

On March 29, 1988, Paul Eckstein was cross-examining Robert L'Ecuyer on the floor of the Arizona Senate, during the impeachment trial of Governor Evan Mecham. Mr. Eckstein was an attorney for the Board of Managers, the five members of the Arizona House of Representatives responsible for prosecuting the articles of impeachment filed in the Senate against the then-Governor.

SITTING IN JUDGMENT

Reflections on an Impeachment



On direct examination, L'Ecuyer had offered his opinion that it was proper for Mecham to "loan" \$80,000 from the Governor's protocol fund to Mecham's struggling Pontiac dealership because, among other reasons, Mecham paid a higher rate of interest than the protocol fund was otherwise realizing. In his cross-examination, Eckstein was asking L'Ecuyer about a bar disciplinary proced-

ing that led to L'Ecuyer's voluntary retirement from the State Bar of Arizona. L'Ecuyer had "borrowed" some \$5,500 from his trust fund, and his defense was that he was paying a higher rate of interest than the trust fund could otherwise obtain.

Not wanting to answer Eckstein's questions, L'Ecuyer attempted to read a prepared statement into the record. This was a moment where a truly momentous pro-

ceeding had the potential to spiral out of control. But thankfully for the people of Arizona, the man who presided over the impeachment simply would not let that happen.

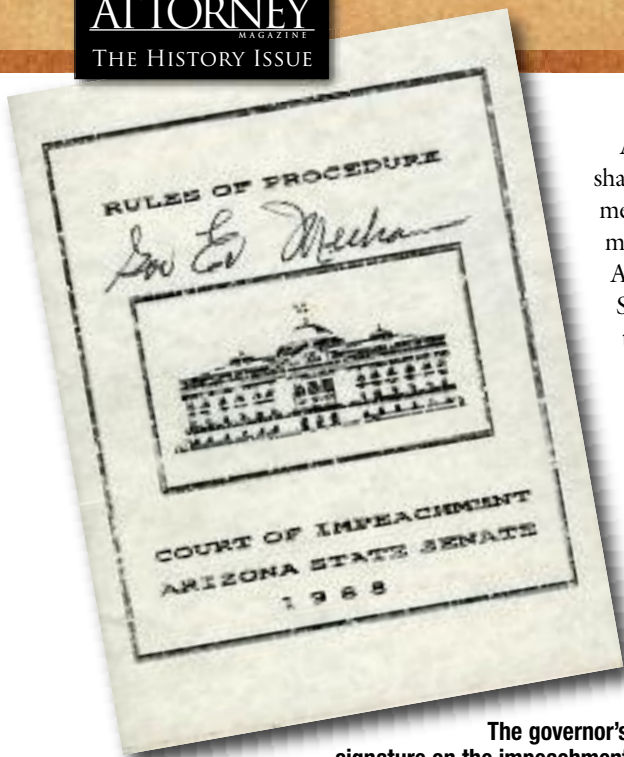
Before L'Ecuyer had a chance to read his statement, Arizona Supreme Court Chief Justice Frank Gordon, sitting as the Presiding Officer of the Court of Impeachment, turned to L'Ecuyer, pointed

BY FREDERICK R. PETTI AND DANNY ADELMAN

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All the senators, staff and lawyers involved in the court of impeachment.



The governor's signature on the impeachment rules book.

ARIZONA ATTORNEY has asked us to share our memories of the impeachment trial. It is hard to believe that more than 20 years have passed since April 4, 1988, when the Arizona Senate voted to sustain two of the three Articles of Impeachment, thereby removing Mecham from the position of Governor of Arizona. But they have, and we have decided to write this article to pay tribute to the man who, according to all of the 30 state senators who sat as the Court of Impeachment, conducted the proceedings with “dignity, patience, dispatch and most importantly, absolute fairness”—our old boss and friend, Frank X. Gordon, Jr.

A Brief History

Frank Gordon was born in Chicago and moved to Kingman, Ariz., with his parents, Frank X. Gordon and Lucile G. Gordon, when he was only six months old. The year was 1929, and the family moved so his father could start a new and, at the time, unique business—the sale of title insurance on real property. Justice Gordon’s father was an attorney, and he took and passed the Arizona bar in 1932.

Justice Gordon often told us about his childhood in Kingman. According to Justice Gordon, it was a safe town in those days, and he and his friends wandered its streets freely and knew everyone. In fact, on Mar. 29, 1939 (exactly 49 years before he admonished L’Ecuyer), Gordon and a friend were standing on a Kingman street when a big car pulled up and the driver asked the boys where there was a church in town. After providing directions, Gordon and his friend decided to follow the car. Inside, they watched as Clark Gable married Carole Lombard in an otherwise private ceremony.

Justice Gordon also told us fondly about his horse Jim and his dog Bobby. When he was only 10 years old, Gordon rode Jim into the hills, and he and Bobby camped out overnight. With his .22 rifle, he killed a rabbit, cooked it over a fire and ate it with the watercress he harvested from Beal Springs. Justice Gordon often said that nothing teaches a boy responsibility like

having to fend for himself and care for a large animal.

After graduating from Kingman High School, he attended Stanford University, where he once dated another Arizonan in his class, Sandra Day. Of course, Sandra Day married John O’Connor and was later appointed to the United States Supreme Court by President Ronald Reagan. Many years later at a lawyers meeting in Santa Fe, John O’Connor introduced Justice Gordon to his wife, and Justice Gordon replied, “Glad to meet you.” Justice O’Connor said, “What do you mean, ‘Glad to meet you’? You dated me once at Stanford!”

After graduation, Gordon attended the University of Arizona College of Law, graduating in 1954. He served as Kingman City Attorney from 1954 to 1956, and then entered private practice in Kingman until 1962, when Gov. Paul Fannin appointed him to the Mohave County Superior Court. Gov. Raul Castro then appointed him to the Arizona Supreme Court in 1975, and he was elected by members of the Court to be Chief Justice in 1987. He served as Chief until he retired from the Court in 1992.

Our Impeachment Research

Mecham was elected governor on Nov. 4, 1986, having won the election with a 40 percent plurality, while Democrat Carolyn Warner and Independent Bill Schultz received 34 percent and 26 percent, respectively. Mecham was sworn in on Jan. 6, 1987, and soon thereafter rumors of impeachment began to circulate. Those rumors took on added significance with the allegation that Mecham had violated Arizona’s campaign finance disclosure laws by failing to reveal a loan he received from an attorney, Barry Wolfson. Impeachment ceased being just a rumor when in October 1987 the Speaker of the Arizona House of Representatives, Joe Lane, hired William P. French, a former Arizona Superior Court Judge, to investigate whether there were sufficient grounds to impeach Mecham.

On Jan. 15, 1988, French delivered a report recommending that Mecham be impeached. For the next two weeks a Special Committee from the House held hearings to determine whether French’s allegations were sufficient to support a vote of impeachment. On Feb. 5, 1988, the

his gavel, and said sternly, “Mr. L’Ecuyer, you’re an attorney. You know that you’re here to answer questions. Now, Mr. Leonard [Jeris Leonard, Mecham’s lawyer] will straighten up, I’m sure, anything that your answers might bring misconceptions on, but you have no right to make a statement from the witness stand. You’re just to answer the questions.”

A properly contrite L’Ecuyer responded, “You’re correct in admonishing me, Your Honor. I’m sorry.”

As luck would have it, a photographer for the *Arizona Republic* was in position to capture a photograph of Chief Justice Gordon at the moment when he was pointing his gavel, and that photo graced the front page of the *Republic* the following morning. For many Arizonans, that photograph provided a visual record of the man who handled the Mecham impeachment trial with dignity and grace, and made sure that the trial did not become an event that brought shame on Arizona.

What Arizonans do not know is that seconds before the photograph was taken, Justice Gordon popped a hard candy into his mouth, and he hated the photograph because he could see the lump the candy made in his cheek.

We know about Justice Gordon’s reaction to the photograph because we had the great fortune to serve as his law clerks during the Mecham impeachment trial.

House voted 46 to 14 to impeach Mecham, finding in Article I of the Articles of Impeachment that Mecham obstructed justice by impeding an investigation of a death threat by a member of Mecham's staff; in Article II, that Mecham failed to disclose a \$350,000 loan to his campaign from Wolfson; and in Article III, that Mecham improperly lent \$80,000 from the Governor's protocol fund to his own automobile dealership.

We young law clerks first raised the possibility of an impeachment trial with Justice Gordon in early September 1967. As we walked back from lunch at the Department of Transportation cafeteria (the Judge liked the tuna fish salad served there), Danny asked Justice Gordon whether the rumors of impeachment seemed so serious that we

should start looking into how a Court of Impeachment operates. The Judge laughed and told us that there was no way that the Republican Legislature would vote to impeach a Republican Governor, not even one as controversial as Mecham.

The Judge changed his tune after French was hired, and he poked his head in our office one day and asked us to go ahead and conduct some research regarding how an impeachment trial would be held in Arizona. The Judge told us to spend only a small part of our time on the assignment so we could continue to perform our court duties. We soon discovered, however, that even though there had been two such trials in Arizona (including a 1964 trial of two Corporation Commissioners at which the Special Prosecutor was William Rehnquist),

Arizona's Constitution and statutes provided very little guidance, and the task of establishing a court of impeachment was enormous.

In spite of what we had discovered, Justice Gordon was reluctant to have us begin researching impeachment in earnest. One day, the Judge would ask us to hold off researching until it was more certain that impeachment was imminent. The next day, he would walk into our office and ask us about the very topic he had just told us to set aside. After becoming tired of returning books to the library—only to retrieve them the following day—we eventually ignored the Judge and devoted ourselves full-time to learning about impeachment. Instead of poring through the most recent case law in death penalty cases like most of our fellow



Law clerks Danny Adelman and Fred Petti with Chief Justice Frank Gordon.



clerks, we were searching for knowledgeable staffers in the Oklahoma Legislature—one of the few places in the country that might have some reference materials about how an impeachment trial of a governor should be conducted.

It turned out that it was a good thing we had overcome Justice Gordon's hesitation to dive into our impeachment research. On Jan. 15, 1988, the day William French delivered his report to the House of Representatives, the Judge met with the Senate leadership and their legal staff. At that meeting, much to the Judge's surprise and amazement, he discovered that the Senators had been even more reluctant than he to research what impeachment was all about, and how the process worked.

Drafting the Rules

It is hard to imagine a proceeding more fraught with peril for inducing a constitutional crisis or a clash between the judiciary and the Senate than an impeachment trial, where the Chief Justice presides "over" the Senate.

Justice Gordon showed his true genius before the Mechem impeachment trial by letting the senators know that they were the Court of Impeachment, and he was there only to preside and to make sure that the procedure was fair and impartial. Whatever the Senators had to deal with in such a politically charged event, they did not need to worry about Justice Gordon making some kind of power play. When he realized that the Senate leadership was reluctant to prepare for the impending impeachment trial, for reasons both practical (the Senate needed to finish its legislative work) and political (Mechem posed many problems for the Republican leadership), Justice Gordon merely offered his assistance in helping the Senate prepare. He met with both Carl Kunasek, the Republican President of the Senate, and Alan Stephens, the Democratic Minority Leader, to discuss how best to draft the rules and procedures for the

impeachment trial.

As a result of their discussions, Fred Petti was assigned to work with the Republican caucus and staff lawyers and Danny Adelman was assigned to work with the Democratic caucus and staff lawyers. By

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meeting with the Senate leadership and developing a working rapport with both parties, Justice Gordon was able to "imbed" his clerks into the drafting process in both caucuses, and guarantee that he had a voice, solely to make sure that whatever rules and procedures were established were fair and impartial.

For us, Justice Gordon's clerks, the experience was both exhilarating and enlightening. We were not prepared for the lack of understanding of some of the senators regarding fundamental due process rights. Nor were we prepared for the anger that they felt toward Mechem, not for his actions per se, but for putting them in the uncomfortable position of having to serve as judges in an impeachment trial.

We also were unprepared for the strange and peculiar personalities exhibited by some of the senators. Fred soon discovered that one of the Republican senators believed that he was a "preamble citizen," meaning that he was a citizen covered by the phrase "we the people" in the Declaration of Independence. Therefore, he could ignore certain laws that "non-preamble citizens" (anybody who wasn't White, Anglo-Saxon and Protestant) must obey, including, for example, registering his automobile or getting a driver's license.

Danny also learned that one of the Democratic senators wanted permission from the Department of Public Safety to carry a concealed weapon onto the Senate

floor during the impeachment trial. Fortunately for all involved, Senator Stephens convinced his colleague that it was not a good idea to carry a weapon during the impeachment proceedings. Together, we fielded questions pertaining to the significance of whether the flags on the Senate floor would have fringes on them.

In spite of the many unusual thoughts or requests that emerged from the caucuses, Senators Kunasek and Stephens, and many other members of both caucuses and their great staffs, managed to keep their respective parties focused on the task at hand. Moreover, having seen that Justice Gordon was there to help the Senators, not to dictate to them, both Senators Kunasek and Stephens deferred to Justice Gordon on issues of fairness and impartiality. As a result, the Senate staff, with our assistance, drafted what we believe to be a model set of rules of impeachment.

On Feb. 11, 1988, the Senate convened as a Court of Impeachment for the first time. During that meeting, the Rules of Impeachment were adopted. It was also the first time that Justice Gordon presided over the Court of Impeachment. Although he set the tone that the impeachment proceedings would be conducted in a dignified and fair manner, it was an extremely stressful evening. After the Court of Impeachment recessed for the day, we joined Justice Gordon, along with Senator Kunasek and Bob Urdane, the Republican Majority Leader, in Senator Kunasek's conference room, which served as our chambers during the impeachment trial. Justice Gordon remarked that he sure could use a drink, and Senator Kunasek produced a bottle of Scotch.

Although that was Justice Gordon's drink of choice, we clerks did not qualify as Scotch drinkers. After two glasses, neither of us was in any position to drive home; we spent the night at our office at the Supreme Court. Justice Gordon had been supplied a Department of Public Safety driver because of death threats he had

received in connection with the Mecham matter, so he got to go home after the impromptu party broke up.

The Court of Impeachment

On Feb. 29, 1988, the Senate began hearing the first of 23 days of testimony, carried live on both television and radio. In his wonderful law review article on the Mecham impeachment, University of Arizona law professor Robert Glennon wrote the following concerning Justice Gordon:

Gordon set the tone of the proceedings. Civility, decorum, and impartiality characterized his performance as presiding officer. A danger in any impeachment trial, and this one in particular, is that the impeachment jury might appear biased or politically motivated. Gordon's display of judicial temperament created the unmistakable appearance of neutrality. Behind the scenes, Gordon told both lawyers and legislators that they were on display, as representatives of their professions, and they should conduct themselves accordingly.¹

We could not have said it better.

During those 23 days, there were many interesting moments and many interesting stories to tell. For brevity's sake, we've elected to tell two.

The first involves Paul Eckstein's cross-examination of Governor Mecham. The Governor first took the stand on Mar. 17, 1988. At the start of the lunch break, Tim Delaney, then an associate at Brown & Bain, handed Fred a motion *in limine* regarding 404(b) evidence that Eckstein wished to use during his cross-examination of Mecham. The evidence consisted of a civil conviction of Mecham for fraud. During the lunch break, Justice Gordon asked Danny to read the Arizona 404(b) case on point. We then discussed the case, and Justice Gordon concluded that he would only permit Eckstein to use the evidence if Mecham testified that he had never been found guilty of lying, cheating or defrauding anyone.

After lunch, Eckstein continued his cross-examination. In response to a question regarding a 1981 lawsuit filed against the Governor, Mecham testified that

"nobody has ever found me guilty of lying or cheating or defrauding anyone." The Governor had said the exact words that Justice Gordon said Mecham needed to utter before Justice Gordon would permit Eckstein to use his evidence. As soon as those words left Mecham's mouth, Justice Gordon turned his chair away from the Court of Impeachment so that only we could see him. He looked at us with a startled expression and mouthed the words, "Can you believe it?" Justice Gordon then allowed Eckstein to impeach Mecham with a judgment for fraud in which the jury awarded punitive damages against the Governor.

The other story involves a request that Justice Gordon made of Fred right before the senators voted on the first impeachment charge. To help facilitate the trial, the Senate had printed up the copies of the Rules of Impeachment in a pocket-sized booklet. In the days leading up to the vote on the Articles of Impeachment, some of the senators began asking all involved in the impeachment trial to sign their copy of the rules. By April 4, everyone, including Justice Gordon, was participating in the signing ritual.

As he was preparing to take the bench and call for the verdict on the first Article of Impeachment, Justice Gordon handed Fred his copy of the rules booklet and asked him to get Governor Mecham to sign it. An incredulous Fred asked the Judge if he was kidding. Justice Gordon assured Fred that he was not and that Fred needed to go get that booklet signed.

Fred sheepishly approached Governor Mecham and asked if he would sign Justice Gordon's booklet. The Governor gave Fred a blank stare, but he took the booklet and signed it. At that moment, Fred reached into his pocket, pulled out his own booklet, and said, "And would you sign one for Justice Gordon's grandson?" The Governor obliged Fred's request.

After he received his rule book back from Fred, Justice Gordon took the bench, and the senators voted to sustain Article 1 of the Articles of Impeachment by a vote of 21 to 9 and to sustain Article 3 by a vote of 26 to 4. As a result of Fred's white lie, he has

the last signature penned by Evan Mecham while he was still the Governor of Arizona.

Conclusion

Over the years, many people have asked us how Justice Gordon would have voted on the question of Mecham's impeachment. We don't know because he never told us.

It was our singular honor and good fortune to clerk for Justice Gordon during the Mecham impeachment. The State of Arizona caught a glimpse for a month of what we saw every day throughout our year clerking for him. We were in the unique position to watch our judge practice what he preached.

After one meeting where the Judge handled some questions that were clearly designed to start an argument rather than to solve a problem, we asked the Judge how he avoided getting baited into a shouting match. He just smiled and said, "You never wrestle with a pig; you'll both get dirty, but the pig enjoys it." Many have heard this saying. We had the privilege of watching a man who put it in action.

He also showed us that there is no substitute for hard work, even when you've reached the pinnacle of your profession. After each day of testimony was taken on the Senate floor, we would meet with the Judge in chambers. We almost made a game of trying to predict every legal and evidentiary matter that he might have to rule on the next day. As his clerks, we would gather the research and write memos into the night, and then we'd meet with the Judge again early the next morning. He spent the time each day to make sure that he did the best job he possibly could.

We learned much during the impeachment trial and much during that year. The most important lesson he taught us was that good lawyers always turn square corners and, by doing so, bring honor to our noble profession.

Like the rest of Arizona, we were blessed that Frank X. Gordon, Jr., was the Chief Justice of the Arizona Supreme Court when the Arizona Senate sat as the Court of Impeachment in the matter of the impeachment of Evan Mecham, Governor of the State of Arizona. 