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THE POLITICAL TRIALS OF CARL C. MAGEE

SUSAN ANN ROBERTS

CARL C. MAGEE, an Albuquerque newspaper editor, was the defendant in the most blatant political trials in New Mexico history. These trials, stretching from June 1923 to July 1924, transformed the courts of law into veritable battlefields on which the state's political giants fought for power. And what a struggle it turned out to be! After all was said and done, the Magee trials had both exposed and altered existing political conditions. In the one instance, they revealed the highly charged nature of local partisan politics and demonstrated the willingness of some Republican leaders to use the courts as political weapons against their enemies. In the other, they led to the breakup of one of the state's most formidable Republican machines and precipitated in 1924 a Republican electoral disaster. At the same time, these trials had far-reaching implications for the courts themselves. They insured that no party would ever again so outrageously manipulate the judiciary.

Yet the political trials of Magee, as significant as they were to the politics of the 1920s, have not received the attention they warrant for basically two reasons. First, while writers have credited Magee with helping uncover Albert B. Fall's role in the Teapot Dome and Elk Hills scandal, most of them have otherwise ignored him. Secondly, and more importantly, writers have virtually excluded New Mexico's courts from their statehood histories. They have in the process neglected not only these specific trials and their consequences but also the contributions of the judiciary and the legal community to this state's political development. Attempting to remedy these omissions, this article offers an analysis of the Magee trials.

In the twenties Old Guard Republicans dominated New Mexico politics, but their hold was far too tenuous for their liking. Over the first decade of statehood, for example, they lost approximately as many statewide election contests as they won. Furthermore, they were troubled by a split within their party as some independents bolted in 1920 and did not return until 1924. Worried about their future, the Old Guard played politics in a rough, unyielding fashion. So, too, did the Democrats, the difference being one only of degree and effective power. The result was a decade of intense partisan politics, bitterly and hotly contested elections, and a willingness to use any methods to effect politically desired ends. It was a time in which parties brooked no opposition—a time seemingly made for the Magee trials and the kinds of partisan and legal activities that accompanied them.

As a partisan action, the Magee affair involved to varying degrees most of New Mexico's leading politicians. Operating behind the scenes were the leaders of the Republican party: Albert B. Fall, a former United States senator and Secretary of the Interior until his resignation in March 1923; Holm O. Bursum, a United States senator, titular head of his party, and often a Fall antagonist; and Secundino Romero, United States marshal and undisputed boss of the northern counties. Noted Republicans David J. Leahy, Clarence J. Roberts, and Reed Holloman were more directly involved. Democrats who actively participated were Richard H. Hanna, an unsuccessful candidate for the offices of governor and United States senator; Fred Wilson, a future attorney general; and James F. Hinkle, governor of the state.

As a legal action, the Magee trials involved many of New Mexico's leading attorneys. Frank W. Parker, the subject of a key Magee editorial, served with Roberts and Hanna as the first three justices on the state supreme court. Leahy and Holloman sat as two of the state's eight district judges. Supreme court justices reviewed appeal cases resulting from the trials. A battery of prominent attorneys made their presence felt throughout the proceedings, acting for the prosecution, for the defense, or in some other capacity. Quite simply, the legal community found itself deeply

enmeshed in the partisan political struggles of the times. They could not do otherwise given their partisanship and the forum in which this particular contest for power took place.

Carl C. Magee, the major personality of the trials and their aftermath, ironically began his career in New Mexico as a Republican. He came to the state from Oklahoma in 1917 seeking a more healthful climate for his wife. An editor and a lawyer, he managed in 1920 to negotiate the purchase of the *Albuquerque Morning Journal*, a daily Republican newspaper with the largest circulation in the state.¹ As long as he ran the *Journal* as a reliable Republican, he encountered no difficulty with party leaders. In fact, his ensuing troubles stemmed from his determination to expose political corruption within the state. Quite naturally focusing on corruption inside the Republican Party, given its position of dominance, the editor soon tangled with Republican leaders. He lost control of the *Journal* as the result of his exposés, thereafter continuing his crusade through editorships of a semiweekly and subsequently of a daily, the *New Mexico State Tribune*.

Magee's loss of the *Journal*, as future events were to show, was only the opening round of his battle with the state's political powers. His losing of the newspaper hinged upon the withdrawal of financial backing, the direct consequence of editorial comments on the methodical looting of the state land office and of the need for cleaning up the Republican Party. Fall, who earlier told Magee that the Republican land office served the interests of southern New Mexican cattlemen, personally warned the editor to lay off or be ruined. Had Magee heeded this warning, he could have saved his newspaper, but he did not. By the early spring of 1921 Magee learned that his financing of the *Journal* through a Kansas City bank was being terminated under directions from Fall. His informant was, significantly, Senator Bursum.²

Magee did not give up without a fight, as he and Bursum discussed the newspaper's economic status through a series of telegrams. These began on this note: "Your information concerning Kansas City deal correct [stop] Must liquidate in twenty days or lose control [stop]"³ The telegrams indicated that Bursum, who

faced a special United States election contest, might help secure new financing but probably not without strings. Indeed, Magee wired the senator the following in acknowledgment of a possible deal: "Not sure I made myself clear [stop] Fully expect to support you in September and have no objection to personal obligation to you . . . but do not wish to be obligated to interests which I might feel harmful to the state [stop]."4

Having been notified by Bursum that no new out-of-state financing was available, Magee proceeded with a drive for public funding through bond subscriptions. This soon became a partisan matter. A number of Democrats attended a public fund raising meeting in Albuquerque, and several Democrats over the state sent in subscriptions.⁵ By June Magee was in a position to continue publishing the *Journal* for a time, prompting Bursum to write Magee's chief competitor, a loyal Republican editor:

You are perfectly free to use your own judgment of what you think is the best thing to do. I only meant the request [for the *Albuquerque Evening Herald* not to interfere with Magee's fund raising] pending at the time he was in trouble, and did it on the theory that it was better to have him as a competitor than possibly some one else more formidable.⁶

In short, Bursum predicated his actions not on his friendship for Magee but rather on political realities generally and on his dislike for Fall specifically.

From that time on Magee ran his newspapers in a partisan Democratic fashion.⁷ The only major exception was his endorsement of Bursum in the special senatorial election of September 1921.⁸ This aside, the editor over the next two years stepped up his partisan attack, striking out in all directions. He fired his most irritating shots, as it turned out, in the direction of the northern counties. In editorials spaced over fourteen months, Magee attacked Romero, boss of San Miguel, Mora, and Guadalupe counties, and Leahy, judge of the Fourth Judicial District encompassing those counties. By the spring of 1923 he had his readers thinking in terms of San Miguel County as "Sec Romero's Empire" and of the

political organization there as Sec's "copper-riveted machine." Romero, himself, he described as an unjust boss who exploited the Spanish people, at once "narrow, bigoted, arrogant, malicious," and "interested only in his own selfish plans." Judge Leahy came in for the following criticism: "Over this enormous estate of the people, the Hon. Dave Leahy, right hand bower of Sec Romero is a dictator by reason of his appointing power as district judge."⁹

In the face of these attacks Romero and company could only demur.¹⁰ Magee, after all, resided in Albuquerque, seemingly safely beyond the grasp of the Fourth Judicial District. But then the Albuquerque newspaperman made a tactical error. On June 8, 1923, he wrote an editorial on the handling of state supreme court funds. According to this account, José Sena, clerk of the court, had deposited court money without bond and under his name in a thereafter defunct Santa Fe bank. Magee called for the removal of Sena from office at the very least and addressed his article and its information to Justices Clarence M. Botts and Samuel G. Bratton. He carefully avoided suggesting any wrongdoing on the part of Chief Justice Parker but did say that Parker "has grown too accustomed to old methods to see anything wrong in what has happened."¹¹

Done in the crusading manner of so many of his editorials, Magee probably had better grounds for questioning the financial matters of Sena and Parker than even he, himself, realized. In March 1921 and again in February 1923, Sena wrote to Secretary of Interior Fall soliciting the job of governor of Puerto Rico. In both letters he complained of his lowly salary as supreme court clerk. In the first instance, he wrote:

The salary I am receiving of \$3000 hardly enables me to live and I am not able to pay debts but very gradually [no period] . . . With the salary of \$3,000 and having out of that to contribute largely as I have done to the Republican Cause, I cannot save anything and I would like to have you help me in this matter.¹²

In the second instance, he again begged Fall's help: "I am getting along in years and as I stated to Mr Bursum would like to obtain something where I would not be compelled to work so hard as I

have work [*sic*] for the last years and at least be able to save something for my older days."¹³

As for Parker, his awareness of financial matters, both court-related and personal, seemed at best naive. His territorial district court clerk, William Martin, was involved in all sorts of court deposit irregularities extending from 1907 to 1910 and involving deposits in a number of different banks. In January 1910 Parker wrote Bursum to the effect that his clerk failed to make two deposits in the First National Bank of Santa Fe, adding, "This ought to be deposited at once."¹⁴ In August 1910 the traveling auditor's report referred to "the claims against ex-clerk Martin."¹⁵ Parker's personal finances showed similar carelessness, as Parker ignored two outstanding bank notes when called due. At a given point one of the two banks involved threatened, "Several times we have sent you notices and you have not been interested enough to favor us with a reply, our patience is about exhausted, if you cannot voluntarily take care of your obligations perhaps you might be forced to do so."¹⁶

With these facts to back up his allegations, Magee might have found his position more secure. Without them he presented his San Miguel County enemies the opportunity for which they were waiting, namely, a chance to crush Magee while avoiding the outward appearance of political revenge. With such an opportunity available, Judge Leahy charged the editor with the criminal libel of Justice Parker and issued a "Forthright Warrant" for his arrest.¹⁷

What followed was a political trial. As the Magee matter proceeded, it eventually came out that O. O. Askren—former attorney general, brilliant trial lawyer, Las Vegas resident, and personal counsel to Romero—and Roberts were behind the various court actions.¹⁸ Their participation, added to that of both prosecution and defense personnel, made the proceedings read like a political "who's who." Chief prosecutor for the state was Luis E. Armijo, district attorney in San Miguel County and Leahy's successor as district judge of the Fourth Judicial District. Assisting the prosecution at Armijo's request were Askren, Roberts, and C. W. G. Ward, a former district attorney.

Chief defense attorneys were Hanna and his law partner, Wilson. Assisting in Magee's defense were Las Vegas attorneys George Hunker, chairman of the Democratic State Central Committee, and M. E. Noble, a future state supreme court justice, and an Albuquerque attorney and future United States senator, Dennis Chávez.¹⁹

The court case began simply enough as a libel action, with Magee taken to Las Vegas to stand trial for allegedly libelling the chief justice of the supreme court. Ironically, the issue was drawn before the principal party in the action was even aware of Magee's article concerning him. Interviewed in Santa Fe some days after the fact, Judge Parker said, "I wish to state that the procuring of said indictment was without my knowledge, and it came to my attention after it had been returned by the grand jury, and I was not a party, directly or indirectly, to its procurement." Having by then read the article in question, he did consider it a "gratuitous insult" to a justice, a matter that might justify a response. Still, had he been asked, he felt he probably would have recommended ignoring the matter altogether.²⁰

The libel trial itself was brief. The state called few witnesses. Askren and Hanna made impassioned pleas for their respective sides.²¹ Then the case went to the jury, the judge instructing it to find "from the evidence complained of that Magee intended to state and did convey the idea that Frank W. Parker in the capacity of Chief Justice of the Supreme Court had been so accustomed to seeing wrong done that he would intentionally condone a violation of law."²² As expected, the verdict returned was guilty. Leahy sentenced Magee to a term in the penitentiary but not until he had vindictively denounced the editor. At one point he said:

You cowardly, wickedly, wantonly, falsely, and maliciously attempt to assassinate the character of Judge Parker, and destroy the reputation which he has built up in good conscience by many years of faithful, efficient and honest public service, and you do so in the name of liberty—liberty of the press. You evidently mistake liberty of the press to mean license to villify [*sic*] and abuse with no regard for the truth.²³

The judge concluded his remarks by stating that Magee was "a greater menace to civilized society . . . than is the cow thief or horse thief."²⁴

Not content with the finding in this criminal libel action, Magee's antagonists further planned to break him financially and put him away beyond the reach of even gubernatorial pardon. Thus during the course of the libel action, Leahy issued four orders to show cause why the defendant should not be adjudged in contempt of court.²⁵ These orders stemmed from the *Tribune's* continuing editorial assault on Leahy's court. Magee stated, for example, that "the secret of Sec Romero's copper-riveted machine in San Miguel County is his influence over the district court and his ability to influence its conduct." He also wrote that Leahy was "still sitting as the sole judge of his own misconduct."²⁶

With the contempt charges lumped together, Magee was back in Leahy's court on July 10. There the defendant repeated his newspaper charges in open court. In a question and answer session with his attorney Hanna and with state's attorney Askren, Magee repeated his assertions that Romero ran the county and was aided specifically by, among others, Leahy, Askren, Armijo, Ward, and former Justice Stephen B. Davis. He also said he thought Leahy was a political judge, one who went to the polls and one who, Magee feared, was capable of stealing a verdict. Pursuing this matter, Askren asked about other judges, whether Judge Hanna, for example, ever took part in politics while on the bench. Hanna quickly rose and challenged Askren to point to one instance where he as a judge dabbled in politics. The charged atmosphere of the courtroom was unmistakable.²⁷

The contempt trial—its spirited exchanges played out—ended with Leahy pronouncing the court's verdict. The judge sentenced Magee to 360 days in the San Miguel County jail and fined him seven dollars and the Magee Publishing Company, \$4,050.²⁸ Within a matter of days Governor James F. Hinkle entered the picture and granted Magee a full pardon for both the criminal libel sentence and the contempt of court sentence. In so doing the governor gave his reasons: the indictment for libel was filed with-

out the consent of the party supposedly libelled; neither Magee nor Parker lived in the district where the trial was held; and the proceedings seemed "to be a conspiracy, and more of a persecution than a prosecution." The contempt charges Hinkle specifically dismissed as harsh and beyond reason. He labeled the whole affair a blot and a disgrace upon the state.²⁹

Two days later Governor Hinkle offered additional explanation for his pardon. Originally planning to wait until after the exhaustion of court appeals, Hinkle learned from Hanna that Magee did not intend to appeal to the supreme court. This fact, added to a contemplated Democratic "pow-wow" to hear demands for a special legislative session which had been called to act as a court of impeachment for the Fourth Judicial District personnel, prompted the governor to act immediately. He obviously wanted to avoid the charge of having succumbed to partisan political pressure.³⁰

Incredibly, even the full pardon for Magee did not end this bizarre exercise in partisan judicial politics. This became evident when Leahy's court decided to deal with yet another political enemy, Magee's chief defense attorney and a zealous Democrat, Richard H. Hanna. Open hostility toward Hanna was shown throughout the trial. The court overturned every defense motion. The prosecution questioned Hanna's integrity by suggesting he had engaged in political activity while sitting on the supreme court. Apparently regarding these harassments as insufficient, Leahy's court brought formal charges against the attorney.

The charge originated with Askren who swore to a lengthy information of professional misconduct by attorney Hanna. Setting out that Hanna's conduct made him unworthy to practice law, the information focused on speeches Hanna delivered during the Magee trial, both in Las Vegas and in Albuquerque. It alleged that in those speeches Hanna sought to bring the court into disrepute by referring disrespectfully to an unnamed attorney for the prosecution, failing to show a respectful attitude toward the judiciary, and appealing to public sentiment.³¹

Seeking to translate this information into suspension or even disbarment of Hanna, Clarence J. Roberts took up the fight. With

this twist the reporter for the *Santa Fe New Mexican* covering the Las Vegas trials could not help but remark:

The spectacle of a former chief justice of New Mexico conducting a legal battle with the object of disbarring or suspending another former chief justice, and his own associate on the supreme court bench for seven years, drew an audience that nearly filled the district court room yesterday afternoon.³²

The show lived up to its advanced billing. Roberts, in arguing the proceeding, suggested that Hanna aided and abetted Magee in his partisan newspaper campaign. He challenged Leahy's critics to try to impeach the judge. He dared his own and Askren's critics to file formal charges against them.³³ In short, the whole episode, highlighted by the antagonism between two former supreme court colleagues, quickly degenerated into a highly partisan affair. Once again, the forum was a supposedly impartial court of law.

After two days of hard fought battles, Judge Leahy fined Hanna \$25.00 for contempt and suspended him temporarily from practice in the Fourth Judicial District. From there Hanna's case was to go right up to the supreme court, the court having authority over suspension and disbarment proceedings. In the meantime the San Miguel County trials stopped, specifically pending supreme court resolution of the Hanna disbarment case. Still to be heard were yet more contempt charges against Magee, at least one and perhaps as many as three more.³⁴

As the capstone of the state's judicial system, then, the supreme court ultimately found itself in a position of having to resolve the many political questions raised at the district court level. Its first such case, however, was not the matter of Hanna's disbarment but rather the validity of Magee's exoneration. As such, it involved the constitutional issues of the governor's pardoning power and the separation of powers between the executive and judicial branches. This case, long debated and extensively researched, was decided during the court's January term of 1924. Justices Bratton and Botts, joined by District Judge Raymond Ryan, heard the case, Parker having disqualified himself for obvious reasons.

The case involved Magee and his publishing company's conviction for contempt of court. The facts were these. Having first planned to appeal the decision to the supreme court, Magee and his attorneys changed their minds. Informed of this, the governor granted Magee a full pardon. The attorney general then interposed a motion to dismiss on the grounds that the governor had the power to pardon and that the state could not further maintain the case. The supreme court took the motion and cases themselves under advisement, determining both upon their merits. Reviewing the questions involved, Justice Bratton delivered the opinion of the court.³⁵

In this opinion Bratton carefully avoided references to the partisan nature of the original trials. Indeed, he cleverly sought to sidestep any political confrontation—including a fundamental confrontation between the executive and the judiciary. He began by ruling as inherent the power of the courts to punish for contempt. He then asked, "does a conviction and punishment upon such a charge come within the pardoning power of the Governor?" In answer to this question he gave full discussion to all sides of the issue, basically in terms of residual constitutional powers. He reviewed, for example, contentions that to allow the pardoning power in criminal contempt cases meant the following results: weak, ineffective, and vassal courts, with the executive unable to influence their actions but quite able to control their effect.³⁶

In response to these and similar arguments, Bratton fell back to fundamental democratic tenets. He simply said that the power to pardon resided in the sovereign people. They, in turn, vested this power in the governor of the state. The wisdom of this action or of the governor's exercise of this power were not matters for the court to decide. In a final note of judicial self-restraint Bratton said, "when we have determined that the power is vested in the Governor, our connection with the matter ceases, as courts exist for the purpose of construing and enforcing laws, not to make them."³⁷

What this meant was the barring of the state from any further prosecution, the pardons having been ruled valid and effective.

Justice Botts concurred; District Judge Ryan found himself unable to do so. Ryan felt compelled to offer a dissenting opinion because of the constitutional issues involved. His interpretation was that the constitution conferred no power upon the executive either to review or to interfere with court proceedings. "On the contrary," wrote Ryan, "a vigorous independent judiciary is the very bulwark of our institutions. The Constitution reflects such a conception of the judiciary."⁸⁸

The supreme court also heard the Hanna disbarment case in 1924. The case took that long to reach the court because of another self-effacing judicial maneuver. The high bench initially referred the matter to a special commission of three members of the bar—the state board of bar examiners. The commission was to hear the evidence and to report its findings including conclusions and recommendations. Based upon that report, the supreme court rendered its decision, Justice Botts speaking for the court. Agreeing with the committee, he took Hanna to task for participating in public meetings held to create sympathy for his client. He then verbally slapped the former justice, stating:

The respondent [Hanna] is a member of the bar of long standing, who has held high office in this state, and his training and experience have been such that he could not have failed to know that his conduct was improper and most unbecoming. . . . there can be no justification or excuse for him.

Botts did not, however, follow up this verbal condemnation with similarly harsh legal action. Adding reprimand and severe censure to the period of suspension already suffered, he ruled these sufficient punishment. Again Chief Justice Parker did not participate.⁸⁹

But even these two supreme court decisions were not the final word on the story of Carl C. Magee. Less than two weeks after his pardon in July 1923, he wrote yet another ill-considered editorial, this one entitled "Illustrating Roberts, C. J." In it he charged that Roberts, while sitting on the supreme court, had thrown out six to eight hundred Democratic ballots in the 1916 Read-Crist dis-

trict attorney contest. He added, "such gall and chicanery is an index to Roberts' character."⁴⁰ Roberts correctly pointed out that he had disqualified himself in that case; and when no retraction but only reassertion was forthcoming, he filed a criminal charge against the Albuquerque editor.⁴¹ Brought to trial in Santa Fe District Court in January 1924, Magee this time stood trial in the courtroom presided over by Reed Holloman.

The Santa Fe trial lasted from January 3 to January 6, 1924. In some ways it resembled the Las Vegas trials. Hanna and Wilson again defended the editor. Roberts once more sat at the prosecution table. But the prosecuting attorneys representing the state and the legitimacy of the complaint were quite different. Chief prosecutor was the district attorney of the First Judicial District, Alexander Read. Assisting him were the Assistant District Attorney John Kenney and former District Attorney J. H. Crist.⁴² As fate would have it, Read and Crist, the two contestants in the election case at issue, thus represented the state and Roberts. It was a united and formidable alignment facing the Albuquerque newspaperman.

In terms of the actual complaint, Roberts quite correctly noted that neither he nor Hanna heard the case, Justice Parker and District Judges Leahy and M. E. Hickey being the judges of record. The complainant consequently charged that Magee published a "certain false, scandalous and malicious and defamatory statement and libel."⁴³ Based on this indisputable evidence, the libel charge against the editor was virtually self-sustaining.

The state quickly exploited its advantages. José Sena, clerk of the supreme court, testified and brought records showing that the court considered only 158 ballots, not the six hundred to eight hundred described by Magee. The prosecution also easily proved that Roberts did not participate in the decision.⁴⁴ And facilitating the case against the defendant was Holloman, the judge effectively hamstringing the defense at every turn. Significantly, Holloman was a known Old Guard Republican partisan. On one occasion he wrote a Republican governor that "as you know, I am naturally a partisan in any matter in which I have any interest."⁴⁵

Given the Republican enmity for Magee, it can be assumed that the judge was vitally interested in the trial over which he now presided.

Consequently, Holloman ruled "irrelevant" and "out of order" defense attempts to show that the six hundred to eight hundred ballots were eventually disqualified and that Crist in 1920 wrote a newspaper article attacking the decision.⁴⁶ In addition, the judge refused to let Magee testify regarding the lack of intentional malice in his editorial or the source of his information. He made these rulings despite Wilson's offer to prove that John F. Simms, a future supreme court justice and the former law partner of then sitting Justice Botts, provided the erroneous information and that Magee published Simms' allegations in good faith. Simms was in the courtroom ready to verify these contentions, but he was not permitted to do so.⁴⁷

The state clearly had the easier presentation in light of the evidence and the rulings from the bench, but the jury had the final word. Both sides recognized this and appealed to the jurors in their closing arguments. Wilson reminded the panel, "Our statutes provide that the jury has the power for mitigation in every sort of case except murder of the first degree."⁴⁸ Crist responded by calling upon the jurors to do their duty: "The court said it [the editorial] was libelous and you have said under oath you will take the law from the court."⁴⁹

Holloman had indeed termed the *Tribune* article "libelous" during the course of the trial. He felt that Magee libelled Roberts even without the use of the words "gall and chicanery."⁵⁰ Translating his beliefs into instructions to the jury, the judge told the panel, "The Court . . . instructs you that as a matter of law the article in question is libelous per se."⁵¹ The jury, having been handed a directed verdict, deliberated for thirteen and one-half hours and took over a dozen ballots. It returned a verdict of not guilty.⁵² Magee later admitted, "The only time I was really guilty, I was acquitted."⁵³ The Las Vegas trials, clearly political in intent and result, surely influenced this decision. Neither a clear-cut case of libel against Magee nor the efforts of Judge Holloman, who

conducted his court with much more finesse than his Las Vegas counterpart, could offset the effects of the earlier kangaroo court proceedings of Leahy and company.

Then it was back up to Las Vegas for Magee and one last courtroom confrontation with Judge Leahy. It was now July 1924, more than a year after the beginning of this sordid partisan affair. This time Leahy found Magee guilty of direct contempt of court and sentenced him to three months in the San Miguel County jail. Incarcerated immediately, Magee again received a gubernatorial pardon but not his freedom because Sheriff Lorenzo Delgado contended that a governor could not pardon for a direct contempt charge. Ignoring the adjutant general's request to free the prisoner by use of the New Mexico National Guard, Governor Hinkle chose instead to arrange Magee's release on bond until the supreme court could hear the case on appeal.⁵⁴

The supreme court, when it met, finally put the libel-contempt proceedings against Carl C. Magee to rest. Speaking for the court this time was none other than Chief Justice Parker, the unwitting and unwilling harbinger of Magee's legal woes. The court again faced the task of determining the governor's power to pardon, with attorneys Askren and Roberts arguing that this power did not extend to matters of direct contempt. Parker dismissed this argument, finding no essential differences between the classes of contempt. He also rejected the contention that the independence of the judiciary was in jeopardy.⁵⁵

The chief justice then added a human note, the only one offered during any of the court's decisions concerning this affair. Recognizing the inherent power of the courts to punish for contempt, he pointed out that one man exercised this highest form of judicial power without jury consultation. And, as Parker said,

Judges are human, the same as Governors and legislators. The power to punish for contempt in cases like the present is exercised under the stress and sting of insult, and human nature may not always be able to withstand such stress without losing the poise and calm judgment so necessary to the proper exercise of judicial power. It may be wise, then, to have a check upon such arbitrary power in the form of pardons by the executive.⁵⁶

All that was missing was direct reference to the human nature of Judge Leahy. Carl C. Magee, as far as the supreme court was concerned, was permanently a free man.

Leahy and Magee met one more time in an episode that began on the evening of August 9, 1925. In Las Vegas to chair a meeting of the state hospital board, Magee was sitting in a hotel lobby when Leahy entered. Leahy attacked Magee, knocked him to the floor, and continued to beat him. Magee managed to free and fire the gun he was carrying. Two shots hit Leahy in the arm; a third hit and killed a bystander who was trying to restrain Leahy. On June 16, 1926, Magee was tried for manslaughter in the same district court where he had stood trial so many times before. He was once more defended by Hanna, but Askren and Roberts did not prosecute. And on the bench sat a different figure, Luis E. Armijo, elected in 1924 to succeed Leahy as judge of the Fourth Judicial District. Based largely on Leahy's self-incriminating testimony, Judge Armijo directed a verdict of acquittal. The jury complied.⁵⁷

With this tragic event the Magee affair ended, but the political implications remained. The central figure in these episodes, Carl C. Magee, had at one time a seemingly bright future as a reform Democrat. He unsuccessfully tried for the party's United States senatorial nomination in 1924. He returned to Oklahoma in 1927 where he engaged in various ventures, including the invention of the parking meter. As for those other major participants who remained active in state politics, the record varied. Governor James F. Hinkle failed to secure the 1924 Democratic gubernatorial nomination and thereby lost his bid for a second term in office. Justice Samuel G. Bratton, the man who beat out Magee for the Democratic senatorial nomination, defeated incumbent Senator Holm O. Bursum in the 1924 general election. A second justice, Clarence M. Botts, left the bench at the end of his appointive term in 1924 but returned to the scene as the 1930 Republican gubernatorial candidate. He met defeat in the general election. The third justice, Frank W. Parker, successfully retained his judicial

seat until 1923, when his death terminated some thirty-five years of continuous service on both the territorial and state supreme courts. District Judge Reed Holloman remained on the bench and continued his partisan activities, causing his legislative adversaries in 1925 to draft, although not use, articles of impeachment against him. The point here is not that the Magee affair effected these political fortunes but rather that it involved these and many more prominent politicians and directly provoked the following consequences.

First, Magee helped to bring down Albert B. Fall. Testifying under oath before a congressional committee in November 1923, he pointed to Fall's recent acquisition of wealth and to his role in Magee's loss of the *Albuquerque Morning Journal*. He then linked Fall to the Las Vegas trials, the plan being to insure the editor's insolvency and to force his press out of business. Magee based these assertions on the feasible premise that Fall and Secundino Romero wanted to partition the state in terms of political power and Republican Party control.⁵⁸

Secondly, Magee almost singlehandedly smashed Secundino Romero's political machine, a process Romero unwittingly concluded. Regarding Luis E. Armijo and Lorenzo Delgado as turn-coats because they came to tolerate Magee, an angry and frustrated Romero kicked them out of the Republican Party. They, in turn, formed a coalition party, the "Democratic-Republicans," and defeated the machine candidates in the 1924 general election. Armijo beat the unreconstructed David J. Leahy for district judge; Delgado defeated Romero for sheriff. Romero, a once undisputed boss, had permanently relinquished his stranglehold on northern New Mexico politics.⁵⁹

Thirdly, Magee's attacks on Republicans and their responses took a toll on Republican Party successes. Largely because of Fall's disgrace and Romero's destruction, even a united Republican Party fared disastrously in the 1924 elections. Republican President Calvin Coolidge did carry the state, but Republicans otherwise lost the United States Senate seat they had previously held

and every state contest except two—the lieutenant governorship and a supreme court position. A contributing factor was the smaller margin of Republican votes returned by San Miguel County, the headquarters of the Romero machine.

Finally, the Magee trials had a sobering effect on the courts and their function within the partisan structure. The supreme court aided this process, as it rose above the petty partisan atmosphere that existed in the courts below. It further helped by assuming a posture of judicial self-restraint with respect to the constitutional issue of power and where it resided. This is not to say that the judiciary ceased to function as a political agency or that members of the legal community disappeared from politics. It is to say that the judiciary became an institution less easily manipulated for blatantly partisan purposes.

In these ways, then, the political trials of Carl C. Magee significantly influenced New Mexico's political history. Still, to end the story here would leave much unsaid about the tragic nature of the trials themselves. Magee suffered immeasurably, as both his life and his livelihood were in constant jeopardy. The state received considerable publicity on a nationwide scale, all of it detrimental. But perhaps the ultimate tragedy was how the trials revealed in caricature the bitterness of New Mexico's politics.

NOTES

1. Milton C. Nahm, *Las Vegas and Uncle Joe: The New Mexico I Remember* (Norman, 1964), p. 145; William G. Shepherd, "How Carl Magee Broke Fall's New Mexico Ring," *The World's Work*, 48 (May 1924), 30. Nahm covered the Magee trials as a cub reporter for the *Las Vegas Daily Optic*.

2. Nahm, *Las Vegas*, pp. 145-47; Shepherd, "Carl Magee," pp. 31-32, 36-37.

3. Magee to Bursum (telegram), April 4, 1921, Holm O. Bursum Papers, Special Collections Division, University of New Mexico Library, Albuquerque, New Mexico.

4. Magee to Bursum (telegram), April 8, 1921, Bursum Papers.
5. Jerry Haggard to Bursum, April 14, 1921, Bursum Papers.
6. Bursum to H. B. Hening, June 3, 1921, Bursum Papers.
7. Magee's switch in partisan loyalty followed his loss of the *Journal. Santa Fe New Mexican*, July 9, 1923.
8. Magee may well have supported Bursum out of a sense of obligation. In doing so, he hardly pleased his Democratic subscribers and backers. Anti-Bursum Republicans were not happy either. Bernard S. Rodey, formerly Republican territorial delegate to Congress, responded to Magee's endorsement in the following public statement: "I desire to state for the benefit of my friends throughout the state, and to whom I have said and written many things in praise of Carl C. Magee, that I do not follow Mr. Magee in his support of Mr. Bursum in this campaign." *Albuquerque Morning Journal*, Sept. 13, 1921.
9. Nahm, *Las Vegas*, pp. 148-49.
10. Romero did use the press to rebut Magee, relying particularly on *El Independiente*, a Spanish-language newspaper he owned and published in Las Vegas. In front page editorials this paper proclaimed the virtue of Romero. Magee reprinted in English a section of an editorial which stated: "Furthermore, this same madness which causes his powerlessness does not permit him to understand that the New Mexico people will NEVER, NEVER, change gold for copper, that is to say, never will underestimate men who have sacrificed themselves in defense of its interests—as Secundino Romero, the king of San Miguel county, has done so many times—to pay attention to the empty preachings of Mr. Magee." *Albuquerque Morning Journal*, May 27, 1921.
11. *New Mexico State Tribune* (Albuquerque), June 8, 1923.
12. Sena to Fall, Mar. 5, 1921, Albert B. Fall Papers, Special Collections Division, University of New Mexico Library, Albuquerque, New Mexico.
13. Sena to Fall, Feb. 24, 1923, Fall Papers.
14. Parker to Bursum, Jan. 7, 1910, Bursum Papers.
15. C. V. Stafford to Attorney General Frank W. Clancy, Aug. 31, 1910, Bursum Papers.
16. One note was with the Socorro State Bank, and the other F. W. Parker note was with the First National Bank of Albuquerque. In both cases Bursum acted as intermediary, receiving notification about the loans along with Parker. In at least one of the two cases the bank simply charged the note to Bursum's account. Socorro State Bank to Parker, Aug. 23, 1918, and First National Bank of Albuquerque to Bursum, Oct. 19, 1916, Bursum Papers.

17. Nahm, *Las Vegas*, p. 150.

18. Askren originated the Parker libel action. Roberts assisted him. *Santa Fe New Mexican*, July 23, 1923. Askren was an attorney of some note. Justice James McGhee in his memoirs placed him among "the best and most experienced." James B. McGhee, *Happenings in and Around New Mexico Courts, 1909 to January 1, 1947, Plus an Early One in Texas* (Santa Fe, 1965), p. 11. The reporter who covered the Magee trials for the *Las Vegas Daily Optic* said of him, "Askren was, in the opinion of New Mexico's legal fraternity, the ablest trial lawyer in the history of the state." Nahm, *Las Vegas*, p. 154.

19. Nahm, *Las Vegas*, p. 154.

20. *Santa Fe New Mexican*, June 14, 1923.

21. *Ibid.*, June 21, 1923.

22. Nahm, *Las Vegas*, p. 155.

23. *Santa Fe New Mexican*, June 30, 1923.

24. *Ibid.*

25. *Ibid.*

The contempt of court citations resulted from Magee's activities while on trial, as he continued to lash out editorially at the Republican leaders of the Fourth Judicial District. One contempt proceeding specifically concerned an article about Leahy and his court. It charged that Magee published this article "for the purpose of embarrassing the court and the judge thereof in the administration of justice and for the further purpose of creating public sentiment in favor of said defendant, Carl C. Magee." This and other information in criminal contempt can be found in the Carl C. Magee Papers, Special Collections Division, University of New Mexico Library, Albuquerque, New Mexico.

26. Nahm, *Las Vegas*, p. 158.

27. *Santa Fe New Mexican*, July 11, 1923.

28. *Ibid.*, July 13, 1923.

29. *Ibid.*, July 16, 1923.

30. *Ibid.*, July 18, 1923.

31. *Ibid.*, July 10, 1923.

32. *Ibid.*, July 21, 1923.

33. *Ibid.*

34. *Ibid.*, July 23, 1923.

35. *State v. Magee Pub. Co. et al.*, N. M. 455.

36. *Ibid.*

37. *Ibid.*

38. *Ibid.*

39. *In re Hanna et al.*, 30 N. M. 96.

40. *New Mexico State Tribune*, July 26, 1923.
41. *Santa Fe New Mexican*, July 28, 1923.
42. *Ibid.*, Jan. 3, 1924.
43. *Ibid.*
44. *Ibid.*, Jan. 4, 1924.
45. Holloman to Merritt Mechem, Mar. 9, 1921, Bursum Papers.
46. *Santa Fe New Mexican*, Jan. 4, 1924.
47. *Ibid.*, Jan. 5, 1924.
48. *Ibid.*
49. *Ibid.*, Jan. 7, 1924.
50. *Ibid.*, Jan. 5, 1924.
51. *Ibid.*, Jan. 7, 1924.
52. *Ibid.*
53. Shepherd, "Carl Magee," p. 40.
54. Edward Michael Praisner, "A Political Study of James F. Hinkle and His Governorship, 1923-1925" (M.A. thesis, University of New Mexico, 1950), pp. 98-99.
55. Ex parte Magee, 31 N. M. 276.
56. *Ibid.*
57. Nahm, *Las Vegas*, pp. 213-17.
58. *Ibid.*, p. 191; U. S., Congress, Senate, Committee on Public Lands and Surveys, *Hearings: Leases Upon Naval Oil Reserves*, 68th Cong., 1st sess., 1923-24, I, 840-41, 892.
59. Nahm, *Las Vegas*, pp. 208-9.

For details on the state-wide implications of the reduced Republican vote in San Miguel County, see Robert Thompson and Charles Judah, *Arthur T. Hannett: Governor of New Mexico* (Albuquerque, 1950), pp. 11-12.