

Judge Royce H. Savage

By

William Kellough

“To hear courteously, to answer wisely, consider soberly and to decide impartially”
Socrates

The comfortable home is bathed in soft afternoon light. It is fall in Tulsa and the air is charged with football. A small, intense man sits in the room’s most comfortable chair wearing a golf shirt, slacks and slippers surrounded by a crowd of men in suits with jackets off, some on the couch, others in dining room chairs, clutching files, papers, books, legal pads. This is the living room and private courtroom of Royce Savage, arbitrator, former federal judge and general counsel of one of the world’s largest oil companies. The casual atmosphere is nonetheless charged with the intensity of the man. The collection of legal talent in this room was not there to pass the time talking football or golf or politics, all subjects of keen interest to the Judge. Rather they were buying his time and wisdom to decide an oil and gas dispute involving millions of dollars, outside of the courtroom and the formal legal process, with its uncertainty, high cost and lengthy delays. They were seeking a fair, speedy and concise decision from the diminutive man in the easy chair. They had come to the right place.¹

The Royce Savage story begins on a ranch near Blanco in the Choctaw Nation,² Indian Territory (now Pittsburg County, Oklahoma) on March 31, 1904.³ Blanco was and still is a small station town on the Missouri, Kansas & Texas railroad line that linked Dennison, Texas to Vinita, Indian Territory and then north into Kansas. Savage’s parents migrated to the area which, at the turn of the century, was one of the nation’s prime coal producing regions. Like most of the newcomers to Indian Territory, Savage’s father raised cattle. But the booming economy of the region was fueled by coal. Coal production began after the Civil War. The Choctaw Nation, as did most of the autonomous tribes which had been

¹ The author was privileged to assist Judge Savage in these arbitrations as a sort of law clerk.

² The independent Choctaw Nation comprised land between the Canadian River on the north, the Red River on the south and Arkansas on the east. The western boundary was an arbitrary line drawn north from the Island Bayou on the Red River to the Canadian River. *See* Morris, Goins and McReynolds, *Historical Atlas of Oklahoma* (University of Oklahoma Press 1976) at p. 38. Blanco was founded in 1901 and, for reasons lost to history, was named after Ramon Blanco, the Governor General of Cuba at the outbreak of the Spanish Civil War. Ruth, Kent *Oklahoma Travel Handbook* (University of Oklahoma Press 1977) at p. 51.

³ Interview by the author with Royce H. Savage, Nov. 12, 1986, hereafter “Savage Interview”.

transported west of Arkansas, granted non-Indian mining concessions. The most notable mining entrepreneur was J. J. McAlester who, in 1872 founded the community that bears his name just north of Blanco because "...the best coal was to be found at the cross roads where the Texas Trail from Springfield, Missouri to Dallas crossed the California Trail from Fort Smith to Albuquerque."⁴

A lifelong friend of Savage, who was born in nearby Bug Tussle, former Speaker of the House, Carl Albert, described the coal mining boom this way:

"After 1872, when the Missouri, Kansas and Texas tracks reached the coal fields, the fever became an epidemic. Within a generation, nearly fifty mining companies opened more than one hundred mines in the area. Rich veins of what was called the "best steam coal west of Pennsylvania" ran two to eight feet thick and produced three million tons of coal annually. The town of McAlester lay at the center of the bustling activity...[The] sleepy village of 646 people in 1900 was Oklahoma's first industrial city ten years later with 12,000 residents."⁵

The Savages were among the thousands of white pioneers, or, depending on the point of view, interlopers, who settled in the last American frontier in the lower forty eight states. Since 1867, emigration into the Choctaw Nation was allowed by permission of the principal chief, endorsed by ten respectable citizens upon payment of a \$1000 bond and a 1.5% tax on the value of all property brought into the Nation.⁶ The 1890 census, the decade of the Savage family emigration, the population was 10,017 Indians and 28,345 Whites.⁷ So obviously, for better or worse, the area had evolved into a non-Indian territory. However, throughout his life, Savage was proud of his Indian Nation roots.

The Choctaw Nation on the eve of Oklahoma statehood was still very much the wild west. The M. K. & T. Railroad had been bringing civilization into this area since its completion in 1872.⁸ But in 1904 and throughout Royce's boyhood the area was still a land of rough timber, streams and cattle ranges. Every boy grew up hunting and fishing and Royce was no exception. He must also have listened wide-eyed to the tales of outlaws who still ranged up and down the territory, for it was only a few years before his birth that the Jennings, Doolin and

⁴ Debo, Angie, *The Rise and Fall of the Choctaw Republic* (University of Oklahoma Press 1934) at p. 128

⁵ Albert, Carl, *Little Giant*, (University of Oklahoma Press 1990) at pp. 9-10.

⁶ Debo *supra.* at p. 277

⁷ Debo *supra.* at p. 143

⁸ Hofsommer, Donovan L. *Railroads in Oklahoma* (University of Oklahoma Press 1977) at pp. 3-19.

Dalton gangs were broken up by U.S. Marshalls.⁹ The locals idolized famous lawmen like Bill Tilghman and Heck Thomas who battled the Territory outlaws. All of these influences... the love of the outdoors and the law, in its scholarly and more vigorous applications, could be seen in the character of Royce Savage, the man and the judge. The keen intellect and the scholarly habits he developed in college together with his pioneer upbringing shaped the man into the first rate lawyer and judge he later became.

Savage's early years in Blanco passed quickly and in 1921 he began his studies at the University of Oklahoma. Warren G. Harding was in the White House and Oklahoma was enjoying rapid growth in those post World War I years. Just as the coal boom shaped the economy of the state thirty years earlier, oil was king during the years leading up to the Depression. As a Freshman at OU Savage was one of only several students nearly all from around the Sooner state. Those fortunate few seeking higher education in Oklahoma in those days formed relationships which lasted throughout life. Several of Savage's classmates had a strong influence on his later life and career. Notably, John Brett (father of Judge Tom Brett former Northern District of Oklahoma judge), Luther Bohanon, who later served as district judge for the Western District of Oklahoma and Lee Thompson (father of Judge Ralph Thompson of the Western District) were fellow students at OU. But the two most important contacts he made at OU were his debate coach, Josh Lee and Alfred P. Murrah, later U.S. Tenth Circuit Judge. The Murrah-Savage relationship was also enhanced when Savage's brother, Leonard, who later practiced law with Murrah. Oklahoma was indeed a small pond and Savage and his peers became big fish.¹⁰

Josh Lee himself became a *very* big fish when, in 1936, he parlayed a single term in the U.S. House as Fifth District Representative to Oklahoma's junior Senator. Years later on Lee's 75th Birthday, in 1967, surrounded by many of his former students, among them Savage and Murrah, he said his "...highest contribution to the public good was the young men and women I recommended to office."¹¹ Indeed, Savage's friendship with Lee was the catalyst for his career as a jurist.

⁹ Shirley, *West of Hell's Fringe*, (University of Oklahoma Press 1978) at pp. 198-200, 364-369. These were just the most famous of scores of bank robbing gangs who plagued the Territory in the late Nineteenth Century. The Jennings gang was broken up in 1898, the Daltons in 1894 and the Doolins in 1896. *Id.*

¹⁰ Savage Interview; Creel, Burke and Franks, *American Jurist: The Life of Alfred P. Murrah* (Oklahoma Heritage Association 1996) at p. 51.

¹¹ Creel, Burke and Franks, p. 132.

As a Freshman at OU Savage may have been drawn to debate and hence to Lee, because of his early financial success. As a walk-on on the Debate Team, Savage won the campus prize of \$25 and, according to Savage with no false modesty, became a campus celebrity!¹² He continued his participation in debate through undergraduate and Law School. Lee later recalled Savage's salient characteristics as a debater. "I remember Royce as being a good listener. He could quickly select the important issues in the debate question. He never overstated his case...He had a good voice and good delivery which inspired confidence in the reliability of what he said."¹³ Like many students in his day, Savage completed his undergraduate and law studies in six years, graduating with a BA in 1925 and LLB in 1927. Even in those prosperous days of the late 1920's it was hard to find a job as a new law graduate. Savage put all his belongings in an old Gladstone bag and moved up to Oklahoma City. He soon found employment with Jess G. Read, State Insurance Commissioner. Savage stayed in this job nearly two years then took an opportunity to practice law in Tulsa with Eugene O. Monnet, the son of his University of Oklahoma law school dean, Julien Monnet. He was paid the exorbitant sum of \$200 a month. For the next nine years Savage gained ground as a young lawyer in the "Oil Capitol of the World". But in 1938 he moved back to Oklahoma City and worked in the firm of Cantrell, Savage and McCloud.¹⁴ Like nearly all lawyers in those days he was a broad based general practitioner. Savage also devoted himself to Democratic Party politics. His career and the rising popularity of Josh Lee, Oklahoma's most articulate New Dealer, converged in the Senatorial election of 1936.

Senator Thomas P. Gore, an old agrarian reformer, had become a bitter foe of the Roosevelt's New Deal. He opposed the unprecedented expansion of the federal government and was totally out of step with the national Democratic Party but was too proud to yield his position. Gore had served in the Senate since statehood and his seat had become a prime political target. A large field of candidates ran in the Democratic primary in the summer of 1936. The front runners were Governor E.W. Marland, Gomer Smith, Senator Gore and Congressman Josh Lee.¹⁵ Lee had won the Fifth Congressional House seat in 1934, beating his Republican opponent by 3 to 1.¹⁶

¹² Savage Interview

¹³ Wheat, Chuck "Savage Marks 2 Decades of Achievement" *Tulsa World*, October 3, 1940.

¹⁴ Casey, Orben J. *And Justice for All: The Legal Profession in Oklahoma*, (Oklahoma Heritage Association 1989) at p. 137; Savage Interview

¹⁵ Scales, James R. and Goble, Danney, *Oklahoma Politics* (University of Oklahoma Press 1982) p. 194.

¹⁶ *Directory of Oklahoma* (State Election Board 1981) p. 718

Lee drew on his oratorical skill and alliance with the New Deal and, importantly, the help of his former students who became known as the “Rover Boys”. Murrah ran his campaign in the west and Savage in the east. Lee started out as the underdog running against the popular Governor Marland and incumbent, Gore. But his campaign organization and magnetic personality paid off. To the down and out voters of Dust Bowl Oklahoma, Lee’s campaign slogan: “A farm for every farmer and home for every family” resonated well.¹⁷ He took a commanding lead in the primary and, in July, he beat Marland in a runoff primary, 301,259 votes to 186,899. Lee then went on to win the general election against Republican, Herbert Hyde by a margin of 2 to 1. Savage’s key role in engineering this victory and legal skill and reputation put him in the top tier of potential appointees for any new federal judgeship available in Oklahoma.¹⁸

Some time during the post World War I period the practice of senatorial courtesy in the selection of federal judges became firmly established. The senior Senator of the same party as the President made the selection.¹⁹ In 1936, Congress created a new federal judicial position: a roving supernumerary judge assigned to all districts.²⁰ This judgeship became available *prior* to Lee’s election but Senator Gore, running a close race for re-election, refused to recommend anyone reasoning that selecting one applicant would anger a dozen.²¹ Oklahoma’s senior Senator, Elmer Thomas, could have exercised his prerogative and nominated a candidate but, facing a tough re-election campaign in 1938 and needing Lee’s unconditional support, he allowed Lee to claim this patronage opportunity. Murrah generously wrote to Lee that he would yield to Savage for this appointment; but Lee stuck with Murrah who was confirmed in February 1937.²²

Judge Robert L. Williams resigned from the Eastern District bench to take a seat on the Tenth Circuit Court of Appeals. Lee immediately thought of Savage for this position; but they both agreed that the selection should go to a resident of the district. Appointing an outsider like Savage might cost Lee political capital. So

¹⁷ Scales and Goble at p. 195

¹⁸ *Id* at p. 720-722.

¹⁹ Kellough, William C. “A History of the United States Courts in Oklahoma”, *The Federal Courts in the Tenth Circuit: A History*, Logan, James K. ed., (U.S. court of Appeals for the 10th Circuit 1992) at pp. 173-215, 187.

²⁰ Act of June 22, 1936; 49 Stat. 1804. At the time of the creation of this judgeship the three Oklahoma federal judges were Edgar S. Vaught (Western District), Frank E. Kennemar (Northern District) and Robert L. Williams (Eastern District), see Kellough ...

²¹ Savage Interview

²² Creel, Burke and Franks *supra* at p.51

Eugene Rice of Duncan was selected and confirmed. Lee anticipated that other positions would soon open be available.²³ He was correct.

Within a few years, an unprecedented three judicial positions opened up at the same time and set the stage for a high profile senatorial power struggle. In 1940 Congress created a second district court position for the Western District of Oklahoma to assist Judge Vaught.²⁴ Senator Elmer Thomas asserted his prerogative and nominated Oklahoma City lawyer, Stephen S. Chandler. Senator Lee vigorously opposed the Chandler nomination as did the Roosevelt administration, believing that Chandler was unqualified.²⁵ The process was further complicated by the fact that other federal judicial vacancies opened up in 1940: Murrah resigned to take a seat on the Tenth Circuit and Kennemar resigned from the Northern District bench. Kennemar was never able to get over his son's homicide conviction in 1935 and the emotional strain was too much for him.²⁶ Senator Lee was quick to nominate Brower Broaddus for Murrah's vacant roving seat and Savage for Kennemar's position setting the stage for a lengthy power struggle between Lee and Thomas.²⁷ Neither would support the others' candidates.

This standoff went on for months. Savage continued to practice law in Oklahoma City waiting for a compromise. Finally, Thomas relented in his opposition to Broaddus and Savage with the personal intervention of Judge Orrie Phillips, Chief Judge of the Tenth Circuit. Both were quickly confirmed²⁸ and Savage, at age 36, took office in Tulsa at the old courthouse on Third and Boulder on October 3, 1940.²⁹

After twenty years on the bench the Tulsa World printed a series of articles summing up Savage's tenure. His old college friend John A. Brett said it this way:

“Early in life he was destined for the judiciary; his entire life has been characterized by logical living, always in balance and governed by reason. His great talent in this regard especially fitted him for the law, but it would have marked him for greatness in any field of

²³ Savage Interview

²⁴ Act of May 24, 1940; 54 Stat. 219

²⁵ This opposition was borne out by the fact that it took three years to confirm Chandler. He was confirmed by the Senate on May 13, 1943 by a floor vote of 37 to 28 with 31 abstentions. See Goulden, Joseph C. *The Benchwarmers*, (Weybright and Talley 1974) pp. 206-249.

²⁶ Savage Interview, see also *Kennemar v. State*, 57 P. 2d 646 (1936)

²⁷ Savage Interview; see also Goulden, Joseph C. *The Benchwarmers*, (Weybright and Talley 1974) pp. 206-249.

²⁸ Savage was confirmed by the Senate on September 24, 1940, Vol. 86, p. 12554 Cong. Record, 76th Cong, 3rd Session.

²⁹ *Tulsa World*, September 30, 1960.

endeavor.³⁰

Precision, economy of thought, closely reasoned analysis are the qualities which became the trademarks of Savage's judicial decisions. He would have denied having any specific judicial philosophy other than to listen closely to the facts and apply the law as consistently as possible. However, when his few published cases are analyzed³¹ certain trends are apparent which establish a consistent jurisprudential attitude if not philosophy.

First, he recites almost no superfluous facts. Law, to Savage, was as close to the logic of a syllogism as possible. He had no interest in inflating or embellishing the story, whether a criminal episode or a complex contractual arrangement. Only those facts necessary to support a complete resolution are discussed and analyzed. Savage did not believe in wasting his time or anyone else's with literary decisions or turns of phrase designed to distinguish him from his colleagues. He would likely disagree with Justice Cardozo's view that a judge's personality and even subconscious tendencies must shape his judicial decision-making:

“He must balance all his ingredients, his philosophy, his logic, his analogies, his history, his customs, his sense of right, and all the rest, and adding a little here and taking a little there, must determine, as wisely as he can which weight shall tip the scales.”³²

Savage likely would have considered this description of the judicial process to be overly egocentric. As much as possible, the jurist must be an instrument of the law logically applied and equally as importantly, an administrator of dispute resolution. The result of this unadorned approach to judging was to enhance his esteem among lawyers and litigants, whose goal was a favorable and speedy outcome, to make up for a loss of reputation, to some degree, as a literary jurist.

Second, Savage cannot be typecast as either a liberal or conservative. He did not lean in the direction of law enforcement or the rights of the accused. Neither big business interests nor aggrieved and injured plaintiffs could claim him as an ally.

³⁰ *Tulsa World*, October 2, 1960

³¹ Savage leaves behind a very small body of published cases. He preferred to rule from the bench with short oral decisions. The majority of his reported decisions are 10th Circuit cases assigned to him specially.

³² Cardozo, Benjamin N. *The Nature of the Judicial Process* (Yale University Press 1921) pp 161-162

He did not use his decisions to advance a social agenda. Lawyers appearing before him in his twenty one years on the bench must have said repeatedly to their clients and to each other: Savage is scrupulously fair and predictable only to the extent that the outcome should, to any reasonable advocate, be predictable. This accounts for a letter the Judge received from the losing lawyer in a case:

“It has been my observation over the years that the sting of an adverse decision is usually accepted in good grace by the lawyers and the litigants if they are convinced the judge has given their cause fair and complete consideration. Your opinion in this case certainly accomplishes that result.”³³

Savage’s demeanor and attitude on the bench could not be described as “colorful” which is often a euphemism for choleric, dictatorial or crude. Lawyers did not fear to appear before him. Savage never displayed the domineering and sometimes tyrannical behavior of trial judges. His personal self confidence, on and off the bench, made such displays unnecessary. As Judge Murrah noted: “ I suppose we would call him a judge’s judge, for whenever judges are mentioned, he stands out with quiet dignity. Many times I have said that he is undoubtedly possessed of the noblest attributes of a man.”³⁴ Certainly Savage was not perfect. He possessed a sharp and at times brutal wit which he used often enough to let lawyers and litigants know who was intellectually in charge of the courtroom.

Finally, Savage’s jurisprudence is defined by a commitment to administrative efficiency. Perhaps due to his humble upbringing, he recognized the need to expedite litigation and thus save cost to the litigants and the judicial system itself. He was an early champion of the pretrial conference which few judges used at that time to maximum advantage. In his own words:

“ There has been great progress in the continuing effort to further improve procedures, in order that litigation will be less expensive, time consuming and above all, to enable us to get better results. The most improved procedural device has been the pretrial conference, where we clear out the underbrush and agree on the basic issues.”³⁵

When the federal court administrative office needed help in cleaning up a four year backlog of cases in Brooklyn, New York Savage was one of a five man team

³³ *Tulsa World*, October 3, 1960

³⁴ *Id*

³⁵ *Tulsa World*, October 2, 1960

of judges assigned the task. His expertise in the pretrial conference was put to practical use in a venue far from home.³⁶ Administrative efficiency does not provide scintillating anecdotes for future legal historians. But for those who work with and in the system it is a quality much to be desired.

With this overview of Judge Savage's approach to the art and science of judging it will be useful to turn attention to several of his written opinions in criminal and civil cases.

Application of the logic of the law, even more than a blind adherence to stare decisis, characterizes many of his opinions. In **Dunaway v. U.S.**³⁷ the defendant was convicted of breaking into a federally owned building and stealing \$48. He was tried under the Assimilative Crimes Act³⁸ which makes state penal law applicable to any act committed in a "federal enclave" if there is no directly applicable act of Congress on point. The defendant argued that since there *was* a federal law applicable, larceny, and since it had a \$50 threshold he could not be charged or tried in federal court. Savage noted that the Kansas law of *burglary* would apply since the act involved breaking into a building, and there was no dollar amount required. So the defendant could be tried and convicted under the Assimilative Crimes Act.

This skill at parsing facts as finely as need be to get to the right result is shown in **Frank v. U.S.**³⁹ Ben H. Frank was a clever capitalist. He promoted a so-called "doodle bug" to find oil which he claimed in his prospectus "...if used carefully and properly, the results being as scientific and sure as the laws of Nature and Physics, [it] should always be correct and accurate."⁴⁰ He claimed that a \$300 investment should return a profit of \$200,000. On appeal after conviction for mail fraud Frank argued that the key evidence, his solicitation letter to investors should not have been admitted into evidence by the trial court since the letter was sent *after* the investment was made. However, Savage ruled in strict conformity with the mail fraud statute. "Since it is the use of the mails in furtherance of the fraudulent scheme that is prohibited rather than fraud upon the recipient of material sent through the mails"⁴¹ the evidence was admissible. However, Savage went on to find that the jury instructions themselves were erroneous since they did not instruct the jury to find *intent* to defraud. The conviction was "reluctantly" set

³⁶ Savage Interview

³⁷ 170 F. 2d 11 (10th Cir. 1948)

³⁸ 18 U.S.C. 468

³⁹ 220 F. 2d 559 (10th Cir. 1955)

⁴⁰ Id p. 562

⁴¹ Id p. 563

aside. Here is a judge who will follow the logic of the law down whatever path it leads with no effort to twist the case to achieve a pre-determined outcome.

No one ever accused Judge Savage of being soft on crime. He was a man of moral rectitude albeit understated and tinged with humor. But he was as likely to turn a criminal loose on a “technicality” as not. In **Selvidge v. U.S.**⁴² the defendant had been convicted of “forging and uttering” U. S. Treasury checks. As the company bookkeeper she endorsed incoming check receipts with a rubber stamp “for deposit only...by Thelma L. Selvidge” and deposited them into her own personal checking account. Savage ruled that “If Selvidge had merely endorsed the name of the principal and cashed the checks contrary to her instructions, the crime of forgery would have been applicable....But when she added her *genuine* signature purporting to endorse the checks as the agent of her named principal, although she had no authority to do so, she was guilty of embezzlement”⁴³ which was a state crime. Since jeopardy had attached the trial court conviction was reversed and Ms. Selvidge was acquitted. The U.S. Attorney must have been highly agitated!

Savage could also turn a “technicality” against a hapless defendant such as Mr. Jones an Oklahoma cottonseed merchant. Under wartime price regulations a “recognized handler” of cottonseed could sell only at a reduced controlled price. A retailer was entitled to a markup. For a brief window of time, Jones fell into the obscure and complicated definition of a “recognized handler”. The trial court had sympathetically exempted him from the more restrictive category. Savage found the trial court’s attempt to assist an otherwise honest businessman “understandable”. However, he ruled on appeal “...if the issue be tendered in mitigation of damages, [the court could find] that the violations were neither willful nor the result of failure to take practicable precautions against the occurrence of the violation.” **Bowles v. Jones.**⁴⁴ For Judge Savage there were no “technicalities” only laws and rules, some obscure and some obvious but all incapable of being read out of existence based on sympathy.

The habit of mind which most often compelled Judge Savage to apply strict analysis to cases also led him to exercise judicial authority in a practical way with an emphasis on adherence to rules. Put another way, Savage, both as a trial and appellate judge, believed in the broad scope of judicial discretion when it favored a

⁴² 290 F. 2d 894 (10th Cir. 1961)

⁴³ Id at p. 895

⁴⁴ 151 F. 2d 232 (10th Cir. 1945)

practical and economical result. In **Gilmore v. U.S.**⁴⁵ a convicted bank robber imprisoned at Alcatraz requested post-conviction relief based on fraud claiming he had been induced to sign a waiver of immunity and had thus testified before the grand jury. He sought a “writ of habeas corpus ad prosequendum” to transport him to Oklahoma for his hearing. The trial court denied his request. In a rare digression, Savage noted that the correct writ which should have been filed by this *pro se* litigant was “ad testificandum”. But the judge noted that “...the improper designation of the desired writ is not fatal”⁴⁶ The crux of the decision, however, was that Savage thought Gilmore’s story was unreliable. He had committed an infamous crime, killed a police officer and attempted to escape. “In this setting it seems appropriate for the trial court to conclude that he would be unable to give sufficient credence to Gilmore’s testimony to justify the expense and inconvenience of transporting him, with guards, from Alcatraz, California to Muskogee, Oklahoma.”⁴⁷

As an experienced trial judge, Savage was a recognized reliable appellate jurist. This, along with his lifetime friendship with Judge Murrah on the Tenth Circuit accounts for his broader range of written opinions in a reviewing capacity. It sometimes put him at odds with his fellow Oklahoma district court colleagues. In **Davis v. U.S.**⁴⁸ he reversed the conviction of the defendant found guilty of transporting marijuana in a trial presided over by Stephen Chandler of the Western District. Chandler instructed the jury: “I am of the opinion, beyond a reasonable doubt, that the defendant did commit the act as charged.” This comment went beyond the scope of permissible comment and was, according to Savage, the basis for a new trial.⁴⁹

Savage was never afraid to render far reaching decisions overturning improper or unconstitutional governmental action. He overturned a minimum price order of the Kansas Corporation Commission because it invaded the exclusive province of the Federal Power Commission. **Cities Service Gas Co. v. United Producing Co.**,⁵⁰ Savage found for a fullblood Cherokee whose land was condemned by the U.S. following removal from state court. Since the state court was without jurisdiction initially, the removal to federal court was improper. **Grand River Dam Authority v. Parker**,⁵¹ He ruled for the U.S. and Phillips Petroleum Co. in a

⁴⁵ 129 F. 2d 199 (10th Cir. 1942)

⁴⁶ Id at 201

⁴⁷ Id at 203

⁴⁸ 227 F. 568 (10th Cir. 1955)

⁴⁹ Id at p. 570

⁵⁰ 212 F. Supp. 416 (N.D. Okla. 1960)

⁵¹ 40 F. Supp 82 (N.D. Okla. 1941)

suit against the state of New Mexico finding that the state's school tax imposed on mineral interests was unconstitutional. **U.S.v.Bureau of Revenue, State of New Mexico.**⁵²

In civil tort cases Savage again proved his predictability: if the facts and the law led to a certain result, Savage would find it.⁵³ In **Waters v. National Life and Accident Insurance Co.**⁵⁴ Edgar Waters died by electrocution in a room where he distilled whiskey in violation of state law. Payment under his life insurance policy was excluded for death "...sustained in connection with a violation of law."⁵⁵ Savage held that since the evidence showed that Waters was barefoot on concrete floor in a windowless room and the overhead light with a pull cord was used to allow him to brew his liquor, he was engaged in an illegal enterprise. Jury verdict for the plaintiff was set aside.

Judge Savage was just as apt to rule for the plaintiff when a close question of law or fact demanded it. In **Eddy v. Hotel Building Co.**⁵⁶ plaintiff alleged the stairway at the Biltmore Hotel In Oklahoma City was poorly lit and there were no handrails. A City ordinance required hotels to have handrails. Defendant asserted that plaintiff was not a guest at the hotel and the duty owed to her was merely to not cause injury willfully or by active negligence. The judge held that there was no distinction between an invitee and licensee and thus ordinary care had to be exercised. Violation of the ordinance amounted to negligence *per se*. Directed verdict in favor of the defendant was reversed and remanded.

Numerous cases can be cited showing the Savage approach to administrative efficiency. **Sweeny v. Anderson**⁵⁷ is an example. Ohio congressman Sweeny sued newspaper publishers in Kansas for an article published in a December 1938 issue of a Kansas newspaper. Plaintiff's Kansas counsel died and plaintiff requested a continuance of trial. The trial court granted the pass but plaintiff failed to appear stating that he thought the court would grant him a longer continuance. Judge Savage upheld the trial court's dismissal stating: "Courts should discourage delay and insist upon prompt disposition of litigation." [The] "...unsupported assertion in correspondence with the court that it was essential that he remain in Washington

⁵² 291 F. 2d 677 (10th Cir. 1961)

⁵³ A Westlaw Keycite and Sheperds review of *all* of Savage's published opinions discloses no reversals on appeal or criticisms. Admittedly only a small percentage of the overall cases decided were memorialized in a published opinion.

⁵⁴ 61 F. Supp. 957 (N.D. Okla. 1945)

⁵⁵ *Id* at p 958

⁵⁶ 228 F. 2d 106 (10th Cir. 1955)

⁵⁷ 129 F. 2d 756 (10th Cir. 1942)

because of the national crisis did not afford adequate grounds for a continuance...[T]he court did not act arbitrarily but rather assumed the commendable attitude of insisting upon a termination without undue delay.”⁵⁸ So even the exigencies of World War II could not dissuade the judge from insisting on the expeditious resolution of cases.

Since the vast majority of Savage’s opinions were not published we have to look to other sources for some of his most noteworthy cases. One such case was the trial of the Tulsa Police and Fire Commissioner, Jay L. Jones, the Chief of Police, Paul Livingstone, six police officers and eleven others on 78 counts of bribery and corruption. This notorious case was tried in May 1957 and arose out of a relationship between the law enforcement defendants and three well known bootleggers and gamblers who made “political contributions” and other payments for protection. Prohibition was still in effect in Oklahoma although previously repealed nationally in 1932. The three law enforcement defendants received 1 year jail sentences and \$1000 fines. All but four of the rest were also convicted. One co-defendant was Nolen Bulloch, a reporter for the Tulsa Tribune. Judge Savage sustained a motion to dismiss as to Bulloch before the jury began deliberating and he quietly moved to the back of the courtroom, took out his note pad and began reporting the rest of the story.⁵⁹

These punishments were relatively light; but the scandal shook the Tulsa police department to its foundation. It took many years and a total re-organization to repair the damage to its reputation.⁶⁰

The one trial that still stands out in the Northern District as Savage’s biggest case was the criminal antitrust case filed against virtually every major international oil company in the wake of the Suez War. The closure of the Suez Canal pipeline caused a spike in oil prices and the Justice Department obtained price fixing indictments against the companies who most benefited from this dramatic price increase. The federal courthouse on Boulder Street had never witnessed such a spectacle: over thirty defendants, sixty lawyers and 10,000 exhibits! Savage sustained a motion to dismiss at the end of the government’s case ruling that the evidence presented “doesn’t rise above the level of suspicion”. This decision caused a sensation in the business and legal world.⁶¹ It was rendered in classic

⁵⁸ Id at p. 757

⁵⁹ Savage Interview

⁶⁰ Treckell, Ronald L. *History of the Tulsa Police Department, 1882-1990* (Self Published 1991) Ch. 8. ; See also Tulsa World, Feb. 16, 2007 “DA took on a ‘strange and disgusting’ case”

⁶¹ Savage Interview

Savage style: brief, succinct and forceful; but it created a cloud which hung over him for the rest of his life after he later accepted an offer to join the law department of Gulf Oil, one of the dismissed defendants. Absolutely no evidence or even a suspicion of unfairness exists linking the two events. This did not prevent a several nationally prominent spokesmen from weighing in on the subject.

When Savage announced his decision to join Gulf as its General Counsel effective November 1, 1961 he wrote: “My decision to resign and take up a residence in another state was reached with the greatest reluctance. For 21 years I have had the great satisfaction of actively participating in the administration of justice as a federal trial judge.... The welfare of our country demands that we have able and courageous judges. We have many lawyers at the bar of our Northern District of Oklahoma who have the requisite qualifications to become a great judge.”⁶² President John Kennedy accepted Savage’s resignation coolly without the usual thanks for a job well served and warm wishes. Kennedy reportedly remarked:

“The reason that [judges] are appointed for life is so that there can...be no actual improprieties and no appearance of impropriety...I don’t think that anyone can accept a Federal judgeship unless prepared to fill it for life because I think the maintenance of the integrity of the Judiciary is so important”⁶³

The New York Times added its voice to the chorus of critics:

No one has suggested, nor is there the slightest grounds for thinking, that Judge Savage was moved by improper considerations in the anti-trust case; and there is not law against his now going to work for Gulf. Nevertheless, he showed poor judgment in doing so because his action tends to lessen public confidence in the independence and integrity of the Federal Judiciary”⁶⁴

Senator Estes Kefauver of Tennessee went so far as to recommend that the present conflict of interest laws be extended to cover federal judges contending

⁶² Tulsa Tribune,”Judge Quits Federal Job for Oil Post”

⁶³ Quoted in Van Tassel, Emily Field, *Why Judges Resign: Influences on Federal Judicial Service, 1789 to 1992* (Federal Judicial Center 1993) at p. 16.

⁶⁴ Id

that “It doesn’t look right for Judge Savage to leave the bench and go to work for one of the defendants in the case.”⁶⁵

These damaging and unfounded opinions have found their way into legal journals thus extending the cloud of suspicion into the realm of scholarship.⁶⁶ Judge Savage remained philosophical about the stir he created with his characteristic ability to make decisions with the utmost confidence and rarely second guess himself. If he under-estimated the political fallout from his decision he never indicated as such.⁶⁷ In this author’s opinion, Savage would not likely have cast off reason and intellectual discretion as easily as did Kennedy and Kefauver if faced with a similar situation *in court* where speculation and innuendo have no place.

The Savage legacy and reputation remain in tact. His pioneering commitment to pretrial conferences as a tool for case management is replicated in all federal and state courts. His clear and concise body of published cases are the products of a disciplined and thoroughly trained legal mind. And for those who knew him as a man as well as a judge these comments, from an anonymous lawyer quoted in a retrospective article on his twenty years on the bench, are especially apt:

“He does everything well. He is a fine judge, a pillar of the community and social life, a good golfer, deadly hunter and fisherman and – for God’s sake don’t put my name on this - a vicious poker player.”⁶⁸

Following nearly a decade as Gulf’s General Counsel, Savage retired and returned to Tulsa and became *of counsel* with the firm of Boone, Ellison and Smith in 1969. He practiced law until his death on December 27, 1993. His skill and experience were widely sought by clients from around the country who recognized the value of his passion for excellence whether in law...or poker.

⁶⁵ Tulsa Tribune, October 19, 1961.”Kennedy Accepts Savage Resignation Formally”

⁶⁶ Van Tassel, Emily Field, “Resignations and Removals: A History of Federal Judicial Service and Disservice” 142 U. Pa. L. Rev. 333 (Nov. 1993); McFadden, Christopher R. “Judicial Independence, Age-Based Bias and the Perils of Mandatory Retirement for Appointed State Judges” 52 S.C. L. Rev. 81.

⁶⁷ Savage Interview

⁶⁸ Tulsa World, “Savage’s Influence Widespread in Many Fields”, October 2, 1960.

