

# **Dirty Little Secrets**

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**The Persistence of Corruption  
in American Politics**

LARRY J. SABATO

AND

GLENN R. SIMPSON

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T I M E S B O O K S



R A N D O M H O U S E

tight as a tick, and the vote was so close it all came down to Voting Box 13 in Alice, Texas, in the heart of Parr's territory. Several days after the election, Parr's precinct man in charge of Box 13, Luis Salas, "found" 203 more votes, 202 of them for Johnson.<sup>10</sup> Amazingly, these good citizens had voted in alphabetical order, with the same handwriting and blue pen.<sup>11</sup> Moreover, the discovered ballots gave the victory to LBJ by a statewide margin of only 87 votes. Thus was a U.S. senator created by corruption and sent on his path to the Oval Office.

While there is little to admire in the low standards Johnson set, his sins must be interpreted in context. Voting fraud was a way of life in parts of Texas in the 1940s, just as it has been, at various times, in Chicago, Louisiana, West Virginia, New Jersey, and many other places. For much of our history vote fraud has been as American as (sour) apple pie. This is a humbling and sobering reality, and we need to remember this whenever we feel the urge to sanctimoniously condemn wide-scale fraud in other countries' elections. Election reformers still have a full plate right here in the United States.

### **The Philadelphia Story**

The city where the American democracy was born is now proof of America's continuing corruption of the electoral process.<sup>12</sup> In 1993, a special election was held to fill the vacated 2nd Senatorial District seat in Philadelphia, Pennsylvania. The contestants for the seat, which would determine the balance of power in the state Senate, were Republican Bruce Marks and Democrat William Stinson. Even though the district was substantially Democratic, Marks had come close to winning it in 1990 against veteran state senator Francis Lynch, and after Lynch's death in May 1993, Marks decided to try again. His new opponent, Stinson, was often described as a classic Philly Democratic pol, a deputy mayor who lost a 1991 Democratic primary for a city council seat by a mere seventeen votes.

The battle was fierce, and the campaign attracted statewide attention because the Senate was then divided evenly, twenty-four Democrats to twenty-four Republicans. With a pro-GOP, anti-

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Clinton tide running across the country in fall 1993, Marks appeared to surge. Sure enough, Marks received more Election Day votes (those cast in polling places on the day of the election) than his opponent—19,691 to Stinson's 19,127. Yet Stinson garnered an extraordinary proportion of the absentee ballots to turn the tide—1,396 to Marks's 371, yielding totals of 20,523 and 20,062, respectively. The Philadelphia County Commissioners (Democrats Margaret Tartaglione and Alexander Talmadge Jr., and Republican John F. Kane), sitting in their capacity as the County Board of Elections, certified Stinson as the victor of the race on November 18, 1993. State Democrats arranged for Stinson to be sworn into office quickly, before a court could issue an injunction to stop it.

While the board's imprimatur ordinarily would have marked the conclusion of the election, in the case of the Second District it marked the beginning of a lengthy inquiry, by the end of which Stinson was indicted (though not convicted) and Judge Clarence Newcomer of the U.S. District Court for the Eastern District of Pennsylvania condemned the commissioners for permitting blatant violations of state election law and overturned the result of the special election. Stinson was eventually cleared of criminal charges of absentee ballot fraud, but in the civil proceedings, Newcomer found sufficient proof to implicate Stinson in a conspiracy to steal the election, and Stinson was ousted from office. (Several Stinson staffers were even less fortunate; their involvement in the fraud resulted in criminal prosecution and conviction.<sup>13</sup>) *Marks v. Stinson*,<sup>14</sup> the conclusion of candidate Marks's civil challenge to Stinson's victory, marked an extraordinary but necessary intervention of a federal judge into the state's political process to redress claims of civil and voting rights violations. Newcomer's order to certify Marks as the winner on the basis of the machine vote total without considering the absentee ballots cast appears to be unprecedented in modern times.<sup>15</sup>

The vote fraud was documented beyond question.<sup>16</sup> Despite Pennsylvania's strict laws regarding application for, completion, and return of absentee ballots,<sup>17</sup> the Stinson campaign and related organizations engaged in the systematic distribution and collection of absentee ballots, which circumvented the normal process. More remarkably, the Democratic members of the Board of Elections themselves were implicated in the conspiracy, despite the procedural

safeguards they were legally required to observe in order to prevent absentee voting fraud. The electoral process was corrupted not just by a campaign but by those charged with overseeing it.

The competition for the Second District seat was tight enough to convince members of the Stinson organization that fraud was required to ensure victory. In both predominantly white and minority areas, Stinson's campaign and related Democratic Party organizations engaged in a widespread effort to file fraudulent applications for absentee ballots and then ensure the proper choice was made when applicants returned their ballots. Some of the applicants did not realize what they were doing, some were not even registered, and others were browbeaten and intimidated. The Democratic commissioners played a key role in the plot; as Marks recalled, they and their staffs "illegally [gave] absentee ballots directly to my opponent's campaign and to [Democratic] committee people."<sup>18</sup>

Absentee voting in Pennsylvania is not unlike that of most states: exacting statutory guidelines determine the method of application, completion, return, and processing of an absentee ballot. Absence from the state or county of residence, or disability, are legitimate reasons to vote absentee. An absentee ballot cannot be requested more than fifty days prior to the election and must be requested at least seven days before the election. A voter is required to submit an absentee ballot request to his or her local board of elections by the Tuesday prior to the election. Although the Philadelphia board's official policy required a check of each applicant's signature against the file copy, in actual practice it did not do so. When any absentee application is approved, statutory language requires the board of elections to return an absentee ballot only to the applicant, who must mail or return the ballot to the board in person prior to the Friday preceding the election.

The Stinson campaign used two distinct ploys to put illegally obtained absentee votes in its column. First, from July through September of 1993, campaign workers solicited hundreds of absentee applications as part of a canvass and registration effort in predominantly white Democratic precincts. Contrary to election law, "many persons who were hesitant to register because they simply did not want to go to the polls were told that they could fill out an absentee ballot application and obtain a ballot out of convenience."<sup>19</sup> The

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dates of the applications were left blank to conceal the fact that they were requested either before or after the filing deadline. When William Jones, a Stinson worker, approached the candidate to express his concern over the scheme, Stinson told him "that he was never going to lose another election because of absentee ballots."<sup>20</sup> Robert O'Brien, a campaign staffer, instructed subordinates to deliver the completed applications to the election board's office. As a result, the board sent over 500 ballots to the campaign, which O'Brien then distributed to workers, who proceeded to take them to homes of voters. As Stinson had instructed, the workers directed voters to "either check off the straight Democratic box, or to check off the individual Democratic names, and then to return the completed absentee ballot to O'Brien."<sup>21</sup> About 450 ballots supporting Stinson found their way back in this manner.

More dubious still was the Stinson effort to elicit absentee applications and "correctly" complete ballot packages in Hispanic and African-American precincts. Late in the campaign, polling results provided by the Democratic State Committee indicated Stinson was trailing Marks. The decision was made to target minority precincts in a last-ditch effort to turn the tide in his favor. In essence, the Stinson campaign workers convinced some minority voters that, in Marks's words, "if they wanted to vote from the convenience of their own home that they could do so, and they could just fill out the application and say that they were out of town or make up some medical reason."<sup>22</sup> Ruth Birchett, who directed the Stinson campaign in minority areas, was explicitly assured by both the candidate and one of the election board's Democratic commissioners that the scheme was legitimate, although others in the Stinson organization recalled that a hard-edged cynicism permeated the effort. For example, one staffer reported that the not-funny "'joke' in the Stinson campaign was that the Hispanics would sign anything," a problem exacerbated by the fact that the absentee ballot application included no Spanish language instructions. Some Hispanics were apparently not even aware they were voting. Lydia Colon, for example, thought she was signing a form to request removal of a pile of refuse from her back yard. However, the Democratic canvasser who connived her into signing the ballot did not count on her subsequent decision to go to her polling place on election day and attempt to vote.<sup>23</sup>

The execution of the minority plan mirrored the one used for the majority white precincts: applications were solicited and submitted by the Stinson workers, who then received, distributed, and returned about 600 ballots. Likewise, campaign workers instructed voters to mark their ballots for Stinson. The special twist was that the field staffers were paid one dollar per correctly marked ballot returned. In other words, the Stinson workers distributing the applications and ballots took the supposedly neutral polling place to the voters while serving simultaneously as remunerated flushers and haulers.

The Stinson organization received the funds to implement this plan from several sources, including the Committee for a Democratic Majority PAC (\$4,000) and a PAC associated with Democratic State Senator Vincent Fumo (\$4,000).<sup>24</sup> The money also paid for a phone bank operated in English and Spanish, to inform voters of the "new way to vote." From direct testimony, the dates of the street money contributions, and the receipts retained for payments to workers, Judge Newcomer determined that the ballots—cast overwhelmingly for Stinson—could not have been returned prior to the absentee ballot deadline. Further, it was clear to the court that campaign workers aided completion of the ballots "in the homes of voters and often directed, coerced, and/or intimidated voters to vote for Stinson; . . . [and] the campaign workers had a political and financial interest in obtaining votes for Stinson."<sup>25</sup>

Compounding this disturbing pattern was the active assistance given the Stinson campaign by two election commissioners, both Democrats. These officials casually waived normal procedures, helped to process absentee applications for unregistered citizens, and permitted campaign workers to distribute ballots—all in contravention of the rules, and all consciously designed to result in a Stinson victory.<sup>26</sup> Judge Newcomer reserved some of his harshest language for Democratic commissioners Talmadge and Taglione, since they "could have prevented much of the illegal activity that occurred even if the Stinson campaign had acted illegally."<sup>27</sup> If the commissioners had required that existing written procedures be followed, for example, the wrongdoing that altered the outcome of the election could not have happened. As Republican election attorney Jack Connors, who worked on this case, suggested, "You had

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built-in arrogance of power in a local board of elections that had been in one party's control for over twenty years. The reason why this case is so outrageous . . . was that they thought they were going to get away with this."<sup>28</sup>

This particular instance of fraud, unlike so many others, had a just ending that served as a powerful warning to vote-tamperers. After concluding that nearly 600 absentee ballots had been cast after the deadline by unregistered people, Judge Newcomer stated firmly that "Bruce Marks would have won the 1993 Special Election in the Second Senatorial District" had it not been for the Stinson organization's violation of state election law.<sup>29</sup> Newcomer then evicted Stinson from the state Senate, gave his seat to Marks, and with it, control of the Senate to the Republican Party.

But we need to remember that the Philadelphia fraud was widespread, well established, relatively easy to accomplish, and stayed hidden for a good while. Only an aggressive, generously financed, and thoroughly politicized legal assault on the system that stole an election managed to right the balloting wrong. Most candidates are not so well positioned to pursue suspected fraud—and as a consequence, one suspects, similar or more subtle shenanigans elsewhere may go undetected and unexposed.

### **Sweet Home Alabama: Southern Fried Voting Fraud**

As Philadelphia's state Senate election suggests, it is the close election that often leads to revelations about voting fraud. (The candidates in close or disputed races are almost inevitably involved in court brawls, and their investigations can turn over rocks that hide sleazy shenanigans.)

Such has recently proved to be the case in Alabama as well. The 1994 election for chief justice of the state Supreme Court yielded a dead heat, with Democratic incumbent Sonny Hornsby losing to Republican Perry Hooper Sr. by fewer than 300 votes out of 1.2 million cast. It had been a high-stakes race, with the trial lawyers backing their former association president (Hornsby) with at least

3. For a classic treatment, see Paul Leland Hayworth, *The Hayes-Tilden Disputed Election of 1876* (Cleveland: Burrows Brothers, 1906).
4. Louise Overacker, *Money in Elections* (New York: Macmillan, 1932), p. 31.
5. Many "floaters"—individuals who would roam from precinct to precinct, casting a ballot at each one—were imported from other cities and towns to perform this extraordinary civic "duty." The practice may be the origin of the old aphorism, "Vote early and often."
6. J. J. McCook, "Venal Voting: Methods and Remedies," *Forum* 14 (September/October 1892): pp. 1, 159; as cited in Overacker, *Money in Elections*, p. 32.
7. A. Z. Blair, "Seventeen Hundred Rural Vote-Sellers," *McClure's* 38 (November 1911): 33; as cited in Overacker, *Money in Elections*, p. 33.
8. For further details on the 1960 election, see Theodore C. Sorensen, *Kennedy* (New York: Harper and Row, 1965), chap. 8, pp. 211–23; Stephen E. Ambrose, *Nixon* (New York: Simon & Schuster, 1987), chap. 26, pp. 584–608; and Theodore White, *The Making of the President 1960* (New York: Pocket Books, 1961).
9. As Johnson underling L. E. Jones later reported, LBJ had an early introduction to the (under) world of voter fraud. Working for the left-leaning Maury Maverick in his winning 1934 congressional campaign, Johnson sat at a table covered with money and paid barely bilingual Mexican-Americans in multiples of \$5 bills. Jones realized that Johnson was paying each man \$5 for each eligible voter in his family. See Robert A. Caro, *The Years of Lyndon Johnson: The Path to Power* (New York: Alfred A. Knopf, 1982), pp. 276–77. Johnson put this experience to good personal use in 1937, campaigning in his successful bid to fill Texas's Tenth Congressional District seat, which had been vacated by the death of James P. Buchanan. Caro reports that Johnson bought votes in African-American and Czech communities.
10. Parr ordered Salas to come up with the needed votes in a meeting attended by Johnson himself, according to Salas. Decades later, Salas admitted that two deputy sheriffs added the extra names to the voter list, at his direction. Most observers at the time strongly suspected this skulduggery, but efforts in the Democratic state committee and in the courts to change the results failed. See James W. Mangan, Associated Press interview, July 30, 1977. For a more extensive account of Johnson's Box 13 shenanigans, see Caro, *The Years of Lyndon Johnson*, chaps. 14 and 15, pp. 318–412.
11. The hundreds of previous signatures were written in different color inks, and were clearly signed by each individual voter separately.
12. The first draft of the Philadelphia section was researched and written by University of Virginia graduate student Charles H. Woodcock.

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13. See "Stinson Cleared of Election Fraud," United Press International regional news, June 22, 1994. There was insufficient evidence to tie Stinson directly to the fraudulent efforts made on his behalf. The Democrat had been specifically charged with unsealing and counting absentee ballots, as well as unlocking voting machines in his own precinct. For a description of the pretrial proceedings, see Marc Duvoisin, Daniel Rubin, and Henry Goldman, "Stinson, 2 Aides Are Indicted; Charges Center on Absentee Ballots," *Philadelphia Inquirer*, March 13, 1994, p. A1.
14. Newcomer's final opinion in the *Marks v. Stinson* case (1994 U.S. Dist. LEXIS 5273; hereafter, *Marks v. Stinson*) was actually the second time he ordered Stinson stripped of the seat and certified Marks. The proceedings occurring prior to his April 26, 1994, decision are complicated, and an accounting of the entire obstacle course Marks was forced to run in order to gain redress would require a chapter in itself.

Marks's appeal through the state court system proved futile. The Marks campaign was actually aware that absentee malfeasance had occurred prior to election night. Even so, Steve MacNett, a Pennsylvania lawyer who worked on Marks's appeal, explained that at each of several stages of the appeal process, "the apparent over-politicization of the Pennsylvania Courts, especially in Philadelphia," prevented successful action. MacNett continued, "[The] three judges he was before in Philadelphia, each of them has deep ties to the Democratic party establishment" (interview with Steve MacNett, July 18, 1995).

Marks's inability to gain redress quickly was compounded by the actions of the County Board of Elections, which prompted Judge Clarence Newcomer to note that "the actions of the board [of Elections] were designed to, and did in fact, prevent any realistic opportunity to appeal the certification in the State court system. . . . Defendants allege plaintiffs consistently failed to avail themselves of the proper appeal procedures. Plaintiffs were never given the opportunity to present their claims because the safeguards failed at every level" (1994 U.S. Dist. LEXIS 5273, 58).

With his appeal to the State Supreme Court pending, Marks filed for redress in federal court. Judge Newcomer found his claims compelling, and on February 18, 1994, delivered his initial injunction stripping Stinson of the seat, threw out all absentee ballots, and ordered the Board of Elections to certify the victor of the machine vote, that is, Marks. While federal judges have in the past overturned the results of state elections on civil and voting rights grounds, this was the first occasion a federal judge simply installed the opposing candidate in office rather than ordering a new election.

However, Newcomer was found to have exceeded his authority by the court of appeals. (See his original opinion, *Marks v. Stinson*, 1994 U.S. Dist.

LEXIS 1586, order overturned.) The Third Circuit Court of Appeals upheld the portion of Newcomer's order stripping Stinson of the seat, but vacated his order to install Marks. While the Circuit Court agreed the District Court was correct to claim jurisdiction, proof of voter fraud was not sufficient to award the seat. Writing for the court, Judge Stapleton, stated, "The district court should not direct the certification of a candidate, unless it finds, on the basis of record evidence, that the designated candidate would have won the election but for wrongdoing" (19 F.3d 873, 889 [3d Cir. 1994]). The appellate judges relied on *Griffin v. Burns* (570 F.3d 1065 [1st Cir. 1978]) to suggest that Newcomer's order to install Marks might be unconstitutional, creating an opportunity for voters to challenge the decision under the Federal Voting Rights Act. Because Newcomer's order voided *all* absentee ballots cast, it inevitably voided some that were lawfully and properly cast. The First Circuit in *Griffin* "concluded that rejection of a ballot where the voter has been effectively deprived of the ability to cast a legal vote implicated federal due process concerns" and possible Fourteenth Amendment violations (*Marks v. Stinson*, 19 F.3d at 889).

The second opinion, which we discuss in the text, was the result of the circuit court's remand to Newcomer. See particularly Newcomer's analysis of the number of illegal absentee ballots and the statistical tests used to corroborate his findings. Newcomer went to great pains to show that the Stinson campaign's "dollar a ballot" drive produced approximately 600 fraudulent votes (greater than the 461 needed to change the election results). He also found via expert testimony that Stinson received approximately 1,000 more absentee votes than expected.

The story does not end here, however. Stinson unsuccessfully appealed Newcomer's second opinion to the Third Circuit in August 1994, and then in January 1995, to the U.S. Supreme Court, which declined to overturn or comment upon the judgment. In the (presumably) final chapter of the story, Marks ironically lost his hard-won seat in the regular 1994 general election to Nina Tartaglione, the daughter of Democratic County Commissioner Margaret Tartaglione, who had been implicated in the scandal that denied Marks the seat to begin with. (See "Recount Shows Marks Still a Loser," United Press International regional news, November 14, 1994.)

15. See, for example, *Griffin v. Burns* (570 F.2d. 1065, 1st Cir. 1978), the case cited by the Third Circuit panel to justify remanding the case to the district court. In this case, Providence election officials distributed absentee ballots for a primary city council contest, although Rhode Island law only provides for absentee voting in general elections. The Rhode Island Supreme Court found the statutory omission precluded the use of absent-

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tees in primary elections, decertified the primary victor, and ordered recertification based only on machine votes—which also changed the outcome of the election. However, the circuit court agreed with absentee voters' claims that the lower court ruling effectively disenfranchised them, vacated the order to certify on the basis of the machine count, and ordered a special election. Note, however, that the *Burns* case did not involve fraud per se, and the Third Circuit left Newcomer the option to certify Marks if he found the Republican would have been elected but for the wrongdoing.

16. See "Improper Ballots Turned Election," *Philadelphia Inquirer*, March 25, 1995, p. A1. The *Inquirer's* investigation, which required a massive effort, indicated that at least 540 absentee ballots cast for Stinson were tainted, a number that exceeded his margin of victory.
17. PA Stat. Tit. 25, 3146.1–3146.6 (1994).
18. Interview with Bruce Marks, July 18, 1995. In addition, several hundred rejected applications (some of which were for unregistered individuals, and some of which were simply fraudulent) were covertly returned to the Stinson campaign to prevent their discovery. These documents are public records, and should have been preserved for two years.
19. *Marks v. Stinson*, 1994 U.S. Dist. LEXIS 5273 p. 23.
20. *Ibid.*, p. 26. As noted above, Stinson had narrowly lost an election for a Philadelphia city council seat in a June 1991 Democratic primary. For a fuller account of Jones's recollections of his work for Stinson, see also Henry Goldman and Sergio Bustos, "Campaign Worker Says Stinson Ignored Warning on Ballots," *Philadelphia Inquirer*, February 8, 1994, p. A1. Stinson, on the other hand, challenged Jones's credibility and claimed that he deliberately maintained his ignorance of many details of his campaign, including the absentee ballot program. See Mark Fazlollah, "Stinson Said He Stayed Clear of Details," *Philadelphia Inquirer*, February 8, 1994, p. A1. Stinson's argument, however, contradicts the testimony of many of those who worked on his campaign; see Marc Duvoisin, "Absentee-ballot Quest Described as Obsessive; Aides Say Stinson Discussed It Frequently," *Philadelphia Inquirer*, March 13, 1994, p. A1.  
Ironically, Marks later recalled that Daniel McElhatton, Stinson's opponent in the 1991 city council primary, was one of the sources who suggested he investigate Stinson's use of absentee ballots: "I ran into [Daniel McElhatton] who had run against my opponent in a 1990 primary, . . . and he just recommended to me that I look into the absentee ballots" (interview with Bruce Marks, July 18, 1995).
21. *Marks v. Stinson*, p. 23.
22. *Ibid.* See also *Marks v. Stinson*, p. 31, where Judge Newcomer notes the scheme; Hispanic and black voters were also told "that the law had been

- changed and there was a 'new way to vote' from the convenience of one's home."
23. For a more complete account, see "Voters Say Ballots Were Forged," *Philadelphia Inquirer*, November 21, 1993, p. A1; and John F. Dickerson, "Is This Seat Stolen? Angry Republicans Contend That Dirty Tricks at the Polls Tipped the Balance of Power in Pennsylvania," *Time*, February 7, 1994, p. 34.
  24. *Marks v. Stinson*, p. 36.
  25. *Ibid.*, p. 39.
  26. One of the Democratic commissioners even gave an order to "stay out of it" to an elections board employee who ascertained that unregistered citizens had applied for absentee ballots and so informed the commissioner.
  27. *Marks v. Stinson*, p. 55.
  28. Interview with Jack Connors, July 18, 1995.
  29. *Marks v. Stinson*, p. 47.
  30. Office of Alabama Secretary of State, Elections Division. As was the case with the Philadelphia story, where party control of the Pennsylvania state senate was at stake, the significance of the Alabama election was tied to a larger issue current in the state at the time. Tort reform, which gained national prominence in the Republican Party's "Contract with America," is an especially significant issue in Alabama, as in many states where judges are elected. Plaintiff trial lawyers categorically oppose regulatory efforts to limit jury awards for punitive damages and pain and suffering in civil liability suits. Alabama is distinguished by the large dollar amounts that juries award to plaintiffs, and by the fact that the state appeals courts, including the Supreme Court, often maintain the amounts set by juries. Hornsby is the past president of the Alabama Trial Lawyers Association and is critical of tort reform. Hooper and the Alabama Business Council are outspoken proponents of reforming tort award limits. The Hornsby-Hooper race is therefore symbolic of the wider issue.
  31. The United States Court of Appeals for the 11th Circuit requested that the state Supreme Court clarify the status of the 1,700 absentee ballots under Alabama electoral law prior to ruling on the merits of Hooper's supporters' claims. A five-judge panel of the state Supreme Court (not including Hornsby), all Democrats, ruled on March 15, 1995, that by Alabama Code 17-10-7, the ballots were in substantial compliance with Alabama electoral law and should be counted despite the fact that the affidavits attached to the ballots were not notarized or witnessed by two individuals, as required. This ruling would place their colleague Hornsby back on the bench. The circuit court is currently considering the panel's opinion, and as Hooper noted, "This isn't even close to being over." (See