

Judicial Profile

BRIAN W. PORTUGAL

Hon. H. Dale Cook U.S. District Judge, Northern, Eastern, and Western Districts of Oklahoma

A SHORT DISTANCE from the north bank of the Arkansas River in Tulsa is a federal building that is older than the state of Oklahoma. Like the U.S. Courthouse a block away, the business of justice is carried out inside. The justice dispensed there is, like the majesty of the building, attributable in large part to the

single U.S. district judge who sits there, Hon. H. Dale Cook. The building's original luster was already gone when then-Chief Judge Cook got the idea to renovate the structure for the U.S. Bankruptcy Court and for the district judges who had assumed senior status. Now the building is a living monument to its benefactor and the ultimate symbol of Judge Cook's life—a life so rich that few can rival it.

Judge Cook explains that he might have been in middle school before he realized his first name was Harold. He had always gone by his middle name, Dale, to avoid confusion with his father, also named Harold, the chairman of Guthrie Cotton and Oil Company in Guthrie, Okla.

Fortuitously, Dale Cook had four years in the Junior Reserve Officer Training Corps in high school. He graduated from high school in 1942 and knew he'd soon be in the military. But the program emphasized the need for American officers to be educated, so Cook enrolled in college summer school and the regular ROTC program, garnering as much education as he could before military service.

Dale Cook shortly became Lt. Cook of the U.S. Army Air Corps. After he got his wings, he and the other new pilots prepared for advanced flight school, which required the young officers to rank—from one through three—their preferred flying assignments: fighters, bombers, and the like. Lt. Cook, showing the same craftiness that he would show as a lawyer, determined his rankings as follows: "fighter, fighter, fighter." He was assigned to fighters, but while he was awaiting orders, his superior officer unexpectedly chose six officers to become instructors, and Lt. Cook was one of the chosen. Lt. Cook protested, but he was told, "You take orders and don't ask questions."

Lt. Cook initially instructed Chinese and American



pilots in advanced single-engine flight and moved on to train pilots on the fighters that they would fly in combat. Perhaps Lt. Cook's most challenging student was a colonel, who outranked him by four levels and who had flown B-17 bombers in Europe and wanted to learn to fly fighters. The colonel had some difficulty landing the fighters, whose center of gravity was far different than the "flying fortress" bombers he had flown. Lt. Cook would not certify the colonel as quickly as the colonel wanted, so the colonel went over Lt. Cook's head and obtained certification. The next time out, the colonel ground-looped the plane (think rolling as you land). Obviously shaken, the colonel went to Cook and asked if he would train him Cook's way, and Cook readily agreed.

The day after his discharge from the Army, Cook returned to the University of Oklahoma in Norman. Like his father, Cook intended to operate a business, so he enrolled in the university's business school. During his studies, Cook thought it would be beneficial to know a bit about the law and enrolled in the law school for a semester. He was so thrilled with the law

that he took a second course, a third, and so on, until he obtained his law degree.

It was during law school that Cook received a fateful telephone call from a man trying to enlist his help campaigning for Bob Kerr for one of Oklahoma's U.S. Senate seats. Cook was not sure he agreed with Kerr's political positions, but the caller informed Cook in no uncertain terms that if Cook expected to be a lawyer in Oklahoma, he had to be a Democrat. Perturbed by the idea that justice should depend on party affiliation, Cook responded to an advertisement of a meeting of the College Republicans and went to listen. He sat in the back of the room, which contained about 15 people—Judge Cook jokes that there could not have been many more Republicans in Oklahoma at the time—and, by the end of the evening, he was the president of the College Republicans, which he says “shows how desperate they were.”

As Cook approached the end of law school, he still thought he would pursue a career in business and would therefore forgo the bar exam. But on reflection (and a mere 10 days before the exam), he thought it was silly to complete law school and not take the bar, so he obtained a copy of *Clark's Law Summaries*, read up, and passed the bar. He was now Counselor Cook.

Now, if you want to have a good start in the law, it's hard to do better than Dale Cook—all this newly minted attorney did was to run for the elected office of chief prosecuting attorney in his county as a member of the minority political party and win. Cook recognized the opportunity, and he did not hire any assistants. Every case was his alone. He remained in that office for three years, winning re-election once. He did not run for a third term because, as he told his constituents, “anyone who ran for a third term should be defeated.”

President Dwight D. Eisenhower's election in 1952 was a boon for the handful of Republicans in Oklahoma, but the party was so small in Oklahoma that there was a lack of unanimity on who should receive political appointments; among the vacancies were the U.S. attorneys for the state's federal judicial districts. Two hopefuls contacted Cook and asked for his support, but he declined when the men promised him an assistantship in exchange. Ultimately, Fred Mock was appointed, and he hired Cook to be his first assistant U.S. attorney.

In the 1950s, federal criminal law was much less developed than its modern counterpart is and mainly dealt with violations of the Dryer Act—interstate car theft—so much of the work that Cook did as an assistant U.S. attorney focused on federal condemnation of land for use in constructing military bases as well as Federal Tort Claims Act cases resulting from a sonic boom that occurred before an air show in Oklahoma City.

In 1958, Cook left the government for private practice, which presented him with every kind of case. In

his chambers with staff, Judge Cook frequently draws on the many anecdotes from those days, including blowing cigar smoke rings during an opposing counsel's jury argument, defending the same blue law violator by continually showing that what the man was peddling was truly essential to folks on Sundays, and winning an evidentiary argument with a judge by quoting the judge's own words from the textbook the judge wrote.

Public service called again in 1963, when newly elected Republican Gov. Henry Bellman asked Dale Cook to become his legal counsel. Cook had no desire to take this position and felt unprepared—he had no notion of politics as practiced in the state capital. After repeated entreaties, Cook agreed to serve for six months until the governor could find someone else. Cook stayed for a little more than three years, and his destiny on the bench was foreshadowed during this time when the governor asked if he could do anything for Cook to thank him for his extraordinary service. Cook demurred that he did not take the job with the idea of receiving any patronage, but when pressed whether there was anything in the world that he wanted, Cook explained that he always felt strongly about the place of the federal judiciary. Both men knew that Gov. Bellman was in no position to help him, however, because governors have no part in the appointment process, and Bellman had no intention of continuing in politics after he left the governorship.

After that experience, Cook returned to private practice, where he also got involved in banking, becoming chairman and president of the Shepard Mall State Bank in Oklahoma City. Cook received a new call in 1971, when Elliot Richardson, then the secretary of housing, education, and welfare, asked Cook to come to Washington to be director of the Bureau of Hearings and Appeals at the Social Security Administration. Even though Cook thought it was a good idea to develop such a system, he had no desire to lead it or to move to Washington, D.C. When pressed, Cook explained that, if Secretary Richardson wanted to pay for him to take a trip to Washington, he would meet with him, but the secretary had to understand that Cook would not take the job. Richardson agreed, and Cook visited Washington—and he took the job, with the understanding that he would not stay long. He stayed three and one-half years.

During his time in Washington, Cook met up with an old college fraternity brother, who lived in the same neighborhood as U.S. Supreme Court Justices Byron “Whizzer” White and William H. Rehnquist and regularly played lawn tennis with the justices. The three men needed a fourth for doubles, and Cook was asked to join. When Chief Justice Rehnquist died in 2005, Judge Cook was asked about the stories in the press that Rehnquist was known for wagering on anything and everything. Judge Cook laughed and recounted the tale of the Chief Justice calling him for his thoughts on who would carry Oklahoma in the 1976

presidential election—President Gerald Ford or Gov. Jimmy Carter. As the Chief Justice's question indicated, he obviously had a wager with someone.

In 1974, U.S. District Judge Luther Bohanon decided to assume senior status, leaving a vacancy in Oklahoma, which is one of the few states to have a "roving" judgeship—that is, a seat on the bench of each of the state's federal judicial districts. Bohanon determined that he would not formally notify the President of his intentions until he knew who would replace him. In the interim, Gov. Bellman—who had had no intention of carrying on in politics—had been elected U.S. senator from Oklahoma, and as such, he had a great deal of influence over nominations to district judgeships. When Sen. Bellman asked Judge Bohanon whether Dale Cook would be an acceptable successor, Bohanon agreed, and Sen. Bellman called Cook to talk over the possibility of the nomination. Cook, who had expressed an interest many years earlier, was now not so sure. He had just been offered the opportunity to return to banking as a chairman of the board, with the assurance that he could practice law on the side. Sen. Bellman suggested that Cook think the idea over that night. Cook called him at 7:30 a.m. the following morning to say he would be honored to accept a nomination.

President Ford nominated Cook on Dec. 2, Cook's confirmation hearing took place on Dec. 18, and on Dec. 20 Cook received his commission as U.S. district judge for the Northern, Eastern, and Western Districts of Oklahoma. Judge Cook's career had been focused in Oklahoma City, and as a roving judge his chambers could be located anywhere. But because there was interest in getting a second federal judge in Tulsa, he agreed before his nomination to locate his chambers in Tulsa, where he remains. Judge Cook became chief judge of the Northern District of Oklahoma in 1979, and it was during this time that he cast his eye on the federal building two blocks from the U.S. Courthouse in downtown Tulsa. At the time, Chief Judge Cook had two colleagues on the bench, James O. Ellison and Thomas R. Brett. Chief Judge Cook thought that some day the three men, as senior judges, would need chambers and courtrooms. That notion led to years of restoration and renovation of the building, which now houses Judge Cook and the Northern District of Oklahoma's U.S. Bankruptcy Court.

Among the highlights of his long judicial career, Judge Cook sat for many years on the Magistrates' Committee of the Judicial Conference of the United States. He sat by designation numerous times with the U.S. Court of Appeals for the Tenth Circuit, and he traveled to judicial districts suffering case backlogs to sit as a visiting district judge. The best highlight of Cook's judicial career, however, is any time he spends on the trial bench. Court watchers recall the break-neck pace of Chief Judge Cook's docket; he would send one jury out to deliberate and bring in a new jury to start another trial. The current chief judge of the Northern District, Claire V. Eagan, first met Judge

Cook in 1976, when she was a law clerk to Chief Judge Allen Barrow. At that time, Tulsa had only two resident federal judges. Eagan says she always found Judge Cook to be kind and approachable. But in 1978, when Eagan entered private practice, she saw the view from the bar. Chief Judge Eagan remembers Judge Cook as "the most impressive jurist one could appear before," because "he always knew more than the lawyers," and he had no time for gamesmanship—"he cut right through it." And Chief Judge Eagan makes a special point to highlight Judge Cook's support for women in the law—be they law clerks, attorneys at the bar, or judges.

U.S. Magistrate Judge Sam A. Joyner hails Chief Judge Cook as "an anchor of the Northern District," describing his opinions as "always clear, very well researched, and right on." Judge Joyner points out that, despite Judge Cook's senior status, he maintains a heavy criminal docket; therefore, Joyner concludes, "I don't know if there's any reason to talk about his age because he's ageless."

Then there are the lawyers' comments. The U.S. attorney's office in Tulsa, whose attorneys appear before Judge Cook frequently because of his large criminal docket, are overwhelming in their praise. U.S. Attorney David E. O'Meilias sums up Judge Cook's acumen as a trial judge by saying that in any given examination of a witness, Judge Cook always knows exactly where the examination is going "and is three questions ahead of the lawyers." Assistant U.S. Attorney Allen J. Litchfield marvels at Judge Cook's ability as a trial judge: "It never ceases to amaze me when he anticipates exactly what a witness will say or do once he or she is on the stand." He notes the judge "can analyze a complicated evidentiary issue in an instant from the bench."

Doug Horn—who started out as an assistant U.S. attorney in the Eastern District of Oklahoma, subsequently became the head of the Northern District's Criminal Division, and has since returned to the Eastern District as the first assistant U.S. attorney—has seen Judge Cook across two districts. Horn offers pithy and high praise: "You can't meet a finer person or finer jurist in what we do." Horn recalls his first appearance before Judge Cook, when the judge volunteered to help out with another judge's cases in the Eastern District. In that case, one defendant pleaded guilty to taking part in a robbery. Horn asked Judge Cook to sentence the defendant to probation, citing what the young man had done in the four years since the offense—he had graduated from the University of Oklahoma with honors, he was working as a reporter for the *Daily Oklahoman*, he had gotten married, and his wife was seven months pregnant. Because of his conviction, the young man had already lost his job; therefore, Horn argued to Judge Cook that no more punishment was required. Horn recalls that the judge "listened to what I had to say, and he didn't know me from Adam." Judge Cook sentenced the man to probation.

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The best part of Chief Judge Cook's story, which is necessarily truncated here, is that it continues. When asked what is the most important case on which he has worked, he responds, "The case I'm working on right now." **TFL**

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