

## Readers Forum: James Sturdivant: Judicial reform: Let's finish the job and appoint district judges

By JAMES M. STURDIVANT | Posted: Saturday, January 24, 2015 12:00 am

Fifty years ago, Oklahomans were humiliated by revelations that three state Supreme Court justices had accepted bribes. Former Justices N.S. Corn, Earl Welch and N.B. Johnson served jail time for their criminal actions.

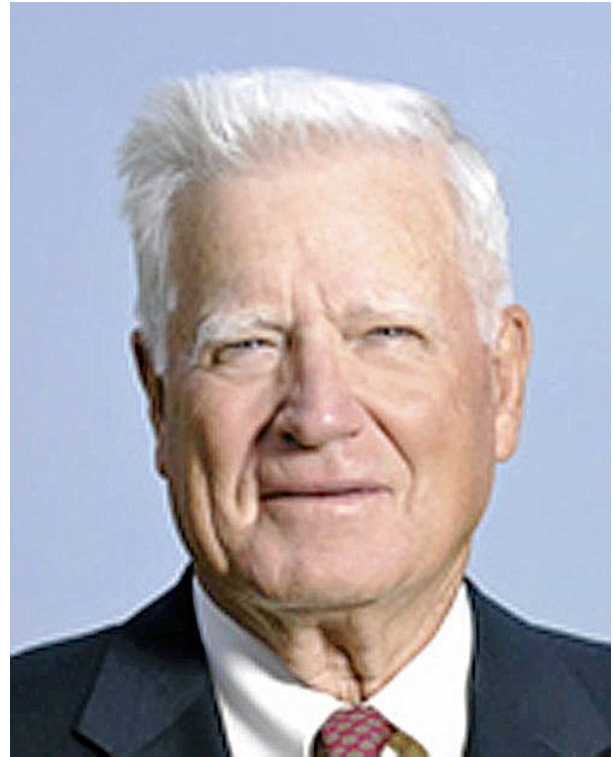
Corn, Welch and Johnson had been elected, and re-elected, to their high positions by the people. The shame cast on our state by their misconduct was the fuel for a judicial reform movement led by former University of Oklahoma College of Law Dean Earl Sneed.

The Sneed Plan, calling for the appointment, not election, of our appellate judges, passed as a constitutional amendment in 1967. Missing from the Sneed Plan were district court judges who remain elected officials to this day.

The Sneed Plan established the Judicial Nominating Commission, composed of 15 members. It has six lawyers, elected by the lawyers, six laypersons appointed by the governor, plus three more laypersons, one selected by the members of the commission, one selected by the House speaker and one selected by the president pro tem of the Senate.

When a vacancy occurs on any court, the commission carefully screens all applicants and submits a list of three qualified people to the governor who must name one person from that list. All appointed appellate judges are on a retention ballot every four years. A bad apple can be removed. If a district court judgeship becomes vacant by death, resignation or removal, that vacancy is filled in the same manner by the commission.

Why were district judges not included in the Sneed Plan? The answer is simple, political sausage. In 1967, rural Oklahoma was suspicious of a commission in Oklahoma City and the governor



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having a big say in who their local judges would be. That opposition was deemed substantial, so supporters of the Sneed Plan decided that half a loaf was better than none and, as a political expedient, they excluded the district judges from the plan submitted to the voters.

The time has come to further amend the law to provide for the appointment of district judges in the same manner as appellate judges. The 1967 compromise has served its purpose. At least 12 members of the commission must live in what was formerly our six congressional districts so the rural vs. urban tension is reduced.

The practice of law has changed and lawyers now routinely travel statewide to appear in court. Half of the presidents of the Oklahoma Bar Association have historically come from counties other than Oklahoma and Tulsa. It is a different world from 1967.

Electing judges is simply a bad idea. In Tulsa County we recently elected five district judges. Incumbent judges had to take time from their important work to campaign and, yes, raise money. It is not surprising that some candidates raised and spent more than \$100,000 campaigning.

Most of these campaign funds come from lawyers who practice before those same judges. This is an unfortunate byproduct of electing judges.

Unlike most political races, ethical restrictions limit what judicial candidates can do in a campaign, e.g., they cannot say “verdicts are too high (or too low)” or “I’m for the little guy.”

When we have judicial elections, lawyers get many questions from good people who ask how they should vote. The average conscientious voter has no reliable means of making an informed decision on who will be a good judge. Judges go to work every day and handle the cases they are assigned. Most of their work is without fanfare or notoriety. Occasionally, a judge will draw a case that gets media attention but that is the exception, not the rule.

Oklahoma is one of 32 states that still elects some or all judges. Retired U.S. Supreme Court Justice Sandra Day O’Connor recently said, “in too many states, judicial elections are becoming political prize fights where partisans and special interests seek to install judges who will answer to them instead of the law and the Constitution.” Or, as Alexis de Tocqueville predicted more than a century ago, the election of judges will “sooner or later, have disastrous results.”

For these and other reasons, it is time to change our laws, get it right and provide for district judges to be appointed, and be subject to removal, in the same manner as appellate judges.

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