OKLAHOMA: THE NEW AFRICA

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I wish to offer posthumous thanks to my Uncle Jimmy (Stewart), who kindly introduced me to Fanny and Ralph Ellison, his childhood and lifelong friend. This paper is, itself, part of my belated thanks to Mr. Ellison in his own right.

I grew up largely in Oklahoma among the descendants of Black cowboys, Black Indians, cavalrymen, and deputy marshals, who formed the background for Ellison's description of his roots. This resilient spirit of the Black towns was rarely described in detail by Ellison. Instead, he spoke generally of the frontier and averred that its ethos had surely shaped him.1 Recently, though, I have come to appreciate that many people have no frame of reference through which to interpret the vague explanation of "frontier" and its impact on consciousness.

Further, Ellison recounted fondly the classic, broad-ranging, high-quality public school education he received in pre-

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1. Ellison fleshes out this otherwise bare-bones description of the frontier in part of his essay on Jimmy Rushing, the famous master of the blues-jazz tradition. Ellison describes the special quality of Rushing's voice as

a lyricism which is not of the Deep South, but of the Southwest: a romanticism native to the frontier, imposed upon the violent rawness of a part of the nation which only thirteen years before Rushing's birth was still Indian territory. Thus there is an optimism in it which echoes the spirit of those Negroes who, like Rushing's father, had come to Oklahoma in search of a more human way of life.

RALPH ELLISON, Remembering Jimmy, in SHADOW AND ACT 245 (Quality Paperback Book Club 1994) (1964) [hereinafter SHADOW].
desegregation Oklahoma City. He attributed much of his later success to this experience. My elementary education began in the Oklahoma City school systems described by Ellison. I had also taken this legacy for granted. Not until I embarked upon a serious scholarly study of American social history did I begin to see the larger themes involved—and how non-mainstream these experiences have been.

This essay offers the reader some connections between Black Oklahoma’s experience and the larger Afro-American consciousness. I shall identify and describe landmarks on this intellectual journey, using as guides some illuminating and heretofore unexamined case law involving the New Africa.

INTRODUCTION

Ralph Ellison’s complex perspective on American culture grows from deep roots in the land known to most citizens as the State of Oklahoma, to aficionados of the West as Oklahoma Territory, to students of Native American sovereignty as Indian Territory—and to escaped slaves, freedmen, and Buffalo Soldiers as the New Africa. It has taken the better

2. See RALPH ELLISON, GOING TO THE TERRITORY (1986) [hereinafter TERRITORY]. In this collection of essays, Ellison describes the lasting influence of educators such as Dr. Inman Page, the first Black graduate of Brown University, and Professor Johnson Chestnut Whittaker, the second Black cadet at West Point. These gentlemen set the standard for public school education in the Oklahoma City schools, which served generations of Black families. Dr. Page later served as president of what is now Langston University, an historically Black college. RALPH ELLISON, Portrait of Inman Page: A Dedication Speech, in TERRITORY, supra, at 113, 113-19 (a speech delivered at Brown University in 1979); RALPH ELLISON, Going to the Territory, in TERRITORY, supra, at 120-44 (an address delivered at Brown University in 1979).

3. A letter written by A.G. Belton, a Black man from the South, to the American Colonization Society explained the meaning of Oklahoma and Africa for Blacks during Reconstruction:

We as a people are oppressed and disfranchised we are still working hard and our rights taken from us times are hard and getting harder every year we as a people believe that Africa is the place but to get from under bondage we are thinking of Oklahoma as this is our nearest place of safety.

part of a lifetime for me to appreciate how much this experience differs from the mainstream. The widespread independent and self-governing Black settlements of Oklahoma created a confident individualism that fell outside the mean of racial stereotyping. Ellison’s life, work, and world view reflect that heritage.

ELLISON AND THE REJECTION OF VICTIM STATUS

A recent biographical essay on Ellison echoes a familiar sense of frustration with this intellectual who was admired for his lyricism, but chastised for his unwillingness to perceive Afro-Americans primarily as victims of racism. In *Heroism & the Black Intellectual: Ralph Ellison, Politics and Afro-American Intellectual Life*, Jerry Gafio Watts engages in a less vitriolic, much more balanced discussion of Ellison and his struggle for artistic individualism than that which circulated among earlier generations of Black and leftist intellectuals. Watts recognizes Ellison’s

The idea of colonizing freedmen was not new and had also been promoted by Presidents Abraham Lincoln and Andrew Johnson. What lent a sense of freshness to this concept was the possibility of opening lands heretofore reserved for Native Americans to African Americans. Indeed, one of the most vigorous promoters of Oklahoma as the New Africa was Edwin P. McCabe (founder of Langston City, Oklahoma, and former State Auditor of Kansas) and his supporters who sought to make Oklahoma a Black state. This was reported widely in the era, including the *New York Times*, *The Kansas City Evening News*, and the *St. Louis Globe Democrat*. See BLACK HISTORY IN OKLAHOMA: A RESOURCE BOOK 150-60 (Kay M. Teall ed., 1971) [hereinafter BLACK HISTORY].

4. Some twenty-nine Black settlements were established in what became the state of Oklahoma. Currently eight of these towns remain. The State Department of Tourism has proudly published a map displaying the Black towns of Oklahoma. See infra app. Some excellent descriptions of these settlements can be found in KATZ, THE BLACK WEST, supra note 3, at 245-64. Arthur L. Tolson offers a description of the Reconstruction effort to create Indian Territory as a state to be settled by freedmen in ARTHUR L. TOLSON, THE BLACK OKLAHOMANS: A HISTORY, 1541-1972, at 69-89 (1974); the Black Oklahoma towns are described in id. at 90-105.


6. This debate has sputtered with varying degrees of fury for many decades. The most aggressive—and often personal—attacks upon Ellison came from writers of the Left, led by John O. Killens. Killens’ 1952 critique of RALPH ELLISON, INVISIBLE MAN (1952) shrilly condemned the bestseller for not conforming to the preferred values of social realism. “The Negro people need Ralph Ellison’s *Invisible Man* like we need a hole in the head or a stab in the back. It is a vicious distortion of Negro life.” HAROLD CRUSE, THE CRISIS OF THE NEGRO INTELLECTUAL 235 (1971) (quoting John O. Killens). By the mid-1960s the push
“celebration of Black American creative endurance and American possibility” in the face of pervasive racism. However, Watts characterizes Ellison as living “in a fantasy of the healthy Black adaptation to an oppressive environment,” which expresses itself through the metaphor of the blues. Instead, Watts would argue that the “despair, hopelessness, and anomie experienced by large sectors of the Black urban populace today are not the by-products of the absence of an urban Black cultural agency. Instead, they are the result of a sustained, systematic denial of opportunity, both perceived and real.”

Earlier in his volume, Watts goes through the motions of acknowledging the critical importance of Ellison’s biographical background. Namely, despite segregation in Oklahoma post-statehood, “the frontier culture had offered Black Oklahomans a sense of possibility.” Ellison himself had long given public credit to the unique history of Black Oklahoma as the source of his creative and intellectual world view. Ellison did not speak of his home as existing in a mental,

and pull had hugely intensified for Black writers to conform to a political-economic standard for their subject matter. The pressure increased to participate in group conferences to work with other Black writers to articulate an evolving Black aesthetic grounded in left-wing values. Cruse offers a vibrant picture of one of the more noted Black writers’ conferences held at the New School for Social Research in 1965. Historian Herbert Aptheker and John Henrik Clarke (along with Killens, a co-founder of the Harlem Writers Project) shared a panel which condemned both Ellison and James Baldwin for being “not particularly visible in the struggles of the Negro people.” Id. at 508 (quoting Herbert Aptheker).

[T]he last ten years . . . Baldwin took flight and went to Paris hating himself and his people, literally, but did come back and enter the mainstream of the struggle. Whether he is psychologically back home completely opens maybe a question. But at least he knows the road that leads to home. But Mr. Ralph Ellison seems to have been going further away from home in that sense.

Id. (quoting John Henrik Clarke).

7. WATTS, supra note 5, at 108.
8. Id.
9. Id. (citation omitted).
10. Id. at 33.
11. Id. (citation omitted).
12. See, for example, Ellison’s discussion with Richard G. Stern:

STERN: Were you conscious at this time of peculiar limitations upon your freedom of action, perhaps even your freedom of feeling?

ELLISON: Well, now, remember that this was in Oklahoma, which is a border
psychological bubble insulated from economic realities. Ellison remembered Black Oklahoma’s exterior, material environment as nurturing an interior, psychological hardiness.

Did institutional racism exist in Ellison’s Oklahoma? Surely. The fluid society of pre-statehood and early statehood eventually was replaced by Jim Crow laws. Blacks, no matter how well educated, often could not rise to state and as the forty-sixth state was one of the last of our territories to achieve statehood. Although opened to American settlers in 1889, at the time of my birth it had been a state only seven years. Thus it had no tradition of slavery, and while it was segregated, relationships between the races were more fluid and thus more human than in the old slave states. My parents, like most of the other Negroes, had come to the new state looking for a broader freedom and had never stopped pushing against the barriers. Having arrived at the same time that most of the whites had, they felt that the restriction of Negro freedom was imposed unjustly through the force of numbers and that they had the right and obligation to fight against it. This was all to the good. It made for a tradition of aggressiveness and it gave us a group social goal which was not as limited as that imposed by the old slave states. I recognized limitations, yes; but I thought these limitations were unjust and I felt no innate sense of inferiority which would keep me from getting those things I desired out of life. There were those who stood in the way but you just had to keep moving toward whatever you wanted.

RALPH ELLISON, That Same Pain, That Same Pleasure: An Interview, in SHADOW, supra note 1, at 3, 5-6.

13. Later in the same interview with Stern, Ellison discusses the civil rights struggle through his own childhood experience: “At that time my mother was being thrown into jail every other day for violating a zoning ordinance by moving into a building in a section where Governor Alfalfa Bill Murray had decided Negroes shouldn’t live. . . .” Id. at 13. In the essay, Remembering Jimmy, Ellison describes “Deep Deuce” and the bittersweet joy of Eastside Oklahoma City. See ELLISON, Remembering Jimmy, supra note 1, at 241. My parents’ medical office and my earliest memories center around this section of Oklahoma City. I confess that Ellison’s description resonates with my family’s experience, including the passionate loyalty for Jimmy Rushing and his music.

Everyone on Oklahoma City’s “East Side” knew that sweet, high-floating sound. “Deep Second” was our fond nickname for the block in which Rushing worked and lived, and where most Negro business and entertainment were found, and before he went to cheer a wider world his voice evoked the festive spirit of the place. Indeed, he was the natural herald of its blues-romance, his song the singing essence of its joy. For Jimmy Rushing was not simply a local entertainer, he expressed a value, an attitude about the world for which our lives afforded no other definition. We had a Negro church and a segregated school, a few lodges and fraternal organizations, and beyond these there was all the great white world. We were pushed off to what seemed to be the least desirable
stations befitting their preparation. And the Ku Klux Klan became entrenched. How, then, could Ellison rationally characterize his

side of the city (but which some years later was found to contain one of the state’s richest pools of oil), and our system of justice was based upon Texas law, yet there was an optimism within the Negro community and a sense of possibility which, despite our awareness of limitation (dramatized so brutally in the Tulsa riot of 1921), transcended all of this; and it was this rock-bottom sense of reality, coupled with our sense of the possibility of rising above it, which sounded in Rushing’s voice.

Id. at 241-42.

14. In his essay Perspective of Literature, Ellison offers a touching example of the injustices of life:

When I was a young boy I often went out to the Oklahoma State Capitol, where I assisted Mr. J.D. Randolph with his duties as custodian of the State Law Library. I was about eleven years old at the time, quite impressionable, and very, very curious about the mysterious legal goings-on of the legislators. All the more so because while I was never able to observe the legislature in session, it was not at all unusual for me to look up from pushing a broom or dusting a desk to see one of the legislators dash into the library to ask Jeff—Mr. Randolph was always addressed by his first name—his opinion regarding some point of law. In fact, I soon came to look forward to such moments because I was amazed by the frequency with which Mr. Randolph managed to come up with satisfactory answers, even without consulting the heavy volumes which ranged the walls.

I wasn’t surprised that Mr. Randolph was a janitor instead of a lawyer or legislator; Oklahoma was segregated at the time and Afro-Americans were strictly limited in their freedom to participate in the process of government. We could obey or break laws, but not make or interpret them. In view of this, I was amazed that Mr. Randolph had come to know so much about the subject. This was a tantalizing mystery, but the fact that white men of power would show no shame in exploiting the knowledge of one far beneath them in status aroused my sense of irony. That “after all” was simply another example of white folks taking advantage of Black folks.

RALPH ELLISON, Perspective of Literature, in TERRITORY, supra note 2, at 321, 321-22 [hereinafter ELLISON, Perspective of Literature]. Decades before the scenarios described by Ellison, Mr. Randolph’s impressive education had been applied in a different arena. He had been the first teacher of Oklahoma City’s original public school for Black students. See BLACK HISTORY, supra note 3, at 185-86.

15. As a youth Ellison perceived lynching as a pervasive and ugly reality which the eloquent editorials of Roscoe Dungee would not bring to a halt. Ellison had little faith in the law. “It was to be obeyed in everyday affairs, but in instances of extreme pressure, it was to be defied, even at the cost of one’s life.” ELLISON, Perspective of Literature, supra note 14, at 323. Ellison’s self-confessed cynicism about the law stemmed from the racial bias and brutality that suffused the legal system in Oklahoma. As he recounts:
experience as positive and confidence-building?

The real answer lies in a spirit of resistance that Ellison does not emphasize—for it concerns not the music, literature, and art which formed the core of his life. Blacks in Oklahoma, like almost all Oklahomans—male or female, young or old—typically had experience with firearms. They were accustomed to protecting themselves, their families, and their properties. This fighting spirit and experience did not unfailingly prevent the scourge of lynching, but it lent a greater sense of security—or at least selfhood—than that enjoyed by Afro-Americans elsewhere in the country. Some Black Oklahomans dedicated their efforts not only to self-protection, but

“Alfalfa Bill” Murray, who took great pride in his knowledge of Roman constitutions, was the governor of the state and a very loudmouthed white supremacist. And one occupant of the local bench, a certain Judge Estes, was famous for a quip made from the bench, to the effect that a Model T Ford full of Negroes ranging at large on the streets of the city was a more devastating piece of bad luck than having one’s path crossed by a squad of thirteen howling jet-Black tomcats. . . . With such opinions issuing from the bench, I felt little inspired to trust the fairness of judges.

*Id.* at 323-24.

16. Consider, for example, excerpts from newspapers of the time referred to by Ellison in his reminiscences:

The colored people of Bryan County have organized with a determination to protect their lives and property against the ravages of the lawless whites of that county who are bent on driving the negroes away, and it is now admitted that serious trouble will follow any attempt on the part of the whites to carry out their threat.

The word has been “sent down the line” and the negroes all over the county are preparing for the worst. They are no longer depending on the law to protect them but will protect themselves.


However, a dozen years later, the KKK had essentially taken over the state. The *New York Times* reported that, in September 1923, Oklahoma Governor J.C. Walton had declared martial law in order to oust the Klan from its entrenched positions within the government, and in particular to stop the “whipping parties” led by KKK members protected by local police. *See id.* at 211-14. Unfortunately for Governor Walton, the overwhelming majority of National Guardsmen were, themselves, Klansmen. Pushed by the Grand Dragon of the KKK to call a special session, the Legislature in October passed a resolution removing Governor Walton from office. Oklahoma thus joined the ranks of Texas and Arkansas as Southwestern states recognized nationally as dominated by the KKK. *See id.* For a scholarly account of this episode, see CHARLES C. ALEXANDER, *The Ku Klux Klan in the Southwest* 148-58 (1995).
but to community protection. The Buffalo Soldiers stationed at Forts Sill, Reno, and Supply were the cavalry assigned to Indian and Oklahoma Territories through early statehood. U.S. deputy marshals included Afro-Americans in their numbers.¹⁷ And the legendary self-reliance of the cowboy and homesteader is so deeply ingrained as an icon of Americana that one need only point out that a substantial number of these cowboys and homesteaders were Black.¹⁸ During this same time period, Black Oklahomans also pursued other recourses, including legislative, political, and judicial.

Watts’ biographical essay does not linger on whether Ellison’s explanations for rejecting victimhood and embracing individualism could have some foundation in reality.¹⁹ Almost as soon as the author presents Ellison’s exegesis, he moves on to negate summarily any descriptions of Black Oklahoma that might support Ellison’s perception. A perusal of Watts’ footnotes and bibliography indicates that he reviewed several historical treatises on the subject. Unfortunately, Watts’ skepticism may have limited his examination of Ellison’s Oklahoma roots.

Seemingly, Watts and others have not been willing to credit fully the historiography of Black Oklahomans, such as Arthur Tolson and John Hope Franklin, despite their renown as historians. Watts appeared understandably

¹⁷. See Katz, The Black West, supra note 3, at 245-48 (referring specifically to the Buffalo Soldiers in Oklahoma). See id. at 199-251 (referring more generally to the Black infantry and cavalry in the West). The photographs of Black peace officers are eloquent. Id. at 256, 264. See also William Loren Katz, Black Indians: A Hidden Heritage 76-88, 154-68 (Aladdin Paperbacks 1997) (1986) [hereinafter Katz, Black Indians] (offering more detailed, extensive information).

¹⁸. Katz offers the most comprehensive examination of the Black cowboy, the homesteader, and the pioneer woman. Katz, The Black West, supra note 3, at 143-66 (ch. 6), 168-98 (ch. 7), and 281-304 (ch. 11).

¹⁹. Ellison’s own expression of this dynamic is, characteristically, far from simplistic. In 1976 he described race as

a major cause, form, and symbol of the American hierarchical psychosis. As the unwilling and unjust personification of that psychosis and its major victim, the Afro-American took on the complex symbolism of social health and social sickness. He became the raw labor force, the victim of social degradation, and symbolic of America’s hope for future perfection. He was to be viewed, at least by many whites, as both cause and cure of our social malaise. Ellison, Perspective of Literature, supra note 14, at 336. Thus, we see that Ellison acknowledges the reality that race has its victims; but he declines to elect victimhood as a continuing status.
taken by the Tulsa race riot of 1921. Tulsa had, at the time of the writing of *Heroism & the Black Intellectual*, experienced a major resurgence of political and historical interest. For many, though, the real story of Tulsa lay not so much in the Greenwood District’s “Black Wall Street” being leveled in a massive pogrom, but in the development of this vital business economy and in the armed resistance of Greenwood residents. It is a matter of emphasis and focus. Similarly, Ellison attributed Black Oklahomans’ mien to their different history with regard to slavery, namely, that there was “no tradition of slavery.” Watts points out that Ellison was wrong: Cherokees held slaves. However, the story is far more intricate. Yes, Cherokees held slaves—under a system significantly different than that of European-American slaveholders. There were also Cherokee freedmen. Creeks and Seminoles had long integrated large numbers of escaped slaves into their ranks. Indeed, one of the few Civil War battles fought in Oklahoma was an engagement between the Creek leader Opothle Yahola, called “Old Gouge,” and Confederate troops as the Creeks refused to hand over the Blacks living among them.

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20. An excellent and highly readable background can be found in HANNIBAL B. JOHNSON, BLACK WALL STREET: FROM RIOT TO RENAISSANCE IN TULSA’S HISTORIC GREENWOOD DISTRICT (1998). One will find a progressive focus in Johnson’s work which harmonizes with that of Tolson, Franklin, and Ellison.

21. See SHADOW, supra note 1, at 5-6 (referring to Ellison’s interview at supra note 12).

22. WATTS, supra note 5, at 127 n.32.

23. Both before and after the Civil War the general consensus was that whatever strains existed between American Indians and the Africans in their midst, they were mild compared with those that existed in European-American settlements. As Katz summarizes: “Among Creeks, Seminoles, and Cherokees, Black people made economic strides they could rarely duplicate in U.S. society. Black Cherokees owned barbershops, blacksmith shops, general stores, and restaurants. Some had become printers, ferry-boat operators, cotton-gin managers, teachers, and postmasters.” KATZ, BLACK INDIANS, supra note 17, at 145. Black Indians among the Choctaws and Chickasaws, however, “suffered.” Id.

24. Id.

25. See ANGIE DEBO, A HISTORY OF THE INDIANS OF THE UNITED STATES 173-76 (1970). Some of the most intriguing scholarship on this subject can be found in KATZ, BLACK INDIANS, supra note 17. THE WPA OKLAHOMA SLAVE NARRATIVES (T. Lindsay Baker & Julie P. Baker eds., 1996) offers many oral histories of the lives of Black Indians. See, e.g., id. (describing Phoebe Banks (Creek), id. at 30-34, and her family’s trek seeking safety in Kansas with Chief Opothle Yahola and the group’s battle with Native Americans fighting for the Confederacy; Lucinda Davis (Creek), id. at 107-17; Betty Robertson (Cherokee), id. at 355-358; and Sarah Wilson (Cherokee), id. at 492-99).
Thus, the overriding sensibility of the Territory was a place free from the long-standing infrastructure of slavery as experienced in the South. Nor did the Oklahoma experience parallel that of the border states where Free Soilers and Pro-Slavery factions had warred in the decade preceding the Civil War. Thus, freedmen found Indian Territory even more hospitable toward settlement than the “Exodusters” had found in Kansas. Indeed, Indian Territory became a major focus of Black colonization after white backlash made Kansas often unsuitable.

This essay does not seek to recount in full the intricate and exciting history of how some twenty-nine Black towns became established in the Territory. Instead, I shall attempt to flesh out the images of Oklahoma as the New Africa—a domestic version of the back-to-Africa solution espoused by groups as diverse as the Colonization Council (encouraging collective pioneering in the territories and Liberia) to the better-remembered Universal Negro Improvement Association of Marcus Garvey. I shall highlight linkages between particular themes of the Ellisonian vision of America and their basis in Oklahoma’s legal history, commencing with the contrast between the image of the Afro-American as a victim of racism and the Afro-American as a creative, resilient individual.

THE AFRO-AMERICAN AS HISTORICAL VICTIM

The perceived impact of slavery upon Africans in the diaspora has formed the stuff of socio-political debate for more than a century. Each generation develops its own articulation, with arguments posited and countered passionately. White historiography in the nineteenth and early twentieth centuries largely embraced the concept that slavery was a relatively benign albeit “peculiar institution” where slaveholders cared for and protected their inferior human chattel. During this same period, Black

27. Id. at 82-95.
historiography and Marxist scholarship unabashedly catalogued and denounced the brutality of the slave system, the tradition of slave revolts, and Black resistance under Reconstruction.\textsuperscript{30} By the 1960s this academic debate had entered the political arena full force, through the work of Daniel P. Moynihan, which became a foundation of the Great Society programs.\textsuperscript{31} Moynihan and others had argued that the brutality of slavery had shattered family ties, leaving the Afro-American family in shambles.\textsuperscript{32} Indeed, Moynihan described the Black family as pathological, in need of major intervention by the federal government.\textsuperscript{33}

In the 1970s, groundbreaking research into original source documents revised this image once again. Herbert Gutman's study of Black family life vitiated the Moynihan image of pathology.\textsuperscript{34} Eugene Genovese provided a holistic approach to the economic politics of slavery, showing that slaves were surely subject to a system of oppression, but typically did not become downtrodden.\textsuperscript{35} The anthropological and economic evidence suggested to Gutman and Genovese that despite the admitted cruelties of the slave system as a whole, it did not manage wholly to destroy Africans in the diaspora. The work of these historians reinforced the image not of Negro docility and victimization, but rather of resistance and resilience.

Paradoxically, an image of Black resilience, assertiveness—indeed, aggression—did not fit the image to which so many Americans of either race had become accustomed. Neither did ambition, discipline, and education figure into the popular conception of Blacks in Reconstruction or later. Thus, Ellison's recounting of Black Oklahoma City, as set forth in his essays \textit{Going to the Territory}\textsuperscript{36} and \textit{Portrait of Inman Page: A Dedication}

\textbf{CRITIQUE OF TIME ON THE CROSS} (1975) (presenting a balanced view).


31. One of the most incisive critiques of this interplay between historiography, victimhood, and political impact can be found in SAMUEL F. YETTE, \textit{THE CHOICE: THE ISSUE OF BLACK SURVIVAL IN AMERICA} 82-89 (Cottage Books 1996) (1971).

32. \textit{Id.}

33. \textit{Id.}


36. ELLISON, \textit{Going to the Territory, supra} note 2, at 120.
Speech,\textsuperscript{37} found little resonance outside of his home state. Watts’ recent expression of this skepticism may offer an illustration.\textsuperscript{38} However, consider the following ideas: Black pioneers valued a broad range of Western literature, music, and dance; they institutionalized this educational standard through the endeavors of Afro-American teachers schooled at West Point and Brown University; and Black Oklahomans used this discipline and education to produce not only blues and jazz but thriving businesses and professions. These ideas do not comport with an image of Afro-Americans as perpetual victims.

Watts does not attempt to simplify the issue of victim status. He presents an intricate discourse on the conundrum it creates for the Black intellectual. For Watts, victim status is a dynamic, fluid “dialectical relationship.”\textsuperscript{39} It is a metaphor for “an ideological discourse that mediates the political, economic, and psychological relationships between oppressed and oppressor.”\textsuperscript{40} Watts notes that “[i]t is not an empirical description of the machinations of an exploitative material relationship.”\textsuperscript{41} Externalities do not tell the whole story.

Moreover, even if material benefits or detriments might indicate a victim-victimizer relationship, Watts argues:

\begin{quote}
\textsl{[A]ll subjugated people in the United States do not necessarily occupy a victim status. \ldots [T]he victim status can only arise when the victimized seek recognition of their victimization from the victimizer and the victimizer grants such recognition. But not all who are victimized seek such recognition, nor are all who seek recognition granted it.}\textsuperscript{42}
\end{quote}

Watts’ analysis of victim status is unusually keen and subtle. It is hard to reconcile such careful and unbiased analysis with the abrupt characterization of Ellison’s world view as mere fantasy. Could this dismissal be grounded in a belief that one cannot credit the emotional memories of Ellison? Could those memories be nothing more than the

\textsuperscript{37} ELLISON, Portrait of Inman Page, supra note 2, at 113.
\textsuperscript{38} WATTS, supra note 5.
\textsuperscript{39} \textit{Id}. at 18.
\textsuperscript{40} \textit{Id}. at 17-18.
\textsuperscript{41} \textit{Id}. at 18.
\textsuperscript{42} \textit{Id}.
nostalgia almost all of us hold for our childhoods—critically unexamined, benignly embellished? The answer may largely depend upon how one understands the dynamics of race and victimhood.

**IS ELLISON’S BLACK OKLAHOMA A FANTASY?**

John McWhorter recently offered a profound, perceptive analysis of contemporary Afro-Americana and its “Cult of Victimology.”\(^{43}\) This professor of linguistics posits that Afro-Americans have experienced “a transformation of victimhood from a problem to be solved into an identity in itself.”\(^{44}\) McWhorter describes this as a mental state where “remnants of discrimination hold an obsessive, indignant fascination that allows only passing acknowledgment of any signs of progress.”\(^{45}\) Objective statistical evidence demonstrates that more Black Americans are better off in terms of social and economic class than ever before.\(^{46}\) Yet, the cult of victimization as described by McWhorter requires little or no acknowledgment of progress. If a member of the Black middle class has achieved such success, victimology requires that person to decry that success as merely illusory—claiming that the external trappings of success veil an internal reality of racial oppression which supersedes everything else.

Two best-selling authors who have articulated such a perspective include Ellis Cose giving voice to the rage of the Black middle class,\(^{47}\) and Jill Nelson describing racism and sexism among the upper ranks of print journalism.\(^{48}\) A quote from Cose articulates the “special burden” of being born Black in America, embraced by this school of thought. Cose unabashedly equates one’s birth as an Afro-American with being “uniquely branded for failure.”\(^{49}\) How does such failure become predestined? Because this Black person has grown up “constantly being told, in the schools and in the streets, that Blacks are not as bright as whites and are not

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44. *Id.*
45. *Id.*
46. *Id.* at 6-7.
49. **Cose, supra** note 47, at 163.
academically inclined.\textsuperscript{50} Cose believes that it is not even appropriate to compare the progress of Afro-Americans with Euro-Americans. If such a comparison were to work, Cose argues it would be necessary to find a group of whites "who had been constantly discouraged, since they were toddlers, from trying to develop anything remotely resembling an intellect, or a group of Blacks who had always been told that they were the best and brightest in the world, and never doubted it."\textsuperscript{51}

It may well be that Cose's comparison group of Black folk comes from Oklahoma before the days of desegregation. Until then, Ralph Ellison's experience as described in his collection of essays, Going to the Territory, had been repeated by generations of youth.\textsuperscript{52} They came from self-sufficient rural Black towns and from Black urban schools dedicated to excellence irrespective of funding—or lack thereof. Even as I write these words I recognize that as a product of this broad network of support my comments may be nearly as suspect as Ellison's. Perhaps the reader believes that I, too, share in the purported "fantasy" of confidence and competence in the face of active institutional racism.

Let me, then, turn to a source that surely could never be discounted as being biased in favor of Black Oklahomans: the Oklahoma judicial system.

\textsuperscript{50} Id.

\textsuperscript{51} Id. Assuming that Cose's offered paradigm was not mere rhetorical flourish, I would suggest that such a group of whites indeed exists: the white poor. This low rung on the economic ladder has widely experienced the persistent discouragement and anti-intellectualism Cose identifies. The interested reader may wish to refer to JIM GOAD, THE REDNECK MANIFESTO: HOW HILLBILLIES, HICKS AND WHITE TRASH BECAME AMERICA'S SCAPEGOATS (1997). Indeed, as Goad points out, the class bias against this group (the traditional peasantry) is so deeply etched that epithets which would be considered socially unacceptable if applied to any other group are placidly accepted—even celebrated—here. Consider the colloquial use of the term "white trash." It indicates the utter lack of value placed on these "disposable" lives. Id. at 37-51. For the reader curious about Goad's position on race, his thesis (presented with a sardonic wit and solid historical fact) is (1) that class is the primary, fundamental barrier in American society and (2) that those in power have traditionally manipulated the issue of race to divide the disenfranchised and assure the hegemony of the powerful. See id. at 205-30.

\textsuperscript{52} ELLISON, TERRITORY, supra note 2.
THE IMAGE OF THE BLACK FRONTIER IN OKLAHOMA COURT OPINIONS

A review of cases involving Black settlements and their residents reveals a most intriguing picture. By contrasting extrajudicial descriptions of that era with court cases from that time, we can add another dimension. The resulting depth lends a complexity worthy of the Ellisonian vision.

The View from Boosters

Booker T. Washington extolled Oklahoma's Black towns in general and Boley in particular. Washington crowned Boley as "the youngest, the most enterprising and in many ways the most interesting of the negro towns in the United States." He did not gainsay the rough edges. Boley was, in his eyes, a "rude, bustling, western town." The Western character of this settlement and the settlers worked together to attract folks who were not "helpless and ignorant," but instead were "land-seekers and home-builders, men who have come prepared to build up the country."

At the time Washington wrote his exuberant essay, he had already had three years to observe and evaluate the first impressions gathered upon his visits to Tullahassee, Clairview, Wildcat, Grayson, Wilitka, Taft, and Boley. During the intervening years, the positive impression only grew:

In 1905, when I visited Indian Territory, Boley was little more than a name. It was started in 1903. At the present time it is a thriving town of 2,500 inhabitants, with two banks, two cotton gins, a newspaper, a hotel, and a "college," the Creek-Seminole College and Agricultural Institute.

William Katz’ arguably more objective description of Boley matches Washington’s. Its population quickly grew to 4,000 and "boasted the tallest

54. Id.
55. Id.
56. Id.
57. Id. at 327, 329.
building between Oklahoma City and Okmulgee.” 58 Perhaps even more critical in the long term was the impressive increase in literacy celebrated by the Black towns. As early as the census of 1900, Langston City had a literacy rate which exceeds that of Oklahoma’s general literacy rate today: “72 percent of its citizens could read and 70 percent could write. Among women fifteen to forty-five years old, the reading rate was 96 percent and for writing it was 95 percent.” 59

All in all, the focus on self-improvement, self-reliance, and self-government resulted in Black settlements that generally enjoyed much lower rates of crime than found elsewhere. Washington adds in his praise of Boley: “It is said that during the past two years not a single arrest has been made among the citizens.” 60 Part of this low crime rate owed to the ban on liquor sales. Part could be attributed to the ban on prostitution both formal and informal. 61

The Guthrie newspaper, published by Judge G.N. Perkins (known as the “old African lion”) 62 describes the overall prosperity of the Black settlements:

The moral, financial and political condition of the colored people of the territory is very good, the financial condition of the Oklahoma negroes is better than or equal to any state in the union taken as a whole, because nearly all own their own land.

The colored farmers are doing excellently, they have made good crops almost every year since ‘94, and have a good market for all their produce, cattle, hogs, etc. They get their farms free, which are now worth from $200.00 to $5,000.00 apiece, they raise from ten to sixty bushels of corn per acre, from one-fourth to one-

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59. Id. at 298.
60. Washington, in id. at 330.
61. Katz quotes a notice in the Boley Progress newspaper telling white men to stay away from Boley’s women, and warning Black women “against meeting white men at the trains, under any pretext.” Katz, The Black West, supra note 3, at 298. It was typical throughout the West (and elsewhere) for “white town fathers to locate houses of prostitution in Black neighborhoods.” Id. at 291.
half bales of cotton per acre, from ten to thirty bushels of wheat per acre, all other kind of produce in abundance.63

The New York Times had been so intrigued by the conflicting stories concerning the influx of Blacks to Oklahoma that in 1891 it sent a reporter to investigate. His task was to sort through the claims of both the boosters and the detractors. He focused especially on Guthrie, the territorial capital and also the headquarters of the Afro-American Colonization Company. The reporter reviewed Guthrie’s census figures and bank deposit records. He found that there were probably about 2,000 Blacks “in and about the capital.”64 He noted “many of the little houses in the suburbs showed a number of colored families comfortably situated.”65 Further, these colonizers were “not all paupers”—as demonstrated by their bank deposits “ranging from $200 to $1,000.”66 The reporter found that in “one bank alone sums aggregating over $15,000 have been deposited by the negro settlers.”67 It is noteworthy that the reporter’s investigations here had not yet turned to the successful Black settlements of Langston and Boley, but only to Guthrie, where Blacks constituted a small but significant minority of the overall population.

The reporter had been sent to Oklahoma Territory to answer the question: Had the land been “overrun” with an “influx of pauper negroes from the South”?68 His conclusion: “Humiliating as the confession must be and is, the appeals for aid coming from Oklahoma do not come from the negroes, but from the whites.”69 Yes, some Black settlers came with “nothing except the rags they wore, but they [never became] public charges.”70 Why? Because “they [were] cared for by persons of their own race until they were in such condition that they could help themselves and help others.”71

63. Id.
64. The Blacks in Oklahoma, N.Y. Times, Apr. 9, 1891, reprinted in id. at 156, 157.
65. Id.
66. Id.
67. Id.
68. Id. at 156.
69. Id. at 157.
70. Id.
71. Id. The reporter noted that Black settlers effectuated this mutual aid and uplift by working the land in a “cooperative plan” where claims were farmed by two to eight families “all working together and often living together, awaiting the time when more lands will be opened for settlement, when the surplus expect to find claims for themselves.” Id.
The View from Detractors

I hesitate to summarize accuse the first generation of Oklahoma courts of ignoring the positive views excerpted above. On the other hand, Ellison's own acerbic description of the Oklahoma justice system illustrates the racism which suffused a public apparatus largely under the control or influence of white supremacy. The comment attributed to Judge Estes reflected the antipathy and fear of white men towards Black men. Whether objectively true or merely apocryphal, it reveals much about the uneasy relationship.

"Playing the Race Card"—Oklahoma Style

Consider the positive picture of Boley presented above in light of the following words which, taken on their face, suggest a virulent stereotyping. In a 1914 case, Boley was described as "notorious" for being "a negro town in which no white man has ever lived or desired to live." Were these the words of the Oklahoma Supreme Court itself? Not necessarily. The court actually had slightly detoxified the pleas of the defendant United States Fidelity & Guaranty (USF&G) in the suit below. Did the court accept USF&G's argument that race somehow presupposed gross negligence and incompetence on the part of Boley Bank, its Black owners and operators? Once more, a careful, detached reading offers a compelling and textured story, as nuanced and possibly as unexpected as the Ellisonian vision itself.

Boley had experienced sufficiently large and rapid growth that it could support not only one, but two, banks. Boley Bank & Trust Company opened its doors in 1907. According to standard business practice, the organizers entered into a $5,000 bonding contract with USF&G to cover the bank's

73. See supra note 15.
74. This is more than a generational issue. Consider Superior Stucco v. Daniels, 912 P.2d 317 (Okla. 1995), where the court affirmed that a white worker who was the victim of a drive-by shooting in a "predominantly Black area of town" was placed at greater risk due to his race. Id. at 318.
76. The language used in the defendant's brief was quite explicit, referring to the plaintiffs as "ignorant and incompetent negroes." Id.
77. Id. at 615.
cashiers and others who handled money. Over time a cashier engaged in a series of sophisticated and discreet embezzlements which he concealed very well. Eventually Boley Bank was taken over by the Bank Commissioner of Oklahoma. Some time after that, the embezzlement was identified, and Boley Bank sought to have USF&G pay on the $5,000 bond. USF&G refused, offering the racist argument summarized above.

The Oklahoma Supreme Court approached USF&G’s position in a manner familiar to practitioners of law. The court did not frontally assault the allegations. Instead, the court in essence considered the argument on its face, in the most favorable light. The court then asked whether—even on its own terms—the argument could support a decision in USF&G’s favor.

USF&G neither alleged nor attempted to prove that there was any “fraud or misrepresentation as to the character or color of the parties to the contract.” At the time USF&G entered into the contract with Boley Bank, the surety knew the books and records would be maintained by Black people in a Black town. The surety knew that “all the stockholders, officers, and employees of the plaintiff bank were negroes.” The defendant could not now raise race as grounds for vitiating the contract.

Did the Oklahoma Supreme Court itself “buy into” the surety’s depiction of Black businessmen as inherently incompetent? The court’s analysis and holding suggest not. The court pointed out that the terms of the bond did not require the bank to engage the services of expert accountants. The contract instead contemplated compliance with the standard for the day: “examination by a committee of men selected from the ordinary business avocations, reasonably capable of comprehending the condition of the accounts of the bank.”

The Boley Bank board met this requirement. Further, they discovered the cashier’s embezzlement shortly after it occurred, although not immediately. The court made clear that the law could not reasonably expect better than this. It is the nature of the crime that embezzlement is only rarely discovered while it is ongoing. With elegant common sense the court explained that if the level of perfection asked by USF&G were legally

78. Id.
79. Id.
80. Id. at 617.
81. Id. at 616.
82. Id. at 617.
83. Id. (quoting Am. Bonding Co. v. Morrow, 96 S.W. 613 (1906)).
84. Id.
mandated, no insurance would be needed; the practice of bonding bank employees would be unnecessary.\textsuperscript{85}

Finally, the court made short shrift of USF&G's implication that the town of Boley itself, or the officers or employees of Boley Bank, somehow kept the defendant at bay. Was Boley so physically dangerous that no white man should enter? The court disposed of this quite bluntly. If USF&G had desired more frequent or stringent examination, "it had the power to require the same."\textsuperscript{86} However, the surety had continued its bond without closer scrutiny. Thus, it was "estopped to deny liability on the ground that the examinations were made" less frequently than originally contemplated.\textsuperscript{87} Race vilification was not a winning argument.

Men and Women of Property

Land ownership bolstered a sense of self-sufficiency and a feistiness that belie an image of victimhood. A review of civil cases involving the Black settlements of Oklahoma reveals a picture of propertied men and women who, as needed, protected their rights through resort to the court system.

The most dramatic cases stem from the Tulsa Race Riot of 1921, where Black businesses sued insurance companies that refused payment for property lost in the conflagration. Many read the leading case of \textit{Redfearn v. American Centennial Insurance Co.}\textsuperscript{88} for the detailed picture of the state-sponsored terrorism involved. Others may find \textit{Redfearn} equally compelling for its description of the substantial assets held by entrepreneurs and residents.

But Black Wall Street was not the only site for Black capital. Most settlers invested primarily in land, which from time to time resulted in judicial contests. In an era where the criminal courts routinely identified the

\begin{quote}
\textsuperscript{85} \textit{Id.}
\textsuperscript{86} \textit{Id.}
\textsuperscript{87} \textit{Id.}
\textsuperscript{88} 243 P. 929 (Okla. 1926).
\end{quote}
race of police officers, witnesses, and parties in criminal cases—if all involved were not European-American—the role of race in these civil matters can be revealing. In cases involving Black Indians, ethnic identity could be relevant as a matter of law, due to the special status of land held by Native Americans in Oklahoma. Race identification would be expected.

In cases concerning the purchase, sale, or mortgaging of land held by Blacks, are race labels relevant? Or, does the court’s identification of ethnicity reveal pervasive racism? The answer is ambiguous. One could read the court opinions through the lens of three generations’ distance, and quickly identify instances of ugly, unqualified bigotry. One can also find

89. In Miller v. State, 267 P. 673, 673 (Okla. Crim. App. 1928), the Court of Criminal Appeals labeled the ethnicity of apparently everyone involved in the first-degree rape case: convicted defendant (“unmarried white man”), complaining witness (a “French-Negro girl, about 9 years old”), and the arresting officer (“a negro policeman”).

90. Consider the manslaughter case of Austin v. State, 228 P. 1113 (Okla. Crim. App. 1924), where the Court of Criminal Appeals casually accepted the image of Afro-Americans as peculiarly prone toward violence and activities of dubious morality:

Defendant, a negro woman, had been living for several years with a negro man by the name of Albert Haley as husband and wife. . . . [T]here was a supper given at the home of another negro woman in the town of Canadian, Pittsburg county, at which place these parties lived. This supper was attended by a number of negroes of that community, among whom were the defendant and Haley.

Id. at 1114. See also Relf v. State, 280 P. 851 (Okla. Crim. App. 1929), involving a crap game that erupted in a killing by “[t]he defendant . . . a negro, and . . . the person killed, [who] was also a negro.” Id. at 852. In Henson v. State, 114 P. 630, 630 (Okla. Crim. App. 1911), the Court of Criminal Appeals apparently considered the ethnicity of the parties a significant factor in “exclud[ing] every element of reasonable doubt as to the justice of the judgment herein upon the merits.” A fight broke out between the defendant, described as “a negro,” and “another negro or Indian.” Id. A deputy sheriff attempted to arrest the defendant, who shot him with a pistol, killing the deputy.

91. E.g., In re Micco’s Estate, 68 P.2d 798 (Okla. 1937), involving the transfer of land to a sole surviving heir who is an enrolled Seminole living in Boley, Oklahoma; In re Estate of McDade, 218 P. 532 (Okla. 1923), a disputed inheritance of land involving enrolled Cherokee freedmen living in “a negro settlement, a short distance from the town of Fort Gibson . . . commonly known as Frog Hill or Frog Town.” Id. at 535.

92. For example, in Thomas v. Huddleston, 164 P. 106 (Okla. 1916), the defendant blamed a questionable real estate conveyance on “the probate proceedings [being] very irregular, having been carried through by some negro lawyers in Boley.” Id. at 108. The court did not seem to accept his explanation. After an excruciatingly detailed examination of the facts and testimony, the court found Huddleston guilty of fraud. Id. at 109.
many more land disputes where race conceivably might matter, for some all-Black towns specifically barred whites. Yet, ethnicity is only a passing reference, or the cases make no express mention at all. In retrospect, the cases stand out for today’s reader specifically because they are so banal, so ordinary. In the first generation of Oklahoma court cases, there is nothing unusual about Blacks holding property and fighting for property ownership. Other cases offer a glimpse of everyday prosperity—and Black property-holders who stand ready to enforce their rights. In a case challenging the railroad’s placement of lines, the court identifies Lewisville as the place where “the farmers purchase their supplies.” On a frontier that contained few and generally crude edifices, stone was used for a building in Tullahassee. Livestock damaged in shipping to Boley became the subject of a lawsuit against the railroad company. This is not a world of “despair, hopelessness and anomie.”

93. An early study of Langston City, Oklahoma, reported: “The titles to these lots could never pass to any white man, and upon them no white man could ever reside or conduct a business according to the literature of the promoting company.” Katz, The Black West, supra note 3, at 257. More often, the restrictions were informal, customary, as recounted by Booker T. Washington, “I learned upon inquiry that there were a considerable number of communities throughout the Territory where an effort had been made to exclude negro settlers. To this the negroes had replied by starting other communities in which no white man was allowed to live.” Id. at 329.

94. See, e.g., Filtsch v. McJunkins, 252 P. 437 (Okla. 1926) (sale-purchase of land in Rentiesville); Turner v. Johnson, 207 P. 555 (Okla. 1922) (a quiet-title action for three lots in Boley); White v. Tullahassee Realty Co., 198 P. 584 (Okla. 1921) (a receivership for a corporation established to buy and sell land in Tullahassee); Peters v. Bledsoe, 190 P. 407 (Okla. 1920) (dispute over payment for eighty acres near Boley); Watson v. Manning, 156 P. 184 (Okla. 1916) (a breach of contract for the sale of two lots in Boley).


96. Redus v. Mattison, 121 P. 253 (Okla. 1912) (a breach of contract suit over payment for the work done).


98. Watts, supra note 5, at 108.
CONCLUSION

Ralph Ellison’s vision of “freedom within unfreedom” presents an insoluble paradox for those who are firmly committed to viewing Afro-Americana through a lens of socioeconomic pathology. In a 1965 interview with three young Black authors Ellison applied his complex world view nurtured in Oklahoma to an analysis of Harlem, the human condition, and the Black writer. Ellison foresaw the damage that could be wrought when Black writers accept sociological clichés and go no deeper.

Ellison took pains to clarify that he did not deny “that these sociological formulas are drawn from life.” His point was that they do not “define the complexity of Harlem.” Such formulae merely “abstract” Harlem and “reduce it to proportions which the sociologists can manage.” But this long-time Harlem resident could not recognize the “Black Capital of

99. The fuller quote is:

Relying upon race, class, and religion as guides, we underestimate ... the power of life-styles and fashion to upset custom and tradition. ... [O]ur failure to grasp the mysterious possibilities generated by our unity within diversity and our freedom within unfreedom can lead to great confusion. It also leads to the loss of potential talent ....

RALPH ELLISON, On Initiation Rites and Power: Ralph Ellison Speaks at Westpoint, in TERRITORY, supra note 2, at 39, 52.

100. The context for this follows:

But if a Negro writer is going to listen to sociologists—as too many of us do—who tell us that Negro life is thus and so in keeping with certain sociological theories, he is in trouble because he will have abandoned his task before he begins. If he accepts the clichés to the effect that the Negro family is usually a broken family, that it is matriarchal in form and that the mother dominates and castrates the males, if he believes that Negro males are having all of these alleged troubles with their sexuality, or that Harlem is a “Negro ghetto”—which means, to paraphrase one of our writers, “piss in the halls and blood on the stairs”—well, he’ll never see the people of whom he wishes to write. He’ll never learn to use his own eyes and his own heart, and he’ll never master the art of fiction.


101. Id. at 276.
102. Id.
103. Id.
America" in these descriptions. The internal lives of the people were missing—even if some externalities of the physical setting were present.

Ellison acknowledged then—and would likely do so now—that Blacks had experienced a "sustained, systematic denial of opportunity," as Watts argues. Yet Ellison would—and did—counter that much of the "despair, hopelessness and anomie" described by Watts, and the victim status celebrated by Cose and Nelson, have their basis in a particular, propagated image of the Afro-American condition. Ellison had warned that the victim image is "apt to destroy our human conception of ourselves just at the moment when we are becoming politically free." 104

Did Ellison superimpose upon Harlem a fantasy world? No. As Ellison underscored, he did not "deny the ruggedness of life there, nor the hardship, the poverty, the sordidness, the filth." 105 These were tangible aspects of life in Harlem which Ellison saw—indeed, engaged—on a daily basis, for Harlem was his home for many decades. Notwithstanding the objective, negative sociological data, Ellison saw "something else in Harlem, something subjective, willful, and compellingly human." 106 Ellison—the artist and intellectual—believed that "something else" challenged "the sociologists who ignore it, and the society which would deny its existence." 107 For Ellison this ineffable quality "makes for our strength, . . . our endurance and our promise." 108

The "something else" which Ellison entreats other artists and intellectuals to value is, I believe, coterminus with the cultural heritage that Ellison credits to his Oklahoma roots. In his own words:

We were forced into segregation, but within that situation we were able to live close to the larger society and to abstract from that society enough combinations of values—including religion and hope and art—which allowed us to endure and impose our own idea of what the world should be and of what man should be, and of what American society should be. I'm not speaking of power here, but of vision, of values and dreams. Yes, and of will. 109

104. Id. at 277.
105. Id. at 276.
106. Id.
107. Id.
108. Id.
109. Id. at 299.
This, then, is how Blacks molded from Oklahoma’s red and often racist clay a rich and joyful existence. But let us all be clear about the source of this joy. The secret of their joy was neither naïveté nor denial—but resistance.  
