

**Tennessee Voices: Bad guy in real-life potboiler is not election of judges**

By Stephen Vaden

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A prominent, silver-tongued Southern trial lawyer concocts a complicated plan to bribe a local judge to obtain a favorable result in a dispute over legal fees. What he and his comrades do not know is that the judge is working for the FBI, recording all of their illicit conversations for federal prosecutors.

Soon, five prominent plaintiffs' attorneys find themselves pleading guilty to a litany of charges in federal court and facing additional investigations about other potential bribery schemes. Even the state's attorney general and former U.S. senator play bit roles.

It sounds like a script right out of the latest John Grisham novel, destined to grace the big screen. However, this is one story Mr. Grisham would rather you not read. Starring in this Greek tragedy is none other than Mississippi's own "King of Torts," Richard "Dickie" Scruggs. Lurking in the shadows of the limelight is *The Appeal*, the latest novel by Scruggs' good friend Grisham. The contrasting plot lines, one fictional and one all too real, demonstrate what ails our state court systems and how not to repair it.

Grisham's new novel revolves around a fictional chemical company with ties to conservative politicians. Having spent much of its existence polluting a local town's water supply, the evil corporation finds itself on the wrong end of a \$41 million jury verdict. Rather than clean up its act, the chemical company decides to invest its resources in a campaign to elect a business-friendly justice to the Mississippi Supreme Court. As the state's highest court, it will have the final say as to whether the jury's verdict stands. Thus, Grisham instructs us that what is wrong with our judicial system is the fact the judges are elected.

Contrast *The Appeal's* narrative, safely filed away in the local bookstore's fiction section, with the current headlines emanating from Mississippi, and one finds an almost complete role reversal. It is the tort bar, the hero in Grisham's novel, seeking to corrupt the judiciary. Meanwhile, the only honest person found in the entire Scruggs scandal is none other than the elected state circuit judge, Henry Lackey. The dirty money at issue here is old-fashioned bribes rather than campaign contributions subject to disclosure requirements.

Scruggs' actions demonstrate that it is the information one does not know about that can truly lead to harm. This is a lesson Grisham cannot seem to grasp. On his nationwide book promotion tour, Grisham has assailed judicial elections and called for their abolition. Grisham refers to his preferred system of selecting state court judges as "merit selection." The practical effect of merit selection is that all of a state's judges would be chosen by the governor, from a list approved by a panel dominated by trial lawyers, criminal defense attorneys and others directly interested in the rulings of the judges whom they select.

To add icing on the cake, unlike the political process, but just like the Scruggs scandal, all of the panel's important debates would take place behind closed doors, immune to public scrutiny. Rather than remove the influence of interested trial attorneys from the selection process, Grisham's plan calcifies it and removes the appointments process from the realm of normal public debate. It does not eliminate corruption so much as make a more insidious form of it possible.

Tennessee's legislators appear to be taking their cues from reality rather than Grisham's preferred fictional narrative. The General Assembly recently decided to end the backroom dealing associated with "merit selection" by returning to the contested judicial elections Tennessee's constitution mandates.

Former Tennessee Gov. Ned McWherter said it best: "You can't go wrong when you let the people vote." Maybe that is a message Scruggs can relate to Grisham, should the noted author decide to visit his friend in jail to perform research for a more accurate sequel.