

The Michigan Auto Dealers Prosecution: Exploring The Department of Justice's Mid-Century Posture Toward Campaign Finance Violations

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INTRODUCTION

IN 1948, FLINT, MICHIGAN, was more than the backdrop for a Michael Moore movie.¹ While it may be difficult to imagine today, Flint was then a prosperous industrial center. The American automobile industry, with its associated auto dealers, commanded an important position in the nation's economy. With that position came wealth and political influence, but also, in the immediate post-war period, industry concern about the degree to which the government would control the peacetime economy.

A few key individuals operated at the intersection of the auto dealers and politics, one of the most prominent being Flint's own Arthur Summerfield, an active partisan Republican, leader in the auto dealers' trade group, and the owner of the nation's largest Chevrolet dealership. If Summerfield were active today, federal laws and regulations would classify and regulate many of his activities. He was a key fundraiser for his party—a "bundler" or a "conduit" of campaign funds in modern parlance. His extensive contacts in Washington might also have qualified him as a lobbyist.

Even in the 1940s, Summerfield and his colleagues' activities were subject to a degree of regulation. Beginning in 1907 with the Tillman Act, Congress had enacted a series of laws limiting what

individuals and corporations could do in federal elections. Those criminal provisions were rarely enforced, and guidance on their scope and application was elusive.²

In 1948, the United States Department of Justice chose to prosecute Summerfield's auto dealers for making illegal corporate contributions to Michigan Republican party accounts, allegedly to influence federal elections. This article explores the events leading to that choice and the results of the prosecutions.

Although there is relatively little published research on campaign finance regulation prior to the 1974 amendments to the Federal Election Campaign Act, the few scholars who have studied that earlier period have offered a number of theories to explain the general lack of federal enforcement that then prevailed, especially against corporations.³ One explanation might be that corporations were unpopular targets for prosecution. Or prosecutors might have doubted the constitutionality of the law and therefore been reluctant to risk unfavorable precedent. Prosecutors were oftentimes political figures themselves, so perhaps political pressure explained the lack of prosecutions. A final possibility is that few corporations violated the law.

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¹ Moore's *ROGER & ME* (1989) portrayed Flint's demise, blaming General Motors executive Roger Smith for closing plants. Flint also appeared in Moore's *BOWLING FOR COLUMBINE* (2002), *FAHRENHEIT 911* (2004), and *CAPITALISM, A LOVE STORY* (2009).

² ALEXANDER HEARD, *THE COSTS OF DEMOCRACY* 131 (1960). Jeremiah Lambert, *Corporate Political Spending and Campaign Finance*, 40 N.Y.U. L. REV. 1033, 1053 (1965) describes differing interpretations of the prohibitions by the Chamber of Commerce and the Justice Department.

³ See Robert E. Mutch, *Before and After Bellotti: The Corporate Political Contributions Cases*, 5 ELECT. L. J. 293 (2006).

Given the scarcity of published decisions and primary source research, these explanations have been largely speculative. As a rare exception to the usual lack of enforcement, could the Michigan prosecution effort of the late 1940s help us understand better the Department of Justice's enforcement posture, and help us decide which explanation is strongest? On occasion, the exception proves the rule. Maybe this is one such occasion.

Part I reviews the meager enforcement history of the corporate contribution ban, and discusses what conduct a corporate executive in 1948, such as Summerfield, would have expected the law to reach. Part II addresses the history of the auto dealers' prosecutions in detail, drawing on archival records from the trials, the FBI, and the Truman Justice Department. Part III then reviews the competing explanations for the government's timid enforcement summarized above, and analyzes to what extent the auto dealers' prosecutions help us evaluate their validity.

ENFORCEMENT PRECEDENTS AND THE SCOPE OF THE CONTRIBUTION BAN

Enforcement

Federal law prohibiting corporations from making contributions in federal political campaigns dates to 1907 and the Tillman Act.⁴ Almost a decade later, a federal district court sustained the constitutionality of the Act in *United States v. United States Brewers' Association*.⁵ In that case, brewing companies and their trade association faced prosecution for a conspiracy to violate the Tillman Act's contribution ban. Brewers had been active in state politics for decades, fighting prohibition laws as well as state and local taxation, but the rise of prohibition as a federal issue prompted their entry into federal campaigns.⁶ Their cultural association with Germans and Catholics also made them an appealing political target.

In 1914 roughly 100 Pennsylvania brewing corporations and associations were indicted for conspiracy to violate the Tillman Act.⁷ The defendants moved to quash the indictments, asserting that the federal contribution ban was unconstitutional.⁸ The *Brewers* decision upheld the law, using extremely deferential reasoning that would be wholly at odds with modern constitutional analysis.⁹ The *Brewers* Court, for instance, found nothing vague in the Act's

prohibition of "a money contribution in connection with any election."¹⁰ The *Brewers* opinion made quick work of the litigant's constitutional claim, stating that the law "neither prevents nor purports to prohibit the freedom of speech or of the press." Why? "Its purpose is to guard elections from corruption and the electorate from corrupting influences in arriving at their choice."¹¹ The district judge concluded: "I am of the opinion that . . . Congress kept within its constitutional powers. Were I in doubt upon this question, I would resolve that doubt in favor of the constitutionality of the Act."¹² Unsuccessful in their constitutional challenge, the brewers entered pleas of *nolo contendere* and were fined.¹³

There were no more reported decisions applying the corporate ban for another 47 years. In the interim, Congress expanded the prohibition to include expenditures as well as contributions and extended it to include contributions and expenditures by labor organizations as well as corporations.¹⁴ There were a handful of prosecutions against unions, but the first reported decision in a case against a corporation was *United States v. Lewis Foods*, for vi-

⁴ Mutch, *supra* note 3, offers a more detailed version of this history.

⁵ 239 F. 163 (1916).

⁶ See PETER ODEGARD, *PRESSURE POLITICS* 244–66 (1928). The Brewers' Association raised funds from individual businesses by levying a barrelage tax on members. By 1913, this system yielded about \$750,000 annually. ODEGARD at 258.

⁷ *Id.* at 256. The U.S. Senate Judiciary Committee subsequently subpoenaed the records of the investigation. See *Brewing and Liquor Interests and German and Bolshevik Propaganda, Report and Hearings* (3 vol.), Senate Doc. 66-62 (1919).

⁸ 239 F. 163, 165 (W.D. Pa. 1916).

⁹ *Id.* at 169.

¹⁰ Compare *Brewers*, 239 F. at 169, with *FEC v. Massachusetts Citizens for Life*, 479 U.S. 249 (1986). Wilbur Layman noted that even by 1958 neither the courts nor Congress had clarified the scope of "in connection with," see Wilbur D. Layman, *Constitutionality of Section 610 of the Federal Corrupt Practices Act*, 46 CAL. L. REV. 439 (1958).

¹¹ 239 F. at 169.

¹² 239 F. at 170. Modern constitutional doctrine would not permit a court to save the constitutionality of this law by a bare assertion of salutary legislative purpose. Thus *Buckley v. Valeo*, 424 U.S. 1, 25 (1976), subjected campaign finance limits to the "closest scrutiny."

¹³ ODEGARD, *supra* note 6, at 256. The Senate report states that brewers "paid several hundreds of thousands of dollars in fines and penalties." *Brewing and Liquor Interests*, *supra* note 7, at 28.

¹⁴ Labor Management Relations Act of 1947 (Taft Hartley), 61 Stat. 136 (1947); see MELVIN I. UROFSKY, *MONEY & FREE SPEECH; CAMPAIGN FINANCE REFORM AND THE COURTS* 22–23 (2005).

olating the expenditure ban.¹⁵ Enforcement of the original corporate contribution ban was scarce after *Brewers* and, so far as reported decisions are concerned, nonexistent. As Edwin Epstein noted: “between 1916 and 1948 it may be said that the Tillman Act was, as a practical matter, moribund.”¹⁶ The same, it seemed, could be said of the period from 1948 to the 1970s.

Yet beginning in 1948 there was one exceptional effort to prosecute corporate contributors, as the Department of Justice indicted three groups of Michigan automobile dealers for making illegal corporate contributions to a state party committee in 1946 and 1948.¹⁷ There is no obvious reason why the Michigan auto dealers should have been the exception, as the contributions were not large, the activity at issue arguably violated state rather than federal law, and there were no strongly sympathetic facts to alleviate prosecutors’ concerns about the constitutional questions around the law. Because the auto dealers prosecution seems anomalous, perhaps its record can help us understand the dearth of enforcement, to which it was an exception.

Scope of the contribution ban: Contemporaneous views

Given the vague statutory language and scant case law, what would a corporate executive have believed the law prohibited? That changed over time. In the wake of the *Brewers* decision, one writer opined that the government enjoyed broad constitutional powers to restrict corporate activity, as well as activity of other organizations.¹⁸ “Statutes regulating the expenditure of money in elections should receive a liberal construction in order to effectuate the intention of the legislature” contended this author.¹⁹ Through the 1920s doubts about the constitutionality of the corporate contribution ban focused on the federal government’s limited power to regulate elections for presidential electors (who were considered state officers), primary campaigns, and until the enactment of the Seventeenth Amendment, elections of Senators by state legislatures.²⁰ Free speech claims were not discussed. For the states’ part, a tabulation of state regulations published in 1928 reported that 34 states prohibited corporate contributions and two additional states specifically prohibited contributions from insurance companies.²¹

In the 1936 election cycle, the Democratic Party published the *Book of the Democratic Convention*

1936, which featured lavish (and expensive) advertisements from corporations.²² The Party sold the book, and a number of large purchasers were corporations.²³ After a congressional committee investigated the convention book as a violation of the Corrupt Practices Act (at the request of the Republican party), Congress prohibited these specific kinds of purchases in the Hatch Act Amendments of 1940.²⁴ But no new prosecutions followed. This incident suggests that there was no consensus in the 1930s on the degree to which the ban on corporate contributions permitted these transactions.²⁵

The major campaign finance reform theme during the late 1930s and 1940s instead involved the

¹⁵ *United States v. Lewis Foods*, 366 F.2d 710 (9th Cir. 1966). For description of prosecutions against unions, see generally Mutch, *supra* note 3.

¹⁶ EDWIN M. EPSTEIN, *CORPORATIONS, CONTRIBUTIONS AND POLITICAL CAMPAIGNS: FEDERAL REGULATION IN PERSPECTIVE* 16 (1968). Although beyond the scope of this article, enforcement of state corporate contribution bans had been similarly quiescent.

¹⁷ There are few scholarly references to this prosecution. Epstein’s monograph cites an article in *Nation’s Business* quoting a former Justice Department official. See EPSTEIN, *supra* note 16, at 153 n. 50, citing *Business in Politics: What You Can Do*, *NATION’S BUSINESS*, June 1960, at 60. In the chapter of Epstein’s book published the following year, which explicitly draws from the monograph, there is no mention at all. EDWIN M. EPSTEIN, *THE CORPORATION IN AMERICAN POLITICS* (1969). Another author in a 1965 article appeared unaware of the prosecution. See Lambert, *supra* note 2, at 1044 & n. 60.

¹⁸ *Liability of Nonpartisan Association Under Corrupt Practices Act*, *LAW NOTES* (Apr. 1920) at 7, 8.

¹⁹ *Id.* at 8. Among the authorities cited is *People v. Gansley*, 158 N.E. 195 (Mich. 1916), one of a series of prosecutions under state corrupt practices laws of brewers who made contributions in “local option” prohibition elections. See *id.* at 8. See also *State v. Fairbanks*, 115 N.E. 769 (Ind. 1917), which upheld prosecution of corporate officers for \$200 contribution.

²⁰ EARL SIKES, *STATE AND FEDERAL CORRUPT PRACTICES LEGISLATION* 194 (1928); *Newberry v. United States* 256 U.S. 232 (1921).

²¹ HELEN M. ROCCA, *CORRUPT PRACTICES LEGISLATION* 19 (1928).

²² Louise Overacker, *Campaign Funds in the Presidential Election of 1936*, 31 *AM POL. SCI. REV.* 473, 480 (1937). Overacker noted that the size of individual and family contributions to the Republican Party in 1936 was “staggering.” *Id.* at 495. Her article does not try to establish whether these contributions were subsidized or reimbursed by the corporations these families owned.

²³ *Id.*; see also *Investigation of Campaign Expenditures in 1936*, S. Rep. 75-151 (1937) (the “Lonergan Report”) at 18–19.

²⁴ *Lonergan Report* at 19; HEARD, *supra* note 2, at 249. This legislation also limited contributions by individuals to \$5,000 per person per year. *Id.* at 213.

²⁵ EPSTEIN, *supra* note 16, at 71–72 described similar practice in the 1960s.

growing strength and influence of labor unions in politics. Corporations were less interested in challenging their campaign finance burdens in court than in compelling unions to live by the same rules. So corporations supported a 1943 law that extended the Tillman Act to unions.²⁶ When the CIO's nascent political action committee came under subsequent fire, Republicans argued that any "PAC" connected to a union or corporation violated the Corrupt Practices Act. The National Association of Manufacturers disavowed any interest in starting its own PAC. Robert Gaylord, the President of the NAM, testified before Congress that PACs violated the law, and even if PACs were technically permissible, they were "highly improper."²⁷

About six months later, Republicans in Congress called on the Justice Department to prosecute unions for funding political pamphlets. Attorney General Francis Biddle refused to proceed with a test case, and opined that such uses of money fell outside the Act's definition of "contribution."²⁸ In 1947 Congress enacted an expenditure ban for corporations and unions in the Taft-Hartley law and the CIO sought to provoke a test case challenging the now more explicit restriction.²⁹ In February 1948, the Justice Department commenced a prosecution of the CIO for making illegal political expenditures.³⁰ In March, the district judge dismissed that indictment, holding unconstitutional the expenditure ban.³¹ In June, the Supreme Court affirmed, but construed the expenditure ban as not applying to the CIO's actions.³²

THE AUTOMOBILE DEALERS PROSECUTION

As the 1948 political season commenced, many corporations and corporate executives were actively engaged in politics. One might expect that some number would bend the rules to help their favored candidates. How widespread was disregard for the law? How easily was it circumvented? The story behind the Auto Dealers prosecution suggests some answers.

Political context

National political context: 1948. A number of thorough treatments of the 1948 presidential election are available and the story of Harry Truman's upset victory over Thomas Dewey is no doubt at

least generally familiar to most readers, but certain contextual information will be helpful here.³³ The 1946 mid-term elections had proved rough going for the Democratic Party. The Republican gained control of both Houses of Congress, by a 51–45 seat margin in the Senate and by 246–118 in the House of Representatives. Truman's presidency was not popular with a number of important interests in the Democratic Party's coalition. Truman's defeat appeared so likely that some party operatives attempted to replace him with General Dwight D. Eisenhower as the Democratic standard-bearer in 1948.³⁴ The more progressive factions within the party rallied around Henry Wallace's candidacy while some southerners supported the "Dixiecrat" Strom Thurmond.

Truman advisor Clark Clifford quipped that the Democratic Party consisted of "an unhappy alliance of Southern conservatives, Western progressives and Big City labor" and victory would come only if the campaign could "lead enough members of

²⁶ The War Labor Disputes Act (Smith-Connally), 57 Stat. 163 (1943).

²⁷ *Tells NAM Refusal to Raise Funds to Influence Election*, CHI. DAILY TRIB., Sept. 1, 1944, at 6.; *No Political Fund for NAM*, SAYS HEAD, N.Y. TIMES, Sept. 1, 1944, at 14.

²⁸ *Absolves CIO Group*, N.Y. TIMES Mar. 28, 1945, at 25; Willard Edwards, *Biddle Rejects Senate Plea to Prosecute CIO*, CHI. DAILY TRIB. Mar. 28, 1945, at 10. Biddle responded: "Of course, a case might arise in which such expenditure of money might be regarded as a contribution if it were shown that the money was spent at the behest or direction of a political candidate or committee. In none of the cases we have investigated is there any indication, however, that these conditions exist." *Id.*

Recall that the Supreme Court handed down *Thomas v. Collins* in January 1945, reversing a judgment of contempt against a labor organizer. Justice Rutledge's opinion in *Thomas* is very protective of the speech rights of unions, and this posture no doubt made an impression on the DOJ. 323 U.S. 516 (1945).

²⁹ *United States v. CIO*, 77 F. Supp. 355, 356 (D.D.C. 1948).

³⁰ See Louis Starks, *Murray is Indicted for Political Act in Labor Law Test*, N.Y. TIMES, Feb. 12, 1948, at 1. See generally Section 304, *Taft-Hartley Act: Validity of Restrictions on Union Political Activity*, 57 YALE L. J. 806 (1948).

³¹ *US v. CIO*, 77 F. Supp. at 358.

³² *United States v. CIO*, 335 U.S. 106 (1948).

³³ See Robert Shogun, *1948 Election*, AMERICAN HERITAGE, June 1968; ZACHARY KARABELL, *THE LAST CAMPAIGN: HOW HARRY TRUMAN WON THE 1948 ELECTION* (2000); Richard S. Kirkendall, *Election of 1948*, in ARTHUR M. SCHLESINGER, ED. HISTORY OF AMERICAN PRESIDENTIAL ELECTIONS: Vol. IV at 3099, 3103–04 (1971).

these three misfit groups to the polls.”³⁵ Clifford’s calculus suggested that Truman focus on the second and third of these groups. Labor, in particular, required attention, mollification, and mobilization.

Meanwhile, Republican hopefuls and most everyone else presumed Truman’s weakness would be fatal and that the Republicans would gain the White House.³⁶ New York Governor Thomas Dewey was the strongest candidate for the Republican nomination through 1948, but Michigan Senator Arthur Vandenberg enjoyed enthusiastic support among Michigan Republicans. Michigan was an important state, financially and politically, for any Republican nominee. Vandenberg withdrew early, and the Republicans nominated Dewey on their third ballot at the convention, after rival candidate Robert Taft withdrew.³⁷

Unfortunately for the Dewey camp, they placed too much credence in the predictions of Truman’s defeat and failed to campaign with much energy.³⁸ Truman, by contrast, worked very hard. Among other tactics, he called Congress back into special session, forced votes on a number of populist issues, including price controls, and used those votes to indict the Republican Party and mobilize his base.³⁹ Truman ultimately won with 303 electoral votes to Dewey’s 189,⁴⁰ Yet Dewey won Michigan.⁴¹

Michigan politics and the auto dealers: 1948.

By 1946, the beating Republican candidates had taken through the Great Depression was subsiding in Michigan.⁴² Key support for Republicans in Michigan as well as nationally came from the auto industry,⁴³ which was in dramatic transition from war production back to the manufacture of civilian goods. As late as January 1945, the Office of Price Administration (OPA) was still reducing the quota of automobiles rationed to the civilian market.⁴⁴ Bearing in mind that the last new automobiles dated to 1942, as rationing persisted into 1945, the market tightened practically to oblivion.⁴⁵ Japan’s surrender in August 1945, was accompanied by the reintroduction of a civilian automobile industry.

But persistent governmental regulation of the market made political influence an enormously important goal for the automobile industry, as the OPA retained significant control over the industry. OPA kept new car prices at their 1942 level⁴⁶ and dictated to whom these cars should be sold.⁴⁷ Public demand for automobiles was, no surprise, greatly in excess of supply.⁴⁸ Meanwhile, price controls pit-

ted automobile dealers against manufacturers over how much discount the OPA would allow dealers and, accordingly, how much of any increase in costs would be borne by dealers rather than manufacturers.⁴⁹ By the end of 1945, manufacturers had produced only 75,000 cars. The OPA had predicted

³⁴ Kirkendall *supra* note 33, at 3103–04 (1971).

³⁵ *Id.* at 3106.

³⁶ *Id.* at 3115.

³⁷ Shogun, *supra* note 33.

³⁸ Kirkendall, *supra* note 33, at 3142. “Even most Republicans found him inadequate as an individual and a campaigner.” *Id.*

³⁹ *Id.* at 3124.

⁴⁰ *Id.* at 3137. The popular vote was narrower. Truman received 49% of the vote, and Dewey took 45%. It was also a low-turnout election. *Id.* at 3143.

⁴¹ *Id.* at 3138.

⁴² WILLIS FREDERICK DUNBAR, MICHIGAN: A HISTORY OF THE WOLVERINE STATE 654 (1965).

⁴³ See e.g. LOUISE OVERACKER, PRESIDENTIAL CAMPAIGN FUNDS, 1944, 39 AM. POL. SCI. REV. 899, 916 (1945); MICHAEL J. WEBBER, NEW DEAL FAT CATS 65–67 (2000).

⁴⁴ *February Auto Ration Cut*, N.Y. TIMES, Jan. 27, 1945, at 13. The OPA was established under the Emergency Price Control Act of 1942, 56 Stat. 23, (1942). Congress directed the OPA to stabilize prices, wages, and salaries, and prevent “speculative, unwarranted and abnormal increases in prices, and to eliminate and prevent profiteering, hoarding, manipulation, speculation and other disruptive practices” that otherwise could occur during wartime. See *Yakus v. United States*, 321 U.S. 414, 420–21 (1944).

⁴⁵ *New Cars Limited to Eight Groups; Others May Buy Only Used Autos*, N.Y. TIMES, Mar. 15, 1945, at 25. The OPA would prosecute not only dealers who sold cars outside the rationing system, but also dealers who resisted selling cars to buyers with rationing certificates. See *OPA Seeks Ban by Court on Auto Dealer For Not Selling to Certificate Holders*, N.Y. TIMES, Mar. 28, 1945, at 25.

Automobile production for civilian use had ceased on February 10, 1942. WILLIS DUNBAR, MICHIGAN: A HISTORY OF THE WOLVERINE STATE 574 (1965). Local rationing boards allocated the existing stockpile of about 500,000 1942 automobiles to a limited set of purchasers, among them doctors, ministers, and state military services. Charles F. Phillips, *Some Observations on Rationing*, 18 J. BUS. OF UNIV. CHICAGO 9, 11 (1945); *New Cars Limited to Eight Groups*, *supra*.

⁴⁶ *Auto Dealers Fight any Cuts in Discounts*, N.Y. TIMES, Aug. 1, 1945, at 30; *Old Car Prices Sag on Promise of New*, N.Y. TIMES, Aug. 29, 1945, at 38.

⁴⁷ Cases describing the Emergency Price Control Act’s application to automobile sales include *Fuller v. Borkin*, 163 F.2d 887 (7th Cir. 1947); *Horsley v. United States*, 160 F.2d 43 (5th Cir. 1947); *Shearer v. Porter*, 155 F.2d 77 (8th Cir. 1946).

⁴⁸ See, e.g., H.G. Vatter, *The Closure of Entry in the American Automobile Industry*, 4 OXFORD ECON. PAPERS 213, 231–32 (1952); Hugh Rockoff, *Price and Wage Controls in Four Wartime Periods*, 41 J. OF ECON. HIST. 381, 396–400.

⁴⁹ *Auto Dealers Fight a Cut in Discounts*, N.Y. TIMES, Aug. 1, 1945, at 30; *Auto Dealers Fight Ceiling*, THE HERALD-PRESS, Nov. 15, 1945, at 3; *Car Industry Surprised by Announcement*, NEWS PALLADIUM, Nov. 19, 1945, at 1; *Auto Makers Wary in Price Comment*, N.Y. TIMES, Nov. 19, 1945, at 34.

240,000 would be built. Manufacturers produced scarcely enough automobiles to supply two to each of 33,000 car dealers.⁵⁰

Price and production curbs burdened Michigan's sales tax revenue stream, since lower prices meant lower tax payments.⁵¹ Additionally, price controls encouraged black market transactions, so some sales went unreported (or reported at a lower price than that actually paid), denying the state its full tax. Automobile sales tax collections had been a problem in Michigan even before price controls,⁵² but the controls exacerbated the problem.

People were desperate for automobiles. Dealers set up waiting lists, but crafty individual purchasers placed orders for new cars from several different dealers and then resold the cars at a premium to customers further down the priority lists.⁵³ On the black market, an automobile was often transferred to a used car dealer who sold this "used" car outside the new-car limits, at \$200 to \$300 over the ceiling.⁵⁴ Some dealers would also sell (illegally) the choice positions on the top of the priority lists.⁵⁵ Organized rings of purchasers could buy new-model automobiles in Detroit, above the legal price if necessary, and drive them to Southern states and sell them for an even higher premium.⁵⁶ One report described a Detroit-area spotter who followed a driver into church and arranged to buy the churchgoer's new-model car during services.⁵⁷

Publicly, "this practice [was] condemned by automobile dealers . . . and [would] be watched very carefully. Anyone attempting to transfer his order to someone else [would] lose his priority."⁵⁸ Yet consumers wanted cars and, as the OPA's controls through 1946 continued to distort the automobile trade, more purchasers (and dealers) tolerated the black market's risks.⁵⁹ In response, OPA announced more flexible pricing limits, but not by much.⁶⁰ OPA also hired more agents and focused enforcement on automobile dealers.⁶¹ OPA begged purchasers who paid over the ceiling to report the seller, in which case OPA would refund the overcharge.⁶² The compliant buyer suffered no penalty, and kept the car. The offending seller was liable for treble damages under the price control statute and its implementing regulations.⁶³

In the November 1946 election, as noted before, Republicans did well nationally, and won control of both houses of Congress. Truman then ended the remaining price controls.⁶⁴

Republican also posted strong returns in Michigan, and the state elected a political newcomer, Republican Kim Sigler, as Governor.⁶⁵ Sigler became prominent as the colorful special prosecutor assisting Judge Leland Carr's 1943 one-man grand jury investigation of corruption in Michigan state government.⁶⁶ Sigler

⁵⁰ DUNBAR, *supra* note 43, at 574–75; *Prices at '42 Level Predicted for Cars*, N.Y. TIMES, Aug. 28 1945, at 1.

⁵¹ *See, e.g., Protest 50% Auto Curb*, N.Y. TIMES, July 12, 1941, at 28.

⁵² *State's New Car Trade Standards Law Faces Test*, NEWS-PALLADIUM, Dec. 8, 1944, at 14.

⁵³ *Car Agencies Deny Black Market Deals*, N.Y. TIMES, Nov. 24, 1945, at 21.

⁵⁴ *Bootleg Autos Now Being Sold*, N.Y. TIMES, Feb. 21, 1946, at 23.

⁵⁵ *Car Agencies Deny*, *supra* note 53, at 21.

⁵⁶ *31 Indicted for Multimillion Black Market Used-Car Deals*, WASH. POST, Apr. 20, 1946, at 1. Purchasers spent an average of \$600 over the ceiling price, which might itself only be \$800. *Id.*; *see also Scofflaws*, TIME, May 6, 1946.

⁵⁷ *31 Indicted*, *supra* note 56, at 2.

⁵⁸ *Car Agencies Deny*, *supra* note 55, at 21.

⁵⁹ *Scofflaws*, *supra* note 56 ("As they did in the Prohibition era, people now winked and smiled at lawbreaking . . ."); V. DENNIS WRYNN, *DETROIT GOES TO WAR* 158 (1993).

⁶⁰ With the end of the war, pressure grew to do away with price controls and other wartime limits in all sectors. Through the summer of 1946 Truman and deregulatory interests battled in Congress. *See* Andrew Bartels, *The Office of Price Administration and the Legacy of the New Deal, 1939–1946*, 5 PUB. HISTORIAN 5, 25–28 (1983).

⁶¹ *OPA Acts in Auto Sales*, N.Y. TIMES, Aug. 29, 1946, at 21; *The OPA and the Black Market*, NEW REPUBLIC, Sept. 9, 1946, at 279. The automobile dealers' trade associations launched a variety of initiatives to show their resolve against black market activity. *See Auto Dealers Seek to Curb Resale Racket*, WASH. POST, Dec. 31, 1946, at 3; *Philadelphia Auto Group Acts Against Resales of New Cars for Premiums*, WALL ST. J., May 13, 1947, at 1; *Clair Stebbins, Killing a Racket*, ZANESVILLE SIGNAL, May 25, 1947.

⁶² *OPA Centers Drive on New Auto Fraud*, N.Y. TIMES, June 25, 1946, at 23. Not surprisingly, this offer prompted "dozens" of calls. *Phone Tip Spurs Auto Racket Drive*, N.Y. TIMES, June 26, 1946, at 26.

⁶³ *See Shearer v. Porter*, 155 F.2d 77, 79 (8th Cir. 1946).

⁶⁴ *Bartels*, *supra* note 60, at 27–28.

⁶⁵ *GOP Wins By Landslide: Sigler Gets Largest Plurality Polled in Off-Year Voting*, IRONWOOD DAILY GLOBE, Nov. 6, 1946, at 1.

⁶⁶ *Success Formula*, TIME, July 1, 1946; DUNBAR, *supra* note 42, at 649–50; *Intensive Manhunt Under Way for Bribery Witness' Slayer*, WASH. POST, Jan. 13, 1945, at 1; FRANK ANGELO, *ON GUARD: A HISTORY OF THE DETROIT FREE PRESS 190–92* (1981); PAUL KAVIEFF, *THE PURPLE GANG: ORGANIZED CRIME IN DETROIT 1910–45* at 189–98 (2000); BRUCE A. RUBENSTEIN AND LAWRENCE C. ZIEWACZ, *THREE BULLETS SEALED HIS LIPS* 7 (1987). During the investigation, key witness State Senator Warren Hooper was murdered. Sigler attempted to establish that former Republican Governor and RNC Committeeman Frank McKay ordered the killing. Rubenstein and Ziewacz's book reviews the events in great detail.

prosecuted over 40 cases before he was fired in 1946, when, among other things, the investigation appeared to be closing around former Governor and Republican political boss Frank McKay.⁶⁷ Sigler used this controversy to launch his successful anti-corruption candidacy for Governor.⁶⁸ Sigler's chosen candidate for attorney general, Eugene Black, also won, and the Sigler administration seemed poised to solidify reform control over the state and the Republican Party.⁶⁹

However, after the election Governor Sigler trained his efforts on anti-subversive legislation and illegal sports gambling, rather than political corruption.⁷⁰ Sigler achieved national attention and praise as an anti-communist, testifying before the House Un-American Activities Committee in early 1947 along with F.B.I. Director J. Edgar Hoover, among others.⁷¹

By contrast, Attorney General Black kept his focus on political corruption. Black's opportunity for prosecutorial distinction came with another one-man grand jury proceeding conducted by Judge W. McKay Skillman, investigating the "automobile sales racket" and the unpaid taxes automobile dealers owed the state on gray market income.⁷² In November 1947, Skillman indicted nine automobile dealers for title fraud and tax fraud. The "purchasers" in the dealers' title paperwork included infants and dead people.⁷³ Although overcharging for new cars and undervaluing trade-in cars no longer violated federal price controls, these practices evaded the state sales tax.⁷⁴ Skillman's investigations proceeded alongside the Attorney General's own pursuit of back-taxes from auto dealers.⁷⁵ Governor Sigler was not pleased with this persistence.⁷⁶ Michigan Republican fundraising was "extremely well organized" under Flint auto dealer Arthur Summerfield. The auto dealer contributions were important to Republicans nationally as well as locally.⁷⁷ The party leadership in Michigan preferred that their Attorney General not pursue auto dealers. But Eugene Black had other ideas.

The "one-man" grand jury. A distinctive aspect of the auto dealers' story was the "one-man" grand jury. Under Michigan law, state judges, sitting alone, exercised "the inquisitorial powers traditionally conferred only on coroners and grand juries."⁷⁸ One scholar summarized the law as follows:

[I]t provides that any judge, including police judges and justices of the peace, on complaint of any person, sworn or unsworn, may use the subpoena, the power to punish for contempt, and the power to grant immunity . . . in an investigation of suspected crime, and may cause the apprehension of any persons . . . for further proceedings the same as upon formal complaint.⁷⁹

Judge-jurors could hire prosecutors, detectives, and other staff.⁸⁰ Given the broad discretion and power judges enjoyed under this procedure, conventional grand juries had "practically disappeared" in Michigan.⁸¹ The one-man jury could act quickly

⁶⁷ RUBENSTEIN AND ZIEWICZ, *supra* note 66, at 153–63.

⁶⁸ *Kennedy's Son Easily Beats Field in Fight for Curley's Seat*, WASH. POST, June 20, 1946, at 3; RUBENSTEIN AND ZIEWICZ, *supra* note 66, at 163; THOMAS NOER, *SOAPY: A BIOGRAPHY OF G. MENNEN WILLIAMS* 60–61 (2005).

⁶⁹ *Sigler, Senator Vandenberg and Hoffman Leaders*, NEWS-PALLADIUM, Nov. 6, 1946, at 16.

⁷⁰ Andrew Bishop, *Michigan*, NEW REPUBLIC, Aug. 11, 1947, at 12; *Group Meets with Sigler*, IRONWOOD DAILY GLOBE, Mar. 2, 1948, at 2.

⁷¹ M.J. HEALE, *MCCARTHY'S AMERICANS* 108–110 (1998).

⁷² *Supreme Court May Decide When Auto is Used*, NEWS-PALLADIUM, Aug. 5, 1947, at 22; *Some Dealers Make 1,000 p.c. on Car Sales*, TRAVERSE CITY RECORD-EAGLE, Nov. 10, 1947.

⁷³ *9 Auto Dealers in Court Today*, NEWS-PALLADIUM, Nov. 14, 1947, at 8; *Detroit Auto Investigation Brings Charges Against Industry Middlemen*, RALEIGH REGISTER, Dec. 17, 1947, at 8. Indictments in a separate investigation are described in *Two Auto Dealers Must Stand Trial*, TRAVERSE RECORD-EAGLE, Dec. 24, 1947, at 10.

⁷⁴ Auto manufacturers set prices for cars. A dealer selling in excess would therefore violate the terms of contract with the manufacturer. See *Big Shot Detroit "Auto Row" Dealers Charged with Phony Titles to Cars, Evasion of Taxes on Overcharges*, OLEAN TIMES HERALD, May 24, 1948, at 13; William N. Leonard and Marvin G. Weber, *Automakers and Dealers: a Study in Crimogenic Market Forces*, 4 L. AND SOC'Y REV. 407, 411–13 (1970); PETER DRUCKER, *CONCEPT OF THE CORPORATION* 89–90 (2d ed. 1983).

⁷⁵ Black sought to tax the "true" value of trade-in vehicles, rather than the artificially low value set by dealers. See *Used Car Dealers Win Supreme Court Hearing on Taxes*, HOLLAND EVENING SENTINEL, Mar. 24, 1948, at 1.

⁷⁶ *See Gov. Sigler Grants \$6,000 to Auto Jury*, NEWS-PALLADIUM Dec. 2, 1947, at 14.

⁷⁷ NOER, *supra* note 68, at 61.

⁷⁸ *In re Oliver*, 333 U.S. at 262. See also *People v. McCrea*, 6 N.W. 2d 489 (1942).

⁷⁹ Glenn R. Winters, *The Michigan One-Man Grand Jury*, 28 J. AM. JUD. SOC'Y 137, 138 (1945).

⁸⁰ *Oliver*, 333 U.S. at 263; *Unprecedented Success in Criminal Courts*, 26 J. AM. JUD. SOC'Y 42 (1942).

⁸¹ Winters, *supra* note 79, at 138.

and decisively, but in the wrong hands such power could be abused.⁸²

A judge who pursued a successful high-profile prosecution, as Homer Ferguson did as a one-man jury against corruption in Wayne County in 1939–41, would enjoy a major boost to his public career. Ferguson used his reputation from the Wayne County investigation to win a seat in the United States Senate in 1942.⁸³ Kim Sigler's position as prosecutor for Judge Leland Carr's three-year corruption investigation, which followed the Ferguson inquest, propelled Sigler into the governor's office.⁸⁴ Eugene Black may have believed his work with the Skillman one-man jury and his involvement with a second one-man jury in Genesee County under Judge Philip Elliott would help his political career.

From state to federal investigation

As noted above, Governor Sigler opposed the Skillman one-man grand jury, but other developments also threatened the state investigations. The United States Supreme Court dealt a potentially substantial blow to Skillman's efforts in March of 1948, when it handed down *In re Oliver*.⁸⁵ The Court held that Michigan's one-man grand jury procedure, permitting a judge to take testimony in secret and, if (as in *Oliver*) he disbelieved the witness, immediately jail him for criminal contempt, unconstitutionally denied the witness the right to an open trial.⁸⁶ Some predicted that this decision would "take the teeth out of the law."⁸⁷

Less than a week after the *Oliver* decision, Attorney General Black nevertheless attacked Sigler's administration for hampering the auto tax investigation's funding. In a speech at which Sigler was present, Black asserted that this interference served auto dealers who had "made heavy contributions to the Republican campaign chest" in 1946.⁸⁸

In May, Black again accused the Sigler administration of collusion with auto dealers.⁸⁹ He publicly accused a "four-man Michigan gang"—Arthur Summerfield; former Governor Wilbur Bruckner, who represented the auto dealers; Wayne County Republican leader Frank Iverson; and Paul Graves, president of the Detroit Auto Dealers Association—of insuring through political pressure that delinquent sales taxes would not be pursued.⁹⁰

Black's incentives might have been factional, at least in part. The Michigan press reported rumors

that Black either would file against Sigler in the September 1948 Republican gubernatorial primary or was "acting as hatchetman" for another potential candidate.⁹¹ Black was also close to Detroit Police Commissioner Harry Toy, who wanted to unseat Summerfield as RNC Committeeman and thereby control party patronage if a Republican won the presidency in 1948.⁹² Black had endorsed Thomas Dewey for the Republican presidential nomination, but Sigler and Summerfield supported the nascent presidential candidacy of Senator Arthur Vandenberg.⁹³

⁸² *Id.* at 148. See also Robert G. Scigliano, *Politics and the Judicial Process: The Michigan One-Man Grand Jury* at 229–30 (dissertation) (1957). The Supreme Court in *Oliver*, 333 U.S. at 263, noted secrecy and the use of hideouts.

⁸³ WINTERS, *supra* note 79, at 142.

⁸⁴ Scigliano, *supra* note 82, at 117–20, 232 n.1.

⁸⁵ *In re Oliver*, 333 U.S. 257 (1948).

⁸⁶ 333 U.S. at 273–74. The Court revisited the one-man grand jury in *In re Murchison*, 349 U.S. 133, 139 (1955), concluding that the same judge may not, consistent with due process, both serve as a grand juror and preside over a contempt charge arising from the same investigation.

⁸⁷ *Decision Hits Grand Jury*, TRAVERSE CITY RECORD-EAGLE, March 9, 1948, at 1.

⁸⁸ *Sigler Disavows Speech By Black*, IRONWOOD DAILY GLOBE, Mar. 12, 1948, at 1. The next day, Black launched a test case against dealers who charged "exorbitant" financing charges. *State Checks Car Financing*, TRAVERSE CITY RECORD EAGLE, Mar. 13, 1948, at 5. Internal state studies indicated that the "auto rackets" grand jury was increasing sales tax revenues. Letter from Louis Nims to Eugene Black, April 29, 1948 in Sigler Papers, RG/MS 43 Box 35 Folder 1.

⁸⁹ *Alger Denies Black Charge*, TRAVERSE CITY RECORD EAGLE, May 5, 1948, at 5; *Secretary of State, Attorney General Feud at Lansing*, NEWS-PALLADIUM, May 5, 1948, at 14.

⁹⁰ *Black Backs Dewey, Assails Vandenberg*, DETROIT NEWS, May 28, 1948, at 34; *Targets of Attack Challenge Black*, DETROIT TIMES, May 28, 1948, at 2C.

⁹¹ *GOP Ponders Black's Strategy in Radio Talk*, NEWS-PALLADIUM, May 29, 1948, at 12.

⁹² *Black's Next Target to be Sigler, He Says*, DETROIT SUNDAY TIMES, May 30, 1948, at 6. Summerfield was, naturally, interested in retaining this position, and the power that would come from a Republican in the White House. *Charges Group Forced Her Out of GOP Race*, CHI. DAILY TRIB. June 23, 1948, at 10. Other reports indicated that Black acted on behalf of former Governor Alex J. Groesbeck as well as Harry Toy. *GOP Plea to Quit is Spurned by Black*, DET. NEWS, July 22, 1948, at 1, 4. Black, Groesbeck and Toy were aligned against the Sigler, Summerfield, Brucker faction within the Michigan Republican Party. STEPHEN B. AND SARA H. SARASOHN, *POLITICAL PARTY PATTERNS IN MICHIGAN* 70 (1957). The Summerfield faction had taken control of state Republican politics from the Frank McKay machine. *Id.* at 32–37.

⁹³ *Vandenberg to be Available to End, Statement Indicates*, N.Y. TIMES, June 22, 1948, at 1.

At this point, the Black/Sigler/Auto Dealers battle spilled into the national press. Drew Pearson, a nationally syndicated investigative columnist, reported that Black believed the auto dealers had given Republican contributions, via Arthur Summerfield, in return for lenient sales tax enforcement.⁹⁴ Fed up, Sigler announced he would no longer fund the grand juries.⁹⁵ Judge Skillman closed his grand jury investigation of auto dealers, referred his records to the local prosecutor, and simultaneously filed papers to seek the Republican nomination for Governor.⁹⁶ The Elliot one-man jury in Genesee County ceased operating on July 16.⁹⁷ The eventually successful Democratic hopeful for governor, G. Mennen Williams, began his campaign by criticizing Sigler's defunding of the investigative grand juries.⁹⁸

Attorney General Black responded to the closing down of the grand juries by announcing he would launch his own investigation of illegal contributions.⁹⁹ Black asserted that Republicans had raised funds from corporate sources in violation of state and federal law.¹⁰⁰ He accused Arthur Summerfield of "assessing" auto dealers for \$250,000 in Repub-

lican contributions.¹⁰¹ He revealed that the so-called "Summerfield Plan" named county Republican finance directors in each of Michigan's 83 counties, through whom *all* contributions flowed, whether to individual candidates or the party. Summerfield administered the distribution of the money.¹⁰² Most finance directors were connected to the Michigan Auto Dealers Association, and solicited fellow dealers for contributions calibrated to their sales volume.¹⁰³

As an aside, Summerfield's plan resembled the assessment plan Mark Hanna used to raise funds during the 1896 McKinley campaign.¹⁰⁴ Summerfield, like Hanna, defended his plan as superior to funding by "political bosses,"¹⁰⁵ in part because it included regular audits and drew on a broader base of support. Critics complained that Summerfield's plan placed Summerfield in complete control, and gave him power he could use to punish his political rivals.

As the summer wore on, Black promised reporters that the "auto rackets" investigations had unearthed "concealed political contributions on a big scale by corporations."¹⁰⁶ Black publicly predicted that the

⁹⁴ Drew Pearson, *Vandenberg Backers Pull Boner*, WASH. POST, June 24, 1948, at B13. When interviewed later by the FBI, Judge Philip Elliott stated he withdrew from his investigation after hearing Pearson's report, because he knew Black had released grand jury information through an intermediary (Detroit Police Commissioner Harry Toy) to Pearson. Memorandum of Elliott Interview, Sept. 14, 1948. This memorandum and most of the federal documents cited in this article are in the U.S. Justice Department's archived File No. 72-38-8 of the auto dealers' prosecution at the National Archives in College Park, Maryland.

⁹⁵ *Black Bitter Against Board*, TRAVERSE CITY RECORD-EAGLE, July 1, 1948, at 11. Black promised to fund the juries out of his budget. *Id.*

⁹⁶ *Judge Skillman to Oppose Sigler*, NEWS PALLADIUM, July 2, 1948, at 1. Skillman withdrew from the race a mere three weeks later. *Skillman and Keyes Out of Race*, DETROIT FREE PRESS, July 23, 1948, at 1, 4.

⁹⁷ See Jim Ransom, *Campaign Cash Will be Traced*, DETROIT FREE PRESS, July 17, 1948, at 1; *Judge Quits Genesee Jury*, DETROIT NEWS, July 17, 1948, at 1. See also statement of Judge Elliott, read into the record during testimony taken Aug. 10, 1948, attached to Notice of Hearing on Motion to suppress evidence, U.S. v. Lippincott Motor Sales, Indictment No. 4444 (E.D. Mich).

⁹⁸ *Sigler, Black Exchange Fire, Stillman Silent*, NEWS PALLADIUM, July 3, 1948, at 12.

⁹⁹ *Shuffle Auto, GOP Quizzes*, DETROIT NEWS, July 21, 1948, at 4.

¹⁰⁰ *Campaign Cash Will Be Traced*, *supra* note 97, at 1, 2. The contributions, made to the Michigan state party after the 1946 primary, were deemed to be to influence the general (federal) election, thus making this state matter subject to federal law.

As Black told U.S. Attorney Thomas B. Thornton, federal prosecution would also avoid the state's one-year statute of limitations. See Letter from Thornton to T. Vincent Quinn, June 16, 1948. See also Letter from Joseph Deeb to Peyton Ford, July 22, 1948.

¹⁰¹ William Mueller, *Fraud Cry of Black Challenged*, DETROIT NEWS, July 18, 1948, at 1.

¹⁰² SARASOHN, *supra* note 92, at 37-38; *Report of the Subcommittee on Privileges and Election re: Hook Against Ferguson (Michigan)*, S. Rep. 81-801 (July 28, 1949).

¹⁰³ SARASOHN, *supra* note 92, at 38. Later, Black urged federal prosecutors to pursue Summerfield's finance committees for failing to report as "political committees" but this theory never became part of that case. Eugene Black to Peyton Ford, Aug. 6, 1948. See also Memorandum to Alex Campbell from A. Abbott Rosen, Oct. 13, 1948.

¹⁰⁴ HERBERT CROLY, *MARCUS ALONZO HANNA 219-227* (1912) (1983 ed.); LOUISE OVERACKER, *MONEY IN ELECTIONS 112-113* (1932).

¹⁰⁵ *Black Ignoring Demands He Quit*, SAGINAW NEWS, July 22, 1948, at 1; William Mueller, *GOP Plea to Quit is Spurned by Black*, DETROIT NEWS, July 22, 1948, at 4.

In an interview with an FBI agent, James Rice (an ally of Summerfield's) described the plan's purpose as "to obtain a volume of contributions" from a large number of people so that they could effectively combat political machines and the control of candidates by one or two people and to prevent those few persons "from buying favors by buying candidates." FBI Report of Wm Bradley, Oct. 1, 1948, at 40.

¹⁰⁶ *GOP Weighs Black Charge*, DETROIT NEWS, July 19, 1948, at 1.

Justice Department would take up the federal issues.¹⁰⁷ Black was in a position to know, as he had been communicating since June with Justice Department prosecutors.¹⁰⁸ In early August, Black was called into state court to return auto dealers' records taken from the one-man grand juries; instead he dramatically handed them off to the U.S. Attorney for the Eastern District, Thomas P. Thornton.¹⁰⁹

The federal prosecution

Recently released files show that Attorney General Black's allegations had the close attention of Truman's Justice Department. From the outset, the corporate contribution investigation was under the supervision of Assistant Attorney General Alexander Campbell and key Justice aide Peyton Ford, who with Campbell reported directly to Attorney General Tom Clark.¹¹⁰ Clark himself urged Campbell

to "hurry up" the selection of a DOJ attorney to assign to Michigan.¹¹¹ The high-level attention is noteworthy when one reflects on the other priorities of the day. As the following details unfold, remember that as the auto dealers' investigations and prosecutions were moving forward, Campbell was also prosecuting cases against Communists, managing the consequences of Whittaker Chambers's testimony before the House Un-American Activities Committee, prosecuting a painters' union for violations of the Corrupt Practices Act, investigating nepotism allegations, and managing the Truman Administration's dealings with the NAACP.¹¹² Ford, a key assistant to Clark, was also personally involved in the Chambers matter, among others.¹¹³

The files amply demonstrate the enthusiasm of Campbell, Ford, and probably Clark for the investigation of the Michigan auto dealers, but also re-

¹⁰⁷ *Campaign Cash*, *supra* note 97.

¹⁰⁸ On June 16 Black first met with U.S. Attorney Thomas P. Thornton about releasing to Thornton documents obtained from the Skillman and Elliott one-man grand juries. See Thornton to Quinn, June 16, 1948; Thornton to Ford, July 2, 1948. Black telephoned Thornton on July 16, and visited U.S. Attorney Joseph Deeb on July 23. Memorandum from Deeb to Thornton, July 30, 1948. Apparently Black arranged to meet Deeb on the 16th as well, but did not appear. Deeb to Ford, July 22, 1948. Black's assistants met with Deeb on July 28 to hand over copies of documents, which Deeb then sent to Thornton because the acts took place in the Eastern District, and Deeb was the U.S. attorney for the Western District. Memorandum July 30, 1948, at 2; Letter from Thornton to O'Connor, July 31, 1948. Black's staff delivered another "truckload" of documents to Thornton on August 3. Letter from Thornton to Campbell, August 24, 1948. Black's assistants described a broad conspiracy to raise corporate money for the Republican Party, placing Summerfield at the center of it. Memorandum to Thornton from Brandt and Meier, Aug. 4, 1948.

Oddly, all FBI memoranda indicate Black's first contact was with Deeb and make no mention of the earlier Thornton contacts. Deeb, in a later interview, recalled being skeptical of the claims thinking that "in all probability Black, after months of public claims and charges, was not able to deliver upon his claims and wanted to transfer the situation to the Justice Department." FBI Interview with Deeb as part of FBI background check of Arthur Summerfield, summarized in FBI Report of Clark Diggins, Nov. 28, 1952, at 17.

¹⁰⁹ *FBI May Probe Charges Against GOP in Michigan*, AP, Aug. 4, 1948; *Black Gives Auto Records to US Attorney*, WAYNE COUNTY DEMOCRAT, Aug. 7, 1948, at 1. Judge Elliott had been working with Black's deputies to identify various records in the process of closing down his jury. They spent July 20 marking documents. See Excerpts of Testimony, attached to Motion to Suppress, U.S. v. Lippincott Motor Sales, Indictment 4444 (E.D. Mich 1948). The next day, Judge Elliott discovered that Victor Meier, one of Black's deputies, had taken the documents. See Excerpts of Testimony, *supra*, at 4. These documents were

turned over to the U.S. Attorney August 3. *Id.* at 6, 10.

¹¹⁰ As noted before, the Department of Justice's files on the auto dealers' prosecutions are in the National Archives, titled *Alleged Illegal Contributions by Corporations*, File No. 72-38-8. The files were released to this author after screening. According to the file log the previous researcher had accessed them in October 1961. On the chain of command see handwritten note by Campbell, dated August 11, 1948 indicating he, Ford and "A.G." were "working this one . . . every day."

¹¹¹ Clark notation to Campbell, Aug. 4, 1948.

¹¹² See *United States v. Painters Local Union No. 481*, 172 F.2d 854 (2d Cir. 1949); *12 Top Reds Face N.Y. Trial on October 15*, WASH. POST, Aug. 24, 1948, at 2; C.P. Trussell, *Red Links Denied: Ex-State Department Economist Balks at Other House Queries*, N.Y. TIMES, Dec. 10, 1948, at 1. See also SAM TANENHAUS, *WHITTAKER CHAMBERS 296-304* (1997); ALLEN WEINSTEIN, *PERJURY: THE HISS-CHAMBERS CASE 178-79* (1978); *Campbell, U.S. Prosecutor of Top Reds, Dies*, CHI. TRIB., Jan. 6 1968, at S-A9.

Campbell's November 1948 correspondence with NAACP Counsel Thurgood Marshall is cited in MICHAEL KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* 535 n. 41 (2004). See also John London, *Rowell Case Dropped by Grand Jury But Not FBI*, WASH. POST, Apr. 5, 1949, at 1.

Campbell and Clark were close as colleagues in the Justice Department, and remained good friends though the 1960s, as shown in the correspondence between Clark and Campbell at the Clark Archives at the University of Texas at Austin. These archives extend to 1967, when Clark left the Supreme Court. Box No. B26, Folder 1. Campbell died January 5, 1968, of a heart attack. *Campbell, U.S. Prosecutor of Top Reds, Dies, supra*. Clark similarly preserved a file of friendly correspondence with Peyton Ford, among them a series of letters recommending Ford for membership in the Chevy Chase Country Club. Clark archives, Box No. B 46, Folder 6.

¹¹³ See *Oral History interview with Tom C. Clark*, Oct. 17, 1972, at 189-90, available at <<http://www.trumanlibrary.org/oralhist/clarktc.htm#oh2>>.

veal that others involved thought that their tactics were imprudent. For one, on August 10 the Director of the FBI wrote the Attorney General resisting Campbell's August 6 request that 20 agents be assigned to the matter, so that simultaneous interviews could be made throughout the state. The Director complained that this would be contrary to the procedures followed in similar cases, and "will very possibly result in repeated unwarranted attacks on the Department and the reopening of other election matters on the part of Senator Ferguson."¹¹⁴ Ferguson, up for reelection in 1948, headed a Senate subcommittee investigating commodities speculation by government officials.¹¹⁵ Ferguson also was leading the Senate's investigation into Communist influence in the government, during which Ferguson and Clark had feuded openly in August about whether Ferguson's hearings had harmed the Justice Department's own investigations.¹¹⁶

Federal prosecutors had reason to hesitate. The records Black produced showed something less than the grand-scale violations he had promised in his public statements. The U.S. Attorneys' initial review of a number of Auto Dealers Association materials showed that dealers had solicited and collected checks to the Republican State Central Committee at an August 27, 1945 Association meeting.¹¹⁷ A few of these were illegal corporate contributions. A \$500 contribution by Roy Burgess was made from the account of his dealership, Genesee Motors; another \$500 made by Harry Woodin was drawn on the Lippincott Motor Sales account.¹¹⁸ The Lippincott contribution check was later voided (the corporate records stated it was "not allowed by corporation") but other records revealed a second check for \$500, made out to cash, with notations indicating it was a substitute contribution.¹¹⁹ Similarly, the records showed that Peter Gavriloff made his \$500 contribution using R&G Motor Sales funds. When that check was returned, Gavriloff contributed \$500 personally and took reimbursement from his dealership.¹²⁰ A third dealer, Otto Graff, produced records showing a check for \$500 drawn against his corporate accounts, with a "phony endorsement," which was cashed.¹²¹ Many other dealers listed in the Association's books, including Arthur Summerfield, gave properly from their personal funds.¹²²

Before convening a federal grand jury in Detroit, U.S. Attorney Thornton told Campbell he had concerns about the investigation.¹²³ Thornton noted that

FBI investigators had interviewed Black's recommended witnesses, but "the information furnished has been scanty to say the least."¹²⁴ Thornton hoped that the grand jury would be more successful in eliciting information, "and if not we then will be protected if inquiry is made as a result of [Black's assistants] Brandt's and Meier's claims as to what these people will testify."¹²⁵ However, Thornton advised that indictments would be premature before investigators could "develop a conspiracy" tying together illegal contributions statewide.¹²⁶ Notations

¹¹⁴ Memorandum of Aug. 10, 1948. Attorney General Clark replied to the FBI on August 10: "The allegations are serious—Please conduct a complete and expeditious investigation as you think necessary. Whatever number of agents as are necessary should be assigned. TCC" Copy of Memorandum of Aug. 10, with TCC notation, attached to Memorandum from Harold Beaton to Alex Campbell, Dec. 3, 1948.

¹¹⁵ Mary Spargo, *GOP Plans to Push Probe of Scandals*, WASH. POST, Jan. 6, 1948, at 3.

¹¹⁶ *Clark Again Denies Data to Ferguson*, WASH. POST, Aug. 17, 1948, at 1.

¹¹⁷ Memorandum, Deeb to Thornton, July 30, 1948, at 3.

¹¹⁸ *Id.* at 4–6.

¹¹⁹ *Id.* at 6.

¹²⁰ *Id.* at 7–8.

¹²¹ *Id.* at 11.

¹²² *Id.* at 10. Black added a number of dealers to the investigative pool in another meeting with Thornton and other federal prosecutors on August 19. He provided a list of names in block print, but no other documents, asserting that these dealers had either made corporate contributions directly or by writing checks to "cash" and contributing the cash to the Republican Party. Memo to TPT [Thornton] from HDB [Harold Beaton] August 19, 1948. FBI investigators questioned Black again on August 30 to obtain additional information to back up his initial description of widespread wrongdoing. FBI Report by William Bradley, Sept. 9, 1948, at 109–112. Black did not provide any useful additional information.

¹²³ Letter from Thornton to Campbell, Aug. 30, 1948.

¹²⁴ *Id.* at 2.

¹²⁵ *Id.*

¹²⁶ *Id.* Thornton wrote Campbell again on August 31, expressing his frustration over the quality of information Black had provided, consisting "almost entirely of conclusions and the Government's investigation therefore must of legal necessity from a factual standpoint cover the entire field under consideration." Letter from Thornton to Campbell, Aug. 31, 1948 (marked "PERSONAL").

Thornton then asked investigators to identify all individuals who contributed \$500 or more to the Wayne County Republican Finance Committee, determine their corporate affiliations, and ask them whether the contributions were made personally. Memorandum from Director, FBI to Campbell, Oct. 12, 1948. If the donor said the contribution was personal, investigators were then told to check the corporate books. The FBI balked at this proposal, preferring instead to contact them first by letter, which Thornton opposed. *Id.* Campbell instructed the FBI to follow the direction of Thornton. Memorandum from Campbell to Director, FBI, Oct. 19, 1948.

on Justice Department file documents, in Campbell's handwriting, show his confidence that the dealers "conspiracy" did exist.¹²⁷

The federal grand jury began to hear evidence in Flint on September 2, with the Michigan press paying close attention.¹²⁸ Among the first to testify was Mrs. Dudley Hay, a former Republican National Committeewoman whom Arthur Summerfield had ousted in his unsuccessful bid for Republican National Committee Chairman.¹²⁹ The grand jury also heard from auto dealer Peter Gavrilloff, and Lyle Church, a Genesee County prosecutor and former County Republican Chairman.¹³⁰

Secrecy is supposed to accompany a federal grand jury investigation, yet on September 13 columnist Drew Pearson again divulged inside details. He claimed to have copies of contribution checks to the state Republican Party drawn on auto dealers' corporate accounts.¹³¹ Two days later, the jury summoned a group of auto dealers to testify and to identify records.¹³² Then, a month after hearing its first witness, on October 1 the federal grand jury indicted four auto dealerships and five executives for making \$500 each in corporate contributions to the Re-

publican Party in 1946, for a total \$2,000 in illegal contributions.¹³³ Black promised his own state conspiracy warrants to issue "within a week" but this never occurred.¹³⁴

Although the small total sum would seem anticlimactic, these dealers had obscured their donations by making them personally, then seeking corporate reimbursement, and had also categorized the expenditures as tax-deductible business expenses.¹³⁵ Pleased with this news, Pearson again took to his column to credit himself with involving the Truman Justice Department in the matter.¹³⁶ Judge Frank Picard set their trial date for November 9, a week after the 1948 general election.¹³⁷ Democratic gubernatorial candidate G. Mennen Williams made good use of the "slush fund" scandal in the closing days of his campaign.¹³⁸

The investigation then moved to Detroit, where a second grand jury (also under U.S. Attorney Thornton) heard witnesses October 8 and 9.¹³⁹ FBI agents from the Detroit office interviewed Arthur Summerfield on October 7 and requested lists of contributors who had given to the Republican Party through him. Summerfield declined.¹⁴⁰ The FBI balked at interviewing indiscriminately 98 reported

¹²⁷ The words "not true" are written and underlined on a copy of a letter from O'Conner to Thornton, Aug. 30, 1948, next to an interviewee statement that dealer organizations had not contributed to a political party to the interviewee's knowledge.

¹²⁸ *Federal Grand Jury Opens GOP Contribution Inquiry*, SAGINAW DAILY NEWS, Aug. 6, 1948, at 1; *FBI Agent First Witness in GOP Fund Probe*, DETROIT TIMES, Sept. 2, 1948, at 1.

¹²⁹ Kenneth McCormick, *Mrs. Hay Testifies in GOP Fund Probe*, DETROIT FREE PRESS, Sept. 3, 1948, at 1. Hay had complained that the auto dealers were taking over the state party. *Ex-Committeewoman Calls Auto Dealers Boss of GOP*, DETROIT TIMES, Sept. 3, 1948, at 1.

¹³⁰ *3 Witnesses Spirited Into GOP Inquiry*, DETROIT NEWS, Sept. 4, 1948, at 1; *Republicans Testify in Fund Quiz*, DETROIT TIMES, Sept. 4, 1948, at 1.

¹³¹ Drew Pearson, *Stassen Drew Half a House, Plus*, WASH. POST, Sept. 13, 1948, at B15; *Scandal Hinted in GOP Quiz*, DETROIT FREE PRESS, Sept. 13. Although Black had handed documents over to federal investigators, he continued actively lobbying for greater attention to the scandal. Jack Redding, of Truman's campaign staff, met with Black around Labor Day (Sept. 6, 1948), and heard Black's allegations that fundraising had been tied to sales taxes. Redding stated: "I took copious notes and promised to help him all I could." Later, Redding mentioned the issue to Truman and Attorney General Clark, who said he would look into Michigan Republican fundraising personally. JACK REDDING, *INSIDE THE DEMOCRATIC PARTY* 264-65, 268 (1958).

¹³² *2 Day Search Proves Futile*, DETROIT NEWS, Sept. 17, 1948 at 1; *Grand Jury to Skip Summerfield Quiz*, DETROIT FREE PRESS, Sept. 21, 1948; *Jury Hears Aide of GOP Leader*, DE-

TRAIT FREE PRESS, Sept. 22, 1948 at 1. Summerfield's records contained no evidence of violations of state or federal restrictions. FBI Report of William Bradley, Oct. 1, 1948, at 20.

¹³³ *U.S. Jury Indicts 4 Auto Agencies*, DETROIT NEWS, Oct. 1, 1948, at 1; *Indict Flint Automen for GOP Donations*, DETROIT TIMES, Oct. 1, 1948, at 1; *Indicted in Michigan for 1946 GOP Gifts*, N.Y. TIMES, Oct. 2, 1948, at 9. Indicted were Roy H. Burgess and Genesee Motors; Harry Woodin, Blanche Lippincott and Lippincott Motors; Otto Graff and Otto Graff Inc.; and Peter Gavrilloff and R & G Motor Sales.

On October 4 the dealers each entered not guilty pleas. *Auto Agencies, Officers Deny Federal Charge*, DETROIT TIMES, Oct. 4, 1948, at 1.

¹³⁴ *U.S. Jury*, *supra* note 133.

¹³⁵ *Id.*

¹³⁶ Drew Pearson, *Where Does GOP Get Its Money?*, WASH. POST, Oct. 5, 1948, at B15.

¹³⁷ *Flint Auto Dealers Trial Set for Nov. 9*, NEWS PALLADIUM, Oct. 12, 1948, at 1.

Summerfield and Picard had been good friends. Letter from Summerfield to Picard, July 13, 1944, in papers of Frank A. Picard, Box 1, at Bentley Historical Library, University of Michigan.

¹³⁸ NOER, *supra* note 68, at 78-82.

¹³⁹ *New Phase Indicated in GOP Quiz*, DETROIT FREE PRESS, Oct. 8, 1948, at 1; *GOP Jury Hears East Side Dealer*, DETROIT TIMES, Oct. 8, 1948, at 1; Kenneth McCormick, *Jury Hears Bankers, Car Dealer*, DETROIT FREE PRESS Oct. 9, 1948, at 1.

¹⁴⁰ Memorandum to Campbell from Director, FBI, Oct. 18, 1948. Summerfield attempted to tape the interview, but the agents observed that he "threw the wrong switch." *Id.* at 2.

Republican donors of \$500 or more, as Thornton had asked.¹⁴¹ Attorney General Clark advised investigators instead to interview only those who showed some indication of having violated the law, and when was the case, to “call the parties before the G[rand] J[ury].”¹⁴²

On October 22, the Detroit jury handed down five sets of indictments citing evidence of about \$3,000 in illegal corporate contributions.¹⁴³ Eleven days later, Governor Sigler lost to G. Mennen “Soapy” Williams, who remained Michigan’s Governor until 1960.¹⁴⁴ Many credited the state and federal investigations of the auto dealers for his defeat.¹⁴⁵ Sigler trailed other Republicans on the ticket and significant numbers of voters who voted for Dewey crossed over to vote for Williams.¹⁴⁶

Auto dealers on trial

With the election now over, the first set of trials commenced against the Flint auto dealers at the Bay City, Michigan, courthouse. The case against Lippincott Motor Sales and its principals Blanche Lippincott and Harry Woodin began November 9, 1948. The Government contended that after the dealership cancelled an improper corporate contribution of \$500, it substituted a \$500 check made payable to “cash,” which was then contributed to the Republican State Central Committee.¹⁴⁷

Lippincott’s counsel responded that the corporate contribution statute was unconstitutional under the First Amendment.¹⁴⁸ He cited *U.S. v. CIO*, and argued “the Court goes very far in holding a corporation, labor union or individual has the right, subject to regulation but not subject to prohibition, to spend money in political elections.”¹⁴⁹ The court denied that motion, without prejudice.¹⁵⁰

After the government rested its case, defense counsel again argued that the corporate contribution ban was unconstitutional.¹⁵¹ After summarizing the concurrence in *CIO* (which would have reached the constitutional question) he added:

Everybody recognizes that in the interest of maintaining purity of elections that Congress has the right to regulate perhaps by a ceiling on amounts, but I think we have been going off on a tangent in our thinking for a long time that we could make one rule for an individual and one for a corporation. The first amendment, in fact a great many of our amendments

included in the Bill of Rights apply to corporations as well as individuals.¹⁵²

The court again denied Lippincott’s motion for acquittal.¹⁵³ Whether the \$500 in cash replaced the earlier illegal contribution was critical to the case

¹⁴¹ See Memorandum to the Attorney General from Director, FBI, Oct. 21, 1948.

¹⁴² *Id.* The memorandum contained a handwritten notation reading “Get Campbell on phone” and noting that Clark had advised Campbell to limit interviews to those where there were “indications of violations” and to “call the parties before the G.J.”.

Even so, investigators interviewed every Ford dealer in Wayne County, and inspected the records of all but four of them, based only on testimony that a dealer had solicited contributions from them. FBI Report of William O. Bradley, Nov. 24, 1948, at 65.

Campbell and Thornton discussed Clark’s instruction on December 12, after the first set of dealers went to trial. See notation on unsent letter of Nov. 9, 1948.

¹⁴³ *GOP Fund Jury Indicts 5 Car Dealers*, DETROIT NEWS, Oct. 22, 1948, at 1; *Indict Auto Agencies over Campaign Gifts*, N.Y. TIMES, Oct. 23, 1948, at 6. Indicted were Myron Patterson and Northwest Chevrolet, Ernest North and North Brothers Agency, Kessler Motors, Inc., Dominic Merrollis and Merrollis Chevrolet, and Dennis Hickey and Hickey Motor Sales. *Id.* Each pled not guilty. *Face Trial in GOP Fund Case*, N.Y. TIMES, Oct. 28, 1948, at 22. Hickey Motor Sales was accused of making a \$100 corporate contribution, Merrollis, of two contributions, one of \$150 and the second of \$203. Kessler was accused of making a \$200 contribution, Northwest of two contributions; \$650 and \$1,215. The North Brothers Agency was accused of contributing \$547 by reimbursing Ernest North for his personal contribution. *Justice Department Press Release*, Oct. 22, 1948.

¹⁴⁴ Williams, age 37 when elected, had served in 1947 as the Deputy Director of the OPA for Michigan. Web McKinley, *This Man Williams*, NEWS PALLADIUM, Nov. 22, 1948, at 1; NOER, *supra* note 68, at 55–56.

¹⁴⁵ Labor, especially the CIO-PAC, provided significant support to Williams, compounding the difficulties of Sigler’s lackadaisical campaign. JOHN BARNARD, *AMERICAN VANGUARD: THE UNITED AUTO WORKERS DURING THE REUTHER YEARS, 1935–1970*, at 322–23 (2004); NOER, *supra* note 68, at 72–80.

¹⁴⁶ *Sigler Concedes*, DETROIT TIMES, Nov. 3, 1948, at 1. Williams’s Republican support may also have come from “McKay machine” partisans who sought to rid Michigan of the 1946 Sigler reform clique and who may have assumed they could defeat Williams in 1950. That was the Williams campaign’s interpretation. NEIL STAEBLER, *OUT OF THE SMOKE FILLED ROOM 33–35* (1991).

Governor-elect Williams welcomed Black’s service in his administration. Jim Ransom, *Black to Get Offer from Williams*, DETROIT FREE PRESS, Nov. 4, 1948, at 1.

¹⁴⁷ *US v. Lippincott*, No. 4444 (E.D. Mich. Nov. 9, 1948) at 4–5 (Trial Transcript).

¹⁴⁸ *Id.* at 6.

¹⁴⁹ *Id.* at 7.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 84.

¹⁵² *Id.* at 86.

¹⁵³ *Id.* at 90.

and a jury question.¹⁵⁴ After deliberating less than an hour-and-a-half the jury acquitted the Lippincott defendants.¹⁵⁵

A second jury trial against R & G Motor Sales and Peter Gavrilloff on November 10 went no better for the prosecutors. This company's records showed that Gavrilloff had made a \$500 personal contribution to the Republican Party, which he reimbursed by cashing a corporate check (the corporation's books classified it as "miscellaneous expenses").¹⁵⁶ The defendants presented no evidence. Judge Frank Picard instructed the jury that the facts as presented constituted a violation and the jury should find the defendants guilty if they believed the facts.

About six hours later, Judge Picard called back the jury, frustrated that they had not reached a verdict. The jury returned a verdict of "not guilty" about fifteen minutes afterwards.¹⁵⁷ Picard, apparently furious, admonished the jury that "today you have done more to destroy the confidence of the people in trial by jury in Michigan than any group of twelve men or women I have ever seen. . . . How you could reach the conclusion you did, under the admitted and undisputed facts in this case, is beyond me."¹⁵⁸

In Washington, Assistant Attorney General Peyton Ford asked whether the jury had been "reached"—i.e., whether jury tampering had influenced the verdict.¹⁵⁹ His query stemmed from a note one trial juror sent Judge Picard, which noted that the jury knew "that money rules, so why pass a law that will cause a man to cheat and lie."¹⁶⁰ Additionally the group was "fed-up on price control, black market, etc. Saw the case as just another law to control man's liberties."¹⁶¹

In the meantime, Campbell called the Michigan prosecutors to Washington.¹⁶² In a handwritten note dated December 12, Campbell reassured Attorney General Clark that "We have 15 more cases for Grand Jury and are proceeding with them—as well as trying to make the big conspiracy."¹⁶³

Yet one month later, Michigan U.S. Attorneys Deeb and Thornton wrote a cautionary memorandum to Campbell.¹⁶⁴ After they related the acquittals of the Flint auto dealers and reviewed other corporate contributions made by Detroit dealers who had been indicted and Wayne County dealers who had not yet been indicted, Deeb and Thornton wrote:

There is no evidence indicating that in these instances where corporate contributions were made . . . , the contributions [were] other than voluntarily given or that huge sums of corpo-

rate funds were being poured into the State Republican Party campaign chest fund for the purpose of influencing a federal election. In addition no evidence of a conspiracy has been developed, and it is our view that such evidence cannot be developed for the investigation reflects that none exists.

It is noted that Section 251 [] makes no distinction between a large or small corporation. It prohibits corporate contributions generally. However, since the violations that do exist involve small dealer corporations, it is our view that these violations are technical in nature.¹⁶⁵

Thornton and Deeb noted that the intent of the federal prohibition was to "remove disproportionate influences exerted by means of large aggregations of money" and cited Elihu Root's famous expression of that idea.¹⁶⁶ They concluded from this his-

¹⁵⁴ *Id.* at 95–99.

¹⁵⁵ *Id.* at 103; Robert S. Ball, *Second GOP Trial Starts*, DETROIT NEWS, Nov. 11, 1948; *Cleared in Political Case*, N.Y. TIMES, Nov. 10, 1948, at 25. According to the FBI, the proceeds from the check "ha[d] not been traced to any political committee. However, the check voucher makes reference to a former check which was payable to the Republican State Committee." FBI Report of William O. Bradley, Nov. 24, 1948, at 7.

¹⁵⁶ Memorandum of Harold Beaton to Alex Campbell, Dec. 3, 1948, at 5.

¹⁵⁷ The Michigan press widely reported this verdict. Robert Ball, *Fund Verdict Riles Judge*, DETROIT NEWS, Nov. 11, 1948, at 1; Kenneth McCormick, *Judge Hits Verdict as Improper*, DETROIT FREE PRESS, Nov. 11, 1948, at 1; Ed Brand, *Picard Assails Auto Case Jury*, DETROIT TIMES, Nov. 11, 1948, at 2.

¹⁵⁸ See Brand, *Picard Assails*, *supra* note 157; FBI Report of William O. Bradley, Nov. 24, 1948, at 8–9; Memorandum from Harold Beaton to Alex Campbell, Dec. 3, 1948, at 6–7.

¹⁵⁹ Memorandum from John O'Keefe to Alex Campbell, Dec. 10, 1948.

¹⁶⁰ Memorandum from FBI to Campbell, Dec. 13, 1948. The juror added: "Hoping I am never called upon to sit in judgment against my fellowman until we are allowed to use base ball bats to get a verdict." *Id.* Apparently this jury's deliberations did not go smoothly.

¹⁶¹ *Id.*

¹⁶² Letters from Campbell to Deeb and Thornton, Nov. 26, 1948.

¹⁶³ Note from Campbell to Clark, dated Dec. 6, 1948.

¹⁶⁴ Memorandum from Thomas Thornton and Joseph Deeb to Alex Campbell, Jan. 14, 1949. President Truman appointed Thornton as District Judge in the Eastern District of Michigan January 13, 1949. See <<http://www.fjc.gov/public/home.nsf/hisj>>.

¹⁶⁵ Thornton and Deeb Memorandum, *supra* note 164, at 7.

¹⁶⁶ *Id.* at 8. That legislative history had been briefed by the Department in the Supreme Court's consideration of *US v. CIO*, and it appears that Deeb and Thornton used that brief or another common reference in writing their memorandum. See Allison R. Hayward, *Revisiting the Fable of Reform*, 45 HARV. J. LEGIS 421, 464–65 (2008).

tory that “it is quite obvious that the statute is designed to prevent electioneering by mass organizations in a position to exercise tremendous power.”¹⁶⁷ Deeb and Thornton advised Campbell that Black’s claims had not been borne out, no evidence of a conspiracy existed, no huge sums of corporate money were pouring into the Republican Party, and that the 21 violations were technical. They believed any additional prosecutions would fail, and advised against further investigation.¹⁶⁸

Main Justice did not accept their advice.¹⁶⁹ The second group of indicted auto dealers, from Detroit, resolved their cases on February 3, 1949. U.S. Attorney Thornton dismissed the charges against the individuals in return for their corporations’ pleas of *nolo contendere*.¹⁷⁰

Federal investigations continued into 1949. Edward Kane, the new U.S. attorney who had replaced Thornton, now a federal judge, continued to dispatch the FBI to interview dealers. Kane set the Genesee Motors trial for June 21, 1949, and the Otto Graff, Inc., trial for June 22, both in Bay City.¹⁷¹ Graff and Genesee instead pled *nolo contendere* on

June 20; the court fined Graff’s dealership \$750 and fined Genesee Motors \$500.¹⁷² The court dismissed the charges against the individual executives.

In April 1949 columnist Drew Pearson attempted to renew national interest in the scandal by rehashing the 1948 revelations, releasing information about several additional leaked contributions, and claiming “evidence of widespread violation of the Corrupt Practices Act.”¹⁷³ Pearson admitted that Alexander Campbell was his confidential source in a later controversy unrelated to the auto dealers’ prosecution and Campbell was quoted by others as saying he was “politically obligated” to Pearson.¹⁷⁴ So it may be that Campbell was Pearson’s source in the auto dealers’ controversy.

On June 29, the federal grand jury indicted eleven more auto dealerships for making corporate contributions to the Wayne County Republican Finance Committee.¹⁷⁵ Of these, eight immediately pled *nolo contendere*.¹⁷⁶ One dealership, Frost-Avis Inc. and A. Robert Frost, pled not guilty.¹⁷⁷ Bryant Motors and Tom Boyd, Inc. initially stood mute, but later pled *nolo contendere*.¹⁷⁸ The in-

¹⁶⁷ Thornton and Deeb Memorandum, *supra* note 164, at 9.

¹⁶⁸ *Id.* at 10.

¹⁶⁹ A rift grew between Deeb and Campbell, possibly as a consequence of their differences in opinion. See FBI Internal Memorandum from L.B. [Louis] Nichols to Clyde Tolson, Nov. 23, 1955; FBI Report of Clark P. Diggins, Nov. 28, 1952, at 19.

¹⁷⁰ *4 Firms Admit Gifts to GOP*, DETROIT NEWS, Feb. 4, 1949, at 1. The four dealerships were Merollis Chevrolet, Hickey Motor Sales, North Brothers, and Northwest Chevrolet. Kessler Motors, a fifth indicted dealership, initially maintained its innocence and did not appear with the others. *Id.* Kessler later pled *nolo contendere* as well. The fines were: Northwest Chevrolet, \$1,650; Hickey Motor Sales, \$500; Morellis Chevrolet \$500; North Brothers \$1,000 and Kessler Motors, \$200. Letter from Joseph Murphy to John O’Keefe, July 5, 1949.

North explained that he wrote a personal check to the Wayne County Republican finance committee for \$547, or a dollar per car delivered the prior year, but realized he had insufficient funds for the check to clear. North then requested reimbursement from the dealership’s bookkeeper, without divulging the purpose. See Statement of Ernest North, U.S. v. North Bros. Mar. 14, 1949, at 3.

¹⁷¹ Memorandum from FBI to Campbell, May 25, 1949.

¹⁷² See Sentence, U.S. v. Genesee Motors, No. 4446 (E.D. Mich 1949); Memorandum from Harold Beaton to Charles Murray, Oct. 3, 1952.

¹⁷³ Drew Pearson, *Johnson Learned Who Talked*, WASH. POST, Apr. 1, 1949.

¹⁷⁴ *Reveal Senate Candidate as Column Tipster*, CHI. DAILY TRIB. June 6, 1950, at 15. Pearson confirmed Campbell’s role under court order in a libel action brought by Norman Littell, whom Pearson had accused of operating as an unregistered foreign agent. Pearson lost. *Pearson Loses Libel Suit*, N.Y. TIMES, May 16, 1953, at 9.

¹⁷⁵ Letter from Kane to Campbell, June 30, 1949; Memorandum from Campbell to the Attorney General, July 7, 1949. Twenty FBI agents had performed the investigative work for this set months before during the election season, in October and November 1948. See FBI Report of William Bradley, Nov. 24, 1948.

¹⁷⁶ *Id.* Fines were: Northlawn Motor Sales and Edward Schoenherr, \$750; J.B. Cote Inc., \$1,250; Allen and Locke Motors and George Locke, \$500; Park Motor Sales and Harold John, \$750; C. Creed Inc., \$500; and W.B. Deyo Co. \$1,500. Letter from Kane to Campbell, Sept. 26, 1949.

¹⁷⁷ See *id.*; Campbell Memorandum, *supra* note 175. Frost-Avis apparently reconsidered and was fined \$750.

¹⁷⁸ See Letter from Kane to Campbell, September 28, 1949. Bryant Motors was fined \$500; Tom Boyd was fined \$500, Gilbert Motor Sales was fined \$750 and Alfred Steiner was fined \$750. *Id.*, see also Letter from Kane to Campbell, Sept. 29, 1949 (Steiner fine).

Gilbert contributed \$480 to the Wayne County Republican Finance Committee in February 1948, later reimbursed from corporate funds; Bryant endorsed a corporate check of \$150 payable to himself to the WCRFC. Several dealerships endorsed corporate checks over to the committee: by Stark-Hickey to donate \$1,000 to the WCRFC; by Allan and Locke to donate \$100 in 1946; by C. Creed to donate \$250 in 1948; by Tom Boyd, Inc. to donate \$500 in 1946 and \$200 in 1948; by Alfred Steiner to donate \$500 in 1946; by J.B. Cote to donate \$500 in 1948 and \$484 in 1948 (Cote made payable and endorsed the 1948 contribution as “Sam Charters,” a fictitious person). W.B. Deyo used a check payable to “cash” of \$750 to contribute to the WCRFC as well. A Frost-Avis check payable to the company’s cashier for \$500 became a contribution—but that \$500 was charged back to the company’s principals in September 1948. FBI Report of William Bradley, Nov. 24, 1948, at 1–2.

dictment of each individual officer was, as before, dismissed.¹⁷⁹

In October 1949, Campbell again contacted the Detroit U.S. Attorney, Edward Kane, urging his office to investigate Ford dealers.¹⁸⁰ He also noted that the Park Dealership, which had pled nolo contendere in July as a part of the Wayne County group, was a Mercury dealership. Accordingly, Campbell insisted that Kane should investigate the corporate records of every Wayne County Lincoln and Mercury dealer.¹⁸¹

Based on nothing more, Kane commenced investigating these fourteen dealerships in late November 1949.¹⁸² Investigators found a \$620 contribution on the books of Evans Motor Sales, because, as Stewart Evans explained, his accountants wrongly advised that corporate contributions were allowed.¹⁸³ Two other dealerships, Mel Hague and Harmon-Daniels, made corporate contributions in early 1948, which they charged back to personal accounts in September, no doubt out of sensitivity to the news of the other investigations.¹⁸⁴ The majority of those investigated were innocent of any wrongdoing.¹⁸⁵ Meanwhile, Alex Campbell resigned from the Justice Department in December

1949, to seek the Democratic Party nomination for Senate from Indiana.¹⁸⁶

U.S. Attorney Kane filed against the three dealers on August 11, 1950. Hague and Evans pled nolo contendere, while Daniels initially pled not guilty but on September 19 changed his plea as well to nolo contendere.¹⁸⁷ This final set of convictions marked the end of the investigation.¹⁸⁸

Aftermath

Public attention to the auto dealers' scandal dissipated soon thereafter. With the collapse of used car prices in June 1949, black market and off-the-books profits likewise evaporated.¹⁸⁹ Also, Michigan succeeded in bringing charges against several organized automobile sales rings.¹⁹⁰ Governor Williams appointed Eugene Black to the state Circuit Court, and Black ran successfully for a Supreme Court seat as a Democrat in 1955, in which he served until 1973.¹⁹¹

Arthur Summerfield's political career continued apace as Republican National Committeeman for Michigan.¹⁹² At the 1952 Republican National Convention, Summerfield delivered the Michigan delegation to Dwight Eisenhower and was soon after-

¹⁷⁹ FBI Report of William Bradley, Oct. 3, 1949. This report noted that the Detroit investigation was expected to close down. There was quite a bit less press attention than before to this round of cases. See *Nolo Contendere Pleas Entered by Ford Agents*, NEWS PALLADIUM, July 9, 1949, at 12.

¹⁸⁰ Letter from Campbell to Kane, Oct. 28, 1949.

¹⁸¹ *Id.* In November 1949 Campbell also conveyed the names of investigated dealerships to the IRS, because they may have deducted corporate contributions (disguised as a tax deductible item) on their tax returns. His letter includes citations to Lippincott and R&G Motors, the two dealerships acquitted in 1948. Letter from Campbell to Schoenman, Nov. 8, 1949.

¹⁸² Memorandum from FBI to Campbell, Nov. 22, 1949; FBI Report of William Bradley, Jan. 27, 1950.

¹⁸³ FBI Report of William O. Bradley, Feb. 20, 1950, at 4. Another dealer, Mark Leach, gave \$250 personally because he believed it would help his dealership receive scarce new cars, as the factory representative attended a meeting where the auto dealers were solicited. *Id.* at 8.

¹⁸⁴ FBI Report of Eldon Williams, Mar. 20, 1950. The dealers who did this were Mel Hague (\$650 to the Wayne County Republican Finance Committee); and Bill Daniels (\$1,050 to WCRFC). Coogan-Shumerski gave \$250 to the WCRFC from corporate funds, but executives reimbursed the company within the month.

¹⁸⁵ *Id.* See also FBI Report of Eldon Williams, May 18, 1950. One dealer, Harold Johns, advised investigators that tales of Ford company pressure "could develop from a luncheon such as was held" because "a number of the dealers had several cocktails before lunch, during lunch, and during the meeting, and a

number of irresponsible statements do result." FBI Report May 18, 1950, at 3.

¹⁸⁶ *Campbell Resigns Justice Agency Job*, N.Y. TIMES, Dec. 20, 1949, at 29. He lost to Republican incumbent, Homer Capehart. *Democrats use Press Hostility as Defeat Alibi*, CHI. DAILY TRIB., Nov. 13, 1950, at 7.

¹⁸⁷ FBI Report of Eldon Williams, Sept. 6, 1950; FBI Report of Eldon Williams, Oct. 12, 1950. As before, the court dismissed charges against the individual officers and fined the corporations. Evans Motor Sales was fined \$1,000; Mel Hague Inc. \$1,000; and Bill Daniels, Inc. \$1,500. FBI Report Oct. 12, 1950. Interestingly, Daniels appeared before Thomas P. Thornton, now a federal judge.

¹⁸⁸ Memorandum FBI to Ass't A.G. James McInerney, Nov. 13, 1950.

¹⁸⁹ *Used Auto Slump*, WALL ST. J. June 2, 1949, at 1.

¹⁹⁰ *Auto Tax Evaders Seized*, N.Y. TIMES, Dec. 20, 1949, at 34; *Uncover Huge Auto Sales Tax Fraud; Seize 7*, CHICAGO DAILY TRIB. Dec. 20, 1949, at B9; *Charge 8 With \$750,000 Bootleg Auto Resales*, CHI. DAILY TRIB., Nov. 5, 1950, at A11.

¹⁹¹ MARY M. STOLBERG, BRIDGING THE RIVER OF HATRED, 111-12 (2002); *Eugene F. Black, 87, Ex-Justice in Michigan (Obituary)*, N.Y. TIMES, Aug. 9, 1990. Black's record on the court included a series of scathing dissents. See *Jones v. Bloom*, 200 N.W. 2d 196 (Mich. 1971); *Plumley v. Klein*, 199 N.W. 2d 169 (Mich. 1972).

¹⁹² Robert S. Allen, *Rich Michigander Slated to Head GOP Committee*, WASH. POST, July 31, 1949, at B5; *Disorder in the Ranks*, TIME, Aug. 1, 1949; *Change of Command*, TIME, Aug. 15, 1949. See also the entry for Summerfield in *Current Biography* 1952, at 572.

wards named RNC Chairman.¹⁹³ During the subsequent campaign Democratic operatives accused Republicans of assessing auto dealers for contributions in the 1952 cycle, much as the Summerfield plan had in 1948.¹⁹⁴ After winning the presidential election, Eisenhower named Summerfield Postmaster General.¹⁹⁵

THE LESSONS OF THE PROSECUTION

In his 2006 article for this Journal on the history of the corporate contribution ban, historian Robert Mutch noted several possible explanations for the dearth of corporate contribution enforcement. Mutch noted that lack of enforcement could stem from the attitude of the times. Corporate contributions would be difficult to detect without prosecutors investing considerable scarce resources. Prosecutors may not have been inclined to bring such cases, if as Mutch relates, corporations posed (or seemed to pose) less of a threat in the 1940s and 1950s than in 1907. A wide array of other restrictions now applied to corporations.¹⁹⁶ Noted Mutch, “[s]omething like the 1907 Act probably could not have been enacted in the 1950s; being already in place, it was equally unlikely to be enforced.”¹⁹⁷

Other scholars have had their own theories. Prosecutorial reluctance might have reflected doubts about the law’s validity. The corporate and labor prohibitions were potentially unconstitutional in the eyes of some.¹⁹⁸ With regard to the expenditure ban, that would seem a reasonable concern as even in more recent times its constitutionality has been a continual source of controversy.¹⁹⁹ Commentators from the pre-FECA era observed that prosecutors and judges appeared uncertain about the entire statute, including the contribution ban.²⁰⁰ “The obvious political overtones of the section coupled with its literal uncertainty would then result in a decision not to prosecute unless the section clearly applied,” noted one.²⁰¹

Prosecutors could have feared for their own political well-being. As one author noted, vigorous prosecution “cannot be expected when the defendants are likely to be pillars of the community.”²⁰² Prosecutors traveled in political circles, would be unlikely to prosecute their own donors, and could be deterred from pursuing rivals’ donors by the potential that their own side would be pursued in retaliation.

Finally, prosecutions might have been few and far

between because violations were rare. Corporate managers engaged in other forms of corporation-subsidized politics, if they wanted to, consistent with the statute, but avoided making contributions. So the statute may have worked, in that direct contributions to candidates became an unappealing way of using corporate funds for politics.

The auto dealers’ cases contain elements sympathetic to each of these theories to some degree. While corporations, especially big ones, may have seemed less pernicious after the war than before, auto dealers could have been an exception. The sales tax and black market scandals made headlines. The public would have been angered at the cheating that plagued the industry. Whereas ordinarily there may not have been much appetite to prosecute a series of small businessmen and women for small corporate contributions, the dealers may have seemed like “bad actors” capable of executing a broad campaign financing “conspiracy.” However, if popular disgust or mistrust had been a factor in moving the prosecution forward, it did not carry into the courtroom. Once in court, prosecutors could not win a conviction, and jurors expressed distaste for enforcing this criminal statute against this kind of activity.

There were several occasions when prosecutors

¹⁹³ *Two Who Swung Key Votes Due for Top Jobs*, L.A. TIMES, July 12, 1952, at C; Robert Albright, *GOP Chiefs Close Ranks in Drive for Harmony*, WASH. POST, July 13, 1952.

¹⁹⁴ Nathan Perlmutter, *Eisenhower’s Choice*, THE NATION, Sept. 6, 1952, at 191; Drew Pearson, *Ford Dealers Urged to Aid GOP*, WASH. POST, Oct. 21, 1952, at 35; *GOP Accused of Soliciting Car Dealers*, WASH. POST, Oct. 25, 1952, at 2. The dealers were allegedly urged to give in appreciation of the “many hours” of Summerfield’s time spent in Washington lobbying for more generous dealer discounts. *GOP Accused*, *supra*. Justice Department documents reflect inquiries in October 1952, into Summerfield’s role in the auto dealers’ solicitations, which had the personal attention of then-Attorney General James McGrath. See the handwritten note attached to Memorandum to Beaton from “Marty B” Oct. 1, 1952.

¹⁹⁵ Edward Folliard, *Summerfield Has Made Good as Businessman, Politician*, WASH. POST, Nov. 26, 1952, at 2; *Senators OK Summerfield for Ike Cabinet*, CHI. DAILY TRIB., Jan. 15, 1953, at 8.

¹⁹⁶ Mutch, *supra* note 3, at 307.

¹⁹⁷ *Id.* at 308.

¹⁹⁸ See Lambert, *supra* note 2, at 1045–46.

¹⁹⁹ *Compare Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), with *Citizens United v. FEC*, 558 U.S. ____ (2010).

²⁰⁰ EPSTEIN, *supra* note 16, at 305 (1969); Layman, *supra* note 10, at 445.

²⁰¹ Layman, *supra* note 10, at 445.

²⁰² *Id.*

expressed concern about the law's constitutionality. The Deeb and Thornton memorandum, written just before Thornton departed his position as U.S. Attorney to join the federal bench, is the most explicit example from the archives.²⁰³ They doubted that the law was appropriately applied to these small closely held businesses and advised that the prosecutions cease. Their recommendation was based on practicalities as well. The jury acquittals in the two cases that went to trial made successful prosecution look unlikely. Moreover, when first launched, the prosecution was advertised as seeking to bring down a large interstate conspiracy that, as it turned out, did not exist, not to bring separate prosecutions *ad hoc* against small violations.

Yet Deeb and Thornton lost that argument, suggesting that the most significant distinction between the auto dealers' prosecutions and other potential corporate contribution cases was the zeal with which the Washington, D.C.-based supervisors pursued these cases. Alex Campbell, Peyton Ford, and Attorney General Tom Clark felt none of the countervailing career pressures or restraint that local prosecutors might have felt. Indeed, Campbell probably leaked confidential investigative records to Drew Pearson. The threat someone might prosecute a labor organization supporting the Administration in retaliation provided little deterrent, because those entities were making headway testing the statute in court.²⁰⁴ Meanwhile, chilling auto dealers and other corporate managers from making contributions to Republicans served the Administration's political agenda.

A separate but related feature of this prosecution is how the claims came to the Justice Department already developed, thanks to zeal from another source. The distinctive powers of the Michigan one-man grand jury allowed an idiosyncratic state prosecutor to plumb the depths of dealers' financial records and find some contributions. When Michigan Attorney General Black met resistance from Governor Sigler, he took the records to the Justice Department and made bold promises about their inculcating power. Black oversold the evidence. The Justice Department bought the tale, and later resisted revising that view. However inaccurate Black's depiction, the fact that he was the state Attorney General and at least nominally a Republican provided cover for the Justice Department to pursue investigations that otherwise might have been condemned as fishing expeditions as well as to prosecute the

victims of the fishing expedition that had already occurred at the state level.

Because the federal investigation, pushed from Washington, continued for two years, bringing in dealers not included in the original state investigations, it gives modern scholars a thorough, if narrow, window into mid-century corporate political activity. Even among the politically mobilized auto dealers, who had a great deal at stake in 1946 and 1948, the use of corporate treasury funds for surreptitious campaign contributions was not widespread. When federal investigators in 1949 audited all 14 Lincoln and Mercury dealerships in Wayne County, they found three dealers who had used corporate funds, *once* each, for modest contributions. Prosecutors are rarely in a position to engage in such broad and undifferentiated discovery. Given how little was found, the investigation came to a close.

This prosecution illustrates several of the explanations offered to account for the lack of enforcement, not just one. Popular will appeared to be lacking for convictions under this law. Lawyers on both sides doubted the law's constitutionality. Once prosecutors sifted through numbers of dealers' financial records, they found that compliance was the rule, not the exception. One factor made the auto dealers' prosecution different—politics.

CONCLUSION

The auto dealers' prosecutions featured many distinctive characteristics. The Michigan one-man grand jury system enabled a kind of inquisition and thus was able to command the production of wide-ranging evidence. Attorney General Eugene Black was a maverick reformer not reluctant to disrupt his party's fundraising network, or to appropriate grand jury records for his own purpose. Arthur Summerfield worked to modernize the Republican fundrais-

²⁰³ See *supra* note 164.

²⁰⁴ U.S. v. CIO, 355 U.S. 1206 (1948); U.S. v. Painters Local Union No. 481, 79 F. Supp. 516 (1948), *reversed*, 172 F.2d 854 (2d Cir. 1949). The Justice Department may have sought a corporate contribution prosecution to "balance out" the prosecutions of unions, as seemed to be the motivation behind the prosecution of Lewis Foods in 1963. MUTCH, *supra* note 3, at 306; EPSTEIN, *supra* note 16, at 41. However, there is no indication in the Department's files that this was their motivation.

ing network, but that unsettled certain party activists. Summerfield's money base, the automobile dealers, had their own concerns about governmental control of the auto markets, felt strongly about the direction federal regulation would take, yet suffered from a lack of public credibility.

But Eugene Black's tenaciousness would have meant little without the Justice Department's embrace of his investigation. The records leave little reason to second-guess the Department's initial interest. As far as Justice knew, Black's tale of a broad conspiracy would be proved. But Black's evidence fell short within weeks and a nonpartisan prosecutor might have ended the office's activity at an early point. For Attorney General Clark and his top assistants, however, political considerations could have trumped practical ones. So long as there was some justification for pursuing Republican donors, it made sense for them to continue, even if the investigation yielded scant evidence, depended on a law of questionable validity, and took key staff away from other projects. Here was a situation, unlike the one that would be faced ordinarily, where the threat of retaliation against the Administration's funders proved no deterrent. Labor seemed all too happy to

litigate, so the Clark Justice Department could pursue this "interstate conspiracy" with little political cost. No other explanation for the Department's persistence seems as persuasive.

In the end, after two years of effort, the Justice Department had little to show for its work. It won no convictions. For those few donors that made contributions from corporate funds, prosecutors agreed to acquit each individual in exchange for nolo contendere pleas (and modest fines) from the companies. The promised widespread Republican conspiracy to evade the Corrupt Practices Act never surfaced. Federal prosecutors waited fifteen more years before trying a corporate corrupt practices case again.²⁰⁵

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²⁰⁵ Mutch, *supra* note 3, at 302.