Earning Their Spurs in the Oil Patch

The Cinematic FBI, the Osage Murders, and the Test of the American West

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In the early morning hours of March 10, 1923, one of the saddest episodes in twentieth-century Oklahoma history reached an earsplitting crescendo. About three o'clock, as the heavy air of early morning blanketed Osage County into stillness, a shattering explosion ripped the dark silence and rent a residential neighborhood in the small town of Fairfax.[1] The home of Osage tribe member William E. "Bill" Smith was, in a flash of light and the deafening eruption of several quarts of nitroglycerine, ripped into splinters. The substantial dwelling was, quite literally, leveled. A photo-

graph of the scene revealed nothing more recognizable than shards of shredded and broken lumber.[2] The force of the blast was so great that a traveler standing in a hotel room two blocks away was knocked from his feet. Enough nitroglycerine exploded to blow a hole six feet in diameter and three feet deep through the Smith's garage floor.[3]

The toll of this spectacular crime was both solemn and frightening. Solemn because Rita Smith, a member of the Osage tribe, and Nettie Brookshire, her white live-in domestic, were instantly killed. Bill Smith, Rita's husband, lingered in unspeakable agony, dying four days later.[4] It was frightening because it seemed as if the murder spree that started in the Osage Hills in May 1921 would never end. By 1923 estimates of murdered Indians in Osage County ranged from two dozen to twenty-seven.[5] Nothing had been done to stop the murders. The astonishingly violent and brutal end of Bill and Rita Smith and their housekeeper suggested that there was no end in sight and that the violence might be escalating. Bill Smith, who had feared that he and his wife would be killed or blown up, had moved from his ranch into his new home in town only a few days before the explosion.[6]

The Osage tribe sought to stop the carnage. The murder of more than twenty members in fewer than three years was more than any community its size could tolerate, but local efforts to stop the killing proved futile. Incompetent or indifferent, state and local law enforcement had done nothing to stanch the flow of Osage blood, and ten days after the Smith household were murdered in their sleep the tribal council appealed to the Department of the Interior and the Department of Justice (DOJ) for help "in capturing and prosecuting the murderers of the Osage Tribe."[7] The Osage request for federal help had the support of Indian Agent George Wright, who asked that a "good detective from the Department of Justice be assigned to this case."[8]

The Osage received the requested assistance from the Department of Justice, George Wright got his detective, and with the aid of the publishing industry and Hollywood, the Federal Bureau of Investigation (FBI) later pasteurized, processed, and reprocessed the Osage Murders story into a public relations boon. Within thirty years of the Smiths' demise, the FBI had tailored print and screen versions that significantly streamlined and glorified the bureau's role in solving the cases. Perhaps the earliest romanticized version of the crime and its consequences came in 1931 with the publication of a not-widely-circulated book, *Tragedies of the Osage Hills, as Told by the "Sage of the Osage,"* written by Arthur Lamb, an operator of

an Indian curio store in Pawhuska, in the center of the Osage reservation. Lamb did not, however, lavish credit on federal officials for solving the crimes.[9]

Nonetheless, the story's obvious dramatic aspects soon made it useful for the investigative agency's public relations purposes. In 1932 the NBC radio network aired a drama called "The Osage Murders," broadcast nationwide on the *Lucky Strike Hour.* The *Daily Oklahoman* reported that "facts for the broadcast were taken from the records of the federal bureau of investigation."[10] In 1933 King Features Syndicate, part of William Randolph Hearst's newspaper empire, ran a series of columns trumpeting the skills of federal investigators, with the Osage Murders a featured item. Author James R. McCarthy asserted that "Director J. Edgar Hoover of the Bureau of Investigation sent out several special agents with word that the murderer or murderers must be found," which, McCarthy said, is exactly what the "highly trained secret service sleuths" did.[11] Over the next twenty years Hoover continued to look for ways to use that story as well as others to promote his agency. In the early 1950s Lawrence J. Hogan, an FBI employee, compiled a summary of interesting cases, among them the Osage story, for high-level FBI officials who were interested in promoting a major motion picture about the agency.[12]

Next, in 1956 came the best-selling book *The FBI Story, A Report to the People,* penned by two-time Pulitzer Prize–winning journalist Don Whitehead.[13] Hoover himself wrote the foreword to the book, and he said that author Whitehead had been given "the full facts . . .so long as they did not violate security" and were "within the bounds of security and policy considerations."[14] The FBI accommodated Whitehead with office space and research assistance.[15] Assistant Director Louis Nichols gave Whitehead ideas about cases and investigations that merited consideration and provided "source material" for Whitehead's use. Nichols had "a lot of say on" the book and, he later claimed, "'if I saw something that I thought gave an erroneous impression or maybe wasn't one hundred percent accurate, I would point that out to Don. . . .'" Nichols denied any editing.[16] Memos from Hoover, however, indicate the FBI director monitored the manuscript and suggested changes when he felt they were necessary.[17] Hoover certified and endorsed Whitehead's version of the facts in the final sentence of his foreword to *The FBI Story, A Report to the People.* "My associates and I," wrote Hoover, "are deeply grateful for the painstaking care of the author, Don Whitehead, in his accurate portrayal of the record of the FBI. . . ."[18] The book contained

nine chapters. The fourth, titled "The Roaring Twenties," devoted a five-page, ghastly subchapter, "Murder by Proxy," to the Osage Murders. Whitehead characterized this episode as "one of the most fantastic cases in [the FBI's] files."[19]

The book was soon followed by a popular motion picture titled *The FBI Story*, based on Whitehead's book. Billed as "The First Complete Authentic Drama of the World's Greatest Crime Fighters," the screenplay was written by Richard L. Breen and John Twist. The two-and-one-half-hour-long film, produced and directed by Mervyn LeRoy, was distributed by Warner Brothers. Starring were veteran actors James Stewart, as Agent John Michael "Chip" Hardesty, and Vera Miles, a Boise City, Oklahoma, native, as Hardesty's wife, Lucy Ann. The storyline involves the history of the FBI, and the action begins with Hardesty regaling young FBI agents with exciting episodes of his personal career with the agency. His crime-busting exploits included chasing gangsters in places like New York City's Central Park and Yankee Stadium and international criminals in more exotic locations like South America. A significant portion of the film, slightly more than nineteen and one-half minutes, is devoted to Chip Hardesty's efforts to apprehend the culprits in the Osage Murders in Oklahoma. The picture premiered in October 1959.[20] Both book and movie had not only the imprimatur of the FBI, but the personal involvement, and in many ways, the direct supervision of Director J. Edgar Hoover.

According to the movie's producer, Mervyn LeRoy, "He [Hoover] and his men controlled the movie. Everybody on that picture . . . from the carpenters and electricians right to the top, everybody, had to be okayed by the FBI. I did one scene, the one where he has his first meeting with the men, and after I shot the picture they discovered that one extra shouldn't have been in there. I don't know why. So we had to shoot the scene over. I had two FBI men with me all the time, for research purposes so that we did things right." Hoover endorsed the movie even more demonstratively than the book. Hoover's first view of the movie came, according to LeRoy, at a private screening. After watching the movie, LeRoy recalled, " . . . Edgar stood up and he motioned for me to come over to him and he put his arms around me and he said, 'Mervyn, that's one of the greatest jobs I've ever seen. . . ."[21] He biographer Curt Gentry said Hoover cried at the public premier.[22] Hoover threw an honorary party for the cast and staff of *The FBI Story,* and afterward used FBI agents to provide courtesies to producer LeRoy and star Stewart throughout the world.[23] Hoover had already explicitly endorsed Whitehead's ver-

sion of the FBI's clever and snappy disposition of the Osage Murders. Obviously, the even more artistic and fictionalized Hollywood account also met with his approval.

There should be no doubt that the Bureau of Investigation (or BOI, which became the United States Bureau of Investigation in 1932 and the Federal Bureau of Investigation in 1935) completed the difficult task of gathering evidence necessary to lock up the people who had killed the Smith family and several other Osages. With the arrests made possible by the Bureau of Investigation, the murder of Osages stopped. Neither local nor state law enforcement agencies had accomplished that, and they showed minimal interest in trying. The Department of Justice assembled the evidence that convicted the killers, often through resourceful use of undercover agents and a lot of hard work. However, a casual reading of Whitehead's book might lead a reader to believe that the FBI's work in convicting the murderers of the Smith household (and a handful of other Osages) came after and as a result of the Hoover reforms. The movie explicitly suggests the Osage Murders were solved after Hoover became acting director, an event that actually happened May 10, 1924. Before that, from August 1921, he had been assistant director under William Burns. Thus, in 1923 Hoover was not even director of the Bureau of Investigation when its attention was drawn to the ruthless little gang that was eventually convicted of the murders.[24]

J. Edgar Hoover in the 1920s (FBI photo).

The movie and the book (as well as their several predecessors in print and broadcast media) that received Hoover's overt endorsement plainly suggest that through a combination of brainpower, discipline, tenacity, and super-sleuthing and legal-eaglery the Bureau of Investigation, alone, had cracked a deep, dark, and mysterious case. The 3,200–plus pages of the FBI's files on the Osage Murders paint a different picture: The bureau's investigation of the Osage Murders was not the smooth, clever police work suggested by the ethical and determined Jimmy Stewart of the movie or the professional efficiency depicted in Don Whitehead's best seller. In fact, many people in Fairfax, a town of 1,342 inhabitants in 1920, already knew who had killed the Smiths and some of the other murdered tribe members, and these dutiful citizens told the Bureau of

Investigation as much almost from the moment the agents arrived in town.[25] For its part, the bureau initially bumbled around and ignored the public's suspicions and also dismissed the damning circumstantial evidence that supported the widely held opinion. The

The main street of Fairfax, Oklahoma, 1928. The motion picture showing at the Tall Chief Theater was Oh Kay*, directed by Mervyn LeRoy—his second picture (OHS Research Division photo).*

bureau went through two agents and six months before a third and former agent, temporarily reappointed from outside the bureau, refocused the effort. He investigated the same suspects that previous agents had learned about right at the start.

The month of March 1923, when the Smiths were blown up and the Osage Nation asked the federal government for help, was not the best time to be an agent of the Bureau of Investigation or, for that matter, to hold any other position in the Department of Justice. The nation had endured two years of the presidential administration of Warren G. Harding, with all of its attendant outrages and disgraces. The oily clouds of the Teapot Dome affair were visibly gathering over Secretary of the Interior Albert B. Fall and were casting shadows on the Justice Department's chummy inaction. DOJ itself was in increasingly bad odor around Washington over the mysterious suicide of Jesse Smith, a crony of Attorney General Harry M. Daugherty. Although he was never given an official appointment by Daugherty, Smith had managed to convince the attor-

ney general to give him an office in the department. Later congressional testimony corroborated rumors that had circulated around both Daugherty and Smith that Justice was involved in a wide variety of dubious deals and nefarious activities.[26] Lurid affairs sprouted into public consciousness like Oklahoma gushers as the Osage Murders investigation got under way. The scandals drove Attorney General Daugherty from office about a year after the Smith household was blown into the great certainty.[27]

The Bureau of Investigation was only slightly better. Daugherty fired the bureau's director, William E. Flynn, and replaced him with childhood buddy William J. Burns, director of a large private detective firm.[28] "Together," Hoover's biographer Curt Gentry wrote, "Daugherty and Burns had very quickly turned the BOI into a dumping ground for political hacks. . . ."[29] Burns was bad enough by himself. He had been convicted of burglary, had spied for Germany prior to the United States' entry into World War I, had functioned as a strike-breaker and a jury-rigger, and lately operated a private detective agency specializing in labor espionage. But Burns was not the worst. That ignominy belonged to Gaston Means, who was merely the most odious of dozens of dollar-a-year-men, honorary agents, and others working under the rubric of the Bureau of Investigation without official appointments.[30] Like Burns, Means had spied for Germany before World War I, but he had also performed as a double agent for the United Kingdom. Means's catalogue of misdeeds, too long to list, included an acquittal for murder. After being cut loose by the Bureau of Investigation, Means had added a conviction for bilking a newspaper millionairess out of more than one hundred thousand dollars in a fraudulent scheme to locate and return the kidnaped Lindbergh baby.[31]

As the Teapot Dome scandal came to the attention of the United States Senate, William Burns dispatched BOI agents to muckrake and tail the senators who were exposing the scandal. According to Gentry, evidence later presented to committees investigating Teapot Dome revealed that bureau agents "tapped telephones, intercepted mail, broke into offices and homes, and copied correspondence and private papers, looking for anything which might be used for blackmail" or would otherwise be helpful in obstructing the investigation.[32] Former Special Agent in Charge Neil Welch, in later decades a nominee for director of the Federal Bureau of Investigation, agreed that the bureau of the early 1920s was "a pervasively corrupt agency even by the wide-open standards of the Harding administration."[33]

This, then, was the Bureau of Investigation that arrived in Osage County, Oklahoma, with the responsibility for identifying the murderers who were killing the Osage citizens. On March 10, 1923, the same day that Rita Smith and Nettie Brookshire were killed, and while Bill Smith lay slowly dying in his hospital bed, Oklahoma Attorney General George F. Short wrote to the commissioner of Indian affairs. Even at this early date Short's letter correctly identified the motive for the murders: "[T]o provide the inheritance of a considerable number of estates, vesting such inheritance in one person." This opinion, from no less than the chief law enforcement officer of the State of Oklahoma, was in the hands of Bureau of Investigation Agent Frank V. Wright by April 5, 1923.[34] Although Short named no suspects, his letter contained precisely the theory and the fact upon which convictions were ultimately obtained in the case of the Osage Murders.

Another early source of information for the bureau was Indian Agent George Wright. As the agent for the Osage at tribal headquarters in Pawhuska, he gathered information from across the reservation. On March 20, only ten days after the Smith explosion and six days after its final victim, Bill Smith, died, Wright sent the commissioner of Indian affairs his assessment: "The popular opinion in Fairfax and Pawhuska is that one person is directly responsible for the various murders, and a rather strong chain of circumstantial evidence has already been woven. . . ."[35] Wright's letter found its way into Bureau Agent Frank Wright's report dated April 2–4, 1923. If the Indian agent was correct, within ten days of the bombing and before the first BOI report was completed, the community had both a suspect and a basis for suspicion. Their suspicion was ultimately confirmed by confessions and convictions.

In a separate report, Agent Wright expressed a strong suspicion that William Hale was the man behind the Smith bombing, that the Burkhart brothers were accomplices, and that Kelsey Morrison had a direct connection with the actual explosion.[36] The letter from the state attorney general to the Bureau of Indian Affairs provided no names nor evidence, only indications. It is therefore apparent that Frank Wright was getting additional leads from someone. His report referred to an "informant" who had given at least some of the new information, but no other sources were identified. The additional informant was probably not the Indian agent; BOI reports showed no reluctance to identify him. Whatever the sources, the allegations contained in the letters from the attorney general, the Indian agent, and Frank Wright's report all addressed the same the-

ory with more or less the same evidence. The perpetrators of the Smith murders (and others) were already right under the bureau's nose. It remained only to obtain sufficient admissible evidence to prove the case, a substantially more difficult proposition.

At this point the investigation devolved into hundreds of pages of mind-numbing reports. They are replete with rumor, hearsay, and, annoyingly, redacted names of informants and sources. Some of these redactions were probably undercover Bureau of Investigation agents working the case. Some may have been citizens simply wishing to avoid antagonizing a murderous gang that was killing the Osage Indians with impunity. Some may have been among the numerous private detectives working the case. Whatever the reason, the redactions and deletions leave troubling, if not gaping, holes that impede the reconstruction of events.

However convincing the bureau did or did not find the circumstantial evidence, more quickly surfaced and pointed to William K. Hale as the prime suspect. Public speculation credited him with having engineered the Smith murders. He controlled large tracts of Osage County land and owned large herds of cattle and a substantial interest in a Fairfax bank, among other businesses. He was a local political power and, as Bureau Agent Wright related in his April 2–4 report, many people suspected him of "being the brains" of a criminal organization. Ernest Burkhart, Hale's nephew and said to be a member of his "organization," was "absolutely controlled by Hale," according to Wright's informants. Burkhart had married Mollie Kyle,[37] who, as a member of the Osage tribe, was therefore entitled to tribal headrights.

For the Osage, headrights served a function like that of a corporate stock dividend. At fixed intervals the tribal government divided its surplus wealth into equal amounts called headrights. These headrights would then be distributed to tribe members. The wells owned by the Osage people produced so much oil and wealth that by 1920 each headright paid $8,100 per year.[38] If Hale "absolutely controlled" Ernest Burkhart, as Frank Wright reported, he could likewise control the growing number of headrights that Mollie Kyle Burkhart received each year. Many in Osage County already understood that Burkhart and, presumably, Hale stood to control a great deal more than just Mollie Burkhart's headright if the killings continued. Because Osage headrights were inheritable, each successive generation of a family of Osage tribe members inherited the preceding generation's headrights. Accordingly, through headrights, shares of tribal wealth accumulated in individuals. As

the Osage Murders progressed, Mollie Burkhart's family was dying naturally or being killed, and more and more headrights were funneled in direction of the Ernest Burkhart household.[39]

As Mollie's family's wealth grew, the family itself was shrinking. In May 1921 her sister, Anna Brown, lay dead, shot in the head, in a rural area of the Osage Nation. Upon closure of her estate, Anna's headrights would pass to her mother, Lizzie Q. Kyle, and her sisters, Mollie Burkhart and Rita Smith. Events intervened. In June 1921 Lizzie Kyle died under unknown circumstances. No investigation was conducted, but rumors of foul play circulated. Her estate was estimated at several million dollars and would, under normal circumstances, pass to her survivors—Minnie Kyle Smith, Rita Kyle Smith, and Mollie Kyle Burkhart. Then, in early 1922 Minnie Smith died of "quick consumption." No investigation was conducted into her death.[40] Rita Smith died when her home was blown to bits in March 1923. Had probate on these various estates not been delayed by the murders and suspicions of murders, Mr. and Mrs. Ernest Burkhart would have been a very, very rich couple.

Lines of descent are typically matters of common law and are nearly as common knowledge. It hardly required the applied intelligence of a legally trained FBI agent to unravel the mystery. People all over the Osage Reservation understood, and, as Frank Wright's reports indicate, word reached the bureau's men as soon as they arrived. Osage tribal attorney T. Woodward was among the very first to suggest an inheritance scheme to BOI Agent Frank Wright. As Woodward explained his theory, he also identified another murder that he thought to be related to the Smith bombing: In January 1923, northeast of Fairfax, Osage tribe member Henry Roan had been found dead of a gunshot wound. His life was insured for twenty-five thousand dollars. The policy's beneficiary was William K. Hale. Agent Wright recorded this in his report of April 2–4, 1923, along with an interesting epilogue: Kelsey Morrison, Ernest Burkhart's frequent companion, had left Fairfax by automobile after three o'clock on the morning the Smith home exploded.[41]

Further, in these first weeks of the bureau's investigation, reports of Bill Smith's suspicions filtered in to Agent Frank Wright. One of the ubiquitous redacted sources reported that Smith, in his hospital bed, had told those present that Hale and Ernest Burkhart were his only two enemies in the world.[42] Within a week, one of those present had confirmed this report, adding that Smith had told those in his room that "'he had expected this to happen.'"[43] In part, Bill Smith expected to die because of his firm and openly expressed

belief that Ernest Burkhart had killed Henry Roan. Even further, Smith (among others) suspected that Ernest Burkhart had killed Roan at Hale's orders and that Bryan Burkhart had killed his sister-in-law Anna Brown. Hale stood to gain twenty-five thousand dollars in life insurance proceeds from Roan's death. Moreover, another dispute sizzled between Smith and Hale; the details are unimportant, but a separate lawsuit involving more than six thousand dollars had engendered further rancor between them.[44] To supplement his own investigation Agent Wright then turned to the reports of the private detectives working the case. His report of May 31, 1923, included a summary of at least five of the reports. These were primarily concerned with the shooting death of Anna Brown, Rita Smith's sister. In conclusion, Wright opined that "the Agent assigned will probably not be far off if he spots Bill Hale for the master mind, the Burkhart brothers for accomplices and the fellow Morrison, mentioned in my previous reports, as the man who arranged for carrying out the details and actually took part in blowing up the Bill Smith home at Fairfax. . . ."[45] The reports of private investigative agencies did nothing to dissuade Frank Wright of what he had been told by the tribal attorney and by a confidential informant in the first week of his investigation.

That was about Wright's last involvement with the case. A mid-April letter from Special Agent in Charge James Findlay of the Oklahoma City office to Director Burns indicated that Wright had "just been given thirty days leave of absence without pay, so that he cannot give this matter further attention for that period of time. . . ."[46] This letter came to the attention of Assistant Director J. Edgar Hoover, who relayed the message to Burns with the observation that "the progress made has not been entirely satisfactory for a case of this magnitude."[47] Indeed, at the time when Hoover expressed dissatisfaction with the Wright phase of the investigation, the bureau possessed virtually no evidence beyond that provided by the public and had added but little evidence to the surmise provided by tribal attorney Woodward. Five weeks passed before Agent Calvin S. Weakley replaced Frank Wright.[48] Neither Whitehead's book nor the subsequent motion picture makes any mention of an agent's mysterious departure from the case or of the resulting delay. Although Stewart's movie character wonders aloud at one point what Washington will think of his failure to generate any leads, neither the book nor the movie make any mention of the fact that the public laid the ultimate theory of the prosecution before the Bureau of In-

vestigation at the very beginning of federal involvement in the Osage Murders.

Agent Weakley also quickly turned to private detectives for information. A former tribal enforcement agent who had investigated the killings himself told Weakley that there was "lots of talk around Fairfax of Bill Hale being the master mind in all these deaths and that this was done to center the inheritance of these estates in the Burkhart family." However, Weakley was also told that an equal number felt that Hale had had nothing to do with it, resented any suggestion that he was involved, and would vigorously defend him.[49] Weakley met with private investigators named Gustafson and Brackett, hoping to obtain their files. Although they did not immediately tender the files, the two provided Weakley with summaries that contained more of the same information that the bureau had already collected. The "private eyes" did have something new, however. On August 6 Brackett had bumped into Kelsey Morrison on the street. He was tribal attorney Woodward's prime suspect as the actual arsonist in the Smith bombing.[50] Morrison denied any involvement in the killings but complained that everybody was accusing him of the Smith murders. Trying to protect himself, he told Brackett that Hale had had something to do with the crime.[51] This was a hairline crack in the conspiracy, but at the time nobody could see it.

Here the BOI missed an important opportunity. It had been five months since the last murder, and the trail was going cold. As predicted, however, a nervous Morrison had made foolish accusations to appear candid as he deflected attention from himself to Hale. Experienced criminal interrogators would have readily identified this common symptom of vulnerability and methodically closed in for the kill. Were Frank Wright still on the case, he might have recognized Kelsey Morrison as a potential snitch and extracted a confession. Earlier, in April Wright had adopted Woodward's theory implicating Hale, Morrison, and the Burkharts. Within a day or so of his conversation with Woodward, Wright had learned from a confidential informant that "Morrison was yellow, probably the easiest point of attack to get at facts; that he would probably talk, and that he was also the only man mentioned so far of the suspects who would divulge anything. . . ."[52] But Wright was gone, and Weakley, quickly becoming discouraged by the prospects of the case, did not try to squeeze Morrison.

Instead, Weakley reinvented the wheel. In a report dated July 20–August 4, 1923, Weakley reiterated the theory that tribal law-

yer Woodward had given Frank Wright in the first week of the bureau's involvement. He identified three more witnesses who had heard Smith express fear that Hale and the Burkharts would kill him and his wife. Despite a growing list of witnesses who attested to Smith's fears, Weakley observed that there was no direct evidence to support the man's apprehensions. The agent held it circumstantial that half of Smith's wife's family had been obviously murdered and that the other half had died in unusual ways.[53] Apparently Weakley did not consider the circumstances to be significant. He also learned that three days before the Smith explosion Morrison used a check from Hale to make a down payment on a new car and that Hale had acted as surety for Morrison's notes at a Fairfax bank. This circumstantial evidence Weakley dismissed with the curious statement that "[t] here has not yet been any facts developed upon which to make any connecting link looking to any definite development." Instead, he turned his attention to private investigator Brackett, who "had not as yet secured any data as he has not as yet been able to locate the parties through whom he expects to secure information."[54] Weakley, evidently, was content to continue relying on private investigators to conduct a federal investigation.

Not all the news was bad. Weakley picked up a few scraps that might accumulate into something of value. One witness had caught Kelsey Morrison changing his alibi from an inculpatory to an exculpatory story. Another had heard Morrison threaten to kill somebody as he bemoaned his fate, specifically the continued accusations that he had blown up the Smith home. Weakley did not see much value in these stories and spent much of his time on the Anna Brown murder. Private detectives and local law enforcement collected enough evidence to charge Bryan Burkhart with killing Bill Smith's sister-in-law Anna Brown, but after a hearing, a judge dismissed the charge.[55] The county attorneys who prosecuted the unsuccessful charges told Weakley that Bryan Burkhart had been unjustifiably nervous while in court and was probably guilty of a conspiracy to funnel the money from the victims toward Mollie Burkhart. The county attorneys had figured it out too.[56]

In late July or early August Weakley finally began actively investigating what had long seemed obvious to many in the community: Hale and his goons were killing people for their money. For three months the BOI's agents and operatives had limited the investigation almost entirely to collection of opinions and hearsay. Those in charge had then dismissed this information as hearsay and opinion and, therefore, as unreliable. But near the end of his report dated

July 20–August 4, 1923, Weakley forged outward into independent investigation of facts that might bolster the widely held circumstantial theory implicating the Hale gang. He found documentation that Joe Grayhorse, one of the more than twenty Osage killed in the previous two years, had given Hale an undivided interest in two tracts of land in August 1920. The two transactions were separate, about ten days apart. The purchase price was " . . . $1 and other considerations."[57] As a practical matter, Grayhorse had given these interests in land to Hale for free. If Hale survived Joe Grayhorse, he would inherit the parcels of land, with Grayhorse's heirs. And that is precisely what happened: Grayhorse died "suddenly" in late 1921.[58]

For months during 1922 and 1923, then, the developing sequence of events made it ever more apparent to many on the Osage Reservation that having something William Hale wanted was bad for an Osage Indian's health. Barely a month after Grayhorse died, Annie Brown had died too, leaving a substantial probable estate to nephew Ernest Burkhart's wife, Mollie. Another couple of months passed and Lizzie Q. Kyle had died, potentially leaving millions in headrights and other wealth to Mollie Burkhart, Minnie Smith, and Rita Smith. In early 1922 Minnie Smith had died, leaving Mollie Burkhart and Rita Smith as Lizzie Kyle's only natural heirs. In February 1923 Henry Roan died, leaving Hale the beneficiary to a life insurance policy worth twenty-five thousand dollars. In March 1923 Rita Smith was killed in the big explosion. Under normal circumstances, her death would have left all to Hale's nephew's wife. Weakley remained unconvinced by the body count, however. In view of Hale's potential pecuniary interest in each of these deaths, many of them demonstrably murders and the others at least suspicious, Weakley's evaluation of the Grayhorse land deals is mildly astonishing: "From this investigation of [the Grayhorse] transactions with Hale which occurred practically a year prior to his death there is nothing to cause suspicion."[59] With this credulous conclusion, the possibility imperiously suggests itself that Agent Calvin Weakley was not the man for this task.

Even after Weakley had confirmed that most of the property in the Kyle family would descend to Mollie Kyle (Mrs. Ernest Burkhart), he remained unconvinced. "Most of the information obtained has been rumor and conclusions based upon theories founded upon circumstances rather than facts," he noted.[60] The first agent on the case, Frank Wright, saw where the circumstantial evidence pointed. Calvin Weakley never did. Relying, as he was wont to

do, on private investigators, Weakley attended a meeting with Gustafson and Attorney General Short. Gustafson suggested that the Burkhart brothers be thrown in jail without bail. (Bryan Burkhart was the last person known to have seen Anna Brown alive.) Sweating a co-conspirator in jail on separate charges remains one of law enforcement's most time-honored and successful methods of obtaining testimony or a confession. Gustafson suggested it then. Weakley probably agreed with Attorney General Short, who said there was insufficient evidence to obtain a warrant.[61]

Next, during the week of August 13–18 Weakley got the opinion of a Fairfax attorney identified only as "Gray." Gray was administrator of Anna Brown's substantial estate and had been clerk of the coroner's inquest that ruled the Smiths' deaths to be by murder. Gray had also communicated with some of the private investigators. He told Weakley that "there had been suspicions which was practically the opinion of the entire community that these crimes were the outcome of the efforts of the Burkharts and Bill Hale in order to center the inheritance of the one family in Mollie Burkhart and that the death of Henry Roan was for the purpose of collecting the insurance. . . ." An otherwise unidentified Mrs. John Kennedy also outlined the same theme for Weakley.[62] Other citizens provided the same rumor. Nevertheless, Weakley said everybody was tired of the case and had given up on it unless somebody involved started talking. He then expressed doubt that the case could be brought to a successful conclusion.[63]

Within a few days he wrote a discouraged memo to Special Agent in Charge Findlay in the bureau's Oklahoma City office. Notwithstanding the clear pecuniary interest of Hale and the Burkharts in the deaths of the Kyle family, Weakley wrote, "No one seems to have any definite data or any information through which to work, and I at present must admit I am at a loss as to any avenue through which any evidence can be obtained." He again exhibited his willingness to forfeit responsibility for the investigation to the mixed bag of private detectives working the case. Referring to potential witnesses (but hardly exhibiting confidence in the great investigative skills and training the print and cinematic versions accorded the agents involved), he reported, " . . . if I can locate them, [I] doubt seriously if I get any information as it seems that they have already been interviewed by the private detectives and no information has been secured. As I have previously explained, it seems that every available party has previously been interviewed a long time ago by

the private detectives, shortly after these murders happened and no material direct evidence was obtained." Complaining that within two days he would exhaust all possible leads, he told Findlay, " . . . at present I do not see any possible chance of unravelling [*sic*] this case, and believe at present any continued investigation is useless."[64] Weakley then recommended that the Bureau of Investigation give up on the Osage Murders.

His recommendation was rejected. Findlay sent a letter to Hoover complaining of the Oklahoma attorney general's failure to fulfill promises of meaningful assistance and of the failures of local law enforcement and prosecutors. He attached Weakley's memo, told Hoover that Weakley had "proceeded as best he could," and asked for instructions. Hoover forwarded both items to Director Burns, who tersely replied, "Have our office continue the investigation and keep after the State Atty. General." Hoover drafted a letter to that effect for Burns' signature on August 29, 1923.[65]

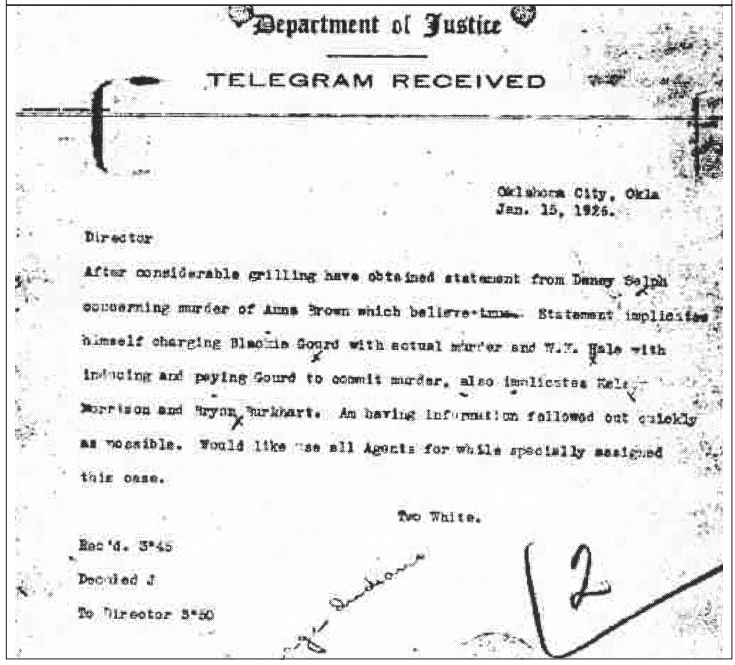
As Washington and Oklahoma City exchanged correspondence about the flagging investigation, Attorney General Short finally provided an investigator. Weakley met with Findlay in Oklahoma City, where he repeated his conclusion that the investigation was stymied, and he then returned to making desultory enquiries. A witness had come forward and claimed that Burkhart had stated an intention to kill Bill Smith, and Weakley indulged his habit of milking private investigators for information.[66] Now, finally, late in August 1923 the Bureau of Investigation got its first break in a while.

The Oklahoma Attorney General's office assigned Thomas F. Weiss to the investigation, and he reenergized it. On September 6 Special Agent in Charge Findlay wrote to J. Edgar Hoover urging that Weiss receive a temporary appointment as a BOI agent and that he be given the assistance of an additional agent to augment the process. Findlay hastened to clarify that he meant to cast no aspersions on Weakley and that he wanted him to remain involved. Weakley, however, had concluded that the murders could not be solved. Weiss, to the contrary, told Findlay he thought he could solve both the Anna Brown murder and another reservation murder unrelated to the Smith bombing. So confident was Findlay in Weiss's abilities that he suggested that if the bureau could not appoint Weiss, the Bureau of Indian Affairs in the Department of the Interior should be approached about an appointment. Curiously, Hoover's memo to Director Burns referred to Findlay's request as "reinstatement." Burns concurred in the request that Weiss be "reengaged."[67] He apparently had been employed as a BOI agent un-

til August 28, 1923, when he had left to work the Osage Murders for the Oklahoma attorney general. Now Weiss wanted the prestige and authority of federal credentials again, and Special Agent in Charge Findlay "unhesitatingly" supported his request.[68]

Within a month Weiss knew what he wanted to do. He composed a forty-page digest of the evidence and theories of the case and set forth in detail the persuasive circumstantial case against Hale and the Burkharts in the Smith bombing, as well as the evidence in the Anna Brown and Henry Roan cases and others. He interviewed and tracked down witnesses in numbers and places Calvin Weakley never imagined. Other BOI agents soon took over the case and made countless discoveries of evidence and witnesses. But it was the *theory*, which Weiss adopted, after Frank Wright's false start and Calvin Weakley's dismissive attitude, that brought down Hale, Burkhart, and Morrison. The murderers' motives and activities were exposed and were seen to have transpired in just about the way tribal attor-

Investigations continued into the mid-1920s, and evidence mounted to indicate William Hale's involvement with the Osage murders (FBI File on the Osage Murders).



Department of Justice

TELEGRAM RECEIVED

Oklahoma City, Okla
Jan. 15, 1926.

Director

After considerable grilling have obtained statement from Danny Selph concerning murder of Anna Brown which believe to be true. Statement implicates himself charging Blanche Gourd with actual murder and W.K. Hale with inducing and paying Gourd to commit murder, also implicates Hale, Morrison and Bryon Burkhart. Am having information followed out quickly as possible. Would like use all Agents for while specially assigned this case.

Two White.

Rec'd. 3*45
Decoded J
To Director 3*50

2

ney Woodward had theorized to BOI Agent Wright in his first week in Osage County during April 1923.[69]

After four trials, William Hale was finally convicted and sentenced to life in prison in 1929; he was paroled in 1947 and moved to Phoenix, Arizona. Ernest Burkhart received a life sentence in 1926 and went to federal prison. He was paroled in the late 1930s, was reincarcerated in 1946, and was pardoned in 1965. Other accomplices, including Kelsey Morrison and bootlegger John Ramsey, were also apprehended, tried, convicted, and imprisoned on either state or federal charges.[70]

None of this was mentioned in the book or the movie that received J. Edgar Hoover's imprimatur in 1956 and 1959. On the contrary, the book suggests that FBI undercover men who played colorful roles and met stealthily in the dark Osage Hills night slowly constructed a motive and developed suspects. A few lines from Woodward's book suffice to summarize the author's fawning approach: "FBI agents moved into Fairfax and found an almost impenetrable wall of fear. People were afraid to talk and witnesses who might have given information had long since disappeared. There were rumors which sent the agents off for days at a time on false leads. Someone, they knew, was deliberately 'planting' stories to confuse their search. But the hunt continued."[71]

A lot of admissible evidence *was* needed, and was gathered by BOI agents, before a prosecutable case could be brought against either Hale or his men. Undercover agents were a part of that. However, the case's voluminous FBI files clearly show that the suspects, the motive, and the *modus operandi* of the Smith bombing and several of the other Osage Murders were neither mysterious nor as secret as book and movie suggest. They were obvious to many residents of Osage County and were made clear to the Bureau of Investigation within days of its beginning to work on the case. Much is made here of the halting early months of the investigation. After criminals have been apprehended, confessed, tried, and convicted it is always easy to look back and say what clues, hints, and evidence law enforcement should have immediately gathered in the heat of the chase. Ultimately, the Bureau of Investigation confronted numerous obstacles in the investigation of the Osage Murders and eventually solved crimes that, in fact, nobody else could or would. In doing so they ended a gruesome, three-year murder spree on the Osage Reservation. They deserve credit for so doing. The six-year investigation and prosecution required enormous patience and persistence. It was during the Osage Murders investigation that J. Ed-

gar Hoover replaced William Burns as BOI director, cleaned house, and began building the modern Federal Bureau of Investigation out of the scabrous United States Bureau of Investigation that existed during the era of Warren G. Harding, Harry Daugherty, William J. Burns, and Gaston Means.

An accurate representation of this accomplishment apparently was not good enough for Hoover. Why did Hoover so enthusiastically endorse such stylized versions of the truth? The episode in the movie *The FBI Story* dealing with the Osage Murders is so fictionalized and takes such great license with the facts that an analysis of its accuracy is not merited. Nevertheless, in its fictionalization the movie suggests something about the role of the West in American life, and its real significance may lie in its decision to use the Osage Murders investigation to illustrate the essence of the agency's history.

The episode based on the Osage Murders takes place in fictitious Ute City, Oklahoma. It is a Hollywood representation of Osage oil boomtowns like Pawhuska, Carter Nine, Whizbang, Hogshooter, and Wildhorse. They were rowdy towns, and *The FBI Story* characterizes them with thrumming oil wells salaciously erect in every street and alleyway, women of the town flinging themselves from ubiquitous saloons to catfight in muddy streets, while gullible, cardboard-cutout "blanket" Indians are taken in by comically sleazy hucksters and confidence men. Finally, the Nordic-looking lawman in this case, FBI Agent Chip Hardesty, and his dutiful, pregnant wife, Lucy Ann, survive hardship and tragedy together when they lose the child while trying to tame this crude and hostile western environment. The Ute City of *The FBI Story* is the cinematic West in transition: oil illuminated and then powered the West into a new era. Western bonanza and boomtowns like Dodge City and Deadwood had their final incarnation with the mix of gushers and Indians in Oklahoma. The modern, petro-industrial West was kicking and screaming at birth in Ute City, and an incipient, technocratic federal law enforcement agency was being tested as a replacement for the now obsolete, ineffective sheriff of the Old West. Yet at the same time, it supplanted the local marshal, who in the movie just could not figure out the (fictionalized version of) the Osage Murders. The FBI exhibited the very values and standards of the supplanted Old West lawmen of literature and lore. Hoover's G-man just brought a more disciplined, educated, white-collar approach to the Anglo taming of the Wild West. As part of the transition to the larger American myth, the new lawman *cum* FBI made Ute City

safe and civilized for red and white man alike. It was a familiar Hollywood story in the late 1950s.

"Essentially, across the span of the nation," historian Anne Butler suggests, "many Americans—young and old, men and women—indulged their western fantasies so completely that they tolerated and encouraged misrepresentations of history."[72] *The FBI Story* is a movie in which J. Edgar Hoover's Federal Bureau of Investigation was the modern, sophisticated law enforcement agency Jeffersonian America needed to hold the line against modern, sophisticated criminals and international Communism. And in this fictionalized Hollywood version of the Osage Murders the FBI demonstrated through its western experience in Oklahoma that it too passed the test of the American West. Of all the thousands of cases Hoover, Nichols, and the FBI could have chosen to fictionalize, they included one in which they can be shown to civilize the uncivilized in the American West. It must have been pretty important to them.

ENDNOTES

[*] Andrew L. Warren holds a law degree from Washburn University and a master's degree in history from Fort Hays State University. He serves as visiting associate professor of criminal justice in Western New Mexico University in Silver City, New Mexico. OHS Research Division photo, Lillie Burkhart Collection.

[1] Thomas F. Weiss Report, April 4, 1923, FBI File on the Osage Indian Murders (Wilmington, Del.: Scholarly Resources, Inc., 1986), Microfilm, 3 Rolls, Roll 1:279 (hereafter cited as FBI File, roll number, page number. The materials were microfilmed in the exact order in which they were released by the FBI and are generally in chronological order. The page numbers used throughout these endnotes are the numbers of the microfilm frames. The FBI File on the Osage Murders may also be viewed on the Internet at the FBI's web site by accessing the Freedom of Information Act [FOIA] page).

[2] *Washington Daily News,* January 13, 1923, FBI File, 1:26.

[3] Clarence Weakley Report, July 20–August 4, 1923, FBI File, 1:140.

[4] Ibid., 1:142; Frank V. Wright Report, April 10, 11, 14, 1923, FBI File, 1:51, 54; Frank V. Wright Report, April 2–4, 1923, FBI File, 1:42.

[5] William Burchardt, "Osage Oil," *The Chronicles of Oklahoma* 41 (Fall 1963): 260–61; James R. McCarthy, untitled feature article, King Features Syndicate, 1933, FBI File, 1:14.

[6] Clarence Weakley Report, July 20–August 4, 1923, FBI File, 1:143.

[7] Frank V. Wright Report, April 2–4, 1923, FBI File, 1:41–42.

[8] Ibid., 42–43.

[9] Arthur H. Lamb, *Tragedies of the Osage Hills, as Told by the "Sage of the Osage"* (Pawhuska, Okla.: The Osage Printery, 1931), 106, 117, 120–22, 151–81.

[10] *Daily Oklahoman* (Oklahoma City), November 15, 1932.

[11] McCarthy, untitled feature article, King Features Syndicate, 1933.

[12] Lawrence J. Hogan, *The Osage Indian Murders: The True Story of a Multiple Murder Plot to Acquire the Estates of Wealthy Osage Tribe Members* (Frederick, Md.: Amlex, 1998).

[13] J. Edgar Hoover, "Foreward," in Don Whitehead, *The FBI Story: A Report to the People* (New York: Random House, 1956), xiv; Curt Gentry, *J. Edgar Hoover: The Man and the Secrets* (New York: Norton & Company, 1991), 446.

[14] Hoover, "Foreword," *The FBI Story*, xiv.

[15] Assistant FBI Director Louis Nichols to FBI Associate Director Clyde Tolson [memo], October 27, 1955, FBI 77–68662–25, in *From the Secret Files of J. Edgar Hoover*, ed. Athan Theoharis (Chicago: Elephant Paperbacks, 1993), 306–07.

[16] Ovid Demaris, *The Director, An Oral Biography of J. Edgar Hoover* (New York: Harper's Magazine Press, 1975), 68–69.

[17] FBI Director J. Edgar Hoover to FBI Assistant Directors Clyde Tolson and Louis Nichols [memo], March 16, 1956, FBI 77–68662–26, in *Secret Files*, 307; FBI Assistant Director Louis Nichols to FBI Associate Director Clyde Tolson [informal memo], June 21, 1956, ibid.

[18] Hoover, "Foreword," *The FBI Story*, xv.

[19] Whitehead, *The FBI Story*, vii– viii.

[20] *Daily Oklahoman,* October 9, 1959; Nick Martin and Marsha Porter, *Video Movie Guide 2000* (New York: Ballentine Books, 1990), 367. The latter characterizes the movie as "a glowing history of the FBI from Prohibition to the cold war [with] some good episodes reminiscent of Warner Brothers G-man pictures of the Thirties. . . ."

[21] Demaris, *The Director, An Oral Biography,* 69, 70.

[22] Gentry, *J. Edgar Hoover*, 447.

[23] Demaris, *The Director, An Oral Biography*, 27, 28.

[24] Burchardt, "Osage Oil," 266; Gentry, *J. Edgar Hoover,* 127. Hoover became permanent director later in 1924.

[25] Frank V. Wright Report, April 5–6, 1923, FBI File, 1:37.

[26] Burl Noggle, *Teapot Dome: Oil and Politics in the 1920's* (Baton Rouge: Louisiana State University Press, 1963), 56, 126; J. Leonard Bates, *The Origins of Teapot: Progressives. Parties. and Petroleum. 1909–1921* (Urbana: University of Illinois Press, 1963), 240; Eugene P. Trani and David L. Wilson, *The Presidency of Warren* G. *Harding* (Lawrence: The Regents Press of Kansas, 1977), 176.

[27] Gentry, *J. Edgar Hoover*, 118–29; Trani and Wilson, *Harding,* 180.

[28] Gentry, *J. Edgar Hoover,* 111.

[29] Ibid., 117.

[30] Ibid., 115; Ralph de Toledano, *J. Edgar Hoover: The Man in His Time* (New Rochelle, N.Y.: Arlington House, 1973), 67; Hank Messick, *John Edgar Hoover* (New York: David McKay Company, Inc., 1972), 34–36.

[31] Gentry, *J. Edgar Hoover*, 118; de Toledano, *J. Edgar Hoover*, 97–98; Messick, *John Edgar Hoover*, 36–37.

[32] Gentry, *J. Edgar Hoover*, 119.

[33] Neil J. Welch and David W. Marston, *Inside Hoover's F.B.I.: The Top Field Chief Reports* (Garden City, N.Y.: Doubleday, 1984), 7, 17.

[34] Frank V. Wright Report, April 2–4, 1923, FBI File, 1:40.

[35] Ibid., 1:43.

[36] Frank V. Wright Report, April 5–6, 1923, FBI File, 1:37.

[37] Frank V. Wright Report, April 2–4, 1923, FBI File, 1:46.

[38] Burchardt, "Osage Oil," 257.

[39] Ibid., FBI File, 1:158.

[40] Thomas F. Weiss Report, September 4, 1923, FBI File, 1:253–54; Frank V. Wright Report, April 2–4, 1923, FBI File, 1:45.

[41] Frank V. Wright Report, April 2–4, 1923, FBI File, 1:44–46.

[42] Frank V. Wright Report, April 10, 11, 14, 1923, FBI File, 1:51.
[43] Ibid., 1:54.
[44] Ibid., 1:56; Clarence V. Weakley Report, July 20–August 4, 1923, FBI File, 1:143; Frank V. Wright Report, April 2–4, 1923, FBI File, 1:47.
[45] Frank V. Wright Report, May 28, 1923, FBI File, 1:72, 74 (quotation).
[46] Findlay to Burns, April 23, 1923, FBI File, 1:60.
[47] Hoover to Burns [memo], May 25, 1923, FBI File, 1:67.
[48] Clarence Weakley Report, July 14–20, 1923, FBI File, 1:114.
[49] Ibid., 1:120, 124.
[50] Frank V. Wright Report, April 2–4, 1923, FBI File, 1:47.
[51] Clarence Weakley Report, August 4–8, 1923, FBI File, 1:133.
[52] Frank V. Wright Report, April 2–4, 1923, FBI File, 1: 47.
[53] Clarence Weakley Report, July 20–August 4, 1923, FBI File, 1:143.
[54] Ibid., 1:144, 146.
[55] Ibid., 1:147, 148.
[56] Ibid., 1:154–55.
[57] Ibid., 1:157–58.
[58] Frank V. Wright Report, April 10, 11, 14, 1923, FBI File, 1:51
[59] Clarence Weakley Report, July 20–August 4, 1923, FBI File, 1:157–58
[60] Ibid., 1:159–60.
[61] Frank V. Wright Report, May 28, 1923, FBI File, 1:74; Clarence Weakley Report, August 9–11, 1923, FBI File, 1:166.
[62] Clarence Weakley Report, August 13–18, 1923, FBI File, 1:172–73.
[63] Ibid., 1:177, 180–81.
[64] Weakley to Findlay, August 16, 1923, FBI File, 1:169.
[65] Clarence Weakly Report, August 9–11, 1923, FBI File, 1:166; Findlay to Burns and Hoover, August 20, 1923, FBI File, 1:168–69; Weakley to Findlay, August 16, 1923, FBI File, 1:169; Hoover to Burns [memo], August 27, 1923, FBI File, 1:170; Burns to Findlay, August 29, 1923, FBI File, 1:171.
[66] Clarence Weakley Report, August 27–September 1, 1923, FBI File, 1:197–99.
[67] Findlay to Hoover, September 6, 1923, FBI File, 1:213; Hoover to Burns [memo], September 21, 1923, FBI File, 1:214; Burns to Findlay, September 28, 1923, FBI File, 1:216.
[68] Findlay to Hoover, September 6, 1923, FBI File, 1:212–14, 219; Burns to Findlay [memo], September 28, 1923, FBI File, 1:216.
[69] Thomas F. Weiss Reports, September 29–October 9, 1923 and September 4, 1923, FBI File, 1:224–87; Burchardt, "Osage Oil," 254, 261, 265–66.
[70] Hogan, *The Osage Indian Murders*, 266–70; Burchardt, "Osage Oil," 265–66.
[71] Woodward, *The FBI Story*, 117.
[72] Anne M. Butler, "Selling the American Myth," *Oxford History of the American West*, ed. Clyde A. Milner II, Carol A. O'Conner, and Martha A. Sandweiss (New York: Oxford University Press, 1994), 798–99.