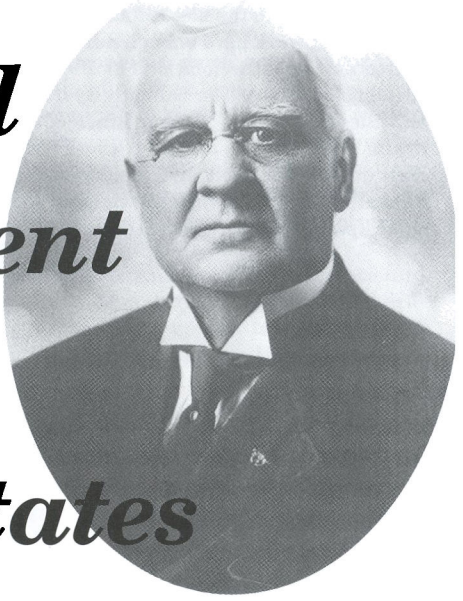
Capital Punishment and the United States Court for the Indian Territory



*By Von Russell Creel**

It is well known that many Indian Territory villains met their end on the scaffold in Fort Smith, Arkansas, after Judge Isaac Parker passed sentence of death. It is less well known that for more than a decade the United States Court for the Indian Territory possessed and exercised capital punishment jurisdiction. During those years, nine men and one woman were hanged under sentence of the court.

For judicial purposes Indian Territory was attached to Arkansas Territory in the early nineteenth century.[1] That was a watershed event in the history of the land, beginning the long, and sometimes controversial, suzerainty of the Arkansas federal courts over their neighbor to the west, a suzerainty that would last for more than six decades.

After Arkansas became a state, Congress made Indian Territory part of Arkansas's single federal judicial district.[2] Then, in 1851 Arkansas was divided into the Eastern and Western Districts, and Indian Territory became part of the Western District.[3]

The 1851 statute did not increase the number of judgeships for the state, meaning that court was held in the Eastern and Western Districts by the same judge until 1871 when Congress created a second Arkansas federal judgeship, assigned the new judgeship to the Western District, and provided for the holding of court at Fort Smith.[4] It was that judgeship to which Isaac C. Parker, fairly or unfairly "The Hanging Judge," was appointed in 1875, and it was to his court that all prosecutions for Indian Territory crimes against the laws of the United States came for trial.

The volume of cases from Indian Territory created a veritable "litigation explosion" crisis for the Western District of Arkansas, and in 1883 Congress addressed the problem by attaching that part of Indian Territory not occupied by the Five Civilized Tribes to the District of Kansas and the Northern District of Texas.[5]

That did not prevent the inhabitants of Indian Territory from calling for the creation of a "resident court," one actually sitting in the land itself. It was not until 1889, however, that their efforts bore fruit. In that year, Congress established an Indian Territory Court to be held by one judge, appointed by the president, with the advice and consent of the Senate, for a term of four years and receiving compensation of $3,500 yearly. The president was to appoint as well, again with the advice and consent of the Senate, an attorney and a marshal. Those officers were to receive the same salaries and fees as the United States attorney and marshal for the Western District of Arkansas. Two terms of court were to be held yearly at Muskogee, beginning on the first Monday in April and the first Monday in September.[6] Procedure and practice were to conform as nearly as practicable to procedure and practice in the circuit courts of Arkansas. Final judgments and decrees were subject to review by the Supreme Court of the United States in the same manner as the judgments and decrees of a federal circuit court if the amount in controversy exceeded $1,000.[7]

Male residents of Indian Territory over the age of twenty-one years, and capable of understanding the English language sufficiently to comprehend court proceedings, were eligible to serve as jurors. However, in criminal cases if the defendant was a citizen of the United States, only citizens of the United States were competent to sit in judgment. Reasons for exemption from jury duty, and grounds for challenge, were to be the same as those in the District Court for the Western District of Arkansas.

The Indian Territory Court was given original and exclusive jurisdiction of federal offenses committed in Indian Territory not punishable by death or imprisonment at hard labor. Capital cases, and crimes punishable by imprisonment at hard labor, still were to be tried in federal courts sitting without Indian Territory.

A modicum of relief was given the Western District of Arkansas by attaching the Chickasaw Nation and part of the Choctaw Nation to the Eastern District of Texas. For the first time, jurisdiction of federal crimes committed in some lands occupied by the Five Civilized Tribes was given to an "outside" federal court other than the Western District of Arkansas. The Indian Territory jurisdiction of the Northern District of Texas under the 1883 act was repealed and given to the Eastern District of Texas as well.[8] Under the 1889 act the "outside" courts were the Western District of Arkansas, the District of Kansas, and the Eastern District of Texas.[9]

The Indian Territory Court was barely a year old when Congress made significant changes in its jurisdiction and structure. The changes were part of the legislation establishing a government for Oklahoma Territory after the run of 1889. The measure became law May 2, 1890.[10]

The creation of Oklahoma Territory reduced the size of Indian Territory appreciably. From that time, Indian Territory was the lands occupied by the Five Civilized Tribes and the Indian tribes within the Quapaw Indian Agency.[11]

Unlike the 1889 act, the 1890 statute vested the court with jurisdiction of some federal felonies. Bootlegging cases, a way of life in Indian Territory, could be prosecuted in the Indian Territory Court, although jurisdiction in that instance was concurrent with the "outside" courts. The 1890 act also outlawed lotteries in Indian Territory. Punishment was not to exceed $500 for the first offense or more than $5,000 and imprisonment not exceeding one year for a subsequent conviction. The provision was enforceable in the Indian Territory Court and applied to all persons in the land, including Indians.

Various crimes against the integrity of the judicial process—perjury, subornation of perjury, theft of court records, conspiracy to intimidate litigants, witnesses, or jurors, and conspiracy to obstruct the administration of justice—fell in the Indian Territory Court's jurisdiction as well. Perjury and subornation of perjury were punishable by imprisonment at hard labor for five years, and stealing or altering process carried a possible sentence of imprisonment at hard labor for seven years. Of great importance, the criminal law of Arkansas, if not in conflict with federal criminal law, was adopted as the criminal law of Indian Territory. There was a conflict if federal law and Arkansas law punished the same offense.

INDIAN TERRITORY COURT TOWNS, 1889–1907

1889 Act	Muskogee			
1890 Act	**First Division** Muskogee	**Second Division** S. McAlester	**Third Division** Ardmore	
1895 Act	**Old Northern District** Muskogee Miami Vinita Tahlequah Wewoka (1898)	**Central District** S. McAlester Atoka Antlers Cameron Poteau (1900, replacing Cameron)	**Southern District** Ardmore Purcell Pauls Valley Ryan Chickasha	
1897 Act	Wagoner (not attached to specific district until 1902 when it became court town for the new Western District)			
1902 Act	**Western District** Muskogee Wagoner Sapulpa Wewoka Eufaula Okmulgee Tulsa (1906)	**Central District** S. McAlester Atoka Antlers Poteau Wilburton (1906)	**Southern District** Ardmore Purcell Pauls Valley Ryan Chickasha Marietta (1904) Duncan (1906)	**New Northern District** Vinita Tahlequah Miami Sallisaw Claremore Nowata Pryor Creek*

* Name changed to Pryor on January 26, 1909 (George H. Shirk, *Oklahoma Place Names* [Norman: University of Oklahoma Press, 1965], 198).

Procedurally, Arkansas law was adopted for criminal cases in the Indian Territory Court. A major consequence of using Arkansas criminal procedure was to bring the grand jury to the territory. An Arkansas grand jury consisted of sixteen members,[12] any twelve of whom could return an indictment.[13] Although Indians could not serve on a petit jury if the defendant was a citizen of the United States, it was eventually held that Indians could serve on grand juries in Indian Territory (*Carter* v. *United States*, 37 S.W. 204, 1 Ind. Terr. 342 [Ind. Terr. Ct. Apps.1896]). Felonies were prosecuted in the territory by indictment and misdemeanors by indictment or information in the discretion of the prosecuting attorney.[14]

The 1890 legislation made important changes structurally in the Indian Territory Court as well, creating three divisions. The First Division was the lands occupied by the Indian tribes in the Quapaw Indian Agency, part of the Cherokee Nation, and the Creek Nation with its seat at Muskogee. The Second Division was the Choctaw country with its seat at South McAlester,[15] while the Third Division was the Chickasaw and Seminole Nations with its seat at Ardmore.[16] Two terms of court were to be held each year in each division, and criminal cases were to be tried in the division in which the offense was committed.

The number of judges for the court remained one, and the statute authorized expenses for traveling and subsistence for the judge when holding court other than in Muskogee. A deputy clerk was to be appointed for each division in which the clerk did not reside, the deputy to reside at the place for holding court in his division.

Then, in 1895 Congress finally gave the inhabitants of Indian Territory what many had thought for decades was their rightful due, a local court with full power to try all criminal offenses committed in the territory.[17] That long awaited "home rule" did not come in one fell swoop, however.

Beginning March 1, 1895, if the court had jurisdiction of a crime before 1895, its jurisdiction of that crime was exclusive. Then, as of September, 1896, the Indian Territory Court acquired "exclusive original jurisdiction of all offenses against the laws of the United States, committed in said Territory," and the laws conferring jurisdiction on the Arkansas, Kansas, and Texas federal courts of crimes committed in Indian Territory were repealed.[18] As of September, 1896, the Indian Territory Court was a court with capital punishment jurisdiction.

In addition to its jurisdictional provisions, the 1895 statute made significant changes in the Indian Territory Court's structure. The

Indian Territory was divided into three judicial districts, the Northern, the Central, and the Southern. The Northern District was the Creek country, the Seminole country, the Cherokee country, all the land occupied by Indian tribes in the Quapaw Indian Agency, and the townsite of the Miami Townsite Company. The Central District was the Choctaw country, and the Southern District was the Chickasaw country. The court towns for the Northern District were Vinita, Miami, Tahlequah, and Muskogee, for the Central District South McAlester, Atoka, Antlers, and Cameron, and for the Southern District Ardmore, Purcell, Pauls Valley, Ryan, and Chickasha.[19] Two terms of court were to be held yearly at each court town.

The bench was enlarged by two judgeships, the new judges to be appointed by the president with the advice and consent of the Senate. Four-year terms were provided again, but the statute added the qualifying phrase, "Unless sooner removed as provided by law." The salary of an Indian Territory judge was increased to $5,000 annually, and the judges were to receive necessary expenses when holding court away from their respective districts. The new judges were to be appointed for the Northern and Southern Districts, while the incumbent judge was given the Central District. The judge of one district was authorized to sit in another district upon the disqualification or inability of the resident judge to sit.

The president was to appoint an attorney and marshal for each district, and a clerk was to be appointed by the resident judge for each district, the incumbent clerk holding the Southern District clerkship, the incumbent attorney taking the Northern District position, and the incumbent marshal serving the Central District.

A milestone provision of the 1895 statute gave Indian Territory a local appellate court,[20] although there was not a separate appellate bench. The judges of the Indian Territory Court were to constitute a court of appeals, the judge senior in commission serving as chief judge, and the judge who tried the case not sitting on the appeal. The court was to hold two terms yearly at South McAlester.

When the Indian Territory Court acquired capital punishment jurisdiction in 1896, conviction of murder or rape carried a mandatory death sentence. However, a defendant under sentence of death might escape the gallows by presidential commutation of sentence or pardon. Then, in January, 1897, Congress gave juries the power to convict "without capital punishment." In that event the defendant was to be imprisoned for life at hard labor.[21]

A curiosity of capital punishment in Indian Territory was the extent of appellate review of death cases. In 1891 Congress passed the

Evarts Act, establishing the United States circuit courts of appeals. Section 5 read that writs of error could issue from the Supreme Court to circuit and district courts if the conviction was for a capital or otherwise infamous crime. Section 6 gave similar jurisdiction to the proper circuit court of appeals for other crimes, and Section 13 provided that appeals from decisions of the Indian Territory Court lay to the Supreme Court of the United States and to the Eighth Circuit Court of Appeals with its seat at St. Louis. Taken together, the sections meant that convictions for crimes punishable by imprisonment at hard labor were reviewable by the Supreme Court, while convictions for misdemeanors were reviewable by the Eighth Circuit (*Harless* v. *United States*, 88 Fed. 97 8th Cir. [1898]). With the establishment of the Indian Territory Court of Appeals in 1895, all convictions were reviewable first by that court, and then misdemeanors and felonies were reviewable a second time by the Eighth Circuit. However, in capital cases, because of the Supreme Court's reading of the appellate jurisdictional statutes, appeal would lie only to the Indian Territory Court of Appeals. There was no second review in the Supreme Court or the Eighth Circuit (*Brown* v. *United States* and *Curley* v. *United States* [companion cases], 171 U.S. 631, 19 S.Ct. 56, 43 L.Ed. 312 [1898]. See also *Cross* v. *United States*, 145 U.S. 571, 12 S.Ct. 842 [1892], and *Folsom* v. *United States*, 160 U.S. 121, 16 S. Ct. 222, 40 L.Ed. 363 [1895]).[22]

During the years the Indian Territory Court exercised capital punishment jurisdiction, the old Northern District had five executions, the Central District three, the Southern District one, and the new Northern District one. The Western District had none.[23] It was 1898 before the hangman first had his due. Then two men paid the supreme penalty at the same time, on the same day, on the same scaffold. The venue was the Northern District.

Charles Perkins, in his mid-fifties when he drifted into Indian Territory sometime in 1897, worked briefly for the Missouri, Kansas and Texas Railroad, using the name Charles Jones. He then went to Wagoner and called himself Charles Perkins. In Wagoner he became acquainted with, and formed a fancy for, Nancy Adkins. Visiting Adkins one day, Perkins became abusive toward Adkins and her mother. Another man present, George Miller, came to the defense of the women. Perkins began cursing Miller and threatened to kill him. Leaving Adkins's house, Perkins lay in wait for Miller. When Miller left about 11:00 P.M., Perkins drew his gun, accosted Miller, and shot him twice. Death was instantaneous. Perkins immediately fled Wagoner and was eventually captured at Atoka.

Judge John R. Thomas (p. 172);
Judge W. H. H. Clayton (right)
(Courtesy Oklahoma Historical Society).

Perkins's trial began on April 21, 1898, before Judge John R. Thomas. The case went to the jury the following day, and a verdict of guilty was quickly returned. Four days later, Judge Thomas sentenced Perkins to hang on July 1, 1898.

K. B. Brooks was employed by a man named Combs at Hudson.[24] One day in October, 1897, Combs left for a business trip to Coffeyville, Kansas, leaving at the home place his sixteen-, eleven-, and five-year-old daughters. After the girls had gone to bed, Brooks entered their room, got on the bed in which the eldest girl, Lulu, was sleeping, and tried to rape her. The girl resisted, and Brooks struck her on the head with a club, rendering her unconscious. While that was happening, the eleven-year-old, Cora, took her little sister, Ida, into the yard, where they hid behind a tree. Brooks came looking for them, but did not find them. In the meantime, Lulu had wandered into the yard. Brooks caught her and struck her with the club again, so viciously that it broke. He then raped her. Cora, barefoot, carried Ida more than a mile to the nearest house, where she gave the alarm. The neighbors hurried to the Combs place and called a doctor to care for Lulu. A search party for Brooks was formed, but he eluded it. Brooks had gone to the house of Moore Gibson, where he spent the night in the barn. After breakfast the next morning, he

left the country. Eventually, he was captured in the Osage Nation and returned for indictment and trial.

Brooks's trial began on April 29, just a few days after Perkins's. It also went to the jury the following day, and the jury returned a guilty verdict that day. Wasting no time, Judge Thomas immediately sentenced Brooks to hang on July 1, 1898.[25]

No appeal was taken in either case, and no effort was made to secure executive clemency for either man. While Perkins said that he had relatives in Tennessee, and Brooks had a father and daughter living in Paris, Texas, the only visitors to the condemned men were local African-American ministers and the Catholic priest, Father Charles. The day before he was to die Perkins wrote a letter to his brother in Tennessee. He addressed the letter to William Whitfield and signed it Henry Whitfield.

Both men were restless the night before their execution. Comforted by the marshal, they went to sleep about 11:00 P.M. Brooks awoke first at 6:00 A.M., and Perkins quickly followed. Brooks had a shave, but Perkins declined, saying that it did not matter. For breakfast, the men had coffee, bread and butter, eggs, steak, and vegetables. Their attire for the occasion was black suit, white shirt, and slippers. After being dressed, the men were visited by the ministers and Father Charles. When the death warrants were read, Brooks had a smile on his face. He asked that his photograph, which appeared in the paper, be sent to his family in Texas.

Perkins and Brooks were handcuffed and taken to the scaffold. About twenty feet high, the scaffold was covered on top and enclosed at the bottom. The ropes were hemp and had been purchased in St. Louis. The coffins in which the men were to be buried were standing upright at the bottom of the gallows. A pass from the marshal was required to gain admittance, and only ten were issued. Lulu Combs and her father asked to attend, but their request was denied.

After songs and prayers, Perkins and Brooks were asked if they had anything to say. Perkins declined, but Brooks spoke for about five minutes. He said that he was innocent, and that he was being persecuted because of his color. He thanked the marshal, deputies, and guards for their kind treatment. The black hoods were put in place, and the traps sprung. Perkins lived only three and a half minutes, while Brooks lived for over ten minutes. Although it had been reported that Perkins would be buried as a pauper, the African-American Baptist Church conducted a service for both men. They were interred in the African-American cemetery.[26]

In little more than a year, the Northern District had its third execution. The same scaffold was used, but a new rope was purchased. George Curley, sometimes called George Cully, was in his mid-to-late twenties when he found himself in great trouble with the law. Described by one newspaper as a "rough looking darkey,"[27] Curley lived in and around Wagoner and Muskogee for some ten years or so beginning about 1887. For much of the time, he enjoyed a good reputation. Then, he and a man named Jim Wofford were charged with a robbery at Miami. A severance was granted, and Wofford was tried, convicted, and given a penitentiary sentence. Before Curley could be tried on the robbery charge, he found himself facing an even more serious accusation, murder.

According to the government, a farmer named Dick Carr had brought a load of cotton to Muskogee and sold it. Curley saw Carr with the money, followed him when he left town to return to his home at Choska, and robbed and murdered him.[28] Curley was indicted by the grand jury sitting at Vinita in October, 1897. The case was sent on change of venue to Muskogee, a superseding indictment was returned on December 13, and Curley went to trial later that month. The jury convicted on December 22 without mercy. On Christmas Eve, Judge Thomas passed his third death sentence, sentencing Curley to be executed on February 25, 1898.

Curley attempted to appeal the judgment of conviction and sentence to the Supreme Court of the United States, but the appeal was dismissed for want of jurisdiction (*Curley* v. *United States*, 171 U.S. 631, 19 S.Ct. 56 [1898]).[29] The time for execution having passed while Curley's "appeal" was pending, Judge Thomas resentenced Curley to hang on July 21, 1899. Curley did not appeal to the Indian Territory appellate court, nor did he attempt to secure executive clemency.

When a Muskogee reporter visited the jail, he wrote that Curley thought the world had turned against him, and he was only waiting to die. Curley was profane and evinced no religious convictions or concern with what awaited him after death. He even threw the contents of a slop bucket at the scribe.

Curley corresponded with some friends, but made no contact with his family. He had his photograph taken, but was very selective with whom he shared it. A few days before he was to die, Curley made a profession of faith and was baptized and received into a local church. It was rumored that Curley had confessed to his minister that he had killed and robbed Carr.

The execution took place at 8:00 A.M. Curley had not asked to have any relatives or friends present. The only ones in attendance were jail officials, a minister, and a physician. Curley walked to the scaffold with a firm step and an erect bearing. He said a few words, a hymn was sung, Curley joining, and a prayer offered. The noose was put in place, Curley's face was covered by a black hood, and the trap sprung. Death came quickly, the neck being broken and a vein severed. A service was held that afternoon by the church Curley had joined.[30]

When Curley went to the gallows, two more men were in jail at Muskogee awaiting the same fate. They kept their appointment with death little more than a month after Curley was hanged.

Although he had family, Cyrus Brown lived the life of a drifter. Coming to Indian Territory, Brown received shelter and care when ill from a man named Daniel Cuthbert. Cuthbert was living on a boat near Webbers Falls when he disappeared in the early fall of 1896. Brown fell under suspicion when he and the boat were seen in the vicinity of Fort Smith. Brown claimed that he had purchased the boat from Cuthbert when Cuthbert decided to leave Indian Territory. The suspicions became stronger when Cuthbert's body was found on a sand bar in the Arkansas River. Cuthbert had been shot, and the body weighted with rocks before being thrown in the water.

Brown and a second man, Johnson Morgan, were held for the crime. When the case was tried in July, 1897, a directed verdict of acquittal was entered as to Morgan, but Brown was convicted. Before sentence was imposed, Brown's motion for new trial was sustained because the prosecution had not proven the jurisdictional allegation of the indictment that Brown was a citizen of the United States and not a member of an Indian tribe or nation. The *Muskogee Phoenix* thought that a mere "technical objection."[31]

Brown's second trial was held in December, 1897, and it took the jury only about an hour to convict again. On Christmas Eve, Judge Thomas sent Brown to the gallows, passing his second death sentence that day. Brown then attempted to appeal the judgment of conviction and sentence to the Supreme Court of the United States. As in the companion case of George Curley, the court held that it had no appellate jurisdiction of capital cases from the Indian Territory court (*Brown* v. *United States*, 171 U.S. 631, 19 S.Ct. 56 [1898]). Unlike Curley, Brown then appealed to the Indian Territory Court of Appeals. The court handed down its opinion on June 9, 1899. Authored by Judge W. H. H. Clayton and concurred in by Chief Judge William McKendree Springer and Judge Hosea Townsend, the judg-

ment was affirmed (*Brown* v. *United States*, 52 S.W. 56, 2 Ind. Terr. 582 [Ind. Terr. Ct. Apps. 1899]).[32]

Brown's appeal raised some interesting legal issues. First, Brown argued that the trial court should have instructed under the Arkansas murder statute, not the federal murder statute as Judge Thomas did. There was only one degree of murder under federal law, but Arkansas law defined murder as first or second degree and imposed a maximum term of only twenty-one years for second-degree murder. Brown argued that because the jury was not required to fix the degree of murder if it convicted, it was error to impose any sentence on the guilty verdict. That, the court said, was correct if Arkansas law governed.

Judge William McKendree Springer (Courtesy Oklahoma Historical Society).

Under the 1895 act if federal law and Arkansas law punished "the same offense," federal law controlled.[33] Parsing the language of the federal and Arkansas statutes, the court said that each was, in essence, a codification of the common law of murder. In a prosecution under either, the government would have to prove the same elements to convict. Consequently, the laws punished "the same offense." *Brown* thus established definitively that murder cases in Indian Territory were to be prosecuted under federal law.[34]

Brown's second argument raised an interesting double jeopardy question. The indictment was in two counts. The first charged Brown with killing Cuthbert with a loaded gun, the second with a loaded pistol. At the first trial, the jury convicted on the second count. At the second trial, the jury convicted on the first count. Brown urged that the first trial was an acquittal on the second count, the second trial was an acquittal on the first count, and consequently he had been found not guilty on all charges. Again the

court agreed that the conclusion was correct, if the predicate for it was correct.

The predicate was not correct, the court said, because count one and count two did not charge different crimes. If they had, then convicting on one count was an implied acquittal on the other. But in the eyes of the law, a pistol was a gun, and a gun was a pistol. If the government had shown that the killing was done "with a pistol, a shotgun, a rifle, a musket, or any kindred weapon," a guilty verdict could have been returned under either, or both, counts of the indictment (*Brown* v. *United States*, 52 S.W. 58, 2 Ind. Terr. 590 [Ind. Terr. Ct. Apps. 1899]).

Following affirmance, the case was returned to the trial court for resentencing. Judge Thomas then sentenced Brown to hang on August 25, 1899. His walk to the gallows was not to be a solitary one, however. In February, 1899, Matthew Craig was arrested by a deputy United States marshal, Joseph Heinrichs, near Tahlequah for liquor law violations. Heinrichs took Craig to his home for the night, intending to take him to Muskogee the next day. While the deputy slept, Craig got possession of a gun and shot Heinrichs to death. Craig was at large for a few days, and was then caught, tried, convicted, and sentenced to death, again by Judge Thomas.

Brown and Craig were executed on August 25, 1899, at Muskogee. In their last days, they kept to themselves. Neither sought solace in religion, and during an unsolicited prayer session Brown was reported to have risen, while his visitors were kneeling, and smoked a cigarette. While Brown fought his execution every step of the way, Craig appears to have harbored no hope after being sentenced and simply awaited the inexorable end to his life. Brown did not deny killing Cuthbert, but claimed that he had not acted alone. Craig maintained to the end that he did not fire the shot that killed Heinrichs. The executions were witnessed by thirty or so people, including the son and daughter of Heinrichs. The men died within four minutes of the drop which broke their necks. In not quite fourteen months, five men went to the gallows in the old Northern District. Brown and Craig were the first white men, and they were the last persons to be hanged at Muskogee during Indian Territory days.[35]

Rufus Binyon was an African-American farmer and preacher in Ran.[36] He and his wife had a motherless girl, Mary Hawthorne, living with them. One day in May, 1900, when the child was about eight years of age, Binyon's wife ran to a neighbor's house, screaming that the child had fallen in the fireplace and been burned. When

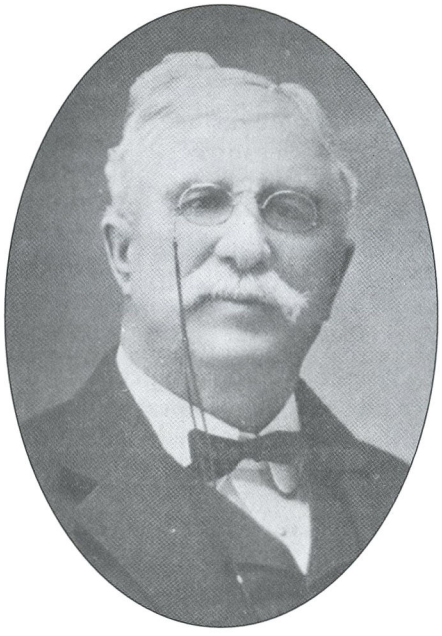
the neighbor lady went to the Binyon place, she found Mary in the fireplace, horribly burned and dead. The girl's head had a deep gash on it, and it was at first supposed she had fallen into the fireplace, struck her head on the wall, knocking her unconscious, and burned to death. That theory was soon discredited, however, for the ashes in the fireplace were undisturbed, and the body was covered with bruises. When a doctor arrived and examined the corpse, he said that the gash had been caused by a board or other bludgeon. He also opined that Mary was dead before she was put in the fireplace and that likely she had been raped.

Suspicion quickly focused upon Binyon. He was speedily restrained of his liberty and narrowly escaped being lynched. After cooler heads prevented vigilante justice, Binyon was taken to Ardmore in the custody of seven heavily armed guards and turned over to the authorities. Binyon was indicted in the Southern District in December, 1900. He pled not guilty and not guilty by reason of insanity and was not tried until January, 1902. The jury convicted without mercy, and Judge Townsend sentenced Binyon to hang in March.

Binyon then appealed to the court of appeals for the Indian Territory. The judgment was affirmed on September 23, 1903 (*Binyon* v. *United States*, 76 S.W. 265, 4 Ind. Terr. 642 [Ind. Terr. Ct. Apps. 1903]). Judge Clayton authored the opinion, with Chief Judge Joseph A. Gill and Judge Charles W. Raymond concurring.[37]

Sufficiency of the evidence to convict was not a serious issue. Numerous witnesses testified that Binyon had told them that he had beaten the child severely, and, finding her dead, he put the body in the fireplace and burned it in an effort to conceal his crime. There was evidence that the child's clothes were completely burned, and when her skin was touched it would slough off. Two witnesses gave evidence that her private parts were lacerated, torn, and swollen. A physician testified that the gash on her head was about three inches long and that it went to the skull which was broken and cracked. Testifying in his own behalf, Binyon did not deny the killing. He claimed only that he had no recollection or consciousness of what had happened.

Binyon raised two principal arguments on appeal. The first was that he should have been acquitted by reason of insanity at the time of the commission of the offense. Binyon's evidence of insanity was this. A few years before the homicide, he was refused permission to marry his present wife by her father. Binyon became morose, took to his bed, and was delirious at times, requiring that he be watched



Judge Hosea Townsend (Taken from Joyce Rex, ed., McClain County, Oklahoma, History and Heritage *[Purcell, Oklahoma: McClain County Historical and Genealogical Society, 1986]; used by permission).*

and restrained. Called by the defense, the physician who was treating him testified he thought Binyon was faking. Shortly after that episode, Binyon married his intended, and there had been no recurrences of his delirium. Binyon testified that as a school boy in Alabama he had difficulty learning, and at times he would hit his head because something was crawling in it. Nevertheless, Binyon acquired some education and taught school for a time. Binyon also wanted to preach, but he was denied a license by the presbytery as an unfit person for ordination. On occasions, however, he was permitted to take the pulpit, and there was testimony that he would "preach curious." Canvassing the evidence of insanity, the appellate court found it "trifling and unconvincing" (*Binyon* v. *United States*, 76 S.W. 265, 4 Ind. Terr. 642 [Ind. Terr. Ct. Apps. 1903]).

Binyon's second major argument for reversing his conviction was that African Americans had been intentionally and systematically excluded from the grand jury that indicted him. The court found that the alleged error had not been properly preserved for appellate review, but it considered the issue because of "the case being such a grave one" (*Binyon* v. *United States*, 76 S.W. 267, 4 Ind. Terr. 649 [Ind. Terr. Ct. Apps. 1903]).

The controlling law was, Judge Clayton wrote, "that citizens of the African race have a constitutional right to sit upon our grand and petit juries, and that any abridgement of that right because of their race or color is unlawful" (*Binyon* v. *United States*, 76 S.W. 265, 4 Ind. Terr. 651 [Ind. Terr. Ct. Apps. 1903]). If exclusion of African Americans from a grand jury because of race or color was estab-

lished, then any African American indicted by that grand jury was entitled to have the indictment quashed.

The question then was whether Binyon's proof was sufficient to show unconstitutional exclusion of African Americans from the grand jury that indicted him. Binyon's proof was that when the grand jury was empaneled, there had not been an African-American grand juror during the preceding two and a half years, and there had not been an African-American petit juror during the last year and a half. There also was proof that the African-American population of the Southern District was substantial and that many African Americans possessed the qualifications of grand and petit jurors.

The appellate court deemed that proof insufficient. There had to be "other proof than the mere fact that for some considerable period of time no colored jurors had served on the juries of the court" (*Binyon* v. *United States*, 76 S.W. 265, 4 Ind. Terr. 653 [Ind. Terr. Ct. Apps. 1903]). Indeed, the court appears to have viewed Binyon's proof of discrimination as proof of no discrimination, observing that "but two years before the jury was selected that found the indictment colored grand jurors were allowed to sit with the grand jurors, and eighteen months before colored men were allowed on the petit juries" (*Binyon* v. *United States*, 76 S.W. 265, 4 Ind. Terr. 653 [Ind. Terr. Ct. Apps. 1903]).

After losing in the court of appeals, Binyon attempted to take his case to the Supreme Court of the United States. There he was met by the decision in the *Curley* and *Brown* cases, and the matter was dismissed for want of jurisdiction (*Binyon* v. *United States*, 195 U.S. 623, 25 S.Ct. 786 [1904]). The time for execution having passed while the appeals process was being exhausted, Judge Townsend set a new execution date of September 22, 1905.

The battle to save Binyon's life was not yet over, however. First, a strenuous effort was made to have the president commute Binyon's sentence to life imprisonment at hard labor. That hope was extinguished when Pres. Theodore Roosevelt announced on September 20, just two days before the scheduled execution, that he would not intervene.

Binyon's lawyers then invoked a provision of Arkansas law that allowed the sheriff to empanel a twelve-person jury if there were reasonable grounds to believe that a defendant under sentence of death was insane or pregnant. The jury was to try the question of insanity or pregnancy, and if it determined that such existed, the

execution was to be suspended. As the Arkansas statute read, it was discretionary with the sheriff whether to summon the jury or not.[38]

Acting on Judge Joseph T. Dickerson's suggestion, the Southern District marshal, B. H. Colbert, empaneled a special jury at 5:00 P.M. on September 21, 1905, to inquire into Binyon's sanity. After hearing numerous witnesses, including Binyon, the jury found that he was sane. When asked if he knew that he was to be hanged the next day, Binyon replied that he did. Only with the jury's verdict on sanity did the legal battle end.

Binyon could quote large parts of the Bible by memory and preached frequently while in jail. He had a ravenous appetite, particularly for chicken and gravy. Binyon slept soundly the night before he died, and he greeted the death watch on awakening with a hearty "good morning." For breakfast, he had steak, eggs, and biscuits. He spent some time with a local reporter and asked the reporter to give his regards to Aunt Lucy, Aunt Lindy, and Aunt Sarah.

Dressed in his funeral clothes, Binyon was taken to the gallows at 1:48 P.M. on September 22, 1905. Asked if he had anything to say, Binyon sang "I'm Going Home To Die No More" and bade those in attendance farewell. After the black cap was placed over his face, Binyon recited the Lord's Prayer, the noose was affixed, and the trap sprung at 2:00 P.M. Binyon was pronounced dead at 2:15 P.M. Later that day, he was buried in the African-American cemetery. Rufus Binyon was the first and only person executed in the Southern District of Indian Territory.[39] Judge Dickerson, who presided over Binyon's sanity hearing, never passed sentence of death, but his experiences in Binyon's case and that of Clyde Perkins may have informed his opinion regarding the death penalty. During the 1915 session of the legislature, he unsuccessfully authored legislation to abolish the death penalty in Oklahoma.[40]

Clyde Perkins was tried in the Southern District for the rape of a ten-year-old girl, Fostina Adams. What is particularly interesting about the case is the manner in which the trial was conducted. Perkins was an African American, as was his alleged victim, and the defense counsel was an African-American lawyer. Additionally, Judge Dickerson empaneled an all African-American jury to try the case. Thirty-five African-American men were brought to Chickasha from Pauls Valley and Wynnewood as veniremen, and twelve were then selected to sit as petit jurors. Although Perkins took the stand and denied the charge, the jury convicted after deliberating for fifty-five minutes. On the first ballot eleven jurors voted to convict

without capital punishment, while one voted for the death penalty. The one then switched his vote, and the verdict was without capital punishment. Dickerson sentenced Perkins to life imprisonment at Fort Leavenworth.

In passing sentence Judge Dickerson said that the verdict was the one he would have returned as a juror. If Perkins had been acquitted, Dickerson predicted that he would have raped other girls, until one day he would have raped a girl of another race and would have "probably paid for the crime by being burned to ashes."[41] Indeed, Dickerson said that Perkins had been saved from "Judge Lynch" only by being given a speedy trial.[42]

Judge Joseph Albert Gill (Taken from The Chronicles of Oklahoma, *12 (September, 1934).*

Juries in the Central District regularly returned murder verdicts without capital punishment. It was not until 1903 that the Central District had an execution.

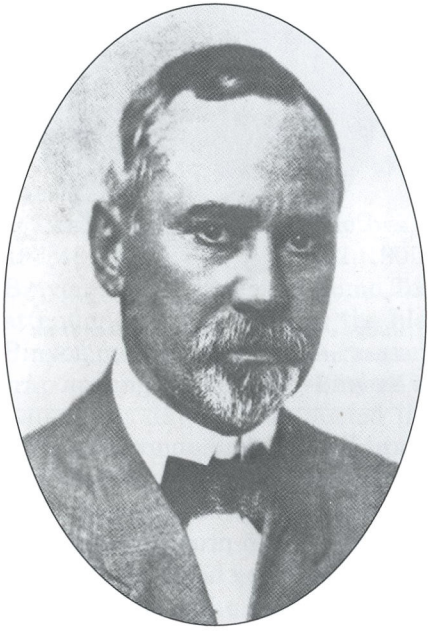
John Hennessey was a railroad laborer near Calvin and was known in the community as a miser.[43] In early December, 1902, he left the section house where a card game was in progress and went to the river to wash his clothes. The next morning he was found shot to death on the river bank.

Robbery seemed to be the motive, for Hennessey's pants pockets had been cut open and nothing of value was in them. However, Hennessey had in a sense outfoxed his killer or killers. One of his eccentricities was to wear two pairs of trousers. In the second pair, the authorities found a small tin box containing a number of pellets about the size of a man's finger. The pellets, about an inch in length, were covered with wax and tied tightly with twine. When the pellets were broken open, they were found to contain ten- and twenty-dollar bills.

Of great importance, the authorities found a series of tracks leading to and from the place where Hennessey's body had been found. The tracks clearly showed that the heel of one boot was smaller

than the other. Inquiring of cobblers in the area, they learned that such a pair of boots had been purchased recently by Charles Barrett, a fellow employee of Hennessey on the railroad.

According to Barrett, he was twenty-two years old and had been born in Montague County, Texas. In a confession made after his conviction and sentence, he described himself as the black sheep of the family, a sobriquet apparently well merited. Leaving home at thirteen years of age, Barrett claimed that he rode for a time with the Suggs Gang in the Chickasaw Nation, returned to Texas, then went to New Mexico, where he was known as Chickasaw Jake. Forced to leave New Mexico, he came back to Indian Territory, married a girl named Nora Williams, and had one child, a daughter.



Judge Charles W. Raymond (Courtesy Western History Collections, University of Oklahoma Libraries).

From the beginning, the case against Barrett was very strong. Besides the tracks, and exceedingly damning, his wife had tried to purchase a money order with a bill that was folded and creased in the same way as those found on Hennessey's body. Barrett's wife also told the authorities that her husband had admitted killing Hennessey. At trial the prosecution bolstered its case with the testimony of Charlie Isaac, a barber, and Bert Harper, a reporter. According to Isaac and Harper, Barrett had admitted killing Hennessey. Isaac testified that Barrett said Hennessey was the fourth man he had murdered, while Harper testified Barrett said he shot Hennessey while he was bending over his washing. On the stand, Barrett denied making the statements attributed to him by Isaac and Harper and offered an alibi defense. Not surprisingly, the jury was persuaded beyond a reasonable doubt that Barrett had murdered Hennessey, but perhaps surprisingly, given the Central District's record,

the jury convicted without mercy. Judge Clayton sentenced Barrett to die on July 17, 1903.

Then began a weird series of protestations of innocence, partial confessions, and finally a full admission of guilt. Barrett did not appeal his conviction and sentence, but he wrote President Roosevelt personally asking commutation of the sentence to life imprisonment. Barrett wasted no time in seeking executive clemency, for his epistle to the president was penned before Judge Clayton formally sentenced him to die. In the letter Barrett claimed complete innocence and asserted that his conviction was based on perjured testimony. He also wrote that his life had been without blemish until then, apparently forgetting his "Chickasaw Jake" days. His chance of commutation was not helped by the refusal of J. H. Wilkins, the United States attorney, and Judge Clayton, to make a recommendation for mercy. As expected, Washington refused to stop the execution.

Judge Joseph Thomas Dickerson (Courtesy Western History Collections, University of Oklahoma Libraries).

As his death came nearer and nearer, Barrett began seeking solace in religion, speaking several times with E. D. Cameron, a Baptist preacher in South McAlester.[44] In July, just a few days before he was to hang, Barrett gave Cameron a written confession. In the confession, he said that he and two other men, unnamed, killed Hennessey, but he refused to admit that he fired the fatal shot. Then, the day before his execution, Barrett gave yet another confession.

In the second confession, Barrett said that for some time an acquaintance had suggested that they rob Hennessey. On the day of the murder, Barrett met that man who was carrying a rifle. The man said that Hennessey was at the river. Barrett and the man got a third man, Tom Stennett, and the three went to where Hennessey

was washing his clothes. The man with the rifle started three times to shoot Hennessey but did not have the nerve to pull the trigger. Barrett then took the rifle from him and shot and killed Hennessey. They found more than $1,000 on their victim. Barrett and Stennett then went to the third man's house where they divided the loot. Included were two $1,000 bonds, and Barrett insisted that they be burned to avoid detection. Barrett identified the man with the rifle as Charlie Isaac, the barber who had given such incriminating testimony against him at the trial.

In 1903 Annie Williams was about eight years old. She lived in Wilburton with her mother, or stepmother, Dora Wright. The household also included Joshua Harvey. One day in early February, Wright told the authorities that the child had been hurt. When they arrived at the house, they found Annie, dressed in her night clothes, dead. Her hands were swollen, and one forefinger had been ripped off. The body was covered with bruises, there was a wound over the left eye, and there had been hemorrhaging in the area of the left ear with great loss of blood. Numerous cuts, some as long as two inches, were found. There also were burn marks on the body, and it appeared that Annie had been violated. The latter acts likely were committed with a poker and occurred after the child was dead. A neighbor said that she had seen Harvey leave the house with a bundle of clothes. The garments, blood stained, were found in a tin can near the house, as was a broken chair covered with blood.

Taken into custody, Wright admitted whipping the girl, saying that she had caught her playing with a group of white boys. She denied the acts of mutilation, and Harvey said he knew nothing about the child's death. No indictment was returned against Harvey, but a true bill for murder was found against Wright. The jury convicted, and Judge Clayton passed sentence of death the same day that Barrett was sentenced to hang and set the same execution date. Wright did not appeal, but she did seek presidential clemency. As with Barrett, United States Attorney Wilkins and Judge Clay refused to recommend mercy, and Wright's plea was rejected.

Because there had been no executions in the Central District, a scaffold had to be constructed. That was done within the jail enclosure at South McAlester, and the steel traps were made specially for the occasion by the Pauley Jail Company of St. Louis, Missouri. After much debate it was decided that the executions would be public. By 5:00 A.M., July 17, a large crowd was assembled before the jail. Many of those who did not gain admittance "occupied seats on house tops, in trees and high fences in the immediate vicinity of the

jail."[45] The Barrett and Wright hangings were the first ones under sentence of the Indian Territory Court to be public. Some of the jurors in the two cases wanted to witness the executions, and the hangings were delayed until their trains arrived. That same morning Barrett's twelve-year-old brother came from Oklahoma Territory and saw his older sibling shortly before he went to the gallows.

Barrett slept well the night before his death, while Wright spent the night praying and singing. Both Barrett and Wright spent some hours of their last day on earth with clergy, and Wright told her minister that she was responsible for the child's death. She did not implicate Harvey, but she continued to deny desecrating the body. Barrett was dressed in black suit and white shirt as he mounted the scaffold, while Wright wore a white dress, a white satin ribbon around her waist, and red slippers on her feet. She also wore a number of rings, pins, and brooches. When asked if they had any last words, both said no. The nooses were placed around their necks, the traps sprung, and Barrett and Wright dropped to their deaths.

The necks of both were broken. Wright's body convulsed several times before hanging limp, while Barrett's twitched twice and was then lifeless. The attending doctors placed "instruments against the breast which connecting with eartubes, enabled the physicians to hear plainly the pulsations of the heart."[46] Barrett and Wright were buried in the city cemetery by the government at public expense.[47] Barrett was the third white person to be legally hanged in Indian Territory, and Wright was the only woman convicted in the Indian Territory Court of a capital crime to suffer the extreme penalty.

Wright's execution was not the last word in the Annie Williams case, however. In January, 1904, Harvey was indicted for the girl's murder. He pled not guilty and went to trial. Before the matter was submitted to the jury, apparently seeing that he had no chance of acquittal, and in hope of saving his life, he changed his plea to guilty. Harvey was sentenced to life imprisonment.[48]

Grant Williams worked at a construction site of the Choctaw Railroad. On October 8, 1901, he went to the pay car to get his wages, and an argument ensued with the paymaster. Williams left but returned with a pistol, which he began firing with abandon, wounding a conductor and killing the paymaster, Ed Dolan. As he left the scene, a tramp raised up from behind a stack of railroad ties. Williams fired again, killing the man. He then fled into the woods. The grand jury indicted Williams in December, 1901, but he was not captured until late September, 1902, in Russellville, Arkansas. After a defense motion for continuance had been granted, and a mo-

INDIAN TERRITORY EXECUTIONS, 1896–1907

Name	District	Race	Crime	Date of Execution	Place of Execution
Charles Perkins	Old Northern	African American	Murder	July 1, 1898	Muskogee
K. B. Brooks	Old Northern	African American	Rape	July 1, 1898	Muskogee
George Curley (alias Culley)	Old Northern	African American	Murder	July 21, 1899	Muskogee
Cyrus Brown	Old Northern	Caucasian	Murder	August 25, 1899	Muskogee
Matthew Craig	Old Northern	Caucasian	Murder	August 25, 1899	Muskogee
Charles Barrett	Central	Caucasian	Murder	July 17, 1903	S. McAlester
Dora Wright	Central	African American	Murder	July 17, 1903	S. McAlester
Rufus Binyon	Southern	African American	Murder	September 22, 1905	Ardmore
Grant Williams	Central	African American	Murder	November 3, 1905	S. McAlester
Robert Cotton (alias Carpenter)	New Northern	African American	Murder	September 3, 1906	Vinita

tion for change of venue denied, the trial began on January 18, 1904. The jury returned a verdict of guilty the following day, and Judge Clayton sentenced Williams to hang on March 18, 1904.

A timely appeal was taken to the Indian Territory Court of Appeals, and the judgment was affirmed unanimously on October 19, 1905 (*Williams* v. *United States*, 88 S.W. 334, 6 Ind. Terr. 1 [Ind. Terr. Ct. Apps. 1905]). Judge Townsend authored the opinion. The appeal raised no novel or challenging legal issues. The only holding of any particular interest was that the credibility of a government witness, Eliza Dixon, could not be impeached by showing she was a cocaine addict, unless it was claimed that she was under the influence of the drug when testifying.

If most prisoners on death row were model inmates, Williams was the exception. On one occasion he tried to strike a guard with a metal cuspidor. Another time he wrenched loose a piece of one-inch steel water pipe and attacked a guard. He was subdued only after being sprayed with a water hose for more than two hours. From being aggressive and threatening, Williams then became reclusive, almost catatonic. Afflicted with consumption and partially paralyzed, he would go for days without eating. Sometimes he would lie on his bunk, covered with a blanket, communicating only by nods or shakes of the head. Other times, he crouched like an animal.

As in Binyon's case, a sanity jury was empaneled. Williams was brought into the courtroom between two burly inmates, half walking, and half being carried. Five doctors testified that Williams was not insane, and the jury agreed. The next day, the time for execution having passed because of the appeal, Judge Clayton resentenced Williams. Again, he had to be supported by others, and he responded to the court's questions only by moving his head. The date of execution was set for November 3, 1905, and that time the jail authorities decided the hanging would be private.

Williams ate a light meal the night before his death and slept well. The next morning he had a hearty breakfast and was dressed in a blue jumper, a colored shirt, and a pair of slippers. He allowed two ministers to come into his cell, who read scriptures, prayed, and sang, while Williams lay on his cot in a dazed condition. When the marshal entered the cell to read the death warrant, Williams let out a low, eerie moan. After the death warrant had been read, the officers removed the blanket Williams had covered with, put it on the floor, rolled Williams from his cot, and laid him on the blanket. They

Judge Luman F. Parker, Jr. (Courtesy Eastern Trails Historical Society, Vinita).

strapped his arms and legs to two boards and carried him to the scaffold. The boards were taken off, two guards held Williams while the noose and hood were put on, and the trap was sprung. There was no movement of the body. After ten minutes Williams was pronounced dead and the body taken down for burial in potter's field. Williams was the last person executed in the Central District.[49]

Robert Cotton, his wife Cynthia, and child Wisdom lived in Vinita. In early August, 1905, Cotton stabbed Cynthia to death. Indicted for murder by the grand jury at Vinita, the case was sent on change of venue to Sallisaw. After a three-day trial in May, 1906, the jury convicted Cotton of murder, and Judge Luman F. Parker, Jr., sentenced him to hang on September 3.[50] There was evidence that Cotton violated his wife after killing her.

No appeal was taken, and no plea for executive clemency was made until just a few days before Cotton was to be hanged. Then a group of Cotton's friends asked for commutation of the sentence. For a time, it appeared that the execution would be stayed, because President Roosevelt wanted to see a transcript of the trial, and the stenographer could not prepare one before the scheduled execution date. However, after hearing from the United States attorney and Judge Parker regarding the case, the president decided that he did not need to read the transcript and that he would not interfere with the sentence of the court.

Cotton met frequently with Reverend Hawkins of the African Methodist Episcopal Church in Vinita in the days preceding his execution and eventually gave the minister a confession. Cotton said that he came into the bedroom with a knife. He quarreled with his wife, accusing her of infidelity, struck her on the head several times, and forced her to submit to him. He then took the knife and tried to cut her throat. They struggled until the bed collapsed. Cynthia tried to run away, and Cotton pursued with the knife. He stabbed her in the neck, but he did not know how many times. At one point, Wisdom pleaded with his father to stop. The fight continued outside. When Cotton and Cynthia got to the smokehouse, Cotton started to cut Cynthia's throat. She ran away again, but then Cotton overtook her and finished the job. Cotton never admitted violating his wife's body after she was dead. Cotton also said that his real name was Robert Carpenter and that he was an escaped convict.

As his date with death approached, Cotton was very restless. Some nights he could not sleep, and he ate little. Asked if he was ready to die, he said no, but that he was trying to get that way.[51] The night before, however, he slept well, and he ate a good breakfast in

the morning. After bathing and dressing, he spent some time with Reverend Hawkins and another minister. Cotton walked to the scaffold with a fairly firm step. When he reached the top, he said "Jesus, save me."[52] Reverend Hawkins spoke a lengthy prayer, and then as the noose and hood were put in place, Cotton kept repeating "Lord, have mercy" until the trap was sprung.[53] After six minutes, Cotton was pronounced dead. Services were conducted at the AME church, and Cotton was buried in the city cemetery. Robert Cotton, or Robert Carpenter, was the last person to be hanged under sentence of the Indian Territory Court and the only person to be executed in the Northern District.[54]

ENDNOTES

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[1] The 1834 act's definition of Indian Territory included some lands west of the Mississippi River that were not within the boundaries of present-day Oklahoma. That part of Indian country was attached for judicial purposes to the District of Missouri and is without the scope of this article.

[2] Arkansas became a state in 1836. It was not until 1844 that Congress expressly attached Indian Territory to the District of Arkansas. Act of June 17, 1844, sec. 1, chap. 103, 5 Stat. 680.

[3] Act of March 3, 1851, sec. 1, chap. 24, 9 Stat. 594.

[4] Act of March 3, 1871, sec. 5, chap. 106, 16 Stat. 472.

[5] The District of Kansas was given jurisdiction of "all that part of the Indian Territory lying north of the Canadian River and east of Texas and the one hundredth meridian not set apart and occupied by the Cherokee, Creek, and Seminole Indian tribes." Act of January 6, 1883, sec. 2, chap. 13, 22 Stat. 400. The District of Kansas sat at Wichita and Fort Scott. The Northern District of Texas as given jurisdiction of "all that portion of the Indian Territory not annexed to the district of Kansas by this act, and not set apart and occupied by the Cherokee, Creek, Choctaw, Chickasaw, and Seminole Indian tribes." Act of January 6, 1883, sec. 3, chap. 13, 22 Stat. 400. The Northern District of Texas sat at Graham.

[6] The principal group of the Creek tribe was the Maskoke or Muskoke, rendered in English Muscogee or Muskogee. H. L. Fitzpatrick, ed., *Oklahoma Almanac, Golden Anniversary Edition, 1957–1958* (Norman: Oklahoma Almanac, 1957), 112. Congressional enactments and congressional speeches used both spellings.

[7] Act of March 1, 1889, chap. 333, 25 Stat. 783.

[8] Although historically Indian Territory did not include the panhandle, the Supreme Court read the 1889 act's definition of Indian Territory as including that area and placing it within the jurisdiction of the Eastern District of Texas. *Cook* v. *United States*, 138 U.S. 157, 11 S.Ct. 268 (1891). The Eastern District sat at Paris.

[9] The 1883 jurisdiction of the District of Kansas was not repealed by the 1889 legislation. See also note 5.

[10] Act of May 2, 1890, chap. 182, 26 Stat. 81.

[11] The statutory definition was "that part of the United States which is bounded on the north by the State of Kansas, on the east by the States of Arkansas and Missouri, on the south by the State of Texas, and on the west and north by the Territory of Oklahoma as defined in the first section of this act." Act of May 2, 1890, sec. 29, chap.

182, 26 Stat. 93. Oklahoma Territory was defined as "all that portion of the United States now known as the Indian Territory, except so much of the same as is actually occupied by the five civilized tribes, and the Indian tribes within the Quapaw Indian Agency, and except the unoccupied part of the Cherokee outlet, together with that portion of the United States known as the Public Land Strip." Act of May 2, 1890, sec. 1, chap. 81, 26 Stat. 93.

The unoccupied part of the Cherokee Outlet was within the jurisdiction of the District of Kansas for crimes committed, and for prosecutions commenced, prior to passage of the act. Act of May 2, 1890, sec. 9, chap. 86, 26 Stat. 93. Thereafter, the territorial courts of the Territory of Oklahoma had jurisdiction, and the jurisdiction of the District of Kansas was repealed. Act of May 2, 1890, sec. 9, chap. 86, 26 Stat. 93. See also *Mattox* v. *United States*, 156 U.S. 237, 15 S.Ct. 337 (1895).

See also Act of May 3, 1892, secs. 1 and 3, chap. 59, 27 Stat. 24, providing for trial of cases from the Quapaw Indian Agency at Fort Scott, Kansas.

[12] William W. Mansfield, comp., *A Digest of the Statutes of Arkansas . . . 1883* (Little Rock: Mitchell and Bettis, 1884), sec. 3991.

[13] Ibid., sec. 2101.

[14] See for example U.S.C. 55, Volume C, 57 (indictment for obscenity), and 62 (indictment for carrying a weapon), both misdemeanors.

[15] The South McAlester post office was established on February 5, 1890. It was so named to distinguish the community from McAlester, two miles to the north. South McAlester became McAlester on May 19, 1907, and the old McAlester became North McAlester. The 1907 McAlester is the county seat of Pittsburg County. George H. Shirk, *Oklahoma Place Names* (Norman: University of Oklahoma Press, 1964), 224, 172, 148.

[16] The Ardmore post office was established on October 28, 1887. The town is named for Ardmore, Pennsylvania. It is the county seat of Carter County. Shirk, *Oklahoma Place Names*, 11.

[17] Act of March 1, 1895, chap. 145, 28 Stat. 693.

When Congress first made the criminal laws of the United States applicable to Indian Territory, it provided that those laws did not reach crimes committed by "one Indian against the person or property of another Indian." Act of June 30, 1834, sec. 25, chap. 161, 4 Stat. 733. That limitation was continued in the 1889 statute.

The 1890 statute spoke to the question in sections 30, 31, and 36. Section 30 stated that the tribal courts retained exclusive jurisdiction of litigation "in which members of the nation by nativity or adoption shall be the only parties," and Section 31 read that no jurisdictional grant should "deprive any of the courts of the civilized nations of exclusive jurisdiction over all cases arising wherein members of said nations, whether by treaty, blood, or adoption, are the sole parties."

In Ex parte Mayfield, 141 U.S. 107, 11 S.Ct. 939 (1891), the Supreme Court considered a habeas corpus challenge of the jurisdiction of the Western District of Arkansas to try an adultery prosecution when the defendant was a Cherokee by blood and his wife was a white woman by consanguinity, as was the woman with whom he committed adultery. Because the prosecution was not in the Indian Territory Court, Sections 30 and 31 did not apply. However an 1866 treaty between the United States and the Cherokee Nation preserved the jurisdiction of tribal courts in criminal cases if "members of the nation, by nativity or adoption, shall be the only parties," precisely the language of Section 30. The Supreme Court held that the treaty deprived the court of jurisdiction of the case and granted the writ. Although the court's reasoning is not

pellucidly clear, the opinion observed that the wife of the defendant had not initiated the prosecution and questioned whether she was a victim of the crime.

The Supreme Court visited the question next in *Alberty* v. *United States*, 162 U.S. 499, 16 S.Ct. 864 (1896). The case came on writ of error from the Western District of Arkansas where the defendant, a member of the Cherokee Nation, was convicted and sentenced to hang for the murder in Indian Territory of a United States citizen. In *Alberty*, the court held that the phrases "only parties" and "sole parties" meant parties to the crime, that is, the perpetrator and the victim. Because the deceased was not an Indian, the Arkansas federal court could try the case.

Even if Indians were the "only parties" to the crime, the Indian Territory Court could try the case under Section 36 if the Indians were members of different tribes or nations. That section gave the court jurisdiction of "all controversies arising between the members or citizens of one tribe or nation of Indians and the members or citizens of other tribes or nations in the Indian Territory."

In 1897 Congress gave the Indian Territory Court exclusive jurisdiction of all prosecutions for all crimes committed after January 1, 1898, by any person in the territory, thus repealing the race-based exclusions of the 1889, 1890, and 1895 acts. Act of June 7, 1897, Miscellaneous, chap. 3, 30 Stat. 83. The following year the Curtis Act abolished the Cherokee and Seminole tribal courts as of July 1, 1898, and the Choctaw, Chickasaw, and Creek tribal courts as of October 1, 1898, and provided that tribal laws were not to be enforced by the courts of the United States. Act of June 1898, sec. 28, chap. 517, 30 Stat. 504, 505. Those frontal attacks on their sovereignty led the tribes to treat with the federal government in an effort to retain some judicial power.

The relationship between the Curtis Agreement and the treaties or agreements was considered in In Re Poff's Guardianship, 103 S.W. 765, 7 Ind. Terr. 59 (Ind. Terr. Ct. Apps. 1907). The Indian Territory Court of Appeals held that the language in the ratified agreements repealed the abolition language of the Curtis Act and restored to the tribal courts the power to hear and decide any matters not expressly surrendered by the treaties. Although none of the treaties retained jurisdiction in homicide prosecution, there was an execution under sentence of a tribal court as late as July 1, 1899. Louis Coleman, "'We are making history': The Execution of William Going," *The Chronicles of Oklahoma*, 76 (Spring, 1998): 38–47.

[18] Act of March 1, 1895, sec. 9, chap. 145, 28 Stat. 697. The statute contained a "savings" clause, permitting the "outside" courts to exercise jurisdiction after September 1, 1896, of all matters of which they had acquired jurisdiction before that date.

[19] Wagoner was named a court town in 1897, but it was not attached to a particular district. Act of June 7, 1907, chap. 3, 30 Stat. 84. In 1898 Wewoka was named a court town in the Northern District. Act of July 1, 1898, chap. 542, 30 Stat. 568. In 1900 Poteau replaced Cameron as one of the Central District's court towns. Act of June 6, 1900, chap. 795, 31 Stat. 657.

[20] Under the 1890 act, appeals in certain matters tried before a commissioner could be appealed to the Indian Territory Court, but its review was *de novo*. Mansfield, *Digest of Statutes of Arkansas*, sec. 2437. In hearing appeals from commissioners, the Indian Territory court judge sat as a *nisi prius* judge, not as an appellate judge in the traditional sense of the term.

[21] Act of January 15, 1897, sec. 1, chap. 29, 29 Stat. 487.

[22] Even the Supreme Court found the appellate jurisdictional statutes confusing at times. In *Queenan* v. *Territory of Oklahoma*, 190 U.S. 548, 23 S.Ct. 762 (1903), the Supreme Court reviewed a judgment of the Supreme Court of the Territory of Oklahoma in a murder case. Little more than a year later, it acknowledged that the case had not

come within its appellate jurisdiction. *New* v. *Territory of Oklahoma*, 195 U.S. 252, 25 S.Ct. 68 (1904).

[23] In 1902 Congress created a fourth judicial district for Indian Territory. Part of the old Northern District became the new Northern District with its seat at Vinita, and the remainder of the old Northern District became the Western District with its seat remaining at Muskogee. Act of May 27, 1902, sec. 8, chap. 888, 32 Stat. 276. Under the 1902 act the other court towns for the Northern District were Tahlequah, Miami, Sallisaw, Claremore, Nowata, and Pryor Creek. Bartlesville became a Northern District court town in 1906. Act of June 21, 1906, chap. 3504, 34 Stat. 52. The other court towns for the Western District under the 1902 act were Wagoner, Sapulpa, Wewoka, Eufaula, and Okmulgee. Tulsa became a Western District court town in 1906, and Wilburton was added to the Central District by the same legislation, as was Duncan in the Southern District. Act of June 21, 1906, chap. 3504, 34 Stat. 342, 343. Marietta was named a Southern District court town in 1904. Act of March 7, 1904, chap. 405, 33 Stat. 60.

Pryor Creek was changed to Pryor on January 26, 1909. Shirk, *Oklahoma Place Names*, 198.

[24] No longer in existence, Hudson was located in present-day Craig County. Shirk, *Oklahoma Place Names*, 121.

[25] John Robert Thomas, who passed sentence of death on Perkins and Brooks, was born on October 11, 1846, in Mount Vernon, Illinois, the son of William A. and Caroline Neely Thomas. After the death of his father, Thomas moved to Indiana where he was reared by his maternal grandparents. Educated in the common schools of the Hoosier State, Thomas attended Hunter Collegiate Institute at Princeton, Indiana, until the coming of the Civil War. Thomas enlisted as a private in Company D, 120th Indiana Volunteer Infantry Regiment, eventually rising to the rank of captain. In 1863 he was wounded at the Battle of Stone River.

Returning to civilian life, Thomas read law in the office of Judge Monroe C. Crawford in Jonesborough, Illinois, and was admitted to the bar in 1869. Thomas quickly became active in politics, serving two terms as city attorney for Metropolis, Illinois, and then four years as state's attorney before he was elected to Congress in 1878 on the Republican ticket. Thomas served five terms, voluntarily retiring in 1889.

In early January, 1914, Thomas went to the Oklahoma State Penitentiary at McAlester to see a client who was incarcerated at that institution. Shortly after his arrival, Thomas was shot and killed during an attempted breakout. Three prison officials died as well before the abortive escape ended in a hale of gunfire that killed the convicts.

Services for Thomas were held in Muskogee at Grace Episcopal Church with burial in Greenhill Cemetery. In 1924 his body was removed to Arlington National Cemetery where he rests between his half-brother, Thomas A. Berryhill of the United States Navy, and his son, Col. John Thomas, Jr. Carolyn Thomas Foreman, "John R. Thomas," Archives Division, Oklahoma Historical Society (hereafter cited as AD OHS); *Who's Who In America 1910–1911* (Chicago: A.N. Marquis and Company, 1910), 1905; *Biographical Directory of the American Congress 1774-1949* (Washington, D.C.: Government Printing Office, 1950), 1910; *McAlester* (Oklahoma) *News Capital*, January 20, 1914; Statement of R. L. Reams, prepared at request of Carolyn Thomas Foreman, AD OHS; *Illinois Freemason*, February 20, 1914; *Muskogee* (Oklahoma) *Daily Phoenix*, January 14, 1934; *St. Louis Globe-Democrat*, January 20, 1914.

[26] *Muskogee Daily Phoenix*, April 28, May 5, June 30, July 17, 1898.

[27] Ibid., July 13, 1898.

[28] Choska was in present- day Wagoner County, nine miles south of Coweta. Shirk, *Oklahoma Place Names*, 51.

[29] Curley's case was decided at the same time as Cyrus Brown's. As discussed previously, the cases held that neither the Supreme Court nor the Eighth Circuit had appellate jurisdiction of appeals in capital cases from the Indian Territory Court. Rather, exclusive appellate jurisdiction in death cases lay with the Indian Territory Court of Appeals.

[30] *Muskogee Daily Phoenix*, April 28, May 11, July 13, 20, 27, 1899.

[31] Ibid., September 16, 1897.

[32] W. H. H. Clayton was born on October 13, 1840, near Delaware, Pennsylvania, during the Log Cabin and Hard Cider campaign of William Henry Harrison and John Tyler. Evincing the political convictions of his parents, Clayton was named for the victorious Harrison. During the Civil War, Clayton served in Company H, 124th Pennsylvania Infantry and saw service at South Mountain, Antietam, Fredericksburg, and the Wilderness.

In the presidency of U. S. Grant, he was appointed United States attorney for the Western District of Arkansas and served in that position until Grover Cleveland recaptured the White House for the Democrats in 1884. Replaced by a Democrat, Clayton regained the attorneyship when Harrison defeated Cleveland in 1888 and then lost it again when Cleveland defeated Harrison in 1892. During the more than fifteen years that Clayton was United States attorney, Judge Parker was the judge, and Clayton represented the government in perhaps the then-busiest federal court in the nation. Clayton prosecuted many cases that ended on the gallows at Fort Smith, which earned Parker his famous sobriquet.

Clayton served on the bench of the Indian Territory court until it expired with the admission of Oklahoma as a state in 1907. He remained in McAlester after his judicial service ended and died there on December 14, 1920. He is buried in the National Cemetery at Fort Smith, Arkansas. J. Gladston Emery, *Court of the Damned: Being a Factual Story of the Court of Judge Isaac C. Parker and the Life and Times of the Indian Territory and Old Fort Smith* (New York: Comet Press Books, 1959), 36; Glenn Shirley, *Law West of Fort Smith: A History of Frontier Justice in the Indian Territory, 1834–1896* (1957; reprint, Lincoln: University of Nebraska Press, 1968), 33; *Muskogee Daily Phoenix*, June 3, 1897; *Eufaula* (Oklahoma) *Indian Journal*, December 16, 1920.

William McKendree Springer was born near New Lebanon, Indiana, on May 30, 1836. He moved with his family to Illinois in 1848 and attended public schools and college in Illinois. In 1858 he was graduated from the University of Indiana at Bloomington. He then read law and was admitted to the Illinois bar in 1859. He served twenty years as a member of the United States House of Representatives, 1875–1895. Springer supported the Cleveland administration's repeal of the Sherman Silver Purchase Act and lost his seat in the ensuing Democratic debacle of 1894. After leaving the Indian Territory bench in late 1899, he returned to Washington, D.C., where he practiced law until his death on December 4, 1903. He is buried in Oak Ridge Cemetery, Springfield, Illinois. *Biographical Directory of American Congress*, 1851.

Hosea Townsend was born on June 16, 1840, in Greenwich, Ohio. He was attending Western Reserve College at Hudson, Ohio, when the Civil War began. Enlisting in the Second Ohio Cavalry as a private, he was discharged as a second lieutenant in 1863

for health reasons. He then returned to Ohio, studied law, and was admitted to the bar in 1865.

Moving south, Townsend practiced law in Memphis, Tennessee, for a number of years. When Memphis was stricken with epidemics of yellow fever in the late 1870s, he returned to Ohio, then moved to Silver Cliff, Colorado, where he made and lost a fortune in the mining business. He represented Colorado in Congress for four years, 1889–1893, losing his bid for a third term in 1892. Although a Silver Republican in 1896, he was appointed to the Indian Territory Court by Pres. William McKinley.

As a judge, Townsend was not a shy or retiring figure. He held in contempt of court a Seventh Day Adventist who refused to perform jury duty on his Sabbath, and when a jury acquitted a defendant in a murder case Townsend thought should have been convicted, he excoriated the jurors, telling them that they were "discharged for the term, and I never want to see any of you in my court again." Yet he could extend leniency to a bootlegger whose family needed him home to keep food on the table.

Townsend served on the Indian Territory Court until statehood. He remained in Ardmore until his death on March 4, 1909. His body was returned to Norwalk, Ohio, for burial in Woodlawn Cemetery. *Biographical Directory of American Congress*, 1928; James MacCarthy, *Political Portraits* (Colorado Springs: Gazette Printing Company, 1888), 46; Colorado Graphic, October 13, 1888, November 1, 1890; *Daily* (Ardmore, Indian Territory) *Ardmoreite*, December 6, 1903, November 3, 1899, February 9, 1902.

[33] There was one exception. Arkansas larceny law was made applicable to Indian Territory by the 1895 statute.

[34] In charging the jury Judge Thomas did not instruct that it could convict without capital punishment. Although Brown was tried after the January, 1897, change in the murder statute permitting sentence of imprisonment for life, Judge Thomas apparently reasoned that the change did not apply because the crime occurred before that date. The ruling was not challenged on appeal. The Indian Territory Court of Appeals never had occasion to decide if rape prosecutions were under federal or Arkansas law. The Criminal Court of Appeals in *Vickers* v. *United States*, 98 Pac. 467, 1 Okl. Cr. 452 (Okl. Cr. 1908) assumed that Arkansas law applied. That holding is difficult to reconcile with the *Brown* decision. Vickers had been convicted of rape in the Western District. His case was pending in the Indian Territory Court of Appeals when statehood came. Under the Enabling Act, the appeal was transferred to the Supreme Court of Oklahoma and then after its establishment to the Criminal Court of Appeals. In 1959 the legislature changed the name of the Criminal Court of Appeals to the Court of Criminal Appeals.

[35] *Muskogee Daily Phoenix*, July 22, September 16, December 16, 23, 1897; *Daily* (Oklahoma City, Oklahoma Territory) *Oklahoman*, July 22, 1899; *Muskogee Daily Phoenix*, July 27, August 24, 31, 1899.

[36] Now extinct, Ran was located in present-day Love County, six miles northwest of Lebanon. Shirk, *Oklahoma Place Names*, 201.

[37] Joseph Albert Gill was born on February 17, 1854 in Wheeling, West Virginia. The family moved to Illinois when Gill was about ten years old. Gill attended the University of Illinois and read law in the offices of John A. McClernand and Charles Keyes. He was admitted to the Illinois bar in 1880. After practicing for a few years in Illinois, Gill moved west, residing at various times in Oregon and Washington, where he practiced law and was a newspaper editor. In 1887 he moved to Colby, Kansas. An ardent Republican, Gill took an active part in Republican politics. He was a Kansas

delegate to the 1896 GOP convention that nominated William McKinley for the presidency.

After he left the bench in 1907, Gill resided in Vinita where he was active in the Baptist Church and served on the school board. In 1920 he moved to Tulsa, where he died on March 23, 1933. Joseph A. Gill, Jr., "Judge Joseph Albert Gill," *The Chronicles of Oklahoma*, 12 (September, 1934): 375–376; *Tulsa* (Oklahoma) *Tribune*, March 24, 1933.

Charles W. Raymond was born in Dubuque, Iowa, in 1858. His father, a captain in the Union army, was killed at the Battle of Nashville, and the family endured straitened economic circumstances for many years. For a time Raymond's mother placed him with a farm family, where he did chores and other farm work for his room and board.

When his mother moved to Onargo, Illinois, Raymond joined her. There he attended school and then studied at Wabash College at Crawfordsville, Indiana. Raymond found employment as a deputy county clerk at Watseka, Illinois, in 1878 and read law in his spare time, being admitted to the bar in 1886.

After his term as judge expired, Raymond stayed in Indian Territory for a short time and then returned to Illinois. According to one source he was offered a federal circuit judgeship during the Taft administration, but declined it. Raymond died on September 28, 1939, at Watseka, Illinois, and is buried in the community cemetery. Benjamin J. Martin, "Charles W. Raymond, 1858–1939," *The Chronicles of Oklahoma*, 17 (December, 1937): 460–461.

[38] Mansfield, *Digest of Statutes of Arkansas*, sec. 2329.

[39] *Daily Ardmoreite*, May 21, 1900; *Eufaula Indian Journal*, February 7, 1902; *Vinita* (Indian Territory) *Daily Chieftain*, December 9, 1903; *Daily Oklahoman*, June 27, 1905; *Madill* (Indian Territory) *News*, June 30,1905; *Daily Ardmoreite*, September 20, 21, 22, 1905; *South McAlester Capital*, September 28, 1905. Some stories refer to Mary Hawthorne as May Hawthorne, and some say that she was the daughter of Binyon's wife.

[40] House Bill 483, *House Journal 1915*, 544; *Daily Oklahoman*, March 9, 1915. The same session of the legislature passed an appropriation for the electric chair. *Session Laws 1915*, chap. 254. In 1913 the method of inflicting the death penalty had been changed from hanging to electrocution, but there had been no funding for the chair. *Session Laws 1913*, chap. 113. From 1915 until the adoption of death by lethal injection, Oklahoma used the electric chair for executions.

[41] *Chickasha* (Indian Territory) *Journal*, May 22, 1907.

[42] Ibid., May 13, 15, 18, 20, 21, 22, 1907.

Joseph Thomas Dickerson was born on January 8, 1864, in Lewisburg, Ohio. The family moved to Kansas, and Dickerson earned the LL.B. degree from the University of Kansas in 1887. Dickerson practiced law in Kansas and was very close politically to Charles Curtis, the author of the Curtis Act and later vice president in the Hoover administration.

After statehood he served as Republican member of the state board of affairs, was the GOP nominee for United States senator in 1912, and was a member of the state house in the Fifth Legislature (1914–1916). While in the house he was one of the managers in the successful impeachment trial of Corporation Commissioner A. P. Watson. In 1933, although a Republican, Gov. William H. "Alfalfa Bill" Murray appointed him to a newly created position as common pleas judge for Oklahoma County. Dickerson died February 7, 1954, at age ninety years. He is buried in Memorial Park Cemetery in Oklahoma City. Law and Procedure followed by Oklahoma State Senate Sitting as

Court of Impeachment together with Journal of Proceedings in Watson and Welch Cases, June 15, 1915; *Daily Oklahoman*, July 21, 1933; *Edmond* (Oklahoma) *Sun*, July 27, 1933; *Edmond* (Oklahoma) *Enterprise*, February 9, 1954; *Edmond Sun*, February 11, 1954; Questionnaire on Biography of Members of the Oklahoma Historical Society, AD OHS; State Election Board, *Directory of Oklahoma 1973* (Oklahoma City: Oklahoma State Election Board, 1873), 317.

[43] Calvin, formerly Riverview, is in central Hughes County. Shirk, *Oklahoma Place Names*, 40.

[44] Evan Dhu Cameron was born in North Carolina, the son of a colonel in the Confederate army. Educated for the bar, Cameron turned to the ministry in 1888 when he was licensed to preach by the Methodist Church. In 1901 he joined the Baptist Church and held his first pastorate at the First Baptist Church in South McAlester. In 1907 he was elected as Oklahoma's first superintendent of public instruction. Defeated for reelection in 1910, he returned to the ministry until his death on July 29, 1923, at Tahlequah. Cameron State University at Lawton, Oklahoma, is named in his honor. R. L. Williams, "Evan Dhu Cameron, 1862–1923," *The Chronicles of Oklahoma*, 11 (March, 1933): 740–743

[45] *South McAlester Capital*, July 23, 1903.

[46] Ibid.

[47] Ibid., February 5, 12, May 28, June 4, 11, 25, 1903; *Indian Journal*, June 26, 1909; *South McAlester Capital*, July 9, 16, 23, 1903; *Indian Journal*, June 26, July 24, 1903.

[48] *South McAlester Capital*, January 21, February 4, 1904.

[49] Ibid., January 21, March 10, October 20, 27, November 3, 24, 1904, September 21, 28, November 2, 9, 1905; *Tishomingo* (Indian Territory) *News*, November 8, 1905.

[50] Luman F. Parker, Jr., was born on August 23, 1872, at Rolla, Missouri. His father was for many years general solicitor for the St. Louis and San Francisco Railway Company. The younger Parker was graduated in 1897 from Washington University in St. Louis with the LL.B. degree. That same year he located in Vinita, Indian Territory.

Parker practiced law in Vinita and served in a number of official positions. He was assistant United States attorney for the Northern District, master in chancery, attorney for the Cherokee Nation, and mayor of Vinita. When he was nominated, some eyebrows were raised because of his father's railroad connections, but Parker assured people that he was "in sympathy with President Roosevelt in his efforts to secure railroad rate legislation." There was sufficient controversy to delay Parker's confirmation for a time.

Parker practiced law for a time after statehood, but ill health required him to withdraw from his profession. Parker was very active in the civic affairs of Vinita, and Vinita named its park for his family. Parker died on August 14, 1912, in St. Louis, Missouri, a few days shy of his fortieth birthday. A communicant of St. John's Church (Episcopal), his body was returned to Vinita for funeral and burial. Parker, at thirty-three years of age, was the youngest and last judge to be appointed to the Indian Territory Court. *Tishomingo News*, December 13, 1905; *Muskogee* (Indian Territory) *Democrat*, November 2, 14, 16, 23, 25, 28, December 1, 7, 18, 2, 1905; *Muskogee Phoenix*, December 21, 1905; *Vinita Daily Chieftain*, January 4, 9, 16, 1906; Judge Joseph Gill, Tribute to Luman F. Parker, Jr., Gill Collection, AD OHS; *Vinita Weekly Chieftain*, August 23, 1912; *Eufaula Indian Journal*, August 16, 1912.

[51] *Vinita Daily Chieftain*, September 3, 1906.

[52] Ibid., September 4, 1906.

[53] Ibid.

[54] *Pauls Valley* (Indian Territory) *Enterprise*, May 31, 1906; *Vinita Daily Chieftain*, August 29, 30, 31, September 3, 4, 1906.