CHAPTER VI

OKLAHOMA: THE TERRITORIAL AND DISTRICT COURTS

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INTRODUCTION

United States courts and judges extended their influence over the land now the state of Oklahoma over a period of decades in a determined and, at times, painful effort to bring white man's rule to Indian country. In many ways the history of the federal judicial system in Oklahoma is unique. It differed from the pattern in the original thirteen colonies and the other congressionally organized territories. Federal jurisdiction in Oklahoma expanded as the authority of the Indian tribal nations was contained and eventually reduced significantly. Yet because this process took over seventy years to complete there was an inevitable blending of Indian and white law, commerce and society; and the federal courts and judges played a central role in bringing these two cultures together.

The evolution of the federal judiciary in Oklahoma is also the story of bringing law and order to a territory which became, after the Civil War, a haven for banditry and violence of every persuasion. Civil disorder in the area reached such depths that one newspaper editor in 1873 plaintively described the scene:

> We have lived in and around the Indian country since the Spring of 1834, but have never known such a state of terror. Now it is murder throughout the length and breadth of the Indian country. It has been the rendezvous of the vile and wicked from everywhere, an inviting field for murder and robbery because it is the highway between Texas, Missouri, Kansas and Arkansas . . .[1]

During the last quarter of the nineteenth century, veritable armies of federal marshals combed Indian country, rounding up cattle thieves, murderers, prostitutes, whiskey sellers and charlatans of every stripe, bringing them to the primitive court houses and jails in Graham or Paris, Texas, in Wichita and Fort Scott, Kansas and, most often, Fort Smith, Arkansas. Justice was swift and potent in these dusty southwestern towns; and the judges were commonly as stern and colorless as the black wool frock coats they wore winters or sweltering summers.

Gradually, white settlers began to fill the territory set aside for the Five Civilized Tribes—Cherokees, Creeks, Chickasaws, Choctaws, and Seminoles—and the smaller tribal populations resettled after the Civil War. Predictably there was resistance. But it is not commonly known how the Indian tribes learned to use white man's law, lawyers and courts to fight the persistent and inimical depletion of their tribal lands. Time and again federal judges were called upon to interpret and enforce the Trade and Intercourse Act[2] and the hundreds of complex congressional laws governing whites and Indians.

The flood of settlers into the Oklahoma and Indian Territories and the discovery of rich natural resources, primarily coal and oil, created an avalanche of high stakes litigation in the federal courts. Disputes over tribal allotments, heirship and the ownership rights created by oil and gas production began to replace the show trials of Cherokee Bill and Belle Starr. By the time of statehood in 1907, the federal courts in Oklahoma had come of age. The parade of territorial judges was replaced by two judges for the Eastern and Western districts, Campbell and Cotteral, both the sort of effective administrators needed to handle the

prolific and unusually complex litigation experienced in the new state.

Oklahoma's federal judges have been drawn from the same reservoir of intelligent, pragmatic lawyers characteristic of the breed throughout the United States. Yet there exists a tradition of gutsy individualism and political savvy among the Oklahoma federal bench which reflects Oklahoma's turbulent past.

A. *THE TRIBAL COURTS OF INDIAN COUNTRY*

In November 1834, the same year Congress passed the first in a steady stream of legislation affecting the Indian country west of Arkansas,[3] Washington Irving wrote of this idyllic land:

> It consists of great grassy plains, interspersed with forests and groves, and clumps of trees, and watered by the Arkansas, the grand Canadian, the Red River, and their tributary streams. Over these fertile and verdant wastes still roam the elk, the buffalo, and the wild horse, in all their native freedom. These, in fact, are the hunting grounds of the various tribes of the Far West.[4]

For many of these tribes—the Osage, Pawnee, and Comanche—the land west of the state of Arkansas, north of the Red River, and along the watershed of the Canadian and Arkansas Rivers was ancestral homeland. For others—the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles—this Indian country was new and unwanted territory. Forced out of Georgia, North Carolina, parts of Tennessee, Alabama, and Mississippi, these Five Civilized Tribes brought established and sophisticated customs and laws into the land of the buffalo hunters. They also brought their tribal courts which must be credited as Oklahoma's first judiciary.

Indian removal to the territory west of Arkansas took place largely during Andrew Jackson's administration although the process had been under way for several decades as settlement of the southeastern United States by whites inflicted unendurable pressure on the indigenous tribes of that region. Under the influence of missionaries and white traders, civilization, including an organized legal system, had taken firm root in most of these five southeastern tribes prior to their expulsion.

The Choctaws, under duress, emigrated to the Indian country under the terms of the Treaty of Dancing Rabbit Creek ratified by Congress on February 24, 1831.[5] Despite the obvious injustice served upon the Choctaws and the other expelled tribes they at first enjoyed a greater freedom than experienced in their home states of Alabama and Mississippi and gradually attained a higher level of prosperity, nurtured by a temperate and fertile land.

The Choctaws at first combined lawyer, judge, jury and penal system in one institution, called "Lighthorsemen" who served to apprehend, try and punish wrongdoers. Corporal punishment rather than imprisonment was the most common penalty for criminal acts. Thirty-nine lashes were inflicted on parents who murdered their infant children. Witches and "wizards" were punished by death. Liquor consumption was recognized early as a destructive influence and was proscribed by all the civilized tribes.[6]

In January 1857 the Choctaws convened the last of several constitutional conventions at Skullyville, Choctaw Nation and adopted a tripartite government with legislative, executive and judicial branches. A supreme court, circuit courts and county courts were created for the judicial branch. Jury trial was recognized. According to most observers Choctaw courts were well disciplined institutions.[7] Jurisdiction over crimes committed by Choctaw citizens was, as in the other Indian country

nations, exclusive and equal to courts of other U.S. territories.[8]

Creek Indian law, from removal to Indian country until the time of their constitution of 1859, was similarly administered and enforced by one tribal General Council. Gradually a form of court system called a "judicating comity" evolved within the General Council to decide more complicated cases including civil lawsuits.[9]

Following the Civil War, in which most Creeks sided with the Confederacy, a new constitution was adopted for the considerably reduced Creek Nation. The nation was divided into six districts, each with a judge elected by the legislature, a prosecuting attorney and lighthorse, whose job was limited to law enforcement. A supreme court consisting of five justices was created and a criminal code adopted. Penalties were established for all varieties of proscribed conduct including use of abortion-causing drugs by women and possession of alcohol. Punishment for the latter offense was for the light horsemen to "search, find and spill" the intoxicants and charge the offender four dollars per gallon as a fine.[10]

Despite the ever encroaching white man's civilization, the federal courts attempted to maintain the integrity of the Creek judicial system. A case in point is *Ex Parte Tiger*.[11] Tiger was tried, convicted and sentenced for murder in a Creek Nation court. He presented a writ of habeas corpus to Judge William M. Springer, Territorial judge for the Northern District of Indian Territory, arguing that he had not been indicted by a grand jury as required by federal constitutional law. Observing that common law jurisprudence was as alien to the Creeks as "Sanskrit or Hebrew" Judge Springer denied the writ and Tiger's conviction by the Creek court was undisturbed.

As was common with most of the tribal leaders in Indian country, mixed bloods dominated the court systems. Col. D.N. McIntosh, a member of the ruling elite and descendant of Scotch and Indian forbears, was the first chief justice of the post-Civil War Creek Nation Supreme Court. The most widely respected Choctaw jurist to serve on that nation's supreme court was Joel W. Everidge of Mississippi.[12]

The Chickasaws, prior to removal, were organized under a more primitive legal system than the Creeks, relying heavily on the authority of the chief and his council. In 1829 this council adopted a code of written law. For the first time significant protection was afforded for the rights of private property. Theft, for example, was punishable by thirty-nine lashes plus restitution.[13] Without the resources to erect and protect jails or prisons, the Chickasaws, like most of the Five Tribes, relied heavily on corporal punishment.

In 1867 following removal from their ancestral homeland in western Tennessee and northern Mississippi, the Chickasaws enacted a written constitution. Article VI created a judicial department establishing a supreme court and county courts. The legislature by a joint vote of both houses elected the judges of the supreme court and circuit courts.[14]

The early federal territorial courts gave full faith and credit to decisions of the Chickasaw Nation courts. In *Howell v. Brown*,[15] the United States Court for the Southern District of Indian Territory enforced a statement of account approved by a Chickasaw Nation probate court. This spirit of comity, so consistently apparent in the early federal court decisions in Oklahoma, can best be explained perhaps by the close resemblance these tribal courts bore to the U.S. courts. The disproportionate influence of mixed bloods in white society also contributed to a greater willingness on the part of non-Indian federal judges to defer to Indian law and tradition.

Most historians agree that the Cherokees developed the most sophisticated legal system and government in Indian country. Indeed in their native Georgia the increasing prosperity of the Cherokees in the first quarter of the nineteenth century antagonized their jealous white Georgian neighbors, hastening their eviction.[16]

The Cherokees' supreme court antedated the supreme court of the state of Georgia by some twenty years. The Cherokees were a peaceful, law-abiding nation and the majority of the cases reviewed prior to removal were civil.[17]

It was the Cherokees under the guidance of their able lawyer William Wirt, who pressed the landmark case in U.S.-Indian relations, *Cherokee Nation v. Georgia*.[18] The Cherokees sought to enjoin the state of Georgia for its many violations of their sovereignty. In denying access to original jurisdiction of the Supreme Court, Chief Justice Marshall held that ". . . an Indian tribe or nation within the United States is not a foreign state, in the sense of the constitution, and cannot maintain an action in the courts of the United States."[19] Thus, even though federal jurisprudence continued to recognize the legitimacy of tribal law, never again would the term "Indian Nation" be interpreted to confer independent national sovereignty. The way was clear for a gradual erosion of the force and effect of Indian courts.[20]

Cherokee removal was largely concluded by 1838. The Cherokee "Trail of Tears" was especially poignant for these people who left behind houses full of fine furniture, libraries, fertile farms and valuable livestock herds. In Indian country the Cherokees fared little better than their earlier settling Indian brethren.

The first Cherokee constitution of 1827 was modified in September 1839, creating a supreme court and such inferior courts as the national council might establish. Cherokee supreme court judges, like U.S. Article III judges, were immune from reduction in compensation.[21] This court attracted a large number of jurists. From 1839 to 1907 there were twenty-six chief justices of the Cherokee Nation Supreme Court.[22]

The Seminoles arrived later in Indian country and retained their more primitive tribal association, never adopting formal courts. The tribe was divided into fourteen bands, each with a "band chief" and two "lawmakers." Crimes and civil disputes came before designated members of each council for resolution.[23] Remaining a small homogeneous group of primarily full bloods, the Seminoles had little need for the modern complexities of white man's law.[24]

Throughout the nineteenth century other Indian tribes were forcibly settled in Indian country, such as the Kickapoo, Sac and Fox, Iowa, Shawnee, Missouria and Otoe and others, each with their own judicial systems. The indigenous Osages, however, occupied the largest territory and were the most populous.

The first Osage constitution was adopted on December 31, 1881 at Pawhuska. Again, a supreme court was established with inferior courts created by legislative act.[25] The Osage constitution, like that of the Cherokees, carefully protected individual rights. In all criminal cases the accused had the right to confront witnesses, to avoid self incrimination and to a speedy public trial.[26]

There were four chief justices of the Osage Nation Supreme Court prior to statehood: Thomas L. Rogers, Peter Perrier, W.S. Matthews, and S.W. Pettit, all mixed bloods.[27] Typical of the credentials acquired by Oklahoma tribal judges were those of Judge Rogers, a well-educated Confederate veteran and 32nd degree Mason.

The tribal courts of the Indian Nations brought a high degree of legitimacy and order to a sparsely populated, totally agrarian society. As cattle companies, railroads and land hungry Boomers closed in from all sides the one primary deficiency in these tribal law courts became more apparent: lack of jurisdiction, both civil and criminal, over the white man. From the Civil War to statehood legal authorities fought an ever-escalating war against civil chaos. It would take a federal court with an iron-willed judge and an army of deputy marshals to eventually bring order to this troubled land.[28]

B. *WHITE MAN'S LAW IN INDIAN COUNTRY: 1834-1890*

The land held by the Oklahoma area tribes was granted by separate treaties executed between 1830 and 1835. During this early period the five Indian Nations formed a contiguous area bounded on the east by Arkansas and Missouri, the south and west by Mexican territory, soon to be the Republic of Texas, and the north by a portion of the Western United States territory, later organized as the state of Kansas.[29]

Until 1819 this Indian country was part of the loosely unorganized Louisiana territory. In 1819 Arkansas Territory was created with Indian country under its jurisdiction.[30] The first federal court for this thinly populated land was in Van Buren.

On June 30, 1834 Congress passed "An act to regulate trade and intercourse with the Indians and preserve peace on the frontiers," the so-called "Trade and Intercourse Act."[31] This statute created a thorough body of federal law for conduct of affairs within Indian country. Among other things, alcohol was banned in this territory, setting a precedent for prohibition which, in one form or another, kept Oklahoma legally bone dry for over 125 years.[32]

Most important however, United States judicial jurisdiction was created over this area:

> . . . so much of the laws of the United States as provides for the punishment of crimes committed within any place within the sole and exclusive jurisdiction of the United States shall be in force in the Indian country; *Provided*, The same shall not extend to crimes committed by one Indian against the person or property of another Indian.[33]

On May 14, 1836 Arkansas became a state, but for eight years had no official federal court. By act of Congress of June 17, 1844 the United States District Court for the District of Arkansas formally succeeded to Arkansas territorial court authority.[34] Later, on March 3, 1851, the District of Arkansas was divided into two districts the eastern and western, the latter embracing "all that part of the Indian country lying within the present judicial district of Arkansas."[35] This court continued to meet in Van Buren. A certain Thomas Burkhart has the distinction of being the first *recorded* felon to be tried in the Western District of Arkansas in 1855.[36] His fate is lost to history.

This district court for the Western District of Arkansas also enjoyed the status of a circuit court:

> [A]ll causes, civil or criminal, except appeals and writs of error, which now are, or hereafter may by law be made cognizable in a circuit court and an appeal or writ of error shall be prosecuted from the final decree or judgment of said district court to the supreme court of the United States, in the same manner that appeals and writs of error are, by law, from a circuit court of the United States.[37]

Thus during the turbulent years after the Civil War prior to the formal creation of Oklahoma and Indian Territories, direct appellate jurisdic-

tion over Indian country was vested in the Supreme Court.

The first judge for both of these Arkansas federal court districts was Daniel Ringo whose accomplishments, if any, are obscure. Ringo resigned in 1860 to join the Confederacy as a judge in nearby Helena, Arkansas.

During the Civil War, federal court activity virtually ceased, resuming afterwards under the control of Judge Henry J. Caldwell, another short tenured jurist. On March 3, 1871 the Van Buren court seat moved to Fort Smith where its reputation increased from the obscure to the notorious.

The federal court house in Fort Smith was a red brick two-story structure next to a famous saloon known as "The Hole in the Wall." The courtroom was on the second floor. Prisoners awaiting trial were kept in the basement in what has variously been described as the "Black Hole of Calcutta" or, more kindly, the "hogpen." Its reputation so rankled some of Fort Smith's more genteel citizenry that in 1887 a new three-story jail was constructed next to the court house with room for 144 prisoners. There were generally no vacancies.[38]

In 1872 Judge Caldwell was succeeded by "an officious young lawyer" named William Story.[39] During his fourteen months in office Judge Story collected over $400,000 in court costs and tried very few cases. He was generally regarded as corrupt and incompetent and resigned in 1874 to avoid impeachment. Story was succeeded by William H.H. Clayton whose resignation led to the appointment in 1875 of Isaac Charles Parker of Missouri, a man whose energetic and remorseless jurisprudence earned him the sobriquet, the "Hanging Judge."

During Judge Parker's 21 years on the bench in the Western District of Arkansas 13,490 criminal cases were docketed resulting in 9,454 convictions, 160 death sentences and 79 executions.[40] Aside from Judge Parker's impressive statistics what caught the attention of both the citizens of Indian country and the national press was his fierce rhetoric. In sentencing Crawford Gooldsby, alias "Cherokee Bill," a notorious murderer, Parker displayed the intensity which made him famous:

> The crime you have committed is but another evidence, if any were needed, of your wicked, lawless, bloody and murderous disposition. . . The many murders that you have committed, and their reckless and wanton character, show you to be a human monster from which innocent people can expect no safety. . . .

Following several more equally fervent paragraphs Parker concluded with his familiar benediction:

> May God whose laws you have broken and before whose tribunal you must appear, have mercy on your soul.[41]

Isaac Parker was born in Belmont County, Ohio in 1838. He practiced law in St. Louis where he later became a judge and member of Congress from Missouri's Sixth District. He served two terms and was on the Committee on Territories where he caught the attention of President Grant. He served briefly as chief justice of the territorial court of Utah before taking office in Fort Smith on May 10, 1875.[42]

Due to weak leadership the prestige of this court was at its lowest ebb when Parker took over. He quickly promoted an increase in the court's "marshal corps" serving as a small army to scour Indian country for lawbreakers. Deputy marshals received two dollars per arrest and often had to pay their own expenses, traveling hundreds of miles into the Indian Nations where there were virtually no roads, hotels or saloons to ease the burdens of horseback travel.[43]

Very quickly Parker's administrative skill and firm hand netted results. His court was

nearly constantly in session six days a week, every day of the year except Christmas. The criminals who joined the dismal parade through Parker's court made up a who's who of western outlaws: Ned Christie, Cherokee Bill, Henry Starr and his wife Belle, Bob, Emmett and Gratton Dalton, to name a few.

The trial of Charles C. Boudinot was one of hundreds but, for a number of reasons, unique. Boudinot, the nephew of Col. Elias Boudinot, a prominent Cherokee leader, was charged with murdering B.H. Stone, a Tahlequah, Cherokee Nation newspaper editor, for certain libelous remarks. Young Boudinot assembled a five lawyer defense team, including his famous uncle and W.H.H. Clayton, former prosecutor in Parker's court. Boudinot's was one of the few acquittals in Fort Smith.[44]

Few of Parker's cases dealt with felons from such high social circles. With no courts of inferior jurisdiction, Fort Smith handled petty larceny, whiskey cases, cattle rustling and assaults by and among whites as well as serious felonies committed by any person in the Indian Nations. Most of the whites settling in the area were knowingly violating federal law in the first place by their mere presence. Subsequent misconduct was not unpredictable.

The few civil cases filed in the Western District of Arkansas primarily involved claims by or against the tribes. Since non-citizens had virtually no right to transact business in the Indian Nations and the Indians themselves used their tribal courts to resolve civil disputes, the Fort Smith federal court had no jurisdiction to try civil cases between non-Indians in Indian country.

As white civilization began to press in from all sides Parker began to hear, with greater frequency, the pleas of the Indians for protection of their sovereignty. Railroads and Boomers presented the greatest threat.

From the earliest days Congress contemplated extension of railroads into the Indian Nations. In 1855 for example, a Choctaw treaty granted a blanket right of way to any railroad authorized by Congress to build through Choctaw territory.[45]

The Union Pacific, Southern Branch (later the Missouri, Kansas and Texas or "Katy") completed the first north-south line in 1872. The first east-west line was the Saint Louis and San Francisco (the "Frisco") extending to Tulsa in 1892.[46] Considerable political pressure was marshaled by the tribes to regulate, tax or own the railroads through their territory to no avail.

The tribes fared little better in Parker's court although he was personally sympathetic to their cause. In a case brought by the Cherokee Nation to block the Atchison, Topeka and Santa Fe rail line from Kansas to Texas, Parker held that the U.S. possessed the power of eminent domain over the land in the Cherokee outlet.[47] Parker apologetically commented at a later occasion:

> I admit it is a proposition startling in its character that the citizens of the Indian country had no remedy in their courts against this railroad company [the "Frisco"] . . . But courts cannot make the law. They must take it as they find it.[48]

This Santa Fe line was eventually built and caused Arkansas City, Kansas to blossom into the primary staging area for the Boomer movement.

Boomers were white settlers who massed along the southern Kansas border areas in the 1870's and 80's periodically launching land grabbing expeditions into the Indian nations. Loosely organized into para-military communities the Boomers believed that the Indians, by failing to fully develop their territory, had no legitimate right of ownership and ought to yield to sincere homesteaders. They pointed to hundreds of thousands of acres in the Chero-

kee Outlet leased by the Cherokees to Texas cattlemen for a few cents an acre.[49]

Foremost among the Boomers was David L. Payne who established "Payne's Oklahoma Colony" in 1879 for a membership fee of two dollars per person.[50] Each attempt by Payne to invade and settle in the Indian country was routed and turned back by U.S. Calvary.

Finally in 1881 the Five Tribes in a rare act of unity raised $4,820 to assist the U.S. attorney in Fort Smith in the arrest and prosecution of Payne for trespass in violation of the 1834 Trade and Intercourse Act and the Cherokee Treaty of 1866. Payne's lawyers argued lack of jurisdiction for by this time Congress had conferred certain limited jurisdiction on the District of Kansas sitting at Wichita which would have provided Payne with a very sympathetic forum. Parker, however, ruled that Fort Smith properly had jurisdiction and fined Payne $1,000. Despite the light sentence the Indians rejoiced believing they had a friend in Judge Parker.[51]

Payne died in 1884, but the Boomer movement intensified attracting greater support in Congress. Even federal political leaders who sympathized with the Five Tribes favored a radical alteration of their traditional forms of land tenure. Senator Henry L. Dawes of Massachusetts guided a bill through Congress which gave the President the authority to enroll citizens of all Indian tribes except those in what is now Oklahoma and divide their collectively owned land into allotments.[52] Later in 1893 Congress extended this allotment policy to the Five Civilized Tribes in legislation creating the so-called "Dawes Commission":

> The consent of the United States is hereby given to the allotment of lands in severalty not exceeding one hundred and sixty acres to any one individual within the limits of the country occupied by the Cherokees, Creeks, Choctaws, Chickasaws and Seminoles. . .[53]

The creation of the Dawes Commission to break up communal ownership of land in Indian country marked the opening of the last act in the short and tragic drama of Indian national sovereignty and added a unique and complex dimension to federal jurisprudence in Oklahoma.

From 1875 to 1883 Judge Parker was the only federal judge presiding over Indian country. By act of Congress January 6, 1883 portions of Indian country were annexed to federal district courts in Kansas and Texas to reduce the administrative burden on Fort Smith and to provide a more accessible and responsive judiciary for the western and southern areas of the future state.[54]

All that part of the Indian country lying north of the Canadian River and east of Texas and the 100th meridian, exclusive of the Cherokee, Creek and Seminole nations was attached to the District of Kansas at Wichita and Fort Scott. This area included the Cherokee Outlet and such burgeoning western towns as Woodward, Guymon and Enid.

Attached to the Northern District of Texas at Graham was all the territory lying south of the Canadian River, excluding the neighboring Choctaw and Chickasaw Nations. The Oklahoma panhandle, Indian country west of the 100th meridian, remained beyond any federal or state jurisdiction, literally a No Man's Land, until 1889.[55]

During the seven years that Wichita and Fort Scott exercised jurisdiction over the northern portion of Indian country Judge Cassius Gaius Foster of Atchison presided. Foster had little time to leave any legacy over Oklahoma affairs; but he was a controversial figure in his home state. Prohibition was gaining momentum in Kansas and Foster was an outspoken leader of the opposition. A legal battle by Foster's Wichita grand jury against

the Topeka *Daily Capital,* a prohibitionist newspaper, raged for 14 years.[56]

In 1884 the Wichita and Fort Scott courts,[57] which had been limited to only criminal acts of whites in Indian country, were augmented by the first overt federal judicial encroachment over Indian affairs. Jurisdiction was extended to disputes between Indians and the Southern Kansas Railway Company which bisected the Cherokee Nation.[58] This federal court authority was grafted onto the bill permitting the extension of the railroad line.

The judge of the Northern District of Texas, when the southern portion of Indian country was under its jurisdiction, was Andrew P. McCormick. In 1889 the Eastern District of Texas at Paris assumed jurisdiction over federal felonies committed in the southern portions of Indian country. Judge David E. Bryant presided.[59] In 1889 when Paris was added as a court town for the Eastern District of Texas, the southern portion of Indian country assigned to Graham was transferred to Paris. Paris enjoyed a brief dominion.[60]

The activities of these neighboring state federal courts in the Oklahoma territory are largely unrecorded. One notorious case, ultimately decided by the U.S. Supreme Court, focused squarely on this complex jurisdictional evolution. Styled *Cook v. United States,*[61] to the residents of the panhandle area it was known as the Massacre of Wild Horse Lake.

On the blazing hot afternoon of July 26, 1888 a posse from a small western Kansas town pursued four Kansans sought for a murder arising out of a long standing political feud. The unlucky four were ambushed and killed 12 miles west of Hooker in Oklahoma No Man's Land. The leader of the posse, Cyrus E. Cook, along with his five accomplices were eventually apprehended by U.S. marshals and taken to Paris, Texas for trial.[62]

At the time of the murder a federal court for Indian Territory had been created in Muskogee. However the far western location of this gunfight was outside of its territorial jurisdiction. The case finally went to trial before Judge David E. Bryant where the defendants were convicted.

On appeal to the Supreme Court Justice Harlan carefully traced the curious history of No Man's Land. In *Cook v. United States,*[63] the Court upheld the constitutionality of the Act of March 1, 1889 which attached No Man's Land to the Eastern District of Texas and provided jurisdiction over crimes committed before the law went into effect.[64]

During these sunset years of Indian sovereignty over Oklahoma there was no more anomalous territory than No Man's Land. This panhandle area, sometimes called the Neutral Strip or Public Land Strip, was the historical native turf for the roving Comanche, Kiowa, Cheyenne and Arapahoe. Until the early 1870's Mexican, then Texas, cattlemen ranged their cattle freely across these 6,500 square miles of dry grass.[65]

The only colorable claim to No Man's Land was that of the Cherokee Nation, contending that their Outlet extended westward beyond 100 degrees W. longitude. This claim received implicit recognition from the many powerful cattle companies which leased much of the area from the Cherokees for as little as 2¢ per year per acre.[66] There may have been a tacit agreement for cattle leasing but there was no recognized state, territorial, federal or Indian government and certainly no judiciary. As one early pioneer in the area noted:

> There were no court expenses; no long drawnout trials; no delays; no appeals; no dockets; no paroles; no pardons.[67]

In 1885 L.Q.C. Lamar, secretary of the interior, declared in a letter opinion that No Man's

Land was not a part of the Cherokee Outlet. When news of the secretary's ruling reached the area on October 13, 1885 it created a mini-land rush as nearly 5,000 western Kansas Boomers staged a land-grabbing free-for-all. Beaver City quickly grew into a de facto seat of provisional government.

On August 26, 1886, by voice vote, a large gathering of panhandle settlers agreed to confine homesteads to 160 acres. A mayor and councilmen were soon "elected" and some semblance of order created.[68] On March 4, 1887 the "territorial council" in Beaver City adopted a resolution to create "Cimarron Territory." Dr. O.G. Chase was selected to carry this message to Congress. A territorial bill passed Congress on March 3, 1887 but failed to survive a presidential veto.[69]

The extent of any provisional judiciary for No Man's Land is largely unrecorded.[70] A "Respective Claims Committee" met periodically in the sod school house at Beaver City "to discourage claim jumping and avoid discord among settlers over claims to town lots and homesteads."[71]

Absence of marshals and judges gave No Man's Land a reputation for wide open lawbreaking formidable even by Oklahoma standards. Beer City sprang up just south of the Kansas border to accommodate thirsty Kansans escaping the scourge of Carry Nation's Anti-Saloon League.[72] As Judge John H. Burford, an Oklahoma Territory justice, reminisced in 1911:

> It seems horse thieves, cattle thieves, assassins and highwaymen made that area their rendezvous and headquarters, and as the settlers of that country were probably more numerous at that time than at any subsequent period prior to statehood, and were, as we are advised, a law abiding class of citizens, they no doubt had some form of judicial procedure by which they executed their laws.[73]

Courts were created spontaneously for each specific case. No records were maintained, only anecdotes recollected:

> [One case] resulted from a killing over an attempt to start a saloon in a community opposed to it. The proposed saloon-keeper was a bully, and, after getting his saloon snugly located in a sod house, with walls three feet thick, and imbibing freely of his own refreshments, he amused himself by shooting from his fortified position into the sod homes of those who had opposed his saloon project. He did not realize what it meant to wantonly attack the homes of women and children. From every sod barricade a fire was centered upon that saloon. After the burial of the saloon keeper, a jury finally acquitted the man who acknowledged firing the fatal shot.[74]

Provisional courts in No Man's Land were laid to rest by the Act of March 1, 1889 which annexed this "Neutral Strip," to the Eastern District of Texas[75] and, on May 2, 1890 to the newly created Oklahoma Territory.

The spring of 1889 was climactic in the evolution of relations between the Indian country tribes and the federal government. The first federal court exclusively for the Indian nations was authorized in March[76] and the first land run occurred in April.[77] For the first time Congress openly abandoned its role as protector of the Indian republics, showing a bold new willingness to abrogate the post Civil War treaties.

Although resistance to federal encroachment was widespread among the tribes it was by no means universal. Progress and stability in the 1880's were not ideals reserved exclusively for whites. Many Indians agreed with Judge Robert L. Williams stating the case for the creation of an Indian Territory court:

> The difficulty of enforcing the law, at so great a distance from the seat of justice, against the criminal violators; no remedies for the collection of debts—and if there had been such, the courts being at such a distance, the same would have

> been inadequate—the importunity of the vast number of nonresident creditors petitioning Congress for relief against those who had left the states and taken up their abode within the Indian borders, to avoid their creditors; the persistent efforts of home-seekers to settle on the lands in what was afterwards Oklahoma Territory—all created an urgent necessity for the creation and organization of the federal courts within the borders of the Indian Territory.[78]

Muskogee in the Creek Nation, which had long been home base for federal Indian agents, was selected as the site for the United States Court for Indian Territory bounded:

> North by the State of Kansas, east by the States of Missouri and Arkansas, south by the State of Texas and west by the State of Texas and the Territory of New Mexico.[79]

These are the present boundaries of the State of Oklahoma defined, for the first time, in terms of a federal judicial district.

As the first federal judge to live and preside in Indian Territory, President Benjamin Harrison appointed James M. Shackelford of Evansville, Indiana.[80] Shackelford, a former Civil War general, became the first of literally scores of patronage appointees who served as federal territorial judges in Indian and Oklahoma Territories from 1889 to 1907. Criminal cases dominated their dockets as the final act of the pageant of the old west played itself out in Oklahoma.

The first permanent federal courthouse in Muskogee was built by Creek Chief Pleasant Porter and Clarence W. Turner at their own expense. Construction began in June 1889. It was an imposing three-story structure befitting the importance afforded the first seat of federal authority in the territory.[81] While settlers and many ambitious half bloods welcomed a local court to promote stable commerce even more effectively than Judge Parker's Fort Smith court.

On April 1, 1889 at 10:30 a.m. Judge Shackelford gavelled in the Muskogee Court's first session, spending the day on docketing matters and swearing in ceremonies. The first trial session began June 3, 1889. Juries, by court rule, could only be selected from United States citizens, which did not include Indians. Indian tribal courts still existed although their influence was clearly declining.[82]

The first case tried in Shackelford's court was *U.S. v. Husted*—assault and intimidation, an inauspicious beginning.[83] Although the courts in Arkansas, Texas, and Kansas continued to maintain jurisdiction over capital and serious felony offenses, an avalanche of cases soon piled up in Muskogee. Marshal Thomas B. Needles and his 300 temporary deputies helped make Judge Shackelford the busiest judge in the southwest. Over 186 civil and criminal cases were docketed in his court during its first term which commenced in June 1889.[84]

With the availability of a court having, for the first time, general civil jurisdiction, one of the first questions presented was whether any statute of limitations should apply to bar claims arising in Indian country prior to the creation of the Indian Territory Court. Judge Shackelford quickly ruled that no limitations applied. Claims arising between non-Indians as far back as the Civil War were cognizable in Muskogee.[85]

While Judge Shackelford busied himself with the organization of the Indian Territory Court, the great Oklahoma Land Run was brought to fruition to the west. On March 2, 1889 the "Springer Amendment" was grafted onto an otherwise routine congressional Indian appropriations bill opening the so-called Unassigned Lands for white homesteaders.[86] This area comprises present Kingfisher, Logan, Canadian, Oklahoma, Cleveland, and part of Payne Counties in central Oklahoma. Title to this

land had been in dispute but under the control of the Creeks and Seminoles since Indian removal. In January 1889 these two tribes were induced to sell their lands for white settlement. President Benjamin Harrison quickly set April 22, 1889 at 12:00 noon as the day and hour of the opening of the land to homesteaders.[87]

When the dust settled on the evening of April 22 over 60,000 non-Indians tented legally for the first time in Indian country. Guthrie swelled to 15,000; Oklahoma City to 5,000 and Kingfisher to 3,000.[88] In its haste to open the area Congress had forgotten to provide for any executive or legislative government or laws or courts to enforce them. For over a year the Unassigned Lands, like the panhandle area, made do with a provisional government.

In theory the Indian Territory Federal Court had jurisdiction over the Unassigned Lands. But its authority only extended to the enforcement of federal criminal and civil law. Local government controversies and particularly land disputes were outside the scope of Judge Shackelford's authority. With the sudden influx of 60,000 Boomers the quantity and intensity of land disputes cannot easily be exaggerated.

On April 27, 1889 a provisional government for Oklahoma City was informally established. Judicial matters were placed under the authority of temporary "police judges." O.H. Violet of California was such an elected police judge. His counterpart in Guthrie was E.M. Clark and G.J. Keeney in Kingfisher. These police courts, even though organized under authority of no law, served as beneficial safety valves for the hot tempered Boomers.

The two U.S. Land Offices—in Kingfisher and Guthrie—also served as the equivalent of courts of civil jurisdiction. The registrar and receiver of each Land Office became a makeshift judge. By common consensus citizen arbitration boards were selected to mediate disputes between rival claimants to town lots and rural homesteads.[89] Several Oklahoma jurists got their start as "land office lawyers" in Guthrie, most notably Frank E. Dale and John Cotteral, the first federal district judge for the Western District of the new state in 1907.[90]

Despite the good intentions of most of the settlers determined to bring order to their new home, major conflict often erupted with no judiciary to provide necessary restraint. Oklahoma City suffered near anarchy from its creation in April 1889 until provisional government was abolished on January 31, 1890 by U.S. marshals and army cavalry.[91] The main source of the problem was the intense rivalry between two political factions: nicknamed the Seminoles and the Kickapoos. The Seminoles were partisans of the Seminole Town and Improvement Company, a Kansas Boomer land syndicate. With their well placed spies in Congress the Seminoles were able to organize an effective land run plan prior to April 22 designed to tie up as many town lots as possible and to dominate the provisional government. The Kickapoos attracted anyone opposed to the heavy-handed tactics of the Seminoles. The result was two-fisted politics and mob violence which "police judges", with no enforcement capacity, were powerless to control. Thus the army stepped in and from February to May 1890 Oklahoma City was simply under martial law.[92]

With the creation of Oklahoma Territory, municipal and county governments and a territorial judiciary supplanted this provisional "system" and the acts of government during this one year of near anarchy were generally ratified by the new territorial courts.[93]

C. *COURTS IN THE TWIN TERRITORIES: 1890-1907*

The opening of the Unassigned Lands, the erosion of tribal authority, the coming of

railroads and the advent of a presidential administration favoring the Boomers[94] all combined to impel the creation of twin territories which later joined as Oklahoma. General Nelson A. Miles, in a report to the War Department in 1885, epitomized the sentiment favoring formal territorial status:

> . . . without courts of justice or public institutions, without roads, bridges or railways, it is simply a dark blot in the center of the maps of the United States. It costs the government hundreds of thousands to peaceably maintain 60,000 to 80,000 Indians there, when the territory is capable of supporting many millions of enlightened people.[95]

The "Organic Act" of May 2, 1890 created a formal territorial government for all of the present state of Oklahoma except the Five Tribes Nations and the Cherokee Outlet.[96] The Public Land Strip (No Man's Land) was included with existing settlers receiving preferential homestead rights.[97] A large area in the southwest, known as Greer County, had long been claimed by Texas. The Organic Act temporarily excluded this land from Oklahoma Territory "until the title to the same has been adjudicated and determined to be in the United States."[98] In an action commenced by the U.S. attorney general Greer County eventually was determined to be part of Oklahoma Territory.[99]

The Cherokee Outlet was also reserved until ". . . the interest of the Cherokee Indians . . . shall have been extinguished and the President shall make proclamation thereof." This occurred in 1893 when the Cherokees sold their outlet to the United States for $8.5 million.[100]

The most important exclusions from Oklahoma Territory, of course, were the Cherokee, Choctaw, Chickasaw, Creek, and Seminole Nations. Looking ahead to the final absorption of these tribes Congress provided:

> Any other lands within the Indian Territory not embraced within these boundaries shall hereafter become a part of the Territory of Oklahoma whenever the Indian nation or tribe owning such lands shall signify to the President of the United States in legal manner its assent that such lands shall so become a part of said Territory of Oklahoma and the President shall thereupon make proclamation to that effect.[101]

Along with the familiar territorial governor and legislature was created a supreme court, district courts, probate courts and justices of the peace. The supreme court consisted of a chief and two associate justices serving four year terms. Oklahoma Territory was divided into three judicial districts where each supreme court justice was to live in and preside as a trial as well as appellate judge. This curious system of dual judicial authority was common in the western territories where trials far surpassed appeals in occupation of judicial time and resources.[102]

Certain other subtle features of the Organic Act enhanced the authority of the federal courts in Indian Country. Exclusive jurisdiction was conferred on the territorial district court over the Cherokee Outlet even though the Cherokees still held it within their Nation.[103]

Authority over Indian country conferred on the courts at Fort Scott and Wichita, Kansas and Paris, Texas was withdrawn from the new Oklahoma Territory. Jurisdiction remained, however, over the Five Tribes Nations, officially designated "Indian Territory."[104] As to Indians from smaller tribes within Oklahoma Territory, the territorial courts were given jurisdiction over controversies between tribes and members of one tribe against another preserving tribal court autonomy only over claims between members of the same tribe.[105]

Needing some settled body of law other than federal criminal and, in that era, sparse civil law, Oklahoma territorial courts were given the laws of Nebraska to apply.[106] Rounding out this very comprehensive judicial system Congress authorized appeals from the

territorial supreme court to the Supreme Court of the United States.[107]

The Five Tribes Nations, which had been subjected to imposition of the first federal court in the area the previous year, were also given an enhanced judicial system by the Organic Act. For the first time in this act the term "Indian Territory" was given legal definition. Although full territorial status for the tribes was reserved, the enlargement of the United States courts all but extinguished any lingering vestiges of independence. Indian Territory was divided into three judicial divisions with court seats at Muskogee, South McAlester, and Ardmore. The Muskogee or First Division embraced the Creek Nation, Quapaw Agency, and Cherokee Nation, east of 96 degree longitude. South McAlester controlled the Second Division—all of the Choctaw Nation. Chickasaw and Seminole country comprised the Third Division with Ardmore as court town.[108] In 1895, when three separate judicial *districts* were created in Indian Territory, similar territorial demarcation was followed.[109]

Designation of court towns was a consuming ambition of the mixed bloods and white settlers in Indian Territory. Not only was the location of a federal court likely to promote respect for law and improve stability, lawyers and their clients brought business. The three Indian Territory courts were required to hold two terms per year,[110] each term ensuring a welcome traffic of free spending jurors, litigants and their attorneys. In this spirit the citizens of Ardmore raised $1,000 in 1889 to hire a young lawyer, Walter A. Ledbetter, to go to Washington to lobby for an Ardmore division.[111] His efforts were successful.

In addition to the creation of three court towns for Indian Territory the Organic Act provided that the law of Arkansas, in large part, would be applied.[112] Thus with Nebraska law applicable in the Oklahoma Territory a curious dichotomy in Oklahoma arose affecting certain precedential cases and rules of procedure arising in the eastern and western portions of the state. The 1907 Constitution of Oklahoma did not completely obliterate these distinctive traditions.

Once again token deference was given to the integrity of the tribal courts:

> . . . but nothing in this act shall be so construed as to deprive any of the courts of the civilized nations of exclusive jurisdiction over all cases arising wherein members of said nations, whether by treaty, blood or adoption, are the sole parties, nor so as to interfere with the right and power of said civilized nations to punish said members for violation of the statutes and laws enacted by their national councils where such laws are contrary to the treaties and laws of the United States.[113]

In the absence of a true territorial government, with its hundreds of elected and appointed officers from a governor on down, Indian Territory was an anomaly. Judicial officers alone represented the authority and prestige of the United States.

It is no wonder, therefore, that fully half of the lengthy Organic Act was devoted to the Indian Territory courts. Another reason for the detailed complexity of the Indian territorial court system was an effort to legislate around the lingering fundamental problem for the federal government—the continued existence of the Indian nations and their courts. This "problem" was soon to be resolved in a manner which reflects no credit on the system which overwhelmed the peaceful Oklahoma tribes.

D. *THE COURTS OF INDIAN TERRITORY*

No area of the United States has ever been as entangled in complex, overlapping judicial jurisdiction as was Indian Territory in the 1890's. Tribal courts for the Five Nations

maintained authority over intertribal civil and petty criminal offenses. Judge Parker, aging and irascible, still presided over felony cases at Fort Smith. Judge Bryant in Paris, Texas exercised lingering authority over a part of the southern area—soon to be extinguished. And the Indian Territory Federal Court, with Muskogee, South McAlester, and Ardmore as court towns, provided another layer of judicial administration. The inevitable conflict between the new U.S. court in Muskogee and the Indian tribal courts is epitomized by the case of *Standley v. Roberts*.[114]

By the 1890's the considerable coal deposits in the Choctaw Nation were well known and highly prized. The mining claim laws of the Choctaws gave exclusive mining privileges to tribal citizens only; however leases to non-citizen entrepreneurs were common. In August 1889 James S. Standley and others brought an action in U.S. court in Muskogee to collect coal rental from defendant Roberts. The Standley group claimed title to a Choctaw coal mine adverse to the claim of a rival group who had leased the same mine to Roberts.

During the pendency of this federal court case the Roberts lessors obtained a judgment from the Choctaw tribal court enjoining the Standley's lessee, the Atoka Coal and Mining Company, from working their lease.

The Eighth Circuit Court of Appeals was asked to determine what effect should be given to the judgment of the Choctaw court. The appellate court was deftly able to avoid a foursquare ruling on this point but noted that a judgment of the Choctaw court, under the Organic Act and prior precedent, was to be given full faith and credit in a United States court. This finding was made in the face of the March 1, 1889 act creating the Indian Territory Court which provided, in part:

> . . . said court shall have jurisdiction over all controversies arising out of said mining leases or contracts and of all questions of mining rights or invasions thereof where the amount involved exceeds the sum of one hundred dollars.[115]

This sort of conflict between tribunals clearly could not continue without ensnarling the commerce of the territory in a hopeless web of litigation. Not surprisingly it was the tribal court system that was dismantled.

The tribal courts lingered until the passage by Congress of the Curtis Act[116] which made tribal law unenforceable in all United States courts in Indian Territory.[117] The Curtis Act also abolished the Cherokee and Seminole courts on July 1, 1898 and Chickasaw, Choctaw, and Creek courts on October 1, 1898. All pending cases were transferred to the U.S. Indian Territory Court.[118]

Vestiges of jurisdiction by racial identification continued in a curious provision of the Atoka Agreement with the Choctaws and Chickasaws. Any member of either of such tribe charged with homicide in Indian Territory Federal court had the absolute right to a change of venue to either Fort Smith or Paris, Texas with the Indian Territory judge "selecting the court that in his judgment is nearest or most convenient to the place where the crime charged in the indictment is supposed to have been committed. . . ."[119]

Abolition of the tribal courts met with little resistance from either Indian or white. Their influence had greatly diminished and the ruling class of mixed bloods demanded a higher level of social order for the protection of commerce. As one historian observed: "[t]he Indians opposed the abolition of the tribal courts less than any of the other changes, for their leaders admitted the seriousness of the crime situation."[120]

All jurisdiction over present day Oklahoma exercised by the Western District of Arkansas was abolished on September 1, 1896.[121] Judge Parker's colorful twenty-five year reign ended.

Although personally bitter at the gradual reduction of his power base he approved of the advent of an independent Indian Territory. Like most of his fellow westerners Parker hoped:

> . . . that the Indian country should be by Congress organized into a territory of the United States, and that beautiful land made the home of civilization and refinement, instead of the rendezvous and refuge of the thieves, murderers and desperadoes of all classes . . .[122]

At the same time Parker showed a marked sensitivity to the root of the crime problem in the Indian country. He laid most of the blame on the intruding white influence:

> During the twenty years I have been engaged in administering the law there, the contest has been one between civilization and savagery, the savagery being represented by the intruding criminal class of which I have spoken. I have never found a time when the Indians, the Osages, the Cherokees, all of them, have not been ready to stand by the courts in carrying out the law. The United States government in its treaties, from the days of Andrew Jackson down to the present time, stipulated that the criminal element should be kept out of the Indian country; but the treaties have only been made to be broken.[123]

Indian country matters also wound down in the two other neighboring state federal districts from 1890 to 1895. In Paris, Texas Judge David E. Bryant was the presiding federal judge when, in 1889, jurisdiction over a portion of southern Indian Territory was transferred there from Graham. In Wichita the federal district judge, Cassius G. Foster, served for the entire time that the Kansas district court exercised any jurisdiction over Indian Territory or Oklahoma. The same law in 1895 which took away Judge Parker's jurisdiction also removed the Texas and Kansas courts from Indian Territory.[124]

In 1893, at the end of his four year term, Judge Shackelford retired to practice law in Muskogee where he died in 1909. Succeeding him as the second Indian Territory judge was Charles B. Stuart, a successful lawyer from Gainesville, Texas. Stuart had moved to Texas from Virginia in 1876 and had represented the Texas and Pacific Railway Co. while actively engaged in Democratic party politics. Appointed by President Cleveland to succeed Shackelford he "presided with ease and tranquility"[125] unlike his predecessor who was known for his intemperate attitude towards members of the bar. Upon resignation from the bench in September 1895, Stuart returned to McAlester, and then to Oklahoma City and later Tulsa where he enjoyed a very successful private practice.[126]

From 1890 to 1895 federal legislation along with a stepped up emphasis on law enforcement brought even greater pressure to bear on the judicial system of the Indian Territory. The Dawes Act, passed in 1887, initiated the federal policy of allotting land to individual tribe members, but excepted the Five Civilized Tribes from its application.[127]

The legislation creating the so-called Dawes Commission, enacted in 1893, gave the President the authority to survey, divide, and allot in severalty the lands of Indian Territory.[128] The act also provided for the conversion of allottee Indians to U.S. citizens. Thus began a process of absorption of Indian citizens and land into federal jurisdiction which took nearly two decades. The immediate practical effect, as the Five Tribes capitulated one by one, was a massive influx of litigation onto the already overburdened Indian Territory Court. The final enrollment of Indians from the Five Tribes was 101,506 allotted 15,794,351.48 acres of Indian Territory lands.[129]

Compared to the pacification of the northern plains tribes, the allotment process was free of violence. There was, however, some organized resistance. At least one episode, the Crazy

Snake rebellion, resulted in interposition by the new territorial court.

A Creek fullblood, Chitto Harjo, in 1901 convened a council of like-minded resistors who demanded that all Creeks surrender their allotment certificates. Widespread alarm resulted; and in the end 94 followers of Harjo were arrested. Harjo was tried before Judge John R. Thomas, supernumerary or roving judge for Indian Territory. Thomas gave Harjo a stern lecture then released him and his confederates upon their pledge to peacefully accept allotment.[130] In an earlier case in 1897, involving the murder of two Seminoles by an enraged white mob, Thomas displayed a similar willingness to protect the rights of Indians. He presided over the trial of twenty whites including a deputy marshal handing out stiff prison sentences.[131]

Crime continued to keep Indian Territory judges extremely busy. In October 1892 the Dalton gang, Bob, Emmett and Gratton, staged their last dramatic bank robbery in Coffeyville, Kansas from their relatively secure haven south of the border. Outlaws Bill Cook, Jim French, Cherokee Bill, Bob Rogers, Date, Bruce and El Miller—and other notorious bad men also terrorized Indian Territory during the 1890's.[132]

Seeing that one judge, first Shackelford (succeeded by Stuart), was not enough, Congress, in 1895, reorganized Indian Territory into three judicial districts—the Central, Northern and Southern—each with its own judge.[133] The Central district consisted of the Choctaw Nation, with court sessions in South McAlester, Atoka, Antlers and Cameron. Judge Stuart was assigned to the Central District, where he presided principally at South McAlester until his resignation a few months later. The Chickasaw Nation became the Southern District, with Ardmore, Purcell, Pauls Valley, Ryan, and Chickasha as court towns. For the Southern District judge President Cleveland chose Constantine B. Kilgore of Texas. Kilgore was the very image of a western territorial judge. A contemporary described him:

> [Judge Kilgore] was just about the most impressive-looking man I've ever seen, standing well over six feet . . . flowing tie over the top of his waistcoat, and this was topped by a Prince Albert coat and yellow cowboy boots. . . .[H]e always wore a couple of pistols these were under his coat, out of sight.[134]

In an age when prestige was measured largely by physical prowess judges like Kilgore were more likely to enforce respect for the authority of law. Kilgore only served two years, dying in office in 1897 and leaving little trace of his tenure.

As judge of the Northern District embracing Creek, Cherokee, and Seminole country, the Miami Townsite and Quapaw reservation—President Cleveland selected a famous congressman, William M. Springer of Springfield, Illinois.

Springer was born in Indiana on May 30, 1836. He graduated from Indiana University in 1858 then moved to Illinois to practice law.[135] He served in Congress from 1874 to 1894, where he authored the Springer Amendment which opened the Unassigned Lands in the run of 1889.[136] It was only fitting that an ardent Northern Boomer should receive such a choice patronage plum.

The selection of judges in both the Indian Territory and Oklahoma Territory was notoriously the result of partisan patronage. Very few of the thirty-two judges appointed between 1890 and 1907 were at the time of their appointment residents of either territory;[137] and all but a handful moved out after their terms. One historian likened the situation to an oriental despotism:

> . . . the Indian Territory was always regarded by the political powers at Washington as a sort of satrapy wherein appointments might be made to

pay political debts or to make places for men if provision had to be made somewhere.[138]

As stated above, in 1895 Charles Stuart, the senior judge for Indian territory, resigned. Before resigning he saw to the appointment of his former Texas law partner, Yancey Lewis to be his successor.[139]

Yancey Lewis was born in Gonzales, Texas in 1861. As an 1885 graduate of the University of Texas Law Department, he was the first and one of the few territory jurists with a formal legal education. He associated in practice with Stuart and followed him from Texas to Ardmore in 1895. Lewis served in the Central District from December 1895 to June 1897, rejoining Stuart in practice then in South McAlester and later returning to teach at the University of Texas law school where he became dean.[140] Judge Lewis brought to the rough and tumble Indian Territory court a rare academic background. Yet at an imposing six feet three inches he had the physical presence, like Kilgore, so often needed to command respect in the western territories.

The year 1897 brought Republican William McKinley to the White House and consequent changes to the Indian Territory federal court. In the summer Yancey Lewis resigned to be replaced by William H.H. Clayton, U.S. attorney at Fort Smith. In October C.B. Kilgore of the Southern District died, succeeded by Hosea B. Townsend of Silver Cliff, Colorado. Responding to a burgeoning caseload and with an eye toward creating added patronage, a heavily Republican Congress created a supernumary judicial position. President McKinley promptly appointed John R. Thomas of Illinois to the post on June 7. Judge Thomas, born in Illinois in 1846, was a Civil War veteran and former Congressman. He was an ardent McKinley supporter for which he was rewarded with the roving judgeship. Thomas' term expired in 1901 and he returned to the practice of law in Muskogee. He was killed in a prison break while visiting the warden at the state penitentiary in McAlester in 1914.

In addition to the notable Indian cases described earlier, Judge Thomas had the distinction of sentencing the first murderer to death in the U.S. Court for the Indian Territory—one Cyrus W. Brown who was hanged in Muskogee in 1897.[141]

Of Hosea B. Townsend, who served from 1898 until statehood, unfortunately little is recorded.

Also in 1897, to fill the vacancy caused by the resignation of Yancey Lewis, President McKinley appointed William H.H. Clayton to the Central District. Clayton was one of the few appointees in either territory who had an established reputation in the region. As U.S. attorney at Fort Smith he prosecuted hundreds of felons and endeared himself to the Indian nations by successfully prosecuting Boomer David L. Payne.[142]

Clayton's popularity with the Indians, however, did not last. His rulings against the Choctaws and Chickasaws in certain citizenship cases were the precipitating cause of the creation by Congress of a separate temporary court for the territory—the "Choctaw-Chickasaw Citizenship Court."[143]

In 1896 Congress had authorized the Dawes Commission to hear Indian citizenship claims as part of the process of enrollment and allotment. Direct appeal to the federal court embracing the tribal territory was also provided. The Choctaws, by nature a shrewd and litigious group, challenged thousands of putative tribal "citizens" enrolled by the Dawes Commission by appealing to Judge Clayton. The judge adopted a liberal attitude and enrolled 2,175 "court citizens" over the strenuous objections of the Choctaw tribe.

The Choctaws responded by calling a special session of their council which organized a lobbying effort in Congress. Under the strong

leadership of Chief Green McCurtain a Supplementary Agreement to the Choctaw allotment treaty was eventually adopted creating a special court to hear the objections of the Choctaws and Chickasaws to the enrollment of these thousands of opportunistic settlers.[144] Three judges, Spencer B. Adams of North Carolina, Henry S. Foote of California and Walter L. Weaver of Ohio, were appointed to serve on this court. During its brief term, from July 1902 to December 31, 1904, over 3,400 citizenship claims were reversed.[145] The McAlester law firm of Mansfield, McMurray and Cornish, representing the Choctaw tribe was awarded a $750,000 attorney fee based on a percentage of the value of the claims denied.[146]

Chief McCurtain summed up the general criticism of Judge Clayton, whose unpopular rulings led to the creation of this unique court, when he observed that although the white man was smart enough to manufacture almost anything, he couldn't manufacture Indians.[147]

Personnel changes in the court continued. On January 1, 1900 Joseph A. Gill, another friend of President McKinley, succeeded retiring Judge Springer. Gill was a native of West Virginia, born in 1854. He practiced law in Lincoln's hometown, Springfield, Illinois, and later settled in Colby, Kansas. Known as an "uncompromising Republican," he was reappointed by Theodore Roosevelt to the Northern District in 1904 and served until statehood. Gill was later appointed to assist in dividing the territory into election districts to select delegates to the first constitutional convention, and he was an active delegate himself.[148]

Succeeding John R. Thomas in July 1901 as roving judge was Charles W. Raymond of Watseka, Illinois. Born in 1858 in Dubuque, Iowa, Raymond was yet another strong McKinley supporter. Apparently a controversial figure, Raymond once received a death threat from Chief Pleasant Porter of the Creek Nation after Raymond ordered an injunction against the Chief in a civil suit.[149] Raymond served only one term, retiring to Muskogee in 1905. He remained active in Republican politics and turned down an offer by President Taft to serve as a U.S. circuit judge.[150]

In 1902 Congress carved out yet a fourth permanent district in the territory from what was the Northern district. This new "Western" district consisted of the Creek and Seminole Nations and portions of the Cherokee and Choctaw Nations.[151] Court towns were Muskogee, Wagoner, Sapulpa, Wewoka, Eufaula, and Okmulgee. Judge Raymond, the roving judge, was assigned to this new district.

Thus toward the end of Theodore Roosevelt's first term, in 1904, Indian Territory had four full time federal judges. This number soon doubled. In April 1904 Congress approved the creation of a second associate judgeship position for each of the four districts[152] and a fifth "roving" judgeship for the Northern District.[153]

Filling these new associate positions were William R. Lawrence in the Northern district, Louis Sulzbacher in the Western, J.T. Dickerson in the Southern and Thomas C. Humphry in the Central district. Luman F. Parker was appointed roving judge. In 1906 Luman Parker replaced Lawrence in the Northern District. Lawrence had been shifted to the Western District in late 1905 to replace Raymond who retired. These new judges were somewhat inferior in status. They were not members of the territorial court of appeals nor could they appoint commissioners or court clerks.[154]

Judge Humphry was an English emigrant who settled in Logan County, Arkansas. He was the only Indian Territory judicial appointee who had served in the Confederate Army. Humphry was elected to the Arkansas

legislature where he became Speaker of the House before resigning to become a county and later district judge. Moving to Indian Territory in 1896, Humphry abandoned his southern Democratic past and became a Republican, a seeming prerequisite for judicial office at that time.[155]

William R. Lawrence was another Illinois Republican lawyer, and Union army veteran.[156] Of Sulzbacher, Luman Parker, and Dickerson, little is recorded.

The nine judges serving Indian Territory at the time of statehood in 1907 were among the busiest in the nation. It is reported that Muskogee had more federal officials in residence than any city in the United States outside of Washington, D.C.[157] Appeals from Dawes Commission allotment rulings, cases involving Indian guardianships, railroad, coal and oil cases comprised the majority of the courts' docket.

Of these cases, those involving the sensational and sudden wealth of Indian allottees from oil discoveries brought the greatest notoriety. Since every Indian citizen, including minors, was allotted homestead and surplus land, guardians were necessarily appointed to lease or otherwise manage the land for these underage Indians. For unscrupulous whites a golden opportunity arose to collect huge fees and shares of royalties with the cooperation of friendly federal judges. Unfortunately hundreds of these "grafters" took control of thousands of valuable oil leases in the territory which, by 1907, was the largest oil producing area in the world.[158]

E. *THE COURTS OF OKLAHOMA TERRITORY*

The federal courts in Oklahoma Territory followed the more common pattern imposed on the western territories. A formal tripartite government was established by act of Congress. A supreme court consisting of a chief and two associate justices was created by the Organic Act.[159] Unlike Indian Territory the new territorial judges in Oklahoma shared their power with a legislature, a governor and an elected non-voting delegate to the House of Representatives.[160] In one respect, however, the courts experienced an evolution similar to that of the Indian Territory court—a heavy case load leading to expansion, steadily, during the seventeen years of territorial status.

President Harrison's choice of supreme court justices for Oklahoma Territory in the late spring of 1890 were Edward B. Green of Illinois as chief judge and Abraham Seay of Missouri and John J. Clark of Wisconsin as associate judges.[161] They were paid $3,000 per year and divided their time between the district trial bench and appellate review.[162]

The territory was marked off by the supreme court into three districts.[163] Judge Green was assigned the First District embracing Logan and Payne Counties (then labeled simply 1 and 2) and the Ponca, Tonkawa, Otoe and Missouri, Pawnee, Osage, and Kansas tribal lands. The first district also took in part of the still unorganized "Cherokee Outlet" and the northern portion of the Iowa, Kickapoo and Sac and Fox lands.[164] Although not recognized as nations like the Five Tribes, most of Oklahoma Territory in 1890 was still Indian land. Court sessions for the First District were held in the territorial capital of Guthrie and in Stillwater.[165]

To Judge Seay, presiding over the Second District, the Supreme Court gave Canadian, Kingfisher and Beaver Counties plus the balance of the Cherokee Outlet. This district also embraced the Cheyenne, Arapahoe, Wichita, Kiowa, Comanche, and Apache country. Court convened at Beaver, El Reno, and Kingfisher.

The rest of the territory, the Third District, under John J. Clark, consisted of Oklahoma and Cleveland counties and the southern portions of the Iowa, Kickapoo, and Sac and Fox tribal land. Court towns were Norman and Oklahoma City.

Of the three appointees, only Judge Seay made any sort of lasting impact on the territory. Born in Virginia in 1832, his family settled in Missouri prior to the Civil War. Seay served four years in the Union Army, rising to the rank of Lieutenant Colonel. A staunch Republican and Civil War veteran, Seay rose to prominence in Missouri as a district judge.

A large, portly man with a squeaky high voice, Seay never failed to make a vivid impression. Among the cases he decided during his brief tenure was *Bank of Kingfisher v. Smith.* The case started as a simple collection case to recover a $1,500 loan. The defendants claimed the money was given as a bribe to help influence the location of the territorial capital. Bribes, disputes, gunfights and litigation of varying intensity were associated with Oklahoma's choice of a territorial capitol. Apparently finding the defense a red herring Seay directed the jury to find for the plaintiff.[166]

Seay's tenure on the bench was brief. In January 1892 he resigned to become the territory's second governor, an office more to his liking. As a jurist one observer noted he ". . . cared little for precedent and did not spend much of the time of the court in reading court reports, but decided every question as it was presented to him right off the bat."[167] By contrast Chief Justice Clark was a more scholarly judge, a quality not keenly appreciated in Oklahoma Territory at that time. One first hand commentator notes:

> Judge Clark at Oklahoma City was a conscientious man, but a great believer in precedent, and no matter what question was raised, he had to consult all the authorities before he would render an opinion . . . [and] was often hidden behind the books, while the business of the court was getting further behind every day.[168]

There was indeed little time for serious scholarship, legal or otherwise, in Oklahoma in the 1890's. The land was a frenzy of pioneering activity. Settlers on their newly acquired homesteads were busy building sod houses and planting corn, wheat and sorghum. In the new towns of Guthrie, Kingfisher, and Oklahoma City clapboard saloons, real estate offices, churches, feed stores, and banks bloomed out of the flat land. The "courthouses" themselves were often mere tents or at best dimly lit one room shacks. Money was scarce; barter formed the economic base of the territory.

After the first explosion of land disputes subsided crime actually declined. Roving gangs of outlaws as had plagued Indian Territory for over a generation were rare. The territory was settled mainly by young families from midwestern farm country where respect for law was an overriding element in their upbringing.[169]

But Oklahoma Territory soon suffered a new form of lawlessness arising out of the social and economic tension and competition on this newest of America's frontiers. The tensions were most pronounced in the Cherokee Outlet where competition for railroad services and settlers led to large scale violence. The resultant strife was known as the "Railroad War."

After several years of negotiating the United States and the Cherokees settled on a purchase price for the Outlet. On September 18, 1893 the second Oklahoma land run commenced at high noon as another generation of Boomers stampeded into this rich wheat and cattle country of north-central Oklahoma. The settlers quickly filled every quarter section and swelled the population of Woodward, Alva, Perry, Enid, Pawnee, and Pond Creek.

The Outlet automatically became a part of Oklahoma Territory as soon as this Cherokee claim was extinguished.[170] But there was no immediate provision for courts or judges. This was soon remedied by Congress in December 1893. Two additional territorial judges were authorized bringing the total for the territory to five.[171]

At this time a Democratic administration was in power. To fill these two new seats President Cleveland in early 1894 appointed two loyal Democrats: Andrew G. Curtain Bierer of Guthrie and John L. McAtee of Maryland. The judicial districts for the territory were also redrawn on February 3, 1894.[172] Jurisdiction over the turbulent Outlet was shared between McAtee, Bierer, and John H. Burford who replaced Judge Seay.[173]

The so-called "Railroad War" not only caused violence among the settlers, it brought to the territorial judges some sharp criticism.[174] In March 1887 Congress had granted to the Rock Island Railroad a charter to cross Indian Territory. Following closely the old Chisolm Trail, the line eventually became the main link between Kansas City and Fort Worth. In 1891 executives of the Rock Island and certain Cherokee tribal leaders entered into a curious agreement. It had been announced that tribal leaders would be given first choice on allotments in the Outlet, when acquired by the United States. The arrangement was that some 69 Cherokees would select their 80 acre tracts adjoining the depots then sell them to the railroad for townsite speculation.

Secretary of Interior Hoke Smith learned of the scheme and announced that no county seat in the newly formed Outlet counties could be located nearer than three miles from any Rock Island depot. Thus the major population centers in the Outlet soon developed at four townsites. Two towns called Pond Creek were settled—one the Rock Island depot and the other the county seat three miles down the line. A similar arrangement developed for the town of Enid.

The Rock Island soon made it apparent that it was prepared to starve the two "government" towns south of their depot stations. In retaliation the county seats enacted punitive ordinances such as requirements that the trains proceed at no more than four miles per hour through their depot towns.

Both county seat towns of Enid and Pond Creek brought a mandamus action in the territorial court to compel the railroad to put depots in their towns. On July 9, 1894 Judges Dale, Scott, McAtee, and Bierer granted the railroad's request for a third continuance of the case to August. The *Enid Daily Wave*, a strongly Populist newspaper, spoke for the citizens of both towns contemptuously:

> The machinery of justice has slipped a cog and when August comes a half dozen cogs will slip and the court will conclude it is too hot to try the case anyhow. Where is that half carload of giant powder shipped to Enid a few weeks ago?[175]

On July 12, 1894, the court dismissed the mandamus altogether and the next day the citizens of Enid and Pond Creek wrecked two trains by sabotaging bridge trestles. Violence aimed at the Rock Island raged for another two weeks. Numerous arrests were made with Judge McAtee presiding over all preliminary hearings. But both sides quickly sought a truce and the judge seems to have succumbed to the spirit of reconciliation. In a telegraph message to the U.S. attorney general McAtee stated:

> Held preliminary hearing in L County Thursday. All defendants in cases for violation Interstate Commerce Act and destruction of railroad property. Forty in number waived examination and gave bond for appearance.
>
> Same proceedings in O county yesterday. Ten defendants. Quiet restored and good feeling

> prevails here. Will be no further violence at present if arrangements are arrived at for depot at those towns.[176]

The Railroad War ended when, on August 8, Congress enacted just the legislation McAtee mentioned.[177] Rock Island depots were mandated at the two county seat towns.

While near anarchy was raging in the Cherokee Outlet, the mid-90's also brought a change of administrations in Washington and consequent changes in the Oklahoma Territory court. None of the original supreme court justices—Green, Clark, or Seay—served out their first full term and, as previously stated, two new judgeships were created for the Outlet following the 1893 run.

Judge Abraham Seay's successor was John H. Burford, a well-connected Republican from Indiana. Burford, the son of a Baptist preacher, was born in Parke County, Indiana in 1852 and attended the University of Indiana. He settled in Indianapolis where he read law eventually becoming chief district prosecutor. In 1889 he was appointed registrar of the U.S. Land Office in Oklahoma City by his good friend Benjamin Harrison.[178] Burford was immediately thrust into the legal whirlwind spawned by the intense rivalry over conflicting town lot claims. He presided at all of the important public hearings during those turbulent first months.[179]

Along with controversy came physical hardship for territorial judges such as Burford. One eyewitness to the territorial era suggests that the judges and the justice they dispensed both suffered from the hardships of life in Oklahoma in the 1890's:

> The first set of judges were appointed by President Harrison; then as vacancies occurred, or the court was enlarged, succeeding presidents would make appointments. At first, high class lawyers were appointed; later it seemed that the appointees were not so well qualified. These judges would go from their comfortable chambers in the counties of their residence, out to the primitive and ill-furnished county seat towns such as Cloud Chief, Arapaho, Taloga, Cheyenne, Grand and others to hold a term of district court at least once a year. On such trips the accommodations were meager, and the judges would be uncomfortable and inclined to be irritable and arbitrary. Anxious to get away, they would snap out a ruling on a motion or demurrer almost before an attorney could state it. It took little showing to get a change of venue from these outlying counties to the home county of the judge.[180]

Burford must have endured the discomfort well enough. He succeeded Judge Seay in the Second District at El Reno on March 8, 1892. He resigned in 1896 but was reappointed chief justice by William McKinley on February 16, 1898. Burford served in this position until statehood thus solidifying a firm position in Oklahoma public life. He was the Republican candidate for the U.S. Senate in 1914.[181]

Judge Green, the second of the first three justices to resign, was succeeded, on May 26, 1893, by Frank Dale of Guthrie, formerly of Wichita, Kansas. Democratic President Grover Cleveland appointed Dale chief justice at that time, presiding over the First District and residing in Guthrie.

More than most justices, Dale dealt often and strictly with the outlaw bands that still roamed the territory, such as the Doolin gang. The murder trial of desperado Arkansas Tom Jones caused the ordinarily fearless judge to surround himself with bodyguards. The trial was in Stillwater, which on Dale's orders, was filled with armed marshals on every roof top. After the conviction and sentencing, Dale proposed a solution to the burden on judicial administration (as told by Glenn Shirley):

> The [Jones trial] had so aroused the ire of Chief Justice Dale that after the trial he called Marshall Nix into his chambers and gave him "a most unusual order", perhaps the only one of its kind

> ever issued by an Oklahoma judge. "Marshal, this is serious," he said. "I have reached the conclusion that the only good outlaw is a dead one. I hope you will instruct your deputies in the future to bring them in dead."[182]

Dale, a Democrat, went out, as politics invariably demanded, in 1898 with the advent of McKinley who replaced him with Burford. President Cleveland was also able to replace the third of the original three justices with the appointment of Henry W. Scott to the Third District on September 19, 1893. A Democrat, Scott replaced Republican John J. Clark.[183] Unfortunately, Scott resigned short of the end of his term under clouded circumstances.

During most of the 1890's Oklahoma's two non-voting congressional delegates, Dennis T. Flynn and David A. Harvey, were Republicans. As such they were the unofficial party leaders for the territory, particularly the flamboyant Flynn. Under Flynn's sponsorship an audit of federal court expenses was initiated. Some expense padding was uncovered but a Flynn-inspired grand jury failed to indict any marshal or judge. Judge Scott received the brunt of the attack by Flynn and the Republican press. The *Oklahoma Daily Times Journal* suggested that if the attorney general:

> . . . looked into his record he would reach the conclusion which we hope will rid this judicial district of the incubus that now rests upon it.[184]

Scott resigned in 1896 and returned to a quieter law partnership in New York City.[185]

President Cleveland's two Cherokee Outlet judges, as stated earlier, were Andrew G.C. Bierer and John L. McAtee. McAtee was a Maryland lawyer and, like Scott, something of an unpopular carpetbagger. He served as Fifth District judge from April 19, 1894 to May 30, 1902.[186] His survival as a Democrat through most of the McKinley administration is something of a mystery.

History records little of McAtee. We do have some record of his running feud with Judge Dale. A certain outlaw, Henry M. Shoemaker, was tried and sentenced to life by Judge McAtee in Blaine County. Without consulting McAtee, Judge Dale was importuned by the defendant to impose an appeal bond of only $8,000.00. Learning of Dale's act McAtee proclaimed it a "gross insult" and an "outrage his district would resent." He had marshals remove Shoemaker to federal prison immediately before he could post bond.[187]

Andrew G.C. Bierer was born in 1862 in Fayette County, Pennsylvania. His family moved to Kansas where he studied law in his father's law office. Bierer received a Masters of Law degree from Georgetown University and thus was easily the best educated of all territorial judges.

In Garden City, Kansas Bierer commenced a law practice with John H. Cotteral, later one of Oklahoma's first two life tenured federal judges. The two later settled in Guthrie where they practiced extensively in the land office. So-called "land office lawyers" were not always highly regarded. One fastidious early historian writes:

> It is true that the opening of the land office in the Territory has drawn in this direction a large number of "land lawyers" and professional shysters, whose legal acquirements extend no further than the knowledge of drawing homestead papers and contests. And while these 'black sheep' have sneaked into the legal fold of Oklahoma, to quite a large extent, they are not considered as part of the bar, the members of which are gentlemen of ability, honor and integrity.[188]

It is doubtful that Bierer and Cotteral fit this stereotype reflecting some of the bias generated in the process of creating the territory. A Georgetown law professor recommended Bierer to President Cleveland who appointed him to the Fourth District on January 17, 1894.[189] Bierer served until February 16, 1898 when he was replaced by Bayard T. Hainer of Guthrie.[190]

The Cherokee Outlet was not the only land formally annexed to Oklahoma Territory in the 1890's. On March 16, 1896 Justice Harlan announced the decision of the United States Supreme Court in *United States v. Texas*[191] having the effect of annexing all of Greer County, Texas to Oklahoma Territory.

This large, fertile area between the two forks of the Red River had been in limbo ever since the treaty annexing Texas to the United States in 1845. In a painstakingly thorough opinion Harlan traced this land through every political and diplomatic event effecting it since the United States-Spanish Treaty of 1819.

When news of the decision reached Mangum, the county seat, the Texas judge, G.A. Brown, was presiding over a pending trial. He immediately adjourned court without completing the case. Judge Brown's action was unnecessary for on May 4, 1896 Congress passed a law providing that all proceedings pending in the Greer County, Texas courts were to be assigned to the new Greer County, Oklahoma territorial court. By order of the territorial supreme court, Greer County was assigned to the Third District under then Judge James R. Keaton.[192]

The year 1896 brought McKinley and the Republicans firmly back into power but not before President Cleveland made his last two appointments to the territorial supreme court: John C. Tarsney and James R. Keaton.

Of Judge Tarsney little is recorded except that he was a lawyer from Kansas City and formerly a member of Congress from Missouri. Tarsney replaced the (temporarily) retiring Burford.

Keaton of Oklahoma City was born in Carter County, Kentucky in 1861. He taught school as a young man in Texas then, like his colleague Bierer, attended Georgetown University Law School. In 1890 he moved to Guthrie, going into partnership with Bierer and Cotteral. He succeeded the semi-disgraced Henry W. Scott in the Third District.[193]

Keaton was on the bench when Greer County joined Oklahoma. In the fall of 1896 when ad valorem taxes were due, the clever cattle ranchers of the area refused to pay them, claiming that on January 1, 1896 their land was in Texas and therefore not taxable to Oklahoma. Keaton thought their argument sound but was reversed by his more pragmatic brethren sitting on appeal. No ad valorem taxes meant no money for county operations including salaries for judges.[194]

On March 22, 1898 Benjamin T. Burwell of Oklahoma City, formerly from Kansas, succeeded Keaton whom McKinley ousted. Similarly, Bierer, the Democrat, was replaced on February 16, 1898 by Bayard T. Hainer of Guthrie. The next year McKinley made his third appointment—Clinton F. Irwin of Elgin, Illinois—who replaced Tarsney.[195]

In 1901 Theodore Roosevelt succeeded William McKinley as President and preserved Republican domination on the court until statehood in 1907. J.K. Beauchamp of Enid succeeded the unpopular McAtee on May 30, 1902. Two additional judicial districts for Oklahoma Territory were created in 1902 by a Republican dominated Congress.[196] Selected by President Roosevelt to fill these two new judicial positions were J.L. Pancoast of Perry and Frank E. Gillett of El Reno. Pork barrel politics, however, was not the only factor motivating this legislation. In March 1896 Greer County had been annexed. Between June 9 to August 6, 1901 the Wichita and Caddo and Comanche, Kiowa, and Apache reserves were opened to white homesteaders by lottery.[197] These combined Indian lands cover what are now the following counties in Western Oklahoma: Comanche, Caddo, Kiowa, Greer, Jackson, and portions of Tillman and

Beckham. Although the population boom in these newly opened lands was not as large as in the lands opened in 1889 and 1893, federal litigation increased due, once again, to land title disputes. Again the territory was re-subdivided, this time into seven judicial districts.[198]

The last change in the Oklahoma Territory Supreme Court was the appointment of Milton C. Garber of Garber, Oklahoma (by way of Iowa) to succeed Judge Beauchamp. Garber was born in Humboldt County, California in 1867, later moving with his family to Iowa. He received his law degree from Iowa University. In 1893 he made the run into the Cherokee Strip. Garber eventually settled in Guthrie where he practiced law before elevation to the bench. After statehood, Garber stayed on as a state district judge and finally mayor of Enid.[199]

On the eve of statehood, then, there were seven justices for Oklahoma Territory: Burford (Chief), Irwin, Burwell, Hainer, Garber, Pancoast, and Gillett. One of the last judicial acts of this court cleared the way for the Constitutional Convention in Guthrie which led to the extinction of their offices. A certain C.E. Autry of Woods County brought suit to enjoin Territorial Governor Frantz from calling the convention. The Woods County Probate Court issued the requested injunction which Judge Pancoast allowed to stand. The basis for the suit was the alleged improper division of Woods County into several smaller counties by the proposed draft constitution. William H. Murray led the fight for the proponents of the convention succeeding in obtaining a reversal by the territorial supreme court on appeal.[200]

The convention occurred, and with statehood, the territorial courts were extinguished.

F. *FEDERAL COURTS IN THE STATE OF OKLAHOMA*

In the first few years of the twentieth century pressure to admit Oklahoma and Indian Territories as states escalated. In 1905 political leaders in Indian Territory, led by Charles Haskell and William H. "Alfalfa Bill" Murray, organized an unsanctioned convention to draft a constitution for a proposed state of Sequoyah. However, Congress and President Roosevelt had already declared their intention to form a single state out of the twin territories; so the Sequoyah movement went nowhere.[201]

The Oklahoma Enabling Act[202] passed in the summer of 1906 formally melded the two territories into a state and called for a state constitutional convention which met from November 20, 1906 through March 15, 1907. The document produced was in excess of 50,000 words, the longest constitution of any state and possibly any country in the world.[203] Heavily influenced by the populism of William Jennings Bryan, the Oklahoma constitution provided elaborate restraint on banks, corporations and railroads. The unfettered business climate of the Republican dominated territorial era was seriously circumscribed.

The Enabling Act divided the new state into two federal judicial districts: eastern and western. It was the first state to enter the Union with more than one judicial district. Indian Territory became the Eastern District and Oklahoma Territory the Western District. Court towns for the Eastern District were Muskogee, Vinita, Tulsa, South McAlester, Chickasha, and Ardmore. Terms of court for the Western District were held at Guthrie, Oklahoma City, Enid, and Lawton. To avoid the confusion which could result from a new court system replacing an old one, Congress provided "that the laws in force in the Territory of Oklahoma, as far as applicable, shall extend over and apply to the said State until changed by the Legislature thereof."[204]

Oklahoma's first administration, led by Governor Charles Haskell, was strongly Democratic. However, then as now, selection of federal judges was a presidential prerogative

and Roosevelt, a Republican, was in the White House. Roosevelt looked to the leading state Republican, Frank Frantz, for recommendations. Frantz, a Rough Rider in the Spanish American War with Roosevelt, had been Haskell's unsuccessful opponent in the first governor's race.

For judge of the Eastern District Frantz recommended his friend and strong supporter, Ralph E. Campbell of McAlester. Campbell had been a staunch Frantz ally as chairman of the GOP convention in Tulsa in 1908. Shortly after the state's first election Frantz joined his old captain Roosevelt on a steamboat cruise down the Mississippi. Frantz used this relaxed occasion to urge the appointment of Campbell. Passing over all the incumbent Republican territorial judges such as Gill, Gillett, and Lawrence, Roosevelt named Campbell.[205]

Campbell took office on November 11, 1907 at Muskogee. He was paid $6,000 per year as sole federal judge presiding over a district administered the day before his appointment by eight judges. The caseload was reduced, however, as the cases pending in the territorial courts were divided between the new federal and Oklahoma state courts along traditional jurisdictional lines.

Campbell was born on a farm in Pennsylvania on May 9, 1867, later moving with his family to Kansas. He attended Northern University of Indiana and the University of Kansas law school. He worked as legal counsel for the Choctaw Coal and Railway Co. (later the Rock Island) before practicing law in McAlester.

Although subject matter jurisdiction had been greatly reduced the workload in the Eastern District was substantial. Cases involving Indian land titles, made even more dramatic by the oil boom in Creek and Washington counties and Glenn Pool near Tulsa, dominated the court's civil docket. Tulsa lawyer and historian John B. Meserve noted:

> No jurist probably ever faced such a maelstrom of litigation as did Judge Campbell during these inceptive years . . . Added to the manifold Indian questions came exhaustive litigation occasioned by the rapid extension of oil production by the large non-resident corporations and these matters found final lodgment in his court.[206]

Restrictions against alienation of allotted Indian lands were systematically removed during the first decade of the century, culminating in 1908 when most all remaining restrictions were eliminated. Just prior to the 1908 act a massive effort to quiet title against fraudulent town lot transactions and other irregular Indian conveyances resulted in the so-called Thirty Thousand Land Suits filed in the Eastern District. These suits involved 27,517 conveyances covering over 3.8 million acres of allotted land, over 1/5 of eastern Oklahoma!

Public sentiment among the whites in Oklahoma, predictably, ran high against this federal intervention. Oklahoma's Senator Robert L. Owen, himself the owner of ranch land near Bartlesville obtained from restricted Cherokees, unsuccessfully tried to have a bill passed to require the dismissal of the suits. Most of the cases were finally settled with quit claim deeds received from thousands of defendants.

A change in U.S. attorneys in Muskogee saw a dismissal of a large number of these land suits. But as late as 1925 twenty still remained on the docket. Their dismissal brought an end to the most extensive litigation ever in the Eastern District.[207]

Another notorious case brought before Judge Campbell was the fraud prosecution of Governor Haskell and large property owners in Muskogee. In 1909 the U.S. attorney instituted criminal proceedings against Haskell and others for conspiracy to defraud the Creek

Nation. The defendants had used straw men and other fraudulent devices to buy up Muskogee town lots from Creek allottees. Even Creek Chief Pleasant Porter was implicated in the scheme but not indicted.

In the 1908 elections, while these charges were being developed, Haskell was treasurer for the National Democratic Committee. Roosevelt used the affair to his political advantage. But in the end no convictions were obtained. Local sentiment overwhelmingly favored the defendants.[208]

In 1918 Judge Campbell was hired away from the bench by oil tycoon Josh Cosden to become general counsel of the Cosden Oil Company. Once again Frank Frantz had a hand in Campbell's good fortune, recommending the judge to his friend Cosden. Campbell's rising star did not last, for on Sunday January 9, 1921 he committed suicide in his downtown Tulsa office. His motive to this day remains a mystery, for no scandal ever came to light to tarnish his still excellent reputation.[209]

As the first judge for the Western District President Roosevelt selected John Hazelton Cotteral of Guthrie. Cotteral was born in Middleton, Indiana in 1864. His first career choice was professor of Latin which he abandoned to study law. He received his law degree from the University of Michigan.

Like many midwesterners of his day Cotteral migrated farther west, settling in Garden City, Kansas where he practiced law in partnership with Andrew G.C. Bierer who later became a territorial judge. The two partners soon headed south and made the run of 1889 establishing their practice in Guthrie.[210]

Cotteral's appointment to the bench in November 1907 was also on the recommendation of Frank Frantz. Cotteral was an acceptable compromise selection to Governor Haskell. Before confirming his nomination Roosevelt made the rather unusual request that Cotteral appear personally before him so that he could confirm that he "looked like a judge."[211] Apparently he passed the exam.

At the time of his appointment, Cotteral was possibly the best known lawyer in the state. In 1902 he had been elected president of the Oklahoma Bar Association. He was leader of the Oklahoma territorial delegation to the 1904 Republican Convention which ardently supported Roosevelt. He ran unsuccessfully for the first state supreme court at a time when Democrats dominated state politics.

There are indications that Cotteral's demeanor was less than congenial. His close friend and former law partner Andrew Bierer noted that Cotteral ". . . was many times judged impatient with the expression of views adverse to him . . ."

Cotteral served the Western District for over twenty years from November 11, 1907 to May 28, 1928 when he was appointed by President Coolidge to the Eighth—soon to be Tenth—Circuit Court of Appeals.[212] Oklahoma progressed during this period from wild frontier to a modern state grown rich with oil and agriculture, and the federal judiciary played an active role in this dramatic progress.

The Oklahoma Constitution, for all of its populist provisions considered highly progressive in 1907, contained some provisions inimical to federal law. The "grandfather clause," designed to disenfranchise blacks, was the most notorious. The "grandfather clause" was actually a 1910 amendment to the Oklahoma Constitution, the product of an early Oklahoma legislature. All prospective voters were required to take a literacy test except those who were descendants of persons eligible to vote before January 1, 1866, the date of the Fifteenth Amendment ensuring voting rights to blacks. The *Daily Oklahoman* praised

this law which "finally and forever [barred] the Negro race from Oklahoma politics."[213]

Winding its way through Oklahoma courts, the grandfather clause was finally declared unconstitutional by the U.S. Supreme Court in *Guinn v. U.S.*[214] Guinn and other elected officials of the state were indicted and convicted in federal court for violating a federal statute prohibiting conspiracies "to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States . . ."[215] The Supreme Court had no trouble invalidating the Oklahoma literacy test in an opinion that was a precursor of fifty years of anti-discrimination federal jurisprudence.

Most of the work of the two Oklahoma federal courts, however, related to the growing pains of a booming oil economy. The historical coincidence of the discovery of oil in land held largely in trust for the benefit of thousands of wards of the federal government quite naturally caused Indian allotment cases to control a large percentage of the courts' dockets.

The case of Jackson Barnett, in the Eastern District, illustrates the complexity of the litigation in which oil rich Indians became embroiled. Barnett was an illiterate Creek whose allotment in the Creek County Cushing field produced the richest Indian royalty up to that time. An old bachelor at the time of the oil find, Barnett was pursued and won over by a younger woman. The two married and moved to Los Angeles where Barnett died without a will.

Within days cousins, sons, nephews began appearing with their lawyers armed with lucrative contingent fee contracts. Close to 1000 claimants to Barnett's estate eventually surfaced. As a fullblood under federal guardianship Barnett's estate was administered in the Eastern District under the supervision of then Judge Robert L. Williams. Williams had succeeded Campbell after the latter's move to the Cosden Oil Company. The case was commenced in 1934 with the last Tenth Circuit appeal concluding in 1942. Williams upheld the integrity of the Dawes Commission enrollment and found 34 bona fide Barnett heirs who inherited his millions.[216] In the process Williams proved his hard bitten reputation earned after nearly twenty years on the federal bench. One account has it:

> He (Williams) is driving on relentlessly, wearing out lawyers, witnesses and court employees although he is 68 years old and only two years short of retirement. No man in the crowded courtroom in the new Okmulgee Federal Building follows testimony more closely, remembers it better, nor leaps in fray with more heat than Judge Williams.[217]

Robert Lee Williams was not only a potent force on the federal bench but was one of Oklahoma's most influential citizens. A lifelong bachelor, Williams devoted all his energies to law, politics and the bench. One acquaintance commented, in the purple tones of the American Victorian era:

> He knew not the sweets of domestic life—the devotion of wife, the touch of a childish hand upon his cheek as father, the blissful atmosphere of home's temple.[218]

One explanation for Williams' bachelorhood, perhaps apocryphal, is that as a poor Alabama farm boy he was denied marriage to an upper class belle. For the rest of his life, it is said, Williams sent her a telegram announcing every major achievement in a life full of such milestones. He demonstrated some of this monomania during his career as a jurist.

Born in Alabama in 1868, Williams settled first in Atoka then Durant, Choctaw Nation in 1897. He rose quickly as a young corporation lawyer in Democratic politics. Although a Democrat Williams maintained a close alliance

with business and oil interests and was often at odds with the more populist Murray/Haskell wing of his party.

At the Oklahoma Constitutional Convention Williams, one of the half dozen principal leaders, sponsored most of the railroad and corporate regulatory provisions.[219] He won election to the first Oklahoma Supreme Court in 1907 and was selected chief justice by his colleagues. His opinions were often lengthy and verbose[220] and his demeanor on the bench was generally austere and acerbic.[221]

In 1914 Williams ran for governor offering the voters a businessman's Democrat as an alternative to the Socialist party which reached its apogee in Oklahoma in the pre-World War I era. Although Williams was the clear victor the Socialist, Fred W. Holt, won approximately 20% of the vote. Williams as governor was largely considered a success. As Oklahoma historians Danney Goble and James Scales put it:

> Surprisingly, given the slimness of his election, Williams was able to dominate public affairs without enduring the internal dissension that plagued other strong chief executives. His firm control propelled the state far toward realizing the goals of the new breed of business progressives. The result seemed to confirm the wisdom of Williams' typical belief that government could best function as "one great business enterprise to be administered according to business sense and business judgment."[222]

At the close of Williams' term as governor, Judge Ralph E. Campbell fortuitously resigned in September 1918. Williams hastened to apply for the Muskogee position. He received the unanimous endorsement of the Oklahoma congressional delegation but was opposed by the Murray Democratic faction and such notable labor leaders as Samuel Gompers and John Wilkinson, the local president of the United Mine Workers at McAlester. President Wilson procrastinated but the appointment finally came on January 7, 1919.[223]

During his 18 years as Eastern District Judge Williams earned the respect and fear of the Oklahoma bar frequently using sarcasm, irony and stern lectures to bring recalcitrant lawyers and litigants to heel. But his court was well administered and widely regarded as a fair tribunal.

The criminal docket was often congested with cases spawned by Prohibition which Williams openly opposed. Civil cases received Williams' closer attention, giving him the opportunity to write the lengthy, thorough opinions which he loved to produce. The *Barnett* case previously discussed is an example. Another web of litigation which Williams skillfully untangled were the "River Bed Cases." The Oklahoma Land Commissioners had given valuable oil and gas leases covering portions of the Cimarron River bed. Other claimants to this acreage were the Creek Nation, the United States and the owners of adjoining real estate. Williams found the Cimarron non-navigable and thus held in favor of the adjacent land owners.[224]

Unlike most contemporary federal judges Williams maintained an active and open involvement in Oklahoma politics. In the 1930's he was appointed by his old rival Governor Murray to a committee to consider revisions to the Oklahoma constitution. He also kept up a constant, garrulous correspondence with the Oklahoma congressional delegation, giving solicited and unsolicited advice and trading the gossip and rumor that politicians relish.[225]

Oklahoma in the early 1920's was, like the rest of the country, experiencing unprecedented economic growth. Tulsa, Bartlesville, Vinita and other cities in northeastern Oklahoma particularly developed rapidly producing a higher volume of new court business.

In 1920 John W. Harreld became the state's first Republican senator and with successive Republicans, Harding and Coolidge, in the White House the opportunity to create another judicial position for a worthy Republican presented itself.[226] The choice was Franklin E. Kennamer of Durant who was appointed second judge for the Eastern District. Kennamer's appointment was unusual because of the creation of Oklahoma's third judicial district, the Northern.

Franklin Elmore Kennamer was born in Kennamer's Cove, Alabama in 1879. He was educated in Alabama and served in the Spanish American War. He migrated to Madill in the Choctaw Nation and established a modest country law practice. He ran as a Republican for a vacant seat on the Oklahoma Supreme Court in 1920 and, surprisingly, rode Harding's coattails into office. Never a legal scholar, Kennamer nonetheless acquired a reputation for solid common sense.

Judge Williams, a staunch Democrat, did not welcome Kennamer's appointment and made his displeasure well known throughout the Eastern District. The tension between the two became so intense, and the influence of Senator Harreld was so great that Congress was persuaded to create the Northern District, with its primary seat in Tulsa, specifically for Kennamer.[227]

The *Congressional Record* discloses, albeit with considerable understatement, the rationale for the creation of the new district:

> Some degree of confusion or overlapping in the work under the present arrangement, owing to the fact that there are two judges in one district, has, in the opinion of some witnesses, interfered somewhat with the entire harmony of the present arrangement and has made the division into new districts preferable.[228]

Although Tulsa was primary court town, the Northern District was authorized to convene in Vinita, Pawhuska, Miami, and Bartlesville.[229] Kennamer acquired a farm near Vinita and preferred to hold court there even though this often caused some inconvenience to witnesses, lawyers and litigants.[230] By the end of the 1920's, with the infusion of prohibition cases, the Northern District was working at a capacity equal to the other two districts.

Meanwhile the late 1920's saw a transition in the Western District. Judge Cotteral resigned to take a seat on the Eighth Circuit in May 28, 1928. He was replaced by an experienced trial lawyer whose twenty-eight years on the bench gave him the longest tenure of any Oklahoma federal judge.

Edgar Sullins Vaught was born in Cedar Springs, Virginia in 1873. He graduated from Carson and Newman College, Jefferson City, Tennessee in 1899. Migrating to Oklahoma City in 1901 he pursued a career in education first as a high school principal of Irving High School and finally superintendent of Oklahoma City schools until 1906.

Like many of his contemporaries Vaught read law instead of attending law school, and he became a member of the bar in 1905. Vaught began a steady succession of law partnerships and was a leading Oklahoma trial lawyer for over twenty years. In one year he tried 63 jury cases, winning 57! Vaught represented Ford Motor Co. for over 20 years never losing a case.[231] Vaught also busied himself in civic affairs. To aid the state in its effort to acquire a state capitol site, Vaught purchased the tracts which are now the seat of state government as "Trustee for the State of Oklahoma."

His appointment to the Western District followed Cotteral's resignation by only three days—quite possibly a record breaking short review period. President Coolidge had no trouble selecting Vaught, a Republican lawyer with an excellent reputation.

Vaught was by all reports a durable, conservative jurist. Oklahoma City during the second quarter of the twentieth century was a conservative businessman's town. Vaught fit the bill perfectly—a steady churchman, Chamber of Commerce leader, mainline Republican. His tenure on the bench was punctuated only occasionally by sensational or difficult trials such as the notorious C.F. Urschell kidnapping case in 1933.

Vaught presided as federal judge at the time when Oklahoma came of age as a modern state. The wild west was gone. The Indian claims were largely put to rest. Federal jurisprudence in Oklahoma began to dwell on the larger themes which preoccupied so many federal judges during the Depression and war years: the expansion of national hegemony at the expense of state and local interests. Vaught, like most of his Oklahoma brethren, believed in a strict construction of constitutional and federal law. Writing for the *Oklahoma Law Review* he said:

> Any man who is qualified to perform the duties of a judge has political and economic views. To submerge those views and decide questions that come before the court, unbiased and uninfluenced by such views, is the highest duty of a judge, although it is often a difficult task. . . . [It] takes clear thinking, keen logic and indomitable fortitude for the judiciary to check the inroads on the Constitution and not be carried along with the trend of the times.[232]

In 1956 at the age of 83 Vaught retired to allow a younger man to step in. He died three years later on December 5, 1959.

The two decades from 1920 to the United States entry into World War II were politically turbulent in Oklahoma. Two governors, Walton and Johnston, were impeached and removed from office in the 1920's. The Dust Bowl and Depression wrecked the state's economy. "Alfalfa Bill" Murray rose from the ashes to assume the gubernatorial leadership denied him in 1907. Roosevelt's New Deal was hotly debated and grudgingly embraced by a populace skeptical of leftist government programs. By 1941 the federal government, through its blitz of relief and work agencies, was as potent a force as in territorial days. This, in turn, brought price controls and the taking of land for military installations. The effect was a greater burden than ever on the Oklahoma federal courts.[233]

Sometime during this post World War I period the practice of senatorial courtesy in the selection of federal judges in Oklahoma became firmly established. Routinely the senator in office of the same party as the President made the selection which was presented to the attorney general who formally passed the name on to the President. During all but a few instances both Oklahoma senators have been from the same party. From this has developed a pattern of taking turns in making the selection. During presidential administrations in which both senators are members of the President's opposition party senatorial courtesy is suspended. The President then looks to some other source for the recommendation.

In 1936 to ease the burden on the courts Congress obligingly created a fourth judicial position in Oklahoma—a supernumerary or roving judge assigned as junior judge to all three districts.[234] In the fall of that year, Senator Thomas P. Gore, an institution in Oklahoma politics, was defeated in the Democratic primary by Josh Lee, one term congressman and former speech professor at the University of Oklahoma.[235] Lee easily defeated a weak Republican in the general election. One of Lee's former students and active campaign organizers was Alfred P. "Fish" Murrah. Murrah was Lee's choice for the roving judge position.

The roving judgeship actually became available before Lee's election. But Gore, running a close race for re-election, refused to recommend anyone, reasoning that selecting a favorite would please one man and anger a dozen.[236] Although Oklahoma's other senator was also a Democrat and had greater seniority he allowed Lee to propose his candidate for this new judicial position.

At age 33 when appointed, Murrah was the youngest federal judge in the United States. Born near Tishimingo in 1903 his family settled near Verden in Johnston County. Murrah's mother died when he was five and his father when he was fifteen. As an orphan teenager Murrah rode boxcars throughout the south and east. He sold papers, washed dishes and finally returned to Oklahoma in 1919 to finish his education.

A gifted speaker, Murrah attended the University of Oklahoma where he was coached in debate by Josh Lee. After graduating from O.U. Law School Murrah settled into law partnership with Luther Bohanon in Seminole. After successfully organizing Lee's campaign in the west, Murrah ascended the bench on March 3, 1937.

Murrah remained a federal trial judge for only three years. In 1940 he was appointed to the Tenth Circuit where he served until his death in October 1975. Never known as a scholar, Murrah was nonetheless a consummate court administrator and diplomat. At his death he was serving as director of the Federal Judicial Center in Washington, D.C.[237]

Soon after Murrah's appointment, Senator Lee had an opportunity to recommend a second judge, as Williams was elevated to the Tenth Circuit in 1937. A native of Tennessee and later Oklahoma state court judge from Duncan was tapped by Lee to follow Judge Williams in the Eastern District. Eugene Rice was born near Woodland Mills, Tennessee in 1891, the youngest of eleven children. He graduated from Hall-Moody College in Martin, Tennessee and got his law degree in 1917 from Valparaiso University.

Rice served in France in World War I and returned to settle in Oklahoma City, then Duncan, where he soon became a state trial judge. When the Williams vacancy occurred Murrah and others who knew and respected Rice importuned Lee to nominate him to the position. Rice was also supported by Thomas.

Remembered as a strict disciplinarian, Rice often severely lectured members of the bar who deviated from the rules of conduct imposed by the court. But as Judge Royce Savage noted in a memorial address at the death of Rice:

> But in this respect he was only adhering to the precedents so firmly established in the Eastern District of Oklahoma by his immediate predecessor [Williams].[238]

Rice was sworn in on August 11, 1937 and served until his retirement in 1963 at age 76. He died four years later in November 1967.[239]

By 1940 the case load in Oklahoma City warranted a second trial judge to assist Edgar Vaught in the Western District. A temporary second position was created,[240] later made permanent,[241] for the Western District. Selection of a man for this seat proved difficult as the process became mired in a web of state politics.

Elmer Thomas had been one of Oklahoma's senators since 1926 and was thus entitled to great deference when it came to recommending federal judges. For the new position in the Western District Thomas adamantly supported Oklahoma City lawyer Stephen S. Chandler. The process was further complicated by the fact that two other federal judicial vacancies opened up in 1940: Murrah resigned as roving judge and Kennamer retired from the North-

ern District. To fill these vacancies Senator Lee proposed the appointment of Bower Broaddus and Royce H. Savage, respectively. Both Thomas and Lee were Democrats with a Democratic President in office. Thus some form of compromise had to be worked out between them concerning the three available positions. Senator Lee, however, would not agree to Chandler's appointment which was also opposed by the administration. Chandler's nomination was effectively stymied.

Nonetheless, Senator Thomas stubbornly supported Chandler and refused to approve Broaddus or Savage until Chandler, his appointee, was confirmed. This stalemate went on for months until finally Thomas was persuaded to relent to the Broaddus and Savage appointments by a personal appeal from Orie Phillips, chief judge of the Tenth Circuit. Broaddus and Savage were quickly confirmed and sworn in on October 1, 1940. However, Chandler's nomination languished in the Senate for over two years. Finally by floor vote 37 to 28 with 31 abstentions Chandler was confirmed on May 10 and sworn in on May 13, 1943.[242]

The occasion for the vacancy in the Northern District in 1940 was the early retirement of Franklin Kennamer due to total disability. Kennamer's son Phil was convicted in Pawnee County for manslaughter in the sensational shooting death of Tulsan John Gorrell.[243] The publicity and emotional trauma worked its toll on Judge Kennamer for several years until he could no longer endure the strain of a most demanding occupation on the bench.[244] Kennamer lived quietly on his farm near Bonita, Oklahoma until his death in 1960.

Kennamer's replacement, Royce H. Savage, was another of Josh Lee's proteges and his campaign manager in the 1936 election in eastern Oklahoma. Murrah, Luther L. Bohanon, and Savage as Lee's three most effective political assistants were nicknamed "the Rover Boys" by the press. All three became federal judges.[245]

Royce H. Savage was born near Blanco in the Choctaw Nation near McAlester in 1904. His father was a cattleman with no formal education. After attending high school in McAlester Savage attended the University of Oklahoma obtaining his law degree in 1927. His first job on graduation was assistant insurance commissioner. From 1929 to 1940 he practiced law in Oklahoma City and Tulsa.

His former professor Josh Lee wanted to recommend Savage to Judge Williams' vacant seat in the Eastern District in 1937. Savage, however, turned it down since he was not a resident of that district and was reluctant to risk losing the position in the event that there should develop strong local opposition. Lee's second choice was Eugene Rice.

From October 1940 to 1961 Savage presided in the Northern District. Unlike Kennamer he lived and held court almost exclusively in Tulsa.

The war years brought price control and draft evasion cases to the federal bench in Oklahoma. Like his contemporaries Savage tended to be a stern enforcer of all measures designed to aid the war effort.

The postwar era was one of steady and diversified economic growth particularly in northeastern Oklahoma. Under the aggressive sponsorship of Senator Robert S. Kerr, Oklahoma developed its water resources in dramatic measure. Lake projects of the Corps of Engineers demanded large tracts of privately owned land. Both during and after the war federal land condemnation cases were a significant part of Savage's case assignments. With pragmatism his guiding principal, Savage acquired a reputation for steady and efficient administration.

One case in particular brought national attention to the Northern District of Oklahoma. Following the Suez Canal closure in the mid-1950's the Justice Department obtained price fixing antitrust indictments against virtually every major United States oil company. This case was transferred to the Northern District and assigned to Judge Savage in Tulsa.

The federal courthouse on Boulder Street had never witnessed such a collection of lawyers each clamoring for the spotlight. Savage succeeded in organizing the litigation, obtaining procedural concessions from all the litigants. At the conclusion of the government's case Savage ordered the indictments dismissed finding that the charges of price fixing did not rise above the level of mere suspicion.

In 1961 Savage resigned from the bench to become general counsel for Gulf Oil Corporation in Pittsburgh. This move was not without controversy due to the fact that Gulf had been a defendant in the oil industry antitrust litigation. Following a second "retirement" Savage resumed an active law practice in Tulsa.[246]

Savage was a particularly strong proponent of the use of pretrial conferences and active involvement of the trial judge in seeking a speedy resolution of the case. One Tulsa lawyer commented on the Savage approach:

> His tenure has been marked by radical reforms in the procedures of federal courts. It is no discount to his many talents to note that in the field of court administration his record is unique. It is probable that no member of the national judiciary has made a greater contribution to the techniques which are now hopefully regarded as a solution to court congestion. His reputation in this and other fields has become legendary.[247]

Administrative efficiency in the Savage tradition is a salient characteristic of the federal judiciary in Oklahoma.

Bower S. Broaddus, Senator Lee's other 1937 designated candidate, was born in Chilocothe, Missouri in 1888. He graduated from Kansas City School of Law in 1910. From 1910 to 1940 Broaddus practiced law in Muskogee serving for a time as city attorney and police judge.[248]

Before his appointment as roving judge Broaddus served in the Oklahoma House of Representatives and Senate during the mid 1930's. Although not an original supporter of Josh Lee Broaddus later became a close friend and ally paving the way for his appointment.

In 1942 Josh Lee, who had been elected in 1936 by the greatest majority ever given to an Oklahoman, was defeated by aging, conservative Republican Ed Moore.[249] One of Lee's most enduring legacies was his influence in the selection of four Oklahoma federal judges and political tutelage of a fifth, Luther Bohanon.

Between the end of the Second World War and the presidency of John F. Kennedy only two new federal judges appeared on the Oklahoma scene: William R. Wallace and Ross Rizley.

Bower Broaddus died in December 1949 leaving a vacancy in the roving position. At that time Senator Robert S. Kerr was enjoying the flush of his freshman term and was beginning to form a power base unrivaled in Oklahoma before or since. The death of Broaddus presented Kerr with his first opportunity to nominate a federal judge. He gave the nod to William Robert Wallace, an Oklahoma City attorney for Magnolia Oil Company. Kerr himself was an oil man and respected members of that elite fraternity.

Wallace was born in Bell County, Texas in 1886. He had the distinction of being the first student to enroll in law school at the University of Oklahoma in 1910. He was counsel to Magnolia Oil Company from 1925 to 1950.[250]

Wallace's appointment drew fire from Washington columnist Drew Pearson who implied that as an Oklahoma oil attorney he was unfit to be a federal judge. Pearson's attack was part of the larger criticism of Kerr which hounded him throughout his Senate years.[251]

The other postwar appointee, Ross Rizley, came to the bench from a noteworthy political career and as a favorite of President Eisenhower.

Rizley, a veteran politician from Guymon, began his public career as a state senator from 1931-1934. He ran as a sacrificial Republican candidate for governor in 1938.[252] His efforts were rewarded, however, in 1940 when he won his congressional seat on the coattails of the popular Republican presidential candidate Wendell Wilkie.[253] Rizley held this seat for four terms.

Born in Beaver County in 1892, Rizley received his law degree from the University of Kansas City, then commenced practice in Guymon in 1918. He maintained his practice, on and off until his appointment to the bench in 1956. After his defeat for a fifth House term, Rizley served the Eisenhower administration as solicitor of the Post Office, chairman of the Civil Aeronautics Board, and assistant secretary of agriculture.[254]

The retirement of Judge Vaught in the Western District paved the way for Rizley's appointment, which was one of the few instances when the President paid no heed of senatorial prerogative in the selection of a federal judge. Both Oklahoma senators, Kerr and Monroney, were Democrats. Rizley retired because of failing health in 1965. He died in March 1969.

These postwar years were relatively quiet for the federal bench in Oklahoma. They were years of virtually unchecked prosperity for Oklahoma's two largest industries: agriculture and oil. The work of the federal courts naturally gravitated towards these dynamic sectors of the state's economy. Most of the federal judges during these years—Chandler, Savage, Vaught, Rizley, Rice, and Wallace—all enjoyed a reputation as business-like judges with highly refined administrative skills. They did not fit the stereotype of the "corn-pone" country lawyer, an image ardently cultivated by so many of Oklahoma's state elected officials.

Oklahoma's brethren in the 1950's were not, however, free of controversy. Judge Chandler, the Western District's second judge, sustained an uninterrupted barrage of criticism practically from the beginning of his office in 1943.

Chandler was a central figure in a complex web of litigation involving the bankruptcy reorganization of the Selected Investment Company. Selected's principal owner, Pat O'Bryan of Oklahoma City waged an ever-escalating war against Chandler who responded in kind by trying to have O'Bryan prosecuted for fraud.

In the early 1960's the controversy intensified. Chandler owned certain real estate known as the Smiling Hills development near Oklahoma City. In 1965 an Oklahoma County prosecutor charged Chandler with conspiracy to build private roads servicing his development with public funds. His eventual acquittal did not protect him from extraordinary action finally taken by the Tenth Circuit.[255]

On December 13, 1965, by special order of the Judicial Council of the Tenth Circuit, Chandler was stripped of all judicial power. He was allowed to retain his staff and his $30,000 annual salary. The Tenth Circuit order stated:

> . . . until further order of the judicial council, the Honorable Stephen S. Chandler shall take no action whatsoever in any case or proceeding now or hereafter pending in the United States District

> Court for the Western District of Oklahoma; that all cases and proceedings now assigned to or pending before him shall be reassigned to and among the other judges of said court; and that until further order, no cases or proceedings filed in the U.S. District Court for the Western District of Oklahoma shall be assigned to him for any action whatsoever.[256]

Refusing to resign Chandler remained in office as a judge with a highly restricted docket. He finally closed his office because of declining health and died on April 27, 1989.

From 1961 to 1965 five new federal judges appeared on the scene in Oklahoma, four replacements and one filling a newly created position. All five were leading state Democrats appointed during the highest point of that party's power since FDR both in the state and the nation—the Kennedy and Johnson years.

On June 24, 1960 roving Judge William R. "Bob" Wallace was killed in an auto accident. It was not until August 30, 1961 that his successor, Luther Bohanon, was sworn in. The reason for the delay is that Bohanon's appointment did not proceed smoothly.

Bohanon was born in Fort Smith, Arkansas in 1902, one of thirteen children of a livery stable operator. He was raised in rural eastern Oklahoma working, his early years, as a telegrapher and line-walker for a pipeline company. Bohanon attended the University of Oklahoma receiving a law degree in 1927. As an undergraduate he was one of Josh Lee's "Rover Boys" which brought him into the center of the action in Oklahoma politics.

Another important influence on Bohanon was Dean Julian C. Monnet, the law school's influential guiding spirit for 32 years from 1909 to 1941. A graduate of Harvard Law School and a Phi Beta Kappa in philosophy, Monnet held out an example of intellectual liberalism, in the larger sense, which had a strong effect on Bohanon and other young, ambitious, bright Oklahomans.[257]

After law school Bohanon associated with A.P. Murrah in Seminole which, in the late 1920's, was the center of the most productive oil field in the United States.[258] When the oil boom subsided Bohanon settled in Oklahoma City. Among other clients, Bohanon represented the Otoe and Missouria tribes for over twenty-five years in their on-going effort to establish property rights. As a result of this work and other cases, such as the notorious Selected Investment litigation, Bohanon prospered.[259]

In 1936 Bohanon worked with young oilman Robert S. Kerr in the election of Leon "Red" Phillips for governor. The Kerr-Bohanon friendship endured. Bohanon was a particular favorite of Kerr's brother Aubrey. When the 1961 vacancy in the roving position appeared, Aubrey Kerr, through the Senator, insisted on Bohanon's appointment.

By this time the American Bar Association was routinely asked to rate candidates for judicial office. The ABA rated Bohanon unqualified. This was enough for Attorney General Robert Kennedy (no friend of Kerr's), to have the nomination stalled. Kerr, seeing his prestige on the line, took steps to logjam certain legislation in the Senate critical to the Kennedy administration. Unwavering in his determination to have one of his three choices ("Bohanon, Bohanon and Bohanon") selected, Kerr eventually won the day.[260] Bohanon promptly resigned from the ABA and to this day has never been a member.

The *Dowell*[261] desegregation case was Bohanon's greatest challenge. This litigation, sponsored by the NAACP, was aimed at forcibly integrating Oklahoma City public schools. It dragged on for over 17 years. By supporting strong measures to create a unitary school system Bohanon was constantly under attack from the press and the public. Threats were common occurrences. The sort of ostracism inflicted on Bohanon is best summarized

by Jack Peltason in his book *Fifty-eight Lonely Men: Southern Federal Judges and School Desegregation*:

> The District judge is very much a part of the life of the South. He must eventually leave his chambers and when he does he attends a Rotary lunch or stops at the club to drink with men outraged by what they consider (judicial tyranny). A judge who makes rulings adverse to segregation is not likely to be honored by testimonial dinners, or to read flattering editorials in the local press, or to partake in the fellowship at the club.[262]

The other case that brought Bohanon continuous criticism was the *Bobby Battle* case, imposing restrictions and deadlines for improvement of the Oklahoma State Penitentiary at McAlester.[263] Bohanon did not draw the case intentionally. It was pending on Judge Langley's docket in the Eastern District when he died. The two roving judges, Bohanon and Daugherty, divided Langley's cases even-odd.

The *Dowell* and *Battle* cases have given Bohanon the reputation as the most liberal and activist Oklahoma federal judge. He, however, considers himself a strict constructionist literally following the Constitution and Supreme Court decisions.[264] At present Bohanon, in his mid-80's enjoys senior status with Oklahoma City as his home.

It is commonly understood that the Kennedy-Johnson administrations aggressively expanded the scope and authority of the federal government. A new wave of bureaucratic agencies—such as Medicare, Occupational Safety and Health Administration (O.S.H.A.), Housing and Urban Development (H.U.D.) were initiated and Oklahoma received its fair share of regulatory treatment.

Defense spending accelerated as the Vietnam War intensified. Tinker Air Force Base in Oklahoma City became, by the mid-1960's, the state's largest civilian employer. Finally, the Kennedy-Johnson commitment to civil rights in housing, voting, employment and education thrust upon federal courts jurisdiction in areas previously largely dormant.

Two Oklahoma cases, prior to *Brown v. Board of Education of Topeka*, gave the United States Supreme Court an opportunity to move aggressively towards full integration of blacks into public education: *Sipuel v. Board of Regents of the University of Oklahoma*[265] and *McLaurin v. Oklahoma State Regents for Higher Education*.[266]

In *Sipuel* the black plaintiff Ada Sipuel brought suit in Cleveland County District Court, the home county of Oklahoma University, requesting admission to Oklahoma University Law School. At that time there was no law school for blacks in the state. The Supreme Court ruled that equal protection of the law demanded that Oklahoma provide her a legal education.

In *McLaurin* a black graduate school applicant, George W. McLaurin, filed a complaint in the Western District, seeking to enjoin the refusal of the Oklahoma State Regents to admit him to the University of Oklahoma's graduate school. A three judge panel was created consisting of A.P. Murrah from the Tenth Circuit, Edgar Vaught, and Bower Broaddus. These three ruled that Oklahoma's separation of races in higher education was unconstitutional.[267] The Supreme Court affirmed and eventually went farther than the trial judges, ruling that McLaurin could in no way be physically set apart from whites in the classroom.[268] The next significant case in this area was the Court's most sweeping *Brown* decision.

Although no stranger to large quantities of litigation the Oklahoma jurists in the early 1960's obviously needed more help. In 1961 Congress added a second roving judge position[269] with home base in Oklahoma City. Speculation focused on several local lawyers such as James H. Fellows and Boston W. Smith. By agreement with Senior Senator Kerr

Senator Mike Monroney was given the privilege of recommendation.[270] He selected Judge Frederick Daugherty of the Oklahoma County District Court.

According to Daugherty who, like Bohanon, has taken senior status on the court, he was not a political crony or even active supporter of Monroney.[271] Daugherty was, however, one of Oklahoma's most familiar public figures, particularly in the state's large military community. Daugherty maintained his rank of Major General and command of the 45th Infantry Division for four years after his swearing in as roving judge.

Born in 1914 Daugherty received his law degree from Oklahoma City University during his active military career. His rise from private, his war decorations and his eventual command of the 8400 person Oklahoma based army earned him a degree of respect unique even for a federal judge.[272] Daugherty, who was sworn in on October 5, 1961 is still called "the General" by the Oklahoma Bar.

Judge Savage's (Northern District) retirement and the increasing infirmity of Judge Rice (Eastern District) thrust a tremendous case load on the two freshmen roving judges: Bohanon and Daugherty.

Daugherty became the first judge since the days of Haskell to sit in judgment over an incumbent governor. Governor David Hall was convicted in 1975 for accepting bribes and sentenced by Daugherty to a stiff federal prison sentence. According to "the General" it was his greatest challenge.[273]

Filling the vacancy left by the retirement of Royce Savage in the Northern District presented Senator Kerr with another patronage opportunity. His selection, Tulsa lawyer Allen E. Barrow, was another controversial choice.

A native of Okemah, born in 1914, Barrow was a product of law schools at Tulsa University and Southeastern University in Washington, D.C. Barrow acquired experience in federal government work prior to his appointment: serving in the F.B.I. from 1940 to 1942, the army from 1942 to 1946 and the Southwest Power Administration from 1951 to 1954.

Barrow was Kerr's statewide campaign manager for his 1960 Senate election which he won by a much slimmer margin than in his past two elections. Nonetheless, Barrow was Kerr's first and last choice for Savage's seat on the bench. His nomination was held up in the Senate Judiciary Committee for several months due to a number of formal objections to his appointment.[274] Despite this setback there seems to have been no organized opposition to Barrow in the administration and he was sworn in on August 2, 1962.[275]

Barrow's sixteen years on the bench were equally controversial. Much of the mixed reviews from lawyers and fellow judges given Judge Barrow derive from his highly personal, unpredictable style.

He was famous for giving unusual criminal sentences. To one young felon he ordered him to return home and finish high school. Barrow sentenced accused oil swindler Robert Trippett to spend a night in jail as an example of the unpleasantness a serious sentence would bring.[276] Some sectors of the public were outraged by Barrow's light handed sentencing. One report had it that in 1976 roving Judge Dale Cook sentenced twice as many felons to prison as Barrow.[277]

To errant lawyers in his courtroom, however, Barrow was anything but lenient. The threat and actual sentencing of lawyers to jail for contempt was not uncommon.

During Barrow's years federal judges still maintained direct control over bankruptcy reorganization cases. A number of large, complex bankruptcy cases were brought in the Northern District during the 1960's such as the

E.C. Mullendore and *Home Stake Production Co.* cases. Barrow's philosophy was that these cases should not be hurried. The maximum return to creditors and investors could best be achieved by protracted federal trusteeships.[278]

On February 26, 1979 Judge Barrow died suddenly of a heart attack.

Lyndon Johnson's two appointees to the federal bench in Oklahoma were Luther Eubanks and Edwin Langley. Both were native Oklahoma Democrats whose nominations were accepted without difficulty.

Eubanks was originally from Caprock, New Mexico but raised in Walters in Cotton County, Oklahoma. Born in 1917, Eubanks received his law degree from Oklahoma University in 1942 followed by army service. During World War II Eubanks served in the 808th Tank Destroyer Battalion in France, Germany and Austria. He was Cotton County attorney for three years after the war, then state representative for two terms and finally district judge for District Five from 1956 to 1965.[279]

Ross Rizley's declining health forced his resignation, paving the way June 11, 1965 for the return of a Democrat as chief judge for the Western District. As an active member of Rotary in his hometown of Walters, Eubanks helped Rotarians raise money to send local rising star Fred Harris to a national debate tournament. It was a favor Harris never forgot. As junior senator he received Mike Monroney's blessing to nominate Eubanks to Rizley's position.[280]

During Eubanks' tenure as an active trial judge—which only recently ended with his retirement in 1987—the Western District "came of age" in every sense. The emphasis shifted dramatically in all three Oklahoma Districts to management and disposition of caseload. In 1984 the *Annual Report of the Administrative Office of the United States Courts* showed the Oklahoma City court as having the second "weightiest" case load of all 94 judicial districts. Cases are weighed on the basis of complexity.

To head off a breakdown which the system would undoubtedly experience, Eubanks aggressively backed the use of a magistrate to preside over settlement conferences. The actual number of trials dropped from 89 in 1982 to 70 in 1983 to 48 in 1984.[281]

Eubanks also had his share of "show trials." Civil antitrust cases against price fixing in the asphalt industry dominated much of his calendar in 1966 and 1967. Later, he presided in one of the first trials under the Racketeer Influenced and Corrupt Organizations Act (R.I.C.O.) against a motorcycle gang known as the "Outlaws." A six-time murderer was the government's chief witness.[282]

Rounding out the appointees in the 1960's was O. Edwin Langley of Muskogee replacing retiring Judge Rice in the Eastern District. Langley was born in 1908 near Prague in Lincoln County, Oklahoma. He was awarded a full scholarship to Harvard University returning to attend law school at Tulsa University where he graduated in 1940.

Langley served in the Army J.A.G. Corps from 1941 to 1945. After a short period of private practice in Muskogee he was appointed U.S. attorney for the Eastern District.[283] The position of federal prosecutor is typically viewed as a stepping stone to the federal bench but, curiously, not in Oklahoma. Only Langley and current Judges David Russell and Layn Phillips of the Western District rose to the bench that way.

Langley's sponsor was Senator Mike Monroney who promised newly elected Fred Harris that he could have the next choice (Eubanks). Monroney's "short list" also included Walter Arnote of McAlester and Joe

Stamper of Antlers.[284] Langley was sworn in on January 27, 1965 serving until his death on September 12, 1973.

Langley's successor in the Eastern District was a man whose academic training exceeded all others who have held a federal judgeship in Oklahoma. Joseph W. Morris was born in Rice County, Kansas in 1922. He received his law degree from Washburn University in Topeka, and a masters of law and doctorate from the University of Michigan. He was corporate and finally general counsel to Amerada Oil Company from 1949 to 1972. From 1972 to 1974 Morris was dean of the Tulsa University law school.[285]

Morris was a Republican and close friend of freshman Senator Dewey Bartlett. Morris had been a state regent for higher education under Bartlett as governor. With his credentials, ABA and Senate sponsorship was assured. Only one small hitch developed—Joe Stamper of Antlers, a powerful Oklahoma Bar Association leader, opposed the appointment since Morris was not a resident of the District. He would also be the first Republican of the five successive judges for the Eastern District.

Stamper's opposition crystallized at a meeting of the Board of Governors of the Oklahoma Bar Association where an endorsement resolution for Morris was proposed. Morris' allies on the board managed to have the vote tabled. At a later meeting it was reconsidered and approved. In any event it is doubtful that the Antlers' Democrat had even the slightest influence on Senator Dewey Bartlett.

Morris was sworn in on April 19, 1974 and left the position on August 1, 1978 to take on the job of general counsel to Shell Oil Company. And like Savage of the Northern District Morris later "retired" again to private practice in Tulsa.

With his academic and professional expertise in oil and gas law Morris quite naturally brought a high level of professionalism to a court with a unique history in that area. The heaviest volume of cases, however, arose from prisoner habeas corpus cases: the McAlester state penitentiary lies within the Eastern District.

Epilogue

Throughout the unprecedented pioneering era of the nineteenth century Oklahoma was outside of the mainstream of western settlement as an Indian sanctuary. It took an increasingly complex legal system, forged by the imperfect "crucible" of Congress to hold the white settlers back from this attractive land and to stabilize the powerful economic and social forces generated there. Federal courts and judges consequently dominated the process of evolution from raw land to territory to state.

Since statehood the history of the United States court in Oklahoma is largely the story of the judicial selection process itself. In this regard Oklahoma is not unique. Federal judges here, as in all states, often begin their careers as politicians. Or, at least, their careers are enmeshed in one political struggle or another. Political motives often dominate the selection process. Yet to a surprisingly large degree, federal judges grow quickly away from overt partisanship. Oklahoma judges are no exception.

Oklahoma currently has twelve life tenured federal judges in its three districts: *Northern*—H. Dale Cook, Chief, James O. Ellison, Thomas R. Brett (roving); *Western*—Ralph G. Thompson, Chief, Luther L. Bohanon (senior, roving), Frederick A. Daugherty (senior, roving), David L. Russell (roving), Lee R. West, Wayne E. Alley, and Layn Phillips; *Eastern*—Frank H. Seay. The federal judiciary in Oklahoma is now in the hands of a younger generation whose careers reached their peaks in the late

1960's and 1970's. With each generation, modern methods of judicial administration gain a stronger foothold in the system. Eccentric, flamboyant personality yields to a more predictable, "scientific" application of judicial procedures and decision making. Yet there is some raw, unrestrained element in the Oklahoma temperament which even the most comprehensive system of court rules cannot totally submerge.

NOTES

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[1]*Western Independent*, (Fort Smith) Aug. 28, 1873, as quoted in G. Shirley, *Law West of Fort Smith* 23 (1968).

[2]Act of June 30, 1834, ch. 161, 4 Stat. 729.

[3]The term "Indian country" will be used to describe the area now Oklahoma to distinguish it from "Indian Territory," a term first officially used to describe the "judicial territory" created by Congress in 1889. *See* Act of March 1, 1889, ch. 333, 25 Stat. 783.

[4]W. Irving, *A Tour on the Prairies* 10 (1956).

[5]G. Foreman, *Indian Removal* 28-29 (1932).

[6]A. Debo, *The Rise and Fall of the Choctaw Republic* 45, 46-47 (1934).

[7]R. Williams, *The Judicial History of Oklahoma*, Proceedings of the Fifth Convention of the Oklahoma Bar Association (Unpublished) 7 (1911). This manuscript is a rare, extremely useful source document authored by one of Oklahoma's most famous federal judges and noted political scholar. It is located among the Robert L. Williams private papers, Oklahoma Historical Society Archives, Oklahoma City, Oklahoma. *See also* Debo, *supra* note 6 at 76.

[8]*Standley v. Roberts*, 59 F. 836, 845 (8th Cir. 1894).

[9]A. Debo, *The Road to Disappearance: A History of the Creek Nation* 125, 180-181 (1941); *see also* Williams, *supra* note 7 at 5-6.

[10]*Id.*

[11]47 S.W. 304 (Ct. App. Indian Terr. 1898).

[12]Williams, *supra* note 7 at 6-7.

[13]A. Gibson, *The Chickasaws* 153-154 (1971).

[14]Williams, *supra* note 7 at 8.

[15]83 S.W. 170 (Ct. App. Indian Terr. 1904).

[16]G. Woodward, *The Cherokees* 139-140 (1963).

[17]*Id.* at 146.

[18]30 U.S. (5 Pet.) 1 (1831).

[19]*Id.* at 18.

[20]*Id.* at 1-4.

[21]*Id.* at 2.

[22]*Id.* at 3.

[23]*Id.* at 9.

[24]*See* E. McReynolds, *The Seminoles* (1957).

[25]Williams, *supra* note 7 at 10-12.

[26]Art. V, §§ 11-12, Osage Constitution, in *Constitution and Laws of the Osage Nation* (1973).

[27]Williams, *supra* note 7 at 12.

[28]The history of Indian jurisprudence in the United States courts is a subject worthy of full and separate treatment. While Congress clearly retains the power to abrogate Indian treaties and, hence, tribal autonomy, *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903), there has always been a strong reluctance to totally emasculate the system of separate and indigenous tribal law. As recently as 1981 the Supreme Court reaffirmed the right of an Indian tribe, the Jicarilla Apaches, to enforce an oil and gas severance tax on production of oil and gas from tribal lands. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1981).

[29]The Oklahoma panhandle area was not allotted to any tribe but was, until 1885, claimed by the Cherokees. From 1885 to 1890 it was literally "No Man's Land." See discussion at pp. 00-00, *infra*.

[30]Act of March 2, 1819, ch. 49, 3 Stat. 493.

[31]Act of June 30, 1834, ch. 161, 4 Stat. 729.

[32]*Id.* § 20 at 732.

[33]*Id.* § 25 at 733.

[34]Act of June 17, 1844, ch. 103, 5 Stat. 680. *See also* "The Federal Courts in Oklahoma," *Inventory of Federal Archives in the States*, Series II, no. 35, Historical Records Survey of the W.P.A. (1939).

[35]Act of March 3, 1851, 9 Stat. 594; *see also* Shirley, *supra* note 1 at 14-15.

[36]M. and B. Stanley, *Hell on the Border* 3 (privately printed). This curious booklet purports to be a reprint of an original eyewitness narrative of the famous federal court at Fort Smith.

[37]Act of June 17, 1844, 9 Stat. 594, §3.

[38]Stanley, *supra* note 36 at 7.

[39]Shirley, *supra* note 1 at 16.

[40]*Id.* at 193.

[41]Stanley, *supra* note 36 at 114.

[42]*Id.* at 9.

[43]Shirley, *supra* note 1 at 45-46.

[44]Stanley, *supra* note 36 at 69.

[45]Miner, "Little House on Wheels: Indian Response to the Railroad," in *Railroads in Oklahoma* 9 (D.L. Hofsommer ed., 1977).

[46]D. Goble, *Progressive Oklahoma* 58 (1980).

[47]Hoig, "The Rail Line that Opened the Unassigned Lands," *Railroads in Oklahoma*, *supra* note 45 at 21.

[48]Miner, *supra* note 45 at 17, quoting Parker in an undated manuscript decision, *St. Louis and San Francisco Railway Co. v. William Henderson*.

[49]Goble, *supra* note 46 at 6.

[50]K. Baldwin, *The 89ers: Oklahoma Land Rush of 1889*, 1-16 (1981).

[51]Shirley, *supra* note 1 at 75-76.

[52]Act of February 8, 1887, 24 Stat. 388.

[53]Act of March 3, 1893, ch. 15, 27 Stat. 612.

[54]Act of January 6, 1883, 22 Stat. 400; *see also* "The Federal Courts in Oklahoma," *supra* note 34.

[55]*See* note 62, *infra*.

[56]Templar, *The Federal Judiciary of Kansas*, 37 Kan. Hist. Q. 1, 5 (1971).

[57]These courts had jurisdiction over the Northern District of Texas, the Western District of Arkansas, and the District of Kansas.

[58]Act of July 4, 1884, ch. 179, 23 Stat. 73.

[59]Surrency, *Federal District Court Judges and the History of Their Courts*, 40 F.R.D. 139 (1967).

[60]Act of March 1, 1889, ch. 333, 25 Stat. 783.

[61]138 U.S. 157 (1891).

[62]G. Rainey, *No Man's Land* 205 (1937) (privately printed Enid, Okla.). A copy of this unusually well written vanity press publication is located at the Oklahoma Historical Society, Oklahoma City.

[63]*See* note 61, *supra*.

[64]Act of March 1, 1889, ch. 333, 25 Stat. 783.

[65]D.E. Green, *Panhandle Pioneer* 5 (1979).

[66]Rainey, *supra* note 62 at 122; *see also* Dale, "The Cherokee Strip Live Stock Association," 5 *Chronicles of Oklahoma* 58-78. The "Cherokee Outlet" or "Cherokee Strip" was an area of land one degree in width extending west from the Cherokee lands ceded by the treaty of 1828 (7 Stat. 311) as far as the western boundary of the United States, at that time, the 100th meridian. *Id.* at 58.

[67]Rainey, *supra* note 54 at 121.

[68]*Id.* at 137-38, 157-58.

[69]Green, *supra* note 65 at 24-25; *see also* Williams, *supra* note 7 at 30.

[70]Correspondence from former Oklahoma Territory Judge John H. Burford to Hon. R.L. Williams (Nov. 27, 1911), Robert L. Williams Collection, Archives, Oklahoma Historical Society.

[71]Green, *supra* note 65 at 18.

[72]*Id.* at 10.

[73]Burford Correspondence, *supra* note 70.

[74]Williams, *supra* note 7 at 31.

[75]Act of March 1, 1889, ch. 333, 25 Stat. 783.

[76]*Id.*

[77]Appropriation Act of March 2, 1889, ch. 412, § 13, 25 Stat. 980, 1005; Presidential Proclamation of March 23, 1889, 26 Stat. 1544. April 22, 1889 at 12:00 noon was set as the start of the run into the Unassigned Lands.

[78]Williams, *supra* note 7 at 13-14.

[79]Act of March 1, 1889, ch. 333, 25 Stat. 783.

[80]Williams, *supra* note 7 at 14; *see also* Surrency, *supra* note 59 at 267.

[81]J.D. Benedict, 1 *History of Muskogee and Northeastern Oklahoma*, ch. 23, "First United States Court in Muskogee" (1922).

[82]Foreman, "Oklahoma's First Court," 13 *Chronicles of Oklahoma* 457 (1935).

[83]*Id.* at 464.

[84]G. Shirley, *Heck Thomas, Frontier Marshall* 105 (1962).

[85]U.S. Court Records, Muskogee, Oklahoma, March 29, 1889-June 6, 1890, (Microfilm Records, Archives, Oklahoma Historical Society, Oklahoma City).

[86]Act of March 2, 1889, ch. 333, 25 Stat. 980. Congressman William H. Springer, the bill's author, of Illinois later became a member of the Oklahoma Territory Supreme Court.

[87]Presidential Proclamation of March 23, 1889, 26 Stat. 544.

[88]G. Shirley, *West of Hell's Fringe* 9, 10-11 (1978).

[89]Brierer, "Early Day Courts and Lawyers," 8 *Chronicles of Oklahoma* 2-4 (1930).

[90]*Id.*

[91]Goble, *supra* note 46 at 21.

[92]*Id.*

[93]*See, e.g., Mayor of Guthrie v. Territory of Oklahoma*, 1 Okla. 188 (1892).

[94]President Grover Cleveland, a Democrat, was a strong opponent of the erosion of Indian autonomy. Benjamin Harrison, a midwesterner, was inaugurated on March 4, 1889.

[95]G. Shirley, *supra* note 88 at 6.

[96]Act of May 2, 1890, ch. 182, § 1, 26 Stat. 81 [hereinafter "Organic Act"].

[97]*Id.* § 18 at 90.

[98]*Id.* § 25 at 92.

[99]*United States v. Texas*, 162 U.S. 1 (1896).

[100]*Organic Act*, § 1; *See* Woodward, *supra* note 16 at 320.

[101]*Organic Act*, § 1.

[102]*Id.* § 9.

[103]*Id.* "In addition to the jurisdiction otherwise conferred by this act, said district courts shall have and exercise exclusive original jurisdiction over all offenses against the laws of the United States committed within that portion of the Cherokee Outlet not embraced within the boundaries of said Territory of Oklahoma as herein defined, and in all civil cases between citizens of the United States residing in such portion of the Cherokee Outlet, or between citizens of the United States, or of any State or Territory, and any citizen of or person or persons residing or found therein, when the value of the thing in

controversy or damages or money claimed shall exceed one hundred dollars."

[104]*Id.* "All acts and parts of acts heretofore enacted, conferring jurisdiction upon United States courts held beyond and outside the limits of the Territory of Oklahoma as herein defined, as to all causes of action or offenses in said Territory, and in that portion of the Cherokee Outlet hereinbefore referred to, are hereby repealed. . ."

[105]*Id.* § 12, ". . . any person residing in the Territory of Oklahoma, in whom there is Indian blood, shall have the right to invoke the aid of courts therein for the protection of his person or property, as though he were a citizen of the United States."

[106]*Id.* § 11.

[107]*Id.* § 9.

[108]*Id.* § 30.

[109]Act of March 1, 1895, ch. 145, 28 Stat. 693.

[110]*Organic Act*, § 30.

[111]J.B. Thoburn & M.H. Wright, 2 *Oklahoma: A History of the State and Its People*, App. LI-1 (1916).

[112]*Organic Act*, § 31.

[113]*Id.*

[114]59 F. 836 (8th Cir. 1894).

[115]Act of March 1, 1889, ch. 333, § 6, 25 Stat. 783.

[116]Act of June 28, 1898, ch. 517, 30 Stat. 495.

[117]*Id.* § 26.

[118]*Id.* § 28.

[119]*Id.* § 29.

[120]A. Debo, *And Still the Waters Run* 65 (1984).

[121]Act of March 1, 1898, ch. 145, § 9, 28 Stat. 693. This act of Congress also eliminated the last vestiges of jurisdiction exercised by the District of Kansas and the Eastern District of Texas.

[122]Shirley, *supra* note 1 at 141, quoting Parker in the *Indian Chieftain*, Oct. 26, 1883.

[123]Stanley, *supra* note 36 at 104-05, quoting Parker in the *St. Louis Globe Democrat*, July 30, 1895.

[124]Act of March 1, 1895, ch. 145, § 9, 28 Stat. 693.

[125]Norton, "Resolution of Respect For and in Appreciation of Honorable Charles B. Stuart," 15 *Chronicles of Oklahoma* 228, 232 (1937).

[126]Although maintaining a residence and practice in Oklahoma City, in 1927 Stuart formed the Tulsa law partnership of Stuart, Coakley and Doerner, the genesis of Doerner, Stuart, Saunders, Daniel and Anderson.

[127]Act of February 8, 1887, ch. 119, § 8, 24 Stat. 388.

[128]Act of March 3, 1893, ch. 15, 27 Stat. 612.

[129]Debo, *supra* note 120 at 47-51.

[130]Morton, "Government of the Creek Indians—the Crazy Snake Revolution," 8 *Chronicles of Oklahoma* 187, 193 (1930).

[131]Clark, "The Career of Judge Thomas," 52 *Chronicles of Oklahoma* 152, 166-167 (1974).

[132]Stanley, *supra* note 36 at 125-133.

[133]Act of March 1, 1895, ch. 145, 28 Stat. 693.

[134]M. Houts, *From Gun to Gavel: The Courtroom Recollections of James Mathers of Oklahoma* 28-29 (1954).

[135]Benedict, *supra* note 81 at 386.

[136]Peery, "The First Two Years," 7 *Chronicles of Oklahoma* 281, 283 (1929).

[137]J.B. Thoburn, 2 *A Standard History of Oklahoma* 831-35 (1916).

[138]*Id.* at 835.

[139]Norton, *supra* note 125 at 233.

[140]"In Re Report of the Committee Appointed by this Court [Eastern District of Oklahoma] to Prepare a Statement as to the Lives and Activities of Certain Members of the Bar and Former Attaches of this Court Now Deceased," 5 *Chronicles of Oklahoma* 352, 355-56 (1927).

[141]Meserve, "From Parker to Poe," 16 *Chronicles of Oklahoma* 89, 93 (1938).

[142]C. Rister, *Land Hunger: David L. Payne and the Oklahoma Boomers* 94 (1942).

[143]*See generally* Debo, *supra* note 6 at 269-72.

[144]Act of July 1, 1902, ch. 1362, 32 Stat. 641.

[145]Debo, *supra* note 6 at 269-72.

[146]Debo, *supra* note 120 at 40.

[147]Debo, *supra* note 6 at 270 (quoting from the Ardmore *Indian Citizen*, Dec. 9, 1897).

[148]"Judge Joseph Albert Gill," 12 *Chronicles of Oklahoma* 375-376 (1934).

[149]W.H. Murray, 1 *Memories of Governor Murray and True History of Oklahoma* 225-26 (1945).

[150]"Charles W. Raymond," 17 *Chronicles of Oklahoma* 460-461 (1939).

[151]Act of May 27, 1902, ch. 888, § 8, 32 Stat. 245.

[152]Act of April 28, 1904, ch. 1824, 33 Stat. 573.

[153]Meserve, *supra* note 141 at 94.

[154]Thoburn, *supra* note 137 at 834.

[155]T. Humphry, "Judge Thomas Chauncy Humphry," 17 *Chronicles of Oklahoma* 353 (1939).

[156]J. Benedict, 1 *History of Muskogee and Northeastern Oklahoma* 385 (1922).

[157]*Id.*

[158]Debo, *supra* note 120 at 104.

[159]Act of May 2, 1890, ch. 182, 26 Stat. 81.

[160]*Id.* §§ 2, 4.

[161]Williams, *supra* note 7 at 24.

[162]Bierer, "Early Day Courts and Lawyers," 8 *Chronicles of Oklahoma* 2-12 (1930).

[163]"The supreme court shall define said judicial districts, and shall fix the times and places at each county seat in each district where the district court shall be held and designate the judge who shall preside therein." Act of May 2, 1890, ch. 181, § 9, 26 Stat. 80.

[164]The first district covered "all that part of the Cherokee Outlet lying east of the range line between ranges 3 and 4 West of the Indian Meridian, and all that part of the lands occupied by the Iowa, Kickapoo and Sac and Fox Indians lying north of the township line between townships 14 and 15 North of ranges 2, 3, 4, 5 and 6 East of the Indian Meridian." Doyle, "The Supreme Court of the Territory of Oklahoma," 13 *Chronicles of Oklahoma* 214, 215 (1935).

[165]*Id.*

[166]Henslick, "Abraham Jefferson Seay," in *Territorial Governors of Oklahoma* 28 (L.H. Fischer ed., 1975).

[167]Peery, "The First Two Years," 7 *Chronicles of Oklahoma* 419, 427.

[168]*Id.*

[169]For a vivid picture of life in Oklahoma Territory, *see* A. Debo, *Prairie City* (1985).

[170]Act of May 2, 1890, ch. 181, § 1, 26 Stat. 80.

[171]Act of December 21, 1893, ch. 5, 28 Stat. 20.

[172]Doyle, *supra* note 164 at 216.

[173]By April 1894 the Supreme Court of Oklahoma Territory was constituted as follows: *First District* (Logan, Payne, Lincoln, and "Q" [now Pawnee] counties), Frank E. Dale, replacing Green, presiding; *Second District* (Canadian, Kingfisher, Blaine, Washita, and "O" [now Garfield] counties), John H. Burford presiding; *Third District* (Oklahoma, Cleveland, and Pottawatomie counties), Henry W. Scott, replacing Clark, presiding; *Fourth District* ("P" [Noble], "K" [Kay], "L" [Grant], and "M" [Woods] counties), A.G.C. Bierer presiding; *Fifth District* ("N" [Woodward], "D" [Dewey], "G" [Custer], Day, Roger Mills, and Beaver counties), John L. McAtee presiding. *See id.*

[174]A thorough discussion of the Enid and Pond Creek railroad wars is found at Shirley, *supra* note 88 at 217-32 and Goble, *supra* note 46 at 31-38.

[175]July 13, 1894. Quoted in Shirley, *supra* note 88 at 225.

[176]*Id.* at 231.

[177]Act of August 8, 1894, ch. 236, 28 Stat. 263.

[178]"Passing Pioneers," 1 *Chronicles of Oklahoma* 254 (1923).

[179]*See* Chapman, "Oklahoma City—From Public Land to Private Property," 37 *Chronicles of Oklahoma* 440 (1959).

[180]Edwards, "Early Days in the C & A," 28 *Chronicles of Oklahoma* 148, 157 (1949).

[181]"Passing Pioneers" *supra* note 178 at 254.

[182]Shirley, *supra* note 88 at 194.

[183]Williams, *supra* note 7 at 25.

[184]December 16, 1895. Quoted in Shirley, *supra* note 88 at 335.

[185]*Id.* at 341.

[186]Williams, *supra* note 7 at 26.

[187]Shirley, *supra* note 88 at 204-05.

[188]M.R. Tuttle, *Illustrated History of Oklahoma* 186 (1890).

[189]Williams, *supra* note 7 at 25.

[190]*Id.* at 27.

[191]162 U.S. 1 (1896).

[192]Greer County, Oklahoma Territory was absorbed by Jackson, Greer, and part of Beckham Counties at statehood.

[193]Williams, *supra* note 7 at 26.

[194]Powers, "Notes on the History of Greer County," 27 *Chronicles of Oklahoma* 425 (1949).

[195]Williams, *supra* note 7 at 27.

[196]Act of May 2, 1902, ch. 679, 32 Stat. 184.

[197]Proclamation No. 6, 32 Stat. 1975 (1901).

[198]*Id. First District*—Logan, Lincoln, and Payne—John H. Burford; *Second District*—Canadian, Kingfisher, Cleveland, and Pottawatomie—B.H. Burwell; *Fourth District*—Noble, Kay, and Pawnee and the Osage Nation—Bayard T. Hainer; *Fifth District*—Garfield, Grant, Blaine, and Roger Mills—J.K. Beauchamp; *Sixth District*—Woods, Woodward, Beaver, Day, and Dewey—J.L. Pancoast; *Seventh District*—Caddo, Comanche, Kiowa, and Greer—Frank E. Gillett. *See* Williams, *supra* note 7 at 27-28.

[199]Truitt, "Judge Milton C. Garber," 27 *Chronicles of Oklahoma* 407 (1949).

[200]*Autry v. Frantz*, 18 Okla. 561 (1907); *see also* Jones, "Caption Frank Frantz: The Rough Rider Governor of Oklahoma," 43 *Chronicles of Oklahoma* 374, 386-87 (1965).

[201]J. Scales & D. Goble, *Oklahoma Politics: A History* 16 (1982).

[202]Act of June 16, 1906, §13, 34 Stat. 267, 275.

[203]Scales, *supra* note 201, at 23.

[204]*See* note 202, *supra*.

[205]Howell, "The Life and Death of Oklahoma's First U.S. Judge," *Tulsa Tribune*, Jan. 9, 1980.

[206]Meserve, *supra* note 141 at 95.

[207]By Act of May 27, 1908, ch. 199, 35 Stat. 312, Congress removed most restrictions against alienation. For a

thorough discussion of the so-called "30,000 land suits," *see* Debo, *supra* note 120 at 205-208.

[208]*Id.* at 203-204.

[209]Howell, *supra* note 205.

[210]Bierer, "John Hazelton Cotteral," 14 *Chronicles of Oklahoma* 49 (1936).

[211]R. Harlow, *Oklahoma Leaders* 29-37 (1928).

[212]Bierer, *supra* note 210 at 51.

[213]*Daily Oklahoman*, Aug. 7, 1910, quoted in Scales, *supra* note 201 at 47.

[214]238 U.S. 347 (1915).

[215]*Id.* at 354.

[216]For the full Barnett story, *see* Debo, *supra* note 120 at 338-49.

[217]*The Oklahoma News*, Oct. 24, 1937, at 4.

[218]Taylor, "Robert Lee Williams as I Knew Him," 31 *Chronicles of Oklahoma* 378, 382 (1933).

[219]Scales, *supra* note 201 at 22-23.

[220]*Id.* at 74.

[221]Interview with Royce H. Savage (Feb. 10, 1986).

[222]Scales, *supra* note 201 at 78.

[223]E.E. Dale and J.D. Morrison, *Pioneer Judge: The Life of Robert Lee Williams* 280-87 (1958).

[224]On appeal the Eighth Circuit affirmed Williams. *See U.S. v. Hayes*, 20 F.2d 873 (8th Cir. 1927).

[225]Dale, *supra* note 223 at 324.

[226]Act of September 14, 1922, ch. 306, 42 Stat. 837.

[227]Interview with Royce H. Savage (Feb. 10, 1986); *see also* Bicentennial Committee of the Judicial Conference of the United States, *Judges of the United States* (2d ed. 1983) [hereinafter "Bicentennial Committee"].

[228]H.R. Rep. No. 1375, 68th Cong., 2d Sess. (1925).

[229]The Act of February 16, 1925 divided Oklahoma into three judicial districts as follows: *Northern*—Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Osage, Ottawa, Pawnee, Rogers, Tulsa, and Washington Counties; *Eastern*—Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Carter, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, LeFlore, Love, McClain, Muskogee, McIntosh, McCurtain, Murray, Marshall, Okmulgee, Pittsburg, Pushmataha, Pontotoc, Seminole, Stephens, Sequoyah, and Wagoner Counties (with court sessions in Muskogee, Ada, Hugo, South McAlester, Ardmore, Chickasha, Poteau, and Pauls Valley); *Western*—Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward Counties (with court sessions in Guthrie, Oklahoma City, Enid, Lawton, and Woodward). Act of February 16, 1925, ch. 233, 43 Stat 945.

[230]Interview with Royce H. Savage (Nov. 12, 1985).

[231]Shirk, "Judge Edgar S. Vaught," 37 *Chronicles of Oklahoma* 394-403 (1959).

[232]Vaught, *Amending the Constitution by Judicial Decree*, 9 Okla. L. Rev. 249, 250-54 (1956).

[233]*See generally* H.W. Morgan & A.H. Morgan, *Oklahoma: A History* 118-46 (1984) and Scales, *supra* note 201 at 118-220.

[234]Act of June 22, 1936, ch. 693, 49 Stat. 1804.

[235]Scales, *supra* note 201 at 194-97.

[236]Interview with Royce H. Savage (Nov. 12, 1985).

[237]*The Oklahoma News*, Feb. 8, 1937; *Daily Oklahoman*, Oct. 31, 1975.

[238]R.H. Savage, *In Memoriam of the Honorable Eugene Rice and Honorable Ross Rizley*, 304 F. Supp. 7, 10 (1969) [hereinafter *Rice & Rizley Memoriam*].

[239]Bicentennial Committee, *supra* note 227 at 416.

[240]Act of May 24, 1940, ch. 209, 54 Stat. 219.

[241]Act of August 3, 1949, ch. 387, 63 Stat. 493.

[242]Interview with Royce H. Savage (Nov. 12, 1985); *see also* J.C. Goulden, *The Benchwarmers* 206-49 (1974).

[243]*See Kennamer v. State*, 59 Okla. Crim. 146, 57 P. 2d 646 (1936).

[244]Interview with Royce H. Savage (Nov. 12, 1985).

[245]*Id; see also* Scales, *supra* note 201 at 197.

[246]Interview with Royce H. Savage (Nov. 12, 1985).

[247]Comment by Richard P. McDermott, *Tulsa World*, Oct. 21, 1960.

[248]Bicentennial Committee, *supra* note 227 at 56.

[249]Scales, *supra* note 201 at 227.

[250]Bicentennial Committee, *supra* note 227 at 513.

[251]A.H. Morgan, *Robert S. Kerr: The Senate Years* 93-94 (1977).

[252]Scales, *supra* note 201 at 203.

[253]*Id.* at 219.

[254]W.J. Holloway, *Rice & Rizley Memoriam*, 304 F. Supp. at 12.

[255]Goulden, *supra* note 242 at 215-24, 236.

[256]As quoted in *The Oklahoma Journal*, Dec. 29, 1965; *see also Chandler v. Judicial Council of the Tenth Circuit*, 398 U.S. 74 (1970), for a detailed history of the Chandler controversy. The Judicial Council later partially modified its December 13, 1965 order by allowing Chandler to retain cases pending before him as of December 28, 1965.

[257]In 1983 Bohanon helped sponsor the publication of Kenny A. Franks and Paul F. Lambert's, *The Legacy of*

Dean Julien C. Monnet: Judge Luther Bohanon and the Desegregation of Oklahoma City's Pub. Schools (1983). This work is a thorough history of Bohanon's desegregation cases in tribute to Monnet, whom Bohanon credits with inspiring his unpopular effort to implement the Warren Court's *Brown* decision.

[258]McReynolds, *supra* note 24 at 361.

[259]Interview with Luther L. Bohanon (Mar. 24, 1986).

[260]Morgan, *supra* note 251 at 218-19; *Daily Oklahoman*, Aug. 18, 1961.

[261]Interview with Luther L. Bohanon (Mar. 24, 1986); *see Dowell v. School Board of Oklahoma City Pub. Schools*, 219 F. Supp. 427 (W.D. Okla. 1963).

[262]J. Peltason, *Fifty-eight Lonely Men: Southern Federal Judges and School Desegregation* 9-10 (1961).

[263]*Battle v. Anderson*, 457 F. Supp. 719 (E.D. Okla. 1978).

[264]Interview with Luther L. Bohanon (Mar. 24, 1986).

[265]332 U.S. 631 (1948).

[266]339 U.S. 637 (1950).

[267]*McLaurin v. Oklahoma State Regents*, 87 F. Supp. 526 (W.D. Okla. 1949).

[268]339 U.S. 637.

[269]Act of May 19, 1961, 75 Stat. 80.

[270]*Daily Oklahoman*, Aug. 18, 1961.

[271]Interview with Frederick S. Daugherty (May 14, 1986).

[272]*Sunday Oklahoman*, Nov. 15, 1964.

[273]Interview with Frederick S. Daugherty (May 14, 1986).

[274]*Tulsa Tribune*, May 4, 1962; *Tulsa Tribune*, July 27, 1962.

[275]Bicentennial Committee, *supra* note 227 at 435.

[276]*Tulsa Tribune*, Dec. 21, 1976.

[277]*Tulsa Tribune*, May 6, 1977.

[278]*Tulsa Tribune*, Feb. 23, 1979.

[279]Interview with Luther Eubanks (May 14, 1986); *see also The American Bench* 1445 (1977).

[280]Interview with Luther Eubanks (May 14, 1986).

[281]*Daily Oklahoman*, November 22, 1984.

[282]Interview with Luther Eubanks (May 14, 1986).

[283]Bicentennial Committee, *supra* note 227 at 284.

[284]*Daily Oklahoman*, Nov. 28, 1964.

[285]*The American Bench*, *supra* note 279 at 1454.