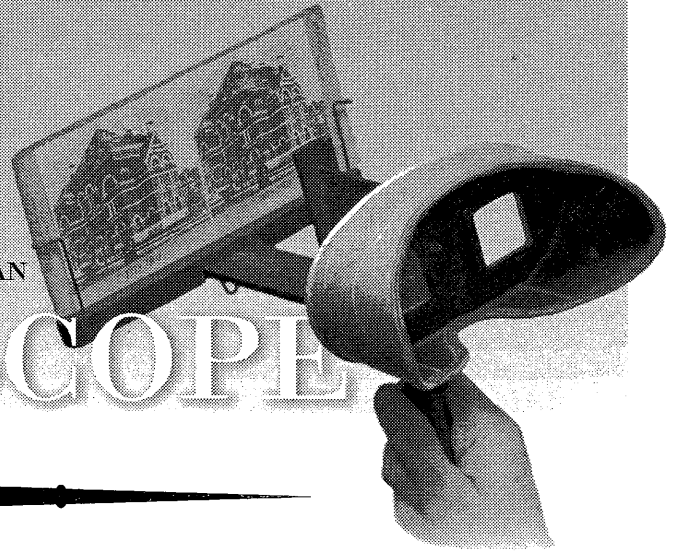


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WESTERN DISTRICT OF MICHIGAN

STEREOSCOPE



On the Road to Watergate: The Criminal Prosecution of Senator Truman H. Newberry

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On November 5, 1918, as the last rays of sun were setting upon the “Progressive Era” of American politics, Truman H. Newberry defeated Henry Ford, the automobile magnate, in an election for one of Michigan’s two seats in the United States Senate by a slim majority of the popular vote. Newberry had also defeated Ford in August of that year in the Republican primary, thereby resulting in Ford running as a Democrat.¹ Shortly after the election, Ford and his friend and fellow industrialist, Harvey Firestone, engaged more than 40 private investigators to canvass the state to obtain evidence that Newberry and his campaign organization had exceeded campaign spending limits fixed by federal law. As a result of this investigation, the United States Department of Justice empanelled a federal grand jury in Grand Rapids, Michigan. In October, 1919, this grand jury indicted Newberry and 134 other persons of violating the Federal Corrupt Practices Act. After trial, Federal District Judge Clarence B. Sessions found Newberry guilty, sentencing him to two years in prison and imposing a \$10,000 fine. Newberry appealed and, on May 2, 1921, the United States Supreme Court reversed his conviction on the ground that Congress lacked the constitutional power to regulate campaign spending in primary

“History is more or less bunk.”

Henry Ford (1916)

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elections. Although Newberry was finally awarded his Senate seat the next year, he resigned this seat eleven months later under intense political pressure.

This criminal prosecution generated tremendous attention throughout the nation because it arose from an election to the United States Senate and because of the widespread fame of Henry Ford. The trial and subsequent appeal also attracted attention because of the challenge that it posed to federal campaign finance reform. Finally, as will be seen below, the outcome of the election may have helped doom the ratification by the U.S. Senate of the League of Nations covenant in the Versailles Treaty.

The Progressive Era and the Enactment of the Federal Corrupt Practices Act

The Progressive Era in American history generally refers to the period between 1901, when Theodore Roosevelt succeeded to the presidency after William McKinley's assassination, and 1917, when America entered World War I against the Central Powers under Woodrow Wilson. The progressive movement was a widespread reaction against the political corruption, unrestrained capitalism and social injustice present in post-Reconstruction America. One historian described this movement as follows:

"In its essence, the progressive movement was a great social reaction against the preceding age. Compounded of moral political, economic and intellectual revolt, it was not restricted to one party but ran through the entire gamut of political organizations. Nor was it a product of a single economic class. Farmers and laborers were at its core, but they were soon joined by multitudes from the white collar and small business classes and even by some of the very rich Politically, the movement had a Middle Western tinge at the start. But by 1910, with the election of Woodrow Wilson [as governor of] New Jersey and Hiram Johnson in California, it was nationwide. Finally, the progressive movement was a way of thought that separated an old and new America. The perspicacious Henry Adams sensed this when he spoke of his generation of Americans becoming 'instantly old.'"



Theodore Roosevelt, 1916

First and foremost, the Progressive Era was a period of intellectual and social ferment. The muckrakers, writers who exposed the evils of modern industrial society, published many works during this period. Included in this group were Upton Sinclair (*The Jungle*),

Frank Morris (*The Octopus*), Theodore Dreiser (*Sister Carrie*) and Jack London (*People of the Abyss*). The black activist, W.E.B.

DuBois, published his monumental work, *The Souls of Black Folk*, in 1905, which ultimately resulted in the establishment of the National Association for the Advancement of Colored People five years later. Union organizing and labor strikes also proliferated during this period. The International Workers

of the World, better known as the IWW or the "Wobblies", was founded in Chicago in 1905, organized on the dual concepts of "one big union" and direct action. Labor leaders such as Big Bill Haywood, Mother Jones and Eugene V. Debs agitated for workers' rights while spectacular strikes were staged by textile workers in Lawrence, Massachusetts (1912) and miners in Ludlow, Colorado (1913-1914). Labor unrest also found an outlet in political activism. In 1910, the first Socialist Party candidate was elected to Congress and, as of one year later, seventy-three American cities had elected socialist mayors. Eugene V. Debs, the Socialist Party candidate for President in 1912, captured 6% of the popular vote, which was the largest share of the vote captured by a Socialist presidential candidate before or since.

The Progressive Era was also punctuated by the passage of federal and state legislation aimed at correcting economic, social and

political wrongs. During Teddy Roosevelt's presidency, Congress enacted the Meat Inspection Act, the Pure Food and Drug Act and the Hepburn Act, the last of which authorized the Interstate Commerce Commission to regulate railroad and pipeline rates. The Justice Department under Roosevelt and William Howard Taft prosecuted trusts and other monopolistic business combinations

"Henry Ford first became involved in national politics in 1915, when he organized the Ford Peace Commission dedicated to calling a halt to World War I through mediation."

under the Sherman Anti-Trust Act. Wilson's administration could boast of the Clayton Antitrust Act, the Federal Reserve Act and legislation establishing the Federal Trade Commission among its progressive achievements. Also during this period, the Sixteenth Amendment, authorizing a graduated federal income tax, and the Seventeenth Amendment, permitting the direct election of United States Senators, became a part of the federal constitution. State legislatures were just as active as the federal government, passing statutes regulating the wages and hours of workers, requiring safety inspections of factories and providing for compensation of workers injured or killed in industrial accidents.

Among the progressive legislation enacted by Congress during the Progressive Era was the Corrupt Practices Act, enacted in 1910 and later amended. This act, which was the genesis of modern federal campaign finance reform, stated

that a person seeking nomination as a candidate for the United States Senate could not:

"... give, contribute, expend, use, or promise, *or cause to be given*, contributed, expended, used, or promised, in procuring his nomination and election any sum, in the aggregate, in excess of the amount which he may lawfully give, contribute, expend, or promise *under the laws of the state in which he resides*: Provided, that . . . no candidate for Senator of the United States shall give, contribute, expend, use, or promise any sum, in the aggregate, exceeding ten thousand dollars in any campaign for his nomination and election."

(Emphasis supplied.) Any violation of this statute was punishable by a maximum fine of \$10,000 and imprisonment for two years. Michigan law at the time authorized candidates for the Senate to spend not more than \$3,750 on their campaign.

The 1918 Election

The Landscape

Michigan. In 1918, Michigan was experiencing great population growth primarily attributable to the expansion of the automotive industry centered in Detroit. In that year, Detroit was the fourth most populous city in the nation containing factories producing Ford, General Motors, Packard and other brands of motor vehicles. In addition, military production for the final year of World War I was at its height. Ford



Judge Clarence Sessions

Motor Company was producing Eagle-class submarine chasers at its newly opened River Rouge complex and, in Grand Rapids, a consortium of furniture manufacturers organized the Grand Rapids Airplane Company to manufacture airplane parts for the U.S. Army.

Michigan had adopted in 1908 a modern state constitution replacing its pioneer constitution of 1850. The political climate in Michigan in 1918 was generally Republican and conservative, although Woodbridge N. Ferris, a Democrat and the founder of the Ferris Institute in Big Rapids, was governor that year, having been first elected in 1912. Nonetheless, Michigan could boast of a succession of progressive Republican governors in its recent history including Hazen Pingree, Aaron T. Bliss and Chase Osborn.² In 1912, during Osborn's administration, the Michigan legislature had enacted a workers compensation act that served as a model for other states. Also under Osborn's leadership, laws were enacted increasing regulatory powers over railroads, express companies, telephone companies, banks and insurance companies.

was the Republican Carl E. Mapes, who would hold this seat until his death in 1939. Occupying the federal bench in the United States District Court for the Western District of Michigan was United States District Judge Clarence W. Sessions.

Judge Sessions was born on February 8, 1859 in the town of North Plains in Ionia County, Michigan. His father, William Sessions, was a farmer and had been elected to the Michigan state legislature. Judge Sessions graduated from the Arts Department of The University of Michigan in 1881 and thereafter studied law at its law school. In 1884, Sessions was admitted to practice in Michigan and thereafter "became a member of the most prominent law firm in Muskegon and one of the largest in Western Michigan, his associates being Smith, Nims, Hoyt and Erwin."³ After serving six terms as Muskegon City Attorney, Sessions was elected as Circuit Judge for the Fourteenth Judicial Circuit of Michigan in 1906. Five years later, he was appointed as United States District Judge for the Western District of Michigan by President Taft to fill the vacancy left after Judge Arthur C. Denison was elevated by that same President to the Sixth Circuit Court of Appeals.

The Candidates

Henry Ford. Ford was born on a farm in Dearborn, Michigan, on July 30, 1863. Raised as a farmer, he exhibited great interest and skill in repairing farm implements and other machines at an early age. Eventually, Ford left the farm and founded the Ford Motor Company,



Culver Pictures *Woodrow Wilson*

Grand Rapids. Grand Rapids in 1918 was in its second year of operating under a new commission-manager city charter that created six seats for city commissioners elected by ward voting, a mayor elected at large, and an appointed city manager. Christian Gallmeyer occupied the mayor's seat. The city managers in 1918 were Gaylord C. Cummin and, upon his resignation, Fred H. Locke. The U.S. Congressman representing the City



Charles Evans Hughes

which in 1908 introduced the Model T automobile. This vehicle was cheap, resilient, lightweight and easy to repair. Its mass production and distribution eventually would change the face of America.

Henry Ford first became involved in national politics in 1915, when he organized the Ford Peace Commission dedicated to calling a halt to World War I through mediation. That year, Ford organized a mission to sail to Europe on what became known as the "Peace Ship", and pledged to "get the boys in the trenches home by Christmas." Ford invited President Wilson and Secretary of the Treasury, William McAdoo, to join him on this voyage, both of whom politely declined the invitation. The Peace Ship embarked from Hoboken, New Jersey on November 23, 1915, bound for Oslo, Norway, with Ford on board. Arriving in Oslo on December 18, 1915, Ford became seriously ill and, five days later, sailed back to New York. Although the Peace Commission remained in Europe until January, 1917, it had no impact upon shortening the war.

In 1916, Henry Ford's name was entered in the Michigan Republican presidential primary, where he defeated the GOP's favorite son, U.S. Senator William Alden Smith⁴, by more than 5,000 votes. In Nebraska's Republican primary that same year, he was narrowly defeated by Senator Albert Cummins. In the Ohio presidential primary, Ford generated 5,000 write-in votes. Ford, however, later declared he was not a candidate and endorsed Woodrow Wilson for reelection against the Republican nominee, Charles Evans Hughes. Ford's

contribution of \$58,800 to Wilson late in the campaign for advertising in critical states, including California, has been acknowledged as crucial to Wilson's narrow victory over Hughes. Remembering this assistance, on July 13, 1918 Wilson asked Ford to enter the primary for Michigan's open seat in the United States Senate caused by the retirement of William Alden Smith. Ford agreed to enter both the Republican and Democratic primaries which were scheduled for August 27, 1918.

Truman H. Newberry. Ford's opponent in the 1918 Republican primary and, as it turned out, in the 1918 general election, was Truman H. Newberry. Newberry was born on November 5, 1864, in Detroit. He has been described as "an estimable, canny, parochial-minded businessman, the son of a successful attorney, a Yale graduate, [and] a protégé of Russell A. Alger"⁵, the former Secretary of War under President McKinley and U.S. Senator from Michigan.⁶ Newberry served as an officer in the U.S. Navy on active duty during the Spanish-American War and as Secretary of the Navy in Teddy Roosevelt's

administration. Newberry was an industrialist in his own right. He and his brother-in-law, Henry B. Joy, were directors of the Packard Motor Car Company and were instrumental in moving its factory from Warren, Ohio to Detroit. Newberry, along with Chase Osborn and Frank Knox, helped direct Teddy Roosevelt's Michigan campaign for President in 1912 under the Progressive Party's banner. In 1917, two months after the United States declared war against Germany, Newberry was awarded the rank of Lieutenant Commander in the U.S. Navy. At that time, this was the highest rank ever conferred by the Navy upon a civilian. Shortly thereafter, Newberry was appointed as aide to Rear Admiral N. R. Usher and stationed in New York City.

In December, 1917, while still serving at his post, Newberry became interested in running for the Republican nomination for the open Senate seat in Michigan. That month, he called together a group of advisors for a meeting to explore this possibility. These advisors told

him that, as a candidate, he would be laboring under two significant disadvantages. First, Newberry was relatively unknown in the state; he had previously held no elected political office. Second, because of his wartime duties in the U.S. Navy, he

Vote for
HENRY FORD
For Senator



The Workingman's Friend

From the Collections of The Henry Ford (P.D. 1234)

would be unable to leave his post to campaign in Michigan. To overcome these obstacles to election, Newberry was advised that he would require a campaign war chest of at least \$50,000 to be spent on campaign organization, political advertising and other campaign activities. However, any such expenditure would greatly exceed the campaign spending limit of \$3,750 established by the Federal Corrupt Practices Act and the relevant Michigan statute. After weighing the pros and cons, Newberry decided to proceed with the campaign and to raise the necessary funds to run in the primary.

The Primary Election

Henry Ford's campaign in the primaries was virtually nonexistent. He spent no money and made no public appearances. Newberry, on the other hand, waged an active and expensive campaign in the GOP primary, which was severely criticized at the time. One week before the election, Lieutenant Governor Luren Dickinson published an open letter to Newberry charging him with the "flagrant disregard of Michigan's primary laws" and urging him to quit the race.⁷ Similar charges were made by other public figures during the campaign. Firing back, Newberry was severe in his criticism of Ford. Newberry's campaign chastised Ford because his son, Edsel, had obtained a deferment from the draft. Newberry taunted Ford by charging that he was more successful in keeping Edsel out of the war than he was in bringing the boys home for Christmas on his Peace Ship. The newspapers were lukewarm at best over Ford's candidacy. In an editorial

published after Ford announced his candidacy, the *New York Times* wrote that Ford lacked the type of mind needed to solve national and international problems. The *Grand Rapids Herald* also opposed Ford's election, noting that the U.S. Senate "made laws and not Lizzies."

Ford and Newberry were opposed in the Republican primary by Chase Osborn and William G. Simpson. Ford's only opponent in the Democratic primary was James W. Helme, the state's Dairy and Food Commissioner. Newberry, in his subsequent criminal trial, admitted that members of his campaign staff, allegedly representing a group of Democrats from Grand Rapids, urged Helme to run against Ford so that Democrats would not cross party lines and vote for Ford in the GOP primary. In the end, Newberry defeated Ford by 114,963 votes to 71,800. Osborn garnered only 47,019 votes, coming in third. Ford, however, waltzed to victory in the Democratic primary, defeating Helme by 30,791 votes to 8,414.⁸

The General Election

Ford conducted an active campaign against Newberry in the general election but to no avail. Ford supported the ballot initiative granting to women the franchise. He also proclaimed that, if elected, he would "begin an agitation to abolish the patent laws" because they failed to stimulate inventions, exploited consumers and burdened

"Had Ford won, there would have been a 48-48 split in the upper chamber, with any tie being broken by the vote of Democratic Vice President, Thomas Marshall."

productive industries.⁹ As in the primary, Newberry waged an expensive and forceful campaign with heavy newspaper advertising. One ad featured reprints of letters from Theodore Roosevelt and William Howard Taft supporting Newberry and castigating Ford. These efforts were crowned by a front page advertisement in the *Detroit Free Press* one day before the election accusing Ford of being a "Hunlover", guilty of harboring German aliens and sympathizers in his Highland Park plant.

The voter tally when the polls closed on November 5, 1918 resulted in a narrow victory for Newberry — 220,054 votes as against 212,487 for Ford. Ford took



Truman H. Newberry

Wayne County by nearly a 2-1 margin, prevailed in Kalamazoo and Muskegon Counties, and demonstrated surprising strength in the Upper Peninsula. However, this was not enough to offset Newberry votes throughout the rest of the state.¹⁰ Newberry's election was certified to the United States Senate on December 4, 1918, and he was sworn as the Junior Senator from Michigan on May 19, 1919. Newberry's election resulted in Republican control of the Senate by a 49-47 majority. Had Ford won, there would have been a 48-48 split in the upper chamber, with any tie being broken by the vote of Democratic Vice President, Thomas Marshall. GOP control of the Senate meant that Republicans controlled Senate Committee leadership positions. One of these leaders was Senator Henry Cabot Lodge of Massachusetts, who was named Chairman of the Senate Foreign Relations Committee.

The Investigation

As noted above, only a few days after the election Ford and Harvey Firestone launched a private investigation of Newberry's campaign. In addition, Ford submitted an affidavit to the Senate's Committee on Privileges and Elections requesting a recount of the ballots. This request was granted but the recount confirmed Newberry's victory albeit by a smaller margin. The U.S. Department of Justice, after reviewing evidence collected by Ford and Firestone

and examining the report filed by Newberry's campaign committee attesting that \$176,568.08 had been spent in the primary, empanelled a federal grand jury to investigate this organization. The grand jury was established in October, 1919 in Grand Rapids. Two months later, the U.S. Senate voted to conduct its own investigation of Newberry.

Newberry's Indictment and Trial

The grand jury issued a six-count indictment of Newberry and 134 co-defendants on November 29, 1919. Chief among the charges was the claim that the defendants, in spending campaign funds in excess of the \$3,750 limit, had conspired to violate the Federal Corrupt Practices Act. Included among the defendants were George W. Welsh, the future mayor and city manager of Grand Rapids, Frank D. McKay, soon to become the GOP state political boss¹¹, and James W. Helme, Ford's opponent in the Democratic primary. On December 29, 1919, Newberry's defense team filed a demurrer¹² to

the indictment on the ground that the Federal Corrupt Practices Act was unconstitutional insofar as it attempted to control spending in a primary campaign.

The Lawyers

The lead lawyer on the government's team was a former U.S. Attorney for the Southern District of Indiana, Frank C. Dailey. As United States Attorney, Dailey had prosecuted and convicted the mayor of Terre Haute and more than 100 other defendants on election fraud charges. Dailey also prosecuted election fraud cases against the Superintendent of Police for Indianapolis and 80 other local officials which resulted in convictions. Assisting Dailey was an Assistant United States Attorney from Indianapolis, W. H. Eichorn. A future Kent County Circuit Court Judge, H. Dale Souther, was also on the prosecution team.

Newberry and the other defendants retained three attorneys as their primary trial counsel. In the lead was James O. Murfin of Detroit. Murfin earned his law degree from the University of Michigan in 1896 and began practicing law in Detroit that year. From 1901 to 1903, Murfin had served in the Michigan State Senate as a Republican. From 1908 to 1912, Murfin had sat as a Circuit Court Judge in Wayne County. At the time of the Newberry trial, he was a Regent of the University of Michigan.

The second member of this team was Martin L. Littleton of New York City.



United States Courthouse, Grand Rapids circa 1918

Littleton was the F. Lee Bailey of his time. He had represented D. W. Griffith in negotiating with local governments and the NAACP over screenings of the pro-Ku Klux Klan film, *Birth of a Nation*. Later in his career, Littleton represented Harry F. Sinclair in a criminal prosecution arising from the Teapot Dome Scandal. Prior to the Newberry trial, Littleton had served as Brooklyn Borough President and District Attorney for Kings County, New York. Littleton had also been elected as a Democrat to the U.S. House of Representatives in 1910, serving only one term.

The third and final member was George E. Nichols of Ionia, Michigan. Nichols was born on August 8, 1861 in Eaton County, Michigan and was admitted to the Michigan Bar in April, 1883. Nichols had served as a Michigan State Senator and, later in life, acted as Governor Fred W. Green's personal attorney. He also was later elected as President of the Michigan State Bar. In 1927, he was appointed a Special Assistant State Attorney General to prosecute the founder of Benton Harbor's House of David, "King" Ben Purnell, for gambling and prostitution, which resulted in Purnell's conviction.

The Trial

On January 12, 1920, Judge Clarence Sessions issued his order overruling the defendants' demurrer. This order contains



Martin Littleton

powerful language reminiscent of the Progressive Movement's attack on the "malefactors of great wealth":

"It goes without saying that authority, so great and so far reaching, must necessarily include the right

of self-protection, self-preservation and continued existence. What may be done in one state, may be done in another, or in all the others. If, as urged by counsel for respondents, Congress is impotent to enact laws to prevent a candidate for the office of United States Senator from procuring

his nomination and election by the lavish expenditure of huge sums of money, and by the corruption of the electorate through bribery, then money rather than fitness and ability becomes the controlling political force and not only the dignity and honor but

also the very life of the Nation is threatened and endangered.

Because of its hidden and insidious character and the difficulties of discovery, conviction and punishment, the corrupting influence of money, when directed

toward and into congressional elections, is infinitely more to be feared and more deadly to American ideals, American institutions and the American government than the terrors of the Ku Klux, the coarse

practices of the ward heeler, or the dishonesty of the custodian of the ballot box. The power of Congress to lay hold of and to eradicate both the lesser and the greater of these evils was adjudicated and settled many years ago, and at this late day, cannot be successfully denied."

"After his retirement, the *Grand Rapids Herald* highly praised Judge Sessions' conduct of the Newberry trial. It was generally recognized that the Newberry trial was the apex of a distinguished career on the federal bench."

U.S. Supreme Court Record of Newberry Trial at pages 13-14 (hereinafter, the "Record").

The jury trial began in Grand Rapids on January 26, 1920, on the second floor in what is now The Grand Rapids Art Museum.¹³ Included among the witnesses testifying for the prosecution and the defense were former Michigan governor Chase Osborn, and the former mayor of Detroit, Oscar B. Marx. Newberry did not testify in his own defense. A substantial portion of the testimony detailed the raising and disbursing of campaign funds. Two witnesses from Grand Rapids testified that George Welsh had paid them cash for campaign work. John Smolenski, a Grand Rapids lawyer, recounted cash payments made to him for campaigning among Polish-

Americans.

Probably the most dramatic testimony concerned blackmail. William H. McKeighan,¹⁴ the owner of a Flint drugstore and also a former mayor and alderman of that city, was called to testify about a visit made by Fred Henry, Newberry's campaign coordinator in Genesee County, and three other Newberry supporters, prior to the primary election. McKeighan had previously been convicted of assault and robbery and had been sentenced to prison, although his case was on appeal to the Michigan Supreme Court. These visitors told McKeighan that, unless he switched his allegiance from Chase Osborn to Newberry, his conviction would be upheld by the Michigan Supreme Court:

"Dick Fletcher spoke up then and said, 'I told you before we came up here there was no use talking money to him. I know how to straighten him out. McKeighan has been with me before. He knows how I stand in Lansing, and regardless of whether Newberry carries the State of Michigan and goes as a United States Senator, or whether he does not, we will still retain power in the State of Michigan; and he knows well enough that his case is up in the Supreme Court there, and I am in shape so I can see whether it is affirmed or reversed, and if he wants to get out and work for Newberry, we will see that he does not go to jail, his case will be reversed.'"

Record, p. 313. McKeighan then testified that, after this remark by Fletcher, he "figured that it was

safer to play on the safe side of it, so we kind of decided we would be for Newberry. The district was carried for Newberry. My case was reversed." *Id.*

The jury retired to consider its verdict at 5:45 p.m. on March 18, 1920. Two days later, the jury returned a verdict of guilty against Newberry and 16 other defendants on the first count of the indictment, *viz.*, conspiracy to violate the Federal Corrupt Practices Act. The jury found 70 of the defendants not guilty. Ten of the defendants had previously pleaded *nolo contendere* and were discharged. Charges against the remaining defendants were dismissed on the government's motion, or by the Court acting *sua sponte*.

Judge Sessions imposed the sentences upon the 17 convicted defendants that same day. Newberry received the maximum: two years imprisonment at Leavenworth federal prison and a \$10,000 fine on King. John S. Newberry, the Senator's brother who had contributed over \$90,000 to the campaign, received a fine of \$10,000. Three of the nocturnal visitors to McKeighan's drugstore, Fred Henry, Paul King and Richard Fletcher, received stiff sentences. Judge Sessions imposed a \$10,000 fine and ordered King to be imprisoned for two years. Henry and Fletcher each received prison sentences of one

year and three months.

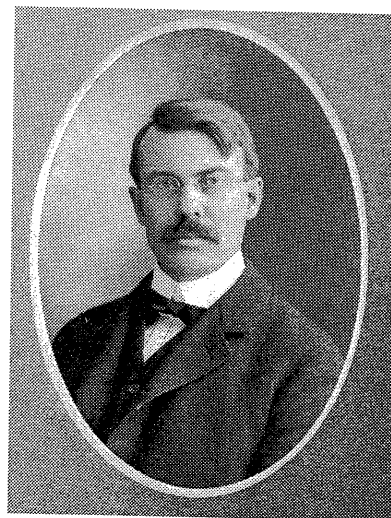
After his retirement, the *Grand Rapids Herald* highly praised Judge Sessions' conduct of the Newberry trial. It was generally recognized that the Newberry trial was the apex of a distinguished career on the federal bench:

"During the trial the nation's interests centered on the Grand Rapids courtroom. Probably there has never been a trial in America involving so many men of prominence not only in politics but in business, industry, journalism and other professions on indictments concerning an election contest. Congressmen debated at length the issues involved; cracker box orators had their way about it in the length and breadth of the country; Michigan voters watched it with unwavering attention. Through the crowded scene moved imperturbably the figure of a judge who knew no distinctions of wealth or place where law and equity were concerned."¹⁵

The Supreme Court Appeal and the Congressional Investigation

Judge Sessions is Overruled

After the verdict was rendered and sentences imposed, Newberry and the other convicted defendants appealed directly to the United States Supreme Court.



George Nichols

The primary issue on appeal involved the constitutionality of the Federal Corrupt Practices Act: whether Congress was empowered to restrict spending in primary elections for federal offices under Section 4, Article 1 of the Constitution, which permits Congress to regulate the "times, places and manner" of holding elections for federal offices. Representing the government on this appeal were the Solicitor General, William R. Frierson, and Frank C. Dailey. Newberry and the other appellants were represented by James Murfin, Martin Littleton, George Nichols and an entirely new face, Charles Evans Hughes. Arguments of counsel were made to the Court on January 7 and 10, 1921 and, on May 2, 1921, the Supreme Court reversed the trial court's judgment and remanded the case to the federal district court.

The Court's opinion, authored by Justice McReynolds, phrased the ultimate question to be decided as follows:

"whether under the grant of power to regulate 'the manner of holding elections' Congress may fix the maximum sum which a candidate therein may spend, or advise or cause to be contributed and spent by others to procure his nomination."

Newberry v. United States, 256 U.S. 232, 247, 41 S.Ct. 469, 65 L.Ed. 913 (1921). The majority of the justices answered this question in the negative, holding that Judge Sessions committed error when he overruled the defendants' demurrer. The Court concluded its opinion as follows:

"We cannot conclude that authority to control party primaries or conventions for designating candidates was bestowed on Congress by the grant of power to regulate the manner of holding elections. The fair intendment of the words does not extend so far; the framers of the Constitution did not ascribe to them any such meaning. Nor is this control necessary in order to effectuate the

power expressly granted. On the other hand, its exercise would interfere with purely domestic affairs of the state and infringe upon liberties reserved to the people.

It should not be forgotten that, exercising inherent police power, the state may suppress whatever evils may be incident to primary or convention. As 'each house shall be the judge of the elections, qualifications and returns of its own members,' and as Congress may by law regulate the times, places and manner of holding elections, the national government is not without power to protect itself against corruption, fraud or other malign influences."

256 U.S. 232, 258.

The Congressional Investigation

On September 29, 1921, two reports from the Committee on Privileges and Elections were presented in the Senate, capping the investigation of Newberry that the Senate had begun in December, 1919. The eleven-page majority report concluded that the bitter and vehement charges against Newberry were "wholly unsustainable" and that Newberry should be declared a duly elected Senator. Indeed, the majority report commended

"On September 29, 1921, two reports from the Committee on Privileges and Elections were presented in the Senate, capping the investigation of Newberry that the Senate had begun in December, 1919."

Newberry for his service to his country at the time of the 1918 elections:

"The record of Truman H. Newberry during the primary campaign and during the campaign of the general election is one that merits commendation and approval. He was, himself, during the whole period, devoting his time and energy to the service of his country. His campaign for United States Senator from Michigan was in the hands of his friends and supporters, who financed and conducted it according to their own plans, out of their own money. His only connection with the campaign was such information as to its progress as was constantly transmitted to him by those having the

matter in charge and such infrequent conferences were possible with him while he was in the performance of his duty as commander in the United States Navy.”

The minority report, however, ran for 75 pages and was primarily composed of excerpts from testimony at Senate hearings: This report, after reviewing the evidence, concluded that Newberry violated the Federal Corrupt Practices Act and that his Senate seat should be declared vacant.

After the submission of these reports, the full Senate then proceeded to debate Senate Resolution 172 that read as follows:

“Resolved, (1) That the contest of Henry Ford against Truman H. Newberry be, and it is hereby, dismissed.

(2) That Truman Newberry is hereby declared to be a duly elected Senator from the State of Michigan for the term of six years commencing on the 4th day of March, 1919.

(3) That his qualification for a seat in the Senate of the United States, to which he has been elected, has been conclusively established, and the charges made against him in this proceeding, both as to his election and qualification, are not sustained.”

In the course of the debates, this resolution was amended by revising paragraph 3, which charged that Newberry through his actions, had harmed the “honor and dignity of the Senate.” The resolution, as

amended, was passed on January 12, 1922. This vote, however, did not terminate the debate over Newberry’s seating. In the 1922 elections, the Democrats slashed the Republican majority in the Senate from 24 to 13. Immediately after the election, Senator Robert LaFollette announced that he would move to unseat Newberry in the next session. The Senator-elect from Michigan, Woodbridge Ferris, proclaimed that his first act in the Senate would be to do the same.

Faced with this opposition, Newberry resigned from the Senate in a letter to Governor Alex J. Groesbeck dated November 8, 1922. A copy of this letter was sent to Vice President Calvin Coolidge as President of the Senate with a request that it be read into the records of the Senate as soon as possible. This was done on November 21, 1922, whereupon Truman H. Newberry ceased to be a United States Senator. Ironically, Governor Groesbeck appointed Henry Ford’s former business manager, James Couzens, to serve out Newberry’s unexpired term.

Denouement

After his resignation, Truman Newberry returned to Detroit and devoted his time to his business interests there. He continued to serve as a member of the board of directors of the Packard Motor Car Company and as chairman of the board of directors of Detroit Steel Casting Company. Truman Newberry passed away on October 3, 1945 at the age of 80. Henry Ford followed him in death two years later.

Conclusion

So ends the fascinating story of how two Detroit industrialists squared off and sparred in the 1918 elections. Although Newberry was the victor at the ballot box he received his comeuppance by being prosecuted and ultimately hounded from office. These events, however, had little impact on federal campaign finance reform at the time. Although the Federal Corrupt Practices Act was amended in 1925, there were so many loopholes in the Act as to render it toothless. The reform movement lay dormant for almost 50 years until the Watergate scandal prodded Congress to pass tougher legislation. This saga also ends with a big “what if?”. If Ford had won the election, the Democrats would have controlled the Senate and Henry Cabot Lodge would not have been appointed chairman of the Senate Foreign Relations Committee. With a Democrat at the helm of this Committee, would the Senate have ratified Woodrow Wilson’s Covenant for the League of Nations?

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Endnotes

- 1 Henry Ford, at the urging of then-President Woodrow Wilson, had determined to run as an independent for the Senate seat vacated by the retirement of William Alden Smith of Grand Rapids. Under Michigan law at the time, Ford was required to enter both the Republican and Democratic primaries to claim independent status.
- 2 Chase S. Osborn was a fascinating and romantic character in Michigan politics. He was born in Huntington County, Indiana on January 22, 1860. Osborn attended only one year of college at Purdue University, quitting to serve an apprenticeship learning typesetting in a print shop. In the 1880s, he purchased and operated three newspapers including the Sault Ste. Marie News. In 1901, he sold the News and, with the sale proceeds, purchased the Saginaw Courier-Herald. Osborn was appointed Michigan's fish and game warden in 1894 by the then Republican governor, where he promoted conservation of the state's natural resources. From 1899 to 1901 Osborn served as Michigan's railroad commissioner and, in 1908, he was appointed a Regent of the University of Michigan. In 1910, Chase Osborn was the Republican candidate for governor and was elected. He then announced that he would not run for a second term and would devote all of his time to his public duties. During Osborn's term, the Michigan legislature passed a workers compensation law along with other progressive legislation. Osborn also sponsored a law establishing a state presidential primary requiring convention delegates to vote for the nominee selected by popular vote. Although this bill passed, he could not garner the necessary two-thirds majority necessary to have the law become effective in time for the upcoming party conventions.

In the 1912 election, Osborn supported Teddy Roosevelt for President and was instrumental in his Michigan campaign. Osborn unsuccessfully attempted to gain the GOP nomination for the United States Senate in 1936; that year he was also a delegate to the Republican national convention which nominated Frank Knox as Alf Landon's running mate.

In addition to his political activities, Osborn was a prolific writer. Among his published works are *A Short History of Michigan* (1924), *The Conquest of a Continent* (1939) and *Hiawatha with its Original Indian Legends* (1944). Osborn also contributed articles as a foreign correspondent for *Collier's Weekly*, the *London Times* and the *New York Times* during the Boer War and Russo-Japanese War. Osborn passed away on April 11, 1949 at his winter home in Poulan, Georgia.
- 3 Charles Moore, *History of Michigan*, Volume II, p. 657, The Lewis Publishing Company, Chicago (1915).
- 4 William Alden Smith was born in Dowagiac, Michigan on May 12, 1859. In 1872, he moved with his parents to Grand Rapids, studied law and began practicing his profession in that city in 1883. Smith was appointed as state fish and game warden in 1887 and, in 1894, was elected as a Republican to the U.S. House of Representatives in the district encompassing Grand Rapids. Smith served as a Congressman until February 9, 1907, when he was elected by the Michigan legislature to the United States Senate. One year before, Smith became the owner and publisher of the *Grand Rapids Herald*. Reelected to the Senate in 1913, he served out his term and declined to stand for reelection. Smith died on October 11, 1932 in Grand Rapids.
- 5 Alan Nevins and Frank Ernest Hill, *Ford: Expansion and Challenge: 1915-1933*, at p. 119, Charles Scribner's Sons, New York (1957).
- 6 Russell A. Alger was born on February 27, 1836 in Lafayette, Ohio. Orphaned at age 12, he nevertheless attended a private high school. After passing the Ohio bar examination, Alger moved to Grand Rapids in 1860 to enter the lumber business. After the Civil War began, Alger enlisted in the Union Army as a private in the cavalry, ultimately being promoted to the rank of major general by war's end. During the war, he participated in 66 battles and skirmishes including the battles of Gettysburg and the Wilderness.

After being mustered out of the army in 1865, Alger moved to Detroit and acquired two lumber companies. In 1884, Alger was nominated as the Republican candidate for governor and won. During his only term, two counties were added to the state. Refusing to run again, he returned to Detroit in 1886 to pursue his business interests.

In 1888, Alger was a leading, but unsuccessful, candidate for the GOP presidential nomination and the next year was elected Commander in Chief of the Grand Army of the Republic. In 1897, he began a term as President McKinley's Secretary of War and was serving in that

position at the outbreak of the Spanish-American War. Accused of gross inefficiency in the provisioning of American troops during that conflict, Alger was forced to resign his position in 1899 due to political pressure. Two years later, he published a history of the Spanish-American War.

On September 27, 1902, Alger was appointed by Governor Aaron T. Bliss to the United States Senate on the death of Senator James McMillan. The next year, Alger was elected in his own right to the Senate where he served until his death on January 24, 1907.

- 7 *Grand Rapids News*, August 22, 1918 at p. 1.
- 8 In the Republican primary, Chase Osborn carried Kent and Ottawa Counties with Newberry running a close second and Ford a distant third. Ford prevailed, however, in Muskegon County. Newberry carried Wayne, Genesee and Kalamazoo Counties.
- 9 Carl Gelderman, *Henry Ford: The Wayward Capitalist*, at p. 146, Dial Press, New York (1981).
- 10 Newberry carried Kent County by 14,990 votes to 12,975 for Ford and also captured Wayne County but by a margin of only 2,100 votes. Republican candidate Albert Sleeper was elected Governor of Michigan over Democratic challenger John W. Bailey. Incumbent Carl Mapes was returned to Congress by defeating Democrat Peter J. Danhof 22,917 votes to 10,783. The voters approved the proposed amendment to the U.S. Constitution permitting women to vote by a margin of 229,790 to 195,284.
- 11 Neither McKay nor Welsh were convicted. Interestingly, lead defense counsel, James O. Murfin, seemed to go out of his way in his opening statement to exonerate Frank McKay:

“Now another respondent is here at home. I want to tell you about the connection of the respondent Frank D. McKay of Grand Rapids. He is a clerk in one of the courts of the city; I am not certain whether it is Judge Brown or Judge McDonald - I am told he is clerk of all the courts. At any rate Mr. McKay had absolutely nothing to do with the primary election, not a thing; but when they came to choose the Kent County Republican Committee Mr. Claude Hamilton was elected chairman of the Kent County Republican Committee. Mr. Frank D.

McKay was made secretary of the Kent County Republican committee. The proofs will show that there was a little difference of opinion between Mr. McKay and Mr. Hamilton. They did not work harmoniously together, and Mr. Hamilton opened headquarters with somebody else in charge.

Late in the campaign Mr. McKay assumed or undertook or took over the duties to which he was assigned, to wit: duties of secretary of the Kent County Republican Committee. He did that which the ordinary secretary of the Kent County Republican Committee, or any other Republican Committee, would do, the duties of secretary to the organized republican campaign committee. That committee received not one dollar from the Newberry organization. At that time the Newberry organization had gone out of business; they solicited funds and ailed to get them. I think the proofs will show that Mr. Hamilton advanced the bulk of the funds that were spent, and aside from working for the entire Republican ticket, that is all the respondent Frank D. McKay had to do, as the proofs will show in this case.”

U.S. Supreme Court Record of Newberry Trial at p. 55.

- 12 The term, “demurrer”, is defined in *Black’s Law Dictionary* as “[t]he formal mode of disputing the sufficiency in law of the pleading of the other side. In effect it is an allegation that, even if the facts as stated in the pleading to which objection is taken be true, yet their legal consequences are not such as to put the demurring party to the necessity of answering them or proceeding further with the cause.”
- 13 The jury was composed of six farmers, one grain dealer, one cattle buyer, two produce dealers, a grocer and a member of a farmers’ cooperative. Ten members were Republicans. The politics of the other two were uncertain.
- 14 Bill McKeighan later became a political boss, exhibiting his muscle by being elected mayor of Flint five times. However, his career was a checkered one. Prior to 1920, McKeighan had been acquitted of charges of electoral fraud and of conspiracy to violate prohibition laws. In 1946, he was indicted by a one-man grand jury on conspiracy to bribe officials of Macomb County, in which indictment he was

accused of being the payoff man in a multimillion dollar gambling conspiracy. Rather than face trial, he fled to Florida and returned in 1954 only when he was cleared of these charges. McKeighan died on September 15, 1957. At that time, *The Flint Journal* recalled that he was "the subject of undying devotion and fanatical hatred." *Picture History of Flint* published by *The Flint Journal* at pp. 176-177 (1976).

15 *Grand Rapids Herald*, March 1, 1925 at p. 7, col. 1.

Two Advisory Council Members Appointed

Two persons, Jan Kittel Mann and Don Lubbers, have been appointed to serve on the Historical Society's Advisory Council. Both bring with them great experience in the community, as well as a familiarity of the purposes of, and a record of service to, the Society. We warmly welcome Jan and Don in their new roles.





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