

THE SHAPING OF OIL AND GAS LAW BY ACADEMICIANS

I

I bring you four academicians.

He was born in Kingman, Indiana in 1888 and died in 1963. He took his Baccalaureate Degree and his first law degree from the University of Indiana in 1911 and a J.D. Degree from Yale in 1912. He briefly practiced law and then became a Professor of Law at the Universities of Florida and Kentucky and in 1920, joined the faculty of law at the University of Illinois. He was a member of the Order of the Coif, an advisor to the Restatement of the Law of Real Property and published articles dealing with oil and gas in many legal periodicals. He was the author of one of the first major treatises on the law of oil and gas. I am speaking of W. L. Summers, author of *Summers on Oil and Gas*.

II

He was born in Denison, Texas in 1901 and died in 1987. He took his Baccalaureate Degree in 1921 and his Law Degree in 1923 from the University of Texas and did post-graduate work at both Columbia and Yale in law. He practiced law for two years and then became Professor of Law at the University of Texas. He was a member of Phi Beta Kappa, the Order of the Coif, was the editor of a

case book on oil and gas and published numerous articles in the legal periodicals. I am speaking of A. W. Walker, Jr., Professor of Law at the University of Texas. He was at Texas for 25 years and in 1948, resigned from the faculty to re-enter the practice of law with the Dallas-based Jackson, Walker law firm.

III

He was born in 1913 and died in 1995. He took his Baccalaureate Degree and his Law Degree from Baylor University and his LL.M. Degree from Harvard. He practiced law briefly before becoming Professor of Law at the University of Wyoming and thereafter at the University of Oklahoma. While at the University of Oklahoma, he was also from 1958 until 1965, a partner in the McAfee, Taft, law firm in Oklahoma City. He was Dean of the Law School at the University of Oklahoma for five years. He was widely published in the legal periodicals before authoring his treatise and was editor of a leading case book on oil and gas. I am speaking of Professor Eugene O. Kuntz, the author of *Kuntz on Oil and Gas*, which had its beginning as a revision of *Thornton on Oil and Gas* first published in 1904.

IV

He was born in 1915 and is still active. He took his Baccalaureate Degree from Washington University in St. Louis in 1937 and his Law Degree from

Columbia University in 1940. He was admitted to practice law in New York and practiced there briefly following which he became a Professor of Law at the University of Texas from 1946 to 1951, a Professor of Law at Columbia University from 1951 until 1963, and a Professor of Law at Stanford University from 1963 until 1998, when he became an Emeritus Professor of Law. He was editor of a leading case book on oil and gas and an author of a treatise on oil and gas. I am speaking of Professor Howard R. Williams, Emeritus Professor of Law at Stanford University and an author of Williams and Meyers on Oil and Gas.

So there they are: Summers, Walker, Kuntz and Williams.

V

The subject which I wish to speak about for a few minutes has to do with prominent academicians. I do not purport to be a legal historian. But I do know that the law of oil and gas is relatively young. If the common law had its origin in 1066 when William the Conqueror crossed the English Channel, we know that many branches of the law which we continue to study today, had their origins hundreds of years ago. I refer to subjects like Real Property, Equity, Contracts, Torts and Remedies.

It is said by some that the drilling of an oil well in 1859 in Titusville, Pennsylvania, by Colonel Drake, “ushered in the Petroleum Era.” It is clear that the underlying principles of oil and gas law were laid down, defined and

developed in the early and middle part of the 1900's. By that I mean, it was in that time frame that the legal concepts relating to the rule of capture, theories of mineral ownership, conveyancing of minerals and royalty, the nature of the oil and gas lease and the implied covenants were evolving and being addressed by the courts. In 1928, Professor A. W. Walker put it this way:

“[o]il and gas was a specie of property peculiar unto itself, . . . As a result of this realization, there is in the process of evolution today a distinct body of rules of law which may properly be designated the law of oil and gas.” 6 Tex. Law Rev. 125 (1948).

I have identified four academicians who played a very, very significant role in shaping the law of oil and gas in the time frame mentioned. I clearly do not mean to say that there were not others who also made great contributions in shaping that law. Look at Professors Kulp, Merrill, Maxwell, Meyers, Sullivan, Masterson, Flitty, Huie, Woodward and Hemingway. Their footprints are also clear. But Summers, Walker, Williams and Kuntz have had a truly great impact on shaping the law.

VI

I have found that:

- In the 1930 to 1960 time frame, Professor Summers, in his Treatise and in his articles has been cited by the state and federal courts 470 times.
- In the 1960 - 1980 time frame, the Williams and Meyers Treatise has been cited 167 times.
- In the 1950 to 1980 time frame, Professor Kuntz, in his Treatise and periodicals has been cited 83 times and *Thornton on Oil and Gas*, which Professor Kuntz supplemented and revised has been cited 91 times in that time frame. At his death in 1995, it was reported by Professor Owen Anderson that he had been cited nearly 250 times, 3 of which were by the Supreme Court of the United States.¹
- The December 1948 issue of the Texas Law Review was dedicated to Professor Walker when he resigned from the faculty. Dean McCormick at Texas directed attention in that issue to numerous recent decisions by the Texas Courts which had cited Walker's scholarly writings.² Later when Walker had an argument before the Texas Supreme Court in an oil and gas case, it was noted that seven

¹ In Memoriam: Eugene O. Kuntz, 48 Okla. L. Rev. xi (1995)

² A. W. Walker, Jr., 27 Tex. L. Rev. 137, 138 (1948)

of the nine justices on the Court had taken oil and gas from Walker when he was on the faculty.³

VII

All of these academicians were in a unique position to shape the evolution of the law of oil and gas. They were intensely involved in this branch of the law. Some were involved near the beginning of the 20th century when the principles of oil and gas law were evolving. Volume I of the Summers treatise was first published in 1927.

There were three ways in which these scholars made their voices heard.

First, they wrote treatises and scholarly articles which appeared in the law reviews which were widely read. They had a very receptive audience. Their audiences were the courts and the oil and gas practitioners who were struggling with the evolving theories. All were seeking help in the analysis of new theories. They found their help from these scholars.

Second, each year these teachers had perhaps 50 to 100 or more students in their classrooms. They sat at the feet of the masters year in and year out. They were a captive audience. As students, they listened and learned the principles being espoused. They were always asking: what is the law? And they were being

³ A Century of Texas Law and Lawyering, 129 Texas Lawyer Publication

told what the law was. And as professors are want to do, students were also being told what those teachers thought the law ought to be. Teachers are not a timid lot. They like to talk. They like to teach. They are imaginative and these men provided great insight to the students who sat at their feet and listened to their words in a time frame when the law was evolving.

Third, when their students graduated from law schools, they pursued careers either as oil and gas practitioners or as judges or as professors of law. Listen to Owen Anderson, who is now the Eugene Kuntz Professor in Oil and Gas and Natural Resources at the University of Oklahoma:

“Eugene Kuntz has influenced oil and gas law more than any other individual.”

Listen to what Howard Williams, Bill Maxwell and Charles Meyers had to say about A. W. Walker, Jr. in the Preface of their first case book published in 1956 - almost 50 years ago:

“It is only fair to say, however, that our work is built on the earlier work of others. In particular, our case book reflects the work of A. W. Walker, Jr. now of the Dallas, Texas Bar, but for 25 years, Professor of Law at the University of Texas. His splendid writings in the field are frequently cited and quoted in this collection.

When Professor Walker left the law school in 1948, his students wrote this tribute in the law review.

“Law students like to think of Judge Walker as a lawyers’ lawyer. . . . His loyalty to the interests of the students was never more evident than in his decision this past summer to abandon a vacation to offer once more his oil and gas course in response to a petition of several hundred students.”

VIII

I have been with my law firm, Gable & Gotwals, in Tulsa for 17 years. But I have nibbled around the edges of legal education, so I know a bit about the academic world. I was on the faculty of the Short Course in oil and gas law for about 15 years sponsored by the Southwestern Legal Foundation along with Professor Maxwell and Thomas Lynch. I was Dean for a short time at the University of Tulsa. I have been published now and again in the legal periodicals.

It has also been my great good fortune to know Gene Kuntz and Howard Williams - fairly well. I have visited Gene Kuntz’s classes and been exposed to his superb teaching abilities. I worked with him in the Bar when he was Dean of the Law School. I worked with him not too long before his death on a brief concerning a tough oil and gas question which we had before the courts. He was a wonderful man.

Almost 50 years ago, I visited and conferred with Howard Williams in New York City when he was teaching oil and gas law at Columbia University; I used his case book when I taught oil and gas law as an Adjunct Professor at the

University of Tulsa and sat on an arbitration panel in Melbourne, Australia in a case involving an overriding royalty interest where Howard was an expert witness. It was also my great good fortune to talk to him on the telephone last week for over ½ hour. I reached him at his office at the Stanford University Law School - still thinking, still pondering and still analyzing at the age of 86. What a superb scholar.

I did not know A. W. Walker but I met him when he was Chairman of the Natural Resource Law Section of the American Bar Association.

I did not know Professor Summers.

I know it may be crossing the minds of some - - - but it is not true - - - I did not meet William the Conqueror when he crossed the English Channel.

What great impact all of these scholars had. Today their work is being carried forth by other top of the line scholars in case books and in treatises. The Kuntz contribution is being carried forward by Professors Lowe, Anderson, Smith and Pierce; and the Williams contribution is being carried forward by Professor Patrick Martin, the Chairman of the International Oil and Gas Education Center of the Southwestern Legal Foundation and Professors Kramer and Maxwell.

In the academic world, the law of oil and gas continues to be in excellent hands.

IX

When John Chipman Gray died in 1915, he was remembered by a series of lectures which were privately published. Gray was a future interests scholar and wrote a book entitled, *The Rule Against Perpetuities* and another book entitled *Restraints on Alienation*. He was first and foremost a scholar and a teacher at the Harvard Law School - - but he was also a practitioner and was a founder of the Boston Law firm, Ropes and Gray, which continues to be an outstanding law firm in Boston. One of the lecturers in speaking about Gray said, “he who controls the fountain determines the color of the stream.” The same could be said about any of these four scholars. Those of us who have been lucky enough to have learned from their teaching and writing are the beneficiaries.

February 16, 2001 Joseph W. Morris