NOTES AND DOCUMENTS

INDEX TO THE CHRONICLES, 1959

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STORIES RELATING TO OKLAHOMA TERRITORIAL COURTS AND LAW

Dr. L. Wayne Johnston, Stillwater, member of the Board of Directors of the Oklahoma Historical Society has contributed to The Chronicles the following biographical sketch of Thomas A. Higgins, Court Reporter in the U. S. District Court at Guthrie before Statehood, and some of Mr. Higgins' stories that he enjoys telling about incidents relating to law and order in Territorial days:

Thomas A. Higgins

Thomas A. Higgins, the writer of the following stories, was born April 12, 1881, on a farm near Cedar Vale, Kansas, and came to Guthrie, Oklahoma, on June 22, 1889. Graduating from the Guthrie High School in 1897, he took shorthand and typewriting at the Capitol City Business College and on completion of that course, went into the employ of Judges Dale and Bierer, attorneys.

In September, 1900, upon the resignation of Emory R. Buckner as Court Reporter for Judge John H. Burford, he was appointed as Court Reporter for the First Judicial District, with headquarters at Guthrie. He assumed his duties about mid-September, 1900 at Stillwater.

Statehood saw many new districts created, and Kiowa and Woodward were dropped from the First District, as well as Payne county, but Kingfisher county was added to the area of the former First District, becoming District No. 11, with Payne county joining with Pawnee county in another District. Then another change in Judicial Districts, with Kingfisher being removed from the 11th Judicial District, and Payne county being attached to the old No. 1, and Logan and Payne counties constituting District No. 9.
Mr. Higgins continued as reporter for Judge Burford until Statehood, and thereafter in the same position under Judge A. H. Huston, which position he held until he entered the practice of law at Cushing.

During the early part of his service as reporter, he also served as deputy clerk of the Court, and prior to Statehood also held the position (without pay) of Deputy Clerk of the Supreme Court of the Territory of Oklahoma.

He has practiced law at Cushing and Stillwater, since February, 1913. Mr. Higgins tells these amusing stories from his experiences:

Political "Due Process"

It was during the Free Homes Campaign of territorial Delegate Dennis T. Flynn that he had scheduled a speech at Taloga, Oklahoma Territory. Incidentally, the fall term of Court for Blaine county was scheduled to begin on the same date, with Judge Jonathon H. Burford presiding, and with Capt. Benjamin F. Hegler, as clerk.

Court was held in a large army tent, and at the convening of the session, the persons who had been summoned as Federal grand jurors, and Federal petit jurors, Territorial grand jurors and petit jurors, together with those summoned as witnesses before both inquisitional bodies, and witnesses who were summoned for the trial of cases set, were present in quite a crowd,—in fact the "tent" court room was filled to the last seat.

Since Delegate Flynn's speech was a feature of the afternoon, Judge Burford obligingly recessed court for the occasion. After concluding his speech, Delegate Flynn was beaming at the large audience he had addressed, and made mention of that fact to Capt. Hegler, who very casually (but truthfully) remarked:

"Yes, there was quite a crowd present and, every damned one of them was brought in by due process of law."

Unbelievers—Quo Vadis?

Judge S. S. Lawrence, the author of Lawrence's Probate Forms, in use in many counties now, was holding one of his first terms of the Superior Court of Logan county. The local bar at that time numbered among its members, Fred W. Green, and Gustave A. Erixon, both of Guthrie. Mr. Green had filed a divorce action for a female client, and had obtained the usual temporary order for suit-money, court costs and attorney fees against the defendant. He had employed Mr. Erixon as his counsel, and he had filed the usual motion to vacate or modify the order previously made. The matter came regularly on for hear-
ing, and substantially the following argument was made by Mr. Erixon in support of his motion to modify:

Mr. Erixon: We have filed this motion because I don’t believe the plaintiff presented the full facts to the Court as to the defendant’s ability to pay. I don’t believe that if she had, the Court would have made the order it did. I don’t believe the plaintiff has shown her need of such a large order. I don’t believe that the Court would have made such an order if the plaintiff had stated her true financial condition. I don’t believe that the defendant is in any condition to meet the payments demanded, and I don’t believe plaintiff is in such dire straits as she alleges. We ask the Court to modify the order.

By the Court: I don’t believe! I don’t believe! I don’t believe! Mr. Erixon, do you ever read the Bible?

Mr. Erixon: I don’t believe I get the significance of your honor’s question.

By the Court: Do you know what the Bible says about those who don’t believe?

Mr. Erixon: I don’t believe that I recall, just now, Your Honor.

By the Court: They go to hell. Mr. Green, prepare your order denying the motion to modify.

Law: As Practiced by Courtesy

Shortly after Statehood Judge A. H. Huston, of the Logan County district, and Stillwell H. Russell, of the Ardmore district, exchanged benches for one week, to permit the trial of cases in which these Judges were disqualified for one reason or another. There were something near one hundred cases set on the Ardmore docket when Judge Huston arrived, and they were all set for the one week for jury trials.

Upon calling the first day’s assignment, all of the cases set for that day were continued, for the reason that: Col. Blank, is on the other side of this case, and he had to go to Dallas, on some other business.

Judge Blank who is my opponent in this case, had to be out of the City today.

Mr. Blank, on the other side, told me that he had gone on a fishing trip which would make it impossible for us to try that case today.

And so on, throughout the remainder of the days’ calendar.

And, too, for the same reason (or lack thereof) all the remainder of the docket for the rest of the week was disposed of by an order of continuance.
Which caused the Logan county District Judge to remark: “This is the only place in the world, to my knowledge, where they practice law entirely by courtesy.”

However, there was one case for trial on the last day of the term, not because both attorneys were present, but because the defendant was present, and demanding a trial, even without the assistance of his lawyer. The attorney for the plaintiff was present, and since the defendant was demanding a trial, a jury was chosen, and the plaintiff’s evidence by way of depositions, was completed. The suit involved a dispute between American Chicle Company and the Ardmore Wholesale Grocery Company, over a carload of chewing gum which the Grocery company had ordered, and received. The Grocery Company was present by one J. V. Bodovitz, president, who had his own ideas of the law of “fitness for use” of such articles as chewing gum.

The president of the company made a statement to the jury, of the company defense, which for brevity and clarity might well be an example to students of Blackstone henceforth.

The defense statement ran something like this:

Mr. Bodovitz: Gentlemen, the plaintiff says we bought a carload of chewing gum from them. Yes, we did. But this gum didn’t have any chicle in it, and without chicle, we claim it isn’t chewing gum. We will introduce evidence that this gum didn’t have any chicle in it, and if it didn’t, he (plaintiff) is stuck. If it did, I’m stuck.

With this terse statement, Mr. President pulled out a carton of this gum from his hip pocket, and introduced it in evidence, and passed it around to the jury.

Result: No chicle! Verdict for Defendant.

Municipal Encephalitis.

There was a street car line on Springer Avenue, Guthrie, in the earlier days, and on that line there lived one of the more prominent families, the W. H. Coyle family. After this line had been in operation for some time, some of the car operated on Springer Avenue had developed a disease known as “flat wheel” in the parlance of street railroading. This line began operations very early in the morning, relatively speaking, but around 6:00 a.m.

Mr. Coyle probably enjoyed his late morning snoozes, and hated to have his slumbers disturbed by the pounding noise of the “flat wheel” cars going by. He endured this torture patiently, but when he could endure it no longer, took his pen in hand and wrote a letter of complaint to John W. Shartel, Presi-
dent of the street railway company, at Oklahoma City. There never had been the most cordial feelings between the two cities, and when Mr. Shartel received this letter of complaint about the noise keeping one of its first cities awake, he likewise took his pen in hand and answered Mr. Coyle about as follows:

“If I thought that anything could awaken the citizens of Guthrie, I would gladly put on a few more ‘flat wheel’ cars.”

* * * *

Unreliable Train Schedules.

Judge J. C. Pollock of the Federal District Court in Kansas was assigned to try a case in Guthrie, involving the crime of making false entries in the books of a National bank. Mr. Dan Hogan, of Cashion, Oklahoma, had been summoned as a juror in that case. Cashion was about midway from Guthrie to Kingfisher, on a line of the Rock Island Railroad (at that time) and he was an officer of the bank in Cashion. He did not answer to the call of jurors at the convening of Court, and the Court was perturbed at his apparent lack of obedience to the summons. Mr. Hogan later in the day put in his appearance and his name was announced as being present. He was called to the bench, and the following conversation took place between the Judge and him.

The Court: Where do you live, Mr. Hogan?

Mr. Hogan: At Cashion, your honor.

The Court: Where is that

Mr. Hogan: It’s on the Rock Island Railroad, about half way between here and Kingfisher.

The Court: Why were you late in coming to Court, then?

Mr. Hogan: I caught the first train through Cashion, coming this way, and thought I could make it in time for the convening of Court.

The Court: Well, I’ll have to fine you $25.00 for being late. You ought to know that you never can depend on the Rock Island getting you to your destination on time.

* * * *

Neckties: Non Juridical!

Temple Houston was practicing law at Woodward with his partner D. P. Marum, when that county was part of the First Judicial District of Oklahoma Territory.

At one of the terms of court, presided over by John H. Burford, Chief Justice, Temple came into court and approached the bench. Judge Burford looked at him, quisically, over the
The judge shivered slightly, and asked Temple to discard that article of wearing apparel, because it made him nervous! Temple cheerfully obliged and apologized.

* * * *

Report Judicial.

It was during the days when the city of Guthrie was angling for a number of railroads into that city that John E. DuMars, representing the M. K. & T. Railway, and John H. Cotteral, representing some property owners, were trying a condemnation case in District Court before Clinton F. Irwin, sitting for John H. Burford, the regular presiding judge.

Mr. Cotteral was introducing evidence in support of his contentions, and Mr. DuMars began to object as "Incompetent, Irrelevant and immaterial, and not a proper measure of damages," and the Court sustained the objections, and Mr. Cotteral excepted to the ruling, and asked another, along the same line, with similar objection, and ruling.

After repeated questions, objections and rulings, the following colloquy took place:

Mr. Cotteral: I don't understand the theory on which the Court bases its ruling.

The Court: On the grounds on which they are made:

Mr. Cotteral: I've asked the same question several different ways, but he always objects, and the Court sustains him. I still don't understand the ground on which the Court sustains his objections.

The Court: Well, all I can do is to furnish you information, I can't furnish you comprehension."

Program at the Erection of Oklahoma Historical Marker at the Line of 1889 and 1893

An outstanding program commemorating the erection of the Oklahoma Historical Marker on the line of 1889 and 1893, on the north side of Stillwater, was held at the Stillwater Municipal Airport on Sunday afternoon, April 10, 1960. The program was sponsored by the Payne County Historical Society, of which Dr.
B. B. Chapman is President, with the assistance of individuals and organizations including the Army and Air Force ROTC Units of Oklahoma State University; Boy Scouts of America; Cherokee Strip Association; United Daughters of the Confederacy; Daughters of the American Revolution; Early Day Settlers, Guthrie; Farmers Union; Girl Scouts of America; Oklahoma National Guard; Daughters of the American Colonists; Oklahoma Pioneer Club of Cushing; Stillwater Chamber of Commerce; Stillwater Grange No. 111; Writers Club of Stillwater; U. S. Army Reserve of Stillwater; Women's Relief Corps, G. A. R.; Oklahoma State University history students; Oklahoma Historical Society.

Over 2,000 guests were on hand at the Stillwater Municipal Airport for the program that stressed patriotic and pioneer themes beginning with preliminary exercises of music by the Stillwater High School Band, drill team exhibition by the Pershing Rifles and a special on the minute "Fly-over" of F-86 type aircraft by the Oklahoma Air National Guard. The main program began with the "Echo of an old Army Signal" fired on the Line of 1889 and 1893 by the Oklahoma National Guard. Then came the Advance of the Color guard of Army ROTC, Air Force ROTC, Pershing Rifles and Naval Reserves. The "Star Spangled Banner" was sung, and Pledge of Allegiance was given, followed by the Invocation and group singing of the old song "Oklahoma," the words of which were written many years ago by Stillwater pioneer, Freeman E. Miller. History students of Oklahoma State University explained "Songs of the Boomer Era" in Oklahoma. The official State song, "Oklahoma," was sung by the Fogarty Junior High School of Guthrie. The fading lines of real '89ers—those who came to this country in 1889 or who made the run on April 22, 1889—were represented by sixty-five of these pioneers, many of them in costume of the period, from over the state, each presented an award of a "Certificate in Oklahoma History" by Colonel George H. Shirk, President of the Oklahoma Historical Society.

Interesting talks were a part of the main program: "History of the Line of 1889 and 1893" by John H. Melton of the Payne County Historical Society; "Food on the Frontier" by Mrs. Edna Eaton Wilson, Editor of The Log Cabin Cook Book; "Women as Pioneers" by Mrs. Sam M. Meyers, Second Vice Regent of Oklahoma Society of D.A.R.; "Run of '89: The Farmers Viewpoint" by Jim Wells, President of the Payne County Farmers Union. "Soldiers on the Frontier: A Tribute," given by Colonel Donald A. McPherson, Professor of Military Science and Tactics, Army ROTC, Oklahoma State University, was especially inspiring, and follows here for readers of The Chronicles:
SOLDIERS OF THE FRONTIER: A TRIBUTE

For some three-quarters of a century before the first official openings in Oklahoma, the history of this area can be told in the annals of the United States Army. In 1817, Major Stephen H. Long brought a small detachment of the famed old Seventh Infantry Regiment up from Louisiana to establish Fort Smith, the farthest western extension of the frontier. It was this group of soldiers, the heroes of the battle of New Orleans, that brought the first semblance of law and order to an untamed wilderness. From this small beginning, the frontier soldiers were destined to expand their services ever forward through the forested hills of the east to the high and open plains of the west. Their tasks were numerous and hard. Theirs the mission to protect the eastern Indians at the terminus of their forced migrations; theirs the task of evicting white settlers from the land to assure the Indian of his permanent home, promised to him forever.

In keeping with the changing policies of the government they served, the soldiers of the frontier built new forts from the timber and stone they provided themselves. Forts Gibson, Towson and Coffee emerged as symbols of Federal control of a turbulent frontier ever progressing. The soldiers surveyed the boundaries, built the roads, escorted government agents and commissioners on their various missions. In this process, many troopers were destined to fill unmarked graves along the trails where their missions led.

It was mostly a hard life they led; far removed from the centers of civilization from which they came. Their work was generally thankless; taken for granted by far away officials who issued orders with little understanding of the problems they entailed. The troopers were called upon to restore order among the tribes when their feuds erupted into open conflict; to establish and maintain peace among the tribes of the east and of the west; and to serve as a barrier to the mounting pressure of the white frontiersman against the boundary of the great Indian Territory.

Near midcentury, the pressure of events forced the Army to extend its forces beyond the cross timbers. Dragoons and cavalrymen were patrolling the Great Plains with missions of war and peace. New forts (Washita, Arbuckle and Cobb) were built to serve as centers of government control along the most unique of all frontiers; that of civilized Indians on the east and the unconquered wild tribesmen of the west.

Escorts had to be provided for wagon trains of the traders; for the gold seekers of '49, along the California Road; and for the topographical engineers surveying a route for the transcontinental railroad. Ironically, it was the great American tragedy of our civil war that witnessed a temporary cessation of the traditional duties of the regular trooper in the Oklahoma area. Hurriedly withdrawn, under orders, in 1861; they would not return until the close of that great struggle in 1865, and the fair lands of Oklahoma would be left to the warring factions of provisional forces for both North and South.

In the hectic years that followed, the Army, most reluctantly, was called upon to engage in a cruel and bitter series of Indian wars for over a decade. Fort Sill, Fort Supply and Fort Reno came to represent the major stations from which the frontier soldier worked and to which many never returned. These troopers were hardly of the type so frequently portrayed in the Hollywood extravaganzas and on "TV". Theirs was a hard, dangerous and unrewarding life, but they faithfully served the government which issued them their orders. They accomplished their missions and received little but abuse for their
Efforts. Few soldiers anywhere or at any time have been called upon to do so many odd tasks as those troopers of the "old Army" in Oklahoma.

Probably the most unique mission assigned the old Army was the thorny problem of the restless white men who insisted on homesteading in Oklahoma regardless of the prohibitions placed upon them by law and government policy. It was the Army that had the wholly thankless task of stopping the famous Boomer movement and of supervising the great openings which we celebrate here today. So long as the government ordered, troopers from Fort Reno, Fort Sill, and Fort Gibson evicted the followers of David L. Payne and William L. Couch in their numerous forays into the Unassigned Lands or the Cherokee Outlet. This was accomplished without bloodshed, in spite of that famous incident on Stillwater Creek when the Boomers announced their intentions of staying and their willingness to resort to force to demonstrate their demands. That Colonel Edward Hatch and the 350 negro troopers of the old 9th US cavalry accomplished the eviction of Couch and his followers without violence is a tribute to the discipline and forbearance of those veterans of many hard campaigns. These events of 1884 mark only one phase of this story, however, for within five years the comrades of these frontier soldiers were the ones to fire the signal guns for the first of the great runs and to police the area opened by Federal decree.

So, from the beginning, until the coming of the permanent settlers, the frontier soldier served whoever needed him or whoever was decreed to have his services. In all the gyrations of Oklahoma's fabulous history, the Army itself was "neutral." It was the very essence of Federal authority and policy. It did its tasks as ordered; ever the mark of the good soldier. The greatest tribute which can be paid, therefore, to the frontier soldier is the laconically simple statement:

"MISSION ACCOMPLISHED"

Reading of the inscription on the Oklahoma Historical Marker, written by Miss Muriel H. Wright, Editor of The Chronicles of Oklahoma, concluded this outstanding historical program at Stillwater:

**BOUNDARY LINE**

**1889 and 1893**

On April 22, 1889, the Run for land south in Old Oklahoma began on this line, by Proclamation of Pres. Benj. Harrison. Also, on Sept. 16, 1893, the Run for land north in the Cherokee Outlet began on this line, by Proclamation of Pres. Cleveland. At Booth No. 1, site ¾ mi. east, thousands registered for the Run of 1893.

Oklahoma Historical Society and State Highway Commission, 1960