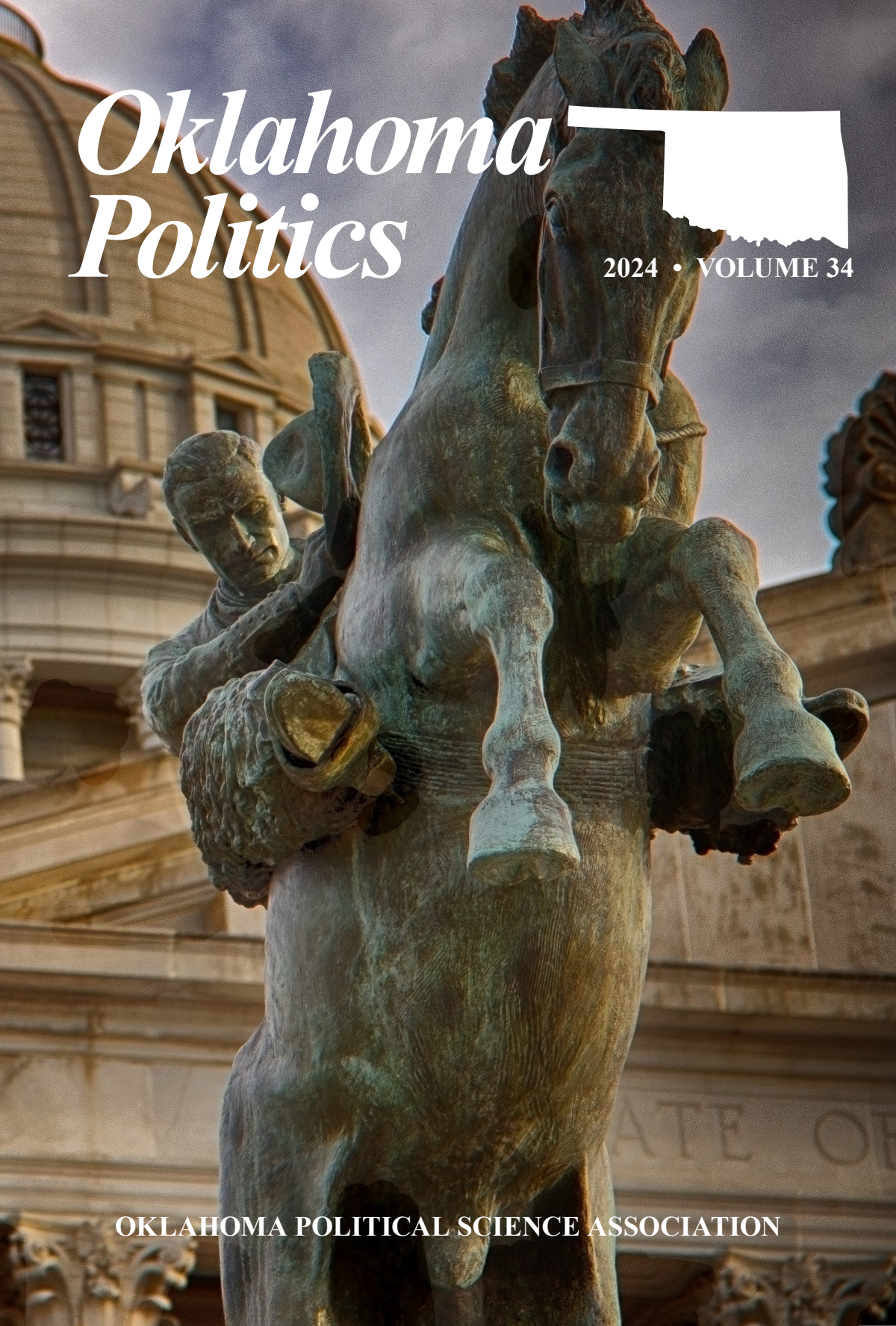

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OKLAHOMA POLITICAL SCIENCE ASSOCIATION

Oklahoma Politics, an annual publication of the Oklahoma Political Science Association, published articles, research notes, and book reviews that have a significant Oklahoma component. For inquiries, email David Searcy, david.searcy@swosu.edu.

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OKLAHOMA POLITICS
VOL. 34 / November 2024

ARTICLES

BOOK REVIEWS

MESSAGE FROM THE PRESIDENT: REFLECTING ON THE SEVEN DECADES OF THE OKLAHOMA POLITICAL SCIENCE ASSOCIATION

Very few statewide political science associations in the United States have such an enduring presence in the study of politics as the Oklahoma Political Science Association. For over seventy years, OPSA members have met and networked with each other to discuss and analyze the politics of the day. The annual statewide OPSA conference has been a mainstay of our profession in Oklahoma. This extraordinary scholarly ritual combines academics, practitioners, policy professionals, interested citizens, and elected leaders to create an enviable synergy of political thought.

I have had the privilege of participating in OPSA for over three of those seven decades. People who know me well have heard that I first decided to go for my Ph.D. to satisfy the requirements of a maniacal administrator who proclaimed one day that to get promoted in my division, you would need a doctorate. I did not come from an academic family, so I naively thought that simply continuing my masters-level studies to the next level would be no big deal. I never dreamed of becoming a professor.

One of my faculty mentors at the University of Oklahoma was Ambassador Edwin G. Corr. He asked me to present a paper at the 1993 OPSA conference being held at Northeastern State University in Tahlequah on behalf of one of his scholar-athletes. Michael Fields was being considered for the Best Political Science Undergraduate Paper Award. But he was playing for the OU football team against OSU that very day. So, I volunteered to present his paper and serve as a discussant on that panel. It was while walking around that beautiful campus on that crisp autumn day that I first thought that being a professor might actually be a nice lifestyle. I have rarely missed an OPSA conference from that day forward.

Publishing a journal every year since 1993 has been an under-appreciated feat. We welcome Dr. David Searcy as the newest editor of *Oklahoma Politics*. He continues the longstanding tradition of publishing our renowned journal. *Oklahoma Politics* has become the standard chronicle for those observing politics in this state. David and I are joined by a wonderful and enthusiastic Executive Board including Connor Alford, Rick Farmer, Aaron Mason, Shanna Padgham, Christine Pappas, Emily Stacey, and John Wood.

One of my great privileges is to hand off the leadership of OPSA to my very first doctoral student, Dr. Emily Stacey. She has planned an incredible conference at her home institution of Rose State College and will thereafter assume service as President of OPSA.

Finally, I would like to extend my condolences to the friends and family of Dr. Randall Jones who has been a committed member of OPSA for decades. He died of pneumonia on September 11. He served as a professor at the University of Central Oklahoma for his entire career. Randy briefly chaired the UCO Political Science Department but was known mostly for his nationally recognized work in election forecasting. He is greatly missed by his colleagues. Donations can be made to the UCO Foundation in his name at centralconnection.org/jones.

Thank you for participating in OPSA! Your support makes this organization such a valuable resource. Please encourage your colleagues and students to take advantage of this professional association as well. With such involvement, we can look forward to many more decades of OPSA serving the political and civic needs of this state.

Brett S. Sharp
President of OPSA, 2023-2024

STATEMENT FROM THE EDITOR

Welcome to the most recent issue of *Oklahoma Politics*. I am new to the position of Editor and thought that I should introduce myself. My name is David Searcy. I am a professor of Political Science at Southwestern Oklahoma State University (SWOSU). I have been on the job for a couple of months and hope to continue the standard of quality that you expect from *Oklahoma Politics.*

I wanted to begin this by issuing a series of thanks. Thank you to Dr. Ananga who I am following in this position. Editing a Journal is a rewarding experience. It is also a challenging one. Anyone who has had to try and wrangle reviewers over the Summer knows how difficult it can be. Dr. Ananga did this job in an excellent and professional manner, and I want to thank him for that work.

Additionally, I want to thank Dr. Christine Pappas who has been an invaluable resource over the past couple of months. In addition to working on the Book Reviews she has been the person who helped me with the mechanics of deadlines and timetables. That you are holding a Journal is a testament to both. If you find something you dislike in this edition, then place the blame with me.

I also want to thank the authors and reviewers for their work. Without submissions and without reviewers to improve those submissions there is no *Oklahoma Politics.* Anyone who has done this work knows how challenging it is. I want to thank everyone involved for their work. That work never ends. I am already thinking of the next issue of *Oklahoma Politics* and would love to see submissions from you. Below you will see submission guidelines. Please consider submitting your work this coming year. I would love to read it.

Finally… Thank you for reading.

The peer-reviewed journal *Oklahoma Politics* publishes articles, research notes, and book reviews that have a significant Oklahoma political, social, and environmental related issue. Consequently, we consider work that addresses practical methods and make significant contributions to scholarly knowledge about theoretical concerns, empirical issues, or methodological strategies in the subfield of Political Science and or environmental politics in the State of Oklahoma. Manuscripts submitted for review should address an important research problem and or question, display a modest level of creativity and or innovation in research, contribute in a significant fashion to a body of knowledge, and lastly, demonstrate the use of appropriate quantitative and or qualitative methods.

Our core concern is to ensure that we provide a platform for authors from Oklahoma and their collaborators from around the United States and around the world to inform the larger scientific community of current political science and environmental politics related research issues in the state. All manuscripts submitted for publication in our journal are thoroughly reviewed by anonymous referees. The submitted manuscripts first goes through a detailed check including a plagiarism check. The editor together with the editorial office takes charge of the review process.

When a manuscript is accepted for full review, the editor will collect at least two review comments and prepare a decision letter based on the comments of the reviewers. The decision letter is sent to the Corresponding Author to request an adequate revision after which the manuscript is forwarded for eventual publication. If you would like to publish your research in *Oklahoma Politics*, please submit your paper for peer-review at: david.searcy@swosu.edu

David Searcy
Editor, Oklahoma Politics

SUBMISSION GUIDELINES

GENERAL

Oklahoma Politics invites submissions that explore the broad context of politics affecting Oklahoma and its place in the surrounding region. We are especially interested in submissions that bring to bear a variety of methodological, analytical, and disciplinary perspectives on state and local politics of the central-south region of the United States: Oklahoma, Kansas, Colorado, New Mexico, Texas, Arkansas, and Louisiana. Because "politics" cannot be thoroughly explored from only a single disciplinary point of view, trans-disciplinary and collaborative projects are encouraged. Though we are the journal of the Oklahoma Political Science Association, we encourage submissions from historians, economists, sociologists, environmental scientists, policymakers, analysts, as well as political scientists and practitioners whose substantive research bears on the politics and issues of the state and region.

Oklahoma Politics is a fully peer-reviewed journal. Each submission receives at least three anonymous reviews and each is reviewed by the editors before a decision is made to accept a manuscript for publication.

MANUSCRIPTS

Manuscripts should be no longer than 30 pages or more than 9,000 words, double-spaced; text, graphics, notes, and references included; no extra space between paragraphs. Do not indent paragraphs. Type font: Times New Roman; 12 point. Notes should be footnotes, not endnotes, and references should be the last part of the manuscript. Graphics (tables and figures count 300 words) submitted separately, one per page, with internal reference indicating the approximate placement in the body of the text (i.e.: "[Table 1 about here]"). Tables/figures must not be larger than a single page.

INTERNAL NOTE STYLE

Footnotes, sequentially numbered superscript (e.g. [1, 2, 3, 4]).

Internal reference style: (author last name year); e.g. (Jefferson 2007).

Internal reference with page number: (author last name year, page #); e.g. (Jefferson 2007, 32). Multiple internal references separated by semi-colon; alphabetical first, then by year: (Author A 2007; Author B 1994; Author CA1 2007; Author CA2 1992).

REFERENCE AND NOTE STYLE

Manuscripts and book reviews must follow the APSA Chicago Manual of Style or Style Manual of Political Science. These format and citation styles can be found in the journals of the American Political Science Association: American Political Science Review, Perspectives on Politics, and PS: Political Science &Politics.

Examples

Journals: Author last, author first or initial. Date. "Article Title." Publication Volume (Number): Page-Page. Example: Budge, Ian. 1973. "Recent Legislative Research: Assumptions and Strategies." European Journal of Political Research 1 (4): 317- 330.

Books: Author last, author first or initial. Date. Title. Publication City: Publisher. Example: Green, Donald, and Ian Shapiro. 1994. Pathologies of Rational Choice Theory. New Haven, CT: Yale University Press.

GUIDELINES FOR CITING CHAPTERS AND WEBSITES

Chapters

Author last, author first or initial. Date. "Chapter Title." In Book Title, ed. Book Author First, Last. Publication City: Publisher. Example: Mezey, Michael L. 1991. "Studying Legislatures: Lessons for Comparing Russian Experience." In Democratization in Russia: The Development of Legislative Institutions, ed. W.H. Jeffrey.

New York: M.E. Sharpe.

Websites
Author last, author first or initial. Date. "Publication Title." (Last Access Date). Example: Collins, Paul. 2005. "Data Management in Stata." http://www.psci.unt.edu/~pmcollins/ Data%20 Management%20in%20Stata.pdf (September 16, 2016).

TABLE & FIGURE STYLE GUIDELINES
Each table or figure must fit on a single page. Authors must submit tables and figures in appropriate format.

Table 1: Similarities Between Oklahoma and West Virginia

	Mean*	**SD**
Not Term Limited (n=72)	2.4	7.5
Term Limited (n=28)	5.0	8.6
Majority Party	Republican	Republican
* Difference significant at the .10 level		

ORGANIZATIONAL/HEADINGS
Major Section Head (Bold Caps & Centered)

SUBSECTION HEAD (CAPS & LEFT: NO PERIOD)
Sub-sub Section Head (Title Caps, Left, & Italicized; No Period)

MANUSCRIPT SUBMISSION
Manuscripts must contain: a cover page with title, author, and author affiliation and contact information; a separate cover page with title only; an abstract of no more than 150 words and the text of the manuscript. Authors whose manuscripts are accepted for publication must submit a short biographical sketch for inclusion in the journal.

BOOK REVIEWS

Book reviews should be no longer than 1500 words. Reviews should be of books on topics relevant to the journal as delineated in the Submission Guidelines. Review style should follow that of the journal as a whole. Full bibliographic information should be included as the lead to the review.

Manuscripts (or ideas for manuscripts) should be emailed to: David Searcy, Editor in Chief, Oklahoma Political Science Association - Southwestern Oklahoma State University, 100 Campus Drive, Weatherford, OK 73096. Email: david.searcy@swosu.edu.

Book Reviews (or ideas for book reviews) should be emailed to: Christine Pappas, Book Review Editor, Oklahoma Politics, East Central University. Email: cpappas@ecok.edu. Telephone: 580-559-5640

PAPERS AND BOOK REVIEWS

They must be submitted electronically, in either Microsoft Word 2003 (or later) format (.doc/.docx) or Rich Text Format (rtf). No other forms of submission will be accepted. Manuscripts of papers not in format compliance will be returned without review.

UNCONQUERED AND UNCONQUERABLE: HISTORICAL CONTEXT OF MCGIRT V. OKLAHOMA

DELANIE SEALS
EAST CENTRAL UNIVERSITY

ABSTRACT

Decades of oppression and assimilation have largely impacted our modern-day Tribal Governments, which continue to fight for sovereignty and build strong and successful governmental systems. The 2020 United States Supreme Court decision, *McGirt v. Oklahoma*, of which recognized and upheld the existence of the Muscogee (Creek) Nation's Reservation, highlights the continued legal and political resistance of Oklahoma Tribes. The literature review incorporates academic articles examining U.S. treaties, federal plenary power, tribal governance, and major implications and impacts of *McGirt*. The methods used to evaluate these topics involve qualitative research to gather and review both primary and secondary legal resources. This research is continually evolving due to the uncertainty of how *McGirt* will affect both Tribes and the State of Oklahoma. Tracking these changes and potential future impacts will build a better understanding of contemporary legal changes and strengthen the foundation for tribal and federal government relations. Much research uses a holistic lens with general observations and explanations when researching *McGirt* versus examining the intricacies of federal Indian policy leading up to the decision in *McGirt*. This paper aims to not only include general implications of *McGirt*, but also demonstrate how the case is legally impacting the Five Tribes and the Quapaw Nation. This thesis will examine the history of tribal governments; eras

of federal Indian policy; Oklahoma's relationship with Native nations; *McGirt's* impact on criminal jurisdictional matters; changes resulting from the *McGirt* case in tribal governments; and lastly, current and future legal precedents that are evolving from the case.

Keywords: McGirt, tribal government, Indian, law, jurisdiction, reservation, treaty, Oklahoma, court, sovereignty

INTRODUCTION

United States Supreme Court rulings can feel like faraway decisions that seem to not have an immediate impact on our everyday lives. Most Americans accept the decision without really thinking about how the consequences will affect their daily lives. Many see the decisions from the justices as upholding minority rights or disadvantaged communities. One need only think of *Brown vs. The Board of Education* or *Roe vs. Wade* –where the minority fought to uphold their rights– to confirm this fact. Supreme Court decisions such as *Roe v. Wade*, which seemed to be of concern mainly to a minority of people, resulted in a prodigious cultural, political, and legal change in the United States. Others see the opinions from the Supreme Court as purely textualist, upholding the laws, treaties, resolutions, and legal documents that specify the legislative history of an issue. *Bostock v. Clayton County* is an infamous case where the Court pointed to the Civil Rights Act, which clearly and plainly prohibits discrimination on the basis of sex, to protect the rights of transgender employees from prejudice in the workplace. While the progress of law is slow and often unfavorable to marginalized groups, there always exists an unforeseen win, as seen in the *Bostock* case. With any piece of legislation, policy initiative, or highly precedential case, decades of reformation from advocacy groups is vital. The fight for equality and equity by underrepresented and purposefully excluded communities has never wavered. An often-forgotten minority is Native Americans. Even through mass genocide, assimilation, diminishing populations, stripping of rights, and removal, Indigenous people all over

the United States still stand strong in their roots as resilient people. The fight continues in places such as North and South Dakota with the Dakota Access Pipeline, in Oregon with the Klamath Tribes' water fight, in New Mexico with rights to cultural practices (Schuknecht, 2018), and in Kansas, with Representative Sharice Davids being the second Native woman to be elected to congress in 2018.

The fight continues especially in Oklahoma, a devastating relocation to those in the past, but a place of sentimentality to those in the present. The deeply ingrained perspective of tribal dependence on colonial forces takes away from the historical tenacity of Tribes to gain religious and political sovereignty from the United States. Many Oklahoma tribal nations have formed intricate and successful governmental systems to maintain their sovereignty. Oklahoma Tribes have fought locally, state-wide, and federally to secure their nations and protect their rights as guaranteed by treaties signed by the federal government and tribal leaders. This continuous fight and resistance to cultural and political imperialism has led to revolutionary cases such as the United States Supreme Court *McGirt v. Oklahoma* decision. This case uncovered broken promises of sovereignty made by the federal government with the Muscogee (Creek) Nation in various treaties and statutes. In this case, the Supreme Court upheld the Muscogee Creek Nation Reservation and finally held the government to its word. For some, *McGirt v. Oklahoma* is the case that is leading Oklahoma toward destruction and inevitable chaos, while for others, it is the first step toward sovereignty. The outcome of the *McGirt* decision, while incredibly frustrating, was the beginning of hope for thousands of Indigenous Peoples in Oklahoma. A promise not so broken. This thesis will examine these cultural impacts made by the Supreme Court's recent *McGirt v. Oklahoma* decision. More specifically, this paper will explore congressional enactments, historical and current relationships between Tribes, the State of Oklahoma, and the federal government; opinions from legal professionals facing the impacts of the case; and the political and judicial changes made by the

Chickasaw, Choctaw, Cherokee, Seminole, Muscogee (Creek), and the Quapaw Nation in response to the *McGirt v. Oklahoma* Supreme Court case.

LITERATURE REVIEW

ON THE POWER AND LAW: MCGIRT V. OKLAHOMA

Maggie Blackhawk is a professor of law at NYU and a teacher of constitutional law, federal Indian law, and legislation. Her research has been published in the Harvard Law Review, Stanford Law Review, Yale Law Journal, Columbia Law Review, and the Supreme Court Review. In her article, "On the Power and Law: McGirt v. Oklahoma," federal Indian law and the success of *McGirt* is more deeply explored in order to understand the relationship between power and law, as well as examine theories of legal change (Blackhawk, 2021). Blackhawk touches on the "presumption from many Oklahomans that the power of ideology (believing that Native nations cannot govern on a large scale) would limit the operation of law" (Blackhawk, 2021, p. 4-5). The *McGirt* case highlights the fight of marginalized groups to reform United States law, without having to take the long battle of reforming societal thinking. Native people have continued to organize power movements, relying on the use of the law to remedy historical injustices and further secure tribal sovereignty (Blackhawk, 2021, p. 7). The *McGirt v. Oklahoma* case was revolutionary in that it secured the idea of law meaning more than contemporary ideologies. These sentiments were made by the Supreme Court in respect to the *Solem* test. This test comes from the *Solem v, Bartlett* Supreme case where the Court held that "only Congress can divest an Indian reservation of its land and diminish its boundaries, but with clearly evincing an intent to change boundaries before diminishment will be found" *Solem v. Bartlett*, 465 U.S. 463, 463 (1984). In Blackhawk's essay, she highlights the shift in the Court's susceptibility to society's ruling outlook on Native erasure, which ultimately gives Tribes the chance to better leverage the law. In *Oliphant v. Suquamish Tribe*, the Court decided that tribal courts

do not have criminal jurisdiction over non-Indians. *Oliphant*, 435 U.S. 191, 191 (1978). The Court in this case, took a textualist approach in reference to the Treaty of Point Elliott, but still largely relied on "common notions of the day" to undermine tribal sovereignty (Blackhawk, 2021, p. 22). Unlike *Oliphant*, the treaty that the Muscogee (Creek) Nation had made with the U.S. was taken solely as a formal legal text that would formally recognize the sovereignty Creeks had over their lands. Due to this feat, other Tribes, such as the Chickasaw, Choctaw, Cherokee, and Seminole Nations' treaties were upheld.

Blackwell states that, "*McGirt* stands as an example of how the social dimensions of power operate as distinct from power in the context of ordinary partisan politics" (Blackwell, 2021, p. 29). *McGirt* is proof of this shift towards non-partisan Supreme Court rulings –in relation to federal Indian policy– that lean away from contemporary political "liberal" or "conservative" decisions. The idea of Tulsa existing within a reservation did not fit with the "common practice of the day" or the "dominant ideology," so legal textual arguments were originally placed on the backburner. As Blackwell perfectly summarizes, "in issuing *McGirt*, the Supreme Court breached the taken-for-granted world view that Native nations could not possibly govern a modern city and, in so doing, it offers the opportunity for the legal academy, as well as the public, to further interrogate and possibly unsettle the dominant ideology of Native erasure" (Blackwell, 2021, p. 36). Blackwell's essay focuses on the importance of tribal nations to continue to advocate for sovereignty through involvement in both the legislative and the judicial branches. The Court's decision in *McGirt v. Oklahoma* showcases the efforts of Native American advocates to codify their rights into law, instead of primarily focusing on changing dominant ideologies.

Permanent Homelands Through Treaties with the United States: Restoring Faith in the Tribal Nation-U.S. Relationship in Light of the McGirt Decision

Angelique Eagle Woman is a law professor, legal scholar, Chief Justice of the Sisseton-Wahpeton Supreme Court, and the Director of the Native American Law and Sovereignty Institute. She has produced numerous articles on Native American sovereignty and the quality of life for Indigenous peoples. In her essay, "Permanent Homelands Through Treaties with the United States: Restoring Faith in the Tribal Nation-U.S. Relationship in Light of the *McGirt* Decision," Eagle Woman discusses the history of treaty making with North American Tribes. The beginning of the essay explores the historical precedents which led to the assumed authority of first the British and then the colonists fleeing Britain. The European settlers concluded that Indigenous people were inferior beings who needed the guidance of European settlers. The early settlers justified the invasion by claiming Native peoples' lands through the idea of Doctrine of Discovery. According to Cornell Law School's Legal Information Institute, "this Doctrine refers to a principle in public international law under which, when a nation "discovers" land, it directly acquires rights on that land" ("Doctrine," 2022). After the early Americans seized much of the United States and had formulated the three branches of government the Tribes were left to deal with the U.S. federal government. During this time, Federal Indian policy was largely constructed by the United States Supreme Court. The Marshall Trilogy "provided the framework in United States' law to undermine the rule of law for tribal governments as denying full property ownership rights, denying full sovereign authority, imposing a ward/guardian relationship, and setting up a tug of war between the federal and state governments, with the U.S. Supreme Court acting as mediator" (Eagle Woman, 2021, p. 671). Similar to the contemporary use of the phrase "guardian and ward" used in guardianship cases, Tribes are reliant on the federal government to be legally and politically accountable for them. Much of the responsibility of the Supreme Court, in relation to federal Indian policy, is to interpret treaties

and congressional enactments in order to gauge Congress' decisions. "The Indian canons of construction assist the Court in the interpretation of these treaties and statutes through three summarizations: treaties are to be construed as the Indians would have understood them; any ambiguities are to be construed in favor of the Indian understanding of the treaty document; and all powers and rights are reserved to a Tribe unless expressly relinquished in a treaty document" (Eagle Woman, 2021, p. 659). The Court is left with the choice of whether or not to utilize these interpretations in their decisions.

In the article, Eagle Woman delves into two cases that the Court has cited to and used in later decisions. The first case is *United States v. Celestine* which "set forth the principle that when Congress has once established a reservation all tracts included within it remain a part of the reservation until separated therefrom by Congress". *United States v. Celestine*, 215 U.S. 278, 285 (1909). The second case is *Mattz v. Arnett*, which "adhered to the legal principle that a congressional determination to terminate must be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history". Mattz v. Arnett, 412 U.S. 481, 505, 503 (1973). These sentiments from both of these cases played a major role in *McGirt v. Oklahoma*, which also largely relied on historical documents to uphold the Muscogee (Creek) Reservation. Writing the opinion of the Court in the *McGirt* decision, Justice Gorsuch rejected the substitution of stories for statutes offered by the State of Oklahoma (Eagle Woman, 2021, p. 679). Despite Oklahoma's attempt to undermine tribal sovereignty with stories, the Court did not waver in their responsibility to evaluate the written law. Justice Gorsuch stated that "in any event, the magnitude of a legal wrong is no reason to perpetuate it". *McGirt v. Oklahoma*, 591 U.S., 38 (2020). Since the creation of federal Indian law, the precedents created by the Supreme Court have instilled hesitation and fear in tribal nations. The outcome of Supreme Court cases can either sway towards or sway away from treaties that would promote the self-determination of American Indian Tribes. The conclusion of

Eagle Woman's article summarizes the importance of the federal government collaborating with tribal nations, as both governing powers continue their sovereignty and use of power. In the article, Eagle Woman states that "Native Americans have consistently employed the discourse of treaty rights to gain recognition for the land and resource rights that have been wrongfully appropriated from them, to assert sovereign rights, and to compel the federal government to carry through on its trust obligations. Although treaty rights are commonly understood as political rights, they also have fundamental importance to the cultural survival of Native American people. Thus, in many ways, the discourse of treaty rights for Native Americans is responsive to international human rights law, which speaks to the obligation of national governments to ensure the cultural survival of distinctive ethnic groups" (Eagle Woman, 2021, p. 686). Pre-*McGirt*, the federal government's interaction with Tribes consisted of an unbalanced grab of power, which left tribal sovereignty on a rocky path. Post-*McGirt*, the Court upheld the enforcement of treaty rights and redress for the violation of treaty rights throughout American history.

Restoring Oklahoma: Justice and the Rule of Law Post-McGirt

Sara Hill has served as the current Attorney General of the Cherokee Nation since 2019 and has worked over a decade for the Nation's Office of the Attorney General. She has spent her entire legal career in Indian Country fighting for a wide range of issues involving Native rights. Her essay, "Restoring Oklahoma, Justice and the Rule of Law Post-McGirt," written largely from her experience as the Attorney General, provides an explanation of tribal and state collaborative efforts pre- and post-*McGirt*. In addition to this, her essay analyzes the challenges *McGirt* presented to Oklahoma tribal nations, and how the federal government could support tribal criminal justice systems in their response efforts to the changes brought on by the case.

This literary analysis will focus on sections three (III) and five (V) of Hill's essay. In section three, Hill discusses the existing struc-

tures, some successful while others not so much, in Indian Country that attempted to bridge the jurisdictional gap between tribal and non-tribal communities. During the termination era, Congress enacted Public Law 280 "to permit states to obtain criminal and civil jurisdiction over Indian Country" (Hill, 2022, p. 566). This Act provided jurisdictional rules and allowed for concurrent jurisdiction between state governments and the federal government. In 1968, PL 280 was amended to force states to ask consent from tribal nations in order to opt into the statute (Hill, 2022, p. 566). This law unraveled into a burdensome problem for state law enforcement due to the lack of funding from the federal government to support the changes enacted in PL 280. The issue Hill found with PL 280 was that it left tribal governments at the mercy of state governments, with few options to address potential issues.

Cross-deputization agreements are another tool that many tribal and non-tribal mixed communities have utilized in Indian Country. As Hill states, "the purpose of cross-deputization agreements is to allow tribal, state, and federal law enforcement officers to operate under the authority of the sovereign having jurisdiction. It provides multi-jurisdictional credentials to law enforcement who are commissioned in both state and tribal law enforcement entities (Hill, 2022, p. 568). The implementation of PL 280 and cross-deputization agreements pre-*McGirt* have been two ways that state and federal law enforcement agencies have worked with tribal agencies, but much work is still needed. The lack of cooperation from particular state agencies has made it difficult for these avenues to function accordingly. Some local law enforcement agencies have been reluctant to enter into cross-deputization agreements with local Tribes due to a lack of intergovernmental communication and reluctance to work with Tribes. However, many non-tribal and tribal police agencies have entered into compacts, such as the recent Chickasaw Nation Law Enforcement Agreement between the Oklahoma District Attorney, District 20, Melissa Handke and the Nation ("Chickasaw Law," 2023). When cross-deputization agreements are not made, it makes it difficult

for local, state, and tribal (also known as Lighthorse) officers to quickly and efficiently react to 911 calls or traffic stops due to the lack of knowledge of jurisdiction on tribal and non-tribal lands. Hill concludes that it is vital for Oklahoma governmental officials to eradicate misinformation that is spread and distrust that is harbored towards tribal law enforcement agencies.

In section five, Hill delves into two options the United States can utilize to support Indian Country and help resolve post-*McGirt* jurisdictional conflicts. The first option is for Congress to fully fund tribal law enforcement on reservations in Oklahoma. Hill proposed the increase in funding in five specific categories: court expansion, tribal prosecution, tribal police, public defense counsel and detention and victim services (Hill, 2022, p. 578-581). The second option is the passage of H.R. 3091, also known as the "Cherokee Nation and Chickasaw Nation Criminal Jurisdiction Compacting Act," introduced by Congressman Cole. According to Congress.gov, H.R. 3091, "authorizes the Cherokee and Chickasaw Nation to enter into intergovernmental compacts with Oklahoma for the state to exercise its criminal jurisdiction within Indian Country". Cherokee Nation and Chickasaw Nation Criminal Jurisdiction Compacting Act, H.R. 3091, 117, (2022). As of 2023, H.R. 3901 has only been referred to the Subcommittee on Crime, Terrorism, and Homeland Security. As Hill states, this bill will help to "provide the necessary authority for tribal-state agreements on subject matter criminal jurisdiction in the shared interest of both tribal and non-tribal people" (Hill, 2022, p. 584). Congress has a duty to uphold the trust doctrine and support tribal affairs. The *McGirt* case has brought to light the many problems existing in Oklahoma, but with these issues come solutions that have already been formulated amongst tribal nations and the State of Oklahoma. As Hill states in the conclusion of her essay, "Now, Congress, the leaders of the Five Tribes, and the leaders of Oklahoma have a challenge: to remake criminal justice in Eastern Oklahoma and find a balance of tribal and state jurisdiction that works" (Hill, 2022, p. 590). The reformation of criminal jurisdiction in Indian Country has come

with its fair share of ups and downs, but the decision has only highlighted the resilience of tribal nations in times of change. Hill points out, similarly to Justice Gorsuch in his opinion, that the *McGirt* decision did not upend anything, but rather legally concluded facts that we already know. Reservations have always existed in Oklahoma, and the rights of tribal nations written in past treaties have only gained the power and recognition they deserve and have always been owed.

METHODS

This essay was written with the use of academic articles and through conversations with legal professionals to educate and inform readers about the historical implications leading up to the *McGirt v. Oklahoma* decision and the resulting legal impacts. The methods used to gather this information involved qualitative research using purposive sampling. I spoke with legal and political scholars working through and with these impacts in real life. This included Judges at the Chickasaw or Seminole Nation; Light Horse Police and non-tribal police officers; the Ada City Council; attorneys practicing Indian law; and community activists working to change the stigma associated with this revolutionary case. For a better scope of the legal analysis of this case, primary and secondary legal resources were utilized in the production of this paper.

PURPOSE

The purpose of this thesis is to track and document criminal jurisdictional matters in Oklahoma surrounding the *McGirt v. Oklahoma* case and the overall political upheaval that has occurred in response to this decision. An analysis of the history leading up to the decision will be provided to offer more context to the developments that led us to where we are now.

ANALYSIS

PRE-COLONIAL TRIBAL GOVERNMENTS

Indigenous people, colonialism, assimilation, cultural integration, land and water rights, healthcare practices, and strong governing bodies are embedded in the cultural history of the United States. The impressive civilizations and governing styles of Tribes in the United States is often underwhelmingly showcased in history. The unfortunate and extremely inaccurate story of the "merciless Indian savages" still prevails today and sadly skews the minds of both young and older people in the U.S. Many Tribes had well-developed and well-established governing systems before colonial contact, which is often absent in the tale of America. Historical accounts, such as the Iroquois Confederacy influencing the U.S. Constitution, help form and show that Indigenous governing styles have always and continue to lead the way and inspire great political ideologies and governments, such as the political make-up of the United States of America. Starting off Indigenous history with the arrival of Europeans does a great disservice to the highly impressive and complex governments that existed prior. It is important that history lectures and books shed light on tribal nation's political systems that have existed since time immemorial. The continuous denial of Indigenous people's ingenuity and resourcefulness was harmful in the past and continues to harm Tribes present day. In the age of self-determination of American Indian governments, it is important to understand and recognize the long existence of tribal governance in North America. The basis of federal Indian policy and the distinction of American Indians as a "political class" is built upon the idea of perpetuity of tribal governments in the U.S., with many Supreme Court cases upholding these precedents.

PHASES OF THE FIVE TRIBES' GOVERNMENTS

Original Governments

Indigenous resilience, creativity, resourcefulness, and the mas-

tery of intricate and effective governing styles all showcase the pre-colonial political systems of North American Tribes. While the debates about *McGirt* have focused on Oklahoma law recently, the legal discoveries that have been made in the case have been existent since before the state was formed. This part of the paper will highlight the history specifically related to the Five Tribes and the Quapaw Nation's forced migration to the Indian Country and the political pressures that have led to their political success today. Tribal governance has been a rocky path for many Tribes due to colonization and forced assimilation. Because of these things, we have only seen the current colonial government structures that have been imposed on tribal nations. The Cherokee, Muscogee (Creek), Seminole, Chickasaw, Choctaw, and Quapaw Nations had vast, complex governmental and economic structures dating centuries before European arrival. Many of the historical values of tribal governments were individual autonomy, emotional, spiritual, and physical connection to one's homeland, and matriarchal/patriarchal/egalitarian structures.

Transitional Governments

During the sovereign-to-sovereign era, the federal government treated Tribes as sovereign nations and made treaties with them, but this ended due to the Doctrine of Discovery. Soon after, the Government decided to discard these formal relations and move on to their true intentions: removing "Indians" from newly European-owned lands and assimilating the Indians into "non-savage" beings. Early Oklahoma history goes back to the infamous Trail of Tears. According to the Oklahoma Historical Society, "the 'Trail of Tears' refers to the difficult journeys that the Cherokee, Creek, Choctaw, Chickasaw, and Seminole Nations took during their forced removal from the ancestral homelands in the southeast to Indian Territory, or present Oklahoma" (Frank, n.d.c). Hundreds of people died from malnutrition, disease, frostbite, and pure exhaustion (Frank, n.d.c). The hope for these Tribes was the chance to restart and make do with the land they received. The promise given to these Five Tribes by the United States was the last thing

the Tribes held onto in the midst of their deadly circumstances. They fought to maintain the land that was rightfully theirs from white settlers but to no avail. The Trail of Tears sealed the mistrust that Indigenous people felt for both states and the federal government.

European settlers began to encroach on the already small amount of land that Tribes were given after the removal. This was due to parts of reservations being conveniently left for non-Native settlers. The goal for the federal government, and many White settlers, was for the total assimilation of Tribes. This became even more apparent through the passing of the Allotment Act, also known as the Dawes Act of 1877. As stated by the Indian Land Tenure Foundation, "The General Allotment Act gave members of selected tribes permission to select 40 to 160 acres for themselves and their children. The federal government negotiated leftover land to non-Indian settlers, which resulted in 60 million acres being ceded or sold to the government for non-Indian homesteaders and corporations as surplus lands" ("Land Tenure History," n.d.). Later, the Oklahoma land run led to even more "Indian reservations" being taken from Native people.

The hostility towards Indigenous land ownership led to these actions being allowed with no repercussions. In other states, the U.S. government attempted to cripple Tribes less through violence, and more through statutory and judicial precedent. Or as Walter E. Echohawk calls it the "Courts of the Conqueror." The divided territory seemed to be a jagged split between Native Americans and settlers. "The federal government cleared the way for statehood in 1898 with the Curtis Act, which announced that tribal governments would be abolished in March 1906 and forced the Five Tribes to accept the allotment law from which they'd been exempt" (Blakemore, 2020). With growing antagonism from White settlers, the push for the unassigned areas of "Indian territory" to become state-led areas resulted in the birth of the State of Oklahoma in 1907. Generations passed, and the Tribes were forced to

assimilate as usual, leading the debates of land ownership to die off. The broken promise from the federal government continued to be broken for generations to come. The atrocities committed by the government have only been mended enough to keep Tribes at bay, but not to truly heal the deep wounds from years of forced removal and continual assimilation. Through congressional acts and legal precedents, such as the Marshall Trilogy, Oklahoma Tribes had to adapt to colonial governmental structures and leadership styles. The Oklahoma Indian Welfare Act of 1936 helped Tribes adopt constitutions and build up their governments. Oklahoma Indian Welfare Act, 25 U.S.C. § 5210-5210 (1936). While the IRA had some good aspects, such as the idea of restoring land to Tribes and promoting tribal sovereignty, it also pressured Tribes to assimilate, yet again, to the U.S. idea of a "proper" governmental structure. In the end, the Indian Reorganization Act simply gave the illusion of choice to tribal nations.

Along with the IWA, the Indian Civil Rights Act of 1968 extended some basic Constitutional rights from the Bill of Rights to tribal citizens in relation to tribal governments. According to the U.S. Department of Indian Affairs, "in 1975, Congress enacted the Indian Self-Determination and Education Assistance Act, promoting greater autonomy and responsibility over contractual programs managed by the Secretary of the Interior. Tribes finally had involvement in controlling federal services to ensure target delivery to the needs and desires of the local communities" ("Self-Determination," n.d.). In the end, the growing pressure to adopt the settler's way of governing led the majority of Tribes to adopt written constitutions and develop governments similar to the White settlers.

Contemporary Governments

As mentioned earlier, the Marshall Trilogy reaffirmed tribal sovereignty and federal trust responsibility through historic court cases. The first case is *Johnson v. McIntosh* (1823) which generally states that private citizens cannot purchase land from Tribes; the

second case is *Cherokee Nation v. Georgia* (1831) which states that Tribes are "domestic dependent nations;" and lastly, the third case is *Worcester v. Georgia* (1832) which states that only the federal government can deal with Tribes and that state law has no force. The federal government's plenary power over tribal affairs can be seen as a paternalistic relationship (guardian/ward relationship). *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). Tribes can be federally recognized by an act of Congress, the Department of Interior through administrative procedure, or a court decision. Along with this, as seen in the Marshall Trilogy, the federal government also has power over Tribes on land rights, negotiation, and overall Indian affairs. Ultimately, the federal government has supreme authority over tribal nations. The Marshall trilogy set in stone this looming dominant power that congress has, which in turn, recoils most of the trust that Indigenous people have for the government. Instead of being a body of power that can be seen as a beacon of hope towards genuine tribal sovereignty, it's seen as a threat.

For tribal nations to retain the sovereignty they rightly deserve, Congress enacted legislation to afford tribal governments more power over tribal affairs and people. Public Law 280 provides limited criminal and civil jurisdiction to tribal governments over tribal members within their reservations. Tribes were able to elect their own chiefs and administer programs in their communities. The passage of the 1978 Indian Child Welfare Act (ICWA) is extremely important for tribal people, especially for Native children. It provides a layer of protection to try and prevent Native children from being wrongfully removed from their culture and community. It has given Tribes the right to intervene and/or transfer jurisdiction during a case. Lastly, the Indian Gaming Regulatory Act passed in 1988, helped to create a regulatory framework and gave tribal nations the opportunity to distinguish their gaming facilities from non-tribal. Native people have had almost everything stripped of them, so congressional enactments like Public Law 280, ICWA, and the Indian Gaming Regulatory Act have helped give back some power and reassurance to Tribes. The Cherokee, Mus-

cogee (Creek), Seminole, Chickasaw, Choctaw, and the Quapaw Nation have Legislative (Tribal Counsel/Legislative), Executive (Governor/Chief/Chairman), and Judicial (tribal courts) branches similar to the United States government. While these contemporary governmental structures tell a sad tale of political and cultural assimilation by White settlers, they also show the dedication to striving for more autonomy in order to protect their culture, lands, and people. *McGirt v. Oklahoma* only strengthened the power of tribal governments in Oklahoma.

TREATIES

Antecedent Treaties

Before the lethal and arduous journey, rightfully named the Trail of Tears, the Indian Removal Act forced Tribes into treaties to secede their lands in exchange for land in Indian Territory. Chiefs, Minkos, and tribal diplomats from the Cherokee, Muscogee (Creek), Seminole, Chickasaw, Choctaw, Quapaw Nations all signed treaties with the federal government. The Cherokee Nation signed the Treaty of New Echota "gave the Cherokees five million and land in present-day Oklahoma in exchange for their 7 million acres of ancestral land" Treaty of New Echota, 7 Stat. 478, 388 (1835). The Removal Treaty (1832) was signed by the Muscogee (Creek) Nation. "The Muscogee leadership exchanged the last of the cherished Muscogee ancestral homelands for new lands in Oklahoma Indian Territory ("Muscogee History," n.d.). In addition to this treaty with the Muscogee Creek Nation, an 1856 Treaty promised that "no portion" of Creek lands would ever be embraced or included within, or annexed to, any Territory or State," and that the Creeks would have the "unrestricted right of self-government," with "full jurisdiction" over-enrolled Tribe members and their property". Treaty with Creeks and Seminoles, Art. IV, Aug. 7, 1856, 11 Stat. 700. 1856). The Seminole Nation signed the Treaty of Payne's Landing (1832) that forced Seminoles to "relinquish the lands in the Territory of Florida, and emigrate to the country assigned to the Creeks, west of the Mississippi river". Treaty With the Seminole, 7 Stat. 368, 344 (1832). The Chickasaw Nation re-

settled to Indian Territory among the Choctaws after signing the Treaty of Doaksville (1837).

The Choctaws moved in similar fashion to the Chickasaws. The Choctaws signed the Treaty of Dancing Rabbit Creek (1830) in which "the Choctaw nation ceded their lands east of the Mississippi River; and moved beyond the Mississippi River". Treaty With the Choctaw, 7 Stat. 333 (1830). Lastly, the Quapaw Nation signed "the Treaty of 1833 which relinquished Quapaw claim to their land on the Red River in exchange for 150 sections of land west of the state line of Missouri, in Indian Territory, which would become modern-day Oklahoma and Kansas" (Bandy, n.d.). At the time, the signing of these treaties signified the forced displacement of Indigenous people from their homelands. Native people fought physically and legally to retain their original lands, but European dominance became too powerful. They trekked into unknown and unfamiliar territory to build back their nations and keep their history, culture, language, traditions, and people alive. The history behind the assimilation of these tribal nations highlights the adoption of Eurocentric ways by Oklahoma Tribes. Today, these treaties have paved the way for successful tribal governments. Despite these sorrowful implications, without the signing of these treaties by the Five Tribes and the Quapaw Nation, their tribal sovereignty, criminal jurisdiction, and reservations would not have been upheld by the Supreme Court.

RESERVATION PRECEDENTS

Indian Country Defined

As defined by the federal law, Indian Country is described as the following:

> "All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and

whether within or without the limits of a state; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same". Indian Country Defined, 18 U.S. C. § 1151 (1948). Shortly after the founding of the United States, the government began making treaties with Tribes to move/contain Indigenous people to make room for European settlement. In an effort to allot Native Americans' land, the federal government created two types of allotment lands in Oklahoma. Restricted lands and trust lands have a "title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation; and (ii) "trust or restricted interest in land" or "trust or restricted interest in a parcel of land" means an interest in land, the title to which interest is held in trust by the United States for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation" Indian Land Consolidation, 25 U.S.C. § 2201 (4)(i) (2004). Restricted lands are lands that were assigned to citizens of the Five "Civilized" Tribes and include Eastern Oklahoma. An individual Native person holds title to the property, but there exist restrictions on the title, such as restrictions against alienation, taxation, and sales, and leases must be approved by the Department of Interior Rights-of-Way Through Indian Lands, 25 U.S.C. § 331 (1925). These restrictions were created by the Stigler Act of 1947, which aimed to change the laws governing the heirs of allottees. Trust lands were assigned to members of other Tribes, which was relevant throughout the United States, and the western part of Oklahoma. Trust land differs from restricted in that title is held by the federal government with beneficial interest also held by an individual Native person. Due to the guardian-ward relationship, much of Indian Country is under the control of the Federal Government.

Supreme Court Cases

The idea of reservations still existing in Oklahoma seemed to many as a fairytale, but cases such as *Solem v. Bartlett* which upheld the notion that for a reservation to be disestablished, Congress must show clear intent to do so. *Solem v. Bartlett*, 465 U.S. 463, 463 (1984). The Supreme Court case arose from a lower court case involving John Barlett, a Cheyenne River Sioux tribal member, who was convicted of attempted rape in the South Dakota state court. The point of controversy was whether the Cheyenne River Act (1908), which opened up the reservation to homesteading, diminished the reservation. The case was taken to the Federal District Court where they held that the reservation was not diminished, meaning that the State lacked jurisdiction to prosecute him. In addition to this, the court found that the federal courts had exclusive jurisdiction. Major Crimes Act, 18 U.S.C. § 1153, 679 (1885). In 1984, a writ of certiorari was written to the Supreme Court for final review of the case. In a unanimous decision from the Supreme Court, the Court affirmed the Federal District Court and the Court of Appeals decisions. The Supreme Court held that Congress has ultimate authority of Indian reservation; opened reservation lands for sale to non-Indians do not express congressional purpose to diminish" *Solem v. Bartlett*, 465 U.S. 463, 463 (1984). The opened parts of the Cheyenne Reservation had retained their Indian character since 1908. *Bartlett* set a precedent for courts, when reviewing reservation status, to not substitute societal beliefs and stories for statutes with concrete language. This sentiment was largely expressed in *McGirt v. Oklahoma*.

The precedents in the *Solem v. Bartlett* case led to the *Nebraska v. Parker* case in which the Supreme Court came to similar conclusions. In 2006, the Omaha Tribe amended its Beverage Control Ordinance and sought to subject Pender retailers to the amended ordinance. Similarly to South Dakota, Pender retailers alleged that they were not in reservation boundaries. "Pender sought declaratory relief and a permanent injunction prohibiting the Omaha Tribe from asserting its jurisdiction over the disputed land" *Nebraska*

v. Parker, 577 U.S. 481, 1 (2016). In 2016, the Supreme Court held that the Omaha Act of 1882 did not diminish the Omaha Indian Reservation. The opinion in *Nebraska v. Parker* was similar to the opinion in *Solem v. Bartlett*. Again, they upheld that only Congress could diminish a reservation with clear intent to do so. In addition to this, the Court held that "historical evidence cannot overcome the text of the 1882 Act, which lacks any indication that Congress intended to diminish the reservation" *Nebraska v. Parker*, 577 U.S. 481, 2 (2016). The Court made a point, once again, to put statutory text at the forefront.

MCGIRT V. OKLAHOMA CASE

The *McGirt v. Oklahoma* case highlights the shift in the approach to Supreme Court cases concerning federal Indian law. Throughout this essay, the history of tribal governments, treaties, and Supreme Court precedents have been explored. The purpose of highlighting these important moments in federal Indian policy showcase how *McGirt* is not just a case that came out of nowhere. For generations, individual Native Americans scholars, activists, tribal leaders, and Native attorneys have been fighting for the Supreme Court to finally uphold treaties that secure tribal sovereignty–sovereignty that has existed since time immemorial. Cases concerning American Indians have historically been led on an unsteady ledge of trust and distrust in the federal government. The *McGirt* case presented the chance for the Supreme Court to uphold the treaties, and overall, Trust Doctrine, made by the federal government and Oklahoma Tribes. The question of reservation status and the legality of state jurisdiction over tribal members originate from the case *Murphy v. Royal*. Patrick Dwyane Murphy, a member of the Muscogee (Creek) Nation was tried in an Oklahoma state court in which he was charged and convicted of murder and ultimately sentenced to death *Murphy v. Royal*, 875 F.3d 896 (2017). Through exhaustion of various Oklahoma courts, Murphy was appealed to the United States Court of Appeals Tenth Circuit. The Tenth Circuit concluded: (1) Murphy's action originally had only been under the jurisdiction of the federal government due to

the Major Crimes Act because of his status as an American Indian, (2) the crime did in fact occur on Creek Reservation, which had not been disestablished according to the *Solem* test, and (3) the federal courts had sole jurisdiction over Murphy. *Murphy v. Royal*, 875 F.3d 896, 1-2 (2017). In the Tenth Circuit conclusion, the judges agreed that the case deserved further review before the Supreme Court. The case later developed in *Carpenter v. Murphy* before the Supreme Court. During the proceedings of the case, Justice Gorsuch had to recuse himself because he had previously considered the case when he was a judge on the U.S. Tenth Circuit Court of Appeals. The Court decided to issue no decision in the *Carpenter v. Murphy* case. In 2019, the U.S. Supreme Court granted certiorari to the *McGirt v. Oklahoma* case to settle the questions presented in the *Murphy* case.

The case began with a man by the name of Jimcy McGirt who was convicted by an Oklahoma court for three sexual assault offenses. Similarly to *Murphy*, McGirt argued that the State of Oklahoma did not have jurisdiction over him due to his status as an American Indian –enrolled in the Seminole Nation– and his crimes being committed in Indian Country (Creek Reservation). As discussed earlier, under the Major Crimes Act, any major crime (murder, kidnapping, rape, etc.) involving a Native American on or off congressionally recognized reservations must be prosecuted in federal courts Major Crimes Act, 18 U.S.C. § 1153, 679 (1885). McGirt's case heavily relied on the MCA, in which the federal government has the ultimate authority over major crimes involving Native Americans. Through a textualist lens, Justice Gorsuch pointed to the Treaty of 1832 in which the United States promised the Creeks a permanent homeland west of the Mississippi in exchange for their lands in the East. Treaty with the Creeks, 7 Stat. 368 (1832). A patent in 1852 was granted to the Creeks to secure their status as residents of the land. The Indian Removal Act of 1830 only furthered the U.S.'s commitment towards treaties with Natives by stating "that the U.S. will forever secure and guarantee to them… the country so exchanged to them". Indian Removal Act, §3, 4 Stat.

412 (1830). In the Treaty of 1856, "Congress promised that no portion of the Creek Reservation shall ever be embraced or included within, or annexed to, any Territory or State, and within their lands with exceptions, the Creeks were to be secured in the unrestricted right of self-government, with full jurisdiction over-enrolled Tribe members". Treaty with Creeks and Seminoles, 11 Stat. 700 (1856). While historical documents accounting the physical and political boundaries of the Creek Nation, the phrase "reservation" was not included in early documents, but inferred in contemporary times. In a 5-4 decision, the Supreme Court concurred with the ruling of the lower Tenth District Court. In the opinion, written by Justice Gorsuch, the Court stated the iconic quote, "On the far end of the Trail of Tears was a promise," which solidified and upheld the not-so-forgotten treaties made by the U.S. between the Muscogee (Creek) Nation. *McGirt v. Oklahoma*, 591 U.S., 1 (2020). An agreement was made amongst the Supreme Court that while the contents of Jimcy McGirt' actions are clearly deplorable, the questions regarding the sovereignty and existence of the Creek Reservation were the real concerns in the case. The Creek Nation joined as amicus curiae for similar reasons and ultimately because the interests of *McGirt* were equally the interests of the tribe. The Supreme Court, however, agreed that despite the missing word, "reservation," in treaties and statutes, the Creek Nation has always been regarded as such. The Court rejected the State of Oklahoma's arguments that the Creek Reservation was never established in the first place. The Court emphasized the sole power of Congress to establish or diminish a tribe's reservation through a clear expressed intent to do so *Nebraska v. Parker*, 577 U. S. 481, 2 (2016). The State of Oklahoma claimed that the Creek Reservation was abolished with the creation of allotments, that Oklahoma has historically maintained jurisdiction over Natives for serious crimes, and that Oklahoma Enabling Act transferred jurisdiction over tribal nations. In his opinion, Justice Gorsuch, made rebuttals that further proved the continuity of the Creek Reservation. Gorsuch stated, "The federal government promised the Creek a reservation in perpetuity. Over time, Congress has diminished that

reservation. It has sometimes restricted and other times expanded the Tribe's authority. But Congress has never withdrawn the promised reservation. If Congress wishes to withdraw its promises, it must say so. Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law. To hold otherwise would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right" *McGirt v. Oklahoma*, 591 U.S., 12 (2020).

The Court's decision solidified the reservation status of the Muscogee (Creek) Nation, which in turn, reaffirmed the power that the Muscogee Nation have always had. The Court's opinion stated what was already known: the State of Oklahoma had been illegally exercising criminal jurisdiction over tribal members on the Creek Reservation. *McGirt* paved the way for further rulings from the Oklahoma Court of Criminal Appeals in which the reservations of the Chickasaw, Choctaw, Seminole, Cherokee, and Quapaw Nations were upheld. The Chickasaw Nation's subsequent case was Bosse v. State; Choctaw Nation was Sizemore v. State; Seminole Nation was Grayson v. State; Cherokee Nation was Hogner v. State; and lastly, for the Quapaw Nation, it was State v. Lawhorn that upheld their reservation. *McGirt* proved revolutionary in the recognition of the continued existence of Tribes in Oklahoma and the sovereignty they still exert.

Further Appeals

As expected, appeals to the *McGirt* decision were made in order to undo the "damage" caused by the case. For the State of Oklahoma, the case opened a Pandora's box that needed immediate remedies. In my interview with the Senior Associate General Counsel for the Chickasaw Nation, Meredith Turpin, I asked about cases that evolved from *McGirt* and how they have impacted the Court's decision. She stated that two big cases following *McGirt* were *Matloff v. Wallace* and *Oklahoma v. Castro-Huerta McGirt* (Turpin, personal communication, 2023). *Matloff* was brought on by the State of Oklahoma, more specifically, Mark Matloff, the

District Attorney of Pushmataha County, to prohibit the vacating and granting of post-conviction relief of Clifton Parish. Parish had been charged in 2012 of second-degree felony murder, and filed for post-conviction relief on grounds supported in. Judge Wallace ordered this relief based on two things, (1) Parish being an American Indian, and (2) the crime had occurred on Choctaw Reservation (upheld in *Sizemore*). *Matloff v. Wallace*, 497 P.3d 686, OK CR (2021). *Matloff* found that reservation status, and the resulting jurisdictional shift, should not be applied retroactively. As stated by Turpin, "after the *Wallace* decision was issued by the Oklahoma Criminal Court of Appeals (OCCA) and limited the retroactivity of *McGirt's* application, the only cases eligible for dismissal were cases that had not exhausted the appeals process" (Turpin, personal communication, 2023). The points raised by *Wallace's* side, regarding fairness, in the case of jurisdictional effects, were not valid in this case. This means that cases that were at the post-conviction relief stage were no longer eligible for *McGirt* related relief. "This narrowed the number of cases that were being dumped into the federal and/or tribal systems and eased the backlog that they were trying to work through on top of the new cases coming in" (Turpin, personal communication, 2023). She further stated that "during that intermediary time period, Oklahoma filed approximately 55 petitions for certiorari to the U.S. Supreme Court, asking that *McGirt* be overturned or limited in some way, and out of those cases, *Castro-Huerta* was granted" (Turpin, personal communication, 2023). Following the denial of certiorari for Parish's case, the Court opted to take up one of Oklahoma's appeals to the *McGirt* decision": *Castro-Huerta* (Case, 2023, p. 95). *Castro* is a case that caused disruption in the short-lived celebration of *McGirt*. In 2015, "respondent Victor Manuel Castro-Huerta was charged by the State of Oklahoma for child neglect and sentenced to 35 years of imprisonment". *Oklahoma v. Castro-Huerta*, 597 U.S., 1 (2022). In the same manner as Jimcy McGirt, Victor Castro-Huerta challenged his conviction by the State of Oklahoma, which he alleged had no jurisdiction in his case. "Castro-Huerta argued that the federal government

had exclusive jurisdiction to prosecute him (a non-Indian) for a crime committed against his stepdaughter (a Cherokee Indian) in Tulsa (Indian Country), and that the State, therefore, lacked jurisdiction to prosecute him". *Oklahoma v. Castro-Huerta*, 597 U.S., 2 (2022). The Court reaffirmed that Indian Country is a part of a State. Due to the General Crimes Act, which extends federal law to Indian Country, still allowing state jurisdiction within the state (which includes Indian Territory). Laws Governing, 18 U. S. C. §1152 (1948). Turpin stated that "once the Court found that the State had concurrent jurisdiction over crimes by non-Indians against Indians, *Castro-Huerta*, and the twelve or so other cases with those same facts, were eligible for their state convictions to stand" (Turpin, personal communication, 2023).

MCGIRT'S IMPACT ON CRIMINAL JURISDICTIONAL MATTERS

In 2021, affirmed, by the Court of Criminal Appeals, the reservation of the Chickasaw Nation. In my research to see the effects of the *McGirt* case on tribal nations, I asked Meredith Turpin what the immediate impacts of *Bosse* were on the Chickasaw Nation. Turpin stated that, "When Bosse was decided, many criminal cases that involved an Indian victim and/or Indian defendant began filing for dismissals, and most of them were granted. The Nation, the U.S. Attorneys, the FBI, and the State prosecutors tried to get the cases being dismissed sent to the federal government or the Tribes, so that anyone who was set to be released was already being charged by the correct jurisdiction. A few cases had statute of limitations issues, or prosecutors declined to take due to evidence issues, but for the most part, the majority of the cases were picked up and taken by either the federal government or the Tribes" (Turpin, personal communication, 2023). Intergovernmental collaboration was key for agencies to adapt to the changes brought on by *McGirt*. In Turpin's work, she has seen the backlog of cases thinning, with cases coming in [to the Chickasaw Nation] that are being filed correctly, depending on where the crime took place, the nature of the crime, the Indian status of the victim

and the defendant. Similar to the Chickasaw Nation, the Cherokee, Choctaw, Seminole, Quapaw, Muscogee (Creek) Nations all were tasked with overcoming the challenges of more power to prosecute and convict tribal members. She discussed the quickly adapted changes made to the Chickasaw Nation District Court and prosecutor's office in response to the decision. "The Chickasaws had previously been preparing for the onslaught of changes that could have potentially, and did come, from the affirming of Creek Reservation, and later the Chickasaw Reservation" (Turpin, personal communication, 2023). She mentioned proudly that the Nation had already been working to expand its code, such as creating new traffic codes, expanding its team of prosecutors, and adding law enforcement personnel. She further stated that "the [Chickasaw] Nation has added a full-time district judge in addition to the part-time judge it always had; created a detention administration team to handle the Nation's new and growing inmate population, entered into scores of jurisdiction-sharing agreements with various municipalities, counties, and state agencies to ensure effective law enforcement responses throughout the reservation, and entered into detention agreements to house our adult and juvenile inmates" (Turpin, personal communication, 2023). Other tribal legislatures had also developed new tribal codes and updates to offenses, statute of limitations, and victim's rights provisions and services in response to the expansion of their criminal jurisdiction in Indian Country. For the Chickasaw Nation specifically, Turpin stated that "one mechanism that has helped is the integrated crimes provision, which lets the Nation adopt state law when the tribal code is inadequate" (Turpin, personal communication, 2023). The *McGirt* decision has led to more communication and collaboration between tribal, state, and federal police departments than ever before. Turpin supported this by pointing out the "Nation's many cross-commission agreements with different agencies, from municipal police departments to Sheriff's offices, to State agencies" (Turpin, personal communication, 2023). A cross-deputization agreement allows the agency's officers to enforce tribal law in Indian country. Turpin mentioned the Deputation Agreement "that was

entered into between the United States Bureau of Indian Affairs (BIA), the State, and the Tribes to allow state and tribal officers to obtain a Special Law Enforcement Commission" (Turpin, personal communication, 2023). She further stated that "with a SLEC, a state or tribal officer can act as federal law enforcement, similar to a BIA agent, in Indian country" (Turpin, personal communication, 2023). One of the issues to come from *McGirt* was the absence of facilities to house Natives prosecuted by their Tribes. Chrissi Ross Nimmo, deputy attorney general for the Cherokee Nation, wrote in the Oklahoma Bar Journal that because the Cherokee Nation had no jailing facilities, "they had to contract with several county jails and juvenile detention facilities for both pre-trial and post-conviction incarceration of the Nation's arrestees and inmates" (Nimmo, 2022, p. 14-15). The Chickasaw Nation has also entered into many detention agreements with various counties to allow their adult inmate population to be housed in county detention facilities. For juveniles, the Chickasaws have contracts with Sac and Fox and other juvenile detention facilities. They have also entered into an agreement immediately after *Bosse* with the state to give it authority to continue handling cases involving deprived Indian children in state court. Other tribal nations have also continued, as well as entered into, intergovernmental agreements with local police departments, jails, prisons, and agencies to further fill potential jurisdictional gaps in Indian Country.

DISCUSSION

MISINFORMATION AND CONTROVERSY

Political Outbursts and Lawlessness

Despite the legality and historical and monumental impact of the Court's decision, many Oklahoma government officials see this decision as regressive. The Stitt Administration riddled the news with "half-truths, exaggerations, and outright lies, all while obfuscating the reality that any real challenge *McGirt* poses to the people of Oklahoma is rooted in his own administration's policies and reluctance to negotiate on equal ground with tribal governments"

(Maxey, 2021). The first example I want to point to is the criminal justice system. Because of these fears being spread amongst different news outlets, "fear of mass murderers and rapists being let free has led to mass panic" (Maxey, 2021). "The ADEPA limits the petitions for habeas corpus which means that less than 10 percent of offenders could even qualify for relief" (Maxey, 2021). In a Washington Post's article over *McGirt* writer, Annie Gowen, "breathlessly repeats the state's concerns", acting almost as an advocate for the Stitt Administration (Maxey, 2021). For Governor Stitt, the disinformation that he spreads was less about the factual basis of these claims, but more about the popularity he could gain. Stitt misconstruing the outcomes of the *McGirt* case serves his purpose of crippling the Tribes and to maintain power over them. The spread of disinformation has led to police departments to refuse assistance from Tribes such as the Ada Police Department with the Chickasaw Nation. It is only the beginning of these tensions, but the possibility of it growing is worrisome. It is extremely important for people to research and think for themselves, but unfortunately, we live in an era where mass spread of misinformation through the media makes this difficult. The *McGirt v. Oklahoma* case has the potential to mold Oklahoma into a great state, built on the intergovernmental partnerships between Tribes and the state. A collaboration is what is needed, but instead, we are left with dissent and a refusal of engagement from political administrations with Tribes. This will only lead us down a slow, frustrating, and arduous path towards change.

CONCLUSION AND THE PATH FORWARD

The primary focus of this essay has been the history of the tribal, state, and federal criminal jurisdiction. With tribal courts and governments gaining more responsibility, the realization of the potential of this reclaim of power is exciting. Despite genocide, assimilation, and many other horrors of American colonization, Oklahoma Tribes have made strong developments over the years to build and mold their governments. Currently, tribal officials,

legislators, and legal professionals are working on policy to fill the jurisdictional gaps to address the need for a division of labor between the Tribes, the State, and the federal government. One example is possible "amendments to federal law to expand Oklahoma Tribes' ability to punish serious offenses, or for the U.S. attorney's offices to cross-designate state or tribal prosecutors as special assistant U.S. attorneys, enabling them to prosecute cases involving Native American defendants or victims in federal court" (Gordon & Baker-Shenk, 2021, p. 3). These developments will be revolutionary for Oklahoma Tribes to regain a sense of inclusion and respect in the judicial system. Like many Tribes in Oklahoma (even those not included with the five federally recognized Tribes), the focus on bettering their people and their land has always been clearly visible. This is where the discussion leans towards the other possibilities that can come from the *McGirt* ruling, such as climate change and environmental policies, land and water rights, healthcare facility collaborations, rehabilitation program partnerships with local governments, and many other issues. Another possibility is the discussion surrounding the rights of tribal citizens who are living and working on Native land having to not pay income taxes. In the eyes of non-tribal members, this potential outcome appears to cripple the Oklahoma State government even more, but to others this is not the case. This potential outcome will potentially positively affect the "Indian territories" where Tribes already fund a majority of the economic developments. There is hope for a better Oklahoma, but this dream is dependent on the collaboration of tribal governments with the State of Oklahoma. *McGirt* was the beginning for a vast array of possibilities for Oklahoma Tribes. As Meredith Turpin stated, "the political landscape between Tribes and the State has been rocky since *McGirt* and its progeny, but there is hope that it can, and will, continue to heal" (Turpin, 2023). The Chickasaw's motto, the "Unconquered and Unconquerable Nation," exemplifies perseverance, resourcefulness, and strength of Oklahoma Tribes to solidify their sovereignty and rights. The *McGirt* ruling has and will continue to prove to be revolutionary to the future of Oklahoma and Indian territory.

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WILLIAM H. MURRAY IN *EL GRAN CHACO*, BOLIVIA: 1919-1929

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ABSTRACT

This paper is drawn from the manuscript of a book whose purpose is to describe and assess Murray's ten years in the "Bolivian wilderness." It was presented virtually at the 72nd Annual Meeting of the Midwestern Association for Latin American Studies (MALAS), hosted by *Universidad Privada Boliviana* in Santa Cruz and Cochabamba, Bolivia. First, it places Murray's colonization project within the historical context of earlier American colonization movements and general American attitudes toward colonization and imperialism. Second, it considers the Bolivian interest in promoting colonization of its frontier areas, and in its final section, it concludes that the experience of Murray's colonies contributed to Bolivian efforts to develop the Bolivian *Oriente* after the country's 1952 Revolution. The middle part describes Murray's fascination with South America and the location, organization, and establishment of his colonies. Also described is how Murray's twentieth-century pioneers were fatally different from those nineteenth-century settlers of the Great Plains of North America. Those differences largely explain the failure of the project. In analyzing these factors, the letters of Murray's daughter-in-law at the time, Marion Draughon Murray Unger Thelde (cited as the Unger Collection) are utilized more extensively than they have been previously. The analysis rejects earlier theories that the colo-

nies failed because of the effects of "Social Darwinism." Rather it concludes that Murray's colonies failed primarily because of bad luck and bad planning, which did not consider the importance of socio-economic infrastructure for modern agricultural development. Finally, the paper ends with an assessment of the influence that Murray's adventure had on Bolivian colonization and development policies.

INTRODUCTION

William H. "Alfalfa Bill" Murray was undoubtedly one of the most "colorful" politicians ever to become Governor of Oklahoma. As Enid attorney Steven Jones summed it up, "Louisiana had Huey Long; Texas had Jim Ferguson; and Mississippi had Theodore K. ("The Man") Bilbo, but only Oklahoma could have produced William H. "Alfalfa Bill" Murray—one of the most controversial figures in the state's history."[1]

Murray was present at the birth of Oklahoma, serving as President of the State Constitutional Convention, first Speaker of the House of Representatives, and United States Congressman for four years. He was two times a candidate for the Democratic gubernatorial nomination before 1930, and once again after leaving office as Governor. He was the second Oklahoman to be a candidate for the Democratic presidential nomination.

Having suffered two defeats for the Democratic nomination for Governor in 1910 and 1918 and a narrow defeat in 1916 for renomination to his fourth district congressional seat, Murray felt unappreciated and discouraged. He decided in 1919 to give up politics and explore his lifelong fascination with South America.[2]

Murray spent the next ten years in the organization and promotion of three colonies in the *El Gran Chaco* region of southern Bolivia. While his experiment in agrarian pioneering ultimately failed, it expanded his experience and provided a period for reading and

reflection.[3] When he returned to Oklahoma in August 1929, he found that he had not been forgotten and that there was practically a ready-made organization of old friends and political allies ready to promote him in the 1930 campaign for Governor.

The motivations for Murray's colonies were not political, racial, or religious, but rather economic, and to some degree, philosophical. Murray believed that a period of depression combined with high taxes was coming to the United States, and fifteen to twenty years of "hard sledding" were ahead for the farmer. In 1923, Murray wrote:

> *I tell you, it will be yet at least fifteen years before the world gets over the present depression---I look for an upturn in the next two years, but that will be a mere "spurt" and it will go down again and last ten years—The farmer the world over has many long, lean years of hardships ahead of him—merely history repeating itself---and I say this, having read all political and economic history worth reading.*[4]

Philosophically, Murray was an agrarian (some have said Jeffersonian) who believed the farmer was the core of civilization. In his *Memoirs* he wrote:

> *It is indeed fortunate that there are long stretches of unimproved, unsettled sections of rich land suitable for white men, in South America; because sooner or later, every industrial nation succumbs to the evils growing out of labor troubles that destroy them. Indeed, about every 2,000 or 2,500 years since the morning of history, Civilization has gone down in night; and at the present time, owing to our rapid communication and transportation, we shall travel toward destruction ten times more rapidly… Civilization will then rise again in a remote unsettled section of South America, by hardy pioneers who will adopt Codes of Honor and of Integrity and Morality and Fair Dealing among men; which together constitute the 'stuff' on which Civili-*

zation is built, and upon which law and order and stability of Government are founded.[5]

Murray figured to be in on this rebirth of civilization in South America!

BOLIVIA AND AGRICULTURAL COLONIZATION

The notion of agricultural colonies in Bolivia was not new in 1924. As pointed out by Patricia Kluck, "Bolivian governments had long promoted the notion of colonization, especially in the lowlands. Plans were first put forth in the 1830s, and formal proposals were outlined in legislation in 1886, 1890, and 1905."[6]

The land law of 1905 had made 100,000 square miles in *El Gran Chaco* available to settlers, who could each acquire up to 45,000 acres at a cost of ten cents per acre. The government wanted foreigners in the *Chaco*, particularly British and Germans, for political as well as economic reasons. The boundary between Paraguay and Bolivia had never been firmly established, and in the continuing dispute, Bolivia thought the presence of foreign citizens might encourage their home governments to support Bolivia against Paraguay in order to protect their citizens in case of trouble.[7] The same principle applied as well to Americans and, undoubtedly, was at least one reason the Bolivian government was willing to give Murray such a vast concession of land whether Bill realized it or not.

Political scientist Alexander Edelmann pointed out, "Every one of the [Latin American] nations has had at least one colonization scheme of some sort. Sometimes the plan provide[d] for bringing in skilled farmers from abroad to increase the nation's agricultural output and to set up model farms with modern methods and machinery to serve as examples for the rest of the farming populace. Thus," Edelmann continued, "in Bolivia, a colony of Okinawans, established in the fertile Santa Cruz area, operate[d] in effect model experimental farms which can be of great help to native farm-

ers."[8] Unfortunately, the Murray colonies did not fall into this latter category although they probably did fall into the former group.

Indeed, the U. S. Department of State did monitor Murray's projects in Bolivia, and Murray was careful to inform the American government of his activities. While he was warned of the inherent dangers of colonization in Latin America, the Department also vouched for his honesty and legitimacy. Murray maintained contact with local diplomats in Bolivia and Argentina (particularly the American minister in La Paz, Jesse S. Cottrell), and they sent periodic reports to Washington on developments in the colonies as they understood them.[9] However, the Murrays had returned to Oklahoma by the time the Chaco War between Bolivia and Paraguay finally became violent in 1932.

Apparently, Bolivia's program had some success in attracting colonists from Germany, England, and from America. However, according to Patricia Kluck, significant colonization in Bolivia did not occur until after the 1952 revolution, when the victorious Nationalist Revolutionary Movement (MNR) promoted the "Bolivianization" of the frontier. While small numbers of Italians, Japanese, Okinawans, and North American Mennonites were attracted, the bulk of settlers were native Bolivians, particularly from the over-populated *Altiplano* that lay between the western and eastern ranges (or *cordilleras*) of the Andes.[10] The objective of most of these colonization projects after the revolution was to provide land for small, native farmers by opening new areas, and government-sponsored colonization efforts which located "many poverty-stricken Indians from the *Altiplano* to the eastern regions. Coca (which the local population chews and from which cocaine is extracted) is grown on about 75% of all farmlands and is the nation's leading source of foreign exchange, although its export is illegal."[11]

LOCATION AND ORGANIZATION OF THE MURRAY COLONIES

In 1919, Murray produced a document entitled *Murray Colony of Bolivia: Its Governing Laws and Rules* in which he set out certain obligations and responsibilities for the colonists and for himself as "proprietor." This document established the pattern for the organization of all of Murray's colonization projects, and the most important provisions were duplicated in the contracts which he signed with his colonists. For example, the new pioneers were required to move onto their tracts within a year and to construct a dwelling house and poultry shed, to fence a corral for stock, and to dig a well. Colonists were expected to participate in the construction and maintenance of public roads, schools, and churches; the surveying of their own land; the installation of a telephone system; the building of a common fence and a common pasture; and a system of central purchasing of stock, supplies, and equipment managed by the proprietor. There would be a "Commission on Health" and a "Committee of Safety."[12]

The social rule would be "co-operation and mutual helpfulness," and the morals of the colony would be governed by the Golden Rule and the Ten Commandments.[13] All colonists would pledge "to maintain the virtues of an American citizen, and will not embrace, imbibe, or adopt, even though it be fashionable, the vices and errors of other races or peoples, realizing that should we do so, we must needs fall below the standard, either of Americans or of the race or people, whose faults and errors we had added to our own vices."[14] This document was signed on December 1, 1919, by Murray and 132 prospective colonists. Many of its provisions were made a part of contracts signed later by those who actually decided to immigrate.[15]

One provision was clear: no blacks need apply. Only white Americans would be welcome in the Murray colonies.[16] Like most rural, southern whites of his generation, Murray's attitudes toward African Americans were ambivalent and inconsistent. On the one

hand, he believed in the social separation of blacks from whites, whom he thought superior in most things. On the other hand, he had good friends who were black and respected the race in a left-handed way.

Nevertheless, he was racist and anti-Semitic and appreciated blacks only when they performed well when they were "in their place." He provided an example when he was quoted as saying that he would like to see "those fast trains in Argentine managed by Americans, with North American negro porters. It would be a revelation to these people," he said. "A North American negro is the best railroad porter in the world as a North American is the best railway manager."[17]

In July 1923, Murray produced a thirty-two-page pamphlet, entitled *The Prospectus for Murray Colonies of Central South Bolivia, South America,* in which he described in detail his trips to Bolivia and the land he had gained as a concession from the government. On the first page he pointed out that "no appeal will be made to any person to join this enterprise. If you are the right person, I want you if you want to go, otherwise there will be no other invitation to anyone."[18]

Taking six pages to describe a mule trip during which he hired a German "linguist" who could speak both Spanish and English as a translator and companion, he ended that section by declaring "my hat's off to The Argentine Mule: For mountain climbing and endurance, traveling long stretches of road without water and feed, he has no equal."[19] Sometimes using local guides, he and his "tropical tramp" companion spent forty-four consecutive nights sleeping on the ground, while the entire scouting expedition lasted a total of ninety days.[20]

The prospectus described the agricultural potential and climate of Bolivia and the mission lands he had secured and their location, which this time was in Tarija Department in southeastern

Chaco, hundreds of miles from his earlier concession. Located a few miles north of the northwestern Argentine frontier, the new concession was not far above the Tropic of Capricorn (just north of 22 degrees south latitude and near 64 degrees west longitude) and twelve miles north of Yacuiba. Murray's main "home tract" of 45,000 acres was at Aguairenda. About thirty miles west of there was a second "home tract" at Itau, and northeast towards Santa Cruz, were his grazing lands of 147,000 acres which he called the "Big Pasture."[21] Thus, Murray laid out three separate areas of settlement.

At Aguairenda, which was founded around 1840, there was a Catholic mission and a small settlement of native Indians. Murray and his family would live there because of its central location. Colonists would get 80 to 110 acres of level land, depending on the size of the family, at a cost of 60 cents an uncleared acre and one to six dollars an acre for those that might be cleared. Each family was expected to take from 160 to 300 acres of hilly land for timber, building material, and other purposes, at 30 cents an acre, and at least 1,235 acres in the "Big Pasture" at 35 cents an acre. Murray figured that the typical package would cost the farmer $540.40.[22] In 2022 currency, this would equal $8,468.30.[23]

Itau, which was founded in 1790 on the Itau River, was thirty-three miles westward and over a mountain ridge from Aguairenda, which was about twelve miles northwest of Yucuiba, the telephone, telegraph, and wireless station for southeastern Bolivia. Murray believed Itau had the best soil, but it also had the disadvantage of further distance to the railroad. At Itau, colonists could buy up to 617 acres at a cost of 33 to 60 cents per acre, depending on the portion of prairie or river valley each person would get after the survey was finished. Those settling at Itau were not required to buy any "Big Pasture" land. "Every person's land will front on the river," Murray promised, but "contracts will be drawn placing the price uniformly at 40 cents an acre and then, when division is made, rebate made to those where the survey gives them less than

the average and payment of the difference where a colonist gets an extra amount of choicest land."[24]

In the "Big Pasture," which was intended for cattle raising, one might buy from 1,235 to 7,413 acres at a cost of 35 cents an acre. A person who wanted the larger number of acres was required to have a family as well as to take $10,000 to Bolivia. Murray's plan was to fence this area and turn cattle into it proportional to the number of acres each person owned. Then he would place a few Indian families on it for them to salt the cattle and look after the fence. The owners would take turns going to the property to "boss" for a month at a time. These lands were not part of the government concession but were purchased from private owners.[25]

The prospectus also described the Bolivian government as stable for the moment although subject to "political revolution," but not of the "armed waring" kind. "We would call it a change of officers," he wrote. "The present government and congress were elected by the 'Republican party' of Bolivia, while the 'Liberal party' had controlled the government for twenty years prior to the present president... It has been 52 years since they had an armed revolution and 34 years since their last war."[26]

The government made important tax concessions to the colonies and promised to support the establishment of local schools with an annual appropriation. The colonists would be exempted from import and export taxes for ten years, and there would be no income or *ad valorem* taxes. There would be only two dollars a year for a road tax and stamps on official documents. The colonists would have the guarantee of protection by the government and the right to bring in personal firearms.[27]

But the most important parts of the *Prospectus*, as it turned out in hindsight, were those parts which warned of the hardships:

> *I want colonists only, who, with their families can be contented in the country. Persons who love city life and can-*

not become contented under the inconveniences of pioneer conditions should not go. No person should go who does not expect to devote his attention to his new enterprise, nor should any person go who will try to drink up all the liquor.

Only those who desire and know how to farm, [should go]. No colonist would be permitted to become a merchant on the colony lands for 5 years; nor sell liquor or start a saloon on the land. The laws would permit you to make all the wine you wish but under my contract, no saloon will be permitted for 25 years on the land. This is to protect the children of all. Nor should any person go who expects to find 'soft-snaps' where no work is performed. No common laborer should go to South America. Such labor is too cheap for him there. This project means such inconveniences as pioneer life entails but profits at the end---ease and comforts and profits do not run together; but energetic effort and contentment even though surrounded by crude conditions, will surely bring its reward of profit and wealth at the end.[28]

Apparently, many who read his brochure focused more on the promise of wealth than the promise of hard work. Many of the men who returned may have wished that they had had a spouse or fiancé like that of C. A. Hoehman of Washita and, later, Wewoka, Oklahoma, who had signed a contract to go to Peru on February 2, 1922, and to buy 618 acres of land at 40 cents an acre.[29] When the Peru adventure did not work out, Hoehman transferred his contract to go to Bolivia. However, on March 23,1924, he wrote to Murray stating:

Dear Sir & Friend: I am writing you today to let you know that I put the South America proposition up to the girl I am going to marry in the very best shape that I could and she absolutely refuses to go so I guess its [sic] give up one or the other so I am for the present at least going to give up the South America proposition. You will recollect I told you as soon as I could talk the deal over with her I would

> *let you know definitely. I am indeed sorry that I could not persuade her to go. I really want to go. Perhaps at some future time I may get her to go but I seriously doubt it. ...I feel sure after my interview with my future wife that its [sic] futile to hope to convince her that South America is the place to go.*[30]

In this way, through the level-headedness of his fiancé, Hoehman was spared the fate of "one old fellow," who as early as arriving at Havana, "was already moping about, head between trembling hands, mumbling: 'I'm a ruined man! My God, why did I leave Oklahoma!'"[31]

ESTABLISHING THE COLONIES AND THE FIRST YEAR

The voyage from New Orleans to Cuba, through the Panama Canal, and down the coast to Antofogasto, Chile, was a weary one. Then, as described by Gordon Hines, "a long and tedious journey over the high, cold Andes on a poorly equipped railroad, dulled their appetites for adventure and half of them were already disposed to turn back. Only Murray's urging that they continue on to see the country that would be theirs and his encouraging words kept them on the long way to Aguairenda."[32]

Although he was only twenty-one years old, Murray's second son, Johnston, who would eventually become the Fourteenth Governor of Oklahoma (1951-55), was sent ahead of the main group by more than a month. Accompanied by his wife, Marion, and a colonist named Oliver, his assignment was to prepare the way with government officials, meet the freight shipment in Buenos Aries, and arrange for it to be sent to Tartagal, Argentina, where the railroad ended. Most importantly, he was to purchase mules and horses in Cordoba, Argentina, and have them at Tartagal when the main contingent arrived.[33] It was not clear why Murray did not select his oldest son, Massena, for these responsibilities, but in one of her letters home, Marion intimated that Massena was known to be "extravagant" with money.[34]

Marion was only a year younger than Johnston and was a bride of less than nine months. They had met as students at Murray State A & M College in Tishomingo. She had grown up in Davis, Oklahoma, the daughter of businessman and one-time State Senator Frank Draughon and his wife. While Marion concentrated on schoolwork and music, domestic servants did the household chores. Precocious for her age, she earned a music degree from the University of Oklahoma when she was only seventeen. She had enrolled at Murray State to complete requirements for a teaching certificate in English and music. She had also vowed to marry the first man who asked her. On the first day of classes, she was so well bundled against the cold that she fainted when she walked into a heated building. When she regained consciousness, she was lying on the floor, peering into the face of Johnston Murray. They were married in June 1923.[35]

Marion Murray carried on a prolific correspondence with her parents and other relatives throughout her time in Bolivia. The Unger Collection in the Western History Collections of the University of Oklahoma contains the correspondence (1924-1928) from Bolivia of Marion Murray as well as miscellaneous items concerning William H. Murray. The letters cover "the experiences of the Murray family in Bolivia, including accounts of their travel to Bolivia, the establishment of Murray's colonies, and of their daily operations. A number of letters contain diagrams of the colony's "layout" as well as other illustrations."[36] The "Unger" designation was due to that being the surname of her second husband and, therefore, Marion's last name when she donated the collection to the University. She later married a man named Thede, which was her name until her death and the one she used when she published her book titled *The Fiddle Book: The Comprehensive Book on American Folk Music Fiddling and Fiddling Styles (1970).* Some scholars use that name to cite the collection, but in this paper, it is cited as the Unger Collection.

When the colonists reached Tartagal, they were refused permission

to cross the border by customs agents until the Bolivian *Delegado of El Gran Chaco*, who had come to meet the colonists, used his influence to get them across the border to Yacuiba, Bolivia. From Tartagal it was horseback and high-wheeled mule carts until they reached Aguairenda and its historic mission and small Indian village.[37] In a letter on June 20, Marion described Aguairenda as "a little village grouped in a square around a white church and some old buildings which were once a Catholic boarding school. The officials... had moved the Indians out of the old school buildings and had cleaned and whitewashed the old rooms. The buildings are about 75 years old. We are occupying the old dining room... I guess we will stay here until our own houses are constructed."[38]

Having left Oklahoma on May 4, 1924, the rather bedraggled group of twenty-nine adults, forty-nine children, and nine members of the Murray family reached their destination on June 18, 1924. In addition to "Alfalfa Bill" and his wife, Alice, among the family were Massena (23) and his wife, Frankie; Johnston (21) and his wife, Marion; William H. "Billy," Jr. (18); Jean (15); and Burbank (12).[39] They were joined later by Murray's nephew, Clive E. Murray, and his wife.[40]

Having survived their arduous trip, the colonists began to settle in and feel better about their decisions to come. But not for long. Problems began to surface almost immediately. As the settlers surveyed the land and marked it off for homesteads, they discovered that much of the Aguairenda concession was under contract to locals, particularly the choicest lots. Under the terms of Murray's agreement with the government, his concession clearly excluded any land currently under lease to another party. Murray had made the mistake of not checking the current occupants of the concession closely enough. The same condition existed at Itau where it was discovered that the prime land in the Itau River valley belonged to a local Indian.[41] Murray's promise that plots there would front on the river could not be kept.

Faith in Murray's assurances that the Bolivian government would eventually grant land titles to the settlers began to waver. Many grumbled when they found that Murray had paid only ten cents an acre for the lands, he sold to them for thirty to sixty cents an acre. These ownership concerns were compounded by complaints about insects, wild animals, the living quarters, the lack of privacy, and the lack of sufficiently clean water. In hindsight the settlers realized that Murray's prospectus had failed to mention many of these specifics.[42]

In addition, the expected rains which usually came in September, October, and November did not come on schedule, arriving not until December. An unusually dry season caused the crops that were planted to be disappointing. Locust swarms (described by some as four-inch grasshoppers), which usually flew over the area on their way to Argentina, were forced to land until their wings dried from collecting moisture as they had come from the north. Although they did not eat much (at least according to Murray), they brought visions of Old Testament plagues to the colonists and would-be colonists reading the news reports at home.[43]

The short of it was that within a relatively brief time all the colonists who had resources to pay their way back to the United States, except for two families, did so. These two plus Murray's own relatives and two families who had misrepresented their resources and had no money to buy passage home were the only ones left. When the members of the second band of colonists departed soon after arriving, only the two indigent families and the Murrays remained. Eventually, Murray paid the passage of the indigents primarily to get rid of their complaining and to avoid the cost of having to support them.[44]

MARION'S LETTERS, THE COLONISTS, AND THEIR PERSONALITIES

Marion Murray wrote nearly one hundred letters home all addressed to her family and describing her daily activities and what

Johnston and others were doing. The letters are important among available primary sources on the Murray colonies because they, perhaps better than anything else, provide a very human context through which to perceive the project and the people involved. References are made to politics, but there is not a great deal of political analysis. There is some gossip about other colonists, but not an inordinate amount. Long and detailed the first year, they are less so in later years. After the arrival of her baby, there are many stories and descriptions of the child.

The letters are very interestingly written with much detail and commentary on the environment and local customs and music. She does not complain or criticize much, but often her observations are sharp as well as perceptive. She defends the colonies and the family against their critics, but behind her words, one might note some reservations about the viability of the enterprise. All of the letters cited in this paper are addressed to members of her family, and the citation numbers refer to box and file folder in the collection.

In a letter dated July 1, 1924, Marion gave her opinions of three families who left the colony only two weeks after they had arrived. The first couple returned because the wife claimed her heart could not stand the altitude, although Marion was skeptical because it was only 2600 feet above sea level, a fact that was stated in the prospectus. Another family of seven left because he said his land wasn't as good as he had expected, although he hadn't seen it yet since it was at Itau. "I think that he and wife were homesick," she wrote, and predicted that "they will land in the States broke, and the boys will pick cotton the rest of their lives." The father was a typical "Arkansawyer," "who can't be transplanted," as was a third man who had two sons who had "left sweethearts in the States... [and] decided it was too lonely a life." Their father was "just bean-headed and ignorant." In her opinion "the best people stayed," and she thought "it a blessing that such quitters return now rather than stay and be a thorn in the flesh." She then warned

her family that "some of these people may get nasty to the newspapers about us, and if they do, you will know what is true and what is not."[45]

Her predictions of negative newspaper publicity turned out to be very true. One family was particularly critical in their interviews. On October 20, 1924, Marion wrote to her father asking him to calm her mother who was "all stirred up" about two articles in the *Daily Oklahoman*. "I knew," she wrote, "when those dirty ****** left here, that they would put a lie in the Oklahoman, so I made haste to write and tell you all about them. But it seems she was stirred up anyhow." She then proceeded to refute the articles point-by-point concluding with "it beats all how some newspapers can hunt out the lies. And how some people can tell them."[46]

On September 21, 1924, Marion described for her mother the four families who remained in the colony with the proviso that she would say only the good things and leave out the bad, declaring that "we all have our bad points anyway." Her comments gave the flavor of the kind of folks who went to Bolivia and how the Murray's regarded them:

> *Mr. ***** is from near Lawton. His wife used to live at Sulphur. [He] is a man about 38 or 40 years old—talkative, loves to eat, loves to be waited on by his wife, brother, and children. [He] has a bachelor brother who is down here. The "batch" is from the 101 Ranch, (I think he slopped hogs there) and is a good-hearted ignorant old soul. Mrs. ***** married at an early age and . . . has [four children]. She loves fancy work, and is the kind to run in four times a day and "neighbor".*
>
> *Mr. ******* is the fellow who had such a bad name in Tishomingo. He is smart, knows the cattle business, and is a good printer. But drink seems to have an upper hand of him. "******", in his sober moments, is all right. His wife is a German woman who, tho' of common people, is*

as good hearted and uncomplaining as any I ever saw. She has two girls---seven and five years—and a boy of three. The latest is expected in about three months.

*Mr. ********** is a smart, tho' uneducated, man. He has, beside a wife which I will pass up because of lack of adequate words with which to describe her, six of the meanest kids that ever graced my presence.*

*Mr. ****** and family are my choice above all. He is a big man who looks like a picture of 1900—walrus mustache, big hat, and all. He is a typical Westerner. His son, 24, is just like him, excepting the whiskers and the years. *******, the son about 15, is a bright boy who wants to take violin lessons [i. e., from Marion]. He has already taught himself all the notes in the first position. The girl ***** is… neat, and seems to be a sweet girl...*

Mr. Murray's original plan was to put all the "nesters" in Itau over the mountains and have Aguavienda [*sic*] settled by the better class of people; …but the Itau proposition having fallen through, he was forced to settle them here. [They] are typical Itau families—ignorant farmers, no more; no less. Next year Mr. Murray says that he will bring down some better people… eye, ear, nose, and throat specialist …a teacher from the journalism faculty at OU …a trained nurse... People of the class that will interest us. The leaders, not the herd.

Of course, keep this to yourselves—just Gama, Mama, and Papa; see?[47]

If these were only the "good" things that Marion could write in September about the colonists who were left, one can imagine what the bad things might have been. Her comments are indicative of an underlying "Murray attitude" and a class consciousness hardly designed to strengthen communications.

By December, three of the colonists were engaged in a letter-writing campaign to the American minister in La Paz and to the State Department as well as to some newspapers complaining and criticizing the Murrays and seeking help to return home. By April 1925, they had all left Bolivia. Two families had received funds from Murray to do so—a fact that they did not include in their comments to the Oklahoma newspapers, which continued to run negative stories on the colonies.[48]

For her part, in a letter dated July 14, 1924, Marion explained her motivations for coming to Bolivia as being for love and for profit. "I love Johnston "she wrote, "and I didn't see a future for us in the States; besides he wanted to come—and if we had stayed there and failed, he'd have said 'If we'd only have gone to South America'... Even if we fail, there'll be no one to blame, and we won't be any worse off than nine-tenths of the young couples I know. We'll be really better off because we've had this experience." Her second reason was that she hoped to make enough money to send their children comfortably to school and to provide for their retirement when the children had scattered. She hoped that there might be a little to leave to them later. She asked her family, "You don't blame me for coming, do you?"[49]

Still, it was clear that her parents were making arguments to convince her to come back to Oklahoma. However, a year later she was steadfast in her loyalty to Johnston and the family project. In a letter to her father dated May 28, 1925, she wrote:

> *Papa, I suppose you think I was deceiving you by not telling you that the colonists had returned; and I was. I was just not telling you anything about it at all, for I so disliked to talk [about] it. Yes, they have all gone, and I'm not sorry, because they were not our kind of people, and I was ashamed of them. If the state of Oklahoma, and particularly the [Daily] Oklahoman, wants to judge our success or failure by the reports of the ignorant, they may for all I care... I absolutely believe in Johnston's ability to make*

> *good here, and in the soundness of his Father's plans... I would hang my head in shame if I ever left him because things were for worse instead of better; or if I influenced him to return... when he does not want to leave Bolivia.*[50]

The stress of living in one large room with the whole family with only curtains stretched across to provide some degree of privacy sometimes affected Marion. On August 21, 1924, she wrote, "Oh Lord! Father Murray will drive me mad talking about foods—starchy foods—fried foods—why, honestly if he only knew that I've practically lived on fried foods all my life, I guess he'd pronounce me dead! And Mother Murray, too, is always talking against certain kinds of foods. Oh Lord! I'll be glad to get into a house with Johnston."[51]

Despite the difficulties of the first year, "Alfalfa Bill" was not ready to give up on his Bolivian dream. He still had a year to satisfy the terms of his concession agreement to bring in twenty-five American families who would stay two years, so in the summer of 1925 he was back in Tishomingo to recruit a new group of settlers. He issued a two-page letter on June 14 in an attempt to recruit more colonists and to correct "false news reports" which had been spread by some of the disgruntled returnees. He wrote:

> *The newspapers, having printed so much false copy (some over-praising the country; others slandering it, depending upon the bias of the writer) that I ask you to pay no attention to the papers. The following I know to be true from personal experience and observation during my year's residence. I remained that I might give you the truth.*[52]

He denied that locusts were a problem, explaining that during the dry years, as the last two had been, they flew over Bolivia on their way to Argentina. When they met moist south winds, their wings became laden with moisture which forced them to the ground where they lay until their wings dried out. Then they were up and away. They lost their wings four to five hundred miles into Ar-

gentina and that was when they began to crawl and to eat. Murray asserted that they did little harm in Bolivia, eating only young vegetables, while a much worst pest was a leaf-eating ant. These, however, were easily destroyed by piling logs over the ant hill and setting them on fire. There was about one hill to an acre. "The land is better than I thought and now worth more," Murray wrote. The rains had come late which had made the growing season at least six weeks late. "But before rains began most of the Colonists who did not get homesick and leave in the beginning, quit work and left, cursing the country and all of us who remained."[53]

After the rain came in December, Murray planted four patches of cotton, which looked promising enough for the Bolivian government to authorize him to purchase 5,000 pounds of cotton seed for the natives in that section and agreed to install a cotton gin, the first in the country. Murray contended that other crops that he planted also did well.[54]

Basically, Murray believed that the Americans who left had simply lost patience. He compared the situation with what had happened during the opening of Oklahoma:

> *This is but a repetition of the "run" into Oklahoma. Hundreds of men sat weeks at the border awaiting the shot to "make the run" but as soon as it was over they went home. Those who stayed, became independent. Just so this, if you do not intend to stay at least two years, better not go. Or, if one thinks he can improve a new country without work, or money to hire it done, better stay away. I emphasize this here as I tried to make clear in the "Prospectus", yet one man boasted on the ship going down: "I do not intend to work, I'm going to get mine from the Natives."*[55]

Twenty years later in his *Memoirs*, Murray reflected that "the colonists failed me. The country was so strange, everything so reversed, few we met could speak English, with no 'bright lights,' a virgin country without settlement. The colonists began to 'crave

the bright lights of America' before we landed, and every-one of them returned so soon as they could get some conveyance back to the Railroad in Argentina, except my family and my four sons, two of whom were married."[56]

PLAN B: NATIVES AND COTTON

Despite his efforts to refute the bad press that his Bolivian colonies had received, Murray was unsuccessful in convincing a significant number of new colonists to sign up. Although it appeared that the colonies had failed, the Bolivian government was hopeful that the project might eventually succeed. The Minister of War and Colonization, Felipe Segundo Guzman, who became interim President from 1925 to 1926, told the Bolivian Congress that Murray should be given more help. Instead of blaming Murray, the government believed that the problems were the result of trying to transplant families into a primitive area. Always resourceful, Murray turned to the development of a "Plan B" which turned on convincing the Bolivian government to renegotiate the terms of the concession so as to relieve Murray from producing American colonists. Instead, Murray would be allowed to substitute native Bolivians to populate the colonies and to engage in the production and ginning of cotton. Eventually, this was accomplished, and new life was injected into the Murray colonies at least for a time. In his *Memoirs*, Murray claimed that as many as four hundred native Bolivians were settled on the concession.[57] As Buchhofer analyzed it, "Murray hoped to secure title to his lands, first by settling Americans on them, and then, once that failed, by making Aguairenda a cotton-producing kingdom attractive to virtually anyone."[58]

The government was optimistic about the prospects of cotton production, and, according to Keith Bryant, a new cotton gin, which Murray had purchased in New Orleans on his trip home in 1925, was delivered along with a mechanic to run it.[59] The delivery, however, was to Buenos Aires in January 1926, where it remained until July when it turned up in Embarcacion, Argentina. According to Robert Dorman, "There it languished for the rest of the year and

beyond." Dorman revealed the reason for the delay: "The Bolivian government neglected (or refused) to pay the freight charges."[60] The cotton gin was finally installed by late October 1927, and it began to produce some cotton bales. But it was too little and too late to save the colony.[61]

According to Marion, the Murray family made quite a hit with the local Indians, who "grin like a Cheshire cat, and bow and scrape around to salute the Senor or Senora de Murray. They usually call us Senorita even if we are married, for we are young... Mother Murray is the 'Little Mama' of them all. 'Mamita,' they call her... They are very much in awe of Father Murray, for he bawls 'em out in English and they don't understand what he says." She continued:

> *Father Murray only knows a few words of Spanish, and can't half pronounce them. But he can make these peons understand him in some way. When any of them come from his land in Itau, they always make a long speech when they greet him and when they depart. Now his Spanish vocabulary doesn't embrace the art of politeness, so when they come to their leave-taking, and tell him they were very happy, etc; etc; kiss the feet of the senor, etc; etc; he grins and says "way-nah," which is his mode of pronouncing "bueno," and says in English, "yes, yes, you're glad you came. (way-nah, way-nah) Get on now and leave me alone." They don't know what he's saying to them, but suppose he is making his farewell speech also, and depart blissfully ignorant.*[62]

Alfalfa Bill's intimidating demeanor did not work as well on Marion as it did with the Indians. In a letter written on April 24, 1926, she revealed that he and she did not get along very well. "He thinks he is the only person…who possesses 'horse sense' and," she wrote, "if we differ, he tries to subdue us with his loud voice and his choice of words." However, she vowed to "stand by my opinions till my limbs give out." She reported that "Johnny says

'let him rave, and then do as you would have before he spoke.' I think that is the best way, but I get so hot-headed that I have to derive a little satisfaction in letting him know how very little I value his unasked-for opinion."[63]

By March 1926, the forty-five Indian families who were renting land in the colony had produced a sizeable corn crop and the alfalfa had yielded three cuttings and was sold for a dollar a bale. Conditions had improved to the extent that Murray had hired a farm manager and had moved into one of the towns. But by Fall 1926, the situation had begun to deteriorate, and the Indians had no cash with which to pay their rents. In January 1927, the government was in turmoil, and Hernando Siles Reyes, who had become President in 1926, was attempting to cancel the concession. Murray went to La Paz and prevented the termination of his concession, but by May the country was under a state of siege and the government turned hostile.[64] As Keith Bryant wrote:

> *At this low point Murray characteristically came up with a new plan: a prospectus for the El Gran Chaco Cattle Corporation of Bolivia. He was to be the president, and Sam R. Hawks, a hotel operator from Clinton, Oklahoma, was to serve as secretary and sales agent. The two men proposed to raise $250,000 to launch the venture. The Murray sons and their wives did not favor the proposal and urged Alfalfa Bill to return to Oklahoma and run for the senate or the governorship in 1930.*[65]

Murray, however, had long contended that real monetary success depended on the development of fine herds of cattle in the Chaco. Adhering to his usual pattern, Murray's prospectus called for investors to pay fifty cents per acre for grazing land with Murray using the money to buy the cattle and pay for their upkeep. Murray was to invest little or nothing himself, but he hoped the plan would help him retain his concession and convince the government of its viability.[66]

In a letter written on April 9, 1927, Marion said that it looked good on paper, but it was not a plan for her or Johnston. "The funniest thing in the prospectus," she wrote, "is the letter at the end. Father M. (I know this) wrote the pamphlet and yet at the end is a letter to Mr. Hawks from Father M. saying that he vouches for all the matter relative to this country in the prospectus! He also says he believes he knows the Chaco better than almost anyone. But he is mistaken. He only thinks he does."[67]

Hawks worked diligently to distribute copies of the prospectus and to raise the money they needed for the project. He wrote to Murray on April 11, 1927, that he had "made a hundred promises to let fellows 'in'—small fellows of course who want three or four hundred dollars or more worth of land and stock. I have explained to them all," he continued, "that the success of our venture depended upon my being able to get a few fellows . . . to put up the $80,000… We don't care, you know, who puts up the money just so [we] get plenty of it…; but it's easier to handle a few men with big money, than it is a lot of men with little money."[68]

The cattle company never materialized, but the attitude of the government did change. Local officials stopped pressing the Murrays and began to remove some of the Indian squatters from the lands. The Bolivian President recommended to the Congress that Murray be relieved of his obligation to bring twenty-five American families, that the concession be reduced to 7,500 acres, and that Murray be employed to train Indians to work the land and operate the cotton gin. Not knowing that this change came about because the border dispute with Paraguay was heating up and the government needed Murray's American presence in the Chaco to help validate Bolivian claims to the region, the Murrays rejoiced over the government's new spirit of cooperation.[69]

At the end of 1927, some members of Murray's family, in particular Marion, and her infant son, left Bolivia and returned to Oklahoma. Even Murray himself was tempted to accept an invitation to

become legal advisor to his old ally Henry S. Johnston, who had been elected Governor of the State of Oklahoma in 1926. Again, with his characteristic stubbornness, "Alfalfa Bill" declined the offer.[70] Marion wrote, "I think Father Murray intends to hang on until the cat dies the ninth time."[71]

Still concerned over the boundary dispute, Bolivia used its government-controlled press and diplomatic resources to praise the colony and maintain the myth of its success. Finally, on August 6, 1928, the Bolivian President canceled the concession, but agreed to keep Murray for the operation of the cotton gin.[72]

For his part, Murray became increasingly disturbed by the actions of the government, which was making advance preparations for a possible war with Paraguay over the Chaco. The war would finally come in 1932 and last until 1935. The government wanted to confiscate his mules and stock, which Murray refused to surrender, contending that as an American citizen, he had to be neutral. "Indeed, every male person from 18 to 51 had already been taken," Murray recalled in his *Memoirs*, "leaving no one but nine old men and boys under 18 and women" to run the colony. "Then they began on canceling the Concession," Murray continued. "I left the question with my sons, telling them that I came down there for their benefit. After two or three weeks' discussing the question with their wives, who wanted to return, we agreed to do so."[73]

They sold what they could and had an auction for the rest and "got just enough to pay… debts and return with my family and the wives of my sons, to the United States; but not enough for the sons to return. They remained until they made money enough to return themselves."[74] Landing in New Orleans on August 13, 1929, he bought passage for the family to Oklahoma. "I had $45 left," Murray wrote in his *Memoirs*, "with nothing but our personal wearing material packed in two trunks and 4,000 lbs. of my library; no household goods, no furniture of any kind."[75] Later Murray was to claim that the Bolivian government "could not have taken the

lands away from me under their own law" and that had he remained six months longer, he "could have sold to the Vice Consul of Belgium my holdings for all that it cost, plus $100.000 profit."[76]

However, as Bryant pointed out, "The Bolivian debacle never made Murray bitter. In the 1940's he wrote nostalgically of the years in South America and suggested to friends that he would like to try the colonization project again."[77] In his *Memoirs*, Murray wrote, "I really do not regret the experience. My sons particularly got a broader view of life, a greater experience that will stand them in good stead throughout life; and in order to prevent being lonely, we read nearly all the time, and learned a lot we did not know. That helped me in what I now write and was of great assistance when I was Governor of the State."[78]

Despite the fact that he had been away from the state and out of public life for ten years, Murray was almost immediately encouraged to run for office. He wanted to run for United States Senator, but that would have meant opposing former U. S. Senator Thomas P. Gore, who was thinking of making a come-back after having been defeated in the 1920 Democratic primary by Scott Ferris, who in turn had lost to Republican William P. Pine.[79] Many of Murray's supporters also wanted to support Gore, so Murray decided to encourage Gore for Senator and file for Governor.[80] The two men in some respects ran as a team buying ads together, but association with Murray helped Gore more than vice versa. After what was called by the media "the cheese and crackers campaign," because Murray had declared in a speech that he would carry his message to the people if he "had to walk and live on cheese and crackers," Murray became the ninth Governor of Oklahoma in a landslide Democratic victory in 1930.[81]

LACK OF SUSTAINABILITY IN A CLIMATE OF UNCERTAINTY

Early in his 1996 article for *The Chronicles of Oklahoma*, Aaron Bachhofer wrote that Murray's Bolivian plan "never stood a

chance of success. Poor transportation, inadequate utilities, misinformation and misunderstanding regarding the land, and bad luck at every turn all combined to catapult the colonists back home."[82]

Whether the project was doomed from the beginning was debatable, but certainly by the end of the first six months it was unsustainable, and the climate of uncertainty that prevailed for any such project in South America conspired against its success. This uncertainty had terminated Murray's earlier projects---the first because of the border conflict between Bolivia and Paraguay, and the second because of the undependability of the Peruvian government. When he finally was able to establish his colonies in southern Bolivia, it was again the uncertainty of the international conflict that eventually terminated the project; however, this time it was not so much the uncertainty on the part of the government as it was the lack of dependability on the part of Murray's own colonists. He had not anticipated that his colonists would fail him.

But Murray had failed his colonists as well. He had underestimated the challenges his colonies would face and overestimated his ability to overcome any obstacles. Despite his pointed and frequent efforts to recruit pioneers who fit his image of the steadfast Nineteenth Century pioneer who would endure physical and mental conditions with determination and fortitude, he ended up with colonists who were from the Twentieth Century and who expected certain conveniences such as clean water and transportation and expected their leader to make good on his promises that there would be no insects of consequence and that water was for the having only thirty feet underground. Murray anticipated the environmental problems and knew that hard work would be required, but he had not counted on having pioneers who would be faint-hearted when encountering unforeseen environmental and political problems. He thought he had controlled for that factor but was blind-sided when he discovered that his pioneers were not made of the stuff of those who had earlier opened the American frontier.[83]

He once rationalized that his colonists were like those who had come to Oklahoma to make the runs and after waiting for weeks for the big moment, and running into the new lands, picked up and left while those who stayed and were willing to work, reaped great benefits.[84] He wanted his colonists to be like the latter, but they turned out to be more like the former. He also failed to consider that the Oklahoma pioneers who made the runs in 1889 and the 1890s numbered in the tens of thousands, not the few dozen that he had recruited. Out of the thousands who made the runs only some had the characteristics to fit the model he had in mind; he underestimated his ability to use interviews and questionnaires to identify people of similar character.

In what remains the most detailed study of the Murray colonies, Anna Gwin Pickens argued in 1948 that, on the one hand, the time was not "scientifically" right for a colony in Bolivia. This was based on a Darwinian theory which she explained as a "subtle, more potent, force in human affairs" similar to that in the scientific world which brings about through natural selection the survival of the fittest. "Certain scientists of settlement," she wrote, "can most convincingly argue that the time is not yet [right] for Murray Colonies in the eastern border valleys of the Andes. Such colonies do not survive because there is, as yet no need for them in the larger sense of the needs of the world-community… It would appear that the inexorable law of survival is in full operation in Bolivia."[85]

In this vein, Pickens suggested that Murray's colonization attempt to open the *Chaco* was premature and that Murray "was ahead of his time."[86] The situation in which the world community needed a populated and developed *Chaco* had not evolved to the point where the time was ready for success. On the other hand, Pickens also said that the time for pioneers had passed. No longer had Americans in the Twentieth Century the fortitude to endure the challenges of pioneer life. Having been exposed to modern conveniences and a higher standard of living, they took much for granted, and they saw that the means to leave existed; in Bolivia, oil

field trucks frequently passed by the colony presenting the opportunity to hop aboard and to go back to civilization. In the 1890s, on the last frontier in Oklahoma, it was often a hundred miles by wagon to get back to civilization. During the occupation of the Great Plains, once one was out on a homestead, one did not have the opportunity to just pick up and leave if the insects were pests or the water poor. In short, the celebrated American pioneer spirit of earlier eras no longer existed. Rather than being ahead of his time, Murray was living in the past.

While Pickens' "scientific" analysis was an interesting one, history has generally shown that simple and obvious explanations are usually best. The failure of the colonies was not so much due to the laws of evolution as it was due to bad luck and bad planning in key areas. Intellectually, the project was not well thought through. Murray underestimated the problems and overestimated his capacity to deal with them. He had an expansive ego and an overblown sense of himself. He considered himself an expert on just about everything from how to throw a curved ball to proper diet to economic and political affairs. He had a misplaced faith in Jeffersonian agrarianism and a theory of civilization which was reminiscent of social Darwinism.

Also, Murray's remarkable skills lay more in the persuasive and legislative realms than in the executive or business spheres. This was not unusual in political leaders. Someone who could conduct a great campaign but was less effective at governing, Murray was better at selling the idea of a colony than at actually managing it. Marion observed that Murray "gets up some of the most gorgeous schemes on paper I ever saw. I wish he would concentrate on what he has… If we do hang on to this land, it won't make a cent until he does go somewhere. He's a politician—that means he is ruined for business."[87]

While a masterful campaigner, as Governor of Oklahoma, he often governed through intimidation and "good-old-boy," partisan

politics. His nicknames pretty well told the story: he was "Alfalfa Bill" because he was an expert on growing alfalfa, simply because he was the first to plant it in the Chickasaw Nation, and if an expert on alfalfa, why not everything else. He was "Cocklebur Bill" because of his irascibility and perceived arrogance, tending to charge ahead not considering less aggressive approaches. During his time as Governor, while his honesty or devotion to the public welfare was never seriously questioned, he became infamous for calling out the national guard thirty-four times and losing the accreditation of the state's higher education system.[88] Finally, as the "Sage of Tishomingo" he promoted his social, political, economic, and racial ideas and his general philosophy of life. These all made him the colorful and controversial figure that he was. A bundle of prejudices from racial to political and economic, he seldom stopped to consider that he might be wrong. Alfalfa Bill Murray was smart, but not smart enough to know that he was on a fool's mission in Bolivia. In his *Memoirs*, he wrote that his time in *El Gran Chaco* was "five years of the most peaceable, satisfactory life, to be followed by five years of the most turbulent, hotly contested of all my life, that of the campaign of 1930 to the end of my term as Governor."[89]

CONSEQUENCES FOR BOLIVIA

From the Bolivian standpoint, there was evidence that the Murray project served to increase the government's understanding of its colonization problem. It became clear that the government would have to do more than simply plant settlers, particularly foreign ones, on the frontier and let them bring civilization to the wilderness. The failure of the Murray colonies illustrated for the government that civilization had to be brought to the frontier fully grown. It would not grow by planting human seeds who resented their inability to bring civilization with them. They must bring more than pioneer spirit and the willingness to work; there must be infrastructure that would support the work and spirit of Twentieth Century pioneers, who were not like those of the Nineteenth Century. Jeffersonian agrarianism would not substitute for modern infrastructure and socio-economic support in bringing sustainable

development to the frontier. As Pickens pointed out, "Whatever the Ministry [of Colonization]'s hope, the failure of the Murray Colony had served to underline Bolivia's inability to break the vicious circle of no-people-no-roads---no-roads-no-people."[90]

Apparently, the failure of Murray's colonies figured into the change in Bolivia's colonization policy when President Hernando Siles' Government, just before its fall in 1930, repudiated the policy of undertaking colonization ventures east of the Andes in favor of maximizing production in the lands already occupied. "Evidently," Pickens wrote, "the failure of the Murray Colony was just what the Republic of Bolivia needed to see the light" that in modern times successful colonization in the *Oriente* was "a thing of the future when railroads and highways will have brought… [this] area in touch with navigable rivers flowing to the Atlantic, and with the railroads to the Argentine and of the Bolivian plateau."[91]

In more recent years, since the 1952 Bolivian Revolution, land policy was marked by lowland colonization. While the government had encouraged colonization in the 1940s, it was not until the 1950s, when a major highway connected Santa Cruz with Cochabamba and a rail system linked Santa Cruz with Sao Paulo, Brazil, that the colonization process began to accelerate. Among the settlers were former rulers, who had lost land in the reform, and native residents of the *Altiplano*, who came as laborers or who were able to buy land. The government facilitated the process by creating the National Colonization Institute (INC) to help highland families move to newly established government colonies, which were sometimes completely isolated from other towns. Between 1952 and the mid-1970s, with government help, 190,000 people colonized the lowlands. However, these government-sponsored colonies accounted for only fifteen percent of all the pioneers. Moreover, there was a high dropout rate, and many complained that the INC provided too few roads and inadequate support services. There were also settlers from Japanese groups and North American Mennonite communities who established

colonies in neighboring Paraguay as well.[92] Colonization, along with improvements in infrastructure and land reform, helped to account for the Department of Santa Cruz's rise to prominence as one of the country's most productive farming areas.[93]

The construction of the all-weather road from Cochabamba in the highlands to Santa Cruz in the lowlands was accomplished in 1954 by the revolutionary government of Victor Paz Estensoro, leader of the *Movimiento Nacional Revolutionario (MNR)* party. The importance of this development was summarized by anthropology professor Allyn Maclean Stearman as follows:

The social Revolution of 1952 led by Paz and the MNR brought radical changes to the old social order. Land was expropriated from the *patrones* and given to the peasants, the mines were nationalized, and debt peonage was abolished. There were also plans to begin to exploit the mineral, timber, and land resources of the Oriente. The road to the lowlands not only would open this territory for use but also would serve to link Santa Cruz with the rest of the nation and thus bring about a greater sense of national integration. Much of this integration, it was felt, could be achieved by encouraging highland people to take up farming in the lowlands.[94]

Thus, colonization of these new lands was expected to expand agricultural production, alleviate highland population pressures, and diminish isolationist tendencies among the lowland natives. Over the thirty years following the social reforms, according to Stearman, these goals were slowly realized but not due primarily to colonization; rather, "other factors such as the discovery of oil, the growth of commercial agriculture, increased industrialization, economic opportunities in service sectors, and, in recent years, the cocaine trade have all contributed to the growing importance of the department in the national scene. Nonetheless," Spearman continued, "for many years the colonization effort was a major fact in the development plan for Bolivia, involving considerable expenditures in monetary and human resources."[95]

Another factor in the colonization efforts after 1953 involved the engagement of the Bolivian Army, which was reorganized after the revolution. The army was not only used in the planning and construction of highways, but it also played a key role in the colonization program. A "Colonization Division" composed of four battalions was created, and as many as 1,800 men were recruited. The majority of the volunteers came from the Altiplano and the valleys, with only a few coming from the east. The soldiers did their work on individual plots of land from 170 to 200 acres in size, which would then be transferred to a peasant family. In addition to the land, a house, some implements, domestic facilities, seeds, technical instruction, medical assistance, and medicine were provided. The Bolivian Development Corporation paid half of the cost while half was paid by the peasants; the Ministry of Defense paid the salaries of the soldiers, who also planted fields to grow a portion of their food.[96]

In addition to the projects of the Army's Colonization Division, the Bolivian Development Corporation organized and supported five other colonies. Two of these had foreign colonists, and by July 1957, there were 1,885 people in all of these colonies, and 36 miles of roads and 344 houses had been built. At the end of its first two years the Development Corporation concluded that the results of the program were promising, but that the army resources should be used more efficiently, and that there was the need for a commission of participant agencies to draw up a national colonization plan that would expand the program to other areas of the country.[97] Eventually, the *Corporacion Boliviana de Fomento (CBF*) superseded the military's Colonial Division and provided civil administrative authority. Still, the military continued to provide manpower and equipment for land clearing, and many of those appointed by CBF as administrators were military or ex-military.[98]

The Bolivian government continued to be interested in foreign colonists in the years after the revolution. Spearman described it as follows:

> *During the initial years of government efforts at resettlement, foreign groups as well as Bolivian highlanders were encouraged to colonize the lowlands. In 1954, fifty Volga-German Mennonites arrived in Santa Cruz. They were followed in 1958 by another fifty Dutch-German Mennonite families and, in 1964, an additional fifty-four families from this same European religious group settled in the department. The Mennonites were guaranteed religious freedom, exemption from military service, the right to establish their own schools, and duty-free access for farm equipment.*[99]

More than 3,000 Old Colony Mennonites arrived in the late 1950s from a parent colony in Mexico and settled in the arid zone south of the Santa Cruz Department and closer to the area where the Murray colonies had been located. They were able to establish productive farms despite the environmental challenges. All of the Mennonite colonies resisted assimilation into Bolivian society with marriage outside of the religious order being prohibited. Spanish was taught only to the men for the purpose of marketing.[100]

The Mennonites were not the only foreign immigrants to settle in the Bolivian *Oriente.* There were Japanese and Okinawans as well. In 1956, an agreement was signed by the governments of Japan and Bolivia that established the colony of San Juan. By 1965, San Juan had some 262 households and 1,546 individuals, and by 1979, road improvements and the arrival of rural electrification illustrated the importance of infrastructure to the expectation of success. Likewise, three Okinawan colonies were founded east of Montero, Bolivia, and with the paving of a road through the Okinawan lands from Montero, the colonies were able to achieve permanence. Unlike the Mennonites, the Japanese and Okinawans intermarried with local Bolivians, learned Spanish, and enculturated their children as Bolivians in addition to teaching them Japanese or Okinawan values.[101]

"By the beginning of the 1960s," according to Spearman, "efforts by the Bolivian government to establish viable agricultural colonies of highlanders began to falter. In most instances, colonies had been opened for settlement before adequate market routes were made available, leaving the settler cut off not only from the marketplace but also from medical, educational, and social support. The colonies," Spearman continued, "became known as options only for the desperate and destitute and were avoided by scores of prospective migrants searching for land. Colonists frequently used the settlements as temporary stopping places until they could acquire farmland with better market access."[102]

CONCLUSION

In 1950, the city of Santa Cruz had a population of 43,000 people spread over an area of about 14,079 acres. Within fifty years, the population had increased to more than a million people extending over 61,750 acres. The Santa Cruz area in 2001 produced 42% of the nation's marketed agricultural output and 34% of its industrial gross national product. The state sponsored migration programs to the Santa Cruz region during the 1960s and 1970s were supplemented by "spontaneous settlement," intensified by "push factors," such as economic crises and severe *altiplano* droughts in the 1980s.[103] By 2021, Santa Cruz was Bolivia's largest city, the area's population was 2.4 million, and it produced 35% of the gross domestic product.

The colonization policies established in the 1950s indicated that Bolivia had learned and acted upon the lessons of the 1920s that taught the need for supporting infrastructure if colonization on the frontier was to be successful. In addition, for a dozen years, the Army was politically neutralized, and its role was redefined primarily in the direction of "civic-action projects, particularly in helping to colonize frontier areas."[104]

Undoubtedly, "Alfalfa Bill" Murray's South American dream,

which caused the intersection of Oklahoma history with the history of Bolivia, contributed to the sustainability of agricultural reform and development in Bolivia significant enough for it to deserve at least a footnote in the histories of both places.

ENDNOTES

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[47] Ibid.
[48] Bryant, 163-65; NARA, *Murray Colonization Project*.
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[52] Murray, *Murray Colony of Bolivia: To All Interested Therein*, 1.
[53] Ibid.
[54] Ibid.
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[56] Murray, *Memoirs*, 2:263.
[57] Murray, *Memoirs*, 2:264.
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[61] Ibid., 235.
[62] Unger Collection, October 4, 1925, U-5:3.
[63] Unger Collection, U-5:4.
[64] Bryant, 167-68.
[65] Ibid., 169.
[66] Bachhofer, 419-20.
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[68] Sam Hawks to Bill [Murray], April 11, 1927 (personal letter) in *Murray Collection*, Carl Albert Center, University of Oklahoma, Box 4, Folder 23.

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[70] Unger Collection, January 13, 1927, U-7:2; and Bryant, 170.

[71] Unger Collection, February 15, 1927, U-5:6.

[72] Bryant, 170-71.

[73] Murray, *Memoirs*, 2:264.

[74] Ibid.

[75] Ibid., 2:265.

[76] Ibid., 2:263.

[77] Bryant, 172.

[78] Murray, *Memoirs*, 2:265.

[79] Gore was grandfather to author Gore Vidal and a distant relative to Tennessee Congressman and Senator Albert Gore, Sr. and his son, Vice President Al Gore, Jr.

[80] Keith Bryant also told the story that when senatorial candidate Charles Wrightsman, a Tulsa oil millionaire, rebuffed Murray's attempt to get him to buy an ad in his *Blue Valley Farmer* campaign newspaper, Murray wired Gore and encouraged him to file. Gore returned to Oklahoma and filed against Wrightsman in the Democratic primary. Bryant 185. In his *Memoirs*, Murray told the story slightly differently, assigning the credit for the contact to his campaign managers. Murray, *Memoirs*, 2:365, 372.

[81] Bryant, 185; Murray, *Memoirs*, 2:365, 372. See also, W. Edward Rolison and Carol Duncan, "Sam Hawks and the Oklahoma Gubernatorial Campaign of 1930," *Chronicles of Oklahoma* 100 (Winter 2022-23): 410-43.

[82] Bachhofer, 399.

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[94] Allyn Maclean Stearman, "Colonization in Santa Cruz, Bolivia: A Comparative Study of the Yapacani and San Julian Projects," in *Frontier Expansion in Amazonia*, ed. Marianne Schmink and Charles H. Wood (Gainesville: University of Florida Press, 1984), 232-33.

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WHITE SUPREMACY CRIMINAL JUSTICE: THE ROGERS FAMILY MURDERS[1]

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ABSTRACT

On New Year's Eve 1939 three members of the Rogers family were murdered, and two small children escaped. Authorities thought the murders were committed by prison camp convicts allowed to roam freely with minimal supervision. A local farmer came forward and identified two prison camp convicts as the murderers. Oklahoma Governor Leon Phillips sent special investigators to Choctaw County. The governor on 12 January announced the confession implicating convicts was a hoax. Instead, two African Americans were charged. One, W. D. Lyons confessed but alleged beatings and torture were used to extract the confession. Locals, white and African American, remained convinced the convicts were at fault. The case attracted Roscoe Dunjee, the NAACP, and ultimately Thurgood Marshall who became Lyons' co-counsel at trial and lead attorney in appeal. Dunjee, the NAACP, and Marshall were attracted as the case was ideal to raise the profile of the NAACP. This raised a conflict between Marshall's obligation to his client, Lyons, and his obligations to the NAACP. Marshall failed to challenge the absence of African Americans on the jury. After Marshall's Supreme Court appeal failed local white and African Americans pressed for Lyons' release. After incarceration from 1940 through 1961, Lyons was paroled by Democrat Governor J. Howard Edmondson and pardoned in 1965 by Republican Governor Henry Bellmon. Lyons lived another 30 years in Okfuskee

where he married and fathered two children.

The New Year's Eve murders and subsequent arson at the Choctaw County Rogers family shack led to the worst instance of Oklahoma political corruption and misuse of Oklahoma's criminal justice system, to my mind, unsurpassed, perhaps unsurpassable. The clash of interested parties ensured the murderers were never brought to justice while a young innocent African American was sent to the State Prison for twenty years. Those with a stake in the affair included the local sheriff and county attorney, the governor, the NAACP, local residents, including the victim's family, and, most of all, W. D. Lyons, the young African American convicted.

THE ROGERS FAMILY MURDERS

Sunday, 31 December 1939, New Year's Eve, two persons approached the Rogers' rural Fort Towson area home. One fired a shotgun through the window killing Elmer Rogers. His wife Marie ran out the back door shouting to their son James Glenn to run, which he did, scooping up his younger brother Billie Don. A fleeing Marie received a shotgun blast. Marie and Elmer were chopped with an ax and the house set afire. A third son, Elvie Dean, hiding under a bed, died of smoke inhalation. Making it to the highway, James Glenn and Billy Don were picked up and taken to the Choctaw County sheriff's office.

> *"Eight-year-old Glenn Rogers, a weeping, tow-headed farmer boy, told in a shrill, shaking voice today how a quiet New Year' eve at this tiny home in the wooded Kiamichi Mountain country had been turned into a night of horror by two men who killed his father and mother and burned their home. ... He told officers that two men whom he never had seen before shot his father through the window, killed his mother when she attempted to flee, spread coal oil around the house, then touched matches to the furnishings."*[2]

County Sheriff Roy Harper – County Attorney Norman Horton's Investigation

Local suspicion fell on convicts at a prison work camp between Fort Towson and Sawyer. The Sawyer work camp was under the jurisdiction of Jess Dunn, warden of the state prison at McAlester. Prison sergeant, Joe Adair, supervised the work camp. Adair maintained lose control over the convicts. They were permitted to roam freely about the area, some had guns and vehicles, lived with girlfriends nearby, were habitues of local drinking and bawdy establishments.[3]

The local investigation was led by Choctaw County officials, Sheriff Roy Harper and County Attorney Norman Horton. Both were Democrats elected for two-year terms. Both were relatively new to their jobs. Neither was directly implicated in the recent federal prosecutions and convictions of corrupt Hugo police officers. Choctaw County affairs was not immune to the corruption and political undertow of the day. Whatever hierarchy there was, Horton and Harper were relatively low on it. What we know of these investigations is roughly as follows.

Tuesday 2 January 1940 Information started coming to authorities implicating prison work camp convicts, Frank Wellmon and Floyd Carpenter. They were arrested.[4] Ten days later, sheriff Roy Harmon announced the crime was solved. Mrs. Pruda May Worts, age 72, told authorities her nephew, Huston Lambert, a 28-year-old Choctaw County farmer, could identify the killers.

> *"Solution of the gruesome triple arson tragedy ... was claimed Friday by Roy Harmon, Choctaw county sheriff. Behind prison walls at McAlester Friday were two convicts from the Sawyer prison camp near here, both accused of the triple murder by Houston Lambert, 28 years old, Fort Towson farmer. Lambert told county officers early Friday morning that the two prison camp trustees, at the point of a gun, forced him to drive them to the Rogers home the*

night of the tragedy … At McAlester early Friday, Lambert confronted the suspects in their cells and identified them as the two he drove to the Rogers home. Both convicts denied his statement. "[5]

The next day, Saturday 13 January 1940, Choctaw County prosecutors announced they were ready to file murder charges against Lambert and the two convicts. They found a bloody axe at one suspect's home, possibly the one used to smash Mrs. Rogers' head. The murder motive seemed to be $80 Rogers had won in a dice game with the convicts.[6] Charges were never filed, however.

Monday 15 January 1940:

"Sheriff Roy Harmon said … the case still presented perplexing angles and that the charges cannot be filed until they are cleared up."[7]

Friday 19 January 1940:

"County Attorney Norman Horton said Houston Lambert, 28-year-old farmer told him a shotgun used in the killings had been thrown into the [Gates] creek. Although Lambert had given several other versions of the tragedy in which officers placed little credence, Horton said he was inclined to believe his latest story. The county attorney said Lambert has absolved several convicts he at first named as the slayers and now says that he and Jim Thompson, a convict, were involved. The farmer admitted he was not 'forced' to accompany the slayers, as he first contended, but says he was 'influenced' by Thompson to go to the Rogers home under an agreement to split whatever money they could take from Rogers, Horton said. After being questioned for several hours, Horton said Lambert told him Thompson shot Rogers and his wife through the window and that Lambert poured kerosene on the bodies and fired the house. The county attorney predicted finding of the weapon would provide a clue which would solve the crime."[8]

For three weeks, between 2 and 22 January, local authorities had obtained information and a confession implicating work camp convicts in the Rogers' murders. Then, Monday 22 January, the *Oklahoma City Times* reported accusations against the prison camp trustees 'gave impetus' to the governor sending down his investigators who reported back there was nothing linking trustees to the murders.[9]

Governor Phillips' Vernie Cheatwood and Bert Steffee Investigation

Leon Phillips was a "star lineman on Oklahoma's 1915 [National Championship] football team."[10] As an Okfuskee County attorney he successfully defended local election officials in one episode of a long federal court battle. Okfuskee County election officials were notorious for denying the vote to African Americans. Phillips defended them in court.[11] Phillips was elected to the State House of Representatives, made Speaker, then elected Governor. He was hard working and detail oriented. Scales and Goble capture Phillips as "a man capable to consuming political hatreds."[12] One gets the impression Phillips saw a political landscape populated by pawns. Some pawns were threats. Governor Phillips had special Investigators looking out for his political interests, "reporting only to Phillips such useful data as the campaign plans of his opponents, as well as the business and marital problems of would-be independent legislators."[13]

By the second or third day of January it began to appear the local investigation would implicate the management of Oklahoma's school lands, on which the prison camp was located and the State Prison at McAlester. There was a direct line of responsibility from the work camp to the governor. The governor was and is the permanent chair of the Land Office Commission.[14] Managing state lands as a recreation area for unsupervised convicts, including murderers, had the potential of derailing the remainder of his term leaving Phillips sitting in the middle of a toxic mess. Monday, 15 January 1940 the governor announced the Land Office Commis-

sioners would end use of prison labor.[15] By early March 1940, the New Deal Works Project Administration (WPA) took charge of the soil conservation work.[16] Bringing in the New Deal WPA solved an immediate problem for the anti-New Deal governor. The governor is also responsible for the state prison and its warden.[17]

The governor quickly realized the Choctaw County murders posed a political threat evidenced by the work camp shakeups. He sent down his special investigators, Vernie Cheatwood and Bert Steffee. to Choctaw County.[18] Cheatwood and Steffee engaged Reasor Cain, a Frisco Railroad Special Officer, and Oscar Bearden, a local constable.[19] Oscar Bearden and Reasor Cain were peculiar persons to join a murder investigation. Neither appears to have been part of the Sheriff and County Attorney's investigation focused on the work camp convicts. A year earlier, March 1939, Bearden, along with six others, including Hugo police chief Jim Lindley, were convicted in federal court of conspiring to protect untaxed liquor shipments passing through Hugo.

Bearden and his fellow conspirators were awaiting appeal at the time of the Lyons arrest.[20] Soon after, on 8 February 1940, the 10th Circuit Court of Appeals affirmed the convictions. Testimony documented Oscar Bearden was a thoroughly corrupt law officer. While Reasor Cain was not a defendant, he was a habitue of the corrupt police station and testified as a defense witness on behalf of Bearden and the others.[21]

The Cheatwood – Steffee investigation leading to Lyons' arrest was behind the scenes. Details were not brought out at trial. They can only be inferred. We can assume they did not look into the convicts and the work camp. [22] Instead, they looked for killers, who, when found, could not embarrass or harm the governor. Fall guys.

The governor's investigators learned W. D. Lyons, a young African American, a convicted chicken thief, lived near the Rogers

home. Lyons had been seen with a shotgun wrapped in a newspaper wandering field and wood ostensibly hunting rabbits. Fishing and hunting commonly supplemented local diets. The Cheatwood-Steffee investigation determined Lyons had borrowed a broken but usable gun and purchased a couple of shotgun shells. As Lyons lived right there, the investigators had no trouble finding people who remembered seeing Lyons with an African American friend, Van Bizzell, in that vicinity about the time of the murders. When Cheatwood and Steffee had their fall guys their next task was to bring around Sheriff Roy Harper and County Attorney Norman Horton. That took over a week. Governor Phillips then could announce the white farmer's confession and white convict arrests were a 'hoax.'[23]

The motive for the 'hoax' was never explained. Nor was how a 'hoax' coming to involve so many unconnected persons, even a murder confession. Houston Lambert, who had confessed and implicated convicts, was released. When asked by a reporter about what is going on, Lambert replied "I just don't know."[24]

County Attorney Norman Horton at this point, Wednesday 24 January 1940, offered a revised scenario of the investigation. The initial murder suspect was W. D. Lyons all along.

> *"It was [Lambert's] statement, Horton said Wednesday, that diverted their investigation of the Negro against whom suspicion was thrown nearly two weeks ago. At that time police sought to question Lyons, but he fled from them and escaped. When the inquiry was resumed a few days ago officers found that Lyons had been seen in the neighborhood of the Rogers home carrying a shotgun the afternoon before the three were killed."*[25]

Finally, Friday 26 January 1940, County Attorney Norman Horton announced W. D. Lyons and Van Bizzell would be brought from McAlester prison to be arraigned for the Rogers murders.[26]

Lyons had not fled police. He was in the Choctaw County jail for two weeks. W. D. Lyons had been held incommunicado with no access to an attorney or appearance before a magistrate. By 22 January 1940, the local authorities had come aboard with the governor's hoax scenario. We can only imagine what went on between the local authorities and the governor's people. In the end, Sheriff Roy Harper and County Attorney Norman Horton went along with what many in Choctaw County, white and African American, thought was a frame-up. Authorities gambled few would care if an innocent African American illiterate convict was unjustly sentenced to death for murder. The local law enforcement corruption was already documented in the federal trials which convicted Hugo's police chief and one of the Cheatwood – Steffee investigators, Oscar Bearden.

Roscoe Dunjee, Stanley Belden, Thurgood Marshall and the NAACP

In 1915 Roscoe Dunjee began *The Black Dispatch* African American newspaper in Oklahoma City. The same year Dunjee helped form the Oklahoma City chapter of the NAACP. In 1932 Dunjee organized the Oklahoma State Conference of Branches of the NAACP. He served as State President 1932 – 1948 and on the NAACP National Board of Directors. Dunjee linked Oklahoma litigants with NAACP attorneys in a number of landmark Oklahoma cases.[27]

Through his newspaper and the Oklahoma NAACP organization Dunjee had a network alerting him to matters of interest to African Americans. Likely, NAACP Idabel branch leader, H. W. Williamson, gave Dunjee an early alert when the Rogers murder investigation turned from white convicts to African American W. D. Lyons. The point of interest were local stories of beatings and torture leading to Lyons' confession. Idabel is less than 50 miles down US 70 from Hugo. H. W. Williamson became the point person for the Hugo NAACP effort.

As NAACP State President Roscoe Dunjee was concerned with broad patterns of government-inflicted injustice upon African Americans. The NAACP could not stand behind every Oklahoma African American accused of a felony. The immediate NAACP issue in the Lyons murder case was not Lyons' guilt or innocence. It was the alleged vicious beating of an African American to gain a confession and the subsequent alleged casual violation of the accused's basic civil and constitutional rights. The NAACP was desperate for scarce funding, new membership, and publicity. The Oklahoma NAACP needed a drum to pound. Dunjee framed the Lyons case from this organizational perspective.

National and local organizations dedicated to opposing legal injustice mounted a gargantuan effort to protect the unjustly accused. But their goals conflicted. Given a choice between saving the victim of the injustice or continuing to fan flames of public outrage, they often chose to keep the case alive to strengthen organizational membership and fundraising. In this instance organizational goals perpetuated, rather than ameliorating, a horrible injustice.[28]

By February 4th, 1940, Dunjee hired white Cushing attorney Stanley Belden to represent accused murderer W. D. Lyons. Belden, a Kansas native, attended Northwestern Oklahoma Teachers College, now Northwestern Oklahoma State University, in Alva. He studied law at Cumberland School of Law in Lebanon, Tennessee.[29]

Dunjee later told Thurgood Marshall:

> *"I employed Belden at a time when only a white man could have gone into Hugo, and at the request of Negroes in that section who advised me that relations between the races were very strained. It is well that I did employ Belden for he has been able to secure the testimony of a large number of whites who otherwise perhaps might have failed to testify."*[30]

Belden, as an American Civil Liberties Union (ACLU) attorney, defended Communists, union members, and Jehovah's Witnesses. He defended unpopular causes in the courtroom and in appeals.

For Roscoe Dunjee the way forward for the Oklahoma NAACP was to involve the national office, especially its Special Counsel Thurgood Marshall. In March 1940 Dunjee wrote the NAACP Executive Secretary Walter White, enclosing a newspaper clipping with details of W. D. Lyons' beating and torture.

> *"I wish you would advance me $100.00 immediately ... I am attempting to dig into ... the terrible flogging given to this Negro in order to extort a confession."*[31]

Roy Wilkins, Assistant Secretary to Walter White in New York, wrote back 18 April 1940 "am mailing … [a] check for $75 today. Best we can do. Sorry."[32]

As intended, Dunjee's letter created interest in the NAACP New York headquarters. However, the national headquarters was itself pressed for funds. Many cases competed for attention. The NAACP leadership had to triage. They needed winnable cases they could bring to the United States Supreme Court. If successful, such cases could change the law and law enforcement throughout the nation. Such cases, incessantly publicized, would bring needed support and prestige to the NAACP. The NAACP was in competition with the ACLU, the Communist Party and other groups fighting on behalf of the disadvantaged.

Thurgood Marshall, age 32, was NAACP Special Counsel and Director of the NAACP Legal Defense and Educational Fund. He had already litigated before the U.S. Supreme Court and had pending cases in Texas and Connecticut. He was very pressed for both time and funds. But, as Director of the NAACP Legal Defense and Educational Fund, he was also charged with raising money. To do that he needed publicity, publicity showing the NAACP at the forefront of the battle against injustice.

Wednesday 11 December 1940 Marshall wrote Dunjee, opening with the April $75 loan:

> *"I wonder if you would let us know whether or not the item will be repaid in the near future so we can use it on our other cases. ... The other question is that we would like to have a full report on this [Lyons] case because we consider it a most important one and the type of case which captures the attention of all of us. ...I am wondering if you would give us the 'lowdown' on the entire situation."*[33]

Dunjee wrote back on Thursday 26 December 1940:

> *"Since we offered defense for Lyons the court has through some subterfuge, or another refused to docket the case. Before the primary, it was commonly known that the officials in Hugo County [sic. Choctaw County] did not want the case called because it might react disastrously to the candidacy of the County Attorney and Sheriff."*[34]

Here, Dunjee was prescient. By 1943 both County Attorney Norman Horton and Sheriff Roy Harmon had been defeated, replaced by Ralph K. Janner and Cap Duncan, respectively. Dunjee goes on:

> *"There is also another element which enters. The governor's office sent a man down to the county and this man is known to have whipped and clubbed Lyons almost into insensibility. This is a wide-open case ... the whites down in Hugo are very much inclined to be with Lyons and against the elected County officials. ...this is one where I believe we could attract the attention of the entire nation."*[35]

At this point, December 1940, Lyons has been jailed 'for safekeeping' at the state prison since January.[36] His co-defendant, Van Bizzell, was released on bail in July. Lyons' attorneys discussed with Dunjee seeking a writ of habeas corpus, but they chose not to. A writ of Habeas corpus would force authorities holding Lyons to justify holding him without trial. It is clear they did not dis-

cuss this strategy with their client, Lyons, nor get him bail. The legal team's consideration, instead, was keeping the case alive for national publicity and fundraising for the Oklahoma and national NAACP. Bailing Lyons would end his usefulness to the NAACP. Lyons' priority, in contrast, was gaining release from jail.

Thursday 11 January 1941, Thurgood Marshall wrote back to Dunjee. Marshall wanted to know if this would be a NAACP case.[37] Dunjee replied:

> *"I am of the opinion that this is one of the most important cases we have attacked. It is a perfect natural so far as winning is concerned. ... What I want to suggest is that you arrange to come down for the trial. Immediately following the trial, I can have you speak in half dozen points of the state which will make it possible to soften the cost of transportation and [etc.]. ... I believe you would be doing a fine thing to step in right at this point so that the National Office can take the spot-light and therefore revive association activity all over the U.S. ... As the matter stands no there is no ill feeling against Lyons. The community will be with him. Public sentiment has completely changed in and around Hugo. The only trouble will come from the officers who worked with the Governor's investigator. They [Sheriff Roy Harmon and County Attorney Norman Horton] are no longer officers, for the white and Negro citizens defeated the sheriff who served at the time Lyons was beaten."*[38]

Local Residents, Whie and African American, and the Victim's Family

Local whites were on Lyons' side. Their horror at the Rogers murders was only amplified by authorities exonerating felons that locals were confident did the crime. They were angered by authorities railroading two African Americans white locals thought innocent. The father of victim Marie Rogers, E. O. Colclasure, helped form a local NAACP chapter.[39] He led the effort to free Lyons well after the NAACP had given up.

The Chicken Thief
William Douglas [W.D.] Lyons, a 19-year-old Ft. Towson youth, was caught Thursday 13 January 1938 at 1:30 a.m. with some chickens, a pistol and flashlight. By 3 p.m. that day he had been sentenced by District Judge George R. Childers to a three-year sentence at McAlester penitentiary. [40]

At the time, an illiterate young southern rural African American male stealing chickens was a trope on stage and literature.[41] It was also a reality. We can notice in the course of thirteen and a half hours young Lyons was arrested, arraigned, tried, and sentenced to three years in the penitentiary by Judge Childers. For some reason he did not serve all three years. As it turned out, it would have been better for him if he had at least served two years. For many young male African Americans, then and today, an arrest, even over a trivial matter, can disastrously change the course of an entire life.

Denver and John Nix, using interviews, court documents and newspaper coverage pieced together African American W. D. Lyons' version of his detention and interrogation.[42]

Within a week of Cheatwood and Steffee's arrival in Choctaw County, Thursday 11 January 1940.W. D. Lyons came home to find two men with drawn pistols waiting. Oklahoma court of Criminal Appeals judge Thomas H. Doyle noted "Lyons was 'arrested' by civilians without a warrant."[43] Oscar Bearden and Reasor Cain were not acting as a constable, a law officer, a Frisco agent, or even within the law. At best, they were 'good citizens helping out.'

In court, Lyons told his version as to what happened next. About three blocks from the courthouse and jail Resor Cain broke off a piece of one-inch board lying on the street and Oscar Bearden struck Lyons on the head with this board. He then kicked Lyons and threatened his life by telling him they were going to burn him and kill him by degrees unless he 'confessed.' About a block from the jail, they banged Lyons' head against a tree. When they reached

the jail, the jailer, Leonard Holmes, greeted Lyons by striking him in the mouth with the jail keys which weighed about five pounds. Bearden then told Cain and Holmes to 'get some more officers, and we will drag him through colored town and let the rest of the Negroes learn a lesson.' Leonard Holmes returned and reported there were no more officers around at that time. The jailor and Deputy Sheriff Floyd Brown then carried Lyons to the top floor of the women's side of the jail where Floyd Brown kicked him and knocked him down with his fist.[44]

Monday evening 22 January 1940 – Tuesday 23 January 1940, Lyons told the court at his trial he was taken from his cell to the office of Choctaw County Attorney Norman Horton. On the way, Lyons said a highway patrolman beat him with a blackjack. In Horton's presence, Lyons said, Cheatwood handcuffed Lyons to a chair and began hitting him with a blackjack. Cheatwood, a highway patrolman and Reason Cain took turns beating Lyons, making threats, and demanding a confession. About 4:30 the next morning county prosecutor Norman Horton asked Lyons if he killed Elmer Rogers. When Lyons said "No" Cheatwood hit Lyons again with the blackjack and continued until Lyons agreed to say he killed Rogers, according to Lyons. Denver and John Nix summarized Lyons' version of his interrogation and confessions.

> *"Sheriff Roy Harmon pulled W. D. Lyons's mangled, bloodied body up from the chair in the county attorney's office – he couldn't stand on his own – and caried him back to the jail section of the courthouse. Lyons stayed in a cell there for just five minutes before men returned and brought him to the sheriff's office. ... He had now been without sleep for approaching twenty-four hours. ... That evening, the assistant county attorney, the court clerk, and Vernon Cheatwood came to Lyons's cell with a written statement, ordering him ... to sign it. ... After nearly two days without sleep, amid repeated rounds of beatings and constant threats, Lyons signed their statement. With their*

> *confession in hand the lawmen walked Lyons out into the jail yard and posed for pictures with him ... After that Lyons was transported to the Oklahoma State Penitentiary at McAlester ... where his captors sat him in a chair in the office of the prison warden Jess Dunn ... Lyons signed a [second] statement prepared for him by his captors ..."*[45]

Wednesday 24 January 1940, Vernon Cheatwood announced 21-year-old African American W. D. Lyons had been arrested Thursday 11 January 1940, two weeks earlier, for the murders.[46]

> *"[Lyons] was held in an undisclosed jail [Antlers in Pushmataha County, about 20 miles Northwest of Hugo] ... 'We got Lyons put away for safekeeping,' said Vern Cheatwood, special investigator for Governor Phillips, who announced Lyons' confession. ... Cheatwood said Lyons admitted after eight hours of questioning, naming another Negro ex-convict, Van [Bizzell], as the man who shot the Rogers, hacked them with an ax and then set fire to their frame home ... Cheatwood said Lyons told him he received two dollars for his part in the slayings ... He denied using either the gun or ax, Cheatwood said, but admitted pouring coal oil through the dwelling before it was fired."*[47]

Pre-Trial Violations of Defendant W. D. Lyons Rights

Whether or not Lyons' testimony about his treatment between his apprehension and confession is truthful, his rights were severely violated. *Compiled Statutes of Oklahoma, 1921* provide:

> § 2351 "No person … charged with a public offense be subjected before conviction to any more restraint than is necessary for his detention to answer the charge."
>
> § 2446 "When a complaint, verified by oath or affirmation, is laid before a magistrate, of the commission of as public offense, he must, if satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, issue a

warrant of arrest."

§ 2456 "The defendant must, in all cases, be taken before the magistrate without unnecessary delay.

§ 2466 "The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention."

§ 2477 "A private person may arrest another … When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

§ 2478 "He must, before making the arrest, inform the person to be arrested of the cause thereof …"

§ 2480 "A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer.

§ 2484 "When the defendant is brought before a magistrate upon arrest, either with or without a warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charges against him, and of his right to the aid of counsel in every stage of the proceedings, and also of his right to waive an examination, before any further proceedings are had."

§ 2485 "He must also allow to the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose …"[48]

Using the Lyons' trial manuscript as a source, Oklahoma Criminal Court of Appeals judge Thomas H. Doyle provided an 'undisputed' chronology of events from W. D. Lyons' apprehension to his criminal trial. The parentheses have the trial manuscript [C.M.] source pages.

"Lyons was arrested [Thursday] January 11, 1940 (C.M. 236)

" 'Confession' obtained at Hugo morning of [Tuesday] January 23, 1940 (C. M. 313-314)

" 'Confession' signed 2:00 P. M. same afternoon (C. M. 129)

" '2d. Confession' obtained at McAlester same night (C.M. 130)

" '3d. Confession' obtained at McAlester two days later (C.

M. 228)
"Lyons before magistrate without counsel [Saturday] January 27, 1940 (C.M. 140)
"First advice of counsel on [Sunday] February 4, 1940 (C.M. 369)
"Information[49] filed [Thursday] August 29, 1940 (C.M. 2)
"Arraignment [Monday] December 30, 1940 (C.M. 5)
"Trial started [Monday} January 27, 1941 (C.M. 7.)[50]

It is not disputed Lyons was arrested without a warrant 11 January 1940 and did not appear before a magistrate until 27 January. During this period Lyons was held in the Choctaw County jail, not Antlers. The jail was at least nominally under the control of the sheriff and county attorney. A defense attorney could reasonably ask the two men making the arrest what information they had, i.e., probable cause, other than the fact he lived there, leading to led them to arrest W. D. Lyons. Why had they not obtained a warrant? That would require a demonstration of probable cause before a magistrate. The sheriff, county attorney, and prison warden could reasonably be asked why they had the defendant brought before them rather than a magistrate. A defense attorney could reasonably ask why the defendant had been held for eleven days, been interrogated, and had confessed three times before being brought to a magistrate. Judge Doyle of the Criminal Court of Appeals seems the only one to ask these questions.

The clear implication is there was no plausible evidence to present to a magistrate for a warrant and no plausible case to bring to a magistrate without a confession. Making Lyons' eleven-day treatment more irregular is he was being held while two or three others were being held in the state prison in McAlester for the same crime, one of them having provided a detailed confession. These considerations alone merited a defense demand Lyons' three confessions, elicited as they were in clear violation of his rights, be suppressed. Whether or not Lyons' account of his beatings and abuse were true, his rights were severely violated with no expla-

nation as to why – if we discount the obvious lie he had escaped. These violations of Lyons' rights, however, did not become part of his attorneys' defense strategy. The defense was focused on the beatings and abuse Lyons said forced his confessions. The alleged beatings, too, were certainly in violation of his rights.

Van Bizzell: Accusation, Arrest and Bail

Eight-year-old James Glenn Rogers, the only surviving witness to his family's murders, was firm. There were two men involved. Authorities, once they obtained a confession from W. D. Lyons, needed to learn his accomplice. Lyons gave them Van Bizzell, an older African American, age 36.[51] Vern Cheatwood, in announcing Lyons' confession, said Lyons identified Bizzell as "the man who shot the Rogers family, hacked them with an ax and then set fire to their frame home …"[52] According to one newspaper account Bizzell was arrested with Lyons on 11 January, questioned, released, and finally re-arrested by Wednesday 24 January when Vern Cheatwood announced the Lyons arrest.[53] Whereas Lyons was brought to the state prison at McAlester for "safekeeping," presumably from mob violence, ironic given his alleged treatment by authorities, Bizzell initially remained in jail in Hugo, steadfastly denying any involvement in the murders.[54] The next day, Thursday 25 January, the *El Reno Daily* Tribune reported Choctaw County Attorney Norman Horton saying "… he would request a quick trial … 'The less delay the better … We have plenty of evidence.' "[55] By that time both prisoners were at the state penitentiary.

Finally, on Saturday, 27 January, W. D. Lyons and Van Bizzell were brought before County Judge Tom Hunter acting as magistrate.

> *"While 30 National guardsmen armed with semi-automatic rifles guarded the Choctaw County Courthouse and jail … two Negroes were returned from McAlester, given preliminary trial and bound over without bond to await action of district court … Immediately after the hearing the Negroes, W. D. Lyons and Van [Bizzell], were whisked down*

> *the secret stairway into cars waiting in the alley between the courthouse and jail and back to the state penitentiary. ... The courtroom, every seat was crowded with spectators, remaining silent during the four-hour hearing. ... eight-year-old Glen Rogers ... gave his version of the crime ... The child could not identify either one of the Negroes defendants when they were pointed out in the courtroom nor could he ever recall seeing a cap, produced by officers. The cap, a grey one with ear flaps, owned by one of the Negroes, is believed by officers to have caused the child to say ... one of the men had horns.' ... [Bizzell] ... entered a plea of not guilty through his attorney appointed by the court to defend him. Lyons made no plea and was not represented in the hearing. Two local attorneys asked by Judge Hunter to represent him declined after disqualifying in the case."*[56]

Bizzell's attorney was Robert H. Warren, a Choctaw County legal insider.[57] Warren had previously served as Choctaw Assistant County Attorney.[58] It is not clear why no attorney stepped forward to represent Lyons. Oklahoma Stature provided "The magistrate must also allow to the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose …"[59]

Lyons finally met with his attorney 4 February 1940, well after he had been arraigned and sent to prison to await trail. Given the undisputed violations of Lyons' rights, an attorney would automatically file a writ of habeas carpus. This was not done. Lyons was allowed to languish in prison without trial for almost another year. In December 1940 Thurgood Marshall asked Dunjee why?

> *"From our review of the case and the Oklahoma statutes it seems that prosecution of Lyons should have begun long ago or the case dismissed. Although we hate to suggest procedure in these cases where a legal lawyer has been retained, I am wondering regarding the possibility of taking some form of legal action to compel the State to either try*

Lyons of release him. I am wondering if you would give us the 'lowdown' on the entire situation."[60]

Dunjee quickly responded:

"[I wrote] several months ago that we swear out a writ of habeas corpus for Lyons but Attorney [Amos Hall][61]] and others on our legal staff advised against it. ... we have the best case to be found in the South on the question of forced confession. We had to go slow because of shortage of funds ... Even the father of the slain girl believes in the innocence of Lyons.

... this is one where I believe we could attract the attention of the entire nation. For instance, I believe we could start something if we sought to secure the freedom of Lyons by a writ. What do you think of this? One of the Negroes who was arrested [Van Bizzell] and who was alleged to have confessed to something has been freed and driven from the town."[62]

At this point, December 1940, Lyons has been jailed 'for safe-keeping' at the state prison since January.[63] His co-defendant, Van Bizzell, was released on bail in July. Imagine 1940s Oklahoma authorities letting loose an African American facing the death penalty for sneaking up and murdering a white husband, wife and their small child -- in their own home, if they had any case against him. Lyons' attorneys discussed with Dunjee seeking a writ of habeas corpus, but they chose not to. A writ of Habeas corpus would force authorities holding Lyons to justify holding him without trial. It is clear they did not discuss this strategy, and getting him bail, with Lyons. The legal team's consideration, instead, was keeping the case alive for national publicity and fundraising for the Oklahoma and national NAACP. Keep in mind Thurgood Marshall's dual NAACP role: NAACP special counsel and Director of the NAACP Legal Defense and Educational Fund. The former entailed providing clients legal defense, the later required creating

publicity and raising money. Bailing Lyons at this point would end his usefulness to Dunjee and the NAACP, especially if the authorities simply dropped the case, as they seemed to have done with Bizzell. Lyons' priority, in contrast, was getting out from under the death penalty threat and gaining release from jail.

In defense of Dunjee and Marshall we can concede they were overworked with other important matters and short of funds. But Stanley Belden, if allowed, could easily have filed the writ. It seems Dunjee told him not to.

THE TRIAL

POST-CONFESSION VIOLATIONS OF LYONS'S RIGHTS

The trial came down to the state presenting Lyons' confession and circumstantial evidence consistent with the confession. The defense task became documenting the state's violation of Lyons' rights in beating a confession out of him, not bringing him immediately before a magistrate, and not providing an attorney. Their next task was to discredit prosecution circumstantial evidence and offer the defendant's alibi.

The All-White Jury

Dallas and John Nix describe the jury selection process. The jury pool was exhausted after prosecution and defense objections and for opposition to capital punishment, firmly held opinions on the case, and other reasons. Judge Childers suggested the County Attorney go out and find more potential jurors. Plaintiff attorneys withdrew their objections and took the remaining jurors to prevent the prosecution from rounding up his friends.[64] Marshall wrote Walter White:

> *"Jury is lousy. State investigator and County Prosecutor busy around town stirring up prejudice, etc. No chance of winning here. Will keep record straight for appeal. "*[65]

The immediate consideration was an all-white jury in an African

American's death penalty case. In Hollins v. State of Oklahoma[66] the United States Supreme Court ruled Okmulgee County had a history of excluding African Americans from juries. Jess Hollins' conviction and death penalty from an all-white jury was reversed, sending the case back for re-trial. In 1940 Okmulgee County was 19.5% African American.[67] In 1940 Choctaw County was 20.7% African American.[68] There is no evidence Lyons' attorneys discussed challenging the absence of African Americans on the jury with their client, Lyons. They only discussed it among themselves. When the matter came up when considering appeal, Marshall sent a Wednesday 31 January 1941 memo to fellow civil rights attorneys, Bill Bastie, Leon Ransom and W. Robert Ming:

> *"A lawyer in Dallas Texas ... [suggests we appeal the all-white jury] The question was not raised at the trial. The point he wants to make is that the defendant requested his lawyer to raise this question and the lawyer refused to do so. ... [the] question about the failure of the lawyer to raise the jury question at the request of the defendant is worthy of some consideration. What say you about raising this point on Habeas Corpus in local federal court? We do not have Much time."*[69]

The strategy suggested appealing on the basis of incompetent counsel. Marshall and Belden could not allow that. We can only speculate as to why the all-white jury was not raised at trial. One reason could be that if it had been brought up either the judge would have to rule for a new trial, or an appeal would easily grant one – or the entire case would be dismissed. We can imagine Marshall did not want the case dropped or delayed given how useful the case was in generating publicity. Fundraising would be sidelined. Further, it is impossible to imagine a credible dispute between the defendant, Lyons, and the Belden – Marshall team on legal strategy. There is no evidence Marshall and Belden ever discussed any legal strategy with Lyons.

Excessive Delay in Arraignment and Trial

On Thursday 25 January 1940, before the arraignment of Lyons and Bizzell, County Attorney Norman Horton told reporters he would request a quick trial ... "The less delay the better ... We have plenty of evidence."[70] Eleven days after that, Stanley Belden first met with his client. He, too, demanded a quick trial. "Judge Childers said it does not appear possible the Negroes can be tried this term as four murder cases are already set for trial this week." [71] In the end, it took over a year for Judge Childers to hold W. D. Lyons's trial.

This delay violated Lyons rights. Oklahoma's Constitution, Article II §20, guarantees "the accused shall have the right to a speedy and public trial." Remedies to a full docket, if needed, include Oklahoma's Constitution, Article VII §9

> *"Whenever the public business shall require it, the Chief Justice may appoint any District Judge of the State to hold court in any district."*

I could find no evidence Lyons' attorney made any effort to get their client a speedy trial.[72] The time to bring up trial delay was 6 February 1940 when Judge Childers complained of his packed docket. I have no doubt any appeal based on explicit sections of the Oklahoma Constitution regarding speedy trials would have resulted in a remedy to Judge Childers' problem.

The trial delay seems to have served the interests of the prosecution and the defense attorneys but not that of W. D. Lyons. For the prosecution, the delay gave time for troublesome witnesses to absent themselves. For example, Van Bizzell, Oscar Bearden and Houston Lambert were not called at trial and defense witness Christine James appears to have changed her testimony.[73] For the defense, the delay allowed Thurgood Marshall time to dispose of other cases and Dunjee and the NAACP to raise needed funds and generate publicity.

Absence of an Attorney until after Confession and Arraignment
Lyons was not provided an attorney during arraignment. Under the provisions of the Code of Criminal Procedure, sections 2484, 2485, C.S. 1921, 22 O.S. 1941 §§ 251, 252, "the magistrate must immediately inform him of … his right to the aid of counsel in every stage of the proceedings" and "he must also allow to the defendant a reasonable time to send for counsel and adjourn the examination for that purpose." If the defendant did not have counsel "the court must assign counsel to defend him."[74] The magistrate, Judge Hunter, asked two attorneys to represent Lyons. When they disqualified themselves, the judge left Lyons unrepresented.[75] He should have adjourned until an attorney could be found. To see the benefit of having an attorney consider Lyons' co-defendant, Van Bizzell.

Robert H. Warren, Bizzell's attorney, was a Choctaw County legal insider who worked behind the scenes.[76] He made two key legal maneuvers. He arranged to sever his client's case from W. D. Lyons, the NAACP and ACLU. He managed by Wednesday 10 July 1940 to have Van Bizzell released on $5,000 appearance bond. Bizzell was (informally) told to leave Choctaw County and stay out.[77] He was never tried. W. D. Lyons remained in the penitentiary.

Van Bizzell's bond, co-signed by one Clyde Collins, required Bizzell.

> *"…"[78] shall personally be and appear before the District Court of Choctaw County ... on the 1 day of Fall Term 1940 at 10 o'clock of said day, to answer the indictment ... and make like appearance from day to day and term to term of each successive term of said Court, until the said charges shall be disposed of by said Court ... and shall not depart from said Court without leave ..."[79]*

Given these bail requirements, the absence of Van Bizzell during Lyon's trial is puzzling. We can surmise Clyde Collins, Bizzell's

guarantor, was also unavailable to tell the jury the circumstance of one accused murderer being tried and his indicted accomplice set free.

Bizzell's appearance was guaranteed by Clyde Collins with $5,000 -- $100,000 in 2020 dollars. Clyde Collins earlier had been convicted of attempted rape, sex with an underage girl, and sentenced to five years in the penitentiary. His attorney, Robert H. Warren, subsequently Bizzell's attorney, successfully appealed.[80] In 1929 Governor Henry Johnson was impeached, tried, convicted, and removed by the state senate. An element of his conviction was his use of clemency.

> *"Undercover clemency to give political aid to his friends also was aired before the senate court ... Johnson gave Clyde Collins, Fort Towson, a leave of absence to aid his 'good friend' Dave Stovall[81] ... The clemency act was filed in the secretary of state's office ... but no record was made in the pardon and parole office ... Collins ... was said to be a member of an influential Choctaw county family ..."*[82]

We can suspect Governor Phillips was behind getting Robert Warren to represent Bizzell, Collins to guarantee Bizzell's bail and the district court to grant bail. All that was behind the scenes.

While Thurgood Marshall was very interested in Bizzell's bail – neither he nor Stanley Belden pursued it at trial or appeal.[83]

The client, W. D. Lyons, made clear to his attorneys, Stanley Belden and Thurgood Marshall, at every opportunity, he was innocent and wanted to get out of the jail or prison holding him as soon as possible.[84] Illiterate Lyons knew nothing of habeas corpus, Oklahoma's statutes or the state's constitution. We can assume neither did his wife, sister, mother or any of his associates. His attorneys did. They discussed habeas corpus among themselves but rejected it. There is no evidence they informed their client of that

discussion or that option. What we know suggests the opposite.

Lyons' Confessions

W. D. Lyons had signed two confessions, the first in the office of the county attorney in Hugo, the second, a few hours later, in the office of the warden of the state prison in McAlester. The third was verbal in the presence of Cap Duncan, then a sergeant at the Penitentiary, several days after the second confession. At trial the prosecution introduced the second (but not the first) confession. The defense objected and the jury was dismissed while the matter was discussed. The defense argued the confession was coerced, the prosecution agreed that perhaps there might be a problem with the first confession (or there might not) but they would not rely on it, just the second confession.

The prosecution conceded authorities placed a pan of the victims' bones on Lyons' lap during interrogation. This was intended to terrify "one of his tribes." [85] Lyons appeared to quiver in fear as a result and signed a confession. The second confession, signed later at McAlester prison was not accompanied by any evidence of intimidation or quivering. The prosecution denied authorities maltreated Lyons in any way save for the pan of bones. The defense stressed Lyons' account of his brutal arrest, long incarceration without access to a magistrate or attorney, and his brutal torture at the hands of his interrogators. For the defense, the effects of this treatment easily carried over to his second and third confessions.

The prosecution presented testimony from those involved in Lyons' arrest and interrogation. All said they did not participate in, nor witness, any maltreatment. Defense cross-examination failed to shake their testimony.

When we read Marshall's cross-examination of former sheriff Roy Harmon might think the prosecution witnesses were well-rehearsed not to remember or say anything. Marshall showed Harmon a photograph of him, the defendant and Vernon Cheatwood

taken immediately after the first confession. The photograph had been in all the Oklahoma newspapers and many national newspapers and magazines. It was famous. The following dialogue between Marshall and Harmon ensued:

> *"**Q** Do you know these three people shown on the reprint?*
> ***A** I can't tell very much about it.*
> ***Q** Do you know who this is [pointing]?*
> ***A** Looks a little like me but there are several fellows here that favor me.*
> ***Q** Who does that look like in the middle?*
> ***A** These negroes look nearly alike to me, can't hardly tell them apart.*
> ***Q** Does that look alike over there [pointing to the defendant]?*
> ***A** No way to tell.*
> ***Q** You can't identify the person on the left?*
> ***A** No. I said it looked like me.*
> ***Q** Are you not positive?*
> ***A** I am not positive.""*[86]

Reason Cain, one of the men who 'arrested' Lyons, testified Lyons was not beaten, abused, threatened, or struck in any way. Reasor Cain saw no abuse of Lyons during questioning or any other time.[87]

Judge Childers curtailed Marshall's cross examination of Reasor Cain.

> *"**By Mr. Marshall**: **Q** What is your occupation at this time?*
> ***A** Clerk for the draft board.*
> ***Q** Did you leave the Frisco voluntarily?*
> ***By Mr. Horton:** Objected to as incompetent, irrelevant and immaterial.*
> ***By Mr. Marshall:** We would like to find out whether he was released from the Frisco as a result of this case, which would give him a motive for testifying.*

By Mr. Horton: *I don't think for every witness, we have to establish a motive for his testimony. They are under oath to tell the truth.*
By the Court: *I think that is right. Whether he was fired, or his time was out, he told who his employer is now."*[88]

Marshall's cross examination tells us three things. First, there was something dodgy in Reasor Cain's recent background the prosecution did not want on the record. Second, Cain was being taken care of with a salaried local draft board political appointment. The appointment was by the President of the United States on the recommendation of the Governor, Leon Phillips.[89] Third, the judge clearly favored the prosecution in denying Marshall a look into Reasor Cain's background. Marshall could have inquired of Reason Cain who he was with when Lyons was arrested. That would be Oscar Bearden, presumably then serving time in a federal penitentiary. Marshall could have also inquired as to what probable cause he and Oscar Bearden had for arresting Lyons. But he did not, nor did he put into the record an objection enabling the judge's decision to be part of an appeal.

The defense began with Lyons' account of his treatment by the authorities. This was presented by Lyons himself and by Belden who summarized it.[90] The defense had several witnesses in support of Lyons' testimony.

Christine James was a prisoner in the jail at the time Lyons was locked in the women's section. Defense attorney Stanley Belden questioned her:

*"**Q** Did you see him [Lyons] at any time during that time?*
***A** I seen him when they brought him up.*
***Q** Tell the Court and jury if you saw anything unusual.*
***A** I didn't see anything.*
***Q** Did you notice his head, feet or eye?*
***A** No sir, I didn't pay any attention to him."*[91]

We must assume Christine James was induced to change her testimony. We do not know of her status at the time of Lyons' trial. As a prisoner under charges the authorities would have leverage over her the defense would not.

The defense called Mrs. Vernon Colclasure, the sister-in-law of the murder victim, Mrs. Elmer Rogers. Her testimony was expected to be compelling to the jury given she was white, respectable, a long-time resident of the area and, the sister-in-law of one of the murder victims. Defense attorney Stanley Belden asks her:

> *"**Q** All right. Do you know Vernon Cheatwood, the Governor's special investigator?*
> ***A** Yes, I do.*
> ***Q** Do you recall his coming to your home one morning, and there talking to you and to the father of Mrs. Rogers [one of the murder victims] about a confession he had obtained?*
> ***A** Yes, he did. ...*
> ***Q** What did Mr. Cheatwood do or say, if anything?*
> ***By Mr. Lattimore**: Objected to as incompetent, irrelevant and immaterial, and calling for hearsay testimony.*
> ***By Mr. Marshall**: If the Court please, on yesterday we specifically asked Mr. Cheatwood whether or not he made a statement concerning a blackjack, and he answered that he never had made the statement concerning that, and I think we are in a position at this time to show that he did make the statement.*
> ***By Mr. Belden**: And further, he stated at that time he never had a blackjack.*
> ***By Mr. Lattimore**: I don't know what the law is in New York, but in Oklahoma in order to impeach you must ask an impeaching question, fixing the time and place. They asked general questions and cannot come in on this procedure now.*
> ***By the Court**: You may fix the time and place. ...*
> ***By Mr. Belden**: Court please, will withdraw that ques-*

tion…

***By the Court**: I will sustain the objection. Let the record show that the defendant is permitted to call Mr. Cheatwood for further cross-examination."*[92]

Vernon Cheatwood was called to the stand and questioned by Thurgood Marshall. We must note Cheatwood was excused from The Rule and was carefully listening to all the testimony. The Rule, common in American courts, requires witnesses to be outside the courtroom, not allowed to talk with one another and under the supervision of a bailiff until called to testify. Cheatwood had an advantage in Thurgood Marshall's examination. Assistant Attorney General Sam Lattimore dictated exactly what questions Belden and Marshall must ask Cheatwood and what answers Cheatwood must give for defense witnesses to impeach Cheatwood's testimony. Vernon Cheatwood sat and watched all this. After this was noticed by the defense, Cheatwood was excused from The Rule over defense objection.[93] With the help of the trial judge Sam Lattimore out-lawyered Belden and Marshall.

Recalled to the stand, Cheatwood could not remember exactly who he spoke with and when during the Lyons' investigation. Did he visit the Colclasure home after Lyons' arrest? "I don't remember whether I did or not. After he was arrested, I don't remember, I might have, I would not say whether I was or not."[94] Marshal asked if Cheatwood could recall being at the Webb Hotel just after Lyon's confession had been obtained in the county attorney's office. Alerted by Assistant Attorney General Latimore not to testify to time and place, Cheatwood was not able to give that information. The defense did not challenge this in a way to enable an appeal.

A key to the case was judge Childers' ruling out the first confession as it was made through fear, but the second confession was made later when there was no fear. The judge seemed confused.

*"**By the Court:** The Court permitted the defendant to submit evidence of the confession made in the county attor-*

ney's office, which the court suppressed ... in order that it might be established, if [there] could be the evidence [of], a continuation of fear, [from] the time he made the confession in the county attorney's office by having had the pan of bones set on his lap, in which the officer said it made the defendant quiver. If they would show a continuation of that fear at the time of the confession made at McAlester, then certainly the jury would have a right to consider these facts to see if there that night the confession at McAlester was made through fear or not. This Court suppressed the first confession that was made here [in the county attorney's office in Hugo]. There was no evidence at that time of fear having been used, or force having been used in the office of the warden of the State penitentiary, and the Court was of the opinion that the confession should be submitted to the jury for its consideration. ... the Court found that there were things done there [in the county attorney's office] that were calculated to scare a man, make him afraid, one of his tribe, by placing the bones of dead white people in his lap, that had been murdered in the community, was calculated to arouse suspicions, things that would make him testify against himself when otherwise he would not. I think in all fairness to this defendant, he has a right to have all the defenses that he might have to the confession that was made at McAlester submitted to the jury, to have twelve men pass on it. ... They [the defense] contended that the defendant was still scared when he went to Oklahoma City [sic. the State Prison at McAlester]. The Court was of the opinion that several days had elapsed. [At] the time, it was not made clear to the Court that both confessions were made on the same day, as I get it now. [95]

Judge Childers did not exclude the first confession because authorities tortured Lyons. The judge never accepted, or rejected, Lyons' version of his treatment. The superstitious fear should have dissipated after the pan of bones was no longer present. Two

weeks of sleep deprivation, fear of torture and threats would not dissipate while a person was in the hands of the same authorities who inflicted the torture, as Lyons was, until well after his second confession. Judge Childres obfuscated the nature source of Lyons' fear. This was not pointed out by Lyons' attorneys.

Neither Marshall nor Belden tried to establish the prison camp convicts as a valid alternative to Lyons in the Rogers murders. Marshall did not cross examine Sheriff Roy Harmon as to the details of the prison camp convict arrests and the confession leading to their arrests, nor to the evidence leading to their charges being dropped. Marshall's sole interest in questioning Harmon was Lyons' treatment in custody. Marshall did not probe Cheatwood as to how, when or by whom the convicts were exonerated. Rather, he was seeking to establish if Vernon Cheatwood caused Lyons to be arrested and if Cheatwood had any knowledge or, or involvement in, Lyons' abuse, beatings or threats. Marshall let stand, unchallenged, Cheatwood's statement the convicts "were all exonerated from the crime." That was what the jury was left with.

This ended the defense case for Lyons' confession being the product of abuse and threats. It was up to the jury to weigh testimony of defense witnesses, Annie May Fleeks, Lyons' sister, Mrs. Vernon Colclasure and E. C. Colclasure, sister-in-law and grandfather of the murder victims, and Hugo's Webb Hotel employees Leslie Skeen and Albany Gipson. They testified Vernon Cheatwood had a blackjack as Lyons described it. They testified Cheatwood talked about beating a confession out of Lyons with it. Prosecution witnesses were authorities present when Lyons claimed to have been abused. They all denied seeing any abuse. Complicating the jury's task was the judge's suppression of the confession obtained in the county attorney's office but admission of the confession in the warden's office. What reason did the jury have to think Lyons was not, in the warden's office, the same broken man who gave the confession in the county attorney's office? Prosecution witnesses Warden Jess Dunn and the new sheriff, Cap Duncan, testified they

saw or administered no abuse on Lyons. There was no evidence, from Lyons or anyone else, Dunn or Duncan abused Lyons. Thurgood Marshall did find a way to challenge Warden Dunn's testimony the confession was freely given and in Lyons' own words by noticing the confession included the word 'renumeration,' a word Lyons would never use or know. Dunn noted that was read to Lyons who Dunn said agreed.

Circumstantial Evidence Against Lyons

Vernon Cheatwood and Bert Steffee appeared to have arrived in Choctaw County Tuesday 2 January 1940. We can assume they hired Oscar Bearden and Reasor Cain to aid their investigation. By Thursday 11 January Cain and Bearden had apprehended W. D. Lyons. If this is at all accurate it suggests Cheatwood and his associates had very little case against Lyons. What might that case have been?

Lyons, as a youth, been arrested and sentenced to prison for stealing chickens. He was an ex-convict. He had borrowed a broken shotgun from a friend. He had bought at least two shells from a local store. He had been seen in Ft. Towson carrying the shotgun wrapped in a newspaper. He had been seen, alone, but not with Van Bizzell, in the field and wooded area in the vicinity of the Rogers home the day of the murder with the newspaper-wrapped shotgun. He had been seen with Van Bizzell earlier that day. Lyons said he borrowed the shotgun and purchased shells to hunt rabbits. Two shots missed a rabbit. He threw the spent cartridges away near a fence post. He wrapped the shotgun in a newspaper as he did not have a hunting license and did not want to be arrested and fined. He was in the vicinity of the Rogers home because it was where he and his family lived – about a half mile from the Quarters, the African American part of Fort Towson. There was no testimony or evidence linking Lyons to the actual murders. No one testified Lyons 'suddenly' came into money or discussed the robbery. No money from the robbery was found.

Guilty
The jury returned a guilty verdict with a life in prison sentence. The jury rejected the death penalty.

POLITICAL REPERCUSSIONS
Lyons' prosecution and conviction seem to have caused Choctaw County political repercussions. The governor lost a legislative supporter in 1940. At the 9 July 1940 Democrat legislative primary:

> *"Well aware that the election holds the key to his success or failure in the last two years of his administration, the anxious chief executive [Phillips] kept a vigil at the telephone and radio until 2 a.m. at the capitol. He was reported Wednesday to be 'pleased' with the results. ... [However] Vance Posey, former president of Southeastern State College at Durant, won in the [State Senate] district composed of Choctaw and Bryan counties. He is listed as anti-administration"*[96]

Governor Phillips pushed three constitutional amendments for a vote in a 11 March 1941 special election.[97] Choctaw was the only one of the 77 counties to vote against all three of the governor's amendments.[98]

In the 14 July 1942 Democrat gubernatorial primary Phillips backed anti-New Deal Gomer Smith in the seven-candidate field. Smith's main opponent was Robert S. Kerr, a New Deal supporter. Kerr actively campaigned for Negro votes. Governor Phillips seconded key staff to the Smith campaign including his special investigator, Vernie Cheatwood. The Lyons case played a part in the campaign.[99] Kerr won. Telling, is while Gomer Smith took all its surrounding counties, Kerr took Choctaw.[100]

State-wide, Leon Phillips successfully kept his administration from repercussions from the mess over the Rogers murders. Overall, one contemporary historian did note "… there was some loss of confidence among common people because of mediocre lead-

ership in the Seventeenth Legislature and the chief executive office."[101]

APPEALS

We might try to put ourselves into W. D. Lyons' mind. He is bewildered by what has happened. He did not murder anyone. He was at best only dimly aware of the wider situation of politics, the law and the motivation of those controlling his situation. He surely knew much of the mess he found himself in was due to his race. He was African American, a Negro, a Black. He was poor with little education. He could not read or write. All the significant actors were white. They showed nothing but contempt for him. He experienced the ugly side of White Supremacy. The ritual of everyday polite interaction between white and African American, each in their proper place, for him, in this situation, was gone. It had to be gone. The white authorities knew he was innocent. But they also knew he must suffer for the crime, be treated as a brute, a savage killer, to serve their larger purpose. That larger purpose was to protect politicians from having their corrupt and incompetent prison and land administration exposed. From 11 January to 4 February 1940 Lyons was helpless in the unrestrained hands of a small number of vicious whites acting under authority of law.

After twenty-five days of isolation Lyons is visited by a genuinely sympathetic white attorney, Stanley Belden. Belden has been sent by Oklahoma City African American Roscoe Dunjee, on behalf of an organization of Oklahoma African Americans, the NAACP. Over a year later, in March 1941, Lyons meets New York African American attorney Thurgood Marshall. Marshall had made the enormous journey from New York just for him. Marshall, Dunjee and Belden, to Lyons' mind, must have come to somehow equal or balance the power of his white persecutors. He was no longer brutalized and abused. At his trial he was treated by white authorities with the same formality and respect as a white in a similar fix. He knew nothing of the law's intricacies. The only outcome he hoped for was to get out of prison, a free man. Only Dunjee, Belden and

Marshall could accomplish that. How, he could not, did not, know.

Marshall wrote to NAACP Executive Director Walter White Sunday 2 February 1941, immediately after Lyons' trial and conviction. After first meeting Lyons Marshall said he and Belden "were convinced he was innocent."[102] Much later Marshall told journalist and friend Carl Rowan "I still think Lyons was innocent."[103]

After jurors were struck or excused the jury panel was exhausted. Marshall wrote to Walter White "The State's attorney was getting ready to call additional tailesmen[104] (sic. talesmen) from the streets when we decided it was best to take what we had than let him go out and get his friends, relatives, etc."[105] The attorneys expected a guilty finding. The trial was conducted with an eye toward a trial record for appeal. In the same letter Marshall wrote:

> *"I think we are in a perfect position to appeal. We will prepare a motion for a new trial … This case has enough angles to raise a real defense fund over the country if handled properly. I thought we should aim at $10,000. We have already raised around $275 in that small community down there. We can raise more than a thousand in this state. We could use another good defense fund and this case has more appeal that any up to this time. The beating plus the use of the bones of dead people will raise money. I think we should issue a story this week on the start of a defense fund and when I get back on the tenth, we can lay plans for a real drive for funds … We have been needing a good criminal case and we have it. Let's raise some real money."*[106]

Governor Phillips Offers a Deal

The campaign of the NAACP and its allies, within Oklahoma and nationally, as well as the political challenge the anticipated appeal posed, as well as (hopefully) awareness W. D. Lyons was framed, caused the backchannel offer of a deal through Roscoe Dunjee. Stanley Belden wrote Thurgood Marshall Monday 31 March 1941.

"I talked to Mr. Dunjee last Friday. Altogether there has been seven people called him over the phone from the State Capital Building about the Lyons case. When the first one called, I told Mr. Dunjee that I thought if we played [our)] hand right we would find that the Governor was back of the calls, and the last one was an investigator [for] the [Governor's] office.

They proposed that we have the case dismissed on the grounds that the Judge was out of the county while the jury was deliberating (that is ground for dismissal in this state) but I am not sure that the Judge was out of the county while was deliberating, but whether he was or not they gave Mr. Dunjee to understand that they would have Lyons released on this ground, but they told Mr. Dunjee that he would have to get rid of Belden.

They told Mr. Dunjee they were doing this because of their friendship for him but ended up by saying it would cost about twenty-five hundred dollars for a guarantee of the release of Lyons. Finally [they] asked Mr. Dunjee what he would pay to get Lyons free.

Now I feel certain that the Governor doesn't want this case appealed to the Criminal Court of Appeals and all the facts be placed before the public. It is one thing to have it published in the papers but a far different thing to have it before the people of the state in a court decision. The Governor has further political ambitions and this case is causing him great embarrassment and if it could be disposed of on the technicality of the Judge being out of the county during the deliberation of the jury, he would be saved politically. ...

Now, I am fully aware of our duty to our client but I am also aware of our duty to expose and not cover up the

things that make possible such travesty [of] justice as took place in the Lyons case, and I feel it is our duty to the colored race, to the state and all concerned that we file the appeal and expose the corruption in this state even though in doing so doing to some degree we risk the liberty of our client and make sure that for some months to come he must stay in prison; but after all this thing is bigger than just the questions of the immediate liberty of W,. D. Lyons or any other individual."[107]

Oklahoma statutes provided the judge must be present during jury deliberation.[108] A mistrial would occur should the State stipulate the judge was out of the county during jury deliberation. This could be seen as a technicality. Implicit here, the State would not ask for a re-trial. Lyons would be freed while the matter of the corruption and abuse leading to his conviction would be forgotten. This is more or less what was granted Lyons' co-defendant Van Bizzell. Bizzell was released on bail and never tried.

After consulting with his mentor, Howard University Law Dean William H. Hastie,[109] and others Marshall wrote Belden "File the appeal. No compromise."[110] Most poignant in the letter is Belden's articulation of the Duty to Client vs. Duty to The Colored Race and to The State at the "risk of the liberty of our client." Whereas Belden is troubled by this, Marshall appears not. Marshall is confident of the appeal and willing to let Lyons' prison stay be prolonged. How would Lyons have reacted should the attorneys consulted with, and be guided by, their client? There is no doubt Lyons would have taken the deal.

In May Belden wrote Marshall.

"The special investigator for the Attorney General's Office told an Oklahoma City Attorney, who is a friend of mine, that if I would file a motion to dismiss the [Lyons] case by reason of Judge Childers having been out of the county during the deliberation of the jury that the case

would be dismissed and that within two weeks they would arrest the two white men that committed the murder. They say they know who they are, that they are bootleggers and that the murder of [the Rogers'] was the result of their quarrels over bootlegging and the division of profit; this certainly is a very queer situation if the authorities know they committed the murder, and they stated positively that they do, it certainly is the duty of the authorities to arrest, immediately, and prosecute the murder and not let [murderers] run loose. Why should the arrest be contingent on the dismissal of the Lyons' case if it is not a political move to prevent an appeal to be filed in the Lyons' case and the public learn the truth, which certainly would affect the [Governor's] political ambitions. This is the first time they ever suggested that I go ahead with the dismissal, before they had always told Mr. Dunjee that they must get rid of Belden before anything could be done."[111]

Marshall was heavily involved in other cases and did not respond concerning the 'offer.'[112] Marshall received another note authorities were anxious to get rid of the case. W. D. Lyons wrote Marshall thanking him for his help and for Booker T. Washington's *Up from Slavery*:

"I am getting along fine, holding my chin up, and trusting in you.

I talked with the sheriff [Cap Duncan] of Hugo a few days ago. He said that if my case was reversed, the court at Hugo would not try me again; that I would be released.

Mr. Marshall, I realize that I am in debt to you already, for many kind things you have done for me, but there is one more thing which I wish to ask of you. It is for financial aid for me if and, when I am released. Of course, you realize that it would not be wise for me to return to Hugo. I should like to obtain transportation to Detroit Michigan, where

I believe I could easily obtain work, unless you could arrange for employment for me some other place.

I plan to get located some place first, and then send for my wife later, after I begin work. If you can arrange for such help as above mentioned, for me, I will repay the money as soon as possible after I get work."[113]

Sheriff Cap Duncan assured Lyons he would not be re-tried if his appeal was successful. We can understand that as encouraging the appeal – quite at variance with the threat if a successful appeal resulted in a re-trial the death penalty would be the likely outcome.[114]

Roscoe Dunjee's back-channel efforts seemingly smoothed the way for the appeal to the Criminal Court of Appeals. He wrote Marshall:

"You are not going to have any trouble getting before this court. The presiding judge B. B. Barefoot, is a personal friend of mine. He told me just few minutes ago to tell you that you would be given as much time as you wanted for oral argument.

I have known Judge Barefoot for the past fifteen years, and he is a liberal of the first water.[115] *I sometimes go out to his office and talk an hour. The last time at his request. You can see you will have easy sledding so far as presentation is concerned."*[116]

Appeal to Oklahoma Criminal Court of Appeals

The Criminal Court of Appeals, since 1960, the Court of Criminal Appeals, has exclusive Appellate jurisdiction in criminal cases. Prior to 1968 the Criminal Court of Appeals had three judges elected on a partisan ballot for six-year terms. At the occasion of the Lyons appeal the judges were Bert B. Barefoot, presiding, Dick Jones and Thomas H. Doyle, all Democrats. Jones had been

appointed to fill a vacancy by Governor Phillips.

Stanley Belden had left his legal practice and Oklahoma for California. Roscoe Dunjee arranged for his friend Amos Hall, a Tulsa African American attorney, to be Marshall's Oklahoma co-counsel. Hall would continue in that role through subsequent Oklahoma NAACP cases.

The Criminal Court of Appeals released its decision Friday 4 June 1943. The Court of Criminal Appeals unanimously rejected the appeal. Curiously, Judge Doyle, however, wrote he favored the opportunity of a re-hearing.[117]

THE US SUPREME COURT

Court Politics and Divisions

Between 1936 and 1942 the Supreme Court heard seven coerced confession cases involving poor uneducated African Americans. These resulted in life in prison or death sentences. The Supreme Court unanimously reversed the convictions.[118]

Justice Black, speaking for a unanimous Court in Chambers v. Florida (1940):

> *"The grave question presented ... is whether proceedings in which confessions were utilized, and which culminated in sentences of death upon four young negro men in the State of Florida, failed to afford the safeguard of that due process of law guaranteed by the Fourteenth Amendment."*[119]

Marshall joined the Lyons case in January 1941. He could easily think Lyons' outcome would be no different from the earlier cases. He crafted Lyons' defense with an eye toward providing the Supreme Court with the elements he thought proved successful in 1936 through 1942 appeals. Marshall had no access to what the court did with similar cases from 1944 or the still-emerging legal scholarship.[120]

Several key elements of earlier decisions were missing from the Lyons appeal. Lyons was not sentenced to death, rather to life in prison without parole. There were three confessions. The first was ruled out by the trial judge. In doing so, the judge did not reference abuse or torture to the defendant. Instead, he noted the undisputed evidence the defendant was not afforded counsel and was not properly arraigned in a timely manner before a magistrate. This was important for appeals as there were no findings of abuse at trial. Rather, the defendant claimed abuse with scant supporting evidence. Those accused of the abuse denied it, as did others present. A second confession was proffered at arraignment.

For appellate judges to overturn the conviction they would have to send it back for re-trial under certain corrective stipulations. What stipulations? The issue of no African Americans on the jury was not brought up at trial. It could not be brought up on appeal. What remedy would a new trial offer?

Lyons' Supreme Court appeal had an additional difficulty. John F. Blevins outlines the Court's evolving collective thinking on forced confessions.[121] In essence some justices had become uncomfortable being part of state criminal justice systems. The egregious behavior of some Southern trial courts toward African American defendants required correction. They began to resist routine intervention. The Court granted certiorari to Lyons but denied relief or rehearing.[122]

The coerced confession cases asked the Court to intervene in state judicial procedures, essentially making federal courts superior to, and part of, the state judicial process. This was new ground for the Court and required constitutional justification. In Brown v. Mississippi 297 U.S. 278 (1936) Chief Justice Hughes, speaking for a unanimous Court noted the defendants were "all ignorant negroes"[123]:

> **"***The State is free to regulate the procedure of its courts in accordance with its own conceptions of policy unless, in so*

> *doing, it 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.' ... It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners, and the use of the confessions thus obtained as the basis for conviction and sentence was a clear denial of due process."*[124]

Fourteen years later Justice Frankfurter said almost the same thing in Watts v. Indiana.

> *"...the State courts have the responsibility for securing the rudimentary requirements of a civilized order, in discharging that responsibility there hangs over them the reviewing power of this Court. Power of such delicacy and import must, of course, be exercised with the greatest forbearance. When, however, appeal is made to it, there is no escape. And so, this Court once again must meet the uncongenial duty of testing the validity of a conviction by a state court ..."*[125]

While concurring with Frankfurter in Watts v. Indiana, Justice Roberts asked:

> *"...if ultimate quest in a criminal trial is the truth and if the circumstances indicate no violence or threats of it, should society be deprived of the suspect's help in solving a crime merely because he was confined and questioned when uncounseled?"*[126]

For Justice Frankfurter oversight of a state court was 'uncongenial.' Justice Jackson, in concurring, made clear his sympathy with authorities seeking to solve murders. Who else except the murderer could possibly provide details? How other than questioning the murderer could the police get those details? A defense attorney would tell the suspect to say nothing. In contrast, Justice Douglas, also concurring, found the questioning evil.

The Decision

Justice Stanley Reed gave the majority opinion, joined by Harlan F. Stone, Owen Roberts, Felix Frankfurter, Robert H. Jackson:

> *"In our view, the earlier events at Hugo do not lead unescapably to the conclusion that the later McAlester confession was brought about by the earlier mistreatments. The McAlester confession was separated from the early morning statement by a full twelve hours. It followed the prisoner's transfer from the control of the sheriff's force to that of the warden. ... The petitioner testified to nothing in the past that would indicate any reason for him to fear mistreatment there. The fact that Lyons, a few days later, frankly, admitted the killings to a sergeant of the prison guard [Cap Duncan], a former acquaintance from his own locality, under circumstances free of coercion suggests strongly that the petitioner had concluded that it was wise to make a clean breast of his guilt, and that his confession to Dunn was voluntary. The answers to the warden's questions, as transcribed by a prison stenographer, contain statements correcting and supplementing the questioner's information, and do not appear to be mere supine attempts to give the desired response to leading questions.*
>
> *The Fourteenth Amendment is a protection against criminal trials in state courts conducted in such a manner as amounts to a disregard of "that fundamental fairness essential to the very concept of justice," and in a way that "necessarily prevent[s] a fair trial." ... A coerced confession is offensive to basic standards of justice not because the victim has a legal grievance against the police, but because declarations procured by torture are not premises from which a civilized forum will infer guilt. The Fourteenth Amendment does not provide review of mere error in jury verdicts, even though the error concerns the voluntary character of a confession. We cannot say that an inference of guilt based in part upon Lyons' McAlester*

confession is so illogical and unreasonable as to deny the petitioner a fair trial.

Justices Frank Murphy, Hugo Black and Wiley Rutledge dissented. Justice Murphy, Justice Black concurring:

"This flagrant abuse by a state of the rights on an American citizen accused of murder ought not to be approved. The Fifth Amendment prohibits the federal government from convicting a defendant on evidence that he was compelled to give against himself. Decisions of this Court in effect have held that the Fourteenth Amendment makes this prohibition applicable to the states."[127]

Justice Rutledge:

"The confession was introduced over defendant's objection. If such admission of this confession denied a constitutional right to defendant, the error requires reversal. ... In petitioner's brief, a claim is made that Oklahoma denied to him the equal protection of the laws guaranteed by the Fourteenth Amendment. Apparently, petitioner relies upon his undue detention without preliminary examination, which was in violation of the state criminal procedure as a denial by Oklahoma of equal protection of the law. But the effect of the mere denial of a prompt examining trial is a matter of state, not of federal, law. To refuse this is not a denial of equal protection under the Fourteenth Amendment, although it is a fact for consideration on an allegation that a confession used at the trial was coerced."

That left Justice Douglas. He neither joined the court majority nor issued his own explanatory opinion. The decision simply records "Mr. Justice Douglas concurs in the result."[128] Contrast this with Justice Douglas' concurrence in Watts v. Indiana.

"We should unequivocally condemn the procedure and stand ready to outlaw ... any confession obtained during the period of unlawful detention. The procedure breeds co-

erced confessions. It is the root of the evil."[129]

Was not Lyons unlawfully detained at the time of his first two confessions and only brought before a magistrate afterwards?

Was Lyons decided differently from the other twelve African American forced confession cases due to changes in the Court, new justices, new factions, intra-court personal differences? Or was it decided differently because the case itself was different?

The eight cases decided prior to Lyons unanimously or with 6-3 majority reversed convictions. The four cases decided after Lyons were decided similarly, either unanimously or with a 6-3 majority for conviction reversal.

Scholarship falls into two types. The first seeks to discover 'blocks' among the justices. The second seeks to discern emerging policy by examining cases. C. Herman Pritchett, then a young assistant Political Science professor, published a statistical analysis of 1943 Supreme Court decisions. Looking only at the 75 non-unanimous decisions, he calculated the percent of cases each justice agreed with every other justice. Black, Douglas, Murphy and Rutledge, the left-wing group, agreed an average of 82% on non-unanimous decisions. Stone, Jackson, Reed, Frankfurter, and Roberts,[130] the right-wing, agreed 66% of the time with each other. Left-wing justices agreed with right-wing justices on an average of 45% of cases. On 10 civil liberties cases, the left-wing sided with the government on an average of 5% of cases and the individual on 85% of cases. The right-wing sided with the government on an average of 67.5% of cases and with the individual on an average of 27.5% of cases. Justice Stone did not fit well in either group, siding with the government on 3 cases and the individual on 7. Prichett summarizes:

"The statistics show, in fact, that from a quantitative point of view at least, the reorganized Supreme Court has become by far the most badly divided body in the history of

that institution."[131]

Looking at only non-unanimous decisions has two problems. It masks the actual agreement among justices. And it ignores emerging constitutional law. Left-wing and right-wing do not describe the results of the decisions. Prichett can certainly be excused for failing to document the subsequent law as it emerged over the next half-century.

Michael J. Klarman reviewed interwar Supreme Court criminal procedure cases, focusing on southern court convictions resulting in death sentences for poor, ignorant African Americans. The Court reversed a number of the convictions obtained through egregious and undisputed violations of defendant rights. There were no headwinds, either from the north or south, from the decisions. Rather, opinion concerning defendant treatment supported the Court's remedies. The cases involved mob dictated verdicts, lack of effective counsel, torture extracted confessions, knowingly perjured prosecution testimony and racial discrimination in jury selection.[132]

"The Court's willingness to blaze such trails may have depended on the confluence of two factors: appealing cases in which the injustice to black defendants and the dishonesty of the state appellate courts were manifest ..."[133]

These decisions raised hopes of southern African Americans for real reform while sparking more challenges from the NAACP. The NAACP, in turn, used its role in the cases to heighten its profile, raise money and expand the organization. Southern courts also responded by curtailing lower courts' egregious practices. Which did not necessarily mean the reality of Southern criminal justice for African Americans improved.

"...none of these rulings had a very significant direct impact on Jim Crow justice. ... black defendants continued to

be tortured into confessing ...”[134]

U. S. Supreme Court Justices were reluctant to substitute their conclusions for those of juries or decide officials were lying without clear evidence.

Building on Klarman, John F. Blevins, argues that coerced African American confession cases fall into two stages. The first witnessed Court unanimity in reversing egregiously forced confessions in individual cases so outrageous as to engender widespread support for the reversals. At the second stage saw Court divisions over the proper role of the federal judiciary in essentially a state domain.

> *“By the time Lyons was decided, the Court (in the context of coerced confessions) had become less concerned about issues of race and more concerned with federalism and the proper scope of federal judicial oversight of state courts. From this perspective, the struggle over the scope and definition of a “coerced” confession proved to be one aspect of a larger ideological, jurisprudential, and even personal battle among the Justices on the Court at this time.”*[135]

The Prichett analysis focused on left-wing, and right-wing blocks to account for Supreme Court decisions. The Klarman and Blevins analysis seems to hypothesize the coerced confession cases involve two conflicting themes, judicial fairness and federal-state relationships.

In its broad outline, Lyons v. Oklahoma met or exceeded the characteristics of cases unanimously reversed by the Supreme Court. A young, poor, uneducated, African American man was arrested without a warrant by unofficial investigators, beaten, held incommunicado, not given access to counsel, not brought before a magistrate, and signed a dictated confession using words and language foreign to his way of speaking. He was held without trial for over a

year. Other facts included Lyons' innocence was supported by the white victims' closest relations and the white community as well as the African American; two white prisoners from a nearby work camp had been identified as the murderers by fellow inmates and a third white local had confessed implicating the two prisoners. Indicted with Lyons was his alleged accomplice, Van Bizzell, another local African American. Someone provided Bizzell a well-connected local white attorney. A white scion of a wealthy politically connected family provided Bizzell bail. Bizzell, indicted on the same charge, with the same evidence, as Lyons, was never tried.

There were differences between Lyons and other forced confession cases as received by the Supreme Court. For one, in Lyons, much of the plaintiff's side was contested by the state. Justices would have to decide if Oklahoma officials lied. For another, the trial judge ruled out Lyons' first confession while permitting Lyons' to give his version of the confession and, in accordance with Oklahoma law, gave the jury to decide if the second confession given at the State Prison was coerced. This left the justices to second guess the jury. For the Supreme Court loss, Blevins faults Marshall, the NAACP and the ACLU.

> *"The briefs in Lyons-including the ACLU amicus brief-emphasized the disputed facts, rather than explaining why the undisputed facts required a reversal. The failure to fully engage the undisputed facts requirement, which had been clearly articulated in earlier cases, was an egregious doctrinal oversight. Specifically, Marshall failed to cabin those conceded, undisputed facts into a clear, coherent argument within the formal doctrine. ... Marshall's brief read too much like a literary narrative, describing in lurid detail the actions of the Oklahoma officials and investigators. Although both briefs [the NAACP's and the ACLU's] pointed out some undisputed facts, these few specific examples were interspersed among the much larger description of Lyons's abuse, which was disputed. No real*

> *attempt was made to cabin off the undisputed facts, or to argue that they alone could form the basis of a reversal. Rather, both Marshall and the ACLU aimed to shock the Court with the brutality of the Oklahoma police instead of incorporating the undisputed facts into a formal doctrinal framework. The State's brief pointed out this flaw, contending that Marshall's statement of facts should actually be called 'Lyons's testimony.' "*[136]

The more conservative justices were left with no facts to justify a reversal. Justices Black, Murphy, and Rutledge knew injustice when they smelled it. They voted to reverse. Circulating at the time was the pun "tempering justice with Murphy."[137] Dissenting in Falbo V. United States Murphy wrote:

> *"The law knows no finer hour than when it cuts through formal concepts and transitory emotions to Protect unpopular citizens against discrimination and persecution."*[138]

While W. D. Lyons lost at the Supreme Court, Marshall and the NAACP gained some positive publicity. The Court's opinion was interpreted in the press from Marshall's brief rather than the Court majority opinion. In a story titled "Court Decision in Sooner Case Thought Third Degree Excuse." The *Oklahoma City Times* reported:

> *"Police and district attorneys may see in a supreme court decision this week a loophole for getting away with the third degree by giving it a new twist. Take it step by step. ...*
>
> *The Supreme Court considered the second confession voluntary: "That by the time he made it, any effect of the force used on him to get the first confession had worn off. But Justice Murphy dissented ... 'To conclude that the brutality inflicted at the time of the first confession suddenly lost all of its effect in the short space of 12 hours is to close one's eyes to the realities of human nature.' "*[139]

Marshall's petition for rehearing challenged the assertion the two confessions were separated by 12 hours without further torture or coercion. He did not address the majority opinion finding the torture was disputed. He did not acknowledge the trial court threw out the first confession as it was made without counsel or arraignment before a magistrate, not because of torture. Marshall challenged the jury instructions. He argued it should have specified the confession was a product of torture. He does not note the jury heard the defendant's version of the torture and witness testimony denying the torture or that the trial judge left it to the jury to decide who to believe. Essentially, Marshall reiterated justices Black, Murphy and Rutledge's dissents. The Court denied Marshall's rehearing request. [140]

Further Efforts on Lyons' Behalf

W. D. Lyons wrote Thurgood Marshall 30 August 1944.

> *"Several weeks ago, I read in a newspaper that the NAACP and the American Civil Liberties Union would search for new evidence and reopen the case immediately, though I have heard nothing more. If that is a fact, I should like you to write me telling me what the attorneys contemplate doing next."*[141]

Marshall's 7 September 1944 response was cryptic.

> *"...efforts are being made on your behalf which we cannot explain through mail at this time. As soon as we are able to let you know, we will write you again."*[142]

Marshall did not know what was going on. He wrote Roscoe Dunjee asking for an update. Dunjee replied 11 September 1944.

> *"I just read your letter in which you referred to the status of W. D. Lyons case, and the progress we have made in getting a grand jury hearing in Choctaw County.*
>
> *The truth of the matter is that [Amos] Hall and I have been so busy, that we have not had the opportunity to get down*

there and find out the real attitude of the county attorney, and what [E. O.] Colclasure [victim Marie Rogers's father] has uncovered in the way of new evidence."[143]

Lyons again wrote Marshall 13 October 1944.

"Having been advised by editor Dunjee to report to head officials of the NAACP anything that is said to me by law enforcement officers from the outside, I am writing this letter to let you now that I was visited by two special investigators from the governor's office [Robert S. Kerr - 11 January 1943 – 13 January 1947] , who seemed very interested in my case.

The governor's chief investigator (I don't know his name) and another investigator by the name of C.C. Crabb questioned me about thirty minutes. They asked me some of the same questions that I was asked at my trial, and they remarked that I might have to best 'the electric chair again.' ... My visitors talked nicely. They used no harsh words or made no threats. Before they left, they said I would never be given clemency. I cannot tell you through mail all that was said to me."[144]

The NAACP Papers did not include a response from Marshall. Marshall did send Lyons $5 for Christmas, however. Lyons wrote Marshall again 8 January 1945.

"As I wish *to know more about the progress that is being made in my behalf, I should like you to inform me as to what you plan to do to reopen my case.*

Mr. Ralph Jennings who was elected county attorney of Hugo [Choctaw County], the town in which I was convicted, visited me not long ago. He said that for the past six months he has been in search of a clue or clues that will guide him to the actual murderers responsible for the crime of which I am serving a life sentence for and that his

efforts to procure new evidence has resulted to the collection of nothing but rumors.

You're telling me something of the advancement that the NAACP is making in my behalf will be appreciated."[145]

I could find no reference to Marshall, Dunjee Amos Hall or the NAACP involvement in the efforts to find new evidence or otherwise aiding Lyons until late 1952. The 1945 annual NAACP State Convention held in McAlester was chaired by Dunjee with Marshall as the lead speaker. Although Lyons was imprisoned at the nearby State Penitentiary, I could find no reference made to Lyons at the convention or of contact with him by the NAACP.[146]

Rosie Fleeks

In 1946 Rosie Fleeks, Lyons mother, wrote Thurgood Marshall. "I wants (sic.) to know if there can be a way for him to get out of prison. … He is tired of staying in prison he wants to get out before the governor Kerr gets out of office."[147]

Her letter likely reflected W. D. Lyons' limited understanding of his situation. Everyone, white and African American, seemed to know he was innocent. There was a national and a local Choctaw County outcry over his case. Governor Kerr expressed some interest. Marshall's assistant, Robert L. Carter replied 31 May 1946.

"As you know, the NAACP has worked very hard and diligently on your son's case. ... There is nothing further we can do. The only other method where your son can be helped is before the Board of Pardons and Parole. ... you can write to the following address for further help regarding his release:

Society for the Friendless
611 Oil Exchange Building
Oklahoma City, Okla."[148]

In 1952 William J. Orr wrote Thurgood Marshall asking for Lyons'

Supreme Court case number. Orr a fellow prisoner, was, "making an attempt at this time to assist W.D. Lyons with his case."[149] Orr, a forger, was serving a ten-year sentence at the State Penitentiary.[150] Orr's letter appears to have reminded Marshall of Lyons' situation.[151] Marshall wrote Lyons saying he had provided Orr with the requested information. The same day Marshall sent a letter marked PERSONAL to Assistant Attorney General Sam Latimore.

> *"I wonder if you remember the W. D. Lyons case in 1943. ... The time has come, I think, that consideration should be given as to whether or not Lyons should be recommended for parole or clemency of any kind, and I am asking you for your personal opinion as to whether this would be a good move at this time."*[152]

Lattimore's reply was perfunctory. He was under the impression a longer stay in prison was expected before parole could be considered. Latimore was past considering any deals with Marshall.[153] If Latimore's response seems dismissive, compare it to Marshall's response to Lyons' mother, Rosie Fleeks. This appears to have ended the NAACP involvement in the Lyons case. There is nothing further in the NAACP Lyons file.

Lyons became eligible for parole in 1956, under Governor Raymond Gary, but was passed over.[154] By 1961 the State Pardon and Parole Board recommended Lyons be paroled. He was paroled by Governor J. Howard Edmondson.[155]

Denver and John Nix report Lyons settled in Okmulgee where he remarried and worked as a television repairman and, with his wife Mildred, raised a son and daughter. In 1965 the Pardon and Parole Board recommended Lyons be given clemency and a pardon. This was granted by Oklahoma's first Republican governor, Henry Bellmon.[156] In the 1980s, with his children grown, his wife moved to a house a few blocks away. She described Lyons as a loner who had drinking bouts. In the early 1990s he suffered a stroke leaving his right side paralyzed. Denver and John Nix tell us "April 15,

1994, Lyons was killed by a gunshot wound and his house burned down with him inside."[157]

ENDNOTES

[1] R. Darcy is a retired Oklahoma State University Professor of Political Science and Statistics. This article is taken from a chapter in the author's larger study, in progress, into Oklahoma civil and equal rights 1890 – 1953 and a paper presented at the Annual Meeting of the Oklahoma Political Science Association 2024 Conference, Rose State College, Midwest City, OK 7-8 November. *Papers of the NAACP* citations are drawn from Black Studies Research Sources: Microfilms from Major Archival and Manuscript Collections. General Editors: August Meier and John H. Bracey, Jr. *Papers of the NAACP* Part 8. Discrimination in the Criminal Justice System, 1910 – 1955. Series B: Legal Department and Central Office Records, 1940 – 1955. Project Coordinator Randolph Boehm.

[2] "Night of Horror related by Boy." 1940. *El Reno Daily Tribune* Monday 1 January Page 1.

[3] Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights.* Chicago, IL: Lawrence Hill Books. Pages 19 - 20.

[4] "Convict Held in Slaying of Couple, Child." 1940. *Oklahoma City Times.* Tuesday 2 January Page 1; "Science and Law Probe Wild Story of Murder, Arson." 1940. *Sapulpa Herald* Tuesday 2 January Page 1, 6; Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights.* Chicago, IL: Lawrence Hill Books. Pages 19, 21.

[5] "Two Convicts Held in State Triple Slaying." 1940. *Oklahoma City Times.* Friday 12 January Pages 1, 2; "Witness Quizzed in Triple Slaying." 1940. *Oklahoma City Times*. Saturday 13 January Page 11. In response to the convict's arrests the School Land Commission met to stop using prison labor on land conservation. "Prison Labor May be Banned in Soil Camps." 1940. *Oklahoman* (Oklahoma City). Tuesday 16 January Page 5.

[6] "Charges Drawn in Fort Towson Murder Case." 1940. *Oklahoma City Times*. Saturday 13 January Page 11.

[7] "Third Suspect Faces Probe in Fire Deaths; Charges are Delayed." 1940. *Oklahoma City Times.* Monday 15 January Page 9.

[8] "Triple Murder Confession Starts Hunt for Weapon." 1940. *Oklahoma City Times.* Friday 19 January Page 20.

[9] "Arson Murders at Fort Towson Still Baffle Probers Despite Four Arrests." 1940. *Oklahoma City Times.* Monday 22 January Page 3.

[10] "Phillips Makes Big Magazine." 1940. *Harlow's Weekly* (Oklahoma City) Saturday 27 January Page 11.

[11] Sara L. Brown. 1983. "Leon Chase Phillips Governor of Oklahoma, 1939-1943." In Leroy H. Fisher, Editor. *Oklahoma's Governors 1929 – 1955*. Oklahoma City, OK: Oklahoma Historical Society Page 104.

[12] James R. Scales and Danney Goble. 1982. *Oklahoma Politics: A History.* Norman, OK: University of Oklahoma Press. Page 214.

[13] James R. Scales and Danney Goble. 1982. *Oklahoma Politics: A History.* Norman, OK: University of Oklahoma Press, Pages 209 – 211.

[14] Oklahoma's Constitution, Article 6, § 32 in force in 1940 provides "The Governor, Secretary of State, State, Auditor, Superintendent of Public Instruction, and the President of the Board of Agriculture shall constitute the Commissioners of the Land Office, who shall have charge of the sale, rental, disposal and managing of the school lands and other public lands of the State, and of the funds and proceeds derived therefrom, under rules and regulations prescribed by the Legislature."

[15] "Prison Labor May be Banned in Soil Camps." 1940. *Oklahoman* (Oklahoma City). Tuesday 16 January Page 5.

[16] "Vast State Soil Projects to Start." 1940. *Oklahoma City Times* Wednesday 21 February Page 4; "Choctaw County Starts Soil Conservation Work." 1940. *Oklahoma City Times* Monday 11 March Page 1.

[17] Oklahoma statutes Chapter 1, Article I, § 2 provides "The governor shall have the power to remove any officers appointed by him, in case of incompetency, neglect of duty, or malfeasance in office; and may then fill the vacancy as provided in case of vacancy." Clinton Orrin Bunn. 1922. *Compiled Statutes of Oklahoma, 1921 Annotated.* Volume I. Ardmore, OK: Bunn Publishing Company; Chapter 1 Article I § 2351 - § 2, page 307.

[18] "Inquiry of Fire Deaths at Towson is at Standstill." 1940. *Oklahoma City Times.* Saturday 6 January Page 11. State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript page 409. NAACP Legal File 1940 – 55 Crime Lyons, W. D. v Oklahoma Petitions and Briefs 1940-41. Papers of the NAACP Part 8: Discrimination in the Criminal Justice System 1910 – 1955. Series B: Legal and Central Office Records, 1940 – 1955. University Publications of America, Inc.

[19] Contemporary statutes provided for Justice of the Peace appointed constables and gave the constables the authority of sheriffs, marshals and police. See Henry George Snyder. *The Compiled Laws of Oklahoma, 1909: a Compilation of All the Laws of a General Nature Now In Force, Including the Session Laws of 1909.* Kansas City, MO: Pipes-Reed book company, 1909 passim and Chapter 88, Article XIII pages 1353 – 1354.

[20] "Seven Hugo People Face U. S. Charges." 1938. *Chickasha Daily Express* Thursday 15 December Page 2; "Police Officials Face U. S. Charges." 1939. *Chickasha Daily Express* Tuesday 10 January Page 2; "Officials at Hugo Await Sentencing." 1939. *Chickasha Daily Express*. Friday 3 March Page 6.

[21] Hall v. United States 109 F.2d 976.

[22] "Arson Murders at Fort Towson Still Baffle Probers Despite Four Arrests." 1940. *Oklahoma City Times*. Monday 22 January Page 3.

[23] "Two Convicts Held in State Triple Slaying." 1940. *Oklahoma City Times*. Friday 12 January Pages 1, 2.

[24] "Two Negroes Face Charges." 1940. *Paris News* (Paris Texas). Thursday 25 January Page 1.

[25] "Murder Charges Drawn." 1940. *Oklahoma City Times*. Wednesday 24 January Page 4.

[26] "Arraignment Set in Fort Towson Slayings." 1940. *Oklahoma* [Oklahoma City]. Friday 26 January Page 13.

[27] Bob Burke and Angela Monson. 1998. *Roscoe Dunjee Champion of Civil Rights*. Edmond, OK: UCO Press page 71.

[28] Such a theme was explored by Janet Boles in connection with the Equal rights campaign. Janet K. Boles. *The Politics of the Equal Rights Amendment: Conflict and the Decision Process*. 1979. New York, NY: Longman.

[29] "Cushing Has Likely List of Bachelors Well Worth Investigating by Any Leap-Year Conscious Lass." 1940. *Cushing Daily Citizen* Sunday 18 February Page 4.

[30] Letter from Roscoe Dunjee to Thurgood Marshall 13 January 1941. *Papers of the NAACP.*

[31] Letter, Roscoe Dunjee to Walter White, 26 March 1940. *Papers of the NAACP*.

[32] Letter, Roy Wilkins to Roscoe Dunjee, 18 April 1940. *Papers of the NAACP*.

[33] Letter, Thurgood Marshall to Roscoe Dunjee, 11 December 1940. *Papers of the NAACP*.

[34] Letter, Roscoe Dunjee to Thurgood Marshall, 26 December 1940. *Papers of the NAACP*.

[35] Letter, Roscoe Dunjee to Thurgood Marshall, 26 December 1940. *Papers of the NAACP*.

[36] "Son of Victims Witness at Murder Trial of Negro." 1941. *Oklahoman* (Oklahoma City). Tuesday 28 January Page 7.

[37] Letter, Thurgood Marshall to Roscoe Dunjee, 11 January 1941. *Papers of the NAACP*.

[38] Letter, Roscoe Dunjee to Thurgood Marshall, 13 January 1941. *Papers of the NAACP*.

[39] Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights.* Chicago, IL: Lawrence Hill Books. Page 129.

[40] "Young Chicken Thief arrested With Goods Gets Three Year Term." 1938. *Oklahoma City Times*. Thursday 13 January Page 1

[41] J. Stanley Lemons. 1977. "Black Stereotypes as Reflected in Popular Culture, 1880 – 1920." *American Quarterly* Volume 29 Number 1 (Spring) pages 102 – 116. See "Jim Noble" in Chapter "With Statehood Came White Supremacy: African American Leaders Become Janitors"

[42] Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights.* Chicago, IL: Lawrence Hill Books. Pages 65 – 74.

[43] Lyons v. State 77 Okl. Cr 197 (1943) at page 250.

[44] State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 105 – 107, 349 Items #117 – 119, 372. NAACP Legal File 1940 – 55 Crime Lyons, W. D. v Oklahoma Petitions and Briefs 1940-41. *Papers of the NAACP*.

[45] Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights.* Chicago, IL: Lawrence Hill Books. Pages 80 -83.

[46] "Murder Changes Drawn." 1940. *Oklahoma City Times*. 24 January Page 4.

[47] "Negro Guarded From Mob Violence After Confessing Part in ripple Robbery-Slaying at Fort Towson." 1940. *Miami News-Record*. Wednesday 24 January Page 1; "Negro Ex-Convict Admits Murders at Fort Towson." 1940. *Paris News* (Paris Texas). Wednesday 24 January Page 1.

[48] Clinton Orrin Bunn. 1922. *Compiled Statutes of Oklahoma, 1921 Annotated.* Volume I. Ardmore, OK: Bunn Publishing Company; Chapter 7 Article I § 2351 - § 2485, pages 1137 – 1157.

[49] 'Information' is used in some states as a rough equivalent to an indictment. It is a statement of the charges by the prosecutor.

[50] Lyons v. State 77 Okl. Cr 197 (1943) at page 251.

[51] No relation to William Bennett Bizzell, then president of the University of Oklahoma. One version has Bizzell age 36, another age 39, yet another at age 30. "Murder Changes Drawn." 1940. *Oklahoma City Times.* 24 January Page 4; "Two Negroes Face Charges." 1940. *Paris News* (Paris Texas). 25 January Page 1; "Quick Trial For Negroes Sought." 1940. *El Reno Daily Tribune*. Thursday 25 January Page 1; "2 Bound Over in Triple Slayings." 1940. *Miami Daily News-Record.* Sunday 28 January Page 5.

[52] "Negro Guarded From Mob Violence After Confessing Part in ripple Robbery-Slaying at Fort Towson." 1940. *Miami News-Record*. Wednesday 24 January Page 1.

[53] "Negro Ex-Convict Admits Murders at Fort Towson." 1940. *Paris News* (Paris Texas). Wednesday 24 January Page 1.

[54] "Murder Charges Drawn." 1940. *Oklahoma City Times.* 24 January Page 4

[55] "Quick Trial For Negroes Sought." 1940. *El Reno Daily Tribune*. Thursday 25 January Page 1.

[56] "Guardsmen Called Out in Hugo." 1940. *Paris News* (Paris, Texas). Sunday 28 January Page 1, 10.

[57] He was the son of Robert King Warren (1867 – 1926) who served in the legislature and as Choctaw County Attorney. Robert H. Warren's son, also Robert Warren (1921 – 2015) was a third generation attorney who went on to serve as Director of the Oklahoma County Bar Association, Lifetime Fellow of the Oklahoma Bar Foundation and on numerous Bar committees.https://www.legacy.com/us/obituaries/oklahoman/name/robert-warren-obituary?id=7805245 accessed 21 February 2023.

[58] 1936 OK CR 84 | 60 P.2d 401.

[59] Clinton Orrin Bunn. 1922. *Compiled Statutes of Oklahoma, 1921 Annotated.* Volume I. Ardmore, OK: Bunn Publishing Company; Chapter 7 Article I § 2351 - § 2485, pages 1137 – 1157.

[60] Letter, Thurgood Marshall to Roscoe Dunjee, 11 December 1940. *Papers of the NAACP*.

[61] Tulsa's Amos Hall (1896 – 1971) formally enters the case when Stanley Belden withdrew. Hall becomes the NAACP Oklahoma lead attorney with Thurgood Marshall a few years later in *Sipuel v. Board of Regents of the University of Oklahoma*, 332 U.S. 631 (1948). He joined the Oklahoma Bar Association in 1925. In 1969 he was appointed special judge by the District Court in Tulsa County and in 1970 was elected Tulsa County associate district judge.

[62] Letter, Roscoe Dunjee to Thurgood Marshall, 26 December 1940. *Papers of the NAACP*.

[63] "Son of Victims Witness at Murder Trial of Negro." 1941. *Oklahoman* (Oklahoma City). Tuesday 28 January Page 7.

[64] Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights.* Chicago, IL: Lawrence Hill Books. Page 47.

[65] Handwritten Note, Thurgood Marshall to Walter White, 29 January 1941. *Papers of the NAACP*

[66] 295 U. S. 394 (1935).

[67] United States Department of Commerce, *Seventeenth Census of the United States: 1940 Population Volume II Part 5 New York – Oregon. 1943.* Washington, DC: Government Printing Office, Table 21. Page 827.

[68] United States Department of Commerce, *Seventeenth Census of the United States: 1940 Population Volume II Part 5 New York – Oregon. 1943.* Washington, DC: Government Printing Office, Table 21. Page 824.

[69] Memo, Wednesday 31 January 1941. Thurgood Marshall to Bill Bastie, Leon Ransom and W. Robert Ming. *Papers of the NAACP*.

[70] "Quick Trial For Negroes Sought." 1940. *El Reno Daily Tribune*. Thursday 25 January Page 1.

[71] "Want Trial Right Away." 1940. *Paris News* (Paris, Texas). Tuesday 6 February Page 3.

[72] Thurgood Marshall himself pointed out the failure to grant a speedy trial in a December 1940 letter to Roscoe Dunjee. Letter, Thurgood Marshall to Roscoe Dunjee, 11 December 1940. *Papers of the NAACP*.

[73] State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 400 - 401. NAACP Legal File 1940 – 55 Crime Lyons, W. D. v Oklahoma Petitions and Briefs 1940-41. *Papers of the NAACP*

[74] Chapter 7, Article VIII §2590. Clinton Orrin Bunn. 1922. *Compiled Statutes of Oklahoma, 1921 Annotated.* Volume I. Ardmore, OK: Bunn Publishing Company Page 1193.

[75] "Guardsmen Called Out in Hugo." 1940. *Paris News* (Paris, Texas). Sunday 28 January Page 1, 10.

[76] Robert H. Warren was middle of three generations of distinguished attorneys. His father, Robert King Warren (1867 – 1926) served one term as a Democrat in the Oklahoma House of Representatives (1917 – 1919) and was elected Choctaw County Attorney in 1924. Robert H. Warren practiced with his father (1928 OK CR 169 | 267 P. 872) and served as Assistant County Attorney for Choctaw County circa 1936 (1936 OK CR 84 | 60 P.2d 401). The third Robert Warren, **"**Bob" was born 1921 in Hugo. He lived most of his adult life in Oklahoma City. He started his undergraduate studies at the University of Oklahoma. While at Oklahoma University World War II began. He entered the Army Air Corps serving a captain at the U.S. Air Base at Kunming, China. He graduated from the University of Oklahoma School of Law in 1948. (http://genealogytrails.com/oka/choctaw/bios1.html accessed 11 May '22; *Oklahoman*. 2015 Thursday 20 August. (https://www.legacy.com/us/obituaries/oklahoman/name/robert-warren-obituary?id=7805245 accessed 22 October 2023).

[77] Denver Nicks and John Nicks. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights*. Chicago, IL: Lawrence Hill Books. Pager 29; "Son of Victims Witness at Murder Trial of Negro." 1941. *Oklahoman* (Oklahoma City). Tuesday 28 January Page 7.

[78] Van Bizzell Bail Document 10 July 1940. *Papers of the NAACP*

[79] Van Bizzell Bail Document 10 July 1940. *Papers of the NAACP*

[80] Collins v. State 1928 OK CR 169 | 267 P. 872.

[81] Served Oklahoma House of Representatives 1919 – 1929, Speaker 1927; lost re-election in 1930, lost 1938 United States At-Large House of Representative Democrat primary coming in fourth. "Stovall … led the movement against impeachment of Governor Johnson." Stovall was defeated for re-election by R. H. Stanley "one of the coalitionists and a member of the board of managers in charge of the impeachment trial." See "Dave Stovall Defeated." 1930. *Harlow's Weekly* (Oklahoma City, Okla.), Vol. 36, No. 31, Ed. 1 Saturday, 2 August. Page 12. Stovall was among the 'anti-Murray' legislators defeated in 1930 Democrat primaries. See "Murray Men Will Organize Next Legislature." 1932. *Healdton Herald*. Thursday, 4 August, Page: 3.

[82] "Powers Of …" 1929. *Sapulpa Herald* Wednesday 20 February Page 6. Governor Johnson said, "he did not grant any clemency as political favors … he was informed Collins conviction was a frame up and that he was needed at his home to harvest his crop." "Johnson Continues Testimony to Defend Grants of Clemency Shifts Responsibility to Aid." 1929. *El Reno Daily Democrat* 8 March Page 1. State Representative Dave Stovall repeatedly touted as one of the most effective legislators by the state's political journal *Harlow's Weekly* was leader of Johnson's anti-impeachment supporters in the House. Stovall served Oklahoma House of Representatives 1919 – 1929, Speaker 1927; lost re-election in 1930, lost 1938 United States At-Large House of Representative Democrat primary coming in fourth. Stovall was defeated in the 1930 Democrat primary by one of the house impeachment managers, R. H. Stanley. "Dave Stovall Defeated." 1930. *Harlow's Weekly* (Oklahoma City, Okla.), Vol. 36, No. 31, Ed. 1 Saturday, 2 August. Page 12. 1930 saw William Murray sweep the governor race. Stovall was among the defeated anti-Murray legislators. "Murray Men Will Organize Next Legislature." 1932. *Healdton Herald*. Thursday, 4 August, Page: 3. As newly elected governor in a speech to a joint session of the legislature Murray "Singling out Dave Stovall … Murray branded him 'a dirty lobbyist who ought to be driven out of the capitol.' … 'a former speaker of this house, representing an agricultural section, pretending he is here in the interests of the state, driving an automobile he couldn't afford to buy, is lobbying here. I refer to Dave Stovall.' … 'You ought to drive him out of this house as a dirty lobbyist. The idea of him selling himself for filthy lucre! … '"'Gov. Murray Assails Lobbyists and Members of House Not Passing Bills." 1931. *Chickasha Star* Thursday 5 February Pages 1, 6.

[83] Thurgood Marshall letter to Dr. H. W. Williamston, 1 August 1941. *Papers of the NAACP.*

[84] The NAACP files have many notes exchanged between Lyons and Marshall over the years. Lyons' proclaims his trust in Marshall, his innocence of the crime, and his desire to get out of incarceration as soon as possible.

[85] State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 375 - 378. *Papers of the NAACP*.

[86] State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 151 – 158. *Papers of the NAACP.*

[87] State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 239 - 245. *Papers of the NAACP*.

[88] State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript page 238. *Papers of the NAACP*.

[89] The Selective Training and Service Act of 1940, Pub. L. 76-783, 54 Stat. 885, the Burke-Wadsworth Act 16 September 1940, provided "There shall be created one of more local boards in each county … [consisting] of three or more members to be appointed by the President, from recommendations made by respective Governors … the President may appoint necessary clerical and stenographic employees for local boards and fix their compensation … without regard to the provisions of civil service laws." Section 10 (a) (2) (3) Pages 893-4.

[90] State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 324 - 330. *Papers of the NAACP*.

[91] State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 400 - 401. *Papers of the NAACP*.

[92] State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript page 409. *Papers of the NAACP*.

[93] State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript page 15. *Papers of the NAACP*.

[94] State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 401 - 404. *Papers of the NAACP*.

[95] State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 375 - 378.*Papers of the NAACP*.

[96] "Phillips Still Steers Legislative Machine Election Indicates." 1940. *Oklahoma City Times* Wednesday 10 July pages 1, 2. H. V. Posey was elected in Senate District 20.

[97] "Gov. Explains Amendments to Teacher Group." 1941. *Sapulpa Herald* Saturday 1 March Page 1; "Increases Proposed For Gasoline Tax, Car, Truck Tags." 1941. *Oklahoma City Times* Monday 3 March Page 1.

[98] "Increases Proposed For Gasoline Tax, Car, Truck Tags." 1941. *Oklahoma City Times* Monday 3 March Page 1

[99] "Phillips' Undercover Support of Gomer Smith Exposed." 1942. *Oklahoma Eagle* (Tulsa). Saturday 4 July Pages 1, 2.

[100] Robert Kerr and Gomer Smith again faced off in the 1948 Democrat Senate Primary. Kerr had 37.4%, Smith 20.2%. In the 27 July 1948 Runoff election Kerr gained 57.5%, Smith 42.4%. Scales and Goble attribute Kerr's victory to the Negro vote. See James R. Scales and Danney Goble. 1982. *Oklahoma Politics: A History.* Norman University of Oklahoma Press page 257-8.

[101] Edwin C, McReynolds. 1954. *Oklahoma A History of the Sooner State.* Norman, OK: University of Oklahoma Press page 382.

[102] Letter, Sunday 2 February 1941. Thurgood Marshall to Walter White. *Papers of the NAACP*.

[103] Carl T. Rowan, 1993. *Dream Makers, Dream Breakers: The World of Justice Thurgood Marshall.* Boston, MA: Little, Brown page 97.

[104] Talesmen were persons selected from the courthouse corridors and street to complete a jury when a jury pool is exhausted.

[105] Letter, Sunday 2 February 1941. Thurgood Marshall to Walter White. *Papers of the NAACP*.

[106] Letter, Sunday 2 February 1941. Thurgood Marshall to Walter White. *Papers of the NAACP*.

[107] Letter, Monday 31 March 1941. Stanley Belden to Thurgood Marshall. *Papers of the NAACP*.

[108] *Compiled Statutes of Oklahoma*, 1921. N.P.: Okla., Bunn publishing Company, 1922. Chapter 7, Article X, § 2687, page 1225.

[109] Hastie was Dean of Howard University Law School 1939 – 1946 and civilian aid to Secretary of War Henry Stimson, 1940 – 1943.

[110] Letter, Monday 31 March 1941. Stanley Belden to Thurgood Marshall; Letter, Monday 31 March 1941. Letter, Thursday 17 April 1941. Thurgood Marshall' Secretary to William H. Hastie. *Papers of the NAACP*.

[111] Letter, Tuesday 6 May 1941. Stanley Belden to Thurgood Marshall. *Papers of the NAACP*.

[112] Letter, Wednesday 4 June 1941. Thurgood Marshall to Stanley Belden. *Papers of the NAACP*.

[113] Letter, Wednesday 29 October 1941. W. D. Lyons to Thurgood Marshall. *Papers of the NAACP*.

[114] "A new trial, as we see it, could have no other outcome than that of finding the defendant guilty, and with a great probability that the result would be that defendant would be given a death penalty sentence, rather than one of life imprisonment." Lyons v State 1943 OK CR 68 (1943) at 247.

[115] First water in the diamond trade refers to the highest quality, purity, translucence.

[116] Letter, Monday 4 August 1941. Roscoe Dunjee to Thurgood Marshall. *Papers of the NAACP*.

[117] Lyons v State 1943 OK CR 68 (1943) at 259.

[118] Brown v. Mississippi 297 U.S. 278 (1936), Chambers v. Florida 309 U.S. 227 (1940), Canty v. Alabama 309 U.S. 629 (1940), White v. Texas 310 U.S. 530 (1940), Vernon v. Alabama 313 U.S. 540 (1941), Lomax v. Texas 313 U.S. 544 (1941), Ward v. Texas 316 U.S. 547 (1942). See John F. Blevins. 2004. "Lyons v. Oklahoma, the NAACP, and Coerced Confessions under the Hughes, Stone, and Vinson Courts, 1936-1949." *Virginia Law Review*, Volume 90, No. 1 March Pages 387 - 464 at 417 – 420.

[119] Chambers v. Florida 309 U.S. 227 (1940) at 227.

[120] See C. Herman Pritchett. 1943. "The Coming of the New Dissent: The Supreme Court, 1942-43." *University of Chicago Law Review*, Volume 11, No. 1 (December), Pages 49 – 61.

[121] John F. Blevins. 2004. "Lyons v. Oklahoma, the NAACP, and Coerced Confessions under the Hughes, Stone, and Vinson Courts, 1936-1949." *Virginia Law Review*, Volume 90, No. 1 (March), Pages 387 – 464..

[122] S. Sidney Ulmer. 1979. "Parabolic Support of Civil Liberty Claims: The Case of William O. Douglas." *Journal of Politics*, Volume 41, No. 2 (May) pages 634 – 639.

[123] Brown v. Mississippi 297 U.S. 278 (1936) at 281.

[124] Brown v. Mississippi 297 U.S. 278 (1936) at 285 – 286.

[125] Watts v. Indiana 338 U.S. 49 (1949) at 50.

[126] Watts v. Indiana 338 U.S. 49 (1949) at 60.

[127] Lyons v. Oklahoma 322 U.S. 596 at 321.

[128] Lyons v. Oklahoma 322 U.S. 596 at 605.

[129] Watts v. Indiana 338 U.S. 49 (1949) at 57.

[130] During oral argument justice Roberts asked the size shot Lyons used to hunt rabbits. Marshall answered, "he understood it was No. 4." Roberts replied "No. 4 is pretty big shot for rabbit hunting … Other Supreme Court justices hadn't been aware that there was a hunting authority in their midst. Justice Stanley Reed buzzed a few pertinent queries into Robert's ear. Chief Justice Harlan Stone, an expert fisherman, joined in whisperers. Roberts, who spends his summer vacations on his farm near Valley Forge, Pa., kept nodding his head up and down. He seemed to know what he was talking about, or at least there were not enough rabbit experts on the bench to dispute him. However, rabbit experts on Capitol Hill say that Justice Roberts probably was thinking of the matter from the perspective of of a gentleman farmer, not of those who hunt rabbits to eat. In this segment of society, they say, it isn't unusual to hunt rabbits with No. 4 shotgun cartridges." Drew Person. 1944. "Washington Merry-Go-Round." *Daily Mirror* (New York). Sunday 7 May.

[131] C. Herman Pritchett. 1943. "The Coming of the New Dissent: The Supreme Court, 1942-43." *University of Chicago Law Review*, Volume 11, No. 1 (December), Pages 49 – 61 at page 49.

[132] Michael J. Klarman. 2000. "The Racial Origins of Modern Criminal Procedure." *Michigan Law Review*. Volume 99 #1 Pages 48 – 97 at page 48.

[133] Michael J. Klarman. 2000. "The Racial Origins of Modern Criminal Procedure." *Michigan Law Review*. Volume 99 #1 Pages 48 – 97 at page 77.

[134] Michael J. Klarman. 2000. "The Racial Origins of Modern Criminal Procedure." *Michigan Law Review*. Volume 99 #1 Pages 48 – 97 at page 49.

[135] John F. Blevins. 2004. "Lyons v. Oklahoma, the NAACP, and Coerced Confessions under the Hughes, Stone, and Vinson Courts, 1936-1949." *Virginia Law Review*, Volume. 90, No. 1 Pages 387 – 464, at page 393.

[136] John F. Blevins. 2004. "Lyons v. Oklahoma, the NAACP, and Coerced Confessions under the Hughes, Stone, and Vinson Courts, 1936-1949." *Virginia Law Review*, Volume. 90, No. 1 Pages 387 – 464, at pages 399 - 440.

[137] See Howard, J. Woodford. 1968. *Mr. Justice Murphy: A Political Biography.* Princeton, NJ: Princeton University Press, Chapter 12; Treanor, Willim Michael. 2009. "Justice Tempered with Murphy." *Forbes* August 6.

[138] Falbo v. United States 320 U.S. 549 (1944) at page 561.

[139] "Court Decision in Sooner Case Thought Third Degree Excuse." 1944. *Oklahoma City Times*. Wednesday 7 June Page 15.

[140] *Papers of the NAACP*.

[141] Letter from W. D. Lyons to Thurgood Marshall 30 August 1944. *Papers of the NAACP*.

[142] Letter from Thurgood Marshall to W. D. Lyons 7 September 1944. *Papers of the NAACP*.

[143] Letter from Roscoe Dunjee to Thurgood Marshall 11 September 1944. *Papers of the NAACP*.

[144] Letter from W. D. Lyons to Thurgood Marshall 12 October 1944. *Papers of the NAACP*. C. C. Crabb, State Investigator, Oklahoma Department of Public Safety, http://ok-cca.net/cases/1948/OK-CR-129/, ballistic expert, State Bureau7 of Criminal Investigation, https://law.justia.com/cases/oklahoma/court-of-appeals-criminal/1941/52925.html.

[145] Letter from W. D. Lyons to Thurgood Marshall 8 January 1945. *Papers of the NAACP*.

[146] "Equality Sought in Negro Attempt at OU Enrollment." 1945. *Oklahoma Daily* (Norman) Tuesday 6 November Pages 1, 4; Dunjee to Lead Forum On Langston University at Westminster Sunday." 1945. The *Oklahoma Daily* (Norman). Tuesday 29 November. Page 1.

[147] Letter from Rosie Fleeks to Thurgood Marshall 24 May 1946. *Papers of the NAACP.*

[148] Letter from Robert L. Carter to Rosie Fleeks 31 May 1946. *Papers of the NAACP*.

[149] Letter from William J. Orr to Thurgood Marshall 7 October 1952. *Papers of the NAACP*.

[150] "Officers Seek W. J. Orr for Passing Hot Checks." 1947. *Madill Record* Thursday 13 March Page 1. Orr was recommended for parole in 1954 only to be re-arrested and sentenced in 1956 for driving a stolen car. "6 Convicts Ask State Clemency." 1954. *Oklahoma City Times* Tuesday 5 October Page 14; "Eight Convicts Up for Parole." 1954. *Oklahoma City Times* Tuesday 26 October Page 3; "Stolen Car Conviction Draws Five-Year Term." 1956. *Oklahoma City Times*. Thursday 27 December Page 2.

[151] Jack Greenberg, Marshall's Assistant Counsel, replied with the information Orr requested. But wrote a note on the copy to refer the matter to "TM for further action." Letter from Jack Greenberg to Willim J. Orr 10 October 1952. *Papers of the NAACP*.

[152] Thurgood Marshall to Sam Latimore 16 October 1952. *Papers of the NAACP*.

[153] Sam Latimore to Thurgood Marshall 28 October 1952. *Papers of the NAACP*.

[154] Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights.* Chicago, IL: Lawrence Hill Books. Page 199.

[155] "Five Lifers Move Nearer To Freedom." 1961. *Ada Evening News.* Wednesday 1 March Page 12

[156] Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights.* Chicago, IL: Lawrence Hill Books. Page 200.

[157] Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights.* Chicago, IL: Lawrence Hill Books. Page 201.

BOOK REVIEWS

Clara Luper. 2023. *Behold the Walls: Commemorative Edition*, Edited by Karlos K. Hill and Bob L. Blackburn, University of Oklahoma Press. 289 pages.

Behold the Walls!
By Clara Luper

Behold the walls
Do you see what I see?
Visible walls, invisible walls
Separating you and me.
The visible walls are crumbling
As court decisions are handed down.
The invisible walls are still standing,
Making us go round and round.
Each of us must be a Joshua,
Blowing or trumpet of freedom's songs,
And the walls will come tumbling down,
And the world will right the wrong.

In the introduction to the first edition of this book which was written in 1978, Clara Luper listed many of the indignities that Jim Crow segregation required: separate restrooms, telephone booths, and restaurants, for example. She wrote, "These are just a few of the walls that Blacks had seen, and now the whole world would see the walls" (p. 14). The theme of walls is carried through the whole book.

Clara Luper wrote Behold the Walls to recall her involvement in the Oklahoma City fight for integration. The original version is almost like an impressionistic scrapbook. Editors Hill and Blackburn have placed events in chronological order and included high-resolution photographs. The narrative is occasionally broken by sidebar stories or other added information.

The most valuable information in Hill's introduction is underscor-

ing how important are the ties between Black and Native Oklahoma. Hill writes, "From 1866 to 1907, Black people in the Indian nations were still treated as second-class citizens, but they had access to land, the primary means for generating wealth on the frontier and the best chance to break the cycle of poverty rooted in slavery" (p. 5). It is largely unknown that the land on which the Greenwood District of Tulsa, also called Black Wall Street, was Muscogee Creek allotment land.

Clara Luper was born in 1923 and grew up in the Muscogee town of Grayson, an all-Black town. She was educated in segregated schools and then attended Langston University. She became a teacher and taught history at Spencer, a mostly Black school. Luper became the advisor to the Oklahoma City National Association for the Advancement of Colored People (NAACP) Youth Council. In August 1958, the children began their first sit-in at Katz Drug Store. The strike was initiated by a vote of the youth. At every juncture, the youth voted. They drove the direction and duration of the movement.

Luper's leadership was thoroughly non-violent. Several times people are asked to leave the protests because they were not able to control their emotions and they may have fought back against injustice. All of the activists read the rules of non-violent protests as envisioned by Dr. Martin Luther King, Jr. again and again. The four basic rules are, 1) define your objective, 2) be honest because non-violence is not an approach to be used by hypocrites, 3) love your enemy, and 4) give the other side a way to participate in victory when it comes. Students investigated, negotiated, educated, and demonstrated.

In retelling the story of the sit-in movement, Luper's voice is passionate and sometimes funny. She is patient both with her students and with the owners of the establishments in which she was demonstrating. She was battered and bruised as police officers drug her to jail and every racial slur was spoken to her. Clara Luper's resolve

and good humor were never broken. One time, Luper wrapped up a tiny Black baby and snuck it into Anna Maude's Cafeteria with a white woman. Luper announced, "A Black person is eating in Anna Maude's!" The word spread like wildfire throughout Oklahoma City and TV cameras surrounded the restaurant waiting for the person to walk out. The Oklahoman ran the headline, "Baby Breaks Race Barrier."

The first restaurants chosen for the protests were Katz, Veazey's, Kress, John A. Brown's, and Green's. Sit-ins began at Katz's on August 19, 1958. Veazey's may have been the easiest to integrate. When the children marched in to order their Cokes they were informed that the policy had changed the day before and that all could dine together. They enjoyed their Cokes, tipped twice as much as customary, and moved off to Veazey's. Veazey's was also integrated without incident. However, when they moved to Kress, all of the tables had been removed. No one shall eat.

When the group went to John A. Brown's, the group thought integration would be easy because this store was a favorite in the Black community. However, it was quite difficult. "We were cursed and spit on, and coffee was poured on us, but we stayed at Brown's" (p. 35). On Halloween, the sit-inners made white facial masks and chanted "My face is white, May I eat today" (p 39). Six years later they were still protesting. They rented a devil costume. The devil told the store's guards that they were "preparing themselves for an eternity with me in h e l l" (p. 39). One day, the NAACP planned an all-white sit-in. "This was truly a confusing demonstration. The segregationists did not know what to do" (p. 51). Luper became philosophical when she thought about the work she was doing,

I knew that those Blacks who weren't participating in the movement would be the first ones to eat in the restaurants, the first ones to sleep in the hotels, and the first and only ones to be placed by their 'good white folks' on boards, commissions, and in top-paying jobs, while those of us who were at John A. Brown's that day

would continue to be isolated from the fruits of democracy

(p. 53). She believed that she was a troublemaker who would not be tolerated by people in power. She was alienating herself and her students to build a better society. Luper also felt judgment toward Christians who could preach kindness on Sunday but uphold racist practices in their lives.

In 1960, Luper received a phone call from Mrs. Brown wondering if they could meet. Just days after their meeting, segregation ended at Brown's. The two women would remain friends for life.

The remainder of the book details the various incidences at other lunch counters and restaurants in Oklahoma City. Luper and the NAACP Youth Council also ran strikes against other retailers as well as for equity for sanitation workers. A deeply sad incident happened in 1978 when Luper's Freedom Center was bombed. This building held many of her records including all of the financial supporters of the NAACP over the years.

The New York Times published an obituary of Clara Luper upon her death in 2011. Her funeral was held at the Cox Convention Center and it was full to the rafters. When Clara Luper was sitting in jail one of the 26 times she was arrested, would she ever have believed that thousands of Oklahomans and a whole nation would mourn her? When her Freedom Center was bombed, could she have believed she would one day be named as one of Oklahoma's most influential citizens?

In The 1619 Project, journalist Nikole Hannah Jones wrote an essay entitled "America Wasn't a Democracy until Black People Made It One." United States citizens love the Declaration of Independence with its beautiful language: "We hold these truths to be self-evident, that all men are created equal." However, it took the bravery and audacity of Civil Rights sit-inners like Clara Luper to make these words come true. The US and Oklahoma owe Luper

and her team of children a debt that can never be repaid.

Christine Pappas
East Central University

Tom Colbert. 2023. *Fifty Years from the Basement to the Second Floor*, Friesen Press. 257 pages.

Justice Tom Colbert was the first African American justice on the Oklahoma Supreme Court as well as the Court of Civil Appeals. The history of his life offers a view of history into the African American experience including severe racial prejudice and discrimination as well as a path to success.

Tom Colbert was born in Oklahoma in 1949. He notes that his birth nearly coincided with Ada Lois Sipeul Fisher's admittance to University of Oklahoma Law School as the first Black student. Colbert was raised by a single mother in Sapulpa and never spoke to his father. His uncle Pleas Watman was admitted to the Oklahoma Bar Association in 1913 and was a civic leader in the National Association for the Advancement of Colored People and other groups. Colbert grew up with the specter of the Tulsa Race Massacre of 1921 in the not-too-distant past and his Uncle Pleas was one of the leaders who fought for justice after this event.

Like many African Americans in Oklahoma, Colbert's ancestor Ed Colbert was a Freedman, Muscogee Creek in his case. However, the examining commissioner denied his enrollment on the Freedman Roll in 1907. An interesting portion of this book is the transcript of related testimony on this question. Also part of family lore is how Colbert's grandfather was swindled out of his land and oil rights by a white neighbor. The family endured many crises – including murder, death, and tornado – yet always remained strong and loving.

Racial discrimination in public school systems was banned when Brown v. Board of Education was decided in 1954. The City Sapulpa integrated by combining the white Sapulpa High School with Booker T. Washington High School, the Black school, although the lower grades were left segregated for the time being. All but one of the Black teachers was terminated. Even though the Black

Elementary was destroyed by a tornado, integration was resisted.

Participating in sports including baseball, basketball, and track permeates throughout Colbert's book. Sadly, racial discrimination against Black athletes was almost always a part of the story. Many times he was benched because the coach would only play one Black athlete. During a baseball tournament, the officiating was so biased, Colbert recalls, "This was the first time in my life, along with my teammates, that we had observed such racial hatred, bigotry, and blatant discrimination by city officials" (p. 48). The sting Colbert felt from not receiving his letter jacket or being awarded the Athlete of the Year Award is obviously still felt by the author. Happily, Colbert's family was always there to provide a balm to him. He recalls his grandparents told him, "Never let racism, hatred, or bigotry tear me down to the point of giving up and not doing my best and believing in myself" (p. 50).

Throughout his life, Colbert spent time with family in Chicago. During one visit he had the opportunity to hear Dr. Martin Luther King, Jr., speak. The 1966 speech was delivered at a rally against housing discrimination. Colbert recalls, "I, like so many others around me, became spellbound. I had never heard a Black or White man with such a powerful and moving voice, and one infused with a spiritual tone of sincerity" (p. 55). Colbert was also aware of Clara Luper, the Oklahoma Civil Rights leader who was working in Oklahoma City to end segregation in restaurants and other locations.

Colbert graduated from Sapulpa High School. Prior to graduation, he sought out advice from the school counselor on how to attend college. Her response was, "You don't have the ability, and you are not smart enough to go to college. The only thing that you might be able to do is go to a trade school" (p. 69).

Colbert enrolled at Eastern Oklahoma State College to compete in track. He was surprised to find that this school was also racist.

He recalled a dance where a white student from California danced with a Black student. After the dance, the woman was expelled permanently. Seeking a different experience, Colbert accepted a scholarship offer at Kentucky State University, a HBCU. He relished the learning environment and thrived as a track athlete, winning both individual and team championships. He eventually met his wife Dorthea on campus; "I saw her smile, and at that moment, I had fallen in love" (p. 115).

Despite being an education major, Colbert decided to attend law school after graduation from Kentucky State University. Swirling forces seemed to play on the future of Colbert because his potential law career, his life as a teacher, and the possibility of military service in the Vietnam War seemed to create more questions than answers. After thinking he had avoided being drafted, Colbert moved to Colorado to take a job to earn extra money. The military came looking for him and he ended up in the Army. Luckily, he was able to get an interesting assignment with the Criminal Investigation Division. While he was away at Basic Training, his first child was born. He served until 1974.

Colbert moved to Chicago to look for work and became a teacher where he was known as a strict disciplinarian. His dreams of becoming an attorney still lingered. He learned of a new law school in Chicago called the National Conference of Black Lawyers Law School. After attending for four years, he and his classmates learned that the school was not accredited and it would not be so in time for them to take the Illinois Bar Exam. They had wasted their time and money. Whereas some students found correspondence schools that took their credits, Colbert decided to start over and complete three more years at the University of Oklahoma School of Law. After graduation, Colbert was hired by Marquette University as an Assistant Dean where he served as a nonvoting member of the admission committee. He thought this would be a good way to increase minority enrollment at Marquette.

After his sister was senselessly murdered, Colbert decided he needed to move home to Oklahoma again. This news was difficult for his wife Dorthea because she had begun law school at Marquette in the meantime.

Back in Oklahoma, Colbert held a variety of jobs. He was Assistant District Attorney in Oklahoma County where prosecuted difficult cases including capital murder. After having his fill of prosecuting, Colbert resigned so he could go into private practice with Vicki Miles-LaGrange who had just been elected to the Oklahoma State Senate. During this time he realized yet another problem that racism had created – the lack of Black people on jury panels. Colbert tried 40 jury trials in Oklahoma. "In all of those cases, the largest amount of people of color that I ever observed on a jury was three, and in most cases, it was either one or none" (p. 210). Colbert's experience as an adult connected back through his life to his other experiences with racism. "What makes this judicial experience so painful is that I had experienced this egregious and intolerable unfairness as a child, teenager, and now as an adult and practicing lawyer," he wrote (p. 211).

When the opportunity arose for him to apply to become an appellate judge in 2000 – a process that included applying to the Judicial Nominating Commission (JNC) – he knew he must try. Colbert thought the timing was good because Oklahoma had a governor "who believed in diversity" (p. 214) but no person of color had ever made it past the JNC. Governor Keating selected Colbert for the position on the Court of Civil Appeals and he was sworn in on April 14, 2000. There were very few Black people working in the judiciary so Colbert made it his responsibility to enhance diversity throughout the judicial system. In 2004, Governor Henry elevated Colbert to the Oklahoma Supreme Court.

Fifty Years from the Basement to the Second Floor tells a great story about perseverance in Oklahoma and the United States. Colbert stayed true to his family teaching to always work hard and to

seize opportunities as they came. The last chapter of the book tells a bit about Colbert's experience on the Oklahoma Supreme Court and there is a table of cases he decided. If the book has any weaknesses it is that this time in Colbert's life was not rendered more fully. Colbert offers a warning about judicial reforms that would weaken the independence of the judiciary, such as eliminating the JNC or requiring various term limits on judges. In a state where there is one-party control of the governor's office and the legislature, the Oklahoma Supreme Court is the last backstop against the rule of the majority rather than the rule of law. Colbert retired in 2021.

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Friot, Stephen P. (2023). *Containing History: How Cold War History Explains US-Russia Relations*. Norman, OK: University of Oklahoma Press.

Friot offers a wide-ranging analysis of the Cold War's origins, its enduring relevance, and its impact on Russia's geopolitical behavior today. It effectively ties historical events to current developments, particularly in the context of Russia's invasion of Ukraine. As a senior federal judge out of the U.S. District Court for the Western District of Oklahoma, Friot might seem at first blush to be an unconventional authority on Cold War history. But he has served as a judicial delegate to numerous legal exchanges in Russia and has traveled extensively throughout the Russian Federation lecturing and conducting research. He has developed a deep expertise about Russian culture and history. Moreover, Friot has capitalized on newfound ability to access information unclassified since the initial set of foreign policy scholars wrote their longstanding classic, "definitive" treatments of the Cold War. These more recent developments inform his uniquely compelling vision of the profound cultural and historical experiences that continue to shape Russian society and politics.

The author rightly emphasizes that Russia's identity and geopolitical actions are deeply influenced by a long historical trajectory. Successive territorial invasions of Russia going back centuries include armed incursions by Polish, Swedish, French, Japanese, British, and German forces. Even American troops participated in the 1918-1920 Allied intervention. Friot observes, "The Allied intervention does not get more than a footnote—if that—in history books in the United States. The Russians remember it better than we do" (p. 10).

In a gripping style, Friot connects historical memory and current attitudes toward the West. The book acknowledges that Russia's experiences, particularly its sense of victimhood and historical grievances, are often misunderstood in the West. *Containing*

History contrasts competing Russian and Western perspectives over time. Likewise, it creates several analytical conversations among various aspects of international and domestic politics. As Friot notes, "The fact that the Cold War ended with the disintegration of the Soviet empire (which lasted some seventy years), is not nearly as historically significant as the fact that the Cold War ended with the disintegration of the *Russian* empire, which lasted for more than three hundred years" (p. 326).

The focus on the role of Russian ethnicity and cultural distinctiveness as drivers of political and social behavior is insightful. The observation that post-Soviet Russian generations feel a stronger sense of national identity than their predecessors is key to understanding the resurgence of Russian nationalism under Putin. The book dives into the geopolitical legacies of the Cold War, highlighting their continued influence on U.S.-Russia relations today. At its core, the book seeks to explain why Russia and Americans view each other so differently and how the Cold War shaped both nations' domestic and international politics. Friot places these divergent perspectives in the broader context of Russia's historical experiences, such as its imperial past Soviet legacy, and its struggle with Western encroachment.

The claim that the Cold War is still relevant, particularly in how it informs Russia's foreign policy and attitudes toward the West, is well argued. It is true that the distrust between Russia and the West, established firmly during the Cold War, persists and affects modern conflicts, such as the war in Ukraine. This historical perspective helps explain why Putin's actions may seem both strategic and reactive, rooted in a longstanding fear of encirclement and Western hostility. Friot emphasizes that the collapse of the Soviet Union in 1991 did not signal an "end of history," as Francis Fukuyama famously suggested, but rather set the stage for renewed tensions as Russia seeks to reassert itself on the global stage. These pressure points have been exacerbated by Western misinterpretations of Russian nationalism and the internal

pressures facing Russia, especially under Vladimir Putin.

Russia's national identity is multifaceted. While historical antecedents rooted in the Cold War are certainly important, they do not fully account for the complexity of contemporary Russian society. For instance, the resurgence of the Russian Orthodox Church, the role of economic interests, and the impact of globalization on younger Russians could all be explored more deeply to provide a more comprehensive view. Friot tends to focus on historical memory and external relations (especially regarding the West), but Russia's internal political dynamics, particularly the role of authoritarianism under Putin, are underplayed. The resurgence of Russian nationalism and militarism is not purely a product of historical memory—it is also a deliberate tool used by Putin to consolidate power domestically. The role of state propaganda, economic stagnation, and the suppression of dissent in shaping public opinion could be examined more thoroughly.

Friot explains how Russian history differs from that of the United States and Western Europe. The implication that Western societies lack comparable traumas oversimplifies the picture. Western nations, especially in Europe, have also experienced cataclysmic wars and political upheaval, including the two World Wars and the Cold War itself. A more nuanced discussion of how these historical experiences differ in their long-term effects on national identities could strengthen the argument.

The author broadly claims that the Cold War is still relevant. However, the rules of engagement are less clear today, especially in cyberspace. While the Cold War provides useful context, the contemporary global order is marked by multi-polarity (e.g. the rise of China), global economic interdependence, and emergence of non-state actors—all of which differ from the more binary structure of the Cold War. This book could benefit from more fully acknowledging these differences and exploring how new technologies, economic globalization, and different power

dynamics have altered the nature of conflict.

The author states that Putin's ethnonationalism is not an ideology "in anything like the same sense that communism was." This point is under-explored. While communism provided a cohesive, global ideological framework, Putin's blend of nationalism, imperial nostalgia, and anti-Western rhetoric serves a more pragmatic, situational purpose. It lacks the global ambition of Soviet communism but is still powerful in shaping domestic and foreign policy. A deeper exploration of how Putin uses ideology to legitimize his rule and justify his policies could enhance the analysis.

The book hints at some important historical episodes, like the Soviet-German nonaggression pact and the Cold War arms control negotiations. But it doesn't delve deeply into how these events directly shape modern Russian attitudes toward international law, diplomacy, and trust in global institutions. Exploring how historical treaties, betrayals, and alliances shaped Russian strategy could provide a richer understanding of Russia's behavior today.

The book is particularly informative when discussing the contributions of American policy leaders at various points in time during the Cold War. Friot is obviously impressed with many of the U.S. presidents, cabinet leaders, diplomats, and geopolitical strategists that guided American foreign policy during these perilous years. A key theme of the book is how the caliber of these Cold War era policymakers is far superior to contemporary leaders. Friot comments, "It is hard to look at this array of leaders without wondering what accounts for the palpable differences between them and many, if not most, of their twenty-first century counterparts (p. 111). He does express some admiration for Joe Biden's leadership in international affairs which he traces back to Biden's foreign policy experiences in the U.S. Senate. As President, Biden has leveraged Putin's assault on Ukraine to not only completely repair the damage done by President Trump, but

to expand NATO membership with the recent additions of Finland and Sweden.

The author effectively ties together the past and present. He makes some surprising predictions and policy recommendations. First, he recommends that American foreign policy should start preparing *now* for a post-Putin Russia. In the meantime, the West should blunt Putin's existing ambitions with explicit willingness to deploy superior military power.

Second, he says that "it is not likely that Crimea will ever be returned to Ukraine" (p. 328). He supports this prediction with discussion about the long history of Crimea being under Russian control since it was initially annexed in 1783 during the First Turkish War. Friot notes that Russians have longstanding cultural, linguistic, ethnic, and religious ties to Crimea. Furthermore, "Crimea has been redeemed more than once with Russian blood" (p. 329). The interplay of historical factors, geographical considerations, a sense of Western encirclement, the Russian diaspora, and Russia's enduring goal of maintaining access to a warm-water port—particularly Sevastopol, a city of both emotional and strategic importance—makes it clear that Russia is highly unlikely to willingly surrender Crimea (p. 329). In the strictest spirit of *realpolitik*, Friot says that the United States and its allies should feel little imperative in the near term to excuse or recognize Russia's control of Crimea. On the other hand, Friot encourages some toleration for a Russian equivalent to the Monroe Doctrine.

Third, the author declares that further "expansion of NATO to include Ukraine would be counterproductive, unnecessary, and conducive to open conflict" (p. 332). Friot sees a fundamental distinction between NATO's incorporation of Finland and Sweden into its membership and the possibility of such future membership for Ukraine. He asserts that, "rightly or wrongly, Russia would consider accession of Ukraine to be an existential threat" (p. 334). At the same time, Friot sees few drawbacks to welcoming Ukraine

into the European Union. These considerations could play out as major touch-points in any peace negotiations to end the Russia-Ukraine war.

Finally, Friot predicts that over the long term, the U.S. is more likely to ally with Russia than China. He points to the highly educated citizenry in Russia who possess strong affinity toward Western culture. Unlike China, Russian citizens jealously guard their access to the web—admittedly through the use of virtual private networks. The author sees great risk for Russian authorities to start placing limits on internet access. He cautions though that "meaningful democratic reform in Russia, when it comes, will be democratic reform, Russian style" (p. 350). The United States and its Western allies should refrain from arrogantly force-feeding democratic reforms should such an opportunity arise.

In sum, *Containing History* provides a strong historical framework—especially in the context of the Cold War—for understanding Russia's actions and its ongoing conflict with the West. The book is such a wonderful and timely overview to assist contemporary readers to appreciate the complexity of international affairs as currently playing out on the world stage. This book would be a welcome addition to any classroom covering contemporary international affairs.

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Mickey Dollens. 2024. *A Citizen's Guide to Political Change: How to Win with Ballot Initiatives and Defend Direct Democracy.* Whizbang Publishing. 231 pages.

Oklahoma House Representative Mickey Dollens authored a literal 'how-to' guide for engaging the tools of direct democracy enshrined in the state Constitution and provides even inactive citizens with a step-by-step manual of how to participate and have their voice heard. Dollens comes from a recognizably traditional Oklahoma background, having played Division 1 football, worked in the oilfield, and working as a high school teacher; a background that is not overtly political stripping away the idea that to engage in politics, one must be well-connected initially.

Dollens does a wonderful job of making wonky procedures of direct democracy accessible to the average citizen who wants to create social and political change within their community, state, or nation. The book is initially nonpartisan, even though it is obviously written by a partisan politician, and simply asks the reader to consider targeted civic engagement as an effective mechanism of participation. Dollens does not paint an idealistic picture of what citizens can accomplish, he is referencing and painstakingly explaining how critical tools such as citizen-led ballot initiatives and referendums are to "mitigate polarization and reestablish trust in government institutions" (p. 11).

In Chapter 1, "Power to the People", Dollens summarizes a history of populism in the United States, particularly within Oklahoma's founding and contemporary politics that enshrines direct democracy for the citizens as tools to guard against government overreach and ensuring that the voices of the citizens are harnessed and heard. Dollens does a bit of Political Science 101 in explaining the definitions of ballot measures, initiatives, and veto referendums as well as the frustratingly simple (yet oft confused) concept of our democratic republic. While these are obvious concepts to those of us in the field who are teaching on a daily basis, we must recall

that the average American has not been acquainted with the tools of direct democracy, much less being instructed on how to wield these tools to create change. It would be easy for Dollens, much like a professor, to simply espouse the definitions and instruct the reader on how to utilize the tools available, but he goes further by providing anecdotal evidence from other states of how citizens have successfully implemented change using direct democracy and direct participation.

Chapter 2 focuses on the rise and spread of the ballot initiative during the Progressive Era, and the impact that the process has had on contemporary American politics. Again, Dollens makes use of an example of the ballot initiative's use in American politics to create change, specifically, to restore voting rights for former felons in Florida.

Chapter 3 provides a call to action for citizens as there is a concerted attack on the tools of direct democracy at both the national and state level. Dollens notes the efforts to raise the threshold for passing ballot measures, requiring background checks for signature-gatherers, and increasing the number of valid signatures needed to be certified and placed on the ballot for voters. Dollens meticulously explains the threat of losing the tools of direct democracy or them being manipulated in a manner that renders them dysfunctional in the future, and the impact of losing those tools on the average citizen. In many instances, he does so by using states that have implemented such restrictive measures and the consequences of doing so. It is admirable that Dollens mentions the problem of mis-and-disinformation and the need for increased media literacy in 21st-century American politics. The chapter ends with a call to action to protect direct democracy and the power of the people to use these tools to affect change.

Chapter 4 is my favorite as it provides information on a variety of methods that citizens can use to stay informed and engaged politically. Dollens' suggestions include joining advocacy and

community groups, spreading awareness, and staying informed. What is so useful about this chapter is that Dollens provides a detailed list of advocacy groups and community organizations that work at a state and national level to support democracy, including the Ballot Initiative Strategy Center, Represent US, and Vote Save America. There is no guesswork involved, Dollens has provided a literal roadmap to engagement for the democratic citizen to take advantage of immediately.

In Chapter 5, Dollens responds to common criticisms of direct democracy and provides solutions that we can pursue to mitigate these varying issues that plague American politics, including voter fatigue and unintended consequences.

Within Chapters 6 and 7, Dollens provides a step-by-step guide on how to pass a ballot measure, starting with identifying the problem as well as a solution, and how to go about getting to the end goal. The list includes suggestions of who to contact, organizations that may be working in the same area or on the same goal, as well as practical advice regarding setting budgets, recruiting volunteers, and engaging donors. Chapters 8 and 9 go into detail about what to expect once your ballot language is approved and going about conducting an efficient signature-gathering campaign; Chapter 8 even includes sample language to initiate a conversation with a potential signer.

Overall, the book is a heartening use of political capital to better engage citizens and educate them on how best to utilize the tools of direct democracy for themselves. Dollens does an excellent job at keeping what could be a dry 'how-to' topic relevant, applicable, and accessible to everyday Americans who are looking to make a change in their lives. Dollens concludes aptly, "As we conclude this guide, step into your role with confidence. The future of direct democracy—and indeed, the broader landscape of our democratic governance—rests in the hands of those who dare to make a difference. The time to act is now. Are you ready to leave your

mark?”

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Gregory H. Bigler. 2024. *Rabbit Decolonizes the Forest: Stories from the Euchee Reservation.* University of Oklahoma Press. 193 pages.

Rabbit Decolonizes the Forest is a collection of stories that combine personal and family memoirs, traditional *di'i'le* (Euchee tales) recorded from elders, and modern stories told in the style of *di'i'le.* In the Euchee language, *di'i'le* refers to stories or legends, generally featuring animals, which were often told to children. Traditional *di'i'le* often begin and end with a phrase such as "*gae-sthaw-la aw-ha-e-ha.*" The meaning of this phrase is to convey that the stories came from "ones who have gone on" and were not created by the teller. In many Native American communities, including Euchee, stories are used not only for entertaining children but are also used to pass down information, teach traditions, inform identities, and convey ideas. In this book, Bigler uses these different forms of stories to provide a unique and important glimpse into Euchee life as well as provide commentary on contemporary Native American issues.

Gregory H. Bigler is a lawyer, Tribal court judge, Native American Law scholar, and perhaps most central to his identity, Euchee (enrolled through Muscogee Nation). Bigler, along with his law partner, the late G. William Rice, won *Oklahoma Tax Commission v. Sac and Fox Nation,* 508 U.S. 114 (1993), a landmark Native American Sovereignty case in the United States Supreme Court. As part of this collection of tales, Bigler shares his experiences fighting for Tribal sovereignty in the Supreme Court along with other personal experiences. The reader will experience accounts of late-night brief writing and Supreme Court arguments alongside descriptions of attending wild onion dinners, participating in Stomp Dance, and learning Euchee from family members. The interweaving of these experiences illustrate that all of these stories are equally important and impactful in Bigler's life.

Some stories in this collection are traditional *di'i'le* recorded from

Euchee elders such as "How Rabbit Gets His Short Tail." Another traditional *di'i'lie* in the collection titled "*Sahiwane and Gojithlah* (Rabbit and Monster)." In this story, *Sahjwane* (Rabbit) kills the monster who has been terrorizing the woodland animals. *Sahjwane* comes to this conclusion after a meeting of a council of the animals to discuss solutions to the *Gojithlah* (Monster) problem. This story, as Bigler explains, would traditionally be told to children at bedtime but it also served a purpose of teaching how Euchee people address societal problems through council meetings, punishment, and relational expectations.

In addition to traditional tales, this book also contains contemporary stories often written in the style of traditional *di'i'le,* providing clever commentary on current topics of Indigenous policy discussions. The title story, "Rabbit Decolonizes the Forest," tells of Rabbit who decides to decolonize the forest by stripping away all new growth. Another modern *di'i'le* featuring Rabbit depicts him visiting his friend Bear. Bear spends his time in the forest, checking in on family members and helping out with ceremonies. Rabbit on the other hand, regales Bear with his experiences at the United League of Rabbits, talking with other rabbits and passing resolutions about how to be better animals. The final tale, "The Last Old Woman" shares the story of Rabbit in a disappearing forest meeting with an elderly storyteller. This story has two endings as Rabbit has a choice on how to proceed in the changing world he is facing.

Rabbit Decolonizes the Forest provides a captivating look into the two worlds in which Bigler walks. Readers experience heartwarming family stories, entertaining commentary on current issues, traditional tales, and challenging narratives on unresolved injustices.

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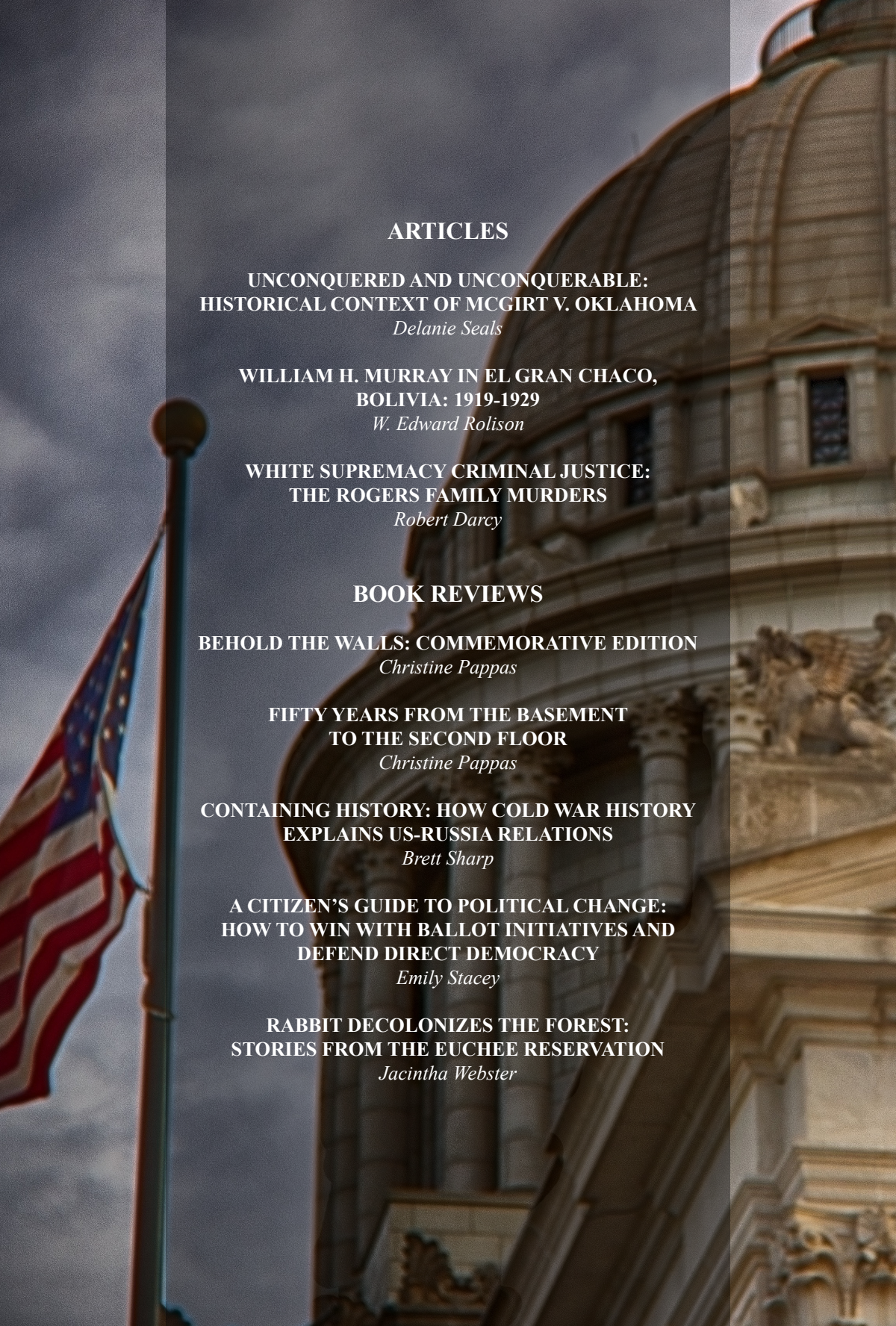

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