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### **Additional associate justices Supreme Court of Oklahoma.**

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H.R. Rep. No. 1413, 52nd Cong., 1st Sess. (1892)

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## ADDITIONAL ASSOCIATE JUSTICES SUPREME COURT OF OKLAHOMA.

MAY 17, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. BYNUM, from the Committee on the Judiciary, submitted the following

### REPORT:

[To accompany H. R. 3983.]

The Committee on the Judiciary, to which was referred the bill (H. R. 3983) entitled "A bill to provide for three additional associate justices of the supreme court of the Territory of Oklahoma, and for other purposes," having duly considered the same, recommend the following amendments:

In section 1, line 4, strike out the word "five" and insert in its stead the word "four," and in line 5 strike out the word "four" and insert in its stead the word "three."

In section 2, line 2, strike out the word "three" and insert the word "two" in its stead.

In section 3, line 1, strike out the word "six" and insert in its stead the word "five."

Also add the following new sections:

SEC. 7. That temporarily, and until otherwise ordered by law, the additional associate justices to be appointed under this act may from time to time, as the business of the courts may require, be assigned by the supreme court of said Territory to either of the judicial districts thereof as associate to the judge assigned to such district, and said judges may hold separate hearings and trials or sit and act together for the expedition of the business of such district as they may deem expedient.

SEC. 8. That the supreme court of the Territory shall designate not exceeding four places in said Territory at which may be tried cases to which the United States is a party, and shall designate and attach districts of the Territory to said places, respectively.

SEC. 9. That in cases where the court sits with the powers and jurisdiction of a district or circuit court of the United States, juries may be obtained under the rules of the common law; and in such cases, procedure, pleading, and practice which conforms to the rules of the common law and the laws of the United States shall not be deemed erroneous solely because it may not also conform to procedure, pleading, or practice under the Territorial statutes.

And when so amended that the bill be passed.

The necessity for the organization of additional courts and the appointment of additional justices is fully presented in a letter by the Hon. Horace Speed, United States attorney for the Territory, to the honorable Attorney-General, a copy of which was transmitted to the committee; also, by a letter from the Hon. Charles Brown, attorney-general for said Territory, to the subcommittee considering the same. Copies of same are published herewith as an appendix to this report.

DEPARTMENT OF JUSTICE,  
Washington, D. C., February 12, 1892.

SIR: Inclosed I hand you copy of a letter, relating to a bill now before the Judiciary Committee in reference to additional judges for the Territory of Oklahoma, written to me by Horace Speed, esq., United States attorney for that Territory.

Respectfully, yours,

W. H. H. MILLER,  
Attorney-General.

Hon. WILLIAM D. BYNUM,  
House of Representatives.

WASHINGTON, February 12, 1892.

SIR: A bill is now being considered by the Judiciary Committee of the House of Representatives, which provides for three additional judges in Oklahoma, and also embraces two provisions as to practice out there which will very much simplify and lessen expense in practice. One provision is that hereafter the United States cases shall be tried at not exceeding four places in the Territory to be selected by the court. The other is that when the court trying a case proceeds according to the rules of the common law and the United States Statutes it will not be deemed error because the procedure did not also comply with the Territorial statutes as to procedure.

The bill is right and should pass.

The need of judges is shown by these facts: Since September 1, 1890, to February 1, 1892—one year and five months, or 518 days—there were filed in the Oklahoma district courts about 3,400 cases, being at the rate of nearly seven per day, counting Sundays, or eight each working day. The courts disposed of 1,950 cases, or about nearly five for each working day, and 1,450 are yet on the dockets. This shows an exceptionally heavy docket, and great labor performed by the courts. In addition to this, the two new counties opened in September last, with 20,000 new people now in them, and the seven new counties in the Cheyenne and Arapahoe reservation of 4,500,000 acres, which the Secretary of the Interior says will be opened for settlement about April 1, into which will go not less than 50,000 people, will make a volume of new and urgent business which the already overtaxed judges can not possibly attend to.

The present law requires the judges to hold two terms of court in each county each year. This makes thirty-two terms of court besides the supreme court, which they can not possibly hold and do justice to their work.

The provision as to trying the United States cases at not exceeding four places in the territory will save much expense and delay. The law now requires that they shall be tried in each county, and that the first week of each term shall be devoted to United States business. The Federal business commonly takes much more than that, and then comes the Territorial criminal cases, and the result is a practical denial of justice in civil cases. Very few if any jury civil cases have been tried at Oklahoma City since March last, and not many at Guthrie. The result is very bad. Then, as the terms are so short, few involved criminal cases have been tried and frequently witnesses and jurors after waiting are dismissed because the term closed without the cases coming up.

The provision as to procedure save an immense amount of labor and appeals, and make definite what must otherwise remain debatable. Those courts have common law and chancery jurisdiction, and sit with the powers of circuit and district courts of the United States, as well as of the Territory. They try persons for offenses against the United States. Many of the United States statutes as to procedure when the United States is a party are mandatory; frequently it is not possible to know whether they are mandatory or not.

The Oklahoma organic act provides that the court in United States cases shall use the same procedure as in other cases. In practice, however, that is often impossible. After that act was passed the Oklahoma statutes were framed, hurriedly printed without any index, with many contradictory provisions under widely separated titles, and some Utopian rules of indefinite extent. They provided that all cases not therein specially provided for should be tried according to the rules of the common law and assimilated as near as may be to the rules of practice on the United States side of the district court; these and other sections clearly showed that the Oklahoma legislature intended the United States cases to be tried according to the established practice of Territorial courts, but the judges have already confessed their inability to bring order out of these discordant directions and have disagreed as to the statutes governing at certain points.

The bill will remove all such difficulties and save much time and expense.

Very respectfully, your obedient servant,

HORACE SPEED,  
United States Attorney, Oklahoma Territory.

The ATTORNEY-GENERAL,  
Washington, D. C.

To the Hon. William D. Bynum, chairman, Henry H. Powers, and F. C. Layton, members of the subcommittee to whom has been referred House bill No. 3983 for consideration:

Being familiar with the condition of affairs in Oklahoma as they pertain to the business of the courts of that Territory, I beg leave to submit the following statement of facts, which I think tend to show the necessity of an immediate provision by Congress for an increase in the number of judges.

In the summer of 1890 the Territory was organized, with six counties quite well settled and one county very sparsely settled, and containing altogether a population, as shown by a census then taken, of about 60,000 people.

The organic act provided for three judges, and they were appointed. They immediately divided the settled portion of the Territory into three judicial districts, and assigned a judge to each district. One of said districts contained three counties and the others each two, and each of said judges has been holding court almost continuously since the organization of the Territory. These judges are required to perform the work of United States judges, Territorial circuit courts, and the supreme court of the Territory, and in addition thereto are required to do nearly all the work that in a State is performed by justices of the peace.

The volume of business has been so great that the judges have been unable, working all the time, to dispose of over one-half of it in the seven original counties.

At the last term of court in the county in which I reside (Logan County), there were over five hundred cases on the trial docket for that term, of which number ninety-five were United States criminal cases, one hundred and five were Territorial criminal cases, and three hundred and one were civil cases.

In Oklahoma County, which adjoins Logan County, there were on the trial docket for the last term a larger number of cases than in Logan County, and among the number were one hundred and thirty-five United States criminal cases and ninety-four Territorial criminal cases. And in every county in the Territory the amount of litigation is equally great in proportion to the population.

Last September two new and large counties were opened to settlement and organized, and in those counties no terms of court have yet been held, on account of the judges being unable to give them the time for a term of court, and yet their jails are filled with prisoners waiting for trial (and this is true of the older counties as well), and the expense of keeping them in jail is a burden that the taxpayers are unable to bear. In addition to the two counties last mentioned, six new counties were organized and thrown open to settlement in April, 1892, and in one day 60,000 people are said to have become settlers in those six counties, and all of those new counties will immediately need the benefit of courts.

The area of the settled portion of Oklahoma, not counting Beaver County (which was very sparsely settled), when the three judges were appointed was about 2,500 square miles. The area of the settled portion at this time, not counting Beaver County, is 25,350 square miles, and including Beaver County is 32,000 square miles, to which it is expected will soon be added, by the opening of the Cherokee Strip and the Wichita country, about 14,000 additional square miles, which will make an aggregate of 46,000 square miles of settled territory.

We had, when the three judges were appointed, a population of 60,000; we now have a population of 150,000, not counting Indians, of which there are several thousand. We confidently expect before next spring to have a population of 500,000.

Experience has shown that our present court facilities were not adequate for our original 60,000 people. How, then, can they be expected to be sufficient for our present population of 150,000, to say nothing of the immediate future? Experience has also shown that in the original six counties, which have now been settled for over three years, that the volume of business is not lessening; on the other hand the number of new cases is constantly increasing, and it may be safely calculated that the present condition of business will continue until our Territory becomes a State, which we hope will be within the next three years.

We have asked in the bill which you have under consideration for three additional judges. I believe that I can say with perfect safety that for the next three years a dozen judges will not be able to do the work that will be before the courts of our Territory. The passage of the bill, while it will not give us all the relief we need, will yet be very beneficial to us, and I therefore hope that it will receive favorable consideration at your hands.

Very respectfully,

CHAS. BROWN,  
Attorney-General of Oklahoma.