17,000 to \$25,000 a year under the state's monopoly system for control of sales; his brother Robert, a retired Army officer, was made the assistant State Purchasing Director; he had the State Road Commission build a limestone road to his Dutch Ridge apple orchard in a sparsely settled section of Kanawha County some fourteen miles up Elk River from Charleston. These old-style 'political doings' combined with the Governor's abrupt manner and his penchant for alcohol gave rise to serious political and personal difficulties.⁷⁸⁸

During the 1952 election, Republican challenger Rush Holt charged that, "[t]he present State Administration [which Marland as the Governor's appointed Attorney General was certainly a part of] is one of corruption, waste, and misgovernment!"⁷⁸⁹ Holt unveiled a "fifteen-point" platform in which eleven of the fifteen positions underscored corruption and the need to clean "a dirty bundle of linen."⁷⁹⁰ Holt alleged "political favoritism in the Department of Public Assistance, the 'squandering of money; in the Road Commission, favoritism in the insurance and liquor sales racket, the 'rotten' State Purchasing Commission and the practice of forced 'kick-ins' to political campaigns by state employees."⁷⁹¹

⁷⁸⁸*Id.* at 3.

⁷⁸⁹*Id.* at 19.

⁷⁹⁰*Id.*

⁷⁹¹*Id.*

Marland responded to some of Holt's allegations by saying that Holt was "a person who stands in a rowboat in the middle of the river, rocking the boat and trying to make the people think there's a storm."⁷⁹² After leaving the Governor's Office, Marland was later discovered driving a cab in Chicago, Illinois. The ruination of Marland's career proved too much for him to endure. He ultimately fell prey to alcohol, a problem which plagued him to the end.⁷⁹³

**G. Governor Wally Barron
(1961-1965)**

The Valentine's Day Catastrophe

It became known as the Valentine's Day Catastrophe for former Governor W.W. "Wally" Barron and his friends.⁷⁹⁴ On Feb. 14, 1968, federal prosecutors indicted Barron and five of his colleagues on bribery and conspiracy charges involving kickbacks they had taken when Barron was Governor. While many West Virginians were excited by the perceived progress during this time period, "they were saddened and disappointed by corruption in the state government. Several high-ranking members of the Barron administration and the former governor,

⁷⁹²Staff Reports, *Former Governor Marland Dies In Barrington, Ill.*, Charleston Daily Mail, Nov. 26, 1965, at A1; Staff reports, *Few to attend Marland Rites at Pinch Ridge*, Charleston Daily Mail, Nov. 30, 1965, at A6 (the six pall bearers at his funeral were members of the Barrington Chapter of Alcoholics Anonymous.); William C. Marland, Associated Press, *Marland Tells own Story*, Charleston Gazette, Mar. 18, 1965, at A1.

⁷⁹³Staff reports, *Few to attend Marland Rites at Pinch Ridge*, Charleston Daily Mail, Nov. 30, 1965, at A6.

⁷⁹⁴*Snapshots of the Twentieth century*, Charleston Gazette, Feb. 13, 1999, at A12; see also, <<http://www.wvgazette.com/static/century/GZ0213.html>>. (visited Mar. 15, 2003.).

himself, were sentenced to prison terms for their part in some of the illegal practices.⁷⁹⁵

During the 1960 campaign for West Virginia Governor, two controversial stories surfaced with regard to then-Attorney General and Gubernatorial candidate William Wallace Barron. *The West Virginia Hillbilly* states:

Two damaging stories came out – one that he had used a gambler's private plane in the early days of his campaign and the other that he had offered State Treasurer Orel J. Skeen \$65,000 to stay out of the Governor's race.⁷⁹⁶

While there was evidence that the allegations cost Barron votes during the Primary, the Democrats pulled together, bringing Barron a landslide victory during the general election. During his Inaugural Address, Barron maintained:

It is essential that we display determination to band steadfastly behind the things that are right about West Virginia.

The situation requires that we re-dedicate ourselves to principles apparently all but forsaken in the every-day commotion of our troublesome times. We must devote ourselves to unselfish service and exert unremitting energy to the purpose of regaining misplaced ideals.⁷⁹⁷

Barron continues:

⁷⁹⁵Otis K. Rice, *West Virginia: The State and Its People* 307 (Parsons: McClain Printing Company, 1971).

⁷⁹⁶*Jack's W. Va. Jack Returned Hundred Fold*, *The West Virginia Hillbilly*, Jan. 16, 1961 at 11.

⁷⁹⁷*Governor William Wallace Barron's Inaugural Address*, *The West Virginia Hillbilly*, Jan. 16, 1961 at 7; see *West Virginia Archives and History* (Visited Mar. 16, 2003 <<http://www.wvculture.org/history/barron.html>>).

As your Governor, I seek not personal power or prestige. I ask only that I be permitted to play my proper part in the building of a better West Virginia.

It is my fervent prayer that I may wear the cloak of humility and have the guidance of the Almighty as I serve my people, my state and my country.

I assume my solemn duties with the pledge that I will give my all.

In the handclasp of mutual trust and toil, we shall advance to a brighter and more abundant future, not only for ourselves and our children, but for generations yet unborn.⁷⁹⁸

Despite Barron's message of veracity, his credibility was questioned even before he was elected Governor. Former State Treasurer Orel Skeen secretly recorded Barron offering illegal inducements; however, Barron won the election in spite of the allegations. The *Charleston Gazette* provides that Barron's administration:

was hit by wave after wave of scandal. Gubernatorial aide Curtis Trent and Liquor Commissioner Clarence Elmore were convicted of income tax evasion. Motor Vehicles Commissioner Jack Nuckols was convicted of falsifying state travel expenses. Highways equipment supervisor Woodrow Yokum was convicted of stealing thousands of government items. Charleston businessman Alex Dandy and others were convicted of falsifying records in a state flood cleanup contract, but the verdict later was reversed.⁷⁹⁹

⁷⁹⁸ Governor William Wallace Barron's Inaugural Address, *The West Virginia Hillbilly*, Jan. 16, 1961 at 7.

⁷⁹⁹ Staff reports, 'I remember how gracious he was...', *Charleston Gazette*, Nov. 15, 2002, at A1.

On July 2, 1962, Governor Barron announced that he had no plans to run for re-election even if the proposed Constitutional Amendment that would allow a Governor to serve more than the four-year term at the time was the law.⁸⁰⁰ Barron proclaimed that his reasons for not seeking re-election were two-fold. First, he wanted the Constitutional Amendment to be successful and did not want the people of West Virginia to believe that he was supporting the Amendment for "selfish reasons."⁸⁰¹ The second reason, Governor Barron proclaimed, was that he had two daughters to educate who were going to college and he wanted to get back to the private practice of law which would enable him to meet those financial responsibilities.⁸⁰²

Barron, however, would not be able to escape his political days as he and several of his administration officials were on trial in 1968 for charges of receiving kickbacks, bribery, and conspiracy charges while Barron was Governor.⁸⁰³ Governor Barron was acquitted of the charges, however, Barron's chief of staff

⁸⁰⁰Bob Mellace, *Barron's Aides Advised He Isn't Running Again: Governor Ready to Put Himself Out Of Politics*, Charleston Daily Mail, July 2, 1962 at A1.

⁸⁰¹*Id.*

⁸⁰²*Id.*

⁸⁰³UPI, *'Serenity' Back Home Barron Aim: Return to Elkins 'Would Be Ideal'*, Charleston Gazette-Mail, Oct. 8, 1978 at A1; James A. Haught, *Barron Years Real Estate Web: City House: Pathetic Monument*, Charleston Gazette, December 17, 1971 at A1.

Bonn Brown, a 1964 candidate for Governor,⁸⁰⁴ and three other individuals were convicted.⁸⁰⁵

While Barron was acquitted of those charges, he later served forty-six months of a twelve-year sentence for paying \$25,000 to the foreman of the jury that had acquitted him.⁸⁰⁶ On March 30, 1971, Barron pled guilty in federal court to conspiracy, bribery, and obstruction of justice.⁸⁰⁷ Barron was sentenced to twenty years in prison, however, his sentenced was later reconsidered and he was paroled in 1975 from the federal prison at Eglin, Florida.⁸⁰⁸ Barron later told the *Elkins-Inter-Mountain*: "You don't know what it's like in prison. . . . I'd sit there and say, 'what have I done' What have I done to my state, to my family, to myself?"⁸⁰⁹

⁸⁰⁴Associated Press, *Moore not first ex-governor to face prison*, Fairmont Times-West Virginian, July 11, 1990 at A12.

⁸⁰⁵Michael L. White, *Barron Pleads Guilty; Perry, Brown Also Cited in Charges*, Charleston Gazette, Mar. 30, 1971 at A1.

⁸⁰⁶UPI, *'Serenity' Back Home Barron Aim: Return to Elkins 'Would Be Ideal'*, Charleston Gazette-Mail, Oct. 8, 1978 at A1.

⁸⁰⁷Michael L. White, *Barron Pleads Guilty; Perry, Brown Also Cited in Charges*, Charleston Gazette, Mar. 30, 1971 at A1.

⁸⁰⁸UPI, *'Serenity' Back Home Barron Aim: Return to Elkins 'Would Be Ideal'*, Charleston Gazette-Mail, Oct. 8, 1978 at A1; see also, Michael L. White, *Barron Pleads Guilty; Perry, Brown Also Cited in Charges*, Charleston Gazette, Mar. 30, 1971 at A1.

⁸⁰⁹UPI, *'Serenity' Back Home Barron Aim: Return to Elkins 'Would Be Ideal'*, Charleston Gazette-Mail, Oct. 8, 1978 at A1. Barron continued to garner headlines throughout the years and in 1986, Barron was once again on the front page as his daughter and son-in-law were facing murder charges that were later dropped; *Murder Charges Dropped Against Daughter, Son-in-law of Ex-Gov. Wally Barron*, Elkins Inter-Mountain, Mar. 29, 1986, at A1; *Ex-Gov. Barron's Daughter Charged* (continued...)

A few years later, it was learned that the jury acquitted Barron because of one holdout, the jury foreman. The foreman's wife had received \$25,000 from Opal Barron with the instructions "not to spend large amounts of money." Joe Perry, Barron's attorney in his original trial, was forced to stand trial himself as he was accused of being the chief architect in the juror bribery scheme. Perry was acquitted; however, Barron, the jury foreman, and many other friends and colleagues of the Governor in state government, were convicted for various crimes and spent many years in prison. Barron was sentenced to a five-year prison term for tampering with a jury.⁸¹⁰

The *Charleston Gazette* reported that:

a Kanawha County grand jury returned 107 purchasing indictments against Barron and other former state officials—but most of the cases died after the state Supreme Court negated part of a law. In subsequent years, several of Barron's former business partners and political associates were convicted of offenses involving him.⁸¹¹

Barron and Bonn Brown also lost the right to practice law in West Virginia. In calling their actions an attack on one "of the most vital areas of our legal structure" the West Virginia Supreme Court provided:

⁸⁰⁹(...continued)

Murder of Dunbar Woman, Elkins Inter-Mountain, Mar. 18, 1986 at A1; *Ex-Gov. Barron's Daughter, Husband Jailed Without Bond in Woman's Murder*, Elkins Inter-Mountain, Mar. 19, 1986 at A1.

⁸¹⁰See *State v. Dandy*, 153 S.E.2d 507, (W. Va. 1967); *State ex re. Brown v. Thompson*, 142 S.E.2d 711 (W. Va. 1965).

⁸¹¹Staff reports, '*I remember how gracious he was...*' *Charleston Gazette*, Nov. 15, 2002, at A1.

It is clear beyond question that each of the crimes of conspiracy to commit bribery and bribing a juror is a crime which involves moral turpitude. It is difficult to consider an offense which is more destructive or corruptive of the legal system of West Virginia than bribery of a juror, especially when such crime is committed by an attorney who is an officer of the Court. Bribery of a juror is a perversion of justice and strikes at the foundation of the judicial system of this State; manifestly the crimes of which Barron has been convicted upon his plea of guilty and for which he has been sentenced to imprisonment involve moral turpitude.⁸¹²

Barron's later attempt to be reinstated to practice law in West Virginia was denied.⁸¹³ The Court provided:

Because of the extremely serious nature of applicant's original offense of bribing a juror when coupled with the separate conviction of conspiring to bribe public officials, we cannot help but conclude that his reinstatement would have a justifiable and substantial adverse effect on the public confidence in the administration of justice. The nature of these crimes directed as they are to the core of the legal system and the integrity of governmental institutions demonstrates a profound lack of moral character on the part of the applicant.⁸¹⁴

Barron's Administration's actions were even discussed in the United States Congress. John R. Buckley, who had been granted immunity for his testimony against his former boss President Nixon, was a Republican political spy who had worked with the infamous E. Howard Hunt Jr., who was convicted for his role in the

⁸¹²In re Barron, 181 S.E.2d 273, 275 (W. Va. 1971).

⁸¹³In re Brown, 273 S.E.2d 567, 574, (W. Va. 1980).

⁸¹⁴*Id.* at 574.

Watergate break-in.⁸¹⁵ Buckley, who worked on Nixon's 1972 re-election campaign, testified before the United States Senate Watergate Committee members in 1973 that his start in "political espionage" began while he was an investigator for Governor Underwood for several months during his unsuccessful 1964 bid for Governor.⁸¹⁶ Buckley testified about the convictions of Governor Barron and many of his top aides for misuse of federal funds.⁸¹⁷ Buckley charges that "[w]e found out that a \$1.5 million federal flood relief money was completely dissipated. We found out that there were kickbacks involved in dummy corporations purportedly designed to do this cleanup after the flood."⁸¹⁸

A February 1968 *Charleston Gazette* article provided: "To date, 17 officials, confidants or business associates of the Barron administration have faced court action—although charges against five of them later were dropped."⁸¹⁹ *Charleston Daily Mail* columnist L.T. Anderson explained that Barron's former attorney, Joe Perry, asserted that Barron stole more than \$7 million during the course of his public

⁸¹⁵Paul J. Nyden, *Ex-Underwood researcher later served as political spy for Nixon*, *Charleston Gazette-Mail*, Sept. 29, 1996 at C4.

⁸¹⁶*Id.*

⁸¹⁷*Id.*

⁸¹⁸*Id.*

⁸¹⁹*Barron, 16 others have faced courts*, *Charleston Gazette*, Feb. 15, 1968, at A1; see also, Staff reports, *Barron figure Sawyers dies*, *Charleston Gazette*, Aug. 15, 2002, at C2 ("Sawyers was one of four members of the administration of former Gov. William Wallace Barron to be convicted in a 1968 federal trial for bribery in fixing state contracts. The convictions gave the State Road Commission such a bad reputation that it was later changed to the Division of Highways.").

service in West Virginia. Anderson, referring to the situation as “a continuing raid on the public treasury” proclaimed:

It is a shameful fact that the federal government had to bring bribery-conspiracy cases against persons in West Virginia Government while West Virginia law and West Virginia government looked the other way and giggled nervously. It would dissipate a great deal of cynicism if the state would join in a federal effort to determine how much, if anything, was stolen, where it is and how it can be recovered.⁸²⁰

The Barron era has been referred to as an “appalling shame and dishonor of that era.”⁸²¹ Nonetheless, when Barron died in 2002, the front page headline depicted, “*I remember how gracious he was . . .*’ *Despite the scandals, former Gov. Barron described as a ‘good, warm fella.’*⁸²²

⁸²⁰L.T. Anderson, *Two Baffling loose Ends Remain*, Charleston Gazette, Apr. 7, 1971, at A4.

⁸²¹Editorial, *The Scale Is Unbalanced*, Sunday Gazette-Mail, Jan. 23, 1972, at A4; Editorial, *Potpourri*, Charleston Gazette, Apr. 15, 2001, at A4 (“Senior West Virginians may remember Alex Dandy, a 1960s Charleston appliance dealer who was entangled with the scandal-wracked Barron administration. Dandy was cleared in a Barron corruption trial, then he moved away—and entered bigger scandals. He pleaded guilty in a Cleveland bank fraud in 1979, and in 1992 he drew a 23-year prison term for bleeding a Michigan grocery chain. Dandy apparently still has Charleston holdings, because federal agents recently filed four liens totaling \$9.5 million against his Kanawha County properties. The new filing updates previous liens seeking \$14 million, which indicates that much of his past debt has been paid.”).

⁸²²Staff reports, *I remember how gracious he was...*, Charleston Gazette, Nov. 15, 2002, at A1.

VII. OTHER STATEWIDE EXECUTIVE OFFICIALS⁸²³

Ninety percent of the politicians give the other ten percent a bad reputation.

–Henry Kissinger

A. Attorneys General–Watching the Law

1. **Attorney General Charlie Brown (1985-1989)**

Attorney General Charlie Brown left office in disgrace when he resigned August 21, 1989.⁸²⁴ Kanawha County Prosecutor Bill Forbes ended the grand jury investigation of Brown after the attorney general agreed to resign.⁸²⁵ Brown defeated State Senator Si Boettner in a close and costly 1984 election. Boettner, incidentally, was later convicted of tax evasion and lost his law license.⁸²⁶

⁸²³In West Virginia, the Governor, Attorney General, Secretary of State, Treasurer, Auditor, and Commissioner of Agriculture are all statewide separately elected officials.

⁸²⁴Jonathan Gill, Associated Press, *W. Va. Attorney General Resigns to Halt Criminal Investigation*, Charleston Daily Mail, Aug. 21, 1989, at A1.

⁸²⁵*Id.*

⁸²⁶Ron Hutchison, *Boettner cops plea with feds*, Charleston Daily Mail, Aug. 30, 1989, at A1.

Controversy surrounded years prior to his actual resignation. Charlie Brown, a Yale graduate, had in 1986 survived a political storm when he was acquitted on the charge that he was leaning on staffers for campaign contributions to pay off his campaign debts.⁸²⁷ Brown contended that he had solicited the contributions after the 1984 election to pay off his campaign debts and as such, the state law prohibiting state officials from soliciting campaign funds from employees did not apply.⁸²⁸ Brown was first elected Attorney General in 1984 and was re-elected without opposition in 1988.⁸²⁹

Jay Arceneaux testified that he and other Deputy Attorneys General were solicited by Brown to buy \$100 tickets to a fund-raiser to help satisfy a \$40,000 debt incurred in his 1984 campaign.⁸³⁰ Arceneaux said Brown shared with him that in order to run for office in West Virginia "you practically had to be a Sen. (Jay) Rockefeller, otherwise you'll be in debt."⁸³¹ Another Deputy Attorney General, David Grubb, said that he bought a ticket to Brown's fund-raiser because he thought he

⁸²⁷Barry Bearak, *CORRUPTION IN WEST VIRGINIA: Scandals as Thick as Coal Dust*, Los Angeles Times, July 8, 1990 at A1.

⁸²⁸Jonathan Gill, Associated Press, *W. Va. Attorney General Resigns to halt Criminal Investigation*, Charleston Daily Mail, Aug. 21, 1989 at A1.

⁸²⁹*Id.*

⁸³⁰UPI, *Charlie Brown Argues With Judge*, Inter-Mountain (Elkins, West Virginia), Nov. 14, 1986, at A1.

⁸³¹*Id.*

would lose his job if he did not buy a ticket.⁸³² Brown was being tried on seven counts of violating a law that forbids soliciting money for political purposes from state employees on state property. Brown decried, “[a]s God is my witness, I do not believe I have violated any laws of the State of West Virginia.”⁸³³

Brown, however, was forced to leave office in 1989 as part of an agreement to halt a grand jury investigation that involved a plan by Brown to pay \$50,000 to a secretary who claimed to need an abortion. In addition to that salacious charge, there was an investigation of the Attorney General’s campaign financial records.⁸³⁴ The secretary, Brenda K. Simon, was later indicted on charges that she attempted to extort money from Brown in exchange for her silence about his alleged role in her pregnancy.⁸³⁵ Some of the notes revealing the details of Brown’s situation were exposed during a child custody battle between Brown and his ex-wife.⁸³⁶ Brown had

⁸³²*Id.*

⁸³³UPI, *‘I do not Believe I have violated law,’ Brown Testifies*, Inter-Mountain, Nov. 18, 1986, at A1; UPI, *Brown Indicted*, Inter-Mountain, Feb. 10, 1986, at A1.

⁸³⁴Barry Bearak, *CORRUPTION IN WEST VIRGINIA: Scandals as Thick as Coal Dust*, Los Angeles Times, July 8, 1990 at A1; Jonathan Gill, Associated Press, *W. Va. Attorney General Resigns to halt Criminal Investigation*, Charleston Daily Mail, Aug. 21, 1989 at A1 (The secretary in question, Brenda K. Simon, denied the allegations as reported by the Charleston Gazette and filed a \$3 million libel suit against the newspaper.).

⁸³⁵From News Services, *West Virginia Attorney General Resigns*, The Washington Post, Aug. 23, 1989 at A5.

⁸³⁶Barry Bearak, *CORRUPTION IN WEST VIRGINIA: Scandals as Thick as Coal Dust*, Los Angeles Times, July 8, 1990 at A1; Stephen Hudak, *Brown views campaign as a crossroads in his career*, The Plain Dealer (Cleveland OH), Sept. 27, 1992 at A1 (Brown’s brother, former Secretary of State of Ohio, Sherrod Brown also
(continued...))

written about himself that “[i]t’s clogging my head so bad I can’t move . . .” and that he was “a sweet guy, morally committed, til [he] was in politics.”⁸³⁷

In 1998, Former Deputy Attorney General Mark Kindt, who served under the Brown Administration, submitted an opinion editorial in the *Charleston Gazette* praising his former boss. Kindt said, “I asked myself whether I would ever have the chance again to work with an inspired, committed public servant like Charles G. Brown. No, I think not.”⁸³⁸ Without discussing or even alluding to any of former Attorney General Brown’s numerous indiscretions Kindt opined:

Attempting to rescue a faded political legacy is probably a fool’s errand, but since the decade has faded even faster, maybe the future deserves an attempt to return some luster to a tarnished time. Attorney General Charles G. Brown was a greater public servant than we knew or, perhaps, cared to admit. It will be a long time before West Virginia ever sees another attorney general with the drive, leadership and inspiration of Charlie Brown.⁸³⁹

⁸³⁶(...continued)

faced controversy in his public life. Sherrod Brown had a messy public divorce with issues such as alleged abuse of his wife and taking money from his children to finance his campaign. Sherrod Brown also faced controversy for his travel and potential travel plans out of the United States.)

⁸³⁷Barry Bearak, *CORRUPTION IN WEST VIRGINIA: Scandals as Thick as Coal Dust*, Los Angeles Times, July 8, 1990 at A1.

⁸³⁸Mark Kindt, opinion editorial, *View from the inside—Looking Back, Charlie Brown a committed public servant*, Oct. 15, 1998, at A5.

⁸³⁹*Id.*

2. Attorney General C. Donald Robertson (1961-1969)

In 1972, former West Virginia Attorney General, C. Donald Robertson, pleaded guilty to two of five federal charges involving bribes paid by a contractor who was bidding on public housing construction projects.⁸⁴⁰ Specifically, Robertson was found guilty of bribery as a public official and for violating interstate transportation in aid of racketeering enterprises.⁸⁴¹ Attorney General Robertson served fourteen months of two concurrent five-year terms in federal prison, was fined \$15,000, and lost his law license.⁸⁴² The Attorney General's brother, Dana Robertson also entered a plea of guilty for the same criminal endeavor.⁸⁴³ He was fined \$1,000 and sentenced to two years in prison.⁸⁴⁴

On October 20, 1972, Attorney General Robertson and his brother Dana filed petitions in the West Virginia Supreme Court asking the Court to permit them to resign voluntarily from the West Virginia State Bar.⁸⁴⁵ The Court denied their petitions to voluntarily resign and annulled both licenses, stating that the Court has

⁸⁴⁰Associated Press, *Ex-attorney General Robertson Dies at 69*, Charleston Daily Mail, Apr. 29, 1996, at B6; *In re Robertson*, 194 S.E.2d 650, 156 W. Va. 463 (W. Va. 1973).

⁸⁴¹*In re Robertson*, 194 S.E.2d 650 (W. Va. 1973).

⁸⁴²Associated Press, *Ex-attorney General Robertson Dies at 69*, Charleston Daily Mail, Apr. 29, 1996, at B6.

⁸⁴³*In re Robertson*, 194 S.E.2d 650 (W. Va. 1973).

⁸⁴⁴*Id.*

⁸⁴⁵*Id.*

a mandatory duty "imposed upon it to annul the license of an attorney who has been convicted to any crime involving moral turpitude."⁸⁴⁶

In 1978, with his conviction far behind him, Attorney General Robertson later sold his Clarion Coal Co. for more than \$1 million.⁸⁴⁷ Attorney General Robertson, who lost the Democratic gubernatorial nomination to James Sprouse by a mere 5000 votes in 1968, was also a former member of the West Virginia House of Delegates and an Assistant Prosecuting Attorney in Harrison County.⁸⁴⁸

**3. Attorney General Darrell V. McGraw, Jr.
(1993 to present)**

Attorney General Darrell V. McGraw, Jr. received negative news coverage for distributing magnets that displayed his name as Darrell "Judge" McGraw and for running public service announcements that would air prior to the 1998 General Election for the West Virginia Supreme Court in which his brother Warren McGraw was a candidate.⁸⁴⁹ The Attorney General's Office responded that: "The public

⁸⁴⁶*Id.* at 651.

⁸⁴⁷Associated Press, *Ex-attorney General Robertson Dies at 69*, Charleston Daily Mail, Apr. 29, 1996, at B6.

⁸⁴⁸*Id.*

⁸⁴⁹Associated Press, *McGraw's television spot raises questions*, Oct. 19, 1998 at A3; Rebecca Catalanello, *McGraw ad stirs debate – Announcement seems like political ad to some stations*, Charleston Daily Mail, Oct. 17, 1998 at A1; Editorial, *Tactics*, Charleston Daily Mail, Oct. 19, 1998 at A4; See Stacey Ruckle, *Many officials hand out trinkets, Tax money often pays for personalized items*, Charleston Daily Mail, Apr. 16, 1998; Associated Press, *McGraw magnets attract detractors: High court candidates say attorney general trying to help brother's campaign*, Charleston Gazette, Apr. 14, 1998, at A1; Editorial, *Trinkets: For the money they pay in taxes, people deserve more than key chains*, Charleston Daily
(continued...)

service announcement has nothing to do with politics and everything to do with consumer protection.”⁸⁵⁰ The public service announcement was designed to reach as many as 3,500 consumers statewide who purchased a digital satellite dish with as much as \$3 million in refunds that, according to the settlement, had to be returned by a fixed date.⁸⁵¹ Nonetheless, Warren McGraw’s election opponents cried foul.

Willis Perry, treasurer for the campaign committee of Democratic candidate Joe Albright said, “This appears to be a very good example of just the kind of inappropriate coincidence and collaboration the public ought to fear if one McGraw is Attorney General and another McGraw is a Justice of the Supreme Court.”⁸⁵² John Yoder, another candidate for the Court said, “Name recognition is one of the most important tools because you can’t distinguish yourself on the issues, so getting your name out by any means is one of the most important things in the election.” Yoder added that when Attorney General McGraw placed his name on office

⁸⁴⁹(...continued)

Mail, Apr. 18, 1998, at A4; Stacey Ruckle, *McGraw giving out 160,000 magnets*, Charleston Daily Mail, Apr. 9, 1998, at A1; Ken Thomas, *Magnets attract criticism: Court candidates say McGraw using mailings, TV ads to help brother*, Charleston Daily Mail, Apr. 13, 1998, at A1.

⁸⁵⁰Rebecca Catalanello, *McGraw ad stirs debate – Announcement seems like political ad to some stations*, Charleston Daily Mail, Oct. 17, 1998 at A1 (The Author of this dissertation was the source of this quote as a Senior Assistant Attorney General in the West Virginia Attorney General’s Office.).

⁸⁵¹*Id.*

⁸⁵²Associated Press, *McGraw magnets attract detractors: High court candidates say attorney general trying to help brother’s campaign*, Charleston Gazette, Apr. 14, 1998, at A1.

handouts as “Judge” it created a confusion that benefitted only his brother.⁸⁵³ “Voters don’t know the difference between ‘Judge’ McGraw and ‘Justice’ McGraw,” Yoder said.⁸⁵⁴

In 1995, in another situation, impeachment was discussed in news stories with regard to an ethics charge filed against Attorney General McGraw, alleging that he violated his duty to represent the Division of Environmental Protection in a law suit.⁸⁵⁵ McGraw called the charges political and theorized that this “was an attempt by Gov. Gaston Caperton’s administration to muzzle him.”⁸⁵⁶ McGraw was admonished by the State Bar.

More recently, Attorney General McGraw was accused of stacking the deck in a lawsuit he filed, seeking control over state and private attorneys hired by more than forty state agencies.⁸⁵⁷ Critics charge that Attorney General McGraw “is seeking this legal control over state government through the judicial branch of

⁸⁵³*Id.*

⁸⁵⁴*Id.*

⁸⁵⁵Brent Cunningham, *Impeachment possible, but unlikely for McGraw*, Charleston Daily Mail, Jan. 26, 1994 at A1.

⁸⁵⁶*Id.*; see *Lawyer Disciplinary Board v. McGraw*, 461 S.E.2d 850, 194 W. Va. 461 (1995).

⁸⁵⁷Steve Roberts, *Another McGraw sits on court to hear case: Attorney general’s power play could be a family affair*, Charleston Gazette, Nov. 16, 2001, at A5; Sam Trantum, *McGraw says he’s just protecting office*, Charleston Daily Mail, Sept. 28, 2001, at A1; Chris Stirewalt, *Case before justice affects his brother*, Charleston Daily Mail, Sept. 28, 2001, at A1; Chris Stirewalt, *Professor’s ideas may be tested: Essay helped lay groundwork for suit by attorney general*, Charleston Daily Mail, Oct. 12, 2001, at A1.

government, currently headed by his brother, the Chief Justice.”⁸⁵⁸ The *Charleston Gazette* writes: “McGraw’s power grab is something that only someone with chutzpah and a brother on the high court would attempt. Unfortunately, McGraw has both.”⁸⁵⁹ Some legislators refer to McGraw’s actions as “part of a continuing pattern of outrageous behavior.”⁸⁶⁰ State Senator and Minority Leader Vic Sprouse, R-Kanawha said: “Here we have both McGraw brothers acting in concert to try to overcome the will of the Legislature to serve the attorney general’s personal interests. This is just more outrageous conduct from the attorney general, but I’m stunned that he and his brother would do something so blatant.”⁸⁶¹

The *Gazette* also noted:

State Supreme Court Justice Warren McGraw still won’t remove himself from a crucial case filed by his brother, Attorney General Darrel McGraw, who wants all state lawyers placed under control of his office. Meanwhile, the attorney general has chosen an in-law of his justice brother as a special state lawyer to pursue an important lawsuit: the attempt to recover state damages from the Steptoe & Johnson law firm for the

⁸⁵⁸Steve Roberts, *Another McGraw sits on court to hear case: Attorney general’s power play could be a family affair*, *Charleston Gazette*, Nov. 16, 2001, at A5.

⁸⁵⁹Editorial, *McGraw: His quest to expand his powers as attorney general is dangerous*, *Charleston Daily Mail*, Oct. 1, 2001, at A4.

⁸⁶⁰Chris Stirewalt, *Lawmakers critical of decision*, *Charleston Daily Mail*, Nov. 9, 2001, at A1.

⁸⁶¹*Id.*

Fred Zain scandal. What a tangle. To follow state events, you need a family tree.⁸⁶²

In 1984, while Darrell McGraw was a West Virginia Supreme Court Justice, he authored an Opinion restricting the powers of the West Virginia Attorney General. He quoted an Iowa Justice who wrote: "To accord the attorney general the power he claims would leave all branches and agencies of government deprived of access to the court except by his grace and with his consent."⁸⁶³ Ironically, in 2001, as Attorney General, McGraw sued for control over 281 attorneys on the state's payroll that were not controlled by his office.⁸⁶⁴ Most agree that the final outcome of the lawsuit could shift power from the Governor to the Attorney General. McGraw argues that several private law firms are at the public trough, and he is aware that it is costing the State \$12 million to \$15 million a year at a minimum.⁸⁶⁵ McGraw argues that "the state is wasting resources and creating possible conflicts by not having a central clearinghouse for legal issues and says the state Constitution empowers only him and his deputies to represent the state."⁸⁶⁶ McGraw also argues that Governors do not want to relinquish the control of outside law firms as they can

⁸⁶²Editorial, *Potpourri*, Charleston Gazette, Dec. 10, 2001, at A4.

⁸⁶³Editorial, *McGraw: His quest to expand his powers as attorney general is dangerous*, Charleston Daily Mail, Oct. 1, 2001, at A4.

⁸⁶⁴*Id.*

⁸⁶⁵Fanny Seiler, *BIC to oppose McGraw's legal suit*, Charleston Gazette, Nov. 30, 2001, at A1.

⁸⁶⁶Chris Stirewalt, *McGraw suit may alter government*, Charleston Daily Mail, Feb. 5, 2002, at A1.

use their discretion to reward those who contributed to their campaign and who contribute to their future campaigns.

Steve Roberts, current President of the West Virginia Chamber of Commerce, said: "Warren McGraw's continuing involvement in brother Darrell's case could make West Virginia a laughingstock of the nation."⁸⁶⁷ John Rogers, a West Virginia lawyer and former Governor of the State Bar, said that Roberts' comments are representative of "[t]he people who are opposed to the petition [and] are basically those who for personal or ideological reasons do not like McGraw."⁸⁶⁸

Critics also contend that private attorneys retained by McGraw to assist the State with the tobacco litigation received \$33.5 million "for doing an undisclosed amount of work."⁸⁶⁹ Steve Roberts calls the hiring of outside tobacco counsel as "a deal that seems to have been kept a secret for two years."⁸⁷⁰ It further was charged that these same law firms contributed to McGraw's campaign for Attorney General. McGraw explained that the lawyers had the expertise to handle such technical, high-powered cases.⁸⁷¹

⁸⁶⁷Fanny Seiler, *BIC to oppose McGraw's legal suit*, Charleston Gazette, Nov. 30, 2001, at A1.

⁸⁶⁸H. John Rogers, *McGraw's petition aimed at restoring the status quo*, Charleston Gazette, Jan. 28, 2002, at A5.

⁸⁶⁹Steve Roberts, *Another McGraw sits on court to hear case: Attorney general's power play could be a family affair*, Charleston Gazette, Nov. 16, 2001, at A5.

⁸⁷⁰*Id.*

⁸⁷¹Jack McCarthy, *McGraw Defends Use Of "Outside Lawyers"*, Charleston (continued...)

House of Delegates Finance Chairman, Harold Michael, said of the attorney fees: "I think what happened was that the money got diverted from the state's share before the state ever got its share. I don't think that's legal at all. It is being looked at. Obviously, the chief legal officer for the state needs to obey the law."⁸⁷² McGraw maintains, however, that the state will receive more than \$1.73 billion from the settlement and none of the lawyer fees come from that amount.⁸⁷³

Attorney General McGraw received an abundance of headlines for several years as a result of a sweepstakes operation by Suarez Corporation Industries. Suarez's business was just 1 of 106 out-of-state sweepstakes operations sued by his Consumer Protection Division in 1994.⁸⁷⁴ The West Virginia Supreme Court said that the company's sweepstakes were "nothing more than ingeniously crafted deceptive methods to sell its merchandise by deluding consumers with expectations of greater rewards if they purchase the product that is the subject of the solicitation."⁸⁷⁵

⁸⁷¹(...continued)

Gazette, Aug. 27, 1994, at A1; Editorial, *\$33.5 million: What kind of legal work justifies that kind of money*, Charleston Daily Mail, Oct. 19, 2001, at A4.

⁸⁷²Sam Trantum, *Lawmaker questions legal fees*, Charleston Daily Mail, Oct. 18, 2001, at A1.

⁸⁷³*Id.*

⁸⁷⁴Fanny Seiler, *McGraw Critical of Sweepstakes Operator's Tactics*, Charleston Gazette, Sept. 5, 1996, at A7.

⁸⁷⁵*Id.*; McGraw v. Imperial Marketing, 506 S.E.2d 799 (W. Va. 1998); McGraw v. Imperial Marketing, 472 S.E.2d 792 (W. Va. 1996).

Suarez's company was later reprimanded by a United States District Court in Ohio following a complaint filed by the Postal Service, alleging that the Suarez mailings violate civil mail fraud statutes.⁸⁷⁶ Suarez blamed the Postal Service action on Attorney General McGraw and United States Senator Jay Rockefeller.⁸⁷⁷ Suarez spokesman Ron Sovik stated: "[w]e see the U.S. Postal Service action as retaliation as part of Suarez Corporation's exposure of the corruption process in West Virginia."⁸⁷⁸ Suarez filed many other actions against McGraw in West Virginia Federal Courts and in the Ohio State Courts.⁸⁷⁹ At one count, there were eleven separate legal suits filed in State and Federal courts between the two adversaries. McGraw said that Suarez used as a tactic, constant law suits in an attempt to drain the resources of the Attorney General's Office in hopes he would no longer pursue Suarez legally.

Suarez also spent \$300,000 of his own money in an unsuccessful attempt to defeat Attorney General McGraw in the 1996 election.⁸⁸⁰ Suarez calls West Virginia "one of the most corrupt states in the nation" and that the rulings against him were the result of decisions made by "McGraw's kangaroo courts" where the

⁸⁷⁶ *Suarez Protests order to seize mail*, Charleston Daily Mail, Dec. 12, 1994, at A9.

⁸⁷⁷ *Id.*

⁸⁷⁸ *Id.*

⁸⁷⁹ *Suarez Corporation Industries v. McGraw*, 71 F.Supp.2d 769 (N.D. Ohio 1999).

⁸⁸⁰ Paul J. Nyden, *Palmetto Poker: Machines pumping cash into South Carolina governor's race*, Sunday Charleston Gazette-Mail, Oct. 18, 1998, at A1.

judges were friends of McGraw.⁸⁸¹ Conversely, McGraw called the Suarez tactics “a recent example of how the gamblers try to corrupt the governmental process in West Virginia.”⁸⁸²

B. Treasurers, Secretaries of State, and Auditors—Watching the Money

1. Treasurer and Secretary of State A. James Manchin (1985-1989, 1981-1985, respectively)

A. James Manchin, sometimes referred to as “the most potent political force in West Virginia in the 20th century,”⁸⁸³ was so popular during the 1980s that then-Governor Jay Rockefeller offered him a \$60,000 per year job in 1984 just to work under Rockefeller’s name, thus, helping to improve his own reputation among West Virginians.⁸⁸⁴ Manchin’s reputation was tarnished, however, when bad investments were made under his watch as State Treasurer that resulted in the loss of nearly \$300 million from the Consolidated Fund managed by the Treasurer.⁸⁸⁵

⁸⁸¹David Adams, *Direct-Mail Company Gives West Virginia Officials A Tough Time*, Akron Beacon Journal (Ohio), Apr. 20, 1996, at A1.

⁸⁸²Fanny Seiler, *McGraw Critical of Sweepstakes Operator’s Tactics*, Charleston Gazette, Sept. 5, 1996, at A7; Editorial, *Conspiracies? More Tangled Accusations*, Charleston Gazette, Sept. 12, 1996, at A4.

⁸⁸³A.V. Gallagher, Associated Press, *Harman respected during impeachment drive*, Sunday Gazette-Mail, Feb. 26, 1989, at A2.

⁸⁸⁴Richard Grimes, *Manchin book portrays office in severe turmoil*, Charleston Daily Mail, June 20, 1990, at A1.

⁸⁸⁵Daniel Bice, *Accounting style altered, witness says*, Charleston Daily Mail, Mar. 8, 1989, at A1.

On March 29, 1989, the West Virginia House of Delegates adopted House Resolution nineteen containing seventeen Articles of Impeachment against Manchin.⁸⁸⁶ It was charged that Manchin knew of the losses for a year and covered them up.⁸⁸⁷ Legislative Auditors also concluded that the massive losses were not uncovered sooner “because records in the treasurer’s office were falsified and some employees in the office failed to supply them accurate records.”⁸⁸⁸ According to Jim Lees, the special prosecutor against Manchin: “My conclusion is that Mr. Manchin would have had to be blind, deaf and dumb not to have been aware in April of 1987 of precisely what was transpiring with the consolidated fund.”⁸⁸⁹

Arnold Margolin, Assistant State Treasurer, went to prison in 1990 for lying about the losses and covering them up.⁸⁹⁰ Margolin initially pleaded innocent to a twenty-six count indictment of charges of perjury and federal securities law violations, but later changed his plea to guilty to two felonies and was sentenced to

⁸⁸⁶James B. Lees, *Special prosecutor summarizes Manchin case*, Charleston Gazette, July 15, 1989, at A2.

⁸⁸⁷Patty Vandergrift, *Manchin tried to hush losses, panel told*, Charleston Gazette, Mar. 16, 1989, at A1.

⁸⁸⁸Fanny Seiler, *Treasurer records falsified*, Charleston Gazette, Feb. 9, 1989, at A1.

⁸⁸⁹A.V. Gallagher, Associated Press, *Report accuses Manchin of cover-up*, Charleston Daily Mail, July 11, 1989, at A1.

⁸⁹⁰Jack McCarthy, *Political Family Scion Making A Go For The Big Time*, Charleston Gazette, Dec. 27, 1995, at A1.

one year in prison and a \$10,000 fine.⁸⁹¹ The state operating funds were being placed in high-risk securities and by early 1987, trades of \$7 billion a month were being made by the Treasurer's Office which amounted to more than triple the amount actually in the fund.⁸⁹² At Manchin's impeachment hearing, it was discovered that the state's losses totaled \$279 million.⁸⁹³

Manchin, who said his staff had not apprized him of the State's losses, apologized saying that "[s]ometimes I don't always have the knowledge" and indicated that he was unfamiliar with several of the investment terms.⁸⁹⁴ Manchin even testified that he did not know that the number inside of a parenthetical on the accounting books indicated a loss.⁸⁹⁵ Manchin said he "left office with [his] head up"

⁸⁹¹Cheryl Caswell, *Ex Politicos Rebound After Fall From Grace*, Charleston Daily Mail, Sept. 6, 1994, at A1 ("Margolin spent time at a half way house in St. Albans upon his release from the federal facility at Ashland two months early for good behavior.")

⁸⁹²Barry Bearak, *CORRUPTION IN WEST VIRGINIA: Scandals as Thick as Coal Dust*, Los Angeles Times, July 8, 1990 at A1.

⁸⁹³Associated Press, *W. Va. Attorney General Resigns to halt Criminal Investigation*, Charleston Daily Mail, Aug. 21, 1989 at A1; Barry Bearak, *CORRUPTION IN WEST VIRGINIA: Scandals as Thick as Coal Dust*, Los Angeles Times, July 8, 1990 at A1.

⁸⁹⁴Barry Bearak, *CORRUPTION IN WEST VIRGINIA: Scandals as Thick as Coal Dust*, Los Angeles Times, July 8, 1990 at A1.

⁸⁹⁵Leslie Wayne, *Wall Street Broker Vs. Mountain State May Set Fiscal Precedent*, Charleston Gazette, Apr. 25, 1995, at D6.

and “[he] was a victim of the system itself.”⁸⁹⁶ He further proclaimed, “I’ve never hurt anyone, but I didn’t realize I had so many solid enemies.”⁸⁹⁷

It was also charged that Manchin used funds from the Consolidated Fund to travel around the State under the guise of “Official Duties of the Treasurer of State” for engagements that had little or nothing to do with the Fund.⁸⁹⁸ Money from the Fund may be spent according to law which provides:

All costs and expenses of the board including fees of professional consultants, advisers and auditors, brokerage commissions and all other necessary expenses of the board incurred in the performance of its functions shall be proper charges against, and payable on a pro rata basis from the earnings of the various funds managed by the board.⁸⁹⁹

From July 1986 to June 1987, Manchin spent more than \$27,000 on chartered airplanes and helicopters while he spent \$18,872 for air travel from July 1987 to June 1988 from the Consolidated Fund.⁹⁰⁰ During just the months of August and September 1988, Manchin spent \$5,123 for aircraft charter.⁹⁰¹ It was

⁸⁹⁶Cheryl Caswell, *Ex Politicos Rebound After Fall From Grace*, Charleston Daily Mail, Sept. 6, 1994, at A1.

⁸⁹⁷*Id.*

⁸⁹⁸James B. Lees, *Investment funds found used for self-promotion*, Charleston Gazette, July 21, 1989, at A6.

⁸⁹⁹Fanny Seiler, *Investing fees went for car washes, trips around country*, Charleston Gazette, Jan. 13, 1989, at A9.

⁹⁰⁰James B. Lees, *Investment funds found used for self-promotion*, Charleston Gazette, July 21, 1989, at A6.

⁹⁰¹*Id.*

also discovered that on many of the same days Manchin chartered planes for travel, he turned in expense sheets receiving payment for mileage where he claimed he had also driven to various destinations.⁹⁰²

Moreover, money for the fund to the tune of \$62,323.90 in fiscal year 1987 to 1988 was spent on the following items described by the special prosecutor as "an abuse of office."⁹⁰³

(Including, from Aug. 4, 1987, until June 26, 1988, 75,000 Constitution of U.S. certificates, \$1,440; 50,000 state flag certificates, \$2,000; 50,000 U.S. constitution certificates, \$960; 2,000 proclamations, \$96; 50,000 souvenir cards of the treasurer's seal, \$4,400; 25,000 Pledge of Allegiance sheets, \$3,750; 1,000 associate treasurer certificates, \$95; 30,000 American's creed sheets, \$2,568; 500 Boys State and 500 Girls State certificates, \$77.65 each; 65,000 'Public Friend' certificates, \$9,945; 150,000 state flag certificates, \$6,000; 125,000 Pledge of Allegiance sheets, \$18,750; 141,000 American's Creed, \$12,069. Total: \$62,323.90)⁹⁰⁴

During his tenure as State Treasurer, from January 1985 until his resignation on July 9, 1989, Manchin's expenses for charter flights, certificates, photographs and

⁹⁰² *Id.*

⁹⁰³ *Id.*

⁹⁰⁴ *Id.*

awards totaled \$209,682.⁹⁰⁵ Manchin's resignation was merely one day before his impeachment trial was to begin in the State Senate.⁹⁰⁶

In 1985, Manchin was criticized for the same practices as he handed out thousands of certificates to school children, volunteer firemen, hospital volunteers, and senior citizens.⁹⁰⁷ Manchin said, "There will always be a cynic who thinks it's a waste of taxpayers money. There is so much money wasted, but this is not a waste."⁹⁰⁸ Manchin continued that his office will "make more money in 20 minutes in interest on our investments than what it costs for a whole year to hand out our certificates."⁹⁰⁹ Manchin also said, "I have made more innovations in state government than any treasurer in 100 years. I bring happiness into the lives of the people."⁹¹⁰

⁹⁰⁵Phil Kabler, *Manchin's expenses for travel, memorabilia totaled \$209,682*, Charleston Gazette, July 21, 1989, at A1.

⁹⁰⁶Richard Grimes, *Manchin says he will retire July 9*, Charleston Daily Mail, July 8, 1989, at A1; Leslie Wayne, *Wall Street Broker Vs. Mountain State May Set Fiscal Precedent*, Charleston Gazette, Apr. 25, 1995, at D6; see also, Darrell E. Holmes, West Virginia Blue Book 414 n. 47 (Chapman Printing, Charleston, WV, 1997) (Special Session held by Senate for the trial of A. James Manchin, upon Articles of Impeachment July 10, 1989-July 10, 1989.); Jack McCarthy, *Political Family Scion Making A Go For The Big Time*, Charleston Gazette, Dec. 27, 1995, at A1; Associated Press, *W. Va. Attorney General Resigns to halt Criminal Investigation*, Charleston Daily Mail, Aug. 21, 1989 at A1.

⁹⁰⁷John Kimelman, *Manchin Continues Handing Out Paraphernalia*, July 11, 1985, at B1.

⁹⁰⁸*Id.*

⁹⁰⁹*Id.*

⁹¹⁰Paul Nyden, *Debate over Manchin's award, trinket expenditures continues*,
(continued...)

Years earlier, as Secretary of State, Manchin was criticized for spending \$66,800 during an eleven month period in 1981 and 1982 that could not be identified as legitimate office expenses according to the Legislature's Commission on Special Investigations.⁹¹¹ The \$66,800 amounted to forty-two percent of the total amount Manchin was allotted by the West Virginia Legislature to run his entire office for the year.⁹¹² The money was spent on various items such as \$12,821 for state flags, while another \$20,204 was spent for about 720,000 pieces of printed matter including "honorary certificates, patriotic and historical brochures, souvenir and informational literature pertaining to the state and its heritage, and the state seal."⁹¹³

In addition, more than \$10,000 was spent on photographic prints, while nearly \$6,000 was spent for such items as "specially engraved plaques and trophies, state pins, pendants, medallions and other honorary symbols and the purchase of more than 7,500 yards of assorted ribbon material, apparently used for

⁹¹⁰(...continued)
Sunday Gazette-Mail, Aug. 7, 1988, at A7.

⁹¹¹UPI, *Manchin defends flag, ribbon money*, Charleston Gazette, July 15, 1982, at A1.

⁹¹²*Id.*

⁹¹³Fanny Seiler, *Manchin's expenses questioned*, Charleston Gazette, July 14, 1982, at A1.

ceremonial occasions and honorary awards.”⁹¹⁴ Manchin called the expenditures “a proper function of the office of secretary of state.”⁹¹⁵

Although a state investigation found that Treasurer Manchin was siphoning from the fund for his own political operations and that his office had lost \$279 million of the State’s money, the voters from his home district in Marion County elected him to the House of Delegates where he currently still serves.⁹¹⁶ It was not until 2002, that the State Legislature discussed returning to the State Treasurer’s Office the power over the \$1.9 billion managed by the Investment Management Board.⁹¹⁷

2. Auditor John C. Bond (1920-1927)

In 1926, Governor Howard Gore concluded that public funds had been illegally withdrawn from the West Virginia State Treasury which resulted in his decision to immediately suspend and remove State Auditor John C. Bond for

⁹¹⁴*Id.*

⁹¹⁵UPI, *Manchin defends flag, ribbon money*, Charleston Gazette, July 15, 1982, at A1.

⁹¹⁶Manchin was a former West Virginia Secretary of State from 1977 to 1985 as well as serving a previous term in the West Virginia House of Representatives. Manchin’s nephew Joe Manchin III, former State Senator from Marion County ran unsuccessfully for Governor in 1996 and was successfully elected during the 2000 election to serve as West Virginia Secretary of State; see also Greg Icenhower, A. *James Manchin: A Biography of Controversy* (Terra, Alta, W.Va. : Headline Books, 1990.).

⁹¹⁷Sam Trantum, *House approves measure to move funds to treasurer*, Charleston Daily Mail, Mar. 2, 2002, at C5.

malfeasance.⁹¹⁸ Governor Gore charged Bond with: “neglect of official duty, illegal and unwarranted withdrawal of public funds from the state treasury.”⁹¹⁹

Governor Gore ordered, “I further request the attorney general to institute proper proceedings for, the recovery of all funds believed to have been illegally withdrawn from the treasury of the state of West Virginia by Auditor John C. Bond.”⁹²⁰ It was State Treasurer W.S. Johnson who in 1926 alerted the Governor that Bond had been “removing money from state coffers and distributing it to friends, relatives and fictitious names.”⁹²¹

During a later inquiry of the then-ousted Auditor Bond, several of the clerks in the Auditor’s Office declared that several persons had been receiving pay from the office who did not work there.⁹²² Furthermore, it was discovered that many of the checks were going directly to friends and family members of Bond who did not work for the state. Bond was also charged with issuing checks to fictitious people. Employees would cash the checks and return the money to Bond.⁹²³

⁹¹⁸*Id.*

⁹¹⁹*Id.*

⁹²⁰*Id.*

⁹²¹Daniel Bice, *Past impeachments have variety of outcomes*, Charleston Daily Mail, at A1.

⁹²²Associated Press, *Many were paid but few did work, trio of state clerks tell Gore Probe*, Charleston Gazette, Oct. 4, 1926, at A1.

⁹²³*Id.*

The House of Delegates was unanimous in its vote to impeach Bond. He resigned one day prior to the Senate vote to convict him, but he was later declared “insane” by a Kanawha County Circuit Court and sent to a state hospital where—if he had remained in the hospital—he would not be forced to face the charges of embezzlement, forgery, and larceny while in office.⁹²⁴ Unfortunately for Bond, after a brief stay at Huntington State Hospital, he was convicted of embezzlement and larceny of state funds and sentenced to six years in the State Penitentiary.

The West Virginia Archives and History website describes Bond in glowing terms as he began his political career. It provides:

When Pendleton County native John Bond entered public office in 1914, he was considered one of West Virginia's most promising young politicians but his career ended in disgrace. Bond was a veteran of the Spanish-American War who rose to the rank of major during World War I. After being elected State Auditor in 1920 and again in 1924, Bond was forced from office.⁹²⁵

⁹²⁴Staff reports, *Bond found insane, going to hospital*, *Charleston Daily Mail*, May 15, 1927, at A1; Staff reports, *Bond's impeachment is ordered by House*, *Charleston Daily Mail*, January 20, 1927, at A1; Staff Reports, *Senate Committee is ready to set trial date for Bond*, *Charleston Daily Mail*, January 25, 1927, at A1; Staff reports, *Bond attacks authority of Gore to remove him*, *Charleston Daily Mail*, Mar. 8, 1927, at A1; Staff reports, *Hallanan upheld by senate; Bond impeachment Dropped*, *Charleston Daily Mail*, Mar. 16, 1927, at A1; Staff reports, *Governor appoints Mallison to succeed Bond as Auditor*, *Charleston Daily Mail*, Mar. 18, 1927, at A1.

⁹²⁵<www.wvculture.org/history/timetrl/ttoct.html/:1020> (visited February 18, 2003.).

3. **Treasurer John H. Kelly
(1961-1975)**

John H. Kelly, in becoming West Virginia's State Treasurer in 1961, pledged:

I will administer the affairs of the office in an efficient and honest manner. I pledge to keep uppermost in mind the best interests of the people of this state.⁹²⁶

In 1976, however, Treasurer John H. Kelly and Joseph F. Rykoskey, Assistant State Treasurer, pleaded guilty to a mail fraud charge arising out of a bribery scheme.⁹²⁷ Kelly and Rykoskey's authority was to designate state depositories and to determine the amounts of state funds to be deposited in each depository.⁹²⁸ Kelly and Rykoskey were bribed "to prefer the bank in the deposit of state funds in non-interest-bearing accounts" and that misapplied bank funds were used in payment of the bribes.⁹²⁹

Kelly and Rykoskey agreed to make state deposits in non-interest-bearing accounts at the bank of choice of the bank officials in return for expense-free junkets. For example, at the bank's expense, both Kelly and Rykoskey, along with their wives, spent many nights at the Greenbrier, a five-star luxury resort located in

⁹²⁶*Meet the Kelleys*, The West Virginia Hillbilly, Jan. 16, 1961 at 10; Topper Sherwood, *Kennedy in West Virginia*, Goldenseal, Fall 2000 at 17.

⁹²⁷United States v. Caldwell, 544 F.2d 691, 693 n.1 (4th Cir.1976).

⁹²⁸*Id.* at 693.

⁹²⁹*Id.*

White Sulphur Springs, West Virginia.⁹³⁰ No limitations were placed on the duration of their stays nor the expenses that could be incurred.⁹³¹

**4. Treasurer John S. Burdett and Auditor Edward A. Bennett
(Both served from 1871-1876)**

In 1875, impeachment proceedings were held against State Auditor Edward A. Bennett and the State Treasurer John S. Burdett on charges of using interest on state money loaned to various banks. After finding sufficient charges against both the Treasurer and Auditor, the House of Delegates sent the case to the State Senate for trial.⁹³² On January 30, 1876, Burdette was ousted by the Senate, while Bennett was retained by only one vote.⁹³³ Bennett remained in office until the expiration of his term.

Burdette would make money by depositing thousands of state dollars in specific banks in exchange for direct, secret, and illegal cash payments from the banks to him.⁹³⁴ Burdette was successful with his scheme by depositing state monies in banks throughout West Virginia. State Treasurer Bennett was implicated

⁹³⁰United States v. Caldwell, 544 F.2d 691, 693 (4th Cir.1976).

⁹³¹*Id.*

⁹³²Staff reports, *The Bond Case in Retrospect*, Charleston Gazette, Oct. 21, 1926, at A1; staff reports, *Unexplained facts caused Gore to order removal of Auditor*, Charleston Gazette, Oct. 26, at A1.

⁹³³*Id.*

⁹³⁴Daniel Bice, *Past impeachments have variety of outcomes*, Charleston Daily Mail, at A1; Staff reports, *The Bond Case in Retrospect*, Charleston Gazette, Oct. 21, 1926, at A1; staff reports, *Unexplained facts caused Gore to order removal of Auditor*, Charleston Gazette, Oct. 26, at A1.

for failing to file semi-annual records that would have exposed the Treasurer's dealings.⁹³⁵ During the Senate trial of both the Auditor and Treasurer, their lawyers argued "the prosecution was political and arose out of differences and animosities" and that both men were upstanding citizens and respected politicians.⁹³⁶

C. West Virginia Public Safety—Protecting the Citizens

1. The State Police

The West Virginia State Police and the State Police Crime Lab are housed entirely within the Executive Department of state government and report ultimately to the Governor. Although not elected statewide officials, their actions have statewide ramifications and reflect upon the Executive Department. Many see the State Police as a direct arm of the Governor's Office while others inaccurately believe that they are controlled by the State Attorney General who in reality has no independent criminal prosecutorial powers. In any case, citizens view their tainted activities as a continued corrupt system of West Virginia government. They are also considered by most citizens as a part of the system of Justice protecting the public safety and arresting those who violate the laws.

As recently as May 2003, the West Virginia State Police began conducting an internal investigation into a trooper who once said he "polices the police," after

⁹³⁵ *Id.*

⁹³⁶ *Id.*

three female employees filed sexual harassment complaints against him.⁹³⁷ The employees allege that he has sexually harassed them and created a hostile work environment.⁹³⁸ The complaints are against Major B.D. Gore, who is chief of executive services for the State Police.⁹³⁹ Gore heads the agency's Professional Standards Unit, which conducts all internal inquiries of troopers' actions.⁹⁴⁰

According to the *Charleston Gazette*:

One of the women complained to Gore's superiors about him last year. She and the other two say he has left sexually harassing messages for them, including e-mail and text messages, made telephone calls to them and indicated that he wanted to have sexual relations with them. One has said she had a short affair with him.⁹⁴¹ Gore is one of the highest-ranking members of the State Police, with only lieutenant colonels and the superintendent above him. He is considered a finalist for the deputy superintendent's post, the No. 2 position with State Police.⁹⁴²

According to the *Charleston Gazette*: "Lawsuits and other allegations of wrongdoing against the West Virginia State Police have cost the state nearly \$5

⁹³⁷Tom Searls, *State trooper who "polices the police" target of inquiry*, *Charleston Gazette*, April 25, 2003, at A1.

⁹³⁸*Id.*

⁹³⁹*Id.*

⁹⁴⁰*Id.*

⁹⁴¹*Id.*

⁹⁴²*Id.*

million the past five years.⁹⁴³ Among some of the cases settled against the State Police include claims of sexual harassment within the State Police offices; a State Policeman who killed his girlfriend and then killed himself; alleged beatings by State Policemen resulting in hospitalization of the victim; and federal and state charges against another State Policeman.⁹⁴⁴

One such incident was State Trooper Gary Messenger who was sent to federal prison after he beat a Welch resident who had called 911 to complain about a drunken party and gunfire by state troopers attending the party. The *Charleston Gazette* further reported that: “[s]ubsequent investigations found that troopers were drinking and having sex with young women inside the Welch detachment. Even Messenger’s attorney likened the barracks to a fraternity house.”⁹⁴⁵

2. The Fred Zain Experience and the State Police Crime Lab

In 1993, the Supreme Court of Appeals of West Virginia discovered that a forensic serologist for the West Virginia State Police systematically falsified his reports.⁹⁴⁶ As a result, the Court ordered new trials in all cases in which his

⁹⁴³Associated Press, *Suits against State Police cost \$5 million*, *Charleston Gazette*, Apr. 29, 2002, at A1.

⁹⁴⁴*Id.*

⁹⁴⁵Editorial, *State Police: Discipline sorely needed*, *Charleston Gazette*, Feb. 1, 2002, at A4.

⁹⁴⁶In re an Investigation of the W Va State Police Crime Lab, Serology Div., 438 SE2d 501, 506 (W. Va. 1993); see also, In the Matter of Investigation of WV State Police Crime Lab, 445 S.E.2d 165 (W. Va. 1994).

testimony had a material effect on the verdict.⁹⁴⁷ The Court held that the misconduct was so pervasive that the Court could treat the corrupt officer's testimony as false in each prior case.⁹⁴⁸

The former head serologist of the State Police Crime Laboratory, Fred Zain, falsified test results in as many as 134 cases from 1979 to 1989. Defendants, since exonerated, were sentenced to long prison terms based upon his testimony.⁹⁴⁹ The Court held that "as a matter of law, any testimonial or documentary evidence offered by Zain at any time in any criminal prosecution should be deemed invalid, unreliable, and inadmissible."⁹⁵⁰ The Court also cited in its findings that these were "shocking and egregious violations," and that Zain's actions were a "corruption of our legal system."⁹⁵¹

The *Charleston Gazette* professes:

NOTHING is more sacred than the principle of trustworthy justice. Lives are at stake. When society sends a criminal suspect to prison, the public needs to

⁹⁴⁷*Id.*

⁹⁴⁸In re an Investigation of the W Va State Police Crime Lab, Serology Div., 438 SE2d 501, 504, 506 (W. Va. 1993).

⁹⁴⁹*Id.*

⁹⁵⁰*Id.* at 520; Associated Press, *Zain trial nears end as jury begins deliberations*, *Charleston Gazette*, Sept. 18, 2001, at C1.

⁹⁵¹In re an Investigation of the W Va State Police Crime Lab, Serology Div., 438 SE2d 501, 508 (W. Va. 1993).; see also, Lawrence I. Shulruff, *Lab Evidence Questioned*, 80 A.B.A. J. 16 (July 1994); *Corrupt Forensic Scientist Contaminates Hundreds of Convictions in West Virginia and Texas*, 18 *The Champion* 56 (June 1994).

feel sure that the evidence was accurate and the outcome was as fair as possible.

That's why the Fred Zain scandal was so horrifying. The former State Police crime lab chief falsified test results to help obtain convictions, putting innocent men in prison on rape charges. When DNA tests proved their innocence, taxpayers coughed up millions to pay for false imprisonment.⁹⁵²

The Zain saga produced numerous cases in which individuals were convicted of violent crimes and were sent to prison based on the testimony regarding scientific evidence.⁹⁵³ One such individual successfully sued and received a \$1 million settlement from the State of West Virginia for incorrectly sending him to prison.⁹⁵⁴ While convictions may reduce crime rates, the lack of confidence in those convictions is unfortunately pervasive.

It has also been argued that the private law firm, Steptoe & Johnson, helped to cover up the Zain miscarriage of justice. Trooper Ted A. Smith testified that Steptoe lawyer Steve McGowen told select people that he "was going to bury this thing so deep that no one could find it."⁹⁵⁵ Moreover, a member of the West Virginia

⁹⁵²Editorial, *Crime lab: More problems*, Charleston Gazette, Mar. 18, 2002, at A4.

⁹⁵³Associated Press, *Zain trial nears end as jury begins deliberations*, Charleston Gazette, Sept. 18, 2001, at C1; Richard Grimes, *Crime labs should be independent: Scientific evidence should be examined by a neutral party*, Charleston Daily Mail, June 10, 1997 at A4.

⁹⁵⁴Richard Grimes, *Crime labs should be independent: Scientific evidence should be examined by a neutral party*, Charleston Daily Mail, June 10, 1997 at A4.

⁹⁵⁵Lawrence Messina, *Lawyer sought to 'bury this thing' trooper testified*, Charleston Gazette, Feb. 20, 2002, at A1; Fanny Seiler, *Delegate Asks Ashcroft to* (continued...)

House of Delegates, Larry Faircloth, sent a letter to United States Attorney General John Ashcroft to investigate the actions of Steptoe lawyers for complaints of police brutality and civil rights violations.⁹⁵⁶

In 2002, Attorney General McGraw filed suit against Steptoe & Johnson declaring “[t]he misconduct proximately caused the state to pay considerably more money in settlement of those claims than would have been necessary but for the defendants’ actions.”⁹⁵⁷ McGraw also alleges that the law firm conspired to conceal misconduct as Zain’s falsified test results and deceptive testimony have been blamed in at least six wrongful convictions.⁹⁵⁸ Two of those wrongfully imprisoned sued Steptoe & Johnson, alleging they spent extra years in prison because of McGowan’s silence.⁹⁵⁹

One wrongfully imprisoned man at the hands of Zain was Glen Dale Woodall. When Woodall sued the State of West Virginia, it was learned that Zain “apparently perjured himself” by testifying “that he performed laboratory tests on seminal fluid that the laboratory was incapable of performing at that time.”⁹⁶⁰ A letter written by

⁹⁵⁵(...continued)
investigate Steptoe, Charleston Gazette, Mar. 3, 2002, at C1

⁹⁵⁶*Id.*

⁹⁵⁷Lawrence Messina, *McGraw sues Steptoe & Johnson over Zain case*, Charleston Gazette, Feb. 20, 2002, at A1.

⁹⁵⁸*Id.*

⁹⁵⁹*Id.*

⁹⁶⁰Rachelle Bott, *Zain enhanced lab test results, co-worker says*, Charleston (continued...)

McGowan and sent to the State's insurer recommended settling the Woodall case "as quickly and quietly as possible, as the potential exposure [for more lawsuits] is catastrophic."⁹⁶¹ Despite McGowan's recognition that the Zain situation was "catastrophic," three months later, McGowan drafted a letter for Superintendent Buckalew that was sent to Kanawha County Prosecuting Attorney Bill Forbes, assuring Forbes that the investigation had concluded that "there was no need to take any further action with respect to any of Fred Zain's cases."⁹⁶²

In 2002, after much of this information implicating Steptoe & Johnson attorneys surfaced, Steptoe began asserting that former West Virginia Attorney General Mario Palumbo, who is suffering from Lou Gehrig's disease and is unable to defend himself, knew about Zain's deceptions even before McGowan did while Palumbo was Attorney General.⁹⁶³ Palumbo's former Chief Deputy disagrees with Steptoe's assertions, stating Palumbo "sought answers from Superintendent Buckalew and was assured that nothing was amiss."⁹⁶⁴

⁹⁶⁰(...continued)

Gazette, Sept. 7, 2001, at A1. Editorial, *Fallout: Zain mess worsens*, Charleston Gazette, Feb. 22, 2002, at A4;

⁹⁶¹*Id.*

⁹⁶²Editorial, *Fallout: Zain mess worsens*, Charleston Gazette, Feb. 22, 2002, at A4.

⁹⁶³*Id.*; Bob Schwarz, *Palumbo gala to benefit muscular dystrophy research*, Sunday Charleston Gazette-Mail, Oct. 7, 2001, at B2; Lawrence Messina, *Firm accused in Zain case points to Palumbo*, Charleston Gazette, Feb. 8, 2002, at A1.

⁹⁶⁴Editorial, *Fallout: Zain mess worsens*, Charleston Gazette, Feb. 22, 2002, at A4.

The *Charleston Gazette* illustrates a glaring problem that seems to follow many of West Virginia's unfortunate corrupt misgivings—the lack of accountability. The *Gazette* asks: “Did the Legislature’s Commission on Special Investigations recommend action? Did United States prosecutors consider civil rights charges on behalf of the men who were wrongly imprisoned? Has the State Bar examined the lawyer conduct in the sorry affair? Not as far as anyone knows.”⁹⁶⁵

After two mistrials in the West Virginia circuit courts, the third trial of Zain was postponed indefinitely.⁹⁶⁶ Later, the fifty-two-year-old Zain, was diagnosed with colon cancer and died in December 2002.⁹⁶⁷ After leaving West Virginia in 1989 to take a similar position in Texas, Zain continued to return to West Virginia to testify in criminal cases. A total of six men in both West Virginia and Texas spent a combined forty years in prison for crimes they did not commit as a result of Zain's false and damaging testimony.⁹⁶⁸

⁹⁶⁵*Id.*

⁹⁶⁶Lawrence Messina, *Zain has cancer: Retrial suspended*, *Charleston Gazette*, Mar. 23, 2002, at A1 (Attorneys for the Prosecution, Jim Lees and Steve Jury, pursued a strategy “that Zain defrauded the state by accepting pay, raises and promotions in exchange for his shoddy services.”); see also, Rachele Bott, *Jurors divided on Zain*, *Charleston Gazette*, Sept. 19, 2001, at A1.

⁹⁶⁷Lawrence Messina, *Zain has cancer: Retrial suspended*, *Charleston Gazette*, Mar. 23, 2002, at A1; Staff reports, *Discredited chemist Fred Zain, 52, dies*, *Charleston Gazette*, Dec. 4, 2002, at A1.

⁹⁶⁸Lawrence Messina, *Zain has cancer: Retrial suspended*, *Charleston Gazette*, Mar. 23, 2002, at A1; Leslie Baldacci, *Justice’s scales a delicate balance*, *Chicago Sun-Times*, May 21, 1999, at A47.

The West Virginia State Crime Lab's problems did not end with the discovery and removal of Zain. Many years later, another of the lab's chemists, Todd McDaniel, pleaded guilty to falsifying test results on marijuana.⁹⁶⁹ Moreover, as recently as March 2002, two more lab officers have been suspended and the FBI has been asked to conduct an independent probe, while an outside lab will retest evidence from narcotics prosecutions.⁹⁷⁰ In arguing that the state crime lab should not be connected to the State Police, Richard Grimes of the *Charleston Daily Mail* maintains:

common sense tells us that any laboratory assigned to a police agency is going to have pressure on it to come up with strong evidence. But that, in turn, could mean that what is presented to a jury in the courtroom could be tainted.⁹⁷¹

Grimes continues:

Under this kind of arrangement, the laboratory's incentive would be to conduct the best crime test results available from a scientific standpoint. The judgment of its presentation in the courtroom would be the medical thoroughness and accuracy of its work, rather than whether the jury finds the person on trial guilty.⁹⁷²

⁹⁶⁹Editorial, *Crime lab: More problems*, Charleston Gazette, Mar. 18, 2002, at A4; Lawrence Messina, *Another shake-up at State Police lab*, Charleston Gazette, May 25, 2-2, at A1.

⁹⁷⁰Editorial, *Crime lab: More problems*, Charleston Gazette, Mar. 18, 2002, at A4; Sam Trantum, *State lab in trouble again: Two workers put on leave after discrepancy found*, Charleston Daily Mail, Mar. 12, 2002, at A1.

⁹⁷¹Richard Grimes, *Crime labs should be independent: Scientific evidence should be examined by a neutral party*, Charleston Daily Mail, June 10, 1997, at A4.

⁹⁷²*Id.*

VIII. THE WEST VIRGINIA LEGISLATURE

When they call roll in the Senate, the senators do not know whether to answer 'present' or 'not guilty.'

Former President Theodore Roosevelt

A. State Senate

1. Senator Randy Schoonover

A December 10, 1998 *Charleston Gazette* editorial began “KEEP your fingers crossed, but corruption seems to be fading in West Virginia.”⁹⁷³ The editorial professed that “[d]uring the [Governor] Barron and [Governor] Moore administrations, bribery investigations, indictments and convictions were so continuous, they were like a major state industry.”⁹⁷⁴ The *Gazette* unfortunately only had to wait about nine months for a return to normalcy as State Senator Randy Schoonover continued to fulfill West Virginia’s rich history of political corruption by accepting a paltry \$2,725 in exchange for putting his influence up for sale.⁹⁷⁵

⁹⁷³Editorial, *Bribery – World cleanup effort*, *Charleston Gazette*, Dec. 10, 1998, at A4.

⁹⁷⁴*Id.*

⁹⁷⁵L.T. Anderson, *Someone must be discounting the price on state senators these days*, *Charleston Gazette*, Feb. 1, 2000, at C1; Jennifer Bundy, *Associated* (continued...)

In September 1999, the United States Attorney's Office for the Southern District of West Virginia, charged Schoonover with accepting a bribe in three payments from a politically prominent wrecking service owner who sought business on the West Virginia Turnpike.⁹⁷⁶ Public Defender Mary Lou Newberger, who represented Schoonover said that he was lured into the scheme by Steve LaRose, a former Summersville mayor and former state Republican Party chairman.⁹⁷⁷ On January 25, 2000, West Virginians learned that once again one of their elected officials would be spending time behind bars.⁹⁷⁸ Even more unfortunate for Schoonover was the fact that after selling his influence for \$2,725 he discovered he really did not have much influence. He was unable to help the LaRose family-owned towing business obtain more business on the West Virginia Turnpike.⁹⁷⁹

⁹⁷⁵(...continued)

Press, *Federal Prosecutors seek information from Greenbrier*, Charleston Gazette, Sept. 14, 1999, at A1; Lawrence Messina, *Scoonover sentenced to 18 months – Ex-senator bribed by LeRose family member to get towing business*, Charleston Gazette, Jan. 25, 2000, at A1.

⁹⁷⁶Jennifer Bundy, Associated Press, *Federal prosecutors seek information from Greenbrier*, Charleston Gazette, Sept. 14, 1999, at A1 (The article also noted that Senator Schoonover sponsored a controversial Greenbrier Gambling Bill, that would allow a casino at the states only five-star establishment.).

⁹⁷⁷Jennifer Bundy, Associated Press, *Former senator leaves prison*, Charleston Gazette, Feb. 21, 2001, at A2.

⁹⁷⁸Lawrence Messina, *Scoonover sentenced to 18 months – Ex-senator bribed by LeRose family member to get towing business*, Charleston Gazette, Jan. 25, 2000, at A1.

⁹⁷⁹*Id.*

Schoonover was sentenced by a United States District Court Judge to a year and a half in prison with two years to follow on supervised release.⁹⁸⁰ On January 4, 2001, Schoonover was released from a federal correctional institution in Ashland, Kentucky and began living at the Bannum Place (a St. Albans half-way house) in Charleston.⁹⁸¹ He was later released from all incarceration and has returned to Clay County and started a new business: Central West Virginia Outfitters.⁹⁸²

L.T. Anderson, columnist for the *Charleston Daily Mail* noted:

In West Virginia, crime-in-government is never of the great, soaring audacious variety from which Michael Caine pictures are wrought. Usually, it involves a greasy back alley scheme that would embarrass any self-respecting thief.

The Randy Schoonover affair is an outstanding example of West Virginia corruption. In bush league sleaze, it equals any I have observed during my 50 years of watching the Legislature struggle against any appearance of public service.⁹⁸³

⁹⁸⁰*Id.*

⁹⁸¹Jennifer Bundy, Associated Press, *Former senator leaves prison*, Charleston Gazette, Feb. 21, 2001, at A2.

⁹⁸²Randy Coleman, Associated Press, *Out of prison, ex-senator builds new life*, Charleston Gazette, June 18, 2001, at A1; Associated Press, *Former state senator released from prison*, Feb. 22, 2001, at A1; Lawrence Messina, *Schoonover sentenced to 18 months – Ex-senator bribed by LeRose family member to get towing business*, Charleston Gazette, Jan. 25, 2000, at A1; Randy Coleman, Associated Press, *Out of prison, ex-senator builds new life*, Charleston Gazette, June 18, 2001, at A1. Schoonover was first elected to the House of Delegates in 1988, re-elected in 1990 and 1992, and was appointed in 1993 to fill a vacancy in the State Senate. Thereafter, Schoonover was elected to his Senate seat in 1994 and re-elected in 1998.

⁹⁸³L.T. Anderson, *Someone must be discounting the price on state senators*
(continued...)

On the day that Schoonover began serving his sentence, State Senator Mike Oliverio (D-Monongalia) addressed the Senate and requested that Senators remember their former colleague.⁹⁸⁴ Oliverio was also critical of federal prosecutors for targeting Schoonover and stated, "While no one condones his activity, I questioned the way the U.S. Attorney's office has gone about this case They picked on the guy in the Senate with the least education and the least money. It seemed a bit heavy handed."⁹⁸⁵

2. Senator William Bernard Smith

Logan County native William Bernard Smith holds the unfortunate distinction of being the only West Virginia lawmaker to ever be expelled from the State Legislature.⁹⁸⁶ In 1961, Governor W.W. Barron appointed Smith as the West Virginia Welfare Commissioner.⁹⁸⁷ Smith was among various former Governor

⁹⁸³(...continued)
these days, Charleston Daily Mail, Feb. 1, 2000, at C1.

⁹⁸⁴Randy Coleman, Associated Press, *Out of prison, ex-senator builds new life*, Charleston Gazette, June 18, 2001, at A1.

⁹⁸⁵*Id.*

⁹⁸⁶See 54 Ops. Att'y Gen. 128 (W. Va. 1971) (The Attorney General's Opinion held that the Federal conviction did not automatically result in the removal from office for Smith. It charged that the Senate had the authority to expel Smith or any other member by a two thirds vote of the members of that elected body.).

⁹⁸⁷In re Bernard Smith, 270 S.E.2d 768, 771 (W. Va. 1980); Staff Reports, "Logan Five" Defendant Dead at 64, Charleston Gazette, Apr. 17, 1995, at A1; In re W. Bernard Smith, 206 S.E.2d 920 (W. Va. 1974).

Barron department heads who were indicted on bribery charges.⁹⁸⁸ Smith and four other politicians, known as “the Logan Five” were sentenced to brief federal prison terms after being convicted of election-rigging.⁹⁸⁹ In 1968, Smith was elected to the State Senate and served in that capacity until his removal in 1972.⁹⁹⁰ The *Charleston Gazette* reported: “Smith attained statewide prominence in the scandal-wracked administration of Gov. W.W. Barron.”⁹⁹¹

Smith was indicted on the bribery charges in 1970 in Kanawha County Circuit Court. On December 13, 1971, Smith was acquitted on federal perjury charges, but was convicted for other charges relating to rigging elections by conspiring to cast fictitious votes for federal, state, and local candidates in the 1970 Primary Election.⁹⁹² Smith continued to practice law in Logan County while he appealed his

⁹⁸⁸Staff Reports, *Logan Five Defendant Dead at 64*, *Charleston Gazette*, Apr. 17, 1995 at A1.

⁹⁸⁹In re W. Bernard Smith, 206 S.E.2d 920 (W. Va. 1974); Staff Reports, *Logan Five Defendant Dead at 64*, *Charleston Gazette*, Apr. 17, 1995 at A1.

⁹⁹⁰In re Bernard Smith, 270 S.E.2d 768, 771 (W. Va. 1980); Staff Reports, “*Logan Five*” *Defendant Dead at 64*, *Charleston Gazette*, Apr. 17, 1995, at A1.

⁹⁹¹Staff Reports, “*Logan Five*” *Defendant Dead at 64*, *Charleston Gazette*, Apr. 17, 1995, at A1.

⁹⁹²In re W. Bernard Smith, 206 S.E.2d 920 (W. Va. 1974); see also *Anderson v. United States*, 417 U.S. 211 (1974) (The Supreme Court of the United States affirmed the conviction of each of the defendants.); In re Bernard Smith, 270 S.E.2d 768, 769 (W. Va. 1980); *United States v. Anderson*, 481 F.2d 685 (4th Cir. 1973).

conviction to the United States Court of Appeals for the Fourth Circuit and then to the United States Supreme Court.⁹⁹³

The West Virginia Supreme Court asserted that “[a]lthough his conviction was widely publicized and generally known, he had a substantial practice at the time of his disbarment.”⁹⁹⁴ The Court stated: “The criteria of character, maturity, and experience are basically designed to permit forgiveness of a young man who has been stupid in his youth and can demonstrate that over the course of years he has become wiser and stronger.”⁹⁹⁵

Smith remained in office after his conviction. In 1972 the Senate voted for his expulsion.⁹⁹⁶ Senator Smith did not resign from the Senate and a January 25, 1972 Opinion written by then-Attorney General Chauncey Browning concluded that a federal conviction did not require a state senator to resign from office; however, the State Senate could cause such removal with a concurrence of two-thirds of the members elected to that body.⁹⁹⁷

⁹⁹³In re Bernard Smith, 270 S.E.2d at 771; United States v. Anderson, 481 F.2d 685 (4th Cir. 1973); Anderson v. United States, 417 U.S. 211 (1974).

⁹⁹⁴In re Bernard Smith, 270 S.E.2d at 774.

⁹⁹⁵*Id.*

⁹⁹⁶*Id.*; Staff Reports, *Logan Five Defendant Dead at 64*, Charleston Gazette, Apr. 17, 1995 at A1; *Majority Leader's Job In Hand Of Legislature: Senate To Vote On Employment If Chafin Convicted Of Charges*, Charleston Daily Mail, Mar. 21, 1995, at A1..

⁹⁹⁷54 Ops. Atty Gen. 128 (January 25, 1972, West Virginia); see also *Majority Leader's Job In Hand Of Legislature: Senate To Vote On Employment If Chafin Convicted Of Charges*, Charleston Daily Mail, Mar. 21, 1995, at A1; see also, (continued...)

In 1973, Smith was publicly reprimanded for “procrastination and delay in handling” a legal matter⁹⁹⁸ and in 1974, the State Bar revoked his license to practice law.⁹⁹⁹ Later, in 1980, Smith’s law license was returned to him.¹⁰⁰⁰ The Court held “the nature of the original offense for which [Smith] was disbarred was reprehensible, but it was completely unrelated to [Smith’s] law practice or activities as an officer of the Court.”¹⁰⁰¹

The Supreme Court ruled that “Smith had been rehabilitated” and therefore, restored his law license.¹⁰⁰² Smith’s law licence was restored in spite of the United States Supreme Court’s finding that there was ample evidence that Smith, Earl Ray Tomblin, and others engaged in the conspiracy to cast false votes for candidates for all offices including United States Senator Robert C. Byrd and United States Congressman Ken Hechler.¹⁰⁰³

The Court outlined how the vote fraud was carried out, such as joining voters in the voting booths and voting for specific candidates regardless of the actual

⁹⁹⁷(...continued)

Richard Grimes, *Bernard Smith’s Fate as Senator Faces Lawmakers*, Charleston Daily Mail, Jan. 12, 1972, at A1.

⁹⁹⁸Committee on Legal Ethics v. W. Bernard Smith, 194 S.E.2d 665 (W. Va. 1973).

⁹⁹⁹In re Smith, 206 S.E.2d 920 (W. Va. 1974).

¹⁰⁰⁰In re Bernard Smith, 270 S.E.2d 768, 774 (W. Va. 1980).

¹⁰⁰¹*Id.* at 771.

¹⁰⁰²In re Smith, 270 S.E.2d 768 (W. Va. 1980); Staff Reports, *Logan Five Defendant Dead at 64*, Charleston Gazette, Apr. 17, 1995 at A1.

¹⁰⁰³Anderson v. United States, 417 U.S. 211, 225 (1974).

voter's wishes. Others such as Cecil Elswick, an unindicted co-conspirator, who served as the Republican election officer at the Mount Gay precinct: "simply went into the voting machine on his own and cast many fictitious ballots. Through a comparison between the reported returns and the number of persons who actually voted, false votes were shown to have been cast for every office—federal, state, and local."¹⁰⁰⁴

Former Supreme Court Chief Justice Richard Neely was a young legislator in 1972 and believes Smith was innocent. Smith, originally from southern West Virginia, was upset at the expulsion which only passed the State Senate by a single vote according to State Senator William Sharpe. Sharpe voted against the move because the appeals process had not been complete. Moreover, then—Senate President Hansford McCourt promised to vote against the expulsion, but changed his mind at the last minute.

In 1982, just two years after his law license had been returned, Smith won a landmark case which ruled that property must be taxed at real market value.¹⁰⁰⁵ Consequently, in 1990, Smith again received a one-year suspension of his license for his handling of an estate and for threatening to deny benefits to those beneficiaries who filed legal ethics complaints against him.¹⁰⁰⁶

¹⁰⁰⁴*Id.*

¹⁰⁰⁵Associated Press, *Ousted State Senator William Smith Dies*, Charleston Daily Mail, Apr. 17, 1995 at A1; Staff Reports, *"Logan Five" Defendant Dead at 64*, Charleston Gazette, Apr. 17, 1995, at A1.

¹⁰⁰⁶Committee on Legal Ethics of the West Virginia State Bar v. Smith, 399 (continued...)

3. Senator J.D. Brackenrich

On September 27, 1993, Senator J. D. Brackenrich resigned from the State Senate to accept a \$52,752 position as the District Engineer with the Division of Highways in order to increase his retirement benefits.¹⁰⁰⁷ State retirement is based upon a worker's salary during their final three years of work. As such, State Senators and Delegates, who make \$15,000 per year as elected officials, strive for these higher paying jobs near the end of their career to build considerably larger retirements. It is argued that such jobs are given as rewards for blindly supporting an administration's policies.

Brackenrich, who once chaired the Senate Natural Resources Committee, plead guilty in May of 1996 to discharging pollutants without a permit from his business into wetlands adjacent to Otter Creek in 1992, while he was a Senator.¹⁰⁰⁸ Despite his sentence of one month in jail, five months on home confinement, and a fine of \$25,000 for violating the Federal Clean Water Act, Brackenrich's job with the state was not affected.¹⁰⁰⁹ Brackenrich was guilty of destroying part of West

¹⁰⁰⁶(...continued)
S.E.2d 36 (W. Va. 1990).

¹⁰⁰⁷Staff Reports, *Week in Review July 14-19, 1996*, Charleston Gazette-Mail, July 21, 1996 at C5; Associated Press, *Convicted Former Senator Brackenrich To Keep Job*, Charleston Gazette, June 22, 1996 at A5 (As a State Senator, Brackenrich's salary was \$6,500, while his salary with the Division of Highways was \$52,752.);

¹⁰⁰⁸*Id.*

¹⁰⁰⁹*Id.*

Virginia's second largest wetland so he could build a pond on his land; he was forced to restore the wetlands he destroyed.¹⁰¹⁰

In addition to those offenses, in June of 1993, just three months prior to resigning from the Senate to accept the new employment, Brackenrich was fined \$12,500 by the Division of Environmental Protection for maintaining a dump site and storing oil in a leaking tank on the property of one of his business.¹⁰¹¹ In his current position with highways, Brackenrich and other State officials were sued for allegedly exposing ten highway employees to harmful asbestos and then endeavoring to conceal the incident.¹⁰¹²

4. Senator Bob Holliday

The *Charleston Gazette* called the 1994 offering of a job to Senator Bob Holliday "a charade of flimflam pulled by the governor and the Democratic Party leaders!"¹⁰¹³ Asking the question "why would the 'good ole boy' system want to get rid of Bob Holliday?" it concluded "because he is an honest man who cannot be bought or controlled by the corrupt West Virginia political system."¹⁰¹⁴ Holliday

¹⁰¹⁰Ken Ward, *Ex-senator sentenced to jail term*, *Charleston Gazette*, June 12, 1996, at A1.

¹⁰¹¹Associated Press, *Convicted Former Senator Brackenrich To Keep Job*, *Charleston Gazette*, June 22, 1996 at A5.

¹⁰¹²Staff Reports, *Week in Review July 14-19, 1996*, *Charleston Gazette-Mail*, July 21, 1996 at C5.

¹⁰¹³*Holliday Affair Another Travesty*, *Charleston Gazette*, Aug. 13, 1994, at A4.

¹⁰¹⁴*Id.*; see also Jack McCarthy, *Circus Politics Who'll Stand For Holliday*,
(continued...)

accepted the higher paying state job which enabled him to significantly increase his state retirement. The Governor was then able to appoint a replacement for Holliday who would be more favorable to the administration's policies.

5. Senate President Earl Ray Tomblin

Current Senate President Earl Ray Tomblin from Logan County has been a source of controversy with his connections to the gaming industry. When Tomblin began his reign as the Senate President in 1994 there was much pressure on him to serve in the Senate's top spot in a corrupt-free manner, as two of his three predecessors had served federal prison sentences.¹⁰¹⁵

Moreover, Tomblin's father, a former Logan County Sheriff, served two different federal prison sentences, both dealing with election violations.¹⁰¹⁶ The senior Tomblin's latest conviction in 1992, stemmed from the same election scheme where Logan County Circuit Judge Ned Grubb was convicted on several counts of corruption.¹⁰¹⁷ Tomblin senior offered a \$10,000 bribe in 1988 to Oval Adams, the Sheriff candidate, to give him a job after the election so that he would qualify for a

¹⁰¹⁴(...continued)

Charleston Gazette, July 4, 1994, at A5.

¹⁰¹⁵Fanny Seiler, *Affairs of State*, Charleston Gazette-Mail, Nov. 13, 1994, at B1.

¹⁰¹⁶*Id.*

¹⁰¹⁷*Id.*

state pension.¹⁰¹⁸ While he did get the job, the elder Tomblin also went to jail for bribing a public official.¹⁰¹⁹

As a Senator, in 1995, Tomblin successfully pushed the State Racing Commission to change its rules to prohibit non-residents who owned and raced West Virginia bred greyhounds from sharing the money from a breeders fund that was set up by the Legislature.¹⁰²⁰ The potential conflict exists because Freda Tomblin, the Senator's mother, is the recipient of a majority of the money and changing the rules would insure it remained that way.¹⁰²¹ In 2001, Tomblin's mother and brother received \$623,057 from the fund.¹⁰²²

Jeannie Hampton, an Ohio resident who had invested thousands of dollars in West Virginia-born dogs, would not be able to receive money from the West Virginia Greyhound Breeding Development Fund under the bill.¹⁰²³ Hampton, in referring to the situation as "more dirty politics" said:

Most of the development money already is going to Freda Tomblin, the mother of Senate President Earl Ray Tomblin, D-Logan, who has a large puppy farm at Harts in Lincoln county and a kennel in her name. Her

¹⁰¹⁸*Id.*

¹⁰¹⁹*Id.*

¹⁰²⁰*Id.*

¹⁰²¹*Id.*

¹⁰²²Fanny Seiler, *Greyhound breeders' '01 payouts set a record*, Charleston Gazette, Mar. 4, 2002, at C1.

¹⁰²³James A. Haught, *Video Poker \$300 Million A Year*, Charleston Gazette, Mar. 29, 1995, at A4.

dogs race at both Tri-State and at Wheeling Downs, a dog track in Wheeling.¹⁰²⁴

Until 1995, the Tomblin family owned Southern Amusement, a company that installed video lottery machines around the state.¹⁰²⁵ Tomblin's father reportedly met with former Governor Gaston Caperton to discuss a plan that would have expanded video lottery statewide where Tomblin's company would have been among twenty companies that could have shared \$58 million a year by replacing Tomblin's video machines with video lottery terminals.¹⁰²⁶ The plan was stopped by Governor Caperton amid political corruption investigations that led to ex-Lottery Director Butch Bryan and Lottery Counsel Edward Rebrook serving sentences in federal prison.¹⁰²⁷

The video lottery machines that were unregulated until the 2001 session of the West Virginia Legislature have been a source of controversy for many years. In 1994, in reference to the video lottery machines, House Speaker Chuck Chambers said, "[b]asically

¹⁰²⁴*Id.*

¹⁰²⁵Fanny Seiler, *Affairs of State*, Charleston Gazette-Mail, Nov. 13, 1994, at B1.

¹⁰²⁶Fanny Seiler, *Power ready to shift in Senate to the southern counties*, Charleston Gazette, Nov. 12, 1994, at B1.

¹⁰²⁷*Id.*

we have illegal gambling going on in every community."¹⁰²⁸ The video gambling machines are located throughout West Virginia in bars, convenience stores, gasoline stations, coffee shops and even strip joints.¹⁰²⁹

These so-called gray machines owned by the Senate President's family are stamped "for amusement only;" however, it is one of the worst kept secrets that the machines openly pay cash winnings in violation of West Virginia law.¹⁰³⁰ In 1994, Tomblin's friend and family business associate, Delegate Joe Ferrell, purchased Southern Amusement in what is believed to be an attempt by Tomblin to divert criticism of his stance against casino gambling "to protect the family business, which had its own gray (poker) machines."¹⁰³¹

The *Charleston Gazette* described Tomblin's gambling connections as a source of controversy for the Legislature. The *Gazette* framed:

What does it say about West Virginia that one of the state's highest officers, the Senate President – first in line to succeed the governor – makes his living from those 'millions of dollars in untaxed revenue'?

¹⁰²⁸James A. Haught, *Video Poker \$300 Million A Year*, *Charleston Gazette*, Mar. 29, 1995, at A4; Paul J. Nyden, *Video Gambling: W. Va.'s dirty, untaxed little secret*, *Sunday Charleston Gazette-mail*, Mar. 26, 1995, at A1.

¹⁰²⁹Paul J. Nyden, *Video Gambling: W. Va.'s dirty, untaxed little secret*, *Sunday Charleston Gazette-mail*, Mar. 26, 1995, at A1.

¹⁰³⁰James A. Haught, *Video Poker \$300 Million A Year*, *Charleston Gazette*, Mar. 29, 1995, at A4.

¹⁰³¹Fanny Seiler, *Affairs of State*, *Charleston Gazette-Mail*, Nov. 13, 1994, at B1; Paul J. Nyden, *Video poker debate likely to be lively: 'Gray machine' owners want to keep control if state makes payouts legal*, *Sunday Charleston Gazette-Mail*, Jan. 3, 1999, at A1; Editorial, *Gray machines: State should take over*, *Charleston Gazette*, Jan. 27, 1999, at A4.

How can Tomblin work on the state budget, knowing that he's part of the untaxed, unregulated operation?

Other questions hang over him: Why did he kill riverboat gambling in the 1995 session? To prevent competition to his machines? Why did an amendment slip through giving his family a still-bigger share of greyhound racing money? The Tomblin political family is the state's biggest greyhound breeder, although the senator's father's name was removed after two corruption convictions.

Fellow senators support Tomblin. The Ethics Commission does nothing. Yet this dubious situation clouds the Legislature.¹⁰³²

6. Senate Majority Leader Truman Chafin

The current Senate Majority Leader Truman Chafin has also faced public scrutiny as he has been indicted, but not convicted, on two occasions.¹⁰³³ He was accused of accepting a bribe when he was a county commissioner to help current Mingo County Sheriff Hilbert "buy the office from Owens for \$100,000."¹⁰³⁴ Owens said he gave \$50,000 to the Mingo County Commission as part of the deal and Chafin was president of the county commission during that time.¹⁰³⁵ While a grand jury indicted Chafin, the charge was dropped because the grand jury was improperly

¹⁰³²James A. Haught, *Video Poker \$300 Million A Year*, Charleston Gazette, Mar. 29, 1995, at A4.

¹⁰³³*Id.*

¹⁰³⁴*Id.*

¹⁰³⁵Fanny Seiler, *Chafin foe made threats, Mingo man says*, Charleston Gazette, Oct. 2, 2001, at A1.

empaneled.¹⁰³⁶ Not only were no additional charges filed against Chafin, but he also forced the county to pay his legal bills.¹⁰³⁷ The *Charleston Daily Mail* described Chafin as “a politician who proudly has no convictions despite being indicted on two different occasions.”¹⁰³⁸

In 1995, facing a potential twenty years in prison and \$1 million in fines, Chafin was charged with “one count of conspiracy to violate federal wiretapping laws and three counts of procuring others to illegally wiretap.”¹⁰³⁹ Chafin, in the process of a “lengthy, bitter divorce,” allegedly paid two men to record the telephone conversations of his former wife Gretchen Lewis who was at the time the State Secretary of Health and Human Resources.¹⁰⁴⁰ Chafin pleaded not guilty to charges.¹⁰⁴¹

Mark McMillian, who was hired by to investigate Chafin’s wife was sentenced to two months in prison and fined for installing a wiretap in what a federal judge

¹⁰³⁶*Id.*

¹⁰³⁷*Id.*

¹⁰³⁸Daily Mail Staff, *W.Va.’s all-star lineup*, *Charleston Daily Mail*, Aug. 5, 1997, at C1.

¹⁰³⁹*Majority Leader’s Job In Hand Of Legislature: Senate To Vote On Employment If Chafin Convicted Of Charges*, *Charleston Daily Mail*, Mar. 21, 1995, at A1.

¹⁰⁴⁰*Id.*

¹⁰⁴¹Associated Press, *Chafin pleads not guilty to charges*, *Herald Dispatch* (Huntington, WV), Mar. 31, 1995, at A1; Associated Press, *Chafin re-charged in wiretapping case*, *Parkersburg Sentinel*, Sept. 20, 1995, at A6.

called "reprehensible" conduct.¹⁰⁴² Chafin, however, was acquitted after a jury trial and continues to serve as State Senator. Chafin denied involvement with the wiretap and said that he received one tape from McMillian and said that he was "shocked" to learn the investigator had been using a wiretap on his ex-wife.¹⁰⁴³

7. Senate Presidents Larry Tucker and Dan Tonkovich

Continuing West Virginia's history of corrupt politics were two former West Virginia Senate Presidents who were sentenced to prison for taking money from gambling interests.¹⁰⁴⁴ One was charged with soliciting \$15,000 from a casino company to help pass a bill that would have allowed casinos in the state. The other was convicted for accepting an illegal \$10,000 payment from gambling interests.¹⁰⁴⁵ The *Charleston Gazette* referred to the State Senate during the mid 1980s as a time "when the institution was gaining a reputation for freewheeling business dealings

¹⁰⁴²Maryclaire Dale, *Chafin investigator gets 2 months in wiretapping*, *Charleston Gazette*, Jan. 30, 1996, at A1.

¹⁰⁴³*Id.*

¹⁰⁴⁴*West Virginian In Corruption Inquiry Is Punished by Court*, N.Y. TIMES, Feb. 16, 1989, at A14 (following federal probe of corruption in West Virginia legislature, former president of state senate, Dan Tonkovich, sentenced for extortion; during same week, former state senate president Larry Tucker sentenced for taking illegal payment from gambling interests, and former state senate majority leader Si Boettner sentenced for income tax evasion); see also, *West Virginia Senate Head Is Fourth Leader to Resign*, N.Y. TIMES, Sept. 9, 1989, at A8 (West Virginia's Attorney General and Treasurer were also investigated.).

¹⁰⁴⁵A.V. Gallagher, Associated Press, "Former W. Va. Senate President Sentenced to 5 Years, Fined \$10,000," Dec. 14, 1989, at A1.

and partying that resulted in the convictions of former senate presidents Dan Tonkovich and Larry Tucker."¹⁰⁴⁶

Former West Virginia Senate President and banker Larry Tucker went to prison twice to serve sentences on separate charges of extortion, once for lying to a grand jury and once for obstruction of justice.¹⁰⁴⁷ In 1991, Tucker was sentenced to thirty-seven months in federal prison for lying to a federal grand jury investigating corruption in state government and was fined \$45,000.¹⁰⁴⁸ At Tucker's sentencing hearing, Assistant United States Attorney Joe Savage pleaded with the Court for a stiff sentence. Savage pleaded: "It is time for this court to say to Larry Tucker and his colleagues who might consider doing the same thing in the future—enough. It is time to take the 'For Sale' sign off the Capitol building."¹⁰⁴⁹

Tucker's successor, West Virginia Senate President Dan Tonkovich, was soon to follow in the footsteps of his predecessor as he became the next West

¹⁰⁴⁶Jack McCarthy, *Political Family Scion Making A Go For The Big Time*, Charleston Gazette, Dec. 27, 1995, at A1.

¹⁰⁴⁷Cheryl Caswell, *Ex Politicos Rebound After Fall From Grace*, Charleston Daily Mail, Sept. 6, 1994, at A1; See also, Jack Deutsch, *Tucker quits as he admits taking cash*, Charleston Daily Mail, Sept. 8, 1989, at A1; Grant Parsons, *Tucker pleads guilty, apologizes*, Charleston Gazette, Sept. 12, 1989, at B1; Fanny Seiler, *Senate president resigns after guilty plea*, Charleston Gazette, Sept. 8, 1989, at A1.

¹⁰⁴⁸Chicago Tribune wires, *Ex-W. Virginia Senate leader sent to prison*, Chicago Tribune, Mar. 19, 1991, at C6.

¹⁰⁴⁹Ron Hutchison, *Official says Tucker lied about money*, Charleston Daily Mail, Dec. 14, 1989, at A1.

Virginia politician to become a resident of the Ashland, Kentucky federal prison.¹⁰⁵⁰ Tonkovich, the sixteen-year legislator who unsuccessfully ran for Governor in 1988, was soon afterward convicted of federal racketeering and extortion charges.¹⁰⁵¹ On September 14, 1989, Tonkovich pleaded guilty to taking a \$5,000 payoff from a casino company to help in passage of a bill legalizing gambling.¹⁰⁵²

Tonkovich had been charged with three counts of extortion, two of attempted extortion, and one of racketeering.¹⁰⁵³ He pleaded guilty to one count of extortion which sentence carries as much as twenty years in prison and \$250,000 in fines.¹⁰⁵⁴ United States Attorney Michael Carey told Tonkovich at his sentencing hearing: "Your misconduct, along with others, has quaked the very foundation of our public institutions and has left the citizens of the state shaken in their confidence and trust of the legislative process."¹⁰⁵⁵

¹⁰⁵⁰*Id.*

¹⁰⁵¹*Id.*

¹⁰⁵²*Id.*; see also, U.S. v. Ellis 91 f.3d 135 (4th Cir. 1996) (unpublished).

¹⁰⁵³From News Services and Staff Reports, *West Virginia Senate's Ex-Leader Enters Guilty Plea*, The Washington Post, Apr. 13, 1990, at A18.

¹⁰⁵⁴*Id.*; Ron Hutchison, *Tonkovich pleads guilty to extortion*, Charleston Daily Mail, Sept. 14, 1989, at A1; Jeffrey Bair, *Grand jury indicts Tonkovich*, Charleston Daily Mail, June 2, 1989, at A1; Ron Hutchison, *Former Tonkovich aide key witness in trial*, Charleston Daily Mail, Sept. 6, 1989, at A1; Jack McCarthy, *Prosecutors link Tonkovich, career gambler*, Charleston Gazette, Aug. 4, 1989, at A1; Ron Hutchison, *Tonkovich's term stiffest in fed probe*, Charleston Daily Mail, Dec. 15, 1989, at A1.

¹⁰⁵⁵Jack McCarthy, *Tonkovich gets five years for extortion*, Charleston Gazette, Dec. 14, 1989, at A1.

8. State Senate Majority Leader Si Boettner

Former Senate Majority Leader Si Boettner was sentenced to five years of probation and 200 hours of community service after pleading guilty to tax evasion in 1989 as well as having his law license suspended.¹⁰⁵⁶ Boettner was also compelled to resign his position with the West Virginia Senate.¹⁰⁵⁷ Boettner was a former member of the House of Delegates and was one of three candidates who ran for the Office of Attorney General in 1984.¹⁰⁵⁸ Although Boettner entered into a 1989 guilty plea agreement with the United States, he later challenged his conviction in various courts with his final unsuccessful challenge occurring in 1998.¹⁰⁵⁹

Boettner, a lawyer and State Senator, pleaded guilty in 1989 to evading payment of federal income taxes and had his law license suspended for three years. Boettner's violation occurred when two individuals made interest payments totaling approximately \$4,000 due on a bank loan obtained by Boettner. The conviction of Boettner in the District Court for the Southern District of West Virginia was for willfully evading the payment of federal income taxes under 26 U.S.C. §§ 7201 which provides:

¹⁰⁵⁶Paul Nyden, *Boettner still fights to reverse tax conviction*, Sunday Gazette-Mail, Mar. 17, 1991, at C1; *Boettner, v. Comm. Of Internal Revenue*, 1998 WL 712526 (U.S. Tax Ct.) 76 T.C.M. (CCH) 622 (1998).

¹⁰⁵⁷*Id.*

¹⁰⁵⁸*Id.*

¹⁰⁵⁹*Id.*; see also *U.S. v. Ellis* 91 f.3d 135 (4th Cir. 1996) (unpublished).

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.¹⁰⁶⁰

Boettner was charged with supporting dog track legislation in return for a promise from William Ellis, a part owner of Tri-State Greyhound Park, that Tonkovich would be paid \$10,000 and, or, receive property of substantial value.¹⁰⁶¹ Boettner told the federal judge that the charge against him stems from a \$25,000 loan he obtained to help finance his unsuccessful 1984 campaign for State Attorney General.¹⁰⁶² Boettner explained that the interest on the loan was paid by other people and that he failed to report that on his 1985 income tax return.¹⁰⁶³

Boettner was initially under investigation in 1987 for the manner in which his \$13,000 campaign debt was paid. Beer lobbyist, Samuel D'Annunzio's corporation, S&J Inc., had borrowed \$13,000 more for a house it was purchasing for Boettner

¹⁰⁶⁰ Committee on Legal Ethics of the West Virginia State Bar v. Boettner, 422 S.E.2d 478, 480 (W. Va. 1992); see also, Committee on Legal Ethics v. Boettner, 394 S.E.2d 735, 738 (W. Va. 1990); U.S. v. Boettner 52 F.3d 322 (Table) C.A.4 (W. Va.), 1995.

¹⁰⁶¹ Jack McCarthy, *Boettner unindicted abettor*, Charleston Gazette, Aug. 3, 1989, at A1.

¹⁰⁶² Ron Hutchison, *Boettner cops plea with feds*, Charleston Daily Mail, Aug. 30, 1989, at A1.

¹⁰⁶³ *Id.*

to lease.¹⁰⁶⁴ Boettner's \$13,000 campaign debt was then paid.¹⁰⁶⁵ Nonetheless, as the allegations surfaced against him, Boettner was named to the Senate Ethics Panel and said that he would fight to pass a bill to set up a State Ethics Commission.¹⁰⁶⁶

9. Senator Jack Buckalew

Even though then-State Police Superintendent Jack Buckalew *pleaded the Fifth* during the disgraceful Fred Zain miscarriage of justice, he was still elected to the State Senate in 1994. After his 1998 State Senate election loss and despite his failure to explain his knowledge of the Zain affair, Governor Underwood was quick to provide Buckalew a top post with his Administration. Fred Zain was the State Police serologist who falsified test results and lied in as many as 134 criminal cases from 1979 to 1989, which resulted in numerous innocent people serving jail sentences.¹⁰⁶⁷ Defendants, since exonerated, were sentenced to long prison terms based upon his testimony.¹⁰⁶⁸

In 2002, information surfaced implicating the Steptoe & Johnson law firm contending that its attorneys attempted to conceal much of the Zain information.

¹⁰⁶⁴Chris Knap, *Boettner to move out of lobbyist's house*, Charleston Gazette, May 6, 1987, at A1.

¹⁰⁶⁵*Id.*

¹⁰⁶⁶Richard Grimes, *Ethics Panel To Include Boettner*, Charleston Daily Mail, July 15, 1987, at A1.

¹⁰⁶⁷In re an Investigation of the W Va State Police Crime Lab, Serology Div., 438 SE2d 501, 504, 506 (W. Va. 1993).

¹⁰⁶⁸*Id.*

In its defense, Steptoe began asserting that former West Virginia Attorney General Mario Palumbo, who is suffering from Lou Gehrig's disease and is unable to defend himself, knew about Zain's deceptions even before McGowan [a Steptoe attorney] did while Palumbo was Attorney General.¹⁰⁶⁹ Palumbo's former Chief Deputy, however, disagrees with the Steptoe's assertions, stating Palumbo "sought answers from Superintendent Buckalew and was assured that nothing was amiss."¹⁰⁷⁰

B. House of Delegates

1. Delegate Joe C. Ferrell

Logan County has continued its questionable ways by electing convicted felon Joe C. Ferrell to represent them in the West Virginia House of Delegates. Ferrell first served in the House from 1983-84 and 1987-92.¹⁰⁷¹ In 1992, Ferrell pleaded guilty to illegally spending \$58,000 in Logan, Lincoln, and Boone Counties during the elections of 1986, 1988, 1990, and 1992 to help win his seat in the state House of Delegates, including a \$10,000 cash payment to then-Logan County Circuit Judge Ned Grubb.¹⁰⁷² Ferrell explained "I delivered the cash to [Judge]

¹⁰⁶⁹*Id.*; Bob Schwarz, *Palumbo gala to benefit muscular dystrophy research*, Sunday Charleston Gazette-Mail, Oct. 7, 2001, at B2; Lawrence Messina, *Firm accused in Zain case points to Palumbo*, Charleston Gazette, Feb. 8, 2002, at A1.

¹⁰⁷⁰Editorial, *Fallout: Zain mess worsens*, Charleston Gazette, Feb. 22, 2002, at A4.

¹⁰⁷¹Fanny Seiler, *Logan Delegate Aims for Senate*, Charleston Gazette, Aug. 29, 2001, at C1.

¹⁰⁷²*Id.*; Editorial, *Liar: Ferrell breaks promise*, Charleston Gazette, Aug. 30, 2001, at A4; Fanny Seiler, *Judicial system complaints will be aired at rally*, Charleston Gazette, Feb. 17, 1998, at C1; Paul J. Nyden, *Ferrell may have an out* (continued...)

Grubb in Grubb's judicial chambers in the Logan County Courthouse."¹⁰⁷³ Ferrell gave Judge Grubb another \$1,500 during a political rally in April 1988, just prior to the 1988 Primary Election.¹⁰⁷⁴ Grubb was later convicted of accepting illegal campaign cash and was sent to federal prison.¹⁰⁷⁵

As a part of his federal plea bargain, Ferrell signed a sworn affidavit promising never to seek public office again and paid a fine of \$174,000.¹⁰⁷⁶ Ferrell, however, changed his mind. During a 1998 interview by the *Charleston Gazette*, Ferrell maintained that he merely agreed that he "had no intention of running" when he signed the plea agreement.¹⁰⁷⁷ Ferrell explained, "But my mind changed. You change your mind on things."¹⁰⁷⁸

¹⁰⁷²(...continued)
for office run, Sunday Charleston Gazette-Mail, Sept. 6, 1998, at C1; United States v. Grubb, 11 F.3d 426 (4th Cir. 1993).

¹⁰⁷³Paul J. Nyden, *Ferrell may have an out for office run*, Sunday Charleston Gazette-Mail, Sept. 6, 1998, at C1; United States v. Grubb, 11 F.3d 426 (4th Cir. 1993).

¹⁰⁷⁴*Id.*

¹⁰⁷⁵*Id.*

¹⁰⁷⁶Fanny Seiler, *Logan Delegate Aims for Senate*, Charleston Gazette, Aug. 29, 2001, at C1; Editorial, *Liar: Ferrell breaks promise*, Charleston Gazette, Aug. 30, 2001, at A4; Fanny Seiler, *Judicial system complaints will be aired at rally*, Charleston Gazette, Feb. 17, 1998, at C1; Fanny Seiler, *Needs for library surprise lawmaker*, Charleston Gazette, Apr. 27, 1998, at C1.

¹⁰⁷⁷Fanny Seiler, *Judicial system complaints will be aired at rally*, Charleston Gazette, Feb. 17, 1998, at C1.

¹⁰⁷⁸Paul J. Nyden, *Ferrell may have an out for office run*, Sunday Charleston Gazette-Mail, Sept. 6, 1998, at C1.

Ferrell's written affidavit with Kanawha County Circuit Court Judge Charles King stated: "I know that it was illegal to use cash in the elections and that in doing so I participated in depriving the citizens of Logan, Boone and Lincoln counties of honest elections. I never intend to run for, or hold, public office again."¹⁰⁷⁹ Despite many newspaper stories and editorials, Ferrell's election to the West Virginia House of Delegates was not challenged. In fact, then-United States Attorney Rebecca Betts said she was "unable to comment on the case. I was a partner in the firm that defended Mr. Ferrell. I'm out of this one."¹⁰⁸⁰

Nonetheless, in 1998, Ferrell ran for and was once again elected to the West Virginia House of Delegates.¹⁰⁸¹ In addition, Ferrell was immediately placed on the House Judiciary Committee upon assuming his seat in the Legislature. According to the *Charleston Gazette*, Ferrell was elected because "[t]he people of Logan County, who apparently have a high tolerance for crooked politicians, elected him."¹⁰⁸² Ferrell, apparently not satisfied with being a member of the House, announced that he would "throw his hat in the ring" to run for the State Senate during the 2002 West Virginia election for the seat vacated by Senator Lloyd

¹⁰⁷⁹*Id.*

¹⁰⁸⁰*Id.*

¹⁰⁸¹Fanny Seiler, *Logan Delegate Aims for Senate*, *Charleston Gazette*, Aug. 29, 2001, at C1.

¹⁰⁸²Editorial, *Liar: Ferrell breaks promise*, *Charleston Gazette*, Aug. 30, 2001, at A4.

Jackson II.¹⁰⁸³ Ferrell indicated that he already had the support of political faction leaders in Logan and Lincoln counties.¹⁰⁸⁴

A *Charleston Gazette* editorial pronounced: "Liar: Ferrell breaks promise."¹⁰⁸⁵ It continues: "So the people in [retiring Senator Lloyd] Jackson's district will get a chance to vote for a politician who breaks his promises and who has made a living in a highly suspect business. Sadly, chances are good they'll elect him."¹⁰⁸⁶ Ferrell later decided not to run for the Senate seat and remains a current member of the House of Delegates.

Ferrell, who also served for two years as Logan County Clerk, owns Southern Amusement Company, one of the state's largest providers of amusement devices, such as pool tables, jukeboxes and video poker "gray machines."¹⁰⁸⁷ He bought the company from State Senate President Earl Ray Tomblin, Jr.'s family in 1995, for an amount that he has never disclosed.¹⁰⁸⁸ Interestingly, Ferrell was able to buy

¹⁰⁸³Fanny Seiler, *Logan Delegate Aims for Senate*, *Charleston Gazette*, Aug. 29, 2001, at A4; see also, Fanny Seiler, *Weirton office site considered*, *Charleston Gazette*, Aug. 20, 2001, at C1.

¹⁰⁸⁴Fanny Seiler, *Logan Delegate Aims for Senate*, *Charleston Gazette*, Aug. 29, 2001, at C1.

¹⁰⁸⁵Editorial, *Liar: Ferrell breaks promise*, *Charleston Gazette*, Aug. 30, 2001, at A4.

¹⁰⁸⁶*Id.*

¹⁰⁸⁷Fanny Seiler, *Logan Delegate Aims for Senate*, *Charleston Gazette*, Aug. 29, 2001, at C1.

¹⁰⁸⁸*Id.*; Paul J. Nyden, *Video poker in gray area west Virginia*, *Charleston Gazette*, Aug. 27, 1998, at A1.

Southern Amusement Co. a few years after filing for bankruptcy with his mining company PayBra that held \$31 million in debts.¹⁰⁸⁹

In June of 2001, thirty of Ferrell's machines were confiscated by the State Police. Logan County Democratic prosecutor Brian Abraham did not prosecute Ferrell saying he "had better things to do right now than prosecute gray machine cases."¹⁰⁹⁰ Incidentally, Abraham's father and brother own Nidie & Bill's, a convenient store and grocery store that at the time had fourteen to sixteen gray machines.¹⁰⁹¹ In spite of Ferrell's open defiance of the gaming laws, Ferrell was issued a video gambling operator's license to operate legal gaming machines in September 2001.¹⁰⁹²

2. Delegate Robert L. McCormick

West Virginia State Delegate Robert L. McCormick was convicted for taking unreported campaign contributions in violation of the Hobbs Act; however, his

¹⁰⁸⁹Editorial, *Liar: Ferrell breaks promise*, Charleston Gazette, Aug. 30, 2001, at A4; Coal Operators Told to Pay, Charleston Daily Mail, Jan. 16, 1997, at A5 (Ferrell and former Logan County Commissioner Jack Robertson were ordered by the federal district court to pay \$543,731 to Caterpillar Financial Services for money that Ferrell and Robertson borrowed to purchase heavy mining equipment in March of 1991.); Paul J. Nyden, *Video poker in gray area West Virginia*, Charleston Gazette, Aug. 27, 1998, at A1.

¹⁰⁹⁰Fanny Seiler, *State Police raid Logan stores for gray machines*, Charleston Sunday Gazette-Mail, June 17, 2001, at C3.

¹⁰⁹¹*Id.*

¹⁰⁹²Randy Coleman, Associated Press, *Lottery Commission issues license to Logan delegate for video poker*, Charleston Gazette, Sept. 29, 2001, at A7.

conviction was later reversed on statutory grounds.¹⁰⁹³ McCormick, a delegate from Logan County, assisted foreign doctors in obtaining licenses to practice medicine.¹⁰⁹⁴ A temporary permit system allowed the doctors to practice pending their completion of the formal requirements for a full license to practice, which included passing a particular test.¹⁰⁹⁵ McCormick assisted the doctors in 1984 in extending the program by sponsoring the bill to do so; he also agreed with the doctors to sponsor such a bill in the 1985 legislative session.¹⁰⁹⁶

During his 1984 re-election campaign, Delegate McCormick told a lobbyist that he had not heard from the doctors. Subsequently, they provided him with several cash payments which were nowhere recorded as campaign contributions, as required by law.¹⁰⁹⁷ McCormick's sponsorship of the 1985 legislation followed thereafter. Subsequent to the passage of the bill, McCormick received another cash payment from the doctors.¹⁰⁹⁸ In all, he received five cash payments.¹⁰⁹⁹

¹⁰⁹³McCormick v. United States, 500 U.S. 257, 260, 271-74 (1991); see also, Ron Hutchison, *Jury indicts legislator for extortion*, Charleston Daily Mail, Sept. 10, 1988, at A1; Ron Hutchison, *Investigation targets other legislators*, Charleston Daily Mail, Dec. 9, 1988, at B1; Jack McCarthy, *Delegate found guilty of extortion, tax evasion*, Charleston Gazette, Dec. 8, 1988, at A1; Richard Grimes, *McCormick unsure about quitting*, Charleston Daily Mail, Jan. 5, 1989.

¹⁰⁹⁴McCormick v. United States, 500 U.S. 257, 260, 271-74 (1991).

¹⁰⁹⁵*Id.*

¹⁰⁹⁶*Id.*

¹⁰⁹⁷*Id.*

¹⁰⁹⁸*Id.*

¹⁰⁹⁹*Id.*

McCormick received probation and a fine of \$50,000 for his conviction of extortion and income tax evasion.¹¹⁰⁰ He was also forced to pay restitution of \$900 to lobbyist John Vandergrift from whom he had extorted money.¹¹⁰¹ After resigning his seat from the Legislature, McCormick said, "I hope my resignation in no way gives the people of West Virginia the impression that I am guilty of extortion. I am not guilty of the charges brought against me, and am confident that my appeal will completely vindicate me."¹¹⁰² In reversing the conviction, the United States Supreme Court held:

to hold that legislators commit the federal crime of extortion when they act for their constituents' benefit or support legislation furthering their constituents' interests, shortly before or after they solicit or receive campaign contributions from those beneficiaries, is an unrealistic assessment of what Congress could have meant when it made obtaining property from another 'under color of official right' a crime.¹¹⁰³

3. Delegate Lisa Smith

On June 25, 2001, the *Charleston Gazette* reported that Delegate Smith's company Elite Professional Health Associates, was overpaid by nearly \$700,000 by

¹¹⁰⁰Andy Wessels, *Former Delegate McCormick on Probation, fined \$50,000*, *Charleston Gazette*, Feb. 9, 1989, at A1.

¹¹⁰¹*Id.*

¹¹⁰²Fanny Seiler, *McCormick quits seat in Legislature*, *Charleston Gazette*, Jan. 21, 1989, at A1.

¹¹⁰³*Id.*

Medicaid after she completed her claim forms incorrectly.¹¹⁰⁴ Smith said it was “unfortunate for [her] and [her] company that Medicaid made such a big mistake” while Secretary of Health and Human Resources Paul Nusbaum called Smith’s comments “ludicrous and irresponsible.”¹¹⁰⁵ At the time, Smith had paid approximately half of the money back to the State, but had stopped making payments.¹¹⁰⁶ Nusbaum said “he didn’t like having the Medicaid program being slammed by a member of the House of Delegates” and that “a member of the House of Delegates should be held to a higher standard.”¹¹⁰⁷

4. Delegate Clinton Nichols

Delegate Clinton Nichols received extensive negative press for his financial difficulties. Nichols, who was first appointed to the House in 1993 by then-Governor Gaston Caperton, lost his re-election bid in 1996 amid reports that he owed the federal government more than \$30,000 in unpaid taxes and faced an \$80,000 lawsuit for unpaid debts to an individual named Walter Schoonover.¹¹⁰⁸

¹¹⁰⁴Fanny Seiler, *Overpaid company blamed*, Charleston Gazette, June 25, 2001, at C1 (The overpayments occurred in 1999 and 2000.).

¹¹⁰⁵*Id.*

¹¹⁰⁶*Id.*

¹¹⁰⁷*Id.*

¹¹⁰⁸Scott Finn, *Clay publisher owns much, owes many*, Sunday Gazette-Mail, May 26, 2002, at A1 (In addition to being a State Delegate, Nichols has spent 28 years with his newspaper the Clay County Free Press, has served as a county commissioner, and as a town council member).

Nichols has also bragged that he could persuade the Division of Highways to repair roads for his friends and in one instance, the DOH spent more than \$10,000 to gravel a road that led to his brother's driveway and to his niece's house, although the road was not on the priority list of roads needing repair.¹¹⁰⁹ Most recently in May 2002, the Clay County Bank sued Nichols for repayment of nearly \$500,000 in short-term loans. The bank foreclosed on more than twenty of Nichols' properties, many of which already have Internal Revenue Service liens against them for unpaid taxes.¹¹¹⁰

5. Delegate Greg Butcher

Delegate Butcher is yet another example of an elected official using his office in an improper manner to facilitate his re-election. The *Charleston Gazette* reported:

Delegate Greg Butcher, D-Logan, is stapling his campaign card to free official Division of Highways' road maps and putting them out for campaign material. A patron at a Lincoln County restaurant picked up one of the maps that were on a counter with other candidates' campaign material. DOH gives the maps away to anyone who asks for them. A DOH source said during legislative sessions lawmakers often ask for three boxes of maps at a time. Each box has 300 maps. DOH doesn't keep a list of whom they give the maps to, said Bill Wood, a supervisor in the planning section. Wood said the maps cost about 11 cents each.¹¹¹¹

¹¹⁰⁹*Id.*

¹¹¹⁰*Id.*

¹¹¹¹Fanny Seiler, *Clay Ridge Residents Wrangle Over Water*, *Charleston Gazette*, Apr. 22, 2002, at C1.

6. Speaker of the House of Delegates Bob Kiss

In a continued performance of questionable activity, a so-called "secret account" known as the 098 account, was created where surplus funds from House of Delegates accounts were moved to an account in the Governor's Civil Contingent Fund.¹¹¹² While the Governor's Contingency Fund is a set of accounts to be used for emergencies or other projects the Governor deems worthwhile, it was charged that the money was actually controlled by Speaker of the House Bob Kiss.¹¹¹³ Kiss denied the connection saying "It's the governor's Civil Contingent Fund."¹¹¹⁴ In fact, when the lawsuit challenged the constitutionality of the account, Kiss said he "didn't even know what the 098 account was until this summer."¹¹¹⁵ Conversely, Governor Underwood said, "We don't move any funds from that account without a written request from the speaker or from House leadership."¹¹¹⁶

¹¹¹²Randy Coleman, Associated Press, *Workman wants to depose House leaders about Budget Digest*, Charleston Gazette, Dec. 12, 2000, at A1.

¹¹¹³Randy Coleman, Associated Press, *Court refuses Workman petition*, Charleston Gazette, Dec. 14, 2000, at A1; Phil Kabler, *'098' account's days numbered, Bill to eliminate infamous fund passes Senate, goes to governor*, Charleston Gazette, Feb. 24, 2001, at A1 (The Senate did not have an equivalent account.).

¹¹¹⁴Fanny Seiler, *Workman asks for contingency fund papers*, Charleston Gazette, Dec. 22, 2000, at A1.

¹¹¹⁵Randy Coleman, Associated Press, *Workman wants to depose House leaders about Budget Digest*, Charleston Gazette, Dec. 12, 2000, at A1.

¹¹¹⁶Fanny Seiler, *Workman asks for contingency fund papers*, Charleston Gazette, Dec. 22, 2000, at A1.

In the 1997-98 budget, the speaker transferred surplus money from two House accounts to the contingency fund for a total of \$1.85 million.¹¹¹⁷ During the summer of 1998, Kiss asked the Governor for \$1.25 million to be transferred, while a few months later he requested that an additional \$600,000 be transferred for grants to projects in various Delegate districts.¹¹¹⁸ The “098 account,” referred to as “legislative leadership doing an end-run around the lawful procedure” for appropriating state revenue, faced a constitutional challenge before the West Virginia Supreme Court.¹¹¹⁹ Just days after the Supreme Court challenge, the State Legislature passed a bill to eliminate the account.¹¹²⁰

Former West Virginia Supreme Court Chief Justice Margaret Workman called the account another example of “legislative leadership doing an end-run around the lawful procedure” for appropriating state revenue.¹¹²¹ This was yet another account that Governor Underwood “zeroed-out” just prior to leaving office just like the \$22.34

¹¹¹⁷Fanny Seiler, *'098' empty, brief moot, Underwood lawyers says*, Charleston Gazette, Jan. 18, 2001, at A2.

¹¹¹⁸Fanny Seiler, *Workman asks for contingency fund papers*, Charleston Gazette, Dec. 22, 2000, at A1.

¹¹¹⁹Phil Kabler, *'098' account's days numbered, Bill to eliminate infamous fund passes Senate, goes to governor*, Charleston Gazette, Feb. 24, 2001, at A1.

¹¹²⁰*Id.*

¹¹²¹*Id.*

million balance on July, 1, 2000, just four months prior to the November, 2000 General Election that was dwindled to a paltry \$20,000.¹¹²²

¹¹²²*Id.*

IX. THE WEST VIRGINIA JUDICIARY—UPHOLDING THE LAW

The government is the potent omnipresent teacher. For good or ill it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that the end justifies the means -- to declare that the government may commit crimes -- would bring terrible retribution.

—United States Supreme Court Justice Louis Brandeis

It is in justice that the ordering of society is centered.

—Aristotle
(384 BC - 322 BC)

A. WEST VIRGINIA SUPREME COURT AND CIRCUIT COURTS

It is essential that the public [has] absolute confidence in the integrity and impartiality of our system of justice. This requires that attorneys who are public officials not only in fact properly discharge their responsibilities but also that they avoid, as much as is possible, the appearance of impropriety.¹¹²³

With the numerous West Virginia Judiciary indiscretions or “perceptions” of indiscretions, the integrity of the legal system of West Virginia has been placed into

¹¹²³People v. Rhodes, 524 P.2d 363, 367 (Cal. 1974).

question. The overriding public interest in preserving the integrity of the judiciary demands that Justices, Judges, Magistrates, and attorneys be accountable for their damaging behaviors.¹¹²⁴ Moreover, the Preamble to the West Virginia Code of Judicial Conduct provides:

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.¹¹²⁵

1. **Circuit Court Judge James Ned Grubb**

Former Logan County Circuit Judge James Ned Grubb had the distinction of being West Virginia's first circuit judge to be convicted of corruption charges while still in office.¹¹²⁶ Grubb, appropriately named, was convicted in 1992 of aiding and

¹¹²⁴The 1974 judicial Reorganization Amendment produced changes in the judicial system. The State's judicial functions are now integrated into a single system which is fully controlled by the State Supreme Court of Appeals. There are three levels of courts in West Virginia, the Supreme Court of Appeals of West Virginia, Circuit Courts, and Magistrates. The Magistrate system replaced Justice of the Peace Courts.

¹¹²⁵W. Va. Code of Judicial Conduct (1993).

¹¹²⁶Associated Press, *EX-JUDGE GRUBB DIES*, Charleston Gazette, Apr. 17, 1997, at C1; (At the time of his arrest, James Ned Grubb was an elected circuit judge of the Seventh Judicial Circuit of West Virginia, located in Logan County.); Ron Hutchinson, *Ex-Judge Ordered To Court: Doctor says Grubb's Health would be hurt if sent back to prison*, Charleston Daily Mail, Jan. 10, 1997, at A2; United
(continued...)

abetting the payment of a bribe, two counts of aiding and abetting mail fraud, conspiracy to commit fraud, tampering with a witness, obstruction of justice, and operating his judicial office as a racketeering enterprise.¹¹²⁷ Prior to Grubb's conviction, the Supreme Court of Appeals suspended him as "[h]is effectiveness as a judge and the integrity of the judiciary have been called into question."¹¹²⁸

The indictment against Grubb delineated the scheme to defraud as:

one to 'obtain money and property by means of false and fraudulent pretenses'; 'to illegally fund the election campaign of the slate of candidates supported by Grubb; and to 'defraud the citizens of Logan and Boone Counties in their rights to ... [a] fair and honest election [and] ... [t]he honest services of Grubb as circuit judge and Burgess as state senator.'¹¹²⁹

In 1988, Circuit Judge Grubb personally gave \$3,000 in cash to Oval Adams who was running for Logan County Sheriff.¹¹³⁰ Near this same time, Earl Tomblin,

¹¹²⁶(...continued)
States v. Grubb, 11 F.3d 426 (4th Cir. 1993).

¹¹²⁷United States v. Grubb, 11 F.3d 426, 430 (4th Cir. 1993); Associated Press, *W. Virginia Judge Found Guilty in Corruption Case*, Los Angeles Times, May 7, 1992, at A33.

¹¹²⁸Matter of Grubb, 417 S.E.2d 919 (W. Va. 1992).

¹¹²⁹Grubb, 11 F.3d at 432 (Grubb was a former member of the Logan County Democratic Executive Committee, the Logan County Board of Education, West Virginia State Senator, and Logan County Prosecuting Attorney.).

¹¹³⁰*Id.* at 432, fn2 ("Under West Virginia law, any candidate or person supporting a candidate must keep detailed accounts of monies received and spent and must file a report of the receipts and expenditures with the West Virginia Secretary of State. W.Va.Code Secs. 3-8-5, 5(a), 5(b), and 7. Furthermore, W.Va.Code Secs. 3-8-5d and 3-8-12(f) limit individual contributions to \$50 cash and \$1,000 per candidate. W.Va.Code Sec. 3-8-11 makes it illegal for any person to
(continued...)

a friend of Grubb's and former Sheriff of Logan County, met with Grubb in his judicial chambers and discussed Oval Adams' race for county Sheriff. Grubb asked Tomblin if he was going to help Adams and Tomblin offered to give Adams \$10,000 for his campaign in exchange for two years of part-time work if elected sheriff.¹¹³¹ Tomblin told Grubb he needed the two years of work for his social security and state pension benefits. Grubb agreed to relay this offer to Adams and "see what he could do."

Afterward, Grubb met with Adams and told him of Tomblin's conditional offer, encouraging Adams to "think about it." Grubb later asked Adams if he had met with Tomblin and Adams answered in the affirmative. On May 2, 1988, Tomblin gave Adams \$10,000, with the understanding that he would hire Tomblin if elected or pay the money back if not elected. Adams won the Primary and General Elections and in July of 1989, Tomblin asked Grubb to "remind Oval [Adams] about my job." Grubb did so and Adams hired Tomblin as a part-time investigator for the Sheriff's Office. Tomblin received a salary, along with social security, retirement, and other benefits, but he did not "perform functions for the Sheriff's Office on a

¹¹³⁰(...continued)

solicit money from a candidate in exchange for support unless that person is a duly appointed and designated member of a political party committee."); (As part of a plea agreement to a charge of conspiracy to transport stolen coal across state lines, Adams agreed to meet with Grubb and tape their conversations.)

¹¹³¹Associated Press, *Ex-Judge Grubb Dies*, Charleston Gazette, Apr. 17, 1997, at C1.

regular basis."¹¹³² For two years, the county clerk mailed to the West Virginia Public Employees Retirement System both the county and Tomblin's share of pension contributions.¹¹³³

Canon 2 of the West Virginia Code of Judicial Ethics (1991) provides a standard that:

A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidences and integrity in the impartiality of the judiciary. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others nor should he convey or permit others to convey the impression that they are in a special position to influence him.¹¹³⁴

Canon 7 provides that a judge who is not a candidate for election or re-election should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office except as permitted in [another section].¹¹³⁵

¹¹³²Grubb, 11 F.3d at 430, 431.

¹¹³³*Id.* at 431.

¹¹³⁴*Id.* (The West Virginia Code of Judicial Conduct was revised effective January 1, 1993, after the West Virginia Supreme Court authored its Opinion in Judge Grubb's case. As such, while the substance of the Canon may be the same, it may be located within another Canon.)

¹¹³⁵*Id.* (Much of then Canon 7 is included within Canon 5 of the current West Virginia Code of Judicial Conduct.)

Both canons must have been absent from sitting Circuit Judge Grubb's mind when he spoke on April 22, 1988 at a political rally in Chapmanville, West Virginia, where he strongly supported Oval Adams in his race for Sheriff. Grubb, who did not face re-election for his circuit judge seat until 1992, stated in part during the 1988 rally:

Now, Oval Adams was raised here. He has roots here. His family's here. Mine is, too. We're not going to come down here and bother you people. If he gets into office, no matter how much applause you give him tonight, he won't have helicopters and laws and policemen come in on you when there's no need to. If you all here tonight are like this judge is or like Oval Adams is going to be, we don't want justice, we want mercy, mercy, mercy.

If you all believe in me, as I believe you do, because there's people in this room ... most of you here in this room, I've touched your lives, one way or another ... I have never closed my door on any of you. Lonnie, Barry, and Ron Dingess and Earl Tomblin ... All of you can say I've been there when you needed me. I've never turned my back on you.

But if you believe in me, which I believe you do, then believe in this ticket. I believe so strong in this ticket. If there's a daddy to this ticket, it's got to be me. It's getting close, but I don't want to lose it. And I want you all here tonight to make a commitment not only to me, I'm not running. Make a commitment to yourself for a better Logan County. Make a commitment to yourselves that you must have and will have better candidates to serve you and better officeholders to serve you.

I'm not ashamed of my ticket. I'm for these gentlemen, and I want you to be. I want you to be able to come to me after this election and say, 'Judge, I did

all I could.' If you do, I'll still have mercy. If you don't, it's justice.¹¹³⁶

Grubb's political wheeling and dealing continued in the early 1990s, when James Burgess, a candidate for State Senator in a district that included Logan County, sought Grubb's political support. Burgess testified that he sought help from Grubb because "I needed some help in Logan County, and I figured he, being a circuit judge, he would have a lot of political clout and he would be very essential to my campaign."¹¹³⁷ Burgess met with Grubb at various places, including Grubb's chambers.

In April 1990, Grubb called Burgess and other candidates to a meeting at Grubb's house to discuss financing the upcoming election campaign. At that meeting, Grubb told Burgess that his contribution to the campaign expenses of the slate of candidates would be \$10,000. Burgess agreed because "I knew [in] Logan County politics you had to get on the slate if you expect to win." Several days later, Burgess gave Grubb \$10,000 in cash.¹¹³⁸

The *Charleston Gazette* reported that "[d]uring and after the trial, Grubb laughed at the proceedings and, at one point, said he would die in prison and the

¹¹³⁶*Id.* at 430, fn 1.

¹¹³⁷*Id.* at 431.

¹¹³⁸When Burgess filed the campaign finance report required by West Virginia law, he omitted reporting this illegal cash payment to Grubb, as well as Grubb's expenditure of those funds in behalf of Burgess and the slate. Burgess mailed this report to the West Virginia Secretary of State. Burgess testified at trial that the reason he did not report the \$10,000 cash given to Grubb was because he was "dealing with a judge." See Grubb, 11 F.3d at 431.

government would be forced to pay for his funeral.”¹¹³⁹ Grubb said, “[i]’m not as upset as everyone else is . . . really, I’ve got to live somewhere. (In prison) I don’t have to pay no rent.”¹¹⁴⁰ Grubb was sentenced on July 20, 1992 to five years and five months in prison and fined \$25,000.¹¹⁴¹

Grubb’s corrupt activities are incredible considering he and two other individuals presented a petition to the Department of Justice during the 1960 election in Logan County to express their outrage with the criminal activities that were rampant. The *Pittsburgh Post Gazette* reported the petition alleged:

mass selling and buying of votes with money, whiskey, and moonshine; the entering of polling places by candidates and other persons; the forcible denial of voters to vote in privacy by some election officials, and the flagrant operation of the voting machines by some election officials without the consent of the voter and often against his overt protests.¹¹⁴²

Dan Fleming, in a novel on the 1960 Kennedy Presidential Primary in West Virginia, describes Grubb as “someone who wanted to reform the whole corrupt system.”¹¹⁴³

¹¹³⁹*Id.*

¹¹⁴⁰ Associated Press, *W. Virginia Judge Found Guilty in Corruption Case*, Los Angeles Times, May 7, 1992, at A33.

¹¹⁴¹ United States v. Grubb, 11 F.3d 426 (4th Cir. 1993) (the court affirmed the conviction of Circuit Judge Grubb under § 666(a)(2).); see also, Associated Press, *Judge Gets Fine, Prison for Corruption Conviction*, Orlando Sentinel, July 21, 1992, at A7; USA TODAY, *West Virginia*, Apr. 29, 1992, at A7.

¹¹⁴² Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 117 (McFarland 1992).

¹¹⁴³*Id.*

At the time of Fleming's book, Grubb had not been convicted for his laundry list of corrupt political activities.

In 1993, more of Judge Grubb's inauspicious escapades surfaced with the suspension of the Logan County Prosecuting Attorney Mark Hobbs' law license for two years for failing to inform anyone of the extortion at the command of Grubb.¹¹⁴⁴ Hobbs, who became Prosecuting Attorney in 1992, explained that the unethical conduct began in 1986 while he was a private attorney. Hobbs was representing Roy Dingess in a wrongful death action and Grubb, who was the circuit judge assigned to the case, met with Hobbs' alone and allegedly asked: "Why don't you turn your two hundred and fifty thousand dollar case into a million?"¹¹⁴⁵ Hobbs testified that Grubb wanted a share of Hobbs' collected fees to be given to the judge's wife.¹¹⁴⁶ Hobbs declared that he feared retribution from the politically powerful Grubb, citing a time when Grubb jailed Hobbs for being late for a hearing.¹¹⁴⁷

Sergeant Marty Allen, who spent six years investigating Grubb, said he "possessed substantial political power in Logan County and people feared he might fabricate criminal charges or even attempt to have them killed."¹¹⁴⁸ The Logan

¹¹⁴⁴Committee on Legal Ethics v. Hobbs, 439 S.E.2d 629 (W. Va. 1993).

¹¹⁴⁵*Id.*

¹¹⁴⁶*Id.*

¹¹⁴⁷*Id.* at 631.

¹¹⁴⁸*Id.* at 632.

County Circuit Clerk Alvis R. Porter asserted that Grubb, on occasion, had asked him to illegally fire or hire employees and had sought to impeach Porter when he failed to cooperate with the Judge's requests.¹¹⁴⁹ Logan County Magistrate Leonard Codispoti testified that after reporting to the State Police of Judge Grubb's attempts to coerce him into unethical conduct, Grubb filed "baseless ethics complaints" against him.¹¹⁵⁰

2. Circuit Court Judge John Hey

Circuit Judge John Hey was prosecuted on sexual assault charges that led to his 1995 guilty plea to misdemeanor battery.¹¹⁵¹ His plea came after he had retired, "for medical reasons," amid allegations that he had sexually harassed women during his career and was often drunk on the bench.¹¹⁵² Hey was still able to get his judicial retirement despite his conduct.¹¹⁵³ Upon entering the guilty plea, Hey agreed to surrender his law license; however, Hey is currently battling to have his license returned.¹¹⁵⁴

¹¹⁴⁹*Id.*

¹¹⁵⁰*Id.*; see *In the Matter of Codispoti*, 414 S.E.2d 628 (W. Va. 1992), *In the Matter of Codispoti*, 438 S.E.2d 549 (W. Va. 1993).

¹¹⁵¹Lawrence Messina, *Court rethinks barring felons from law*, *Charleston Gazette*, Aug. 1, 2001, at A5.

¹¹⁵²Chris Stirewalt, *Pick for Hey prosecutor questioned, former judge may face witness intimidation charge*, *Charleston Daily Mail*, Mar. 28, 2001, at A1.

¹¹⁵³*Id.*

¹¹⁵⁴Lawrence Messina, *Court rethinks barring felons from law*, *Charleston Gazette*, Aug. 1, 2001, at A5.

Judge Hey recently made the news again for allegedly making job threats against Assistant Kanawha County Prosecutor Don Morris after Hey's friend and political supporter, Mike Clifford, successfully defeated former Kanawha County Prosecutor Bill Forbes during the May 2000 Democratic Primary.¹¹⁵⁵ Morris had given sworn statements in the earlier investigation that cost Hey his position as Judge and Hey had allegedly sent word to Morris that he would "have his job."¹¹⁵⁶ West Virginia law makes it a felony to take or threaten to take someone's job because they gave testimony.¹¹⁵⁷

Judge Hey left the bench on a disability retirement amid sexual harassment allegations and rumors of drinking alcohol while performing his duties as circuit judge.¹¹⁵⁸ Governor Caperton approved Hey's application for an \$80,000-a-year disability pension "the same day the Judicial Investigation Commission was bringing charges against him for excessive drinking and sexual harassment—including an accusation that he opened his judicial robe to give an astonished woman visitor an up close and personal demonstration that, like a Scotsman in kilts, he wore nothing underneath."¹¹⁵⁹ Former West Virginia Supreme Court Chief Justice Margaret

¹¹⁵⁵Chris Stirewalt, *Pick for Hey prosecutor questioned: Former judge may face witness intimidation charge*, Charleston Daily Mail, Mar. 28, 2001, at A1.

¹¹⁵⁶*Id.*

¹¹⁵⁷*Id.*

¹¹⁵⁸Lawrence Messina, *Berger gets 'A' for job on bench*, Charleston Gazette, July 5, 1995, at A1.

¹¹⁵⁹Don Marsh, *Caperton didn't change the system—it changed him*,
(continued...)

Workman called Caperton's action, which precluded the possibility of Hey's being fired and losing his pension "a sordid chapter in the history of the judicial system of West Virginia."¹¹⁶⁰

3. Circuit Court Judge George C. Sturgiss

On February 17, 1919, the House of Delegates Judiciary Committee recommended the impeachment of Monongalia County Circuit Judge George C. Sturgiss, maintaining that he was "biased, prejudiced, dishonest and wholly unfit to sit as judge of the circuit court and that he was guilty of misconduct in the administration of the duties of his office."¹¹⁶¹ The recommendation further argued:

we are further of the opinion that Judge Sturgiss's efforts to qualify himself to sit in the case of Lemley against the Morgantown and Wheeling Railway Company was a plain case of corruption. If not bribery in itself. Another instance of corruption was his efforts to increase his court reporter's salary.¹¹⁶²

Finally, the committee reported:

numerous incidents have been shown of the delinquency of the judge: His failure to enter orders, his unlawful arrests, his oppressive and arbitrary judgments, his taking the law into his own hands, his total disregard of the law, all of which show conclusively that Judge Sturgiss has been guilty of arbitrary, oppressive [sic] and unlawful conduct while sitting as a

¹¹⁵⁹(...continued)

Charleston Gazette, July 17, 1995, at A5.

¹¹⁶⁰*Id.*

¹¹⁶¹Associated Press, *Impeachment of Sturgiss recommended*, New Dominion (Morgantown, WV), Feb. 18, 1919, at A1.

¹¹⁶²*Id.*

judge, and stamp him as wholly unfit to hold the office of judge.

Judge Sturgess denied the charges against him.¹¹⁶³

4. Supreme Court Chief Justice Richard Neely

Former Supreme Court Chief Justice Richard Neely received frequent headlines while a member of the West Virginia Supreme Court. Neely fired his government-paid court secretary when she refused to continue to baby-sit the Justice's son.¹¹⁶⁴ Nevertheless, most of Neely's recognition likely stemmed from his eccentric comments. One such comment was in 1989 when Justice Neely proclaimed that police cannot prevent crime: "It's time for citizens like you and me to go home and get out baseball bats" to attack drug dealers.¹¹⁶⁵

In 1990, he said "he wouldn't work within 500 yards of a person with the AIDS virus," while in 1993, he told a group of teenage boys to "tape a rubber to your American Express card and don't leave home without it."¹¹⁶⁶ Years later, in 1981,

¹¹⁶³Staff reports, *Judge Sturgiss Asks Public to Suspend Judgment on Petition for Impeachment*, New Dominion, Jan. 15, 1919, at A1; Staff reports, *Evidence on Sturgiss Case is Being Taken*, Charleston Daily Mail, Feb. 1, 1919, at A3; Staff reports, *Judge Sturgiss goes on stand in defense*, Charleston Daily Mail, Feb. 8, 1919, at A1; Associated Press, *Judge Sturgiss says he wants no compromise*, New Dominion, Feb. 10, 1919, at A1; Staff reports, *House Refuses to impeach judge on Committe Report*, Charleston Daily Mail, Feb. 19, 1919, at A1; Associated Press, *Defeat of Majority Report in House of Delegates Definitely Ends Impeachment proceedings Against Judge Sturgiss*, New Dominion, Feb. 20, at A1.

¹¹⁶⁴A.V. Gallagher, Associated Press, *Neely to End 22-year W.Va. Court Term*, News-Register (Beckley, WV), Apr. 3, 1995, at A13.

¹¹⁶⁵*Id.*

¹¹⁶⁶*Id.*

he compared the Court to the Ku Klux Klan, stating: “[t]he Klan wears white robes and scares the hell out of black people,” the court wears black robes and scares the hell out of white people.”¹¹⁶⁷

On one occasion Neely advertised for a law clerk in the *Virginia Law Weekly*.

Neely pled:

West Virginia’s infamous once and future Chief Justice Richard Neely, America’s laziest and dumbest judge, seeks a bright person to keep him from looking stupid. Preference will be given to U.Va. Law students who studied interesting but useless subjects at snobby schools. If you are dead drunk and miss the interviews, send letters.¹¹⁶⁸

5. Supreme Court Chief Justice Warren McGraw

During the 2000 election, sitting-Justice McGraw, whose term will end in 2004, ran for another seat on the five-member West Virginia Supreme Court that was vacated by retiring Justice Margaret Workman. McGraw was attempting to run for the open seat without vacating the seat he was holding. If successfully chosen by the voters, McGraw would have resigned his current seat and started his new term on the Court and avoid a re-election until 2012.¹¹⁶⁹

Moreover, if McGraw had lost the election, it would not have affected the term he is serving until 2004 when he faces re-election. After McGraw’s name had

¹¹⁶⁷*Id.*

¹¹⁶⁸*Id.*; David Margolick, *Neely’s imaginative campaign keeps reeling in clerks*, *Charleston Gazette*, July 11, 1991, at D6; Lawrence Messina, *Outspoken, outgoing justice still unafraid to rock the bench*, *Charleston Gazette*, Apr. 17, 1995, at C1.

¹¹⁶⁹*Carenbauer v. Hechler*, 542 S.E.2d 405 (W. Va. 2000).

already been placed on ballots across the state, a lawsuit was filed to have him removed declaring his candidacy illegal as McGraw was “an incumbent currently fulfilling an unexpired term to which he was elected.”¹¹⁷⁰

The West Virginia Supreme Court denied fellow Justice McGraw’s candidacy and ordered that his name be removed from the ballot.¹¹⁷¹ According to some county circuit clerks, removing McGraw’s name from the ballot was “time-consuming, expensive and problematic.”¹¹⁷² In Monongalia County, the change of the ballot cost \$4,700, in Marion County it cost about \$3,300, while in Boone County it cost an extra \$3,000.

A few years later, some believe that Justice McGraw should have recused himself from a case that his brother, Attorney General Darrell V. McGraw, Jr. brought before the Court. Steve Roberts, President of the West Virginia Chamber of Commerce, states that “Attorney General Darrell McGraw’s current attempt to take control of all legal activities of every state agency raises several troubling questions. His own brother’s participation in the matter makes the situation even more disturbing.”¹¹⁷³

¹¹⁷⁰*Id.*

¹¹⁷¹*Id.*

¹¹⁷²Associated Press, *Taking McGraw’s name off ballots a costly ordeal, clerks say*, Charleston Gazette, Apr. 6, 2000, at A1.

¹¹⁷³Steve Roberts, *Another McGraw sits on court to hear case: Attorney general’s power play could be a family affair*, Charleston Gazette, Nov. 16, 2001, at A5.

Roberts contends that Justice McGraw has placed himself “in a position to stack the deck among those who ultimately will decide the case.”¹¹⁷⁴ He notes that Justice Robin Davis removed herself from the case because of a potential conflict and then-Chief Justice McGraw chose her replacement.¹¹⁷⁵ Roberts further argues that the involvement of Justice McGraw has tarnished the reputation of the legal system in West Virginia. Continuing, he opines that, “[e]mployers want to operate in a state where good government is the norm, and there is nothing normal about this case. This attempted legal takeover by Darrell McGraw, already aided and abetted by his brother, must be recognized, identified and stopped.”¹¹⁷⁶

6. Circuit Court Judge Pierre E. Dostert

In 1984, Jefferson County Prosecuting Attorney Braun A. Hamstead was sent to jail by Circuit Judge Dostert for refusing to present a case to the grand jury in the way that the judge had ordered. The West Virginia Supreme Court held that Hamstead was acting completely within his discretion while the circuit court had exceeded its legitimate powers.¹¹⁷⁷ The judge was instructing the prosecutor on what charges he could and could not bring against a defendant.

¹¹⁷⁴*Id.*

¹¹⁷⁵*Id.*

¹¹⁷⁶*Id.*

¹¹⁷⁷Hamstead v. Dostert, 313 S.E.2d 409, 419 (W. Va.1984).

7. Circuit Court Judge Kendrick King

In 1993, McDowell County Circuit Judge Kendrick King issued an order prohibiting Harold B. Wolfe from serving legal documents (service of process), which is a business that Wolfe conducts in McDowell County.¹¹⁷⁸ Wolfe had previously been convicted of a felony and even though he had served his sentence, Judge King found that he was not a “credible person” as required by West Virginia law.¹¹⁷⁹ The West Virginia Supreme Court reversed the Judge’s decision and held that “a convicted felon who has completed the sentence and paid all fines set by the judgement of the court is considered to be a credible person for the purpose of the service of process.”¹¹⁸⁰

In 1991, the West Virginia Supreme Court found that King, while an assistant prosecuting attorney, had improperly represented persons charged with family violence or abuse in proceedings brought under the West Virginia Code.¹¹⁸¹ The Court noted the obvious conflict. For example, if a prosecutor has knowledge of allegations of abuse or child neglect against the opposing party he should file a neglect and abuse petition, it necessarily creates an conflict.¹¹⁸²

¹¹⁷⁸Wolfe v. King, 443 S.E.2d 823 (W. Va. 1994).

¹¹⁷⁹*Id.* (One of the requirements of both Rule 4(c) of the West Virginia Rules of Civil Procedure and West Virginia Code § 56-3-11 is that service of process be performed “by a credible person.”).

¹¹⁸⁰*Id.*

¹¹⁸¹Bailey v. Facemire, 413 S.E.2d 183, 187 (W. Va. 1991).

¹¹⁸²*Id.*

In 1997, Judge King issued three administrative orders requiring the county commission to relocate the magistrate court and family law master offices to a more suitable location.¹¹⁸³ The third letter threatened that the individual commissioners would be held in civil contempt if they did not comply immediately.¹¹⁸⁴ In 2000, King “exceeded his legitimate power” in an administrative order he issued requiring the county commission to surrender financial records to an improperly appointed as a special prosecutor.¹¹⁸⁵ Judge King initiated the proceeding to disqualify the county prosecutor and then decided that same matter of disqualification.¹¹⁸⁶

After losing the 2000 re-election campaign, King sued four lawyers, claiming their pre-election comments cost him the election.¹¹⁸⁷ King charged that distribution of a judicial evaluation poll was malicious. It rated King as “poor or less than adequate in legal ability, intelligence and reasoning ability and courtesy/consideration of others,” and “adequate or less than good in diligence/dedication and integrity/moral courage/impartiality.”¹¹⁸⁸

In addition, King sued two assistant prosecutors, Ed Konorish and Danny Barrie and public defenders Steve Mancini and Ted White, who commented in a

¹¹⁸³Commission v. King, 503 S.E.2d 826 (1998).

¹¹⁸⁴*Id.*

¹¹⁸⁵Lambert v. King, 538 S.E.2d 385, 389 (W. Va. 2000).

¹¹⁸⁶*Id.*

¹¹⁸⁷Rachelle Bott, *Former judge's defamation lawsuit dismissed*, Charleston Gazette, Oct. 17, 2001, at A1.

¹¹⁸⁸*Id.*

newspaper advertisement on King's performance as a Judge.¹¹⁸⁹ White said, "[f]or the record, I will say that in my opinion Kendrick King has proven in the newspaper and in the courtroom that he does not have enough judgment, judicial temperament or common decency to judge a cat show and has no business as a circuit judge."¹¹⁹⁰ Kanawha County Circuit Judge Todd Kaufmann ruled that the evaluation poll had a legitimate public interest and held that the lawyer's comments were merely opinion and dismissed the suit with prejudice.¹¹⁹¹

8. Speaker of the House Bob Kiss appointed to Supreme Court

In 1999, Speaker of the House of Delegates Bob Kiss was appointed by then-Governor Underwood to the West Virginia Supreme Court to fill a vacancy created by retiring Justice Margaret Workman. The appointment of Kiss drew an immediate challenge under the Emoluments Clause contained in Article VI, § 15 of the West Virginia Constitution. The Emoluments Clause provides:

No senator or delegate, during the term for which he shall have been elected, shall be elected or appointed to any civil office of profit under this State, which has been created, or the emoluments of which have been increased during such term, except offices to be filled by election by the people.¹¹⁹²

¹¹⁸⁹*Id.*

¹¹⁹⁰*Id.*

¹¹⁹¹*Id.*

¹¹⁹²Rist v. Underwood, 524 S.E.2d 179, 181 (W. Va. 1999).

The controversy arose as a result of a bill passed by the West Virginia Legislature during the 1999 Legislative session that increased the salary of the Justices of the West Virginia Supreme Court from \$85,000 to \$95,000. Kiss was the Speaker of the House of Delegates at the time. After reviewing the issue, a Majority Opinion authored by Justice Warren McGraw, held that Kiss was ineligible to serve the unexpired term. The Majority Opinion affirmed that “[t]o construe the exception language of Article VI, § 15 in the manner suggested by respondents would thus require that we ignore the constitutional scheme intended by the Framers.”¹¹⁹³

The Dissenting Opinion authored by Justice Maynard stated: “This decision amounts to nothing less than a judicial Pearl Harbor” and amounted to “the political mugging of a good man.”¹¹⁹⁴ Maynard charged that the Majority Opinion “has attacked both the Legislature and the Governor with a sledgehammer” and further observed: “This Court cannot continue to thumb its nose at the other branches of government. The Legislature and the Governor will not stand by and continue to allow this Court to usurp their constitutional powers.”¹¹⁹⁵

Maynard said the Majority Opinion “is so empty of legal support” and criticized the majority’s rationale in discussing the Framers intentions during the

¹¹⁹³*Id.* at 194.

¹¹⁹⁴*Id.* at 195 (Maynard, Dissenting).

¹¹⁹⁵*Id.*

1872 Constitutional Convention.¹¹⁹⁶ Maynard provides: "I wish I had been invited to the seance, or had access to the Majority's crystal ball, so that I too could have engaged in enlightening dialogue with the 1872 Framers."¹¹⁹⁷ Justice Maynard ended his dissent with the following observations:

Tragically, people today in West Virginia and across the country have lost confidence in the American court system. The decision in this case is a perfect example of the reason why. The majority has taken the simple, plain language of a clear constitutional provision and twisted it beyond all recognition in order to achieve its own ends. With this decision, the majority abandons the sure foundation of settled law; ignores plain constitutional language; rejects the authority of the Governor to fill vacancies on this Court; usurps the power of the Legislature; and disregards precedential and persuasive authority. The consequences are troubling. We are subjected to a legal opinion bereft of sound legal precedent and supported only by the majority's own spurious reasoning. This decision is on par with that of Captain Smith to go full steam ahead on that frigid night in 1912 when he steered the Titanic. Therefore, I dissent.¹¹⁹⁸

Justice Starcher filed a concurring opinion and blasted the comments of Justice Maynard. Starcher writes:

I am truly upset by the dissenting opinion. I have never read an opinion by a member of this Court that compared the opinion of fellow justices to a cruel act of human slaughter, like the Japanese attack on the United States of America at Pearl Harbor. In fact, I

¹¹⁹⁶*Id.* at 197.

¹¹⁹⁷*Id.*

¹¹⁹⁸*Id.* at 198.

don't think I've ever seen such a vicious comparison in a judicial dissent—anywhere.¹¹⁹⁹

Starcher added that Maynard had failed to keep “the discussion on a respectful and civil plane” and “fuel[ed] and fan[ed] the flames of discord” by “exaggeration, misstatement, and inflammatory rhetoric.”¹²⁰⁰

B. Magistrates

As recently as February 26, 2003, ten-year Logan County Magistrate Danny Ray Wells was charged by the United States Attorneys Office for the Southern District of West Virginia for taking sexual favors, money, and labor, in exchange for freeing defendants from jail.¹²⁰¹ It is contended that when people were arrested and brought before Wells as Magistrate, he would tell them they needed to pay a bond, usually hundreds of dollars, in order to be released from jail.¹²⁰² However, Wells would pocket the money and release the individuals on their own recognizance bonds. It is also alleged that: “In other cases, Wells allegedly let men out of jail in exchange for sex from their wives or girlfriends, or in exchange for work done on his property.”¹²⁰³

¹¹⁹⁹*Id.* (Starcher’s concurring Opinion was filed December 7, 1999, which incidentally was the same day that Pearl Harbor was attacked.).

¹²⁰⁰*Id.* at 199.

¹²⁰¹Christopher Tritto, *Testimony begins in racketeering trial of Logan magistrate*, Feb. 26, 2003, at A1.

¹²⁰²*Id.*

¹²⁰³*Id.*

In July of 2000, thirty-seven-year-old Matthew Crabtree, son of the former West Virginia Supreme Court Administrator Paul Crabtree, was hired at a salary of \$62,004 to supervise 157 Magistrates as Administrative Counsel for Magistrate Court Services.¹²⁰⁴ Incidentally, Matthew Crabtree pleaded guilty in 1984 to robbing an adult bookstore in Rand, West Virginia.¹²⁰⁵ After serving approximately twenty months in prison he was released on probation. In 1990, then-Governor Gaston Caperton pardoned Crabtree for his 1984 offenses which allowed Crabtree to enter West Virginia University College of Law, where he graduated with honors in 1993.¹²⁰⁶ Amid negative publicity, Crabtree resigned from the Supreme Court position in November of 2000, nearly four months after starting the job.¹²⁰⁷

In Martinsburg, the West Virginia Judicial Investigations Committee recommended suspension for Magistrate Bonnie L. Riffle who scraped her own face, bruised her own body, and blamed it on a fictitious individual in hopes that she could claim workers compensation benefits. According to the West Virginia Supreme Court:

A Morgan County grand jury returned a seven-count indictment against Magistrate Riffle on April 13, 1999. The indictment charged her with two counts of feloniously and fraudulently attempting to secure

¹²⁰⁴Associated Press, *Ex-court official's son gets post*, Charleston Gazette, July 27, 2000, at A12.

¹²⁰⁵*Id.*

¹²⁰⁶*Id.*

¹²⁰⁷Fanny Seiler, *Airport contract criticized*, Charleston Gazette, June 19, 2000, at C1.

workers compensation benefits, a violation of *W.Va. Code*, 23-4-19 [1993]. She was also charged with five misdemeanors: three counts of providing false or misleading information to the Department of Public Safety [specifically, members of the West Virginia State Police], in violation of *W.Va. Code*, 15-2-16 [1977], and two counts of falsely reporting an emergency incident in violation of *W.Va. Code*, 61-6-20(3) [1984].¹²⁰⁸

The Court continued:

Because of the severity of the offenses for which Ms. Riffle was convicted and the likely effect that her misconduct, while serving as a judicial officer, would have on the public's confidence in our judiciary, we agree with the Board that public censure of Magistrate Riffle is appropriate. We further agree that suspension for 1 year is warranted. However, we disagree with the Board's recommendation of imposing a \$5,000.00 fine.

The Court also provided:

As one Judicial Hearing Board member stated in a dissent to the Board's recommended disposition: 'This lady has been punished enough. There is no earthly reason to suspend a person from their position as magistrate for a year without pay when Ms. Riffle is not serving in that position. There is no reason to fine an indigent person \$5000.00. I respectfully submit that the Circuit Judge of Morgan County who had the benefit of a pre-sentence investigation and the testing done by the Division of Corrections imposed the appropriate punishment of Ms. Riffle.' The same Board member further noted that sometimes 'a little mercy should be mixed with blind justice.'¹²⁰⁹

In Marion County, Chief Judge Fred Fox confirmed that he told the Sheriff's Office to investigate Magistrate Donna Jones in connection with the disappearance

¹²⁰⁸ <<http://www.state.wv.us/wvsca/docs/fall01/26729.htm>> (visited the West Virginia Supreme Court website May 6, 2003).

¹²⁰⁹ *Id.*

of her assistant's keys.¹²¹⁰ Jones' assistant, Nina Cartright, reported that her office keys were taken from her locked office after she had stepped away for ten minutes during her lunch break.¹²¹¹ Cartright said when she returned to her office, she noticed Jones present while Cartright's office door was open and unlocked.¹²¹² Cartright's keys were found weeks later on a shrub on the courthouse lawn.¹²¹³ Judge Fox said the situation with the keys "is more serious than most of Jones' shenanigans" and that he would consider removing her from office after reviewing a written report from the Sheriff.¹²¹⁴

In January 2003, in Kanawha County, \$500 disappeared from an account for suspects' bond money in magistrate court following a state Supreme Court audit.¹²¹⁵ The money was missing from an account associated with Magistrate Kathy DeMarco's office.¹²¹⁶ On November 10, 1994, an eighteen-count indictment was returned against Wood County Magistrate Ira W. Atkinson, Jr. for various felony and misdemeanor offenses.¹²¹⁷ Among the charges, Atkinson was accused of bribery

¹²¹⁰*Id.*

¹²¹¹*Id.*

¹²¹²*Id.*

¹²¹³*Id.*

¹²¹⁴*Id.*

¹²¹⁵Charles Shumaker, *\$500 reportedly missing from magistrate's account*, Charleston Gazette, Jan. 18, 2003, at A1.

¹²¹⁶*Id.*

¹²¹⁷Matter of Atkinson, 456 S.E.2d 202 (W. Va. 1995).

and receiving gifts as a public official such as \$500 cash, and an in-ground swimming pool, roofing work, and construction of a fish pond at his home.¹²¹⁸

In 1985, Logan County Magistrate Jonny Mendez was publicly censured for a violation of the Judicial Code of Ethics when he suspended the sentence of Mark Craddock.¹²¹⁹ Craddock, an eighteen-year-old student at Sharples High School, was arrested for shooting the moving vehicle of a teacher, Erskine T. Davis, who had disciplined Craddock for various transgressions of school rules.¹²²⁰ Mendez, as Magistrate, had no authority to suspend the sentence.¹²²¹

C. Perceived Inaction

Prior to the current Magistrate system in West Virginia, counties utilized a system of Justices of the Peace. That system was often criticized as being corrupt and out-of-control.¹²²² In 1921, the Raleigh County Circuit Court proceeded to

¹²¹⁸*Id.*

¹²¹⁹Matter of Mendez, 344 S.E.2d 396, 397 (W. Va. 1985).

¹²²⁰*Id.*

¹²²¹*Id.*

¹²²²See State v. Good, 156 S.E.2d 8 (W. Va. 1967) (Delmar Good, a Justice of the Peace in Ripley, WV, received a speeding ticket and paid money to another Justice of the peace Dovenor E. Jarrell to influence the decision against him. During the time of the payment from Good to Jarrell, the case was initially assigned to Justice of the Peace Gay H. Duke. The West Virginia Supreme Court held that Good's payment did not amount to a bribe as provided by West Virginia Code 61-5-7, as when the payment was made, Jarrell had not yet been assigned he case and thus was not "acting or is to act" before the offense can be committed. That same statute did not apply in State v. General Daniel Morgan Post No 548, 107 S.E.2d 353 (W. Va. 1959), where a county sheriff who received money for influence because the language of the statute "referred only to a state officer of the nature
(continued...)

charge D.F. Workman, a county commissioner, for a felony of accepting certain bribes in exchange for certain action as a commissioner to the benefit of the bribing parties.¹²²³ Workman challenged the indictment against him, stating that he was not an officer “of the state” as proscribed by West Virginia Code and thus, he could not be charged with the felony.¹²²⁴ The West Virginia Supreme Court agreed with Workman, stating that the statute dictated that “officers of the state, such as the Governor, Attorney General, members of the public service commission, . . . whose powers or duties extend over the state.”¹²²⁵

During the Lincoln County May 1940 Primary Election, House of Delegates candidate C.J. Marcum, who had previously been convicted by the Federal District Court for the Southern District of West Virginia, on charges of larceny in violation of federal law and was sentenced to federal prison for two years.¹²²⁶ Based upon a provision of the West Virginia Constitution, it was argued that Marcum’s name should be removed from the ballot and it was further determined that he should not be allowed to run for or hold public office.¹²²⁷

¹²²²(...continued)
therein described or a member of the legislature.)

¹²²³State ex rel. Workman v. Anderson 109 S.E. 782 (W. Va. 1921).

¹²²⁴*Id.*

¹²²⁵*Id.* at 784.

¹²²⁶Isaacs v. Board of Ballot Comm’rs , 12 S.E.2d 510 (W. Va. 1940).

¹²²⁷*Id.*

The Constitutional provision provides: "No person who has been, or hereafter shall be convicted of bribery, or perjury, or other infamous crimes, shall be eligible to a seat in the Legislature."¹²²⁸ The West Virginia Supreme Court held that the state constitution "is formed with respect to affairs within its bounds" and thus, a federal conviction is beyond its jurisdiction and would not affect Marcum's candidacy and therefore, his name did not have to be removed from the ballot.¹²²⁹

Seven years prior to the Marcum case, the West Virginia Supreme Court interpreted this same constitutional provision in conjunction with a section of the West Virginia Code that provided:

No person convicted of treason, felony, or bribery in any election, before any court in or out of this State, shall, while such conviction remains unreversed, be elected or appointed to any office under the laws of this State; and, if any person while holding such office, be so convicted, the office shall be thereby vacated.¹²³⁰

The Court held that the words "remains unreversed" referred only to the period of time where the courts could reverse the conviction and not to the time period proceeding the sentence served.¹²³¹ As such, the Court held that Clayton Webb, who was elected constable in Raleigh County, could hold his office in spite of his 1919 conviction for burglarizing a store, and his second conviction in 1929 for

¹²²⁸*Id.* (quoting W. Va. Const., art. VI, § 14).

¹²²⁹*Id.* at 512.

¹²³⁰*Webb v. County Court of Raleigh County*, 168 S.E. 760 (W. Va. 1933).

¹²³¹*Id.* at 760, 761.

carrying a dangerous weapon on his person.¹²³² Webb had served his term of imprisonment for each crime at the time of his election.¹²³³

D. Practicing Felons

In 1997, convicted murderer John Curtis Dortch was denied admission to the West Virginia Bar. The Supreme Court of Appeals of West Virginia denied his admission after the West Virginia Board of Law Examiners voted to recommend his admission.¹²³⁴ Dortch, who was also convicted of conspiracy and attempted robbery, was involved in a 1974 bungled bank robbery that resulted in twenty-four-year-old Gail Cobb one of the first female police officers in the United States to be killed in the line of duty.¹²³⁵

In 1998, convicted three-term Republican Governor Arch Moore began his quest to regain his law licence. In April 1990, Moore pleaded guilty in federal court to extortion, mail fraud, tax evasion and obstruction of justice.¹²³⁶ Surprisingly, the *Charleston Daily Mail*, the state's largest Republican affiliated newspaper, spoke strongly against the re-admission of Moore to the State's Bar proclaiming: "Committing felonies is inconsistent with the privilege of practicing law."¹²³⁷ *A Daily*

¹²³²*Id.* at 760.

¹²³³*Id.*

¹²³⁴Matter of Dortch, 486 S.E.2d 311, 313 (W. Va. 1997).

¹²³⁵*Id.*

¹²³⁶Editorial, *Arch Moore*, *Charleston Daily Mail*, Dec. 28, 1998, at A4.

¹²³⁷*Id.*

Mail editorial discussed that “ours is a forgiving nation” before declaring: “Be that as it may, there are some crimes that can’t be overlooked. The violation of the public trust by an elected official is atop the list.”¹²³⁸

Former Governor Moore had plenty of “heavy hitters” coming to his defense in front of the State Supreme Court, pleading for the return of Moore’s license. Among those was Franklin D. Cleckley, a former West Virginia Supreme Court Justice and current West Virginia University Law Professor. Cleckley wrote: “In my few conversations with him, I have noted a grave sense of remorsefulness and a greater sense of one who was truly seeking atonement for his sins.”¹²³⁹ The *Daily Mail* responded to Cleckley’s comments:

Sorry, but the best atonement for his transgressions would be to continue to suffer the consequences of his criminal behavior. Lowering the standards for lawyers to allow him to practice again at the Bar is wrong.

No matter how sorry or remorseful he may wish to appear, Arch Moore will never be trusted again even to vote. Why should he be allowed to practice the law he violated when he was governor?

Justices should not hesitate in turning Moore down.¹²⁴⁰

¹²³⁸*Id.*

¹²³⁹*Id.*

¹²⁴⁰*Id.* (To this date, the Supreme Court has not decided whether or not to allow Moore to practice law.)

In December of 2000, by a four-to-one vote, the West Virginia Supreme Court changed its rules for admission to the practice of law in West Virginia.¹²⁴¹ The change depicted that people who are convicted of a felony or perjury will no longer be permitted to pursue law licenses in West Virginia.¹²⁴² Then-Justice George Scott, who proposed the rule change called it “a step forward” in the advancement and promotion of public trust.¹²⁴³ Curiously, the change in the law did not apply to lawyers who are seeking reinstatement of their law license after they have been disbarred for a felony conviction, such as Moore, as a separate set of rules govern such an instance.¹²⁴⁴ In addition, the change in the rule did not address pardons granted by a governor to a convicted felon with a law degree.¹²⁴⁵

The change in the rule was short-lived as the West Virginia Supreme Court abandoned it in late July 2001.¹²⁴⁶ In the Court’s written comments, Justice Larry Starcher stated: “To exclude all persons with any sort of felony conviction from possible bar membership—without allowing for any hope of redemption and

¹²⁴¹Associated Press, *Supreme Court Changes Law Licensing Standards*, Charleston Gazette, Dec. 12, 2000, at A1.

¹²⁴²*Id.*

¹²⁴³*Id.*

¹²⁴⁴*Id.*

¹²⁴⁵*Id.*

¹²⁴⁶Lawrence Messina, *Court rethinks barring felons from law*, Charleston Gazette, Aug. 1, 2001, at A5.

rehabilitation—would be taking an extremist position.”¹²⁴⁷ The rule change passed on a three-to-two vote with Justices Robin Davis and Elliott “Spike” Maynard dissenting. Critical of the Court’s change in the rule, Justice Maynard stated: “Just think, in our state, if you are a convicted felon, you can’t run a ‘bar’ and sell whiskey, but you can be a member of ‘the bar’ and practice law.”¹²⁴⁸

Susan Connor, current Charleston lawyer and former lawyer for the State Senate, did not see the need for the change stating that “[a]s lawyers and officers of the court, we have a responsibility to set standards for ourselves beyond what is expected of the general public.”¹²⁴⁹ Connor also commented, “I don’t think asking that lawyers do not have criminal histories is too high a standard. That should be the bare minimum we expect.”¹²⁵⁰

¹²⁴⁷ *Id.*

¹²⁴⁸ *Id.*

¹²⁴⁹ Associated Press, *Supreme Court considers allowing convicted felons to become lawyers*, Charleston Gazette, June 5, 2001, at A7.

¹²⁵⁰ *Id.*

X. COUNTYWIDE CORRUPTION: CONSPIRING OUT OF CONTROL

Principles aren't of much account anyway, except at election time. After that you hang them up to let them season.

—Mark Twain,
(Speech, January 4, 1901 "Municipal Corruption")

A. A Southern West Virginia Pestilence

West Virginia certainly has had its share of corrupt political officials; southern West Virginia, on the other hand, has had more than its share. Nowhere is this more apparent than in a 1992 law review in which three former Assistant United States Attorneys for the Southern District of West Virginia declared that seventy-eight federal political corruption convictions had occurred in southern West Virginia within just a few year period. They penned that between 1984 to 1991:

In the Southern District of West Virginia, over seventy-five public officials have been convicted of corruption offenses in the last six years. During that period, six sheriffs, eleven deputy sheriffs, three county commissioners, eight police officers, three mayors, two members of county school boards, two county prosecuting attorneys, four members of the West Virginia Legislature (including two senate presidents), four lobbyists, three housing officials, a former governor of the state, and a multitude of other public officials and related persons have been convicted for abusing the trust of their office. The West Virginia cases have

involved a variety of crimes including extortion, fraud, arson, drugs, tax evasion, and others.¹²⁵¹

Unfortunately, however, citizens believe that even those working to improve the corrupt system are not immune to its effects. For instance, West Virginia Southern District Assistant United States Attorney from 1989 to 1996, Paul A. Billups, allegedly seduced a witness to influence her testimony in an accident case while he was in private practice representing an insurance company.¹²⁵² Billups made a confidential settlement with Kelly Jones after Jones learned that Billups, who posed as a divorced man, was actually married.¹²⁵³

Continuing the trend of the perception of corruption, as recently as March 20, 2002, Mingo County Prosecuting Attorney Ron Rumora asked the West Virginia Prosecuting Attorneys Institute to appoint a special prosecutor to examine corruption allegations against Mingo County Government officials.¹²⁵⁴ Among the allegations are "improper use of county property, improper disposition of county property, and the improper use of county funds."¹²⁵⁵

¹²⁵¹Michael W. Carey, Larry R. Ellis, Joseph F. Savage, Jr., *Federal Prosecution of State and Local Public Officials: The Obstacles To Punishing Breaches of the Public Trust And A Proposal For Reform, Part One*, 94 W. Va. L. Rev. 301, 302-303 (1992).

¹²⁵²Lawrence Messina, *Ex-prosecutor settles seduction suit*, Charleston Gazette, May 31, 2001, at A11.

¹²⁵³*Id.*

¹²⁵⁴Associated Press, *Special Prosecutor sought for Mingo investigation*, Charleston Daily Mail, Mar. 20, 2002, at A11.

¹²⁵⁵*Id.*

The headline from a front page *Charleston Daily Mail* news story on April 25, 2002, depicted "Deceased's vote counted in Mingo." The article discussed out-of-date county voting lists and cited as an example Brooke Franklin, who was supposedly "a good citizen, voting long into the golden years of her life."¹²⁵⁶ The problem is that Franklin, who died in 1993, somehow managed to vote during the 1994 Primary Election.¹²⁵⁷ It was also noted that during the last statewide election, Mingo County had more people registered to vote than actual citizens eligible to vote.¹²⁵⁸

Former Federal Prosecutor Joseph F. Savage, Jr. was involved in the corruption probes throughout southern West Virginia, including investigations of former Governor Arch Moore, two Senate presidents and the Senate Majority Leader.¹²⁵⁹ Savage, calling the corruption a systemic problem, recalled a situation that quickly introduced him to the ways of Mingo County.¹²⁶⁰ In one instance, Savage noted that Wig Preece, his wife, and several of their thirteen children parked a trailer across from the police chief's office to sell drugs.¹²⁶¹ Savage

¹²⁵⁶Sam Trantum, *Deceased's vote counted in Mingo: Many counties fail to update rolls of registered voters*, *Charleston Daily Mail*, Apr. 25, 2002, at A1.

¹²⁵⁷*Id.*

¹²⁵⁸*Id.*

¹²⁵⁹Patricia Nealon, *Prosecutor ends a job of conviction*, *The Boston Globe*, Nov. 23, 1996, at B1.

¹²⁶⁰*Id.*

¹²⁶¹*Id.*

explained that business was so good that Preece would often run out of drugs and Preece would then place a sign on the front of the trailer declaring “[o]ut of pot, back in 30 minutes.”¹²⁶²

In 1988, Mingo County seized the headlines as fifteen public officials were charged by the United States Attorneys Office for the Southern District of West Virginia on political corruption charges. Democratic Chairman Johnie Owens was known as the linchpin of the massive corruption case.¹²⁶³ In sentencing Owens, the United States District Judge remarked, “I despise your acts of public corruption.”¹²⁶⁴ Once again, West Virginia gained negative national exposure as the *Chicago Tribune* reported, “[n]early 50 public officials or employees in southern West Virginia have been charged or convicted in corruption or drug cases over the past three years.”¹²⁶⁵

Owens and numerous other county officials were charged with conspiring to control the Mingo County corruption-plagued elections of 1984.¹²⁶⁶ The Sheriff in Mingo County pleaded *guilty* to the charges against him, while Owens, the man who

¹²⁶²*Id.*

¹²⁶³State ex rel. Owens v. Brown, 351 S.E.2d 412 (W. Va.1986).

¹²⁶⁴Chicago Tribune wires, *Sentencing, Guilty Plea Latest In A County's Corruption Saga*, Chicago Tribune, Apr. 19, 1988, at C14.

¹²⁶⁵*Id.*; see also *Arrests in Mingo County, West Virginia, exemplify state actions to control public corruption*, Des Moines Register, Apr. 8, 1988, at 3 (The article said that in Mingo County, prosecutors indicted fifteen public officials for bribery, false accounting procedures, illegal contributions, illegal expenditures, and even drug dealing.).

¹²⁶⁶State ex rel. Owens v. Brown, 351 S.E.2d 412 (W. Va.1986).

sold the Sheriff's post, was sentenced to fourteen years in federal prison for conspiracy and tax evasion.¹²⁶⁷ Owens successfully defeated the State's attempt to try him in a Mingo County with a group of jurors summoned from Cabell County.¹²⁶⁸

Owens admitted to quitting the Sheriff's position in 1982 after accepting \$50,000 from Charles "Eddie" Hilbert to aid Hilbert in obtaining the Sheriff's post. Hilbert pleaded guilty to buying his job for \$100,000 and faced up to thirteen years in jail and \$351,000 in fines after striking a plea bargain with federal prosecutors.¹²⁶⁹ Subsequently, he pleaded guilty to conspiracy, mail fraud, failure to report income and he agreed to resign as Sheriff as well as forfeit his pension.¹²⁷⁰

Included in the fifteen indictments were a State Senator, the Prosecuting Attorney, the Mayor of Williamson, two County Commissioners, two county school board members, three former delegates to the State Legislature, one Magistrate

¹²⁶⁷ *Id.*

¹²⁶⁸ *Id.*

¹²⁶⁹ *Id.*

¹²⁷⁰ See Fanny Seiler, *Ex-sheriff files counter complaint in Mingo County tiff*, Charleston Gazette, Oct. 3, 2001, at A9 (In 2001, Owens filed a complaint against a former political collaborator for what he called "terroristic threatening." George Williamson said the dispute began after he recently put up a campaign sign over his driveway for state Sen. Truman Chafin and Owens threatened to kill him. Owens claimed that the commission received half of the \$100,000 he received for the sheriff's office and Chafin was then president of the county commission in 1981-82.).

and one former Magistrate, a former court clerk, a former county clerk and a former school board member who was also director of the county anti-poverty agency.¹²⁷¹

In 1995, an Associated Press article described Mingo County as follows:

The Hatfield-McCoy feud started it more than a century ago. Later, there was armed insurrection over organizing coal mines. Later, the sheriff and more than 50 officials went to federal prison for corruption.

No wonder they called Mingo County 'Bloody Mingo.'

Now a homecoming queen is shot dead at a sewage treatment plant. A state senator again faces federal charges for wiretapping his ex-wife's home. And a high school science teacher is accused of being in a drug ring.

High-profile, mostly-federal cases can make it seem that life is particularly hard in this tough Appalachian coal county of about 33,000 against the Tug Fork River and Kentucky, about two hours south of Charleston.¹²⁷²

In 1960, following the 1960 Primary Election, one Logan County citizen proclaimed: "With \$5,000 you can elect a man to any office except sheriff in this county. This costs \$40,000. Why, heck, all you need to do is have the right boys pulling the levers and you can't miss."¹²⁷³ *Life* magazine articulates:

¹²⁷¹Associated Press, *15 Charged With Buying Spots on Ballot; Action Called Blow to Corruption in West Virginia county Elections*, The Washington Post, Apr. 9, 1988, at A5 (The article quoted special prosecutor James Colburn as saying that the practice of slating candidates and encouraging citizens to vote straight tickets has contributed to the conditions alleged in the 15 indictments.).

¹²⁷²Rochelle Olson, Associated Press, *'Bloody Mingo' West Virginia county writes long, eventful—and troubled—history*, Bluefield Daily Telegraph, Nov. 13, 1995, at A5.

¹²⁷³Donald Wilson, *Slating and 'Lever Brothers,' Life*, May 9, 1960, at 26.

Anything from \$2 to \$5 buys a vote on election day, and sometimes they are delivered in wholesale lots. Moonshine is still used as payment for a vote, but it is now risky business. Last election day Democratic worker Harry ("Geets") Johnson was caught by a revenue officer in Coal Branch Creek with a load of moonshine. Geets was arrested and sent to jail, although not before he had bitten off most of the revenue officer's nose. A variation is the 'half-pint vote' in the area—a straight swap arrangement, bottles for votes—but it too causes a problem for politicians because state law prohibits the sale of half pints of whisky over the counter. Most of the half pints used in elections are brought in by truck illegally from nearby Kentucky.¹²⁷⁴

B. Scruples Of Various County And City Officials

The perception of county officials is just as appalling as the perception of statewide officials. On January 17, 2003, Kanawha County Commissioner Dave Hardy publicly pushed for the resignation of Kanawha County Sheriff, Mike Clifford.¹²⁷⁵ In turn, Clifford pressed for an investigation of Hardy.¹²⁷⁶ Hardy cited \$83,500 in settlements covered with taxpayer and county insurance money to resolve two sexual harassment complaints against Clifford by former employees in his office.¹²⁷⁷ Hardy, incidentally, sent campaign invitations with the heading "Re-

¹²⁷⁴*Id.*

¹²⁷⁵Christopher Tritto, *Hardy wants Clifford to submit resignation, while Clifford asks for investigation of Hardy*, Charleston Gazette, Jan. 17, 2003, at A1.

¹²⁷⁶*Id.*

¹²⁷⁷*Id.*; see also Editorial, *Clifford Bar ethics inquiry*, Charleston Gazette, Oct. 11, 2002, at A4 (The *Charleston Gazette* called the allegations against Clifford "crude, obscene, disgusting, scatological behavior" and said that if true he should resign or be removed from office.).

elect Dave Hardy Commissioner” when he was actually appointed to fill the seat and had not been elected at that point.¹²⁷⁸

Clifford’s complaints stemmed from alleged campaign violations where Hardy was accused of illegally using county vendor lists to solicit campaign contributions. Just a month earlier, a Kanawha County Circuit Judge barred Clifford’s office from working on a convicted murderer’s attempt to be released from jail, “saying it showed questionable judgment by supporting a deal that could spring him from jail in two years.”¹²⁷⁹

The *Charleston Gazette* editorialized:

Altogether, counting lawyer fees, Kanawha County taxpayers probably must shell out more than \$100,000 to pay for the vulgar, lowbrow, trashy, sex obsession of Prosecuting Attorney Mike Clifford.

It’s disgusting that tax revenue from Kanawha families and businesses will be consumed resolving Clifford’s obscene sexual harassment of two former female employees. Allegations against described crudity so gross that it was astounding.

Further, if the prosecutor drove away from a Putnam County service station Friday without paying for gasoline, as state troopers suspect, that’s one more straw on the camel’s back.¹²⁸⁰

¹²⁷⁸Editorial, *Potpourri*, *Charleston Gazette*, Oct. 29, 2001, at A4.

¹²⁷⁹Toby Coleman, *Prosecutor’s office barred from case*, *Charleston Daily Mail*, Dec. 14, 2001, at A2.

¹²⁸⁰Editorial, *Enough Clifford must go*, *Charleston Gazette*, Jan. 15, 2003; see also, Charles Shumaker, *Clifford settles gas tab*, *Charleston Gazette*, Jan. 15, 2003, at A1..

Kanawha County Sheriff David Tucker and Kanawha County Assessor Phyllis Gatson have also been involved in behavior described by the *Charleston Gazette* as “petty, childish, infantile, silly and immature.”¹²⁸¹ Because construction blocked thirty regular parking places, the County Commission asked each officeholder to surrender a few spots. Tucker refused to relinquish nine spots and then “assigned armed deputies to patrol his ‘turf’ and keep others cars out.”¹²⁸² Chief Deputy Assessor Peggy Pope struck back by leaving her car parked in front of the deputies’ cars, blocking them in their parking spaces.¹²⁸³ The actions of both individuals left citizens of Kanawha County without complete law enforcement protection.

On December 20, 2002, in Elkins, West Virginia, the *Inter-Mountain* reported: “Mayor, Clerk Accuse Each Other of Sexual Misconduct.”¹²⁸⁴ During the city council meeting, Elkins City Clerk Phil Graziani read an accusatory statement which also was reprinted and boldly displayed on the front page of the local newspaper.¹²⁸⁵ The following is merely the introduction of that statement:

Three different female employees of the city
have been sexually harassed by Mayor Virgil P.

¹²⁸¹Editorial, *Infantile, Petty, petty, petty, petty*, *Charleston Gazette*, May 3, 2002, at A4.

¹²⁸²*Id.*

¹²⁸³*Id.*

¹²⁸⁴Brad Johnson, *Mayor, Clerk Accuse Each Other of Sexual Misconduct*, *Inter-Mountain*, Dec. 20, 2002, at A1.

¹²⁸⁵*Id.*

Broughton. One of the sexually harassed females was under my supervision; the other two were under the mayor's supervision. The mayor sexually harassed my employee in December 2001. He sexually harassed his receptionist in April 2002, and, as a direct result of that harassment, she left her employment with the city. The receptionist who replaced her was sexually harassed in September 2002.¹²⁸⁶

Broughton, in turn, accused Graziani of also engaging in sexual impropriety, charging that Graziani had asked him to “[c]over for me. Cover for me while [the mayor] was at deer camp. Cover for me while I’m out of town.”¹²⁸⁷ The day before this public display, the *Inter-Mountain* published a front page article that included a color picture with an American flag serving notice of the upcoming meeting.¹²⁸⁸

In 2001, the Putnam County Assessor was fined \$1,000 for placing a peach logo on county vehicles, publications, and uniforms of staff members. The State Ethics Commission found that Assessor D.W. “Peachie” Arthur violated the Ethics Act by including the logos, which parodied Arthur’s campaign signs, on official publications and county vehicles.¹²⁸⁹ The commission order, however, found that the employees could continue to wear the uniforms with the peach logo while any

¹²⁸⁶ *Id.*

¹²⁸⁷ *Id.*

¹²⁸⁸ Brad Johnson, *City Controversy Expected to be Made Public Tonight*, *Inter-Mountain*, Dec. 19, 2002, at A1.

¹²⁸⁹ Evadna Bartlett, *Putnam assessor fined for using peach logo*, *Charleston Daily Mail*, Apr. 7, 2001, at A2.

replacement uniforms should not contain the logo.¹²⁹⁰ The complaint filed with the Ethics Commission alleged that Arthur used the peach logos for private gain in an attempt to promote his re-election.¹²⁹¹

An editorial in the *Charleston Gazette* asks, "Mingo: Trust the police?" It further provides:

Former Delbarton Police Chief Robert Justice has pleaded guilty to demanding a \$1,000 bribe from an arrested man, and bilking Mingo County residents out of \$5,600 through a phony charity appeal. In return for his guilty plea, prosecutors dropped charges that he burned his sister's car to get insurance money, and that he helped steal money from a Delbarton restaurant cash register.

Meanwhile, former Mingo Sheriff's Deputy William Evans has been charged with pretending that his all-terrain vehicle was stolen, and collecting \$6,349 insurance money.

Good lord – it must be terrible for Mingo residents to live with an uneasy sense that some police officers, supposedly their protectors, can't be trusted.¹²⁹²

In an agreement to avoid prosecution, Mingo County Clerk Tommy Diamond resigned amid allegations that he overcharged the county for expenses, sold computers that were donated to the Young Marines and kept the proceeds, attempted extortion of his employees, received a \$2,000 advance payment to attend

¹²⁹⁰*Id.*

¹²⁹¹*Id.*

¹²⁹²Editorial, *Mingo: Trust the police?*, *Charleston Gazette*, Feb. 21, 2001, at A4.

a meeting that he later did not attend and did not return the money to the county coffers, and paid various employees who did not work.¹²⁹³

Diamond contended that he was resigning for personal health reasons, declaring that he had done nothing wrong and that the prosecutor's office had a "personal vendetta" against him.¹²⁹⁴ Another charge was that Diamond used a county credit card assigned to him, as well as another county credit card belonging to another county officeholder, for his personal use without reimbursing the county.¹²⁹⁵ In addition, Diamond was accused of altering birth records for a doctor under federal indictment and accepting payment from the City of Williamson for holding Primary Elections in 1989, 1993, 1997, and 2001, and then pocketing the money for himself.¹²⁹⁶

A few years earlier, in June 2000, Diamond pleaded guilty to a misdemeanor battery charge for striking Mingo County convicted felon Johnie Owens.¹²⁹⁷ Owens, who was elected Sheriff of Mingo County, sold the office in 1982 for \$100,000.¹²⁹⁸ He was later convicted and sentenced to fourteen years in federal prison and now

¹²⁹³Tom Searls, *Mingo County clerk resigns under cloud*, Charleston Gazette, Jan. 31, 2002, at A11.

¹²⁹⁴*Id.*

¹²⁹⁵*Id.*

¹²⁹⁶*Id.*

¹²⁹⁷Fanny Seiler, *Chafin foe made threats, Mingo man says*, Charleston Gazette, Oct. 2, 2001, at A1.

¹²⁹⁸*Id.*

resides in Mingo County.¹²⁹⁹ Owens is said to still possess considerable political influence in Mingo County.¹³⁰⁰

Also in Mingo County, the stepson of a Democratic county executive committee member was released from the Pruntytown Correctional Center thirty-three days after he was denied parole. Robert Charles Justice, a former Delbarton police officer, was sentenced to a pair of one-to-two year sentences on March 12, 2001 for bribery and obtaining money under false pretenses. The Chairman of the West Virginia Parole Board said, "The Parole Board didn't feel he was ready to be released."¹³⁰¹ Just one month prior to the 2002 Primary Election, Circuit Judge Michael Thornsby issued the order for a shorter sentence.¹³⁰²

On November 5, 1999, the West Virginia Supreme Court reversed a three-judge panel and ordered that the Logan County Prosecuting Attorney John G. Sims be removed from office.¹³⁰³ Among the allegations were: Sims filed false affidavits with the intent to deceive; exceeded his budget leaving no money to meet the office payroll; targeting investigations against those he perceived to be his political enemies; issuing subpoenas for improper purposes; instituting improper criminal and civil actions; submitting duplicate payment vouchers to the Circuit Court of Logan County and to the Public Defender Services for payments associated with court-appointed

¹²⁹⁹*Id.*

¹³⁰⁰*Id.*

¹³⁰¹Fanny Seiler, *Politico's stepson put on probation before primary*, Sunday Gazette-Mail, Apr. 14, 2002, at C1.

¹³⁰²*Id.*

¹³⁰³*In re Sims*, 523 S.E.2d 273, 277 (W. Va. 1999).

cases prior to becoming county prosecutor; engaged in outside employment while serving as a full-time prosecuting attorney; improper public statements about pending cases; larceny and fraud; and child abuse.¹³⁰⁴

The three-judge panel found that Sims' explanation to some of their findings was "nonresponsive, evasive, equivocal, ambiguous and not worthy of a public official."¹³⁰⁵ The order from the three-judge panel stated that Sims' "tenure in office is marked with arrogance, thoughtlessness, irresponsibility, and mean spiritedness, all of which are repugnant characteristics for any public officer, but are not grounds for removal."¹³⁰⁶ The State Supreme Court reversed the decision, stating that Sims was guilty of misconduct and the only available remedy was removal from office in accordance with the West Virginia Code § 6-6-7.¹³⁰⁷

The petition to remove Sims from office was signed by nine Logan County elected officials and eighty-one adult residents of Logan County. Sims told the *Logan Banner* that "[t]he reason they don't trust me is that they can't control me *and most criminals don't trust prosecutors.*"¹³⁰⁸ Sims later sued the State Bar disciplinary

¹³⁰⁴ *Id.*

¹³⁰⁵ 523 S.E.2d at 278.

¹³⁰⁶ *Id.*

¹³⁰⁷ *Id.* at 282.

¹³⁰⁸ *Id.* at 275.

board members for damages and attorney's fees for investigating allegations of his misconduct and trying to further punish him.¹³⁰⁹

In 1990, Jay Montgomery Brown, Prosecuting Attorney of Marion County was indicted on twenty-one counts, including seventeen felony embezzlement counts.¹³¹⁰ The former prosecutor was charged with misappropriating county money by purchasing items such as a personal gun permit, a computer, paying his State Bar dues, travel advances, and using the money for state and national travel.¹³¹¹

The Marion County Sheriff Charles H. Dodd served in various public positions including Deputy Sheriff and Circuit Court Clerk. Dodd resigned as Sheriff in 1985, and was later convicted for receiving illegal payments in exchange for failure to enforce anti-gambling laws against a certain gambling establishment operating illegally in Marion County.¹³¹² Dodd was fined \$3,000, placed on probation for three years, and lost his state pension for "less than honorable service."¹³¹³

The *Charleston Gazette* criticized former Kanawha County Prosecuting Attorney Bill Forbes for calling the paper after it published a story mentioning his name. The *Gazette* stated, "Kanawha prosecutor Bill Forbes can be such a silly

¹³⁰⁹Rachelle Bott, *Ex-Logan Prosecutor suing disciplinary board*, *Charleston Gazette*, Sept. 25, 2001, at A1.

¹³¹⁰*State v. Brown*, 422 S.E.2d 489 (W. Va. 1992).

¹³¹¹*Id.*

¹³¹²*West Virginia Public Employees Retirement System v. Dodd*, 396 S.E.2d 725 (W. Va. 1990).

¹³¹³*Id.*

child. Last week he called us, raging and threatening to clobber reporter Larry Messina because Messina quoted controversial Charleston lawyer Marc Turgeon as calling Forbes 'a coke dealer' during a trial."¹³¹⁴

Moreover, the *Charleston Gazette* reported that in Nicholas County rumors had circulated that the Summersville police officers have been investigated for removing eighteen guns from evidence that were intended to be destroyed and selling some of them to a local sports store.¹³¹⁵ In Fayette County, a local deputy was suspended without pay and arrested on domestic battery in January 2002.¹³¹⁶ In Morgan County, a City of Bath police officer was charged with a DUI following an accident in his personal vehicle on March 11, 2003.¹³¹⁷

In 1976, a Logan County Grand Jury returned a multiple count, joint indictment against Jack Hobbs and Harold K. Whitman for various violations of the election laws.¹³¹⁸ Both men were convicted of making a false return of the results of the votes cast for candidates during the Primary Election on May 11, 1976 in

¹³¹⁴Editorial, *Potpourri*, *Charleston Gazette*, Feb. 26, 1996, at A4.

¹³¹⁵Fanny Seiler, *DNR to build hatchery, 2 houses*, *Charleston Gazette*, May 29, 2001, at C1.

¹³¹⁶Associated Press, *Fayette deputy arrested, suspended*, *Charleston Gazette*, Jan. 16, 2002, at A3.

¹³¹⁷Staff Reports, *Bath police officer injured in wreck*, charged with DUI, *Morgan Messenger* (Berkeley Springs, WV), Mar. 19, 2003, at A1.

¹³¹⁸*State v. Hobbs*, 282 S.E.2d 258 (W. Va. 1981); *Whitman v. Fox*, 236 S.E.2d 565 (W. Va. 1977).

order to benefit the candidates of their choice.¹³¹⁹ Hobbs and Whitman were appointed election commissioners of Logan County and approached several voters and asked if they needed assistance in voting.¹³²⁰

Several voters testified that Hobbs entered the voting booth with them and pulled the levers for them.¹³²¹ Other witnesses testified that Hobbs “pulled the [voting] levers so fast” that they did not know for whom they actually voted while another said that she was unaware that Hobbs was actually voting for her.¹³²² Hobbs entered the voting booths with the individuals disregarding the sample voting machine that was set up outside of the booths to assist voters.¹³²³

Many of the same charges were raised against Whitman, including allegations that he had voted for candidates of whom the voters had asked him not to vote.¹³²⁴ The “assistance” in voting that Hobbs and Whitman gave to voters was given without an election commissioner from the other political party as required by law.¹³²⁵ In effect, both Hobbs and Whitman “intimidated, tricked or deceived” many

¹³¹⁹*Id.*

¹³²⁰Hobbs, at 262.

¹³²¹*Id.*

¹³²²*Id.*

¹³²³*Id.*

¹³²⁴*Id.* at 262, 263.

¹³²⁵*Id.* at 262.

Logan County voters into voting for unintended candidates.¹³²⁶ They then counted and recorded these votes that they knew to be false.¹³²⁷

When Upshur County Prosecuting Attorney Alex Ross was re-elected as prosecutor in November of 2000 he was scheduled to begin his new term on January 1, 2001.¹³²⁸ Ross began his position by receiving a substantial increase in salary topping at \$111,056 per year.¹³²⁹ Ross, however, was granted a leave of absence on November 30, 2000, at which time he submitted his retirement information to the State of West Virginia. As of January 1, 2001, Ross began earning his full annual salary plus annuity for the same position that he held for many years.¹³³⁰

In 1969, Logan County Assessor Tom Godby, while serving his third consecutive term, was removed from office after the circuit court decided, among other findings, that Godby was guilty of "official misconduct, malfeasance, incompetence and neglect of duty."¹³³¹ The impeachment proceeding was instituted as a result of a group of Logan County voters in accordance with § 6-6-7 of the West Virginia Code. The West Virginia Supreme Court, however, reversed the

¹³²⁶*Id.* at 263.

¹³²⁷*Id.*

¹³²⁸*Id.*

¹³²⁹Fanny Seiler, *Verizon: state owes millions*, Charleston Gazette, Mar. 20, 2001, at C1.

¹³³⁰*Id.*

¹³³¹Smith v. Godby, 174 S.E.2d 165,168 (W. Va. 1970).

circuit court ruling and restored Godby to the Office of Assessor of Logan County.¹³³²

In the Dissenting Opinion, Justice Calhoun stated that the burden of proof against Godby was fully sustained and that he agreed entirely with the circuit judge's decision. Calhoun provided:

In this day in which, in all levels of government throughout the land, the public confidence in public officials is sorely tested. I admire the courage of the trial judge in his effort to bolster and to restore the sagging confidence of the people in their representatives in government. A case of character is, of course, a serious one from the standpoint of the individual public official, but such a case is, I believe, far more serious from the standpoint of the people he serves. [citation omitted] In all cases, courts should constantly bear in mind that the public, as well as the individual, is entitled to a fair trial. Events in recent years throughout the land demonstrate a need for holding public officials to a fairly high degree of accountability to the public in the performance of their official functions and duties.¹³³³

Another Logan County Assessor, Russell Grimmatt was found not guilty of a misdemeanor battery charge on October 31, 2001.¹³³⁴

In Summers County, Prosecuting Attorney Jim McNeely was charged with assault and battery. McNeely called court appointed Monroe County Prosecutor Rod Mohler "a coward, ignorant and unprofessional" for asking a judge to remove

¹³³²*Id.* at 173-174.

¹³³³*Id.* at 176-177.

¹³³⁴Rachelle Bott, *Logan assessor acquitted in protest scuffle*, Charleston Gazette, Nov. 1, 2001, at A1.

him from the case.¹³³⁵ McNeely was charged after Edmund “Ned” Wright arrived home and found McNeely’s car parked at Wright’s wife’s home at 7:00 a.m.¹³³⁶ Wright alleges that McNeely threatened him, grabbed his coat lapel and pushed him to the ground.¹³³⁷

In Cabell County, according to a report from the state auditor’s office, former Mayor Jean Dean and other Huntington City Officials violated state and federal laws at least eight times.¹³³⁸ Several of the violations include the illegal borrowing and spending of money by the board or the city government amounting to millions of dollars.¹³³⁹ Just a month prior to the auditor’s report another Cabell County official, County Surveyor Joseph Grant who was already charged with acting under false pretenses, was arrested on several other misdemeanor charges including driving with a suspended license and writing worthless checks.¹³⁴⁰

In Kanawha County, the Mayor of Jefferson was indicted and charged with twenty-one counts ranging from tax evasion to embezzlement on October 25,

¹³³⁵Associated Press, *Summers prosecutor blasts Monroe official: Motion challenges request to take on battery case*, Charleston Daily Mail, Oct. 23, 2001, at A10.

¹³³⁶*Id.*

¹³³⁷Associated Press, *Prosecutor’s requests denied in his own trial*, Charleston Gazette, Dec. 13, 2001, at A1.

¹³³⁸Brian Bowling, *Huntington audit finds eight major violations*, Charleston Daily Mail, Feb. 7, 2002, at A1.

¹³³⁹*Id.*

¹³⁴⁰Associated Press, *Surveyor faces other charges*, Charleston Gazette, Dec. 14, 2001, at B6.

2001.¹³⁴¹ The town, also know as “the Badlands,” has a reputation for its local strip clubs and alleged occurrences of prostitution.¹³⁴² The Mayor of Smithers, also in Kanawha County, was indicted in an alleged DUI scheme on Valentine’s Day of 2003.¹³⁴³

The Monroe County Sheriff, Gerald Bland, was asked by county commissioners to resign on January 14, 2003. The request occurred after the commissioners received “dozens of complaints from residents around the county” about poor service from the sheriff and his deputies.¹³⁴⁴ Bland has been under an investigation by State Police concerning a joint drug raid conducted by his department and the neighboring Summers County Sheriff’s Department.¹³⁴⁵

In 2003, Harrison County Prosecuting Attorney John Scott resigned amid allegations that left the Harrison County’s criminal justice system in disarray. Scott was practicing law with a suspended law license, allegedly making misleading

¹³⁴¹Rachelle Bott, *Jefferson mayor indicted*, Charleston Gazette, Oct. 26, 2001, at C1.

¹³⁴²*Id.*

¹³⁴³Christopher Tritto, *Smithers mayor indicted in alleged DUI scheme*, Feb. 14, 2003, at A1.

¹³⁴⁴Tom Searls, *Monroe sheriff is asked to quit*, Charleston Gazette, Jan. 15, 2003, at A1.

¹³⁴⁵*Id.*

statements to judges, police and other attorneys, and indicting an individual whose case had been resolved.¹³⁴⁶

It is also clear that educators are not immune to the world of the perception of corruption. Former West Virginia State Schools Superintendent Hank Marockie was investigated for his use of a little-known expense account called the "Superintendent's Discretionary Fund."¹³⁴⁷ Marockie, who signed off on his own travel expenses, accepted more than \$99,000 between 1989 and 1999, from an organization whose contributors included private foundations and some of the largest corporations in the state.¹³⁴⁸ It has also been reported that businesses sometimes paid other travel expenses of the Superintendent including hotel rooms and airline tickets.¹³⁴⁹ Another educator, State School Board President J.D. Morris, resigned amid federal charges that he embezzled \$172,000 when he was President

¹³⁴⁶Associated Press, *Embattled Harrison County prosecutor resigns*, Charleston Gazette, Jan. 25, 2003, at A1; Associated Press, *Harrison prosecutor plans response*, Charleston Gazette, Jan. 18, 2003, at A1.

¹³⁴⁷Eric Eyre, *More information sought on Marockie's spending, Federal jury is looking into his use of expense accounts*, Charleston Gazette, Jan. 24, 2001, at C1.

¹³⁴⁸*Id.*

¹³⁴⁹*Id.*

of Clay County Bank.¹³⁵⁰ Morris was sentenced to eighteen months in federal prison for embezzling \$135,000.¹³⁵¹

C. Sheriff's Amendment

In 1994, the voters of West Virginia again rejected an amendment that would have allowed for unlimited sheriff terms in office.¹³⁵² This marked the third time in twelve years that West Virginians rejected such an amendment as they voted it down in 1982 and 1986.¹³⁵³ In West Virginia, the Governor and Sheriff are the only elected positions with term limits. A sheriff is limited to two, four-year terms or part of any two terms in office, while the governor is limited to two consecutive four-year terms in office.

In 1973, voters amended the Constitution of West Virginia so that a sheriff could serve two consecutive four-year terms instead of the one, four-year term that had been prescribed by the State Constitution.¹³⁵⁴ Since the 1973 Amendment, several county Sheriffs have garnered convictions for corrupt practices. It could be speculated that citizens voted against the Sheriff's Amendment because of weariness of the potential political power that can be amassed by the sometimes-

¹³⁵⁰Christopher Tritto, *Official quits under a cloud*, Charleston Gazette, Oct. 11, 2002, at A1.

¹³⁵¹*Id.*

¹³⁵²Associated Press, *Unlimited Sheriff Terms Rejected for Third Time*, Charleston Gazette, Nov. 9, 1994, at A10.

¹³⁵³*Id.*

¹³⁵⁴Editorial, *Amendment 2 The Current Two-Term Limit Is Prudent*, Charleston Daily Mail, Nov. 4, 1994, at A4.

corrupt county sheriff. A newspaper editorial against the then-proposed amendment suggested that passage would "let sheriffs run again and again, amassing the kind of power that tends to corrupt."¹³⁵⁵ One need look no further than former Logan County Sheriff Don Chafin or Mingo County Sheriff Johnie Owens as perfect examples of the power wielded by a county sheriff.¹³⁵⁶

¹³⁵⁵*Id.*

¹³⁵⁶Howard B. Lee, *Bloodletting in Appalachia* 102-103 (Parsons: McClain Printing Company, 1969); *State ex rel. Owens v. Brown*, 351 S.E.2d 412 (W. Va.1986).

XI. A NATIONAL SPOTLIGHT FOR WEST VIRGINIA

He [Joe Kennedy] bought West Virginia. I don't know how much it cost him; he's a tightfisted old son of a bitch; so he didn't [spend] any more than he had to, but he bought West Virginia, and that's how his boy won the Primary over Humphrey.

—Former President Harry S. Truman

He didn't want to buy West Virginia, he just rented it for a day.

—Claude Ellis,
Director for Kennedy's campaign in Logan County

John F. Kennedy's 1960 Primary Election and a Culture of Corruption in Southern West Virginia.

The 1960 Presidential Primary brought the national spotlight to West Virginia. To seize the nomination, John F. Kennedy, the forty-three-year-old Catholic Massachusetts United States Senator needed to defeat Minnesota United States Senator Hubert Humphrey in the West Virginia Primary to prove to the national convention delegates that a Catholic could collect votes in this deeply religious and ninety-five percent Protestant state.¹³⁵⁷ The “excitement in the hills” was spread by

¹³⁵⁷ *Jack's W. Va. Jack Returned Hundred Fold, The West Virginia Hillbilly,*
(continued...)

the likes of “Jack, Jackie, Bobby, Teddy, FDR Jr., and perhaps Jimmy Hoffa running around the Mountain State.”¹³⁵⁸ Kennedy spent so much time in West Virginia during that time, that “West Virginia was the third word that his daughter Caroline learned to pronounce.”¹³⁵⁹

Prior to the Primary, many in the national press had discounted Kennedy’s chances in West Virginia and conceded the state to Humphrey. In fact, the *Washington Post* surrendered West Virginia to Humphrey based on the “the issue of religion” as it stated, “With one or two exceptions, every West Virginia political newspaper writer that this reporter has interviewed has predicted a victory for Senator Humphrey.”¹³⁶⁰ The *Charleston Gazette* reported: “U.S. Sen. John F. Kennedy made his first campaign swing through West Virginia Monday amid

¹³⁵⁷(...continued)

Jan. 16, 1961 at 11; Meg Vaillancort, *JFK campaign allegations W. Va. politician writes of buying votes for candidate in ‘60*, *The Boston Globe*, July 17, 1994, at A9; Leslie Phillips, *W. Va.: Local elections hold sway on voters*, *USA TODAY*, May 10, 1988, at A6; MaryWade Burnside, *Talking about the politics of picking presidents*, *Charleston Gazette*, May 7, 2000, at F1 (West Virginia University Professor Robert E. DiClerico said that Kennedy “needed to demonstrate his viability to the party elites, who had some doubt whether or not a Catholic could be elected President.”).

¹³⁵⁸Bob Miller, *Looking Back: 1960 primary turned nation’s eyes toward state*, *Charleston Gazette*, May 29, 2001, at A5.

¹³⁵⁹Charles H. Moffat, *Ken Hechler: Maverick Public Servant* 270 (Mountain State Press: Charleston, WV, 1987).

¹³⁶⁰Bob Miller, *Looking Back: 1960 primary turned nation’s eyes toward state*, *Charleston Gazette*, May 29, 2001, at A5.

growing indications that his opponents were gathering en masse to stop him here.”¹³⁶¹

Those predictions were wrong as Kennedy was victorious in fifty of the state’s fifty five counties, garnering a sixty-one to thirty-nine percent statewide margin.¹³⁶² Kennedy’s large margin of victory in the May 10, 1960 West Virginia Democratic Presidential Primary left Kennedy with 236,510 votes and 152,510 for Humphrey.¹³⁶³ Kennedy’s 84,000 vote victory, however, came with much controversy. Kennedy was particularly successful in the southern coal counties such as Mingo, Logan, McDowell, Lincoln, and Boone that were dominated by political factions.

One reason cited by the *New York Times* for the Kennedy victory was far-reaching associations with local political leaders who agreed to slate Kennedy along with favored local candidates.¹³⁶⁴ It has often been reported that Kennedy’s West Virginia victory “was paid for through bribes and organized crime.”¹³⁶⁵ Kennedy,

¹³⁶¹ *Id.*

¹³⁶² J. Howard Myers, *West Virginia Bluebook* 721 (Jarrett Printing: Charleston, West Virginia 1960).

¹³⁶³ *Id.*

¹³⁶⁴ Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 109 (McFarland 1992).

¹³⁶⁵ Angela Charlton, Associated Press, *Dan Fleming is confounded by a book that ...*, *Charleston Gazette*, Nov. 11, 1997, at C1.

nevertheless, attributed his West Virginia victory to voters who cast their vote “on the basis of the issues and not on any religious prejudice.”¹³⁶⁶

Following the Primary, the many allegations of voting corruption in Logan County were investigated by the FBI to determine if federal voting laws were violated. Moreover, the Attorney General and numerous state newspapers also investigated. In addition, newspapers across the nation and throughout the state depicted headlines such as “County Machines helped to Swell Vote for Kennedy in Primary,”¹³⁶⁷ “Plenty of Votes Bought in W. Virginia Primary,”¹³⁶⁸ and “Votes Bought and Sold Openly on Streets.”¹³⁶⁹

A story in the *New York World-Telegram and Sun* quoted a Logan County resident who had been defeated in his bid for Justice of the Peace, as declaring that many voters “wouldn’t go inside the house [polling place] unless they were paid. They would just sit in their cars until they got their money.”¹³⁷⁰ Furthermore, a

¹³⁶⁶Bob Miller, *Looking back: 1960 primary turned nation’s eyes toward state*, Charleston Gazette, May 29, 2001, at A5.

¹³⁶⁷Staff reports, *County Machines helped to Swell Vote for Kennedy in Primary*, Baltimore Sun, May 11, 1960, at A1.

¹³⁶⁸Staff reports, *Plenty of Votes Bought in W. Virginia Primary*, Pittsburgh Post Gazette, June 1, 1960, at A1.

¹³⁶⁹Staff reports, *Votes Bought and Sold Openly on Streets*, Baltimore Sun, May 11, 1960, at A1.

¹³⁷⁰Dickson Preston, *Votes bought in West Virginia Primary*, New York World-Telegram and Sun, May 26, 1960, at A1.

Chapmanville policeman asserted, "I saw men standing outside the polling place with large stacks of \$1 bills. I saw money change hands."¹³⁷¹

In his novel *Kennedy vs. Humphrey, West Virginia, 1960*, historian Dan Fleming discussed, "three young reformers" from the southern part of Logan County who "were also in revolt against the voting system."¹³⁷² Fleming writes:

Dr. Luke Combs, a physician, 30; Sam Hatfield, 31, of the famous 'feudin' clan, a teacher at Man High School; and Ned Grubb, 25, an attorney, organized a petition signed by a thousand residents requesting federal officials to oversee the fall 1960 general elections.¹³⁷³

The *Pittsburgh Post Gazette* reported that the petition alleged:

mass selling and buying of votes with money, whiskey, and moonshine; the entering of polling places by candidates and other persons; the forcible denial of voters to vote in privacy by some election officials, and the flagrant operation of the voting machines by some election officials without the consent of the voter and often against his overt protests.¹³⁷⁴

After the petition was presented, the FBI sent agents to Logan to investigate. "Unfortunately there were few federal laws governing Primary Elections, particularly vote buying," Fleming asserts.¹³⁷⁵ The three individuals thought that their efforts

¹³⁷¹ *Id.*

¹³⁷² Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 109 (McFarland 1992).

¹³⁷³ *Id.*

¹³⁷⁴ *Id.*

¹³⁷⁵ *Id.* at 111. (July 12, 1960 announcement by the Justice Department that its probe failed to show any federal election-law violations and that there was no
(continued...)

with the petition were “non-partisan in nature” and would “insure a comparatively honest election in the fall.”¹³⁷⁶ Fleming describes Grubb as just someone who wanted to reform the entire corrupt system.¹³⁷⁷

Although Ned Grubb, who later became a circuit judge, led what appeared to be an admirable fight for clean elections in Logan County following the Kennedy 1960 victory, he later earned the unfortunate distinction of being West Virginia’s first circuit judge to be convicted of a felony.¹³⁷⁸ Grubb was convicted in 1992 of aiding and abetting the payment of a bribe, two counts of aiding and abetting mail fraud, conspiracy to commit fraud, tampering with a witness, obstruction of justice, and operating his judicial office as a racketeering enterprise.¹³⁷⁹ Essentially, Grubb was convicted for the same unethical and corrupt political activities that he so gallantly seemed to stand against.

Wally Barron, then-Attorney General and later Governor, also weighed in on the election by assigning an Assistant Attorney General to investigate.¹³⁸⁰ The

¹³⁷⁵(...continued)
federal law specifically covering ballot-box stuffing.).

¹³⁷⁶*Id.*

¹³⁷⁷*Id.* at 117.

¹³⁷⁸Associated Press, *EX-JUDGE GRUBB DIES*, Charleston Gazette, Apr. 17, 1997, at C1; (At the time of his arrest, James Ned Grubb was an elected circuit judge of the Seventh Judicial Circuit of West Virginia, located in Logan County.)

¹³⁷⁹United States v. Grubb, 11 F.3d 426, 430 (4th Cir. 1993).

¹³⁸⁰Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 116 (McFarland 1992).

extent of Barron's investigation is unknown given the fact that he was reported to have been heavily involved with slating during his own election for Attorney General.¹³⁸¹ Barron's credibility was further tainted in 1968 when he was charged and acquitted on bribery and conspiracy accusations involving kickbacks he and his aides had purportedly taken while Barron was Governor.¹³⁸² However, a few years later Barron was sentenced to a five-year prison term for tampering with the jury that had earlier acquitted him on various corruption charges.¹³⁸³

Logan County was described as being like "[h]ungry hogs going to the trough" with regard to the amount of money being spent.¹³⁸⁴ The day after the Primary, the *Logan Banner* described the election as a spree of "flagrant vote-buying, whiskey flowing like water, and coercion of voters You name it and we just about had it."¹³⁸⁵ Soon after the Primary, John F. Kennedy joked that he had received a telegram from his father pleading, "Don't buy another vote. I won't pay for a landslide."¹³⁸⁶

¹³⁸¹ *Id.*

¹³⁸² State ex rel. Brown v. Thompson, 142 S.E.2d 711 (W. Va. 1965).

¹³⁸³ *Id.*

¹³⁸⁴ Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 101 (McFarland 1992).

¹³⁸⁵ *Id.*

¹³⁸⁶ Joe Savage, *Just Good Politics: The Life of Raymond Chafin, Appalachian Boss*, Washington Monthly, Vol. 26, No. 12, Dec. 1, 1994, at 56.

Just prior to the Primary, *Life* magazine published an article entitled, "The Half-Pint Vote, Slating and the Lever Brothers."¹³⁸⁷ The article described how votes were bought with money or whiskey, how election officials actually participated by "helping" voters cast a ballot, and it described how slating was used to win an election.¹³⁸⁸ Soon after the *Life* article appeared, the *Logan Banner* said it was "rather rough on Logan County;" however, it did not refute many of the troublesome charges.¹³⁸⁹

Charlie Peters, an ex-West Virginia legislator and editor of *The Washington Monthly*, maintains, "Votes are bought in every West Virginia election" and contends that "[i]n the culture of Appalachia, it's a severe problem – like the old moonshining tradition."¹³⁹⁰ Logan resident and former Deputy County Assessor and Magistrate candidate Claude Ellis described the vote buying in Logan County as "simply a way of life."¹³⁹¹ Ellis said, "I've known people who turn around and go back home if you

¹³⁸⁷Don Wilson, *The Half-Pint Vote, Slating and the Lever Brothers*, *Life*, May 9, 1960, at 26, 27.

¹³⁸⁸*Id.*

¹³⁸⁹Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 101 (McFarland 1992).

¹³⁹⁰Leslie Phillips, *W. Va.: Local elections hold sway on voters*, *USA TODAY*, May 10, 1988, at A6.

¹³⁹¹*Id.*

didn't have something for them [to buy their vote]. [Election time] is Christmas for a lot of people still."¹³⁹²

According to the autobiography of Raymond Chafin, a longtime Democratic "political boss" of Logan County, the Kennedy victory in southern West Virginia was aided by a long-established system of voter bribery in the boss-dominated coalfields.¹³⁹³ Chafin's autobiography adds a unique perspective on a practice that is often discussed, but with few details. Chafin also claims to have "spread money and influence around Southern West Virginia" in order to help many other politicians such as U.S. Senator Robert C. Byrd, and at least three Governors.¹³⁹⁴

Chafin describes from his perspective the election practices in Logan County during the 1930s and continuing to the present day. Political factions such as the one in Logan County illustrate just how readily large numbers of votes could be controlled by a small number of individuals. Chafin, whose own father-in-law was killed in an Election Day shooting, recalls times when some politicians needed armed guards and remembers when the various political deals were contrived at night along the rural roads of southern West Virginia.¹³⁹⁵

¹³⁹²*Id.*

¹³⁹³Raymond Chafin & Topper Sherwood, *Just Good Politics, The life of Raymond Chafin, Appalachian Boss* 149 (Univ. Of Pittsburgh Press 1994).

¹³⁹⁴Jennifer Bundy, Associated Press, *Logan Politics Hits the Light in Boss' Book*, Sunday Gazette-Mail, July 17, 1994, C1.

¹³⁹⁵*Id.*

Chafin had originally supported Minnesota Senator and presidential candidate Hubert Humphrey for the Democratic Presidential nomination after receiving \$2,000 from him; however, after being handed \$35,000 stuffed in sealed briefcases by Kennedy operatives just days before the Primary, Chafin switched his support to Kennedy.¹³⁹⁶ Chafin recalls traveling to McDowell, Wyoming, Mingo, and Boone counties to deliver the “Kennedy campaign money” to pay for election day operations in those counties as well.¹³⁹⁷

Chafin was called a few days prior to the election and told to bring bodyguards with him to retrieve “something to work with” that the campaign was sending to him on a plane later that day. Chafin explained that when he told the Kennedy campaign that he needed “about thirty-five” that he meant \$3,500 and not the \$35,000 he received in packages of five, ten, and twenty-dollar bills. He furthered by stating that he called the Kennedy campaign and told them that they had made a mistake. To this the campaign responded, “Hell no! There’s no mistake! We know you’re doing your job!”¹³⁹⁸ Kennedy brother-in-law Sargent Shriver is quoted as saying he “vividly” remembered meeting with a “top Logan

¹³⁹⁶Raymond Chafin & Topper Sherwood, *Just Good Politics, The life of Raymond Chafin, Appalachian Boss* 115, 137, 141, 143 (Univ. Of Pittsburgh Press 1994)); Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 104 (McFarland 1992); Meg Vaillancort, *JFK campaign allegations W. Va. politician writes of buying votes for candidate in '60*, *The Boston Globe*, July 17, 1994, at A9.

¹³⁹⁷Raymond Chafin & Topper Sherwood, *Just Good Politics, The life of Raymond Chafin, Appalachian Boss* 149 (Univ. Of Pittsburgh Press 1994).

¹³⁹⁸*Id.*

County official a few days before the May 10 voting and being able to persuade the leader to switch from Humphrey to Kennedy.”¹³⁹⁹

“People are still trying to determine how John F. Kennedy did so well in southern West Virginia, the heart of the ‘anti-Catholic’ Bible Belt. McDowell County gave him eighty-four percent of the vote, the highest in the state. The second highest was Wyoming County, with seventy-eight percent of the vote. Logan and Mingo each delivered more than fifty-five percent for Kennedy, and as a result he carried the entire state by more than 84,000 votes.”¹⁴⁰⁰ Chafin said that people sold their votes for cash or personal items as simple as payment for a driver’s license for someone who could not afford it or paying for someone’s electric bill.¹⁴⁰¹

Chafin writes of distributing money freely in buying votes and how he used his political leverage to get Logan County what it needed such as roads, bridges, schools and even a new courthouse.¹⁴⁰² Chafin said many people routinely sold their votes to the highest bidder for cash, moonshine, jobs, or “about anything they could get out of it.”¹⁴⁰³ Chafin’s father, however, believed “you don’t work in politics

¹³⁹⁹Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 104 (McFarland 1992).

¹⁴⁰⁰Raymond Chafin & Topper Sherwood, *Just Good Politics, The life of Raymond Chafin, Appalachian Boss* 149 (Univ. Of Pittsburgh Press 1994).

¹⁴⁰¹*Id.*

¹⁴⁰²*Id.*; Meg Vaillancort, *JFK campaign allegations W. Va. politician writes of buying votes for candidate in ‘60*, *The Boston Globe*, July 17, 1994, at A9.

¹⁴⁰³Raymond Chafin & Topper Sherwood, *Just Good Politics, The life of Raymond Chafin, Appalachian Boss* 53, 54, 136 (Univ. Of Pittsburgh Press 1994).

for no money! You sell your soul when you do that—and you don't do that!"¹⁴⁰⁴

Chafin explained that in order to get people to vote for his political faction, he would promise and later deliver new bridges, roads, and even new schools.¹⁴⁰⁵ Moreover, Chafin articulated that the importance of winning was driven by jobs: "Back then, if Democrats won, they got the jobs. If the Republicans won, they got the jobs."¹⁴⁰⁶

During his comments in the United States House of Representatives, former Secretary of State and then-Congressman Ken Hechler stated:

Mr. Speaker, it was a glorious spring in 1960 in West Virginia. The laurel-decked hillsides sparkled. When the early morning fog had lifted from the mountaintop airports, plane-loads of news commentators, political experts, and curious visitors debarked and headed for the hills and hollows. This was political primary time in West Virginia, the primary which started John F. Kennedy on the road to the White House.

West Virginia, the 35th State in the Union, made John F. Kennedy the 35th President of the United States. It was on this battleground on the 10th day of May 1960 that the future President scored a smashing victory which buried the so-called religious issue.¹⁴⁰⁷

¹⁴⁰⁴*Id.* at 47; Meg Vaillancort, *JFK campaign allegations W. Va. politician writes of buying votes for candidate in '60*, *The Boston Globe*, July 17, 1994, at A9.

¹⁴⁰⁵Raymond Chafin & Topper Sherwood, *Just Good Politics, The life of Raymond Chafin, Appalachian Boss* 99 (Univ. Of Pittsburgh Press 1994).

¹⁴⁰⁶Jennifer Bundy, Associated Press, *Logan Politics Hits the Light in Boss' Book*, *Sunday Gazette-Mail*, July 17, 1994, C1.

¹⁴⁰⁷109 CONG. REC. 198, Dec. 5, 1963 (Statement of Congressman Hechler).

It is believed that Kennedy did take an interest in West Virginia after he was elected President. The first food stamps were distributed in McDowell County soon after the Kennedy election¹⁴⁰⁸ and Kennedy also doubled the surplus food allotment for the poor in West Virginia and extended welfare benefits for the needy.¹⁴⁰⁹ Perhaps the most significant benefit to the State came from Kennedy's support for Interstate 79 which runs from the north to the south of West Virginia.¹⁴¹⁰

Chafin explains that the key to winning an election is controlling the precincts. He expounded that there were more than a hundred precincts in Logan County during those days and precinct captains were chosen who then hired all of the campaign workers and were the individuals responsible for determining "the amount of money they needed to pay people in order [to] 'win' their boss's candidates."¹⁴¹¹

Chafin describes the captains as people with political jobs and political knowledge who either had the largest families or who had developed solid

¹⁴⁰⁸Raymond Chafin & Topper Sherwood, *Just Good Politics, The life of Raymond Chafin, Appalachian Boss* 157 (Univ. Of Pittsburgh Press 1994).

¹⁴⁰⁹Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 167 (McFarland 1992).

¹⁴¹⁰*Barron Meets With Kennedy*, Charleston Gazette, Mar. 16, 1962 at A1; Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 168 (McFarland 1992).

¹⁴¹¹Raymond Chafin & Topper Sherwood, *Just Good Politics, The life of Raymond Chafin, Appalachian Boss* 52, 136 (Univ. Of Pittsburgh Press 1994) (Chafin said that around 1960 it usually cost about \$100,000 gathered from candidates and interest groups (like coal companies) to run a campaign in Logan County.).

relationships with everyone in their neighborhoods.¹⁴¹² Captains coordinated cars to get people to the polls, managed the money necessary to win the precinct and “in some cases, the captains were the ones who paid for votes.”¹⁴¹³ This explains why Chafin believed that precinct captains were so vital on election day and why he was able to have so much power.

Chafin represents:

Now most southern West Virginia voters took pride in voting for its own sake, while others took pride in what they were going to get for it—money, a job, a pint of whiskey, or some favor from a politician. Everyone had a good reason to get to the polls on election day, though, and most of the competition for votes was right there at the precincts—among those party captains. They did anything and everything they could to get the votes in for their people. At times, things could get pretty rough around the polling places.¹⁴¹⁴

Chafin explained that the mechanics of vote-buying requires the cooperation of both Republicans and Democrats at the polling places.¹⁴¹⁵ Voters willing to sell their ballot simply ask an election commissioner (who by law were from both political parties) for “assistance.” The election commissioners would then “assist” the voter by casting the ballot in favor of a particular political slate of which the voter is going to be paid to vote; then, the commissioner signals outside the “house” [voting precinct] that the vote had been cast, allowing campaign workers in the yard to

¹⁴¹²*Id.* at 52.

¹⁴¹³*Id.* at 52, 123 n.2.

¹⁴¹⁴*Id.* at 53, 54.

¹⁴¹⁵*Id.* at 55.

make the promised payment.¹⁴¹⁶ Chafin said that occasionally a Republican in the highly outnumbered Democratic areas would receive a token job as a reward for participation in the corrupt system.¹⁴¹⁷

Chafin added:

If someone was selling his vote, one of the commissioners would take him over to a table and he'd watch that voter fill out his ballot. Or the voter might just let the commissioner do it for him. (Some of those fellows could vote a ticket faster than a chicken pickin' up corn!) When that voter came out of the building, a commissioner in the doorway gave a sign, which changed every hour or so. That commissioner might tug on his nose or scratch his ear or something to show his faction's people outside that the voter had done what they wanted. Then the precinct captain signed off to somebody else, who met that voter and paid him off.¹⁴¹⁸

The production of slates was a big part of an election during that period. A slate is a printed list of candidates that a political faction such as Chafin's would suggest that you support and for whom you would cast your ballot. The slate could contain names for every office on the ballot or simply the names of a few candidates that the specific faction would choose to support. Slates often determined the winner of the election. Many politicians during those days declared that you were either on the slates or you lost the election.¹⁴¹⁹

¹⁴¹⁶*Id.*

¹⁴¹⁷*Id.* at 54.

¹⁴¹⁸*Id.*

¹⁴¹⁹*Id.*

In some counties there were competing political factions with separate slates. Each faction would raise money by levying a fee for each candidate who wished to be included on the slate. That money was typically used to print the slates as well as to pay voters. Money played an intricate role in slating of candidates as a candidate with limited funds may not be able to raise the money and thus, typically would be left off the slates, often losing the election as a result.

Chafin's nonchalant attitude toward southern West Virginia politics demonstrates that this was simply a way of life for politicians throughout various communities. It also demonstrates how easy it was for Chafin to control the votes for Kennedy in the 1960 Election. He remembers one election in which an argument began with regard to whether or not a group was voting in the correct precinct.¹⁴²⁰ Chafin says the event turned so violent that one man was shot in the head and killed.¹⁴²¹ While two men were tried for the murder, one was declared innocent and the other was later pardoned, possibly not even serving a day in prison.¹⁴²²

Raymond Chafin has yet to retire from politics. *Charleston Gazette* political columnist Fanny Seiler reports that Chafin, the long-time Logan County political boss who supported the former Governor Cecil Underwood, was instrumental in getting his Administration to pave a private road just prior to the last General

¹⁴²⁰ *Id.* at 27.

¹⁴²¹ *Id.*

¹⁴²² *Id.*

Election in November 2000 where Underwood was running for re-election.¹⁴²³ The Logan County road supervisor, Curley Belcher, said Chafin aided his friend in getting the road paved by directing him to pave the private road under an "emergency order."¹⁴²⁴

In describing politics of the 1960s and before, Chafin said, "If you wanted to win an election, it was fist-and-skull back then. If you didn't go out there and risk getting shot or killed, you didn't work an election at all. It was dangerous in those days."¹⁴²⁵ Chafin believes that elections are much different today, particularly in light of the limitations on the amount a candidate can pay election workers as well as the fact they can no longer campaign at the polls.¹⁴²⁶ In addition, many local residents described Logan politics as a "great game," a "sport," a "way of life."¹⁴²⁷

Chafin adduces that while those limitations are in place in today's elections, there are no limits placed on the amounts that someone can pay for television advertising.¹⁴²⁸ Chafin asserts that one difference in candidates today is that they

¹⁴²³Fanny Seiler, *Logan neighbors wrangle over paving of road*, Charleston Sunday Gazette-Mail, June 24, 2001 at 3C.

¹⁴²⁴*Id.*

¹⁴²⁵Raymond Chafin & Topper Sherwood, *Just Good Politics, The life of Raymond Chafin, Appalachian Boss* 189 (Univ. Of Pittsburgh Press 1994).

¹⁴²⁶*Id.* at 190.

¹⁴²⁷Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 105 (McFarland 1992).

¹⁴²⁸Raymond Chafin & Topper Sherwood, *Just Good Politics, The life of Raymond Chafin, Appalachian Boss* 190 (Univ. Of Pittsburgh Press 1994).

are more concerned with how they will look on television than actually going from county to county, door to door, or by campaigning at different meetings around the state.¹⁴²⁹

Chafin postulates that only a rich man has a chance to win a campaign today as they can have substantial television buys that make it difficult for the average person to compete. Chafin said:

The way it is now, nobody but the rich man's got a chance to win. You pay hundreds or thousands of dollars to the advertisers, and they'll say anything you want them to about the other side. A poor person running for office doesn't have any way to fight a campaign like that. There's no way they can compete.¹⁴³⁰

In addition, Chafin expressed that the television campaign commercials do not tell the potential voter anything about the candidate and that many are not even fit for public consumption.¹⁴³¹ He said, "If you had [heard] such things about one of our candidates in the old days, he'd have knocked your head off."¹⁴³² Chafin further asserted that the coal companies' only concern was with which candidate would allow them to "get away with more."¹⁴³³ Chafin declared:

These coal companies and big businesses are all the same. Their money people ask, 'Which man is going to

¹⁴²⁹*Id.* at 190.

¹⁴³⁰*Id.*

¹⁴³¹*Id.*

¹⁴³²*Id.*

¹⁴³³*Id.* at 175.

let me dump the most in the creek?,' 'Who's going to let me strip coal and scrape the trees over the hillside the way I want?,' or 'Who'll let me get by this law or that one?'¹⁴³⁴

Joe Savage, a former United States Attorney for the Southern District of West Virginia, said there were no successful vote buying prosecutions in West Virginia until the late 1980s in part because of a sense that juries would be unlikely to condemn such behavior by their neighbors and friends.¹⁴³⁵ Savage referred to a time when, "[o]ne drug-dealing fire chief and local political boss [were] met by the fire truck and paraded through town for a hero's welcome during a brief release from custody as he awaited the start of a 10 year sentence."¹⁴³⁶ It seems that as a society, we consistently continue to tolerate misconduct by local officials.

Chafin's description of life in Logan County during that time period confirms Savage's belief. Chafin depicts a time of lawlessness depending on whose side of the political fence a person belonged. Chafin recalled a time when his friend John was fighting a man who had just arrived in town to promote the union. The sheriff arrested both of them and said, "Now, John, I've told you about starting trouble down here. . . . You already killed four or five people and here you are beating up

¹⁴³⁴*Id.*

¹⁴³⁵ Joe Savage, *Just Good Politics: The Life of Raymond Chafin, Appalachian Boss*, Washington Monthly, Vol. 26, No. 12, Dec. 1, 1994, at 56.

¹⁴³⁶*Id.*

on this fellow. I believe we're gonna have to put you in jail this time."¹⁴³⁷ The Sheriff, however, let John go when he promised not to fight anymore.¹⁴³⁸

Chafin also recalled when he and an associate were fired personally from their Division of Highways jobs by Governor M.M. Neely for not joining a different political faction in Logan County. Chafin quoted the Governor as declaring, "[n]ow, both of you work for the state roads, and you'll do exactly as I say, or you won't have a job in my administration!"¹⁴³⁹

Strong political machines were not only in southern West Virginia during the Kennedy Election. The Northern Panhandle of West Virginia had a strong and well-financed political organization and North Central West Virginia also had strong political factions.¹⁴⁴⁰ For instance, in Harrison County, "Humphrey never had a chance since he was opposed by the powerful county machine, lacked support from labor, and was swamped by the well-organized Kennedy operation."¹⁴⁴¹ Fleming also quoted Harry Pauley, the Speaker of the House of Delegates in West Virginia

¹⁴³⁷Raymond Chafin & Topper Sherwood, *Just Good Politics, The life of Raymond Chafin, Appalachian Boss* 68 (Univ. Of Pittsburgh Press 1994).

¹⁴³⁸*Id.*

¹⁴³⁹*Id.* at 85.

¹⁴⁴⁰Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 68, 69 (McFarland 1992).

¹⁴⁴¹*Id.* at 83.

in 1960, as saying that Kennedy leaders offered so much money that it “would pay for the next couple of elections in Harrison County.”¹⁴⁴²

It has been asserted that West Virginia’s largest county, Kanawha County, had several independent voters and was not a “machine controlled county like Logan or McDowell.”¹⁴⁴³ He did admit, however, that there were still several precincts that were so called “machine-controlled.” Dan Fleming in his novel about the 1960 Kennedy Election selects Kanawha County resident Edward W. Hiserman to describe his view of a typical Kanawha County election.

There is an inside man and an outside man at every bought precinct. There’s also a ‘rider’ who goes around from precinct to precinct with money. The side man has some token—often it’s baseball tickets. When a purchasable voter comes into the polls, the inside man goes into the booth with him and makes certain how he votes—or votes for him. Then the inside man gives the voter a baseball ticket. The voter takes this token to the outside man and gets paid for voting—\$2 or \$3 usually. When the outside man runs out of money, he gets more by giving the rider the tickets he has collected as proof that he used the money in the agreed way.¹⁴⁴⁴

Much speculation exists about exactly how much money poured into the hills of West Virginia during the 1960 Presidential Election. Pulitzer Prize-winning investigative journalist, Seymour Hersh’s novel *The Dark Side of Camelot* claims

¹⁴⁴²*Id.* at 129 (interview of Harry Pauley by Dan B. Fleming, Jr., at Bluefield, West Virginia, Apr. 26, 1985).

¹⁴⁴³*Id.* at 87.

¹⁴⁴⁴*Id.* (Edward W. Hiserman, interview with Roscoe Born, Wall Street Journal reporter, Charleston, West Virginia, May 25, 1960.).

that \$2 million was dumped into West Virginia by the Kennedy campaign.¹⁴⁴⁵ In Dan Fleming's novel on the Kennedy Election, he quotes Kennedy's brother-in-law, Sargent Shriver, explaining how he compelled southern West Virginia officials to support Kennedy: "We played the West Virginia game by the West Virginia rules."¹⁴⁴⁶

Former President Harry S. Truman even weighed in on the election, calling Joe Kennedy "as big a crook as we've got anywhere in this country" and stated, "He [Joe Kennedy] bought West Virginia. I don't know how much it cost him; he's a tightfisted old son of a bitch; so he didn't [spend] any more than he had to, but he bought West Virginia, and that's how his boy won the Primary over Humphrey."¹⁴⁴⁷

When asked if Kennedy bought the 1960 West Virginia Primary Election, Claude Ellis who directed Kennedy's winning campaign in Logan County said with a wink and a smile, "I'd have to check if the statute of limitations ran out yet."¹⁴⁴⁸ Ellis continued: "He didn't want to buy West Virginia, he just rented it for a day."¹⁴⁴⁹ Humphrey said, I can't afford to run around this state with a little black bag and a checkbook. I don't have a daddy to pay the bills. I don't have an open

¹⁴⁴⁵Tom Searls, "*The Dark Side of Camelot*" casts West Virginia in bad light, *Charleston Gazette*, Nov. 12, 1997, at A3.

¹⁴⁴⁶Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 87 (McFarland 1992).

¹⁴⁴⁷Merle Miller, *Plain Speaking* 199 (Medallion Books 1974).

¹⁴⁴⁸David Lieber, *Kennedy didn't buy W. Va., he just rented it, ex-aide says*, *Charleston Gazette*, Nov. 24, 1983, at A1.

¹⁴⁴⁹*Id.*

checkbook."¹⁴⁵⁰ The Kennedy campaign however, only claimed to have spend \$55,000 for advertising; \$10,000 for traveling; and \$5,000 for printing and mailing.¹⁴⁵¹

Ken Hechler, former United States Congressman, West Virginia Secretary of State, and speechwriter for President Truman, said such claims were "outrageous" and typically used to sell books. Hechler said Kennedy did not need to buy votes in West Virginia because his campaign was more cohesive and better organized than Humphrey's.¹⁴⁵² Hechler explained that many of Kennedy's family members toured the state—as did the popular Franklin D. Roosevelt, Jr.—on behalf of Kennedy while Humphrey traveled primarily with his wife.¹⁴⁵³

Chafin's Book states:

Ever since the last vote was tallied that spring, analysts have speculated about the effects of vote buying and 'out-of-state' wealth on JFK's victory. Investigations were carried out by the U.S. Justice Department, the FBI, anti-Kennedy Democrats, the Wall Street Journal, local newspapers, and Washington espouser Jack Anderson. Invariably the conclusion was, as one former state governor declared (intending no apparent irony),

¹⁴⁵⁰ *Id.*

¹⁴⁵¹ *Id.*

¹⁴⁵² Angela Charlton, *Dan Fleming is confounded by a book that . . .*, Associated Press Political Service, Nov. 11, 1997.

¹⁴⁵³ Jean Stein, ed. George Plimpton, *American Journey: The Times of Robert Kennedy* 71 (Brace Jovanovich 1970) (Roosevelt stated that, "[i]t was quite clear to everybody that the Kennedy family spent an enormous amount of money on television, radio, newspaper ads; a very large and expensive staff . . . as compared with Hubert's campaign which really was poorly financed.").

that Kennedy had 'sold himself' to the voters, not bought them.¹⁴⁵⁴

Even today, speculation continues with regard to the details surrounding the West Virginia Primary that propelled John F. Kennedy, Jr., despite his religion, into the national spotlight as a feasible candidate. In 1995, Pierre Salinger, who worked on Kennedy's campaign and later became his press secretary, confirmed that money went to local officials (including a number of sheriffs) in order to get Kennedy's name on printed campaign material.¹⁴⁵⁵

In *The Kennedys: Dynasty and Disaster*, John H. Davis maintained:

In December, 1961, FBI listening devices picked up evidence of large Mafia donations to the West Virginia campaign that had apparently been disbursed through Frank Sinatra. It was this under-the-table money, used to make payoffs to key election officials, that was to be the deciding factor in the contest.¹⁴⁵⁶

On October 8, 2000, Tina Sinatra told *60 Minutes* that her father, Frank Sinatra had been approached by Kennedy's multimillionaire father, Joseph P. Kennedy, to contact Chicago mob kingpin Sam Giancana, to help secure the union

¹⁴⁵⁴Raymond Chafin & Topper Sherwood, *Just Good Politics, The life of Raymond Chafin, Appalachian Boss* x, xi (Univ. Of Pittsburgh Press 1994) (citing Dan B. Fleming, Jr. *Kennedy vs. Humphrey, 1960: The Pivotal Battle for the Democratic Presidential Nomination* at 145 (McFarland & Company, Inc., 1992).).

¹⁴⁵⁵Dawn Miller, *Sheriffs Given Money to Help Kennedy*, Salinger Confirms, *Charleston Gazette*, May 13, 1995, A3.

¹⁴⁵⁶John H. Davis, *The Kennedys: Dynasty and Disaster* 286 (McGraw-Hill 1984).

vote in the 1960 West Virginia Presidential Primary.¹⁴⁵⁷ Sinatra always publicly denied such allegations of his complicity in a scandal involving mafia association in the 1960 West Virginia Primary Election.¹⁴⁵⁸ Sinatra's assertion that the Mafia's help to Kennedy was crucial in bringing a Kennedy victory over Humphrey in the 1960 Primary Election only reinforced the image of corruption in West Virginia's political system. News of Sinatra's allegations with regard to the West Virginia Primary has been documented ad nauseam in papers around the world.¹⁴⁵⁹

The situation of the Kennedy election in West Virginia has not faded from headlines throughout the country. In fact, in 1993, federal and state prosecutors launched investigations into the election of then-New Jersey Republican Governor, Christine Todd Whitman.¹⁴⁶⁰ The allegations were that as much as \$500,000 in

¹⁴⁵⁷L.A. Times-Washington Post News Service, *Sinatra asked crime boss to aid JFK, daughter says*, The Dallas Morning News, Oct. 7, 2000, at A1; see also, Los Angeles Associated Press, *Daughter Says Frank Sinatra Got Mob Boss to Help With JFK Election*, The Inter-Mountain (Elkins, West Virginia), Oct. 7, 2000, at A3.

¹⁴⁵⁸Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 69 (McFarland 1992).

¹⁴⁵⁹Hugh Davies, *Sinatra told me about links with the Mob: Daughter Tina claims that singer secured Mafia help for Kennedy*, Daily Telegraph (London), Oct. 7, 2000, at A14; *Don Cheadle Stars In 'The Rat Pack'*, Los Angeles Sentinel, Aug. 20, 1998, at A4; The Dallas Morning News, *Sinatra asked crime boss to aid JFK, daughter says*, Oct. 7, 2000, at A4; Verne Gay, *Daughter: Sinatra's mob ties helped JFK*, South Bend Tribune (Ind.), at A1; Stephen Salisbury, *Robert F. Kennedy's reputation has negotiated flak around publication of 'The Dark Side of Camelot'*, Philadelphia Inquirer, Dec. 10, 1997, at A1.

¹⁴⁶⁰Jules Witcover, *Officials probe N.J. campaign Boast that votes were suppressed puts advisor Rollins in hot seat*, The Baltimore Sun, Nov. 13, 1993, at A2.

“walking-around money” under her control was paid to curtail the traditionally Democratic black vote in the gubernatorial election.¹⁴⁶¹ The *Baltimore Sun* reported:

The handing out of “walking-around money” has fallen off, some consultants say, as appeals by direct mail, radio and television have increased. In the past, it has not been restricted to local or state elections. It has been used, or rumored to have been used, in presidential campaign as well, notably in the West Virginia presidential primary of 1960 by supporters of John F. Kennedy against Hubert H. Humphrey. In Chicago, Democrats tell the story that Franklin D. Roosevelt used to say that when he died he wanted to be buried in the Windy city so that he could keep on voting – and be paid for it.¹⁴⁶²

¹⁴⁶¹ *Id.*

¹⁴⁶² *Id.*

XII. OBSTACLES BREEDING CORRUPTION VIOLATIONS AMONG WEST VIRGINIA POLITICIANS

Injustice anywhere is a threat to justice everywhere.

—Martin Luther King Jr.,
Letter from Birmingham Jail, April 16, 1963

A. Gambling Interests

West Virginia politics has been surrounded by controversy and corruption and one contributing factor has undoubtedly been the gambling industry. For instance, both Elton "Butch" Bryan, a former Director of the West Virginia Lottery and William Edward Rebrook, III, attorney for the Lottery Commission, were convicted of corruption for their illegal activities with regard to the State Lottery.¹⁴⁶³

In September 1993 after a jury trial in federal District Court, Bryan was convicted of two counts of mail fraud, one count of wire fraud, one count of securities fraud, and perjury.¹⁴⁶⁴ Bryan forced his subordinates to lie and produce

¹⁴⁶³Associated Press, *Former Lottery Director Convicted of Fraud Charges*, Los Angeles Times, Sept. 26, 1993, at A24; Associated Press, *Ex-Lottery Officials Sentenced*, The Washington Post, Feb. 8, 1994, at A7.

¹⁴⁶⁴United States v. Bryan, 58 F.3d 933 (4th Cir. 1995) (In agreement with other circuits, the Fourth Circuit held in, that various kinds of dishonesty by public officials are denials of the "honest services" of 18 U.S.C. S 1346 and therefore
(continued...)

false documents to award the lottery's 1991 advertising contract to Fahlgren Martin Inc., of Parkersburg, West Virginia. He also rigged bids in a failed attempt to grant a video lottery contract to Video Lottery Consultants of Bozeman, Montana, in exchange for promises of a job with the company.¹⁴⁶⁵

Bryan resigned as Lottery Director and was sentenced to four years and three months for bid-rigging and attempting to steer a \$2.8 million advertising contract to a company that did not have the best rating for the job.¹⁴⁶⁶ Bryan was also convicted of perjury for giving false testimony before a grand jury.¹⁴⁶⁷ In April 1990, ReBrook was hired as Lottery counsel by Lottery Director Bryan.¹⁴⁶⁸ ReBrook, a 1992 candidate for Attorney General, was sentenced to two years and three months in jail for buying stock in the Montana gaming company and telling others to do so based upon inside information that Governor Caperton planned to expand

¹⁴⁶⁴(...continued)

prosecutable as mail fraud. In *Bryan*, the Director of the West Virginia Lottery used the mail to rig bids relating to the lottery.)

¹⁴⁶⁵United States v. Bryan, 58 F.3d 933, 937 (4th Cir. 1995); Ron Lewis, *Bryan architect or scapegoat?*, *Intelligencer*, Sept. 24, 1993, at A1; see also Pat Doyle, *State lottery may end ties with Atlanta Software Firm*, *Star Tribune* (Minneapolis, MN), Aug. 11, 1996, at A1 (AWI, a subsidiary of Video Lottery Technologies, was barred from doing business in Australia for more than a year because of improper activities by its former president as Bryan was convicted of corruption charges for manipulating the contract-procurement process.)

¹⁴⁶⁶United States v. Bryan, 58 F.3d 933, 937 (4th Cir. 1995).

¹⁴⁶⁷*Id.*

¹⁴⁶⁸United States v. ReBrook, III, 58 F.3d 961, 963 (4th Cir. 1995); United States v. Bryan, 837 F. Supp.162 (S.D. W. Va. 1993.).

video lottery immediately following the general election.¹⁴⁶⁹ He was convicted November 5, 1993 of wire fraud and insider trading.¹⁴⁷⁰

ReBrook's problems were not limited to the Lottery as he lost his law license amid allegations that he exchanged legal services for sexual favors with several women.¹⁴⁷¹ Although ReBrook admitted having sex with two of his clients, the West Virginia Supreme Court returned ReBrook's law license to him in May of 2001.¹⁴⁷²

West Virginia's Northern Panhandle has not been immune to the problem of illegal gambling. In Dan Fleming's novel *Kennedy vs. Humphrey, West Virginia 1960*, he interviewed Harry Hamm, long-time editor of the *Wheeling News-Register*. Hamm describes the northern panhandle of West Virginia as a "political snakepit."¹⁴⁷³ Hamm discusses activities of "racketeers" in the area and even Mafia activity in West Virginia elections as a result of gambling activities. Hamm explains:

¹⁴⁶⁹*Id.*; Associated Press, *Court Rules in Rebrook Case*, Charleston Daily Mail, July 1, 1995, at B5; United States v. Bryan, 837 F. Supp.162 (S.D. W. Va. 1993.).

¹⁴⁷⁰United States v. ReBrook, III, 58 F.3d 961, 963 (4th Cir. 1995); United States v. Bryan, 837 F. Supp.162 (S.D. W. Va. 1993.).

¹⁴⁷¹Lawrence Messina, *Court lets ReBrook practice law*, Charleston Gazette, May 10, 2001, at A1; Jeanne Kennedy, *The Anatomy of an Election Eve Story*, Charleston Daily Mail, May 21, 1992, at A1; Howard Kurtz, *Late sex allegations increasingly familiar*, Charleston Daily Mail, May 14, 1992, at B6; Paul Nyden, *ReBrook is accused of sexual harassment*, Charleston Gazette, May 9, 1992, at A12.

¹⁴⁷²*Id.*

¹⁴⁷³Dan B. Fleming, Jr., *Kennedy vs. Humphrey, West Virginia, 1960: The Pivotal Battle for the Democratic Presidential Nomination* 68, 69 (McFarland 1992).

Ohio County, where Wheeling is located, for many years was a forbidden zone to the Mafia because of the dominance by local crime overlord 'Big' Bill Lias, who operated the Wheeling Downs racetrack and according to Hamm, all of the remaining forms of crime, including the 'numbers' and slot machines. However, Hamm said the Pittsburgh Mafia considered nearby Hancock and Brooke Counties part of their territory. In these two counties, particularly Hancock, the Mafia was 'always active in every political campaign' from governor on down. He added that most of the statewide political figures in West Virginia over the years would negotiate with the racket leaders such as Bill Lias to secure their support in elections in that area of West Virginia.¹⁴⁷⁴

Fleming said that during the 1960 Primary Election a strong Hancock County organization well-financed by "local rackets that controlled illegal slot machines, the numbers, track betting, and other forms of gambling" and dominated local elections.¹⁴⁷⁵ In addition, he describes a close relationship between gaming interests and some state officials. He said that one state figure received \$15,000 per year for several years to insure that state police would leave slot-machine gambling alone.¹⁴⁷⁶

In 1999, the West Virginia Legislature passed a bill authorizing a referendum in Greenbrier County for citizens to vote on whether the Greenbrier, a five-star resort in White Sulphur Springs could open a casino in its former congressional

¹⁴⁷⁴*Id.* (Harry Hamm interview by Dan Fleming, Jr., Wheeling, West Virginia, August 24, 1985.).

¹⁴⁷⁵*Id.* at 77.

¹⁴⁷⁶*Id.*

fallout shelter.¹⁴⁷⁷ The Greenbrier Casino Bill, sponsored in the State Senate by Senator Randy Schoonover, was reportedly the subject of investigation by the United States Attorney's Office for the Southern District of West Virginia.¹⁴⁷⁸

While a spokeswoman for the Greenbrier confirmed that the United States Attorney's Office had contacted the hotel, she would not confirm what information had been requested.¹⁴⁷⁹ During this same time period, Senator Schoonover, resigned his seat in the State Senate after being charged with taking \$2,725 from a "prominent wrecking service owner who sought business on the West Virginia Turnpike."¹⁴⁸⁰ The gambling referendum at the famous and historical Greenbrier Resort failed as Greenbrier County voters defeated it during the 2000 General Election.¹⁴⁸¹

In discussing the topic of corrupt gambling practices in 1995, United States Congressman Frank Wolf (R-VA) testified before Congress: "In 1990, a former West Virginia Governor pleaded guilty to taking a bribe from racing interests. In 1994, a

¹⁴⁷⁷Jennifer Bundy, Associated Press, *Casino bill under investigation, report says*, Charleston Gazette, Sept. 14, 1999, at A1.

¹⁴⁷⁸*Id.*

¹⁴⁷⁹*Id.*

¹⁴⁸⁰*Id.*

¹⁴⁸¹Tom Miller, *Under the Dome: A look back*, Charleston Gazette, Dec. 26, 2000, at A5.

West Virginia lottery director was sentenced to Federal prison for rigging a video lottery contract.”¹⁴⁸²

Then-Congressman and current West Virginia Governor Bob Wise, joined Congressman Wolf to co-sponsor a bill that would create a National Gambling Impact and Policy Commission.¹⁴⁸³ Wise called gambling “a quick fix” and said that states and municipalities may base their decisions on faulty information.¹⁴⁸⁴ Wolf said, “Government is supposed to be the protector of society, not the sponsor of its ruin,” while Wise concurred beholding that “over time, gambling doesn’t contribute a lot to the moral climate.”¹⁴⁸⁵ Wise also declared: “I am not wild about gambling. Too many people see it as a panacea, which isn’t there. I want to see some empirical evidence.”¹⁴⁸⁶

Despite then-Congressman Wise’s 1994 negative statements with regard to the gambling industry as well as West Virginia’s poor track record with gambling interests, the topic dominated the 2001 West Virginia Legislative Session as the

¹⁴⁸²141 Cong. Rec. E86-02, at 6 (daily ed. Jan. 11, 1995) (statement of Representative Wolf); see also, *A Look at State Gambling Corruption*, Gannett News Serv., Sept. 23, 1995, 1995 WL 2906999 (listing gambling-related public corruption scandals in South Carolina, Kentucky, West Virginia, Louisiana, Illinois, Minnesota and Missouri).

¹⁴⁸³*Wise Supports Proposed Gambling Commission*, Charleston Daily Mail, Oct. 4, 1995, at A2.

¹⁴⁸⁴*Id.*

¹⁴⁸⁵*Id.*

¹⁴⁸⁶*Id.*

Governor now seemed open to legalizing the gaming machines in order to increase revenue for a struggling state budget. A *Charleston Gazette* editorial asked:

Will Gov. Bob Wise's effort to clean up the scummy, illicit, video poker racket succeed? Or will legislators do what they've done repeatedly in past years - let the criminal enterprise continue running wide-open, bleeding hundreds of millions of dollars from West Virginians and paying no taxes on the loot?

The Wise plan would reduce the enterprise to 9,000 machines, limit them to adult establishments and collect \$100 million in state revenue from them. If legislators reject his proposal, a \$100 million hole will be left in future state budgets, presumably requiring a major tax increase.

Incredibly, at Wednesday's public hearing on the so-called "gray machines," most of the witnesses were lawbreakers begging to be allowed to continue operating illicitly. Amazing.

When the session ends April 14, if the Legislature once again has left the racket untouched, West Virginians will be justified in asking whether some lawmakers obstructed reform to assist the illegal operators now raking in fortunes.¹⁴⁸⁷

Prior to the 2001 West Virginia Legislative Session, the practice of housing and providing illegal pay-outs on thousands of video poker machines—so-called gray machines—in convenience stores, bars, and even supermarkets, which allow easy access to children, had been virtually ignored by law enforcement officials. For several years politicians threatened to do something about the illegal activity that seemed to be above the law. Finally, the November 2000 election of Governor Bob

¹⁴⁸⁷Editorial, *Results?, What's happening?*, *Charleston Gazette*, Mar. 30, 2001, at A4.

Wise promised to bring change by either eliminating the illegal machines from the State or by taxing and regulating the machines.

A column by *Charleston Gazette* News Editor, Dan Radmacher, describes the preposterous position of the owners of the machines operating illegally. Radmacher explains:

IMAGINE a crack dealer getting up before a legislative committee and complaining that the state would put him out of business if it enforced drug laws. Legislators would probably tell the crack dealer he has no right to make a living engaging in illegal activity, and they might well call in troopers to have the idiot arrested.

But Wednesday at the Capitol, criminal after criminal got up to tell legislators that they could not stay in business unless they were allowed to continue engaging in illegal activity.

....

Of course, the criminal activity I'm talking about isn't selling crack cocaine. It's paying off on "amusement only" video poker machines. And, of course, the Legislature isn't talking about enforcing laws against this; it's talking about regulating the machines so state government gets its cut.

....

What's happening now in this state is shameful. The widespread flagrant lawbreaking is sucking hundreds of millions of dollars out of the economy. It's making many gray machine owners and operators wealthy at the expense of thousands of poor West Virginians.¹⁴⁸⁸

¹⁴⁸⁸Dan Radmacher, *Video Poker Profiteers Criminals*, *Charleston Gazette*, Mar. 30, 2001, at A4.

In addition, the *Charleston Daily Mail* held a strong position against expanded gambling that began with forceful opposition to a 1995 casino gambling debate in the West Virginia Legislature.¹⁴⁸⁹ Calling expanded gambling a “bad roll of the dice for West Virginia,” the *Daily Mail* commented: “First, I’ve had an uneasiness from the very beginning that the massive amounts of money involved in casinos will be too big a temptation to some of our public officials. Unfortunately, West Virginia has a dismal record when it comes to public corruption.”¹⁴⁹⁰ The editorial continued: “You read it here first: If riverboat gambling happens in West Virginia you’ll see public officials in jail within three years.”¹⁴⁹¹ The *Daily Mail* even intimated that their anti-gambling position may not be shared by other newspapers as “[t]he talk I hear at newspaper publisher meetings is that casinos have quickly become significant advertisers for the newspapers in those communities.”¹⁴⁹²

In another editorial, the *Charleston Daily Mail* opined:

West Virginia’s track record on corrupt politicians is poor. The state couldn’t even handle its own lottery without sending a lottery director and a lottery attorney to prison. In the past 10 years, federal prosecutors have bagged a governor, two state Senate presidents and a host of lesser officials on various charges related to using a public office for private gain. But even if official corruption does not materialize with so many

¹⁴⁸⁹Terry Horne, *Why Riverboat Gambling Is Wrong*, *Charleston Daily Mail*, Feb. 6, 1995, at A4.

¹⁴⁹⁰*Id.*

¹⁴⁹¹*Id.*

¹⁴⁹²*Id.*

dollars floating around—which is a poor bet—the riverboats could still wind up running the Legislature.¹⁴⁹³

In a letter to the editor entitled “Gaming Industry Wins Politicians,” Kanawha County and Sissonville native Ruth A. Harvey writes:

Editor:

I read on the editorial page about the extended gambling and how it hurts the poor, taking grocery money to play the machines.

Then I hear on the radio that the Senate sneaked the bill through while some members were in other committees. I do intend to find out who did the voting of that bill out, and then I think someone needs to check on where their money is coming from.

There are a lot of politicians who have been bought off by the gambling industry. They do not care what the people have or if they have jobs. All they care about is No. 1 and how much money is floating around.

I am sick to death of all of them, and you can bet I will do everything in my power to see they do not get elected again.¹⁴⁹⁴

It was fitting that the speaker for the Legislative Breakfast on the opening day of the 2001 West Virginia Legislative Session was former South Carolina Governor David Beasley. South Carolina had just declared the video lottery machines to be illegal. Beasley called the video poker industry corrupt and explained that all efforts

¹⁴⁹³Editorial, *Riverboats this is an economic development that West Virginia can ill afford*, Charleston Daily Mail, Jan. 24, 1995, at A4.

¹⁴⁹⁴Ruth Harvey *Gambling Hurts the Poor*, Charleston Gazette, Apr. 5, 2001, at A4.

to regulate poker machines in his state failed.¹⁴⁹⁵ To further his opposition, Beasley said the video poker industry was “powerful, corrupt, and unregulatable.”¹⁴⁹⁶ Beasley stated that the gaming industry is “so corrupt” that “they’ll end up owning part of your political machine. They do it in every state.”¹⁴⁹⁷ Beasley asserted:

They get their tentacles into certain members of the House and the Senate, and they end up owning, I mean owning, some of your political machine. And I mean that in the most corrupt way. I saw it in South Carolina. If I hadn’t taken them on when I did, they would have been forever in our state.¹⁴⁹⁸

Despite of Governor Beasley’s warnings, the West Virginia Legislature—later that session—legalized video lottery and set forth regulations. With the passage of the bill to regulate video lottery gambling, any video poker machines not under state control became illegal as of January 1, 2002.¹⁴⁹⁹ The State will now allow only 9,000

¹⁴⁹⁵Associated Press, *The task: harnessing video poker: Former S.C. governor raises caution flag*, Charleston Gazette, Mar. 10, 2001, at A1.

¹⁴⁹⁶*Id.*; see also, Paul J. Nyden, *Palmetto Poker: Machines pumping cash into South Carolina governor’s race*, Sunday Charleston Gazette-Mail, Oct. 18, 1998, at A1 (Governor Beasley’s press secretary estimated that at least fifty percent of the contributions received by his election opponent came from “people who make money from video poker machines.” He also argued that seventy-five percent of the \$1,000 or more contributions came from gambling interests.); Paul Owens, *Gray Machines unmanageable, ex-governor says*, Charleston Daily Mail, Mar. 9, 2001, at A1.

¹⁴⁹⁷; Paul Owens, *Gray Machines unmanageable, ex-governor says*, Charleston Daily Mail, Mar. 9, 2001, at A1.

¹⁴⁹⁸Associated Press, *The task: harnessing video poker: Former S.C. governor raises caution flag*, Charleston Gazette, Mar. 10, 2001, at A1.

¹⁴⁹⁹Associated Press, *State Lottery Commission proposes video poker rules*, Charleston Gazette, June 20, 2001, at A1.

machines to be operated legally throughout West Virginia and those are to be controlled by the State Lottery Commission.¹⁵⁰⁰

Soon after the passage of West Virginia's new gambling legislation, controversy ensued. The *Charleston Gazette* declared:

Political connections by former operators of the "video poker" racket are amazing. Everyone knows that Senate President Earl Ray Tomblin and Delegate Joe Ferrell, both D-Logan, are veterans of the illicit business. Now columnist Fanny Seiler has revealed that Eastern Panhandle "gray machine" operator Lee Wesson, who had cocaine and tax convictions in the past, is partners with three powerful Steptoe & Johnson lawyers in a new legal gambling firm, Advanced Lottery Technologies. His partners are George Carenbauer, former state Democratic chairman; Pat Kelly, who was Gov. Underwood's legal counsel; and Ralph Bean, chairman of the Council for Community and Economic Development.¹⁵⁰¹

The gambling issue is not new to West Virginia. In January 1931, Governor William G. Conley, Attorney General Howard B. Lee, and Logan County Circuit Judge Naaman Jackson met to discuss the illegal gaming activity and conditions existing in Logan County. Circuit Judge Jackson said: "Since Don Chafin began his reign in Logan County in 1913, the county has had a tradition of lawlessness, and much of that criminal activity has been traceable directly to the Sheriff's Office."¹⁵⁰²

¹⁵⁰⁰*Id.*

¹⁵⁰¹Editorial, *Potpourri*, *Charleston Gazette*, Dec. 17, 2001, at A4.

¹⁵⁰²Howard B. Lee, *Bloodletting in Appalachia* 122 (Parsons: McClain Printing Company, 1969).

Circuit Judge Jackson reported that gambling was widespread in Logan County and operated within the protection of the Sheriff.¹⁵⁰³ It was noted, then-Sheriff Joe Hatfield installed an estimated 200 slot machines in the county to pay for the money he had to borrow in order to win the election.¹⁵⁰⁴ “The machines are designed to accommodate all classes of gamblers—dime, quarter, half dollar, and dollar” including “some school children gambl[ing] away their lunch money.”¹⁵⁰⁵

The Logan City Council was opposed to the gambling machines and ordered the Chief of Police, Lon Browning, to arrest “all persons who have such gambling devices on their premises.”¹⁵⁰⁶ The Chief of Police quickly resigned, stating that he was not ready to die.¹⁵⁰⁷ A new Chief, Roy Knotts, was hired. Upon his appointment, Knotts entered a local pool hall to purchase cigarettes and was shot five times in the back. The warrants for the arrest of slot machine operators were later found in his pocket soaked with his blood.¹⁵⁰⁸ The Logan County Prosecutor would not enforce the gambling laws as he feared that he would suffer the same fate as Chief Knotts. According to Logan County Circuit Court Judge Jackson, the

¹⁵⁰³ *Id.*

¹⁵⁰⁴ *Id.*

¹⁵⁰⁵ *Id.*

¹⁵⁰⁶ *Id.*

¹⁵⁰⁷ *Id.*

¹⁵⁰⁸ *Id.* at 123.

Prosecutor was “grossly incompetent and drunk most of his waking hours.”¹⁵⁰⁹ As recently as 2001, another Logan County Prosecutor refused to prosecute illegal gambling activity. Prosecuting Attorney Brian Abraham said, “he had better things to do right now than to prosecute gray machine cases” when State Police had confiscated thirty illegal machines.¹⁵¹⁰ The thirty confiscated machines were owned by convicted felon and current Logan County Delegate Joe C. Ferrell. Incidentally, Abraham’s father and brother also own a store where the gray machines were present.¹⁵¹¹

The gambling problem is not exclusive to West Virginia. A South Carolina newspaper provided:

Two Louisiana legislators are now serving prison sentences, having taken money from the video poker industry. A governor of the state is under investigation for his involvement with gambling. Over the last several years, officials in West Virginia, Virginia, and Arizona have been convicted of corrupt practices related to gambling. An attorney general of another state was imprisoned for accepting a bribe to refrain from prosecuting video poker operators. This is how such gambling organizations inevitably corrupt democratic institutions.¹⁵¹²

¹⁵⁰⁹*Id.* at 123.

¹⁵¹⁰Fanny Seiler, *State Police raid Logan stores for gray machines*, Charleston Gazette-Mail, July 17, 2001, at C3.

¹⁵¹¹*Id.*

¹⁵¹²Travis Medlock, *Gambling: It's about time we did something*, The Post and Courier (Charleston, SC), Dec. 18, 1997, at A19.

The convictions of many of West Virginia's political officials have been linked to gambling. Naming just a few, the bribes of a single racetrack owner led to the convictions of former Governor Arch Moore, two Senate Presidents, and the Senate Majority leader.¹⁵¹³ Speaking against the expansion of gambling in West Virginia, State Delegate Paul Prunty declared, "We have a cancer in this state, and that cancer is gambling."¹⁵¹⁴ Current Delegate and formerly impeached State Treasurer, A. James Manchin countered, "Don't be too concerned that we're going to corrupt the people of West Virginia. We're a strong people."¹⁵¹⁵ As recently as 2002, West Virginia's Racing Commission chairman was forced to resign for what Governor Wise's Administration called "unethical betting activities."¹⁵¹⁶

In 1979, the Hancock County Prosecuting Attorney, Robert G. Altomare, was found guilty for his involvement in illegal gambling activities.¹⁵¹⁷ As a result, Altomare was indicted on three counts for violating, and conspiring to violate, in 1977 through 1979, the federal Racketeer Influenced and Corrupt Organizations Act and for violating, on January 31, 1979, the Obstruction of Justice Act, by attempting

¹⁵¹³Patricia Nealon, *Prosecutor ends a job of conviction*, The Boston Globe, Nov. 23, 1996, at B1.

¹⁵¹⁴Phil Kabler, *House gives video poker its support Delegates vote 66-34 to OK bill consistent with Wise's concerns*, Apr. 7, 2001, at A1.

¹⁵¹⁵*Id.*

¹⁵¹⁶Fanny Seiler, *Racing Commission chairman forced to resign*, Charleston Gazette, Jan. 23, 2002, at A1.

¹⁵¹⁷United States v. Altomare, 625 F.2d 5, 7 (4th Cir.1980).

to induce a witness before a grand jury to testify falsely.¹⁵¹⁸ During the same time, he stood trial for conspiring to obstruct the enforcement of the criminal laws of West Virginia "with the intent to facilitate an illegal gambling business."¹⁵¹⁹ Altomare was convicted of all charges on May 2, 1979.¹⁵²⁰

In another case of gambling impropriety in May 1990, William T. Ellis was convicted of extortion, conspiracy, racketeering and obstruction of justice.¹⁵²¹ The conviction of Ellis was another case involving a race track and politicians.¹⁵²² Ellis was a limited partner in Tri-State Greyhound Park Incorporated, a West Virginia corporation that conducted pari-mutual betting on greyhound races.¹⁵²³ Under West Virginia statutes, Tri-State was permitted to retain a specific percentage of the revenue generated by public betting. Because of unexpected financial shortfalls in 1986, the owners supported a bill that would have given dog track owners a larger percentage from the bets.¹⁵²⁴

¹⁵¹⁸625 F.2d at 7.

¹⁵¹⁹*Id.*

¹⁵²⁰*Id.*

¹⁵²¹U.S. v. Ellis, 91 F.3d 135 (4th Cir. 1996) (unpublished); Ron Hutchison, *Ellis' Bid For Freedom Denied By Judges: Ex-City Businessman To Remain In Prison*, Charleston Daily Mail, July 25, 1996, at A6.

¹⁵²²Ron Hutchison, *Ellis' Bid For Freedom Denied By Judges: Ex-City Businessman To Remain In Prison*, Charleston Daily Mail, July 25, 1996, at A6.

¹⁵²³Lawrence Messina, *2nd District ads heat up airwaves: Humphreys answers Capito attack within day*, Charleston Gazette, Oct. 4, 2000, at A8.

¹⁵²⁴*Id.*

Although the bill passed both houses of the West Virginia legislature, it was vetoed by the Governor. The owners endeavored to get a similar bill passed again in 1987. To support its efforts, Tri-State promised to pay Ellis \$500,000 if the bill became law. Ellis, working through lobbyist Samuel D'Annunzio, allegedly provided cash and amenities to various state legislators.¹⁵²⁵ This time, the bill passed the legislature and was signed by then-Governor Arch A. Moore, Jr.

A subsequent corruption investigation led to a plea agreement from D'Annunzio, who detailed the corruption scheme and his relationship with Ellis. D'Annunzio also gave the government tapes, which he had secretly recorded, of conversations with Ellis and other participants in the scheme.¹⁵²⁶ Consequently, in December 1988, in the midst of the continuing investigation, D'Annunzio committed suicide.¹⁵²⁷ At Ellis' trial where he faced charges of mail fraud, racketeering, and obstruction of justice, the government sought to admit statements of the deceased D'Annunzio which implicated Ellis.¹⁵²⁸ D'Annunzio's statements provided information to United States Attorneys that led to the convictions of Ellis, former State Senate Presidents Dan Tonkovich and Larry Tucker, State Senator Si

¹⁵²⁵ Ron Hutchison, *Ellis' Bid For Freedom Denied By Judges: Ex-City Businessman To Remain In Prison*, Charleston Daily Mail, July 25, 1996, at A6.

¹⁵²⁶ *Id.*

¹⁵²⁷ *Id.*

¹⁵²⁸ *Id.*

Boettner, and Governor Arch Moore.¹⁵²⁹ Ellis was sentenced to ninety months in federal prison and fined \$50,000.¹⁵³⁰

B. Ethics Legislation

Senator Mike Oliverio from Monongalia County proposed a bill in 1997 that would force elected officials and cabinet secretaries to wait two years before they could pursue a job and make a living lobbying the legislature.¹⁵³¹ Federal law requires members of Congress to wait a year before lobbying their former colleagues, while there is no such restriction for state officials.¹⁵³² The first Ethics bill in the State's history occurred in 1989 as then-Governor Caperton successfully pushed the legislature to pass it. Even the 1989 bill did not pass until "a string of legislators, governors and state administrators [were] sent to prison."¹⁵³³

Caperton appealed to voters "to recommit ourselves to ensuring that we never go back. The back-room, slipshod politics of the past must forever remain in the past."¹⁵³⁴ It appears that it was necessary for a string of legislators, governors

¹⁵²⁹*Id.*

¹⁵³⁰*Id.*; Lawrence Messina, *2nd District ads heat up airwaves: Humphreys answers Capito attack within day*, Charleston Gazette, Oct. 4, 2000, at A8.

¹⁵³¹Editorial, *Lobbying: W.Va's Elected Officials Ought to Wait a Year Before Lobbying*, Charleston Daily Mail, Feb. 27, 1997, at A4.

¹⁵³²*Id.*

¹⁵³³Editorial, *Ethics Law needs more teeth*, Charleston Gazette, July 27, 2000, at A4.

¹⁵³⁴Bill McAllister, *Ex-Gov. Moore Agrees to Plead Guilty; W. Virginian Charged With Fraud, Extortion*, The Washington Post, Apr. 13, 1990, at A1.

and state administrators to serve prison sentences before such legislation would pass. The *Charleston Gazette* theorized, "legislators had little choice but to pass the legislation, especially with new scandals in the news almost daily."¹⁵³⁵

The *Charleston Gazette* argues that corruption led to the enactment of the Ethics law. It maintains:

Several prominent corruption cases in the late 1980s helped lead to the passage of the 1989 ethics bill, according to Robert "Chuck" Chambers, the bill's sponsor and former Speaker of the House.

Two successive presidents of the state Senate were convicted on federal corruption charges for accepting money from lobbyists.

Former Senate President Larry Tucker pleaded guilty to accepting \$10,000 from lobbyist Sammy D'Annunzio of Clarksburg. He reportedly tried to return the money, but D'Annunzio was cooperating with federal investigators and wore a tape recording device during the meeting.

Tucker's predecessor as Senate president, Dan Tonkovich, also pleaded guilty to extorting money from gambling and insurance interests.

In 1988, former Gov. Arch Moore was already accused of extortion, mail fraud and tax evasion, charges that would earn him a prison term in 1990. At the trial, Assistant U.S. Attorney Joseph Savage said, "Let there be no mistake. Arch Moore is a "criminal."¹⁵³⁶

¹⁵³⁵Dan Radmacher, *Ethics Commission Return Investigatory Powers*, *Charleston Gazette*, Dec. 6, 1994, at A4.

¹⁵³⁶Scott Finn, *Cycle of Influence: Ethics law falling short of promise to clean up government, critics say*, *Charleston Gazette*, July 23, 2000, at A1.

Even with the Ethics legislation finally passed, West Virginia's laws are apparently significantly weaker than many other states. A recent study of all fifty state legislatures by the nonpartisan, nonprofit Center for Public Integrity ranked West Virginia as forty-third based on financial disclosure laws.¹⁵³⁷ In the study, which focused on potential conflicts of interest among lawmakers, West Virginia also lost points for not requiring information about legislators' clients, real estate holdings or their spouses' investments.¹⁵³⁸ Disclosure laws require lawmakers to disclose information to the public regarding employment income and financial assets.

As recently as December 2001, the *Charleston Gazette* disclosed that not a single legislator had been cited in the past five years by the state Ethics Commission for ethics violations.¹⁵³⁹ The lapse in activity made the West Virginia Ethics Commission the "only such body in the nation that has not cited a legislator in the past five years."¹⁵⁴⁰ West Virginia and Florida are the only two states that do

¹⁵³⁷Editorial, *Ethics Law needs more teeth*, *Charleston Gazette*, July 27, 2000, at A4.

¹⁵³⁸*Id.*; Scott Finn, *Legislators' conflicts can cut both ways*, *Charleston Gazette*, Mar. 28, 2000, at A1 (The study gave West Virginia's disclosure laws a flunking grade for failing to require disclosure of information commonly required by other states such as a spouse's income, positions on corporate boards, and real estate holdings.).

¹⁵³⁹Associated Press, *State Ethics Commission target of criticism*, *Charleston Daily Mail*, Dec. 13, 2001, at C6; Editorial, *Smiles and Scowls*, *Charleston Gazette*, Dec. 15, 2001, at A4; Scott Finn, *Ethics panel not catching violators*, *Charleston Gazette*, Dec. 13, 2001, at C1.

¹⁵⁴⁰Associated Press, *State Ethics Commission target of criticism*, *Charleston*
(continued...)

not give the power to their Ethics Commissions to initiate investigations or act on anonymous complaints.¹⁵⁴¹

The Ethics Act was weakened in 1990 when the legislature removed the authority of the Commission to initiate its own investigations of violations of the Act.¹⁵⁴² After the change in the Ethics Act which successfully passed during the closing minutes of the 1990 legislative session, the Commission was allowed to institute investigations upon a verified complaint where a person was willing to openly sign his or her name.¹⁵⁴³ Another stumbling block provided that if the allegations of the complaint were found to be false, sanctions could be imposed upon the person filing the complaint.¹⁵⁴⁴

While the goal of this provision may have been to prevent vindictive complaints, it clearly discourages legitimate complaints as individuals fear retribution for their veracity. The *Charleston Gazette* called the commission “effectively hogtied” and said it has virtually turned into a “rubber stamp, approving almost every questionable action that comes before it.”¹⁵⁴⁵

¹⁵⁴⁰(...continued)
Daily Mail, Dec. 13, 2001, at C6.

¹⁵⁴¹*Id.*

¹⁵⁴²Dan Radmacher, *Ethics Commission Return Investigatory Powers*, *Charleston Gazette*, Dec. 6, 1994, at A4.

¹⁵⁴³*Id.*

¹⁵⁴⁴*Id.*

¹⁵⁴⁵Dan Radmacher, *Ethics Commission Return Investigatory Powers*,
(continued...)

Notwithstanding, the Ethics Act sets forth ethical standards for public employees, and the Ethics Commission still serves the valuable function of rendering advisory opinions to persons who are interested in determining whether certain conduct or relationships would violate the Act. In addition, if two-thirds of the Ethics Commission determines that probable cause exists to believe a criminal violation has occurred, it may refer the matter to the appropriate county prosecuting attorney.¹⁵⁴⁶

A legislative survey conducted in 1995, showed that forty-four percent of the West Virginia Legislators favored the legislation that would restore the Ethics Commission's power to initiate investigations of possible ethics violations.¹⁵⁴⁷ The poll revealed that twenty-nine percent opposed the change in the Ethics laws, with some of the legislators fearing political "witch hunts" while twenty-seven percent of the legislators were undecided.¹⁵⁴⁸ To this date, the legislature has not restored such power to the Commission.

The *Charleston Gazette* asks "whether the corruption that permeated the Statehouse then remains now, cloaked in legality. Have bags of cash merely been replaced with legal donations, fund raisers, receptions and other methods of gaining

¹⁵⁴⁵(...continued)
Charleston Gazette, Dec. 6, 1994, at A4.

¹⁵⁴⁶*Id.*

¹⁵⁴⁷*Legislative Survey*, Charleston Gazette-Mail, Jan. 8, 1995 at C1 (The telephone survey was conducted by the Sunday-Gazette Mail over the course of eight days in December and January. Eighty-five legislators participated.).

¹⁵⁴⁸*Id.*

favor with politicians?"¹⁵⁴⁹ The *Gazette* believes the current structure may be every bit as corrupting and damaging to the system as the bags of cash carried to the Legislature in 1974 when a group of mine inspectors wanted a raise. It continues:

Today they host a reception for lawmakers. They contribute generously to a campaign. They use money to build relationships with lawmakers that give them access to influence legislation – often in ways detrimental to the general good. Ordinary citizens, or citizen group lobbyists who lack deep pockets, are left out in the cold.¹⁵⁵⁰

The mine inspectors gave a brown paper bag filled with cash to the chairman of the House Finance Committee and asked him to deliver it to Delegate T.J. Scott, who sponsored legislation to increase their salaries.¹⁵⁵¹ The money was instead given to then-House Speaker Lewis McManus, who in turn called the mine inspectors in for a meeting. The mine inspectors admitted that the payment was intended for Scott and did not think they had done anything wrong. At the end of the meeting they asked, "What about our raise?"¹⁵⁵² The House of Delegates Rules Committee reprimanded Scott for "irresponsible actions;" however, Delegate Scott

¹⁵⁴⁹Editorial, *Ethics: Law needs more teeth*, Charleston Gazette, July 27, 2000, at A4.

¹⁵⁵⁰*Id.*

¹⁵⁵¹Scott Finn, *Cycle of Influence: Ethics law falling short of promise to clean up government, critics say*, Charleston Gazette, July 23, 2000, at A1.

¹⁵⁵²*Id.*

remained in office for another six years and was never charged with any violation of law.¹⁵⁵³

The West Virginia Ethics Commission continues to exist without significant authority as it reversed itself on a decision that appeared to make a provision of the ethics law stronger. Initially, it had issued an Opinion that would prevent a member of a public body from seeking business from that body until at least six months after the person is no longer a member. The Commission later reversed itself saying, "it was difficult to determine lawmakers' intention."¹⁵⁵⁴

C. Problems with State Prosecution of Public Corruption

One of the most significant factors impeding effective state prosecution of corruption is that the West Virginia State Attorney General along with the fifty-five County Prosecuting Attorneys lack any statewide prosecutorial authority.¹⁵⁵⁵ The Primary function of the Attorney General is to render Opinions, provide advice, and represent the state in all criminal appeals and civil suits; thus, criminal prosecutions

¹⁵⁵³*Id.*

¹⁵⁵⁴Jim Wallace, *State ethics commission reverses itself on interpretation*, Charleston Daily Mail, May 3, 2002, at A1.

¹⁵⁵⁵Michael W. Carey, Larry R. Ellis, Joseph F. Savage, Jr., *Federal Prosecution of State and Local Public Officials: The Obstacles To Punishing Breaches of the Public Trust And A Proposal For Reform, Part One*, 94 W. Va. L. Rev. 301, 304-309 (1992) (listing structural barriers to state and local enforcement in West Virginia, including absence of statewide prosecuting authority, part-time nature of county prosecutor's position, jurisdictional boundary of county line, constraints on grand jury, and procedural limitations at trial).

are left to the individual county prosecutors who are elected in county elections to four-year terms.

Former Speaker of the West Virginia House of Delegates and current Federal District Judge for the Southern District Court of West Virginia, Chuck Chambers, believes that the State Attorney General's Office should have criminal prosecutorial powers.¹⁵⁵⁶ Chambers cites the lack of such power in the Attorney General's Office as a reason that state corruption prosecutions have been limited.¹⁵⁵⁷

Former West Virginia Congressman and Secretary of State, Ken Hechler, was also a proponent of delegating prosecutorial power to the State Attorney General in vote fraud and corruption cases. Hechler said the federal government and county prosecuting attorneys are frequently "a part of the system."¹⁵⁵⁸ During a campaign stop in Williamson, West Virginia, Hechler announced that he intended to enforce the voting laws "without fear or favor" to which he and Mingo County Democratic Chairman Johnie Owens, who was later convicted for election fraud violations, entered into an altercation with Hechler as Owens, who had considerable control over Mingo County elections, was upset with Hechler's attempts of reform.

¹⁵⁵⁶Associated Press, *State seeks rehearing in Moore's sentencing*, Times-West Virginian (Fairmont, WV), July 14, 1990 at A1.

¹⁵⁵⁷*Id.*

¹⁵⁵⁸Charles H. Moffat, *Ken Hechler: Maverick Public Servant* 310 (Mountain State Press: Charleston, WV, 1987).

The *Charleston Gazette* recognizes the need for the Attorney General prosecutorial powers. The *Gazette* criticized a 1982 West Virginia Supreme Court Opinion which limited the Attorney General's power to review contracts "as to form" even if he suspects criminal wrongdoing.¹⁵⁵⁹ The *Gazette* maintains:

The attorney general should be able to question a contract that may be unconstitutional or have been illegally awarded. He or she should be able to blow the whistle on a bureaucrat who is betraying the trust of the citizens. The attorney general should be able to initiate investigations into corruption in the Statehouse. West Virginia's attorney general can do none of these, and the state suffers because of it.¹⁵⁶⁰

Both the Attorney General and Prosecuting Attorneys would face fiscal considerations even if they had authority. The Attorney General must survive within the confines of a budget set by the West Virginia Legislature, while a county prosecuting attorney must live within the restraints of a budget set by the county commission. With constant financial difficulties at both a state and county level, it is easy to imagine how investigations would become nonexistent.

A County Prosecuting Attorney is responsible for the prosecution of all crimes committed within the boundaries of their counties including murder, kidnapping, arson, rape, robbery, sexual assault, and intoxication offenses. In addition, many of the county prosecutors work only part-time and thus, they supplement their incomes by maintaining a private civil practice on the side.

¹⁵⁵⁹Dan Radmacher, *Ballistic Feat McGraw Shot Self In Foot*, *Charleston Gazette*, May 27, 1994, at A4.

¹⁵⁶⁰*Id.*

Moreover, corruption investigations are both costly and time consuming. Furthermore, it is unrealistic that a Prosecuting Attorney could sacrifice the necessary amount of time to develop the expertise to pursue public corruption investigations. County Prosecuting Attorneys also face procedural limitations as many of the crimes occur in multiple counties and even beyond the State's border. The Attorney General must be given legal authority as well as provided sufficient funding to investigate and prosecute corruption charges.

XIII. CLEANING UP WEST VIRGINIA POLITICS WITH *CLEAN MONEY*

Stay bored and government becomes more of an instrument of the rich and powerful against the rest of America. Get active with your fellow citizens and you might just see more government of, by and for the people.

—Ralph Nader
(*New York Times*, July 20, 1997)

West Virginia, which is known for its age-old, corruption-plagued system of government, must implement the so-called *Clean Money/Clean Election* legislation as one avenue to revitalizing its system of government and elections. It must be said, however, that this is only one small step toward improving a badly broken system of elections and is not an all encompassing solution to West Virginia's quandaries. There are simply too many corrupt practices that have been ingrained in the culture of the State and such attitudes cannot be changed overnight. Nonetheless, enacting reform to rid the system of the vast sums of money from special interest groups and wealthy individuals is definitely a healthy beginning.

Maine's *Clean Money* system is a prime example of an effective model of reform. One advantage of such legislation is that it allows states to limit the incessant corruption in the political system and return the power of government to the people. Under *Clean Money* systems, candidates renounce special interest

donations and large donations from wealthy individuals. Instead, candidates agree to strict spending limits with fixed and equal sums of money from a publicly financed election fund. A system of publicly funding state elections fosters a healthier democracy by increasing the number of candidates who run for office and thus, increases voter choices. *Clean Money* reform also addresses the imbalance in campaign funds available to incumbents and challengers.

Candidates participating in a *Clean Money* system have the advantage of listening to the voters instead of spending the majority of their time fund-raising in order to become elected or attain re-election. As such, candidates become candidates instead of full-time fund-raisers. This certainly is an advantage to voters who want their elected officials working on actual issues instead of spending much or all of their time raising money.

In order to qualify for public funding in a *Clean Election*, a candidate must collect and remit a fixed number of small donations from a set number of registered voters. This process requires candidates to connect with voters early in the campaign season, rather than with special interest groups and multi-millionaires. Candidates selecting a *Clean Money* option must also agree not to raise private money for their campaign and not to spend any of their own money.

Clean Money systems restore the principle of one person, one vote decreasing the strong reliance by candidates on wealthy special interest groups for campaign contributions. Departing from the dependence on private donations will reduce the influence of wealthy special interests in legislative decision making and in the West Virginia electoral process. In addition, many candidates will revel in the

fact that they no longer have to plead for campaign dollars because a *Clean Money* system is voluntary. As such, candidates may choose to run in the traditional way by relying on private donors and special interest groups. Moreover, some incumbents may consciously choose to continue to abide by traditional campaign rules as they have learned to work the system and unlike their challengers, they are able to attain large campaign *War Chests* that often ensure re-election.

In many cases, while incumbents may begin a campaign with an advantage over a challenger, a *Clean Money* system is still the best opportunity toward reform. Incumbents are able to provide brochures, magnets, pens, pencils, coffee mugs, pictures, and many other items predominately displaying their names and often their pictures to citizens throughout the state. Clearly this is an advantage for an incumbent in continuing to build name recognition with voters and is an issue that should be addressed by West Virginia lawmakers. One obstacle to such reform, however, is that the same individuals writing the laws are also the ones who benefit from the advantages of incumbency. Another incumbency advantage is the art of claiming credit for funds going to local projects as voters are often subjected to pictures of their elected officials published in the newspapers showing them presenting checks to various groups.

West Virginia State Senator Mike Oliverio says that public financing of elections is probably a good idea, but not a practical idea for West Virginia. Oliverio stated that West Virginia could not afford a *Clean Money* system as: "We're a state

that can't pay our health insurance premiums for our employees."¹⁵⁶¹ Senator Oliverio's argument, however, is precisely the reason West Virginia must implement *Clean Money* reform. The reason the State cannot pay health insurance premiums is a result of the influence already yielded by special interest groups.

Special interest groups and wealthy individuals are the only ones who can afford to give enormous sums of money to campaigns. In reality, what is at stake is our capacity for self-rule. If citizens are preoccupied with millionaires or multi-millionaires running their own campaigns with their own resources, they must implement a *Clean Money* system of public financing. *Clean Money* is about clean politics. Regardless of whether a candidate says, "no, I won't abide by that because I have millions of dollars, and I will just finance my own campaign and go beyond the expenditure limits," money is still given to challengers out of that *Clean Money/Clean Election* fund. This promotes an honest and clean election process that demonstrates that voters who contribute a small amount to a campaign have a voice and allows anyone to run for office.

Prior to the 2000 General Election, a cartoon in the *Charleston Daily Mail* depicted the prevailing views of the average voter with regard to elections. The cartoon was entitled "Special Interests 2000" and illustrated a huge trough that was overflowing with cash. A donkey and an elephant are submerged in the cash while

¹⁵⁶¹Phil Kabler, *Voter apathy: Senators try to boost turnout*, *Charleston Gazette*, Feb. 24, 2001, at A9.

the “special interest men” are standing in the background proclaiming “we’ve already won!”¹⁵⁶²

United States Senator John McCain proclaims: “In the current system, politicians conspire to stay in office by selling the country to the highest bidder.”¹⁵⁶³ A *Clean Money* system empties the campaign chests of legislators who once were supplied with massive amounts of money from business lobbies and wealthy individuals. However, it is sometimes difficult to get legislators to consider *Clean Money* reform as it inevitably will result in competition for them during the next election as more people will actually be able to participate in the governmental process.

Former United States Secretary of Labor Robert B. Reich in delineating on the troublesome problem of money in politics observes, “Democratic and Republican national fund-raising committees have raised more than \$400 million in *soft money* since the beginning of 1999, which is nearly twice the amount of unrestricted donations raised in 1996.”¹⁵⁶⁴ In addition, he indicates that both parties have amassed more than \$430 million in individual contributions.¹⁵⁶⁵ Reich further explains that “[m]ore than 70 percent of the Republican money came from the

¹⁵⁶²Cartoon, *Special Interests 2000*, Charleston Daily Mail, Aug. 29, 2000 at A4.

¹⁵⁶³Peggy Brown, Bill Zimmerman, *Reforming Campaign Finance*, Newsday, May 11, 2000, at A37.

¹⁵⁶⁴Robert B. Reich, *Taking back democracy*, American Prospect, Dec. 4, 2000, Vol. 11, Issue 25, at 48.

¹⁵⁶⁵*Id.*

wealthiest who comprise just one-tenth of 1 percent of Americans, while more than sixty percent of the Democratic funds came from this group.”¹⁵⁶⁶

Reich asserts that the *Clean Money* initiatives that have passed in Maine, Arizona, Vermont, and Massachusetts defy the logic of those critics who vocalize that reform is impossible. Reich concludes that such critics are “plain wrong” in light of the positives of *Clean Money* legislation.¹⁵⁶⁷ In discussing the evils of money on our system of government, Reich elaborates:

Obviously, the system is deeply corrupting. Money is rarely traded directly for votes, but it buys access and influence, which effectively translates into votes. As a practical matter, large numbers of Americans have become disenfranchised. They have no real capacity to influence public policy. The act of casting a vote in favor of one or the other of two highly bankrolled candidates, both of them deep in hock to the special interests that have financed their respective campaigns, is a pale reflection of democracy—even when the race is as tight as the one just ended.¹⁵⁶⁸

The *Charleston Gazette* suggests that West Virginia should institute a *Clean Money* system like the system adopted in Maine that would supply public funding for candidates who refuse special interest money.¹⁵⁶⁹ It continues: “It shouldn’t take

¹⁵⁶⁶ *Id.*

¹⁵⁶⁷ *Id.*

¹⁵⁶⁸ *Id.*

¹⁵⁶⁹ Editorial, *Ethics: Law needs more teeth*, *Charleston Gazette*, July 27, 2000, at A4.

a prison term for another Governor or Senate President to spur reform this time."¹⁵⁷⁰

Moreover, the *Gazette* proclaims:

Special interests pour billions of dollars into political campaigns. They don't do this out of charity or civic duty. This river of cash represents a multitude of investments, usually paying out handsomely in tax breaks, regulatory loopholes and other government favors.¹⁵⁷¹

The *Gazette* further hypothesizes that a *Clean Money* system would help to "rid the political system of a corrupting influence" and that "[t]his system would increase involvement in campaigns. More people will run for office [and] the focus will shift to a candidate's ideas rather than a candidate's ability to raise money from special interests."¹⁵⁷²

Similarly, an editorial in the *Clarksburg Exponent* supporting *Clean Money* elections lobbied for West Virginia to acquire such a stance, saying it is "an idea that deserves attention." The editorial professes:

There are three states in the nation that are experimenting with something called "clean elections." Arizona, Maine and Vermont are offering to pay for a candidate's campaign. That means no fund-raisers, no influence peddling, no paying out the nose for TV ads. We think this is an idea other states -- including West Virginia -- should look into.

In Arizona, if a candidate for the legislature signs on, he receives \$25,000 in state money. It allows a

¹⁵⁷⁰*Id.*

¹⁵⁷¹Editorial, *Clean money: Stop river of cash*, *Charleston Gazette*, Apr. 12, 2002, at A4.

¹⁵⁷²*Id.*

candidate to be a candidate, not a beggar. He doesn't have to do the rubber chicken circuit and go hat in hand to donors.

....

One of the big advantages of such a system is the effect on the voters. They would know that Candidate X is not getting thousands of dollars from special interests. As a result, Candidate X would not be beholdin' to these special interests once in office. In addition, Candidate X would not have to spend month after month raising funds for the next election.

The *Exponent* continues:

Public funding for campaigns would likely restore voters' faith in the system -- faith that has been badly shaken in recent years. Once their faith is restored, voter turnout would probably increase.

This kind of a system would give a candidate an opportunity to challenge an incumbent who many times is awash in money and is hard to unseat. It may not level the playing field, but it would give someone a fighting chance.¹⁵⁷³

Clean Money reform is a solution for one of the core problems in the current system of electing politicians in West Virginia and beyond. It eliminates the link between special interest contributions and the candidate. In addition, politicians no longer would spend the majority of their time calling affluent people to beg for money. Furthermore, newspapers are more likely to question a candidate or an elected individual with substantive questions about issues and votes instead of

¹⁵⁷³Editorial, '*Clean elections*'—an idea that deserves attention, *Clarksburg Exponent*, Oct. 27, 2000 at A4.

whether or not their stance on an issue is based upon a large campaign contribution from a special interest group or individual donor.

It is not necessarily that people feel so disengaged from the issues, but rather that they simply feel they have no control and that their votes have nothing to do with changing the system. Therefore, people are not going to become completely engaged in politics until the system is changed. The old adage, "he who has the gold makes the rules" seems to apply to elected candidates of all branches of government running for re-election. *Clean Money* reform would prove to the citizens of West Virginia that politics is no longer about campaign contributions, but instead, it is about the issues that truly affect everyday lives.

Each day the system goes unchanged, a new generation of disengaged citizens comes of age. Television stations criticize elections and all politicians as being corrupt; however, the media is a part of the problem as candidates have to raise insufferable amounts of money in order to buy air time. As such, candidates become full-time fund-raisers instead of politicians who are dedicated to serving the public. A letter to the editor in the *Los Angeles Times* seems to speak for numerous people throughout the country near the time of an election:

So far in 1997, I have received six requests for campaign contributions from both the Republicans and Democrats. I have not sent either party one dollar. Instead, I wrote in large, bold letters, across the contribution return card: 'not one dollar more until we have real campaign finance reform!'

I enclosed it in the return envelope they furnished and mailed it back to them. Some envelopes were postage paid. The others I gladly put a 32-cent stamp on.

The special interests are buying the votes of our senators and congressmen. Why should we help any senator or congressman get re-elected with our hard-earned money? They no longer represent us.¹⁵⁷⁴

Enacting *Clean Money* reform will end the magnetism of money over the public agenda. An article in *The Nation* discussing the need for *Clean Money* Campaign Reform maintained:

Over the past year, America has been treated to the demoralizing spectacle of business as usual in Washington; lavish corporate and state subsidies to our two official political parties; corporate sponsorship of the parties' scripted conventions and judicial protection of the exclusionary debates; ongoing mobilization of special-interest by members of Congress; foreign regents of global capital pumping dirty dollars; the squelching of competition by Congressional incumbents whose massive war chests insure a re-election rate of better than 90 percent and then, to top it all off, the purchase of legislative and regulatory relief by lobbyists. Such is the suffocating stranglehold of money over the public agenda in America.¹⁵⁷⁵

Grass-roots efforts leading to the passage of laws and referendums in Maine, Arizona, Vermont, and Massachusetts, are paving the way for other states to

¹⁵⁷⁴Ralph D. Hillman, *Campaign Fund Reform Bill*, Los Angeles Times, May 20, 1997, at B6.

¹⁵⁷⁵Jamin B. Raskin, E. Joshua Rosenkranz, *Dollar democracy*, The Nation, Vol. 264, Issue 17, at 11 (1997).

overhaul their political systems and West Virginia should follow suit.¹⁵⁷⁶ The *USA*

TODAY reports:

Thanks to a pioneering system of public financing for legislative campaigns, Maine and three other states are beginning to throw off the system that requires candidates to beg money from corporations, labor unions, trade associations and wealthy individuals who want to bend public policy for their benefit.¹⁵⁷⁷

USA TODAY also voiced:

But where the option of using public financing to fund state campaigns was offered, democracy gained: While there were state-to-state variations, overall more new people were drawn into politics and more women ran for office. Incumbents who chose the new system voiced relief at being liberated from the money chase and the demands for special-interest favors in return.¹⁵⁷⁸

Maine's *Clean Money* program is an example of the public's extreme frustration with the current system and their willingness to spend a little of their money to pay for clean elections, rather than let the elections continue to be procured by individuals who do not have the public interest in mind. People who understand *Clean Money* reform realize that a few dollars today will be offset by the

¹⁵⁷⁶Editorial, *The people do care about reforming campaign finance*, Greensboro News & Record, Feb. 26, 1999, at A8; Gary Zuckett, *Fighting fire with fire, meaningful campaign finance reform possible*, Charleston Gazette, Nov. 18, 1998, at A5 ("arizonans for clean Elections turned in 195,000 signatures to have Proposition 200 placed on the ballot - 82,000 more signatures than needed to qualify.").

¹⁵⁷⁷USA TODAY, Debate, *Hungry for good news about the election? Try this.*, USA TODAY, Dec. 6, 2000, at A24.

¹⁵⁷⁸*Id.*

elimination of unnecessary tax breaks and subsidies that special interests and corporations now receive from the government.

As discussed, Maine's *Clean Money* program could serve as a model for West Virginia. It provides in part:

Candidates can opt not to accept or spend private funds for their campaigns. They must demonstrate credible public support by raising a minimum number of \$5 individual contributions.

That money is transferred to a state Clean Elections Fund, which then gives each candidate 75 percent of the average spent in recent elections for that office. (With no need to spend money on fund-raising, available funds go further).

If candidates running with private money outspend set levels, opponents playing under the clean-elections rules are entitled to extra public funding.¹⁵⁷⁹

Such reform in West Virginia encourages a solid possibility for competition within the political parties, and thus supports the reduction of the dominance of money in elections. Moreover, it eliminates the link between high-dollar contributions and the candidate. Critics will no longer be able to argue with a straight face that a \$5 donation buys influence with a candidate as opposed to the thousands of dollars donated by special interests and wealthy individuals.

State Delegate Boyd Marley of Maine was successfully elected as a *Clean Money* candidate and campaigned as "your special interest free candidate" and

¹⁵⁷⁹Debate, *Maine aims to clean up system*, USA TODAY, May 2, 2000, at A15; see also, ME ST T. 21-A §1121 (1995).

“voter owned elections.”¹⁵⁸⁰ Marley argues that Maine’s *Clean Money* system works and should become the norm for all states.¹⁵⁸¹ Marley delineates that during the 2002 General Election in Maine, fifty-nine percent of the victorious Maine Legislators were clean election candidates. Marley said that prior to becoming a *Clean Money* candidate he spent seventy percent of his time raising money and not nearly enough time actually going to community based functions. Marley also asserts that legislators are able to vote their conscience when they do not have to rely on special interest money as they can vote without fear of losing future campaign donations.¹⁵⁸²

A *Clean Money* initiative allows candidates to run for election—and if elected—be committed to the actual voters and the issues in the electoral district. It gives candidates the means to raise issues and frame the debate in areas where candidates in the past could not compete. Such a law forces candidates to return to “old-fashioned” politics where candidates campaigned door-to-door, attended editorial meetings, frequented local political functions, and answered questionnaires from politically active organizations. The candidate of today simply buys his or her voice with thirty-second television advertisements written by political strategists who have polled the public on the issues of the day.

¹⁵⁸⁰Interview of Boyd Marley by Author, University of Charleston, Geary Student Union, 2nd Floor, Charleston, West Virginia, Feb. 2, 2003.

¹⁵⁸¹*Id.*

¹⁵⁸²*Id.*

Without such legislation, the door to politics will remain forever closed to many good West Virginia citizens who may want to participate in the system of government. While it is true that *Clean Money* laws will not entirely remove the influence of money from politics, West Virginians clearly cannot stand idle. Corporations and wealthy individuals will always find ways to fund politicians. During the 1998 election, sixty percent of United States House candidates were able to raise money with a ten-to-one advantage over their opposition.¹⁵⁸³

Glenn Cummings, a Democratic candidate who ran for the State House of Representatives for the first time, was the first candidate to qualify for public funding under Maine's Clean Election Act.¹⁵⁸⁴ Cummings qualified for up to \$12,000 in state funds by collecting signatures from fifty registered voters who agreed to write \$5 checks to Maine's Clean Election Fund.¹⁵⁸⁵ Cummings believes he would not have been able to participate in the election without the *Clean Money* option.

According to an article in *American Prospect*:

The law is already having the effects its organizers intended. The number of contested primaries rose 40 percent this year, reversing a long decline. In races for open seats, where clean candidates stand the best chance of winning, more than 60 percent include at least one clean candidate. Nearly half of all senate candidates-the most expensive race to run-are running clean. And women, who historically

¹⁵⁸³Gary Zuckett, *Fighting fire with fire, meaningful campaign finance reform possible*, Charleston Gazette, Nov. 18, 1998, at A5.

¹⁵⁸⁴Joshua Green, *Clean money in Maine*, American Prospect, Sept. 25, 2000, Vol. 11, Issue 21 at 3638.

¹⁵⁸⁵*Id.* (Senate candidates can receive nearly \$40,000).

have less access to money, are running clean races at a rate of 44 percent, nearly double that of their male counterparts.¹⁵⁸⁶

The Article also provided:

'One thing we're learning is that nobody really liked the old system,' says Alison Smith, co-chair of Maine Citizens for Clean Elections. 'Everybody felt tarnished, sick of the constant fundraising, and tired of constantly being shaken down for money.' While new candidates and those who lack a fund-raising network would seem the most obvious beneficiaries of the new law, a surprising number of incumbents have chosen to run clean as well. The most commonly cited reason is a desire to avoid the ethical conflicts that accompany large campaign contributions. . . . 'I used to have to write fund-raising letters, make calls, attend fundraising events, write thank-you letters, and fill out campaign finance forms,' says Sharon Treat, a three-term Democratic senator. 'No more. Now it's simple. I'm done fundraising.'¹⁵⁸⁷

The fight for *Clean Money* legislation will not be an easy one for West Virginia. For example, during the 2000 election, Missouri and Oregon voters rejected similar reform proposals.¹⁵⁸⁸ Ironically, special interest groups in both states spent enormous amounts of money to defeat the proposals and confuse the

¹⁵⁸⁶ *Id.*

¹⁵⁸⁷ *Id.*

¹⁵⁸⁸ Ellen Miller and Micah Sifry, *Three steps forward, two steps back*, American Prospect, Jan. 1, 2001, Vol. 12, Issue 1, at 8; (It must be noted that the reform initiative in Oregon was just one of 26 issues on the ballot and expensive battles were fought over many of the other initiatives. In Missouri, voters were faced with the death of their Governor and United States Senate candidate Mel Carnahan just weeks before the election. Missourians also faced a difficult Gubernatorial campaign as well as being in the national spotlight with the tight presidential race.)

voters.¹⁵⁸⁹ The success of reform opponents in Missouri and Oregon has been attributed to “using scare tactics and demonizing reform activists to defeat state public-financing initiatives”¹⁵⁹⁰ and described as “dirty money beat[ing] *Clean Money*.”¹⁵⁹¹

In Missouri, a committee called “No Tax Dollars for Politicians” worked against campaign finance reform through strong field operations as well as radio advertisements at a reported cost of \$600,000 (contributed by the state’s leading businesses).¹⁵⁹² Many of the donors pouring hundreds of thousands of dollars into their anti-reform campaign included Anheuser-Busch, KC Power & Light, Hallmark Cards, and the Missouri Association of Realtors.¹⁵⁹³ One fact leading the push for reform was the 1996 donations of more than \$445,000 to Missouri House of Representatives candidates came from a single zip code with no residential population. Instead, this high-donor area was comprised entirely of post office boxes used mainly by special interest lobbying organizations.¹⁵⁹⁴

¹⁵⁸⁹*Id.*

¹⁵⁹⁰USA TODAY, Debate, *Hungry for good news about the election? Try this.*, USA TODAY, Dec. 6, 2000, at A24.

¹⁵⁹¹Marc Cooper, *Measures that mattered*, The Nation, Vol. 271, Issue 17 at 7 (2000).

¹⁵⁹²Ellen Miller and Micah Sifry, *Three steps forward, two steps back*, American Prospect, Jan. 1, 2001, Vol. 12, Issue 1, at 8.

¹⁵⁹³Marc Cooper, *Measures that mattered*, The Nation, Vol. 271, Issue 17 at 7 (2000).

¹⁵⁹⁴Ben Senturia and Pat Harvey, *New hope for Campaign finance reform*, St. (continued...)

Similarly, a group in Oregon calling itself “No Taxpayer Handouts for Politicians” spent vast sums of money to defeat the *Clean Money* initiative through advertisements and direct mail.¹⁵⁹⁵ Some of the attacks creating the negative image of the reform were included in a voter guide that was disseminated to 800,000 households.¹⁵⁹⁶ Leading to efforts promoting reform was that just forty-seven percent of eligible citizens voted in the 1998 General Election, marking the lowest turnout in Oregon history.¹⁵⁹⁷ Furthermore, 1998 was the most expensive election in Oregon’s history as state legislative candidates spent \$11.4 million during that election.¹⁵⁹⁸ In addition, ten legislative candidates spent more than \$200,000 each, while thirty-six other legislators spent more than \$100,000 each “all for a part-time citizen-legislator position that pays \$1,200 a month.”¹⁵⁹⁹

In Connecticut, the legislature passed a similar reform plan and it was vetoed by the Governor.¹⁶⁰⁰ The reform in Connecticut occurred after it was discovered that

¹⁵⁹⁴(...continued)

Louis Post-Dispatch, Nov. 8, 1998, at B3.

¹⁵⁹⁵Ellen Miller and Micah Sifry, *Three steps forward, two steps back*, American Prospect, Jan. 1, 2001, Vol. 12, Issue 1, at 8.

¹⁵⁹⁶*Id.*

¹⁵⁹⁷Phil Keisling and Paula Krane, *Clean-Money campaign heads to salem Oregon should become fifth state in U.S. to alter role of political donations*, Portland Oregonian, Feb. 10, 1999, at B9.

¹⁵⁹⁸*Id.*

¹⁵⁹⁹*Id.*

¹⁶⁰⁰USA TODAY, Debate, *Hungry for good news about the election? Try this.*, USA TODAY, Dec. 6, 2000, at A24.

a former state treasurer had operated a fund-raising racket out of his office.¹⁶⁰¹ USA

TODAY affords:

Starting in Maine in 1996, voters have endorsed public financing in every state where it has been on the ballot. Perhaps more telling, Connecticut is the second state where legislators themselves have bread such a change—a stunning turnaround, brought on by scandal.¹⁶⁰²

In Wisconsin, public financing for judicial elections was passed by the Senate while the House did not act.¹⁶⁰³ Similar efforts for reform have been made in North Carolina,¹⁶⁰⁴ Nebraska,¹⁶⁰⁵ and Minnesota.¹⁶⁰⁶ While referring to the continuing increase in campaign spending, Bruce Miller of Common Cause Minnesota said that voters are witnessing a “political arms race.”¹⁶⁰⁷

Under a law passed in Nebraska, candidates for the Legislature are limited to spending \$73,000, while candidates for the Board of Regents, Public Service

¹⁶⁰¹USA TODAY, *While Washington fiddles, states reform campaigns*, USA TODAY, May 2, 2000, at A15.

¹⁶⁰²*Id.*

¹⁶⁰³USA TODAY, *Debate, Hungry for good news about the election? Try this.*, USA TODAY, Dec. 6, 2000, at A24.

¹⁶⁰⁴*Id.* (Much support has been generated among grass-roots voters and more than 1,000 elected officials.).

¹⁶⁰⁵Kevin O’ Hanlon, Associated Press, *Brennan Center allowed to join case involving campaign spending law*, AP Wires, Mar. 12, 2002.

¹⁶⁰⁶Star Tribune, *Campaign money New approach needed in Minnesota*, Star Tribune (Minneapolis-St. Paul, Minnesota), Mar. 2, 2001, at A24 (“‘Soft’ money - unregulated big bucks channeled through state political parties and their legislative caucuses - swelled from a \$4 million trickle in 1992 to an \$18 million tide in 2000.”).

¹⁶⁰⁷*Id.*

Commission, and the State Board of Education are limited to \$50,000, as other offices also have limits.¹⁶⁰⁸ Under the law candidates who agree to abide by voluntary spending limits can qualify for public funds if their opponents exceed the cap. Then-incumbent Board of Regents member Rosemary Skrupa of Omaha was the first to receive public campaign funds under the law when opponent Randy Ferlic spent \$289,499, in his successful campaign for the *unpaid* board seat.¹⁶⁰⁹ The Nebraska Campaign Finance Limitation Act Fund comes from fines levied against candidates and campaigns for violating campaign finance laws. Those fostering opposition to reform also contend that this simply gives an advantage to an incumbent candidate because of their upper hand in name recognition that can be difficult for a *Clean Money* opponent to overcome.¹⁶¹⁰

According to *American Prospect*:

But serious obstacles confront the movement for public financing of state elections. As important as they are, the victories in Maine and Vermont do not translate well to other battlegrounds, especially larger, industrial mega-states like Michigan and California. As the movement spreads, it can be expected to attract significant opposition from such business groups as the Chamber of Commerce, which proponents of public financing did not face in Maine and Vermont. . . . As the movement shifts into high gear, reformers can

¹⁶⁰⁸Kevin O' Hanlon, Associated Press, *Brennan Center allowed to join case involving campaign spending law*, AP Wires, Mar. 12, 2002.

¹⁶⁰⁹*Id.*

¹⁶¹⁰*Id.*

expect millions of dollars to be spent in high-profile campaigns against public financing.¹⁶¹¹

Kentucky's public financing covers only candidates for Governor. Such candidates must agree to a spending limit of \$1.9 million. In turn, they receive \$2 from the State for every dollar they raise.¹⁶¹² While Kentucky's law has been credited with engaging more debates and joint campaign appearances by candidates and reduces the amount of money spent in races for Governor, reformers argue it does not go far enough.

Maine's so-called *Clean Money* system offers State-funded money to pay for the campaigns of legislative or gubernatorial candidates who agree to forgo the use of any private money.¹⁶¹³ During the 2000 Maine election 17 of 35 State Senate members were elected as clean candidates. Additionally, 45 out of 151 State House of Representative members were *Clean Money* electees.¹⁶¹⁴ More than half of the *Clean Money* candidates who ran for election who ran won their races. Many of these *Clean* candidates represented the Democrats and Republicans and included both incumbents and challengers.¹⁶¹⁵ In all, 115 of the 353 candidates ran

¹⁶¹¹Robert Dreyfuss, *Reform beyond the beltway: States as laboratories of clean money*, *American Prospect*, May 1, 1998, No. 38, at 50.

¹⁶¹²Associated Press, *Campaign fund reform group's goal; Clean Money gets started*, *Cincinnati Enquirer*, Aug. 16, 1999, at B1.

¹⁶¹³Ellen Miller and Micah Sifry, *Three steps forward, two steps back*, *American Prospect*, Jan. 1, 2001, Vol. 12, Issue 1, at 8.

¹⁶¹⁴*Id.*

¹⁶¹⁵*Id.*

Clean Money campaigns, vowing not to accept private money or contribute any personal money to their campaign.¹⁶¹⁶

A *Clean Money* system would allow more people in West Virginia to run for office and thus, provides the opportunity for more people to participate in the system of government. It diminishes the influence of money in politics and breaks the grip of special interest groups and wealthy donors. Candidates who choose to participate in a *Clean Money* system are no longer bogged down by the constant money chase and the demands for special favors in return for the massive amounts of money collected from contributors. Furthermore, the costs of a public financing system are offset by the elimination of unnecessary tax breaks and subsidies that special interests and corporations receive from elected officials.

Arizona's *Clean Money* proposition enjoyed the broadest support of any referenda in that State's history.¹⁶¹⁷ In Arizona, long-shot Democrat candidate Jay Blanchard used *Clean Money* and won a State Senate race against the sitting Republican House Speaker (who was term-limited out of the House) despite the fact that it was a heavily Republican district with enormous private interest backing.¹⁶¹⁸

¹⁶¹⁶Joshua Green, *Clean money in Maine*, American Prospect, Sept. 25, 2000, Vol. 11, Issue 21 at 3638; Editorial, *Campaign Money Morass*, The Nation, July 3, 2000, Vol. 271, Issue 1, at 3.

¹⁶¹⁷Gary Zuckett, *Fighting fire with fire, meaningful campaign finance reform possible*, Charleston Gazette, Nov. 18, 1998, at A5.

¹⁶¹⁸Ellen Miller and Micah Sifry, *Three steps forward, two steps back*, American Prospect, Jan. 1, 2001, Vol. 12, Issue 1, at 8; (Blanchard admitted that while his campaign benefitted from a scandal surrounding his opponent during the final weeks of the campaign, he also asserted that without the availability of public
(continued...)

Two other Arizona candidates who rejected private money defeated opponents who accepted large contributions to win seats on the State Corporations Commission. This was a rare victory where big-money clout too easily trumps the public interest at the government agencies that regulate business.¹⁶¹⁹

In Arizona,

sixteen candidates were elected under the Clean Money system, including an upset victory over the former speaker of the State senate. And the challenger spent only one-quarter of the money that his opponent took. In Maine, 49 percent of the State senate candidates won their seats while participating in the Clean Money program. Overall, states implementing public financing have seen more candidates run, more contested primaries, more women running for office, and, most importantly, it is proving that good candidates can run winning campaigns and participate in a system that limits spending. The only way we have to truly level the playing field, both between candidates and parties of opposing ideologies, and more importantly, between new candidates and incumbents, is to commit the resources to the process of getting people elected.¹⁶²⁰

In Vermont, public financing enabled a third-party gubernatorial candidate to run a credible campaign by broadening the campaign issues and still garnering ten

¹⁶¹⁸(...continued)

funding he would not have even run for office.); see also, USA TODAY, Debate, *Hungry for good news about the election? Try this.*, USA TODAY, Dec. 6, 2000, at A24.

¹⁶¹⁹USA TODAY, Debate, *Hungry for good news about the election? Try this.*, USA TODAY, Dec. 6, 2000, at A24.

¹⁶²⁰147 CONG. REC. S2625 (daily ed. Mar. 21, 2001) (statement of Sen. Cantwell).

percent of the vote.¹⁶²¹ While the United States District Court did strike down part of Vermont's law, District Judge William Sessions emphasized the need for the United States Supreme Court to review the issue of spending limits within Supreme Court precedent in light of the new and unfortunate election realities.

As *USA TODAY* reported:

A new national survey by the Mellman Group testing a specific plan for full public financing of federal elections received a favorable response by a 3 1/2-1 margin. That support cuts across party lines: 76 % of Democrats, 71 % of independents and 59 % of Republicans queried said yes. Gallup Polls show support for the general idea at 62%-27%, the biggest margin since the Watergate scandal.¹⁶²²

It is time for West Virginia to reform. The need for change is only further intensified by the scandalous fall on a national level of the country's then-seventh largest business, Enron, as it filed the largest bankruptcy suit in United States history.¹⁶²³ Moreover, when it came time for United States Senators to hold

¹⁶²¹USA TODAY, Debate, *Hungry for good news about the election? Try this.*, USA TODAY, Dec. 6, 2000, at A24.

¹⁶²²USA TODAY, *While Washington fiddles, states reform campaigns*, USA TODAY, May 2, 2000, at A15; also see, Greensboro News & Record, *The people do care about reforming campaign finance*, Greensboro News & Record, Feb. 26, 1999, at A8 ("Public opinion nationwide presents a clear, strong position. In 1997 a national poll taken by Princeton Survey Research Associates showed that 60 percent of the people said that the president and Congress should make campaign finance reform a 'top and high' priority.").

¹⁶²³See Editorial, *Dirty money, Enron cash to politicians*, Charleston Gazette, Jan. 29, 2002, at A6 (The editorial maintains that Enron, "whose tipped-over corporate symbol now is dubbed 'the crooked E,'" shoveled cash to various politicians in order to gain myriad beneficial changes in federal regulations effecting Enron. The editorial notes that \$6 million was funneled to politicians during the last
(continued...)

hearings to investigate Enron, it was difficult to find a Senator who had not received money from the company in the form of campaign contributions. In fact, Enron donated as much as \$1.7 million during the 2000 election cycle.¹⁶²⁴

According to the *Charleston Gazette*, “CEO Ken Lay and his top executives poured vast sums into GOP campaigns, giving \$623,000 to the younger Bush alone. Lay helped pay for the controversial Florida vote recount that gave Bush the presidency, and also donated \$100,000 for his inaugural.”¹⁶²⁵ The *Gazette* also claims that Enron “showered political cash on nearly everyone—greedily bled hundreds of millions of dollars from California during that state’s power crisis.”¹⁶²⁶

In discussing the high cost of campaigns, an article in *The Nation* argues that more candidates would run for office and more of those candidates would actually have a chance of winning if the “cost of entry” were reduced.¹⁶²⁷ The article asserts that if we reduce the amount of money in campaigns, then candidates would no

¹⁶²³(...continued)

twelve years and refers to the system of financing campaigns as “the cesspool of dirty money in politics.”); Editorial, *Enron, Corporate criminals?*, *Charleston Gazette*, Feb. 19, 2002, at A4; Editorial, *Enron More disclosures*, *Charleston Gazette*, Jan. 14, 2002, at A4.

¹⁶²⁴Editorial, *Campaign Finance after Enron*, *Washington Post*, Jan. 23, 2002, at A16.

¹⁶²⁵Editorial, *Enron More disclosures*, *Charleston Gazette*, Jan. 14, 2002, at A4.

¹⁶²⁶Editorial, *Enron More and more slime*, *Charleston Gazette*, May 22, 2002, at A4.

¹⁶²⁷Nancy Watzman, *Team Gore/Team Bush*, *The Nation*, Aug. 21, 2000, Vol. 271, Issue 6.

longer need corporate sponsors.¹⁶²⁸ Referring to the 2000 Presidential election, the article maintains: "If Al Gore and George W. Bush wore the logos of their corporate sponsors on their sleeves, voters could have the same advantage as spectators at Daytona Beach. Instead, the candidates use a bag of tricks to obscure their donors' corporate ties."¹⁶²⁹

In noting the high costs of Florida state legislative elections, the *Sarasota Herald-Tribune* asks: "So how does the average working stiff get elected to the Florida Legislature?"¹⁶³⁰ The *Tribune* provides the answer, "He doesn't."¹⁶³¹ The article provides that the cost to run for a Florida State Senate seat in 2000 was between \$300,000 and \$750,000, while it was necessary to raise between \$100,000 and \$250,000 to run for a House of Representatives seat.¹⁶³² As the costs grow, it seems the net worth of candidates is not far behind as the average Florida State Senator is worth nearly \$2 million, while the average House of Representatives member has a net worth of nearly \$800,000.¹⁶³³

Grass-roots campaigns, such as actually getting out and walking an election district, have become simply memories of the past. *Clean Money* campaign reform

¹⁶²⁸*Id.*

¹⁶²⁹*Id.*

¹⁶³⁰Capital Bureau, *Average working stiffs need not apply to Legislature*, *Sarasota Herald-Tribune* (Florida), July 20, 2000, at B8.

¹⁶³¹*Id.*

¹⁶³²*Id.*

¹⁶³³*Id.*

will help to revitalize the West Virginia Legislature so that more people can get involved in the system. Such reform will “guarantee that the people who are elected wouldn’t owe special interests when they take office . . . [r]ather than having campaigns funded by special interests, which then go to the Legislature for tax breaks and corporate subsidies.”¹⁶³⁴

If elections are going to be bought, then undoubtedly the public would rather the money come from a program designed by the government than from special interest groups and large donors that will insist on a return on their money. The only two returns the government wants is a vote and honest public service, while corporations may want changes in laws often leaving citizens with higher prices, fewer choices, and sometimes, unsafe products and services.

West Virginia’s state budget is a shrine to fiscal mismanagement. One way to solve many of the State’s problems is to get rid of large campaign contributions and go with a *Clean Money* system. With the cost of such a system at only about one dollar per person it is a positive improvement for West Virginia citizens. They can choose such a system at a minimal cost to taxpayers per year or they can keep the status quo by paying thousands of dollars per year to support tax breaks and loopholes, pork barrel spending projects, lucrative state contracts and other favors.

Clean Money campaign reform will give West Virginia candidates who reject all private financing and abide by spending limits, a disinterested source of funding public financing. It is well past the time for West Virginians to work toward fixing a

¹⁶³⁴*Id.*

broken system. Moreover, with the State's unfortunate and incessant history of corruption, one cannot imagine a better option than instituting *Clean Money* election reform. It is time to *clean up* West Virginia government.

XIV. A CULTURE OF POLITICAL CORRUPTION

My notion of democracy is that under it the weakest shall have the same opportunities as the strongest.....no country in the world today show any but patronizing regard for the weak.....Western democracy, as it functions today, is diluted fascism.....true democracy cannot be worked by twenty men sitting at the center. It has to be worked from below, by the people of every village.

–Mahatma Gandhi

Those who profess to favor freedom and yet depreciate agitation, are people who want crops without ploughing the ground; they want rain without thunder and lightning; they want the ocean without the roar of its many waters. The struggle may be a moral one, or it may be a physical one, or it may be both. But it must be a struggle. Power concedes nothing without a demand; it never has and it never will.

–Frederick Douglass

Cautious, careful people, always casting about to preserve their reputation and social standing, never can bring about a reform. Those who are really in earnest must be willing to be anything or nothing in the world's estimation, and publicly and privately, in season and out, avow their sympathy with despised and persecuted ideas and their advocates, and bear the consequences.

–Susan B. Anthony

West Virginia's official State Motto is *Montani Semper Liberi*, Latin for "Mountaineers are always free."¹⁶³⁵ While it may stand for the pride of its people, it does not accurately represent its system of elections. Unfortunately, the State Motto has become a cruel joke on West Virginians as they have witnessed outrageous and disgraceful election conduct throughout the years along with the consistently rising costs of campaigns. As such, West Virginia's current system of elections discourages individuals from entering into politics unless they can raise large sums of money. This is evidenced by West Virginians watching a continuous cycle of money pouring into each election contest. They have also—sadly—read headline after headline depicting scores of state politicians convicted for seemingly endless corrupt practices.

West Virginia's government is a functional arm tasked with implementing State policies as formulated by the three branches of State government namely the Executive, the Legislative and the Judiciary. As proven throughout this book, both perceived and actual corruption occurs at all levels of the governmental hierarchy in West Virginia.

A. Corruption

As one of the oldest realities in human society, political corruption exists in almost every country in the contemporary world. It necessarily follows that political corruption exists in each of the fifty United States. Conventional wisdom is that political corruption harms the rule of law, discourages the civic participation by

¹⁶³⁵The State motto of West Virginia *Montani Semper Liberi* is included on the official state seal. See W. Va. Const. Art. II § 7 (1872).

citizens of society, and inhibits economic growth. There is no all encompassing definition of corruption, however, *Black's Law Dictionary* defines corruption as follows:

Corruption is an act with intent to gain some advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the right of others.

Political corruption is the misuse of public power for private profit. Such corruption involves behavior on the part of elected or appointed officials in the public sector, who improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them. In truth, public attitudes can overshadow legal definitions of corruption. As such, public opinion often defines corruption in ways which nullify law. For instance, if public opinion and legal definitions do not conform, the likelihood is that elected officials will act in accordance with the public view, and in so doing transgress the law. It is therefore imperative that the citizens of West Virginia be informed and enlightened as to the damage that corruption can cause.

B. Causes of Corruption

There is simply not a single cause of corruption that has plagued this State. Corruption in the West Virginia political arena originates in part from societal attitudes toward formal political processes. Moreover, governmental attributes that encourage corruption in the State include wide authority of the elected officials along with minimal accountability for corrupt activities. Societal attitudes fostering

such corruption include compliance to personal gain over the rule of law while it is also true that political corruption has persisted as a way for members of poverty-stricken social groups to ascend the social ladder.

More causes of corruption include West Virginia elected officials ignoring the laws as many of the violators of the public trust go unpunished, the passing of legislation based upon the recommendation of a special interest group who contributes heavily to candidates for office, the public belief that the laws and regulations are not adequate to prevent and combat corruption, the lack of investigative and prosecutorial authority in the State Attorney General's Office, and the very culture developed throughout generations of corrupt elected officials.

Corruption has many roots of evil. Whether it is the need to conquer, possess and control for reasons of greed, power or some other psychological variable, the basic premise is that to be corrupt is to inflict oppression on others. But what causes people to be corrupt? What in us allows us to be controlled, and what is the fire that burns in a few to rise up and lead reform? The answers are not simple, yet they are basic as the lines between obeying the law and lawlessness are blurred and sometimes often justified.

In West Virginia, for instance, the very formation of the State left question regarding its legality and ethical origin. When people establish a government by using \$27,000 in gold coins stolen from a bank, its creation begins hidden away in the hills of Appalachia. West Virginians have allowed the elite few to run their lives from their thrones over dirty coal camps, controlling their money, their time, and

their freedom. It certainly does not justify the extreme corruption that has existed, but it does help to explain the culture which allows it to breed.

West Virginians have lived with corruption generation after generation. If a government, a corporation, or a single person continues to hold a people under thumb, then it is only time that holds those people in oppression. For one day, it happens—a strike, a massacre, or a strong-willed person emerges to change minds and lead a movement. The oppressed cannot continually be subjected to seeing convicted political felons held in the highest esteem. They cannot be continually threatened at the local polling places to vote against their conscience. They cannot continually see back-alley payoffs and greater financial exchanges from corporation to candidate not only go unpunished, but also be accepted and even expected as the cost of doing business. Apathy escalates when voters watch self-proclaimed, “honest” candidates promise to change the system and speak against injustice and corruption, yet see these very people become, not only elected officials, but also as corrupt as the individuals they had initially set out to replace.

Unrestrained behavior creates social norms. Moreover, unrestrained and unregulated activity such as the influx of the large amounts of money that donors provide creates the “belief” that everything is for sale. Of course, it naturally follows that such an attitude carries over to actions of elected officials after the election and while they are holding the office. A history of political factions, intimidation, vote buying, vote steeling, and limited regulation have created a culture surrounding West Virginia elections. The social norms created by the constant violations of

West Virginia law without adequate consequences perpetuates a culture of apathy and indifference.

In 1941, United States Supreme Court Justice William O. Douglas outlined:

Free and honest elections are the very foundation of our republican form of government. Hence any attempt to defile the sanctity of the ballot cannot be viewed with equanimity. . . . 'The temptations to control these elections by violence and by corruption' have been a constant source of danger in the history of all republics. The acts here charged, if proven, are of a kind which carries that threat and are highly offensive. Since they corrupt the process of Congressional elections, they transcend mere local concern and extend a contaminating influence into the national domain.¹⁶³⁶

In West Virginia, United States Attorney, Kasey Warner, in recognizing the presence of vote fraud in the State, said: "It's embarrassing. The truth is that some West Virginians are so wimpy they will sell their birthright to vote—and others refuse to stand up for truth, justice and the American way."¹⁶³⁷ Warner also noted: "These are people who might not be participating and might not approve of what's going on, but they may be beneficiaries of a corrupt system. They're in jobs with good pay, good benefits and security. They know that they could be putting all that in jeopardy if they speak out."¹⁶³⁸

People are afraid to expose corrupt activities because they are afraid of reprisals against themselves or their families. Such fears will last as long as some

¹⁶³⁶United States v. Classic, 313 U.S. 299, 329 (1941) (Douglas dissent).

¹⁶³⁷Editorial, *Vote Fraud*, Charleston Daily Mail, May 13, 2002, at A4.

¹⁶³⁸*Id.*

West Virginians sell, and other West Virginians buy, political power. Many of the economic and social ills of which West Virginians complain can be traced to the willingness of some who sell out to those who seek the power, and the willingness of others to ignore criminal violations for the sake of short-term gain.

Money, money, money—the lack of it seems to be the driving force in the illicit behavior of West Virginia’s corrupt political history. The poor man who could not afford to leave his coal mining job because his only pay was in scrip, who could not escape to a place nearby to live for it would also be coal company owned, nor who could he speak out against the problem to the local sheriff because his salary is paid for by the very company committing the injustice.¹⁶³⁹ As there was no accountability, what is the problem with that same miner taking five dollars at the polls to vote against someone he really believes in? Ethical behavior becomes at risk when someone is concerned about how they are going to feed their family. Along those same lines, Freedom of Speech does not mean that much to someone who has just starved to death.

¹⁶³⁹Even today, West Virginia elections are controlled by a small number of individuals and corporations. The only difference may be that campaign contributors are at least held somewhat accountable with increased reporting regulations. Coal companies have long ruled the day in West Virginia. In years past it was argued that coal companies handicapped and impeded Governor Marland’s full term in office because of the potential loss of jobs to southern West Virginia if Marland’s five percent proposed tax on coal was successful. The tax increase was put forward to provide for money for a college education to West Virginia high school graduates; however, coal companies feared that as younger people received their education they would leave southern West Virginia creating a void in the workforce.

People are often more concerned about how they are personally affected instead of a particular criminal action against the state committed by an elected official. For instance, many West Virginians are more concerned with whether or not their elected officials are able to help them with issues such as a workers compensation claim or a problem with a bridge in need of repair than they are concerned about a politician taking some money from an illegal source. When considering the political criminal conduct and the indifference by many of West Virginia's citizens to such actions, it has been said that "you can't eat democracy."

It has also been argued that West Virginians have generally considered poverty as a personal moral failing rather than a social injustice. From the earliest days when our forefathers chose our future leaders, it was believed that wealth, judgment and power naturally flowed together. Thus, from the very beginning our leaders were the so-called elite as sturdy fortunes became indications of social status. Although West Virginia ranks among the lowest for education, healthcare, employment and salaries, citizens often choose their leaders from the ranks of wealth and privilege.

West Virginia is also known for its low crime rate, however, it has been evidenced throughout this book that this is not the case with its elected officials. In reviewing the constant flow of convictions at all levels of West Virginia government and the light sentences imposed by federal and state courts it seems that those committing crimes against the public trust are not held accountable for their actions.

Moreover, a strict conclusion that citizens view the light sentences as a complete lack of accountability for corrupt behavior is presumptuous as such an assumption infers that all West Virginia citizens have an initial respect for the law. People are concerned with their personal problems, and to some, in resolving issues important to them, the end justifies the means—even if illegal. Furthermore, such acceptance of illicit behavior creates a feeling of inevitability based upon a long history of political corruption. Among some of the charges against West Virginia's elected officials during merely the last two decades include:

- stealing
- cheating
- gambling
- bribery
- ballot box/poll tampering
- corrupt real estate transactions
- insurance sales fraud
- tax evasion
- extortion
- mail fraud
- filing false tax returns
- obstruction of justice
- fraud
- accepting illegal cash contributions
- illegally distributing cash to influence elections
- making illegal campaign promises
- failing to report income
- receiving money through illegal actions
- lying
- covering up unlawful acts
- countless campaign violations
- selling political offices
- failing to pay state bills
- concealing state bills
- violating the public trust
- numerous sex offenses
- falsifying documents
- defrauding the government
- drug racketeering

- jury tampering
- threatening witnesses
- soliciting prostitution
- liquor sales racketeering
- perjury
- federal securities law violations
- illegal withdraw of public funds
- embezzlement
- forgery
- larceny
- assault
- battery
- public drunkenness
- police brutality
- civil rights violations
- falsifying State Police laboratory test results
- "election-rigging"
- blackmail
- illegal gambling
- illegal wiretapping
- sexual harassment
- robbery
- arson
- drug usage
- child abuse

West Virginia University professor Robert Jay Dilger explains that West Virginia's corrupt history has led to the State's lack of confidence in the political system. Dilger writes:

The scandals that have rocked the governor's office in West Virginia, coupled with the indictments and convictions of several administrators and legislators during the 1980s, have shaken the confidence of West Virginians in their political leadership. In 1990, a statewide survey revealed that West Virginians believe that corrupt politicians and poor school systems were West Virginia's most critical problems. When asked if they believed that politicians in West Virginia are more honest, less honest or about equally honest as politicians in other states, only 4.5 percent indicated that West Virginia's politicians were more honest than others, 26.5 percent indicated that they were less

honest, and 69 percent indicated that they were equally as honest (or dishonest) as others.¹⁶⁴⁰

Dilger continued:

Despite their relatively strong institutional powers, West Virginia's recent governors have not always proven to be well regarded and admired by either the electorate or state legislative leaders. The convictions of Governors Barron and Moore have had a particularly significant and denigrating impact on the public's perception of both politicians in general and of elected state government officials in particular.¹⁶⁴¹

As long ago as 1904, the West Virginia Supreme Court sent a warning that such a laissez faire attitude toward political corruption would only lead to a breakdown in State government. Justice Dent's Dissenting Opinion provided:

The sentiment held and being fostered by politicians, through a corruptible vote, that crime against the election laws is no crime, should be firmly met and vigorously repelled before it becomes a floodtide, destructive of popular government. Courts of justice, at

¹⁶⁴⁰Robert Jay Dilger, *The Governor's Office: A comparative analysis*, (visited Oct. 12, 2000 <http://www.polsci.wvu.edu/ipa/par/Report_10_4.html >.) ("Although all eight of West Virginia's recent governors were well trained and had careers that prepared them to undertake the responsibilities of being governor, two of them (Barron and Moore) were indicted, convicted and sentenced to prison for criminal acts committed while in office. Moreover, the rest of West Virginia's recent governors, as a group, have not fared particularly well, in comparison with former governors in other states, after having served in office. Only Rockefeller was subsequently elected to another public office (the U.S. Senate), none were appointed to a national office or commission, only two (Smith and Underwood) were subsequently appointed to a state commission and one former governor (Marland), suffering from alcoholism, attracted nationwide attention after he was discovered by reporters driving a taxicab in Chicago.).

¹⁶⁴¹*Id.*

least, should give no countenance to such a false and dangerous sentiment.¹⁶⁴²

A good example of the lethargic culture of politics in West Virginia is former Governor Arch A. Moore, Jr.'s quest for the return of his law license. Moore, perhaps the most corrupt politician in the State's history, has support from many of West Virginia's most prominent individuals including a former State Democratic Chairman and other Democratic figures. Moore enjoys such support even though he still denies his guilt and states that the only reason he initially pleaded guilty was so he could learn more about the case against him and that he believed he could withdraw his plea at any time.¹⁶⁴³ In addition, Moore denies the bribes, ignores the questions surrounding the closing of the state's lawsuit against the Pittston Coal Company for the Buffalo Creek tragedy (that later left West Virginia taxpayers stuck for a \$9.5 million debt that should have been paid by Pittston), and denies the bags of unmarked cash and illegal campaign contributions he solicited and received. In fact, even ex-coal operator H. Paul Kizer, who played a central role in the indictment of Moore, now supports Moore's efforts to regain his law license because "[Moore] has suffered enough."¹⁶⁴⁴

Moore's request for return of his license may not fall on deaf ears as the West Virginia Supreme Court is a forgiving group with those who have disregarded

¹⁶⁴²Payne v. Staunton, 46 S.E. 927, 935 (1904)(J. Dent, Dissenting).

¹⁶⁴³Martha Bryson Hodel, *Moore argues for law license*, Charleston Gazette, Dec. 4, 2002, at A1.

¹⁶⁴⁴Paul J. Nyden, *Ex-coal operator Kizer backs Moore's bid for law license*, Charleston Gazette, Dec. 10, 2002, at A1.

the public's trust and disgraced the image of West Virginia. For example, Bernard Smith, a former scandal figure who was involved in two bribery trials, a perjury trial and a vote fraud trial in the early 1970s, was given his law license back by the Court.¹⁶⁴⁵ The *Charleston Gazette* reported that the Court ruling returning Smith's license may have set the stage for "the return of the licenses of eight other criminal lawyers who were disbarred in bribery and fraud scandals that followed the term of ex-Governor W.W. Barron."¹⁶⁴⁶

Similar to the Court, West Virginians themselves appear to be a forgiving people. As recent as April 23, 2003, the *Parsons Advocate* announced with a large headline and a sizable picture of former Governor Moore on its front page that he would be the guest speaker at an annual Republican political dinner.¹⁶⁴⁷ With regard to other speaking engagements, the *Charleston Daily Mail* maintains:

Former Gov. Arch Moore, a convicted criminal, was an honored guest last month at a Republican Legislature Committee fund-raiser.

Some years earlier, former governor Wally Barron, a convicted criminal of the Democratic persuasion, re-visited the state Capitol. He was warmly greeted by officeholders.

¹⁶⁴⁵Staff reports, *Bernard Smith's law license restored*, Oct. 8, 1980, at A1.

¹⁶⁴⁶*Id.* (the eight Barron associates were gubernatorial aide Curtis Trent, Attorney General C. Donald Robertson, his brother Dana Robertson, Deputy Attorney General Phillip Graziani, Assistant Attorney General Marshall West, Barron business partner Joseph Berzito, and Barron law partner Bonn Brown.).

¹⁶⁴⁷*Miner, Moore, Sprouse to speak at Lincoln Day Dinner*, *Parsons Advocate*, Apr. 23, 2003, at 1.

To honor our ex-convicts, how about a Felons Day?¹⁶⁴⁸

Many would argue it is important to forgive those who have committed wrongs, but it seems that citizens do not even become upset when the wrongs are committed in the first place. In 1980, the *Charleston Gazette* in an editorial entitled "An honest governor" asks:

Why not re-elect an honest governor?

If West Virginians were to elect a series of governors who gave them honest government, it's very likely most citizens would savor the benefits, treasure them and conclude that honest government is, the best government. At that point, when honest government is taken for granted and no need exists, as is the case today, to nurture it lovingly and tenderly, the body politic will be able to afford the luxury of choosing between gubernatorial candidates whose ideologies clash. Today, alas, the prudent voter must ask: 'Which candidate is honest?'¹⁶⁴⁹

Conversely, West Virginians often settle for dishonest elected officials. To this end, according to some political observers, *voting the dead* is an ancient and honorable election day practice in West Virginia. Nonetheless, it is a practice lawmakers and West Virginia citizenry should no longer tolerate. Corruption has an impact well beyond the amount of money that may have been stolen or the decisions influenced by bribery. The real costs come in the form of a breakdown in societal morality caused by prominent examples of corrupt behavior.

¹⁶⁴⁸L.T. Anderson, *Honoring our governors of the past*, Charleston Daily Mail, March 8, 2002, at A4.

¹⁶⁴⁹Editorial, *An honest governor*, Charleston Gazette, Oct. 27, 1980, at A4.

The *Charleston Daily Mail* declared, "Perhaps if the state worked harder to make sure that voting is not just convenient, but also clean and fair, turnout would take care of itself."¹⁶⁵⁰ It further asserted, "West Virginians have sold their votes for as little as a pint of liquor, and we continue to joke about dead people voting."¹⁶⁵¹ The *Daily Mail* also attributes West Virginia's "decades-old scandals that have sullied the region's reputation," as a reason many State residents remain wary of their government.¹⁶⁵² They quote a former election officer from Mingo County who recalled, "People would come in and vote and you'd have to vote them under somebody else's name because they'd already voted."¹⁶⁵³ Moreover, the *Charleston Daily Mail* also described the West Virginia election process as, "Dead people voting, cash and liquor-bought ballots, a process controlled by the slick political party machine."¹⁶⁵⁴

West Virginia has consistently fulfilled its reputation of corrupt politics throughout the years. Moreover, such stories of political misdeeds are passed from generation to generation and only add to the frustrations experienced by many citizens as a result of today's political indiscretions. For instance, in the 1940s,

¹⁶⁵⁰Editorial, *W. Va. Voting, The state needs to concentrate on clean voting, not more voting*, *Charleston Daily Mail*, Mar. 10, 2001, at A4.

¹⁶⁵¹*Id.*

¹⁶⁵²Stacey Ruckle, *Southern West Virginia's history of voting corruption is a long tale*, *Charleston Daily Mail*, at A4.

¹⁶⁵³*Id.*

¹⁶⁵⁴*Id.*

elder statesmen of both the Republican and Democratic parties conceded expansively that votes had been bought in West Virginia for as long as they could remember.¹⁶⁵⁵ They offered the so-called redeeming argument that: "since both parties compete to buy an equal number of votes in the contested precincts, the non-bought votes really decide the election outcome."¹⁶⁵⁶

Furthermore, in his 1946 visit to the State, *The Nation* magazine editor Carey McWilliams wondered incredulously:

"What a visitor to West Virginia finds mystifying about the politics of the state is how the citizenry really know who won an election It would be accurate to say," he reasoned; "that there are rotten boroughs in West Virginia, but it would be closer to the truth to say that the state itself is a rotten borough." McWilliams confessed he was 'impressed with the nonchalant manner in which voting frauds are taken for granted."

In 1952, the *Charleston Gazette* reported that during that Primary Election they investigated and "found evidence of the dead and the insane voting, and widespread vote buying."¹⁶⁵⁷ In 1966, the *Charleston Daily Mail* proclaimed: "If you don't vote your own ballot someone else will."¹⁶⁵⁸ The article referred to several citizens whose votes were recorded even though they had not been to the polls to

¹⁶⁵⁵K.W. Lee, *Revolt in the Mountains*, Sunday Gazette-Mail, Apr. 19, 1969, at M3.

¹⁶⁵⁶*Id.*

¹⁶⁵⁷Editorial, *Plan for Honest Elections*, Charleston Gazette, July 16, 1966, at A4.

¹⁶⁵⁸Charlie Connor, *Outright Forgeries*, Charleston Daily Mail, July 18, 1966, at A3.

vote. One such individual, Lenora B. Withrow, responded: "You're not serious! No, I didn't go to the polls at all—you mean I'm recorded as voting?" After reviewing a copy of her signed poll slip, Withrow noted: "That's not my signature—that's not even near it."¹⁶⁵⁹

A 1969 *Sunday Gazette-Mail* article depicts the continuing problem with special interest groups. It provides:

Special interests groups have long played inordinately powerful roles in these colonies. From the beginning, coal operators have bought politicians, who in turn bought elections. Doctors and lawyers have had their influential associations. Labor unions—the UMW of A in particular—have been in the game for years. Teachers are now learning a few tricks. Almost everybody has had his pressure group except, of course, the forgotten people in the hollows.¹⁶⁶⁰

In the intervening years, corrupt election practices have been fused with the State's political system as hallowed custom and technique. Irrespective of who wins or loses it is a pernicious and devastating game. Democracy is at risk as two out of three eligible West Virginian's do not bother to vote. In 1992, West Virginia was

¹⁶⁵⁹*Id.*; see also eg., Charlie Connor, *Who Voted As Mrs. Logan?*, Charleston Daily Mail, July 8, 1966, at A17; Staff Reports, *3 More Dead Voters Turned Up*, Charleston Gazette, July 30, 1966, at A11; K.W. Lee, *They Swear Dead Voted*, Charleston Gazette, Apr. 30, 1968, at A2; Jack Greene, *21 In Precinct 47 Deny They Voted; Secrecy Step Fails*, Charleston Daily Mail, Sept. 21, 1966, at A1; Don Marsh, *38 Testify to Vote Wrongs*, Charleston Gazette, Sept. 22, 1966, at A1; Don Marsh, *Phony Signatures, Preacher Vote-Paying Found*, Charleston Gazette, Sept. 30, 1966, at A1.

¹⁶⁶⁰K.W. Lee, *Test of Power*, Sunday Gazette-Mail, Apr. 27, 1969, at M2.

among the worst in the nation in voter turnout as it ranked forty-second for that year's election.¹⁶⁶¹ That same year, the *Charleston Daily Mail* maintained:

West Virginia's image is changing.

Barefoot hillbillies are surrendering the limelight to disgraced politicians—an almost unending procession of office-holders whose careers have crumbled because of drug abuse, greed, illicit sex or extortion.¹⁶⁶²

Also in 1992, the *Sunday Gazette-Mail* voiced concern with the influx of massive amounts of money pouring into West Virginia elections. Such spending only further cultivates apathy in state politics. Many West Virginians question why they should even vote in a system which they cannot participate. The *Gazette Mail* purports:

Nowhere is the need to control campaign spending more apparent than in West Virginia. Although poor and small—the state ranks 49th in per-capita income and 41st in land size—it is forth in the nation for spending on gubernatorial campaigns. Candidates for governor in 1988 spent a combined total of \$9 million—\$13.12 for each vote cast.¹⁶⁶³

Two of West Virginians most expensive campaigns in State history were waged and won by former Governor and current United States Senator Jay Rockefeller. In 1980, Rockefeller spent \$11.7 million to win re-election while he

¹⁶⁶¹Aviva L. Brandt, Associated Press, *State ranked 42nd in voter turnout for 1992 election*, *Charleston Gazette*, Jan. 12, 1993, at C3.

¹⁶⁶²Kay Michael, *Disgraced politicians becoming state's stereotype*, *Charleston Daily Mail*, Aug. 28, 1989, at A1.

¹⁶⁶³Susan Leffler, *Cash flow in politics targeted, Reformers try to persuade candidates to reduce spending*, *Sunday Gazette-Mail*, Aug. 30, 1992, at B1.

spent \$12.1 million on his 1984 election to the United States Senate.¹⁶⁶⁴ It has also been charged that the astronomical increases in gubernatorial spending helped drive up the price of other state campaigns. In 1976, candidates spent a total of \$154,953 on all races for the State Senate. By 1986 the total had soared to \$1.5 million.¹⁶⁶⁵

During the 1992 gubernatorial election, Charlotte Pritt pulled thirty-five percent of the vote in the Primary Election despite her low-budget campaign that spent a mere \$115,000. Her loss set up the challenge between two millionaires in the General Election as: "Caperton, who comes from a wealthy coal and insurance family, will be challenged by Republican Agriculture Commissioner Cleve Benedict, a 'gentleman farmer' who is heir to much of the Procter & Gamble fortune."¹⁶⁶⁶

State politics is becoming a game that only the wealthy and special interest groups can play. Former Caperton Communications Director Bob Brunner said, "Caperton would have probably been considered an amusing sidelight to the campaign story 15 years ago. But now, with the money and skills of media people, he can become in the public's eye a viable candidate for governor in a matter of a couple of months—from nowhere."¹⁶⁶⁷

¹⁶⁶⁴*Id.*

¹⁶⁶⁵*Id.*

¹⁶⁶⁶*Id.*

¹⁶⁶⁷Lloyd Grove, *Election case study in TV politics*, Charleston Gazette, May 13, 1988, at A1.

Despite West Virginia's outrageous level of legal campaign spending, illegal contributions totaling hundreds of thousands of dollars collected for elections or re-election continues to flow with impunity. Moreover, punishments handed out to those caught red-handed are tantamount to slaps on the wrist. Consider two Governors who committed such violations of the public trust by stealing millions of dollars and served a combined jail time of approximately six years. Now consider that both Governors were well received by citizens and other elected officials after being released from jail.¹⁶⁶⁸

Another cause of corruption in West Virginia is the lack of accountability for violating the laws of the State. Those intent on corrupting the process do not fear the consequences as many of the offenses are rarely prosecuted, despite the scale of some abuses. Consider an Attorney General accused of extorting money from his employees to pay for his campaign debts and then attempting to pay a secretary \$50,000 in hush money to remain quiet about the allegation that he was the father of her unborn child. Now consider that the Kanawha County Prosecuting Attorney the Attorney General as long as he agreed to resign from office. This is another example of an offender being handed no sanctions or fines and serving no jail time. The message from the so-called prosecutions of elected officials is that there is no threat of jail time for those who break campaign finance laws and violate the public trust.

¹⁶⁶⁸While former Governor Barron is now deceased, former Governor Moore continually travels the State as a well-received speaker at political functions despite his convictions for numerous corrupt activities.

Further contributing facts perpetuating the State's political struggles are West Virginia's underdeveloped system of transportation and struggling economy. Additionally, throughout the early years of statehood many West Virginians viewed politics as entertainment while others simply saw it as a way of life. It was a period when political bosses controlled the masses by providing patronage jobs and securing improvements in areas such as local schools and roads. Communication was also an impediment. For instance, in 1860, forty-three newspapers existed in the counties comprising present-day West Virginia, while three of those were daily, thirty-six were weekly, two were tri-weekly, and two were monthly publications.¹⁶⁶⁹ One of the problems with communication during the early years of statehood was that even though newspapers, books, and pamphlets were available, "thousands of people could not read and write and had little use for a newspaper."¹⁶⁷⁰ Likewise, many potential readers lived long distances from towns where the papers were printed and mail service during those years was uncertain.¹⁶⁷¹

From its inception as a State until present day, West Virginians have witnessed turmoil at their polling places on election day. Corruption has infiltrated not just the highest of West Virginia's elected officials. It instead touches all levels of government from federal, state, county, to city elections. The message received

¹⁶⁶⁹State v. Young, 311 S.E.2d 118. n.7 (W. Va. 1983).

¹⁶⁷⁰Otis K. Rice, *West Virginia: The State and Its People* 141 (Parsons: McClain Printing Company, 1971).

¹⁶⁷¹*Id.*

is that it is all corrupt and that no one is immune to the culture of campaign corrupt practices and illegal behavior after being elected.

Moreover, democracy, which is perhaps the most fundamental of all federal concerns, rests on an attitude of mind: the peoples' belief that they can govern themselves through their freely chosen representatives. When the repositories of the peoples' trust prove unworthy, their actions undermine the peoples' belief, thus striking at the most fundamental tenet of community life. It is clear that at least as a matter of perception, all parties, all factions, all candidates, and all politicians emerge from this exposure as from a cesspool, offensive and pungent. Public confidence has waned in the ability of West Virginia to conducting an honest election and abiding by the results.

C. Cost of Corruption

Influence often takes many forms. People with connections utilize West Virginia politicians to procure such allotments as jobs for themselves or family members or simply the passage of a law that benefits them personally or benefits their business. On the other hand, members of State government and other elected representatives enjoy special taxpayer paid-for allowances with mail and telephone use that they can use at their discretion to help ensure re-election. Moreover, political support to parties during elections is often quid pro quo from which certain individuals or groups who provided the support tend to benefit. The soiled financing of political elections has also contributed to the rising spiral of corruption as candidates have become narcotic dependant on money to finance their campaigns.

People have stopped voting because they feel that regardless for whom they vote, candidates do not really care about their concerns. People believe that politicians sell pieces of government just as corporations sell stock in a company. The cost of treating special interest groups and wealthy donors as the torch bearers of First Amendment liberties will be how democracy begins to flicker out.

In 1926, the West Virginia Supreme Court cited with approval the Michigan Supreme Court as follows:

The readiest way to stop fraud and corruption at elections is to see to it that the same is not rewarded by success; and when, by the connivance and procurement of the election officers, the law is, in essential particulars, disregarded, so that candidates and voters lose the benefit of its protective provisions, under circumstances well calculated to produce the belief that such conduct may have changed the result from what it would otherwise have been, there is as great danger of wrong to the individual voter through counting, as excluding, the vote of the precinct.¹⁶⁷²

The West Virginia Supreme Court seemed to stray from that belief in 1940 when it interpreted Article VI, Section 14, of the West Virginia Constitution which provides:

No person who has been, or hereafter shall be convicted of bribery, perjury, or other infamous crimes, shall be eligible to a seat in the Legislature. No person who may have collected or been entrusted with public money, whether State, county, township, district, or other municipal organization, shall be eligible to the Legislature, or to any office of honor, trust, or profit in

¹⁶⁷²Hatfield v. Scaggs, 133 S.E.109 (W. Va. 1926) (quotation omitted.).

this State, until he shall have duly accounted for and paid over such money according to law.¹⁶⁷³

In light of this constitutional provision, the West Virginia Supreme Court took the view that a conviction under West Virginia law would disqualify a candidate for the Legislature and as a result, the candidate could not be seated in the Legislature if elected.¹⁶⁷⁴ In stark retreat, however, the Court decided that an individual who was convicted under federal law would not be precluded from holding a seat in the West Virginia Legislature.

Consequently, when a Delegate who was federally convicted of a felony and agreed never to run for office again later ran for and was elected as a member of the House of Delegates, when a governor who was indicted for corrupt activities yet eight years later was re-elected, and then convicted by federal and state courts on numerous charges, and still adorns statewide newspapers announcing his engagements as key-note speaker, when another governor who pardoned forty-five murderers is put back in office years later, when a state senate majority leader who has been indicted on both state and federal charges is elected every four years, when a former superintendent of the state police who plead the Fifth Amendment in the sordid Fred Zain affair which caused innocent citizens to go to jail was elected to the state senate, when a state treasurer is impeached after losing \$279 millions in State funds and soon afterward elected as a member of the House of Delegates,

¹⁶⁷³W. Va. Const. Art. VI, Sec. 14 (1872).

¹⁶⁷⁴Isaacs v. Ballot Commissioner, 122 W. Va. 703, 12 S.E.2d 510(1940); 51 Ops. Atty Gen. 182 (Feb. 1, 1965).

it is understandable that voters who continually witness the lack of accountability of officials for wrongdoings and illegal activities would become cynical and apathetic about the election process and politics itself. After all, it is said that familiarity breeds contempt.

Such contempt, however, along with little to no sentences imposed upon those who violate the law, only continues to send the message to voters of government disinterest in corrupt activities of candidates. A recent *Associated Press* newspaper article held:

“Just over half of the voting age population, 51 percent, cast ballots in November, slightly more than the 49 percent who voted in the 1996 presidential election. Voter turnout has dropped steadily over the last four decades since more than six in 10 voted in the 1960 presidential election.”¹⁶⁷⁵

Additionally, a report in *Dollars & Sense* provides:

Since 1964, voting rates have steadily dropped until only half of the electorate voted in the 1996 presidential contest (63 % did in 1964) and only one third of the electorate is voting in non-presidential elections. The last time the United States saw this low a level of turnout was in the 1920s. . . . In 1992 about 70 % or retirees of all races were showing up at the polls but only 38.5% of 18 to 20 years old.¹⁶⁷⁶

John Bonifaz, founder and executive director of National Voting Rights Institute, states with regard to reforming campaigns that nothing less is at stake than

¹⁶⁷⁵Will Lester, *Associated Press*, *Making it easier may draw voters*, *Charleston Gazette*, Mar. 13, 2001, at A3 (poll conducted by Medill School of Journalism).

¹⁶⁷⁶Abby Scher, *Cleaning up politics, clearing out big money*, *Dollars & Sense*, July 1, 2000, at 24.

the principle of “one person, one vote.”¹⁶⁷⁷ People are not going to engage as citizens in the democratic process until the campaign finance system is improved as our forefathers knew that a so-called “one person, one vote” system was most likely to produce competitive, fair, and open elections.

While problems of election violations have existed since its inception as a State, it is impossible to determine how many candidates have benefitted or have been unfairly kept out of office by West Virginia’s history of corrupt practices. Moreover, it seems as if all elected officials become indistinguishable from each other. Consider that the one common element in nearly all of the corrupt or perceived-to-be-corrupt activities discussed throughout this book is money. Government has a credibility problem and those who follow West Virginia politics or have simply read a newspaper could easily theorize that corruption has seeped not only into the legislative, executive, and judicial, but also into almost everything at the State Capitol, including law enforcement and public life.

Politics is viewed as the byproduct of a deeply flawed government oversight of immeasurable moral blindness and sometimes a savage behavior. Such acceptance, or at least explicitly expressed tolerance has only served to further pollute not only law enforcement but government itself, fueling public cynicism, spreading fear and turning the public sector into a criminal’s accomplice.

¹⁶⁷⁷*Id.* (“Bonifaz coined the phrase ‘the wealth primary’ to describe the current system, since it enfranchises those with money.” Bonifaz asserts that the amount of money in politics violates the equal protection clause of the 14th amendment of the Constitution.).

It begs the question as to how many government policies would have done much better throughout the years without the special interest pressure on elected officials. To continue, politicians hand out special tax breaks, subsidies, grants and other giveaways to the benefit of political contributors and to the detriment of the taxpayer. The direct exchange of money and favors between political and special interests gets worse everyday. The dining-for-dollars lifestyle of raising money is at an all time high.

Corruption erodes the values people revere and undercuts the legitimacy of the State while wearing away the legitimacy of the rule of law. Influence and money together give the small aristocracy groups in society an unfair advantage in their access to public services at the cost of the vast majority of the population. The tolerance of corruption and the lack of reforms are among the more basic issues to be addressed. Equally important, corruption reduces economic growth by lowering incentives to invest by potential businesses wishing to start a business in the State. In cases where entrepreneurs are asked for bribes before enterprises can be started as with the case of former Governor Arch A. Moore Jr., corruption acts as a secret tax that hurts State citizens and lines the pockets of elected officials.

While corruption lowers economic growth, it is also true that poverty itself causes corruption as poverty-stricken people are more likely to abandon their moral principles. Corruption in government as perceived by the people also lowers respect for constituted authority and therefore the legitimacy of government. As the elected officials are widely believed to be corrupt, many in the public see little reason why they, too, should not follow such corrupt behavior.

Therefore, in evaluating the cost of corruption to a society, it is sometimes easier to look at the financial ramifications than at the often more serious, lingering psychological effects. The countless dollars spent on buying elections and remaining in office after elected is sometimes more easily realized than the lost voice of the poor, or even more correctly, the "unwealthy." The single mother, the small business owner, the college student, and the senior citizen become drowned out by the individuals, the lobbying groups and corporations who hold the purse strings.

The financial strains caused by excessive and frivolous spending have led to a gridlock on the road to progress. Those who believe that the overwhelming amount of money spent could not have affected them to any significant extent, consider the staggering amount of money, impossible now to calculate, that has been squandered by West Virginia's elected officials throughout the years on the following trinkets:

- banners
- state flag certificates
- United States Constitution certificates
- proclamations
- souvenir cards of the treasurer's seal
- gubernatorial collector cards
- state seal stickers
- highlighters
- Pledge of Allegiance sheets
- associate treasurer certificates
- American's Creed sheets
- Boys State certificates
- Girls State certificates
- "Public Friend" certificates
- engraved plaques
- trophies
- letter openers

- pencil sharpeners
- money clips
- notepads
- calendars
- state pins
- pendants
- medallions
- hats
- patches
- "honorary" awards and certificates
- patriotic brochures
- historical brochures
- souvenir literature
- pens
- pencils
- litter bags
- key chains
- magnets
- flags
- paperweights
- coffee cups
- yardsticks
- coin purses
- fans
- bumper stickers
- pill boxes
- magnifying rulers
- "financial literacy" kits

Now consider that former Secretary of State and Treasurer A. James Manchin, in one year, spent forty-two percent of the entire budget for the Secretary of State's Office on such trinkets. Then consider, the same man, as State Treasurer, continuing his pattern of excessive spending of taxpayer money and the amount of time wasted by him and his employees to order, prepare, address and distribute these office souvenirs. Perhaps if more time would have been spent on the actual duties for which he was elected, \$279 million dollars would not have been lost in state investment funds.

The late 1980s witnessed an era of accelerated electronic and technological advancement. Children in West Virginia were being left in the dust of other state's school systems. West Virginians have always had to deal with the stereotype of being less advanced or even "backwoods," fighting images of having no shoes, bad grammar and less education. Students who did go to college, especially out-of-state, soon realized how much it would have helped to have more knowledge of computers, foreign language, advanced math, science and writing skills, and fewer certificates, pens, combs and key chains. While school budgets did not allow some children to go on educational field trips, thousands of tax dollars were available for chartered flights, awards, certificates, key chains, and magnets. Just as the coal companies kept the miners isolated out of greed, this State Treasurer because of his improper and illegal use of State money kept a generation of West Virginia children less educated, less advantaged and less prepared for the world they were about to enter.

In a time when voter cynicism is at an all-time high and trust for government is at an historical low, the need for reform is paramount to the preservation of a true democracy, in which those who govern are elected by the majority and not just a few. Therefore, the cost of such a history of corruption and its potential continuance is the loss of our republic, where one voice equals one vote, as voices not heard lead to apathy and oppression for generations to come.

We raise our children in a nation which encourages the pursuit of happiness and teach them of an extremely poor and underprivileged young man named Abraham Lincoln who grew up to be President and affect the minds of people and

therefore changed a nation. Unless we reform our system of elections, the cost to our states, our country, and even our world could be incomprehensible, for imagine if young Abraham would have been told that he was too poor to ever be President. Imagine the great minds, the innovative thinkers, and the historical leaders who have been ignored, or worse, jaded by the very process that could change their life or the lives of others and then evaluate the cost of the lack of reform.

D. Looking to the future

Since the latter part of the 1800s, coal, railroad, power, and chemical companies with out-of-state headquarters have dominated West Virginia economically and politically.¹⁶⁷⁸ Their presence is immeasurable. For instance, between 1897 and 1928, more than 10,000 men died in West Virginia's coal mines, a rate of more than 330 per year, and 475 in 1928 alone.¹⁶⁷⁹ The state of the State throughout much of West Virginia's history because of such control by big business was that of lawlessness.

In January 1931, the circuit judge of Logan County Naaman Jackson, had privately appealed to Governor Conley to intervene in Logan County to help restore the rule of law. Jackson feared that the murderer of the Logan police chief would be acquitted by a Logan County jury because of the intimidating tactics of the sheriff's department and the willingness of the army of 'special constables' to testify to anything.¹⁶⁸⁰

¹⁶⁷⁸Jerry Bruce Thomas, *An Appalachian New Deal* 6 (University Press of Kentucky 1988).

¹⁶⁷⁹*Id.* at 19.

¹⁶⁸⁰*Id.* at 37.

It is necessary to view the relationship between the past and the present to enlarge the inquiry into such an ethical dilemma as West Virginia's political culture of corruption. As such, the problems of the present cannot be discussed intelligently without an understanding of the past. Every culture has its own particular customs and West Virginia is no exception. Such customs include structure and function of the family, patterns of written and spoken language, different beliefs and attitudes toward religious worship, death, literacy and learning, patterns of education, ways of dressing, attitudes toward wealth, and authority and power.

Once a corrupt system is in place and a majority of people operate within that system, individuals have no incentive to try to change it or to refrain from taking part in it, even if everybody would be better off if the illicit behavior were to be eliminated. Nonetheless, when corruption has become ingrained, as in West Virginia, it is very difficult to eradicate it. Corruption is allowed by West Virginian's accepting lower standards. It has no political face, age, has no color, religion, or creed. The problem with corrupt government officials is that there are few ways to fight back other than making more informed choices on election day.

Furthermore, reform efforts are often unsuccessful due to the combined influence of inadequate strategies, political resistance, failure to sustain long-term reform efforts, and the lack of knowledge about appropriate tools to establish systemic change. Lessons learned from successful reform programs suggest that the key factor is strong political will demonstrated by a commitment from the leadership at all levels of government. Nevertheless, a critical starting point for

sustainable and effective anti-corruption strategies in West Virginia is a strong commitment from reform activists. A single initiative will not fix the problem that has existed since West Virginia's very inception. Moreover, the only way to curb corruption is to attack its causes, not its consequences as culture of corruption provides a setting in which corruption flourishes and becomes expected behavior though perhaps not accepted behavior.

Cracking down on the lawbreakers is one way to show that West Virginia is genuine in its efforts to reform its system of elections. Abusers must be punished accordingly or no reform will occur. Violators must fear punishment or they will continue to break the laws. With firm language as well as strict enforcement, offenders will understand that there are consequences for their actions.

In addition, improving the voting system itself must be of high importance. For instance, during the 2000 General Election, it was estimated that four million to six million Americans who tried to vote in the Presidential Election did not have their choices counted.¹⁶⁸¹ There are countless simple steps that can be taken to reform a state election process. Nevertheless, without changing the political culture itself, such stand-alone attempts which make voting more accessible or make it easier for a person to run for office become futile. An illustration of this was during the 2002 Primary Election, when only 321,429 West Virginians cast votes.¹⁶⁸² This was an

¹⁶⁸¹Staff reports, *Study finds millions disenfranchised*, USA TODAY, July 17, 2001, at A11 (citing a study of the nation's voting system by scientists at MIT and CalTech.).

¹⁶⁸²Editorial, *Voting*, Charleston Daily Mail, June 20, 2002, at A4.

increase of only one percent from the election four years prior even though State voters were able to take advantage of the new “no-excuse” absentee voting law that allowed them voters to vote during the fifteen days prior to the election without a reason.¹⁶⁸³

Cleaning up West Virginia politics is a job for individual West Virginia voters and the idea of selling votes is not new to the State or national political scene. It has even been said that George Washington himself treated voters to liquor on election day in exchange for their votes. The public becomes immune to election violations believing “everybody does it” as it has been an imbedded part of West Virginia’s history of campaigns. The buying of elections has become a cancer on democracy as average citizens making \$25,000 per year cannot spend millions of dollars on a political campaign for the *chance* to procure an office and, thus, do not become involved in the system.

Moreover, even if elected, fund-raising becomes a time thief as politicians spend many hours each day fund-raising just to stay in office. Senator Byrd has said that Legislators have become part-time legislators and part-time fund-raisers. The lack of money weeds out good people and good talent from even getting involved in politics. It is a pay-to-play system in which principles and payments go hand in hand with donors wishes. As much as major donors complain that they hate the system, they like even less the possibility of losing their powerful voice in governmental decisions.

¹⁶⁸³Bob Kelly, *Voting options expand*, Charleston Daily Mail, Feb. 13, 2002, at A4.

For instance, Charleston Attorney Thomas Potter, Bush's co-finance chairman for West Virginia, felt he had a voice in State political appointments since he raised \$200,000 for Bush's 2000 Presidential campaign.¹⁶⁸⁴ Potter called the choices for the United States Attorneys for the Northern and Southern Districts of West Virginia by the White House as "outrageous."¹⁶⁸⁵ Potter believed that his daughter, who works as an Assistant United States Attorney in the Northern District, "was clearly the best candidate."¹⁶⁸⁶ It can reasonably be deduced that Potter felt his daughter should have been given the position since he raised so much money for the Republican Party.

Raising money for a return in favors after an election is a practice that must end. Thus, a *Clean Money/Clean Election* system is one possibility of a positive change that must be instituted.¹⁶⁸⁷ If millions of taxpayers contribute a dollar or two to a Clean Election Fund then the money funding campaigns is untainted placing the focus back on merit versus money. Until we limit the money pouring into political campaigns, spending will continue to be an arms race to raise as much money as possible. A perfect example of how money buys elections is the \$76

¹⁶⁸⁴Fanny Seiler, *Bush's picks for U.S. attorney ruffle feathers*, Charleston Gazette, July 1, 2001 at C3.

¹⁶⁸⁵Fanny Seiler, *Underwood slow to pay debts, businesses say*, Charleston Gazette, July 8, 2001, at C3; Fanny Seiler, *Bush's picks for U.S. attorney ruffle feathers*, Charleston Gazette, July 1, 2001 at C3.

¹⁶⁸⁶*Id.*

¹⁶⁸⁷See generally, Chapter Thirteen.

million spent by Michael Bloomberg to buy the New York City Mayor's seat.¹⁶⁸⁸ Regardless of the arguments, it is clear that a smart businessman would not spend \$76 million if he could have won the seat by spending just \$5 million or \$25,000. Furthermore, without corporate or wealthy sponsorship an individual of average means could not actually become participants in the system.

The United States has one of the greatest constitutional systems in the world, enabling its citizens to implement their ideas and beliefs. Nonetheless, if you have money, you have power and can buy access. With money an individual can counter the voice of the press and opponents by buying the advertising access that the average individual cannot otherwise obtain. If people who give \$10 feel they have \$10 worth of access, what do people or lobbyists who give \$10,000 to a candidate get? In an ideal world, lobbyists perform legitimate services to clients—industries, professional organizations and others who want their points of view about legislation represented to lawmakers. The federal and state investigations and convictions of numerous West Virginia politicians, however, demonstrate that some lobbyists have unfortunately taken the art of persuasion to the extreme.

In the United States of America the public should not feel they have to contribute large sums of money in order to participate in the system of government. For instance, the *soft money* loophole created in 1978 established a situation of money flowing into campaigns at a level equivalent to alcohol flowing to pubs after

¹⁶⁸⁸Associated Press, *Bloomberg's Final Tab In N.Y. Race:\$76 Million*, Mar. 31, 2002, at A2 (Bloomberg spent \$2.5 million on his transition and inaugural ceremony.).

the repeal of prohibition in 1933. No individual, group, or candidate should ever be put into a position where there are asking for \$1 million or \$100,000 contributions for a job that may pay \$90,000. To continue, it is difficult to legitimize the actions of a candidate for the West Virginia State Senate spending more than \$400,000 or a candidate for the West Virginia House of Delegates spending more than \$100,000 in an election when both positions pay \$15,000 per year.¹⁶⁸⁹

Democracy, despite all of its flaws, has the ability of self-correction. Unfortunately though, young people are becoming more and more distant from the system as they realize that you cannot run and win without money. Whether it is money buying influence from an elected official, buying votes or buying elections, or whether elected officials are buying votes and elections, money is the common theme. The influx of massive amounts of money into campaigns only discourages voters, candidates, and clean elections. Even former Governor Moore was raking in illegal campaign donations because he knew he faced a Rockefeller who could spend—and then did spend on two occasions—\$12 million to win an election. Wealthier people should not have a louder voice simply because they have more money.

A key issue is not merely who is donating the money, but also how much the campaigns cost. Campaigning today is about raising money and buying advertisements and not about grass-roots efforts. We should not regulate speech lightly, however, special access for interest groups drowns out the voices of ordinary

¹⁶⁸⁹Associated Press, *Nearly \$6 million raised for races*, Charleston Daily Mail, Jan. 2, 2003, at A1.

citizens. Few average citizens are able to give an elected official large sums of money in order to ensure that they can exercise their free speech rights.

As such, there will not be true reform until candidates no longer have to raise such enormous sums of money. Just prior to each election, West Virginians are inundated with frivolous, biased, self-serving political advertisements on television. This assault of the airwaves only advances the cynicism, and consequently voter turnout falls. The cost of these commercials is excessively high which often makes candidates frantic to raise as much money as possible. Thus, candidates become obligated to special interests and big donor individuals who funnel cash to their campaigns while appearance of impropriety only further exacerbates the problem with people failing to vote.

There needs to be a limit in the power of money from lobbying groups, corporations, associations, and individuals because these entities have the wealth and power to control who comes into an office and who remains. Whomever sits on the throne makes the laws so these major players both navigate and drive us into the future. During the May 2002 Primary Election, eighty-seven candidates for the West Virginia Legislature had no opponents. Part of this resulted in the entrenched incumbents who raised the most campaign cash from big money lobbying groups seeking legislative favors.

Moreover, with such large campaign *War Chests* it renders incumbents all but invincible. It has often been posed that getting into the office is the hardest step as the odds are that you will be able to stay there once you win your initial election. In addition, victorious candidates are able to use the power of the incumbency to

ensure re-election. The practice of campaigning at the expense of taxpayers whether it be the countless thousands of dollars in trinkets or the millions of dollars in handouts from the Budget Digest must end.

West Virginians must not forget, however, that their voice does still have a vote and they truly do elect the officials who reign supreme. Until West Virginians realize that their one vote does count, their voice will be silenced, resulting in no change. In other words, there is one element that facilitates reform—the individual. Unfortunately, as has been explained, the average West Virginia voter does not feel their one vote can make a difference. To those voters, consider the following:

In 1645, one vote gave Oliver Cromwell control of England.

In 1649, one vote literally cost King Charles I of England his head. The vote to behead him was 67 against and 68 for -- the ax fell thanks to one vote.

In 1714, one vote placed King George I on the throne of England and restored the monarchy.

In 1776, one vote gave America the English language instead of German (at least according to folk lore.)

In 1800, the electoral college met in the respective states to cast their two votes for President. When the results of the electoral college votes were opened by both houses of Congress, there was a tie vote for President between Thomas Jefferson and Aaron Burr. That threw the election of President into the House of Representatives where Thomas Jefferson was elected our third president by a one vote margin.

In 1824, none of the four Presidential candidates received an electoral majority. The election was again thrown into the House of Representatives, where John Quincy Adams defeated front runner Andrew Jackson by one vote to become the nation's 6th president.

Andrew Jackson received the majority of the nation's popular vote.

In 1846, a one vote margin in the U.S. Senate approved President Polk's request for a Declaration of War against Mexico.

In 1867, The Alaska Purchase was ratified by just one vote paving the way for the eventual admission of America's largest state in 1958.

In 1868, one vote in the U.S. Senate saved President Andrew Johnson from impeachment.

In 1875, a one vote margin changed France from a monarchy to a republic.

In 1916, if presidential hopeful Charles E. Hughes had receive one additional vote in each of California's precincts, he would have defeated President Woodrow Wilson's re-election bid.

On November 8, 1923, members of the then recently -- formed revolutionary political party met to elect a leader in a Munich, Germany beer hall. By a majority of one vote they chose an ex-soldier named Adolph Hitler to become the Nazi Party leader.

In 1940, the vote taken by the French parliament to maintain its status as a republic failed by a margin of one vote.

In 1941, the Selective Service Act (the draft) was saved by a one vote margin -- just weeks before Pearl Harbor was attacked.

In 1948, if Thomas E. Dewey had gotten one vote more per precinct in Ohio and California, the presidential election would have been thrown into the U.S. House of Representatives where Dewey enjoyed more support than his rival -- incumbent Harry Truman. As it was, Dewey was expected to win the general election by a landslide so most Republicans stayed home. Only 51.5 percent of the electorate voted. Truman defeated Dewey.

In the 1960 presidential election, an additional one vote per precinct in Illinois, Missouri, New Jersey, and Texas may have altered the course of America's modern history by denying John F. Kennedy the presidency and placing Richard Nixon in the White House eight years earlier.

In 1962, the governors of Maine, Rhode Island, and North Dakota were all elected by a margin of one vote per precinct.

In 1994, the U.S. House of Representatives enacted a law banning specific classes of assault weapons. The vote was initially tied but one member changed his vote to approve the ban.

Imagine how different our nation and our world would be today if these and other individuals would have thought they did not matter in the scheme of things. Imagine all of those who have climbed from darkness to take on their oppressor, to fight for freedom, march for equality, or sit-in for justice. Of course, it is naive to assume that those who rise above corruption never commit any wrongdoings on their journey, that all of them have been law abiding once they emerged victorious.

To reform the system in West Virginia, other states, and even on a national level, individuals must lead a grass-roots effort, for to facilitate change from the national level down is to ask the people who are already part of the problem to fix the problem. Therefore, it not only matters which box you mark for President of this country, but also who you support for sheriff, mayor, delegate, state senate and governor. Furthermore, it is not about simply supporting and fighting for an individual, but also for an idea or principle. In Maine, for example, legislation for *Clean Money* reform passed through a referendum by the people. Conversely, in the case of West Virginia, the State constitution does not even allow for such a

referendum by the people illustrating how elected delegates and representatives still control the voice of the citizens of the State.

West Virginians cannot continue to accept the status quo from their elected officials and must make them accountable for their actions during each election cycle. Current Kanawha County Circuit Judge and former Kanawha County Prosecuting Attorney, Charlie King is critical of elected officials using their office for personal gain to the detriment of West Virginia citizens. In reference to the large amounts of money spent by former Treasurer A. James Manchin on flags and other trinkets, King proclaimed: "You will find a lot of outrages in state government that the criminal code does not cover. The Legislature has failed to fill in the gaps. The only remedy the public has is when they go to the polls."¹⁶⁹⁰

When questioned why he did not stop some of these payments for incumbent political expenditures, then-Commissioner of Finance and Administration and former West Virginia Supreme Court Justice, John McCuskey said, "He is elected by the people and you get what you vote for."¹⁶⁹¹ More accurately, McCuskey should have said you get what you "pay for." Obviously, in West Virginia the For Sale sign is still posted, just the price has gone up. Votes continue to be for sale to the highest bidder, but now, instead of a pint of whisky, it takes millions of dollars of petty and superficial television advertising to buy someone's vote. The system, because of the very nature of human beings, will be fallible, Nonetheless, it is time that West

¹⁶⁹⁰Paul Nyden, *Debate over Manchin's award, trinket expenditures continues*, Sunday Gazette-Mail, Aug. 7, 1988, at A7.

¹⁶⁹¹*Id.*

Virginians demand that the government be returned to the people. Government should be available to all citizens and not simply to those who can pay for it.

Children who grow up in West Virginia learn in school that one vote equals one voice. Later in life, however, they learn the harsh reality—the reality that big money speaks louder. Moreover, that same child who is told that he or she can be anything, that their future and their happiness is theirs to pursue, also learns that unless they come from a family of wealth, win the lottery or “sell out” to the highest bidder, their dream to make a change in government and their State is limited or may be even quieted forever by the stronger voices of lobbying groups, corporations, and wealthy individuals.

We are also teaching the future voters of West Virginia that there is no accountability for their actions. When they read or hear about elected officials who continually commit crimes and walk away with a slap on the wrist, when they hear a crowd cheer for a former Governor who has been convicted for numerous felonies, when they read that local officials whom they are told to respect have been convicted for DUIs, bribery, fraud, extortion, and even obstruction of justice, how can we expect them to believe they will be held responsible for their own wrongdoings?

To educate our children, to empower them with the dream and desire that they can one day make a difference and then to force them to inherit such a outrageous history of corruption, may be the greatest injustice. But therein lies the possible beginnings to a true reform at the most basic level—to educate, to hold those we elect to the highest of standards, to hold individuals accountable for their

actions, to enforce the laws, and to implant and nurture the desire to influence and improve our government, affects the very nature of the State and its citizens future within it.

Ridding West Virginia of a culture of political corruption rests in the hands of the voters. As it is clear that no magical law will change a history of corruption, the people must act. The first step to reforming this system is the realization that it will not occur overnight, for it is a system that has been corrupt since its inception. West Virginians must see themselves enslaved past with open eyes. Understand that West Virginians can only be victimized and forced quiet by their elected officials if that is what they allow. Reform will not be without effort, it will not be without controversy, but most importantly, it must not be without success. Nonetheless, it is time for West Virginian's to finally bring truth to their official State Motto and prove that indeed Mountaineers are Always Free.