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**BIO:** I was a 24 year old, first time felon, when twelve strangers—without special skill or training—recommended that spend the remainder of my natural life in prison without review after being found guilty of my first felony offense.

### **IMPARTIALITY IS A FUNDAMENTAL AND LEGAL OBLIGATION OF THE OKLAHOMA PARDON AND PAROLE BOARD**

It is the opinion of this writer, that no inmate confined in the Oklahoma Department of Corrections will ever receive a fundamentally fair and impartial clemency hearing from the Oklahoma Pardon and Parole Board as long as both of the state's highest courts are permitted to appoint retired judges, district attorneys, and law enforcement to an executive board in violation of the separation of powers doctrine.

Oklahoma's Parole Board was created in 1944 by a constitutional amendment during the administration of Governor Robert S. Kerr. The purpose of the Board's creation was to cool the moral passions of a citizenry that felt ethically betrayed by former Governor Leon Phillips.<sup>i</sup> The public was outraged after learning that Governor Phillips had granted clemency to a physician, serving a life sentence for murder, stemming from a death that was the result of an illegal abortion.<sup>ii</sup> In an attempt to restore confidence in the executive, the authors of the constitutional amendment felt compelled to significantly limit the clemency power of the Governor by requiring the newly created Board to first "impartially investigate" and then "recommend" to the Governor only the inmates the Board deemed worthy of clemency.<sup>iii</sup>

At first glance, the official duties of the Board do not appear to create an irreconcilable conflict with other provisions of Oklahoma's Constitution; presuming of course, that they are performed in a lawful and ethical manner. However, a closer look at the Board's composition reveals the author's corrupt intent to not only deny inmates an opportunity to plead for mercy before an impartial panel; but to also unlawfully influence the recommendations of the Governor's appointees, to wit:

There is hereby created a Pardon and Parole Board to be composed of five members; three to be appointed by the Governor; **one by the Chief Justice of the Supreme Court; one by the Presiding Judge of the Criminal Court of Appeals.**

It is evident from the silence in the record that both of the state's highest courts willingly entered into an agreement with the legislature to not only encroach upon an executive power that historically belonged exclusively to the Governor; but to also unofficially suspend the separation of powers doctrine in that moment. This is more than conjecture; the clandestine agreement is further corroborated by the fact that no inmate has ever won a legal decision against the Oklahoma Pardon and Parole Board after the judiciary was incentivized to protect the interest of the Board. The pattern of behavior suggest that the judiciary has acted in furtherance of the conspiracy by using its gatekeeping function to silence—or metaphorically keep a knee on the neck—of every inmate who has ever attempted to expose the corruption the permeates the Oklahoma Pardon and Parole Board—myself included.<sup>iv</sup> To interpret otherwise, one must presume that every complaint filed by an inmate after the Board's creation was frivolous and without merit—that's absurd!

On September 15, 2020, I appeared before the Oklahoma Pardon and Parole Board on an application for commutation.<sup>v</sup> In support of my application, I provided the Board with clear and convincing evidence<sup>vi</sup> that the medical examiner testified falsely in my case and the jury solely relied on her false testimony in rendering their verdict and recommendation of punishment at life without parole. Furthermore, I had two medical experts, a neurologist and a forensic pathologist, both of whom made themselves available to the Board for questioning prior to, and during the commutation hearing. Rather than "impartially investigate" the evidence of factual innocence as required by the Oklahoma Constitution, Judge Allen C. McCall<sup>vii</sup> used his position on the Board to discredit the affidavits of both medical experts while bolstering the medical examiners testimony now proven to be based on junk science. My request for clemency was denied.

On April 28, 2021, I filed a civil complaint<sup>viii</sup> against the Oklahoma Pardon and Parole Board, more specifically Judge McCall, alleging, among other things, that he was sitting on the Board in violation of Oklahoma law. Several months after the denial of my commutation, I discovered that Judge McCall was holding dual offices; he was assigned to the Judicial Ethics Advisory Panel, while simultaneously serving as a member of the Oklahoma Pardon and Parole Board<sup>ix</sup> in violation of Oklahoma's Constitution. The egregiousness of Judge McCall's official misconduct not only corrupted the impartiality of my commutation hearing; it tainted every business meeting and hearing conducted by the Board during the past four years. My civil complaint was assigned to the docket of District Court Judge Natalie Mai of Oklahoma County; who to this day has deliberately refused to compel the court clerk to certify the summons and petition

and return them both to me so I can perfect service upon the properly named defendants. I believe that Judge Mai's actions strengthen my theory that the judiciary has a compelling interest in protecting no matter how egregious the official misconduct.

While gathering the facts necessary to file an extraordinary writ, I decided to proceed by serving the defendants without the summons, but with an affidavit detailing the unethical behavior of Judge Mai. On July 7, 2021, Judge McCall resigned from the Oklahoma Pardon and Parole Board. Although there is no published opinion on the issue; I choose to interpret Judge McCall's decision to resign as a victory because I do not believe that it was a decision made from an exercise of free will.

It is without question that comprehensive changes, which go far beyond the scope of this writing, are needed at the Oklahoma Pardon and Parole Board to ensure that all applications for parole, commutation, and pardons are "impartially investigated" prior to being placed on the docket of the Board. It is the opinion of this writer that meaningful reform must first start by separating the judiciary from the executive in order to seat an unbiased panel; impartiality of the mind cannot exist when the powers of the judiciary and the executive are united in one person or political body.

As someone trained in law, I am in admiration of the distinguished judicial career of the Honorable Judge Allen C. McCall; but not even he could overcome the division of loyalties necessary to sit as an impartial member of an executive Board. In a public statement, Judge McCall qualified his resignation by saying, "*I always tried to stand up for victims and law enforcement and give inmates a fair opportunity.*"<sup>x</sup> This statement was clearly intended to influence the perception of his performance while sitting on the Board. However, in a heated email exchange, Judge McCall's allegiance to the judiciary, while sitting on the Parole Board, was revealed; "*I absolutely trust a criminal justice system designed and refined by names like Jefferson, Adams, Jay, Madison, Marshall (John and Thurgood), O'Connor and Roberts!*" "*So why is our Board attempting to undermine verdicts in cases of violent crimes?*"<sup>xi</sup>

I would answer Judge McCall by saying that other than the fact that Oklahoma's Constitution charged you with a duty to "impartially investigate" and then "recommend all deemed worthy of clemency" without exception—wrongful convictions do occur!

I would further suggest a careful reading of a 2020 report that examined the first 2,400 postings to the National Registry of Exonerations report titled "Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police, and Other Law Enforcement."<sup>xii</sup> This

report will alter how judges, lawyers, legislators, the public, and scholars perceive the accuracy of our evolving criminal justice system.

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<sup>i</sup> Amended by State Question No. 309, Legislative Referendum No. 86, adopted at election held on July 11, 1944.

<sup>ii</sup> "Capital Clemency in Oklahoma 1943-1966," by attorney Gary Peterson of Oklahoma City, Oklahoma.

<sup>iii</sup> Article 6, §10 of Oklahoma's Constitution.

<sup>iv</sup> Phillips v. Williams, 608 P.2d at 1134.

<sup>v</sup> Oklahomadoc.zoom.us/rec/share Access Passcode: UW=Fq9SE

<sup>vi</sup> Affidavits from a Board Certified Neurologist; and a Board Certified Forensic Pathologist.

<sup>vii</sup> Appointed by the Oklahoma Supreme Court.

<sup>viii</sup> Case No. CV-2021-988

<sup>ix</sup> Article 7, § 11(c) of Oklahoma's Constitution

<sup>x</sup> Tulsa World Newspaper

<sup>xi</sup> Email dated June 7, 2020.

<sup>xii</sup> Samuel R. Gross, Maurice J. Possley, Kaitlin Jackson Roll and Klara Huber Stephens.