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Lyda Burton Conley at her 1902 graduation from
the Kansas City College of Law.

“Trespassers, Beware!”: Lyda Burton Conley and the Battle for Huron Place Cemetery

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*We were fighting for the grave of our mother, and what could anyone do, in a case like that, but die rather than surrender?*¹

On January 14, 1910, Lyda Burton Conley,² Kansas attorney and direct descendant of the great Wyandot Chief Tarhe, stood before the United States Supreme Court to appeal the dismissal of the suit that she had filed against Secretary of the Interior James Garfield in 1907.³ Conley sought a permanent injunction against the sale of the cemetery in which the bodies of her mother and her ancestors lay. In the Court, she formally represented herself as named plaintiff; in spirit, she was there on behalf of her two sisters Lena and Ida, her deceased mother and father, and the ghosts of hundreds of Wyandot Indians buried in a small cemetery in the middle of what had become downtown Kansas City, Kansas. Although she had been admitted to the Missouri Bar in 1902,⁴ Conley did not appear before the Supreme Court in her capacity as an attorney. Instead, she was recorded as acting *in propria persona*, “in her own

[†] Professor of Law, University of Kansas School of Law. This essay is gleaned from my work on a biography of Lyda Burton Conley. I would especially like to thank a number of people for their assistance, research help, and support as I have undertaken to document the life of Lyda Burton Conley, understand the history of the cemetery, and write this article, including Jan English, Second Chief of the Wyandot Nation of Kansas; Darren Zane English; Rebecca Barber, Executive Director, Wyandotte County Historical Museum; John Nichols, Archivist, Wyandotte County Historical Museum; Ann Johnson Prum; my research assistant Melissa Rodriguez, J.D. University of Kansas. 1995; the Honorable Arthur J. Stanley, Jr.; Tom Stacy; Nina Tarr; Stuart Tarr; Paul Wilson, Professor of Law Emeritus, University of Kansas; Holly Zane, Esquire; and many others who have cooperated with and encouraged me as I have struggled to “know” the life of Lyda Burton Conley. My research has been partially supported by the University of Kansas School of Law Faculty Research Fund.

1. *An Up-to-Date Heroine of the Wyandottes*, THE INDIAN'S FRIEND, Sept. 1909, at 10-11 [hereinafter *Heroine*] (reporting an interview with Conley a few months before her argument in the Supreme Court).

The name “Wyandot” is an Anglicization of the tribe’s aboriginal name, spelled phonetically as Wendat. In the text of this essay, the spelling “Wyandot” is used to refer to the tribe until it was officially split into two factions in 1867, *see infra* pp. 11-12, and to the members of the Wyandot nation of Kansas. The spelling “Wyandotte” refers to those tribal members who did not obtain citizenship in 1867, and whose descendants now form the core of the Wyandotte Tribe of Oklahoma, *see infra* p. 12. The spelling used in original source material or to describe geographic locations has, however, been preserved.

2. Ca. 1868-1946. Lyda Conley died on May 28, 1946; an extended obituary and tribute to her life published a few days later reported her age at death as 72, which places her birth in the year 1874. Henry Van Brunt, *Three Sisters’ Defense of Cemetery Continued for Nearly Forty Years*, KAN. CITY TIMES, June 7, 1946. Other records, however, including those of the Bureau of Indian Affairs, and the personal correspondence of family members, suggest that she was born sometime between 1865 and 1869. M595 Indian Census Rolls 1885-1940, *microformed on* Rolls 411-12 (Nat’l Archives Microfilm); letter from Andrew S. Conley to Sarah Zane (Mar. 5, 1868) (on file with author).

3. Petition for Injunction, Conley v. Garfield, No. 8548 (C.C.D. Kan. filed June 11, 1907).

4. Jan English, *A Chronological History of the Wyandot Nation of Kansas at 1902* (1994) (unpublished manuscript, on file with author). Jan English is Second Chief of the Wyandot Nation of Kansas,

person."⁵ Her appearance before the Court was the culmination of her four-year effort to prevent the sale by the federal government to private developers of the cemetery, which she characterized then, and which is recognized today, as a sacred and culturally significant Native American burial ground. Conley's case⁶ appears to be the first on record in which a plaintiff argued that the burying grounds and cemeteries of Native American peoples are entitled to federal protection. It was probably the first in which an attorney claimed that the lineal descendants of the tribal beneficiaries to a treaty have standing to enforce the provisions of that treaty against the federal government. And it was undoubtedly the first in which the plaintiff-attorney attempted to protect the subject matter of the litigation using not only her legal acumen, but also a double-barrelled shotgun and a threat to shoot anyone who tried to desecrate the graves of her mother and ancestors.

Lyda Burton Conley's lawsuit to prevent the sale of the burial ground was but one of the many battles she fought on behalf of her Native American community. She is a woman "whose story must be remembered."⁷ This essay tells one part of her story: that of the federal lawsuit she filed in an effort to preserve and protect her mother's grave in the Huron Indian Cemetery in Kansas City, Kansas. In the course of the telling, the essay recounts not only Conley's legal battle but also something of the history of her people, the Wyandot, and of the context and culture in which Conley acquired the passion to dedicate herself to the preservation of her mother's memory, her people's sacred territory, and the traditions of the Wyandot nation. It will, I hope, prove her to be a remarkable woman: a woman attorney at a time when women were not supposed to be lawyers; a person who fought powerful adversaries that people were not supposed to fight and articulated legal theories that people were not allowed to assert. Although Conley lost the legal battle when her appeal to the Supreme Court was dismissed, she ultimately won the war. The legacy of her victory is evidenced by the small grassy space which still remains in downtown Kansas City, Kansas.

I. THE HISTORICAL BACKDROP: WYANDOT PERSEVERANCE, FEDERAL BETRAYAL

In the heart of the city, now occupying the place where the wyandots erected their village nearly seventy years ago, is another city. It is a city of the dead wherein lie buried many members of the tribe or nation of Indians whose history is the most pathetic or poetic of all the North

5. Minutes of the Supreme Court of the United States, Jan. 14, 1910, at 294, *microformed on* Roll 25, Microcopy No. 215 (Oct. 12, 1908-May 29, 1911) (Nat'l Archives Microfilm).

6. Conley v. Ballinger, 216 U.S. 84 (Univ. of Neb. Press 1910).

7. MADELEINE B. STERN, WE THE WOMEN: CAREER FIRSTS OF NINETEENTH-CENTURY AMERICA xvii (1994) (1963) (describing the lives of nineteenth-century women "firsts" whose stories had been forgotten by history).

*American Indians. The burial ground, known as Huron Cemetery . . . is almost surrounded by long rows of business houses and public buildings. Ever and always is the rush and roar of traffic around and about, but they who sleep under the grass-covered mounds are undisturbed.*⁸

Lyda Conley's passion to save the Huron Place Cemetery is best understood in light of the circumstances that led the Wyandot to establish the cemetery in late 1843 and the events that led the federal government first to attempt to sell the land in the early part of this century. The cemetery—today a 1.9-acre plot of ground dotted with grave markers, some dating back to the middle of the nineteenth century, some placed as recently as the 1960s—reposes atop a quiet green hillock nestled in the middle of downtown Kansas City, Kansas, on a bluff above the Missouri River. The relatively few markers and headstones scattered across the grassy knoll of the cemetery belie the hundreds—some believe over a thousand—Wyandots who were buried there according to tribal custom, wrapped in their blankets in unmarked graves. Today the cemetery's presence is acknowledged by a small wooden sign and a series of bronze plaques, installed after the cemetery was placed on the National Historic Register in 1971.⁹ An eight-story municipal building constructed in the early 1960s rises to the south of the cemetery, casting its shadow on the grounds and on the graves of those who lie within. To the west the old federal building, where the judges and magistrates of the federal district court for the District of Kansas heard cases until the spring of 1994, keeps its silent watch. Someone passing by would not likely remark upon this cemetery, other than perhaps to note the oddity of its location within a largely decaying downtown.

But in many respects the Huron Cemetery is a monument to and a measure of the history and ultimate failure of the U.S. government's nineteenth- and twentieth-century policies concerning Native Americans. The cemetery's story, and hence Conley's, is at once tragic and uplifting. The Huron Place Cemetery is one of the few tangible reminders of the long and sordid history of Wyandot-white relations. It is a history of the repeated repatriation of the Wyandots: from their original twelve-million acre homelands in what is now Ontario to Wisconsin, Michigan and Ohio; then to the eastern edge of the vast prairies of "Indian country" which later comprised the Kansas-Nebraska territories; and finally, for some, to the "Indian Territory" in what is now northeastern Oklahoma. This history speaks also of the suppression of Wyandot identity and culture under nineteenth-century federal policies that envisioned extermination through assimilation of Native peoples. Ultimately, the cemetery is a reminder to all of us of the ongoing failure of the federal government to honor its treaty

8. PERL W. MORGAN, HISTORY OF WYANDOTTE COUNTY, KANSAS 81 (1911).

9. See Entries in the National Register, Kansas, Sept. 3, 1971 (unpublished) (copy on file with author).

obligations to Native Americans and of the great costs—in terms of lives lost and culture obliterated—of federal Indian policy, from the eighteenth century into the present day. But it is also a reminder of the will of a woman whose love for her mother and respect for her people was so compelling that she endured ridicule, spent time in jail, and took one of the turn-of-the-century's most powerful political figures to court in an effort to protect the sanctity of the graves of her Wyandot ancestors.

If the story of Conley's fight to preserve the Huron Place Cemetery has a beginning, perhaps it is in 1843, twenty years before her birth. In mid-July of that year, some 700 to 750 members of the Wyandot nation set out on steamers on the Ohio River bound from Cincinnati, Ohio for the western frontier. Their destination was the wilderness of the Great Plains west of the Missouri.¹⁰ The Wyandots who departed from Ohio that July day were descended from the three linguistically and culturally related tribes (the Wendats, the Petun, and the Neutrals) that had once composed the powerful Huron Confederacy.¹¹ By the turn of the nineteenth century, disease and war had reduced the numbers of the Hurons from as many as 20,000 to no more than 2000, a people scattered throughout the American Northwest Territories and parts of present-day Ontario and Quebec. The colonization of North America, westward expansion in both Canada and the United States, and a series of unfavorable treaties between the Wyandots (as the co-mingled tribes of the Huron Confederacy have come to be called) and the British and American governments had resulted in the congregation of a substantial proportion of the Wyandots in two areas hundreds of miles away from their aboriginal homelands in Canada: the region surrounding the Sandusky River in present-day Ohio, and an area known as the Wyandotte Reserve near Detroit, Michigan.¹²

At the start of the nineteenth century, the Michigan and Ohio Wyandots, by virtue of various agreements with the fledgling United States government, owned considerable lands in the desirable Northwest Territories of Michigan

10. My account of the Wyandots' removal from Ohio to Kansas and their early years in Kansas is based on number of works, including FELIX S. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW (photo. reprint 1986) (1971) [hereinafter COHEN]; KENNETH S. DAVIS, KANSAS: A HISTORY (1984); English, *supra* note 4; Larry K. Hancks, The Emigrant Tribes: Wyandot, Delaware and Shawnee, A Chronology (1993) (unpublished manuscript, on file with author); Robert Emmet Smith, Jr., The Wyandot Indians, 1843-76 (1973) (unpublished Ph.D. dissertation, Oklahoma State University (Stillwater)) (on file with Wyandotte County Historical Society); LOREN L. TAYLOR, 1 A SHORT ETHNIC HISTORY OF WYANDOTTE COUNTY (1992).

11. For a discussion of the Huron Confederacy, its component tribes, and the roles of the various Great Lakes Indian tribes in the pre- and post-Revolutionary War era, see RICHARD WHITE, THE MIDDLE GROUND: INDIANS, EMPIRES AND REPUBLICS IN THE GREAT LAKES REGION, 1650-1815 (1991). For a scholarly treatment of the social and political structure, customs, and culture of the tribes constituting the Confederacy, see CONRAD HEIDENREICH, HURONIA (1971).

12. See, e.g., COHEN, *supra* note 10. at 46-53; 1 BEVERLY W. BOND, JR., THE HISTORY OF THE STATE OF OHIO 57-58 (Carl Wittke ed. 1941). Although many members of the original tribes of the Huron Confederacy eventually migrated south into the United States, some moved north from their aboriginal lands into an area near Midland, Ontario, where they remain today, preserving and perpetuating Wyandot (Huron) traditions, culture, and language.

and Ohio. The Ohio Wyandots, for example, controlled nearly 110,000 acres of prime Ohio agricultural and forest land, some of which had been given to tribal members in payment for intelligence services they had provided to colonial forces during the Revolutionary War. They were a well-educated and prosperous people whose members included prominent lawyers, abolitionists, suffragists, and businessmen. Through marriage and adoption, the Wyandots had assimilated into their tribe members of other Indian nations, a great many whites, and some African Americans. Most Wyandots by the turn of the nineteenth century were of mixed Native American-white ancestry; some historians believe that the last “full-blooded” Wyandot died in the early nineteenth century.¹³ Because of the ministry of John Stewart, an itinerant Methodist Episcopal missionary of mixed African-American and Indian heritage who arrived among the Wyandots of Upper Sandusky, Ohio, in about 1816, most Wyandots practiced Christianity according to the dictates and traditions of the Methodist Episcopal Church.¹⁴ Despite their assimilation of many aspects of the so-called “white” lifestyle and their adoption of Methodist Episcopal Methodism, however, the Wyandots maintained their historic cultural traditions and political practices, and most still spoke their native language, Wendat. Their eighteenth- and early nineteenth-century treaties with the federal government assured them perpetual rights to their Michigan and Ohio lands as well as federal protection against white encroachment.

But with the passage of the Indian Removal Act in 1830,¹⁵ the forced removal of the Wyandots from their Ohio and Michigan property became inevitable. The valuable lands of the Wyandot were coveted by white settlers, and their continued presence in the two northwest states was an embarrassment to government bureaucrats whose duty it was to execute the mandates of the Removal Act. Although they resisted removal longer than any other Indian tribe—the Wyandots were the last of the great northeastern Indian nations removed under the 1830 Act—they were ultimately compelled to accede to their removal in an 1842 treaty with the federal government.¹⁶ By this treaty, the Wyandots ceded their Ohio and Michigan lands to the federal government in exchange for up-front monetary payments, annuities, and the grant of “a tract of land west of the Mississippi River, to contain 148,000 acres, and to be located upon any lands owned by the United States, now set apart, or [that] may in future be set apart for Indian use, and not already assigned to any other

13. *E.g.*, Roy E. Mervin, *The Wyandot Indians Address Before the Kansas State Historical Society at Its Thirtieth Annual Meeting (Dec. 5, 1905)*, in *TRANSACTIONS OF THE KANSAS STATE HISTORICAL SOCIETY* 1905-06, at 73, 88 (George W. Martin ed.).

14. *See, e.g.*, JOSEPH MITCHELL, *THE MISSIONARY PIONEER, OR, A BRIEF MEMOIR OF THE LIFE, LABORS, AND DEATH OF JOHN STEWART (MAN OF COLOR), FOUNDER, UNDER GOD, OF THE MISSION AMONG THE WYANDOTTES AT UPPER SANDUSKY, OHIO* (New York, J.C. Totten 1827); BEECHER B. PENNINGTON, *HISTORY OF THE SEVENTH STREET METHODIST CHURCH SOUTH* 3-15 (1915).

15. Indian Removal Act, ch. 148, 4 Stat. 411 (1830) (codified as amended at 25 U.S.C. § 144 (1983)).

16. *See, e.g.*, COHEN, *supra* note 10, at 53-63 (discussing Indian removal policy from 1817-46); Hanks, *supra* note 10, at 79 (discussing same); Smith, *supra* note 10, at 42-57 (discussing same).

tribe or nation."¹⁷ The treaty evidences the negotiating skills of the Wyandot leaders who, although unable to resist removal, nonetheless elicited from the federal government an unprecedented concession now known as “the Wyandot floats”: the right of each of the thirty most prominent families in the tribe to select 640 acres anywhere within the removal territories.¹⁸ The Wyandots were allowed time to wind up their Ohio affairs and given assurances as to the timing and nature of the compensation they were due under the terms of the treaty.

The Wyandots left Ohio, knowing that the land they had been promised was not the equivalent of that which they had given up¹⁹ but unable to resist the political and military forces that compelled their departure. Records of their arrival indicate that the two steamers which brought them westward arrived in late July, 1843, at Westport Landing on the east bank of the Missouri River, where the Wyandot passengers were promptly put out. Some secured temporary lodging in the town of Westport; others set up camp on the narrow strip of land at the confluence of the Missouri and Kansas Rivers in what is today the heart of Kansas City, Kansas.²⁰ There the Wyandots waited through a summer of flooding, pestilence, and disease for the compensation and the land which they had been promised in the Treaty of 1842.

On those river banks, in the fall of 1843 and through the winter and spring of 1844, many Wyandots died from diseases brought on by exposure, relentless flooding, and the epidemics that plagued the western frontier. As the death toll among the Wyandots mounted, the survivors identified the highest point within their encampment, just west of the border between the state of Missouri and the territories of the Great Plains. In the fall of 1843, on that highest point, they established a cemetery in which to bury their dead. The oldest marked grave in the cemetery today is that of Chief Ron-ton-dee, who died on November 17, 1843, but there were almost certainly burials before that date. Estimates as to the total number of Wyandots who died during the first year after removal from Ohio vary, but most suggest that at least 100 tribe members—nearly one-seventh of the Wyandot population that had been

17. Treaty with the Wyandot, Mar. 17, 1842, U.S.-Wyandot, 11 Stat. 581. *reprinted in* 2 INDIAN AFFAIRS: LAWS AND TREATIES 534 (Charles J. Kappler ed., 1904) [hereinafter Kappler].

18. See Homer E. Socolofsky, *Wyandot Floats*, 36 KAN. HIST. Q. 241, 242 (1970) (discussing unique nature of this aspect of the treaty and detailing the ultimate disposition of the 35 sections known as the “floats”). Many of Kansas’ most prominent early cities, including Lawrence, Manhattan, and Topeka, were established on these “float” lands.

19. In 1831, a party consisting of several Wyandot leaders travelled to the western territories which the federal government had indicated were the lands to which the eastern tribes would be removed, and for which the Wyandots’ Ohio property might be exchanged. Upon their return, this party reported to the tribal membership that the lands which had been offered in exchange for the Wyandots’ Ohio property were inferior and recommended against any future agreement to be removed. *The Report of The Wyandot Exploring Delegation, 1831*, 15 KAN. HIST. Q. 248, 253-58 (J. Orin Oliphant ed. 1947). Eventually, however, the forces animating the removal policy became too overwhelming to resist.

20. Lucy B. Armstrong, *Journal of Lucy B. Armstrong*, Excerpt: The Migration of the Wyandots to Kansas (1344-47) (copy on file with author), available in http://history.cc.ukans.edu/kansas/wn/wn_lba.html; Hancks, *supra* note 10, at 82; Smith, *supra* note 10, at 63-64.

removed from Michigan and Ohio-had been buried on top of the bluff above the Missouri by the early months of 1844.²¹ That burial ground, the site of the Wyandots' futile wait for the federal government to fulfill its treaty obligations, eventually came to be called the Huron Place Cemetery. Some sixty-odd years later, it would become the focal point of Conley's litigation with the federal government.

Within weeks of the Wyandots' arrival on the banks of the Missouri, it had become apparent to their leaders that the federal government had made no provisions for them and was making no effort to honor its commitments under the Treaty of 1842. Late in 1843, the Wyandots took the unprecedented step of negotiating, without the participation of the federal government, a treaty with the Delaware tribe for the purchase of three 540-acre parcels of land due west of the Missouri River. The Delaware, various bands of which had been removed from Ohio, Indiana, Illinois, and Missouri in the 1830s, had received under the terms of their treaties of removal a tract of land that stretched about twenty miles, from the west bank of the Missouri River across from Westport Landing to the area of present-day Tonganoxie, Kansas.²² This treaty between the Delaware and the Wyandot was the first ever executed between two Indian nations without the official involvement of the federal government. Although its validity was challenged by Indian agents assigned to the two tribes, Congress eventually "sanctioned" the treaty in 1848.²³ Pursuant to the terms of the Delaware-Wyandot treaty, the Wyandot tribe paid the Delaware \$48,000 for thirty-six sections of the isthmus between the Kansas and Missouri Rivers, and acquired an additional three sections by gift, for a total area of thirty-nine sections. On these thirty-nine sections the Wyandots established a town and, once again, began to establish a new life and society, literally and figuratively centered around the small cemetery at the top of the bluff.

As noted, the Ohio and Michigan Wyandots who came to the territories in 1843 were well-educated and astute in matters of business and politics. Many were deeply committed to the tenets of their Methodist Episcopal faith. By mid-1844 members of the tribe had built a church and established the first free school in the territories.²⁴ Over the next ten years the town of Wyandotte City²⁵ grew up around the cemetery and became a center of business and

21. *E.g.*, TAYLOR, *supra* note 10, at 13; WYANDOTTE COUNTY AND KANSAS CITY, KANSAS: HISTORICAL AND BIOGRAPHICAL 150-51 (Chicago, Goodspeed Publishing Co. 1890) [hereinafter WYANDOTTE COUNTY].

22. Agreement with the Delaware and Wyandot, Dec. 14, 1843, Del.-Wyandot, 9 Stat. 337, *reprinted in* Kappler, *supra* note 17, at 1048; *see also* No. 1, Sketch of the Public Surveys in Kansas & Nebraska, Nov. 8, 1855 (original survey sketch on file with author) [hereinafter Survey Sketch].

23. S. Con. Res. 19, 30th Cong., 1st Sess. (1848) ("A Resolution to sanction an Agreement made between the Wyandotts and Delawares for the Purchase of certain Lands by the former, of the latter Tribe of Indians").

24. *See, e.g.*, Armstrong, *supra* note 20.

25. The town of Wyandotte City was formally incorporated in 1859; maps from the 1850s depict the town as either Wyandott, Wyandotte or Wyandot City. By the mid-1880s, Wyandotte City and the nearby communities of Armourdale and Rosedale had been consolidated into the single city known today as Kansas City, Kansas.

commerce catering to the steadily increasing numbers of pioneers, adventurers, and homesteaders embarking across the Indian country of the Great Plains for destinations to the west. Streets were laid out which today still bear the names-Armstrong, Tauromee, and Northrup-of important families and leaders among the Wyandot tribe.

The Wyandot community, though bound together by a shared history and a unique cultural and religious heritage, nonetheless reflected many of the national political conflicts of the pre-Civil War era. In the late 1840s, the struggle over the issue of slavery manifested itself in the Wyandot community when one of the tribal leaders, William Walker, Jr., purchased a slave woman named Dorcas in Harrisonville, Missouri, and brought her to Wyandotte City.²⁶ Walker's flagrant pro-slavery act drove a wedge between the majority of Wyandots, who were abolitionists (some of whom were themselves partly of African-American descent), and the smaller, pro-slavery faction of the tribe. Until the Supreme Court's *Dred Scott*²⁷ decision in 1857, slave ownership was illegal west of the Missouri River. Nonetheless, over the next several years as many as twenty slaves were purchased and brought across the Missouri River, some of them by Wyandot tribal members. The schism that developed because of this issue resulted, among other things, in the establishment by the abolitionist Wyandots of a second church and, in 1851, a second Wyandot cemetery called Quindaro. This rift among the Wyandots persisted for several years, and there is some evidence that for a brief period Quindaro Cemetery served as the burial place for anti-slavery Wyandots, while Wyandots aligned with the slaveholders were buried in the Huron Place Cemetery.²⁸

In 1850, the Wyandots began to take steps to settle their claim to the 148,000 acres that they had been promised under the treaty of 1842. Eventually they executed a new treaty in which the federal government promised a \$185,000 payment to the tribe in lieu of the acreage.²⁹ Once again, the government failed to make the payment it had agreed to make. The Wyandots' land holdings were now reduced to the thirty-nine sections they had acquired by purchase and gift from the Delaware in 1843, along with the land rights represented by the "Wyandot floats" that had not yet been exercised by the Wyandot families owning them.

By 1853 it had become clear to Wyandot leaders that the politically unorganized Indian territory would soon become a pawn in the divisive slavery issue, as well as the next target of westward expansion of white settlers. With the support of Pacific railroad company promoters, they organized an unofficial

26. See, e.g., Hancks, *supra* note 10, at 95.

27. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

28. See Smith, *supra* note 10, at 87-93 (describing split in the Wyandot Methodist Episcopal congregation).

29. Treaty with the Wyandot, Apr. 1, 1850, U.S.-Wyandot, 9 Stat. 987, *reprinted in* Kappler, *supra* note 17, at 587.

provisional territorial government. William Walker, Jr., was elected provisional governor of the unofficial government in 1853;³⁰ Abelard Guthrie, an Indian sub-agent who had married a Michigan Wyandot (and who later became quite unpopular among his Wyandot in-laws), was elected the unofficial territory’s congressional delegate.³¹

In 1854 the festering issue of slavery, the passage of the Kansas-Nebraska Act,³² and a revised federal Indian policy to consign Native American peoples to “reservations” combined to alter permanently the relationship between the Kansas Wyandots and the federal government and, as it later developed, the nature of the Wyandots’ future legal claims to the Huron Place Cemetery in which their ancestors lay. The Kansas-Nebraska Act, enacted May 30, 1854, opened the homesteading of the Great Plains and permitted those who properly laid claims in what are now Kansas and Nebraska to determine for themselves whether the new states would be slaveholding or free. The presence of various Indian nations and their claims to lands within the newly designated Kansas-Nebraska Territories presented serious political and practical problems to the vision of statehood for Kansas and Nebraska contemplated by the Act. Eventually, some of the tribes resident in the Kansas-Nebraska Territories, such as the Delaware and Shawnee, were removed yet again, this time to “Indian Country,” Oklahoma. Some—the tribes of the Kickapoo and the Sac and Fox, for example—were consigned to tiny reservations carved out of the lands they held under their original treaties of removal.³³

By 1854 the lands at the confluence of the Kansas and Missouri Rivers on which the Wyandots had made their home had proved to be both strategically located and commercially valuable given the new status of the Kansas and Nebraska Territories. Moreover, the sophisticated Wyandot leaders knew that the value of their property in Wyandotte City had greatly improved since their arrival in 1843. They did not favor the idea of yet another removal, nor consignment to a “reservation” in the remote, undeveloped, and geographically undesirable Indian Territory in present-day Oklahoma. So, pursuing an idea that had first been broached (possibly by the Wyandot leaders themselves, although this is not entirely clear) during the treaty negotiations of 1850, the federal government concluded that the Wyandots then living in what was soon

30. Socolofsky, *supra* note 18, at 245.

31. See TAYLOR, *supra* note 10, at 16.

32. Kansas-Nebraska Act, ch. 59, 10 Stat. 227 (1850-51).

33. In addition to the large number of nomadic tribes which had always inhabited the plains regions that later became Kansas and Nebraska, several eastern tribes had legal claims on large acreages in those regions. In 1855, when the official public survey of the eastern third of present-day Kansas and the eastern quarter of Nebraska was published by the Surveyor General’s Office, the survey noted eleven areas, reflecting the treaty-based claims of nine tribes or bands, occupying parts of the territories. See Survey Sketch, *supra* note 22. The Kansas-Nebraska Act required that these tribes be removed or otherwise dealt with prior to the opening of the territories to homesteaders. By the 1870s, treaties had been negotiated with a total of eighteen Indian nations who relinquished to the federal government over thirteen million acres. DAVIS, *supra* note 10, at 34.

to be the state of Kansas had “become sufficiently advanced in civilization”³⁴ to justify their becoming citizens of the United States. On January 31, 1855, the Wyandots and the United States signed the first federal treaty to confer citizenship on the members of an American Indian tribe.³⁵ Pursuant to the provisions of the 1855 Treaty, all Wyandots in the tribe who were deemed by the appropriate government agent to be “sufficiently advanced” (a phrase which excluded so-called idiots, drunkards, and other undesirables) were given the opportunity to become citizens. These Wyandots thereby relinquished, permanently and forever, their status as members of an Indian tribe and nation. Consonant with the nascent federal policy of “allotment,” the treaty also obliged the tribe to cede to the federal government the lands which it had purchased from the Delaware in 1843. These ceded lands were later to be disbursed by the government in “allotments” to individual Wyandots and their families; payments would also be made directly to the Wyandots to account for improvements. Thus, land held in common by the tribe would become the property of individual, now “citizen-Wyandots.” But the treaty expressly provided that “[t]he portion [of the Wyandot Purchase] now enclosed and used as a public burying-ground, shall be permanently reserved and appropriated for that purpose.”³⁶ That clause in the treaty was a reference to the Huron Place Cemetery established in 1843 at the top of the bluff, and it was the meaning and enforceability of that clause that would become the legal centerpiece of Conley’s litigation half a century later in the Circuit and Supreme Courts of the United States.

The Treaty of 1855 purported to dissolve the Wyandot tribe as a singular legal entity. At least sixty-nine eligible Wyandots, however, did not take up the United States’ offer to relinquish their tribal status and identity in exchange for citizenship and a small allotment of what had been tribal property. Among these was Hannah Zane, the grandmother of Conley. Others—including Eliza Burton Zane Conley, Conley’s mother—were minors at the date of the treaty’s execution and could not legally exercise their treaty right to become citizens until they reached the age of majority. Despite the treaty’s objective to eradicate the tribe and its political structure, the Kansas City Wyandots continued to conduct their internal affairs according to their past customs and practice, and to celebrate traditional Wyandot ceremonies of religious and cultural significance, such as the Green Corn Feast held in August.³⁷ The federal government viewed the 1855 Treaty as granting citizenship to a substantial portion of the Kansas Wyandots, thereby ending its obligation to pay annuities and otherwise support the tribe in any monetary capacity. The

34. Treaty with the Wyandot, Jan. 31, 1855, U.S.-Wyandot, 10 Stat 1159, *reprinted in* Kappler, *supra* note 17, at 677.

35. *Id.*

36. *Id.* art. 2.

37. *See, e.g.,* Hanks, *supra* note 10, at 176.

Wyandots themselves, however, did not regard the treaty as having altered the tribe’s political or cultural practices.

Eventually, at least 200 Wyandots were declared “unfit” for citizenship by government bureaucrats assigned to assess the readiness of tribal members to assume the “duties and responsibilities” of United States citizenship.³⁸ By midsummer 1857, most of these “incompetents” had drifted to the Indian Territory of Oklahoma where they became guests of the Seneca (from whom, several years later, they would eventually purchase somewhere between 21,000 and 33,000 acres on the north side of the Seneca Reservation). This splinter group—Wyandots who in 1857 were of uncertain legal status as a result of the distinction between the citizen and “incompetent” Wyandots created by the 1855 Treaty—would also play a critical role in the drama of Conley’s federal litigation some forty years later.

The outbreak of the Civil War and the resulting carnage occupied much of the federal government’s energies for the next several years. Critical legal and political issues left open by the implementation of the 1855 Treaty according citizenship to the Kansas Wyandots remained unresolved. Specifically, the legal status of Wyandots who were deemed “competent” to become citizens in 1855 but had not exercised that option, or who had been minors, remained unresolved. In addition, the distinction the 1855 Treaty drew between the “citizen-Wyandots” and the “incompetents” who moved to Oklahoma and established permanent residence there created further status issues. Although the 1855 Treaty dissolved the Wyandot tribe, it did not grant citizenship to the “incompetent” group. In 1862, some of the Wyandots who had migrated to Oklahoma returned to Wyandotte City to seek financial assistance from the citizen-Wyandots. While in Kansas, they organized a rival tribal council whose purpose was to reclaim the Wyandots’ status as a tribe. The rival council implicitly and explicitly challenged the authority of the citizen-Wyandots’ tribal council, which had consistently operated in Wyandotte City since the tribe was legally dissolved by the 1855 Treaty. This rival council, led by Head Chief Tauromee, vested Abelard Guthrie with power of attorney, and in April of 1862 the council asked that authority over the absentee Wyandots be transferred to the jurisdiction of the Delaware agent. A political struggle developed within the Kansas Wyandot community over which council legitimately represented the interests of the Wyandots. In 1864 supporters of the rival council returned to Indian Territory intending to seek reinstatement by the government as an Indian tribe.³⁹ In 1867 a delegation of Oklahoma “incompetent” Wyandots, led by Tauromee, travelled to Washington to negotiate a treaty that would restore the Wyandots’ tribal status. In February, 1867, the federal government signed a treaty with several bands

38. See generally Mervin, *supra* note 13, at 87.

39. The discussion of the events of 1862-67 is taken from Hancks, *supra* note 10, at 153-75; Smith, *supra* note 10, at 176-205.

and tribes of the Indian Country. Treaty provisions allowed Wyandots who had been parties to the Treaty of 1855 and their descendants to re-establish themselves as a new Wyandotte Tribe confined to the Indian Territories.⁴⁰ Through this Treaty the Wyandots who had migrated to Oklahoma were able to regain their status as wards of the federal government. This group subsequently refused to accord membership in the newly constituted "Wyandotte Tribe" to those citizen-Wyandots who had remained in Kansas and had refused to recognize the authority of the rival tribal council.

Meanwhile, the Indian agent who remained among the citizen-Wyandots was faced with the problem presented by the large number of Kansas Wyandots who had never opted for citizenship or who were minors in 1855. In 1867 this agent surveyed the Kansas Wyandots to determine who wished to retain tribal status and who wished to become citizens. His original notes indicate that many of the Kansas citizen-Wyandots wished to renounce their opportunity to become United States citizens. Among these was Eliza Burton Zane Conley, acting for herself and her four children: "Eliza wishes herself and family placed on Indian list."⁴¹ In the final submission to the Bureau of Indian Affairs in 1871, however, none of the Conleys—neither mother nor daughters—were included in the roll of Wyandot tribal members.⁴² In 1896 the Conley sisters were designated as "absentee or citizen Wyandottes" in the census of special Indian agent Joel T. Olive.⁴³ Their inclusion in the so-called "Olive roll" of citizen-Wyandots became a significant aspect in Conley's lawsuit to protect the Huron Place Cemetery.

By 1890 Wyandotte City had become Kansas City, Kansas, a boom town strategically located between the "cultivated" East and the still rugged but rapidly growing West. It was a place of major commercial and industrial activity, with the commercial center radiating out from the square block in the middle of downtown where the Huron Place Cemetery, and the bodies of the Wyandots, still lay. That square block seemed too commercially valuable, to some with political influence, to "waste" on an Indian cemetery. Business leaders pressured the politicians, and in the spring of 1890, Kansas Senator Preston B. Plank introduced in the Congress a joint resolution declaring the Huron Place Cemetery a "nuisance"; he claimed that a majority of Wyandots in Kansas City favored removal of the cemetery to another, more "secluded" location.⁴⁴ When word reached the Wyandot community in Kansas City, many of its leaders protested the proposal. Although Plank's resolution ultimately

40. Treaty with the Seneca, Mixed Senecas and Shawnees, Quapaws, Feb. 23, 1867, *reprinted in* KAPPLER, *supra* note 17, at 960.

41. Letters received by the Office of Indian Affairs, 1824-81, *microformed on* Microcopy No. 234, Roll 951, Frame 221 (Nat'l Archives Micro. Publications).

42. *Id.* at Frame 721.

43. Joel T. Olive, Census of the Absentee or Citizen Wyandotte Indians (Nov. 18, 1896) (archival material on file with Wyandotte County Historical Society).

44. MORGAN, *supra* note 8, at 83; English, *supra* note 4, at 1890.

was defeated, the seeds for the potential future destruction of the cemetery had been sown.

In the late 1890s William Elsey Connelly entered the ring. Connelly was an entrepreneur and amateur historian who had long maintained an interest in the Wyandot communities in Kansas and the Indian Territories. He had written several works about the Wyandots, including a compilation of their legends and a short history of Wyandots in Kansas.⁴⁵ His 1892 survey of the known burials in the Huron Place Cemetery is today considered to be the best account of nineteenth-century burials there.⁴⁶ Despite his apparent interest in Wyandot culture and the historical significance of the cemetery, Connelly was much more attracted to the financial benefits he himself might reap if the cemetery were sold. The citizen-Wyandots of Kansas City were no longer recognized by the federal government as having tribal status of any kind, and Connelly undoubtedly perceived that their claim to the “reserved” lands comprising the cemetery was somewhat tenuous. The Wyandotte Tribe of Oklahoma, on the other hand, had re-acquired the status of a tribe in 1867. In 1899 Connelly approached the Wyandotte Tribe of Oklahoma with a proposal that sounded very much like Preston Plumb’s resolution. The proposal involved selling the cemetery, removing the bodies to another site, and distributing the proceeds among the Wyandotte tribe. Connelly was elected the agent of the Wyandottes for this purpose and negotiated an agreement that, among other things, gave him power of attorney for the tribe and assured him a fifteen percent commission upon the sale for his legal fees.⁴⁷ Connelly, who is still infamous among local historians for his entrepreneurial skills, must have felt very pleased with himself. He was on the verge, he believed, of accomplishing what the great Senator Plumb could not—the sale of the “eyesore” that was the Huron Place Cemetery.

He had not counted on Lyda Burton Conley and her two sisters.

II. THE CONLEYS ENTER THE FRAY

*We had two large American flags in the shack . . . and in the event of troops putting in an appearance, we had decided to wrap the folds of the flag around up, and tell the boys in blue to shoot—for they would have to do that before they could disturb those graves.*⁴⁸

Lyda Burton Conley was born Eliza Burton Conley sometime between 1865 and 1869 to Eliza Burton Zane Conley, a member of the Wyandot tribe, and Andrew Conley, a white man who emigrated from England. She was one of

45. E.g., WILLIAM E. CONNELLY, WYANDOTTE FOLKLORE (Topeka, Kan., Crane & Co. 1900).

46. WILLIAM E. CONNELLY, HURON PLACE (rev. ed. 1991) (1897).

47. Grant Harrington, *Colorful History of Huron Cemetery Told in Protest to Proposed Sale*, KAN. CITY KANSAN, July 13, 1947.

48. I.T. Martin, *Living in a City of the Dead*, KAN. MAG., 1909 (quoting Lyda B. Conley).



Helena Conley, Lyda Conley, and cousin Nina Craig, ca. 1930.

four daughters born to Eliza and Andrew; two of her sisters, Helena (called Lena) and Ida, survived to adulthood, while the third, Sarah (called Sallie), died while still a teenager. Although little is known about Lyda Conley's childhood and youth, one can be certain that Lidie (as she was called by her family well into adulthood)⁴⁹ was a girl of independent spirit and fearsome will. It is perhaps inevitable that she would have been so, for the Wyandots had a reputation for producing and tolerating proud, disobedient, and ill-tempered women.⁵⁰ The refusal of the Wyandot women of seventeenth-century Huronia to accept the Christian tenet of female inferiority and submissiveness had caused the Jesuit missionaries who proselytized among the Wyandot no small distress; indeed, they viewed the Wyandot women as the principal impediment to the "civilization" of the tribes that made up the Huron Confederacy.⁵¹ Moreover, the Wyandots were a matriarchal and matrilineal society that accorded women prominent roles in the religious and political structures of society. In its aboriginal state, Wyandot society vested significant political power in the women of the tribe, including the responsibility for naming tribal chiefs and the ownership of most marital property. Although Anglo-European traditions concerning the appropriate roles of women and men had certainly become entwined in the fabric of Wyandot culture by the later half of the nineteenth century, Wyandot women remained influential in all matters of business and politics that could be expected to affect the interests of the tribe.⁵²

As a young woman, Lyda Conley and her sister Lena rowed a boat every day across the Missouri River to attend Park College in Missouri.⁵³ Lyda Conley was trained as a telegraphic operator, and later became an instructor at Spalding Business College in Kansas City, Missouri. She was a devout Methodist Episcopal and regularly taught Sunday school classes at the Seventh Street Methodist Episcopal Church in downtown Kansas City. She was widely

49. Lyda never used her birth name of Eliza and reportedly hated it. She used the name Lidie or Lyda in her correspondence and "Lyda Burton Conley" on her business cards and as the name under which she argued before the Supreme Court.

50. See generally KAREN ANDERSON, *CHAIN HER BY ONE FOOT: THE SUBJUGATION OF NATIVE WOMEN IN SEVENTEENTH-CENTURY NEW FRANCE* (1991).

51. Selected reports of the Jesuit missionaries are reprinted in *MAJOR PROBLEMS IN AMERICAN WOMEN'S HISTORY* 21 (Ruth M. Alexander & Mary Beth Norton eds., 2d ed. 1996). Huron men were quicker to adopt the new religion and even retaliated against the disobedient women. One priest reports a council at which the men berated the women that

It is you women . . . who are the cause of all our misfortunes—it is you who keep the demons among us. You do not urge to be baptized. . . . You are lazy about going to prayers; when you pass before the cross, you never salute it; you wish to be independent. Now know that you will obey your husbands . . . and, if any fail to do so, we have concluded to give them nothing to eat.

One young woman hearing this fled into the woods. The men searched for her and, having found her, came to the Jesuits to ask if "it would not be well to chain her by one foot; and if it would be enough to make her pass four days and four nights without eating, as penance for her fault." *id.* at 22.

52. See, e.g., John Wesley Powell, 1879-1880 BUREAU OF ETHNOLOGY-SMITHSONIAN REP. 59 (1881).

53. KAN. CITY KANSAN, Sept 16, 1958.

read and travelled and corresponded with many friends and relatives in and out of the Kansas City area.⁵⁴

What could have motivated the young Lyda Conley to pursue a career path that seems, today, so unlikely for a turn-of-the-century woman? One can only speculate, considering the traces of her life that she left behind and the world in which she came of age. One can suspect, for example, that as a girl, Lyda Conley heard stories of some of her independent and unconventional female ancestors, among whom was her great great-aunt Elizabeth "Betsy" Zane (immortalized in a popular nineteenth-century poem and later by western writer Zane Grey)⁵⁵. Conley's grandmother had refused to make the choice prescribed by the 1855 Treaty between becoming a citizen or being deemed "incompetent." When Conley was a girl, her mother had tried to defy the government's wish that she become a citizen. Although her desire to remain a Wyandot was apparently ignored by the Indian agent, Eliza Burton Zane Conley to her death regarded herself and her daughters as Wyandots rather than as citizens of the United States.

Then, too, Conley grew to womanhood in Kansas, one of the first states to award women significant constitutionally-based legal rights, including the right to divorce, to have custody of their children in the event of divorce, to vote in school board elections, and to own property. The turn of the century was an era in which many Kansas women dared to challenge the roles demanded of them by nineteenth-century norms. During the last quarter of the nineteenth century, some of the nation's most "radical" female political figures, including Populists Mary Elizabeth Clynen Lease and Annie Diggs, were Kansans whose activities were widely reported and discussed throughout the state and country.⁵⁶ Jennie Mitchell Kellogg, the first woman lawyer admitted to practice in Kansas in 1881, served as Assistant State Attorney General from 1891 to 1893 (although she was never formally appointed to the position).⁵⁷ The newly founded state was more hospitable to women attorneys than many: in 1897 a local publication reported that "Kansas has more successful women lawyers than any other Western State."⁵⁸

54. Materials documenting the contents of this paragraph are part of the permanent archives of the Wyandotte County (Kansas) Historical Society and Museum.

55. ZANE GREY, BETTY ZANE (1903). Zane Grey himself was a relative of Lyda Conley; they shared a common great great-grandfather in Ebenezer O. Zane, a colonel in the colonial army in the Revolutionary War. Ebenezer Zane's son Isaac was kidnapped by the Wyandots in 1761 when he was seven years old and adopted as member of the tribe, a common practice among the Wyandots and some other northeastern tribes in that era. When offered the opportunity to return to his white family many years later, Isaac Zane refused, and later married Myeerah, daughter of the Wyandot Chief Tarhe. Myeerah and Isaac Zane were the great-grandparents of Lyda, Ida, Lena, and Sally Conley. For a fairly reliable historical account of the experiences of Betty Zane and her brother Isaac, see CHARLES MCKNIGHT, OUR WESTERN BORDER ONE HUNDRED YEARS AGO (Philadelphia, J.C. McCurdy Co. 1878) (on file with author).

56. See Martha J. Hodgesmith, "Some of them [are] actually representing clients in court . . .:" *Women Lawyers in Kansas*, in REQUISITE LEARNING AND GOOD MORAL CHARACTER: A HISTORY OF THE KANSAS BENCH AND BAR 96 (Robert W. Richmond ed., 1982).

57. *Id.* at 96-97.

58. *Id.* at 97 (quoting MAIL & BREEZE, Apr. 15, 1898).

Conley may also have been influenced by her acquaintance with Lucy Bigelow Armstrong. Armstrong, a Wyandot by virtue of her marriage to John McIntyre Armstrong, was the highly educated daughter of a Methodist missionary to the Ohio Wyandots. Active in the pre-Civil War abolitionist movement and the statehood efforts of the New England free-staters, Armstrong was an ardent suffragist and advocate of women's rights; in 1858, she successfully persuaded the Commission of Indian Affairs that widows among the Wyandots should be counted as "heads of households" for purposes of distributions of allotments to the Wyandots under the provisions of the 1855 Treaty.⁵⁹ Moreover, Armstrong's husband was an attorney who had studied law in Ohio before the Wyandots' removal to Kansas; she well knew the power of the law. She had been a central figure in the public debate over the cultural and historical significance of the Huron Place Cemetery that had been precipitated by the remarks of Senator Plumb in 1890. "To remove the 'burying-ground' now," Armstrong wrote in May, 1890, in an outraged letter to the *Wyandotte Gazette*,

would be to scatter the dust of the dead to the winds. What a sacrilege! I remember with reverence many of the good Wyandots buried there, and my heart protests against such a desecration of that sacred ground. Such a sale is repugnant to every sentiment we cherish for our dead, as well as being offensive to the highest impulses of a Christian civilization.⁶⁰

Perhaps Armstrong, anticipating some future fight over the cemetery in the wake of Senator Plumb's first attempt to accomplish a sale, saw in Lyda Conley a woman who had the spirit, the will, and the intellect to become an attorney and fight the federal government on its own terms. Perhaps Armstrong merely planted the seed of the idea to attend law school in the mind of her young acquaintance. Whatever may have motivated Conley, in 1900 she enrolled in the Kansas City College of Law. Her studies comprised the standard turn-of-the-century law school curriculum: courses on evidence, criminal law, jurisdiction, and remedies.⁶¹ Lyda graduated in May, 1902 (one of four women out of the sixty-seven in her graduating class), and on June 21, 1902, she was admitted to the Missouri Bar.⁶²

It was one thing for a woman at the turn of the twentieth century to attend law school and graduate, and quite another for her to secure steady

59. See Correspondence of Lucy B. Armstrong, in Letters Received by the Office of Indian Affairs, 1842-1881, *microformed on* Microcopy No. 234, Roll 952, Frames 187-212, 324 (Nat'l Archives Microfilm).

60. GRANT HARRINGTON, HISTORIC SPOTS IN WYANDOTTE COUNTY 119 (1935) (quoting from Armstrong's letter); WYANDOTTE COUNTY, *supra* note 21, at 173; English, *supra* note 4, at June 4, 1890.

61. Archival materials on file with Wyandotte County Historical Society.

62. See English, *supra* note 4, at 1902. Conley was admitted to the Kansas bar six months after she argued in the Supreme Court of the United States. *Id.* at July 6, 1910.

employment or make a living as an attorney. Lyda Conley's ambition was to practice law, serving the interests of her Wyandot people and other Native Americans, but a reliable, income-producing caseload was not initially forthcoming. After she graduated, Conley continued as a teacher of telegraphy at the Spalding Business College. Her personal papers and local court records indicate that she did maintain a modest practice, mainly representing relatives and her Wyandot neighbors in routine legal matters such as contract and property disputes.⁶³ Occasionally Native Americans sought her assistance on criminal and other matters.⁶⁴

In 1906, the events that would ultimately earn Lyda Conley a place in the annals of legal history began to unfold. On June 16 of that year Congress authorized "the inhabitants of all that part of the area of the United States now constituting the Territory of Oklahoma and Indian Territories to adopt a constitution and become the State of Oklahoma."⁶⁵ Five days later, at the urging of local businessmen and William Elsey Connelly and in a clause inserted in the middle of an omnibus appropriations bill pertaining to every Indian agency, tribe, and educational institution in the country, the Congress of the United States authorized the Secretary of the Interior "to sell and convey, under such rules and regulations as he may prescribe, the tract of land located in Kansas City, Kansas, reserved for a public burial ground under a treaty made and concluded with the Wyandotte tribe of Indians on [January 31, 1855]."⁶⁶ The clause further provided for the removal of the bodies buried in the Huron Cemetery to the Quindaro Cemetery and for the distribution of the proceeds of the sale of the land—less the costs of reinterment and legal costs associated with the sale—among the Wyandotte Tribe of Oklahoma and the citizen-Wyandots. Shortly thereafter, the Secretary of the Interior appointed a "Commission" of three—two of whom were members of the Wyandotte Tribe of Oklahoma—whose duty it was to proceed to Kansas City and make arrangements for the sale of the cemetery. William Connelly, who had first instigated an effort to sell the cemetery in 1899 and who continued to represent the Wyandottes of Oklahoma, stood to gain a substantial portion of the proceeds of the sale of the cemetery as his legal fees. In short order, the Commissioners appointed by the Secretary of the Interior came to Kansas City, ensconced themselves in the federal courthouse, and prepared to take bids on the job of disinterment and reburial of the Wyandot bodies, and on the property itself.⁶⁷

But the Secretary of the Interior, his appointed commissioners, and the local business community had not reckoned on the likes of Lyda Burton Conley

63. Archival material on file with Wyandotte County Historical Society.

64. *Id.*

65. Act of June 16, 1906, ch. 3335, 34 Stat. 267. *repealed by* Act of Feb. 13, 1913, ch. 44, 37 Stat. 668.

66. *Id.*

67. Martin, *supra* note 48, at 50-51.

and her sister Lena. Late one night in the summer of 1906, Lyda and her sister stole into the Huron Place Cemetery and posted on each marked gravesite of their lineal ancestors a sign bearing the words “Trespassers, Beware.” They built a small hut “close to the graves of their parents, with tiny windows overlooking the cemetery on all sides,”⁶⁸ armed themselves, and (so it was said) threatened “that the first man to turn a sod over one of those graves would either turn another for the Conley sisters or have some other person bury him.”⁶⁹

Passive resistance it was not, but the Conleys’ encampment in the Huron Place Cemetery accomplished its immediate objective. The Conleys’ unorthodox means of preventing the disinterment of their ancestors captured the fancy of women throughout Kansas City and the region, and many of the local ladies’ reading clubs then prevalent among middle- and upper-middle-class women expressed their support for “the Conley girls.”⁷⁰ When the Commission left Kansas City in the fall, it had failed in its mission to remove the bodies of the buried Wyandot and sell the cemetery—Kansas City had rejected the Commission’s offer to sell the cemetery for \$75,000.⁷¹ But the statutory mandate—and Connelly’s determination to consummate the sale and collect his fees—had not dissipated, and the legal threat to the cemetery raised by the Act of June 21, 1906 still loomed.

III. THE LEGAL BATTLE

*[T]he said defendants have signified their intentions and threaten the wrongful removal of the remains of the . . . persons interred in the . . . Burial-ground, and have declared their intentions and threaten to provide for the illegal sale of [the] Burial-ground . . .*⁷²

The dramatic, certainly illegal physical defense of the Huron Place Cemetery that so thrilled the public was, perhaps, a temporary means to prevent the destruction of the graves of the Wyandots buried in the cemetery. But Conley was a pragmatic woman, and she knew the limits of her ability to prevent the execution of a federal statute with only some handpainted signs and a double-barrelled shotgun.⁷³ On June 11, 1907, Conley filed a petition for injunction in the United States Circuit Court for the District of Kansas. Named

68. *Heroine*, *supra* note 1, at 11.

69. *Id.*

70. *See, e.g.*, Letter from Mrs. Randolph Nichols, Corresponding Secretary, Associated Clubs of Kansas City, Kansas, to Ida Conley (Oct. 27, 1906) (pledging Associated Clubs’ support in Conley’s efforts to save Huron Cemetery) (original on file with the Wyandotte County Historical Society).

71. English, *supra* note 4, at 1907.

72. Petition for Injunction at para. 6, *Conley v. Garfield*, No. 8548 (C.C.D. Kan. filed June 11, 1907).

73. Conley’s shotgun may be seen at the Wyandotte County Historical Museum in Bonner Springs, Kansas.

as defendants in the equitable action were James R. Garfield, as Secretary of the Interior of the United States, and the three members of the Commission appointed to execute the statute's authorization to sell the cemetery.⁷⁴ In the petition, Conley claimed that as a citizen-Wyandot, she had "seizin and a legal estate" in the Huron Place Cemetery land.⁷⁵ Conley asserted numerous constitutional grounds on which the sale of the cemetery should be enjoined, including a claim that the statutory authorization to sell the cemetery violated Article VI of the Constitution, which made "all Treaties . . . the supreme Law of the Land."⁷⁶ She claimed also that the authorization impaired the United States' obligation of contract to the citizen-Wyandots that derived from the 1855 Treaty.⁷⁷ Finally, she argued that the conditions of statutory authorization to remove the bodies to the Quindaro Cemetery were impossible to perform because that cemetery was held in adverse possession by the Quindaro Cemetery Association,⁷⁸ which would not allow the burials. Conley sought an injunction enjoining and restraining the government and its appointed Commissioners from encroaching upon or disturbing the graves within the cemetery or from furthering its sale.⁷⁹ She also sought a preliminary injunction pending disposition of the petition for a permanent injunction.⁸⁰

On July 1, 1907, the defendants demurred to Conley's equitable petition, asserting numerous grounds for dismissal.⁸¹ These included, *inter alia*, that the federal court lacked subject matter jurisdiction because the petition did not allege diversity of the parties, the requisite jurisdictional amount of \$2000, or a substantial federal question;⁸² that Conley was not a citizen of the Wyandotte Tribe, nor of any Indian tribe, but rather was a citizen of the United States and therefore had no right or interest stemming from the 1855 Treaty;⁸³ that the Act of June 21, 1906, authorizing the sale of the cemetery was "of equal authority" under the Federal Constitution with any treaty;⁸⁴ that Conley's petition was in reality a suit against the United States to which it had not consented;⁸⁵ and that the Constitution does not prohibit Congress from impairing its obligation of contract "for good and sufficient reasons," which reasons existed in the statute authorizing the sale.⁸⁶ The demurrer

74. Petition for Injunction at para. 6, *Conley* (No. 8548).

75. *Id.* at para. 1.

76. *Id.* at para. 5 (citing U.S. CONST. art. VI, § 2).

77. *Id.*

78. *Id.*

79. *Id.* at para. 7.

80. *Id.* at para. 8.

81. Demurrer of Defendants to Complainant's Bill, *Conley v. Garfield*, No. 8548 (C.C.D. Kan. filed July 1, 1907).

82. *Id.* at paras. 1-2.

83. *Id.* at para. 1.

84. *Id.* at para. 7.

85. *Id.* at para. 10½.

86. *Id.* at para. 11.

demanded that the petition be dismissed, with reasonable costs to the defendant.⁸⁷

At this juncture a curious series of events occurred. According to the district court records, not only was the defendants' demurrer filed on July 1, but a hearing on the demurrer was held the same day. District Judge John C. Pollock entered an order referring the matter to Special Master Charles Blood Smith "to determine and report whether said bill is susceptible of amendment so as to come within the jurisdiction of this court" ⁸⁸ Also on that same day, Special Master Smith prepared a lengthy report and recommendation in which, after discussing the authorities he deemed relevant, he concluded that the district court lacked jurisdiction to proceed in the matter.⁸⁹ The speed with which these proceedings took place may imply that Conley did not receive a fair and impartial hearing on her claims.⁹⁰ In any event, on July 2, 1907, her petition was dismissed by order of Judge Pollock, on the ground that there was no basis for federal jurisdiction over the complaint.

Lyda Conley was undaunted. On July 20, she filed a bill of exceptions to the special master's report⁹¹ and an amended bill of complaint for injunction⁹² that attempted to cure the defects in her original pleading as identified in the special master's report. In the amended bill, Conley averred her own standing on the ground that, as a descendant of the Wyandot party to the Treaty of 1855, she was, in effect, a third-party beneficiary of the treaty who could enforce its terms against the federal government. Her complaint alleged that, pursuant to the Treaty of 1855, the Huron Place Cemetery land was forever reserved for use by the Wyandot people as a cemetery and burying-place. Specifically, she argued that the treaty expressly stated that the land would be reserved for use as a cemetery, and that the Wyandots had relied on such statements; as a result, hundreds of Wyandots, including Conley's mother, father, and sister, were buried there long after the schism among the Wyandots occasioned by the Treaty of 1855. The complaint further contended that, notwithstanding the 1867 Treaty that reestablished the Wyandotte Tribe in Oklahoma, the newly constituted tribe now seeking to sell the cemetery was not the legitimate successor to the Wyandot Tribe dissolved by the Treaty of 1855. Accordingly, the new tribe retained no authority to sell

87. *Id.* at para. 12.

88. *Conley v. Garfield*, No. 8548 (C.C.D. Kan. July 1, 1907) (order referring matter to special master).

89. Report of Special Master, *Conley v. Garfield*, No. 8548 (C.C.D. Kan. filed July 2, 1907).

90. The speed with which Conley's petition was dismissed following the filing of the demurrer certainly raises questions about collusion between the defendants and certain judicial officers of the district court. We know that the defendant-Commissioners had offices in the federal building and therefore might have had ready access to the chambers of Judge Pollock. Certainly the timing of events permits an inference that the district court and the Special Master had seen the defendants' demurrer before it was actually filed, or at least knew the nature of the defendants' contentions.

91. Bill of Exceptions to Special Master's Report, *Conley v. Garfield*, No. 8548 (C.C.D. Kan. filed July 20, 1907).

92. Amended Bill of Complaint for Injunction, *Conley v. Garfield*, No. 8548 (C.C.D. Kan. filed July 20, 1907).

the cemetery over the objection of a citizen-Wyandot whose ancestors were buried there. In addition, the complaint alleged that the Act of Congress authorizing the sale of the Huron Place Cemetery was unconstitutional under the Fifth Amendment of the United States Constitution because it authorized the taking of property without due process of law. Finally she argued that the act violated Article VI of the Constitution because it purported to override the express language of a duly ratified treaty of the United State.⁹³ The amended complaint sought to enjoin the defendants

forever, from encroaching upon or disturbing the remains of said persons interred in said Burial-ground, or the grave stones, or any other act or acts of desecration or violence, and perpetually enjoining and restraining the said defendants, forever, from advertising for sale or by bid or otherwise, or accepting bids for the sale of said Burial-ground⁹⁴

Conley's original petition for injunction and her amended complaint reflect the workings of a creative and exceptional legal mind. Both documents invoke traditional principles of contract and constitutional law and apply them to the unique and complex history of the Wyandots. In addition the complaint and the amended bill in particular eschew the constraints of turn-of-the-century pleading requirements and the thin body of then-existing "Indian law" to articulate a jurisdictional basis for the lawsuit, and legal theories for the protection of the cemetery, that anticipate many fundamental components of modern-day federal Indian law. Conley filed her action during a time when the United States regarded Native Americans as wards of the state who were dependent on the "beneficence" of the federal government but who had no legal recourse for any actions the government took against them. In 1871, for example, Congress had declared that the Indian tribes were not sovereign nations capable of making treaties with the United States, thereby abrogating their right to enter into treaties with the federal government.⁹⁵ The Supreme Court subsequently held in *Lone Wolf v. Hitchcock*⁹⁶ that the United States Congress could unilaterally repeal a treaty through federal legislation. Those treaties with Indian tribes that remained nominally in force were deemed to be "not a grant of rights *to* the Indians, but a grant of rights *from* them."⁹⁷ As of 1906 no court had ever recognized a tribe's or an individual tribe member's legal right to enforce the provisions of an Indian treaty through a lawsuit against a representative of the federal government, and general

93. U.S. CONST. art. VI, §2.

94. Amended Bill of Complaint for Injunction at para. 7, *Conley* (No. 8548).

95. Act of Mar. 3, 1871, ch. 120, 16 Stat. 566 (current version at 25 U.S.C. § 71 (1988)).

96. 187 U.S. 553 (1903).

97. *United States v. Winans*, 198 U.S. 371, 381 (1905) (emphasis added).

jurisdictional legislation authorizing Indian tribes to sue in federal court was nonexistent.⁹⁸

Yet Conley, regarded by the federal government and the circuit court as a citizen of the United States despite her Wyandot heritage, claimed derivative rights, or standing, to enforce the Treaty of 1855. Conley even claimed that the government had legally enforceable duties stemming from the treaty. Conley could not ground her main argument—that the cemeteries of Native American peoples are sacred—in any legal precedents. Nonetheless, Conley presented her arguments as moral imperatives, perhaps with the hope that they would compel the court to overturn existing precedent that permitted the government’s sale of the cemetery.

The district court did not ever consider Conley’s amended bill. Perhaps, given the suspicious disposition of her original petition it would not have mattered if it had. On July 2, 1907, Conley filed a notice of appeal to the Supreme Court of the United States, limited to the question of whether the federal court had jurisdiction to hear her claims.⁹⁹ The effect of that notice of appeal, then as now, was to divest the Circuit Court for the District of Kansas of jurisdiction in the case—the subsequently filed amended petition was irrelevant. Conley may have had strategic reasons for filing the amended petition; her later correspondence with the Supreme Court as well as her motion for rehearing of the case when she ultimately lost the appeal both indicate that the remedy she sought in the Supreme Court was a remand to consider the amended bill. On October 9, 1907, the district court allowed the appeal from the dismissal of the original petition, paving the way for Conley’s argument before the United States Supreme Court.¹⁰⁰

IV. THE NOT-SO-LEGAL AFTERMATH

*Like Jacob of old, I, too, when I shall be gathered unto my people, desire that they bury me with my fathers in Huron cemetery, the most sacred and hallowed spot on earth to me, and I cannot believe that this is superstitious reverence any more than I can believe that the reverence every true American has for the grave of Washington at Mount Vernon is a superstitious reverence.*¹⁰¹

98. See generally COHEN, *supra* note 10, 283-85 (discussing scope of Indian tribes’ capacity to sue in federal courts); Reid P. Chambers, *Judicial Enforcement of the Federal Trust Responsibility to Indians*, 27 STAN. L. REV. 1213 (1975) (discussing federal trust responsibility as basis for suits by Indian tribes in federal courts). Congress did not explicitly abrogate the United States’ sovereign immunity and authorize suits against the federal government to enforce treaty provisions until the 1960s.

99. Decree, *Conley v. Garfield*, No. 8548 (C.C.D. Kan. filed July 2, 1907); Assignment of Errors, *Conley v. Garfield*, No. 8548 (C.C.D. Kan. filed Dec. 30, 1907).

100. *Conley v. Garfield*, No. 8548 (C.C.D. Kan. Oct. 9, 1907) (order allowing appeal).

101. Handwritten document found among Lyda Conley’s personal papers (transcription on file with author; original on file with the Wyandotte County Historical Society). This may be presumed to be the basis for her arguments in the District Court and before the Supreme Court in 1910.

Although she lost in the district court, the pendency of Lyda Conley's appeal to the Supreme Court bought time and a respite for the cemetery. The appeal was initially docketed for the October Term, 1907, but more than two years passed before her case was finally placed on the argument calendar of the Supreme Court. The Supreme Court record in *Conley v. Ballinger*¹⁰² reveals something of what went on during those two years, as Lyda Conley struggled to pay the filing fees and printing costs associated with litigating in the nation's highest court, to post an adequate appeal bond, and to file the requisite documents pertaining to her appeal.¹⁰³ Conley's correspondence with the Supreme Court also reflects her concern about the lengthy delays associated with the case—she wrote Chief Justice Fuller somewhat audaciously in March, 1909, stating that she wished to know precisely when her case would come on for a hearing, for "with me, 'time is money,' and I cannot afford to spend either in idleness."¹⁰⁴ Conley was concerned that she would be unable to find a suitable member of the bar to vouch for her good character and so ensure her ability to argue her case before the Court. Shortly before she departed by train for Washington, D.C., en route to her historic moment before the Supreme Court, Conley told a reporter who had asked whether she was admitted to the Supreme Court:

No, but I am willing to take the examination, if I can find anyone who will stand to sponsor me. But you know one can plead his own case in any court, and this I intend to do. No lawyer would plead for the grave of my mother as I could, no lawyer could have the heart interest in the case that I have.¹⁰⁵

Finally, in late December of 1909, Conley received word that her case would appear on the January docket of the Supreme Court. In January, she left with her sister Lena by train for Washington, D.C.

Conley's apprehension that she would be unable to find a qualified attorney to move her admission to practice before the Supreme Court proved to be well-founded. Although Conley had been admitted to the state bar of Missouri some eight years earlier, she evidently could not find a single attorney in the city of Washington who would vouch for her character and fitness to practice before the Supreme Court. Neither the Court's contemporaneous docket nor its records suggest that she was ever admitted to practice before the Supreme Court. Instead, Conley, herself the plaintiff in the case against the Secretary

102. Richard A. Ballinger became Secretary of the Interior during the pendency of the appeal to the Supreme Court and was substituted as party-defendant in the case of *Conley v. Garfield* on January 31, 1910. Mandate, *Conley v. Ballinger*, 216 U.S. 84 (1910) (No. 21,023).

103. See generally Transcript of Record, *Conley v. Garfield*, 216 U.S. 84 (1910) (No. 9-77).

104. Letter from Lyda B. Conley to Chief Justice Fuller (March 25, 1909). in Transcript of Record, *Conley* (No. 9-77).

105. Martin, *supra* note 48, at 52.

of the Interior and the congressional Commission, argued pro se. The Solicitor General of the United States submitted the government’s case “on printed argument.”¹⁰⁶

Conley was the third woman, the second woman attorney, and the first woman of Native American descent to appear and argue in the courtroom of the Supreme Court of the United States. We can only imagine the reaction of the spectators in the gallery of the Court when this woman from Kansas stepped to the podium. Perhaps there was a collective gasp of disbelief. Perhaps there were titters or laughter from an audience that was not well-acustomed to the notion that a woman could practice law, and certainly did not expect to see a woman standing before the nation’s highest and most sacrosanct Court. Perhaps those within the courtroom were unsure of how to react properly to a woman advocate arguing before the nation’s highest judicial body. Perhaps some among them even felt awe or admiration. Undoubtedly we will never know.

We can know, however, something of the nature of Lyda Conley’s argument, and that the Court was moved by the strength and courage of her convictions. From her brief we can assess the formal arguments she made, which were based on the best authority she could find in support of her all-too-radical legal theories. But we also know something about her personal appeal to the nine Justices in whose hands the fate of the cemetery rested. Conley left what appears to be a handwritten account of her remarks to the Court, and from that account we know that she spoke with eloquence of the history of the Wyandots, of their loyalty to the colonial forces during the Revolutionary War, and of the consistent failure of the federal government to honor its treaties with them. Through patriotic and biblical references, Conley appealed to the Justices’ sense that the graves of the great Wyandot leaders interred at Huron Place, no less than the grave “of Washington at Mt. Vernon,” were deserving of federal protection and respect. Her argument may have been unorthodox, but there is evidence that it had a profound impact on the Justices: one contemporaneous account reported “it is a matter of record that the judicial reserve was affected and penetrated by the force of that moving drama.”¹⁰⁷

Unfortunately, less than three weeks after the oral argument, in an opinion by Justice Oliver Wendell Holmes, Jr., the Supreme Court upheld the lower court’s dismissal of Conley’s original petition. Although the Court, according to Holmes, had “examined the facts with anxiety to give full weight to any argument by which plaintiffs pious wishes might be carried out,”¹⁰⁸ it ruled unanimously that, if the Treaty of 1855 created any rights at all, they were tribal rights, not individual ones; Conley, in effect, had no standing to bring

106. Transcript of Record, *Conley* (No. 9-77). See generally Minutes of the Supreme Court of the United States, *supra* note 5.

107. 1 KANSAS STATE HISTORICAL SOC’Y, THE ANNALS OF KANSAS 1886-1925, at 512 (Kirke Mechum ed. & Jennie Small Owen annalist, 1954).

108. *Conley v. Ballinger*, 216 U.S. 84, 89 (1910).

an action based on the treaty's provisions. More important, the treaty did not confer any legally enforceable obligations on the part of the United States, which "was bound itself only by honor, not by law."¹⁰⁹ According to the Court, the Treaty of 1855, with its language plainly reserving "permanently" the tract of land on which the Huron Place Cemetery had been founded, did not create a legally enforceable trust obligation against the federal government to protect the cemetery:

It seems to us more reasonable to suppose that the words 'shall be permanently reserved and appropriated for [use as a cemetery]', like the rest of the treaty, were addressed only to the tribe and rested for their fulfillment on the good faith of the United States—a good faith that would not be broken by a change believed by Congress to be for the welfare of the Indians.¹¹⁰

The Court found no basis for federal jurisdiction over Conley's action. It upheld the district court's dismissal of Conley's suit, reversing only that part of the decree assessing costs. Conley's petition for rehearing was denied on May 2, 1910. After nearly three years of litigation Conley had lost, and the path was again cleared, at least legally, for the sale of the Huron Place Cemetery.

But Conley's passionate fight to save the Huron Place Cemetery was far from over. Though the Court's decision in *Conley v. Ballinger* enabled the sale of the cemetery pursuant to the provisions of the Act of June 21, 1906, Conley would not admit defeat. Fort Conley still stood near the grave of her mother, and Lyda and her sister continued to guard the grave and the cemetery even after the Court's mandate authorizing the sale had issued. On July 29, 1910, federal marshals acting under a court order entered the Huron Place Cemetery and destroyed the shack in which the Conleys had kept their watch.¹¹¹ Undaunted, the two women rebuilt the shack. It would be destroyed and rebuilt a least twice more—some accounts suggest several times—before federal officials would give up the fight.¹¹² Moreover, the notoriety attending the cemetery due to the physical presence of the Conley sisters and their lawsuit had dissuaded potential buyers of the site, and the Commission that had been established to find a buyer for the property eventually gave up.

In the meantime, Conley's activities had attracted nationwide attention, including that of Kansas Senator Charles Curtis, who later served as Vice President under Herbert Hoover. Curtis, a Topekan of Kaw descent, visited the Huron Place Cemetery in 1912 and soon thereafter introduced a bill in

109. *Id.* at 90.

110. *Id.* at 91.

111. *See* English, *supra* note 4, at July 29, 1910.

112. *See* English, *supra* note 4, at July 30, 1911, May 15, 1918.

Congress to preclude the sale of the cemetery.¹¹³ On February 13, 1913, Congress approved legislation that both repealed the part of the Indian Appropriation Act of 1906 authorizing the sale of Huron Place Cemetery and recommended that the cemetery become a national monument.¹¹⁴ On September 8, 1916, Congress appropriated \$10,000 for the renovation and preservation of the cemetery, and assigned the Trustees of Haskell Institute, a Native American vocational school located in Lawrence, Kansas, to administer the funds and assure the perpetual maintenance of the cemetery.¹¹⁵

For the rest of their lives, Lyda and Lena Conley watched over and protected the Wyandot graves at the Huron Place Cemetery. Even after the federal government had provided for the preservation of the cemetery, the Conleys sometimes perceived threats to the integrity of the cemetery and the Wyandot graves within it. In 1918, Conley sought an injunction in federal court to restrain city officials from completing cemetery renovations and improvements that she believed were undertaken carelessly, without regard for the presence of unmarked graves at Huron Place.¹¹⁶ She and her sister Lena were arrested on several occasions on various charges relating to their attempts to interfere with city officials whose actions, the Conleys believed, were desecrating Wyandot graves.¹¹⁷ In the early 1930s, Lyda spent 10 days in jail in lieu of paying a \$10 fine for trespass.¹¹⁸ Lena Conley achieved notoriety for placing curses on local officials and others whom she perceived as not respecting the sanctity of the Huron Place Cemetery.¹¹⁹ Those who knew the Conley sisters in their later years have attested that they spent much of their time in the cemetery, close to the graves of their ancestors, watching over them and honoring their spirits.

EPILOGUE: "CURSED BE THE VILLIAN THAT MOLEST
THEIR GRAVES"¹²⁰

Lyda Conley died on May 28, 1946. Within months of her death, the federal government and the Wyandot Tribe of Oklahoma again initiated efforts to move the Wyandot graves and sell the cemetery land. In 1947, separate bills were introduced in the House and Senate to permit the sale of the Huron Place Cemetery on behalf of the Wyandot Tribe of Oklahoma,¹²¹ but neither was

113. See English, *supra* note 4, at February 8, 1912 (regarding report by Curtis recommending that cemetery become national monument).

114. Act of Feb. 13, 1913, ch. 44, 37 Stat. 668.

115. Act of Sept. 8, 1916, ch. 468, 39 Stat. 844.

116. KANSAS STATE HISTORICAL SOC'Y, *supra* note 107, at 218.

117. See English, *supra* note 4, at May 5, 1918, June 6, 1937.

118. *Id.* at June 6, 1937 ("Wielding a broomstick, Lyda Conley chased some people from the cemetery. A judge gave her the choice of a \$10 fine or a 10 day jail term. Proudly she served the sentence.")

119. See English, *supra* note 4, at October 23, 30, & November 8, 1922.

120. Misspelling of "Villain" and other errors engraved in Helena Conley's tombstone.

121. H.R. 3685, 80th Cong., 1st Sess. (1947); S. 1372, 80th Cong., 1st Sess. (1947).

enacted. Nine years later, during the “termination era” that lasted from 1953 to 1968, Congress enacted legislation providing for the termination of federal supervision over the Wyandot Tribe; the legislation explicitly authorized the sale of the cemetery as part of the termination process.¹²² Tensions had again arisen between the federally recognized Wyandot Tribe of Oklahoma and the unrecognized citizen-Wyandots who had, for the most part, continued to live in the environs of Kansas City, Kansas. By 1957, the Oklahoma Wyandots were threatening to move the bodies from Huron Place to a site in Oklahoma. Local businesses were eager to play a part in the destruction of Huron Place Cemetery. But no federal money had been appropriated to pay for the disinterments, and the plans for Huron Place languished.

On September 15, 1958, Lena Conley, the last of the four daughters of Eliza Burton and Zane Conley, died in her home in Kansas City, Kansas. Three days later, she was laid to rest near the graves of her mother, father, and three sisters. The tombstone that she herself designed to mark her grave bears her birth name, her Indian name “Floating Voice,” and the warning “Cursed be the villain that molest their graves.”¹²³ Even in death, it seemed, the Conley sisters were unwilling to give up their fight to protect the cemetery and what it represented.

In 1959, the City of Kansas City, Kansas and descendants of the citizen-Wyandots initiated separate lawsuits, subsequently consolidated as *City of Kansas City v. United States*,¹²⁴ against the United States and the Wyandots of Oklahoma, seeking to invalidate that part of the termination legislation that authorized the sale of the Huron Place Cemetery. A three-judge panel of the district court, convened because the plaintiffs sought to enjoin the enforcement of an act of Congress, found unanimously that the Wyandot descendants lacked standing to bring an action concerning the Treaty of 1855.¹²⁵ Further, citing *Conley v. Ballinger*, the court also found that Kansas City’s complaint for injunctive and other relief failed to establish grounds for federal jurisdiction.¹²⁶ The Supreme Court summarily affirmed the panel decision in 1961.¹²⁷

Despite the failure of the Wyandot descendants in federal court, the cemetery was not sold—for it had come to be regarded as a local historic landmark, and as in 1910, no buyers were forthcoming. In 1971, after years of effort by Wyandot descendants, local historians, and city officials who appreciated the historical and cultural significance of the Huron Place Cemetery, the site was placed on the National Register of Historic Places. Although this status does not render the cemetery absolutely protected against

122. Act of Aug. 1, 1956, Pub. L. No. 84-887, 5(c). 70 Stat. 893 (1956).

123. See *Last of Conleys Joins Family*, KAN. CITY KANSAN. Sept. 19, 1958.

124. 192 F. Supp. 179 (D. Kan. 1960), *aff’d*, 365 U.S. 568 (1961).

125. *Id.* at 181.

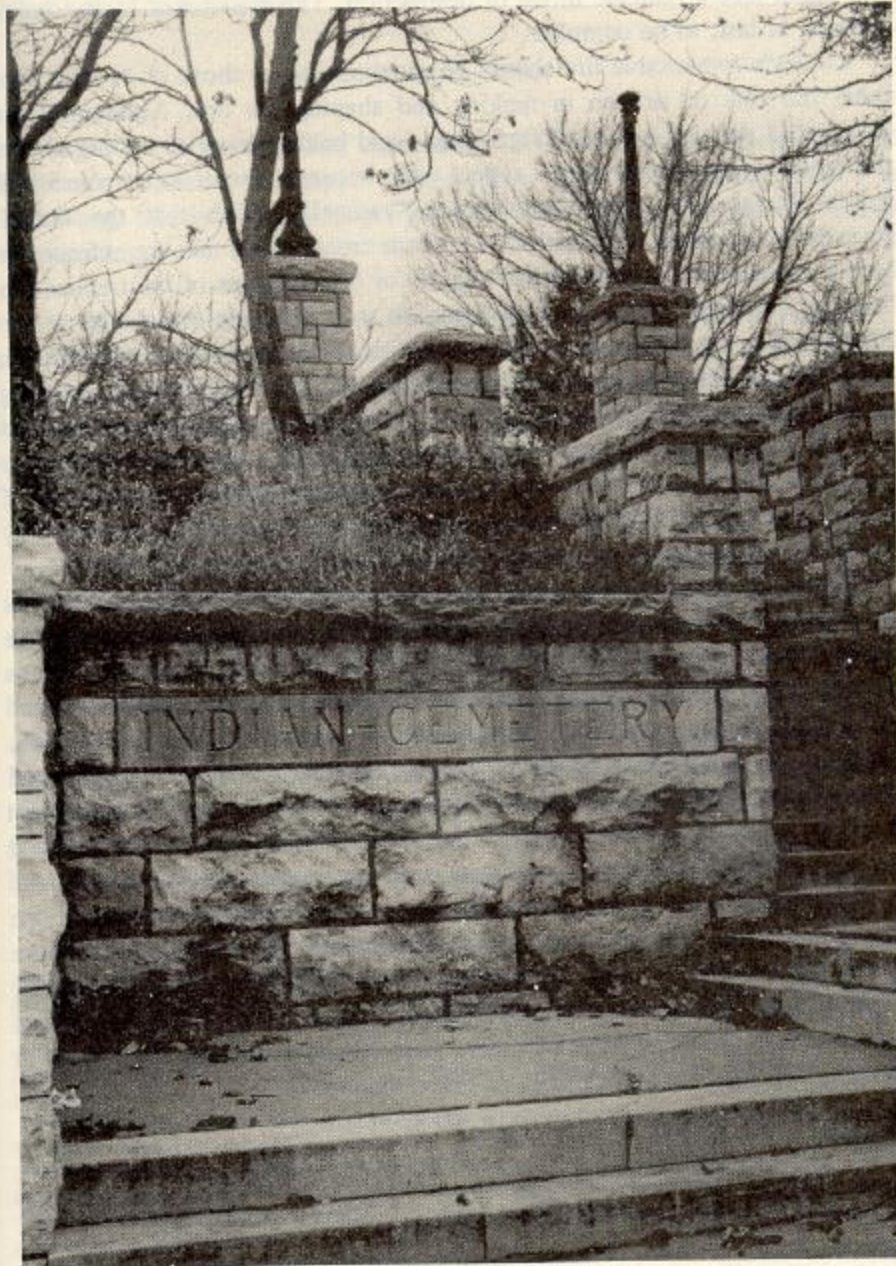
126. *Id.* at 182.

127. 365 U.S. 568 (1961).

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"Trespassers, Beware!"

29



Huron Cemetery steps as they appear today.

encroachment or desecration, other state and federal legislation which does extend to the cemetery now make it extremely unlikely that the cemetery will ever again face a realistic threat of destruction. The mission of Lyda Conley appears, at last, to be complete.

Conley's remarkable life should be remembered by those of us who care about the role of women in making and shaping the law. Although Lyda Conley did not win her most significant legal battle, many of the arguments she made in the federal courts reflect what became essential components of federal Indian law. For example, her "radical" notion that the federal government's treaties with Native Americans create duties that are enforceable by the descendants of the original signers or beneficiaries of the treaties has become an aspect of the trust doctrine. It is a principle which has led to compensation for thousands of Native American descendants for lands stolen from their ancestors through dishonored treaties. Her theory that the burying places used by Native Americans are sacred and entitled to government protection animates the provisions of the federal Native American Graves Protection and Repatriation Act,¹²⁸ which generally forbids the removal of the remains and cultural artifacts of Native Americans from lands owned by the federal government, as well as a host of similar state laws.¹²⁹

Conley's most important legacies, however, are surely the example she set for women attorneys and Wyandots alike and the continued existence of the Huron Place Cemetery itself. Conley has served as a role model for women such as Janith English, Second Chief of the Wyandot Nation of Kansas, and Holly Zane, the attorney who drafted the Wyandot Nation's Constitution. Because of Lyda Conley's efforts, carried on after her death by her people and those who knew her, the cemetery has survived for more than 150 years, and is one of the few tangible reminders of a Native American nation that was once as many as 20,000 strong. Its headstones tell us the names of—and thus help us to remember—those among the nearly-lost tribes that once composed one of the mightiest Confederacies of pre-Columbian North America. These headstones are a tribute not only to those who lie beneath them, but to the many Wyandots whose graves in the cemetery are unmarked, and to Lyda and Lena Conley and the legion of others who fought with and after them to preserve the integrity and sanctity of this monument.

128. 25 U.S.C.A. §§ 3001-3013 (West Supp. 1995).

129. *E.g.*, Native American Historical, Cultural, and Sacred Sites Act. CAL. PUB. RES. CODE § 5097.9 (West 1982); Kansas Unmarked Burial Sites Preservation Act, KAN. STAT. ANN. §§ 75-2741 to 75-2754 (1989); Indian Antiquities, Archaeological Resources and Unmarked Human Skeletal Remains Protection Act, 11 N.C. GEN. STAT. 70-1 (1991). *See generally* H. MARCUS PRICE III, *DISPUTING THE DEAD: U.S. LAW ON ABORIGINAL REMAINS AND GRAVE GOODS* (1991) (reviewing federal and state statutes designed to protect aboriginal remains and artifacts).