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Law Enforcement at Fort Smith, 1871-1896

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SYNOPSIS

LAW ENFORCEMENT AT FORT SMITH 1871-1896

The 32d Congress on March 3, 1851, established a Court for the Western District of Arkansas to be domiciled in Van Buren, Arkansas. Though they were separate courts, the Eastern and Western Districts of Arkansas had the same judge. Congress on March 3, 1871, passed a law shifting the seat for the Court for the Western District from Van Buren to Fort Smith, and providing for the appointment of a judge for the Western District.

The first session of the Court for the Western District to convene at Fort Smith was called to order by Judge William Story on Monday, May 8, 1871, in the Rogers' Building. On November 14, 1872, a fire destroyed the Rogers' Building, and the court on November 18 opened in the old "Soldiers' Quarters."

Graft and corruption in the Court for the Western District sparked a congressional investigation in the spring of 1874. Bills were introduced to abolish the Court for the Western District. When Story resigned under fire, the Senate failed to act. Pending the appointment of a new judge, Henry J. Caldwell presided over the Fort Smith court. While Story was judge, seven men were sentenced to death and were executed by the Court for the Western District. At the November 1874 term of court, Judge Caldwell doomed one man.

Isaac Parker was appointed to be judge of the Court for the Western District by President Ulysses S. Grant in March 1875. Parker on May 10 opened the first term of the Fort Smith court over which he was to preside for the next 21 years. At the May 1875 term of court, eight men were convicted of murder and sentenced to death. Six of these men were hanged in the old Garrison on September 3, 1875.

Five of the six men convicted of murder at the November 1875 term of court were hanged on April 21, 1876. Five months later, four more men were sent to the gallows. Thus, within a period of 371 days, 15 convicted murderers had paid the supreme penalty for their crimes on the Fort Smith gallows. Since these executions were public affairs, they had been witnessed by thousands of people. By the time the next two men went to the gallows on

December 20, 1878, public hangings at the old Garrison were a thing of the past; a stockade had been erected around the scaffold and the only persons admitted were those with tickets.

During the fall of 1883 pressure began to mount for congress to appropriate funds for the construction of better facilities for the court and jail at Fort Smith. The hue and cry raised by the Fort Smithites reached Washington. Anna Dawes' article describing conditions in the U. S. Jail was widely circulated, and on March 16, 1886, President Grover Cleveland signed a bill appropriating $125,000 for the construction of a courthouse and jail at Fort Smith. Work on the new jail was started in January 1887, and on February 1, 1888, the contractor turned the new jail over to Marshal John Carroll. On March 17 the prisoners in Cell No. 1 of the old jail sought to burn their way out. The attempt failed. Two days later the inmates were transferred to the new jail. Following the removal of the prisoners, the old jail was used for hospital purposes. The new courthouse was completed during the fall of 1889, and Judge Parker convened his court in this building on February 3, 1890. The old courthouse at the "Garrison" was then turned into a hospital and offices.

While Carroll was marshal for the Court for the Western District an unusually large number of law enforcement officers were slain in carrying out their duties. In the 20 months between May 1886 and December 1887, nine deputy marshals, two possemen, and three guards were killed by desperados.

During the 1890's a number of outlaw bands terrorized the Indian Territory, western Arkansas, and southern Kansas. Although it was hard, dangerous work, the lawmen broke up these gangs. Henry Starr and a number of his confederates were brought before Judge Parker. Although Starr was convicted of murder and sentenced to death, his case when appealed to the Supreme Court was ordered retried. Once again, Starr was convicted and doomed by Judge Parker only to be saved by the high court. After Parker had left the bench, Starr in 1898 was allowed to plead guilty to manslaughter.

Next came the struggle against the Cook Gang. A number of the members of the gang, along with several lawmen, died in gunbattles. The leader of the gang, William T. Cook, was convicted of armed robbery in Judge Parker's

Court and sentenced to 45 years' imprisonment. One of Cook's henchmen, Cherokee Bill Goldsby, was convicted and doomed by Judge Parker for murder. Cherokee Bill on July 26 killed Guard Lawrence Keating in an attempt to breakout of the U. S. Jail. When he was executed on March 17, 1896, it attracted national interest.

During the summer of 1895, the Rufus Buck Gang conducted a 13-day reign of terror in the Indian Territory. Captured, the five members of the Buck Gang were convicted of raping Rosetta Hassan and sentenced to death by Parker. James C. Casharago, who was executed on July 30, 1896, was the last man to be executed by the Court for the Western District. While Parker was judge, 79 of the men upon whom he had passed sentence of death were hanged at Fort Smith. Altogether, 87 men were executed by the Court for the Western District from the time of removal to Fort Smith from Van Buren in 1871 until Parker's retirement from the bench in 1896.

Congress on January 6, 1883, passed an act reducing the area in the Indian Territory over which Judge Parker's Court had jurisdiction. The legislation, however, had little effect on the volume of business coming before Judge Parker. The 50th Congress enacted several laws bearing on the jurisdiction of the Court for the Western District. The most important of these was passed on February 6, 1889, and was to take effect on May 1. Section 6 of this act authorized the granting of a writ of error to the Supreme Court of the United States in all criminal cases tried before any U. S. trial court where there had been a conviction carrying a death sentence.

The law of 1889 was in effect 15 months before any of the Fort Smith lawyers saw fit to challenge Judge Parker. In October 1890, Parker had sentenced to death two men, "Bood" Crumpton and William Alexander, who had been convicted at the August term of court. On February 2, 1891, the Supreme Court handed down its opinion in the two cases: Crumpton's sentence was affirmed, while Alexander's was reversed and remanded to the Court for the Western District for retrial. Alexander's second and third trials ended in hung juries. Satisfied that he would now be unable to secure a conviction District Attorney William H. H. Clayton consented to a nolle prosequi.

On March 3, 1891, congress passed another law directed at Judge Parker's Court. Section Five of this enactment authorized a direct review by the Supreme Court in all cases tried in the district or circuit courts

of the United States where there had been a conviction for a capital, or otherwise infamous, crime. In the five years, 1891-1896, fifty criminal cases were appealed from Parker's Court to the Supreme Court. The high court ruled that 30 of the 47 persons convicted of murder hadn't had fair trials. Of these 30, 16 were discharged or won acquittal at their retrials. The remainder ended up in the penitentiary. Seven of these 14 were convicted of manslaughter at the retrial; the other seven were found guilty of murder.

Congress on March 1, 1896, passed an act stripping Judge Parker's Court and the District Courts at Paris, Texas, and Fort Scott, Kansas, of their jurisdiction over all offenses against the laws of the United States committed in the Indian Territory, except such cases as they had already proceeded against. This law was to take effect on September 1. When September 1 arrived Judge Parker was not on hand to hear the words "Oyez! Oyez! The Honorable District and Circuit Courts of the United States for the Western District of Arkansas, having criminal jurisdiction of the Indian Territory, are now adjourned, forever. God bless the United States and the honorable courts!"

Parker did not long survive the curtailing of the court's jurisdiction. On November 17 the end came at 2:45 a.m.--two months and 17 days after his court had lost its authority in the Indian Territory. Judge Parker on the 18th was laid to rest in the Fort Smith National Cemetery.

LAW ENFORCEMENT AT FORT SMITH 1871 - 1896

Chapter I

The Court for the Western District Moves to Fort Smith

The seed from which the Court for the Western District of Arkansas sprouted was sown in 1834. Two years before Arkansas was admitted to the Union, the 23d Congress on June 30 passed "an Act to Regulate Trade and Intercourse with the Indian Tribes and Preserve Peace on the Frontiers." [1] Section one of the "Intercourse Law" described the Indian Country as "all that part of the United States west of the Mississippi and not within the States of Missouri or Louisiana or the Territory of Arkansas, also that part of the United States east of the Mississippi and not within any state, to which the Indian title has not been extinguished." [2]

According to Section 20 of the "Intercourse Act" the penalty for selling, exchanging, giving, bartering or disposing of any ardent spirits or wine" to a redman in the Indian Country was to be a fine of $500. For introducing or attempting to introduce the same, "except such supplies as shall be necessary for officers of the United States troops for the service under the direction of the War Department," the fine was $300. One thousand dollars was to be the penalty for setting up or maintaining a distillery for the "manufacture" of ardent spirits. [3]

Section 22 of the "Intercourse Act" provided that trials dealing with the right of property to which an Indian was a party on one side and a white on the other, the burden of proof was to rest on the white "whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership." [4] For the purpose of carrying the enactment into effect all that part of

the Indian Country "west of the Mississippi River that is bounded north by the north line of lands assigned to the Osage Indians, produced (or continued) east to the State of Missouri; west by the Mexican possessions; south by the Red River; and east by the west line of the Territory of Arkansas and State of Missouri, shall be and hereby is annexed to the Territory of Arkansas," while the remainder of the Indian Country west of the river was assigned to the judicial district of Missouri. The "several portions" of the Indian Country east of the Mississippi were to be annexed to the judicial district in which they were situated. [5]

Section 24 of the Act of 1834 clearly demonstrates that the Indian Country west of the Territory of Arkansas was subject for judicial purpose to the Federal district court for Arkansas long before the Court for the Western District was established at Fort Smith.

It was provided by Section 25 of the "Intercourse Law" that "so much of the laws of the United States as provides for punishment of crimes committed within any place within the sole or exclusive jurisdiction of the United States," are declared to be in force in said Indian Country, excepting crimes committed by one Indian against the person or property of another redman. Finally, according to Sections 26 and 27 the violation of any of the acts, provisions, or regulations of the "Intercourse Law" was made "judically cognizable" in the district court having jurisdiction over the said territory. 6

The Territory of Arkansas on June 15, 1836, was admitted to the Union, and the new state was organized into one federal judicial district. A district court was constituted to be presided over by one judge, who was to hold at Little Rock two sessions annually on the first Mondays of April and November. The judge for the Arkansas district was to have and exercise the "same jurisdiction and powers" which were by law given to the judge of the Kentucky District under the act of September 24, 1789, entitled, "An Act to establish the Judicial Courts of the United States." [7]

The salary of the judge for the Arkansas district was fixed at $2,000 per year, payable quarterly. He was authorized to appoint a clerk who was to receive the same fee as the clerk of the Kentucky District; provision was made for the appointment of a district attorney to be paid besides his stipulated fees, $200 yearly. A marshal was to be appointed "to perform the same duties, be subject to the same regulations and penalties and be entitled to the same fees as are prescribed to the marshal in other districts, and he shall be entitled to $200 annually as compensation for extra services." [8]

Nine months later, the 24th Congress on March 1, 1837, enacted a measure to extend the jurisdiction of the district court of Arkansas. The court was clothed with the same "jurisdiction and powers" conferred on the several district courts by the act of March 30, 1802, "to regulate trade and intercourse with the Indian tribes, and by subsequent acts of Congress, concerning crimes, offenses, and misdemeanors, committed against laws of the United States in any town, settlement, or territory belonging to any Indian tribe in amity with the United States." [9]

Congress on June 17, 1844, approved an act providing:

> That the courts for the United States in and for the district of Arkansas be and hereby are vested with the same power and jurisdiction to hear, try, determine and punish all crimes committed within that Indian country designated in the twenty-fourth section of the act to which this is a supplement, and therein and thereby annexed to the Territory of Arkansas as were vested in the courts of the United States for said territory before the same became a state. And for the sole purpose of carrying this act into effect all that Indian country hereunto annexed by the said twenty-fourth section of the said act aforesaid to the Territory of Arkansas be, and the same hereby is, annexed to the State of Arkansas. 10

A zooming population in western Arkansas increased the business brought before the federal district court for Arkansas. Travel, except by water, was difficult on the frontier. Little

Rock, while centrally located to take care of cases arising in Arkansas, was a long way from the Indian Territory. An act was accordingly approved by the 2d Session of the 32d Congress on March 3, 1851, creating the Western District of Arkansas. Section 1 of the new legislation provided that the counties of Benton, Washington, Crawford, Scott, Polk, Franklin, Johnson, Madison, and Carroll, along with that part of the Indian Country within the present judicial district of Arkansas, should constitute a new judicial district to be designated the "Western District of Arkansas." The remainder of the state would be organized as a judicial district, styled "the Eastern District of Arkansas." The same judge was to preside over each district.

It was provided in Section 2 of the enactment that the judge for the Western District would hold two terms per year at Van Buren, the county seat of Crawford county. These terms were to begin on the second Mondays of May and November. In addition to the ordinary jurisdiction and power of a district court, the court for the Western District would have within the limits of its jurisdiction all:

> causes, civil or criminal, except appeals and writs of error, which now or hereafter may by law be made cognizable in a circuit court and an appeal or writ of error shall be prosecuted from the final degree or judgment of said district court to the Supreme Court of the United States in the same manner that appeals and writs of error now are, by law, from a Circuit Court of the United States.

The President was to appoint a district attorney and a marshal for the Western District, who were to receive the same salary and fees as the officers holding these positions of trust in the Court for the Eastern District. The judge was to appoint a clerk for the Court for the Western District.[11]

Three years later, the 33d Congress on March 27, 1854, amended the act dividing Arkansas into two districts. Henceforth, offenders convicted in the Western District of crimes "punishable by confinement at hard labor" in the penitentiary "may be sentenced by the

Court to the Penitentiary House in the Eastern District of Arkansas the same as if the Penitentiary House was in the Western District. ..." Heavy penalties for arson were announced. It was provided that any white "setting fire to, or attempting to fire, any buildings in the Indian Territory belonging to an Indian, or any Indian setting fire to, or attempting to fire, any buildings belonging to or in lawful possession of a white person, should on conviction thereof be deemed guilty of a felony and be sentenced to hard labor" for a term of not less than two or not more than 21 years. At the same time, it was provided that any white assaulting a redman or other person in the Indian Territory, or any Indian assaulting a white person, with deadly weapons with intent to kill or injure should on conviction be declared guilty of a felony and sentenced to imprisonment at hard labor for a term of from one to five years.

By the same amendment, the recently organized counties of Sevier and Sebastian, of which Fort Smith was the county seat, were added to the Western District.[12]

Judge Daniel Ringo, who presided over the Arkansas district when the Act of March 3, 1851, was passed, now had jurisdiction in both the Western and Eastern Districts. Although the Court for the Western District had tremendous power, Judge Ringo didn't make his weight felt. Judge Ringo's sympathies were with the South. In February 1861, the judge resigned and turned the court records over to his clerk, John B. Ogden. Following the withdrawal of Arkansas from the Union in May 1861, President Jefferson Davis appointed Ringo judge of the court which the Confederacy established at Helena, Arkansas. In the last week of December, 1862, a Federal column led by Brigadier General James G. Blunt raided Van Buren. The Crawford County Courthouse was burned and the records for the Court for the Western District destroyed.

At the end of the Civil War, President Andrew Johnson appointed Henry C. Caldwell judge for the Courts for the Eastern and Western Districts of Arkansas. During the period from 1865 to 1871 most of

the cases filed in the Court for the Western District were for treason or confiscation of known Confederates' property. The majority of these cases were "nolle prosequi," because of the general amnesty issued by the President.[13]

* * *

During the winter of 1871 United States Representative Thomas Boles drafted and introduced in the 3d Session of the 41st Congress a bill designed to shift the United States Court for the Western District of Arkansas from Van Buren to Fort Smith. The bill was approved March 3. But the act as passed was scarcely recognizable as the bill prepared and dropped in the hopper by Congressman Boles. True, it attained the original object aimed at by its author, but so many amendments had been attached that it was hardly recognizable.[14]

Section 1 provided, "That in addition to the terms of the district court of the United States for the western district of Arkansas, required by existing laws to be held at Van Buren, in the State of Arkansas, there shall be held by the judge of said district two terms of said court in each year at the city of Helena, in said State, on the second Monday of March and September."

No court was to be held at Helena until such time as "an instrument in writing be duly executed by the proper authorities of Phillips county agreeing to furnish suitable rooms for holding court for ten years without expense to the government." This document was to be filed with the clerk of the United States District Court at Little Rock.

According to the fifth section:

> the counties of Phillips, Crittenden, Mississippi, Craighead, Greene, Randolph, Lawrence, Sharp, Poinsett, Cross, Saint Francis, Monroe, Woodruff, Jackson, Independence, Izard, Marion, Fulton, and Boone, in the said State shall hereafter be deemed and be a part of the western district of Arkansas, and there shall be appointed by the President of the United States, by and with the advice and consent of the Senate, a district judge for

the western district aforesaid, who shall, from and after the time of his appointment, hold the terms of court at the times and places required by law. Said district judge shall be paid the same salary and in the same manner as the judge of the eastern district of said State. And the terms of the court now required to be held at Van Buren, shall hereafter be held at Fort Smith in said district, and the present district judge of the said State shall be and remain the district judge of the eastern district thereof, as if originally appointed thereto.

Finally, it was provided by Section 6 that so much of the bill entitled "An act to divide the district of Arkansas into two judicial districts, as approved March three, eighteen hundred and fifty-one, as gives the judge of the district of Arkansas jurisdiction over the western district of said State, and all laws inconsistent herewith, are hereby repealed." [15]

Congressman Boles opposed the riders annexing the eastern counties to the Western District and the establishment of a place for holding court at Helena with all his strength. He saw in them a scheme to strike at and cripple the jurisdiction of his friend, Judge Caldwell. He likewise realized that the radical faction of the Arkansas Republican party would push to have one of their wheelhorses appointed to the new Federal judgeship. [16]

Upon receipt of the news of the passage of the bill of March 3, the Fort Smithites were confronted by the problem of how "to make the necessary preparations" to accommodate the court, and "the officers and branches" associated with it. The editor of the Tri-Weekly Herald suggested arrangements be made "whereby some of the buildings of the Garrison may be secured for that purpose." If not, with the post scheduled to be abandoned by the military and the reservation sold, the city of Fort Smith or Sebastian County might purchase from the government such of the buildings "as will be suitable for court and other purposes." [17]

Colonel Logan H. Roots who had been appointed by President Ulysses S. Grant to replace William Britton as United States Marshal

for the Western District of Arkansas was expected to reach Fort Smith during the third week of April. Prior to his arrival, Marshal Roots named Colonel I. W. Fuller to take charge of the office which he planned to establish in Fort Smith. Fuller's appointment was well received by the Fort Smith press. The editor of the Tri-Weekly Herald informed his readers, "Col. Fuller possesses the energy and the ability necessary to fill this office." [18]

At the end of the fourth week of April, Colonel Fuller saw that the offices of the U. S. Marshal and the clerk of the court were transferred from Van Buren to Fort Smith. They were lodged in a room over the bank. Colonel Ben T. DuVal had his law office in the adjoining building.

As yet neither Marshal Roots nor Judge William Story, who had been appointed by President Grant to preside over the newly constituted court, had reached Fort Smith. When questioned by the editors, Fuller said that he was expecting Roots at any moment. Judge Story, he continued, would arrive in good season. According to the latest word from the judge, he planned to open the first session of his court at Van Buren and then adjourn to Fort Smith. [19]

Colonel Fuller let it be known on Monday, May 1, that the U. S. Court for the Western District of Arkansas would convene in Fort Smith on the following Monday. Though the judge and marshal hadn't arrived, preparations for the opening of court were much in evidence. Out-of-town attorneys were making arrangements for lodging. [20]

Judge Story and Marshal Roots reached Fort Smith at the end of the first week of May. At 10 a.m. on May 8, Judge Story rapped for order. For the first time, the U. S. Court for the Western District of Arkansas convened in Fort Smith. Colonel Fuller had arranged for the court to conduct its proceedings in the second story of the Rogers' Building in the hall formerly used by the Masons and Odd Fellows.

Other members of the court in attendance besides Judge Story were: Marshal Roots, Chief Deputy Marshal R. C. Kernes, Clerk J. O. Churchill, and District Attorney Huckelberry. Very little business was on the judge's agenda for the first day. After

reappointing Churchill clerk of the court, Story admitted a popular local lawyer, James Brizzolara, to practice before his court. Since all the returns had been made at Van Buren, the judge, to give everyone an opportunity of being in attendance, adjourned the court until 10 a. m. on May 9.

The editor of the Tri-Weekly Herald was impressed by the large number of attorneys from other counties in attendance. As he informed his subscribers, "The town is jammed with strangers from all parts, some in office, some hunting for office, and a vast number that have been in, and now out, and some who do not want pap, though they are scarce; altogether the U. S. Court adds considerably to the life of the city." [21]

When the court opened on Tuesday, the 9th, "everything seemed to run smoothly." The Tri-Weekly Herald informed its readers that Judge Story gave "entire satisfaction, and his new Marshal, Col. Roots, with his many and efficient aids [sic], doing things up in apple pie order." Not too much business was transacted. While getting organized, the new officers of the Court seemed to be "getting the harness fitted, so as to give general satisfaction."

After charging the grand jury, Judge Story adjourned the court until 9 a.m., Wednesday morning. [22]

The court finally got down to business on Wednesday. By noon on Friday, the 12th, 17 civil and 7 criminal cases had been considered and disposed of. Among the criminal cases brought before Judge Story was one for murder. Heuse Posey and George Spaniard were charged with the crime. The defendants' lawyers, Ben DuVal and Robinson, argued that as the killing had occurred in Arkansas, the United States didn't have jurisdiction. Judge Story agreed and ordered Posey and Spaniard released from custody.

Editor James H. Sparks of the Herald believed the Court "added much to the life of the town." This was demonstrated, he believed, by the large number of strangers from all parts of the district who

were in the courtroom. "Usually this might have led to confusion," yet the editor added, "everything moves smoothly along in the most orderly manner, and the Court gets off a large amount of business, and we learn in a manner quite satisfactory to all the officers of the Court, and the members of the bar in attendance." [23]

Although Congress had shifted the court to Fort Smith, a number of the civic leaders were afraid that if they didn't provide suitable facilities it would be removed. Editor Sparks urged that the Sebastian County Courthouse be speedily completed to provide for the United States Court. While the rooms occupied in the Rogers' Building were "spacious and good," the Fort Smithites mustn't lose "sight of the importance of finishing the Court House," nor of the necessity of doing "all in our power to make full provision for the United States Court" and its officers." [24]

Editor Dunham of the Van Buren Press sat in on a session of Judge Story's Court. He was unimpressed with his surroundings. He reported to his subscribers that he found the U. S. Court at the "Hole in the Wall" at Fort Smith. The room was "gloomy and dark and rank with nigger and Indian." Dunham felt that Marshal Roots had entered "easily and readily" upon the duties of his office. Roots, he forecast would make "a prompt and courteous officer," while Judge Story was disposing of the business brought before his court with "commendable zeal."

The editor of the Herald didn't appreciate the Press' allusion to the "Hole in the Wall." The "Nigger and Indian," Sparks reported, were "certainly no more 'rank' now, than they were" when the court had sat at Van Buren. Sparks believed the transfer of the court had made "the difference with our neighbor." [25]

Judge Story disposed of 11 criminal and 2 civil cases on May 17. Ruth Shores, the first woman to be brought before the bench since its transfer from Van Buren, was tried for murder. She was convicted by the jury of manslaughter with a recommendation for clemency. Judge Story accordingly sentenced Ruth Shores to six months in the penitentiary. [26]

A public school picnic was scheduled for May 19, so Judge Story adjourned the court on Thursday, the 18th, with orders to reconvene on Monday at 9 a.m. [27]

The Court, following its three day recess, resumed work with renewed vigor. While the number of cases was large; most of them were of minor character, which caused "much annoyance, trouble, and expense." [28]

On May 24 the Grand Jury for the Western District adjourned. The jurors seemed pleased with the thought of "getting an opportunity to go home, and become acquainted with the family." Prior to the discharge of the Grand Jury, Marshal Roots threw a party to which he invited the jurors, Judge Story, several of the officers of the court, and a number of the more influential Fort Smithites. A guest reported, it was a very pleasant "sociable." The Grand Jury on taking their leave presented Judge Story and Marshal Roots with a "flattering testimonial." [29]

The petit Jury concluded its business on May 31. On doing so, the members signed a memorial stating that they considered "the removal of the United State Court from Van Buren to Fort Smith, an act of wisdom and justice, too obvious to all in the least cognizant with the merits of the respective places to require any further comments, and the authors and prosecutors of the removal are entitled to much praise."

Judge Story and Marshal Roots were commended for the way they discharged their onerous and important duties.

The editor of the Herald felt certain the endorsement of the jurors would echo and re-echo across the district. According to Editor Sparks, "the justice of the move has long since been acknowledged, but something always appeared in the way of the move; in fact the lukewarmness of those most directly interested was one great cause. Much credit is due to those who effected the move, no odds what their object may have been." [30]

Just as it was being predicted that the Court was about to wrap up its docket for the session, a new group of prisoners on June 3 were brought in by the deputy marshals. A special grand jury was empaneled to inquire into the charges and facts. If the necessary witnesses could be called on short notice, Judge Story planned to dispose of these cases. Editor Sparks voiced his approval. "That is the way to do business, and not keep them [the accused] waiting for months in jail to know if an offence has been committed." [31]

The special grand jury had completed its deliberations by June 8 and was discharged. [32]

Judge Story on Saturday, June 17, adjourned his Court until the next regular term. People who had been in frequent attendance reported that the court had functioned very smoothly during the late session. Besides giving general satisfaction, it had added "much to the life, and none to the disturbance of the town." [33]

While in session the Court for the Western District had disposed of 132 cases. Of the 37 civil actions brought before the court, 21 had been disposed of, 15 continued, and 1 taken under advisement. Eighty-nine criminal cases had been heard. There had been 23 convictions, 24 acquittals, 13 nolle prosequis entered, 2 indictments quashed, 6 forfeitures of recognisance, while 21 of the cases had been continued. Of the criminal cases, practically all fell into three catagories. There were 25 cases of larceny, 24 of introducing spiritious liquors into the Indian Territory, and 16 assaults with intent to kill. Four people indicted for murder had appeared before Judge Story. The most severe sentence handed out by the judge was to Levi Shepperd, who was sentenced to two and one-half years in the penitentiary for assault with intent to kill. Civil cases fell into six catagories: bankruptcies, voluntary and involuntary, scire facias, assumpsit, contempt, and libel. [34]

Two days after the court adjourned, Judge Story and Marshal Roots took passage on the steamer Dardanelle. They were en route to Helena

to hold the term of court which was scheduled to convene in that Mississippi River town. Deputy Marshal Kernes was also aboard the boat. Kernes had with him four prisoners (two white, one Indian, and a Negro) who had been sentenced by Judge Story to terms in the penitentiary. The whites and the Negro had been convicted of larceny, while the Indian had been found guilty of assault with intent to kill. Commenting on the prisoners, Editor Sparks observed, "This is perhaps the smallest shipment ever made from the Western District, and we trust they will become smaller still." [35]

Marshal Roots on July 28 returned to his Fort Smith office. [36]

* * *

Although the court wasn't in session, its agents were busy. U. S. Deputy Marshals D. C. Winton, who had been operating in the Indian Territory for several months reached Fort Smith on Saturday, August 12. The lawman had two prisoners — Thomas Cook and George Cooper. Both men were accused of stealing two "fine stallions" from Billy Nero of Micco, Choctaw Nation. At the time they were taken into custody, the two men still had the horses in their possession.

Visiting with Editor Sparks, Marshal Winton reported that crop prospects were excellent in the country through which he had ridden. He warned the editor that it would require more than "an ordinary effort" to smash the bands of horse thieves now infesting the Territory. At the moment, the Indians were peaceable and quiet, and looking anxiously for the railroad.

Deputy Marshal Joe Peavy brought in two men charged with murder, Simmons and Keyes, while George Lt. Rutherford had arrested Grubb, who was charged with killing a Negro in the Choctaw Nation the previous year.

The prisoners were confined in the U. S. Jail at Fort Smith, pending their appearance before the U. S. commissioner.

After talking with the lawmen, Editor Sparks informed his subscribers, "The marshal business is good, and from present prospects, a full docket will greet his honor next session." [37]

Doctor C. W. Peirce, the attending physician, took Editor Sparks on a tour of the prison where people arrested by the marshals were confined while awaiting the next session of the court. (The court at this time used as its place of confinement a building of hewed logs out on Belle Point.) Sparks found the prison "in a very clean and healthy condition, and the prisoners in good health and apparently in fine order." They gave every appearance of "enjoying their confinement with a stoical indifference and nonchalance, that might characterize men in a more comfortable situation."

At the time of Sparks' August 30 visit there were 21 prisoners: 9 whites, 7 Negroes, 4 Indians, and one Mexican. If he had been directed to pick out 21 murderers or horsethieves, the editor admitted that he would have passed by many of the prisoners, although some of the inmates, "judging from their phiz," had looked through bars before.

The prisoners all spoke well of their keepers and quarters. Their only complaint was of the beef they were fed, which they claimed was neck and shank. Sparks was glad to see that their treatment was humane, and to discover that their "wants in sickness and in health were promptly attended to."

Sparks missed the preacher, as did the prisoners. According to one of the inmates he had been "bailed out the day before, and now they...[were] left to work out their salvation alone."

The guards (James Brogan, J. Maledon, H. B. Hershey, and W. Lewis), who were supervised by Jailer Charles Burns, escorted the editor and his party through the various department of the jail and its appurtenances. Everything was found in "apple-pie order." The cooking and laundry departments were clean and neat.

Entering the prison, the accused were shown a list, containing the names of 67 attorneys. In vain did they look "for a chart containing their 'photos'." Since the lawyers outnumber the prisoners three to one, the inmates remarked, "if there were fewer lawyers their hope of delivery would be better." [38]

LAW ENFORCEMENT AT FORT SMITH 1871-1896

Chapter II

Judge Story Resigns Under Fire

An economy minded 42d Congress cut the appropriation for the Justice Department. Marshal Roots accordingly was compelled to drastically reduce his force of deputy marshals. Of the 28 lawmen currently on Roots' payroll 17 would have to be released. The task of selecting who should be retained was disagreeable. It was left to the deputy marshals to indicate the manner of doing it, so as to give no offense to those who would be discharged. They decided to do it by lots. After the drawing, which was made at the beginning of February 1872, it was found that Jacob Owens, Jacob Bear, Joseph Williard, Joseph Peevy, Lee McLemore, Hugh McGuire, Rube Lamson, Geo. Dean, John Scottie, W. H. Johnson, and C. R. Stephenson would remain on the force.[1]

Commissioner Churchill on April 11 issued a warrant for the arrest of Ezekiel Proctor for a murder committed in the Cherokee Nation. At the moment, the Cherokee court was reportedly trying Procter. The deputy marshals were directed to take Proctor into custody in case the Cherokees released him.

Deputy Marshal Bentz had been killed in the Cherokee Nation a short time before, so the authorities of the Fort Smith court calculated on taking his killers into custody on the same patrol. A strong posse was accordingly sent. Deputy Marshals Owens and Peevy were placed in charge of the posse. The marshals proceeded to a point 12 to 15 miles west of Evansville where the Cherokee court was in session. Reaching Whitmore's Barren Fork, the lawmen (about a dozen in all) dismounted and approached the courthouse. Hot words were engaged with the Cherokee Light Horse. The redmen opened fire; the posse shot back.

Within a matter of moments, seven marshals and three Cherokees had been killed or mortally wounded. Among the dying was Deputy Marshal Owens.

Deputy Marshal Peevy sent an urgent appeal to Fort Smith for help. When he scribbled a note, he warned, "we are in a devil of a strait." He asked his superiors to:

> send us men and means instanter. We are with the dead and wounded and expect to stay until the last one of us goes up. For God sake send help, and send quickly. Come to Dutch Town, and then down Barren Fork to Whitmore's. We look for help to-morrow night by dark and lots. We are looking to be attacked every moment.

News of the bloody affair caused consternation in Fort Smith. Managing Marshal Kerens ordered out a 20-man posse, accompanied by physicians, to attend to the dead and wounded. [2]

Seven months later, Fort Smith was visited by a dreadful conflagration. At 7:30 a.m. on November 14, the cook in the Washington Street restaurant owned by the Ferry brothers shouted, "Fire!" The flames spread rapidly. Hamilton's Saloon was the second building enveloped. Next, the fire swept through the "immense brick building" belonging to William H. Rogers. On the other side a restaurant, on the corner of Garrison Avenue were consumed, and so on down to the alley. There, the fire was arrested by pulling down C. F. Bocquin's frame building.

Wind fanned by the roaring inferno carried sparks across to Thomas Lanigan's store, alongside which several hundred bales of cotton were stacked. After a desperate struggle the fire fighters succeeded in controlling the fire.

While the excitement was highest, the cry "Fire!" announced a new danger. Hundreds rushed to the new scene of trouble, to find a small frame house on Walnut Street near Catholic Avenue had caught fire from a defective flue. The new brick building owned by Buckley & Welch was soon ignited. Both these structures were soon gutted. [3]

As soon as the fires had been extinguished, the city fathers made a survey of the damage. Losses in the conflagration were listed as: Captain Rogers' large two story brick building in which were located the Post Office, Marshal's Office, U. S. Court, the law office of Walker & Rogers, and Ed. Brogan's Saloon. While the property was valued at $15,000, it was only insured for $3,000.

A brick building owned by Mrs. Bomford and Mrs. Shumard valued at $3,000.

One brick and two frame buildings belonging to John Gardner. One of the frame structures was occupied by Metzhauer's Cafe and the other by Guler's Confectionery.

Mrs. W. H. Mayers' two story frame building which housed J. H. Hamilton's Saloon and Ferry Brothers' Restaurant.

Three buildings of Ed Czarnikow — one a two story frame structure housing Nester's Saloon, the second a double story brick edifice occupied by Czarnikow as a store, and the third a frame building rented to Bowers as a saloon.

Two frame dwellings occupied by J. J. Phillips and a Mr. Spier were burned to the ground.

People familar with fire fighting, on inspecting the scene of desolation, were satisfied that if Lanigan's store had burned, the entire town would have gone up in smoke. The editor of the Western Independent observed, "Those men who fought to save that building deserve the thanks of the public."[4]

Because of the fire, which had destroyed its quarters, the court for the Western District did not meet on the 14th. The next morning, November 15, the court convened at the Sebastian County Circuit Courtroom, where a two-day session was held. Meanwhile, Marshal Roots had received permission from the Department of the Interior to open the large brick building, known as the Soldiers' Quarters, within the walls of the Garrison.

On Monday morning, the 18th, Judge Story called the court to order in its new surroundings. The Soldiers' Quarters stood with its sides

facing to the northwest and southeast, its gables pointing to the northeast and southwest. The northeast room of the first floor was appropriated for use as the courtroom, while the other room was taken over as offices for the marshal, clerk, and other officers of the court. Underneath the building were the two rooms formerly used as kitchens, these were quickly turned into a jail, and the log stockade near the bank of the Poteau abandoned.[5]

At the time of the fire, the trial of John Childers for murder was being conducted before Judge Story.

John Childers was of strong, muscular build, five feet eleven inches in height, and weighed 160 pounds. He was the son of John Childers, a white man, and Katy Vanne, his Cherokee wife. Childers was born on Cowskin Creek in the Cherokee Nation on May 3, 1848. Previous to committing the crime for which he was on trial for his life, Childers had had trouble with the law.

The man Childers was accused of killing was Reyburn Wedding, a peddler, who made his livelihood by traveling through the Indian Territory with his wagon bartering flour and bacon for hides and agricultural products. Wedding had a handsome black horse to which Childers took a fancy. Childers fell in with Wedding on the morning of October 14, 1870, as he drove his wagon up Caney Creek in the northern part of the Cherokee Nation near the Kansas border. Childers sought to talk Wedding into parting with his horse.

The peddler declined, remarking that he had no intention to trade and drove on.

Childers' brow "darkened," and he reined up his horse, while planning his next move. Having decided to possess the horse, no matter what the cost, the breed touched his spurs to his pony's flanks. Overtaking Wedding, Childers asked if he could hitch a ride in the wagon.

Wedding said it was all right.

After tying his pony to the tailgate of the vehicle, Childers climbed into the seat beside the peddler. Side by side they rode

until the wagon reached Caney Creek near Childer's Station. All the while, Childers kept trying to deal Wedding out of his horse. Suddenly, the breed whipped out a bowie knife. Wrestling the peddler to the bed of the wagon, Childers slashed his throat from ear to ear. He then dumped the body into the stream and drove the wagon out onto the prairie. Childers now traded on his own terms. After stripping the harness from the dead man's horse, the breed saddled it and rode away.

The stolen horse led to Childers' arrest. At Broken Arrow in the Creek Nation, the horse was recognized, and Childers was taken into custody by Deputy Marshal Vennoy and a posse of hard-riding Kansans. Vennoy and the posse started for Kansas with their prisoner. Childers, however, escaped.

About February 1, 1871, Childers was again arrested at Broken Arrow and taken to Kansas. From Kansas, he was escorted to Van Buren and examined by United States Commissioner J. A. Churchill, who ordered him held to await action by the next grand jury.

Childers didn't remain in the Van Buren jail long. He and six others escaped and took to the woods. The others were soon captured. But Childers returned to his old haunts, joined a renegade gang that was terrorizing the Cherokee and Creek Nations, and succeeded in eluding the law for months. He might never have been re-arrested nor Wedding's death avenged had he not fallen for a Fort Smith prostitute. She induced Childers to believe that she was madly in love with him, while she secretly planned to secure money from him by various pretexts. Learning that Childers was in the area, Marshal Vennoy contacted the harlot. For $10, she agreed to assist the marshals to capture her lover.

She sent word to Childers that she wished to see him. Marshal Vennoy was notified of the scheduled rendezvous. That very night while Childers "was reveling" in the harlot's embrace, the house was quietly entered by Vennoy and Deputy Sheriff Joe Peevy through a door which the lady of the street had purposely left unlatched. Childers was apprised of the presence of the intruders by the click of the hammers

as two guns were pointed at him. Dragging the breed from the arms of his seducer, who eagerly snatched the promised reward, the officers escorted their prisoner back to jail.

The Fort Smith Grand Jury on May 15, 1871, made a report returning 11 true bills of indictments, naming 16 persons charged with major crimes. At the bottom of the list appeared John Childers, charged with murder. Childers was arraigned on Thursday, May 18. He pled not guilty; Judge Story continued his case till the next term of court. While awaiting trial, Childers' bail was set at $1,500.

On November 16 J. S. Robinson, whom Childers had retained as his attorney, applied to Judge Story to subpoena as witnesses for the defense, Cowito, Micco, and William Sevier. Three weeks later, the defendant's attorney asked that the trial be continued. Two days later, December 7, Judge Story granted the application. The trial was rescheduled for the May 1872 term. An order was issued by the court transferring Childers to the Little Rock Penitentiary for safe keeping. Childers' attorney protested. On January 18 Judge Story set the order aside. Eleven days later, Childers was admitted to $2,000 bond.

A further postponement was requested by Childers' lawyer on May 30, because of lack of witnesses for the defense. Judge Story was agreeable. The case finally came to trial on November 6. It lasted until the 18th, one day besides Sunday being lost because of the destruction of the Rogers' Building by fire. Childers was defended by Colonel Du Val; the prosecutor was District Attorney Newton J. Temple, assisted by John H. Rogers. Wedding's Kansas friends had hired Rogers to help the district attorney. The jury was out only a short time. When the jury returned, the foreman announced the verdict, guilty.

Following his conviction, Childers was kept in confinement until May 19, 1873, when he was again brought before Judge Story. The judge pronounced sentence. Childers was to be executed on Friday, August 15, for the murder of Reyburn Wedding.

"God would forgive them for it." Childers announced that he had no regret, except that he must leave his sister and friends, and asked that his body "be not given for dissection, but that his sister be permitted to give it burial in the Cherokee Nation."

"My pals and me once swore to help each other, no matter what the circumstances," he added, "but they seem to be doing nothing for me now."

Marshal Sarber interrupted to say, "If you will give me their names," Childers, "I pledge you not to hang you now. What is your answer?"

It grew so quiet on the old Garrison parade ground that the drone of insects in the trees was the only sound. Dust and tobacco smoke hung motionless in the air. The heat was stifling.

Turning away from Sarber, the condemned man surveyed the crowd. Among it he recognized many former companions in crime, but Childers was not one to turn informer.

Instead, he waved farewell with a general sweep of his hand. To the marshal's offer he replied in a firm, clear voice heard by all, "Didn't you say you were going to hang me?"

"Yes," Sarber answered.

"Then," Childers coldly responded, "why in hell don't you do it."

After Childers had finished speaking, Reverend Harrell made a few eloquent remarks. Harrell closed with a prayer which brought tears to many eyes.

Jailer Burns read the death sentence. The rope was adjusted by Burns and Deputy Marshal Messler, while the prisoner offered a short prayer. The black cap was adjusted. At 2 o'clock Marshal Sarber gave the signal, and Messler pulled the lever which sprung the trap. John Childers' neck jerked to one side as he shot down to the end of the rope.

At the same moment there was a flash of lightning and a clap of thunder. Minutes later the work was done, the cloud had vanished, and all that remained of John Childers hung limp and quivering.

Several days before August 15, a gallows was erected. Until a few hours before the fatal date, Childers had anxiously expected to be pardoned or to have his sentence commuted. Petitions for executive clemency had been forwarded to President Grant by Childers' attorneys. These hopes were dispelled by a telegram from Attorney General George H. Williams, informing the lawyers that it was believed in Washington that their client was guilty. Consequently, the President had determined not to intervene. Heavy pressure was said to have been exerted by persons living in southern Kansas who had been friends of Wedding to let the law take its course.

The day of the execution dawned bright and clear. A large crowd had turned out to watch, with eager, morbid curiosity Childers' execution. As the fatal hour approached, the multitude grew restless. Finally, at 1 p.m. there was a shout. The cry alerted the crowd that Childers guarded by six deputy marshals, led by Marshal John Sarber and Jailer Burns, had left the jail. As the execution party approached the scaffold, a small black cloud was sighted bearing in from the southwest. By the time the group had reached the steps leading to the gallows it started to sprinkle.

Childers displayed the same cool demeanor he had maintained from the beginning. Marshal Sarber faced the prisoner and the throng quieted, while Childers puffed a cigar with "as much nonchalance as if the affair was none of his." When given an opportunity to speak, the doomed man spoke for 16 minutes. Since it had been rumored that Childers had made a full confession before leaving the jail, the onlookers listened eagerly. Childers "quibbled" at first, then admitted that he had killed Wedding. He claimed, however, that there should have been a mistrial, because the date of the murder named in the indictment and in the testimony sworn to by Vennoy and Erkhart was wrong.

Young and old were cautioned by Childers to avoid evil companions and bad practices. He admitted that those witnesses who had sworn that he was 60 miles away when the crime was committed had lied; he hoped

The entire proceedings, the hanging and the storm, filled many of the spectators with awe. Those who believed in the supernatural shuddered with fear, while the "scoffers never attempted to explain the strange visitation...."

A Negro woman in the crowd screamed, "John Childers' soul has gone to hell; I done heard de chains clankin." Other superstitious persons believed that Childers was never executed, but that the form appearing on the scaffold that day was "the devil in human disguise."

Perhaps the thunder, lightning, and rain which accompanied Childers' execution could be interpreted as God's condemnation of the swelling battle between good and evil in the Indian Territory — the Armageddon of the West. Because John Childers was only the first of 87 convicted felons to die on the gallows which had been erected at the old Garrison for crimes committed in what in 1907 became the state of Oklahoma.

Nor was the battle to be easily won. It was to rage for 23 years. John Childers himself had revealed the temper of the men who composed the forces of evil when he refused to identify his companions in crime. [6]

* * *

Three Cherokees were tried in June 1873 for murdering two white trappers on Grand River in their Nation. The accused (Young Wolf, Six Killer, and Tu-ne-ha) had merely planned to rob the trappers. Their crime had netted them several steal traps but little else of value. The jury on June 23 returned a verdict of guilty. Judge Story on August 4 sentenced the three redmen to die on Friday, October 10, 1873.

On the day of the scheduled execution, the doomed men were marched from the jail to the gallows. After the ropes had been adjusted and before the trap was dropped, they each addressed the crowd in Cherokee. Since only a few were present who understood the language, no account was made of the sentiments expressed. [7]

* * *

Friday, April 3, 1874, dawned clear and pleasant over the middle reaches of the Arkansas. The wind blew gently; the sun shone brightly, "giving animation to all humanity who cared to appreciate it."

Within the basement of the U. S. Jail were three men, "who cared not for the beauties and pleasantry of the day, and whose lives were soon to be ended for crimes committed against God and man." According to reports reaching the Fort Smithites, the three felons had given little thought to "religious devotions" until ten days before the date scheduled for their execution. As the fatal day neared, they laid cards and fiddle aside. Ministers were called in. Each of the convicts spoke well of the treatment they had received from Captain Alnutt, the jailer, and guards Charles Burns and Jack Rutherford.

John Billy, a heavy-set Choctaw, was about 55 and the oldest of the trio. He was married and the father of four. Billy, along with three other redmen, had been arrested for a petty crime near Muskogee the previous autumn.

One of the arresting officers, Perry DuVal, had jokingly told Billy that on his arrival at Fort Smith, he would be hanged. Not understanding that DuVal was jesting, Billy looked for an opportunity to escape. While DuVal and the other deputies were sleeping, Billy slipped one of his handcuffs and succeeded in getting hold of DuVal's pistol. He shot DuVal through the head, killing him instantly. Next, Billy fired at Deputy Marshal Will Ayres, who was sleeping on his back, his right hand thrown across his chest. The ball ripped through the hand and cut away the right pap. Deputy Marshal James Wilkinson was asleep in an adjoining room with another prisoner and a guard. Hearing the shots, Wilkinson leaped to his feet and was shot through the back, the projectile tearing through one of his kidneys.

Ayres by this time had scrambled to his feet and seized Billy. While they wrestled, the guard who had slept with Wilkinson shot Billy twice, once in the head and the other time through the body. Shortly Billy was hauled to Fort Smith.

Arriving at the gallows, the three felons ascended the steps and confronted the mass of humanity that had gathered to watch the execution. After the reading of the death warrants, each of the doomed men was allowed to speak.

Pointer spoke through an interpreter. As before, he "most emphatically declared his innocence."

Filmore's youthful voice gave no indication of fear when he addressed the crowd. Like Pointer, Filmore claimed to be innocent. He swore that he was two and one-half miles from the scene of the crime. Many in the multitude believed that Filmore had told a "falsehood while on the brink of eternity."

John Billy showed no sign of fear. His voice was clear and distinct. Unlike Pointer and Filmore, Billy acknowledged his crime, and "was perfectly satisfied that he deserved to die."

The ropes were lowered and adjusted around the necks of the felons. C. Messler supervised the task. The black caps were placed over the men's heads, and at 2:30 the drop fell. Doctors DuVal, Dunlap, Maine, and others were present. Filmore was pronounced dead in 13 minutes, Billy in 15, and Pointer in 16 minutes.

"Thus the laws have been vindicated and these bloody minded men have suffered the extreme penalties," wrote Editor Wheeler in the Western Independent on April 9, 1874. [8]

The execution of three redmen at the Garrison on April 3, made six that had been hanged during the past six months. All had been citizens of the Indian Territory. "It is getting to be a very common thing to hang a man in this part of the country," Editor Wheeler warned his readers. [9]

* * *

Billy, Pointer, and Filmore, although they didn't know it, were destined to be the last men Judge Story was to send to the gallows. Judge Story's conduct on the bench had come increasingly under fire. The costs of the Court for the Western District had skyrocketed.

After recovering from his wounds, Billy was lodged in the same cell with John Childers. According to the editor of the Western Independent, Billy "became a convert of religion, and often made known his willingness to die for the crimes he had committed. He is said to be, by those who knew his character, an experienced and daring desperado."

Pointer, an 18-year-old Seminole, "had a rather wild look," and swore that he was innocent of the murder of the white man he was accused of killing in the Chickasaw Nation. He said that a man named McGee had been the perpetrator of the foul deed. When Editor Wheeler visited the jail, Pointer was asleep. Upon being waked, he seemed "quite playful" and unconcerned about his approaching fate, "laughing and jumping about as though he had years to live." His cell was the one previously occupied by Tu-ne-ha, who had been sent to the scaffold six months before. Having embraced religion, Pointer appeared ready to meet his fate, "although he persistently asserted his innocence."

The third man slated to be executed was a Choctaw, Isaac Filmore, who had been sentenced to death for killing a white man in the Creek Nation. Filmore was a "stripling, and was no doubt leading a wild and reckless life when arrested." He had murdered his victim in a robbery, which had netted him $1.50, near Fishertown in June 1873. The killer denied his guilt. Circumstantial evidence, together with a confession made when first arrested, had satisfied the jury that Filmore was the murderer. Like the others, Filmore was converted while in his death cell.

The Garrison enclosure where the gallows had been erected was "literally thronged with anxious humanity, waiting to witness" the execution. Shortly before 1 p.m., the prisoners were escorted from the jail by a strong force of marshals. Their spiritual advisers accompanied the party. Pointer was the only one that exhibited any emotions or "fear at the awful doom that would soon follow them."

Marshal Roots had been replaced, but John Sarber who was named as his replacement on March 18, 1873, was no improvement. Sarber issued warrants to witnesses and jurors for their services some of which were never paid. Witnesses were of necessity subpoenaed from the far reaches of the vast district. Unable to collect their pay, some were compelled to sell their horses and walk home.

Charges of receiving bribes were preferred against Judge Story. In April 1874, Ben DuVal, Judge John T. Humphrey, and District Attorney Newton J. Temple were called to Washington to appear as witnesses before the House sub-committee on Expenditures in the Department of Justice.

When Judge Story was called to Washington to appear before the sub-committee, it became necessary to adjourn the May 1874 term of court at Fort Smith. Marshal Sarber informed the Fort Smith newspapers that the Court for the Western District would be called to order on June 15.

Rumors reaching Fort Smith from Washington during the second week of May indicated that the Court for the Western District would be abolished. If so, the Federal District Court would continue to meet at Fort Smith with Judge Caldwell presiding. Editor Wheeler felt this solution would "give satisfaction to all the people interested." [10]

Congressman James B. Sener of the Sub-Committee on Expenditures in the Department of Justice reported on June 6 as to "expenses, disbursements and general management" of the Western Judicial District of Arkansas since its reorganization in 1871. Mr. Sener's committee found that the expenditures had been "extraordinary" and not in all cases supported by appropriate vouchers. For the Fiscal Year ending June 30, 1871, the disbursements of Marshal Britton had been $137,958; the next year, with Logan Roots being marshal, they had reached the "extraordinary" sum of $321,653. In Fiscal Year 1873, Britton was marshal most of the year and expenses fell to $264,447 -- making a

total of $724,058 for three years. If the salaries of the clerks, district attorneys, and commissioners were included this figure would be boosted to $750,000.

The committee had been unable to discover the reasons behind these huge disbursements. At the same time, the members were in agreement that "there was a most lamentable state of morals among the court officials in the district." According to the court record, Judge Story had allowed bail to be posted by felons after their conviction of capital offenses and while awaiting sentence.

Bail had been allowed people while motions were pending for new trials which were never acted upon. This was done despite the law that the judge "shall examine and approve accounts current of the marshal before allowing the same." At least one instance had been found by the investigators where Judge Story had signed "blank accounts current, which was filled up by the marshal, for $20,000, the same being allowed and paid at the treasury." Story's explanation to the committee of this action was characterized as "lame, disconnected, and unsatisfactory."

The committee was in agreement that the only way to institute reforms was to abolish the Court for the Western District of Arkansas. The district would be annexed to the Eastern District, so that there would be one district and one judge for the area currently embraced in two districts.

To form some judgment as to how excessive the expenditures of the Court for the Western District had been, the committee contrasted them with the judicial expenses for the entire state before the Civil War. In 1858 these had totalled $25,000; in 1859, $19,000; and in 1860, $16,000.

The committee believed that if the district were abolished and legislation enacted for the proper examination and recording of acts as in the other Federal judicial districts, "every door to fraud will be closed, and the administration of justice can be more successfully maintained in the territory now comprising the western district than at present." [11]

As had been rumored at Fort Smith, Congressman Sener on June 9 introduced a bill to abolish the Court for the Western District of Arkansas and annex its jurisdiction to the Eastern District. On doing so, he asked the speaker for permission to offer a resolution directing Attorney General Williams "to institute a full and thorough investigation into the character of the allowances paid at the treasury department, as well as claims still due for expenditures in the marshal's office, of the western district of Arkansas, since the first day of July 1870, and to report the result thereof to the house on the first day of the next session."

Representative Charles Hays of Alabama objected, unless he was permitted to offer an amendment that "no part of the claims shall be paid until the department has been satisfied of their correctness."

Mr. Sener shouted, "No!" He anchored his objection on the ground that it would allow the Justice Department to be the legitimate judge in the matter, consequently, the resolution was tabled.

Representative Robert H. Speer of Pennsylvania asked for and received the floor. When he addressed the House, he referred to the judge of the Western District "as a person named Story, who had remained in that position to mock the administration of justice."

Tracing the history of the district, Speer said that it had started "with the corrupt judge who was in the habit of admitting to bail persons tried and convicted of capital offenses and letting them go free afterwards." Evidence had shown that Judge Story had bought certificates issued for the payment of jurors and witnesses at the district court at forty and sixty cents on the dollar. "A judge who was charged with having received a bribe of $2,500 for admitting a nolle prosequi to be entered in a certain case; a judge whose records were marred and interlined, and erased and confused; a judge who had approved one of the marshal's vouchers for $20,000 in blank; a judge who had allowed the government to be plundered of hundreds of thousands of dollars."

In justice to Judge Story, Speer remarked, he had responded to the committee's invitation to appear. His statement was found to be "lame and unsatisfactory." Speer characterized it as "not a statement of a man conscious of his official and personal integrity; it was not a statement of a man who felt keenly the injustice done by such charges, but a statement of a cringing, shrinking, cowardly and corrupt man."

Next, Representative Speer turned his ire on "an infamous and corrupt marshal, named Wm. A. Britton." Britton was accused of "preparing fictitious lists of deputy-marshals and making out bills in such names." Evidence had been found that Britton had bought up vouchers from jurors, witnesses, and deputies for 30 and 40¢ on the dollar. Instances had been reported where cartloads of vouchers could be obtained at 2¢ on the dollar. These vouchers had been subsequently presented to the Treasury and paid in full.

Suspicions had been aroused in Washington, and an investigation order by a grand jury, so it had been arranged by Britton and the district attorney, who was also a party to the frauds, that a favorable report should be made. The bills were paid, and Britton (who had been removed) was reinstated by President Grant, in the absence of the Attorney General. Subsequently, the Attorney General had appeared before the Senate and blocked Britton's appointment.

In disposing Britton a "worse man was appointed in the person of Logan H. Roots." According to Speer, Roots had immediately organized a national bank at Fort Smith. Owning three-fifths of the bank stock, Roots "continued to peddle out by the cart-load the certificates for pay of the witnesses, jurors and deputy marshals." Roots had forwarded these vouchers for payment to his own bank to the tune of hundreds of thousands of dollars. These vouchers were paid at a tremendous discount.

Speer claimed that the expenses for the court for 1871-1873 were $743,023. Of this figure, $14,791 was paid to grand jurors, $32,01[illegible]

to petit jurors, and $114,117 to witnesses. This left $582,101 for the marshals, deputies, and clerks. Citing the year 1872, when the expenses for the district with a population of 300,000 were $321,653, Speer pointed out that they exceeded the expenses for the same period for all the New England States, New Jersey, Pennsylvania, and Ohio with a population of 10,500,000. At the close of Mr. Speer's speech, the objection to Mr. Sener's resolution was withdrawn, and it was adopted. [12]

The editor of the Fort Smith Herald in commenting on Mr. Speer's charges, felt that he had used "too pointed a lance, and that not too well poised, in the mention of Logan H. Roots." As he recalled, Roots' connection with the bank, while he was marshal, couldn't have extended beyond a month or two. The bank had been chartered in early 1872, and had begun operating about June. Roots had been removed as marshal in July. Editor Sparks didn't believe one could censure the bank or an individual for placing surplus capital "where it will pay best." [13]

A bill to abolish the Court for the Western District of Arkansas was passed by the House. House Bill 3621 provided that "until further provision shall have been made by law, court shall be held at the same places [Helena, Little Rock, and Fort Smith] and at the same time as now provided by law" in Arkansas.

Judge Story, sensing the temper of Congress, could see that unless he resigned he would be impeached. On June 16 Story submitted his resignation as judge of the Court for the Western District. Editor Sparks felt this was encouraging, because as yet the Senate hadn't taken up House Bill 3621. As he informed his subscribers on June 20, "The resignation of Judge Story, if accepted--and we have no doubt but that it will be--may settle the question of the district, and it may not be abolished." [14]

Story's resignation weakened the forces pushing for the abolition of the Western District and the legislation failed to pass the Senate.

Arkansans were delighted to learn that President Grant on July 2 had nominated a Confederate hero, General James F. Fagan to take Sarber's place.

Editor Wheeler of the Weekly Independent hailed Fagan's appointment:

> This is an indication of better times in the future administration of the affairs of that dept. of the public service here.
>
> It is an indication too, that Mr. Grant is trying to rise above that political pressure, which has hitherto forced him to make his appointments from party considerations alone; and find his appointees only among his party adherents without regard to honesty and capacity. When the appointing power of the govt. will have been influenced more by the honesty and capacity of the aspirants for office, and less by party fealty of such aspirants; then there will be less time for unloading purposes.

Wheeler at the same time informed his subscribers that it was not his purpose to castigate Sarber. According to the latest news from Washington, no charges had been filed against the ex-marshal. The change had been made "to make a new start in the administration of affairs" in the Court for the Western District. [18]

Marshal Fagan reached Fort Smith during the second week of July and assumed his new duties. Even before he reached his new post, Fagan had made several appointments which were well received by the Fort Smithites. Ben Field was named chief clerk in the marshal's office; Dr. W. W. Bailey would be surgeon and physician for the prisoners confined in the U. S. Jail; Major Ripley of Little Rock was given the contract for feeding the inmates. [19]

Several days before Marshal Fagan entered on his new duties, there was an attempted jail break. On a quiet Sunday morning,

two prisoners succeeded in breaking out. As they raced toward the Poteau, Guard George Maledon opened fire. The ball struck Ellis McKee, one of the fleeing men, in the back, knocking him to the ground. McKee's companion was recaptured by one of the deputy marshals and another guard. The wounded man was taken to a hospital, where Dr. Bailey cut out the ball. At the time the Western Independent went to press on July 8, McKee was reportedly well on the way to recovering from his wound. [20]

At the beginning of the third week of July, District Attorney for the Western District Newton J. Temple tendered his resignation. Temple's many Fort Smith friends were disturbed by this development. Editor Wheeler commented, Temple's "earnest, able, and persistent opposition to judicial frauds here has endeared him to the honest people of the District. His record in the Dept. of Justice and before the country is clear. We hope we may get as good a man to fill his place." Temple had told his friends that he would re-establish himself in California. [21]

President Grant named William H. H. Clayton, the brother of United States Senator Powell Clayton, to replace Temple. Clayton at the time he received his appointment was the prosecuting attorney for the First Arkansas Judicial Circuit. Several weeks passed before Clayton was able to wrap up his business in the state court. Clayton reached Fort Smith on August 31 by stage. Editor Wheeler, as a good Democrat, wasn't happy to learn of the new district attorney's arrival. When his subscribers read the Weekly Independent for September 3, they learned that Clayton was in town. "Have we a Clayton among us?" the editor inquired. Answering his question, he commented, "We have. Then Heaven help us." [22]

Marshal Fagan and District Attorney Clayton were delighted to discover that Jailer Blanks was a good disciplinarian. Blanks inspected the jail twice a day. Not only did the jailer make the prisoners keep the cells "neat," but he saw that they kept themselves "clean." The food sent into the jail by Contractor Ripley was pronounced good, wholesome, and well cooked.[23]

The posses sent out by Marshal Fagan found plenty to keep them busy in the vast territory over which the Court for the Western District had jurisdiction. Many times, the deputy marshal in charge was able to report a successful mission, on occasions he reported failure, and sometimes he told of exciting gunfights.

Deputy U. S. Marshals W. M. and J. C. Cockran rode into the old Garrison on September 3 with two prisoners, one of whom was a Choctaw named Stephen Anderson. The Indian was a desperado of the most "violent type." Lawmen had frequently tried to apprehend him without success. Anderson was accused of many crimes — robbery, horsestealing, and murder.

The Cockrans and their posse had ridden up to Anderson's house before daylight the morning of August 29 and had taken cover. At daybreak, Anderson walked out into his yard. He was armed with a sporting rifle and a Smith and Wesson six-shooter. Calling his dogs, Anderson walked toward the underbrush in which the marshals had taken cover.

Tom Sanford, a member of the posse, drew his gun and called for Anderson to surrender. Instead of doing as directed, Anderson fired at Sanford. As he did, J. C. Cockran shot, "giving him a good sprinkling" of buckshot. W. M. Cockran rushed up behind Anderson and caught him by the neck. Placing his pistol to Anderson's head, W. M. Cockran told him to give up, which he did.

After the marshals had taken Anderson into custody, the felon's father and brother trailed the posse for 15 miles on the chance, which proved futile, of rescuing their kinsman.[24]

Not so fortunate was the posse led by Deputy Marshals Hugh Carroll and Davis. Near Maysville, they arrested two brothers, "bad characters," belonging to the Tittle family. Carroll and one guard took the prisoners aside, while Davis and the rest of the posse rode into Maysville to capture a third brother. Meanwhile, "old man Tittle" had gathered together a number of armed friends and prepared to recapture his sons. "Old man Tittle" and his confederates came upon Deputy Marshal Carroll. Drawing their guns; they ordered him and the guard to release their prisoners. Next, they relieved the deputy marshal of his gun and money. After giving Carroll and the guard a "sound cursing," the desperados rode into Maysville. Davis and the rest of the posse had stopped at a house. One of the posse had been stationed outside as a guard. As "Old man Tittle" and his party galloped up, several of the men trained their shotguns on the guard. After disarming him, they compelled Davis and the rest of the lawmen to hand over their weapons.

Commenting on the discomforture of the posse, the editor of the Western Independent observed:

> The Tittles are said to be daring men, and defy all law, and it is useless for three or four men to attempt to arrest them, and to accomplish their arrest it will take 25 to 30 men to do it. This news we learn from one of the guards who expressed himself as perfectly willing to stay as far away from the Tittles as heretofore. We have no doubt but Gen. Fagan will soon attend to these desperate characters as the law directs. [25]

More successful than the Carroll-Davis posse was one led by Deputy Marshals Cockran and Carter. The Cockran-Carter detachment reached Fort Smith during the second week of October from a patrol through the Creek Nation with nine prisoners.

While on their sweep, the marshals had learned the hiding place of Redmouth, a noted renegade. Early on October 4, they had closed in on Redmouth's hiding place. Redmouth was camped in a deep ravine with one of his wives. Awakening, Redmouth began shooting. Although it was very dark, the marshals returned the fire, using the flashes from Redmouth's pistol as an aiming point. As soon as it was light,

the marshals advanced and found a woman "completely riddled with bullets and in a dying condition." Before expiring, the woman stated that during the fight, Redmouth had held her in front of himself as a shield. She said that Redmouth, before abandoning her, had been wounded. After pursuing Redmouth a number of miles, the posse lost his trail, and the marshals sadly admitted that their man had given them the slip.[26]

By the end of the first week of October, Jailer Blanks reported that he had 87 prisoners in the U. S. Jail. Each week, as the posses returned, saw the number of Blanks' charges increase "at the rate of 10 to 12." The townspeople on learning this felt certain that Judge Caldwell would have his hands full when he opened the Court for the Western District on the first Monday in November.[27]

The most important trial which took place during the November term of court was that of McClish Impson, "a young and ignorant Indian," who was tried for killing an unidentified white man in the Creek Nation. The jury returned a verdict of guilty on November 13. The next day, Judge Caldwell sentenced Impson to death. On January 15, 1875, Impson was escorted from his cell. While on the scaffold and waiting for the rope to be adjusted, Impson confessed the crime and blamed his father's teaching for bringing him to the gallows.[28]

Editor Wheeler was impressed with the way Judge Caldwell ran his court. The readers of the Western Independent for November 19 learned:

> The U. S. District Court for the Western District of Arkansas has been in session for nearly two weeks, and the amount of business dispatched in that time is surprising. Judge Caldwell is on the bench, and "every thing moves like clock-work." In the Grand Jury room is kept an attorney -- Col. Harrington of the Eastern District -- who acts as clerk for that body; thus enabling them to progress admirably. We are told by a member of the Grand Jury that they will soon complete their labors and adjourn. 29

By the end of November, so many cases had been disposed of that the population of the jail had been more than cut in half. When the Western Independent went to press on December 3 there were 29 white men and 8 Negroes confined in the U. S. Jail. "Quite a cleaning out since Judge Caldwell has been presiding," Editor Wheeler observed. 30

LAW ENFORCEMENT AT FORT SMITH 1871 - 1896

Chapter III

Judge Parker Hangs Six

By 1875, the year Isaac Charles Parker was appointed to the Fort Smith bench, there was no worse spawning place for Satan's own than the Indian Territory. People called the area "Robbers' Roost" and "The Land of the Six-Shooter." At the time of the hanging of John Childers in 1873, crime was so rampant that the condition give rise to the phrase: "There is no Sunday west of St. Louis -- no God west of Fort Smith." [1]

Parker's formative years were not too dramatic. The future "hanging judge" was born in a log cabin on October 15, 1838, in Belmont County, Ohio. While helping on the family farm, he spent several winters in grade school and took some work at Barnesville Academy that was about as advanced as today's junior high school. The Kansas-Nebraska question was the absorbing topic of the day, and young Parker, fond of debate, took an active part in the discussions. After digesting a few law books, Parker in 1859 was admitted to the Ohio bar. [2]

In the same year, young Parker caught the Western fever. Not that Ohio was overcrowded, but moving west was a characteristic of the people of 19th Century America. Isaac's father, Joseph, had migrated from Pennsylvania, while his father's people had emigrated to the "Keystone State" from Massachusetts. On Parker's mother's side, the Shannons had been Virginians. Consequently, Parker merely followed a pattern traced by his forebearers when he pushed on into the Missouri Valley. [3]

He went down the Ohio River by packet, caught a boat up the Mississippi and Missouri, and landed at St. Joseph, Missouri. St. Joseph was a gateway to the great western frontier. Trappers, traders,

scouts, gamblers, and the nondescript gathered here on the border. Ben Holladay was running a freight line to the West. The first pony express rider was to thunder westward toward California from St. Joseph the next year. It was a wild town on a wild frontier. A man with a little legal knowledge was needed and welcomed. Parker liked St. Joseph and hung up his shingle.

Within a short time of his arrival on the Missouri frontier, Parker was courting dark-eyed Mary O'Toole. She had been born in St. Joseph and had graduated from the Convent of the Sacred Heart. Mary was a Roman Catholic and Parker a Protestant. This delayed but didn't prevent a marriage. To them were born two sons, Charles and James. "Parker worshipped his dark-eyed cheerful Mary, was devoted to her and their two sons." Mary in turn found her "Isaac perfect, a kind and loving husband, an indulgent father." [4]

Although he had just come of age, Parker lost no time in becoming interested in politics. He had a background for his interest, a great-uncle, Wilson L. Shannon had twice been governor of Ohio, then minister to Mexico, member of Congress, and finally governor of Kansas Territory. Like Shannon, Parker was a Free Soil Democrat. His hero was the Little Giant, Senator Stephen Douglas of Illinois. Parker was president of the first Douglas for president club organized in Missouri. In 1860, Parker did his best in a futile effort to have his idol elected to the presidency.

The election of Abraham Lincoln resulted in the secession of the Lower South. The firing on Fort Sumter and Lincoln's call for 75,000 volunteer precipitated a crisis in the Upper South. Four of these states cast their lot with the Confederacy. In the border slave states there was a political tug of war between the forces of Union and secession. As a Northerner, a nonslaveholder, and a Douglas Democrat, Parker declared for the Union. Parker during the war saw service as a corporal in the militia, and used his skill as a politician to help keep Missouri on the side of the Union.

Parker had now become a Republican. His reputation began to grow. Having held the office of city attorney, he was elected prosecuting attorney for Buchanan County. When President Lincoln sought re-election in 1864, Parker as a presidential elector, helped cast Missouri's vote for "Old Abe." In the same year, Parker was elected State's Attorney for the Twelfth Judicial Circuit of Missouri.

During the reconstruction period which followed the Civil War, Parker, when just 30 years old in November 1868, was elected judge of the Twelfth Judicial Circuit for a six year term. Two years later, he quit the bench to run for Congress. He was elected a representative from the 6th Missouri District. Two years later he was re-elected. [5]

Intentionally or not, Parker while in Congress laid the foundation for becoming a Federal judge. During the 42d Congress, Parker served as chairman of the Committee on Expenditures of the Navy Department and was a member of the committee on Territories. Because of his latter assignment, he became deeply interested in the problem of the American Indians and was sympathetic to their problems. His second term afforded him even richer opportunities. Parker was appointed to the powerful Committee on Appropriations. He steered the Indian Appropriation Bill of 1872 through the House, and sponsored a measure to organize a territorial government for the Indian country in the Western District of Arkansas, which failed to pass. Little by little Parker became the champion of the Indians. In the halls of the 43d Congress, Parker was known as "the Indian's best friend." [6]

Parker's work pleased President Grant. In a message to Congress in 1872, the President observed:

> The policy which was adopted at the beginning of this Administration with regard to the management of the Indians has been as successful as its most ardent friends anticipated within so short a time. It has reduced the expense of their government, decreased their forays upon the white settlements, tended to give the largest opportunity to the extensions of the great railways through the public domain, and the pushing of settlements into more remote districts of the country, and at the same time improved the condition of the Indians. 7

Unlike many men with a military background, Grant expressed concern for the welfare of the redmen living in the Indian Territory. For as he said:

> The subject of converting the so-called Indian Territory, south of Kansas, into a home for the Indian, and erecting therein a territorial form of government, is one of great importance, as a complement of the existing Indian policy.... A territorial government should protect the Indians from the inroads of whites for a term of years uhtil they have become sufficiently advanced in the arts and civilizations to guard their own rights and from the disposal of lands held by them for the same period. 8

In 1874 the Missouri Republicans nominated Parker for the United States Senafe. This was in the nature of a compliment, because Missouri was again in the hands of the Democrats and no Republican could hope to win. Moreover, the situation in the Sixth Congressional District was such that Parker had little chance of being re-elected to the House of Representatives. It was understood, however, that with the Republicans in control in Washington that Parker would get an appointment from the White House when he retired from Congress in March 1875.

President Grant accordingly appointed Parker chief justice of the newly created Utah Territory. Parker now took the most important step of his career. Before the Senate could act on his appointment, Parker wrote Grant asking him to withdraw it. Instead of the Utah assignment, Parker asked that he be considered for judge of the United States Court for the Western District of Arkansas. While the Utah position had a more high-sounding title, it had numerous drawbacks. Besides being a long way off, the Utah post was temporary. Territorial officers would loose their jobs whenever Utah became a state. At the same time, the district judgeship was for life, and Fort Smith was not too far from St. Joseph.

In writing to the White House, Parker had assured Grant that he could handle the task. He knew the law; the President could check

on that. Parker as judge of the Twelfth Judicial Circuit of Missouri, had previous service on the bench. Having lived in a region similar to the Arkansas frontier, Parker believed he could cope with the problems confronting the Court for the Western District better than an easterner. Furthermore, Parker, having specialized in Indian affairs while in Congress, believed he could handle any judicial problem which might arise in the vast Indian Territory over which his court had jurisdiction.[9]

Arkansas' two Republican senators (Powell Clayton and Stephen W. Dorsey) requested that Parker be named to fill the vacancy existing at Fort Smith. The Republican party had fallen on evil times in this section of the southwest. Arkansas had just passed through the throes of reconstruction. It had witnessed only a short time before, the split in Republican ranks which had resulted in the Brooks-Baxter War. It was doubtless this factional split in the Arkansas Republican party which led President Grant to select a man from outside the state, not identified with either wing.

Upon receiving these requests, President Grant withdrew Parker's nomination as chief justice of the Territory of Utah and appointed him judge of the Court for the Western District of Arkansas at a salary of $3,500 per annum. Parker's nomination was quickly confirmed by the Senate. Grant on March 19, 1875, filled out and transmitted to Parker an official copy of his appointment. At 36 years of age, Parker became the youngest judge on the Federal bench.[10]

No man ever entered into judicial office under more trying or unfortunate circumstances. A triumphant and righteously indignant Democracy had secured control of the Arkansas state government, which had been denied to it by force of arms for a period of years. The term "carpetbagger" was anathema in the ears and hearts of the majority of the white inhabitants of the district. The fact that Parker had been selected from outside the state, coupled with the

word that he had received the endorsement of the Arkansas senators, both of whom were "radical" Republicans, could cause difficulties. In addition, the scandal that had compelled Judge Story to resign, was enough to make thinking men pause and wonder if another "carpetbagger" had been foisted upon them. [11]

President Grant didn't expect that Parker would desire the position as judge of the Court for the Western District very long.

"Stay a year or two," Grant wrote, "and get things straightened out."

"I did not expect to stay here more than a year or two," Parker told a reporter 20 years later, "but I am still here, as you see."

"Yes, it was the greatest mistake of your life," remarked the judge's wife, as she added, "He is only fifty-eight but he looks like a very old man."

"No, Mary, not a mistake," exclaimed the judge, "for we have been enabled to arrest the flood tide of crime." [12]

The judge, Mrs. Parker, and their two boys reached Fort Smith by steamboat on a pleasant Sunday morning, May 2, 1875. Although its population numbered less than 3,000, Fort Smith was justly called a center of commerce and trade. The Arkansas, when navigable, afforded a low-cost means of transportation; wholesale warehouses had been established; Fort Smith was the distribution center for a vast region in the eastern Indian Territory and much of western Arkansas.

Being realists, the newcomers expected little in the way of progress and "creature comforts." They were correct. Even the boosters would admit that Fort Smith was a second class town. There were no paved streets; no sidewalks; no streetlights, except an occasional lantern; no bustling factories; no decent hotels or public schools. The chief means of travel were river craft and horse-drawn carriages and wagons. Fort Smith boasted four newspapers, and 30 saloons which did a thriving business with steamboaters and railroaders, cowboys returning to Texas from the drives to the Kansas and Missouri railheads, and transient traffic to the great Southwest. One bank, the First National, had been established in 1872. [13]

Garrison Avenue was wide enough, but rain made it "nasty and uninviting," a "seething mass of mud and filth." It was "simply a mud hole with all the garnishments needed to complete its filthy grostesqueness." When the sun shone, as it did on the day of Parker's arrival, there was dust to baffle the pedestrian or to drive him into the saloons. [14]

Many had flocked to the landing, not especially to welcome the newcomers, but to get a good look at the new judge. They saw a broad-shouldered man over six feet in height, weighing 200 pounds, with piercing blue eyes, and tawny mustache and goatee. They noted his quick, firm step and square-set jaw, and they guessed that he would be forceful. Beyond this, he was a "carpetbagger" and another appointment of President Grant, who four years before had sent them Judge Story. In Mrs. Parker, the citizens saw a pleasant woman, larger than average, while the two children were remarkably handsome.

After Parker had obtained lodging for his family, he took a look about town and the Garrison and sized up the situation. Only then did he realize that he had accepted one of the most difficult offices in the country.

During the latter months of Story's tenure, the Court for the Western District had fallen into disrepute. People on the street were openly critical of Story's regime and the wasteful and inefficient methods of his court. Witnesses were difficult to secure, and many of the law abiding citizens living in the district were openly antagonistic toward its officers. The bar itself was sullen and even openly rebellious. [15]

Moreover, many of the Arkansas Democrats distrusted Parker because of his switch to the Republican party. Local newspapers had expressed their disgust at Parker's congressional votes on bills affecting sectional issues. [16] Despite the successes registered by President Grant's Indian policy, they felt that it had been a bust.

Parker had likewise been a member of the House when it had voted to abolish the Court for the Western District. After this had failed to pass the Senate, Parker had voted for the passage of the redistricting act, which was referred to by a Fort Smithite as "one of the most iniquitous measures ever brought to the attention of a deliberative body." [17]

The newspapers gave the judge only guarded publicity.

"We have made a great mistake, Isaac," Mary remarked.

"No, Mary," the judge replied, "We are faced with a great task. The people need us. We must not fail them."

Failure would mean bloodshed and domination of the Indian Territory by the forces of evil. Parker had experienced the cruel border warfare as carried out by Jim Lane and his Redlegs, and the Bushwhackers led by William C. Quantrill and Bloody Bill Anderson. Parker was familar with the type of ruthless individual that had made his way into the Indian Territory. He realized that politics for the time being must be pushed aside. Politics could play no part in bringing law and order to the Arkansas frontier. The country's salvation, the fate of the Court for the Western District, lay in the Arkansans' hands. Only if he could have their help and co-operation in attacking this "vast problem of crime" could Parker achieve his ideal, "a great government, where liberty, regulated by law, would be guaranteed to all, even the humblest." [18]

For clerk of the court, Judge Parker hand picked Stephen Wheeler. A Union veteran and Republican wheelhorse in Arkansas, Wheeler had been appointed in April 1875 to be clerk of the Federal Circuit Court at Fort Smith, a division of the Eighth Judicial Circuit. Wheeler accepted the task with alacrity and never left this position until June 1897, eight months after Parker's death. In the 22 years he held the office, Wheeler issued 18,877 warrants for arrest of persons charged with the violation of every Federal statute on the books. [19]

As private bailiff, Parker retained George S. Winston, private bailiff under Story and Caldwell. Winston always gave close attention to court affairs, and he came to Parker with the unanimous recommendation of the other court officers.[20]

Parker quickly became acquainted with Marshal Fagan and District Attorney Clayton. James Brizzolara was named Clayton's assistant on May 8, 1875.[21]

The physical setting of the court was as grim as the work ahead. The old "Soldiers' Quarters" was a story and half brick structure with its sides facing to the northeast and southwest, its gables pointing to the northeast and southwest. The northeast half of the first floor was partitioned off and used as the courtroom, while the other half was employed as offices for clerks, the marshal, and attorneys. Beneath the building was the basement, eight feet deep and partitioned by a solid stone wall into two cells, each 29 by 55 feet. Since the fire in November 1872, these had served as the U. S. Jail. Small basement windows provided the chief source of light and ventilation. Entrances to the cells were made from the outside on either side of the porch facing southeast. Inside each basement entrance was built of rough timber a small vestibule, eight by ten feet, where prisoners, during sessions of court, were permitted to confer with their attorneys.

The old Commissary Storehouse was occupied by Judge Parker and the other officers of the court as offices.[22]

* * *

The people wanted proof that Parker was a man of action, and they quickly got it. Judge Parker opened the Court for the Western District on May 10, only eight days after his arrival at Fort Smith. During his first term of court, 18 persons came before him charged with murder.

Judge Parker sat behind a wide-impressive, cherry-panaled desk, in an exceedingly high-backed, leather-bottomed chair, such as was considered befitting the dignity of the law. Parker had brought with him from Missouri the Bible that was so important to his life. It was a ponderous, stiff-backed book, held together by a fancy brass clasp.

The first murder trial over which Parker presided was that of Daniel Evans. This case was typical of many that were to follow. In 1874 the body of a 19 year old boy was found in a belt of timber which skirted a small stream in the Creek Nation, near Eufaula. The dead boy's footgear had been removed. Hidden beneath a stone were a battered pair of heavy work shoes. Searching the body, the discoverers found a pocketbook bearing the name "Seabolt." A few miles away, a bullet through its brain, was found a small, grey pony. Nearby was a well-worn saddle.

Following the discovery of the corpse, the authorities instituted an investigation. When questioned, the settlers living in the area recalled having seen two riders, one a man the other a boy, several days before. The boy was reportedly wearing new boots with high heels and fancy tops, and riding a large bay with a fine new saddle. At the same time, his companion was said to have been mounted on a small, grey pony with old saddle, and his feet encased in a pair of heavy work shoes.

A United States deputy marshal was sent for. A search for the dead boy's traveling companion was launched. Near Eufaula, the posse overtook a man of about 20 summers. When the marshal hailed the man, he noticed that he was riding a beautiful bay, with a new saddle, and was wearing a fancy pair of boots, with sloping heels and highly ornamented tops. In response to the marshal's questions, the horseman identified himself as Daniel H. Evans of Bosque County, Texas.

One of the posse asked Evans where he had bought the boots.

"I didn't buy them, I traded for them."

"A boy I met in the Creek portion," Evans retorted, "Said he got them in Texas."

The story seemed plausible, but the posse wasn't convinced. Despite Evans' protests, the deputy marshal decided to escort him to Fort Smith for a preliminary hearing before the U. S. commissioner.

The commissioner decided to hold Evans in jail to await investigation by the grand jury. When the evidence was presented to the grand jury that body on November 27, 1874, indicted Evans for the murder of Seabolt.

Evans was arraigned before Judge Caldwell on the following day. As expected, Evans pleaded "not guilty as charged." H. A. Rogers and William M. Cravens were retained as attorneys for the defense. The trial which began on December 8 lasted two days. All evidence presented by the government against Evans was circumstantial. Consequently, the jury was unable to agree. After being out 60 hours, the jurors returned; the foreman announced that they were unable to reach a verdict, standing 11 to 1 for conviction.

Judge Caldwell on December 10 discharged the jurors. Evans was returned to the jail beneath the courtroom to await a new trial. There he was when Judge Parker opened the May term of the Court for the Western District.

Evans' second trial commenced on Monday, May 17. Three days before, the attorneys for the defense had appeared in court, and on their motion Bond and Robinson were appointed to assist in the defense. A motion for continuance was overruled. Evans, bolstered by his first experience before the bar, was confident. There was no new evidence; this time he would be set free.

The trial moved rapidly. During the first day, most of the testimony was presented. Mistaken identity, the defense stoutly maintained. That evening as District Attorney Clayton was sitting alone in his office, he heard footsteps in the hall. He was worried, unless the prosecution dug up additional evidence, Evans would probably be acquitted. There was a knock at the door. Clayton called, "Come in!"

A stranger who appeared to be about 40 entered.

He introduced himself as Seabolt from McKinney, Texas. The newcomer explained that he was the father of the boy murdered by Dan Evans.

So startled was the prosecutor by this announcement that he nearly fell out of his chair. Quickly regaining his composure, he asked Seabolt to tell his story.

Seabolt explained that his son and Dan Evans had left Texas together in October of 1874. Early in November, he had received a letter from his son written at Denison, Texas, stating that he and his friend were going into the Indian Territory.

Prior to his son's departure, Seabolt had given him a large, bay horse and a pair of boots. The elder Seabolt had purchased an identical pair for himself. At this, he raised one foot to the level of the table so Clayton could have a close look. Clayton's heart beat faster. The boot, with its high heel and fancy top, was an exact mate to the ones worn by Evans.

"One of the heels came off," Seabolt continued, "just before my boy left home, and he put it back and drove three horse-shoe nails into it to hold it in place." As the senior Seabolt recalled, it was the left one, and when repaired it was a little off-center. Then feeling that the other heel might come loose, the boy had driven three nails into it.

Clayton was elated. What a coincidence that the father of the victim, of whom the government had heretofore known nothing, should suddenly appear to furnish vital evidence needed to put a noose around Evans' neck. It was late when the interview terminated. Clayton took the father to a quiet boarding house and arranged for him to remain there until summoned.

When court reconvened on the 18th, the attorneys for the defense submitted their closing arguments and rested their case.

Clayton now rose and exclaimed "Call Mr. Seabolt."

As he said this, Evans was seen to twist nervously in his chair. It was apparent to all that the "defendant was surprised by the introduction of material testimony against him, which he was wholly unable to anticipate, and consequently rebut."

The father took the stand. He told the same story as he had the previous night. When the elder Seabolt ceased speaking, all eyes, including those of the judge and jury, were focused on Evans, who sat a little back, his feet thrust beneath one of his attorneys' chairs.

Evans was asked to show his boots to the jury. As he did, Clayton pointed to the heads of the three horseshoe nails in the heel of each boot, and to the unmistakeable indications that the heel on the left boot had at sometime been removed and replaced. A comparison of Evans' boots with those worn by the witness completed the testimony. Arguments were made by the opposing counsels on Wednesday, the 19th. Time was now at hand for Parker to charge the jurors. He did this at length. As he did, the judge led the jury. Parker believed Evans was guilty — and the guilty must be punished.

The jury was out only a few minutes. When it returned, the foreman announced that Evans had been found guilty.

Judge Parker on June 26 pronounced sentence. Instead of saying that a person was to be hanged until he was dead, Parker repeated the dread word three times. Evans rose. Parker talked for several minutes, denouncing him in a harsh, cold voice; then he set the date for the execution, and said, "I sentence you to hang by the neck until you are dead, dead, dead!" [23]

Evans' face took on a scornful smile as he thanked the judge. As the doomed man was led aside, Parker's eyes filled with tears.

Six-feet-tall and handsome James H. Moore, like Evans, was a professional bad man. Born in 1847 near Warrensburg, Johnson county, Missouri, Moore had moved at an early age with his parents to Grayson county, Texas. Before he was of age, young Moore had joined a band of outlaws in the Indian Territory. The band's field of operation extended from Kansas into the northern counties of Texas. By the time he was 27, Moore had become captain of this group of desperados.

Moore and an outlaw named Hunton on the night of August 26, 1874, robbed Cox, a crippled farmer, living in Washington county, Arkansas, near the site of Old Fort Wayne. Hunton stood guard while Moore took the old man's two horses. A citizens' posse pursued the outlaws to Fort Gibson and from there to Eufaula. There, one of the posse caught a southbound train; the rest followed on horseback the trail left by Moore and Hunton. At Atoka, the lone pursuer sighted the two outlaws as he was getting off the train. Collecting another posse, he gave pursuit. After a long, hard chase the posse on the evening of September 1 overtook the two fugitives on the Little Blue, a short distance from the Red. A gun-battle ensued. Moore was one of the best shots with a six-shooter in the Territory. He knocked one of the pursuers, William Spivey, from his horse with a bullet in the brain at 100 yards. A second member of the posse, Captain A. D. Irwin, was cut down, badly wounded.

In the darkness which soon blanketed the area, the desperadoes lost their horses and separated. Hunton doubled back and was captured by the citizens' posse, 16 miles south of Perryville. He was then taken to Fayetteville, where he was allowed to plead guilty to horsestealing. Since he gave the authorities valuable information, Hunton wasn't prosecuted for murder. Transferred to the Federal jail at Fort Smith, Hunton escaped. He was pursued into the Indian Territory and killed when he resisted arrest.

After killing Spivey, Moore made his way to Caddo, where he boarded a northbound train. Detraining at Eufaula, Moore hired a Negro to lead him to the camp of a drover. Moore had decided to get into the cattle business. He would get rid of the owner and sell the cattle. So Moore walked along with the man, kindly helping him with the beeves.

Encountering a confederate named Nowlen, Moore told him to proceed to Old Fort Wayne, where he would make arrangements to sell the cattle. Nowlen set off on his exciting mission.

Hardly had Nowlen reached the cattle market at Cincinnati, Arkansas, before he was recognized and taken into custody. When questioned, Nowlen told of the plot to murder the drover and make off with his cattle. Nowlen informed the authorities where Moore could be located. Having secured this valuable information, Deputy Marshal James E. Oates and another man rode out of Fort Smith. One mile east of Fort Gibson near the National Cemetery, Oates and his companion on September 10 found the drover's camp. Moore wasn't around. They asked as to Moore's whereabouts.

At first, the drover denied having any knowledge. When Moore had seen the officers approaching, he had told the drover that if he informed on him he would be killed. Pressed by Oates, the drover finally pointed to the gulley in which Moore was hiding. The officers rode over to the ravine; there they found Moore, "as close to the ground as a wagon track." He begged them not to shoot. Subsequently, Oates reported that Moore's clothing was saturated with cold sweat. The deputies soon had the cuffs on their prisoner.

After he had time to reflect on his situation, Moore asked Oates how the officers knew where he was hiding.

Oates refused to say.

Moore suspected Hunton. He expressed neither sorrow nor surprise when told of Spivey's death. Instead, he boasted that counting Spivey he had killed eight white men, and as for "niggers and Indians he did not count." Continuing, he said, "If he ever got out of the scrape, he would go back to his old life; never intended to work for a living, but 'would have it, if he had to war on civilization, as long as he could'."

The capture of Moore, Hunton, and Nowlen smashed a band of horse-and cattlethieves which had been operating in the Territory for about three years. Several men who hadn't been suspected of outlawing left the area soon after the capture of the three men. Nowlen was turned over to a Texas sheriff and returned to the Lone Star State for trial.[24]

At Moore's trial before Judge Parker, the defendent denied being present when Spivey was killed. He claimed "with brazen effrontery" to have been 100 miles away at the time the crimes was committed. The jury refused to believe Moore. On May 25 a verdict of guilty was handed down. One month and a day later, Parker sentenced Moore to the gallows. When he did, the judge observed that it was a pity to waste such talent at Moore's. Nevertheless, he continued, "sympathy should not be reserved wholly for the criminal. I believe in standing on the side of the innocent...quiet, peaceable, law-abiding citizens. Is there no sympathy for him." Could one turn loose the unregenerate and incorrigible, the men like this James Moore, who boasted of their sins?[25]

In Texas and Arkansas there was no law against selling whiskey, consequently, saloons were established just across the border, so residents of the Indian Territory could quench their thirst. One such was the grog shop run by Ottery on the Texas side of Red River.

A trip to Ottery's saloon on February 7, 1875, a Sunday afternoon, spelled disaster for two Chickasaw Nation farmers. William Jackson Whittington was a native of Taylor county, Georgia, but he had grown up in Upshur county, Texas. In 1870 he had removed to the Chickasaw Nation, where he sharecropped for Simon James.

On the fatal Sunday, Whittington and a neighbor, John J. Turner, crossed the river. After drinking a considerably quantity of Ottery's rotgut whiskey, the two friends left the saloon. While at the shop, Whittington had noticed that "Old Man" Turner was carrying a considerable sum of money, $105.

After fording the river, the two men rode along together. Whittington thought about the money. By this time, Turner had taken the lead. Stopping and picking up a club, Whittington rode up behind Turner, and knocked the old man from his horse with a fierce blow. Whittington was crazy drunk. Leaping off his horse, he drew his bowie knife and slashed Turner's throat. After rifling Turner's pockets, Whittington fled.

As chance would have it, Turner's 18-year-old son had ridden out to meet his father. Young Turner while crossing a small prairie, saw a man in the distance with two horses. The man stooped as if "engaged with some object on the ground." When the boy galloped up, he saw Whittington, who fled into the woods. Recognizing the victim as his father, young Turner went after the murderer. He caught Whittington before he could escape across Red River. Money belonging to the dead man was found in the killer's pocket, while the murderer's blood-stained knife, was picked up near the corpse.[26]

The now-sober Whittington was escorted to Fort Smith for trial. As was to be expected, the jury found Whittington guilty. Judge Parker was much affected by the trial. When it was over Judge Parker thundered as he sentenced Whittington to death:

> The man you murdered, was your friend and you had spent most of the Sabbath day...in his company. In an unsuspecting hour when he no doubt was treating you as a trusted friend you stole upon him unperceived and aimed the deadly weapon at his head and with the fateful knife you brutally hacked his throat to pieces and with these fatal instruments of death, you mangled, you murdered your victim.
>
> But your guilt and your depravity did not stop there. Scarcely had you committed the bloody deed before you entered upon the commission of another crime. You converted to your person as spoils of the murder your victim's money. 27

Smoker Man-killer was aptly named -- he had killed two men before he was of age. Man-killer was a full-blood Cherokee who lived in the Flint District (now Adair County, Oklahoma). The murder of another Cherokee brought Man-killer into tribal court, for the Court for the Western District had no jurisdiction in cases involving only Indians. This meant acquittal because the redman's tribunals, like the ecclesiastical courts of the Middle Ages, were well-known for leniency.

Man-killer was a moody Indian who carried a chip on his shoulder. On September 1, 1874, Man-killer encountered William Short, a neighbor,

as he was out hunting wild game. Man-killer couldn't speak English, so he hailed Short in Cherokee. Short understood and answered employing what little Cherokee he knew and sign language. Suddenly, the Indian made a sign that he wished to see Short's gun. The unsuspecting hunter handed his weapon to Man-killer, whereupon the redman shot and killed him. To make certain that Short was dead, the Indian drew his knife and hacked his neighbor into ribbons. Tossing the rifle aside, Man-killer walked home. When Short failed to return, his wife sounded the alarm and a searching party was organized. It wasn't long before the mutilated body was found.

Smoker Man-killer had boasted to his friends of the killing, consequently, he was soon arrested and taken to Fort Smith. Since he didn't speak English, the trial had to be conducted through a court interpreter. Judge Parker was known to wind up a murder trial in a day. Because of the language barrier, the Man-killer proceedings took longer--nearly three days. Nevertheless, it ended up with a verdict similar to the ones handed down in the trials of Evans and Moore. [28]

"The law has come on me," cried Man-killer.

"Indeed," snapped Parker, "the sword of human justice trembles over you and is about to fall upon your guilty head." [29]

Edmund "Heck" Campbell had been born into bondage on the Ring plantation in the Choctaw Nation on the Fort Smith-Scullyville road, nine miles west of Fort Smith. Campbell, his brother Sam, and his half-brother Frank Butler had been freed from slavery by the 13th Amendment. Heck had married and started farming in the Choctaw Nation. Nearby was the farm worked by another Negro, Lawson Ross. For some time there had been bad blood between the Campbells and their neighbor. After a prayer-meeting brawl, the Campbell brothers and Butler went to Ross' cabin. Heck Campbell shot Ross, and then the brothers butchered Maria McKinney, a young Negress who lives with the victim.

Sam Campbell, who was very young, escaped with a six-year sentence for manslaughter. The other members of the trio were convicted of murder and sentenced to death on June 26 by Judge Parker. Before the

sentence could be carried out, Frank Butler was killed in a futile attempt to break out of the U. S. Jail.[30]

Scattered through the Indian Territory in 1872 were isolated country schools. So isolated were these schools that it was difficult to get teachers. Moreover, it was necessary for the teachers to go to the agency to collect their salaries.

John Emmett Naff of Jonesboro, Tennessee, had migrated to the Indian Territory at the beginning of the 1870s. According to the Jonesboro Journal, "No other young man that was ever reared in our town possessed natural gifts superior to his. He lacked steadiness and application to make his life a succession of brilliant successes." But, being of "erratic dispostion," Naff preferred a "wandering and adventurous life." Following his arrival in the Cherokee Nation, Naff became known as the "barefoot school teachers," a drifter, but a likeable and useful person.

Naff finished up his school term near Tahlequah in the summer of 1872. With his pay, $250, in his pocket, he packed his clothes and books, stuffed them in a carpetbag, and started for the Illinois River. Nightfall overtook Naff near the home of Deputy Marshal C. R. Stephenson. The following morning, after breakfast, Naff asked Mrs. Stephenson how much he owed.

She replied, "fifty cents."

The teacher pulled out his wallet and handed the woman a five dollar bill.

Mrs. Stephenson couldn't change it, so she told Naff to get the bill changed and leave her 50¢ at a store by Mackay's Saltworks.

Naff agreed, and started out the door.

A brother of Mrs. Stephenson, Sam Fooy of Webbers Falls chanced to have also spent the night at the house.

Fooy at the time was 22 years old and had a wife and three children. His father, James, and uncle, Benjamin, had come to Fort Smith from Memphis in the late 1840s. James Fooy had married a mix-blood Cherokee.

Sam was born in 1849. Subsequently, the Fooy brothers moved to the Cherokee Nation, where they died. Sam's mother remarried. Both Sam's stepfather and mother tried their best to give the boy a Christian upbringing. They failed. Sam preferred the wild life. He drank heavily and frequented the Fort Smith gambling dens and brothels. Sam had had several brushes with the law but had always escaped conviction.

Sam left his sister's with Naff. This was the last time the "barefoot school teacher" was seen alive.

About a year later, a skeleton was found at the foot of a high bluff next to the Illinois River. A bullet hole was in the skull. Shortly afterwards, an Indian boy, while exploring the area, came across a partially bound book. On the flyleaf was the name of the missing school teacher written in Gothic script, his last residence, and other memoranda, along with a quotation in Latin from Horace, book 1 ode 4, which when translated read, "Pale death treads with even step the hovels of the poor and the palaces of the kings." Other articles subsequently identified as belonging to Naff were found in the area.

Sam had been unable to keep his terrible secret. It developed that he had told the sordid tale to Stephenson, begging him to keep it a secret. He had also talked too much to a young harlot of whom he was enamored. These confessions helped assist District Attorney Clayton in getting a conviction.

Sam Fooy made a grand impression in the U. S. Jail. Cheerful and gregarious, he was liked by the inmates and the visitors. Guards called him a model prisoner.[31]

Public interest in the fate of the men slated to be executed on Friday, September 3, 1875, intensified as the day approached. The clergy were untiring and regular in their attendance at the jail. Their labors of love were rewarded by "a happy change in the hearts of the prisoners," who seemed resigned and willing to die. Much of

the doomed men's time was spent in prayer and singing. Their former recklessness had changed "to serious thought and affectionate deportment to their companions."

Kindness and sympathy were manifested by the Fort Smithites for the condemned. Ladies had visited the jail to give the men "an abundant supply of fruits, pastry, and substantials." Bouquets of flowers adorned the cell windows, which the prisoners carefully watered. One of the men told the editor of the Weekly Independent that he "was ready to die, but regretted that he had led a wild life, and had not earlier known the savior." He had suffered with chills and fever, and his sleep had been disturbed by dreams.

Fooy informed a reporter:

> I dreamed that I was on the gallows before a great crowd of people. I was sick and weak and felt like fainting, and I thought I could not face death. Just then a fellow stepped up from the crowd, came right to me and said "Look here, Sam, don't you be afraid to let them jump you. Jesus is standing under the floor and he will catch you in his arms." I felt strong and when the drop came I felt no pain, but fell asleep, and I woke up in a beautiful garden — the most beautiful place I ever saw, with running waters and stars dancing on the waves.

Heck Campbell was visited by his mother on Saturday. She spoke to him but little. At intervals, she seemed to satisfy her "heart by long and lingering looks from her moistened eyes at her condemned boy." She bought him a small gift, a stick of candy, a small paper of cookies, and a few leaves of home grown tobacco.

So many visitors at the jail increased the "labor and necessary vigilance of the guards. Their courtsey and attention to the many callers was called to the attention of the Fort Smithites by the editor of the Weekly Independent.[32]

The scaffold upon which the men were to be executed had been erected at the south side of the old Garrison, against the front of the magazine. According to the correspondent from the St. Louis Republican:

The structure is built of rough timbers. The cross-beam is a stout stick of hewed oak, supported on two upright posts, very strongly braced. The platform is about seven feet from the ground. The distance between the supporting posts is about twelve feet, giving nearly two feet space for the fall of each victim. The trap extends across the breadth of the platform, and consists of two pieces strongly hinged to the flooring of the platform so that they form a connection in the nature of a couble door when closed from below. These are held in place when brought up by a stout beam of oak, extending in the direction of the gallows' beam on which rest two arms firmly fastened to one flap of the door below. To this beam about the middle is secured an iron trigger bar which passes up through a place provided in the trap doors and is secured by a knew in a strong iron lever about three feet long, well secured on the facing of the platform flodr. By a movement of this lever back, the trigger bar which holds the trap in position is released and the doors drop down.

On this door the condemned men will stand. Six ropes at this moment are tied over the beam, and six bags of sand of 200 pounds in weight each have been thrice dropped to test the further working of this awful enginery of death. 33

A large crowd, estimated to number 5,000, assembled at an early hour on September 3 at the Garrison. Judge Parker had determined that the six men sentenced to death at the May term of court should be hanged together. It appears that he thought this would be a dramatic way to warn the outlaws that law had come to the Indian Territory. In passing sentence, Parker had decreed that the executions should take place at some time between 9 a.m. and 5 p.m. General Fagan, as United States Marshal, was to designate the hour and choose a "convenient place."

It would be a well-reported hanging. All the local newspapermen were present, along with others from Little Rock, St. Louis, and Kansas City. A strange crowd, observed the big-city correspondents. There were whites, Negroes, Indians, and every possible mixtures of these three. There were farmers in working clothes, well-dressed city people, and rough-clad frontiersmen.

Some of those present were from Fort Smith and the neighboring counties of Arkansas. More, however, probably came from the turbulent Indian Territory. For the Parker court, although domiciled in Arkansas, was important chiefly because it had jurisdiction over 70,000 miles of the Indian country. From that area came most of the prisoners who appeared in Parker's Court for the Western District, including the six who were to be hanged. [34]

The felons had prepared themselves for their final moments on earth in different ways. Moore, the braggart and horsethief, announced that he wished to receive the solace of religion. Shackled and manacled, with guards at his side, Moore was escorted to the Catholic church, where he received holy communion from Father Lawrence Smythe. Dan Evans, the first man whom Judge Parker had condemned, made the trip to see the father at the same time.

Reverend W. A. Sample (Presbyterian) and Reverend H. M. Granade (Methodist) visited with the condemned men frequently during the final days. Heck Campbell announced that he had joined the church and would die in peace knowing that he had received forgiveness. When asked which church he had joined Campbell didn't know. [35]

Sam Fooy, with the help of his minister, prepared a statement which was given to the St. Louis Republican. [36]

As the final hours approached, Smoker Man-killer accepted his fate with stoical Indian indifference. His mother, Lucy Man-killer, sat opposite the door to the cell of the condemned, where she could gaze wistfully at her son. By her side sat the wife of the prisoner with their baby on her knees. Man-killer came to the bars and called out in Cherokee to the infant.

When asked by a reporter if he were afraid to die, Man-killer said no, he had become good. When the correspondent asked Man-killer if he had murdered William Short, a note of hardness came into his voice and he retorted in English, "...,I not kill Short; somebody else kill; he die." [37]

While awaiting the end, Man-killer composed a letter in Cherokee. When translated it read:

> Flint District, Cherokee Nation. Was raised in that district. My mother is living, my father is not. They killedmy father about nine years ago. My mother raised me. I feel very good, only I think the law did not serve me right. Jesus Christ is looking upon the people on earth; the time is put for the Lord to take us away. We all have to die at a certain time. I don't think it is right that the law has taken hold of my case. I deny my guilt on the charge of murder. Parties who brought the charges told falsehoods on me. I did not kill the man they charge on me -- William Short. John and Dick Welch did it. I was not acquainted with William Short. I think that they just want to charge me with it. I feel good in the way I am going.
>
> Smoker Man-killer [38]

The crowd which was noisy at the start, calmed down as the guards appeared. Hangman George Maledon hurried about. He tested each rope. While these preparations were taking place, Judge Parker didn't go near the scaffold. He was grim and silent and under a strain, so the court officials said. Word was sent that Jailer Pierce was ready to bring out the prisoners. When the judge received this news, he walked to the window at the far end of his room. From there he could see the gallows. [39]

At 8 o'clock the convicted felons' shackles were removed, and they washed and dressed in black suits. Promptly at 9:30 a.m., the prison door swung open. Out marched the prisoners, two abreast, toward the waiting gallows. On each was a leg-iron, each man's wrists were secured by handcuffs. Four Fort Smith clergymen marched with the procession, while the well-armed guards commanded by Marshal Fagan fell in at the sides and rear. The doomed men clunked up the steps and took their seats on the rough benches. A large awning shaded those on the spacious platform. After listening to Major Pierce read the death warrants, Marshal Fagan asked the men if they had anything to say. [40]

Sam Fooy remarked briefly that he hoped that all present would seek the Savior and die as happy as he did.[41]

Several of the others were more verbose. James Moore, a giant of a man with a well-merited reputation as a gunfighter, spoke next. The crowd pressed forward to catch his final words. Moore's life had been exciting. Would he, they asked themselves, display bravado to the end?

He would. Looking down at his last audience, Moore spoke in clear, crisp tones; "I have lived like a man, and I will die like a man. I am prepared...I think I see men here who are worse than I have ever been. I hope you may make peace with God before brought to my condition."

Recognizing a friend, Moore called out, "Goodbye, Sandy." He tried to wave but his hands were too tightly bound.[42]

William Whittington was sick and worried about his wife and children. Afraid that he wouldn't be up to speaking, Whittington had drafted a letter and handed it to his clergyman, the Reverend H. M. Granade. The reverend read the message to the throng.

How I Came to the Gallows:

> My father taught me to be honest, and to avoid all those great sins that disgrace the world; but he did not teach me to be religious. If he had I would have been a christian from my boyhood. I was just what my father taught me to be. He showed me how to drink whiskey, and set me the example of getting drunk. I took to this practice, and this is what has brought me to the gallows. When I got drunk I knew not what I was doing, and so I killed my best friend. If it had been my own brother it would have been the same. If I had been blessed with the good instruction that I have had since I have been in prison, I would have been a good and happy man to-day, with my family. Oh! what will become of my poor wife and two dear little boys, who are away out on Red River? I fear that people will slight them and compel them to go into low, bad company, on account of the disgrace that I have brought upon them. But I leave them in the hands of the gracious God in whom I have learned to trust.... Oh! that men would leave off drinking altogether. And,

O, parents, I send forth this dying warning to-day, standing on the gallows: "Train up your children in the way they should go." My father's example brought me to ruin. God save us all! Farewell! Farewell! 43

Fooy, Moore, and Whittington had not denied their guilt. The three other doomed felons used their final words to declare their innocence. It was as if they still had a lingering hope that they might receive an executive reprieve.

Dan Evans displayed the same cocky attitude on the scaffold as he had in the courtroom. The crowd, knowing that Heck Campbell's half-brother had died trying to break jail, viewed the Negro with interest. Heck was calm and cool as his end approached. He bade the multitude "farewell and hoped they would all meet in Heaven." 44

When his turn to address the crowd came, Smoker Man-Killer spoke in Cherokee. An interpreter translated his words into English.

"I am prepared to die...I did not kill Short; I would acknowledge it if I had, I have never been guilty of a mean act in my life. I killed a Cherokee; but I killed him in self-defence.... My conviction was caused by prejudice and false testimony." 45

The warrants read and the last words spoken, the preliminaries were about over. After a prayer by the Father Smythe, the hymns, "Jesus, Lover of My Soul," and "Let us join our Friends Above," were sung. The Reverend Sample then gave a prayer, followed by the hymn "Nearer my God to Thee," with the benediction by the Reverend Granade. 46

It was now the hangman's turn. George Maledon stepped forward, and lined the convicted felons up with "their feet squarely across the line where met the two planks forming the death-trap." One by one, the black caps were placed over the men's heads and the nooses adjusted. 47

"Robed in the black uniform of death, this frightful phalanx stood firm and betrayed no sign of weakness or faltering."

Several seemed to smile as the caps were drawn. At the last moment, Campbell shouted, "Farewell to all! I'll soon be gone! May we all meet in Heaven."

Moore called, "Dios amigos!"

"Farewell, vain world!" Evans cried as he waved his handkerchief at a friend.[48]

"Lord Jesus receive me," one of the doomed men shouted. Most of the spectators felt it was Sam Fooy, but there was no telling, for at that instant Maledon had pulled the lever which sprang the trap.

The bodies dropped at 11:05. Not one struggled. Maledon had done his work well, every neck was broken by the fall. It was a gruesome sight: six lifeless bodies dangling from the end of the hangman's ropes.

Below the platform were doctors (Price, Bailey, Main, DuVal, and Booth) with gold watches in their hands. After a few minutes, the doctors tested each man to see if there was any pulse beat. Dr. DuVal was paid two dollars for each man. When he filled out his official papers, he noted, opposite Cause of death, "Strangulation."

After the men had been pronounced dead, the bodes were taken down. Maledon did this by means of a jerk-knot that looped around the beam. The thrifty executioneer would use the ropes again.

The six corpse were placed in coffins. Fooy's Fort Smith relatives took charge of his coffin, while Father Smythe came for Evans' and Moore's. Smoker Man-killer's mother claimed his remains. The coffin was placed in a little wagon, and she started back to the Cherokee Nation, with Man-killer's wife walking alongside, carrying the baby. Whittington's and Campbell's bodies were taken over by the authorities and buried in a little plot on the reservation reserved for that purpose.[49]

John F. Weaver of the Western Independent in his report of the executions wrote:

Now that these desperadoes are gone, many will breathe freely who have been active in their arrest and prosecution. On the growing youth of our country these terrible scenes should make a lasting impression. All of these men were young and in their full prime of strength, and should have been active and useful members of society, the pride of their friends, the staff of their aged parents. And why does society, through the stern mandates of the law, thus consign these men to death and exterminate them from the face of the earth? Because they are preying wolves upon the lives and property of their fellow beings, unfit to live and unsafe to remain at large. The moral should not be lost in the excitement and glare of the terrible exhibition, nor forgotten in the morbid curiousity which absorbs the mind in witnessing the event so rare and tragical. 50

LAW ENFORCEMENT AT FORT SMITH 1871 - 1896

Chapter IV

Judge Parker Sends Five to the Scaffold

On September 26, 1875, just 23 days after the mass hanging, four prisoners in the U. S. Jail thought they saw their chance to escape. When the door to one of the cells was opened to send in the evening meal, the desperate men made a break. Dashing past the startled guards, the felons raced toward one of the gates. The guards quickly recovered and opened fire. A Choctaw named Magee dropped. His companions now heeded the calls to halt. When the prison surgeon examined Magee, he found that he had been struck and severely wounded by three balls. [1]

Deputy Marshal M. Wallace spent the first week of September on patrol in the Red River country. He stopped on the 4th at the cabin of a known "Choctaw desperado" to serve a writ. The Choctaw "placed himself on a war footing, and declared his intention to fight to the bitter end." Wallace and the Choctaw blazed away. The lawman proved the better marksman for he killed the Indian. [2]

The grand jury which was convened on the first Monday of November sat for 38 days. By the time the body adjourned on December 15, it had examined 215 cases, returning 140 true bills, while ignoring 75. During the session the grand jury had questioned at least 1,500 witnesses. Editor Wheeler of the Western Independent was given to understand that "the records show that this body of men did four times the amount of work as any preceding jury." [3]

* * *

As the news of the mass hanging spread, the evildoers in the Indian Territory wondered what manner of man had taken over as

judge of the Court for the Western District. Was it mere chance, they asked themselves, that he had hanged six men at one time? Could he be "reached?"

Inside of eight months, they had their answer. On April 21, 1876, five men were sent to the gallows. Counting McClish Impson, who had been doomed by Judge Caldwell, this made an even dozen to be executed in a 16 month period at the old Garrison.

John Wadkins lived in what is now Adair county, Oklahoma. A wagon-maker by trade, Wadkins also played the fiddle for neighborhood dances. One day he received a message to provide music for a dance at Fayetteville, Arkansas, about 25 miles to the east. Eager to pick up a little extra money, Wadkins saddled his horse on the morning of March 8, 1875, and rode over to William Leach's house. Leach, a neighbor of Wadkins, had been born 44 years before in Hall county, Georgia. A Confederate veteran, Wadkins had served in the 29th Georgia Infantry, during the Atlanta campaign. The stocky, fair complexioned veteran had moved to the Cherokee Nation in 1867 from Texas. Leach's wife was a Cherokee.

Wadkins asked Leach to accompany him and show him the best way. It was about 9:30 when the two men left Leach's. An hour later, they stopped at Foreman's blacksmith shop, about three miles east of Leach's. Here, Leach had his horse shoed. While this was being attended to, Leach talked with the blacksmith and several other men who chanced to be in the shop.

When the two men resumed their journey, the men at the blacksmith shop observed that Wadkins was riding Leach's horse and carrying his fiddle under his arm; Leach was walking, a gun sloped over his shoulder.

Wadkins failed to show up at the dance as scheduled. Word was sent back by a traveler to find out why he hadn't kept his date. The man was told that Wadkins had left Foreman's blacksmith shop, saying that he was en route to the Fayetteville dance. Leach

was questioned. Although his answers were vague and evasive, suspicions weren't greatly aroused. It was decided that the fiddler had changed his mind, picked up his gear, and moved on to another section of the Territory. Little thought was given to Wadkins' disappearance, because people were constantly pulling up stakes and moving on for little apparent reason.

A turkey hunter on April 8 saw a flock of buzzards hovering over a thicket. When he investigated, he was horrified to find a human skeleton.

When an investigation was launched, numerous signs indicating that the victim had been murdered were found. Burned leaves showed that the killer had tried to cremate the corpse in an effort to destroy all traces of the crime or chances for identification. The larger bones were charred, while most of the smaller ones had been reduced to ashes. The skull had been punctured by a ball; one of the ribs showed what appeared to be the scar made by a bullet, which seemed to indicate that the fatal shot had been fired from the rear. Some 75 yards distant from the body, a place was found in the road, where a fire had been kindled from small sticks. Scrapping away the ashes, the deputy marshals found clotted blood on the rocks. A few steps from this place were found signs that a heavy body had been dragged through the undergrowth. Among the ashes where the skeleton lay were found a piece of catgut, a knife, fragments of clothing, a screwdriver, and a glove; articles which were identified as having belonged to Wadkins.

Upon being presented with this evidence, U. S. Commissioner Harrison at Fayetteville issued a warrant for Leach's arrest. Taken into custody, Leach was escorted to Fort Smith. At the trial, sworn testimony was heard that Leach had on several occasions attempted to sell a pair of boots. When produced as evidence, these boots were identified by several witnesses as having been worn by Wadkins when last seen alive. On December 20, 1875, Leach was convicted of murder. [4]

Prior to their arrest in 1875, the two murderers had traded off the boots, burned the pantaloons, and hid the dress in a hollow log. When questioned, Sealy and Ishtonubbee confessed to the crime, for which they were convicted on December 31, 1875.[5]

Robert Alexander left his home in the Choctaw Nation on April 20, 1874, to visit his neighbor, Conrad Miller. Since he was on the lookout for game, he carried a gun. While talking with Miller, Alexander heard a wild turkey gobble nearby. "There's one," he cried. Getting up, Alexander picked up his gun and disappeared in the direction of the sound.

About 30 minutes later, Miller heard two shots fired in rapid succession. Miller had expected his friend to return for supper. When hours passed and he failed to show up, Miller blew his horn as a signal. There was no answering shout.

It was now getting late. Perhaps, Miller thought, Alexander would return during the night. But he didn't. The next morning, Miller becoming alarmed notified Alexander's brother, Red. Miller and Red Alexander spent the entire day looking for the missing man. On the following day, the two searchers were accompanied by a young Negro. The boy found Robert Alexander's body in the timber about 50 yards from the road. He stopped, shouted, and waited for the others to come up. As soon as Red and Miller dashed up, Red told the others to stand back while he looked for tracks. Not finding any, he rolled the body, which was lying on its side, over. On doing so, the men discovered a large wound in Robert's neck. A ball had struck the deceased in the throat, hit a bone, glanced downward, and came out the small of the back.

A deputy marshal was sent for. Suspicion was soon focused on a good looking Choctaw Indian, Orpheus McGee. When questioned, McGee told a confusing story. To make matters worse, he had the murdered man's gun. The Indian was arrested and taken to Fort Smith to be charged with murder. McGee was tried and convicted of murder on December 11, 1875.

Eight miles from Stonewall in what is today Pontotoc county, Oklahoma, lived a harmless white, medicine man named Finney. He farmed a little and drove away evil spirits when called upon to do so. For this the whites called him "Squirrel," while the neighboring Chickasaws referred to him as Funny. Dr. Funny had a Negro cook, Mrs. Mason, who lived with him in his log cabin.

Isham Sealy and his uncle, Gibson Ishtonubbee, were two young Chickasaws. Three days previous to their fatal visit to Dr. Funny's, Sealy had threatened the old medicine man's life.

On the night of May 10, 1873, the two Chickasaws rode over to Dr. Funny's isolated cabin. Before knocking at the door, Sealy killed Funny's horse. Next, Sealy and Ishtonubbee called and asked if they could spend the night in the cabin. Funny lit a latern, came to the door, and said they could. Blankets were brought out, and the two Chickasaws bedded down on the floor.

Shortly before daybreak, Sealy and his uncle arose. Ishtonubbee crept out into the yard and procured an ax, while Sealy armed himself with a gun-barrel that was standing in the corner of the room. Mrs. Mason was the first of the intended victims to be awakened. Before she could scream, Sealy felled her with a blow from the gun-barrel on the head. He continued to rain blows on the women until she was lifeless. Meanwhile, Dr. Funny had been awakened. Before he could come to the woman's aid, Ishtonubbee rushed him with the ax. After Ishtonubbee had knocked the old man down, Sealy whipped out his bowie knife, cut his throat, and stabbed him in the back. Before leaving the scene of the crime, the Indians made off with a pair of boots, pantaloons, and a dress.

Next day, a neighbor passed by. Looking through a crack in the door he saw the body of Mrs. Mason lying in the bed, while Dr. Funny's was sprawled on the floor.

Prior to his execution, McGee made a confession. He said, "I took his [Alexander's] gun from him and shot him down, and then took hispistol and shot him with it. I shot him once with the gun and once with the pistol. It was about sundown...." At the close of his statement, McGee remarked, "I was not raised right and that is the very reason I am in this fix now. — Try and do right. My mother tried to teach me right, but I would not listen to her. The Choctaws have bad laws that make them do wrong. There ought to be preachers all over the Nation to teach them right."

At the same time, McGee charged that the Alexander brothers had killed a Choctaw, a crime for which they had escaped punishment.[6]

James Harris had a small drygoods and "general furnishings" store in Beattie, Kansas. He felt that he could do better in Texas. Loading his merchandise in a covered wagon, Harris started for the "promised land." He was accompanied by his 12 year old son, John F. Besides a team and a spare horse, the Harrises had a dog and two shotguns, one a single barrel and the other a double-barrel.

Driving across the Indian Territory, the emigrants passed Fort Sill. Not far from the fort, they came to a camp of Comanches. The Harrises climbed down from their wagon and walked among the lodges. The boy enjoyed himself immensely.

There chanced to be in the camp that day a Negro, Aaron Wilson. He coveted Harris' three horses. When Harris and his son pushed on, Wilson waited about one hour and untied his old grey horse. Leaving camp, he slowly trailed the wagon as it rolled southward. The first night out from the camp of the Comanches, Wilson watched the Harrises from a distance. On the following night, he rode boldly up to their camp just as the senior Harris was preparing supper. James Harris invited the Negro to share their meal.

As the three sat around the fire talking, Wilson asked if he might stay all night. The elder Harris was agreeable and offered

Wilson a blanket. All lay down by the camp fire. About midnight, the Negro awakened. Picking up an ax, he struck the elder Harris a fearful blow on the head. The screams of the dying man awakened the son. The terrified boy begged the killer to spare him. After amusing himself with the boy's fears and prayers, Wilson walked over to the wagon, pulled out the double-barrel shotgun, which the elder Harris had shown him earlier in the evening, and cruelly blasted the boy at pointblank range. Next, he sent the contents of the second barrel crashing into the father's right breast.

After removing the old man's clothing and rifling the pockets, Wilson wrapped the body in the quilt under which he had slept, and dragged it about 25 yards from the wagon. He hid the corpse behind the roots of an upturned tree. The body of the boy was carried about 175 yards in the opposite direction and left uncovered. After tumbling the goods out of the wagon, Wilson pawed through them and discovered a suit which struck his fancy. Peeling off his discarded army clothes, he calmly put on a new suit.

Turning his broken down mount loose, Wilson secured the Harrises' three good horses. Wilson hadn't gone very far, when he noticed that the Harrises' dog was trailing the wagon, just as it had all the way from Kansas. Wilson swung down off the seat and threw stones at the dog. The dog dodged into the underbrush, but when the wagon rolled on, he followed.

Four days after the Harrises had paused at the Comanches' camp, Wilson returned just at dark. The barking of the Indians' dogs aroused the attention of the Comanches. They recognized the Harris dog and observed that he had a new owner. The chief stepped out of his shelter, and saw a man with his head wrapped in a blanket. Pulling the blanket aside, the chief recognized Wilson. The chief asked the Negro what he was doing with the gun, dog, and three horses.

Wilson replied that he had traded for the horses and the gun. The chief, upon examining the horses and the dog, recognised them as belonging to the white man and boy who had stopped briefly at his camp several days before. Suspecting that something was amiss, the chief borrowed one of Wilson's horses and went to see the agent at Fort Sill. Wilson, becoming alarmed, fled the camp.

Meanwhile, the agent had contacted the post commandant, Colonel Ranald S. Mackenzie. The colonel ordered Lieutenant Matthew Leeper to take a squad, arrest Wilson, and search for the missing travelers. The next day, the lieutenant's patrol took Wilson into custody. Wilson conducted the soldiers to the scene of the double tragedy. There, he was compelled to show where the bodies were hidden.

A routine search of the wagon disclosed the left boot of the elder Harris. Inside the boot was found $345.25, which Wilson in his haste had overlooked. Since Wilson was a Negro, the lieutenant had no authority over him, so he sent for a deputy marshal. Within a few days, the Negro was en route to Fort Smith. [7]

Osee Sanders lived near Tahlequah in the Cherokee Nation. During the Civil War, the handsome Sanders had fought for the Union in the 3d Indian Home Guards. He was 29 years old. A farming Indian, Sanders eked out his livelihood from the soil.

Nearby lived Thomas S. Carlyle, a white man, who had a Cherokee wife. As such, Mrs. Carlyle received Cherokee warrants, which could be turned into cash. It was rumored that the Carlyles kept substantial sums of money in their house.

Houses in this section of the country were built in two sections, with a covered passage, called a "dog-trot" between. The "dog-trot" was a cool space much used during hot weather. Frequently, a man would bring his work in from the shed and do it in the shade. It was a popular spot. On the evening of August 6, 1875, Carlyle, his

wife, their son, and another child were sitting in the "dog-trot". Suddenly, their attention was drawn to two horsemen coming down the road. As they approached, Carlyle saw that one of them was Osce Sanders, whom he regarded as a close friend. The other individual, he had never seen. The two riders reined in their horses. Carlyle called and invited them to come in, and sent his boy to open the gate, which was fastened on the inside.

Sanders and his companion dismounted, tied their horses to the hitching rack, and started up the walk. Carlyle, to his horror, now saw that each of his callers had drawn a pistol. "What are you doing with those!" Carlyle called. He received no answer. Instead, the stranger rushed up onto the "dog-trot". Carlyle grappled with him. At the same time, Sanders pointed his revolver at Mrs. Carlyle and the boy. Terribly frightened, the woman called for her children and fled for the meadow, about 150 yards from the house. As they ran, they heard three shots. She and her brood took cover in the weeds and tall grass. In terror, the woman waited until she saw Sanders and his confederate ride off into the rapidly gathering darkness.

Retracing her steps, she found a horrible sight. Her husband and her children's father was lying dead on the grand at the foot of the steps in a pool of blood. The house had been ransacked. A pocketbook containing a small sum of money was gone, as was the trunk in which the Cherokee warrants were hidden.

Mrs. Carlyle ran with her children to the nearest house. The neighborhood was soon aroused. Next day, a posse started out to look for the killers. Sanders was arrested at his home, three miles from the scene of the crime. The unidentified man had disappeared. Sanders protested his innocence. He claimed he didn't know the whereabouts of his alleged confederate.

Meanwhile, the officers had been studying the tracks left by the killers in the Carlyle's yard. Measurements were made of one of the footprints, and when compared with the shoes worn by Sanders, they were pronounced identical.

Sanders was taken before the U. S. commissioner. He decided there was enough evidence, and Sanders was ordered to Fort Smith for trial before Judge Parker's court. Mrs. Carlyle was called to the stand. Between sobs she told her story of what had happened on that terrible August evening, five months before. The jury went out on January 5, 1876. When it returned, the foreman announced that Osee Sanders was guilty. Judge Parker, in passing sentence, reminded the Indian in impassioned voice of the shocking crime he had committed and of how he had made the wife a widow and the children fatherless. [8]

Judge Parker set Friday, April 21, 1876, as execution day for the six men convicted of capital crimes at the November term of court.

Word reached Parker that a tremendous throng was expected. The judge didn't quite comprehend this, for he had thought the people of the frontier would be so sickened by the first mass hanging that they wouldn't want to see another. Instead, their appetites had been whetted. People who hadn't seen the first mass hanging wanted to be present at this one.

On the day of the scheduled execution, the Western Independent published a 12 column spread concerning the men and their crimes, under the heading, "A CARNIVAL OF HANGING!" [9]

The day before the men were slated to mount the scaffold, Marshal Fagan received a telegram from Washington. The message read:

Washington City, D. C.
April 19, 1876

To J. F. Fagan: — I have this day granted a reprieve to Osee Sanders, sentenced to be hanged on the 21st inst. Suspend his execution. Acknowledge receipt.

U. S. Grant [10]

The Judge was shaken. For the first time it had happened to him. A murderer had been reprieved. Fagan realized how the Judge

must feel. He asked Parker what he planned to do.

"I am going to do nothing about it," retorted Parker, "he is our President." [11]

People who wanted to witness the hanging poured into Fort Smith on Thursday, the 20th. All roads leading into the town were thronged. Early on the 21st, the crowd moved out onto the reservation to get positions as near the gallows as possible and "to make sure of being present at the first move in the drama." The newspapermen estimated the spectators to number between 6 and 7,000.

At 7 o'clock the five felons were unshackled. In accordance with their request, the "black gowns were dispensed with and they were dressed neatly but plainly in the usual citizens' dress, furnished by their friends" or by the jailer, Major Pierce. The condemned left the U. S. Jail and started for the gallows at 10:30. They were guarded by eight deputy marshals and attended by four ministers, Reverends Sample, Greathouse, and Granade, and Father Smythe. Aaron Wilson puffed a cigar.

After their arrival on the scaffold, Marshal Fagan read the death sentences, which were followed by prayers and the singing of hymns. Taking advantage of the opportunity offered by Marshal Fagan, several of the doomed men addressed the crowd. After Leach had finished speaking, Fagan inquired, "Anyone else?"

There was no answer.

"You'd better get rid of that cigar," said Hangman Maledon.

Aaron Wilson tossed it aside. Then the black cap was drawn over his head. As soon as all the caps and ropes had been adjusted, Maledon walked to the lever at the end of the platform. After waiting a moment, he pulled. At 11:45 the trap sprung and the five men dropped to their deaths. [12]

Summing up what he had seen, Editor Wheeler wrote in the Western Independent:

The executions had to-day counts up eighteen [19] human beings who have suffered by the sentence of the United States court for murder since August 1873 — two years and eight months.

This is a fearful commentary on the morals of the Indian country, and terrible as such scenes are, and shocking as they must be to the finer feelings of humanity, it must be admitted, that such crimes as these men were found guilty of, merits the severe punishment meted out to them.

The certainty of punishment is the only sure preventive of crime, and the administration of the laws by Judge I. C. Parker, since his advent as Judge of the U. S. Court for the Western District of Arkansas, has made him a terror to all evil doers in the Indian country.

The determination shown by the Judge that the laws shall be faithfully and fearlessly administered, and the firmness of purpose he has displayed, has won for him the confidence and respect of the members of the bar and our citizens, as well as of the law abiding men of all races in the Indian Territory, and it will soon remove from the Western District of Arkansas the odium under which he found it.

LAW ENFORCEMENT AT FORT SMITH 1871 - 1896

Chapter V

Six More Men Stand on "The Gates of Hell"

Within less than five months, there was another multiple hanging at Fort Smith. Four men were scheduled to die on the grim scaffold on September 8, 1876. When these felons had paid for their crimes, it would make 15 who had "been executed, within a year, by the sentence of the same court, on the same spot and on the same gallows."

Who were these men? What were their crimes?

Sinker Wilson, a young Cherokee, had been convicted of murdering Datus Cowan. This was in 1867 when the U. S. Court sat at Van Buren; Judge Caldwell had sentenced Wilson to be hanged on February 7, 1868.

Only two witnesses, both whites, had been examined at the trial. The first reported that near Rock Creek he had encountered a man (Cowan) "driving sheep, and further on his way he met -- two men and a small boy." The other witness for the prosecution testified that "he was behind this man and met two men and a small boy, and further on his way he found the sheep driver dead, and he seemed to have been killed but a very short time."

Sinker's lawyer asked the witness, if Sinker was "the boy he met."

He replied that he wasn't sure, for "he was only traveling through the nation and knew no one."

After being convicted, Sinker was locked up in the Van Buren jail to await execution. Within a few days, one of Sinker's fellow prisoners procured a knife. With this weapon, four of the prisoners unlocked the prison door and escaped.

Shortly after Sinker broke jail, his brother told him that he and another man had killed the sheepherder. Sinker remained at large until the autumn of 1875. At that time he was taken into custody by a deputy marshal. While en route to Vinita, Sinker slipped his hands from the cuffs and escaped. He returned to his home.

Ezekiel Miller, a half-breed, ran a small store in the Saline District, near Sinker's home. Soon after Sinker's second escape, Miller approached him and inquired, "Sinker I understand you have said you were going to kill me, is it so?"

Sinker replied that he had never thought of killing him or anyones else; and if he had heard that, he guessed the boys had told it for a joke.

About two weeks later, Miller's store burned. When a deputy marshal investigated the fire, Miller told him that Sinker was the boy who had escaped from the Van Buren jail. Miller would have Sinker arrested by the Cherokee authorities on an arson charge, and if the marshal were on hand, he could take charge of him, and 'make business'."

Sinker was taken into custody and tried for arson. Upon being found innocent, the marshal arrested Sinker and brought him to Fort Smith. At the May 1876 term of court, Sinker was identified as "Wilson, alias Flyer Wilson, alias, Sinker Wilson, alias Acorn," who had been convicted of murder and sentenced to death by Judge Caldwell nine years before. Judge Parker, although the Indian protested that he was innocent, resentenced Sinker to be executed on September 8, 1876. [1]

James Hanson lived on the Hiwan Prairie in the Choctaw Nation and watched after George Downing's stock. On October 15, 1875, Hanson caught a train for Stringtown. After transacting his business in town, he went to see Downing. It was late in the day when Hanson reached Downing's, so he prepared to spend the night. About midnight,

Downing awakened Hanson and told him that his wife had been murdered. Pulling on his clothes, Hanson rushed home. The first thing he saw on entering, his cabin "was the body of his wife whom he had left that morning in good health, laid out on a table, cold in death, a victim of the knife of a brutal assassin."

About 2 p.m. a woman who lived nearby had chanced to drop by the Hanson's house. She knocked and there was no response. She heard a baby crying. When she opened the door, she saw Mrs. Hanson lying on the floor on her right side in a pool of blood, her head toward the door. Her left arm was around her baby -- her last act had been to protect it.

An examination of the cabin indicated that Mrs. Hanson had fought desperately to save her life. The room and the porch were splattered with blood.

As soon as it was light, Hanson and his friends started searching for clues outside the house. They soon found where a horse had been tied to the corner of the fence, about ten steps from the cabin. The hoof marks made by the suspect's horse were followed about a mile in a southward direction toward Potapas'.

Upon questioning Frank Page, a neighbor, Hanson learned that Samuel Peters, a 28-year-old Choctaw, had left his house about 11 a.m. on the day of the murder. Peters had told Page that he was going to his uncle Potapas'. Peters was said to be riding "a little bay pony mare." Several other people now came forward and said that on the afternoon of October 15, Peters had met them near Potapas'. To one he had cried, "Hurry up, a white person has been killed," to another, "You had better go fast, a white person has been beaten to death."

About four days after the murder, a warrant was sworn out for Peters' arrest. When taken into custody at Potapas' cabin, the prime suspect had a shotgun in his hand and a knife in his scabbard.

Blood was found on his pants and on the inside of his coat sleeve. The coat had recently been washed. Peters denied that he was the killer. He admitted, that he had been present, when another Choctaw, Gibson Lewis, had murdered Mrs. Hanson. The arresting deputy marshal, however, was satisfied that Peters was his man.

While in the U. S. Jail awaiting trial before Judge Parker, Peters told a number of his fellow prisoners that he and Hanson had been friends, but this feeling had turned to mistrust, when a yearling and some corn and meat belonging to Hanson had been stolen. Hanson accused Peters of the theft. The Choctaw brooded over what his friend had said. Finally, he determined to warn Hanson not to continue telling lies about him.

When Peters reached Hanson's house on October 15, the white man was absent. Wrought up, the Indian stepped inside the door to tell Hanson's wife, Charity, that her husband must quit telling people that he was a thief. Since Peters didn't speak English too well, Mrs. Hanson had trouble understanding him. She, however, could tell that he was deeply troubled. Becoming frightened, Charity tried to push the door closed. Peters seized her; a struggle ensued. Drawing a knife from his pocket, he opened it, and stabbed Charity Hanson. In a frenzy, he slashed at the screaming woman again and again. Breaking away, Mrs. Hanson ran to the room where her baby was, picked it up, and tried to escape. Following the woman, Peters continued to strike her with the knife.

The jury on June 21 found Peters guilty of the murder of Charity Hanson.[2]

John Valley, a Peoria Indian, and a white man, Eli Hackett, lived on Spring River. In mid-November 1873 Hackett and Valley's brother and mother had difficulty over the payment of annuity money to a little girl, Hackett's child. The child lived with Hackett's brother, and he, Eli, and Valley all advanced claims to the money. Agent Hoag asked who the child's parents were.

Hackett said he was the father, whereupon the agent paid him the annuity.

On the evening of November 27 Hackett was visiting the John Beavers. About 8 o'clock there was a knock at the door. Beavers arose and went to the door. The caller was John Valley. Although John had been drinking, Beavers invited him to come in out of the cold. As soon as John had sat down by the fire, the host poured him a drink of whiskey. The heat of the room and the additional liquor caused Valley to blackout.

After about 30 minutes, Valley, without rising, drew his pistol and shot at Hackett twice, the first ball striking Eli in the chest, while the other hit the chair in which he was sitting. When shot, Hackett leaped up, threw his hand to his breast, and screamed "Lord." He staggered out the door. Valley remained seated for several more minutes, then got up and followed Hackett.

Hackett, after leaving Beaver's, walked to Ed Black's, a short distance down the road. He hadn't been there more than one-half hour before Valley showed up. Before Valley could enter the cabin, he was met by Frank Boyer.

Valley asked Boyer, "Where is Eli?"

He was told by Boyer that Hackett "was in the other room."

"Do you think I gave him a fair shot?" Valley inquired.

"I guess you did," Boyer replied.

"If you don't think it is a fair shot," Valley retorted, "I'll give him another one."

Boyer allowed that Eli didn't need any more.

At this Valley said, "I will learn him to cheat my brother."

Valley was arrested in the fall of 1875 and taken to Fort Smith. Tried before the May 1876 term of Judge Parker's court, Valley on May 20 was declared guilty.[3]

Before September 8, the day which Parker had scheduled for the executions, Osee Sanders' reprieve expired. When President Grant

refused to intervene a second time, Parker added Sanders to the list of men to be hanged on September 8, and now there were four.

Many Fort Smithites felt that with two mass executions within the year, not many would turn out to watch the hanging. They were fooled, however. According to the editor of the Western Independent, "a circus could not have drawn a greater concourse than was congregated around the foot of the scaffold on this occasion, and as much curiosity evinced as if an execution had not taken place for a century."

At 7 o'clock the irons were removed from the four condemned, and the prisoners "made their final preparations."

The doomed were brought from their cells at 10:30. The "procession" was formed in front of the cell. Accompanied by their spiritual advisers and escorted by the deputy marshals detailed as guards, the felons "started for the gallows where the last scene was to be enacted."

After their arrival on the scaffold, the death warrants were read, religious exercises conducted, the prisoners made a few remarks, and then shook hands with each other and with their friends. The ropes were adjusted, the black caps drawn over their faces, and at 11:55 the drop fell. All the men's necks were snapped; after a few struggles the physicians declared the men dead.

The Western Independent informed its readers, "On no similar occasion has better order prevailed, the marshals on duty taking every precaution that nothing disorderly should transpire to detract from the solemnity of the scene." [4]

* * *

Deputy Marshal Kidder Kidd reached Fort Smith on November 21 from the Cherokee Nation. Among his prisoners was Buzzard-Flop. The redman was charged with murdering a man two years before in the Canadian District. At the time that he was turned over to Jailer Pierce, Buzzard-Flop was deathly sick. He had to be carried from the wagon to the hospital. During the night, he passed away. [5]

The week before, a particularly cold blooded murder had been perpetrated on Horse Creek in the Cherokee Nation. A settler's wife had become enamored of the hired man. She talked the hired man into killing her husband. After shooting the victim twice in the heart, the conspirators crammed his body into a box and rolled it into a gulley. The dead man was the owner of three teams and had $300 in his possession. These were taken by the killer and his paramour, who when last reported had crossed the Arkansas and were heading down the Texas road. Although the marshals gave chase, the lovers succeeded in eluding them and were never made to answer for their crime in Judge Parker's court.[6]

During the last week of November, Jim Hendrick, who had broken out of the U. S. Jail the previous summer and had made his escape by swimming the Arkansas River, was recaptured by Deputy Constable George Rivercomb. When the Western Independent went to press on December 5, Hendrick was "safely embedded in his old home."[7]

About the same time, Jonas Thompson, a Choctaw, who had also broken out of Major Pierce's "guest house" returned to Fort Smith in the guise of a horsethief. He was promptly arrested. According to Editor Wheeler, "Jonas is a naughty Choctaw and brim full of theft. He now rests quietly in the District jail."

Major Pierce, the highly respected and efficient jailer, died of a heart attack on January 8 of the new year. Burns was named to replace the deceased as jailer of the U. S. Jail.[8]

* * *

The coolness that had attended Judge Parker's arrival at Fort Smith gave way to enthusiastic support. "Confidence in the court has been restored," wrote the editor of the Herald. "Moneys appropriated are being properly applied.... The court and the several departments are being run in perfect order and harmony."

A later issue described Parker as "a man of coolness, calmness and great deliberation."

The Western Independent, Parker's greatest political critic in the beginning, was most responsive to "this almost revolutionary improvement." [9]

Even a "stroke of conscience" seemed to have gripped Congress." [10] By an act passed on January 31, 1877, the 44th Congress amended Section 533 of the Revised Statutes to read:

> The Western District of Arkansas shall consist of the counties of Benton, Washington, Crawford, Sebastian, Scott, Polk, Sevier, Little River, Howard, Montgomery, Yell, Logan, Franklin, Johnson, Madison, Newton, Carroll, Boone and Marion, and the country lying west of Missouri and Arkansas known as the Indian Territory. The Eastern District of Arkansas shall include the residue of the state. [11]

Thus the portion of Arkansas now attached to the Western District would consist of 19 counties in compact form extending from the Missouri-Arkansas border southward across the state to a line even with the southern boundary of the Indian Territory. Although Congress had reduced the jurisdiction of Judge Parker's court, it "gave evidence of common sense in the manner of the changes wrought as commended them to all fair minded people....the work of the gerrymanders was destroyed." [12]

At the same time, Section 572 of the Revised Statutes was amended to provide that regular terms of court in the Western District would be convened at "Fort Smith on the first Mondays in February, May, August and November." [13]

* * *

In 1877 ten malefactors were sentenced by the Court for the Western District for capital crimes. February 26 was scheduled as the day on which Judge Parker would pass sentence on three men who had been tried and convicted at the November 1876 term of court.

At 10:20 Irving Perkins, a Negro, was brought before the bar. Perkins had been convicted on December 16 of murdering his illegitimate

child. The crime had taken place in the Creek Nation. At his trial, Perkins had protested his innocence. His request for a new trial had been denied, and now "he begged for life in a solemn and touching manner, and finished by appealing to his God for a full and free pardon." Parker was unmoved by this demonstration; Perkins received his death sentence without a "murmur." [14]

Next to be hailed before the judge was Charles Thomas, who had been condemned for killing a fellow mulatto in the Indian Territory. Parker allowed Thomas to make a statement. The giant mulatto began by saying:

> he had not received justice; did not deny the killing of the man, but claimed to have committed the deed in self-defense. He said that one man who testified against him had told "as big a lie about the killing as any man in the world, and didn't know any more truth than a hog did about holiday."

According to the editor of the Western Independent, Thomas' "statement was not as intelligently given as that of Perkins, but the manner in which he gave it showed that he did not appreciate the occasion, but spoke with much vindictiveness, towards [sic] all concerned in the case against him."

Judge Parker waited till Thomas had finished his tirade, before he warned the condemned that he had best be thinking about a way of preparing "his soul to meet his God."

It was unseasonably warm at Fort Smith, and all the windows in the courtroom had been thrown open to admit a breeze. Judge Parker as he spoke to Thomas sat at his big cherrywood desk. The doomed man was seized by the urge to make a break. Behind him to the right was an open window, but several deputy marshals intervened. Behind the judge's desk was a window, while between Thomas and Parker's desk was a table covered with a mass of books and documents. This table, Thomas reasoned, could serve as a "stepping stone" to the top of Parker's desk, and from there to the open window it was

but a leap. Thomas suddenly sprang to the table, and from there to the top of Parker's desk. The judge's reflexes surprised everybody. As Thomas broke for the window, Parker grabbed him. Thomas wrenched free, but before he could reach the window, he was tackled by Clerk of the Court Wheeler.

Thomas was brought back before the bar. While the judge passed sentence, it took four deputy marshals to hold him. After the death sentence had been pronounced, Thomas was shackled and returned to his cell. [15]

As soon as the courtroom had quieted, the marshals brought in Black Crow, a full-blood Arapaho. A "blanket Indian" Black Crow had been convicted of murdering the son of Dr. Holloway at Fort Sill, two years before. Black Crow was unable to speak or understand English. Through a Negro interpreter, he denied that he had committed a capital crime. When told of what was to come, the poor Indian seemed to regard "the affair as something of pleasure more than that of death, as he received the news with a smile." One of the spectators felt Black Crow had "seen years of wild life, as his gray hair will testify, but this last act of his will end his career and the first ideas of civilization will be taught him on the gallows on the 27th day of April, 1877." [16]

Before the fatal day arrived, recently inaugurated President Rutherford Hayes intervened. The sentences of the three men were commuted to life imprisonment at the U. S. prison at Moundsville, West Virginia. In 1883 President Chester Arthur gave Thomas an executive pardon. [17]

Three men were convicted of capital offenses at the August term of court, which closed on October 13. Two of the felons sentenced to death by Judge Parker on October 12 were white, while the other was a Negro.

William J. Meadows and several other men fancied that they had been injured by the Missouri, Kansas and Texas Railroad. To get revenge they conspired to wreck a train. The first time they

carried out their scheme, they derailed a locomotive, but failed to inflict much damage. Not satisfied, they succeeded in throwing a second train from the track. This time, one man was killed and three other railroaders seriously injured.

"A small day book" belonging to Meadows was found at the scene of the wreck. After being taken into custody, Meadows broke down under questioning and told the authorities where the tools used to loosen the rails were hidden.

Since Meadows didn't have any money, Judge Parker appointed four leading members of the Fort Smith bar (W. M. Cravens, T. H. Barnes, E. E. Tiller and Thomas Marcum) to defend him. Although the defense lawyers did their best, the jury declared their client guilty.[18]

Thomas H. Robinson had agreed to help Mr. Cannon drive cattle from Texas to Missouri. As the men were getting ready to camp for the night on the plains out in the Indian Territory, Cannon bawled out Robinson for abusing some of the stock. Robinson called on his employer for an explanation. There were hot words. Threats were made; Robinson pulled his gun and shot and killed Cannon.

At his trial before Judge Parker, Robinson was ably defended by Thomas H. Marcum and James K. Barnes. After the defendeat had been found guilty, Marcum made a lengthy argument for a new trial, which was overruled by Parker.[19]

A Negro, Joshua Wade, was arrested for raping Elizabeth Hale, a Choctaw, near Caddo. Wade, like Robinson, was represented by Marcum and Barnes. The editor of the Western Independent reported, "He [Wade] is one of the most complete animals in development that ever enjoyed human shape. It is true he has human reason, but his animal instincts greatly preponderate."

Wade, along with Meadows and Robinson, was scheduled to die on January 18, 1878.[20] Once again, President Hayes intervened. Instead

of going to the scaffold, Meadows and Robinson were to spend the rest of their lives at the Detroit House of Correction, while Wade was to be imprisoned for life at Moundsville.[21]

Nine Negroes were brought to trial in December 1877 for the murder of Perry Ross, a Negro, in the Creek Nation on May 15. The jury on December 12 found Carolina and Peter Grayson, Man Lewis, and Robert Love guilty as charged. Judge Parker on February 25, 1878, sentenced the four men to death. The execution was to take place on June 21. President Hayes, however, commuted the sentences to life imprisonment in the Detroit House of Correction. In June 1887, Carolina Grayson died. Before he passed away, he stated that although the others were present at Ross' house and all knew that trouble was brewing, he had fired the fatal shot.[22]

* * *

Deputy Marshal John Williams arrested and lodged in the U. S. Jail on January 18, 1878, Joe Benheur, who was charged with raping the six-year-old daughter of August Briolet. The Briolets lived in the Choctaw Nation near Fort Smith.[23]

Although this crime caused considerable excitement locally, time was too short to get it added to the cases to be considered by the February grand jury. Nevertheless, the Court for the Western District found plenty to keep it busy when called to order by Judge Parker on the first Monday of February.

"One of the most remarkable trials that ever engaged the attention" of the court was the murder trial of Elizabeth and Dorcas Owens which began on February 15 and lasted till the 19th. The two women, mother and daughter, were charged with the murder of Ezekiel Hurd.

Hurd and the defendants had lived on a farm on Red River in the Choctaw Nation. Their dwellings were about 200 yards apart, and the families used the same well. Hurd had accused the Owenses of shooting his livestock that had wandered in the Owenses' yard. He

sent word by "one or two members of the family" that if they didn't stop, he "would come down and stamp them [the Owenses] into the ground." On another occasion, Hurd threatened to "come down and kill the whole d.. d outfit."

Accompanied by Julia Barrett, Hurd on May 26, 1877, rode past the Owenses. As the horsemen passed, Elizabeth Owens walked out of her house. Calling to Hurd, she demanded to know if he planned "to carry his threat into effect."

Hurd shouted for the old woman to "go to h__l" and rode on.

After an absence of several hours the riders returned. As they did, Elizabeth Owens picked up a shotgun and accosted them in the road, and asked Hurd, "Are you going to do what you said you was?"

Hurd replied, "If you a re willing to drop [it], I am."

"See that you do it," Mrs. Owens snapped. Turning around, she started to return to her house. As she did, Hurd leaped off his horse and seized her by the hair with one hand and caught the shotgun with the other. Throwing Mrs. Owens to the ground, Hurd began stomping her.

Obediah Owens, Elizabeth's husband, was on the gallery skinning a coon. Up until he heard his wife's screams, Obediah hadn't taken part in the quarrel. Obediah and his daughter, Dorcas, rushed to Elizabeth's assistance. The husband asked Hurd three times to let go of his wife. Hurd refused. Whereupon, Obediah stabbed Hurd with his barlow knife in the chest, about two inches above the breastbone. Hurd staggered back several steps and collapsed. Within a few minutes, he was dead.

The jury deliberated about one hour before returning a verdict of not guilty. Much interest was manifested in the trial for several reasons. First, Elizabeth Owens claimed to be the neice of Confederate Brigadier General Humphrey Marshall of Kentucky, and as such she traced her "blood back to Chief Justice Marshall." Second, this was the first time that females had been tried for murder in Judge Parker's court. Apparently, the verdict was very popular, because it was followed by "general applause." [24]

There was so much evil to combat in the Court for the Western District that one term of court faded into another. On July 31, 1878, the editor of the Western Independent observed that the May term of the district court "draws to a close this week and the remaining time between now and August 5 will be occupied in sentencing the guilty and perfecting the business of the past term."

He was favorably impressed with the "quiet and systematic working order" in which Parker's court conducted its proceedings. Everything seemed to work like "well-oiled machinery." The officers were always at their posts, and the only time there was any tumult, nervousness, and vexing delays it was due to tardy jurors, the occasional "long winded chin-music" that an attorney was compelled to indulge in "to satisfy a client," or where a "stupid jury" seemed to require an interpretation of the evidence. At such times, the evidence was "repeated and rehashed" until scarcely a fragment of the original was remembered. Not infrequently the prosecution and the defense attorneys would "slide into encounters" when the courtroom was "made to resound with the clash of cold steel reverberating from helmets of brass, on which the Court at once bid them hold their prancing steeds."

Judge Parker, according to the editor, never failed "to come to the rescue of a bewildered witness when he is being borne to the earth by an over-zealous effort to invalidate his testimony or fasten the crime of perjury on him because he is on the wrong side."

To realize that the judge was decidedly "master of the situation" served to inspire respect and confidence. In addition, the calm and unimpressive dignity which characterized Parker's "patient and untiring earnestness of purpose to give the most trivial cases the same attention as those of momentous import" enabled the prisoner at the bar to feel that he would receive that justice to which he was legally entitled.[25]

Forty-five year old Joe Bonheur was retried by Judge Parker's court in August. A previous trial before the May term of court had ended in a hung jury. Bonheur was accused of raping the daughter of August Briolet. Like murder, rape was punishable by death. It was

well therefore that the court "gave the prisoner the advantage of a strong combination of legal talent to encounter the prosecution." The trial lasted several days and "such a string of abominable developments are seldom brought to the surface, and it is difficult to realize that they have been perpetrated by a being wearing the human form and endowed with instincts above the brute creation." Many members of the Fort Smith medical fraternity testified in detail to give the prosecution and the defense such assistance as might be had from professional experiences.

Bonheur's court appointed lawyers gave a good account of themselves. Colonel Marcum went "into this case with all the vehemence of his ability, and had he been laboring for a thousand dollar fee he could have not put in better work." Colonel Cravens who had few equals and no superiors in close reasoning powers, made a telling speech for the old Frenchman. J. K. Barnes attacked in his usual hard-hitting fashion the case being woven by District Attorney Clayton. He concentrated "everything available" and drove it home "with sledge-hammer-like power." Other defense lawyers "filled up the ranks, throwing themselves into the breach where exhaustion caused the leaders to falter and for hours argued such strong points of defense before the jury that a hope of escape from the fierce grappling clutches of the powerful prosecution was now evident in Bonheur's face."

Judge Parker delivered his charge. After the jury had filed out, the prisoner and the spectators awaited with "almost breathless suspense the result of this his second trial for the same offense."

Not guilty was the verdict. "Poor old Joe whose head was bending, was now restored to liberty," wrote the editor of the Western Independent.[26]

During the first week of October, Augustus Hecht was tried in the U. S. District Court for killing Collins. This shooting had taken place near Fort Gibson. The Hecht trial excited unusual interest; it was "one of those cases where the 'tug of war' comes

in where equals in intellect, ability and adroitness in law matters are pitted against each other to measure swords in the public arena of justice." In this trial, Prosecutor Clayton met his match in James A. Yantis. According to one of the spectators, Yantis defended Hecht in "a four hour's speech and developed such capacities and powers of argument as marked him in the eyes of the multitude as a rising star among lawyers." Although it was believed that Clayton presented a good case, Mr. Yantis "walked away in triumph with his client with only a trace of manslaughter." [27]

John Post Oak was not as fortunate as Hecht and Bonheur. He came before Judge Parker's court accused of a cold blooded crime — the murder of John Ingley and his wife in the Creek Nation. The couple's infant son of 12 to 16 months had been left to perish for want of food and water. Post Oak's crime had been too much for him to conceal in his "untutored breast," and he had talked too much. This "confession" and circumstantial evidence resulted in Post Oak's conviction on August 16. [28]

When the November term of court opened, it was confronted by another full docket. There were four murder cases; three assaults with intent to kill; "of the light-fingered fraternity that believe in equalization of property without working for it; one who did not understand the revenew law, and one who delivered himself from jail before his time was out — 32 in all." In addition, there were ten cases that had been held over from the August term of court. [29]

James Diggs, a Negro, was brought before the November term of the court accused of murdering J. C. Gould, a cattle drover. Gould bought cattle in Texas and drove them to Kansas. On his last trip he had hired two men to help him, Hiram Mann and James Diggs. Leaving Kansas, the trio headed for Texas to pickup a herd of cattle. On the night of August 4, 1873, the cowboys stopped at a deserted cabin. The cabin was in Indian Territory near the Kansas line.

During the night, Diggs awoke, took an ax, and bashed in Gould's and Mann's heads. After rifling his victims' pockets, Diggs, believing that both were dead, left the cabin with the $26 that his crime had netted.

The next morning, a settler living about two miles down the road was startled to see a Negro, riding toward them, like the devil was in pursuit. Diggs excitedly explained that his employer and Mann had been slaughtered by two Texans, who had entered the cabin just before daybreak. Diggs related that he had escaped by hiding in the woods. From behind a log, he had watched and waited until the killers had ridden off.

A posse was organized and hastened to the death cabin. There they found Gould dead. Hiram Mann's skull had been crushed by an ax, but he still breathed. A close examination of the ground showed no hoof scars. Equally interesting, the posse was unable to find the log where Diggs had hidden. Diggs remarked that he only thought the unwelcomed visitors had come on horseback. Perhaps, he continued, they were afoot.

Their suspicions were aroused, so the posse questioned Diggs closely. The Negro swore that he didn't have any money. When searched, it was found that he carried $27 in greenbacks cached in the lining of his coat. Diggs explained that he was afraid to admit that he had the money because the posse would think he had stolen it. Information was obtained that Gould had recently been paid that amount in corresponding bills. Diggs' was arrested and taken to Fort Smith. When no witnesses appeared to testify against the Negro, Judge Story directed that he be released.

Diggs couldn't keep his mouth closed. One of Marshal D. P. Upham's (Upham had replaced Fagan as marshal on July 10, 1876.) bright young deputies, James C. Wilkinson, heard about the affair. What he learned, however, wasn't too encourgaging. Hiram Mann had

remained unconscious for 30 days, before making a miraculous recovery. Wanting no more of the Indian Territory, Mann had left for Michigan. The other witnesses had scattered to the winds. Wilkinson, refused to give up. Diggs, who had heard that the case had been reopened, disappeared from his usual haunts. Wilkinson became a manhunter. He finally caught up with and arrested Diggs in the Osage Nation. Mann now came forward to identify Diggs "as the man who dug the ax into Gould" and himself.

This time, the jury decided Diggs was guilty of murder. Judge Parker sentenced Diggs to be executed on December 20. Commenting on the sentence, the editor of the Western Independent observed, "He will therefore accompany John Post Oak on that fearful voyage and prospecting tour, not in search of the remains of Sir John Franklin or the North Pole." [30]

After being in session only five days, funds were exhausted; Judge Parker was compelled to continue all criminal cases on the docket till the February term of court. The editor of the Elevator complained:

> This is for various and obvious reasons a serious misfortune to the district. Having occurred before it is becoming decidedly monotonous, and strenuous efforts should be made to prevent its repetition. As the criminal docket was very large, a considerable number of witnesses and prisoners on bond were in the attendance, many of whom came hundreds of miles from the different nations of the Indian Territory.
>
> Besides the great disappointment occasioned to these people, the expenses, of the court are largely increased, and serious injury done to prisoners in jail awaiting trial. Some of them would doubtless be discharged on trial and all are being punished before trial and conviction. The [Justice] Department at Washington repeatedly promised, we understand, to furnish the necessary funds for defraying the expenses of the term, and why it failed to do so is a mystery. [31]

The editor of the Western Independent informed his subscribers on December 11 that the 20th would be a "solemn and sad one" for

Post Oak and Diggs. Persons who expected to witness the execution were warned that it would be private, "as the gallows has been enclosed so that it will be impossible for any one to see from the outside." [32]

A rather grim joke which originated with one of the court official was circulating about Fort Smith. A local life insurance agent had asked Colonel C. to introduce him to people who might wish to insure their lives. The colonel replied that he thought he knew two who might avail themselves of the opportunity. At this, the agent expressed thanks for the expected business; but when he learned that it was "Diggs and Post Oak who are to be hung [sic] on the 20th, his mercury fell to zero." [33]

On Friday, December 20, Post Oak and Diggs were taken from their cells. After listening to their death warrants, which were read by Assistant Jailer Barnes, they were invested "with convict jewlry" by Jailer Burns. The condemned felons were escorted to the enclosed scaffold. Besides their spiritual advisers, the Reverend V. V. Harlan of the Methodist Church and Reverend C. G. Smith of the Baptist Church (Colored), they were accompanied by guards Reeves, Hechler, Rutherford, Lewis, Allison, Washington and Wheeler, and Jailer Burns. The hanging party entered the enclosure a few minutes after 1 p.m.

A short time before, Doctors Eberle and Bennett of Fort Smith and Doctor Davenport of Scott County had showed up. They, along with six members of the press, were admitted by Selaski, "who acted as guard on the ramparts."

Ascending the platform, the prisoners took their assigned positions. Religious exercises were held by the two men of the cloth.

Post Oak declined to make any final remarks, but engaged in an audible prayer, "seemingly trying to gain all the time he could." He called for Marshal Upham and asked several questions. It was supposed by the gentlemen of the pfess that Post Oak had some idea of escaping, because he had asked the marshal to "provide him with a pair of pum

sole shoes, but the programme being different from what he expected, he made no effort." Nevertheless, it seemed clear to the witnesses that Post Oak was more reluctant to die than Diggs, "who said he had escaped this thing for five years and had now asked God for pardon, and attributed his present condition to drunkenness and gambling."

Diggs had made a written confession, admitting his guilt and the justice of his punishment, while Post Oak had verbally acknowledged his crime to Marshal Upham and his two spiritual advisers. Harlan and Smith had devoted many hours to the two doomed men to help bring them to a "proper realization of their fearful condition."

Ten minutes before two, the black caps and ropes having been adjusted, the trap was sprung. The two men dropped to the extent of their cords. Post Oak's neck was broken, and he was declared dead in 11 minutes. Diggs wasn't so fortunate; his death resulted from strangulation. He expired in seven minutes from the time he fell, and "his writhings and suffocating convulsions were horrible to behold." After about 20 minutes, the bodies were cut down and placed in coffins.

Thus died the 16th and 17th persons to be executed at Fort Smith in the three and one-half years since Judge Parker had become district judge. Reporting the execution to its readers, the Western Independent observed that these men had been "brought here for trial and condemned for crimes committed remote from this state. — the U. S. Court located here has a jurisdiction of over seven hundred miles of territory, extending north and south, east and west, but not one of these crimes has been committed near Fort Smith or in the state of Arkansas; yet we may expect taunting comments from an inimical press which seems to be determined on conferring the odium of these executions to the state of Arkansas." [34]

* * *

His term had expired at the end of the year, and a number of the Fort Smithites circulated petitions asking President Hayes to

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reappoint Colonel Clayton prosecuting attorney for the Court for the Western District. Although he was a Democrat, the editor of the Western Independent endorsed the campaign. These petitions, he observed, but echoed "the universal sentiment of this community." [35]

President Hayes, like the people of the Western District, was impressed with Clayton's record. On January 20, 1879, the chief executive reappointed him. [36]

Most Fort Smithites were becoming sensitive to the reputation that the numerous hangings were giving their city. The Western Independent on February 12 pointed out:

> Fronting the city on the SW is a Government Reserve of about 300 acres, a portion of which was once occupied as a military fort. Its walls, bastions, blockhouses, magazines and officers' quarters [sic] are in part still standing, and are occupied by the U. S. Court officials, and it is entirely separate and distinct from the city. Here are constantly collected by the U. S. Marshal and his deputies, the malefactors from a vast extent of territory west of the State. Several times each year courts are in session for the trial & punishment for crimes committed in the Indian Territory. The frequent execution of murderers at this place have led to unjust opinions as to the moral status of the city, when in fact we have nothing more to do with them than any other part of our state, and our city is not entitled to the odium of these executions which find their way into a thousand papers without explanation. We believe not one of the ...[25] who have been executed within five years, committed his crime any where near this place and certainally not in this state. 37

After having been in recess for several weeks, the Court for the Western District reconvened on the first Monday of February. The court officials, following their brief vacation, went back to work with renewed energy. From the empaneling of the jurors up till February 12, the editor of the Western Independent wrote:

> scarcely an hour of working time has been lost, and more than the usual amount of business has been attended to. Everything seems to conspire to make short work of the minor cases. Although there is a sameness in the routine of the court, business that must make it irksome and hackneyed to Judge Parker, he nevertheless goes through

with his impressive charged and instructions to the juries as though it were the first one of the kind, and it is always an interesting hour to those who assemble at the opening of the court, as the true intents of the law and of jury trials and all the responsibilities involved are fully set forth in clear and unmistakeable language. On Saturday last scores of witnesses were called up and made happy by being paid and discharged. A number of the culprits are taking advantage of the evident disposition of the court to be somewhat lenient where they plead guilty without involving so much time and expense. 38

LAW ENFORCEMENT AT FORT SMITH 1871 - 1896

Chapter VI

The Battle Against the Forces of Evil Continues

The Court for the Western District of Arkansas in March 1879 was all powerful. In addition to 19 Arkansas counties, the district included 70,000 square miles of Indian Territory. Consequently, the jurisdiction of Judge Parker's court encompassed more territory than any other in the United States. For this reason, it was more expensive to the government than any other district court, a fact which at times seemed "incomprehensible" to the congressmen in Washington, "when the necessary appropriations for defraying the expenses of the court were applied for."

People familar with the court who knew the vast number of cases handled, together with the costs and expenditures, were ready and willing to commend its officers "for their efficiency and a strict performance of duty."

Expenses for the court for the last half of Fiscal Year 1879 had been $59,006. A large percentage of the business transacted during the current fiscal year had been carried over from previous years. The appropriation for expenses of the court had been so small that the Attorney General was compelled "to refuse any further funds for this district to defray the expenses of the February and May terms" of 1878. The court accordingly had been required to remain in session almost continuously from July 1, 1878, to mid-October to dispose of business properly chargeable to Fiscal Year 1878.

During the period July 1 - December 31, 1878, 151 persons accused of crimes had been hailed before the court. Forty-one civil cases had been tried at the same time in which fines totaling $53,191 had

been assessed. Of the criminal case tried: 2 were for murder, 2 for manslaughter, 1 for rape, 15 for assault with intent to kill, 2 for mail robbery, 4 for counterfeiting, 1 for bigamy, 3 for perjury, 2 for bribery, 70 for larceny and robbery, 31 for violation of the internal revenue laws, and 22 for introducing whiskey into the Indian Territory.

Prisoners, depending on the type of offense and the term of the sentence, were sent to various correctional institutions. Those receiving sentences for more than one year were generally sent to the Detroit House of Correction, and those given terms of one year or less to penitentiaries in Missouri and Arkansas.

Judge Parker's Court had given no "little prominence" to the state as well as to Fort Smith. Of late, it had become a terror to the lawless marauders who frequented the wilds of the Indian country. Except for the protection which the court afforded, many of the most industrious, thrifty and law-abiding citizens of the Indian Territory wouldn't feel secure while pursuing a peaceable life. That there was any peace and security for these people was chiefly due to a well organized force of deputy marshals, commanded by Marshal Upham.

Upham had demonstrated to friend and foe that he was the most efficient and capable marshal to have held that position since the Court for the Western District had been established in 1851. His executive ability and superior business capacity entitled him to the position he had occupied since 1876. Major C. M. Barnes, the chief deputy, was the accountant for the court. His records were forwarded to Washington without a "spot or a blemish." Indeed, no "crookedness" in the slightest degree had ever been detected in Major Barnes' accounts. The editor of the Western Independent cited Barnes as eminently fitted for the position and he cannot be "ousted."

Criminals brought before Judge Parker could consider themselves in the "scales of Justice." Parker was "among the eminent jurists of the country, and his legal opinions" were accepted as authority by the attorneys of the Fort Smith bar. He was noted for his impartiality. Frequently, his charges to juries had found their way into print, and were favorably commented on for their intrinsic legal merits.

"Judge Clayton" was recognized by the Fort Smithites as the "ablest advocate the United States has ever had before this Court." Clayton was "far above mediocrity in the profession of law," and filled his office to the satisfaction of the court. Gifted with an excellent "retentive memory and incisive logic," Clayton skillfully manipulated the minutia of evidence successfully, and won many a hotly contested case in the face of talented opposing counsel.

Clayton's assistant in 1879 was Captain George A. Grace. A graduate of the Albany Law College, Grace, for a young man, had few peers in his profession. He was an eloquent speaker, logical reasoner, and filled his position with credit.

Stephen Wheeler doubled as Clerk of the Court and U. S. Commissioner. Assisted by his deputy, Samuel A. Williams, Wheeler mastered his numerous functions in highly creditable manner.

Assisted by a respectable corps of guards, Charles Burns was in charge of the U. S. Jail. Doctor J. E. Bennett looked after the prisoners' health. [1]

The crime rate was so high in the area over which Parker had jurisdiction that though the court worked long hours it was hard pressed to keep abreast of new business. It seemed that Marshal Upham's hard-riding deputies were unwilling to give the officers of the court any rest.

Deputy Marshals Willard and Columbus Ayres reached the old Garrison on February 10 from the Cherokee Nation. Seven

prisoners, two of whom (William Elliott and J. N. Stockton), were logged in at the U. S. Jail by the two marshals. Stockton had shot a man at Vinita on January 22. The correspondent for the Elevator thought Stockton looked like a "hard citizen." Willard Ayres told the newspaperman that he believed Stockton to be of unsound mind.[2]

The high sheriff of the Cherokee Nation, Sam Sixkiller, and several guards reached Fort Smith on March 21 with a prisoner, Harry Sisson. Sisson had been tried and sentenced to death by the Cherokee authorities for killing a man near Tahlequah, two years before. Since the evidence was circumstantial, Parker had issued at writ of habeas corpus directing Sisson to be brought before his court.[3]

Deputy Marshal Wheeler captured G. E. Chase, an escaped convict at Stringtown, Choctaw Nation, on April 1. After taking Chase into custody, Wheeler walked about the village on the lookout for another man for whom he had a warrant. As the marshal and his prisoner entered a store, Chase snatched a shotgun. In the struggle which ensued, the gun was discharged and burst, injurying both men. Chase, taking advantage of the confusion, took to his heels. He was recaptured four days later by Deputy Marshal Burns. Wheeler's brother on learning of his injury sent a carriage to McAlester to bring him back to Fort Smith for hospitalization.[4]

Late on April 14 Chief Deputy Marshal Barnes detrained at the Fort Smith depot. Barnes had with him Uriah M. Cooper, who was charged with murdering Robert A. Donnelly at Caddo two years before. Shortly after the shooting, Cooper had fled the Territory. Since then, the officers of Judge Parker's Court had been quietly trying to ferret out his hiding place. Information was finally received that the wanted man was living in Henderson County, North Carolina. Barnes had been sent to the east to take the wanted man into custody. When questioned by District Attorney Clayton, Cooper swore that he hadn't been present when Donnelly was slain.[5]

Marshal Upham at the end of April saw that the courtroom was repainted and renovated. He wanted the room to look its best, when the May term of court convened on Monday, the 5th. [6]

Jailer Burns notified Judge Parker on May 2 that there were 43 men in jail awaiting action by the court. They were charged with: murder 8, assault with intent to kill 8, larceny 16, violating internal revenue laws 10, and illicit distilling 1. [7]

The first important case to be tried before Judge Parker at the May term of court had to do with trespassing on the Indian lands. A Kansas Negro, Ben Reese, had been arrested for cutting timber in the Cherokee Nation. In deciding the case, Parker would determine the validity of the Cherokees' title to the land under treaties they had signed with the government. The case could have important repercussions on the proposed establishment of a Territory of Oklahoma.

In accordance with instructions from the Attorney General, the case had been referred to Parker's Court. Reese was represented by DuVal and Craven. The question to be decided by the judge was whether the "law of the United States applied to a case of cutting timber on the lands of the five civilized tribes."

The law which Parker was to interpret read:

> Every person who unlawfully cuts or aids, or is employed in unlawfully cutting, or wantonly destroys, or procures to be wantonly destroyed, any timber standing upon the lands of the United States, which in pursuance of law, may be reserved or purchased for military or other purposes, shall pay a fine of not more than five hundred dollars and be imprisoned not more than 12 months. Sec. 5388 of the Revised Statutes of the United States.

Since the evidence demonstrated that Reese had cut the timber on lands belonging to the Cherokees, Parker held that these lands were held by the Cherokees "by a base or qualified fee." Consequently, there was no right of reversion to the government of the

United States, but only the possibility of a reversion. Such being the case, the lands in question were not lands of the United States in sense of the statute of the United States making it a penal offense to cut timber on such lands.[8]

Hardly had the judge disposed of the Keese case, before he was called on to preside at an important murder trial.

Thirty-one-year-old Henri Stewart was born in the Choctaw Nation. His father was white; his mother was part Choctaw. A good-looking, six footer, weighing 190 pounds, Stewart had been educated at Yale for the medical profession. After graduating, Stewart had led "an eventful career in the West, South America, Europe, and the West Indies. In 1877 he had deserted his wife and four children in Illinois and returned to the Indian Territory. He joined Sam Bass, and for a time he was a member of that bandit's notorious gang of Texas train-robbers.

In April 1878 he and his cousin, Wiley Stewart, had been arrested for "introducing whiskey into the Indian country." They applied to Dr. J. B. Jones of Caddo, Choctaw Nation, to go their bond. Dr. Jones refused. At this, the two men became belligerent and threatened revenge.

Shortly thereafter, the Stewart cousins rode into Caddo and encountered Dr. Jones at the railroad station. Wiley, who was drunk, started an argument with the doctor and accused him of having them arrested. Henri pulled his revolver. He shot at Jones and wounded his intended victim in the left hand. Whereupon, Wiley pointed his double-barrel shotgun at Dr. Jones. After hesitating a moment, Wiley pulled the trigger sending a charge of buckshot crashing into the "unarmed and helpless" doctor. The blast was fired at such close range that "the wound inflicted was only about the size of a silver dollar, and some of the shot passed entirely through the body."

Following the shooting, the Stewarts galloped off. After making a circuit of the town, they returned and defied the crowd which had gathered at the scene of the murder. A Choctaw sheriff and posse pursued and overtook the killers on the open prairie. A desperate gunbattle ensued. The Stewarts severely wounded several members of the posse and escaped. Henri was traced to Missouri, arrested, and escorted to Fort Smith for trial. At the time, Henri was tried, his cousin was still at large.

During the four day trial, Henri Stewart, while manifesting an intense interest in the proceedings, showed no sign of fear. He even held his composure on the day the jury rendered its verdict of guilty.

According to the editor of the Western Independent, Stewart was defended by able cousel, while the prosecution was conducted with usual ability and eloquence by Clayton and Grace. "The attorneys' speeches and Judge Parker's long and impressive charge to the jury were subjects of great interest and admiration to the large number of spectators." [9]

William Elliott, who liked to be called Colorado Bill, had been born in Ohio in 1847. A fine appearing man of limited education, Elliott had joined the Union army in 1863. Receiving his discharge in 1865, Elliott had drifted to the frontier, where he "led a wild life."

Colorado Bill reached Muskogee in the latter part of February 1879, and established his residence at Ruth Sheppard's house of ill-fame. On the evening of March 2, two young men, David J. "Cooke" Brown and Ross Cunningham, went to the brothel. All hands played cards and drank freely. Shortly after midnight, Brown threw himself "on a bed in a drunken stupor," while Cunningham continued the "carousal."

About 3 a.m. Cunningham sought to awaken his companion and get him to go home. Finally, Elliott ordered Brown to get out.

Brown started to obey, but as he staggered to his feet, he grabbed Cunningham's pistol. Elliott started shooting. One shot struck Cunningham in the leg, while three ripped into Brown's breast and head. When firing his final round, Elliott placed the muzzle of his revolver close to his victim's head, and sent a bullet crashing into his brain. Rubbing the smoking weapon across the face of the corpse, Elliott boasted that he had killed many better men.

Handing Cunningham's pistol to his mistress, Elliott commanded her to shoot the first man that darkened the door. Elliott then paced the floor refusing to permit anyone, except John Woods whom he sent for his horse, to leave. Failing to secure a horse, Elliott sought to escape afoot.

Deputy Marshal Stephenson was sent after Elliott. Coming across the killer's trail, Stephenson tracked him to "his secret haunts in the woods, pounced upon him while asleep and took him into custody."

The Elliott trial lasted three days. So overwhelming was the evidence that the jury returned a verdict of guilty after deliberating only a few moments. According to stories reaching Fort Smith, Elliott's boast that he had killed several other men was true. It was said that he was wanted for murder in several other states.

Elliott maintained during the trial "stoical indifference and indulged in a good deal of braggadocio after hearing the verdict which consigned him to an ignominious death."

The editor of the Western Independent reported, "He/[Elliott] is the second man convicted of murder during the present term of the U. S. Court and will soon expatiate his bloody deed on the gallows, unless saved by executive clemency." [10]

Stewart and Elliott were taken before Judge Parker on the morning of June 11. Before passing sentence, the judge asked if they had anything to say. "No," Stewart replied; Elliott remarked, "I have nothing to say, Judge, but if it was to do over, I would do the same thing again."

As soon as Elliott had finished speaking, the judge sentenced the two men to be "hung on Friday, August 29, 1879, between the hours of 9 a.m. and 5 p.m." After listening to the words which spelled their doom, Stewart and Elliott were manacled and returned to the prison. [11]

When the Western Independent went to press on July 1, the editor noted that the May term was about over. The court, at the moment, was disposing of the few remaining civil cases on the docket. A glance at the proceedings would suffice to demonstrate that "an immense amount of hard work has been accomplished in a brief period." The officers of the court, the editor reported, certainly:

> merit the congratulations and thanks of the people of the district for the efficient manner in which they have performed their complicated and difficult duties. Judge Parker, has presided with marked dignity and ability... all the officers of the court have worked faithfully, intelligently, and in perfect harmony, and have proved themselves eminently worthy of being retained in their respective positions. 12

* * *

The week before Judge Parker called the August term of court to order, the Western Independent warned that a "large part of the Indian country is completely overrun by desperadoes." It was reported that many of these "lawless characters" had banded together for the purpose of pillage and mutual protection. In general, the outlaw bands numbering from 25 to 60, ranged north of the Canadian. The bandits were well-armed with revolvers and long-range repeating rifles. Besides driving off horses and cattle, committing robberies and murders, these badmen insolently defied the officers of the law.

Marshal Upham and his deputies were doing everything in their power to curb this evil, but they were plagued by the limited means at their disposal. The government, the Western Independent urged, should promptly furnish Marshal Upham with necessary funds to crush

out these "defiant desperadoes, before the increased numbers shall require the expensive attention of the army." [13]

One of the most talked about cases to be tried before the August term of court was a civil suit. The Federal government had entered a suit against former Marshal Fagan for $1,618.84 on his official bond. Fagan countered with a claim that the government owed him $24,000. The case was complex, and required the examination of several hundred accounts, and took up the court's time for two weeks. It was concluded on August 25, and resulted in a verdict in favor of Fagan for $2,916,27. About $9,000 worth of accounts weren't passed upon by the jury, because there were no certified copies of them as required by law. Judge M. L. Rice, Colonel R. C. Newton, and Colonel Brizzolara represented Fagan, while Clayton argued for the government. [14]

President Hayes refused to intervene, and Henri Stewart and William Elliott realized that they were to die. August 29 dawned bright and beautiful, "and the sun shed its lustrious rays through the prison bars of the U. S. jail as if endeavoring to cheer the hearts" of the condemned killers.

At five minutes past 2 p.m., Stewart and Elliott ascended with "firm step and fearless mein" the scaffold which had been erected in the Garrison enclosure. They were attended by their spiritual adviser, Reverend Sample, and a number of guards and deputy marshals. Reverend Sample made a few remarks, "expressing perfect satisfaction with his intercourse with the prisoners and their spiritual condition." Next, he offered a fervent prayer, in which he was joined by the doomed.

When asked if he had anything to say, Elliott declared that he was innocent of the crime for which he was convicted. He claimed that he had shot Brown in self-defense. Elliott swore that he hadn't killed on account of Ruth Shepperd, but admitted it was wicked to have taken up residence at a brothel, and that

he was ashamed of himself. After stating that he had forgiven everybody, Elliott announced that he had "made peace with God, and was willing to die." He then shook hands with those around him and bade them goodbye. As the black cap was being drawn over his head, Elliott ramarked, "Be sure to break our necks, boys, and don't punish us."

Stewart declared that he hadn't planned to speak on the scaffold, but would avail himself of the opportunity of saying a few words. Instead of regretting his current situation, Stewart considered it a "blessed priviledge; was confident that he had found grace, and would soon be happy in a better world." He spoke of the thief on the cross, who had found forgiveness at the last moment of his life.

Stewart stated that he entertained malice toward no one. Jerking the rope with his hand, he shouted, "Thank God for giving us such a speedy means of passing from this life to eternity."

At 2:30 Deputy Marshal Barnes signaled Jailer Burns by a move of his hand, and the trap fell. Elliott's neck was broken by the fall; he died without struggle. Within 16 minutes, his pulse had ceased to beat. Stewart's neck was not broken; his limbs twitched convulsively for about five minutes, and pulsation ceased at nine minutes. The bodies were cut down at ten minutes to 3. Stewart's remains were taken charge of by his stepbrother, Arthur T, Stewart of Atchinson, Kansas, and were interred in the city cemetery. Elliott's body was buried on the military reservation.

The execution had taken place "privately" in the old Garrison, where 25 other criminals "had been launched into eternity." Only a few court officials, members of the medical fraternity, the press, and a few invited guests were present. [15]

The editor of the St. Louis Times-Journal commented critically on the execution of Elliott and Stewart. According to the St. Louis paper, these "executions will make 135 that have occurred in Arkansas

since Judge Ike Parker was induced to doff the congressional toga in Missouri and don the judicial ermine in Arkansas." Parker, the editor wrote:

> is a mild-mannered man with a peaceful smile and a pale eye. But when the sunlight of that smile and the glnce of that pale eye rest upon a murderer, that murderer might just as well as not make his peace with man and heaven. Parker is so kind and considerate that he never harrows up a murderer's soul either by expatiating upon the enormity of the offense of depicting the disgrace and pangs of the death he is about to suffer.
>
> "Please be kind enough," he says in soothing tones, "to put your self in readiness to be present at your execution six weeks from next Friday."
>
> He is so affable and courteous and so popular among the killing class, that men have been known to travel weary miles to get within the jurisdiction of Parker's Court to kill a man, in order to be sentenced by this genial official and strung up by his gentlemanly and efficient assistants. 16

Commenting on the article in the Times-Journal, the editor of the Western Independent observed, "Though written in a style of levity inappropriate to the subject, yet it was evidently well-intended and paid a merited tribute to the affability, courtsey and uncompromising justice of Judge Parker."

Since the article in question was likely to create an erroneous impression of Arkansas, the Western Independent felt it was only right to point out that the court over which Parker presided was located in western Arkansas, but obtained most of its business "from the Indian country." In the four years Parker had been judge there had been 42 indictments for capital offenses. Twenty-nine of these had been convicted and sentenced to death, but only 18 had been executed. One had been slain trying to escape, ten had had their sentences commuted to life imprisonment, while 13 had been sent to prison for manslaughter for terms ranging from three to ten years.

Not one of these felons had been from Arkansas. All were from the Indian Territory; the majority were brought hundreds of miles to the Fort Smith court. Consequently, the editor wrote, there should be little surprise about the enormous amount of business transacted by the U. S. Court, when cognizance of its extent and jurisdiction were considered. Throughout a territory exceeding in area the states of Missouri and Arkansas, Parker's court exercised police powers, executing the criminal and general intercourse laws.

While there were Indian courts, they were "invariably a travesty on justice." They could only take cognizance of cases wherein all the parties involved were Indians and citizens of the Territory. All other cases involving a United States citizen, irrespective of his nationality, appertained to the U. S. Court.

The "anomalous character" of the Territory made it a "comparatively safe harbor for lawless people and especially for the worst classes of criminal refugees from the States." The great danger, difficulty, and expense of executing writs in such a wild and vast area operated in a great measure as a license to crime. If Parker's court were provided with necessary funds, the editor pointed out, it was safe to say that it would remain in continuous session. Despite its limited means, Parker's court disposed of more criminal business than all other Federal courts in the Union. [17]

During the August term of court, about 30 prisoners pled guilty and were sentenced for crimes committed in the Indian Territory. These men had stood accused of larceny, assault to kill, and for violation of the intercourse law. After listening to their pleas, Parker, depending on the gravity of the crime, sentenced them to the penitentiary at Little Rock or the Detroit House of Correction.

Congress had failed to make an appropriation for a regular term of court, so the prisoners deemed it wise to enter a plea of guilty in expectation of receiving a shorter term of confinement. This

action on their part had saved the government a considerable sum, because it was estimated that each trial by jury cost about $200.[18]

* * *

The killings in the Indian Territory continued. Hardly a week passed without the report of a shooting. Many times, the victim was an innocent bystander, such as when on the morning of August 2, a detachment of the Creek Light Horse rode into Muskogee. John Vann, a Cherokee with a reputation as a gunfighter, was "parading the streets armed with a six-shooter." Since this was against the Creek law, the Light Horse sought to disarm Vann. He refused and opened fire. Vann was cut down with a bullet through the brain. Several of Vann's friends raced to the scene. Additional shots were exchanged. A member of the Light Horse was mortally wounded, as was James Carter. A young salesman, Carter had been employed in Dickens' store, and had rushed to the window when the shooting started. As he looked outside, a stray ball struck him in the neck, severing his jugular vein.[19]

Other times, the death of the victim had been premediated. Chancey Lugard owned a farm ten miles north of Eufaula. On June 9 the old man was plowing his corn. His stepson, James Heaslett, happened to be in the area. The young man took cover in the bushes near the edge of the field. As Lugard reached the end of a row and started to turn his team, Heaslett shot him in the back. As he fell, the stepson dashed from his place of concealment. Bending over the dying man, Heaslett sent a ball from his pistol crashing into Lugard's head. Heaslett, maddened by the sight of blood, used his revolver to beat out the old man's brains.

Cora Lugard, the victim's little eight-year-old daughter, was also working in the field; she heard the shot and then saw the horse bolt. She caught the horse near the fence. As Cora was calming the beast, her half-brother dashed up and told her that he had killed her father. Heaslett told Cora to go to a nearby Indian's cabin and tell the people that a half-breed had killed Chancey.

The crime was quickly reported. A party of Creeks led by B. F. Chapman and Thomas Adams soon were hot on the murderer's trail. Heaslett was overtaken and captured near Okmulgee. When arrested, he had in his possession a pistol which was "covered with his father's gory locks" and brains. Since both the victim and the killer were citizens of the United States, the Creeks notified the U. S. marshal to come and pick up Heaslett. [20]

With such goings on in the "Land of the Six-Shooter," it was only natural that when the November 1879 term of court opened, Judge Parker found that there were a large number of cases awaiting action by the grand jury. A breakdown of the crimes revealed:

Murder	6
Manslaughter	1
Assault with intent to kill	9
Larceny	35
Introducing liquor into the Indian Territory	11
Violating Internal Revenue Law	8
Total	70

Forty-three of these men were confined in the U. S. Jail, while the remaining 27 were out on bond. At the same time, there were 48 cases pending in court: 9 murders, 3 for manslaughter, 7 for assault with intent to kill, 9 larceny, 12 violations of the internal revenue law, 7 for introducing liquor into the Indian Territory, and 1 resisting arrest. Of this number, 19 were being held in the jail and 29 had been bonded. [21]

Writing of the opening of court, the editor of the Elevator reported that the influx on November 3 was very great "consisting of white men, colored men, (probably two or three times as many negroes as whites), Indians ... , and persons of all shades from the fairest to the blackest ...." We go to the courthouse:

raising on the steps to the porch on a level with the floor of the court room, and looking around we see, outside the wall, (for the court house is situated inside of a stone fort), wagons scattered all around, men and women hurrying to and fro among them, like a large camp, though more scattered than a military one would be. From the wagons, over steps leading over the walls of the fort and through a double gate in the walls, comes a stream of men and women, three-fourths of whom are negfoes, Indians, and mixed to the court house. They stand around in groups and talk, but it is like geese gabble to us.

Everything is managed in the court room with due decorum, as in the U. S. Courts in other states where the general make-up is the white man alone, though this could not be the case in such a mixed multitude without extraordinary efforts, and for which the court deserves praise. There are probably 500 persons indicted in this court per year, and it is believed to be the largest criminal U. S. Court in the Union. 22

While the court was in session on November 13, a drunken white man created a disturbance. Judge Parker told the doorkeeper, Dan Harris, to take the drunk "out of the presence and hearing of the court." Harris called for assistance. Aided by another Negro, Harris escorted the drunk from the courtroom to one of the gates leading through the old Garrison wall. As they pushed the man through the gate, he fell, his head striking one of the great,stone gate posts. The drunk received a nasty gash. Subsequently, he was taken to the Avenue House, where he died two days later.

A coroner's jury was convened to investigate the matter. It was presumed that all persons who had witnessed the incident would be called on for testimony. The editors of the Elevator were surprised on making routine inquiries as to the jury's verdict to learn that there had "been no sufficient investigation such as to satisfy the public."

Commenting on the case, the editors observed:

This being an offense charged to have been committed by a colored man on a white man, as there is considerable prejudice already existing on account of treatment of some white men in this place by colored officers, should have been fully, fairly, and openly and publically investigated, and the examination of witnesses in the case should have been full. The district attorney, [Mr. Clayton] who was here, should have attended to it in person we think. We have known Dan, the party charged with this offense...from his boyhood, and he has always borne a good character;...and it is due to this community that any such supposed offense should be well investigated.

We think it most probable from the character of Dan, and from what we can gather from bystanders, that Dan, on getting him [the drunk]

to the gate, pushed hard forward through the gate, and the.../ drunk /, probably was leaning backward, and he / Harris / pushed him forward to an upright position and left him, and he tottered back and fell and fractured his skull...; but what we have been able to learn and predicate our opinion on is not satisfactory to the public, nor do we believe the investigation as had is satisfactory. 2:23

The campaign by the Elevator to get the case reopened failed. Within a few days, most people had forgotten the incident.

Almost as soon as the court could dispose of the cases, the deputy marshal's brought in new business.

Deputy Marshal G. H. Kyle reached Fort Smith on November 5 with two men charged with murder. The accused were lodged in the U. S. Jail. One of the men, Sorrell, a Negro, had been arrested in killing a half-breed Shawnee Sam Bob during the summer. The shooting had taken place on the Goose Neck Bend of the Verdigris, 16 miles south of Coffeeville, Kansas. Sorrell and Sam Bob had bought a barrel of cider, which they took to a Negro celebration. There, the two men had quarreled over the cider. Sorrell handed his pistol to Bill Rowland, a white friend. Rowland took the pistol and killed Sam Bob.

The second prisoner was George Wingfield. Wingfield had killed another white man (Roberts) at the Cross Timbers on the Missouri, Kansas and Texas Railroad in April. Kyle had been called in. When he investigated the matter, Kyke learned that Wingfield and Roberts had fought over a dog. Wingfield had shot Roberts in the hand. Roberts had armed himself and planned to seek revenge. After several days, he told Emanuel Blossor that Wingfield and his brother were too much for him, and he planned to leave the country.

Wingfield appeared at Blossor's house about noon and asked where Roberts was. He was told that he was on Blossor's ranch. Roberts, learning that Wingfield was gunning for him, prepared to leave. Before doing so, he stopped at a Shawnee's to get something to eat. Bread and meat were given to him. Roberts told the Indian that Wingfield was following him and planned to kill him. He then rode off.

Within a few minutes, Wingfield thundered up, and asked the Indian where his late visitor was.

The Shawnee replied that he had just left.

Wingfield galloped off in the same direction. Shortly thereafter, the Indian heard several pistol shots. Another Shawnee, The Fox, who was hunting saw Wingfield shoot Roberts. Being frightened, he fled the scene of the crime and told his uncle what he had seen. The uncle quickly rounded up a number of his neighbors. Guided by The Fox, the party visited the place where the shooting had occurred. There, they found the body of the victim. Roberts had been shot in the back, and three or four times in the chest. By his side, lay the bread which had been given him by the Shawnee.

Almost eight months passed before Kyle was able to arrest Wingfield and escort him to Fort Smith. [24]

Thirteen days later, on November 18, Deputy Marshal Wheeler showed up at the U. S. Jail with five prisoners. These men (two charged with murder and the others with larceny) had been taken on a sweep through the Creek Nation. The men charged with murder were Dan Henderson and M. B. Miley, Texas drovers. On the 9th the two cowboys had ridden up to James Connors' cabin near Eufaula. They shouted that they wished to see Connors. As Connors stepped outside, Henderson shot him in the temple. According to witnesses, Connors had given the Texans no offense.

Wheeler, who was in the area, organized a posse and went in pursuit of the killers. Within a few hours, Wheeler had taken the two drovers into custody. [25]

James Heaslett was brought to trial on November 21 for killing Chancey Lugard. The defendant admitted his guilt. When put on the witness stand by his lawyers, Heaslett claimed that his stepfather had subjected his sister "to outrages inhuman which produced her death 3 or 4 years ago." Moreover, the defendant continued, Lugard had committed incest on eight-year-old Cora. Heaslett swore that he had learned of his stepfather's crimes in May. Since this was immediately before the shooting, his attorneys argued that it had caused temporary insanity on the defendant's part. To support Heaslett's contention that his stepfather was guilty of incest, the defense attorneys (Cravens, Fenno and Pratt) called the mother and little Cora to the stand. Both women corroborated Heaslett's testimony. [26]

Judge Parker gave the case to the jurors on November 29. The jury

remained out for three days and nights. After failing to reach a verdict, the jurors were discharged on the night of December 2. According to the foreman, the jury had stood eight to four for conviction. The jury was discharged by the judge, and the case rescheduled for the February term of court. [27]

On Wednesday, the 3d, the case of the United States vs. Uriah Cooper for the murder of Robert Donnelly was called up. Cooper was charged with shooting Donnelly at Caddo. By profession Cooper was a photographer, well educated, but a physical wreck because of dissipation. Donnelly worked for the Missouri, Kansas and Texas Railroad. While at work one night four or five men induced another railroad employee by threats to go to the car which Donnelly used for his office. In response to his friend's call, Donnelly emerged from the car. As he did, Cooper shot him.

Cooper was represented by a battery of four lawyers (Marcum, Barnes, C. V. Buckley, and Welsh), while Clayton and Grace appeared for the government. Twenty-four witnesses, 17 for the prosecution and 7 for the defense were examined.

The fight was hard on both sides. Testimony was closed on December 9, while two days were taken up with the closing arguments. When the jury returned, the verdict was guilty. Cooper, on hearing it, broke down and cried like a baby. [28]

When the Western Independent went to press on December 10, the U. S. Court had completed the fifth week of its November term. So far, between 40 and 50 cases had been disposed of. These included indictments for larceny, assault with intent to kill, and for violations of the intercourse law. An unusually large number of witnesses had been in attendance. Most of these had been discharged in the interest of economy. Only those were being retained whose testimony might be required by cases currently in progress or docketed to be heard in the immediate future.

Owing to the meager appropriation made by Congress for defraying the expenses of the November term, the officers of the court had been required to practice "the most rigid economy." [29]

At the moment, there were 80 prisoners in the U. S. Jail, some of whom were awaiting trial, some awaiting sentence, and some serving short terms. Because of its vast jurisdiction, the court had to "sit nearly

all the time." Its annual budget since the advent of Judge Parker ranged from $200,000 to $250,000.[30]

During the third week of December, Jackson Marshall was tried for the murder of John Thompson Staggs. The deceased had moved into the Chickasaw Nation from Texas only a short time before he met his untimely end. Staggs' body had been found near a Panola county crossroads; his horse was standing nearby. The Chickasaw Light Horse had investigated the death but had failed to take any action. Since the victim was white and the chief suspect was a young Chickasaw, a deputy U. S. marshal took over. He discovered that Jackson Marshall had been seen near the crossroads a short time before the body was found. In addition, it was learned that there was bad blood between Marshall and Staggs. Marshall was taken into custody and sent to Fort Smith for trial.

When the jury found Marshall guilty, it caused considerable surprise in Fort Smith. The editor of the Elevator reported that the evidence against the defendant was "made up of many apparently trivial circumstances," which didn't seem too important.[31]

George Wingfield was tried during the last week of December for the murder of Roberts. Most of the evidence against Wingfield was by his own admissions. Thomas Barnes, the man Wingfield had retained as one of his attorneys, made a masterful address to the jury. Barnes' eloquence succeeded in winning for his client an acquittal.[32]

On Monday, December 29, James Hicks was brought to trial. Hicks was accused of killing Oliver Gregg in the Cherokee Nation. The murder had taken place the previous June. Hicks and his brother were reportedly interested in property owned by their mother, who was living with Gregg. They were afraid that this property at her death might go to her and Gregg's illegitimate child. The prosecution charged that Hicks had killed Gregg to get him out of the way. Hicks' brother had fled the area. As the testimony developed, the evidence pointed to the brother as the killer. Judge Parker, when he charged the jury, announced that the evidence was insufficient to justify a conviction.[33]

Marshal Upham on the last day of the year discharged and paid off all the petit jurors, except the 12 who were hearing the case against Charley Samuels for the murder of Neally Sanders. The editor of the Elevator informed his readers that the court, even after this case was concluded,

might sit in judgement for several weeks on civil matters. At the end of the year, there were 84 prisoners in the U. S. Jail, including 20 to 30 who had been convicted at the November term. 34

Samuels' fate on January 6 was entrusted to the jury. Within a few minutes, the jurors returned, and the foreman announced that Samuels had been found not guilty. 35

Chapter VII

A Year Passes Without Any Hangings

1880 was the first year since 1877 in which there were to be no executions at the old Garrison. Throughout the entire year the gallows stood idle. During the summer, the scaffold was given a coat of "white-wash." The Fort Smithites began to breathe easier. They reasoned that crime in the Indian Territory must be on the decrease. [1]

Although no felons were hanged during 1880, there was more than enough work to keep the court busy.

At the time the Court for the Western District convened, on February 3, there were 29 prisoners in the U. S. Jail awaiting trial. They were charged with:

Murder	8
Assault with intent to kill	4
Larceny	12
Violating Internal Revenue Laws	3
Perjury	1

A similar number were out on bail. [2]

People familiar with the court reported that the "crowd attendance" and the docket were not as large as usual. [3]

James Heaslett was retried at the end of the second week of the term for the murder of his stepfather. The testimony had been taken and the opposing attorneys had concluded their arguments by Wednesday, the 18th. This time the jury was able to agree. At 6 p.m. the foreman announced that a verdict had been reached. Heaslett was brought from the jail into the courtroom. In his presence, Parker read aloud "the jury's fatal verdict of guilty." Young Heaslett remained motionless in his box, and "evinced that stoic indifference so unexpected of him by those who had witnessed the ordeal before."

Heaslett was scarcely 20 years old, "and sad, indeed, will be the end of his earthly career," wrote the editor of the Western Independent.

Immediately following the conviction of James Heaslett, the court took up the case of John Ames. The defendant, who was charged with murder, had been in the U. S. Jail for over a year awaiting trial. Ames' trial was of short duration. The prisoner was acquitted, as the evidence showed that he had killed in self-defense. Next, came the case of Albert Bunch, a Negro, accused of murdering another member of his race near Scullyville. The evidence was so slight against Bunch that he was discharged "almost without a trial." 5

On February 25 the case of John Miller, who was charged with murder, was docketed. The attorneys, on Tuesday, March 2, completed their arguments, and Miller's fate rested in the hands of the jury. The jurors remained out till Wednesday afternoon, when they returned with a verdict of not guilty. 6

Following the acquittal of Miller, Green Cook was put on trial for his life. This case was quickly disposed of. It took the jury only a few minutes to decide that Cook was innocent of the murder charge.

The next murder case on the docket was that of George Baldridge, who was accused of killing Foreman in the Cherokee Nation. Baldridge's trial ended in a hung jury. 7

Judge Parker on Monday, March 28, passed sentence of death on Uriah Cooper, James Heaslett, and Jackson Marshall. The first two were white; Marshall was a Choctaw. Parker scheduled the executions to take place on Friday, June 18.

When asked if he had anything to say before sentence was passed, Cooper, raised his right hand and in a faltering voice, invoked "Heaven to strengthen him while he made a few remarks." Cooper swore that he had never threatened Donnelly's life; that he wasn't dressed on the night of the shooting as it was stated by witnesses; that he didn't have a shotgun at the time and place stated. He had fled the scene of the crime, he explained, to escape from Scott and Magee, who had been the triggermen and who had threatened his life. His voice getting louder, Cooper exclaimed, "While my body stands before the Court a wrecked vessel, my soul rides the waves of life perfectly free from all stain of the blood of Robert A. Donnelly."

After passing sentence, Parker told the doomed men that he didn't wish to "wound their feelings by referring to their offenses." He reminded them of their "awful condition," and of heaven's "inexhaustible mercies, and exhorted

them to make good use of their remaining days in constant, earnest and fervent preparations for death." [8]

* * *

Meanwhile, the deputy marshals were out hunting up new business for the court. Five bootleggers reached Eufaula on the evening of February 7. They established their base of operations in J. H. Crabtree's store. Deputy Marshal Wheeler was notified of the whiskey runners' activities. Accompanied by five men, Wheeler headed for the store. As the lawmen approached, they were sighted by a lookout. At the first alarm, the bootleggers scattered. Marshal Wheeler commanded, "Halt!" When this brought no response, the lawmen opened fire. The bootleggers shot back. "For a short time the popping of pistols and shot guns reminded one of the 'late unpleasantness'." Altogether about 30 shots were exchanged. Wheeler succeeded in capturing one of the whiskey runners and wounding a second. He also found himself in possession of a pair of saddlebags, three quarts of rotgut whiskey, and the bootleggers' horses.

One of the posse, Joshua Sanders of Webbers Falls, received a charge of buckshot in the left leg. Dr. W. H. Bailey was called on to pick out the shot and dress the wound. [9]

Deputy Marshals Ayres and Stephenson stopped at Caddo in the Choctaw Nation on February 18. The two deputies were on the lookout for Dave Fulsom, the 17-year-old son of a Choctaw district judge. It was common knowledge that the judge's son was engaged in running whiskey into the Indian Territory. The officers were waiting at the depot when Fulsom clambered off a north bound train with eight bottles of whiskey in his carpetbag. When the lawmen called for him to surrender, Fulsom drew his pistol and opened fire. The officers fired back, killing Fulsom instantly. [10]

* * *

Judge Parker called the Court for the Western District to order on Monday, May 3. No time was lost in getting down to business, the juries were empaneled and charged. On checking with Jailer Burns, the judge learned that there were 54 prisoners confined in the U. S. Jail awaiting trial. These men were charged with:

Murder	6
Manslaughter	1
Rape	2
Assault with intent to kill	5
Robbing U. S. mail	3
Counterfeiting	2
Resisting process	2
Larceny	28
Violating Internal Revenue Laws	5

Besides those awaiting trial, there were 15 men serving out their sentences, and two (Cooper and Heaslett) waiting to be executed. This gave the jail a population of 71. At the same time, 40 prisoners by posting bonds had secured their release pending their trials. [11]

Once again, a shortage of funds compelled Judge Parker to restrict the May term of court. According to the Fort Smithites, the two weeks which the court was in session "presented an exceptionally lively and interesting spectacle." Hundreds of people from western Arkansas, the neighboring states, and the Indian Territory "thronged the spacious court building or lounged about the beautiful garrison grounds." A "motley mass of nationalities, Caucausians, Africans, wild and semi-civilized Indians commingled, and presented the most striking contrasts in language, manner, garb and general appearance and offered a rarely interesting study to the students of humanity."

Parker and his corps of officers "were as busy as bees." Each man displayed a "thorough mastery" of his duties, and all worked together in harmony. Through their joint-efforts a "huge criminal docket melted away, like snow beneath a tropical sun."

On Saturday, the 15th, Parker had announced that funds for defraying the court were exhausted. He discharged the jury and continued the remaining criminal cases to the August term. The premature closing of such "an important tribunal," the Fort Smithites complained, was a great misfortune. Not only would it greatly increase the cost of the court, but it materially checked "a much-needed salutary influence over its vast jurisdiction, seriously obstructing the prosecution of justice and works a deplorable hardship on many people, particularly the witnesses living at a great distance and prisoners confined in jail awaiting trial."

Parker's Court, however, had made "good use of its brief session." The personnel had worked hard to make the limited means stretch as far as

as possible. Out of the 59 cases tried, there had been 45 convictions. Three hundred and twenty-two witnesses had been examined, and 77 indictments returned by the grand jury in six days. Thirty-three cases, including six for murder, had been continued and scheduled for the August term. Sixteen of the convicted prisoners had been sentenced to the Detroit House of Correction for terms exceeding one year; the remainder, who had been given terms of less than a year, would be confined in the U. S. Jail and the Little Rock Penitentiary.

For the abbreviated term disbursements to witnesses and jurors totaled $9,950. In this respect, the editor of the Western Independent felt called on to cite Marshal Upham for the "astonishing feat of successfully maintaining the immense business and expenses of his department since the 30th of last June, without any appropriations from the government. We hope that his confidence in the government may not be disappointed, and that he may be continued in the position for which he has proven himself so eminently qualified...." [12]

The death of Jackson Marshall in late April had left only two condemned men in the U. S. Jail. Attorneys Craven and DuVal, through the intervention of U. S. Representative Thomas Gunter, succeeded early in June in getting President Hayes to commute Heaslett's death sentence to life imprisonment. [13] Then, at the last minute, Lawyers Marcum and Buckley learned that the President had agreed to commute the death sentence of their client, Uriah Cooper, to imprisonment for life in the Detroit House of Correction. As the editor of the Elevator informed his readers on June 18, "So we have no hanging here to-day. The friends of Cooper are much pleased, he having been convicted on circumstantial evidence, altogether, and they believing him entirely innocent of the charge." [14]

To try to rally support for the reappointment of Upham as marshal for the Western District, the Western Independent on June 23 observed that he had been in office almost four years, a period longer than any of his immediate predecessors. During his term of office, Upham's administration had been "signalized" by strict honesty in every department and a prompt execution of every duty under his jurisdiction. In the deadlock between the President and Congress relative to appropriations, Judge Parker's Court had been one of the few which continued to perform its regular duties without

intermission. This was, the editor wrote, due solely to the patriotism and liberality with which Upham advanced the necessary funds.

In his treatment of the prisoners placed in his charge, the newspaper reported, Upham was in advance of his times. Heretofore, the prisoners while awaiting trial and serving their terms had been allowed "to lie in their cells at an expense to the government and an injury to themselves." Most of these men were used "to the free life of the Territory," and became ill when confined. At their request, Marshal Upham had permitted them to do light work on the Fort Smith streets and in the Garrison enclosure. Thus at one stroke he had benefitted both the community and the prisoners. [15]

The editor might as well have saved his ink, because President Hayes eight days before had named Valentine Dell, U. S. Marshal for the Western District. Besides being a Republican wheelhorse, Dell owned and edited the New Era, a rival of the Western Independent and the Elevator. Dell took charge of the office on Monday, July 26.

As soon as Dell had taken over from Upham, he named his staff: J. H. Wilkinson of Washington was to be chief clerk, Jake Ayres assistant clerk, and C. C. Ayres jailer. Two of the guards at the jail, J. Williams and Salaski, were discharged. Robert Thompson and Wiley Bailey would replace them. Dell's deputy marshals would be: Willard Ayres, G. H. Kyle, J. H. Berry, Jack Rutherford, Hugh Simpson, James Bourland, Z. W. Moody, R. J. Topping, F. R. Barling, Dwight Wheeler, and J. McWeir. [16]

The editor of the Elevator was sorry to see Upham replaced. He felt that during his four years in office, General Upham had given satisfaction to the entire Republican party. Indeed, it had been frequently remarked that Upham was the best marshal the Western District had had since the war. As the editor informed his readers:

> The marshal has control of a good deal of patronage, and if disposed, can be of material advantage to the people of the district and particularly in the immediate vicinity of the court, and at the same time do the government no injury. We hope we will not have cause to complain in the future and that every department connected with the office of marshal will be conducted in such a manner as to reflect credit upon the office, and be of great advantage to the government in suppressing crime in the district. [17]

Six weeks before Dell took office, Deputy Marshal Mershon reached Fort Smith from the Red River country of the Indian Territory. He had with him 11 prisoners, whom he deposited in "Burns' cooler." Two of the men,

Charlie Palmer and Thomas Balderston, were accused of murdering a man near Tishomingo, three weeks before. Palmer, having lived for several years in Sebastian county, had many friends in the Fort Smith area. [17]

Occasionally the old Garrison was used for activities besides law enforcement. On June 30 the marshal allowed the Van Buren and Fort Smith baseball clubs to play in the "U. S. court-house enclosure." The contest which was watched by a large crowd was won by Van Buren 37-17. [18]

* * *

The Court for the Western District of Arkansas on Monday, August 2, was called to order by Judge Parker. When Judge Parker looked over the docket, he found that there were more than 100 criminal cases awaiting action. More than one-half of the men involved were confined in the U. S. Jail, while the remainder were free on bond. [19]

Dan Henderson was finally placed on trial for the murder of James Connors near Eufaula, the previous November. The trial lasted from Friday, August 6, till Wednesday evening, when the jury returned a verdict of manslaughter. [20]

The next murder case to be brought before the August term of court was that of the United States vs. Charles Lee, alias Solomon Wilson.

During the summer of 1876, George Boyer of Wellington, Kansas, determined to make a trip to Texas to buy cattle. His wife and her younger married sister (Mrs. Cies) accompanied Boyer. Both women were "handsome and attractive." A young man calling himself Solomon Wilson was employed to go along and help drive back the cattle. Mrs. Cies left her child at home in Kansas with her husband. On the trip to Texas, Wilson and Mrs. Cies had an affair. Boyer, learning of the situation, warned Wilson to keep away from Mrs. Cies.

At Fort Worth, Wilson purchased a pistol, "a self-cocker of heavy caliber." After buying a herd of cattle, Boyer prepared to return to Kansas. Before leaving Texas, boyer hired another drover, Joe Davis.

Soon after fording Red River, Boyer was informed by Davis that Wilson was angry with him and was packing a pistol. Wilson had spoken to Davis of stampeding the herd. He would then take the horses and Mrs. Cies and strike out for Arkansas. If Davis wished, Wilson remarked, he could come along.

Should Davis have any trouble with Boyer, Wilson urged him to "shoot him down like a hog."

When the party camped for the night, Boyer, after eating, threw himself down on a pallet. His wife started putting away the dishes, while Wilson and Mrs. Cies sat nearby lunching. Boyer, who didn't own a gun, suddenly got up. Walking over to the wagon, he picked up Davis' pistol. Circling the vehicle, Boyer sat down and called, "Wilson!"

Boyer told Wilson to come over and sit down, because there was an account which he wished to settle. The cattle trader told Wilson that he had heard that he was gunning for him. He wanted Wilson to forget such nonsense and give up his pistol.

Wilson refused. Hot words were exchanged.

Mrs. Boyer begged Wilson to hand over his revolver as that was all her husband wished.

At this, Boyer leaped to his feet. As he took a step forward, Wilson drew and fired. The shot struck Boyer in the neck. He was knocked to the ground. Mrs. Boyer threw herself on her fallen husband to protect him.

Ignoring the woman's screams to "stop shooting as her husband was dead," Wilson pumped four more shots into the body. On doing so, he held his pistol so close "as to powder-burn the wounds and set fire to the victim's clothing."

After the shooting, Wilson took Davis' pistol from the deceased, walked up a nearby ravine, and fired several rounds. Joe Davis, who was watching the cattle at the time of the killing, didn't see the shooting. Hearing shots, he spurred his horse and rode to the nearest house. He told the people there that he knew Wilson had murdered Boyer.

Accompanied by Davis, the farmer raced to the scene. When they encountered Wilson, he showed them Davis' gun, and told them that he had killed his employer in self-defense. He let the farmer inspect the pistol, remarking as he did, "to notice and recollect it, as he would be called as a witness."

As soon as Boyer had been buried, his widow hired several men to assist her in driving the cattle on to Kansas. On their arrival, much excitement prevailed. Wilson and Mrs. Cies claimed that Boyer had fired first. Moreover, they swore that Mrs. Boyer lied when she said that four or five shots had been

fired into her husband after he had been cut down. Apparently, most of the neighbors believed the widow. Fearing that Wilson would be lynched, Mrs. Cies' father warned him that he had better leave the country. Wilson fled to Colorado. Returning to Texas in 1880, he was arrested and brought to Fort Smith.

Identifying himself as Charles Lee, "Wilson's" trial commenced on August 24. It was late Monday afternoon, the 30th, before the prosecution and the defense attorneys had presented their witnesses and final arguments. While Lee admitted slaying Boyer, he argued self-defense. The jury remained out over 48 hours. When the jurors filed back into the courtroom, the foreman announced that they had been unable to agree. Judge Parker scheduled the case to be retried at the November term of court. [21]

Three men (William A. J. Finch, M. R. Pickens, and John Finch) were brought to trial on September 11. The defendants, along with four others who hadn't been taken into custody, were charged with killing Reddick Miller, a Negro. Miller had been killed several miles from Colbert's Station, the previous January. Reddick and a second Negro, Joe Tally, had been accused of stealing a plow. Tally was captured by the vigilantees and given 200 lashes. When the men came after Reddick, he took to his heels. The vigilantees shot and presumably killed the Negro. Although no one saw Reddick's body, several witnesses claimed that they saw him fall near a tree. Later the vigilantees gathered near the tree and a wagon drove up. From a safe distance, the witnesses watched as the whites picked up an object which looked like a body. When the wagon was driven off, it disappeared in the direction of the Washita River.

A month later, a body was pulled from the Washita, with 50 pounds of stone attached to it. It was supposed to be the corpse of the missing Negro.

At the trial, Joe Tally was the chief witness for the prosecution. The defense attorneys claimed that the three men on trial had no part in the lynching of Reddick, and that the four men still at large were the guilty parties.

The editor of the Elevator informed his subscribers while the trial was in progress, "Boil it down and we see three men imprisoned and being tried for their lives, four are fugitives from justice, one killed, another almost whipped to death, and the government placed at an expense of thousands of

dollars, all about an insignificant six dollar plow." [22]

The case was given to the jury on the evening of the 17th. Returning on the 20th, the jury informed Judge Parker that it had been unable to reach a verdict, standing seven to five for conviction. After discharging the jurors, Parker scheduled the case to be retried at the November term of court. Commenting on the case, the editor of the Elevator noted, "the unfortunate men will be compelled to spend another long period in jail before they can get a new trial." [23]

Lum Smith was placed on trial for murdering Mike Allen in the Indian Territory five years before. The jury on September 23 declared Smith guilty as charged. [24]

The trial of Charles Palmer for murder began on September 22, and continued till the 26th, when it was given to the jury. After being out a short time, the jurors filed back into the courtroom, and the foreman announced a verdict of "not guilty." Palmer was released much to the relief of his wife, mother, sisters, and many friends who were in attendance. [25]

As soon as the Palmer trial was finished, the case of George Baldridge, who was charged with killing Foreman, was again taken up. When the Elevator went to press on the evening of September 30, the trial was in progress. The editor announced, "This is the last murder case that will be taken up at this term, and will probably end the criminal business, the balance of the term being devoted to civil cases." [26]

The jury found Baldridge not guilty as charged. [27]

Judge Parker on October 12 passed sentence of death on Lum Smith. Execution was scheduled to take place on Friday, December 17. Lum was the only one of the nine men accused of murder convicted at the August term of court. [28]

David L. Payne was a crusading white frontiersman obsessed with a desire to smash the Indian monopoly of the lands in the Indian Territory. He was backed by two powerful forces--land-hungry farmers and the railroad interests. Congress had granted several railroad companies right of way through the Indian country and had voted three corporations land grants, whenever the Indian titles could be extinguished. The railroads were accordingly as anxious as Payne to break the Indians' monopoly.

Payne and Parker were destined to clash over the ceded or unassigned Oklahoma lands. Though earmarked for the redmen, this region was not assigned to any tribe following the treaties signed with the representatives of the Five Nations in 1866. Claiming that white men could homestead or pre-empt the land, Payne and his Boomers moved in. Evicted by the army, they tried again. [29]

A squad of United States soldiers on August 13 reached Fort Smith with Captain Payne and five of his Boomers (H. H. Stafford, J. K. Jarratt, J. Brophy, A. H. Riggs, and W. H. Smith). The Boomers had been arrested in the Indian country near Fort Reno. Payne and his followers were turned over to the U. S. Court as trespassers. A large number of Fort Smithites were on hand to see Captain Payne. One of them reported:

> Capt. Payne is a stalwart young man, over six feet in height, 35 or 40 years of age, wears a broad brimmed hat, blue flannel shirt and heavy boots. He looks like the stuff pioneers are made of, men who are able to face the hardship and danger of the wilderness and open the way to civilization.

Captain Payne claimed that he wasn't an intruder on the Indian lands. He announced that he was merely seeking a home for himself and his companions on land belonging to the United States. The territory in question had been ceded to the United States by the Indians for a cash payment. He was merely exercising his rights under the Homestead Act, a right which heretofore had never been denied to any citizen. [30]

Judge Parker held at a preliminary hearing that there wasn't any criminal charge against Payne and his comrades. They were accordingly set at liberty and cited to appear at the February term of court "to answer charges of going, the second time, into the Indian Territory." Captain Payne would have preferred to answer this charge at once. Since it was a very important case, the editor of the Elevator informed his readers, it would be decided "by His Honor Judge Parker, when tried in accordance with the genius of our Republican institutions, consistent with the spirit of the age we live" in.

As the Fort Smithites saw it, there were only two points of law involved in the case: Section 2147 of the Revised Statutes provided that the President could use the military to remove from the "Indian Country, all persons found thereon contrary to the law;" and Section 2148 which stated that "persons returning to such country, shall be liable to a penalty of $1,000." Section

2149 couldn't apply to the case in question, because Payne wasn't on any tribal reservation. Consequently, the editor of the Elevator was unable to see that Payne had violated any law. The lands on which the Boomers had intended to settle weren't Indian lands but belonged to the United States. It was unreasonable to assume that the stipulation made by the Indians in ceding these lands to the United States so they might be used to settle other redmen thereon was valid. It was argued by Payne and his supporters that there was no reason that whites shouldn't be allowed to settle on the lands in question in the interim. The Boomers felt these lands were as much open to settlement as any other of the public surveyed lands in the country. 31

Payne and his lawyers pointed out that the land on which the Boomers had squatted had originally been reserved for the Indians. But in 1866 all the territory west of the current boundaries of the Creek, Seminole, and Chickasaw Nations had been sold back to the United States. The acres on which Payne had settled had been sold to the United States without reservation or condition. Section 2257 of the Revised Statues provided "all lands belonging to the United State to which the Indian title had been or may hereafter be extinguished shall be subject to pre-emption." Lands not subject to pre-emption were enumerated as "included in any reservation by any treaty, law, or proclamation of the President; lands included in any incorporated town or town site; lands actually settled and occupied for purposes of trade and business and not agricultural, and mineral and saline lands." 32

No more important case had ever come before Judge Parker. The Indians appropriated money to assist the prosecution. After all, they said, if the court upheld the Boomers, it would "legalize the overwhelming of our whole territory." Payne was also opposed by white cattlemen who leased the ceded lands. In addition, many people living in the Cis-Mississippi agreed with the Border Minstrel of Guthrie, Kentucky, that the Boomers were "commiting land piracy and highway robbery on the poor Indians."

Lined up on the other side were the railroad companies and white frontiersmen. These people were anti-Indian on principle. Besides, Boomer Payne claimed that he was the victim of the "rascality" of "certain high officials," behind whom were the "powerful moneyed influence of the cattle kings who are using the country as grazing fields."

Payne had hundreds of sympathizers in Fort Smith. When Parker continued the case, it looked to some as if he were afraid to face the issue.

Two days before the soldiers reached Fort Smith with the Boomers, Deputy Marshal Willard Ayres camped near Cherokeetown. Accompanied by Zack Moody and _____ Gregg, he rode out to arrest three men for larceny for whom he had warrants, William Fisher, Henry Alfred, and Emanuel Patterson. The first two were taken into custody without difficulty. Before going after Patterson, Ayres left his two prisoners with Moody.

Dismounting and walking up to Patterson's house, the marshal knocked on the door and asked for Patterson. Someone called from inside that Patterson had gone to Cherokeetown and wouldn't be back till morning.

Ayres then shouted, "Open up and strike a light, I must search the house."

Three shots fired in rapid succession crashed through the door, one of which struck Ayres in the chest. Staggering backward, the marshal collapsed near the fence. Before dying he pulled out his notebook and scribbled, "To my brothers: Be Christians, I died by unknown hands." Taking advantage of the excitement created by the shooting, Patterson made his get away. The marshal was buried at Cherokeetown by his brother (Ben), Moody and others. A reward of $200 was offered by Ben Ayres for the capture of Willard's killer. 33

Marshal Dell awarded Deputy Marshal Ayres' widow the contract for feeding the prisoners in the U. S. Jail. His actions in this matter were applauded by the townspeople. 34

John C. Adams and his daughter Arena J. Howe sharecropped on the farm of George Perryman, near Childer's ferry. At this time, Albert Church was the acting postmaster at Tulsa. He became interested in the Widow Howe. On several occasions Church allegedly abused her. Mrs. Howe accordingly secured a pistol with which to protect herself.

On Saturday night, Church came riding down the road toward Adams' cabin. Arena called to Church to stop. As he reined up his horse, she opened fire, shooting him twice. One missile entered the heart, the other struck Church in the shoulder. The body remained seated on the horse until the "life blood had dyed his flanks crimson on both sides." It then toppled to the ground.

Mrs. Howe left the corpse where it fell. It was soon discovered by a neighbor and carried into Adams' cabin. Arena admitted that she had killed

Church, but she claimed that his death was justified. Threats of lynching were soon uttered. At this, Mrs. Howe, accompanied by her father and two children, went to the river, secured a skiff, and started down the Arkansas. They were arrested on Monday by Captain Gube Childers of the Cherokee Light Horse. 35

Deputy Marshal Jack Rutherford and his posse in September arrested Ho-pi-juk-kee, a Negro-Seminole mix-blood, who was wanted for rape and assault with intent to kill. After making the arrest in the Seminole Nation, the posse started for Fort Smith. As they were crossing the Pottawattame Reservation, the lawmen were attacked by six Seminole gunmen. In the ensuing gunbattle, one of the would-be rescuers was killed, along with the marshal's horse. Taking advantage of the confusion, Ho-pi-juk-kee escaped. Rutherford, after securing the assistance of the Indian police, went in pursuit. Fifteen days later, he got his man. This time, Rutherford reached Fort Smith, and on October 16 he turned Ho-pi-juk-kee over to Jailer C. C. Ayres. 36

* * *

The Court for the Western District reconvened on November 1, "with a large amount of business before it." Before adjourning for the morning, Judge Parker had empaneled the grand jury. It was Wednesday, the 3d, before the petit jurors were ready to begin hearing cases. 37

One of the cases which had ended in a hung jury received prompt attention from the new term of court. Charles Lee, who was charged with killing Boyer was a young man "of prepossessing appearance" and was well liked by all who had become acquainted with him since he was incarcerated in the U. S. Jail. Once again, Lee's battery of attorneys (the Barnes brothers, Colonel Craven, William Mallette) argued self-defense. The jury this time reached a verdict and declared Lee guilty of manslaughter. Judge Parker lost no time in giving Lee the maximum sentence for this offense, ten years in the Detroit House of Correction and a $500 fine. 38

The following week William A. J. Finch, M. R. Pickens, and John Finch were retried for the murder of Reddick Miller. After listening to the evidence and the arguments of the defense and the prosecution, the jury returned a verdict of "not guilty as charged." 39

On Thanksgiving Day, the prisoners at the U. S. Jail were treated to a regular feast by Jailer C. C. Ayres. About this time, the editor of the Elevator received a "well-written article from one of the prisoners." The man contrasted the prison as administered by Upham and by Dell. He claimed that the difference in fare was "very great," and wrote of the kindness of Mr. Dell. New cots and blankets had been received with gratitude by the prisoners, for which they thanked Marshal Dell, Judge Parker, and Dr. J. E. Bennett, the medical attendant. In addition, the prisoners were now furnished "papers and periodicals, and treated with charity and kindness." Jailer Ayres and Reverend Harlan, the Methodist minister, were also complimented. [40]

Chief Deputy Marshal Huffington and eight men left Fort Smith on December 14 with 21 prisoners. Twenty of the convicts were to be taken to the Detroit House of Correction, while the other one was to be left at Little Rock Penitentiary. After the departure of "this load"of prisoners, the U. S. Jail still had 59 unwilling guests. [41]

Lum Smith, who was to have been executed on December 17, was given a respite by President Hayes until February 18, 1881. In view of this decision by the President, most members of the Fort Smith court felt certain that Smith's sentence would be commuted. [42]

The Court for the Western District adjourned on December 18. As soon as he could get his business squared away, Judge Parker and his family left for St. Louis for the holidays. [43]

As at Thanksgiving, the prisoners at the U. S. Jail were treated "to a good Christmas dinner." Afterwards, they were allowed to listen to Christmas carols sung by the children of the Belle Grove School under the direction of Mmes. Lipe and Shepperd. [44]

News that Lum Smith's death sentence had been commuted to life imprisonment reached Fort Smith during the first week of the new year. [45]

Judge Parker and his family, on the evening of January 21, returned to Fort Smith from St. Louis. Their many friends were glad to see them back again in good health and spirits. [46]

Chapter VIII

1881 Brings More Hangings

Judge Parker on Monday, February 7, called his court to order. At the time that the February term opened, there were 52 prisoners in the U. S. Jail awaiting trial. In addition, there were a large number of accused who had posted bond. The criminal docket accordingly was "very full, the usual number of murder cases ... and no end to the whiskey, larceny, and assault cases."

Shortly after court had opened, the officers, jurors, witnesses, and spectators were startled by a shot. A hurried check showed that John Armstrong, a guard, had dropped his pistol on the rock floor of the guardroom. The weapon had discharged. The ball struck Armstrong in his leg between the knee and ankle. The bone was so badly shattered that it was feared amputation might be necessary. [1]

At least 200 witnesses registered with the court during the first three days of the session. Tragedy cut down two of the witnesses on opening day. Isom Carter and his fourteen-year-old-daughter, Celia, had come to Fort Smith to testify against Alexander Jackson, "who was charged with committing a nameless crime on the person of Celia." The father and child remained at the courthouse most of the day.

Along toward dark, they walked to the Poteau. Carter planned to spend the night with a brother who lived on the opposite side of the river. Getting into a light skiff, they started across. The Poteau was booming. Large quantities of driftwood were being borne down by the current. Out in the middle of the stream, the frail craft collided with a log and capsized. The father and his daughter grabbed hold of a passing log. Since the water was very cold, the girl soon lost her grip and sank. The distraught father held on grimly and shouted for help as he drifted downstream. People hearing his frantic calls rushed to the bank of the Poteau. It was dark, so they were unable to find any boats with which to go to his rescue. At last the cries ceased; it was presumed that Isom Carter, like his daughter, had drowned.

Several days later, Carter's body was recovered from a pile of driftwood about midway between Fort Smith and Van Buren. Judge Parker and the officers

of the court fretted because the Carters were the principal witnesses against Jackson.[2]

One of the first cases called to trial was that of George Washington Padgett who was charged with the murder of W. H. Stevens. Padgett had been born in Smith county, Texas, on November 29, 1858. His parents were farmers. The father died while Padgett was a child, and his mother remarried. Left largely to himself, the boy learned to ride and break the "wildest bronchos." Becoming a cowboy, he left home in 1880 to work for W. T. Waggoner, the owner of a huge cattle spread in Wichita county, Texas. On June 15, 1881, Padgett left Waggoner's ranch. Crossing Red River into Indian Territory, Padgett encountered a large herd near the Comanche Agency. The trail boss, W. H. Stevens, had agreed to drive 2,200 head of cattle from Texas to a Kansas railhead. Padgett introduced himself as Charley Wilson, and Stevens hired him to help with the drive.

Among the cattle were four or five strays branded with the Waggoner mark. Padgett claimed the right of taking charge of these strays and accounting for them to Waggoner. Stevens refused. This was the seed which germinated trouble between the two men. Henceforth, Padgett took a great dislike to his boss. He was heard by the other drovers to make threats against Stevens' life.

While encamped on Salt Fork at the mouth of [illegible] Pond Creek, Stevens on July 26, 1880, put his hands to work "cutting out" cattle to be sold. Padgett approached Stevens and demanded to know what he proposed to do about the Waggoner cattle.

"No one should cut them out," Padgett warned.

Stevens, who was unarmed, was in his shirt sleeves. Padgett held a cocked revolver in his hand. Hot, abusive words were exchanged. Turning, Stevens asked a bystander to give him a pistol. Stevens, failing to get one, wheeled his horse about and started to ride off. As he did, Padgett leveled his pistol, and shouted, "Damn you, I'll shoot you anyhow."

"Bang!" roared the pistol. The ball struck Stevens in the side just below the right arm, killing him instantly.

Padgett sought to escape. He was followed and captured six miles from the shooting. On being taken, Padgett remarked, "Well, I'm sorry I done it, but this is the seventh man I have killed." When brought to trial in February

before Judge Parker, Padgett claimed that he was joking when he made that statement.

During the trial, Padgett was represented by Thomas Barnes and W. M. Mallette. They argued that their client was guilty of manslaughter not murder, because Stevens had brandished a drover's whip in a threatening manner. The jury didn't agree. On Thursday, the 17th, after deliberating for 24 hours, the jurors reached a verdict of murder. Padgett, seemed to have expected the worse, for when the foreman made his announcement, he showed "no emotion." 3

The next murder case on the docket was that of Arena Howe. She had killed Albert Church at Childer's ferry the previous August. The jurors were unable to agree, ten standing for conviction and two for acquittal. After discharging the jurors, Parker continued the case to the May term of court. Arena celebrated the occasion by giving birth to a girl at 1 a.m. on March 3. 4

William Brown had been born in March 1854 in Davis county, Missouri. Shortly thereafter, Brown's parents moved to Grayson county, Texas. Like Padgett, Brown became a cowboy. In 1878 he went to the Chickasaw Nation, where he married a Miss Love. The groom and his bride set up housekeeping at White Bead Hill. Brown in the summer of 1880 went to work at Fort Sill. There, his employer was McGarvey, who held the contract for putting up hay for the post quartermaster. After work on the evening of August 19, McGarvey's haying crew sat around their tents, talking and waiting for bedtime. Brown challenged Bob Moore to a foot race. Fifty cents was wagered. Moore proved to be the swifter and won. The two men argued; a fight ensued. Moore whipped Brown badly.

Bob Moore and Ralph Tate occupied a tent a short distance from where the fight occurred. Brown, smarting from the double defeat he had absorbed from Moore, procured a rifle. Taking cover near the trail leading to Moore's and Tate's tent, he waited to "get even with Moore."

Soon a man was heard approaching. Brown fired. The scream which followed the shot showed Brown that he had made a terrible mistake. He had mortally wounded his friend, 17-year-old Ralph Tate, and not Moore. Brown fled the camp. After stopping briefly at his home at White Bead Hill, he continued on to Texas.

Mr. Tate, the father of the dead boy, followed his trail for 600 miles through the Indian country and into Texas. After 28 days of hard travel, Mr. Tate overtook and captured the killer near Henrietta, Texas. Brown was manacled and a trace chain padlocked about his neck. In this fashion, the father led his son's murderer all the way to Fort Smith. There, during the first week of October, he turned Brown over to the jailer.

The spectators at the trial pronounced Brown "not a vicious looking man." Brown's trial closed on Friday, March 4, when the jury, after being out only an hour, brought in a verdict of guilty. The defendant listened to the judgement without betraying the slightest emotion. His lawyers (Marcum, Wathan, and Buckley) had made a "stubborn and well planned fight for their client, but without success." 5

The great excitement during the second week of March was the trial of Boomer Payne. Captain Payne had reached Fort Smith from Kansas on March 4 to "stand trial for settling on United States land in the Indian country." Payne and his Boomers had spent the winter on the Kansas-Indian Territory border, kept at bay by bayonets in the hands of United States troops. Because of the severity of the winter, the Boomers for protection from the cold had been compelled to live in dugouts.

Payne was accompanied to Fort Smith by his attorney Judge Baker, a former judge of the Missouri Supreme Court. Judge Baker would be assisted by Colonel Barnes. The editor of the Elevator made no secret of his feeling. He informed his readers on March 11:

> We trust this matter will soon be solved. It is bad enough to have a Chinese wall at our doors, but worse when it is expected that it shall not be bounded by a line on the west side of the Indian settlements, but extinguished by cession to the Government, for, be it remembered, these Seminole lands were ceded, without any reservation, to the United States. 6

After listening to all the arguments in the Payne case, Parker announced that he would take the matter under advisement and announce his decision at the May term of court. 7

Parker then adjourned court until April 10 and "scooted" off to St. Louis. The judge wished to get a little rest from his constant labor, and "to get out of the dusty court room, and away from the bore of weary lawyers, with endless tongues." 8

Marshal Dell kept his deputies constantly on the go. Jack Rutherford and his posse started in late January for Fort Smith from the Seminole Nation with two prisoners. One was Ho-pi-juk-kee, who had been turned loose by the authorities when the grand jury had failed to bring in an indictment. Returning to his Nation, Ho-pi-juk-kee had promptly run afoul of the law. This time, he was charged with obstructing justice and assault with intent to kill. The other prisoner was a white man named Boutwell, accused of larceny.

On the last day of January, the party camped 30 miles from McAlester. At daybreak the next morning, Ho-pi-juk-kee got hold of a Henry rifle and commenced beating Boutwell over the head. As soon as he felled the white man, the Seminole "struck for tall timber;" the marshal and A. B. Ward pursued on foot. Ho-pi-juk-kee ignored the officers' command to halt. They fired. One ball struck the fugitive, killing him instantly. After burying the redman, the lawmen took the injured Boutwell into McAlester. Leaving him with a doctor so he could receive medical attention, the marshal pushed on to Fort Smith. When he made his report, Rutherford observed that he didn't know what prompted the Indian to make the attack, while Boutwell had been too badly injured to make a coherent statement. [9]

Deputy Marshal J. H. Berry on February 6 arrested Charlie Clark and Wright Rogers. The two Negroes were accused of killing a man whose body had been found the previous year in the Poteau bottom, about eight miles southwest of Fort Smith. To try to conceal the crime, the killers had covered the remains with logs and brush. Clark and Rogers who were long time residents of the Scullyville area were lodged in the U. S. Jail by the lawman. [10]

A citizen of Atoka, P. H. B., addressed a letter to the editor of the Elevator on March 17. The correspondent complained that Deputy Marshal D. H. Layman was prowling about the country "with a common woman." Actuated by prejudice and greed, he was in the habit of stopping to "hunt out little cases" that had little merit in expectation of shaking down the unfortunate victim. [11]

The Elevator for March 25 carried a copy of P. H. B.'s letter. Chief Deputy Marshal Huffington promised a full investigation. If the charges were substantiated, he promised to fire Layman. [12]

Deputy Marshal Layman lost no time in replying to the charges brought against him by P. H. B. He pointed out in a letter to the editor of the Elevator that it was a "well-known fact" that the whiskey trade thrived in Atoka. Cases of drunken lawlessness were commonplace. Men under the influence were in the habit of shooting into houses, racing their horses about the streets at breakneck speeds, and shouting and cursing at the top of their lungs. Layman had been asked by several law-abiding citizens to curb the whiskey trade and the disturbances.

Information was given Layman that a box containing liquor consigned to D. Mark was at the railroad depot. Taking post, the officer watched the box until it was picked up and conveyed to the house of a licensed trader, who had given bond not to introduce whiskey into the Indian Territory. When he opened the box, Layman discovered it contained seven gallons of whiskey. After being arrested, the man, whom Layman presumed to be a good friend of P. H. B., had offered him $50 to turn him loose. [13]

Deputy Marshals Jack Rutherford and J. T. Ayres crossed the Poteau into the Choctaw Nation on April 9. They held a warrant for the arrest of Henry Williams, a Cherokee-Negro mix-blood, charged with stealing a pistol and several other items. Williams sought to flee the marshals. He was fired on, one of the projectiles striking him in the back and inflicting an ugly wound. When the lawmen returned to Fort Smith with their prisoner, the prison doctor removed the ball. [14]

Marshal Valentine Dell started for Detroit on April 18 with 22 prisoners, whose sentences ranged from one to ten years. Six other felons would be dropped off at the Little Rock Penitentiary. Eight deputy marshals accompanied Dell to Detroit, while G. H. Kyle and George Williams were to stop at the Arkansas capital. The departure of these convicts cut down the population of the jail to 77, 40 of whom were serving short term sentences. In addition, two county prisoners were confined in the U. S. Jail. [15]

* * *

The May term of the Court for the Western District began on Monday, the 2d. After empaneling the grand and petit juries, Judge Parker ruled against Boomer Payne. Citing many precedents, the judge ruled that the

lands in question, though unassigned, were clearly a part of the Indian country. Pledged to keep white men out of the Indian Territory, the United States Government had adopted the intercourse laws. These provided for the expulsion of white persons who tried to squat there without permits. Second offenders could be fined $1,000.

That was the law, said Parker, and "it must not be expected or asked that ... the courts will break or even bend the timbers of the law."

In other words, the Boomers must stay out; and David L. Payne was fined $1,000.

That was the limit of the statute. Had there been a provision for a prison sentence, Parker would probably have sent Payne up; because the judge agreed with Attorney General Benjamin H. Brewster, who wrote the next year that Payne was "an old and notorious offender, and deserves severer punishment than can be meted out to him in the present state of the law."

Even so, the Parker ruling aided the Indians. The Nations celebrated the decision as an important victory, while the Boomers and their allies viewed it as a real setback. 16

The trial of Amos and Abner Manley for the murder of Eli McVeigh was taken up on May 4. On the night of December 13, 1880, two young Creeks, Amos and Abner Manley,ages 18 and 17, stopped at the house six miles from Eufaula occupied by Mr. and Mrs. Eli McVeigh. At the time that the Manleys rapped on the door,Mrs. McVeigh had gone to bed.

The Creeks shouted that they were cold and wished to come inside and get warm. McVeigh asked where they were going.

"To Mrs. Sweet's to pick cotton," they replied in English.

McVeigh asked them to identify themselves.

They replied, "Moody."

Whereupon, McVeigh told them that the fire was out, but that he would get up and kindle one. Pulling on his clothes, McVeigh let them in and built a fire. As soon as the fire was roaring, McVeigh told the brothers that if they wished to spend the night, he would make them a pallet to sleep on.

The Manleys announced that they would like that.

Lighting a lamp, McVeigh made the Creeks a bed, and they laid down. After the Indians had retired, McVeigh went back to bed. Since one of Mrs. McVeigh's, 18-month-old-twins was ill, she was up with the child off and on most of the night.

Mrs. McVeigh, along toward morning, awoke her husband and told him to get up and take care of the baby while she got dressed. McVeigh pulled on his clothes, lit the lamp, and sat down by the fire with the baby.

Bill Barnett, the McVeigh's hired hand, was sleeping in another bed in the same room. The pallet on which the two redmen rested was before the fire. While McVeigh was rocking the infant, the Manley brothers got up and stood next to the fireplace. They laughed and talked to each other in Creek. Neither the McVeighs nor Barnett knew what they were saying. All this time, McVeigh continued to rock the sick child; Mrs. McVeigh and the other baby and Barnett remained in their beds.

Finally, one of the Creeks stepped out of doors, returning he asked McVeigh for tobacco. After handing the Indian some, McVeigh took his pipe off the mantel and started smoking. The two Creeks stood in front of the fire smoking for a few minutes. Suddenly, they wheeled about. As they did, they held guns(one a six-shooter and the other a pocket pistol) in their hands and fired at Mr. McVeigh. As they shot, McVeigh sprang to his feet and fell. As he did, he threw the child to one side and shouted, "O, Lord!"

Bill Barnett jumped out of bed, as the Indians turned their guns on him. One of the balls grazed Barnett's shoulder. At the same time, Mrs. McVeigh scrambled out of her bed. She was shot at and missed. Barnett grabbed the smaller of the brothers and sought to wrestle him to the ground. The other Creek raced outside and returned with an ax. He struck Barnett on the head with the weapon. Barnett fell to the floor. His assailant struck him a second time on the head with the ax. The next time the ax fell, the Creek missed his mark and chopped off Barnett's left hand at the wrist.

While Barnett was struggling with the brothers, Mrs. McVeigh watched with her two infants in her arms. The larger Manley struck at her three

times with the ax but missed, as Mrs. McVeigh leaped onto the bed with her babies. At this moment, the family dog dashed into the house. Turning about, the pet raced outside and started barking. This saved the woman and the children. Taking the ax with them, the two Creeks ran out the door.

Mrs. McVeigh rushed to her husband and saw that he was dead. Satisfied that Barnett had been killed, she crept to the door and saw the killers standing near the wood lot reloading their pistols. Taking her children with her, Mrs. McVeigh ran for Dr. Tennent's house a quarter mile away. She was barefooted and clad in her nightclothes. Shortly after she had reached Tennent's, Barnett staggered in the door. He was terribly weak from loss of blood. Barnett remarked that the first he had known of the loss of his hand was when he recovered consciousness, reached for his Winchester, and his bloody stump came into contact with the weapon.

When she returned and examined her husband's body, Mrs. McVeigh found that he had been shot in the forehead and the stomach.

The Manley brothers were arrested within the week at their parents' home by Hence Posey and Captain Berryhill. Taken to the Eufaula Hotel, Mrs. McVeigh identified Amos and Abner as the men who had murdered her husband.

The case was given to the jury on Saturday, May 7. Two days later, the foreman reported that the jurors had been unable to reach a verdict. According to the reports reaching the spectators, the jury had stood 11 to 1 for conviction. Judge Parker lost no time in scheduling a retrial. It was slated to begin on May 25. The Manleys' lawyers (Marcum, Buckley, Casey, and Boyd) resorted to the "most ingenious legal efforts" to establish an alibi for their clients. Two women and six or seven men, all Indians, were called on to sustain a story that the brothers were somewhere else on the night of the murder. But their alibi was shattered, when District Attorney Clayton and his clever assistant Grace compelled the witnesses for the defense to contradict one another.

The second trial closed on Friday, June 3. This time, the jury was out only 80 minutes, before it returned a verdict of guilty as charged.[17]

When the <u>Elevator</u> went to press on the afternoon of May 13, the trial of Patrick McGowan for the murder of Samuel Latta was in progress. During the week, Arena Howe had been allowed to change her plea to manslaughter.

She was sentenced to 10 years at the Detroit Home of Correction and fined $200. [18]

Pat McGowan had been born in Ireland in 1846. His father died, and the mother with her three sons and four daughters emigrated to the United States. Mrs. McGowan and her brood settled at Burlington, New Jersey. In 1858, Patrick left home. He went to Philadelphia, where he secured employment as a clerk. Four years later, McGowan moved west to Illinois and enlisted in the 12th Illinois Cavalry. Before being mustered out in 1865, Patrick had become a sergeant. Following the war, he went to Texas, where he stayed for two years before returning to Illinois. 1870 found McGowan living in the Chickasaw Nation. Soon thereafter, he married Mary Boutwell and took up farming.

Believing himself secure under Carl Schurz's orders "protecting farm laborers," McGowan cultivated a small tract in partnership with Sam Latta. A violent quarrel on May 2, 1880, dissolved the partnership. On the evening of July 13, Latta was visiting at Boutwell's, where his widowed sister and her child were boarding. After supper, Latta went out onto the gallery. Lighting his pipe he started to romp with his little niece. Feeling the call of nature, Latta excused himself and walked out into the peach orchard to relieve himself. As he sauntered back toward the house, there was a roar of a shotgun. A charge of buckshot struck Latta in the right side. Throwing up his arms, he screamed, and fell to the ground.

The blast startled Latta's sister who was in the house washing the supper dishes. She dashed outside to where Sam lay dying. As she did, she saw Pat McGowan running off in the opposite direction. Assisted by another woman, she carried Sam into the house, and then went for help. On the way back, she encountered Pat, who told her that he had killed Sam.

On the day before the shooting, a man named Hunter, who believed he had been insulted by Latta, had ridden over to McGowan's. He was said to have urged Pat to get rid of Latta. The day following the murder, Pat stopped at Alexander Poff's cabin. While there, he told Poff that he had shot Latta.

At the trial which began on May 12, McGowan was defended by the Barnes brothers, J. K. and T. H., and William Mallette. They argued that their

client had acted in self-defense. Latta having threatened McGowan's life on several occasions. When the case was given to the jury on the 17th, the jurors were out only a short time before reaching a verdict of guilty. 19

On Thursday, June 16, Judge Parker "slated out the terrible future to five unhappy men, who gazed with craned necks and eager half-dispairing eyes." George W. Padgett, William Brown, Patrick McGowan, Amos and Abner Manley were sentenced by the judge to be hanged on Friday, September 9, 1881, between the hours of 9 a.m. and 5 p.m.

Padgett took the news with "great firmness." The Manley brothers were stolid and indifferent, McGowan was nervous and excited, while Brown was "heartbroken." 20

In May 1880 Charley Bowlegs, Tul-wa-har-jo and three other Seminoles forded the Canadian River from their nation and crossed into the Chickasaw Nation. The Indians told several people who questioned them that they were looking for stray cattle. Bowlegs and his companions had a grudge against Scott Davis and _____ Bateman, who lived just over the line from their Nation. During the night, the redmen posted themselves on a sand bar from where they could see the cabin in which Davis and Bateman lived.

Shortly after daybreak, they sighted Davis and a second white man, Thomas Factor, riding toward them. Bowlegs and his party took cover in a ravine, which commanded the trail traversed by Davis and Factor. The unsuspecting whites rode into the ambush, Factor in the lead. As soon as Davis came within range, Bowlegs shouted, "Fire!" Shots rang out, and Davis fell from his mount. He was still breathing as the Indians dashed up. One of the attackers placed the muzzle of his rifle to the head of the prostrate man and blew out his brains.

After telling Factor to "go on home," the assassins hid the body in a nearby hollow tree. They then pushed on several miles. Bateman was sighted plowing a field. Motioning for his confederates to be quiet, Bowlegs and his four companions dismounted. They crept to within a short distance of where the unsuspecting Bateman was working. Once again, Bowlegs gave the order to fire. His companions refused, whispering, "We killed one, you kill this one." Bowlegs accordingly crawled up to the fence. Bringing his Henry to his shoulder, Bowlegs shot Bateman through the body.

Subsequently, Bowlegs committed suicide, while one of his confederates was killed in a brawl. Only one of the group, Tul-wa-har-jo, was taken into custody. At his trial during the last week of June 1881, Tul-wa-har-jo admitted firing one shot at Davis. He, however, swore that he didn't know that Bowlegs planned murder, when he crossed the Canadian. According to Tul-wa-har-jo he had gone with Bowlegs to serve as interpreter, since he supposed they were looking for strays. Tul-wa-har-jo swore that he wasn't present when Bateman was slain.

The jury returned a verdict of guilty, and Parker sentenced the Indian to death.

Factor was arrested and brought to trial at Fort Smith at the same time as Tul-wa-har-jo. He was charged with conspiring with Bowlegs to lead Davis into the ambush. Evidence was produced by his attorneys to cause doubt in the jurors' minds, and he was acquitted. [21]

Although the May term of court had ended, there continued to be plenty of activity around the U. S. Courthouse. On Friday, July 1, United States Collector of Revenue A. S. Fowler encountered Marshal Dell near the Garrison. Fowler was hot under the collar over some remarks published in Dell's paper, the New Era, regarding his official conduct. Calling Dell to account, Fowler beat him unmercifully and left him unconscious. [22]

Marshal Dell filed charges against Fowler. When the case was tried in city court, Mayor Brizzolara fined Fowler $50 and costs. [23]

Immediately after the trial, Marshal Dell, two deputy marshals, and one guard left for Detroit with five convicts. The "worst character" of the group making the trip was Joe Miller, alias Dutch Henry. As his name indicated, Henry was of German parentage, though in complexion and physical features he resembled an Indian. Henry had been convicted of horsestealing and given a year. This was his third trip to the Detroit House of Correction. Shortly before his last arrest, Henry had been arrested by a patrol from the 10th Cavalry for stealing government mules, but had given the soldiers the slip.

Star Brown, a Delaware Indian, had been sentenced to serve two years for introducing and selling whiskey in the Nation. Several of his best customers had gotten so drunk on Brown's rotgut whiskey that they had set a dwelling afire. A woman had been trapped in the cabin and had burned to death. The three other prisoners, all whites, had drawn terms for selling whiskey and assault with intent to kill. [24]

The body of a white man on July 8 was found 18 miles south of Stonewall on the Okmulgee road. When Deputy Marshal John H. Berry examined the remains, he found that the deceased had been shot in the back of the head. The motive was robbery since the pockets had been turned inside out. In the dead man's carpetbag with his clothing were found four pictures, several receipts for "Cockran's Furniture Polish" and a letter addressed to "E. N. Cockran, Eureka Springs, Ark." from "J. J. Chambers, Wellsville, Franklin County, Kansas."

The unfortunate man was supposed to have been traveling to Texas. Though he didn't have much to work on, Marshal Berry hoped to establish the identity of the deceased and apprehend his killer. Berry accordingly asked all the newspapers in Arkansas, Kansas, and Missouri to carry a story on the finding of the body and the documents found thereon. [25]

A reporter from the Elevator decided to interview the six prisoners in the U. S. Jail awaiting the hangman's noose. After procuring a pass from the jailer, the reporter was escorted into the basement of the old "Soldiers' Quarters." The three white men were in Cell No. 1; the three Indians were lodged in Cell No. 2. So far as the correspondent could observe, they were all confident that their sentences would be commuted. [26]

Deputy Marshal Layman and a three-man posse brought in Frank Rocco on Thursday, July 28. Rocco was one of the kingpins of the illegal whiskey trade in the Indian Territory. The bootlegger had engaged in frequent brushes with the law. On one occasion, he had been captured, and had given bond for his appearance in the Court for the Western District. Learning that he would draw a two year sentence, Rocco disappeared. He next appeared at the home of Thomas H. Thomas, his bondsman. To cover Thomas' loss, Rocco gave him $600.

During the winter of 1880-81, Rocco had been arrested by Layman. The posse stopped for the night in a cabin. One of the guards went out to cut a load of wood. Shortly thereafter, the man who was supposed to be watching

Rocco stepped outside to get an armful of kindling. Rocco, seeing his chance, picked up a shotgun and leaped on a horse sideways, his feet being shackled. He rode to where the guard was cutting wood. Covering the man with the shotgun, Rocco relieved him of the keys to the shackles and $60.

When he again picked up Rocco's trail in July, Layman pressed the fugitive hard. After four days, the lawman learned that the whiskey peddler was holed up near Eufaula at the home of Jennings. Layman, on reaching Jennings', found that Rocco had gone to the creek to bathe. The posse took cover in the house and awaited his return. In a short time, Rocco rode up to the gate and alighted. As he was tying his horse to the hitching post, Layman walked up, pistol drawn, and commanded the bootlegger to surrender. Rocco's hand shot toward his holster. The revolver misfired, thus saving the lawman's life. Shaking his head in disbelief, Rocco dived for cover behind a tree, as Layman's posse charged out of the house. Shots were exchanged. Rocco, concluding that he was badly outnumbered, left the shelter of the tree and made for the prairie, turning and firing as he ran. The posse continued shooting. Four bullets struck the fugitive; he fell to the ground. When they examined Rocco, the posse found that while the wounds were painful, they weren't dangerous.

Four days after Rocco was lodged in the U. S. Jail, Dr. Bennett cut a ball out of the prisoner's neck. Though it was a very painful operation, Rocco didn't flinch or change the expression on his face. Brought before Judge Parker on August 3, Rocco pled guilty to five indictments for introducing whiskey. Parker sentenced him to one year in prison on each charge. [27]

* * *

One man was convicted of a capital offense at the August term of court. In the summer of 1879, Se-quah-nee, a full-blood Sac and Fox, accepted an invitation to a green corn dance. He was a powerfully built, handsome Indian. Unlike the members of the Five Civilized Nations, Se-quah-nee dressed like his fathers, hickory shirt, blue blanket, fringed leggins, and beaded moccasins. Se-quah-nee had a daughter, Wah-su-quah. She had gone to the white man's school.

The invitation to the green corn dance had come from the Pawnee to the north. For a number of years, the Sac and Fox and the Pawnees had been on good terms; both tribes looked forward to the occasion. There were three days of feasting, races, and dancing -- a typical Indian celebration.

With "jollification" over, Se-quah-nee and the other members of his tribe started south to their homes. On the first night out from the Pawnee village, they had just pitched camp, when a nondescript white man, who was walking across the prairie, came up. He told the Indians that he was hungry and asked for food.

After he had eaten, he resumed his journey. Se-quah-nee waited about an hour and started in pursuit. He soon overtook and began to stalk the unsuspecting traveler.

Along toward morning, Se-quah-nee returned to camp and proudly displayed the white man's scalp. The other Indians rejoiced over the trophy, and pledged each other to secrecy.

Se-quah-nee back at his village showed the scalp to his squaw and daughter. Wah-su-quah told her father it was wrong to kill. Se-quah-nee explained that the man he had slain was a horsethief. Killing a horsethief, he said, was justified.

Wah-su-quah brooded over what she learned. She decided to report what had happened to the Sac and Fox agent. After listening to what the girl had to say, the agent gravely announced, he would have to make a report to the authorities of what had happened. When notified of the killing, Marshal Dell sent two deputies to Se-quah-nee's village. They arrested the Indian and took him to Fort Smith.

Prior to the trial, Wah-su-quah traveled to Fort Smith. She arrived in her picturesque garb--a rather pretty girl in a rough and rugged white man's court.

When Se-quah-nee was placed on the stand, Prosecutor Clayton and the defense attorneys had to direct their questions through an interpreter. The jury on August 9 brought in a verdict of guilty. Eleven days later, the Indian was brought before Judge Parker to learn his fate. Before pronouncing sentence, Parker asked Se-quah-nee if he had anything to say. The Sac and Fox replied, "I want to tell the truth; I did not kill the man I am accused of killing; it was an Indian I killed; he stole my horse."

Asked if he believed in a hereafter or Divine being, Se-quah-nee answered, "Indians never hear about such things. I no believe anything only there be God someplace." 28

William McKinney was acquitted of the charge of murder by the jury on August 23. In January 1881 a white whiskey peddler, Joseph Newsom, rode into a small Chickasaw village, about 35 miles north of Red River. Two Negroes, John Taylor and Henry Farro, had accompanied the bootlegger. Newsom and his two confederates got into a dispute. During the melee, Newsom was mortally wounded. McKinney, who was a bystander, and Taylor were taken into custody and brought to Fort Smith for trial. Taylor turned state's evidence against McKinney and was released. The acquittal of McKinney and the failure to capture Farro "left the guilty party scot-free," the editor of the Elevator complained. [29]

Marshal Dell determined to put the "government employees about the Garrison and U. S. Marshal's office into uniform." This was carried out at the end of August. The uniforms were "neat but not gaudy." Those of the marshal, the chief deputies, and Jailer Ayres were "a suit of navy blue; a sack coat, not overly embellished with brass buttons; a single strip of gold cord down the pants, a regular army hat, with a gold cord and tassel, ornamented in front by a tasty shield, enclosed by a wreath of braid work, in the center of which in raised letters, is the official position of the wearer." The guards' uniforms were of the same material and style as the deputy marshals -- the only difference being a plain blue strip running down the pants. The "badge on the dashing" locking hat told the visitor that he was gazing upon a "Guard U. S. Jail." [30]

A reporter from the Elevator visited the U. S. Jail on September 7. He discovered that preparations for the impending hanging had been completed. The scaffold had been erected in an enclosure in the southwest corner of the wall surrounding the Garrison. The area was very small, the correspondent observed, and wouldn't admit more than 50 witnesses. He pronounced the surroundings anything but inviting:

> The scaffold stands eight feet above the ground. A stairway of 12 steps, 3 feet six inches in width, leads up the platform, which is 14x15. The trap is twelve feet long by three wide, and is so arranged as to give way in the center when sprung, each half being on hinges. The cross beam over head is seven feet two inches above the platform, and is of heavy timber. The ropes are so arranged as to give about six feet drop. A deep trench had been dug directly under the trap, so as to prevent the feet of the condemned men from striking the ground. Every attention has been given and great care

is being taken to prevent any botch work. The witnesses will be limited to about forty. None other than members of the press, the clergy, physicians, attorneys, and court attendants will be admitted--and only a limited number of these. A guard will be placed on the walls surrounding the Garrison, and will have positive orders to shoot any person or persons who may attempt to enter the gates or scale the walls or steps.

When he spoke with the condemned felons, the newspaperman found that they were very bitter against Attorney General Wayne MacVeagh. What made it so galling was the thought that with President James Garfield incapacited by an assassin's bullet, they had been unable to appeal for executive clemency. Padgett and McGowan were especially bitter at not being granted a "respite" until the President could have recovered sufficiently to have studies their cases. The Manley brothers were closeted with their aunt. She planned to remain at Fort Smith till after the execution and take their bodies home to the Creek Nation for interment. Their appearance showed that they had been weeping. 31

The doomed men retired at the regulation hour -- 8 o'clock on Thursday, September 8. Amos and Abner Manley dropped off to sleep immediately, Brown, Padgett, and McGowan remained awake until after 11 p.m. All awoke early, and were up by 6 a.m. Each man dressed himself in a neat black suit and cloth shoes provided by Marshal Dell. After eating a hearty breakfast, the men smoked cigars.

A rumor reached the reporter for the Elevator that the Manleys had finally confessed to killing McVeigh. In company with the Reverend Jeffett, the correspondent visited their cell. While acknowledging the crime, they refused to give any details.

At 9:45 a detachment of the Frontier Guards commanded by Captain P. T. Devany marched into the Garrison. Devany detailed some of his men to guard the walls; the remainder were to help the guards escort the prisoners.

Jailer Ayres entered the box in front of Cell No. 2 at 9:50 and called for Brown, McGowan, and Padgett, who responded promptly. After shaking hands with their fellow prisoners, they entered the box. All looked pale, and they glanced anxiously about. At an order from Ayres, they held out their hands and were handcuffed. The trio, one at a time, passed out into the hallway, which extended across the front of their cells. Two deputy marshals took

charge of each man as he emerged. They stood in the open court several minutes, while the jailer went to get the Manleys.

The party started for the enclosure in which the scaffold stood. As the door clanged shut, the reporter looked at his watch: it was 9:55. The condemned, a deputy marshal on each side, marched in the following order: Padgett, Brown, McGowan, Amos and Abner Manley. A detachment of Frontier Guards brought up the rear. All the doomed men were hatless. When about one-third of the way across the parade ground, Brown fainted. A halt was called while he was doused with ice water. As he staggered to his feet, Brown remarked, "I have been very sick for some time past and am feeling very weak."

The march was resumed, and the enclosure reached without further incident. Entering the gate, each of the felons glanced at the "ugly-looking frame work from which they were to leap into eternity." Ascending the steps of the gallows, the condemned sat on a bench beneath an awning which shielded them from the boiling sun. Chief Deputy Marshal Huffington read the death warrants in a clear distinct voice. Huffington had finished at 10:08. As he ceased, Reverend Jeffett announced, "Let us pray." Those upon the scaffold knelt; those in the enclosure below uncovered. A murmur was noticeable from the end of the platform where McGowan knelt and confessed to Father Smythe. At the conclusion of the prayer, the men took their places on the trap, all faced north; Padgett on the right, McGowan, Brown, Amos and Abner Manley in that order to his left. When asked if they had anything to say, Padgett spoke first. He claimed that his killing of Stevens was in self-defense, but bid goodbye to all and hoped to meet them in heaven. McGowan remarked that his shooting of Latta was justified, while he spoke with emotion of the wife and children he would be leaving "to the mercy of the four winds."

"I die an innocent man," he remarked, "but bid you all farewell."

Brown stated that "he would rather have died than to have killed the one he did, for he [Tate] was his friend."

"I feel that I will meet you all in glory. I am ready and willing to go," Brown exclaimed.

Amos and Abner Manley admitted they had killed McVeigh, but observed that he had "threatened their life, and the witnesses had sworn falsely against them."

1881

The black caps were placed over the men's heads. At 10:30 the nooses were adjusted and the scaffold cleared. Padgett didn't want the cap on. McGowan's last words while waiting for the trap to be sprung were, "As we drop out of the world together, let us hope we may meet in the next."

At 10:32 the rope was cut. The trap fell, and the five men plunged into "eternity." They dropped about six feet. McGowan, Padgett, and Brown were dead in about six minutes; the two Indians "died hard and struggled for some time, blood running from the mouth of one and over his clothing." After hanging 22 minutes, the bodies were cut down and placed in coffins. Padgett's was taken away by relatives, and the others were buried on the reserve back of the National Cemetery.

The group of onlookers dispersed; the Frontier Guards marched back to their Armory. Within ten minutes, no one would have known that there had been a hanging within miles of the Garrison. 32

On September 19, a pall of gloom was cast over Fort Smith by the news that President Garfield had died. A mass meeting was held at 10 a.m. on the 23d at the U. S. Courtroom. The entire building was drapped in mourning. An arch of black extended from the American flag on each side, directly in front of the judge's seat. A portrait of the martyared President, encircled with a wreath of evergreens, entwined with crape, adorned the wall back of the speaker's chair. The words "Our Martyared President" appeared in black on the white margin of the picture. The room was filled to overflowing. A great number of people occupied the large porticos in front and rear of the building.

Mayor Brizzolara called the gathering to order, and stated the object of the meeting. On his motion, Judge Parker was called to the chair. Memorial services were conducted, and a resolution drafted expressing the community and the court's grief. 33

Four days before his scheduled date with the noose, Se-quah-nee on October 10 told Interpreter Harris of a dream he had had. He had dreamt that he would "see the corn grow again, sprout from the kernel, tassel out, and yield its fruitage of yellow ears and the dream whispered hope to his saddened heart, and told him he would escape the death by hanging."

Always sincere and understanding of the Indian trying to comprehend the ways of the white man, Judge Parker had been touched by this case.

He and District Attorney Clayton accordingly addressed a petition to President Chester Arthur asking for a commutation of the death sentence.

The day before Se-quah-nee was to be executed, a telegram signed by the chief executive was handed to Marshal Dell. The President had seen fit to change the sentence from death to life imprisonment in the Detroit House of Correction. Se-quah-nee, on being told of his good fortune, grunted, "mighty glad." 34

Tul-wa-har-jo was also saved from the gallows. On the application of his attorneys, a new trial was granted. This time, the Seminole was discharged. 35

Several days before the two Indians had escaped the gallows, a correspondent for the Elevator visited the U. S. Jail. He was surprised to discover the prisoners in both cells holding a moot court. A prisoner had been caught stealing. Inmates were detailed as judge, lawyers, jury, and witnesses. After the examination of the witnesses, the judge gave the case to the jury "in a dignified manner that brought our hat off as we recognized the embryo judical tone of authority." Within a matter of moments, the jurors returned a verdict of guilty. "We understood the reason for the speedy sentence when the guards informed us that the penalty was sweeping and cleaning up the cell." 36

The deputy marshals continued to bring in men accused of crimes as fast as the court could dispose of their cases.

DeLaughlin lived in the Choctaw Nation, just across the border from Rocky Comfort, Arkansas. Crossing the line, he broke into and looted J. T. Wright's store at Cerro Gordo in Little River county. Goods to the value of 600 to 700 dollars were stolen. Suspicion immediately focused on DeLaughlin, because of his reputation as a burgler and horsethief. Wright set out in pursuit, and overtook his man near Hot Springs. When apprehended, DeLaughlin was clad in a suit stolen from Wright's store. DeLaughlin readily confessed his guilt and promised to make restitution. Searching DeLaughlin's cabin, Wright recovered most of his property.

Wright took the thief before U. S. commissioner Jerry T. Cotton of Rocky Comfort; DeLaughlin pled guilty as charged. After recovering the rest of the goods, a member of Deputy Marshal James G. Farr's posse, McAshworth, took DeLaughlin to Farr's cabin in the Choctaw Nation. Before the marshal returned, five men (J. T. and J. B. Wright, W. B. Roberts, Wiley McElroy, and James Collier) showed up at the cabin about midnight.

Demanding DeLaughlin, they took him outside and hanged him to the nearest tree. Upon his return, Marshal Farr was told what had happened. The lawman lost no time in taking the five vigilantees into custody. Farr and his prisoners reached Fort Smith on the evening of November 3. 37

Deputy Marshal Addison Beck and his posse had ridden after the notorious bootlegger Dr. Odum. Beck was informed that his man was traveling through the Cherokee Nation disguised as a race horse owner. Just south of Coffeeville, Beck and his men sighted the suspect. He was driving a wagon. Recognizing Beck, Dr. Odum reached for his revolver. Beck beat him to the draw, shooting the whiskey peddler through the shoulder. Odum threw down his gun and surrendered. As soon as the doctor recovered sufficiently to travel, Beck took him to Fort Smith and lodged him in the U. S. Jail. 38

Whiskey flowed freely at Eufaula on Christmas Eve. A young Creek named Grayson and Weir, a white man, had words. Both drew their pistols and started shooting. Grayson was struck by two balls and killed. Ross, a bystander, had taken to his heels at the first shot. Believing that Ross was involved in the fracus, Zeno Johnson, a member of the Creek Light Horse, shouted, "Halt!" Ross failed to obey the officer's command. Thinking that Ross had been a party to the Grayson killing, Johnson shot and killed him. In the excitement, Weir made his get away. Thirty-six hours later, Weir's body, a bullet hole in the head, was found two miles from Eufaula. Three men were dead. The only man involved still alive was Johnson. Taken before the U. S. commissioner, Johnson was cleared of the manslaughter charge. 39

Meanwhile, the November term of Judge Parker's Court had convened. At this session of the Court for the Western District, there were no convictions for capital crimes. Robert Sullivan was tried on Monday, November 28, for the murder of a three-year-old-child which he and his wife had adopted. Sullivan was escorted into the courtroom by Jailer Ayres. The jury was called and sworn. Through his attorney, Sullivan pled guilty to a charge of manslaughter. District Attorney Clayton was agreeable, and made his address to the jury. Returning, the jury was out only a moment. Except for the passing of sentence by Judge Parker, all was over in 16 minutes.

The crime for which Sullivan stood convicted was particularly revolting. One morning the child started to cry. Sullivan shouted for the child to shut up, or "he would kill it if it didn't."

The crying continued. Whereupon, Sullivan seized a "big whip" and beat the child over the head. Picking the child up he hurled it on the bed, all the while continuing to beat it, until the helpless little thing went into spasms and died. 40

Marshal Dell and four deputy marshals on January 6, 1882, left Fort Smith for the Detroit House of Correction. Guarded by the officers of the law were 11 felons, who had been convicted and sentenced to terms of from one to ten years at the November session of court. 41

Although Dell did not know it, he was on his way out as marshal. Judge Parker had been disappointed when President Hayes had named Dell to the office. At that time, he had described Dell as "ill natured, irascible and impractical ... a friend of bad and reckless men who only want an opportunity to filch money from the government." Several months later, he wrote the President, "If we had the strong arm of an able and honest and effective Marshal to protect us, we could enforce the law and make its power felt ... In the interest of justice and right, peace and security, send me a man who can and will do his duty."

President Hayes failed to respond to Parker's suggestion. Now that Chester Arthur was President, Parker again went after Dell's scalp. He was assisted by District Attorney Clayton and the prosecutor's brother, Powell, Republican boss of Arkansas. 42

Succumbing to political pressure, President Arthur during the last week of January recommended that Valentine Dell be removed as marshal for the Western District. The President nominated Thomas Boles in his place. When the Elevator went to press on February 2, the Senate hadn't confirmed Boles' appointment. Commenting on the change, the editor observed, "Mr. Dell has filled the office well and we do not see why he should be removed." 43

The die, however, had been cast, and Dell was dismissed February 20, 1882. Boles, his successor, was a native Arkansan. He had been judge of the Fifth Judicial District from 1865 to 1868, served three terms in the U. S. House of Representitives, and was receiver of the land office at Dardenelle at the time of his appointment.

Chapter IX

1882 Sees Only One Hanging at Fort Smith

Judge Parker, when he called the February 1882 term of court to order on the 6th, found the docket not "quite" as large as usual. At the moment, there 50 persons in jail awaiting trial. They were charged:

Murder	12
Assault with intent to kill	5
Rape	1
Larceny	15
Violating revenue laws	9
Introducing whiskey into the Indian Territory	3
Selling liquor to Indians	3
Perjury	1
Resisting process	1

After the grand jury had been empaneled, Parker delivered one of his "forceable" charges to the jurors. It was listened to with great interest by a "large attendance." The editor of the Western Independent reported that the courtroom is always packed when "Old Ironsides" charges his jurors. [1]

Thomas Boles reached Fort Smith on the evening of March 16 and on the following day he took the marshal's oath of office. Marshal Dell turned over his keys and badge to Boles on Saturday, the 18th. Boles made two immediate changes in the personnel under his supervision — C. M. Barnes was named chief deputy marshal and Charles Burns jailer. [2]

George Taylor had married the daughter of "Old Man" Downing, a prominent citizen of the Cherokee Nation. At the reception, there was plenty of whiskey. John Still and Jesse Love got very drunk. There was a row, which ended in pistol shots. Still and Love were killed, while "Old Man" Downing was mortally wounded. Since Taylor was a white and the others were Indians, he couldn't be tried in the Cherokee courts. Arrested in August 1881, Taylor had been lodged in the U. S. Jail. At the trial which began on the last day of February, the prosecution was unable to prove that Taylor had killed anyone, or that he even took a hand in the fight. Consequently, the jury on March 7 returned a verdict of not guilty. [3]

The next capital offense to be taken up by the Court for the Western District was the United States vs. Edward Fulsom. Edward was a slightly built Choctaw of good family. His father was Judge Fulsom of Scullyville. On his mother's side he was connected with the McCurtains and Pages, families which had produced many Choctaw leaders. After quitting school, Fulsom became a drifter and cowboy. Fulsom had served one term in the penitentiary.

In February 1881 Fulsom rode into Fort Smith one morning and began drinking heavily. He soon ran out of money. Undaunted, he sold his mount. Along toward evening, Fulsom determined to return to his home. Seeing that his horse was still tied to an awning post on Garrison Avenue, he mounted and rode away. The buyer spotted Fulsom as he turned the corner of 6th Street going toward the reservation. He gave chase. Fulsom was overtaken before he reached the Choctaw line and arrested. The Sebastian county prosecutor was unable to get a conviction and Fulsom was released.

Shortly after his trial, Fulsom fell in with Hobbs. The two men went to work for Dock Woods, rounding up wild horses. Fulsom and Hobbs on August 12, 1881, stopped at the grog shop run by John Stewart on the line between Scott county and the Choctaw Nation. After filling up on rotgut whiskey, the two cowboys started playing cards with Stewart. There was a dispute; Stewart was shot several times. At the trial before Judge Parker, Fulsom claimed Hobbs fired first, but he admitted under cross-examination by Judge Clayton that he had pumped five shots into Stewart as he lay on the floor unarmed and helpless.

William Massengill at this time entered the saloon. He was shot. While Fulsom finished Stewart off by beating him over the head; Hobbs lunged for Massengill, who was struggling to rise. Taking his pistol, Hobbs beat the unfortunate man over the head until he was dead.

Emerging from the saloon, Hobbs and Fulsom swung into their saddles. As they raced away, they let go with wild yells. Five miles from the scene of the murders, at the home of Jesse M. Wright, they reined up their steeds

and asked for cartridges to reload their pistols. They bragged that they had just killed two men.

Three months later, Deputy Marshal Thomas E. Posey learned that Fulsom was hiding out at Waldron, Arkansas. He sent one of his posse, Yates, to make the arrest. Hardly had Yates taken the fugitive into custody than he was confronted by a number of Fulsom's Waldron friends. They compelled the embarrassed posseman to turn his prisoner loose. When he learned what had happened, Marshal Posey rode into Waldron and rearrested Fulsom. Before his friends could intervene, the lawman on November 16 had his man locked up in the U. S. Jail. On being informed of what had happened, the Elevator informed its readers, "Posey has ... [Fulsom] where mobs do not break in."

The Fort Smith court lost no time in dealing with Fulsom. He was convicted of murder on March 11, and the following month Judge Parker sentenced him to be hanged by the neck until dead. Fulsom's execution was to take place on Friday, June 30. [4]

One week after the February term of court had convened, Deputy Marshal Beck and his posse reported in at the U. S. Jail from a sweep through the Cherokee Nation with six prisoners. One of these prisoners, Negro horsethief Lawrence Fisher, had escaped from camp during a blizzard. He was recaptured the next day, after a long chase, by six Cherokee who turned out to assist Beck. While camped on Wolf Creek, 125 miles from Fort Smith, the marshal and his party were attacked by unseen raiders. A large number of shots were exchanged, but no one was hurt. While on this patrol, Beck and his men surrounded the home of George Parish. Beck had a warrant for the arrest of Parish and his two sons. The wanted men made a break for the woods. As they did, the officers opened fire. Since it was very dark, the Parishes escaped. Subsequently, Beck heard that "Old Man Parish" had been shot in the leg as he fled. [5]

Deputy Marshal L. W. Marks reached Fort Smith on Sunday, March 19, with four prisoners. One of these was a woman, Polly Ann Reynolds. Miss. Reynolds, an amazon of 280 pounds, was charged with killing another woman by kicking her in the side at a New Year's Eve party, near Webbers Falls.

In view of her size, the editor of the Elevator jested, "May be she pushed the girl over and fell down on her." [6]

Hardwick, who was lodged in the U. S. Jail accused of robbery, sought to escape on Saturday night, March 18. He removed a few bricks from one of the fireplaces and sought to go up the chimney. Hardwick's plan was frustrated by the guards before he "got a good start up the chimney." [7]

Ex-Marshal Dell and three guards left Fort Smith on March 25 for Detroit with six prisoners. The departure of these felons left 43 prisoners in the U. S. Jail. Sixteen of these men were serving sentences, one was "billed" for Detroit, one (Fulsom) was convicted of murder, and eight were county prisoners. Among the men awaiting trial were Wright and his four confederates charged with taking DeLaughlin from a member of Deputy Marshal Farr's posse and hanging him. Already, this case had been continued for two terms. On Thursday the attorneys for the defense had asked the court to subpoena 22 witnesses. Parker had granted their request and scheduled the case to be tried on May 22. [8]

On June 11 hard-riding Addison Beck and his posse came in from the Cherokee Nation. Beck turned over to Jailer Burns six prisoners, four of whom were accused of whiskey violations, while the others were murder suspects. Negro Aaron Cobler was charged with killing a man named Batey in the Creek Nation, three years before; Tee-o-lit-sa was accused of murdering Cockran and introducing liquor into the Indian Territory. [9]

Ed Fulsom on Friday, June 30, was to be hanged for killing Stewart and Massengill. The execution would be witnessed by about 20 persons. At 11 a.m. the mournful procession left the jail for the scaffold. Fulsom was accompanied by the jailer, his guards, and Reverend J. L. Berne of the Episcopal Church. The condemned had been baptized about two months before. Even before that time, he had been receiving the "unremitting" care of his kindly spiritual adviser.

On the way to the gallows, the Misere de Profoundis and other penitential psalms of the church were read. After mounting the scaffold, Fulsom knelt with the minister, made the sign of the cross, and responded to the "Litany of the Holy Name of Jesus." The doomed man was calm and "showed" no sign of fear. He was asked if he had anything to say.

"No," he replied.

The rope was adjusted, the black cap placed, and at 11:17 the trap sprung. There was no struggle, not even a muscular contortion. His hands and feet were motionless, as he was allowed to hang like a "statue" for 65 minutes, as the pulse grew weaker. When the body was taken down and placed in the coffin, Reverend Berne read the funeral service. [10]

As the deputy marshals pressed their drive against crime in the district, the number of persons confined in the U. S. Jail increased. On July 13 Jailer Burns reported 92 prisoners. A number of these succeeded in getting released on bond; several who were "serving sentences were discharged" at the expiration of their terms. When Burns made his report on July 27, there were 81 prisoners, 15 of whom were charged with murder, while ten were serving sentences in the U. S. Jail. [11]

When Judge Parker called the August term of court for the Western District to order on August 7, the attendance was "very large." On the same day, the grand jury and petit jurors were empaneled and charged by Judge Parker. Through Thursday afternoon (the 10th) over 400 witnesses had reported at the clerk's desk. At the time that the court opened, the docket contained 83 cases, the parties to which were confined in the U. S. Jail:

Murder	17
Arson	4
Rape	1
Assault with intent to kill	11
Perjury	1
Robbing U. S. Mail	4
Retaining pension money	1
Introducing whiskey into the Territory	13
Larceny	30
Passing counterfeit money	1

In addition, there were about 30 cases pending, the parties to which had posted bail. [12]

While some men spent months in jail awaiting trial, others received prompt action in Parker's Court.

On Saturday night, August 5, Ed Peuterbaugh and Lee Hardin stole two horses which were stabled in Captain J. Henry Minehart's barn near Scullyville. They also carried off two saddles and bridles belonging to Captain Minehart. The captain and one of his employees started in

pursuit the next morning. Striking the culprits' trail, they pushed on rapidly, and overtook the two horsethieves near Green McCurtain's place. The men had abandoned the horses and had struck out afoot into the mountains. When he reached Fort Smith, Minehart turned over Peuterbaugh and Hardin, along with a third man who was also wanted for dealing in other people's stock, to Jailer Burns.

The editor of the Elevator warned his subscribers on August 11, "When Minehart goes hunting and strikes a warm trail he seldom fails to bring in the game, and he deserves credit for promptness in bringing these men to justice and safely lodging them in jail."[13]

Peuterbaugh and Hardin pled guilty on three different charges. They were sentenced during the third week of August by Judge Parker.

Unlike Peuterbaugh and Hardin, J. T. Wright, Wiley McElroy, B. Wright, W. W. Roberts, and James Collier had been locked up in the U. S. Jail for a year before their trial for killing DeLaughlin took place. The case was called up on August 24. The defendants were represented by J. K. and Thomas Barnes, W. M.Mallette, and Judge Steel of Sevier county. Judge Clayton conducted the prosecution. A large number of witnesses were paraded to the stand by the defense attorneys. On the second day of the trial, three of the defendants (B. Wright, Dr. Roberts, and Collier) were discharged because of lack of evidence. Judge Clayton pressed hard to obtain a conviction against J. T. Wright and McElroy, while the defense countered with "lick for lick, and made equally as vigorous fight, setting up as their defense an alibi in both cases."

Prosecutor Clayton closed his arguments to the jury at 6 o'clock on Monday evening, the 28th. Judge Parker instructed the jurors and they retired. They were out only 20 minutes when a verdict of acquittal was brought in. "The scene of rejoicing in the court room when the verdict was rendered," the correspondent for the Elevator reported, "is more than we can describe...."[14]

The Court for the Western District took up the case of Jimmie Jones on Friday, September 1. Jones a well-known government scout stationed at Fort Sill was charged with murdering James Davis and Charles Hurd. The deceased had been accused of horsestealing in Texas. Jones had arrested them near Fort Sill. When last seen alive, the two men were in Jones' custody.

A day or two later, their bullet-riddled bodies were found 17 miles from Fort Sill, hanging from a tree. Jones, at the trial, swore that he had turned Davis and Hurd over to officers from Clay county, Texas, after they had produced writs for their delivery. The trial ended in a hung jury and had to be rescheduled.

Charles Patton was a 25 year old Negro. On Sunday, May 28, near Atoka he had attacked 12 year old Dora Wright, shortly after she had returned from Sunday school. The pretty, little Choctaw girl had gone to a spring near her home, "where it seems the brute was watching for her." Patton approached Dora from behind, and clamped one hand over her mouth to keep her from screaming. He had been arrested within 48 hours. His victim identified him by the brass ring he wore on his wrist and his slouch hat. Patton's trial lasted several days. The case was given to the jury at 6 p.m. on Tuesday, September 19; a verdict of guilty was returned at 10 a.m. the next morning. [16]

While the court was struggling to pare down its August docket, the deputy marshals were continually bringing in new business.

Deputy Marshal Beck rode into Fort Smith on September 3 with four prisoners, all charged with introducing and selling whiskey in the Indian Territory. One of the men, Ben Bowlegs, had been taken into custody at Winfield, Kansas, with Dick Glass, who was wanted by the Parker Court for murder and horsestealing. Beck had gone to Kansas to claim both men, but as the Cherokee authorities had offered a reward of $750 for Glass, the Kansans wouldn't release him. To keep from being turned over to the Cherokees, Glass had pled guilty to a charge of horse theft in Kansas. According to the Elevator, Glass was "an Indian-Negro, and one of the worst men in the Indian country, being covered with wounds received in fights with the officers of the law in endeavoring to arrest him." The Kansas lawmen had caught Glass while he was sitting in a barber chair getting a shave.

At a courthouse 40 miles from Muskogee, the Creek authorities had 18 prisoners under guard. Beck had warrants for four of them. When they learned that Beck was enroute to pick them up, these men broke jail. Nine of the 18 were scheduled to be tried by the Creek authorities for participating in Sands' rebellion. A few days before, 13 others had been tried for the same

offense. Convicted, they had been put through a "course of sprouts, receiving one hundred lashes each on the naked back." [17]

Lieutenant C. W. Taylor of the 9th U. S. Cavalry reached Fort Smith by rail on September 20 with an old antagonist of Parker's Court--Boomer Payne. Captain Payne was accompanied by 13 of his followers (ten men, two women, and a child). Payne and his fellow Boomers remained in the lieutenant's custody till noon on the 21st, then Chief Deputy Marshal C. M. Barnes served papers on those who had been ejected from the unassigned lands for the second time. They were to be sued by the government for $1,000 damages each. First offenders would not be prosecuted. After the processing of the papers, the lieutenant was relieved of his responsibility and Payne and his men given their liberty. A box containing ten rifles and four pistols taken from Payne's party would be sold at public auction by Marshal Boles. According to the Elevator, "The intrepid Captain appears in excellent health, and take the matter very easy." [18]

Captain Payne addressed a mass meeting on Wednesday night, September 27, at the courthouse. While paying proper respect to the U. S. Court, Payne denounced the army for the way it had treated him. He cited the laws of the United States to prove that upon his arrest, he should have been conveyed by the most direct route, and with as little delay as possible, to the nearest place beyond the boundary of the Indian Territory where he could have been tried. Instead, the military had detained him 12 days and then transported him by a roundabout 1,200 miles to Fort Smith. The army had tried, in vain, to get him to agree that he wouldn't secure a writ of habeas corpus. At Henrietta, Texas, Lieutenant Taylor had been served with a writ, but he had refused to obey it. Whereupon, a warrant for contempt had been issued by the county judge of Clay county against the lieutenant. When the sheriff came to arrest Taylor, the lieutenant ordered his troopers to load their pieces. With loaded guns and fixed bayonets, the military drove the civil officers from the platform of the car. [19]

"BAYONET RULE!" screamed the Elevator after its editor had heard of Payne's treatment at the hands of the army.

"Barney" Sweeney, a noted badman from Clay county, Missouri, had fled to the Indian Territory in late 1881. He hid out on his brother-in-law's farm near Vinita. A second man, William Wilson, found employment on the farm in August 1882.

One day Sweeney informed an officer of the Missouri Pacific Railroad that one of their trains would be robbed on the night of September 18. Sweeney reported that in addition to himself, the robbers would be Frank James and Jim Commings. James and Commings were to board the train four miles south of Vinita; he and a fourth man would get on at Chouteau.

On the night in question, a number of officers boarded the train at Chouteau and concealed themselves in the baggage car. Sweeney and Wilson were on the platform of the smoker. When Conductor Warren came through and asked Sweeney and Wilson for their fare, Sweeney drew a pistol and "shoved" it under the conductor's nose and ordered him to throw up his hands. Warren obeyed. Sweeney rifled his pockets, taking his pistol and some money. When he had finished this task, he wheeled and shot Wilson through the brain. As Wilson fell from the platform, a small pistol which he had in his hand struck the railing and discharged, the ball striking the conductor in the face, inflicting a dangerous wound.

The train stopped at the place where James and Commings were supposed to get aboard but nothing happened. When the officers took Sweeney into custody, he identified his dead companion as Ed Miller, a notorious member of the James gang. Since Miller had been dead more than a year, the lawmen became suspicious. They decided that Sweeney had wanted to get Wilson out of the way and had concocted the tale about the impending train robbery to get a chance to kill him, and then claim he was the noted Missouri outlaw, for whom there was a big reward, thereby gaining immunity for himself as Bob Ford had when he shot Jesse James. He had played his cards badly, however, and was taken into custody and escorted to Fort Smith by Captain Sam Sixkiller and Detective Prather of the Missouri Pacific. Sweeney was lodged in the U. S. Jail charged with the murder of Wilson and the robbery of the conductor. 20

Deputy Marshal Farr, accompanied by a three-man posse called at Shawneetown, Choctaw Nation, to arrest Dr. J. S. Lennox for the murder of Tom Young. Lennox and seven confederates were waiting as the lawmen rode into the village. Without warning, Lennox and his friends opened fire. The posse shot back. Two of Lennox's men (Lewis Castleberry and Joe Robinson) were gunned down by the lawmen. Lennox and two of his crowd escaped, while the three others, along with the two wounded men, were disarmed. The wounded were left at Shawneetown to allow their injuries to heal, while the posse returned to Fort Smith with their three companions. In the skirmish, a ball had ripped through Farr's hat, which was as near as any of the marshal's party came to being hurt. 21

* * *

There were a number of interesting trials at the November 1882 term of the Court for the Western District.

Lee Morrales, a Mexican, had been released after spending a year for larceny in the Detroit House of Correction. Having served his sentence, Morrales had been given a pass on the railroad to Atoka in the Choctaw Nation. Morrales caught a train out of Detroit on December 15, 1881. Detraining at Atoka, Morrales started for Fort Worth, Texas. Since he had no money, he traveled afoot. Morrales stopped at John Jacobs' cabin and asked for food and lodging. These were cheerfully provided.

Morrales repaid this kindness by stealing a pair of boots and other articles. Jacobs and a friend pursued Morrales on foot. At Caddo, dispairing of overtaking the thief, they gave up the chase. Returning to their homes, they stumbled on Morrales' camp, which they had missed, on their way to Caddo. Making a citizen's arrest, Jacobs and his friend started for Atoka with the Mexican. Before going very far, they decided it was too much trouble, so they killed Morrales and removed the boots which he had stolen from Jacobs.

The body was soon discovered and identified as the man whom Jacobs was pursuing. Jacobs was arrested and taken to Fort Smith. His partner in crime was never identified or apprehended.

Hailed before the Court for the Western District, Jacobs' trial began on November 14. The jury found the defendant guilty. [22]

In the fall of 1881 two Texans, Robert Massey and Edward P. Clarke, were returning across the Indian Territory to their homes. Massey had fallen in with Clarke in Kansas, and they had driven cattle as "chums." They had been to Dakota Territory with a herd of cattle.

Passing through the Chickasaw Nation, the two men were seen by a number of settlers. Massey at that time was riding a large brown horse and Clarke a grey mare. The horse appeared to be "ridden down," while the mare was in good "fix." Clarke had an ivory handled pistol with a large "E" cut in the handle, and his name dimly engraved on the butt.

The cowboys stopped at a herder's camp. There, they introduced themselves as Bob Burns and Bill Dixon. Before pushing on, Burns told one of the herders that he was going under an assumed name because he had killed a "man up in Dakota" and that Massey was his correct name. During the night, "Burns" and "Dixon" had quarrelled over a blanket. Threats were voiced. Next morning, "Burns" told the herders he would "blow Clarke's brains out." The drovers were last seen at a point ten miles from where Clarke's body was subsequently found. Massey at that time was still riding his brown horse and Clarke the grey mare. Massey was alone when he reached the Red River ferry. The boatman recalled that he was riding a grey mare. Returning to Texas, Massey swapped the mare for another animal.

In the first week of February 1882, Mr. Bean was hunting in the Chickasaw Nation. Bean saw wolf tracks leading from the bank of a stream into a nearby hole. Following the tracks, Bean located a suspicious object covered with debris. At first, he thought it was the carcass of an animal. Removing the rubbish, Bean saw a human foot and raised the alarm. As soon as the neighbors had assembled, they disinterred the body. Upon examination, it was found that the deceased had been shot in the back of the head by a pistol ball, the projectile emerging over the right eye. The body had been stripped except for the trousers and a red handkerchief knotted around the neck. About 40 yards from the hole in which the corpse had been stuffed was a pile of ashes. Sifting the ashes, the men found

four or five shirt buttons, the remains of a saddle, several copper fastenings such as were used on leggings, and some buckles. Boots and a spur which were subsequently identified as belonging to Clarke were found about ten feet from the remains of the fire.

The body was badly decomposed, having been partially devoured by animals. Studying the scene, Bean and his companions decided that the victim had been killed, while he was sleeping with his head on his saddle.

Before leaving Abilene, Kansas, Clarke had written his parents in Comanche county, Texas, that he would be home for Christmas. Christmas came and there was no sign of the son. About the beginning of the new year, the parents became alarmed. The father had inquiries and advertisements inserted in several Kansas papers regarding the whereabouts of his son. One of the discoverers of the body read one of these notices and wrote the elder Clarke. The father at once hastened north, carrying a photograph of his son.

Reaching the Chickasaw Nation, Mr. Clarke satisfied himself that the body was his son's. Like Tate's father, Clarke went in search of the killer. He discovered where Massey had turned his horse loose, ten miles from the scene of the crime. He followed Massey and the grey mare to Texas, only to learn that Massey had sold her. Mr. Clarke kept after Massey until he located him about 25 miles from Fort Sill. Making a citizen's arrest, Clarke found his son's pistol in the possession of a man, who admitted that he had purchased it from Massey.

When the case was tried before Judge Parker in early December, the defense attorneys (Colonel Craven, T. H. Barnes, and Mellette) argued that Massey had shot Clarke in self-defense. Taking the stand, Massey swore that Clarke owed him money. The two men had quarrelled over the debt; Clarke had shot at him three times but had missed. He had then killed Clarke and kept the horse for what the victim owed. When asked by Prosecutor Clayton why he had not buried the boots, Massey replied that he must have forgot them in the excitement.

The jury retired late on Saturday evening, the 9th, and a verdict wasn't returned till 11 a.m. Monday morning. Before the decision was announced, Massey was brought up from his cell. When the verdict of

guilty was declared, he turned very pale. His attorneys asked that the jury be polled. After this was done, Jailer Burns slipped a pair of handcuffs over Massey's wrists and returned him to his cell.

Massey's mother and brother had come up from Texas for the trial. The "deepest sympathy" of all who witnessed the proceedings were felt for the mother whose erring son was "doomed to end a wild career on the scaffold."

Commenting on the trial, the editor of the Weekly Independent informed his readers, "Robert Massey is twenty six years of age, and his victim was but twenty at the time of his tragic death. The case just decided is to be sincerely regretted by all concerned, yet it is seldom that a murderer ever escapes the vigorous prosecution of Judge Clayton...." [23]

Robert Massey's mother left for Denison, Texas, on December 14. That morning she visited her son for the last time. Chief Deputy Marshal Barnes kindly tendered the mother and son his private office. Since he was forbidden by regulations from leaving a condemned man alone, Barnes remained quietly in the office when Massey was brought up from his cell. [24]

Sam Paul and James Ross were well-known members of the Chickasaw Light Horse. They had arrested a man named Hawkins as a horsethief. While in custody of the Light Horsemen, Hawkins had been killed. The Chickasaw legislature appropriated $2,000 to be used in defraying the expenses of the defense. With this money, Paul and Ross hired four prominent Fort Smith lawyers, DuVal, Cravens, Barnes, and Mallette. Among the spectators at the trial which began on December 14 were Paul's wife and three little boys. The Paul-Ross case ended in a hung jury. When the jurors were polled it was found that six were in favor of acquittal, the remainder felt that the two Indians were guilty of manslaughter. [25]

Back in 1876 Slaughter and his wife were living at the home of Windham down in the Chickasaw Nation. William Willis one afternoon showed up drunk at the Windham ranch. He was loud and obnoxious and was heard to swear that he would kill someone before he left.

Joe Hardwick, a citizen of the Nation, was also at Windham's. Since Willis had previously shot and wounded him, it was believed that he was the one the badman was gunning for. Hardwick accordingly lost no time in leaving.

After Hardwick had left, Willis continued his bullying tactics. Finally, he attacked Slaughter with a knife. In self-defense Slaughter shot Willis, mortally wounding him. Slaughter's friends persuaded him to leave the country to avoid being killed by Willis' brothers. Fleeing the Chickasaw Nation, Slaughter went to Texas, and from there to Memphis, Tennessee. All this time he traveled openly and used his name. In the summer of 1882, Slaughter had settled at Fort Smith. Shortly after his arrival, Slaughter was recognized by Hardwick and several other residents of the Chickasaw Nation and arrested. Slaughter was tried for the murder of Willis during the third week of January. On Saturday, the 20th, the jury acquitted him of the charge. [26]

There were so many cases on the docket that the November term of court all but merged with the February term. Judge Parker on Thursday, February 1, had the guards bring the two men convicted of capital crimes at the November term before the bar. Before passing sentence on Robert Massey and John Jacobs, the judge "made a very impressive talk" to the two felons. When asked if they had anything to say, they replied in the negative. Parker then sentenced them to be hanged on Friday, April 13, 1883. [27]

The court lost one of its deputy marshals in December by accident. On Monday evening, December 10, several young men were standing at the bar in Thomas Rogers' saloon at the head of Garrison Avenue. They were laughing and talking loudly. Policeman John Keating drew his pistol to frighten "Dummy," a local mute. As he did, the hammer of his pistol accidentally struck a post, causing it to discharge. The ball struck off-duty Deputy Marshal Ed Burns in the shoulder. The missile glanced downward through the right lung. Despite the best efforts of Drs. DuVal and Bailey, young Burns died within 48 hours. No one regretted the death more than Keating. The two men had been good friends. Not desiring to serve on the police force any longer, Keating submitted his resignation. [28]

LAW ENFORCEMENT AT FORT SMITH 1871 - 1896

Chapter X

Congress Reduces the Jurisdiction of Parker's Court

According to the information reaching the press, Judge Parker's court, when it opened for the February term on the 5th, would be confronted by a "a lighter docket than usual." At the moment, there were only 38 men in jail waiting to be tried. About 15 of the inmates were charged with murder, while 18 were serving sentences. But since several deputy marshals were out on patrol, it was felt that the population of the jail would soon be increased. Preparatory for this influx, the jail was "being renovated and whitewashed from pillow. [sic] to post, and everything is being gotten in readiness for the spring 'round-up'."

Meanwhile, Marshal Boles and three guards had left for Detroit with eight prisoners convicted at the November term. [1]

Just as the editor of the Elevator had predicted, the number of men incarcerated in Burns' "boarding house" was increased on Sunday, the 4th. Deputy Marshal J. C. Wilkinson's posse reached Fort Smith with eight prisoners. Wilkinson's team had been out 55 days. During this time, the posse had visited the Sac and Fox Agency, Cantonment Supply, Fort Reno, Tulsa, and Vinita. The weather out on the prairie had been bitterly cold. As Wilkinson expressed it, "it must have been 20 or 30 degrees below Cairo." One of the posse, William Farmer, had frozen his hands and feet; one prisoner's nose had been frost bitten. While the party was in camp on January 9, near Cantonment Supply, one of the horses had frozen to death. [2]

The trial which attracted the most attention during the third week of the February term was that of Sam and Belle Starr. In April 1882, Belle and Sam stole several horses, taking them from the open range near their Younger's Bend home. They intended to sell the animals on the McAlester market. There was profit in such a venture — good horses brought at least $40 each. But there was risk in operating so close to home. Both thieves and horses could be recognized.

Belle on April 20, 1882, told John West, who lived five miles down the road, that she wanted to "pass some horses." Would he help her corral them?

West agreed to help Belle, since he apparently expected to share in the proceeds. Then he spotted a large bay horse with a star on its forehead and a rope mark on its left foreleg. This animal, as John and Belle knew, belonged to Andrew Crane, a cripple who lived nearby.

"God damn the horse," snapped Belle, adding that she didn't "want to steal it." But steal it she did.

When he learned of what had happened, Crane limped over to Younger's Bend, and had a "right smart" talk with Belle. It was a fine horse, Crane remarked. It was gaited and worth all of $85. Crane wanted the horse back, or else the money.

"Well," said Belle, Crane was "a poor boy and a crippled boy." She felt sorry for him. He ought to go get $30 from West, and she would take care of the rest of the amount. But, she warned, Crane had better watch his step and not talk to any of the Fort Smith deputy marshals.

John West, however, refused to give Crane the $30. When the cripple told West of Belle's suggestion, he cursed and growled that "he'd be damned if he would pay for something he did not get, that they had been trying for some time to get him into something of that kind."

Crane returned to the Starrs.

"He ought to be in hell...," Belle roared on hearing what West had said. "He got forty dollars of the money," she raged.

Sam Starr was even more vague. Sam claimed that while he hadn't stolen the horse, "he almost knew who took it but ... he could not swear to it."

That might be, complained Crane, but he was out a good horse. Not that he wanted trouble, he just wanted the money. If he got satisfaction, he promised to leave the area and go out West "to keep down a fuss."

All right, said Belle, she would put up $30; that would be better than giving it to the "big lawyers" down at Fort Smith. She would go down to Muskogee and would send Andrew Crane the bills in a letter, but he must

not claim it as hush money;" she only wanted time to try to find the horse.

Crane waited a while, but he saw neither the horse nor the money. When his father came to his assistance, Belle denounced Crane senior as a "damned old Arkansas hoosier" who should have "kept his mouth shut." Crane's brother-in-law received much the same treatment when he rode over to Younger's Bend. (Mrs. Starr came out with a tirade of abuse and said if she ever got out of this she would make it hot for us fellows.")

Finally, someone took a shot at Andrew Crane. At long last Crane called in the law. He was joined in his complaint by a Cherokee, Sam Campbell, whose grey mare had been taken by the Starrs.

Warrants were sworn out in July 1882, and the dependable Deputy Marshal L. W. Marks made the arrests that fall at a Negro's cabin near the Osage line. Belle and Sam came in without a struggle, hoping they would be released after a preliminary hearing before the United States commissioner or, failing that, in open court. While awaiting trial they secured release on bail. The Starrs also paid for the services of a good law firm, Cravens and Marcum.

The defense attorneys did what they could to win acquittal for their clients at the commissioner's hearing (in October 1882) and in a four-day trial before Judge Parker (February, 1883). They argued citizenship — the rule that the Court for the Western District couldn't handle quarrels between Indians. Belle was clearly under Parker's jurisdiction; despite her "marriage" to Sam, she was legally "a white woman and not an Indian." Sam, as a Cherokee, could not be charged with stealing Campbell's horse, because Campbell was also a redman. Cravens and Marcum observed that Crane, too, had Indian blood and perhaps was a citizen of the Cherokee Nation. Crane, however, proved that he was living in the Territory "as a white people." Consequently, Sam was unable to win his release.

Next, the defense fought to use a case of measles to set up an alibi. The horses had been run off during the third week of April 1882; there were a number of defense witnesses prepared to swear that Sam was "down sick" from March till the end of May; Belle was at his bedside "most of the time." This story was exploded when District Attorney Clayton caught several witnesses for the defense in contradictions. "I can't exactly keep dates," Sam's aunt confessed. Old Tom Starr did worse.

"I don't know what date of the month this is," he admitted under cross-examination, "Indians don't keep the day of the month like white people. We keep it by the moon."

The only other recourse for Cravens and Marcum was to attack the creditability of John West, the prosecution's key witness. But West was firm and stuck to his story, Judge Parker and District Attorney Clayton helping him a little. The fate of the defendants was sealed in the minds of the jurors.

Parker's court was jammed during the trial; all eyes were on Belle. Everyone could see that she was very homely, with her thin, long mouth, her hawk-like nose, her large ears and coarse hair, and scrawny frame. She lacked grace of carriage and looked much older than she was.

Belle was active, though. She refused to take the stand. She dashed off notes to her attorneys. She cried when some one mentioned Jim Reed, a former "husband." While Sam seemed sad and dull, Belle looked up at Judge Parker with a "bold and fearless glance."

It didn't help. The jury found Sam and Belle guilty of stealing Andrew Crane's horse, and also ruled that Belle had taken Sam Campbell's mare. This verdict suited the judge, who then sentenced each of the defendants to one year in the Detroit House of Correction. 3

On July 20, 1882, William H. Finch, a tailor and camp retainer at Fort Sill, was sent for by Post Commandant Major Guy V. Henry. The 30-year-old mulatto had been reported to the major for some small infraction. Refusing to appear, Finch stole a grey horse from Mr. Quinette and fled the Territory. He was arrested about August 10 at Decatur, Texas, by civil authorities. Notified of Finch's apprehension, Major Henry sent a three-man detail to return the prisoner to Fort Sill. This party consisted of Sergeant Bush Johnson, and Privates William Grimpkey and Jerry McCarty of the 9th U. S. Cavalry.

Having secured Finch, the detail started for Fort Sill. On the second night after picking up their prisoner, the soldiers stopped to get some rest. They hadn't slept well the previous night, because of swarms of mosquitoes.

It was about 3 p.m. when camp was made within 18 miles of the fort.

The prisoner's feet were shackled, while the guards prepared supper. After eating, two of the guards, Johnson and Grimpkey, threw themselves on the grass and were soon fast asleep. McCarty took this opportunity to go to the creek to fill the canteens.

The prisoner having feigned sleep seized this opportunity. Grasping a carbine and a pistol, he shot Grimpkey with the pistol and Johnson with the carbine. Hearing the first bang, McCarty came racing up the hill just in time to see Finch shoot Johnson. A thicket screened McCarty from the killer's view. While McCarty watched, Finch rifled Johnson's pockets and found the key to his shackles. After unshackling himself, Finch hid the two carbines in the grass and saddled and bridled one of the horses. After taking all the provisions, a carbine and a pistol, Finch fled. At Caddo, he abandoned his horse and caught the first south bound train, getting off at Denison, Texas.

After the departure of the killer, McCarty came out of hiding. He found Grimpkey dead and Johnson dying. Johnson cried, "Oh,Lord! Oh, Lord!" and said that Finch had shot them. McCarty was directed to go to Fort Sill and get a doctor. Before riding off, McCarty spread a sheet over the dying sergeant to keep off the mosquitos.

It was 8 p.m. before McCarty rode into Fort Sill. Major Henry ordered out a detachment to bring in Finch. A doctor accompanied the patrol to see if he could save the badly wounded Johnson. The detachment didn't reach the scene of the tragedy until 9 o'clock the next morning. By that time Johnson was dead. The dead were placed in a wagon, and the detail returned to Fort Sill.

Shortly after the alarm to be on the lookout for Finch was issued, he was spotted in Denison by U. S. Deputy Marshal T. M. Wright. Arrested, Finch was taken to Fort Smith.

B. T. DuVal and Thomas H. Barnes defended Finch at his trial which closed on February 23. At the close of Barnes' address to the jury, Finch was heard to remark, "he had not a shadow of a doubt of his acquittal." On the witness stand, Finch swore that McCarty had done the killing and then gave him his freedom. The case was given to the jury about 5 p.m. The jurors remained out about 35 minutes, before returning a verdict of

guilty as charged in the indictment. [4]

Sweeney was brought to trial at the end of the first week of March for the murder of William Wilson. Much to the surprise of the Fort Smithites, Sweeney was acquitted.

Robert Brown was arraigned on a charge of killing another Negro, "who came to his house while he was entertaining a few of his friends with a dinner and conducted himself very badly." The jury convicted Brown of manslaughter. [5]

Jimmie Jones was retried for the murder of Davis and Hurd. His previous trial had ended in a hung jury. Jones' attorneys (T. H. and J. K. Barnes, and W. M. Cravens) had rounded up additional witnesses. Judge Parker gave the case to the jury on March 20. After a short deliberation, a verdict of "not guilty" was returned. Jones walked from the courtroom, surrounded by his friends, once more a free man. During his long imprisonment, Jones "by his gentlemanly deportment and happy disposition" had gained the good will of all those with whom he had come in contact. Every "attache" of the jail and marshal's office expressed themselves as truly glad that Jimmie had been able to establish his innocence." [6]

Tee-o-lit-sa was watching on July 6, 1881, as Emanuel M. Cockran made his way afoot across the Choctaw Nation. A particularly brutal looking Creek, Tee-o-lit-sa was in need of money to attend a green corn dance. He decided to kill and rob the lonely traveler. Borrowing a pony from a friend, he trailed Cockran to a secluded spot. There he surprised his victim, shooting him through the back of the head. Tee-o-lit-sa rifled the dead man's pockets, securing $7.40.

It was sometime before the finger of suspicion pointed at the Creek. The information carried by the newspapers describing the finding of a body on the Okmulgee road, and the effects found in the deceased's carpetbag enabled the authorities to establish his identity. Cockran's brothers, hoping to spur the search, offered a reward of $200 for information leading to the detection and conviction of the killer. Deputy Marshal Beck undertook to solve the case. Assisted by the local people, he was able to discover circumstantial evidence indicating that Tee-o-lit-sa was the guilty party. To make certain, he hired John Sinner, a full-blood Creek, to gain

the suspect's confidence. Sinner inveigled Tee-o-lit-sa into telling him of the murder.

As soon as his agent had reported what he had heard, Beck swore out a warrant for Tee-o-lit-sa's arrest.

Meanwhile, Tee-o-lit-sa had been tried in a Creek court and convicted of horsestealing. He was sentenced to be whipped and sent to his home without bond. Knowing that the redman would return at the appointed time to receive his punishment, Marshal Beck arranged to be on hand the prescribed day, in early August 1882.

Beck rode up in time to witness the first blow from the whip. He waited until Tee-o-lit-sa was released from the post, and then stepped forward and placed him under arrest. Taken to Fort Smith, Tee-o-lit-sa was tried at the February term of Judge Parker's Court. While ably defended by his attorneys, the evidence was too overwhelming to admit of acquittal. Tee-o-lit-sa on March 24 was found guilty. [7]

Barna Maha was convicted of murder in the first week of April. About the same time, a telegram reached Fort Smith announcing that President Arthur had commuted the death sentence of John Jacobs to imprisonment for life. The President, however, refused to intervene in the case of Robert Massey. [8]

Bud Stevens was a Texas horsethief. Shortly before he fled Texas, he married a girl of 16 summers, some 20 years his junior. Escaping into the Indian Territory, Stevens hid out in a cabin in the fastnesses of the Arbuckle Mountains.

Nearby lived a Negro family named Loftus. One of the sons, Henry, was a renegade. Henry had fallen in with Martin Joseph, another Negro, and between them they had committed a number of crimes.

Joseph and Henry Loftus on April 20, 1882, rode over to Stevens' cabin. They asked Stevens to help them steal some horses, which they had spotted grazing in a secluded mountain valley. Stevens agreed to help the Negroes run off the horses. The young wife accompanied the three men.

While the Negroes and her husband went ahead to rig up a corral into which to drive the horses, the wife remained at a camp which the rustlers had established. After driving the mustangs into the pen, the outlaws started roping and branding them. Taking advantage of Stevens' preoccupation, Joseph crept up behind and shot him in the back. Joseph and Loftus left the

body to rot and returned to camp. There, they told Mrs. Stevens that Bud had been seriously injured in a fall from his horse and that he was asking for her. The unsuspecting woman accepted Joseph's invitation to "mount up behind."

The invitation Stevens had received to go on a horsestealing expedition had merely been a ruse on the part of Joseph and Loftus to possess his wife. After the trio had ridden some distance, Joseph suddenly leaped from his horse and pulled Mrs. Stevens with him to the ground. Both Negroes raped Mrs. Stevens. As she sat crying, with her apron pulled over her face, they shot and killed her. Carrying the body to the top of the mountains, the Negroes hurled it into a fissure, along with the victim's saddlebags filled with her clothes, a quilt and other articles.

Not long afterwards, Joseph got drunk and told the whole story to William, Henry Loftus' brother. William was afraid of Martin Joseph, so he kept the terrible secret to himself. Subsequently, Joseph killed Henry Loftus, and left the area. Following his brother's death, William kept quiet until he was certain that Joseph was gone. He then told his mother and father what had happened. Recalling the words of Joseph, William and his parents rode up into the Arbuckle Mountains. Just as Joseph had said, they found the fissure. Around the entrance were some of the girl's clothes. Next, they searched for and found Bud Stevens' remains.

Old man Loftus lost no time in contacting Mr. Henderson, a local merchant. After viewing Stevens' corpse, Henderson notified Deputy U. S. Marshal J. H. Mershon. The lawman made a thorough investigation of the case. Martin Joseph's hideout was located. Arrested, the Negro was escorted to Fort Smith.

When he walked into the office of District Attorney Clayton, Mershon lifted a grain sack from his shoulder and dropped it to the floor, remarking, "here's the bones of the horse-thief."

Since this was not too extraordinary, Clayton glanced up and inquired, "what horse-thief?"

Mershon related the facts of the case. When he had finished, Clayton remarked that he ought to have brought in the bones of Mrs. Stevens.

"Great God!" roared the marshal, "that well is full of rattlesnakes."

After a pause, he added, "But I'll get them," one of my men "wanted to be let down there with a rope but I didn't think it was necessary; but if you want the woman's bones I'll get them."

Mershon and his posse returned to the Arbuckles. The posse who had volunteered to go down into the fissure was a tall, gaunt Pennsylvanian John Spencer. One end of a rope was fastened around Spencer's waist; he was lowered slowly into the hole. No sooner had his feet touched the bottom than he spotted a large number of rattlesnakes.

"Lift me out for God's sake!" he shouted. The men above hauled away as fast as they could. When Spencer emerged his face was livid and he was trembling. "Rattlesnakes!" he gasped. "The place is filled with them."

While Mershon and the others were discussing ways of getting rid of the rattlers, Spencer recovered his wits. Speaking through gritted teeth, he said, "Give me that lantern." Without another word, he was again lowered into the hole.

This time, taking advantage of the blinding effect of the lantern on the snakes, Spencer pointed his pistol at the head of the nearest rattler and pulled the trigger. The discharge put out the light in the lantern, and frightened the remaining snakes into retreating into their holes. Pulling out a sack, he began gathering up the bones, together with the saddlebags and clothing. His work completed, Spencer shouted, "Pull!"

At the trial in the first week of April, the bones of Stevens and his wife were produced as evidence. The jury was composed of five whites and seven Negroes. Allen Bobo, a Negro, was chosen foreman. W. M. Cravens and J. K. Barnes were retained by the defense. Although they made strong arguments for acquittal, the jury was unimpressed. After brief deliberation on April 4, a verdict of guilty was returned. [9]

Paul and Ross were retried at the end of the second week in April. The jury on Sunday, the 15th, declared Sam Paul guilty of manslaughter, while acquitting Jim Ross. Judge Parker on the last day of April sentenced Paul to ten years in the Detroit House of Correction. [10]

Robert Massey was scheduled to be hanged on April 13. According to the press, Massey was "a good looking young man, about 5 feet 10 inches, red whiskers, dark hair, blue eyes, and weight about 205 pounds."

The usual applications for a pardon or a commutation were made by Massey's lawyers to President Arthur. They were rejected. While waiting for his date with the gallows, the prisoner received the care of Reverend D. McManus and two young ladies of the Episcopal Church and was baptized.

He slept soundly on the night previous to his death. At half past 11 o'clock, Robert Massey was taken from his cell and escorted to the gallows by the jailer, chief deputy marshal, and guards. The execution party was followed by about 20 spectators and several reporters, who had received permission to attend the hanging.

As the procession left the jail, Reverend McManus, who walked to the left of Massey, began reading the service. The spectators bared their heads. Massey, who was handcuffed, asked Guard Williams to remove his hat for him, which was done. Although he was going to his doom, no man in the "party walked more erect, nor with firmer, steadier step than the condemned." Upon the scaffold, Massey sat, stood, or kneeled, according to the service which was continued by Reverend McManus. While seated, Massey looked calmly at the gallows and the rope, and then at the solemn faces below and in front of him. After the prayer had been read, Massey's attorneys advanced and shook hands with him, as did Jailer Burns and the guards. He asked his lawyers to make a public statement for him. His voice was clearly heard by those below.

Chief Deputy Marshal Barnes spoke up, "Mr. Massey, if you have anything to say, please speak louder so that all may hear you."

Massey, undaunted by Barnes' remarks, stepped to the front of the platform and in a loud, clear voice said, "I don't think justice has been done me here; I am innocent of the charge. I don't deny killing the man, but I did it in self-defense to save my own life. I know the evidence was strongly against me, but I am innocent. This is all I have to say."

He was then placed under the cross-beam of the gallows and upon the trap. Massey's feet and arms were tied, the cap placed over the head, and the noose adjusted. The moment the preliminaries had been completed, Marshal Barnes waved his hand, and Jailer Burns sprang the trap. With startling swiftness, Massey dropped below the platform. Massey was a large man, and the fall broke his neck. He fell at 11:37 and was pronounced

dead in 12 minutes. About four or five minutes after the fall, a little stream of blood trickled down the right lapel of his coat. On removing the cap, this was found to have issued from his nostrils.

Captain John Williams, who had been sent to Fort Smith by Massey's friends and relatives, took charge of the body, which was placed in a coffin and laid to rest in the city cemetery. [11]

Confronted by a shortage of funds to defray the May term of court, Judge Parker on April 18 issued an order postponing its opening until July 2.

At the end of April, there were 78 prisoners in the U. S. Jail. Of these, 17 were awaiting transportation to the Detroit House of Correction, 5 were waiting to be sentenced, and 21 were serving time. [12]

Judge Parker on May 5 sent for the three men convicted of capital crimes at the February term of court—Finch, Tee-o-lit-sa, and Joseph. When Finch was called before the bar to receive his death sentence, he delivered a "set speech" to the court. Clothed in "elegant phraseology" which had been committed to memory, Finch "indulged in insinuations against the Judge, jury, and prosecuting attorney." He made the usual complaints that he hadn't received a fair trial. In conclusion, Finch asked Parker to intercede in his behalf with President Arthur.

When Finch had finished his "speech," Judge Parker "warned him of the danger of clinging to the last hope of punishment and exhorted him to use the time allotted him preparing to meet his Maker."

The three men were to be executed on Friday, June 29. [13]

* * *

Chief Marshal Boles kept his deputies constantly on the go while the February term of the Court of the Western District was in session.

Chief Deputy C. K. Barnes and four guards on March 19 left Fort Smith for the Detroit House of Correction. With them went 21 prisoners, including Sam and Belle Starr. [14]

Deputy Marshal Addison Beck and his posse reported in at the jail on Sunday night, March 25. They had 11 prisoners for Jailer Burns. Four of them (Jefferson Latta, Wesley Hays, Ed. Bohannan, and John Robinson) were citizens of the Choctaw Nation; they had been taken into custody at Caddo for robbing freight cars. In addition, Hays was charged with shooting into a caboose of

a passing Missouri, Kansas and Texas freight train. Six of the prisoners were accused of being bootleggers. One of these was Sam Osage, a Cherokee. He had the reputation of being a very "hard citizen," having served a three year term in the Cherokee penitentiary at Tahlequah for larceny. Salomon Coon, the remaining prisoner, was charged with concealing stolen goods at Muskogee.

During the patrol, Beck had sent two of his posse (John McWeir and John Dyer) to arrest Austin, Bettie Hicks, Jennie Pigeon, and Arch Whitewater. The persons wanted by the law were reportedly holed up in the Cherokee Nation between the Greenleaf and Illinois rivers.

Proceeding to Austin's cabin, the posse found and arrested Jennie Pigeon. While McWeir took charge of the prisoner, Dyer rode over to talk to several men who were standing at the edge of the timber watching. One of the men was Austin. When Dyer demanding that he surrender, Austin drew his revolver. He opened fire as he took cover behind a tree. Several shots were exchanged; Austin's companions scattered into the bottom. Dyer retraced his steps, and he and McWeir started for Beck's camp with Jennie Pigeon. They were soon overtaken by Austin and three other determined characters. The outlaws shot at the lawmen with their long-range Winchesters. Abandoning their prisoner, McWeir and Dyer fled.

While camped near Muskogee, Beck was notified by one of his informants that a suspicious looking white man was loitering in the area. Since it was believed that he was a horsethief, Beck sent McWeir to make the arrest. When McWeir returned with his prisoner, Beck recognized him as an old acquaintance, Tom Sales, whom he had escorted to Fort Smith some time before on a larceny charge. Sales said that he had traded for the "fine" white horse he was riding back in Barry county, Missouri.

Beck took Sales into custody, while he forwarded postal cards with descriptions of the suspect and the horse to a number of Missouri sheriffs. Within a short time, the sheriff of Jasper county arrived and paid Beck $40 reward for Sales. Next, the owner of the mare arrived and gave Beck $25 for recovering the animal which he sold to Beck for $110. [15]

On Tuesday, April 17, Marshal Boles received a startling telegram

from Denison, Texas. Glancing at the paper, Boles learned that John S. Lennox's band of desperados had shot up the camp of Deputy Marshal Layman, killing the marshal and releasing three prisoners. Layman at this time was out after Lennox and a confederate named Randall. The previous August, Tom Young of J. E. Farr's posse had arrested Robert Jones at Lake West, Choctaw Nation. Jones was charged with the murder of Dr. Bailey. Shortly thereafter, Young had been attacked by Lennox and Randall. Struck by a hail of bullets, Young had died.

Marshal Boles feared that the murderous Lennox had killed a second member of his force. Such was not the case. The report of Layman's death was premature. That two-fisted lawman had escaped the ambush, although he reported the death of a boy who had agreed to show him where Lennox was hiding out. [16]

At times, the Court for the Western District was given the ticklish problem of investigating a gunbattle, when there were two sides to the story. Such a case occurred in May 1883. According to Deputy Marshal Mershon, he and Deputy Marshal Cutter had been sent out with warrants for the arrest of the Carson brothers, who were wanted for the cold-blooded murder of two white men, Blankenship and Middleston, and the killing of an old Negro known as Wiley. Twenty-five miles east of Caddo, the marshals arrested Lason Pis-ok-cha. Having taken cover in the brush near their father's cabin, the brothers opened fire. Each of the boys was armed with two pistols. After shooting up most of their cartridges, the Carsons broke cover and charged. A load of buckshot from Cutter's shotgun killed, Jonah, the younger, while a ball from Mershon's piece wounded the elder, who took to his heels and escaped. The only injuries suffered by the lawmen was when a bullet grazed Mershon's finger. A bystander, however, was wounded by a shot from one of the Carsons. Lason Pis-ok-cha was released, and the officers returned to Sherman, Texas. [17]

Lason Pis-ok-cha's story differed completely with Mershon's report. He reported that after the marshals broke into his cabin, they roughed him up and took him outside. As they did, one of them exclaimed, "No, this is not the man," and he was released. Moments later, another member of

the party shouted, "Look out!" and opened fire on three boys and a young man, who were sleeping under a nearby shed. One school boy, 10-year-old John Loun, was gunned down within three feet of his bed. Lankin Picken fled, while a third youngster, Gimlet Mike, was cut down as he sought to escape. Mike had a pistol, but he had dropped it before being knocked from his feet. An examination revealed that the weapon hadn't been fired. Two of the boys died the next day, while doctors held little hope that the third would recover.

Lason Pis-ok-cha let it be known that the posse had no reason for gunning down the boys. Upon being informed of what had transpired, the Chickasaw authorities asked Judge Parker to order an investigation. [18]

The grand jury when it met in July ignored the charge which Lason and the Chickasaw authorities had made against Deputy Marshal Mershon. The reason cited was that, although publicized, no one had come forth to testify that the persons killed were school boys. Those who had asked for the investigation had failed to bring any witnesses. Mershon and Cutter had both been present at Fort Smith and had sworn that their report of the affair was correct. [19]

Chief Deputy Marshal Barnes at 11 a.m. on Friday morning, June 29, entered Cell No. 1 in the U. S. Jail and read the death warrants to the condemned men. Since Tee-o-lit-sa didn't speak English, his had to be interpreted. He nodded and grunted assent. Joseph also appeared nervous and uneasy during the reading of his warrant, but Finch's "manner was composed and indicated a more plucky resignation than his less intelligent fellow unfortunates."

The three men were neatly attired and all wore flowers in their lapels. Finch, however, had on a much better suit than the others. After the warrants had been read, the prisoners were conducted from the cell to the gallows. They were accompanied by the guards and clergy, and followed by the reporters and spectators to whom tickets of admission had been granted. After the trio had been seated on the scaffold, Reverend Phillips read from the scriptures. Next, "Jesus Lover of my Soul" was sung, Finch and Joseph joining in the service, which was closed with a prayer by Reverend Jeffett.

The condemned then stood side by side, and each was asked if he had

anything to say. The interpreter put the question to Tee-o-lit-sa, who replied by pointing to his heart and slowly shaking his bowed head. Martin Joseph remarked that he had nothing to say. Finch was asked last and answered with a "very mannerly bow." Just as Finch began speaking, Tee-o-lit-sa, became too faint to stand, and was escorted back to the bench.

As soon as Finch was finished, final preparations were made. Joseph, when the cap was drawn down and while the noose was being adjusted, began to shake. Tee-o-lit-sa had to be supported until the drop fell, after which he never quivered and was dead in 210 seconds. Joseph's pulse ceased beating in six and one-half minutes, while Finch was pronounced dead at nine minutes.

The Creek's neck had been broken by the fall, which was not the case with Finch and Joseph "whose bodies and limbs writhed and twitched convulsively for several minutes after they dropped." The bodies were allowed to hang for 20 minutes. The editor of the Elevator reported, "Thus three men have paid the penalty of six murders and the terrible power of the law is again shown forth to warn against its violation." [20]

* * *

A special term of the Court for the Western District was opened by Judge Parker on Monday, July 2, with a full docket. When proceedings were resumed there were 61 prisoners in jail awaiting action. They were charged:

Murder	6
Rape	1
Assault with intent to kill	5
Larceny	25
Introducing spiritous liquors	23
Illicit distilling	1

At the same time, there were about twice this number that has posted bond to guarantee their appearance in court. [21]

Mat Music was the first man accused of a capital offense tried at the special term. Music was a large powerfully built Negro, who lived on Caddo Creek in the Chickasaw Nation. A married man of 35 years, Music on or about July 14, 1881, had taken liberties with a seven-year-old girl, giving the child a veneral disease. The child had lived with Music and his wife, since they had no children of their own. When on trial Music claimed

that the outrage had been committed by a neighbor. The jurors didn't agree with Music, and on July 14 they returned a verdict of guilty. [22]

When the Elevator went to press on July 20, the murder trial of Thomas O'Keener was in progress. The defendant was charged with killing Leander Brown, a Wyandotte Indian, at the Quapaw Agency, August 7, 1882. Brown, a member of the Indian police, had arrested O'Keener for cutting hay in the Territory. While the officer was sleeping, O'Keener had awakened, laid his hands on a pick, and plunged it into his chest. Since being locked up at Fort Smith, the prisoner had given every indication that he was insane. O'Keener's lawyers accordingly argued that their client was "mad."

The jury, after deliberating 24 hours, brought in on July 24 a verdict of "Not guilty as charged." According to a spectator, O'Keener's countenance "expressed neither joy, nor emotion, nor thanks, nor anything except a complete blank indifference." at the foreman's announcement. [23]

Marshal Boles' deputies continued their drive against the forces of evil throughout the second half of 1883. Deputy Marshal L. W. Marks and posse rode into Fort Smith on August 12 from Maysville with the Tittle brothers, Robert and J. M. Robert was charged with the murder of Mayers, which had occurred 11 years before in the Cherokee Nation; J. M. was accused of introducing whiskey into the Territory. The Tittles had been taken into custody at Vinita. [24]

Fannie Echols was a bright-looking Negro girl of 20, a trifle fleshy but neat and attractive. She and John Williams worked for Mrs. Crabtree at Eufaula out in the Creek Nation. Though not married John and Fannie found it convenient to live together. Fannie was pleased with the arrangement till John developed a possessive streak. Thereafter, their relations weren't so pleasant. One day, John tried to kill Fannie. He shot five times at a man named Brown who had intervened. Friday before the fatal night, John had whipped Fannie until Mrs. Crabtree made him stop.

On a hot night in July 1883, another one of Fannie's Negro admirers came into their room and hung his pistol and holster on the bed. As Fannie told it, Williams was in a foul humor. As the unwelcomed visitor stepped out of the room, John announced that he would kill Fannie with her friend's pistol. Both made a dash for the gun. In the scuffle, Fannie pulled the

trigger, while the muzzle was pointed at Williams' body.

Fannie's story, however, didn't explain why persons within easy hearing had heard no noise except a pistol shot, and Fannie's exultant shout, "There I've killed him."

The victim was found in bed, in a supine position. A bullet had ripped through his body and was lodged in the floor below -- fired, apparently, by some one standing over Williams' recumbant body. Arrested, Fannie was hustled off to Fort Smith and lodged in the U. S. Jail. [25]

In the same room with Fannie Echols was a white woman, Molly Allen, who was awaiting trial for larceny. She and her husband, Charley, had been brought to Fort Smith from Chetopa, Kansas, about the middle of July. The Allens were accused of stealing three horses. As a reporter for the Elevator walked out of their room one day, Fannie called, "Say, tell them in your paper as they have only two women to feed they might afford to give us something a little extra, for we are getting tired of having the same thing every day."

Fannie lost her roommate in the latter part of September, when Molly and her husband were convicted in Judge Parker's Court and sent to the Detroit House of Correction for a year. [26]

Deputy Marshal Hershon's posse reached Fort Smith on August 26, following a successful six week patrol. Twenty prisoners, four of them (Andy and Barrington Colbert, Frank Thomas, and Zedeek Jackson) charged with murder, were turned over to Jailer Burns. Another man, Charlie Carter, had escaped before the posse rode into the old Garrison. [27]

Deputy Marshal Beck and one of his men, Lewis Merritt, reined up their horses near Big Vienne in the Cherokee Nation at 11 a.m. on September 27. The wagon with the prisoners and guards had gone ahead. Beck and Merritt headed for a cornfield to arrest John Bark. Although the charge against Bark was minor, he had a desperate reputation. Bark, seeing the officers riding toward him, prepared to resist. He was joined by Joe Jacks, a notorious Cherokee-Negro mix-blood. Jacks fired first, Beck was cut down a bullet in the forehead. Merritt emptied five chambers in his revolver before being felled. Two of these balls lodged in Jacks' body. Merritt, though shot once in the head and once in the chest, clung to life till Bark beat out his brains with a six-shooter. Leaving his badly wounded

comrade and the two dead lawmen, Bark fled.

Beck and Merritt were brought to Fort Smith on the 28th. After a post-mortum examination by Dr. Bennett, their bodies were interred in the city cemetery. The editor of the Elevator commenting on the double killing wrote:

> Addison Beck was one of the oldest and most efficient deputies on the force, and was a gentle, quiet and sober man. His wife and three small children reside at Muskogee and are left almost destitute.
>
> Lewis Merritt was a young man about twenty-two years of age, who has been living here for a year or more. His former home was in Jackson, Tenn., where, it is said, he has relatives and many friends. 28

Deputy Marshal Ayres left Fort Smith on Sunday night, October 14, with a ten man posse to arrest Jackson Jacks for the murder of Beck and Merritt. Ayres and his men made a forced march. By daylight, they were in the neighborhood where the shooting had occurred. From Dick Anderson, Ayres learned that the badly wounded Jacks had been carried to Tom Bearpaw's cabin. The marshals surrounded the house, but no resistance was offered. Jacks was loaded in a wagon and taken to Fort Smith. Dr. Bennett, on examining the wounds in Jacks' chest, pronounced them dangerous but not serious. 29

Two weeks before the November term of court was scheduled to be called to order, Judge Parker was called on to make an important ruling bearing on the jurisdiction of the Indian courts. The law of the United States provided that fugitives could be extradited from one state or territory to another to stand trial. Parker in Ex parte Morgan ruled that the Indian country was neither state nor territory. Consequently, the tribes had no way of getting custody of an Indian criminal who had fled to Arkansas or Texas. Nor could the Indians get rid of men wanted in Kansas or Massachusetts by turning them over to those states for trial.

Too bad, said Parker, it was a shocking situation, but "the courts do not make the law." 30

Judge Parker convened the November term of court on the 5th. The grand jury was filled on the day court opened, but it was the next afternoon

before the petit jury was empaneled. [31]

During the final days of November, and the first week of December the Fort Smith court disposed of a number of interesting cases. Zedeck Jackson was tried and acquitted of the murder of Pat Nall, also a Negro. The jury which was trying G. G. Randall for manslaughter was discharged on the 23d. Standing 11 to 1 for acquittal, the jurors had failed to agree on a verdict. Since Randall was a prominent lawyer of Denison, Texas, this case had attracted considerable attention. Randall was charged with being an accessory at the killing of Tom Young, a member of Deputy Marshal Farr's posse. At the time of the shooting, Young was endeavoring to arrest Robert Love for murdering his stepfather, Dr. Bailey. Randall was Love's brother-in-law. [32]

Fannie Echols, after a three month stay in jail, was brought before the bar. At her trial, Fannie swore that John Williams was "jealous of me, and had been in the habit of whipping me on different occasions a long time." Fannie repeated her story of her midnight visitor and the fight for the pistol. To many of the spectators this story sounded plausible. Remember this, John Williams had taken advantage of the girl, and had whipped her besides. Prosecutor Clayton refused to sanction Miss. Echols' explanation. The jury agreed and on December 18 ruled murder. [33]

The jury in the Joseph Jackson murder case deadlocked and was discharged on Tuesday evening, December 11. They had been out since Friday. Buford L. Summerhill in the third week of December was tried and found innocent of the murder of his stepfather, James Boyd. This killing had taken place several weeks before in the Choctaw Nation. [34]

Daniel Jones had been sent to the Texas penitentiary at Huntsville for embezzlement in 1876. His sentence was to run for two years. At this time, he had a wife and two children living in Scott county, Arkansas. Bill Jones had looked after Dan's family (a wife and two children), while his cousin was away. When Dan was released and returned to Scott county, he found a third child. Bill readily acknowledged the parentage. This difficulty was apparently settled, and the two cousins were constant companions.

Unknown to Bill, however, Dan brooded over what had happened. Running afoul of the law, Dan and Bill Jones fled Scott county and took refuge in the Choctaw Nation, where Bill took a wife. Both families lived in a cabin, 75 miles from Fort Smith.

On the night of August 6, 1879, Bill's wife was awakened by a "bang!" Leaping out of bed, she found her husband lying in a pool of blood. Dan was standing near the bed, a lighted candle in his left hand. Bill's pistol lay on a table near the head of the bed, an empty cartridge in its chamber. The only other occupants of the house at the moment were Dan's wife and children. An investigation by the authorities disclosed that the ball had struck Bill in the cheek and ranged upward into his head.

No one was arrested at this time for the murder. Nine months later, Dan was brought to Fort Smith on a larceny charge and convicted. The court suspended sentence. While Dan was in jail, he was indicted by the grand jury for the murder of his cousin. Dan's lawyers (W. M. Mallette and William M. Cravens) argued that Bill was in the habit of brandishing a pistol in his sleep. This theory, didn't account for Dan being at the bed, light in hand, immediately after the fatal shot. The jury on December 22 brought in a verdict of guilty. 35

* * *

Congress on January 6, 1883, passed an act which aimed at the reduction of the jurisdiction of the Court for the Western District. It was provided that the part of the "Indian Territory lying north of the Canadian River and east of Texas and the one hundredth meridian not set apart and occupied" by the Five Civilized Nations should be annexed to the United States Judicial District of Kansas. The U. S. District Courts at Wichita and Fort Scott were given exclusive jurisdiction over all offenses committed within the limits of this area against the laws of the United States. The remainder of the Indian Territory not annexed to the District of Kansas for judicial purposes and not part of the Five Civilized Nations was assigned to and would constitute a part of the judicial district for the Northern District of Texas. It was provided that the new enactment would have no effect on any cases which had originated in the territory transferred that had commenced or were pending in the Fort Smith Court. 36

This enactment had no noticeable affect upon the volume of work coming

before Judge Parker's Court. Indeed, the business transacted by the Court for the Western District increased month by month.

In view of this situation, local pressure began to build up during the fall of 1883 to try to get congress to appropriate funds for the construction of better facilities for the Court for the Western District. The Elevator for November 9 announced that a mass meeting would be held at the U. S. courthouse "for the purpose of rallying support for putting up a building here suitable for U. S. court rooms and Marshal's office, and U. S. Revenue and post office."

In addition, the editor thought it would be wise if the government erected at Fort Smith "a prison in which to confine prisoners now sent by hundreds to Detroit at great expense every year...." It is too bad, he continued, that a U. S. courtroom should "be immediately over a jail in which 50 to 100 prisoners are always confined, and that in an old Government barrack [sic] that did not chance to get burned down with the rest." 37

The hue and cry raised by the Fort Smithites was heard in Washington. When they filed their annual reports for 1883, both the Secretary of War and the Attorney General took cognizance of the inadequate prison facilities at Fort Smith. It was pointed out:

> The district court at Fort Smith, Ark., has jurisdiction over many criminal offenses in the Indian Territory. A large number of prisoners are, therefore, necessarily held at that place. The county has no jail. They are, therefore, confined in the basement of the abandoned army barracks, now used for court purposes. Officers of this department who have recently visited Fort Smith report that the two rooms in which are constantly crowded from 50 to 100 prisoners, are totally unfit for use as a jail, being damp and unhealthy. Nothing separates the foulest murderer from the detained witness. Young and old, innocent and guilty, all are crowded together. Although a physician is in constant attendance, prisoners who have entered this jail in apparent good health have, after a few months' confinement, been released almost physical wrecks. A remedy for this state of affairs is absolutely necessary, and as the county will not probably erect a jail for several years, I recommend that congress make provision for the erection of one by the government. 38

To show Washington and other interested parties just how much business the Court for the Western District disposed of during a year,

the editor of the Elevator compiled and published a table. During 12 months (November 1, 1882, to November 1, 1883) Judge Parker's Court had handled the following cases:

Murders—twenty-six - 13 convicted, 8 acquitted, 3 nolle prossed, and 2 ignored.

Arson -- One -- dismissed.

Rapes -- Five -- 1 convicted, three nolle prossed, and 1 ignored.

Assault with intent to kill -- Forty-four cases -- 20 convicted, 8 acquitted, 8 nolle prossed, 4 ignored and 4 forfeited bond.

Perjury -- Three -- 1 convicted, 1 acquitted, and 1 ignored.

Introducing spirituous liquors into the Indian Territory -- Two hundred and thirty -- 181 convicted, 15 acquitted, 14 nolle prossed, 14 ignored, and 7 forfeited bond.

Carrying on business of retail liquor dealer without paying tax -- eighty-seven -- 62 convicted, 7 acquitted, 6 nolle prossed, 10 ignored, and 2 forfeited bond.

Violating internal revenue law -- Sixteen -- 6 convicted, one acquitted, 4 nolle prossed, 4 ignored, and one forfeited bond.

Fraudulent claims against the United States -- four -- 2 convicted and 2 nolle prossed.

Selling proprietary medicine -- one -- convicted.

Forgery -- one -- convicted.

Embezzling U. S. Mail -- three -- all convicted.

Fraudulent pension contracts -- one -- convicted.

Passing counterfeit money -- two -- convicted.

Receiving stolen goods -- two -- 1 convicted and 1 acquitted.

Cutting timber from government land -- two -- convicted.

Illicit distilling -- five -- 2 convicted, one acquitted, one nolle prossed, and one ignored.

Intimidating witnesses -- one -- acquitted.

Resisting process -- seven -- 4 convicted, 2 acquitted, and 1 ignored.

Contempt -- 28 -- 1 convicted and the rest dismissed.

The grand jury during the same period considered 588 cases, of which 288 were convicted, 55 acquitted, 78 nolle prossed, 47 ignored, and 20 forfeited bond. In addition, there were:

Mistrial by jury 7

Number of applications for witnesses in behalf of defendant at U. S. expense examined and acted on 143

Number of witnesses recognized in open court 575

Number of murder cases tried by jury 20

Number convicted of murder 9; of manslaughter 4 13

Number of days consumed in trial of murder cases 116
Number of accounts examined and allowed for actual expenses 26
Number of orders to pay witnesses..... 1,996
Number of marshal's accounts current examined and approved 45
Number of other accounts, commissioners'&c., examined and approved 30
Number of sentences passed upon defendants convicted.. 368
Number of civil cases on docket November 1, 1882 70
Number of civil cases commenced during year 158
Number of civil cases pending between November 1, 1882, and November 1, 1883 228
Number of civil cases disposed of between November 1, 1882, and November 1, 1883 92
Number of other orders made during said period in relation to jury, commissioners, &c., and entered of record.396
Number of pages of record written and made up during said time 1,528
Number of days of court held during said year.....291

The court during this period had convened regularly at 7:30, took recess at 12 noon till 1:30 o'clock, and adjourned about 5 p.m. Frequently, night sessions lasting till 11 p.m. had been held.

At the November 1883 term there had been 59 convictions. Twenty-two of those convicted were sentenced to the Detroit House of Correction. Two (Fannie Echols and Dan Jones) had been found guilty of murder, while 35 had received jail sentences. Thirty cases were disposed of by acquittal on jury trial or nolle prosequi.

In jail awaiting the February term of court were 35 prisoners, charged as follows:

Murder	15
Assault with intent to kill	3
Larceny	9
Introducing spiritous liquor into Indian Territory	7
Embezzling U. S. Mail	1

All told, there were 59 confined in the U. S. Jail, 20 of whom were serving time and four awaiting sentence for capital crimes. Of these 59, three were women, Fannie Echols, a white woman with a little baby charged with murder, and a white girl doing time for larceny. 39

Chapter XI

Pressure Mounts for the Construction of a New Jail

When the Court for the Western District convened for the February 1884 term on Monday, the 4th, the courtroom had been "cleaned up" and recarpeted. [1] A number of important cases were disposed of by the February term of Judge Parker's Court.

Thomas L. Thompson and James O'Holeren were bootleggers. They set up shop in 1883 at Humphrey Colbert's, 18 miles southeast of Johnsonville in the Chickasaw Nation. Besides being sickly, O'Holeren was a stranger to the area.

The neighbors first noticed that O'Holeren had disappeared, when Thompson began asking if they had seen his partner. Thompson explained that O'Holeren had started for Denison, Texas, for treatment and should have returned within 20 days. The designated time had passed, and O'Holeren had failed to show up.

When an overly inquisitive neighbor asked why he had Jim's horse in the barn, Thompson explained that he and his partner had traded mounts. It was soon observed that Thompson also had in his possession the horse he claimed to have swapped with Jim. Thompson explained this, by saying that he had "found the horse, saddled and bridled, but minus a rider." Consequently, he was afraid that something terrible had happened to his friend. He urged that a search party be organized.

For the next ten days, Thompson continued to fret. Finally, the suspicions of the neighbors were aroused. Several men contacted Captain T. W. Walker and rode over to Thompson's cabin. As they rode up, they noticed a terrible stench and a swarm of flies hovering over the well. When questioned, Thompson said the foul odor came from a dead hog that had fallen into a dry well. He sought to keep the men from investigating the smell. When he saw that they were determined to lower a man into the well, Thompson confessed that he had killed O'Holeren, had thrown his body in the well, and poured in three barrels of ashes.

According to Thompson, his partner had attacked him with a knife on September 20 and had chased him out of the house. In self-defense, Thompson had snatched up a maul-shaped club used for pulverizing corn and bashed in O'Holeren's skull. The club was found near where it had been dropped. Examining the club, they found it was bloody on the small end; this indicated that the person who had used it had blood on his hands when he picked it up. The remains of the dead man were removed from the well. On doing so, it was noticed that there was a stab wound in the breast.

Thompson's attorneys at the trial were unable to give a satisfactory explanation of how O'Holeren had received the chest wound. The jury on February 22 wasted no time in bringing in a murder verdict against Thompson. [2]

William Bullock of Howard county, Arkansas, started for the Indian Territory with a herd of cattle in June 1883. His four motherless children remained behind with relatives. After disposing of the cattle, Bullock started back home. He was afoot. Passing through the Red River country, Bullock on June 27 encountered John Davis, a full-blood Choctaw. The two men talked awhile, then each went his way.

Bullock had hardly passed from view before the Indian decided to kill and rob him. Taking a short cut through the woods, Davis planned to strike the road ahead of his victim. When he came out on the road, he saw from the tracks that Bullock had already passed. Once again, the redman took to the woods and met with the same result. A third swing through the timber brought Davis out on the road ahead of Bullock.

Concealing himself behind a log, the Indian waited. Bullock came into view and was ambushed. Going through the pockets of the dead man, Davis found $16.

The body was discovered within a short time. Since no one was able to identify it, it was buried in a lonely road side grave.

When Bullock failed to return from the Indian Territory, his friends became alarmed. Suspecting foul play, a search was undertaken and the grave found.

Meanwhile, Davis had talked too much. Under the influence of whiskey, he had told several people of the murder. He also informed the girl with

whom he was living of the foul deed. When taken into custody, Davis was wearing boots which were identified as Bullock's, and had the dead man's pocketbook on his person. Davis was found guilty; the jury returning within ten minutes after leaving the courtroom. 3

A second Indian, Jack Womankiller, was brought before Judge Parker at this time charged with murdering a white man. Nathaniel Hyatt lived in the Cherokee Nation, 13 miles from Maysville, Arkansas. On May 7, 1883, Hyatt set out on foot for Arkansas. He was one of the solitary travelers who were always coming and going across the Indian nations. Hyatt never reached Arkansas. When his wife and friends started asking questions, it was learned that when last seen, Hyatt was with Jack Womankiller. The redman, who was on horseback, was said to be drunk and carrying two kegs of whiskey.

On the 10th, a rider observed a large flock of buzzards feeding near the road. Investigating, he found a body, badly mutilated by the buzzards. Hyatt's wife was sent for; she identified the body by the coat, vest and cane as that of her husband.

Since the dead man was within two miles of the home of an Indian named Tehee, the deputy marshals questioned him. Tehee told them that Womankiller had stopped in for dinner on the evening of the 7th. When Tehee asked why the white man hadn't stopped, Womankiller remarked, "Oh, I sent him along, it don't make no difference; I intend to kill him and you can look out for the buzzards up that way." When he left Tehee's, the drunk Indian had ridden in the same direction as Hyatt had gone.

By the time, Womankiller was taken into custody at Tahlequah, he had told his girl friend, Ida Jones, of the murder. While "crazy drunk," he had also boasted of the crime in front of a crowd of Indians.

Womankiller's big talk and the circumstantial evidence brought a quick conviction. On Wednesday, March 12, the jury pronounced Womankiller guilty. 4

Julius Fulsom was more fortunate than Thompson, Davis and Womankiller. A wealthy and influential Choctaw, Fulsom rented land to W. F. Denton, a white farmer. Denton and Fulsom had a violent argument on October 13, 1883, over the division of the crop. Fulsom killed Denton. At the November term of court, Fulsom had given himself up and demanded a trial. The U. S.

commissioner allowed Fulsom to post bond until his case could be docketed. At the end of February, Parker tried the case.

Fulsom, as anticipated, pled self-defense, claiming that Denton had attacked him with a hoe, which was exhibited at the trial. Since there were no eyewitnesses, the jury was compelled to weigh whether the Choctaw was telling the truth. At the time of the trial, the Harvard educated Fulsom was 55 years old. Much to the surprise of Fulsom, the jury on Monday, March 4, returned a verdict of guilty of manslaughter. [5]

Monday, April 28, dawned "cloudy and gloomy" at Fort Smith. A visitor at the U. S. Courthouse could sense that something unusual was about to transpire. The officers and clerks "went about their duties quietly, and spoke in subdued tones." Judge Parker had a troubled expression, as one might well have before performing a disagreeable assignment. Several armed deputy marshals wandered about.

At 9:30 o'clock Judge Parker took his seat; Marshal Boles was ordered to bring up three of the prisoners who had been found guilty of capital crimes. Silence gripped the courtroom as Thomas Thompson, Jack Womankiller, and John Davis were brought in. They were accompanied by the guards and two interpreters.

Thompson was the first called to rise. When asked by the judge if he had anything to say why the sentence of the court shouldn't be passed, Thompson replied that he had killed a man, but that he hadn't cut him with a knife. The court then passed sentence. Thompson was doomed to die on the gallows on July 11, 1884.

Through an interpreter Jack Womankiller was sentenced to be executed on the same day. Womankiller had nothing to say beyond that it was "all right."

Parker also used an interpreter to doom Davis. By his remarks, Davis demonstrated that he hardly realized his position, because he asked the court "to be light on him."

Dan Jones and Mat Music followed the trio into the courtroom. Music was called first. In an angry tone, he remarked that he wasn't guilty of rape, "but that if the laws of the United States hanged innocent men...he would have to stand it."

Jones' motion for a new trial was overruled before Parker passed the death sentence.

The last of the felons to be hailed before the judge was Fannie Echols, the first female to be convicted of a capital crime in Parker's court. She was "plainly though neatly dressed, and wore a nicely laundried sun bonnet." Fannie informed the court that "if she had not done what she did she would have been killed herself." She stood up and listened with no show of emotion as Parker sentenced her to the scaffold. When being taken from the courtroom, however, she broke down, and was removed to her cell weeping. [6]

Marshal Boles' hard-riding deputies made certain that Parker's court had plenty of business. Deputy Marshal Andrews and his posse were at Siloam Springs, Arkansas, on Saturday, December 1. Four Indians visited town late in the afternoon. As the redmen were returning to their homes, Andrews and his men tried to stop them four miles southeast of Siloam Springs. The Indians refused to obey the lawmen's command to halt and opened fire. In the exchange, one Indian (Noisy-Water) was killed and two horses wounded. As the Indians fled, they abandoned five gallons of whiskey. [7]

Deputy Marshal Marks was more fortunate than Andrews. Marks reached Fort Smith on March 10 and turned over to Jailer Burns five prisoners. The first one Burns logged in was Daniel Luckey. Only three months before, Dan had been pardoned by Chief Bushey, head of the Cherokees for the murder of an Indian named Cobb. Before being pardoned, Luckey had spent 20 months in jail at Tahlequah. During this time, he had been shackled and never permitted to leave his cell.

Clem. Kannady was charged with murdering John Vann, near Muskogee, four years before.

Lawrence and Charles Baker had been taken into custody for larceny. They were the sons of the notorious Jim Baker, who had died in prison. While Marks and his posse were arresting Lawrence, Charley had exchanged shots with the lawmen. Fortunately no one was injured, but for his actions Charley would now have to face a charge of "resisting process."

The fifth man was Zeke Moore, a cattle rustler. [8]

* * *

A rapping of Judge Parker's gavel signified quiet, and the May term of the Court for the Western District was called to order on Monday, the 6th. Judge Parker on studying the report of Jailer Burns found that there were 48 prisoners in the U. S. Jail awaiting trial. They were charged:

Murder	16
Assault with intent to kill	8
Arson	1
Attempt to wreck train	2
Counterfeiting	2
Illicit distilling	2
Larceny	10
Introducing liquor into the Indian Territory	7

In addition, a large number of people were out on bond. 9

The trial of Robert Tittle for the murder of John Mizer began on May 24, and occupied the court until the last day of the month. Tittle was accused of killing the victim on June 7, 1872. Since that time he had continued to reside in the Maysville area until arrested by Deputy Marshals L. W. Marks and West Martin, the previous August in Vinita.

The defendant was represented by four powerful lawyers, Talliaferro, T. H. Barnes, T. M. Gunter, and Hugh F. Thomason. These men argued that their client had shot in self-defense. Prosecutor Clayton based his case on the testimony of four witnesses—Mizer's wife (who had remarried), the deceased's brother and sister, and niece. All swore that Tittle had ridden up to Mizer's cabin and called him outside. After words had been exchanged in regard to a debt of $1.75, Tittle had gunned Mizer down. At the time, they testified, Mizer was unarmed.

The two witnesses put on the stand by the defense told a different story. They said that the two men had exchanged words; Mizer had drawn first, but Tittle had shot straighter.

After Parker had charged the jury, the jurors filed out of the courtroom. The next day, June 1, they returned, and Judge Parker was called. Robert Tittle was brought in between two guards, an anxious expression on his face. His mother, his only relative present in the courtroom, fearing the result, left. When the foreman announced the verdict, Tittle was unable to hear what he was saying.

He asked that it be repeated.

Judge Parker replied, "Not guilty."

Bob Tittle, unable to contain himself, shouted, "A righteous verdict, by God!"

When evaluating the trial, the editor of the Elevator observed, the conflict in testimony, "coupled with the fact that the defendant had never left the country, together with the great lapse of time since the killing, was probably what the jury based their verdict upon." [10]

In rapid-fire order, the court took up three more murder cases. William Curtis was tried for killing David McDonald in the Cherokee Nation on April 28, 1883. He was declared guilty of manslaughter.

George Brashears and Jeff Robinson, accused murderers, were released on June 2, when their cases were nolle prossed. [11]

Panhandle Jack was a Texas cowboy. On January 31, Jack was riding a wild pony up a street in Tulsa. The animal fell. Tom Stufferbeam, a spectator, started laughing and guying Jack. The cowboy was in a bad humor from his fall. As soon as he gained his feet, Jack started bullying Stufferbeam.

His ruffled feeling assuaged, Jack left the scene, put up his pony at a livery stable, and came down the street afoot. Jack entered a store near where Stufferbeam was standing. Hardly had the cowhand disappeared inside the door, before Stufferbean snatched a shotgun from the wagon of some hunters who had just driven up. He followed Jack into the store. Throwing the shotgun to his shoulder, Stufferbean ordered the cowboy to drop his pistol. Jack disregarded the command and drew. As he did, Stufferbean sent a charge of buckshot crashing into his face, putting out both eyes and knocking all his teeth loose. Some of the shot hit a bystander in the shoulder. Jack died from his wounds. Stufferbean was arrested by Deputy Marshal Marks and taken to Fort Smith.

Attorneys J. K. Barnes and B. H. Taboo argued the case so well before Parker's Court that the jury acquitted Stufferbean. [12]

Mrs. Mary Matoy had lived with Arch Casey off and on for years. On December 3, 1883, Arch drove his wagon up to her house near Fort Gibson. Arch was drunk, and began abusing his lady love. Striking her, Arch knocked her into the woodpile. He then turned his ire on Mary's 12-year-old son,

James. Arch started after the lad brandishing an ax handle. The boy raced into the house and snatched up a gun. When James came out the door with the gun, Arch charged toward him. Suddenly, the stillness was shattered by a blast. The mother raced toward the sound of the shot and found Arch sprawled on the ground.

Mary and her son decided to conceal the crime. They carried the body into the house, laid it on the slats of the bed, and covered it with a quilt. As soon as it was dark, they hitched up the wagon. Loading the corpse onto the wagon, they drove to the area where Casey had lived. There, they left the team and wagon, and returned home on foot through the woods.

The next day, the wagon and body were found. When the neighbors investigated, they traced the wagon tracks to Mrs. Matoy's. There, they found dried blood in two places -- on the bed and leading from the bed to where the wagon had been parked. This led to the prompt arrest of Mrs. Matoy and James.

At the trial, the prosecution claimed that Arch Casey had been killed on the bed. The jurors apparently sought to compromise, because on Thursday evening, June 17, they found Mrs. Matoy and her son guilty of manslaughter. The next day, Judge Parker passed sentence, giving the mother and son the maximum penalty, 10 years in prison and a fine of $1,000. [13]

July 11, the day on which six felons were scheduled to die, was soon at hand. According to the editor of the Elevator none of the condemned "seem to be making any great preparations for their departures unless it is Fannie Echols, who was baptized in the river" on the last day of June by the minister of the Negro Baptist Church. [14]

Before July 11, three of the six were saved from the gallows. Mat Music, the rapist, received an unconditional pardon from President Arthur, while on the evening of July 3, Marshal Boles received a telegram from Washington that the President had commuted the sentences of Fannie Echols and Dan Jones to life imprisonment. This action was not unexpected by the Fort Smithites, because Judge Parker and District Attorney Clayton "had recommended it strongly." [15]

Friday, July 11, was bright and beautiful at Fort Smith. The condemned

had slept well and rose early on the fatal morning. Each was furnished by Jailer Burns with a suit of "black alpacca clothing, clean white shirts, shoes, etc." At an early hour, their spiritual advisers arrived. Reverend Berne of the Episcopal church attended Thompson; Reverends Butt and Frank Parke of the Methodist church looked after Davis' welfare; the spiritual needs of Womankiller were supplied by Reverend Moore of the Negro Baptist church.

At 10:50 a.m. Chief Deputy Marshal Barnes entered the jail and read the death warrants. Jailer Burns then placed a light pair of handcuffs on each of the men. All the prisoners in the jail came forward to bid the doomed farewell.

The "ponderous doors" swung open at 11 o'clock, and the execution party started for the gallows, being joined on the way by the ministers. Ascending the platform of the scaffold, the prisoners seated themselves. After the four men of God had given the men last rites, Jack Womankiller asked that they be allowed to sing a hymn. Permission was granted. The ministers said goodbye and departed. Stepping forward, the condemned took position on the trap. While their arms and legs were being pinioned, Womankiller and Davis stood firm and erect; Thompson made a few remarks of a religious nature. After the ropes and caps had been adjusted, the trap was sprung. They were given a drop of six feet. Their necks being broken, all were declared dead within 14 minutes. Two minutes later, they were taken down and placed in coffins. By 1 o'clock their bodies were resting quietly beneath the sod.

Not more than 50 persons witnessed the execution. Before being dropped, Thompson had handed Father Berne a sealed envelope containing his version of the killing of O'Holeren. Thompson, as his last request, asked that the club which he had used to kill his victim be used to mark his grave. He wished it inscribed:

T. L. Thompson

Born the 10th Day of April, 1850.
This club prolonged my life from the 20th of September, 1883, to the 11th of July, 1884. [16]

Deputy Marshals J. H. Mershon and Bass Reeves had reached Fort Smith

at the beginning of July with 14 prisoners from the Choctaw and Chickasaw Nations. One of those in custody, Ed McCurray, was badly wounded in the groin. He and his partner had been run down by the Indian police. In the ensuing gunbattle, McCurray had been wounded, his partner killed, and one of the police shot in the knee. McCurray had been hauled all the way from Tishomingo lying on a mattress in the bottom of a wagon bed.

While on this sweep through the Territory, Mershon had killed a man named Webb, who was wanted for murder and had resisted arrest. Near Fishertown, Mershon had attempted to arrest Hamilton, a full-blood Creek, on a charge of murder. The redman chose to flee. During the pursuit, Mershon's horse fell with him; the posse which was following closely galloped over the deputy marshal and horse, severely bruising both. Taking advantage of the confusion, Hamilton escaped, only to die from the wounds received in the chase. [17]

Money provided by Congress to pay the costs of running Judge Parker's Court was frequently in arrears. Marshal Boles received funds at the end of July to pay witnesses and jurors for services rendered since June 30. As yet, the marshal hadn't received any money from Washington to pay the witnesses and jurors for their services prior to July 1. [18]

* * *

Although a tremendous amount of business had been transacted at the May term of court, Judge Parker found a full docket awaiting action when the August term began.

Sam Walters was convicted of bribery during the third week of August. Back in 1879 while Upham was marshal, Walters had been a deputy. While acting in that capacity, he had arrested Campbell for manslaughter. Campbell had been lodged in the Rocky Comfort jail. While there, the prisoner gave the lawman $125 to allow him to escape. The affair didn't come to light until 1882, when Walters had been arrested and brought to Fort Smith for trial. While out on bond, he had jumped bail and fled the state. Nothing more had been heard of Walters until June 1884, when he walked into Marshal Boles' office and surrendered. [19]

Allen Atkins was tried during the last week of August for the murder of John Dukes. On May 25 the two Negroes had had an argument down in the

Poteau bottom. Picking up a club, Atkins had killed Dukes. After considerable deliberation, the jury found Atkins guilty of manslaughter. [20]

Three men were acquitted of murder charges by the Court for the Western District at the end of August and the beginning of September. William Clingan and Charles Haines were charged with being members of a party that had hanged Monday Roberts and Robert Jones on July 26, 1880. When the jury brought in its verdict on August 30, it declared that it had no jurisdiction over Clingan, while Haines was pronounced not guilty.

In April 1883 the badly decomposed body of an unknown man had been found about one and one-half miles from Limestone Gap. Most of the clothing had been burned from the body. Several weeks later, a young Choctaw, Thomas McGee, bragged to his friends that he had killed and robbed the man in question. This led to McGee's arrest. Upon investigating, the authorities discovered that about the time of the murder, Tom was "flush with money." This was considered remarkable since Tom hardly ever worked. The testimony of those to whom Tom had confessed was not corroborated by other evidence produced by the prosecution, consequently, the jury, after remaining out only a few minutes, freed McGee. [21]

Not so lucky was William Dickson. Sam Laster owned a store at Lake West, Choctaw Nation. The local Negroes on December 10, 1883, decided to hold a dance. In response to their request, Laster agreed to let them use a vacant storeroom. The committee in charge of arrangements asked the merchant to be present to keep order.

While the dance was in progress, William Dickson and Mat Brown rode up. Dismounting, the two heavily armed Negroes entered the hall. Dickson began cutting up and climbed up on the counter on one side of the room. He and his companion proceeded to make nuisances of themselves by harassing the dancers. Laster objected. When he tried to compel the two intruders to quiet down and leave, Dickson pulled out his pistol and killed Laster. Both Dickson and Brown were brought to trial. Dickson was convicted of murder on September 8, while Brown was acquitted. [22]

Orlando Bond, a youth of 16 summers, came to the Indian Territory from Marietta, Ohio. He moved in with his uncle, George Stroud, a resident of the Creek Nation. On April 9, 1884, Bond had gone to the

home of W. T. Townly, who was unacquainted with the lad. Bond told Townly that his uncle and a neighbor, John Smith, were planning to take his life. If Smith, he continued, came around, Bond swore he would kill him.

After the boy had left, Townly concluded that he was crazy. He decided to go warn Stroud of his "wild talk." While en route to Stroud's, Townly passed Smith's cabin which was on the Stonewall road, 30 miles southwest of McAlester. On doing so, he was surprised to see Bond talking to Smith. Calling to Smith, Townly took him aside and reported what the boy was telling about the neighborhood. Accompanied by Bond, the two men started for Stroud's. Before they had gone 60 yards, Bond drew his pistol and mortally wounded Smith. At the time of the attack, Smith was unarmed.

At the trial, the defense claimed that Bond was insane. This plea was sustained by the jury. When the verdict was rendered, Judge Parker remanded the boy to the jail, saying that since the jury had found him insane, the "court could not turn him loose on this community until some one came forward and took proper charge of him." 23

The Bond trial was the last case of any particular interest disposed of by the August term of court. While the court might adjourn, there was no rest for the deputy marshals.

Deputy Marshal Bass Reeves reached Fort Smith on September 1, with 15 prisoners. Two of the 14 were charged with murder. Chub Moore, a full-blood Chickasaw, was accused of being the leader of a band of vigilantees who in 1877 had hanged a Negro for an assault on a white woman. Frank Pierce of Reeves' posse had made the arrest on August 7 at Johnsonville. Moore resisted. Pierce shot Moore in the right thigh. To bring him to Fort Smith, the lawmen loaded Moore in a covered hack and placed him on a mattress. Moore, Dr. Bennett reported, had survived the 265-mile trip remarkably well.

Following his arrival at Fort Smith, Moore's condition took a sudden turn for the worse. By Friday, the 5th, it was apparent that the only possible way of saving Moore's life was to amputate the shattered limb. On Saturday, the operation was undertaken; the leg was taken off immediately below the hip. An hour before he was taken to surgery, Moore made a confession. He gave the names of a number of rustlers. In regard to the lynching of the

Negro near Erin Spring, Moore said that he and another man had arrested the Negro and were en route to Fort Sill. They had been overtaken by another party who seized the Negro.

The other person brought in by Reeves' posse charged with a capital crime was Hanna, who had killed a white man on February 24.

Before he had returned to Fort Smith, Reeves told Marshal Boles, he had made a shocking discovery: posseman Frank Pierce was a notorious horsethief. Pierce was alerted to Reeves' discovery and fled the country. 24

Reeves, at the time that Pierce had deserted, held warrants for the arrest of Frank Buck and John Bruner. While on the Canadian, Reeves encountered the two wanted men but didn't recognize them. He asked them about several persons for whom he held writs. Buck and Bruner agreed to serve as guidesides. At noon the posse camped. The cook turned to and started preparing the meal. Reeves was shocked to see Bruner "stealthy pulling his pistol." Suspecting that something was amiss, Reeves stepped behind his horse and confronted Bruner. As he did, the marshal grabbed Bruner's pistol, and at the same time he drew his own. Glancing over his shoulder, Reeves saw Buck was also drawing. Reeves was the faster gun. Bang! Bang! roared the lawman's gun; Buck fell to the ground dead. 25

Shortly thereafter, Deputy Marshal Seale came in and reported that his posse had killed a man charged with larceny. The editor of the Elevator was disturbed by this. He was afraid that many of the lawmen were too ready to throw lead, he wondered what would be done with "this murderer, or whether it is an offense at all for a marshal or a posse to shoot a man charged with larceny in the nation."

"Why is a U. S. officer," he inquired, "not punished for unjustifiably killing a man? No man is so destitute of a common sense as to know he has no right to shoot a man not under arrest and not convicted of a crime, merely because he runs from him." 26

Marshal Boles and a strong force of guards left for Detroit on September 29. They had with them 33 prisoners, whom Judge Parker had sentenced to the house of correction. According to court records, this was the largest number of prisoners ever taken away from Fort Smith at one time. Even with the departure of these men, 61 were still confined in the U. S. Jail. 27

* * *

Marshal Boles on October 9 replied to a letter he had received from Attorney General Benjamin H. Brewster. The attorney general, in response to pressure from the public demanding improvements in conditions at the U. S. Jail, wanted to know the number of prisoners currently incarcerated at Fort Smith, the average number usually confined, a description of the rooms used for "jail purposes," and what facilities Boles had for the care of his prisoners.

To answer Brewster's first question, Boles prepared a table listing the number of prisoners confined in the U. S. Jail at stipulated periods since the first of the year:

Date, 1884.	No. in Jail 1st of Month	Committed during month	Confined during month
January 1st.	78	17	95
February 1st.	53	61	114
March 1st.	74	66	140
April 1st.	102	41	143
May 1st.	80	68	148
June 1st.	90	30	120
July 1st.	51	64	115
August 1st.	77	66	143
September 1st.	106	41	147

Total number during 9 months	454
Number in Jail 1st Jan., Brought down	78
Total number confined during 9 month	532

The total number of days these prisoners remained in jail during this period was 21,599 which being divided by 274, the number of days in this period, gives us a daily average number in confinement of 78.82 +.

Boles reported that the men and boys were confined in cells in the basement of the old Soldiers' Quarters. This building, he continued, was:

> about 60 feet square, outside measurement, and is divided by a partition wall through the center, making two cells — The basement of the building is made of stone — the wall being 2 1/2 feet thick — above the basement the building is of brick, the roof being orginally covered with slate, but is rapidly getting out of order — needing repairs. The bottom of the cells are covered with flag stones, which is about two and one half feet below the surface of the Earth — Length of Cells 55 feet, breadth 29 feet, height, about 7 feet.

The main door to the cells are 6 feet 3 in high, by 4 feet wide. The windows in the front of the cells are 6 feet and 4 inches high, by 3 feet and 3 inches wide, those in the rear end of the cells being not quite — so large — There are four windows in front and four in rear of each cell.

There is also a small door in the rear of each cell but they are not used, and hence are kept securely closed. The front doors are secured by two shutters, the one on the inside being of heavy wood, that on the outside being of bar iron. Inside each cell and including each front door is built of light boards a small room out of which a door opens into the cell. These rooms were built — as a protection to the front doors and to prevent a rush being made by the inmates upon the Turnkeys,&c, and in these rooms the lawyers see and consult with their clients.

When females were committed, Boles had them lodged in the small brick house formerly used by the military authorities as the post guardhouse. The guardhouse was about 75 yards from the entrance to the U. S. Jail, and as such when in use, it necessitated the employment of one extra guard during the hours of darkness.

Since there were only two cells of equal size, the marshal was compelled to confine:

> all criminals and those only charged with misdemeanors together in the same cell without regard to ages, charge or physical condition — The youth of tender years, often charged with only a misdemeanor, is confined for months with the condemned murderer and harden desperado — Besides this we have no place to keep the sick and wounded separate from the wild, noisy, unfeeling crowd around them.

Boles when the weather wasn't too warm, would on occasions have the sick taken to a room in the attic over the courtroom. This would have been done more often, but it required the employment of additional help to care for the patients.

To take care of the spiritual needs of the prisoners, Boles reported that "through the philanthropic kindness of the ministers of the Gospel and some of the Christian ladies and gentlemen of this city; we have preaching and Sunday schools in each cell every Sabbath."

The cooking and washing for the jail, the marshal wrote:

> is done in a little old board house about 75 yards away. The facilities for cookin. and the cooking, is, of course, supplied by Mr. Ayres who subsists the prisoners for me.

> We have some common pots or kettles with which water is heated in some old fire places in this house, to do the washing for the jail and prisoners, using coal oil barrels sawed in two equal parts for wash tubs -- I have no means of giving the prisoners baths, except to bathe their hands and faces ..., without allowing them to take a set-bath in the cell, using a half barrel for the tub.
>
> The urinal tubs, which take the place of the earth closet, shown in the diagram at No. 3. with the slop tubs from the wash stands shown at 4 ..., are removed twice a day, and carried outside the walls of the Fort some distance and emptied into pits dug for the purpose.

Situated as the jail was, it was only "with the most rigid and vigilant attention to its cleanliness and the free use of disinfectants" such as lime that Boles had been able "to keep up the good health of its inmates." As he informed Attorney General Brewster, the fear was always with him that "some contagious disease would get into the jail." If it did, it would be impossible to suppress it without evacuating the jail.

Several years before, when a smallpox epidemic was sweeping through the Creek and Cherokee Nations, Boles had recalled his deputies from the "infected districts" for fear of introducing that plague into the U. S. Jail.

The jailer's office, Boles informed Brewster, was a "little board shanty" in front of the guardroom. It was only about 9x10 feet and was "inadequate and unfit" for the purpose for which it was employed.

Since there were no storerooms for the jail and the property belonging to the inmates, Boles saw that the stores and personal gear were "packed away in the attic of the court room and in the jailer's office."

To help Brewster and the personnel of the attorney general's office understand what he was describing, Marshal Boles attached a ground plan of the U. S. Jail to his letter. [28]

* * *

The U. S. Court reconvened on November 2, 1884. Little time was lost in empaneling the juries for the November term. The docket which was "quite large;" included 56 prisoners lodged in the U. S. Jail. These prisoners awaiting action by the Court for the Western District were charged with:

Murder	11
Assault with intent to kill	8
Larceny	17
Rape	1
Bigamy	1
Whiskey cases	18

In addition, there were 66 men out on bond, making 129 cases on the criminal docket to be tried. [29]

A number of men were placed on trial for their lives at the November term of court.

George Alberti was a prosperous farmer in the Cherokee Nation. Having a large quantity of land, Alberti rented part of it to Henry Meadows. Alberti at this time employed an 80-year-old Negro, Fenn Morgan, to feed hogs and undertake other light chores on the Meadows' farm.

On August 4, 1883, Fred Ray, who lived at Henry Meadows' house, returned from Alberti's farm, where he had been employed for several weeks. While at Alberti's, Ray had chanced to overhear a passing remark that Fenn was supposed to carry from $800 to $900 on his person. Ray, after eating his evening meal, asked Henry Meadows' son, William, if he wanted some money.

The 16-year-old boy replied, "Yes!"

Ray told him to "get your pistol and follow me."

At first, William hesitated. Urged on by the older man, he let his greed get the better of his good judgement.

Twelve-year-old Joel Meadows followed his brother out of the house. The man and the two boys headed for the corncrib. As they walked up, Fenn was busy getting out a basket of corn to feed the hogs.

Ray demanded money.

The old Negro said he had none.

At this, Ray pulled his pistol, thrust it against Fenn's side, and repeated the command. Poor Fenn pulled from his pocket a dime and a penknife. Ray refused the coin and cursed the Negro.

Becoming frightened, little Joel fled to the house. As he dashed into the kitchen, Mrs. Meadows heard a shot. Her child screamed in terror, "There! they've killed old Fenn."

Moments after Fenn had offered him the dime, Ray pulled the trigger. The Negro staggered and collapsed. Whipping out his knife, Ray cut away Fenn's outside trousers. In the pockets of the inside pair, he found some

money. William Meadows was handed $8 as his share of the plunder.

By this time, Joel had returned. He was sent for a hoe. With the hoe a shallow grave was dug, into which Fenn's body was rolled. The hogs, within several days, had rooted up the corpse. Aided by the boys, Ray dragged the body to a lake about 400 yards away and pushed it into the water. This was on Friday.

The following Monday, Ray attended a Negro barbecue. While there, he remarked about Fenn's disappearance. Arrangements were made for the organization of a search party. This group would begin its search on Tuesday morning. Returning to Meadows' house that night, Ray told William to take two pistols, the knife, and the $8. He was to go to Claremore. There, he would catch the first train out of the Indian Territory.

When the Negroes reached Meadows' the next morning, Ray told them that he had found Fenn's body in the shallow water near the edge of the lake. Ray remarked that it was certainally suspicious the way young Meadows had disappeared, when he heard that the lake was to be dragged. At the same time, Ray pointed out that Fenn had been shot.

A warrant was sworn out for the arrest of William Meadows. Arrested, Meadows made a full confession. Ray, when confronted by Meadows' statement, denied knowledge of the crime.

Ray and the two Meadows boys were brought before Judge Parker's Court to answer for the crime. The jury in the third week of November brought in a verdict of guilty against Ray and William Meadows; little Joel was acquitted. 30

On May 15, 1880, Henry Rich, a well-to-do white farmer. and postmaster at Washita, was shot from ambush. At the time of the attack, Rich was en route from Caddo to Washita with the mail. Although badly wounded, Rich succeeded in reaching his home. Before expiring, he told his family that shortly before being fired upon, he had met Robinson Kemp and his stepson, Edmund Jefferson. It was theorized by several of the local authorities that Kemp and Jefferson, after talking with Rich, had taken a short cut through the woods and were waiting to waylay him. Friends of the two suspects were convinced that Rich had been assassinated by Martinas, a Mexican, and Thurman, a white gunman.

Martinas and Thurman were taken into custody at Denison, Texas, and extradited to Fort Smith. On the day set for the trial, the jury was called. Since no witnesses appeared to testify, the two suspects were released. By this time, the finger of suspicion had been pointed at Sam Munn and Peter Robinson. They were arrested, but discharged for want of evidence.

Kemp, who was a wealthy Indian of 65 summers, and his stepson were now taken into custody and charged with Rich's murder. After being held in the Fort Smith jail for several weeks, the Indians were released on bonds of $3,000 each. Both men were hailed before the August 1884 term of Judge Parker's Court. When their case was called up on August 8, Kemp failed to appear. It was discovered that he had jumped his bond and left for parts unknown. Jefferson was jailed. Kemp, fearing the result of the trial, had left his bondsman holding the bag.

Kemp surrendered to the authorities on October 12, and the case was rescheduled for the November term of court. At the trial which was held at the end of the first week of December, Prosecutor Clayton called several witnesses to the stand. They told of the words gasped out by Rich before he died, concerning Kemp and Jefferson. The defense produced a number of persons who swore that Kemp and Robinson were at home on the day in question, helping to erect an arbor under which to hold religious services. The Kemp-Robinson trial ended in a hung jury. [31]

Mason Holcomb had been born in Kentucky. Following the Civil War in which he had served in the Union army, Holcomb had emigrated to Missouri. While living in Missouri, Holcomb had taken a wife. From Missouri, the former soldier had pushed on into northwestern Arkansas. There, he settled first near Jasper in Newton county, and from there he removed to Franklin in Franklin county. Along toward the close of 1882, Holcomb drifted westward into the Indian Territory. He settled near McAlester's store on the Canadian River.

Holcomb and his friend, F. Seigal Fisher, took a job in the summer of 1883 putting up hay. While working in a hayfield on July 23, both men got drunk. After work, they started home together. An argument ensued. Holcomb shot his friend in the back. Leaving the body where it fell, Holcomb fled to Kentucky. Arrested at Mt. Vernon by Fisher's brother in March 1884,

Holcomb was brought to Fort Smith for trial.

Holcomb entered a plea of not guilty; he claimed to have shot Fisher in self-defense. He swore that Fisher had a pistol. When they had quarrelled, Fisher had drawn the weapon and threatened his life. In the struggle which ensued, Holcomb wrenched the pistol away from Fisher, and shot him in the back.

Prosecutor Clayton, through his searching examination of witnesses, demonstrated that at the point where the body was found the grass was knee high and very thick. Strange to say, he observed, the grass hadn't been knocked down. There simply was no evidence of a struggle, Clayton argued. The jury in weighing the evidence, decided on December 19 that Holcomb was guilty. [32]

Three years before Judge Parker had been appointed to the bench, there had been a killing near Tahlequah. William Feigle worked around the Cherokee capital in November 1872. Feigle, on November 24, had walked into town. Stopping in at a shoemaker's, he had his boots half-soled. With this business taken care of, Feigle left Tahlequah, taking the Fort Gibson road.

The next day, his body was found alongside the road, two miles from Tahlequah. Examining the corpse, the Cherokee Light Horse found that besides having been shot, Feigle's skull had been crushed by a heavy object, probably a stone. The unfortunate victim's boots, hat, coat and overshirt had been taken, along with any money, he might have been carrying. Feigle's murder caused quite a sensation. Since Feigle had no relatives in the Indian Territory, the authorities soon gave up their efforts to find the killer or killers. At the time, there was some talk that a Cherokee-Negro, James Arcene, and a full-blood Cherokee, William Parchmeal, might have done Feigle in.

Interest in the case finally lapsed. Eleven years later, Deputy Marshal Andrews was assigned to the Tahlequah area. Andrews became interested in the Feigle case. Reopening an investigation, Andrews was able to scrape up enough evidence to secure a warrant for Arcene's and Parchmeal's arrest. Arcene was apprehended on March 30, 1884, and Parchmeal in early August. Upon being taken into custody, Parchmeal talked. He took Andrews to the scene of the crime and showed him the rock that he and his confederate had

used to bash in Feigle's head. First, he explained, Arcene had pumped four shots into the victim.

The two men were brought before Judge Parker's Court. Turning on one another, Arcene and Parchmeal each claimed that the other was the murderer. The trial began on December 24, after 13 days, the jury was sent out to reach a verdict. The case ended in a deadlocked jury, and the jurors were discharged. [33]

William Hill lived just across the river from Fort Smith on the Jackson King place in the Cherokee Nation. On Monday night, September 9, the old gentleman was murdered. The killer had fired the fatal shot through a crack in the wall. The next day, Hill's son-in-law, William Phillips, was arrested. Charged with the murder, Phillips was lodged in the U. S. Jail. Most of the evidence against Phillips was circumstantial. On June 24 the two men had argued violently; as a climax to the dispute Phillips had shot the old man in the heel. Arrested, Phillips had posted a peace bond.

Bob Hill, a son of the deceased, and Bob Lackey were also taken into custody and charged with complicity in the killing. When they were brought before the U. S. commissioner, he listened to the evidence and ordered their release.

At this trial, Phillips repeatedly denied his guilt. The jury disagreed. On January 20, 1885, a verdict of guilty was returned. [34]

The five men (Mason Holcomb, Fred Ray, William Meadows, William Phillips, and William Dickson) convicted of capital crimes at the August and November terms of court were hailed before Judge Parker on January 31, 1885. Parker sentenced the felons to be hanged on Friday, April 17.

Deputy Marshal Mershon and his posse reported in at the U. S. Jail several days after the November term of court had opened with 14 prisoners. One of these, Bob Wolf, was charged with murder. Wolf had killed another Negro (Frank Stockbridge) three months before. Bob and his victim had been courting the same wench. On the day of the killing, Frank got to the home of the girl first. When Bob rode up, he found that Frank was beating his time. Frank made the mistake of laughing and jeering at Bob. This was more than Bob Wolf could stand. He pulled his gun and killed Frank, the

man who had the audacity to beat him out of his girl and then laugh in his face.

T. N. Hatfield was 50 years old, but he had raped a young girl. Besides wronging the girl, Hatfield had hired a local tough to do away with her father. The assault failed; the father recovered and swore out a warrant against his child's traducer.

On Monday, November 3, three of Mershon's posse had gone to the home of old man Layson at the head of Glass Creek. They held warrants for the arrest for murder of Layson and his son, Jonas. As the posse rode up, old man Layson, his son, and several friends opened fire. A lively battle ensued. Old man Layson was killed and Jonas badly wounded. Two of the posse, Bud Pusley and George Pounds, were wounded. Pusley was taken to Denison for hospitalization. There, he died on the 10th, another victim in the struggle to bring law to the Indian Territory. 35

The omnipresent Mershon was back at Fort Smith on December 26. At that time he turned over to Jailer Burns six prisoners. Since the weather was very cold, the prisoners who had been riding for several days in the wagon were glad to get inside. Two of them, William and Kimon Hamilton, were charged with murdering a Negro, Andy Colbert, near Tishomingo. A brother of the Hamiltons had been slain, and Colbert was presumed to be implicated. The Hamiltons had gone looking for Colbert and had shot him to death. Since then, although the killing had taken place in 1883, the Hamiltons had eluded the law until captured at their home by three of Mershon's posse. The previous June, a posse had surprised the Hamiltons, but they had escaped., though they were compelled to abandon their Winchesters. 36

Jailer Burns on January 6, reported that his jail was becoming badly overcrowded. An examination of his register showed 119 inmates. 37

* * *

The 48th Congress on July 4, 1884, had approved two bills, which, though their effect was little noticed, could be considered attacks on the jurisdiction of the Court for the Western District. One of these enactments granted right of way through the Indian Territory to the Southern Kansas and the Gulf, and the Colorado & Santa Fe railroads. The other gave to the

United States Circuit and District Courts for the Northern District of Texas, the Western District of Arkansas, the District of Kansas, "and such other courts as may be authorized by Congress," concurrent jurisdiction over all controversies arising between the Southern Kansas and the Gulf, and the Colorado & Santa Fe railroads and the nations and tribes through whose land they might be constructed. In addition, the aforementioned courts would have jurisdiction in cases arising between the inhabitants of said nations or tribes and the railroads in question, without reference to the amount in controversy, and "the civil jurisdiction" of said courts "was extended within the limits of the Indian Territory" without distinction as to the citizenship of the parties so far as was necessary to carry out said acts." 38

Chapter XII

Congress Authorizes the Construction of a Courthouse and Jail at Fort Smith

The only case at the February 1885 term of court which elicited much local interest was the retrial of Arcene and Parchmeal for the murder of Feigle. This time, the jury was able to reach a verdict. On March 28 the foreman announced that both men were guilty as charged. [1]

Because of an inadequate appropriation by the 48th Congress for the Department of Justice, there would be no money to defray the expense of a May term of court. The witnesses and jurors were accordingly notified to remain at home till July. This would constitute a great hardship on those persons in jail awaiting trial.

At the time that the Elevator went to press on April 17 there were 45 prisoners in jail scheduled to stand trial. Of these, 20 were charged with murder. Unless Marshal Boles recalled his deputies from the Indian Territory, it was feared that the jail would be filled to overflowing before a July term of court could be convened. To pen up from 100 to 125 men in two cells not over "30 x 50 feet," in the editor's opinion, would be "very hard on them, especially during the hot weather."

Turning his ire on the government, the editor observed:

> The appropriations to run this court have fallen short every year for three or four years past, and it is certainly poor economy on the part of Congress to make insufficient appropriations, when it is plain that it only tends to add additional expense, for these men must be tried and the longer their trials are delayed the greater the expense to the government, and the more unjust to the prisoner, for in many cases innocent men may be incarcerated. [2]

On Saturday night, April 11, a telegram from President Grover Cleveland was delivered to Marshal Boles, announcing that the death sentences of Holcomb, Ray, and Meadows had been commuted to imprisonment for life. [3] Ray's attorneys, Winchester and Bryant, had prepared and forwarded a documented letter to the chief executive on the behalf of their client certifying that until the murder of Fenn Morgan, he had let a good life.

The people of New Madrid county, Missouri, where Ray had resided for ten years had prepared and signed a petition in his behalf. The editor of the Elevator theorized that Meadows' sentence had undoubtedly been commuted because of his youth, while Holcomb had been spared because of the extenuating circumstances in the case and the petition signed and forwarded to Washington by his friends.

Monday evening, the 13th, brought another telegram from the President. Colonel Cravens had succeeded in getting the President to commute Dickson's death sentence to life imprisonment. This left only one man, Phillips, to be hanged on Friday, April 17. As the Elevator went to press on the 16th, Phillips was reportedly "anxiously awaiting and expecting a commutation."[4]

Indeed, Phillips was so confident that his sentence would be commuted that "he had made no preparations to meet his fate." On Friday morning, however, Phillips weakened and sent for a minister. Reverend T. J. Hendrickson responded, and did what he could to prepare the condemned man. Even so, Phillips didn't abandon all hope until 11 o'clock, when a dispatch was received from Washington announcing that President Cleveland declined to interfere in his behalf.

Phillips then sent for his attorney, Colonel Walthen. He asked Walthen to have his body taken to Mrs. Gans' house, where his wife was staying. Walthen was to see that the body was shipped to Ozark for burial alongside Phillips' first wife. The lawyer would sell the cow which Phillips had left at Gabe Payne's place to defray the expense of transportation.

About 11:30 a first class dinner was brought to the condemned by order of Colonel Walthen. After devouring the meal, Phillips spent his time until his execution (which was set for 3 p.m.) in religious exercise and conversing with his friends. At the appointed hour, Chief Deputy Marshal Barnes entered the cell and read the death warrant. Next, Phillips said goodbye to his fellow-prisoners and "marched forth to death, walking erect and firmly," his spiritual adviser on one side and Jailer Burns on the other.

As soon as the party reached the gallows, Reverend Hendrickson offered a prayer in behalf of the condemned. After Hendrickson had finished, Phillips stepped forward and took position on the trap, immediately under the noose. His legs and arms were pinioned. When asked if he had anything

to say, Phillips said, "No!" The black cap was drawn over his head; the rope adjusted.

At this moment, it appeared that Phillips finally realized his "awful condition and certain doom" for he began repeating the Lord's prayer. As the words "Thy will be done" issued from his lips, the drop fell, and the felon dropped through the trap to his death. Phillips' neck was broken. Within 14 minutes his pulse had ceased to beat, and he was pronounced dead. [5]

On Friday, May 1, a posse of 13 Texans led by Indian policeman James H. Guy moved against a well-organized gang of cattle rustlers which operated in the Delaware Bend section of the Chickasaw Nation. The lawmen were hot on the trail of five rustlers (Tom Green, Jim and Pink Lee, Ed Stein, and Della Hunter). Before reaching the Lees' cabin on Mud Creek, Guy and his men dismounted and approached on foot. John Davidson met the lawmen about 100 yards from the house. He was placed under arrest, and a man detailed to guard him. As the posse neared the cabin, Ed Stein threw open a shutter and demanded to know what the posse wanted.

Guy called that he had warrants for the arrest of the Lees and Hunter. Stein was seen to speak to a confederate. He then told Guy that if he had any business to step around to the front of the cabin. Guy did as requested. Hardly had he done so before several chinks from between the logs were knocked out, and two shots were fired at him, killing him instantly. A fierce gunbattle ensued. Three additional lawmen (Andy and James Roff, and William Kirksey) were slain. The rest of the posse retreated to their horses, abandoning their dead comrades. After the posse had been routed, the outlaws fled the cabin and started for Delaware Bend. As they did, they stopped and told several people that "there were several corpses up at the ranch which would spoil unless they received attention." The report of the slaughter aroused the countryside; a large posse was soon organized. [6]

Jim and Pink Lee were able to elude the posse. They seemed to keep just far enough ahead of their pursurers to avoid capture. To make matters more difficult for the authorities, the two brothers appeared to have more sympathizers in the Delaware Bend area than they. Tom Green and Ed Stein, however, were captured and taken to Sherman, Texas, where they were jailed.

They claimed that they had left the cabin before the shooting commenced. [7]

Captain Sam Sixkiller in early June found himself hot on the trail of the most notorious badman in the Territory, Dick Glass. Information had reached Sixkiller that Glass and several confederates had gone to Denison, Texas, to pick up a load of whiskey. Sixkiller and his men (Charlie Leflore and two other members of the Indian police, and Charlie McClellan, a cattleman) set up an ambush near Colbert's Station on the Denison road.

When the lawmen sighted the Glass gang approaching, one of the bootleggers was driving the wagon, while the three others followed on their horses. Sixkiller waited till the wagon had approached to within ten feet, when he stepped out of the underbrush and commanded the whiskey runners to surrender. The three horsemen put their spurs to their mounts. Dick Glass whipped out his pistol as he turned his horse. At this, the lawmen opened fire. Glass and Jim Johnson were shot from their mounts, dead. Securing their horses, the officers pursued the third rider about two miles before they compelled him to surrender. Returning to the scene of the encounter, the lawmen discovered that the driver had unhitched the team and fled on one of the animals. Charlie Leflore started after him. After a chase of six miles he too was captured.

Meanwhile, the other deputies had placed the bodies of Glass and Johnson in the wagon. They were taken to Colbert's Station, where Glass was positively identified. According to the press, "This is quite a feather in Sixkiller's cap, for the man who had the nerve to step out in the road in front of Dick Glass is a little above the average in bravery." [8]

Charlie Leflore reached Fort Smith early on June 19 on the steamer Border City with Sam and Richmond Caroline, who had been arrested at the time that Glass and Johnson were slain. [9]

The execution of Arcène and Parchmeal on Friday, June 26, was a "private affair." Very few spectators were present. While the death warrants were being read to the doomed, a driving rain commenced. It was still beating down when the condemned were taken at 2 p.m. from the jail in which they had been confined for more than a year.

The felons ascended the steps to the scaffold "with that indifference and stoicism so peculiar to the Indian race, evincing no sign of nervousness or fear." After the singing of a hymn and a prayer by their spiritual adviser,

Reverend Sam Dean, they were placed on the death trap.

While standing "almost in the presence of their God," Arcene and Parchmeal confessed their crime. Their statements were carefully taken down by Professor Saunders, the court stenographer. After they had concluded, their arms and legs were pinioned, the caps drawn over their heads, and the nooses adjusted. Jailer Burns then pulled the trigger; the two men shot through the trap, with sufficient force to break their necks. After being declared dead, the bodies were cut down and taken to the city cemetery for burial. [10]

* * *

When the Court for the Western District convened on July 6, it was confronted by the largest criminal docket that had yet faced Judge Parker. In jail awaiting trial were 102 prisoners. A breakdown of the crimes listed:

Murder	29
Assault with intent to kill	18
Arson	2
Counterfeiting	2
Threatening to kill	2
Larceny	27
Introducing whiskey into the Indian Territory	22

All told, there were 117 in jail. Of the others, 14 were serving sentences, while one was an attached witness.

In addition, there were about 75 cases, the defendants to which were out on bond. [11]

Judge Parker had on docket 11 murder trials for this term of court. Orrine C. McCarty's trial was to begin on July 10; Robert Wolf, the 13th; James Wasson, the 15th; Robinson Kemp and Edmond Jefferson, the 20th; William and Kimon Hamilton, July 25; William Letterman, August 6,; Meredith Crow, the 10th; Jeff Hooper, the 14th; James Walker, the 17th; Blue Duck, the 24th; Bruce McKee and John Rice, August 29. [12]

The officers of the court, the jurors, witnesses, and spectators were impressed to note on taking their seats that since the February Court, the courthouse had received a "general house cleaning." [13]

Orrine McCarty's lawyers succeeded in getting Judge Parker to postpone their client's case. The first capital crime taken up by the July term of court was the trial of Robert Wolf for the murder of Frank Stockbridge. Wolf had been raised by Mrs. Lucy Watkins, a wealthy

resident of the Chickasaw Nation. Upon coming of age, Wolf had taken a wife. Wolf and his wife had separated. The husband accused a second Negro, Frank Stockbridge, of being the cause of his marital troubles. One day as Wolf was out riding, he passed a neighborhood dance hall. Stockbridge and several colored girls were sitting in the front yard. Reining up his horse, Wolf dismounted. Passing through the gate, Wolf started teasing one of the girls. Suddenly, Wolf drew his pistol and turning to Stockbridge, he remarked, "I am going to kill you."

Stockbridge rushed Wolf. While the two were struggling for the weapon, it was discharged. The ball struck Stockbridge in the chest, causing a mortal wound.

Wolf at his trial was represented by a powerful battery of lawyers, William M. Cravens, J. K. Barnes and E. C. Boudinot. It was rumored that Mrs. Wadkins had paid the lawyers $600 to represent her protege. Wolf when examined, disclaimed any intention of killing Stockbridge. He said that he had merely made the threat in jest and to frighten Stockbridge. Under cross-examination by Mr. Clayton, Wolf admitted that the deceased had caused the breakup of his marriage.

The jury believed the prosecutor, and on July 25 brought in a verdict of guilty. [14]

Henry and Lewis Weaver had had difficulty with a man named Riddle. Riddle secured the assistance of his friend Tucker. While Tucker held a gun on Henry, Riddle gave Lewis a severe beating. The same night, Riddle and Tucker stole a mule and a horse from the Weavers. Before they could make their getaway the alarm was raised.

A large posse, led by Almerine Wadkins, turned out to hunt the thieves. Riddle and Tucker were captured. After a rope had been tied around the neck of one of the thieves, they remembered that they had hidden the stolen animals in the Washita bottom, about eight miles northwest of Colbert's Ferry.

While en route to recover the horses, the posse drank heavily. After finding the livestock, the suggestion was voiced that they hang Riddle and Tucker.

Wadkins disagreed.

His opposition enraged Lewis Weaver and Jim Wasson. They drew their pistols and opened fire. One ball struck Wadkins just below the heart, but not before he had pulled his pistol and fired three shots at his assailants without effect. Leaving Wadkins dead, Lewis Weaver and Wasson galloped off.

Riddle and Tucker, the cause of the tragedy, were arrested by Marshal Mershon and Policeman Leflore. The widow announced in the Denison Globe-Democrat that she would pay $3,000 for the arrest of her husband's slayers. [15]

On Monday evening, September 24, a man galloped into Colbert's Station and reported that he had seen Jim Wasson about three-quarters of a mile west of town. Simp Bennett quickly collected a posse and started in pursuit. Hearing that Wasson had stopped at a cabin about a mile north of the ferry, Simp sent a man racing ahead to see if he could engage the wanted man in a conversation.

Riding up to the cabin, the man dismounted and said he was looking for cattle. He took a seat between Wasson and the door. Simp and his posse soon rode up.

As they did, Simp called, "Let's stop and get a drink," and dismounted. Wasson didn't realize what was afoot. As the cowboys walked by him, Simp wheeled, drew his revolver, and shouted, "Hold up." Since Simp had the drop on him, Wasson had only one alternative and that was to give up. [16]

Wasson was a double murderer. In 1881 he and a confederate, Johnny McLaughlin, had killed Henry Martin. The killing had taken place near Harney in the Chickasaw Nation. At the time of the shooting, Martin, who was about 30 years old, was living at the home of Mrs. Brooks, a wealthy widow. On the fatal day, Wasson and McLaughlin rode up to Mrs. Brooks' late in the evening. Calling to Mrs. Brooks, the two armed men asked for Martin. Since he had gone to the store, Martin wasn't in. Wasson and McLaughlin, who had been drinking heavily, had trouble remounting. They had been gone only a few moments when Mrs. Brooks heard several shots. Shortly thereafter, Martin's riderless horse trotted up to the house. Several of Mrs. Brooks' cowhands rode out to look for Martin. They found his bullet-riddled body within 200 yards of the house. Suspicion focused on

Wasson and McLaughlin, but they were allowed to flee the area, although a deputy marshal and his posse were camped nearby.

Wasson returned to the Red River country in 1882. As he had a bad reputation, he was not molested. He roamed about the neighborhood at will, keeping under cover whenever a deputy marshal was known to be in the locality. It was only after the killing of Wadkins and the posting of the large reward that Wasson was apprehended.

District Attorney Clayton felt that he had a better chance of convicting Wasson of Martin's murder. When Wasson was brought to trial it was for the shooting of Martin. Clayton's decision was vindicated, as the jury on July 30 brought in a verdict of guilty. [17]

Kemp and Jefferson were retried by Judge Parker's Court during the first week of August. This time, Kemp was found guilty and Jefferson was released. People familar with the Court for the Western District regarded this as most unusual, because one man appeared as guilty as the other. Kemp's lawyer, Colonel Cravens, promptly filed a motion for a new trial. When this was rejected by Judge Parker, Cravens appealed to President Cleveland. [18]

The Hamilton brothers, William and Kimon, were convicted on August 14 of the murder of Andy Colbert. [19]

The trial of William Letterman for the murder of Peter Love in July 1884 ended on August 28 in a hung jury; the jurors stood seven for acquittal to five for guilty of manslaughter. [20]

Joseph Jackson and his wife were employed by Frank Tibbitts of Scullyville. Mrs. Tibbitts had gone to Fort Smith to spend the weekend of March 7-9 with her parents.

After eating breakfast on the morning of the 9th, Tibbitts went to his store, 300 to 400 yards from his house. When he left, Jackson and his wife were doing the dishes. About 8 a.m. Tibbitts, along with all the neighbors, heard two shotgun blasts. Turning to a customer, Tibbitts remarked that Joe must have gone hunting. Another man coming in with a load of wood, heard the shots. Shortly thereafter, he spotted Joe coming out of Tibbitts' house carrying a shotgun.

Later, Joe returned with a Negro woman and entering the kitchen found

the body of his wife. She had been blasted with two charges from a double-barrel shotgun. Joe feigned "great grief." A thorough investigation convinced the people of Scullyville that Joseph Jackson was the murderer. Lee Cannon, a member of Deputy Marshal Searle's posse, happened along and took Joe into custody. [21]

Joe on September 15 was found guilty of killing his wife. [22]

The McKee-Rice case went to the jury at noon on September 19. Five hours later, the jury returned a verdict acquitting the two men of the murder of D. Stewart, two years before. While the two deputy marshals had been attempting to serve a writ on Stewart, he had resisted. When gunned down, Stewart fell with his Winchester in his hands. [23]

The Widow Thruman in 1875 lived in the Chickasaw Nation. Since eligible white women in the Indian Territory were at a premium, the widow had two ardent suitors—Cub Courtney and Theodore Pitts. Of the two, the widow preferred Pitts, consequently, Courtney became extremely jealous of his rival.

On the afternoon of Sunday, June 8, 1875, Meredith Crow was visiting at the home of Carson, the widow's nearest neighbor. Courtney, who was a wild, reckless youth, rode up to the widow's house, while Pitts was calling. Leaving Pitts in the house, the widow walked across to Carson's to avoid Courtney.

As Courtney galloped up to the widow's, Pitts aimed at him through the window. The cap snapped, but the gun misfired. Undaunted, Courtney cursed Pitts at the top of his lungs. He then rode over to Carson's. As Courtney rode up, he pointed his pistol at the people who had rushed outside to see what all the commotion was about. Whereupon, Crow drew his gun and shot Courtney twice, killing him instantly. [24]

Crow headed for Texas before any deputy marshal could reach the area. He remained in Texas until January 14, 1885, when he was arrested by James H. Guy. When brought to trial before the Court for the Western District, Crow's attorneys argued self-defense. They claimed that Crow had stepped out of Carson's house with no thought of harming Courtney. He had been forced to take Courtney's life, when the young man drew on him. The jury

was unconvinced. On October 2, the jurors brought in a verdict of guilty. [25]

Several weeks after Judge Parker had adjourned the July term of court, President Cleveland nominated, and the Senate confirmed as marshal for the Western District John Carroll of Carroll county. At the same time, the President named Monte Sandels of Fort Smith to replace Judge Clayton as District Attorney. Since Boles and Clayton were Republicans, Cleveland had seen fit to replace them with two good Democrats. [26]

Carroll and Sandels were sworn into office on Saturday, November 1. Carroll promptly named as his deputy marshals: A. J. Vanderventer, C. M. Barnes, W. G. Nehms, Samuel Sixkiller, William H. Cravens, E. G. Garrelson, D. W. Hoskins, and J. H. Mershon. [27]

Meanwhile, the deputy marshals during the final days of Marshal Boles term of office continued their drive against the forces of evil.

Frank Cass and A. P. Goodykoontz were found murdered near the Sac and Fox Agency on Monday, August 24. When discovered, the bodies had been "dreadfully mutilated by hogs..., the flesh having been torn from their faces and limbs." The popular Vinita merchants had left their homes in a two-horse buggy, several days before on a cattle buying expedition. Since both bodies were wrapped in their blankets, the authorities theorized that they had been slain in their sleep. The buggy was parked nearby, but the horses were gone. The murderers had also killed Cass' dog.

Within six days, the authorities had solved the case and had taken the killers into custody near Eufaula. When arrested the two suspects, Negroes Jake and Joe Tobler, had in their possession clothing, shotguns, and rings belonging to the deceased, as well as Goodykoontz' gold watch.

Jake and Joe were returned to Vinita. Since there was considerable sentiment for lynching the two Negroes, Deputy Marshal W. F. Jones lost no time in taking the felons to Fort Smith. En route to Fort Smith, Jake and Joe made a full confession.

On the night of the double murder, they said, they had camped near the merchants. Being acquainted with Cass, the Negroes heard him say that he and Goodykoontz were going west to buy cattle. After retiring, the two Negroes decided to murder and rob the merchants. About midnight,

they crept over to the camp of the white men. While Jake shot Goodykoontz twice, Joe blasted Cass and the dog. [28]

Since the double-murder had occured in the area transferred to the District of Kansas by the enactment of January 6, 1883, the Tobler brothers were sent to Wichita for trial. There, they were convicted and hanged. [29]

Deputy Marshal Remey reached Fort Smith on September 2 with Ed Stein and William Davidson, two of the notorious Lee gang. Later in the day, Deputy Marshal Morton arrived with a third member of the gang, T. H. Lee. [30]

* * *

Assisted by a new prosecutor, Judge Parker called the November term of court to order. Although a large number of cases had been disposed of at the July term, the court, as usual, was confronted by a full docket. The first murder case called up was that of Luce Hammon, He-wah-nauck-che, and One Wiley.

A lone traveler named Owens was passing across the Creek Nation in March 1883. When he camped on the night of the 8th near the Seminole line, he was visited by "three half-civilized" Creek boys, Luce Hammon, He-wah-nauck-che, and One Wiley. They asked the white man for a chew of tobacco. Owens gave each of them a chew and they left. As soon as their benefactor had fallen asleep, the three Creeks crept back into his camp. After shooting Owens, they robbed him of a small sum of money.

Owens didn't die immediately. The badly wounded man was discovered by another traveler and carried to a nearby cabin. Although he recovered consciousness before he died, Owens was unable to identify his assailants.

The three Creeks, however, couldn't keep their mouths shut. They boasted of killing a white man. Arrested, they were hailed before the Parker Court. On December 4 the jury returned a verdict of guilty. When the jury's report was interpreted to them, the Indians nodded approval, and they seemed less concerned about it than any of the spectators in the courtroom.

Judge Parker and District Attorney Sandels, taking their youth into consideration (their ages ranged from 17 to 20), recommended that the three condemned be granted executive clemency. [31]

Charley Drew was brought before the bar on December 8 charged with the murder of another Negro named Adams. The killing had taken place in March

at a dance near Sandtown, Cherokee Nation. When court reconvened on Monday, the 10th, Drew asked to have his plea changed to manslaughter. The prosecution was agreeable.

The next trial to be taken up by the busy court was that of Arch Backbone. Seventeen years before, Backbone had been present at the murder of a Negro. Evidence was introduced to show that the defendant was a "mere lad" at the time the crime was committed. While he might have been present, it was argued, he didn't take an active part in the killing. Backbone's lawyers were accordingly able to get their client acquitted. As soon as the verdict was announced, Backbone grasped the hand of each of the jurors. 32

Nelson Meroney on Christmas was found not guilty in his manslaughter trial of killing Deputy Marshal Layman, three years before. Layman had the reputation of being a "rough character," but at the same time he was one of the bravest and most daring of the lawmen.

At the time of his death, Layman and his posse were camped near Canterberry's cabin. The officers had in their custody three prisoners, one of whom was Meroney's father. On April 23 Layman and three of his friends crossed the Red River into Texas. They were accompanied by Jim McCauley who was scheduled to be married that day. Old man Meroney was allowed to go along.

At the reception, after the wedding, all the men drank heavily. On the way back to camp, Meroney gave Layman the slip. Returning to their home, two of the men (Teel and DeLaughter)got into a fist fight. The fearless deputy marshal disarmed the two men. A man named Davis watched the scrap. Teel called to Davis for help. Davis, shouted that he would standby Teel, and raced to his cabin and got a shotgun. Undaunted, Layman disarmed Davis.

Teel now told Davis to go get Woods Kirk. En route, Davis stopped at Canterberry's, where he found Nelson Meroney and Gillan. After arming themselves Davis, Meroney, and Gillan headed for Layman's camp. A short distance from the camp, they met Layman's posse with two prisoners, whom they released. They then proceeded to where Layman and Teel stood.

Meroney approached Layman with gun in hand. Layman grabbed the weapon with one hand, while he drew his pistol with the other. On doing so, he

snarled for Meroney "to let go of the gun or he would [illegible] his head."

Gillan fired at Layman. The ball tore through the deputy marshal's body. As the marshal fell, Gillan shot him a second time, while Davis pumped two rounds into the dying lawman as he writhed upon the ground. Meroney had been captured in Texas; Gillan and Davis were still at large. 33

James Walker was acquitted by a jury on January 7 of the murder of Bill Simmons at Cottonwood on January 6 of the previous year.

The next case to be taken up was the retrial of W. J. Letterman. Once again, the jury was unable to reach a decision. 34

More P. and Robert W. Lillard, were tried for the murder of a Negro woman named Colbert. On the night of January 6, 1885, Hamp Bowlin and the Lillard brothers had ridden up to the Colbert house. Since they had been drinking heavily, the trio was lost. They wished to find the way to Stonewall. Bowlin dismounted and rapped on the door. Colbert refused to open up. Bowlin, becoming abusive, pulled out his pistol and shot through the door. Colbert shot back, wounding Bowlin in the arm. As the Lillard boys fled, several additional shots were fired. Bowlin's first shot had mortally wounded Colbert's wife, while a second had injured a child.

Bowlin died of his wound on the 12th. Before passing on, he had admitted firing first, but claimed that Bob Lillard had also shot. He claimed that they had merely gone to the Colbert's house to have some fun. In returning its verdict on January 17, the jury pronounced the Lillards not guilty. 35

Blue Duck and William Christie spent the morning of June 23, 1884, at the Ross home getting drunk. Early in the afternoon, Blue Duck and Christie rode over to Martin Hopper's. Hopper was not at home, so Christie suggested they await his return. While the men stood on the porch talking, Mrs. Hopper went to the spring to fetch a bucket of water. While she was drawing water, five pistol shots rang out. Moments later, the horse which Hopper's hired man, Wyrick, was using to plow a field came dashing toward the house, the plow still attached to the trace chains.

Christie swore that he was alone on the porch and that Blue Duck had

disappeared. Scrambling to his feet, Christie caught the runaway animal and tied it to the fence. Blue Duck now dashed up, in his hand he held Martin Hopper's pistol. When Mrs. Hopper returned from the spring, Christie had the gun.

An element of mystery was introduced into the case by the question of how Blue Duck and Christie came to get possession of Hopper's revolver, unless he too had a hand in instigating the shooting. At the trial, it was proved that neither Blue Duck nor Christie had a gun at the time they left Ross'. Mrs. Hopper had watched as Christie pulled six cartridges out of his belt and handed them to Blue Duck. After reloading the pistol, Blue Duck untied his horse and rode off, firing a shot at Willie Wolf, a small boy. Stopping at Hawky Wolf's house, Blue Duck bragged of having killed Wyrick. Before riding off, the drunken gunman fired three times at Hawky Wolf but missed.

Before making any arrests in the Wyrick killing, the deputy marshals made a careful investigation. They felt certain that Martin Hopper was involved. In addition, Blue Duck had fled the area. If they took Hopper and Christie into custody, it was feared that Blue Duck might not return. When they finally moved against Christie, the officers charged him with introducing whiskey into the Indian Territory. The arresting marshal told Christie that if he would bring in Blue Duck, the introducing charge would be dropped. Christie accordingly apprehended Blue Duck and turned him over to the lawman.

The grand jury after studying the evidence, indicted Blue Duck and Christie for the murder of young Wyrick. The trial was held in the last week of January. Among those in attendance was Belle Starr, Blue Duck's current paramour. Belle did all that she could to help her lover, giving him advice, and lining up the best legal talent. On the stand, Blue Duck denied having told anyone that he had killed Wyrick. Many who attended the trial felt that Christie was as guilty as Blue Duck. If anything, Belle's presence prejudiced the jurors against her admirer, because they adjudged him guilty, while Christie was acquitted.

Blue Duck wasn't hanged. He was twice reprieved. In September 1886, President Cleveland changed his sentence to life imprisonment "because of

Chapter XII

Congress Authorizes the Construction of a Courthouse and Jail at Fort Smith

Notes

1 Harman, Hell on the Border, 251-252; Fort Smith Elevator, April 3, 1885.

2 Fort Smith Elevator, April 17, 1885.

3 Grover Cleveland had been inaugurated as 22d President of the United States on March 4, 1885.

4 Fort Smith Elevator, April 17, 1885.

5 Ibid., April 24, 1885.

6 Ibid., May 8, 1885.

7 Ibid., May 22, 1885; March 26, 1886.

8 Ibid., June 12, 1885.

9 Ibid., June 26, 1885.

10 Ibid., July 2, 1885.

11 Ibid.

12 Ibid., April 17, 1885.

13 Ibid., June 5, 1885.

14 Harman, Hell on the Border, 256-257; Fort Smith Elevator, July 31, 1885.

15 Fort Smith Elevator, Aug. 8, 1884.

16 Ibid., Sept. 18, 1884.

17 Harman, Hell on the Border, 254-255; Fort Smith Elevator, April 30, 1886.

18 Ibid., 257; Fort Smith Elevator, Aug. 14, 1885.

19 Harman, Hell on the Border, 177.

20 Fort Smith Elevator, Sept. 4, 1885.

21 Ibid., March 13, 1885.

22 Harman, Hell on the Border, 173.

23 Fort Smith Elevator, Sept. 25, 1885.

24 Ibid., Sept. 25, 1885.

some doubt as to his guilt."

According to Belle Starr fans, Blue Duck was even luckier. "After a year," Harman wrote, "through the agency of unseen influences, of which Belle Starr was said to have wielded the directing hand, his pardon was secured and he was set free."

This would indicate that Belle Starr was a woman of great power, able to outwit the United States Government and make the White House do her bidding.

There was one drawback. Blue Duck didn't get a pardon until March 1895. He was in prison when Belle Starr died in 1889, where he was to remain for six additional years. 36

* * *

President Cleveland had named an Arkansan, Augustus H. Garland, as his Attorney General. Mr. Garland in the fall of 1885 recommended to the President that the United States build another Federal penitentiary. The editor of the Elevator on December 11 urged the Fort Smithites to institute a campaign to secure the institution. It was the editor's opinion that Fort Smith could advance more "good reasons" why the Fort penitentiary should be located there than any other city in the United States. 37

Additional impetuous to the drive to get better facilities for the confinement of Federal prisoners at Fort Smith was provided by the article written by Anna Dawes which appeared in February 1886. 38 According to Mrs. Dawes:

> The United States prison at Fort Smith consists of two rooms in the cellar of the government building, with no light except what comes from underground windows and no outside ventilation. In these two rooms were confined during the month of June...[1885], 109 prisoners; nine of them accused of murder, and two already convicted of that crime. This is the whole prison!
>
> A fuller description of this extraordinary place, this piece of medieval barbarity, only makes the horror worse. Each of the rooms, or cells, is 55 feet long and 29 feet broad. Their height from the floor to ceiling is at the utmost 7 feet. The small windows at each end are underneath the wide verandas. The solid partition between

the two rooms prevents any draught. The climate at Fort Smith is that of the interior of Arkansas, a long, hot, dry summer, with the close atmosphere of a valley amongst low hills. In early June the days were already stifling with heat, and the nights were relieved only by a warm breeze that blew off the river across the localities most favorably situated. Hoping to make the air more bearable, the flagstones of the floor are constantly wet down and the noisome air is heavy with the rising steam and dampness.

Into these reeking holes are crowded criminals of every age and degree. The court has jurisdiction over all crimes committed between the white men on the reservations, against white men by Indians, against Indians by white men, under certain conditions. Its prisoners are some of them full blooded Indians, wild and filthy beyond any eastern conception; some are border ruffians who have lost none of their villainy or their loathsomeness;... some are hardened criminals of the worst type who have fled the law of the "States" to seek refuge in the wild Indian country; some are innocent boys brought here for a trifling theft; respectable tradesmen who have unwittingly infringed on some stringent United States regulation about arms or liquor. It is literally true that at Port Smith all these persons are confined in the same room, the close, unventilated, wretched place already described. In the midst of the desperados, the villains and the murderers, are all those criminals already sentenced, whose terms do not exceed a single year. Those sentenced to a longer term are sent to Michigan. Happy the convict whose crime is large, in the Indian Territory, for worse is a single year of Fort Smith than a cycle of Detroit!

The only opportunity for washing given to this multitude of men is the single sink in each cell. There are no baths, only now and then some more fortunate prisoner is allowed the use of a coal-oil barrel sawed in two, this primitive wash tub being the best that is afforded by the government to this institution. The perplexed officials have tried many expedients to relieve the foulness of the place. The single bucket which serves the convenience of this considerable population is placed in a closet in the chimney, that the odors may be carried off through the only method of ventilation known to this jail.

The prisoners spend their time as suits themselves. No work is possible. To relieve the tedium of the slow days, a mock court is held and men are tried of such offenses as spitting upon the floor, and on conviction, are sentenced to sweep it. The wooden cots and blankets which constitute the beds are put to one side during the day, or serve as seats. When feeding time comes the rations are pushed through a slide in the door, and one after another these miserable beings retire to some corner like dogs, to eat their portions. In this matter of exercise, a regular routine is kept up. The prisoners divide themselves into squads which march

up and down the room at intervals; but be their stay there longer or short; they see no ray of sunlight, they breathe no single breath of outside air.

This dank, crowded, underground hole is noisome with odors of every description, dirty beyond description, horrible with all horrors--a veritable hell upon earth. What must it be for the sick? Impossible as it seems to credit the fact, the sick and wounded must live in these same rooms. There is no other provision for them, there is no other place they can be put. It completes the picture to remember that small pox is a disease very common to the Indians.

It should be made evident that for this state of things the people of Fort Smith are in no way responsible. It is a United States prison, and they have no more control over it than they have over the capitol at Washington. They would welcome any attempt on the part of the government to remove this plague spot, and substitute a suitable and decent jail. Nor are the officers of the court to be charged with neglect or blindness. They do all that in them lies to remedy the evils.

There is no question, shameful though the conclusion be, where the blame lies. The worst fact in the whole disgraceful series is the fact that the national government knows all about this horror. It cannot even plead ignorance, for the report of the United States marshal in October, 1884, to the department of justice contains a full statement of the matter, with all the particulars, the statistics, and a diagram of the prison. What was done about it? In June, 1885, nothing had been done about it. [39]

The ringing denunciation with which the Dawes article ended, "What excuse has the government of the United States to offer for the existence and continuance of this scandal?" helped produce results.

A bill appropriating $125,000 for the construction of a courthouse and jail at Fort Smith was passed by the 49th Congress and approved by President Cleveland on March 16. The bill as drafted called for $175,000 of which $125,000 was to be expended for the erection of the courthouse and the remainder for the jail. After reaching the Senate, the amount was pared to $125,000. [40]

The 48th Congress on March 3, 1885, had moved to breakdown the barriers protecting the redmen in the Indian Territory in their right to punish members of their own tribes for offenses committed against each other. Henceforth:

> Any Indian committing against the person or property of another Indian any of the crimes, as follows: murder, manslaughter, rape, assault with intent to kill, arson, burglary and larceny, in any Territory of the United States and within or without an Indian

Chapter XIII

Marshal Carroll Moves the Prisoners into the New Jail

Judge Parker presided over a number of interesting trials at the February 1886 term of court. The first man accused of a capital offense tried before the court was John W. Parrott, a carpenter.Kentucky born, Parrott had moved to Sherman, Texas. Crossing into the Chickasaw Nation, Parrott went to Alexander's Store. There, he entered into partnership with the McAdams, father and son, to build a house. On July 18, 1885, Parrott and the elder McAdams had an argument over the division of profits.

During the dispute, McAdams threatened Parrott's life. Returning to his boarding house for his noon meal, Parrott armed himself. When he returned to work, he carried a pistol in his pocket. According to Parrott, the elder McAdams again accosted him. Hot words were exchanged. McAdams hurled a chisel at Parrott, and advanced toward him with ax in hand. Parrott pulled out his pistol and shot and killed McAdams. At the sound of the shot, Louis McAdams charged out of an adjoining room. Drawing a knife he rushed his father's killer. Parrott fired again, mortally wounding the son.

At the trial, Parrott claimed self-defense. The jury didn't agree. A verdict of murder on two counts was returned. [1]

Tom Lee and Ed Stein were brought before the bar during the fourth week of March charged with participating in the slaughter of Deputy Marshal Guy and three members of his posse on Mud Creek in May of the previous year. The prosecution claimed that after the battle had ceased, six or seven men had slipped from the Lee cabin and examined the bodies. At the same time, the defense attorney sought to prove that the only ones in the cabin at the time of the shooting were Pink and Jim Lee, who had been killed on September 6 in Cook county, Texas, by Deputy Marshals Heck Thomas and Jim Taylor. Ed Stein and Tom Lee testified that they and the women and children had left the area before the shooting began. A verdict of not guilty was rendered on the grounds of identity not being positively proven. District Attorney Sandels was unable to produce anyone who could place Lee in the cabin at the time of murder, while the testimony [illegible] participation

reservation, shall be subject therefor to the laws of such Territory relative to such crimes and shall be tried in the same courts and in the same manner and be subject to the same penalties as are all other persons charged with the commission of said crimes, and said courts shall govern and have jurisdiction in all such cases. 41

the time in question, while doubt was cast on the testimony regarding Stein's participation in the affair. [2]

During the summer of 1885, a gang of daring whiskey peddlers operated in the Chickasaw Nation. Calvin James, the leader of the group, and three of his men (Tony Love, Henry Robey, and Albert Kemp) on August 1 crossed into Texas to pickup whiskey. Each man purchased four gallons. On the return trip, James and Love lagged behind. As they rode through a hollow, James shot Love in the head to obtain the whiskey he carried. James dismounted and dragged his late partner's body off the road and hid it in the brush. The dead man's horse was unsaddled and turned loose.

Riding on, James soon overtook Kemp and Robey. He warned them that if they told anyone what he had done, he would kill them. When Love turned up missing, questions were asked. It was soon determined that when last seen he was riding with his three partners. The three men were promptly arrested; Kemp and Robey told all they knew. At the trial, they appeared as government witnesses against James. Convicted on April 1 of the murder of Love, James was brought before Judge Parker and sentenced to death on April 30. [3]

Kit Ross was part Cherokee and 25 years old. In 1883, while drunk, he had visited the home of Jonathan Davis. Although Davis' wife was ill, Ross rode his horse into the house. Davis in ejecting Ross, cuffed him about.

Subsequent to this difficulty, the two men met frequently. They appeared to the neighbors to be on good terms. Apparently, however, Ross wanted vengence. On December 20, 1885, Davis rode into Chouteau to purchase supplies. While Davis was in a store, Ross entered. He was intoxicated, and loitered about the store until Davis started to leave. As Davis stepped to the door, Ross followed.

Addressing Ross, Davis remarked, "Kit, I believe we will have some snow."

"Yes, I believe we will," Ross answered.

As Davis stepped outside, Ross drew his gun. Bang! Bang! roared the pistol as he pumped two balls into Davis' back. When Davis remained on his feet, the cowardly assailant dropped his hat and pistol and fled. Davis pursued Ross for 75 yards and fired two uneffectual shots before he began

to weaken from loss of blood. Assisted back to the store, Davis died that night.

The incensed citizens of Chouteau offered a reward of $150 for Ross' capture. Six weeks later, Ross was arrested at Shawneetown by Wiley Beavard. Tried before Judge Parker, Ross was convicted on April 3. As he was being led from the courtroom, Ross remarked, "Well, they done it to me." Ross was sentenced to die on the gallows on July 23. [4]

Lincoln Sprole and Ben Clark rented land from Sam Paul in Pauls Valley, Chickasaw Nation. The two men clashed over water rights. Shortly thereafter, Ben Clark and his 18-year-old son, Alexander, started for White Bead Hill to trade. The day was May 30, 1885.

Sprole, learning of the trip, took cover in a roadside thicket and waited for the Clarks to return. Spotting the Clarks' wagon as it approached, Sprole took aim at the older man with his Winchester. Bang! The shot missed. Ben Clark turned in his seat to see if he could see the unseen sniper.

Meanwhile, Sprole had pumped another round into the chamber. The Winchester cracked again. Clark tumbled from the wagon, shot through the chest. The horses bolted. At this, the boy jumped from the wagon.

A third shot from the Winchester broke the boy's knee. Alexander Clark slumped to the ground. Sprole dashed up, intent on finishing off the boy. Alexander begged for his life. Bringing his rifle to his shoulder, Sprole shot the boy, the missile striking him in the right breast and breaking the collar bone. Sprole fled Pauls Valley.

The two badly wounded men were soon found. Ben Clark died six hours after the attack, while the son lingered for 17 days. Deputy Marshal John Williams reached the valley soon after the son had expired. Apprised of the facts, he lost no time in tracking down Sprole, who had made for Kansas. Arrested, Sprole was taken to Fort Smith for trial. At the trial, Sprole's lawyers based their defense on the contention that the "Clarks were bad and dangerous" and that the defendant had great fear of them; he, therefore, waylaid and shot them to get them out of his way. The jury didn't agree. [5]

Robinson Kemp, Meredith Crow, and Robert Wolf, three of the eight men condemned to die on April 23, were escorted to the photograph gallery on April 16 to have their last photographs made. [6]

Throughout the morning, people crowded around the jail endeavoring to get a peek at the condemned. Marshal Carroll ordered the execution postponed till 2 p.m., to await a reply to Rogers' message. While awaiting the dispatch, Wasson lay on his bunk "with his hat over his face apparently in deep thought."

Jackson was morose and out of humor with the world. He declined the services of a minister, remarking "if he thought anyone could get him out of the fix he was in it would be all right, otherwise he thought no one could do him any good."

Two o'clock arrived and there was no telegram. Marshal Carroll, accompanied by several deputy marshals and Jailer Neal Pryor, entered the jail. [11]

Jackson and Wasson were roused from their bunks. Each was presented with "a neat suit of clothing--shirts, undershirts, drawers, slippers, socks, neck-ties and collars." As soon as they had dressed, they bid their fellow prisoners goodbye. Wasson's farewell was very touching. Nearly every man in the cell wept bitterly. Jackson, after completing his toilet, sought to cheat the hangman by cutting his throat with a piece from an "old band saw." He botched the job. Aside from drawing considerable blood, the wound didn't amount to much.

Before being taken to the gallows, the men were escorted into the "box or anti-room," where they listened to their death warrants, after which a light pair of handcuffs were clapped on them by a deputy marshal. They were escorted to the scaffold through a crowd of several hundred spectators who had gathered on either side of the walk leading to the jail.

On the platform, Wasson to stall for time asked for a minister. One was procured and an appropriate service held. While he was being pinioned, Wasson wept. At 3:40 the trap was dropped; the necks of both men were broken by the fall. They remained motionless, and died without a struggle. Within 20 minutes, Wasson and Jackson were declared dead. Their bodies were taken down and placed in coffins. [12]

Unlike his predecessor Marshal Carroll believed in working the prisoners confined in the U. S. Jail. The Fort Smith Elevator reported on June 18 that the court groundswere being cleaned off by the prisoners. At the same time, the

The new gallows which had been erected for the occasion were "more neat and substantial" than its predecessor. The platform was 16 x 20 feet, supported by solid oak columns 12 x 12 inches square; the cross beam was of solid oak 9 x 11 inches, 16 feet in the clear, and rested on two upright columns of oak sixteen feet high, and about 12 x 12 inches square. The beam was braced on top by heavy timbers, the ends of which rested on the upright columns. The trap door was sixteen feet long and three feet wide, the drop fully six feet. [7]

During the first part of the third week of April, a telegram reached Marshal Carroll from Washington. Glancing at the message, the marshal saw that the death sentences of Robinson Kemp, Meredith Crow, Robert Wolf, He-wah-huck-ee, One Wiley, and Luce Hammon had been commuted to imprisonment for life. The commutation of the three Indian boys' sentence had been recommended by Judge Parker and District Attorney Sandels. On doing so, they had cited the boys' youth and ignorance. Kemp, Crow, and Wolf owed their good fortune to Colonel Cravens, who had traveled to Washington in their behalf. [8]

On Saturday night, April 24, there was a severe wind storm at Fort Smith. The stockade surrounding the scaffold was "blown down and entirely demolished, leaving the death trap in plain view to any one passing to and from the court grounds." Since Marshal Carroll was not opposed to public executions, grave doubts were expressed in Fort Smith as to whether the stockade would again be erected. [9]

James Wasson confidently expected that Marshal Carroll would receive a telegram from the President's office commuting his death sentence. Late on Thursday, April 22, a communication arrived announcing that nothing would be done in Washington to stop his execution. When the message was read to him, Wasson was badly shaken. He cried out that it was very hard that he should be called upon to die, when all the other boys had been allowed to live, with the exception of the Negro Jackson.

Wasson slept very little that night. At a late hour, he paced the floor of his cell bewailing his fate. On Friday morning, he still grasped at straws. [10] Congressman John H. Rogers had telegraphed Washington in his behalf.

marshal had fitted himself up a neat private room in the old Commissary, where he proposed "to make himself comfortable during the summer." [13]

On Friday, July 23, unless President Cleveland intervened three men, Lincoln Sprole, Kit Ross, and Calvin Jones, were scheduled to be executed. As yet, Marshal Carroll had made no arrangements to have the stockade surrounding the gallows put back up following its destruction by high winds. Consequently, the scaffold was in full view. As the Elevator reported, "the execution can be witnessed from the top of any building on the Avenue or from the reserve addition without going inside the wall." [14]

Marshal Carroll, however, had a change of heart. On July 19, Monday, he issued orders to enclose the gallows. By the 23d, the day on which the three men were slated to die on the scaffold, the stockade had been reconstructed. [15]

On Tuesday, July 20, a telegram reached Marshal Carroll signed by President Cleveland stating that he had decided to give Kit Ross a two week respite. This reprieve would enable the Washington people to investigate the case further. [16]

Calvin Jones and Lincoln Sprole were hanged as scheduled on the 23d. Two weeks later, since the President had decided not to intervene again in the matter, Kit Ross was sent to the gallows. [17]

The first carload of prisoners for the new Menard Penitentiary at Chester, Illinois, left Fort Smith on Monday, August 23. Deputy Marshal Jim Pettigrew and five guards were in charge of the 23 convicted felons making the trip. [18]

* * *

Five men were convicted of murder at the August 1886 term of Judge Parker's Court.

John T. Echols was born in Fulton county, Georgia. He had emigrated from Georgia to Sebastian county in 1870. Three years later, Echols had moved into the Chickasaw Nation, taking up land near White Bead Hill. Echols, who had a wife and five children, was looked upon by his neighbors as a law-abiding farmer.

In February 1886 Echols traded a horse to his neighbor, John Pettenridge,

for a pony, two yearlings, and a Winchester. The pony and the rifle were promptly turned over to Echols, but the yearlings were out on the range. When Echols went in search of the yearlings he found only one, consequently, he sent word to Pettenridge on February 16 that he must find the missing animal or return the horse. Pettenridge replied that he was busy hauling logs to build a cabin. As soon as he was finished, he promised to look after the matter.

Following the receipt of this message, Echols and his brother-in-law rode out into the woods where Pettenridge was felling timber. Pettenridge was sitting on a load of logs as the men rode up. Hot words were exchanged. Pettenridge told Echols that "he wasn't going to be bulldozed...."

At this, Echols pulled his pistol and shot at Pettenridge. The missile ripped through the brim of his hat. Frightened by the noise the team bolted. Pettenridge leaped to the ground, as Echols fired again. The ball tore into Pettenridge, knocking him down. While Pettenridge lay on the ground, begging for his life, Echols pumped five more shots into him.

When brought before Judge Parker, Echols pled self-defense. He claimed that the dead man had drawn a large knife and had sprang at him. Knowing that Pettenridge was a dangerous man with a blade, he had fired five shots in rapid succession, while the deceased was still on his feet.

Testimony by witnesses for the prosecution who had examined the body shortly afterwards, placed the knife in the dead man's pocket, closed. Since the nature of the wounds were such as to produce death almost instantaneously, it was deemed unlikely that the victim would have closed the knife and thrust it into his pocket. The jury agreed with the prosecution. Echols on August 20 was convicted of murder. [19]

A handsome mulatto, John Stephens, had been born in Iroquois county, Illinois, in 1859. He left Illinois for the Indian Territory in the spring of 1874.

On May 28, 1886, Stephens borrowed a horse and saddleblanket from Charlie Whitefeather, an Indian who lived on the Delaware Reservation. Stephens proceeded to the home of Mrs. Annie Kerr, seven miles distant. It was late at night, when Stephens dismounted in front of Mrs. Kerr's cabin. Entering,

he found Mrs. Kerr and her 16-year-old-son, Louis Winters, sleeping on a pallet near the door. Stephens hacked the two to death with an ax.

Leaving them lying in their gore, Stephens rode to Dr. James T. Pile's house. Some time before, Dr. Pile had testified against Stephens in a larceny case. Breaking in, Stephens rained blows on the doctor and his wife with an ax. The Piles' child was bashed over the head with a board. The hired man, who was asleep in the house, was also attacked.

Dr. Pile lingered for six days at death's door before he expired, his wife, child, and hired man recovered.

It was an extremely dark night, so none of the victims were able to recognize their attacker. In his hurry to get away from Dr. Pile's, Stephens lost his saddleblanket and a "foot-rag." Subsequently, the blanket was identified by Whitefeather as the one he had loaned the mulatto. The authorities had a difficult time finding a motive for the slaying of Mrs. Kerr and her son. At first, it was supposed that Mrs. Kerr's estranged husband had hired Stephens to do his dirty work. Kerr and another son were arrested as accessories, but the grand jury when it indicted Stephens ignored the Kerrs, senior and junior.

At Stephens' trial, Mrs. Pile appeared as a witness for the government. When the prosecutor called her to the stand, the woman exhibited her ghastly wounds for the benefit of the jurors. The jury on September 2, after deliberating only 20 minutes, returned a verdict of guilty. [20]

James Lamb and Albert O'Dell were young itinerant farm laborers. O'Dell the older of the two had been born in Alabama and had moved to Texas with his family. Lamb called Crawford county, Arkansas, his home. Drifting into the Indian Territory, the two men in the fall of 1885 found employment on the farm operated by Edward Pollard and George Brassfield near Lebanon in the Chickasaw Nation. Besides picking cotton, the newcomers took a fancy to their employers' wives. Mrs. Pollard took up with Lamb and Mrs. Brassfield with O'Dell. So open was the affair that it caused a neighborhood scandal.

Next came the problem of getting rid of the husbands. The wives and their lovers discussed the subject and decided to force the issue. Threats first, then violence if necessary.

Brassfield, either disgusted or fearful of his life, left his farm, his wife, and his three children. O'Dell lost no time in moving in to the delight of the faithless wife. Pollard was not so easily intimidated. He continued to live in his house.

On the day after Christmas, Mrs. Pollard asked her husband to go into Lebanon for coffee and coal oil. As he was tramping home through the snow, Pollard was bushwacked and shot through the head by James Lamb. O'Dell helped Lamb hide the body. The two culprits then rejoined their paramours, taking along the coffee which Pollard had been carrying when he was slain.

O'Dell and Nancy Brassfield celebrated by getting married. It made no difference that she already had a living husband, the father of her three children. As soon as the preacher had finished the ceremony, Lamb and Mrs. Pollard tried to induce him to marry them. In response to the preacher's questions regarding the whereabouts of her husband, Mrs. Pollard said that he had deserted her.

No, the minister said firmly. He was a frontier preacher and let a lot of things slide by. But he wouldn't help a woman commit bigamy.

Two months later, Ed Pollard's body was found, by a hunter named Mathews, less than a mile from his now deserted home. O'Dell and Lamb had pushed on westward with their newly acquired families.

Deputy Marshal Mershon and his posse was camped nearby. He at once began to unravel the mystery. Within a short time, the clues led him to Buck Horn Creek, where on March 7 he found O'Dell and Mrs. Brassfield. Mershon took Nancy Brassfield into custody and told her that O'Dell had confessed. Nancy lost no time in blurting out everything she knew. After arresting O'Dell in a nearby field, the marshal secured a confession by acquainting him with the trap into which his lady friend had fallen. O'Dell denied having killed Pollard, laying the blame on Lamb. He, however, admitted having helped hide the corpse.

Lamb and Mrs. Pollard were followed by the lawmen to their camp on the Canadian River and arrested. The four prisoners were escorted to the marshal's camp. Brassfield, learning that his wife was in custody, came and took away his two eldest children, leaving the baby.

Upon being transferred to Fort Smith, the wicked quartette was lodged in the U. S. Jail. Mrs. Pollard made bond and went to the home of her parents

in Livingston county, Missouri. Before returning to Fort Smith, she gave birth to a child of which it was assumed Lamb was the father.

Just before the trial, Nancy Brassfield on September 7 had twin boys--fruits of her illicit romance with O'Dell. Both babies died. Evidently, George Brassfield still had some affection for his erring wife, because he journeyed to Fort Smith to be with her in her last weeks of pregnancy. He was too broke to put up bail, but he gave her what help he could when the twins arrived.

The United States Government chose to try the men for murder and not the women. Mrs. Brassfield and Mrs. Pollard would be held as material witnesses.

While courting and killing, O'Dell and Lamb had stuck together. Arrest dissolved the partnership. Hiring separate lawyers, the defendants attacked each other before Judge Parker. The jury had little difficulty in reaching a verdict of guilty.

As the day set by Judge Parker for their execution approached, Lamb softened. Since he had only helped to hide Pollard's body, Lamb felt that O'Dell should be allowed to go free. An application for a commutation of the death sentences was prepared. After it had been refused, Lamb stated that he thought President Cleveland ought to pardon O'Dell, as he was not present at the murder.

"My life is enough to pay for Pollard's. Hang me and let O'Dell go," Lamb said, "for he does not deserve to be hanged."

This statement caused considerable sympathy for O'Dell. When notified of this, Attorney General Garland wired District Attorney Sandels to question Lamb to see if there was anything that hadn't been brought out at the trial. There was nothing, and Washington refused to intervene.

After the execution of their lovers, the government decided against bringing morals charges against the women in the case. That was in line with Judge Parker and his prosecuting attorney's usual practice. The court could easily have specialized in the punishment of fornication, adultery, incest, bigamy, and the like. But the officials of the Court for the Western District preferred to set sex aside and concentrate on murder, theft, and whiskey cases. [21]

Thomas and John Mahoney, along with their mother, operated a farm near Fort Scott, Kansas. During the slack winter season, the brothers decided to earn additional money by working for the Atlantic and Pacific Railroad. The brothers were assigned to a grading crew working on the railroad between Tulsa and Red Fork, in the Indian Territory. They brought with them in addition to two good teams and wagons, plows, shovels, scrapers and camp equipage.

By early February, the two men had cleared $200. Since it was getting near crop planting time, the Mahoneys determined to return to Fort Scott. Leaving Red Fork, they picked up two tramps, Patrick McCarty and Joe Stutzer.

From Red Fork, the Mahoneys and the hitchhikers proceeded to Coffeeville. McCarty and Stutzer, before leaving Coffeeville, decided to murder their benefactors. Since there were few waterholes in the country between Coffeeville and Fort Scott, McCarty suggested to the brothers that it would be wise if they cooked several days' provisions before pushing on. The party accordingly left Coffeeville, taking the road to Vinita.

When they camped for the night, McCarty insisted that the brothers sleep, while he and Stutzer stayed up and cooked rations. After the boys had dropped off to sleep, McCarty drew his revolver and Stutzer picked up a shotgun. Cautiously, they approached the wagon in which their victims were sleeping. McCarty shot one of the boys in the eye; Stutzer's gun misfired. As the uninjured Mahoney scrambled to his feet, Stutzer felled him with an ax. The blood from the dead men saturated the feather tick on which they had been sleeping.

The next day, February 18, 1886, McCarty and Stutzer drove one of their victims' wagons to Vinita. Camping in a nearby stand of timber, McCarty told the townspeople that he owned the wagon and that he and Stutzer had been working on the railroad.

After selling the mules and harness for $125, Pat gave the purchaser a bill of sale. On doing so, he represented himself and his partner in crime as John and Joe Ryan. Pat kept $105 and gave Joe $20 and the wagon and other items. Joe drove out of Vinita, taking the road to Southwest City, Missouri, while Pat caught the train to Pierce City.

A large, yellow dog which had belonged to the Mahoneys proved the murderers undoing. The dog remained at the camp where his late masters had

met their end. People noticed the dog's strange behavior. When they investigated, they discovered a suspicious looking mound. The mound was opened and the bodies found. News of the gruesome discovery was carried by the press. Within a short time a host of deputy marshals descended on the scene.

Mrs. Mahoney who lived in Neodasha, Kansas, had grown apprehensive when her sons failed to return from the Indian Territory. Learning of the finding of the bodies, she proceeded to Coffeeville. The remains were beyond identification, but she was able to recognize the clothing and boots which were shown to her by the authorities. Questioning the local people, the officers found one who recalled having smelled burning feathers and cotton on the fatal night.

Having identified the victims and secured descriptions of their traveling companions, the authorities began their search. McCarty was traced to Dixon, Missouri. There, they talked with people, who had known the suspect at Red Fork. They told the officers that McCarty had been broke at the time he left the Territory with the brothers. McCarty was arrested. On his person was found a watch which was identified as having been carried by one of the Mahoneys. Taken to Vinita, McCarty was recognized as the man who had sold the mules and harness. Since the murder had been committed in the Indian Territory, McCarty was escorted to Fort Smith for trial.

Stutzer was traced to Fayetteville. There, the authorities found the wagon and the horses which had been his share of the loot. The man with whom Stutzer had left them, reported that the wagon had been bloody. When asked about this, Stutzer had remarked that "he had picked up two tramps and allowed them to ride with him and one night he heard them plotting to kill him; he had kept quiet until they crawled into his wagon and then he killed them both."

At Fayetteville, the authorities lost Stutzer's trail. The governor of Arkansas, in hopes of spurring the search, offered $500 as a reward for the capture of Stutzer.

A Fort Smith jury on September 23 found Pat McCarty guilty of murdering the Mahoney boys. [22]

Judge Parker on Saturday morning, October 30, had the disagreeable task of sentencing to death five white men (Patrick McCarty, John Parrott, James Lamb, Albert O'Dell, and J. T. Echols) and the mulatto, John Stephens,

convicted at the August term of court. By 8:30 a.m. a large number of spectators had assembled in the courtroom.

A little before 9 o'clock, the six felons were brought into the court, an armed guard on each side. As they took their seats in the dock, silence reigned in the room. The quiet was not broken till Judge Parker had taken his seat. Motions for new trials were filed by all the lawyers except those representing Stephens. Starting with McCarty and ending with Stephens, the judge then passed sentence. The six men were condemned to die on the gallows on Friday, January 14, 1887.

Commenting on the day's happenings at court, the editor of the Elevator observed:

> The fate of these men is a hard one, but they brought it upon themselves deliberately, and no one but themselves are to blame for their present awful condition. Their sentences are not only in accordance with the law of the land, but also with the law of God, which says that "He who sheddeth man's blood by man shall his blood be shed." Let the law be enforced. [23]

Shortly after James Wasson had been convicted of the murder of Martin, his partner in that crime, Johnny McLaughlin, had been apprehended. McLaughlin was placed on trial several days before Wasson was executed. His battery of lawyers (Ben T. Duval, Thomas H. and James K. Barnes, and Colonel William M. Cravens) claimed that their client "was a great distance from the scene of Martin's murder." District Attorney Sandels presented contradictory testimony. Three witnesses who weren't present at Wasson's trial were presented by the prosecution. Among these were Wasson's sister, who had been McLaughlin's mistress. She claimed that on the day following Martin's death, McLaughlin had said that he and her brother would have to flee the country as they had murdered a man.

Despite a previous jury having convicted Wasson on less evidence, the McLaughlin jurors were unable to agree. By the time McLaughlin was retried in August, his partner had been executed. Once again, McLaughlin was saved when the jury failed to agree. The case was brought before the November term of court. The jurors this time returned a verdict of acquittal.

According to people in the know, Wasson's lawyers had botched the affair. It was felt that had they secured a continuance of his case until after McLaughlin had been apprehended and had they insisted on a joint trial,

Wasson would have been acquitted of the charge of killing Henry Martin, and would have stood an excellent chance of beating the rap for murdering Almerine Wadkins. 24

* * *

Jailer Pryor was an unusually considerate man. On October 10 while Johnny McLaughlin was waiting for his third trial, Pryor took him and condemned murderer John Parrott out to the LaGrande Hotel. There, the two prisoners dined with the aid of knife and fork for the first time in over a year. After dinner, the "boys" strolled around the city in "the beautiful sunshine" which they seemed to enjoy. As the men had been quite ill, Pryor, told a correspondent for the Elevator, that he felt the outing would do them some good. 25

On special occasions, Thanksgiving and Christmas, the fare in the U. S. Jail was better than many of the inmates had been accustomed to in their days of freedom.

A prisoner wrote the editor of the Elevator a glowing account describing Thanksgiving dinner:

> A stuffed pig got loose and made its appearance on the table of "Hotel de Uncle Sam" of which Mr. W. J. Johnston is proprietor, last Saturday. As it is the practice of Mr. Johnston, and a royal good one it is, to provide something extra good, for his boarders to eat on holidays, his "pigship" was served at dinner with the necessary accompaniments and side dishes, and devoured with a keen relish by all who were so fortunate as to have a ticket for the banquet.
>
> About sixty-five guests now enjoy the hospitality dispensed at "Hotel de Uncle Sam," and those who have made the proper arrangements with the "powers that be," for the coming winter, are looking eagerly forward to the "merry Christmas time," with its accompaniment of egg-nog, and turkey and cranberry sauce.
>
> After dinner, when all were too full (of pig) for utterance, the guests fell into line in the marble floored? corridors, and each received a plug of tobacco and a good cigar. Mr. Johnston is a big-hearted, jovial fellow, and has many guests at his hotel, most of whom come from the B.I.T. Owing to the fact that Col. John Carroll, the genial United States marshal is constantly soliciting boarders for the "Hotel de Uncle Sam," Mr. Johnston nearly always has a full house, and the undivided attention he extends to each guest tends to make him a popular personage with all. 26

The prisoners in the U. S. Jail, 62 in all, were likewise treated to an excellent Christmas dinner by "their landlord, W. J. Johnston." There was turkey in abundance, "and everything else to match it, besides eggnog and cigars." John Parrott, who was spending his second Christmas in jail, was heard to remark that this meal surpassed "any dinner they have ever had since he had been boarding there." [27]

* * *

The life of a deputy marshal was becoming increasingly hazardous. Horse races were held annually at Muskogee on December 23. As expected, the excitement brought an influx of hard characters. To make matters worse, a large supply of whiskey had been brought in for the occasion. With such ingredients it was a foregone conclusion that there would be at least one killing over the holidays. "There seemed to be murder in the air."

About 4 p.m. on Christmas Eve, Alf Cunningham a reckless and blood-thirsty Cherokee half-breed drew his pistol on Tom Kennard, a Negro member of the Creek Light Horse. Alf returned his pistol to its holster without shooting.

The next time they met, Kennard got the drop on Cunningham and struck him over the head with his revolver. This treatment aroused Cunningham's fighting blood. He lost no time in getting in touch with his brother-in-law Dick Vann. Between them, the two Cherokee breeds plotted revenge. Vann was considered a "bad hombre," he had just been pardoned by President Cleveland.

Learning that Vann and Cunningham were gunning for him, Kennard wisely left town. The Cherokees, however, wanted blood. About 6 p.m. they ran into Deputy Marshal Sam Sixkiller. Sam was standing in front of Sol Yates' tin shop, as the two gunmen walked up. Without uttering a word, Vann and Cunningham drew and blazed away. Bullets struck Sixkiller in the heart, arm, and face. As the gallant old lawman slumped to the ground, Vann and Cunningham turned and raced down the street. Vann paused for an instant and sent another ball tearing into the dead officer's body. He then rejoined Cunningham at the billard parlor, where the two killers secured their horses and galloped out of town.

U. S. Commissioner Tufts of Muskogee promptly issued warrants for the arrest of Vann and Cunningham, which he handed to Deputy Marshal Tyson. District Attorney Sandels, however, was compelled to call off the pursuit, because the killers and their victim were Indians and not subject to the jurisdiction of the Court for the Western District. [28]

* * *

A telegram was delivered to Marshal Carroll's office on January 4 from Washington announcing that President Cleveland had commuted the death sentence of John Parrott to five years in the Menard Penitentiary. Parrott, who had expected an unconditional pardon, was understandably disappointed at this news. [29]

Parrott's sentence having been commuted and McCarty having received a reprieve until April 8, only four of the six sentenced to the gallows on January 14 would die as scheduled. O'Dell, Lamb, Echols, and Stephens were taken from the jail and hanged on Friday, the 14th. [30]

On April 4 Marshal Carroll received a wire signed by Attorney General Garland. It read:

> The president declines to interfere further with the sentence of the Court in the case of Patrick McCarty. Acknowledge receipt.

When the marshal read the message to Pat, he was momentarily unnerved and turned as white as a sheet. He soon regained his composure, however, and began "to look at the matter in its true light, but with his usual stoicism."

Two days before, Pat had been taken to the Catholic Church for confession and to receive religious instruction in his adopted religion. The day before his date with the gallows, he attended early mass. [31]

According to the editor of the Elevator, no execution at Fort Smith since that of John Childers back in 1873 had created as much local interest as that of Pat McCarty.

Pat retired at an early hour on the 7th, and rested quietly until about 3 a.m., when he awoke. After walking about his cell for sometime, he again laid down on his cot, where he remained until his usual hour of rising. Pat dressed himself in a suit of navy blue, white shirt, and tie. Thus attired, he attended 7 o'clock mass. When he returned to his cell, Pat appeared in

excellent spirits. During his few remaining hours behind bars, he talked freely with his many callers.

At a few minutes before 2 o'clock, Father Smythe arrived at the jail. After he had talked briefly with Pat, a guard announced that the time for the execution was at hand. The death warrant was read; Pat was taken to the gallows. He ascended the scaffold with "as much coolness as though it was an every day affair with him." Pat showed no signs of emotion. His face "was bleached from long confinement in the jail, and his legs and nose seems a little more pinched than usual, but beyond this there was nothing to betray his feelings."

Upon reaching the platform, McCarty knelt for a few moment's prayer with Father Smythe. He then took his stand on the trap, holding in his hands a crucifix.

Father Smythe addressed the crowd, about 75,which had been admitted to the gallows enclosure. Next, McCarty told the audience that he was "innocent of the crime." At the conclusion of his statement, McCarty kissed the crucifix and returned it to Father Smythe. He shook hands with most of those standing on the platform and bade them farewell. His feet and hands were then pinioned, the black cap drawn over his head, while he repeated his devotions. The rope was adjusted, while McCarty told Maledron to draw it tight.

At 2:07 the drop fell; the body of the convicted felon "going down like a shot and stopping with that dull horrible sound that always attends such events." Pat's neck was broken. He was pronounced dead at 2:38, when his body was taken down and placed in a neat coffin. [32]

* * *

The war against crime in the Indian Territory claimed Sam Sixkiller's successor.

Jim and Nark Cunnieus, and Ed Leeper broke into a Missouri Pacific freight car and stole 800 pounds of flour and three caddies of tobacco. The stolen goods were taken to the camp, where they were cutting railroad ties.

Ed's father, when he saw what his son and his friends had done, reported the matter to William Fields. Besides being a deputy marshal, Fields

served as a railroad detective. After securing warrants for the robbers' arrest from the U. S. commissioner, Fields on Sunday morning, April 9, took young Leeper and Nark Cunnieus into custody. The arrests were made nine miles northeast of Eufaula. Leaving the two men in charge of his posse, Fields, accompanied by Crowdy Nucks, started for the tie cutters' camp to arrest Jim Cunnieus. Approaching the camp, Fields and Nucks encountered Cunnieus, who was riding a mule, and was armed with a shotgun and a revolver.

Fields "threw down" on Cunnieus with his Winchester and called, "Jim, I've got a writ for you, throw down your gun."

Hardly had these words left the marshal's lips, when Cunnieus fired, inflicting a scalp wound. Leaping from his mule, the badman used the animal as a shield.

As he dismounted, Fields shot; Cunnieus replied with a blast from the other barrel of his shotgun. Eighteen "turkey balls" ripped into the officer, killing him almost instantly. Having emptied his shotgun, the outlaw whipped out his pistol and began shooting at Nucks, who shot back. The two men engaged in a running gunbattle. Finally, Nucks sent a ball crashing into Cunnieus' left thigh. Throwing down his pistol, the badman surrendered to the plucky Negro. During the skirmish, 40 to 50 shots had been exchanged. Nucks' clothing had been torn by several bullets.

The shooting caused tremendous excitement in Eufaula. Cunnieus' friends banded together and voiced threats of rescuing him, while the people of Eufaula threatened to lynch the wounded gunman. The shooting had occurred at midday, and a telegram was promptly sent to Muskogee asking for help. Within a short time, Deputy Marshal Bud Kell was en route to Eufaula. When he arrived, he found the feeling intense. Fearing that the prisoner would be taken from him and hanged, Kell loaded him on the first northbound train. On Monday morning, Cunnieus was locked in the Muskogee jail. The next morning, Kell and his prisoner boarded the Fort Smith stage. [33]

Cunnieus cheated the gallows. When brought to the U. S. Jail, he was suffering from the wound in the leg. Next, he had a severe attack of pleurisy, after which he came down with measles. This disease settled in his bowels, and Cunnieus expired of the flux on May 25. The Elevator informed its readers on the 27th, "He has now gone to a higher court to answer for his misdeeds." [34]

* * *

As a result of the shortage of funds, the May 1887 term of Judge Parker's Court had to be curtailed. When the Elevator went to press on June 9, the editor reported that the Federal court yard seems deserted, the "usual crowd of witnesses and hangers on has vanished." About the only sign of life was an occasional lawyer hurrying up the steps to attend to the "wants of some unlucky client."

Work on the new jail which had been commenced in February was progressing rapidly. According to the contractor, the new jail should be completed by August 1.

In addition, a four-foot walk was being paved from the front gate of the old Garrison, to the steps of the courthouse. This work was being done by prisoners, whom Jailer Pryor took out in "small squads to break rock and lay it down." The prisoners seemed to "enjoy this short recreation from the confinement of their crowded cells." 35

* * *

As soon as funds for Fiscal Year 1888 became available, Judge Parker on the first Monday of July called a special term of court to order. As soon as the grand jury had been empaneled it got down to work. Besides studying a number of cases to ascertain if there was sufficient evidence to indict, the grand jury investigated and reported on conditions in the U. S. Jail.

At the end of its session the grand jury reported that it had found the:

> U. S. Jail in good condition and prisoners well cared for. So far as we could observe complaints reaching us as to quality of food are groundless. Jailer Carroll with the able assistance of Mr. Conway and others are alert at all times to their duty, firm, but kind and courteous.
>
> We do not find the sanitary condition of the garrison as commendable as in our opinion it should be, and would recommend a detail police force from the jail to clean away all accumulations of debris, such as bones and other offal from the cook rooms, and other accumulations in and about the garrison, this detail to the end that absolute cleanliness be maintained. Also to the erection of new privies with proper sewerage, and a free use of disinfectants about the urinal. We are pleased to note the rapid progress in erecting the new jail and suitable rooms for coming jurors, as they are much needed. 36

Eight men were convicted of capital offenses at the special term of court which lasted until the fourth week of October.

Abner M. Lloyd, a 60-year-old white farmer, lived near Post Oak on the Washita River. On December 9, 1886, Lloyd went to Tishomingo to purchase a load of hay. Lloyd picked up the hay and started home. Since the hour was late, he camped a short distance outside Tishomingo.

Silas Hampton, an 18-year-old Cherokee, was watching. As soon as he was satisfied that Lloyd was asleep, Hampton crept up to the camp fire. Shooting the sleeping man in the back, the killer rifled his pockets, taking $7.50 and a pocketknife.

A Chickasaw, named Wolf, who lived nearby, was awakened by the shot. Shortly thereafter, Hampton came to his house. Leaving his gun with Wolf, Hampton went to a store, three-quarters of a mile away. There, he invested $3.25 of the dead man's money in a bright-colored silk handkerchief and some trinkets.

About noon on the 10th, Lloyd's body was discovered by William Markham. A deputy marshal was sent for. When he reconnoitered the area, the marshal noticed that the killer had a patch on the bottom of one of his boots. Hampton was tracked to Wolf's house. When taken into custody, Hampton was searched and found to have Lloyd's knife and some of the money on his person. When Hampton asked why he was being arrested, he was told that it was for killing a white man. Hampton blanched. "Don't take me to Fort Smith," he cried, "Kill me now." His pessimism was justified. Hampton was found guilty on July 9. 37

U. S. Deputy Marshal John Phillips and his posse arrested Seaborn Kalijah. The young, uneducated Creek was accused of selling whiskey in the Indian Territory. Before starting for Fort Smith on January 17, 1887, Phillips decided to visit Eufaula, which was about 15 miles away, on business. Three men, Mark Kuykendall, Henry Smith, and William Kelley, were left in charge of the prisoner.

When Phillips returned the next morning, he found his comrades butchered and the prisoner gone. Smith and Kuykendall had been chopped to death with an ax while they slept. The killer had dragged their bodies into the camp fire. Logs had been piled across their legs, and their extremities had been

roasted from the waist down. Kelley's body was lying about 12 yards from the others; he had been shot and terribly mutilated with an ax.

Before starting after the escaped prisoner, Phillips buried the bodies. Within a few days, he had recaptured Kalijah. When apprehended, Kalijah claimed several men had attacked the camp in the dark and he had escaped. Operating on the assumption that Kalijah had had outside assistance, Phillips arrested Dr. Walker, Josh Alrovia, and Ethlo Harjo. Walker and Harjo were related to the prisoner.

Searching Walker's house, the marshal found some gear stolen from the death camp. Walker swore that the property had been hidden under his house by Alrovia. Following the arrest of his kin, Kalijah confessed to having killed his guards. On the witness stand before Judge Parker, Kalijah claimed that the guards had abused him. A number of spectators at the trial felt that the young Creek was sacrificing himself. The jury didn't agree. When it brought in its verdict on July 13, the jury convicted Kalijah, while acquitting Walker and Alrovia. 38

Judge Parker on July 30 named Friday October 7, as the day Hampton and Kalijah would be taken from the U. S. Jail and hanged. The condemned received their sentences through an interpreter, and grunted "their approval of the judge's remarks to them." 39

Jeff Hilderbrand was a son of Judge Stephen Hilderbrand, a highly respected citizen of the Cherokee Nation. Jeff and his brother Johnny, had been arrested and charged with assault with intent to kill. A Negro, John Ridgeway, had appeared as a witness against them.

On May 9, 1884, Ridgeway's body was found under a tree about 300 yards from his cabin on Coon Creek, near the Kansas line. When the authorities investigated, they questioned Ridgeway's common law wife, Mary, who was a white. Mary said that on the night of May 7, Jeff Hilderbrand had come to the house. Jeff had told her husband that he was dodging the marshals. He asked the Negro to go into the woods with him and watch for the lawmen, while he slept. Ridgeway had taken a blanket and had left the cabin with Hilderbrand. This was the last Mary had seen of the Negro. The woman's statements were corroborated by her son and by another man.

Arrested, Hilderbrand was taken to Fort Smith for trial. At the August

term of court, the prosecution charged that Jeff Hilderbrand wanted to make certain that Ridgeway wouldn't testify against he and his brother. The defense attorneys claimed that Jeff was at Webbers Falls, 125 miles away, at the time the crime was committed. Jeff's brother and father, along with several other witnesses, supported his alibi. It therefore came as quite a shock when the jury on August 2 returned a verdict of guilty. 40

On the morning of August 7, 1884, the body of Charlie B. Wilson, a respected merchant of Kulla Chaha, Choctaw Nation, was found alongside the road 15 miles from his home. An examination indicated that he had been shot from ambush as he rode along. One ball had struck him in the small of the back, a second had hit him in the right shoulder, while a third had lodged in his right leg. To make certain that Wilson was dead, his murderers had bashed in his head with their firearms.

Wilson had left home on the 6th to attend an election at Ho-chub-bee precinct, 20 miles from Kulla Chaha, where he was standing for election as representative. His opponents were Robert Benton, Jene White, and Robert Isom. Wilson and Benton had reportedly quarrelled at the polls. The deceased had charged that Benton planned to kill him. After the fuss had quieted down, Wilson left. He had spent the night at the cabin of a friend, several miles from the courthouse.

Wilson was the master of the Masonic lodge at Kulla Chaha. In addition, he was well known in Fort Smith. He was a "quiet, peaceable Choctaw, yet one whom an enemy would dare not to attack openly, hence his assassination...." 41

It was soon ascertained by the authorities that Wilson had been gunned down by Jack Crow, Robert Benton, Peter Coinson, Ned McCaslin, John Allen, Dixon Perry, Charles Fisher, Jim Franklin, Cornealius McCurtain, Joe Jackson, and John Slaughter. With the exception of Crow, all were Indians and could only be tried in the Choctaw Courts. As yet, Crow had failed to take advantage of the Choctaw freedman's registration law, which declared the ex-Indian slaves to be bona fide citizens, after having registered. Crow was accordingly deemed amenable to the Fort Smith court for the crime, but he "took to the woods" before he could be apprehended.

Several of the other assassins were arrested by officers of the tribe. Since they were prominent citizens, they were released. The grand jury had

failed to indict.

Crow remained at large until the winter of 1885-1886. Meanwhile, several of his friends had registered him as a Choctaw. In December 1885, Deputy Marshal Charles Barnhill and his posse trailed Crow to the 109 cabin in the Poteau Mountains, where he and his family lived. Crow when called to surrender refused. Marshal Barnhill and his men surrounded the cabin. The weather was bitter cold; the marshal froze one of his feet. Finally, the posse set fire to the cabin. Crow thereupon surrendered, and the fire was extinguished. When arrested, Crow was wearing Charlie Wilson's pistol.

At the trial in August 1887, Crow claimed that he was a Choctaw citizen. The prosecution held that the murder had occurred prior to his registration and couldn't effect the court's jurisdiction over the case. Two of Crow's partners in crime, Joe Jackson and John Slaughter, were witnesses for the government. They claimed that their party had encountered Wilson on the road. Robert Benton had questioned Wilson about a misunderstanding they had had at the election.

Benton had shot Wilson three times. Although knocked off his feet, Wilson scrambled to his feet and grappled with Benton. Whereupon, Crow shot the deceased in the back with his Winchester, and then beat out his brains.

Testifying in his own behalf, Crow claimed that he had been deputized by Benton to assist in effecting Wilson's arrest. He charged that Peter Coinson and not he had shot Wilson in the back. During the trial, Crow claimed that he couldn't speak English, but after the President had refused to commute his sentence, he spoke good English. 42

Jake Burris and Richard Southerland lived near Fort Gibson. Burris, a Negro, rented his land from Southerland. The two men quarrelled when Burris hauled off a load of corn without discussing the subject with the landowner. As they parted, Southerland ordered Burris to keep out of the field.

The next morning, October 25, 1885, Burris ignored the warning and returned to the field to pick more corn. Southerland was also up at an early hour. He asked a man who farmed a nearby field if he had seen Burris. The man replied that Burris was working in the cornfield. As he rode off, Southerland remarked, "If he is, I intend to kill him."

As Southerland told it, Burris was armed with a shotgun and fired the first shot but missed. Southerland took aim and killed his tenant. A man named Woods witnessed the shooting. In the days immediately following, Woods talked freely. He said that Southerland had entered the field and had shot Burris without warning. As Burris slumped to the ground, he had discharged one barrel of his shotgun.

Following the killing, Southerland went into hiding. When he finally surrendered and told his story to the U. S. commissioner, he was discharged. At the hearing, Woods had changed his story of the affair to coincide with Southerland's version.

After Southerland's discharge, District Attorney Sandels ordered the case reopened. Southerland was arrested and brought before the Court for the Western District. Woods again testified in Southerland's behalf. Other witnesses were brought forward who swore that Woods had not only contradicted his original statements, but that he had also accepted a bribe from Southerland. The jury accordingly on September 14 brought in a verdict of guilty against the defendant. 43

On November 26, 1886, four Negroes (George Moss, Sandy Smith, Foster Jones, and Dick Butler) started out on a cattle rustling foray. It was agreed that if anyone caught them butchering cattle, he would have to be killed. They headed for the Red River bottom in the Choctaw Nation. Sighting a fine steer belonging to George Taff, a Choctaw, the rustlers shot it.

Taff heard the shot and rode over to investigate. He came upon the Negroes while they were skinning the steer. Moss snatched up his weapon and shot the rancher. At this, Moss' horse bolted. Moss' badly frightened partners in crime refused to help him catch the horse. Moss was compelled to return to his home afoot.

It was not long before Taff was missed. A searching party rode out and soon discovered the body. Equally important, Moss' horse, saddled and bridled, was found grazing near the dead man. The horse and the accoutrements were readily identified; Moss was arrested.

When questioned, Moss confessed, implicating his companions. Moss and Smith were taken to Fort Smith for trial by the deputy marshals, Jones and Butler, who were citizens of the Choctaw Nation, were released for trial before

the tribal court. The citizens knowing that Jones and Butler would undoubtedly escape punishment, took them to the spot where Taff was murdered. After compelling them to confess, the vigilantees riddled them with bullets, leaving their bodies for buzzards and wolves.

While en route to Fort Smith, Sandy Smith tried to get away. He was shot down, badly wounded. Before the date set for the trial, Smith on September 10 died of his wounds. Of the four only Moss would have to face Judge Parker. On September 17 the Fort Smith court convicted Moss of murder. [44]

William Alexander, a Negro, was brought before the Court of the Western District. This was his second appearance before Judge Parker. As in the first instance, Alexander was charged with rape. This time, he was accused of raping his 13-year-old stepdaughter, Ella Whitfield. The youngster had been working in a cotton field in the Red River country, when she had been lured aside and attacked. The jury on September 17 pronounced Alexander guilty. [45]

Emanuel Patterson was arrested on January 18, 1887, by Heck Thomas for the murder of Deputy Marshal Ayres eight years before. After Thomas brought him in for trial, Patterson claimed that when he shot, he didn't know that the man beating on his door was a law officer. Instead of identifying himself, Ayres was said to have demanded admittance in a rude manner. The jury brushed aside Patterson's plea of self-defense and decided on a verdict of "guilty of murder." [46]

* * *

Work on the new jail didn't go as well as the contractor hoped. Bottlenecks developed. On August 19 the editor of the Elevator reported, "Work is being pushed rapidly on the new jail. The intention was to complete this building by the middle of September, but it will hardly be ready for occupancy at that time."

Marshal Carroll and his staff hoped the new jail would soon be ready for occupancy. At the end of the third week in August there were 111 prisoners, of whom 35 were charged with murder. [47] The number of prisoners increased rapidly as several deputy marshals reported in at the U. S. Jail with more "boarders." Jailer Carroll on September 12 reported he had 140 prisoners.

An examination of the records showed that this was the largest number of men ever confined in the U. S. Jail. When the Elevator went to press on the afternoon of the 15th, this number had been reduced by sending 22 to Little Rock and the release of four prisoners. [48]

Two men, counterfeiters Daniel Horton and Cornealius Baker, escaped on the night of September 9 from the little jail which was used as a hospital. They accomplished this by digging out. Horton had been declared hopelessly insane by the physicians and could never have been brought to trial. [49]

Early in September, Dick Vann, and Alf Cunningham, Choctaw Cordrey, Jim French, and others were hiding out near Fort Gibson. On occasions, they would ride into Fort Gibson and "paint the town red." Vann on Sunday night, the 18th, was up on Fourteenmile Creek, where he had a row with the Trainer gang. Dick was robbed of his pistols, and whiskey, and was severely beaten. Late that evening, he returned to his camp near Fort Gibson.

Reinforced by his pals, Dick headed for town to do some more "painting." Reaching Fort Gibson, the gang separated. Vann and Cordrey took the road which passed Deputy Marshal Jackson Ellis' house. As they rode by, they shot into the dwelling. After three or four shots had been fired, Ellis threw open the blinds and returned their fire. At the first shot, Vann and Cordrey took to their heels.

About five minutes later, Cirrissa Fields dashed up to the French residence, crying that a man had been shot. She awoke Mrs. Vann French and they got a buggy for the injured man, who proved to be Dick Vann. Vann was picked up and taken to Mart Benges', three miles from town, where he died on Tuesday. [50]

During the late autumn of 1887, two more deputy marshals (Frank Dalton and Ed Stokery) were slain. Since Marshal Carroll had taken office in May of the previous year nine deputy marshals, two posse, and three guards had been killed. They were:

William Irwin, killed by Jack Spaniard and Frank Palmer. Both were still at large, with $500 reward posted for their capture.

F. M. Sweden, murderer, unknown.

J. E. Richardson, murdered by Bill Pigeon, who was at large, with a reward of $500 on his head.

Sam Sixkiller, murdered by Dick Vann and Alf Cunningham. Vann had been killed by Deputy Marshal Ellis, while Cunningham, after being

arrested and turned over to the Creek authorities, had escaped.

William Fields, murdered by Jim Cunnieus, who had died at the U. S. Jail.

Dan Mapes, murdered at Tahlequah by Ned Christie, Charlie Bob Tail, John Parised, and Bud Trainer. All except Christie were in jail at Fort Smith awaiting trial.

John Carlton, murdered at Denison, Texas, by John Hogan, who was in jail at Sherman, Texas.

Frank Dalton, murdered by Dave Smith, Will Towerly, and Lee Dixon. Smith had been killed, and Dixon was in jail at Fort Smith.

Ed Stokery killed by Will Towerly. Towerly in turn had been slain by Stokery's posse.

Ben Impson, posse of Deputy Lawrence, killed by Indians. No jurisdiction, because Impson was also an Indian.

William Smith, posse, Mark Kuykendall and John Kelley, guards of Deputy Phillips, murdered by Seaborn Kalijah, who had been executed on October 7 for the crime.

Henry Miller, a guard for Deputy Smith, murdered by Big Chew. No jurisdiction in the Court for the Western District. Murderer acquitted in Cherokee court. 51

* * *

Seaborn Kalijah and Silas Hampton were executed at the old Garrison on October 7.

There was only one man, Owens D. Hill, convicted of a capital offense at the November term of court. Hill who had lived in Fort Smith, married Viney D. Anderson in 1885. Viney lived just across the Poteau in the Choctaw Nation. Both Hill and his bride were Negroes. In the spring of 1887 the Hills moved to the home of Viney's mother on the Arkansas River, a few miles above Gibson's Station. The son-in-law and the mother didn't get along. Within a short time, the mother-in-law moved out.

In June 1888 Owens became enraged when he learned that his wife had given her mother a plug of tobacco. He slapped Viney's face. The next day while Owens was working in the field, Viney took their child and went to her mother's. Owens tried in vain to talk her into returning. Unable to

do this, Owens decided to kill both women and commit suicide. Having made up his mind, the Negro on the night of June 25 armed himself with a shotgun and razor.

When he arrived at the women's house, he was met at the gate by his mother-in-law. Owens started beating the elder woman over the head with the shotgun. Before he stopped, he had broken his weapon. Viney, seeing what was happening, fled and took cover behind a bed. After Owens had knocked his mother-in-law into insensibility, he started after his wife with the razor. She dashed out of the house, but he caught her in the yard and cut her throat, nearly severing her head from the body. Having broken his shotgun and razor, Owens decided not to do away with himself. Instead, he fled to Kansas City, Missouri.

Shortly after his flight, Owens wrote a friend; he asked about his wife. Apparently, he didn't realize that she was dead. The acquaintance showed the letter to the authorities. Acting on the information contained therein, they were able to arrest Owens Hill. The case was submitted to the jury without arguments, and a verdict of guilty was returned on November 16, within a few minutes. [52]

* * *

On Christmas, the prisoners in Cell No. 1 held an election, which resulted in: T. S. Bussell being chosen judge, Lewis Burrows, prosecuting attorney, A. J. B. Horine sheriff, Pete Clark deputy sheriff, Jim Grantham clerk, and Tom Scott cell detective.

After the election, Messrs. Feiliner Bros. & Gans presented the prisoners with a caddy of chewing tobacco, two boxes of cigars, and a gallon of good whiskey. John Carroll and Will Johnston furnished eggs, etc. With these ingredients, six gallons of eggnog were mixed, and the boys behind the bars enjoyed a "jolly Christmas, for which they extend thanks to their benefactors." [53]

The contractor on February 1 turned the new jail over to Marshal Carroll. According to the prisoners, they all preferred "their present quarters and the change from the old jail to the new is looked forward to with no little degree of displeasure." [54]

At half past 8 on Saturday night, March 17, a guard at the U. S. Jail saw smoke billowing from the windows of Cell No. 1. A hurried inspection revealed that the ceiling of the jail directly under the courtroom had been set afire by the prisoners. The inmates of Cell No. 1 had that day received a large number of religious tracts and pamphlets. These, they had stuffed into the crevices and set fire, in hopes of burning a hole through which they might escape. Had the fire gained headway, it is probable that some of the prisoners would have been roasted.

This was the second time within the past several months that prisoners had sought to burn their way out of jail. To guard against a recurrence, Marshal Carroll on Monday, March 19, had the prisoners removed to quarters in the new jail. 55

Following the removal of the prisoners from the old to the new jail, the old one was used for hospital purposes. On Saturday night, March 24, Ed Rhodes and Isaac Martin were detailed as nurses. The next day, they discovered that one of the window bars was loose, having at some time previous been almost sawed in two, where it was rivetted to the cross bar.

At dusk, when the time to change nurses arrived, Rhodes and Martin kindly volunteered to spend a second night with the sick. The jailer was agreeable.

About 10 p.m. when all the guards were in the new jail, Rhodes and Martin forced the bar and escaped. Sam Jones, a state prisoner from Washington county who had been sent to the hospital with measles, accompanied the two nurses. An accused murderer, Marion Ables, who was recovering from an attack of fever, refused to join in the break. Martin was recaptured and returned to jail on Wednesday by Deputy Sheriff Sam Lawrence of Greenwood. 56

* * *

The 49th Congress passed two laws affecting the jurisdiction of Judge Parker's Court. An act approved by the President on June 19, 1886, detached three Arkansas counties (Howard, Little River, and Sevier) from the Western District and assigned them to the Eastern District. Here again was a blow aimed at the Fort Smith Court. 57

News of the murder of Captain Sam Sixkiller by Vann and Cunningham

caused Congress to act. On March 2, 1887, a law was passed which :

> provided that any Indian committing against the person of any Indian policeman, appointed under the laws of the United States, or any Indian United States deputy marshal, while lawfully engaged in executing any United States process or other duty imposed by the laws of the United States, the crimes of murder, manslaughter, or assault with intent to kill, in the Indian Territory, should be subject to the laws of the United States....58

Chapter XIV

Congress Moves to Curb the Court for the Western District

Judge Parker on Thursday, February 9, 1888, passed sentences of death on seven men convicted at the August and November terms of court. They were: William Alexander, George Moss, Jeff Hilderbrand, Dick Southerland, Emanuel Patterson, Jackson Crow, and Owens Hill. April 27 was set as the day for the multiple execution. [1]

William Alexander's death sentence during the last week of March was commuted to life imprisonment by President Cleveland. Both Judge Parker and District Attorney Sandels had forwarded letters to Washington recommending such action. [2]

President Cleveland in the second week of April commuted the death sentence of Dick Southerland to 21 years in the Little Rock Penitentiary. [3] Before April 27 arrived, the President granted reprieves of ten weeks to Jeff Hilderbrand and Emanuel Patterson. At this time, Hilderbrand, who had been in jail at Fort Smith since November 14, 1885, was suffering from "the last stages of consumption." In view of this situation, the editor of the Elevator urged that Hilderbrand be pardoned at once and allowed to spend his last weeks on earth at home. [4] Before the chief executive could act on the suggestion advanced by the Elevator, Hilderbrand on the last day of April passed away. [5]

The three men (Hill, Moss, and Crow) still slated to be executed on Friday, April 27, spent a restless Thursday night. Much of their time was spent praying and singing. At daybreak, they seemed to calm down. They passed the morning shaking hands and bidding friends goodbye.

Hill was apparently in the best frame of mind. Moss and Crow were morose and gloomy. At times, they appeared to be completely unnerved at their impending fate. Their spiritual advisers, the Reverends K. C. Tylor and S. M. Fisher, were with the three condemned constantly. Hill's sister visited him during the morning; their parting was "quite touching." She accompanied him to the gallows, and stood on the platform until the trap was dropped.

At 12:30 Marshal Carroll entered the jail and read the death warrants. As soon as he had finished, "the sad march" to the scaffold began. The prisoners marched with steady step. Hill sang and prayed alternately. On his breast, Hill wore a large card on which were the letters M. S. B. made from the hair of his mother, sister, and brother.

After reaching the platform there was a short religious ceremony, following which the felons took their positions on the trap. Here, the caps were placed, the nooses adjusted, and the trap sprung. The necks of all three were broken; death was almost instantaneous. After hanging one-half hour, the bodies were lowered. Hill's was turned over to his sister, while Crow's and Moss' remains were interred in Potter's field. 6

* * *

J. D. Morgan, a coal miner, worked for a mining company at McAlester. In June 1887 Morgan took a few days off, going to Denison, Texas. Late on the evening of the 28th, Morgan, with a bottle of whiskey in his pocket, boarded a north bound freight train for McAlester. The miner had expressed his valise ahead. At Blue Tank in the Choctaw Nation, Morgan and four Negroes were kicked off the train by the brakeman for failing to pay their fares. Subsequently, the brakeman recalled that the white man was very drunk.

The next morning, Morgan's body was discovered near the section house, stripped of coat, hat, trousers, and shoes. Captain Charlie Lef'lore of the Choctaw police was immediately notified. The finger of suspicion pointed toward Gus Bogles, a Negro bootblack, who had been booted off the train at the same time as Morgan. Lef'lore followed the Bogles' trail to Denison, where he took him into custody on the last day of June.

When arrested, Bogles confessed that he had killed Morgan by bucking a strap around his neck and beating him over the head with a pistol. The killing had netted Bogles, in addition to the victim's clothing, his watch and $40. Subsequently, Bogles retracted his confession. Bogles' companions on the ride from Denison to Blue Tank, William Netherly, Dennis Williams, and Thomas Wright were apprehended.

The four Negroes were indicted by the Fort Smith grand jury for the murder of Morgan. At the trial which took place at the May 1888 term of court, no

evidence was produced implicating Netherly, Williams and Wright. Moreover, the trainmen were unable to recognize them, although they were positive as to having put Bogles off the train at Blue Tank. Throughout the trial Bogles emphatically denied having seen Morgan. When the verdict of guilty was announced on May 10, Bogles was surrounded by deputy marshals and guards who conducted him back to his cell.

In pronouncing sentence on May 26, Judge Parker remarked:

> ...in your efforts to escape the consequences, you have added to your crime that of perjury. This, of course, is not to be wondered at....It is expecting too much of wicked and depraved human nature for us to look for truth from one who has stained his hands with innocent human blood....Sometimes such persons have succeeded, by their false-hoods, in deceiving juries and in cheating justice. You have not succeeded, and you stand before the bar of this court to have announced to you the sentence which the law attaches to murder.... [7]

Bogles was recalled as one of the most difficult prisoners ever confined in the U. S. Jail. Twice he tried to escape. Several days before July 6, the date set by Judge Parker for his execution, Bogles sought to bribe a trusty to carry him out of jail in an empty barrel that had been brought into the "Hotel de Uncle Sam" filled with sawdust for the spittoons.

For several nights prior to his execution, Bogles whooped and yelled like a mad man, for no other purpose than to annoy his fellow inmates.

About ten minutes before he was scheduled to take his last walk, Bogles thought he saw a chance to make a getaway. John McNance, who was one of the guards, stopped in front of Bogles' cell to talk to two other guards. As he did so, he carelessly thrust his hip close to the lattice. Quick as a flash, Bogles' hand shot out and snatched the officer's pistol. Next, he dashed back into his cell. Bogles' cell-mate, Emanuel Patterson, was resting on his bunk. Seeing what Bogles had done, Patterson grappled with him. Patterson succeeded in wrestling the pistol away from Bogles. As he did, he slid it beneath the bars. The prisoners and guards breathed sighs of relief as they saw McNance bend over and pick up the deadly weapon.

After being disarmed, Bogles made no further effort to escape, nor was he given the opportunity to do so, for the jailer and his men were aware that he had vowed to make a break when they took him out, so they would

have to shoot him. Bogles told Jailer Pettigrew that he could dispense with reading the death warrant. But when the jailer proceeded, he listened to it attentively, notwithstanding.

As soon as the warrant had been read, the doors of the jail swung open. Surrounded by a "bevy of guards," the condemned man was escorted to the gallows, followed by perhaps "200 spectators." Ascending the platform with "great firmness," the felon faced the crowd. A brief religious service ensued; Bogles was placed upon the trap under the "ugly looking noose." There was no change in his countenance until the hangman began pinioning his legs, when his face "assumed an ashy color," but he never flinched.

When asked by Marshal Carroll if he had anything to say, Bogles replied that they "were taking innocent blood."

The black cap was drawn over the felon's head, the rope adjusted, and the trap sprung. Bogles' neck wasn't broken by the fall and he died by strangulation. [8]

Emanuel Patterson received a second respite during the first week of July. This time the reprieve was for 90 days. President Cleveland wanted more time to study the case. [9]

On September 15 Marshal Carroll received a telegram from Washington that Patterson's sentence had been commuted by the President to life imprisonment. Cleveland had decided that the evidence was "not...of that satisfactory character that would justify the infliction of the death penalty." In fact, the commutation had been granted over the opposition of Attorney General Garland, Judge Parker, and District Attorney Sandels. [10]

* * *

There were five convictions for capital crimes at the August 1888 term of the Court for the Western District.

Thomas W. Pringle in early March 1888 traded a rifle to Richard Smith for a cow. Smith didn't have the cow in his possession, so he gave Pringle a bill of sale for the animal, which belonged to Jerry Gardner. On Sunday, March 25, Pringle went to Smith's cabin and took back the gun, telling Smith that he didn't have a clear title to the beast. Smith said that he would accompany Pringle to talk to Gardner on the following Sunday, and thus settle the entire affair.

Three days later, the 28th, Pringle was working in the woods near Wheelock, Choctaw Nation. He was accompanied by his sweetheart. A shot rang out; Pringle collapsed to the ground and died. Since the killer had fired from ambush, the girl saw nothing.

When notified of the murder, the neighbors searched the area for clues as to the identity of the unseen assassin. The ground was soft, and behind a nearby tree were found tracks indicating that the killer wore boots with the heels reinforced by large round headed tacks, 21 driven in the right boot heel and 14 in the other. The trail was easily followed to a lake. On the opposite side, the posse again picked up the tracks which led them to a field behind Dick Smith's cabin.

A boy staying at Smith's place reported that the suspect had come home on the day of the slaying, wet to the waist, and had complained that his boots hurt his feet. Sitting down, Smith had knocked off the heels and pulled out the tacks.

Smith was arrested the next day by Deputy Marshal J. N. Ennis. At the time, he was taken into custody, Smith was wearing boots without heels. A search turned up the missing heels in the brush pile into which the suspect had tossed them. From one of the heels all the tacks had been pulled, but the holes were still plainly visible. The boots fitted the tracks perfectly, even to the imprint of a woolen sock, where Smith's big toe had protruded through a hole in one of the footgear.

Confronted with this evidence, Smith confessed. On doing so, he sought to incriminate Charley Mitchell, stating that he had told him to shoot Pringle. Mitchell was arrested and taken before the U. S. commissioner, but was released because of insufficient evidence.

In view of the overwhelming evidence, the jury on August 21 brought in a verdict of guilty against Dick Smith. [11]

Living at Oak Lodge, Choctaw Nation, in 1886 were William Morgan and his son-in-law Lewis Burrows. On September 9 the two men had quarrelled violently. Morgan, who was a minister in the local church, abused Burrows because he was unable to collect 35¢ from a boy. That evening Morgan went to Burrows' house and found him outside cutting wood. Burrows met his father-in-law with ax in

hand. The argument was resumed. Infuriated by Morgan's remarks, Burrows struck him a terrific blow on the left shoulder with the ax. The head drove through the shoulder blade and into the older man's heart. Burrows' wife was standing beside her husband when he struck her father.

At the trial before Judge Parker, Burrows claimed self-defense. He testified that Morgan had rushed him with a knife. Several witnesses supported Burrows in his contention; others swore that Morgan's knife was in his pocket at the time he was killed. Since the prisoner was a deacon in the church and had taken great interest in the religious life of his fellow prisoners while awaiting trial, many Fort Smithites believed the jury would recommend that the charge be reduced to manslaughter. The jury didn't take this point of view, however, and on September 15 convicted Burrows of murder. [12]

Alexander Juzan and James Christian ran large numbers of cattle in the Chickasaw Nation. Bad blood between the two men went back to 1884, when Jim Wasson had killed Almirine Wadkins. The victim was Juzan's brother-in-law, while Christian had sided with Wasson.

Early in 1887, Christian accused Juzan and Dick Sacra of stealing cattle. Swearing out a warrant, he had them arrested. One of the witnesses in the case which would be settled in the tribal court was William Hamilton. The witness had fled to Texas. James Christian, Dave Hardwick, and Jim Bonds went after him. On the return trip, they were joined by a young man named Bud Luttrell.

Luttrell took a seat in the buggy alongside Christian and Hamilton, while Hardwick and Bonds rode horseback. The two horsemen lagged behind. The date was April 10.

Suddenly, several shots fired in rapid succession alerted the two riders. Putting their spurs to their mounts, Hardwick and Bonds raced ahead. As they rode up on the buggy, they spotted Hamilton and two bodies. Hardwick and Bonds "threw down their guns" and demanded to know what had happened to Christian and Luttrell.

Hamilton excitedly explained that Juzan and his nephew, Steve Bussell, had ambushed the buggy and killed his two companions. After firing the fatal shots, they had ridden off at a gallop. Hardwick and Bonds followed the killers a short distance. Unable to overtake them, they returned and took care of the bodies.

Three days later, Hardwick, who was a member of the Indian police, assembled a posse and went in pursuit of Juzan and Bussell. The posse was soon hard on the trail. When they overtook the wanted men, a gun battle ensued. Juzan was killed. Bussell, although wounded, escaped. Shortly thereafter, he was arrested by Captain Charlie Leflore, and bound over to the United States Commissioner at Muskogee, who sent him to Fort Smith.

Within a few weeks, Bussell's uncle and aunt, Mr. and Mrs. James Thompson, traveled to Fort Smith and applied for bail. Along with them came Hamilton. The prime witness swore that Christian and his party had been drunk at the time of the shooting.

As they drove up, Juzan had called "Hello!"

Christian replied, "Go to h__l, you d__d cow thief," and reined up the team. Christian at the time had his Winchester between his knees. As Christian and Juzan exchanged words, Juzan and Bussell dismounted. Christian threw his rifle to his shoulder. Juzan beat him to the draw. Throwing his gun on Christian, Juzan shot the rancher in the head, killing him instantly. Christian's rifle fell across his lap; Luttrell grabbed it. As he was climbing out of the buggy, Juzan shot him through the shoulder, causing him to drop the Winchester. Luttrell ran around in front of the team, and Juzan shot him again. This time the ball tore through the victim's neck.

When he had dismounted, Juzan had turned his horse loose. After the killings, Juzan and Bussell went in pursuit of their horses. Hamilton swore that this was the last that he had seen of them.

After listening to this testimony, Judge Parker ordered Bussell released on a bond of $10,000 which was posted by Mrs. Thompson.

By the August term of court, the prosecution was able to turn up additional evidence. Meanwhile, Hamilton had left the area. Judge Parker accordingly ordered the jury, when the case was brought to trial, to disregard his statements. The prosecution based its case on circumstantial evidence gathered by John Christian, a brother of the deceased, and Hardwick. At the same time, the defense claimed that Juzan and Bussell had been to the pasture to look for stock, and on their way home had unexpectedly encountered Christian and his traveling companions. When Christian had reached for his gun, Juzan had opened fire, while Bussell had merely been a spectator. The jury on September 17

returned a verdict of guilty. [13]

Albert Langue, a young white man, worked in William G. Sorder's coal pit on Cabin Creek, near Chetopa, Kansas. Growing tired of his work, Langue in June 1887 quit and asked for his back pay. Sorder paid him $2.30, instead of the $6 Langue claimed he was due. Hot words followed.

Langue shouted that he would have his pay in full. If Sorder removed anymore coal from the pit before he settled his debt, Langue threatened to kill him.

Whereupon, Sorder snatched up his shotgun and ordered Langue to get out.

Langue retorted, "I don't have to!"

At this, Sorder blasted him.

Tried by the Court for the Western District, Sorder claimed that when he fired the fatal shot, he believed it was in self-defense, because Langue had threatened his life. Taking cognizance of the fact that Langue was unarmed, the jury didn't agree. After being out for 24 hours, the jurors on October 16 declared Sorder guilty of murder. [14]

On the night of September 26, 1883, the body of Jake Foulk, a brakeman on the Missouri, Kansas and Texas Railroad, was found near the depot at Savanna in the Choctaw Nation. An examination showed that the brakeman had been shot in the chest. Months passed before the authorities made an arrest. In 1884 George Brashears was taken into custody. When brought to trial before Judge Parker, the evidence against Brashears was so meager that District Attorney Clayton entered a nolle prosequi and Brashears was discharged.

Later, Brashears was arrested and convicted of larceny, for which he served a year in the Detroit House of Correction. Following his release from prison, Brashears reportedly told three men that he had shot Foulk. These individuals kept silent until Brashears was arrested on a second larceny charge in 1888. While in the U. S. Jail awaiting trial for larceny, Brashears was indicted a second time for the Foulk murder.

At the trial, the three men (Bragg, Stanton and Blansett) to whom Brashears had confided came forward to testify against him. Blansett swore that Brashears had told him that he had hidden five gallons of whiskey on the caboose. When the train had stopped at Savanna, Brashears had made certain that there were no authorities at the depot. He then climbed back aboard the caboose to get

his whiskey. Foulk refused to let him have it. The men had argued; Foulk kicked Brashears in the mouth. Brashears had then shot him, remarking that no man could kick him and live.

The testimony of these three witnesses, in conjunction with the circumstantial evidence produced by the government, enabled the jury on November 2 to convict Brashears of murder. [15]

On Saturday, November 3, Judge Parker pronounced death sentences on Lewis Burrows, William G. Sorder, and Richard Smith. To the question, "have you anything to say why sentence should not now be passed?" Burrows was the only one who replied.

He told the judge that there were only two things he regretted: First, that his attorneys had placed some of his relatives on the witness stand. Second, "that his father had raised a family of six boys, and up to the time of his unfortunate difficulty none of them had ever gotten into trouble, and he regretted exceedingly that he should be the one to place a blot on the family history." Judge Parker named Friday, January 25, 1889, as execution day. [16]

During the second week of October, several deputy marshals reached Fort Smith from the Indian Territory with a large number of prisoners. When the jailer logged these men into the "Hotel de Uncle Sam," he found that on Saturday night, the 13th, he had 170 prisoners, "the largest number ever incarcerated at one time in the history of the court." [17]

* * *

The November term of court opened on Monday, the 5th. Within the next nine weeks, four men were tried and convicted of murder.

James Mills and Tom Robin, both Negroes, boarded at John Windham's in the Seminole Nation. On the night of December 15, 1887, Windham, Mills, Robin, and Windham's 13-year-old stepson, Phillip Lincoln, went coon hunting.

As the men walked through the woods, Windham took the lead. Suddenly, Robin threw his shotgun to his shoulder and blasted Windham in the back. Mills fired two charges into the victim. Before returning to Windham's house, the two conspiritors told Lincoln that they would kill him if he so much as mentioned a word of what had happened. Upon entering the house, Mills and Robin explained to Mrs. Windham that her husband had decided to spend the

night in the woods.

The next day, Phillip Lincoln told several neighbors what had occurred. An investigation was made. When questioned, Mills claimed that Robin had killed Windham. In the afternoon, he led a search party to the spot where the dead man had fallen. Despite Mills' confession, both killers remained in the area.

Several days later, Ben and Mitchell Bruner organized a vigilance committee. A posse composed of Negroes sought to arrest Mills and Robin. They resisted. In the ensuing gunfight, Robin was critically wounded and captured, while Mills escaped. Robin was carried to Fort Smith, where he died of his wounds. Mills was taken into custody in January.

At his trial, Mills claimed that Robin had been the killer, and that he had had no more to do with the crime than the Lincoln boy. The jury didn't agree. On November 10 a verdict of guilty was returned. No motive for the murder was ever ascertained; the three men had apparently been on the best of terms. [18]

John A. Hantz and William Woods of Kinsley, Kansas, had been close friends for a number of years. On October 2, 1887, they left their homes to make a trip through the Indian Territory and Arkansas. They were provided with a team, one saddle horse, a wagon, and a good camping outfit.

At Caldwell, Kansas, the two young men were joined by Henry Miller, a stranger. Upon learning of their plans, Miller asked and received permisson to join them. Entering the Indian Territory, the party camped for a week at Commodore Hollow, about 20 miles southwest of Chouteau. From Commodore Hollow, the travelers pushed on and visited Fayetteville, Van Buren, and Fort Smith. Making a swing through the Choctaw Nation, the men were back in Commodore Hollow by the third week of November.

While they were camped in the hollow, Miller and Hantz went hunting one afternoon. Hantz failed to return. The next day, Woods and Miller broke camp.

Woods reached his home in Kinsley on December 20 without Hantz or the saddle horse. He told Hantz's anxious father that his son had disappeared in the Cherokee Nation. Hantz's brothers returned to Commodore Hollow, but they were unable to find any trace of John.

An elderly hunter on March 18, 1888, found the body of a young man near the Commodore Hollow camp site. There was a bullet hole in the skull. Hantz's

father was notified. After viewing the remains, he identified them as those of his missing son.

Mr. Hantz swore out a warrant for the arrest of Miller. Taken into custody at his home in Troy, Kansas, Miller was jailed in Kinsley. After a preliminary hearing, Miller was turned over to a deputy marshal from the Court for the Western District of Arkansas. When he returned to Fort Smith, the marshal also brought along Woods, whom he had arrested.

At the trial in the third week of November, the government claimed that Hantz was killed by his companions for his money. He had sold his saddle horse at Fayetteville. Consequently, by the time the men had returned to Commodore Hollow, Hantz was the only one with any funds.

Especially damaging to the defense was the fact that at the time of his arrest, Miller had Hantz's watch. He explained this by remarking that he had been carrying the time piece for some time prior to the disappearance of the deceased. Many spectators felt that Miller was the chief offender, while Woods, although he knew of the crime, kept quiet, because of fear for his own life.

Miller's and Woods' lawyers claimed that Hantz had disappeared on November 27. Their case was hurt, when they were unable to explain why their clients had left the area the next day without looking for or informing anyone that Hantz had wandered off. To make matters even more embarrassing, Woods had written one of Hantz's brothers on December 1, telling of his friend's disappearance.

In rendering a verdict of guilty on November 20, the jury addressed a polite note to the judge, asking the mercy of the court in behalf of Woods. An application for a new trial was argued and overruled by Parker. [19]

A revival was held on July 15, 1888, in the Chickasaw Nation. Shadrach Peters and Cy Love engaged in a bitter dispute with two other Negroes over the ownership of a saddle. Another Negro, Malachi Allen, was sitting in a nearby wagon. He heard one of the disputants shout, "I can prove it by Malachi Allen."

Whereupon, Allen climbed off his perch and approached the group, remarking that he didn't want to be involved in their quarrel. One of the four called Allen a liar. Returning to his wagon, Allen picked up his

Winchester.

At this time, Peters was leaning against the back of a chair. Peters, as Allen approached, remarked in jest, "Shoot."

Allen did just that. After killing Peters, he began to fire indiscriminately at the others. Love was gunned down.

Having emptied his rifle, Allen walked away from the camp meeting. He soon returned and took a horse. Deputy Marshal John McAlester chanced to be in the area. The lawman quickly organized a posse and started after Allen. The posse fanned out.

A man named Swain soon overtook the fugitive and ordered him to halt. As Allen reined up his horse, he turned the animal toward Swain as if to surrender. Closing to within rifle range, Allen suddenly leaped off his horse and took cover behind a tree. Shots were exchanged. Finally, the Negro broke cover and started to run. Swain shot him in the arm and he surrendered. The bone was so badly shattered that the arm had to be amputated, before Allen was escorted to the U. S. Jail. Allen employed DuVal and Cravens for his defense. The defense attorneys claimed that their client was of unsound mind. The jury didn't agree. On January 3, 1889, the jury, after being out about 20 minutes, brought in a verdict of guilty. [20]

Marshal Carroll on January 9 received an important telegram from Washington. Glancing at the dispatch, Carroll saw that President Cleveland had commuted the death sentence of two of the three men slated to be executed on the 25th. Burrows' sentence had been commuted to ten years imprisonment at Little Rock, and that of Sorder to life. Judge Parker and District Attorney Sandels had recommended commutation in Burrows' case, and his petition had been signed by a large number of prominent Fort Smithites. [21]

Richard Smith was hanged on January 25 as scheduled. [22]

Judge Parker on Saturday, February 2, passed death sentences on the six men convicted of murder currently in the U. S. Jail. While four of these had been convicted by the November term of court, the sentencing of Bussell and Brashears had been delayed while motions for new trials were being considered. The felons were brought before the judge two at a time, Malachi Allen and James Mills came first, followed by Henry Miller and William Woods, while Steve Bussell and George Brashears were brought in last. The six men

were slated to die on the scaffold on Friday, April 19, unless the President intervened. [23]

* * *

Four men and one woman were tried and convicted of capital crimes at the term of court which commenced on Monday, February 4, 1889.

Calvin Church and Bat Gardner lived near Durant, Choctaw Nation. William Walker boarded with Gardner. On December 11, 1887, Walker and Church had quarrelled over an ax. The next morning, Walker, whose chore was to take care of Gardner's cows, took a Winchester with him when he went to the corral. After taking care of the cows, Walker started back to Gardner's. En route, he stopped in front of Church's and called for Calvin. Church came to the door, and Walker resumed the argument. Mrs. Church called and told her husband to have nothing to do with the troublemaker. Church replied that he was not afraid of him.

At this, Walker shouted, "If you are not afraid why don't you come out here."

Church stepped into his house, lit his pipe, and walked out to the little store where Walker was standing. Walker told Church that if he ever crossed his path again he would kill him.

Church was standing with one foot on the store porch, puffing on his pipe.

Growing more incensed, Walker screamed, "Maybe you think I won't shoot." At the same time, he threw his rifle to his shoulder and shot Church in the head killing him.

Following his arrest, Walker told the authorities that Gardner had hired him to do the killing, and that he was to give him $10 and a quart of whiskey. He complained that he had received the whiskey but not the money.

At his trial, Walker swore that Church had charged him with an ax. Two eyewitnesses contradicted Walker's tale. The jury on February 12, after being out only a few minutes, declared Walker guilty as charged. [24]

Minnie O'Dell was Frank Capel's mistress. At her lover's urging, Minnie, who had lived in Fort Smith, went to Purcell in the Choctaw Nation. Frank and Minnie had a spat on November 6, 1888. The girl left Frank and moved in with

the "notorious prostitute," Nell Singleton.

To drown his sorrows, Frank got gloriously drunk on the 7th. He went to Nell's brothel and fired his pistol into the house. After entering, he knocked Minnie down and kicked her. At first, it wasn't believed that the girl's injuries were serious. During the night, however, her condition took a turn for the worse. A doctor was summoned. Before she died, Millie told the doctor that Frank had struck her with his six-shooter. A post-mortem examination revealed that Minnie's skull had been fractured. In addition, there were bruises on her side from kicks.

When arrested, Frank claimed that when he had entered the house, Minnie had attacked him with a knife. To ward off the woman, he had struck her with his fist, knocking her down. As she fell, Minnie's head had struck the stove.

He didn't deny kicking his former girl friend, but justified his actions by saying that Minnie had tried to kill him previously, while they were taking a buggy ride. When called to the stand, Nell and another call girl said they had been in the room when Frank entered. They claimed that Minnie was sitting on the floor, at the time the drunken man had walked toward her and administered a brutal kick. Badly frightened, they had fled and saw no more of what transpired. The case was given to the jury at noon on March 1. Within an hour, a verdict of guilty was returned. [25]

Elsie James, a wealthy widow, owned a large farm in the Chickasaw Nation, five miles from Stonewall. She was a full-blood Cherokee and weighed over 200 pounds. Working for her was William Jones. Jones, being unmarried, lived at the widow's house.

Early in June 1887, the neighbors noticed that Jones had disappeared. When questioned by the authorities, Mrs. James denied any knowledge of his whereabouts. The authorities, however, weren't satisfied. Finally on October 1, Mrs. James changed her story. Jones, she said, had attacked her on July 2 with a butcher knife. To save her life, she had shot him. Assisted by her daughter, Margaret, the widow had buried the body a short distance from her house. She had Margaret show the deputy marshal where the body was hidden.

When the remains were exhumed, it was found that the head had been bashed in and one of the pants' pockets had been cut out.

The widow now changed her story. She swore that Zeno Colbert, an Indian, had shot and killed Jones in the hall of her house when attacked by the handyman. Colbert reportedly wished to burn the remains, but was talked out of it by Mrs. James. Leaving, Colbert told Mrs. James and Margaret to bury the body and say nothing about it or he would kill them. The next morning, she and Margaret had carried the corpse outside. They then sent for Simpson Alexander, who helped them bury the remains.

Deputy Marshal Heck Thomas arrested Colbert, Mrs. James, and Margaret. At the hearing before the U. S. commissioner, the crushed skull was exhibited, and the two women and Colbert were ordered held for appearance before the Fort Smith Grand Jury. The grand jury ignored the cases against Colbert and Margaret James, but ordered the Widow James held for murder.

Colbert returned to his home, where he was waylaid and killed.

The next term of the grand jury indicted Margaret James. The mother and daughter were scheduled to face Judge Parker in January 1889.

The widow fought the government's case as best she could. She sold her farm and stock to hire four of Fort Smith's best criminal lawyers, DuVal, Cravens, Marcum, and Grace.

The prosecution claimed that Elsie James had shot Jones for the $65 which he had recently received in the mail. According to witnesses, Jones had spent $5 of the money for a pair of shoes. Following his death, the widow had seemed well supplied with funds, and had sold a pair of shoes answering the description of those purchased by Jones. In addition, it was ascertained that she had sent her daughter to the spring, and when Margaret returned, Jones' body was in the hall. The jury deadlocked, and Judge Parker docketed the case to be retried at the February term.

At the second trial, the jury on March 22 found the widow guilty, while they acquitted the daughter. [26]

Ernest Adams worked for Reed Martin on a farm in the Choctaw Nation, not far from Red River. Adams in July 1888, stole a number of melons from the patch belonging to his employer's brother, Joe Martin.

On Sunday morning, July 15, Joe Martin went to see Adams to complain about the theft of the melons. There were harsh words between the two men. Martin returned to his home, while Adams went to a neighbors to borrow a gun,

remarking that he was going turkey hunting.

Later in the morning, Adams and Martin passed a Negro cabin. While in sight of the Negroes, Martin, who was in the lead, turned around and wrestled the gun away from Adams. Shortly after the two men had disappeared around a bend in the road, the Negroes heard a shot. Within a few minutes Martin returned. He informed the Negroes that the gun had accidentally discharged; that Adams had become frightened and had fled into the brush.

Adams failed to return. The next morning a search was undertaken. On the north bank of the Red about a mile from Joe Martin's house, tracks were found where a mule had been tied to a sapling. A man's footprints were spotted and followed. The man had dragged a heavy object down the steep bank and onto a sand bar. When the suspect had returned for his mule, the prints indicated that he had rid himself of his burden. The mule was tracked to Joe Martin's cabin.

Pressing the search for additional clues, the authorities found a comforter and a shoe at the river bank. These were identified as belonging to Adams. On Thursday, a bed-quilt was pulled out of a driftwood jam, while on Friday a headless body was recovered from the Red, some distance below the driftwood barrier. The body was identified by patches on the pantaloons as Adams'. A piece of leather thong with a rope attached was found at the river. People came forward who claimed to have seen the thong and rope in Joe Martin's possession, the day before the murder.

Joe and Reed Martin were arrested and taken to Fort Smith. The grand jury indicted Joe for murder. Since no charges were lodged against Reed, he was released.

At the trial which was held before Judge Parker in early April, the prosecution built its case on circumstantial evidence. It was argued that Martin had killed Adams at the time the Negroes heard the shot. After concealing the body, the killer had waited until nightfall. Covered by darkness, he had used a mule to carry it to the river. Since the bank was too steep for the mule, Martin had dragged the body down the bluff and then carried it across the sand bar to the river. After cutting off the head to prevent identification, Martin had rolled the corpse into the Red. The head had been wrapped in the quilt before being deposited in the water. Apparently,

the head had rolled out unnoticed, when the quilt was pulled from the drift. The defense attorneys sought to prove that Adams had been seen alive several hours after the Negroes had heard the shot. According to their theory, Adams and his wife had had a spat, and the missing man had left for parts unknown to get away from his spouse.

The jury on April 6 returned a verdict of guilty. [27]

Deputy Marshal William Irwin in early April 1886 arrested a horse rustler, Felix Griffin. Irwin and his prisoner stopped at Webbers Falls. There, the marshal learned that an attempt would be made to release Griffin. Irwin and his prisoner accordingly left Webbers Falls a little before noon and started for Fort Smith. The marshal and his prisoner paused briefly at the home of Griffin's mother. When they pushed on, Irwin was heard to say that they would spend the night at Wesley Harris', about 15 miles east of Webbers Falls.

Two of Griffin's friends (Frank Palmer and a half-breed Cherokee, Jack Spaniard) departed from Webbers Falls, riding double, the same afternoon. At Mrs. Griffin's, they picked up another horse. Reaching the Canadian, they asked the keeper of the ferry, if the marshal and his prisoner had crossed the river.

He replied, "Yes, an hour before."

Taking a short cut, Palmer and Spaniard reached Pheasant Bluff ahead of Irwin and his prisoner and took cover. They waited until the marshal and Griffin had passed, when they opened fire, shooting Irwin in the back. After killing Irwin and releasing Griffin, the badmen rode off, not noticing that Spaniard's dog had remained at the scene of the crime.

The government offered a reward of $500 for the arrest of the trio. Griffin was again taken into custody and kept in the Fort Smith jail until August. When presented with the evidence, the grand jury ignored the murder charge against Griffin, and indicted Palmer and Spaniard. Griffin, however, was indicted for larceny. After posting bond, Griffin returned to the Territory, where he was shot and killed near Webbers Falls, while attempting to steal a horse.

Jack Spaniard was arrested seven miles from Eufaula on March 17, 1888, and escorted to Fort Smith by Jailer James Pettigrew. He laughed about it, remarking that he didn't like to be caged up like a mockingbird.

Although Palmer was still at large, the Court for Western Arkansas determined to proceed with Spaniard's trial. At the trial, Spaniard claimed that the dog found at the scene of the crime didn't belong to him. The dog had been kept at the Fort Smith jail for months to be ready for this occasion. At the request of Prosecuting Attorney Sandels, the dog was brought into court. When released, he went to Spaniard, his tail wagging. This apparently settled the case in the minds of the jurors, because on April 12, after an hour's deliberation, they found Spaniard guilty. [28]

During the second week of April, President Benjamin Harrison, who had been inaugurated on March 4, granted an unconditional pardon to William Woods, currently under sentence of death for the murder of Johnny Hantz. Henry Miller, who had been convicted with Woods, was given a respite to June 29 to allow the case to be more completely investigated. [29] Before April 19 arrived, President Harrison commuted Bussell's death sentence to life imprisonment, and gave George Brashears a reprieve until June 21. Thus, of the six men Judge Parker had sentenced to die on the scaffold that day only two (Malachi Allen and James Mills) would keep the date. [30]

April 19 was dark and overcast at Fort Smith. Rain beat down throughout the day. Allen and Mills had slept well; they were up and about at the usual hour. After eating a hearty breakfast, they were furnished "neat black suits, white shirts, collars, cuffs, and white ties." The condemned made their "toilets with great care, assisted by their fellow prisoners."

Allen had made no religious preparation, but during the morning, he called for a minister. J. L. Massey of the Methodist Church responded. Allen asked to be baptized, remarking that he was ready to die. The "ceremony" was performed, and the condemned man's spirits seemed to improve.

Between 11 and 12 dinner was brought in. Allen ate heartily. Mills partook of nothing, as he remained closeted with Father Smythe. Following dinner, several other ministers showed up at the jail, and held religious services in behalf of Allen, who knelt in the corridor, surrounded by a number of his fellow prisoners: Henry Miller, George Brashears, Frank Capel, Joe Martin, and Jack Spaniard. A "beautiful hymn" was chanted in which all the prisoners joined, "rendering the scene a most sad one."

At the conclusion of the services, Jailer Pettigrew entered the jail

and read the death warrants. The condemned said their goodbyes to their fellow prisoners, after which the doors of the prison swung open and "the death march to the gallows through a drizzling rain was soon accomplished." On the scaffold the "ceremonies" were brief. Allen's arm was securely pinioned to one side; Mills was bound in the usual way. Neither man had anything to say, except to their spiritual advisers, who left as the black caps were adjusted. Several seconds later, the trap was sprung. Both men's necks were broken. It was just 45 minutes from the time Jailer Pettigrew began reading the death warrants till the trap was dropped. 31

Judge Parker on April 28 overruled motions for new trials in the cases of Spaniard, Capel, Martin, Walker, and Elsie James. The five were sentenced to be hanged on Wednesday, July 17. Since this was the first time that Wednesday had been designated as execution day, it caused considerable comment in and about Fort Smith. 32

With the Republicans again in power in Washington, a number of the appointive offices in the Court for the Western District would soon have new incumbents.

A new jailer, _____Conway, took charge of the "Hotel de Uncle Sam" on May 1. Jailer Pettigrew had been advanced to second chief deputy marshal, when Carroll had resigned to take charge of the Arkansas State Penitentiary. 33

District Attorney Sandels on May 12 announced that he was turning over his position to his successor Judge Clayton. Sandels made a few remarks, "but they were pointed."

In response, Judge Parker spoke warmly "of the feeling existing between the court, the bar, and Mr. Sandels."

Judge Clayton responded with a few remarks, "characterized by his usual good sense and eloquence." 34

Jacob Yoes on Tuesday, May 29, was sworn in as a U. S. Marshal, replacing John Carroll. The former marshal escorted Yoes from the courtroom to his office. Chief Deputy Marshal Will Cravens relinquished his desk to his successor, Sam A. Williams; Second Chief Deputy Pettigrew turned over his to R. B. Creekmore of Van Buren. Jailer Conway and his assistant, William Casey, were replaced by Will B. Pape and W. J. Roberts. All the guards, except George Maledon, were relieved at 6 p.m. New guards were: W. R. Dye,

turnkey; John Craddock, J. B. Sorell, and Joseph Burns, day guards; John W. Yoes, Murphy Porter, and George Maledon, night guards.

John P. Bloomburg and George Winston were appointed and sworn in as court bailiffs. Bloomburg had held the same position under Carroll, and was reappointed on merit. Winston had previously served as bailiff. Mr. Yoes retained a number of Carroll's field deputies. The first ones sworn in were: Tyner Hughes, Jim Lee, and Charles Barnhill. Commissions were issued to Heck Thomas, Grat Dalton, John Swain, Robert Rayl, D. V. Rusk and John Salmon, all of whom had been on the old force. New deputies appointed were: J. H. Mershon, Bass Revees, John Williams, Calvin Whitson, and E. B. Batteries.

R. A. Caldwell of Washington county secured the contract for feeding the prisoners confined in the U. S. Jail. [35]

Marshal Carroll left to his successor a brand new gallows enclosure. In addition, a roof had been erected to shelter the platform. [36]

The prisoners in the U. S. Jail lost no time in testing the vigilance of their new guards. While the guards were at dinner on May 29, the prisoners on the second floor prized one of the cage doors open with an iron bar. Six or seven of the inmates descended to the 1st floor, where Deputy Jailer W. J. Roberts was sitting unarmed. L. W. Reynolds attacked Roberts, striking him several times with an iron bar. But the officer, although an old man, fought back and prevented the felons from getting through the outside door, until Deputy Marshal Barnhill, who chanced to be in the courthouse, dashed to the rescue. He drove the would be jail breakers back at the muzzle of his pistol. Roberts was badly cut and bled profusely, though his injuries weren't of a serious nature. [37]

Hangman Maledon spent the second week of July getting the gallows ready for the scheduled hanging on Wednesday, the 17th. A reprieve granted Capel by President Harrison left only four to be executed. Of the remaining felons, all except Walker, were "expecting executive interference."

Colonel E. C. Boudinot returned from Washington on July 8, and expressed himself as being satisfied that one of his clients, Elsie James, would be saved. He also held out some hopes for Spaniard. Dr. J. W. Price had gone to Washington to see what he could do for Martin. Walker, however, was sure that he would die as scheduled. He accordingly on the 5th had asked to be

allowed to see Fort Smith for the last time. His request was granted. Accompanied by two guards, Walker "enjoyed a long walk through the city." [38]

During the third week of July, Marshal Yoes was notified that President Harrison had respited Elsie James, Jack Spaniard, Joe Martin, and William Walker. He did so in order that the Attorney General might more thoroughly investigate their cases before passing final judgement. Frank Capel, who had already been reprieved, received a letter from Washington that his sister was working in his behalf. She had secured a personal interview with the President, and had been assured that her brother's case should have "a fair and careful consideration." [39]

Before another week had passed, it was announced that President Harrison had agreed to commute the sentences of Elsie James, Joe Martin, and Frank Capel to life imprisonment at Columbus. [40]

On the night of August 8, just hours before their reprieves were to expire, the President granted Spaniard and Walker another respite till August 30.

Spaniard and Walker were finally executed on Friday, August 30. On the night before the fatal day, Spaniard slept very little; Walker rested quietly.

When it came time for the condemned to leave their cells, Spaniard refused to come out. He begged Jailer Pape to shoot him, as he didn't believe in hanging. Three deputies were sent in to bring him out. Whereupon, Spaniard grabbed a camp stool and threatened to brain the first man that laid hands on him. Finally, he listened to reason and went "forth to death, meeting it bravely."

Neither of the men had anything to say on the gallows concerning their crimes. Both their necks were broken by the fall. Spaniard's body was turned over to his relatives and taken to Webbers Falls for burial; Walker's remains were interred in Potter's field. [41]

Alice Keltner was a frail girl of easy virtue. During the third week of August, she had been convicted in Judge Parker's court for introducing and selling liquor in the Indian Territory. While awaiting sentence, she was confined in a room in the second story of the courthouse. Alice was the only female prisoner at this time. On the night of August 25, she removed with the aid of an iron bar enough brick from the side of the barred window

to crawl through. Then tying her blankets together, she let herself down to the ground and escaped. 42

* * *

The August term of court was very busy. All told, nine men were convicted of capital offenses.

Harris Austin with a physically powerful Chickasaw living on Red River. Thomas Elliott had come to the Indian Territory in March 1883. On May 25, 1883, Elliott and Austin's half-brother, James Pearson, sat and talked on the front porch of a Tishomingo store. Pearson, who was armed, had been drinking. The men's voices rose as Elliott accused Pearson of stealing some of his whiskey. Austin walked up. He called for Pearson to step aside.

After the two men had conversed for a few minutes in Chickasaw, Pearson handed his half-brother his gun. Austin turned and walked toward Elliott. Without warning, he whipped out the pistol and shot Elliott in the chest. Elliott collapsed, and the murderer sent a second shot crashing into his body. To make certain that his victim was dead, Austin placed the muzzle of his gun close to Elliott's forehead and fired a third time, burning the skin badly.

Austin went into hiding following the shooting. Almost six years passed before he was arrested.

Deputy Marshal Carr in April 1889 determined to bring in Austin. The lawman had learned that the fugitive was in the habit of spending the nights at home and the days in the woods. Carr and his posse closed in on Austin's house well before daybreak. They watched as Austin emerged and started for the river. As soon as he was some distance from the house, Carr called on him to give up. He refused. Shots were exchanged; Austin was cut down badly wounded.

The killer was lodged in the U. S. Jail on April 18. As soon as his wound had healed, Austin was placed on trial. The jury was out only 20 minutes on August 23 before reaching a verdict of guilty. 43

William P. Williams of Texas was a whiskey peddler. Four Choctaw Indians, John Billy, Thomas Willis, Madison James, and Graham fell in with the bootlegger on April 12, 1888, in the wilds of the Kiamichi Mountains. In response to the

Indians' request, Williams sold them firewater. The redmen got very drunk. Williams had more whiskey, but the Indians had exhausted their funds. Worse, the peddler refused to extend any credit. Williams added to what was becoming a nasty situation, when he accused the Choctaws of stealing his whiskey.

Graham, foreseeing trouble, tried to get Williams to leave. As the Indians were getting ready to go, Thomas Willis picked up his Winchester and drew down on Williams. There was a sharp report, and Williams toppled to the ground. Billy, Willis, and James raced to the dying man. Seizing Williams' six-shooter, one of them emptied the chamber into the prostrate form.

After stripping the body of its clothing, Willis divided $12 with his companions and retained the victim's nickle-plated Colt's revolver and coat. The deceased was buried in a shallow ravine. To conceal the lonely grave, the killers felled a tree and burned brush and leaves over the mound to hide their crime.

Graham talked. He was taken into custody on January 8, 1889, by Deputy Marshal Ben Cantrail. When questioned, Graham told the whole grisly tale and agreed to become a witness for the government. Williams' skull and coat, showing the mark of seven bullets, were found and produced as evidence at the trial which lasted only a few hours. The jury returned to the courtroom on October 4, and the foreman announced that the three Indians were guilty of murdering Williams. 44

Houston Joyce of Franklin, Texas, ran into trouble with the law at home. Compelled to become a fugitive, Joyce had crossed into the Indian Territory.

Young Joyce made a mistake, while passing through the Choctaw Nation, of stopping for dinner on November 27, 1888, at the home of Jim Goin in Towson county. When he paid for his board, Joyce flashed a big roll of bills.

After Joyce had ridden off, Jim Goin called his nephew Sam Goin and Jimmon Burris. The elder Goin handed his nephew a pistol and told the boys to follow and kill the stranger. They soon overtook their unsuspecting victim. Waiting for an opportune moment, Goin and Burris gunned Joyce down. After robbing the dead man of his money and valuables, the killers left his corpse as feed for the wolves and buzzards.

Two days later, Sam Goin attended a dance. Having a good deal of whiskey

under his belt, Goin told Solomon Bacon what had happened. He remarked that Joyce's horse was running loose on the prairie, and asked him to run the horse in and post it as a stray. Instead of complying with young Goin's request, Bacon reported what he had heard to Deputy Marshal Ennis. When he investigated the case, the marshal found human bones and pieces of clothing scattered about the scene of the crime. Among the interesting items found was a letter addressed to T. J. Babb of Smackover, Arkansas. Since Babb was a member of the Arkansas legislature, this find caused considerable excitement. It was learned on checking that Babb was alive, and that he had agreed to permit Joyce to use his name in writing home and to receive mail in his name. Goin and Burris were convicted on October 9. [45]

Sixty-five-year-old Henry Wilson left Mrs. Mary Solon's cabin, near LeFlore in the Choctaw Nation on March 12, 1869, for Polk county, Arkansas. Wilson planned to purchase a horse for Johnny Weeks and return within the week. Weeks advanced Wilson $7.50 to defray the expenses of the trip. Wilson traveled afoot, and his route lay across the rugged Winding Stair Mountains.

When seven days passed, and Wilson didn't return, his sons (Newton and George) became alarmed. A search was organized. The boys were able to trace their father to Isaac Winton's, where he had spent the first night on the road. The sons were unable to find any additional information regarding their father's movements.

In desperation, they notified the Federal authorities. Deputy Marshal Barnhill picked up a clue. Wilson's gun was found at George Beam's cabin. Beam, however, wasn't at home. When Beam returned, he sensed that something was wrong and wouldn't enter his home. He sent his wife ahead. She soon emerged from the cabin, and she and her husband conversed rapidly and excitedly in Choctaw. At this moment, Barnhill and his men stepped from the brush in which they were hiding. Barnhill called on Beam to surrender. Beam took to his heels. Paying no attention to the lawmen's commands to halt, the suspect succeeded in making a getaway.

Barnhill swore out a warrant and got a Choctaw sheriff to take Beam into custody on suspicion of murder. When questioned, Beam swore that Jefferson Jones had killed the white man and had left his gun at his cabin.

Jones was arrested. He admitted to the marshal that he had shot a white man, and had hidden $5 under the house of his brother, Jimson Jones. Jimson was apprehended and admitted the truth of his brother's statement. But, he added, he had spent the entire amount at Talihina.

The Jones brothers and Beam were indicted for murder by the Fort Smith Grand Jury. By this time, Wilson's badly decomposed body had been located. At the trial before the Court for the Western District, Jefferson Jones on September 14 was found guilty; his brother and Beam were acquitted. [46]

Two Negroes, George Tobler and Irvin Richardson, had quarrelled over the affections of a woman. Richardson won her love.

On the evening of April 30, 1889, Richardson escorted the woman to a dance hall in Cache Creek Bottom, Choctaw Nation. Richardson had been engaged to play for the dancing couples. Along toward morning, while the revelry was at its height, the dancers were startled by a shot. The music stopped and Richardson pitched forward dead. A hasty examination divulged that the assassin had crept up to the outside of the hall. Holding the muzzle of his gun close to a crack in the wall, he had sent a projectile tearing into Richardson's body, less than two feet away.

Operating on circumstantial evidence, the authorities arrested Tobler, who was a brother of Joel and Jake Tobler, who had been executed at Wichita, Kansas, for the murder of Cass and Goodykoontz. At the trial before Judge Parker, Tobler swore that he was innocent. The jury didn't put much faith in the defendant's argument. On September 19 a verdict of guilty of murder was returned. [47]

Charles Bullard had been left an orphan. He had been raised in the east, but had come to the Indian Territory in search of a life more to his liking than the scenes associated with his childhood. The 24-year-old octoroon stopped at Gibson Station, Cherokee Nation. There in the winter of 1889, Bullard had trouble with Walker Beam over a young woman. Beam was quarrelsome and overbearing; he was termed a real "bull-dozer" by his acquaintances.

On the evening of March 5 the two men engaged in a verbal duel. Threats were uttered. The next morning Bullard borrowed an ancient musket, as he said, to go hunting. Instead, he headed toward the area where Beam,

who was a section hand on the Missouri, Kansas & Texas Railroad, was working. Beam was unarmed. The dispute of the previous evening was resumed. Beam called Bullard "a black bastard."

Bullard told him to retract it.

When he refused, Bullard shot and killed him.

Bullard surrendered to the authorities and was escorted to Fort Smith for trial. J.Warren Reed was hired by the killer to defend him. Reed pled self-defense. The prosecution argued that since Beam was unarmed, this plea was unjustified. Bullard was accordingly convicted on October 16. [48]

Judge Parker on November 1 passed death sentences on the nine men convicted of capital crimes at the August term of court. They were: Sam Goins, Jimmon Burris, Harris Austin, John Billy, Thomas Willis, Madison James, Jefferson Jones, George Tobler, and Charley Bullard. The judge fixed, Thursday, January 16, 1890, as the date the felons were to meet their death on the scaffold.

Before sentencing the men, Judge Parker remarked, "Usually in so many crimes, there is some doubt of the wickedness of the murderer, and the intent to commit murder, but in these nine cases the evidence has failed to bring to light one single mitigating circumstance. They are cold-blooded murders, and some of them the worst ever brought to the notice of this court. If you were to search the world over you could not find nine crimes so black as these, and yet seven of these men are Indians, which is also an unusual thing." [49]

Jefferson Jones at the time that Judge Parker addressed him, asked to make a statement. He admitted his crime. When Wilson had stopped at Beam's cabin to inquire the way across the Winding Stair Mountains, he had gone with him to point out the route. A short distance from the house, he had killed Wilson for his money and then rolled the body into a creek. [50]

On Tuesday night, January 14, a telegram was delivered to Marshal Yoes, announcing that President Harrison had granted respites till January 30 to Charley Bullard and George Tobler. At the same time, a message reached him that Madison James' sentence had been commuted to 15 years imprisonment in the Detroit House of Correction. Both Judge Parker and District Attorney Clayton had requested this step, as the testimony at the trial had demonstrated

that Billy and Willis were the chief culprits in the murder of Williams.

Early on the 16th, the six doomed men (Austin, Billy, Willis, Goin, Burris, and Jones) were aroused. New suits were given them by Marshal Yoes. The felons were attended by their spiritual advisers, Reverends Lotz and Kearns of Fort Smith, and Reverend Henry Woods, a Choctaw minister. For a number of days, the condemned had been devoting themselves to "strictly religious duties," and all seemed prepared to meet their fate.

At 11 o'clock the death warrants were read, the iron doors unlocked, and the death march to the scaffold commenced. Each of the felons was handcuffed and attended by two guards.

On the gallows, religious services of short duration were conducted. D. L. Horner, "an intelligent young Choctaw," was called for. He ascended the platform; each of the condemned made a few brief remarks in their tongue which he interpreted. After the arms and legs had been pinioned, the ropes were adjusted, and the caps drawn. The trap was sprung at midday. Every detail had been skillfully attended to. There were no mishaps, "all of the poor wretches dying without a struggle." 51

Marshal Yoes was notified on January 25 that President Harrison refused to intervene any further in the case of George Tobler. At the same time, however, he commuted Bullard's sentence to life imprisonment at Columbus. Bullard was understandably elated by this news, while Tobler displayed his temper by charging partiality on the part of everybody concerned with the court. He said they could take him out and string him immediately, but he hadn't killed Richardson.

Wednesday night, Bullard occupied the same cell with Tobler. They retired about 9 p.m., and Tobler kept up a conversation for about two hours before he dropped off to sleep. He was aroused at 6 a.m. After getting up, the condemned ate a hearty breakfast of "the usual prison fare."

At 8:30 Jailer Pape took Tobler a new suit, underwear, white shirt, and "turn-down collar." He accepted the clothes gratefully and asked for a white necktie, which was furnished him. Tobler returned to his cell and dressed himself for the "grave with as little concern, apparently, as he would show in getting ready to be married," while Bullard swept out the cell.

At 10:45 the death warrant was read, at the conclusion of which Tobler calmly lit a cigar, and walked into the ante-room of the corridor. There, he was met by Hangman Maledon. After Maledon had snapped on the cuffs, the iron doors swung open, and Tobler walked forth.

On the scaffold, while religious exercises were being conducted by Reverend Lotz, Tobler seemed to weaken for a moment. He quickly recovered his poise. When placed on the trap, Tobler looked as cool and defiant as usual. He had nothing to say, and in short order his arms and legs were pinioned, the black cap drawn, and the rope adjusted. The trap was sprung at 11:05. Tobler's neck was broken in the fall; he died almost instantly. Before being taken out to the scaffold, Tobler told Bullard that he had "dreamed during the night of the man he killed." 52

* * *

Five prisoners (Ben Ellis, Mack Gee, Joe DePriest, Joe Cross, and Charles Curlew) during the last week of November successfully broke out of the U. S. Jail. The five had been confined in the second tier of cells. When Turnkey Dye locked up for the night, all managed to slip into DePriest's cell, which was located in the corner next to the door leading into the corridor. Notwithstanding that there were two guards on duty, they managed to cut off the heads of the bolts to the lock on the cell. Prying back the bolts with a broom handle, they let themselves out into the corridor.

The next obstacle which confronted them was the steel trap door leading into the attic of the jail over the third tier of cells. This was locked by a chain and had to be reached by the means of a ladder. They cut the chain. Now, the worst was over as the new jail joined the old courthouse, and there was a window leading into the attic of the old building. Passing through this window, the felons made their way out of the old "Soldiers' Quarters" by squeezing through a hole that let them out between the ceiling and roof of the back porch. There was an open trap door in the ceiling, and they let themselves down by means of blankets tied together. So they could see their way, they had taken a lantern from the cell. As to what the night guards were doing while the break occurred, it was surmised that they were clustered around the stove in the first floor guardroom.

Turnkey Dye was fired for carelessness in locking five men in one cell. This was the first escape from the new jail. 53

* * *

The 50th Congress enacted five laws bearing on the jurisdiction of the Court for the Western District. On February 15, 1888, it was provided that any person convicted of stealing horses in the Indian Territory was liable to a fine of $1,000 or 15 years' imprisonment at hard labor or both. Any person convicted of robbery or burglary in the Indian Territory was made subject to the same penalties: "Provided, that this act shall not be construed to apply to an Indian committing offenses against the property of another Indian." 54

Three and one-half months later, Congress on June 4 authorized any United States marshal, "when necessary to execute any process out of the circuit or district court of the United States for the district for which he was the marshal, or any commissioner of circuit, to enter the Indian Territory and execute the same as if it was within his own district." 55

Five days later, on the 9th, Congress repealed the act of March 2, 1887. 56

The first enactment restricting Judge Parker's powers became law on February 6, 1889. Section One established a Circuit Court of the United States for the Western District of Arkansas, the Northern District of Mississippi, and the Western District of South Carolina. According to Section Two: The circuit courts thus created were given "the same original and appellate jurisdiction as is now conferred by law on other circuit courts of the United States." All cases then pending in the said district courts were ordered transferred to the "said circuit courts." Of vast importance was Section Six which authorized the granting of a writ of error to the Supreme Court of the United States in all criminal cases tried before any United States trial court where there had been a conviction carrying a death sentence. While the language used in the act of 1889 was general, it was universally recognized that the primary purpose of this law was to provide an opportunity for a review of the numerous capital crimes being tried in Parker's court. 57 This enactment was to take effect on May 1.

By an act of March 1, 1889, the 2d Session of the 50th Congress created "the first white man's court in the Indian Territory." It was a court of civil jurisdiction, putting in force the civil law of the State of Arkansas, and in no way interfering with the criminal jurisdiction of Judge Parker's Court.

Section Five of this act provided that the newly constituted court was to have "exclusive, original jurisdiction of all offenses against the laws of the United States, committed in the Indian Territory, not punishable by death or imprisonment at hard labor." The court was to have civil jurisdiction in all cases between citizens of the United States who were residents of the Indian Territory, or between citizens of the United States, or of any State or Territory, and any citizen of, or any person or persons residing in or found in the Indian Territory, where the value of the thing in controversey or damages or money claimed amounted to $100 or more. This section, Six, wouldn't apply to controversies between persons of Indian blood.

Two terms of court were to be held each year at Muskogee by the new court. The judge was to convene the court on the first Monday in April and in September.

Section Seventeen of the act of March 1 was aimed at the Court for the Western District. Judge Parker's Court was to loose its jurisdiction over the Chickasaw Nation, the greater part of the Choctaw Nation, and "that part of the Indian Territory not annexed to the District of Kansas and not set apart and occupied by the Five Civilized Nations." This territory, along with four counties in northeast Texas, was to constitute the Eastern Judical District of Texas. Two terms of district and circuit court were authorized to meet at Paris, Texas, on the third Monday in April and the second Monday in October. The Paris court was given exclusive, original jurisdiction of all offenses committed against the laws of the United States within that portion of the Indian Territory annexed to the Eastern District of Texas, and not assigned to the new court to be established at Muskogee. 58

The law creating the Muskogee court was in accordance with the treaty of 1866 between the government and the Five Civilized Nations. It was championed by many of the Indian leaders, who objected to seeing citizens taken to a neighboring state for trial before juries composed of residents of that state.

Chapter XV

The Supreme Court Gives Parker's Court a Difficult Time

Marshal Yoes on October 22, 1889, wrote the Attorney General:

> As we are about to move Court and Offices to the new Court House, I would respectfully recommend the following necessary changes and improvements in the old building, with a view of using it for Jailor's Office, Hospital, U. S. Commissioner's Office &c. All these recommendations are made to more or less, conform to and meet the views and recommendations of the Messrs. Frank Strong and Howard Perry of the department of Justice....

Yoes reported that the old courthouse was "60 x 60 feet inside dimensions," and was divided into two rooms "30 x 60 feet each." One of these rooms was currently used for the courtroom and the other for the clerks', commissioner's and marshal's offices. If the old courthouse was to be used in the future, it would have to be repaired. According to Yoes, "The Roof, Porches, inside ceiling and plastering" were in very bad condition.

The room now being used as a courtroom, Yoes proposed, could be turned into a hospital. To do so:

> All the present openings for doors are to be closed with masonary. One new opening for a door will cut through the wall into the Hall near its S. W. entrance. The windows are to be left where they are now, each one to be well barred with iron cross bars. The Hospital is to be provided with two water closets and a sink.

The other room was to be divided:

> 1st Jailor's Office with entrance from Hall. 2d Iron cage room around main entrance of Jail with 1 door leading into Jailor's Office. 3d Room for distribution of food for prisoners, with trap door in floor leading to Kitchen or Cook Room. 4th U. S. Commissioner's Office at N. E. end of Room. 5th one small room for Guard sleeping Room. The old stairway leading into the upper half story of the building and taking up a large corner of the room proposed for Jailor's Office, is to be removed. It is not proposed to use the up stairs for any purpose.
>
> The basement below this room is the location of the furnace or heater for the Jail which is proposed to be utilized to heat the entire old building when remodelled. The basement under the other rooms (proposed Hospital) is intended to be used for the Cook Room. An opening for a door is to be cut through the wall

dividing the two basements, and from that opening a stairway is proposed leading into the"Room for distribution of food for prisoners" through the trap door. The prepared food and drink will be brought to the room on this stairway from the Cook room and there distributed on plates and bowls and passed into the Jail.

A general repairing of "plastering, ceilings, painting, glazing and whitewashing" was planned. At the same time, Marshal Yoes, observed, the roof wouldn't have to be relaid; it could be patched. The porches, however, would have to be "renewed."

Yoes attached to his correspondence an estimate prepared by a Fort Smith contractor J. A. Hoffman. Hoffman's price included all "the carpenter work including the iron cage room around the main Jail Entrance & everything else except the expense of pipes &c., for heating the building from the furnace." Hoffman would do the necessary work for $2,950. The heating apparatus and pipes, he told Yoes, would cost another $350.

When Yoes forwarded this information to Washington, he attached two diagrams: No. 1 showed the rooms as they were, while No. 2 depicted the proposed changes. [1]

The Department of Justice on December 16 gave Marshal Yoes permission to go ahead with his plan to convert the old courtroom into a hospital. On doing so, General Agent E. C. Foster noted, "The cause for these expenses are as follows: The jail building at Fort Smith, which is now a new one, contains nothing but cells. It is contiguous to the old Court house which has now been abandoned for the new one." [2]

* * *

The February 1890 term of the Court for the Western District of Arkansas would convene in the new courthouse on Monday, the 3d. Court would open with 50 cases on the docket, four of which were for murder. [3]

In addition, the grand jury's docket contained about 80 cases. This was the smallest number of criminal cases that had confronted the court at any term during the past ten years. This was attributed to two factors: The establishment of the Court for the Eastern District of Texas at Paris and the fact that up to January 1, the court had been in constant session for several months, thereby wiping a large amount of business off the docket. [4]

Only one man, John Stansberry, was convicted of a capital crime at the February term. Born and reared near Granby, Missouri, Stansberry in October 1885 had married Molly Eubank of Newton county, Missouri. The couple in 1889 moved into the Indian Territory to take up land on the Pottawatamie Reservation.

Shortly after the birth of their first child, John fell for a Creek squaw, the owner of a considerable herd of cattle. Stansberry determined to have the squaw and her property.

His wife gave him an opportunity to get rid of the baby on September 20. She stepped out of the house for a few moments to visit a neighbor. On her return, she found her husband weeping and holding the dying child in his arms. John told Molly that the baby had been fatally injured by falling off the top of the bureau. After burying the infant, John and Molly pushed on into the Creek Nation, squatting on a piece of land 14 miles from Eufaula, and not far from the home of the squaw.

On October 13, Stansberry caught his mule. As he rode off, he told his wife that he had some business to transact at the home of one of the neighbors. Stansberry, when he returned, cut through the fields. Approaching his cabin from the rear, he dismounted and let himself into the yard through several pickets in the back fence, which he had previously knocked loose. Unknown to Molly, John re-entered the house, and split her head open with an ax. It was only after the body had been horribly mutilated that he laid his weapon aside.

When he reported the murder to Johnson, his nearest neighbor, Stansberry told him that he had returned from across the Canadian late at night and had found Molly's mangled body. The crime, he swore, had been committed by Indians, while his dear wife slept. In addition, the foul murderers had stolen $300 which he kept in the house.

The authorities didn't place too much faith in what Stansberry said. They didn't believe that if John had been away, his wife would have been likely to go to bed prior to his return. Moreover, they seriously questioned whether Stansberry had ever had $300 to his name. When they examined the river bank where Stansberry claimed to have forded the Canadian, they were unable to locate any tracks made by a mule with a peculiar hoof such as

Stansberry rode. But when they inspected the area behind the house near the hole in the fence, a track made by a mule with a misshapped hoof was found.

Stansberry was taken into custody immediately after his wife's funeral. Tried before Judge Parker's Court, Stansberry on February 26 was found guilty. [5]

Stansberry was brought before Judge Parker on May 1 to learn his fate. Overruling a motion for a new trial, Parker asked Stansberry to stand. After commenting on the terrible crime of which Stansberry stood convicted, the judge remarked, "Listen now, to the sentence of the law as pronounced by the court."

The judge proceeded to sentence Stansberry to the gallows on "the 9th day of July 1890." [6]

John Stansberry slept well on the night of July 8. The next morning, he ate a hearty breakfast, after which he smoked a cigar, and dressed himself for his trip to the gallows. A pair of slippers were offered him, but he declined to put them on, remarking that he preferred to die with his boots on.

A little before 10 a.m., Reverend Dunn called at the jail and offered the doomed man spiritual consolation, which he accepted with but little show of interest.

Deputy Marshal Creekmore entered the prison and read the death warrant, to which Stansberry listened "apparently unconcerned, and with rather a dreamy expression from his blue eyes." At 10:30 the condemned felon was handcuffed, the iron door to the jail swung open, and Stansberry walked out, flanked by two deputy marshals. Unlike most of those who had gone before, Stansberry declined to have any religious services, "saying it would do no good." He had nothing whatever to say, and within seven minutes of the time that the jail doors had clanged open, the drop fell. Stansberry's neck was broken; death was instantaneous. [7]

* * *

Back on February 25 John Tatum, a young white man, had died in the U. S. Jail. Tatum had been stricken on Saturday afternoon, three days

before, with a congestive chill. Jailer Pape had the prisoner removed from the jail to a room in the old court building, and saw that he had every possible attention. Tatum failed to rally. He had been brought to the U. S. Jail from the Choctaw Nation charged with introducing.

The editor of the Elevator, on learning of Tatum's death, observed that notwithstanding that there were at all times between 75 to 150 prisoners in the U. S. Jail, the government provided no facilities where the sick could be attended to. Consequently, deaths, such as Tatum's, had occurred. A room in the basement of the old courthouse was currently used as a hospital, but it was a "damp dark, gloomy place wholly unfit for such use, yet it was the best the marshal could provide." Dr. Bailey, the jail physician, had gone on record as stating that if the government would turn the old courthouse into a hospital, the managers of St. John's Hospital would supply nurses, and the ill could be properly attended to. 8

The May term of Judge Parker's Court had important repercussions. Two men, William Alexander and Boudinot Crumpton, were tried and convicted of murder.

Boudinot Crumpton had the reputation of being a good boy when sober, but he was terror when drunk. On Sunday, November 3, 1889, "Bood" Crumpton and Sam Morgan mounted their horses and left the Widow Harris' place near Muskogee. They planned to call on several young ladies.

Late that evening, "Bood" returned to his home in a drunken condition. He was riding his horse and leading Morgan's. He also had his friend's gun and overcoat. In reply to his parents' questions, "Bood" remarked that they had met a man in a buggy, who had hired Morgan to accompany him to the Pawnee Agency. As Morgan dismounted, he asked "Bood" to look after his horse and other property pending his return.

Seven weeks later, Morgan's body was found in a hole at the roots of an upturned tree. An investigation disclosed that "Bood" and Morgan had purchased several jugs of whiskey and had indulged heartily. Witnesses came forward who swore that when last seen together, the two young men were very drunk.

The authorities believed that Crumpton had lured Morgan to the hole by telling him that there was whiskey hidden there. Dismounting, Morgan

had probably stooped over and reached into the hole. As he did, "Bood" had struck him a fearful blow on the head with his pistol. Morgan had pitched into the hole, and "Bood" had sent a bullet crashing into his body.

When placed on trial, young Crumpton's attorneys argued that Sam Morgan had been killed by his brother Robert. The jury didn't agree, and on June 3 "Bood" Crumpton was found guilty. [9]

Alexander was 33 years old and of French-Mexican extraction. He had gone to Arizona Territory from Kansas with an army officer, who had been transferred to Fort Yuma. There, he took a job with David C. Steadman, whom he had known for six years, to help drive 40 to 50 head of horses from Arizona to the Indian Territory. In the spring of 1889, the two men left Arizona and started east. All went well. They reached the Creek Nation in October and camped on Scott Gentry's farm, near Choska.

Indians and whites came to the corral, inspected the horses, and bought. As Steadman made a sale, he pocketed the cash. Most of the horses were soon sold.

On the afternoon of October 21, the two men left camp together to purchase forage for the remaining stock. That evening, Alexander returned to camp leading the horse Steadman had been riding. The next day, Alexander told Gentry that his boss had run off with a woman, Mrs. House, and had taken all the money. Alexander announced that he was very bitter over the way he had been treated by Steadman, consequently, he was going to keep the horses until he got the money owed him. Gentry sympathized. A man who had done what Steadman had, ought to have his horses seized.

On November 6 Steadman's body was found in a thicket 75 yards from where the two men were last seen together. The body had been torn to pieces by hogs, but it was identified by the clothing, letters, and papers found nearby.

Three days later, Alexander was taken into custody and questioned. His answers were vague and unsatisfactory. When searched, he was found to have $350. Alexander had considerable difficulty explaining how he had got the money. Within a short time, Alexander was on his way to the Fort Smith jail.

When hailed before Judge Parker's Court in June, Alexander retained as his lawyers, Colonel W. H. Cravens and J. Warren Reed. At the trial, R. B. Steadman, a brother of the deceased, was called to the stand by the prosecution. He had traveled all the way from San Diego. Steadman testified that when the two men had left Arizona, Alexander had no money. Though Cravens and Reed fought hard for their client, the circumstantial evidence was so overwhelming that the jury on June 20 returned a verdict of guilty. [10]

Judge Parker on August 2 sent for "Bood" Crumpton and William Alexander. The judge named October 1 as the date the two convicted killers were to die on the gallows. [11] Crumpton's and Alexander's lawyers announced that they would take advantage of the law passed on February 9, 1889, granting the right of appeal to the Supreme Court of the United States in all cases of conviction where the punishment was death. Although the law had been in effect for 15 months, no Fort Smith lawyer up to this time had seen fit to challenge Judge Parker. [12]

In view of this development, Judge Parker granted Crumpton and Alexander a stay of execution. On February 2, 1891, the Supreme Court handed down its opinion in these two cases; the first that had reached that body under the Act of 1889. The high court in the Crumpton case affirmed the judgement of the Court for the Western District; while in Alexander vs United States, the Supreme Court reversed the conviction on the grounds that R. G. Rawles, a Muskogee attorney, had been allowed to testify at the trial over the objections of the defendant's lawyers, Cravens and Reed. Several days after the killing, Alexander had consulted Rawles professionally in regard to the ownership of several horses. Parker had held that "such communications were admissible as evidence in the interest of public policy, where it would tend to expose the commission of crime."

The defendant in each case was represented before the Supreme Court by Augustus H. Garland. A former governor and senator from Arkansas, Garland had served Cleveland as Attorney General. The government's case was argued by Solicitor General William Howard Taft. It was not an even match. Taft was an able lawyer who would in time become President and

Chief Justice, but in 1891 he was young, and his training and background had taught him little about frontier murders. Garland was well equipped to help his clients. Besides being well-acquainted with Fort Smith, he was rated one of the best lawyer-politicians in the southwest.

A new trial was granted Alexander. Cravens and Reed used the time to collect new evidence, or what would pass for new evidence. The retrial, which began at the end of February 1892, ended in a hung jury, five to seven for acquittal. The jury had been out six days. A third trial followed. Again the ambitious young lawyer, Reed, threw himself into the case. Once again, the jury, after deliberating 3 days, was unable to agree. On Christmas Eve 1892, District Attorney Clayton concluded that it would be impossible to secure a conviction. He consented to a nolle prosequi. Alexander, a man who Judge Parker was morally certain had murdered his employer in cold blood, was turned loose. [13]

"Bood" Crumpton's appeal to the Supreme Court for a new trial had been refused, so he was brought before Judge Parker on April 24, 1891, for resentencing. After a few preliminary remarks touching on the case, the judge doomed Crumpton. Tuesday, June 30, was named as the day of execution. According to the Elevator, Crumpton was a "young man of good personal appearance, and takes the matter very cooly. [sic]." [14]

"Bood" Crumpton, when the fatal day arrived, had been cooped up in the U. S. Jail for 18 months. Several weeks before, "Bood" had submitted to the "ordinance of baptism" at the hands of Reverend Williams. Now that he had made his peace with God and felt that his sins had been forgiven, "Bood" had no fears of death. He, however, still protested his innocence. When Reverend Williams remarked to him that he was either going to heaven an innocent man or to hell as a liar and murderer, Crumpton insisted he knew nothing of the murder.

The day before the scheduled execution, several ladies of the town visited "Bood" and presented him with "beautiful bouquets." Early on Tuesday, "Bood" arose, shaved, and dressed in a new suit of black clothes. A boutonniere adorned the left lapel of his coat. Indeed, the condemned looked more like a bridegroom than a candidate for the hangman's noose.

At 9 a.m. Jim Burris, a half-brother, and Kit Harris, a cousin, were admitted to the jail to see "Bood". A touching parting between the kinsmen

ensued. One hour later, the death warrant was read to Crumpton in his cell, and he was marched to his doom. While on the scaffold, "Bood" warned the crowd assembled within the enclosure that whiskey had brought him to his present position. He warned his listeners that "when they took a drink of liquor to look at it close, and they would see a hangman's noose in the bottom of the glass."

Reverend Williams read a few verses from the New Testament and offered a fervent prayer for the condemned. The prisoner's arms and legs were pinioned, the black cap drawn over the head, and a quick jerk on the lever, sent his body plunging downward. "Bood's" neck was broken; the attending physicians pronounced him dead in six minutes. Crumpton's body was taken to his family's plot near Bragg in the Indian Territory. [15]

Apparently, the publicity given to the Fort Smith hangings in the nation's press troubled the Fort Smithites. At the time of "Bood" Crumpton's execution, the Elevator, in publishing a list of those hanged by the Court for the Western District, observed:

> All these men were brought here from the Indian country, where they committed their crimes, and although tried and executed here, Fort Smith or the State of Arkansas had no more to do with them than New York. There has been but one execution under state laws in this county since the war, and that was a negro hung at Greenwood for the murder of his wife. We mention this fact because there is an erroneous impression prevalent aboard that Fort Smith and the State of Arkansas is responsible for the great mass of criminal business transacted in the U. S. court here, when all of it comes from the Indian country. [16]

* * *

John Boyd and Eugene "Hamp" Stanley were hard-bitten criminals. The Boyd-Stanley gang was surrounded by a posse on Cache Creek in the spring of 1890. When called to surrender, the outlaws refused. In the gunfight which ensued, two members of the gang were killed, while Boyd was wounded and captured. A member of the posse, John Dansby, was also slain. Stanley was badly wounded. Hiding behind a log, he succeeded in eluding the marshals for several days. Too badly injured to travel, he was captured by Deputy Marshal Mickle and taken to Fort Smith, 35 miles away. Since the hour was late, Mickle lodged his prisoner in a hotel near the

Frisco depot. The next morning, the marshal was embarrassed to discover that his prisoner had escaped during the night. Stanley was eventually arrested at Spadra.

Brought before the Court for the Western District, Boyd and Stanley were tried for the murder of Dansby. They were found guilty on October 29, 1890. Judge Parker on January 12, 1891, sentenced the two men to be hanged on April 21. Boyd's and Stanley's lawyers appealed to the Supreme Court. The high tribunal sustained the appeal. A new trial was granted. This time, the two badmen were found guilty of manslaughter and sentenced to be imprisoned for ten years. Stanley was also found guilty on three counts of train robbery. He was given 15 years for each, making a total of 55 years in the penitentiary. [17]

* * *

Several times during September 1890, the guards were alerted that the prisoners on the lower floor of the U. S. Jail planned an escape. This enabled the authorities to take prompt action to forestall a break. Two of the prisoners, "Hamp" Stanley and Bud Maxwell, believed that a fellow prisoner, Seth Chambers, had given their plan to Jailer Pape. Sunday morning, September 27, one of them procured a brickbat, which he wrapped in a shirtsleeve. The other secured a jug. Watching for an opportune moment, they attacked Chambers, knocking him down. They beat him badly, before the guards could come to his rescue.

Informed of what Stanley and Maxwell had done, Jailer Pape took them both in hand. At 8 a.m. he had them handcuffed and shackled to the cage bars, "their hands being fastened as high above their heads as they could reach and their feet resting on a narrow iron stringer, about six inches from the floor."

Pape told Stanley and Maxwell that when they apologized to Chambers, he would have them released. They refused, and stood their punishment "manfully" all day Sunday, and through Monday. Finally, at noon on Tuesday, they complied with the Jailer's wishes. Released, they were taken to their cells and locked up.

Even so, Chambers was afraid that the two would "go for him," whenever

they were released from their cells. He therefore asked Jailer Pape to remove him to the second floor of the jail. Pape, satisfied that Chambers wouldn't be molested any further, refused.

Pape informed the editor of the Elevator that Stanley and Maxwell had been mistaken in supposing that Chambers had "preached" on them, as he had never said one word about the matter to the authorities. [18]

Frustrating plans to escape from the U. S. Jail kept Jailer Pape and his men busy during the first ten days of October. On Sunday afternoon, October 5, Allen Hostin was caught as he sought to remove with a piece of wire several bricks from the wall of his cell. Since this was not the first time that Hostin had engaged in such activity, Jailer Pape had him handcuffed to the cage bars in a "most uncomfortable position." After about two hours, Hostin begged to be released. After promising to behave, he was taken down and returned to his cell.

The two convicted murderers, Alexander and Crumpton, shared a first floor cell with Carroll Collier. One of the guards on October 4 discovered that they had sawed two of the iron cage bars in two. If they had succeeded in sawing a third, they could have escaped from their cell, gained the guard corridor, and attacked the guards while they were at dinner. When shaken down, the guards relieved the prisoners of their cutting tools, a small piece from a saw, not more than one inch in length. [19]

* * *

Only two men, two less than in 1890, were convicted of capital crimes in Judge Parker's Court in 1891.

The Missouri, Kansas & Texas Railroad's southbound passenger and express stopped at Verdigris Tank, two miles south of Gibson's Station, on the night of June 18, 1888. While the engine was taking on water, a masked man, who had boarded the train as "Blind Baggage," crawled over the tender to the cab. Pulling out his pistol, he forced the engineer to put his hands over his head. Three other men, all masked, emerged from the brush. Clambering aboard, they walked through the cars, robbing the passengers of $8.75 and a gold watch. As they prepared to make their getaway, one of the train robbers fired several random shots, one of which struck and killed Benjamin C. Tarver, a rancher from Rosebud, Texas, who

was on his way home from Chicago after selling some cattle. The express agent and a newsboy were wounded.

As soon as the train pulled into Muskogee, the robbery was reported. Early the next morning, a posse rode out. The robbers' trail was found and followed some 55 miles. Near the Alexander Lewis farm, the lawmen lost the trail. Lewis was suspected of being implicated in the holdup. He was arrested, but in view of the lack of evidence he was released.

Months passed and still the identity of the train robbers remained a mystery.

In December 1890, J. T. Holleman of Texas told his father that he had helped rob the train. Mr. Holleman lost no time in contacting the chief detective for the Missouri, Kansas & Texas Railroad, J. J. Kinney.

Young Holleman told the detective that he and Rogers had gone to the Indian Territory at the request of Jim Johnson. The three Texans rendezvoused at Lewis' cabin, where they met Kelp Queen and John Barber. At Queen's instigation, they determined to rob the train at Verdigris Tank. Holleman, however, chickened out at the last minute. On the night in question, Queen had boarded the train at Gibson's Station when it stopped to take on water. According to Holleman, the three men who assisted Queen on the night of June 16 were Lewis, Johnson, and Rogers.

When the authorities investigated Holleman's tale, they learned that Rogers, Queen, and Barber had been killed in an attempted holdup subsequent to the killing of Tarver, while Johnson was serving 25 years in the Texas State Penitentiary at Huntsville for the part he had taken in the Cisco bank robbery. Thus, if Holleman's story were true, all the men connected with the holdup were dead, or in prison except the government's witness and Lewis.

Assisted by Charlie LeFlore, Detective Kinney worked up a strong case against Lewis. Taken into custody, Lewis was brought to trial before the August term of Judge Parker's Court. Lewis was convicted on October 26. [20]

Sheppard Busby had been born and reared in Kentucky. During the Civil War, Busby had served in the 56th Illinois Infantry. At the expiration of his term of service, Busby had enlisted in the 50th Missouri. Upon being discharged at the end of the war, Busby settled in Stoddard county, Missouri.

From Missouri, he moved to Arkansas, and then pushed on into the Indian Territory, finally settling in the Cherokee Nation, 15 miles northwest of Fort Smith. "Shep" Busby at one time had served Judge Parker's Court as a deputy marshal.

By 1891 Busby's wife had left him. The old soldier took up with two young Indian women. A writ was sworn out by the U. S. commissioner at Fort Smith charging "Shep" Busby with adultery. The warrant was placed in the hands of Deputy Marshal Barney Connelley from Vinita. Connelley was a highly respected officer and citizen. He had apprehended scores of violators and was a man of extreme caution. Proceeding to Busby's cabin on August 19, Connelley encountered trouble. "Shep" Busby and his son spotted the lawman as he rode up. The two Busbys took cover; the father opened fire, killing Connelley.

Late on the night of the 19th, a report reached Fort Smith that Connelley had been killed. A posse of deputy marshals headed up Lees Creek. When they reached Busby's, they found the body of the dead marshal lying where it had fallen; the lawman's horse was tied to a post. Busby was gone, but his two women and son were at home. These people had Connelley's gun. They stated that old man Busby had disarmed Connelley before killing him. This story was discounted by Connelley's fellow officers, because the dead man was a large, powerfully built man, while Busby was "small and apparently delicate in health." This led the authorities to believe that young Busby had assisted his father, and he was arrested. About a week later, the old man came out of hiding and surrendered, remarking that he was "tired and foot sore from tramping through the brush dodging his pursuers."

Father and son were brought before the November term of Judge Parker's Court. "Shep" Busby claimed self-defense on the grounds that he didn't know Connelley was an officer. "Shep" swore that he believed the marshal was someone who had come to do him harm. The jury on the evening of December 11 disagreed. "Shep" Busby was convicted of murder; his son of manslaughter. 21

Judge Parker on Thursday, January 21, 1892, sentenced "Shep" Busby and Alexander Lewis to be hanged on the Fort Smith gallows on Wednesday, April 27. After the judge had finished dooming the men, Colonel Barnes,

Lewis' lawyer, announced that he would take his client's case to the Supreme Court. Busby, however, told his attorneys that "he wished nothing further done for him." [22]

As the fatal day approached, Hangman Maledon called on Judge Parker and asked to be excused.

"Why not?" exclaimed an astonished Parker, for never before had Maledon hesitated.

"Because he is a Union soldier," replied Maledon.

Judge Parker, who had been a member of the Missouri Home Guard, understood. Maledon was excused, and Deputy Marshal G. S. White, who belonged to the same GAR post as Busby, was named as Maledon's replacement.

Busby was baptized by the Reverend Williams of the Methodist Church on Monday, April 25. The condemned apparently slept well on the night of the 26th, but when breakfast was served he ate very little. Having prepared himself for the tomb, Busby spent several hours in his cell with Reverend Williams.

Just before 10 a.m. he was brought out, while Deputy Marshal Creekmore read the death warrant. Busby was then handcuffed. Accompanied by the necessary guards and his spiritual adviser, the old soldier was marched to the gallows. Arriving on the scaffold, he complained of being tired and sat down. After the religious exercises, and while "Jesus Lover of My Soul" was being sung, Busby stepped forward and made "quite a talk" to those present. He advanced the same plea that he had made at the trial. Busby claimed that he had been convicted through "malice," and that his son, William, was innocent.

At the conclusion of his address, he bid farewell to those present. His arms and legs were pinioned, the noose adjusted, and the black cap "shut out the light of day." Within 14 minutes of the time the trap was sprung, Busby was declared dead. [23]

Barnes and Reed in Lewis' behalf had carried his case to the Supreme Court. They argued that grave errors had been made in the selection of the jury. The high tribunal agreed; a new trial was ordered. Lewis was again bailed before Judge Parker. This time, the jury on May 31, 1894, acquitted Lewis. The same night, Lewis caught a train for his home near Tulsa. [24]

* * *

President Harrison on May 2, 1890, approved an act passed by the 51st Congress establishing the Territory of Oklahoma. The new territory was to include that part of the Indian Territory not occupied by the Five Civilized Nations and by the Indian tribes under the jurisdiction of the Quapaw Agency. In addition, the unoccupied portion of the Cherokee Outlet, together with the Public Land Strip (No Man's Land) were excluded from the Territory of Oklahoma. [25]

On March 3, 1891, the President signed a law passed by the 2d Session of the 52d Congress. This act created a third division of the District of Kansas from portions of the First District. Section Five of this enactment authorized a direct review by the Supreme Court in all cases tried in the district or circuit courts of the United States where there had been a conviction for a capital, or otherwise infamous, crime. This law in conjunction with the one passed on March 1, 1889, made it possible for the first time to secure a review by the high court of the vast number of homicide cases, and cases involving other crimes of violence tried in the Court for the Western District of Arkansas. [26]

* * *

Three men (John Thornton, John Brown, and John Poynter) were tried and found guilty of murder at the February 1892 term of Judge Parker's Court.

John Thornton was destined to be the oldest man hanged by the Court for the Western District. Born in Strasbourg, France, in 1827, Thornton had emigrated to the United States at the age of 12. Thornton learned the jeweler's trade. He moved to the Indian Territory in 1880 from Rock Island county, Illinois. The jeweler set up shop in South McAlester. Although he was up in years, Thornton was known as a rounder. At times, when he couldn't secure liquor, he would drink extracts of all kinds, or anything else which would quench his inordinate thirst. It was common knowledge that Thornton drank too much, but his neighbors didn't suspect that he was guilty of a much more despicable crime. Thornton had repeatedly committed incest with his teenage daughter, Laura.

"To get away from hell," Laura had left home and on November 5, 1891,

married John Moynier. Moynier was an honest, hard working man, employed by the Osage Coal Company. The bride and groom moved into a small house at Krebs. Six days after the wedding, Thornton visited his daughter and new son-in-law. After dinner, Moynier left for the company store to pick up a keg of powder to be used in the mine the next day. As he stepped out the door, the husband asked Thornton to remain until he returned.

Moynier was gone about 30 minutes. When he returned to his home, a ghastly sight met his eyes. Lying on the floor, underneath the bed, her brains oozing from a bullet hole over the right eye was his bride of less than a week. She was breathing hard. Within a few minutes of the arrival of the next door neighbors, the Cherrys, Laura Moynier had expired.

Thornton was arrested and charged with the murder of his daughter. When taken into custody, Thornton had on his person, a letter written by his daughter on the previous day to her stepbrother in Pittsburg, Kansas. When they read the letter, the authorities were shocked to learn that Laura had married to escape from home.

At the trial, witnesses came forward and swore that Thornton had staggered into the Krebs drug store shortly after the crime, and had announced that he had just killed his daughter. It was argued by the prosecution that Thornton had gone to Moynier's house to urge Laura to resume her unnatural relations with him. To try to escape her father, Laura had crawled under her bed for safety. The drunken father had then shot her.

Thornton's attorneys (Peel & Byers) sought to prove their client insane. Judge Parker in his charge to the jury paid considerable attention to this argument. Several eminent authorities were cited who held that a man crazed by drink could be held accountable for his acts. The jury on March 15, after being out less than 30 minutes, brought in a verdict of guilty.

While in jail awaiting execution, Thornton told the guards that when he realized that he had killed his own daughter, he had tried to commit suicide. Six times he had held his pistol to his temple and pulled the trigger. Each time, the piece misfired. According to Thornton, he felt God had intervened to keep him from destroying himself, in order that he might have a chance to repent his sins. 27

Deputy Marshal Charles Lamb had arrested Jim Craig about December 1, 1891, on a charge of adultery and had taken him to Tahlequah. Craig was charged with committing adultery with Mrs. Anna Hitchcock. Within a few days, Craig escaped, and a $20 reward was posted for his recapture. Hoping to secure the reward, Josiah Poorboy, a young Cherokee, rode out to Judge Lord W. Shirley's, near where Craig had been captured. At the home of Judge Shirley, Poorboy found Thomas Whitehead, who claimed to be a detective. The two would-be lawmen set a trap for Craig.

From Shirley's house, Poorboy and Whitehead could observe Mrs. Hitchcock's brothel. The "lawmen" felt certain that Craig would soon show up at Mrs. Hitchcock's.

John Brown and Wahco Hampton stopped at the brothel on the afternoon of the 8th. There, they met John Roach. After dark, at the madam's request, the three men started for Cob Hill with a message for Craig. On the way, they passed Judge Shirley's. The three riders on reaching Cob Hill were unable to locate Craig. Returning to Mrs. Hitchcock's, they were halted by Whitehead and Poorboy, who believed that Craig was with them. Roach dismounted and laid down his gun. Someone shot him in the arm. Hampton and Brown opened fire on Poorboy and Whitehead, killing both. They rifled Whitehead's pockets securing $3. Taking Whitehead's pistol and Poorboy's Winchester, the men rode over to Mrs. Hitchcocks. Hampton bragged to Mrs. Hitchcock that he had just killed two men. He showed her Whitehead's and Poorboy's blood-caked weapons.

Hampton was an 18-year-old Cherokee. Three years before, Hampton and his uncle (William Hampton) had been tried and convicted of manslaughter for killing William's stepfather. Since he was under 16-years-of-age, Wahco was sent to the reform school in Washington, D. C., while his uncle was given ten years in the Detroit House of Correction. Escaping, Wahco had made his way back to the Indian Territory.

Roach was arrested on the day following the double murder and lodged in the U. S. Jail. He was released, however, when the grand jury refused to indict. Roach agreed to become a witness against Brown and Hampton.

Deputy Marshal Heck Bruner and his posse were sent after Wahco Hampton and Brown. Bruner and his men tracked Brown to the home of Hampton's mother,

where they captured him.

Questioning Brown, the lawmen were able to learn something concerning Hampton's whereabout. They pushed on toward Tahlequah. About dark on January 30, 1892, they spotted their man riding leisurely along the road toward them. Fearing that an attack at this point might not be successful, the posse made a detour through the woods. An ambush was set up in the timber bordering a clearing. It wasn't long before Hampton came into view. Bruner called, "Throw up your hands."

Hampton made no reply.

Leaping to the ground, Hampton took cover behind his horse, and opened fire with both his revolvers. The officers shot back. A bullet from one of the lawmen's Winchester tore through the belly of the outlaw's horse and struck Hampton in the thigh. The horse fell, and the badman dropped to his knees and continued to fight. Only after he had been riddled with bullets did he give up. Before the officers could remove him to Fort Smith, Hampton died.

John Brown was indicted by the Fort Smith grand jury on February 16. He was tried on two counts of murder and on March 22 convicted. [28]

John Poynter was born at Eureka Springs, Arkansas. His parents were God fearing, well-to-do, and highly respected in the community. Apparently, however, they had never heard of the old adage, "Spare the rod and spoil the child." Whatever Johnny wanted, he received. If they expressed any opposition to his wishes, Johnny threw a tantrum and usually gained his point.

At the age of 12, Johnny, while playing out in the woods, set fire to another child. For this, he was repremanded. A year later, young Poynter stabbed a playmate with a knife. This time, the injured boy's parents swore out a warrant. Brought to trial in Carroll county, Poynter's attorney placed the defendant and his grey-haired father on a seat immediately in front of the jury. The father's tears and the knowledge that Johnny's mother was sick in bed helped get the young delinquent off with a $50 fine. After the elder Poynter had paid the fine, Johnny boasted, "I knew the old man would pay up before he'd let me go to jail."

Within a year, Johnny was in trouble again. While attending a baseball

game on East Mountain, Johnny picked a quarrel with a smaller boy. Hot words were exchanged. Each called the other a liar. Blows were struck, and the smaller boy trounced the bully. As soon as the victor walked away, Poynter, seeing that he wasn't looking, hit him with a rock. The boy was knocked senseless. True to Johnny's prediction, father made a settlement with the parents of the injured child; Johnny was neither arrested nor punished.

By the time he was 17, Johnny was so completely out of hand that his parents decided that what was needed was a change of scenery. They sent him to live with relatives in Dallas county, Missouri.

Johnny had grown up to be a bully and braggart. There weren't any young boys in his Missouri relatives' neighborhood for him to mistreat. Things were just too peaceful, so he decided to go home. He stole a "fine-riding mare" from one of his relatives and rode back to Eureka Springs. Poynter was received with open arms by his doting parents. Johnny told papa that he had purchased a small pony at an auction, and in turn he had traded it to another man for a horse and a saddle. Next, he had traded with a third man for the fine mare which he was riding, having agreed to give $13 to boot. At the moment, Johnny continued, this man was in Eureka Springs. If his father would just give him the $13, Johnny would close the deal.

Foolish father patted his son on the shoulder, told him what a shrewd trader he was, and handed over the requested sum. There was no deal to close, so Johnny spent papa's money for a good time about town. The next day, the owner of the mare, accompanied by a Missouri officer, reached Eureka Springs. A complaint was filed; Johnny was arrested. Still believing his son's story and satisfied that the man to whom his son had traded the pony was the real thief, Papa Poynter hired a lawyer, put up the price of the mare, and did everything possible to reach a compromise with the Missourian.

The owner of the animal couldn't be swayed; the Missouri officer sent back to Dallas county for extradition papers. Meanwhile, Johnny's father had his son released on $1,000 bail. He gave Johnny money to leave the country. Catching the next train for Texas, young Poynter climbed off

at Brownwood, where he registered as George Gray.

Within a short time, Poynter was back in Carroll county. His family realized that if he remained at home, he was likely to be arrested. Once again, they sent him to Texas. This time, the wayward son was supplied with a horse, saddle, and money. No more was heard of Johnny until he wrote his father that he was in trouble with the law in Wise county, Texas. Having spent his money, Poynter had surrendered his horse and saddle to the sheriff in lieu of a bond.

At the time, there were two other young men from Eureka Springs in Wise county. They were: Ed Vandever, a cripple who used crutches, and William Bolding. The two men had driven down to Texas on a trading expedition. Poynter, who knew Bolding back in Carroll county, asked to accompany them on their return trip across the Indian Territory. Vandever and Bolding refused. Undaunted, Poynter followed on foot. When they camped on December 13, the first night out of Decatur, Poynter renewed his request. This time, Vandever relented.

On Christmas night 1891, the three travelers stopped in front of the farm of W. G. Baird, four miles from Wilburton. Poynter asked Baird where they might purchase hay for their team. Baird gave him the desired information. As they talked, Baird had a good opportunity to inspect the team and wagon. He saw Bolding but not Vandever who was driving. After leaving Baird, the travelers drove on a short distance and camped.

The next morning, Vandever's and Bolding's bodies were found in a dry creek near the camp site. Poynter with the team and wagon and some of the murdered men's clothing was missing. Baird, who was one of the first on the scene, recalled seeing Poynter and gave his description to the authorities.

The wagon was tracked as far as Hartshorne. On the 27th Poynter was arrested at South McAlester, while he was attempting to dispose of the team and wagon. When questioned, Poynter gave his name as Longly. He admitted killing Bolding, but claimed self-defense. According to Poynter, Vandever had spoken sharply to Bolding about abusing the horses. During the quarrel which followed, Bolding had attacked Vandever with an ax, killing him. Poynter had rushed to Vandever's assistance. In the struggle which ensued, he had wrenched the ax away from Bolding, without injury to himself, and had

struck him down. Losing his head, Poynter had dragged the bodies to the creek.

When the authorities examined the death camp, the scene indicated murder. Vandever had apparently been sitting near the fire mixing a pan of dough for biscuits when assailed. Dough and blood were found on the ground close to the fire. Upon Bolding's body were several great, gapping ax wounds. He had evidently tried to defend himself. In doing so, he had been knocked into the fire, and his hands badly burned.

Poynter was escorted to Fort Smith on December 28, and locked up in the U. S. Jail. The bodies of the victims were buried and descriptions of the three men circulated. Bolding's and Vandever's fathers came and identified the corpses.

Poynter was brought to trial. He was ably defended, but the chain of circumstantial evidence woven by Prosecutor Clayton was too strong. On March 26 the jury returned a verdict of guilty. [29]

Judge Parker on April 13 pronounced death sentences on the three men convicted of capital crimes at the February term of court: John Thornton, John Poynter, and John Brown. The three felons were scheduled to die on June 28. Brown's and Poynter's lawyers asked and were granted stays of execution, while they appealed their clients cases to the Supreme Court. [30]

Thornton slept soundly the night of June 27. He arose bright and early to make preparations "for the final scene in which he was to be the principal actor." He dressed himself in a neat suit of black provided for the occasion and ate a hearty breakfast.

After attending his devotions, Thornton was permitted to leave his cell and wander about the corridors. There, he stopped frequently to speak with his fellow prisoners, whom he admonished to make their peace with their God. A few moments before the time slated for the execution, Father Smythe was admitted to the jail, and he and Thornton spent about 10 minutes in private consultation. Father Smythe came out; the death warrant was read.

It was a little before 10 when the execution party left the jail and started for the scaffold. The prisoner had a smile upon his face and a bouquet of flowers in his hand. Upon ascending the platform, Father Smythe

spoke a few words of admonition, as Thornton knelt in prayer.

Everything being in readiness, Thornton stepped upon the "Gates of Hell." When asked if he had anything to say, Thornton replied that "he wished to return his sincere thanks to the temperance ladies who had done so much for him; also to Mr. Pape and his guards for their kind treatment of him." He was happy because he believed that he was going to heaven.

When Deputy Marshal White sprang the trap at 10:26, Thornton's body shot downward. The condemned was of stocky build. He had a small flabby neck; his muscles and flesh were soft, and this condition, a life of dissipation hadn't tended to improve. The fall almost severed the head and the body, only the tendons and leaders prevented the trunk from falling to the ground. Blood spurted out in streams, soaking the dead man's clothing and forming crimson pools on the ground. A thrill of horror ran through the group standing within the enclosure; "strong men turned sick at the sight of the hideous wound in the neck." It was a sickening finale to a most revolting crime. [31]

Brown's attorney, Colonel C. J. Frederick, carried a writ of error to the Supreme Court. The high tribunal set aside the verdict. At a second trial, Brown was again found guilty and given a death sentence. Once again, Colonel Frederick appealed to the high court and was sustained. A third trial brought another conviction for murder. This time, Frederick in his writ of error claimed that Judge Parker had admitted testimony of the defendant's witnesses tainting the reputation for bad character of a government witness. There was proof of the good reputation of this witness, and cross-examination had developed that the reputation of the witness for bad character might have been inspired by the same desperados. In his charge to the jury, Parker observed:

> This reputation must grow out of the dispassionate judgement of men who are honest men and good men, able and competent to make a judgement of that kind. It is not the judgement of the bad people, the criminal element, the man of crime, that is to fasten upon a man and blacken his name.

When it saved John Brown's neck for the third time, the Supreme Court ruled that Parker had committed reversible error in stating that reputation could not be founded on the "judgement of bad people, the criminal element,

the man of crime."

Case reversed, ruled the majority of the court, "the instruction given was too narrow and restrictive."

Justice David J. Brewer drafted a vigorous and caustic dissent:

> Because this part of the charge is, as a whole, unobjectionable. The testimony referred to was admitted, and therefore held to be competent. The rule of law in reference to impeachment was correctly stated, and the objectionable matter was prefaced by a declaration of the court that it gives a matter of admonition. The admonition was just and sound. Reputation is the general judgement of the community in respect to the witnesses whose reputation is challenged and is not made up by the flippant talk of a few outlaws. 32

Moreover, Brewer continued, there was a larger issue:

> After three juries, thirty-six jurors, have agreed in finding a defendant guilty...and such finding has each time been approved by the trial judge, the judgement based upon the last verdict ought not to be disturbed unless it is manifest that the verdict is against the truth of the case, or that the court grossly and prejudically errored. 33

Two other justices, Henry B. Brown and R. W. Peckham, joined Brewer in the dissent.

At his fourth trial, Brown was found guilty of manslaughter. He was sentenced to one year at Columbus, Ohio. Because of good behavior, Brown was released on November 1, 1897. 34

Poynter wasn't as fortunate as Brown. The Supreme Court refused to set aside the judgement of Judge Parker's Court. Resentenced, Poynter was scheduled to be executed on September 20, 1894.

Throughout the trial and long stay in the U. S. Jail, Johnny was cocky and calm and made light of his weeping parents. He asked Judge Parker for permission to set the hour of his departure from earth. Parker consented; and Johnny set 3:30 p.m. When the time approached, he weakened. He asked for a delay of 30 minutes; 15 minutes were granted. At 3:45 he was brought from the jail into the gallows enclosure. Johnny now began to jabber about some capsules that he claimed to have taken, before being escorted from his cell. Poynter swore that he had swallowed poison given him by a trusty. He repeated over and over, "If I

hadn't taken that poison I would have stood it all right." He began to tremble. On the scaffold, Poynter turned livid. His knees buckled so badly that he was scarcely able to stand. He died as he had lived--a braggard and a coward.

The fathers of Poynter's victims were present at the execution, but they didn't enter the enclosure. Marshal George G. Crump had decided that the only people he would admit to executions were physicians, newspapermen, and the attendant officers. 35

* * *

Marshal George A. Knight of the Northern Judicial District of Texas and two other officers reached Fort Smith during the third week of April, 1892. They had with them Dr. John S. Lennox, who was charged with committing three murders in the Indian Territory many years before. The doctor was accused of killing Thomas Young, a young posseman, on May 10, 1882; a boy named Howard on March 1, 1883; and complicity in the shooting of Deputy Marshal Layman on April 15, 1883.

Young had been slain while attempting to arrest Lennox. Howard, it was charged, had been murdered by the doctor to keep him from testifying, while Layman had been shot in a drunken brawl following a wedding. A reward of $500 had been posted by the government for Lennox's capture.

Several years before, Deputy Marshal Carroll had pursued the doctor vainly across Mississippi and Alabama. This time, the wily doctor had been surprised in his bed by the sheriff of San Saba county, Texas. 36

To stamp out drinking, Parker went beyond the letter of the law. The intercourse statutes banned spirituous liquors and wine, but did not mention lager beer. Anheusor-Busch and others therefore determined to test the laws, to see if they had the legal right to ship beer into the country of the Indians. They won their case in the Federal court in Paris, Texas; but would they be successful at Fort Smith?

John Ellis of Krebs was placed on trial during the second week of July for introducing and selling beer in the Indian Territory. The jury convicted him, and he was ordered committed. A writ of habeas corpus was applied for by Ellis' lawyers, but it was rejected by Parker. Ellis' attorneys then announced they would carry the case to the appeals court, and the defendant

was allowed to post bond. All other beer cases were continued, until such time as the appeals court could rule on the Ellis affair.

Should Parker be sustained, the beer business in the Territory could be expected to fade out. The inhabitants would then be compelled to resort to the "old methods of drinking Choctaw beer, cider, bitters, etc., or go dry." It was Parker's opinion that those who sold beer were as guilty as those who introduced, notwithstanding that they held government licenses.

According to Judge Parker's, the intercourse laws were intended as prohibition measures. The term "spirituous liquors or wine" meant intoxicants; beer was an intoxicant. In addition, Tacitus had said that beer was like wine.

It was two years before the Supreme Court made its ruling. The high court in Sarlls v. U. S. ruled Tacitus and Parker wrong. All the best dictionaries agreed:

> (1) "Spirituous liquors" meant distilled liquors. Rum, brandy and whiskey were distilled. Beer was not.
> (2) "Wine" was made by the fermentation of the grape. Grapes were not used in making beer.

The sale of beer to Indians was an "acknowledged evil," declared the learned justices; but it was not illegal. Judge Parker had succumbed to the "temptation...to stretch the law."

Congress, however, came to Parker's rescue. The lawmakers changed the law, adding beer to the list of beverages barred from the Indian Territory. 37

* * *

Three white men (Lewis Holder, John Graves, and Robert Hall), one full-blood Choctaw (Sam Downing), and a Negro (Frank Collins) were tried and convicted before the August 1892 term of Judge Parker's Court.

Back in the latter part of April 1889, Robert Williams was walking across Greenleaf Mountain. Not being in a hurry, Williams wandered about 150 yards off the road. Williams noticed a foul odor coming from a pile of brush which covered the roots of an upturned tree and investigated. When he pulled away the brush, he found the body of a man. Much of the flesh had been torn from the bones by hogs, while the skull had been separated from the trunk. When the authorities inspected the area, they saw that an attempt had been made to burn the body, but the twigs had been too green.

Three years passed before John Graves was arrested and charged with the murder of the unidentified man on Greenleaf Mountain. The evidence was wholly circumstantial. Prosecutor Clayton, however, was able to sway the jury. On July 29, 1892, Graves was convicted. [38]

Frank Collins and his younger brother were staying at the Valley House in Fort Gibson. Another guest, Randall Lovely, struck Frank's brother. Enraged by Lovely's action, Collins killed him at a dance hall brawl in July 1891. Collins was tried during the second week of August and found guilty of murder. [39]

On August 4, 1891, Deputy Marshal Jim Yates and Robert Hall were playing cards in South McAlester. Both had been drinking heavily and they argued. A fight ensued; Yates pistol whipped Hall. Shortly thereafter, the dispute was resumed, and Hall shot and killed Yates. Hall was taken into custody and lodged in the Fort Smith jail.

Brought to trial before Judge Parker, Hall was convicted at the beginning of the third week of August. [40]

Joseph Wilson, a 25-year-old Texan, was a deputy marshal for the Muskogee District. He was fearless and extremely daring. On Tuesday, September 22, 1891, Wilson left Tahlequah with a warrant for the arrest of Sam Downing, alias Sam Hickory. The young Choctaw was charged with introducing whiskey into the Indian Territory. Downing lived with his uncle, "Big Aleck" Stop, ten miles northeast of Tahlequah on Fourteen Mile Creek.

Wilson lost his way and stopped at the cabin of John Carey. In response to Wilson's request, Carey agreed to guide the marshal to within a short distance of "Big Aleck's" house. Carey, fearing Downing, refused to go any farther.

As he left Carey, Wilson told him to wait. If Downing weren't at home, Wilson would inquire for "Hawkins," the nearest neighbor and ride on; if he found Downing, he would make the arrest, and fire his pistol as a signal for his guide to meet him on Brown's Prairie.

After leaving Carey, Wilson rode up to "Big Aleck's." He found Downing at work in the field with a team. Wilson served his warrant. Having made the arrest, he told his prisoner to unharness one of the horses and accompany him to Tahlequah.

Sam replied that the team "belonged to his uncle."

"Well, drive to the house and we will see your uncle about it," Wilson

answered.

Together they went to the cabin. "Big Aleck" was away, so Sam in response to the marshal's suggestion went into the house to get his saddle. As he was about to enter, Wilson fired a shot into the air as a signal for Carey. Downing, not knowing of the prearranged signal, panicked and ran into the house for his gun. When he reappeared at the door, Wilson fired a second signal shot.

Downing believed that the marshal was shooting at him. He accordingly opened fire at the lawman. Wilson returned the Indian's fire. Several of his shots lodged in the door and the side of the house. At this, Downing's wife became frightened. Running outside, she hid among the trees.

Wilson now circled to the right and entered the cabin through a side door. The two men shot at each other at close range. One of Downing's bullets struck Wilson in the chest. The marshal turned and retreated into the yard, where he collapsed and died.

Downing was panic-stricken, because he had killed a marshal. As soon as he had calmed down, he loaded the victim's body onto a wagon. He drove to the edge of a steep bluff about a mile away and rolled the body over and into the gulley, 30 feet below. Returning to "Big Aleck's," Downing unharnessed the team, caught a saddle horse, and headed for "No Man's Land."

When he heard the first shot, Carey prepared to start for the rendezvous. The additional shots puzzled him. After waiting for some time at Brown's Prairie for Wilson, Carey returned to his home.

When Wilson did not return, Marshal Thomas B. Needles ordered out a searching party. The dead man's horse was found about a mile from "Big Aleck's;" its throat cut and a bullet wound in the knee. Wilson's saddle and bridle had been stripped from the beast. Wilson's body was located on September 25, badly decomposed.

Downing was arrested about six months later. He and a neighbor, Tom Shade, were brought to trial before Judge Parker. The prosecution claimed that Downing had badly wounded Wilson, and that Shade had killed him a day later by striking him in the head with an ax. When the jury brought in its verdict, Downing was found guilty of murder; Shade was acquitted. 41

Lewis Holder and his partner, George Bickford, had gone up into the Sans Bois Mountains in December 1891. The two men were on a hunting and trapping expedition.

Shortly after the first of the year, Holder was seen in the Poteau bottom near Fort Smith. Since he had with him Bickford's team, Holder was asked how the horses came to be in his possession. Holder replied that he had traded a note which he held against a man in St. Louis for the team. "Bickford had gone to Texas," he added. Satisfied with Holder's explanation, the man didn't press the issue.

Shortly thereafter, interest in the case was revived by the discovery on January 28 of a body. The corpse was in a gorge about 300 yards from the road. An examination disclosed that the man had been killed when shot in the back of the neck by a charge of buckshot. The finder notified the authorities. Within a short time, the body had been identified and Holder, who had temporarily disappeared, was apprehended in the Choctaw Nation.

When questioned, Holder admitted he had killed his partner but claimed self-defense. He said they had argued; Bickford had tried to kill him with a slingshot. Bickford, however, had stumbled and fallen, giving Holder a chance to get his shotgun and shoot him.

At the trial before Judge Parker in September, Holder's lawyers were placed in an embarrassing position by the strong case worked up by the prosecution. The jury, after being out only a few minutes, returned a verdict of guilty. [42]

The five men (Collins, Downing, Graves, Hall, and Holder) convicted at the August term of court were scheduled to receive their sentences on September 19. The courtroom was jammed with a crowd of curious "outsiders" intent on seeing the men upon whom Judge Parker was to pronounce sentence, and to hear the judge's remarks which were always "interesting and instructive." All five were doomed to die on November 2, 1892. The condemned men's attorneys announced that they would appeal the cases to the Supreme Court. [43]

As soon as the necessary papers had been filed, Judge Parker granted stays of execution.

On October 30, 1893, the Supreme Court affirmed the judgement of the

lower court in the cases of Lewis Holder and Frank Collins. At the same time, the high court overturned the conviction of Robert Hall and ordered a new trial. [44]

Within the week, Downing's and Graves' lawyers had good news for their clients. Their appeals for new trials had been sustained by the Supreme Court.

At his second trial which was held in October 1894, Downing was again convicted and the death penalty pronounced. J. Warren Reed for a second time carried the case to the high tribunal and was sustained. When Downing was tried the third time, the charge was reduced to manslaughter. Convicted on the lesser charge, Downing was sentenced to the Columbus Penitentiary for five years. [45]

At his second trial which ended on June 11, 1894, Colonel Frederick succeeded in convincing the jury that Robert Hall was innocent. [46]

James B. Rutherford, who served as Graves' attorney, reviewed the case and unearthed new evidence which tended to favor his client. The jurors at Graves' second trial, which was held at the November 1894 term of court, brought in a verdict of acquittal. [47]

When the people of Fort Gibson learned that the Supreme Court had refused to set aside Collins' conviction, they prepared and signed a petition asking President Cleveland to commute his death sentence to life imprisonment. The President read the petition with interest. During the fourth week of June 1894, he signed an order commuting Collins' death sentence to imprisonment for life at Columbus, Ohio. [48]

Thus of the five men Parker had sentenced to the gallows on September 19, 1892, only Lewis Holder would be required to pay the supreme penalty for his crime. After the high court had refused to set aside Holder's conviction, Parker prepared to resentence him. For months, Holder had anxiously waited, hoping that the high tribunal would order a new trial. While the prisoner and the spectators listened intently, Judge Parker pronounced the words which Holder had hoped he would never hear again, "To be hanged by the neck until dead." Parker's words died away; the crowded courtroom became as quiet as a tomb. Apparently, it was more

than Holder could stand. His face paled; a tremor shook his entire body. Suddenly, he let out a scream that was heard in the streets below, and fell flat on his face on the courthouse floor.

Everyone believed that Holder had cheated the gallows. People leaped from their seats and milled about as the judge rapped for order. It was with great difficulty that Parker was able to restore a semblence of order. When the deputy marshals bent over Holder, he was still breathing. They carried him outside into the air, and he recovered. But from that day until the date, July 25, 1894, set for his execution, Holder was a broken man. Day after day, he begged the guards passing his cell not to sent him to the scaffold. When this gained him no consideration, Holder declared that if he were executed, he would return as a ghost and haunt them, Judge Parker, and everyone connected with the court. This threat, however, failed to stay the hand of justice.

Early on Wednesday, July 25, Holder's spiritual adviser, Father Pius of the German Catholic Church visited him in his cell. He remained with Holder till he took position on the trap.

At 10:40 Holder was escorted into Jailer Baxter's office and the death warrant was read to him by Marshal Crump. During the reading, Holder sat with folded hands and bowed head, exhibiting no outward emotion. He was marched to the scaffold, supported on one side by Jailer Baxter and on the other by the assistant jailer. Holder mounted the steps leading to the platform unaided. He then announced that he desired to make a statement and advanced to the point of the gallows. Holder had previously asked the jury and Judge Parker to attend his execution as he desired to say something to them. None were present. After a pause, Holder said that he had forgiven them. Judge Parker, he added, "should resign his office, get down on his knees and ask the Lord for forgiveness."

After Holder had finished speaking, George Maledon secured his arms and feet with strong cord and adjusted the black cap. The noose was placed around the condemned's neck; Jailer Baxter placed his foot on the spring, and in an instant Holder shot through the trap. His neck was broken; he was pronounced dead in two minutes. [49]

Several months after Holder's execution, Jailer George Lawson and

half a dozen guards were sitting in the jailer's office. A little before midnight, an unearthly sound drifted out of the inky blackness from the direction of the scaffold. For a moment, the men's blood seemed to freeze in their veins.

"Lewis Holder's ghost!" exclaimed one of the men in a hoarse whisper.

It was several minutes before the guards collected their wits. Lawson's call for volunteers to investigate was answered by all present. The company stepped outside, while the hundred or more prisoners listened with bated breath. When the guards reached the scaffold, they found a very drunk Indian on his knees before the open trap, looking down through the gap where several of his friends had met their end several years before. When questioned, he explained that he was praying for their deliverance. 50

* * *

In 1893 six men were convicted of capital crimes by Fort Smith juries and sentenced to death by Judge Parker. As expected, the condemned men's lawyers appealed their convictions to the Supreme Court. The high tribunal, after studying each case, ordered a new trial.

J. J. Gentry in January 1884 had borrowed a horse from Famous Smith. Both men lived near Webbers Falls. Gentry rode the animal almost to death. Several days later, Gentry asked Smith to loan him a second horse. Smith refused. Later in the day, the two men met on the road to Webbers Falls, and Gentry berated Smith. At this time, Smith was suffering from tuberculosis and weighed about 135 pounds, while Gentry was a powerfully built individual.

Gentry whipped out his pistol and fired at Smith, the bullet cutting a hole in the sleeve of the intended victim's coat. Whereupon, Smith drew his pistol and shot Gentry, killing him.

After reporting the killing to the deputy marshal at Webbers Falls, Smith returned to his home. Nine years passed before the U. S. commissioner issued a warrant for Smith's arrest. Brought to trial during the November 1892 term of court, Smith was convicted on January 8, 1893. Judge Parker scheduled August 5 as the day Famous Smith was to be hanged. A stay of execution was issued when Smith's lawyers appealed the case. 51

Three men (John Hicks, Marshall Tucker, and John Gourko) and a

juvenile delinquent, Alexander Allen, faced Judge Parker on October 29, 1893. The four had one thing in common--they had been convicted of murder and were about to hear the judge doom them to the gallows.

Many months before, on the afternoon of February 13, 1892, Stan Rowe, John Hicks, Andrew J. Calvard and Mixwater stopped at Jim Rowe's house, 12 miles northwest of Tahlequah. Women were present, whiskey flowed freely. The four men left Rowe's together. As they did, Calvard insisted on Rowe going home with him. If he would, Calvard promised to give him a suit of clothes.

Rowe and Hicks suspected that Calvard might be planning to decoy Rowe into an ambush. After discussing the subject, Rowe and Hicks rode after Calvard. As they overtook him, Rowe covered Calvard with his Winchester and accused him of conspiring to turn him over to the law. Calvard denied the charge, remarking that he was a friend to both Rowe and Hicks. Three times Rowe "pulled down" on Calvard. The third time, Hicks whipped off his hat and shouted to Calvard, "Pull off your hat and die like a man."

Rowe at the same instant pulled the trigger, killing Calvard.

Stan Rowe was killed resisting arrest in December, while Hicks was taken into custody. Tried before the February 1893 term of Judge Parker's Court, Hicks on March 7 was found guilty. [52]

Marshall Tucker was a deputy U. S. marshal for the Muskogee Court. Born in 1864 in Sebastian county, Arkansas, young Tucker had accompanied his folks when they moved into the Indian Territory and settled near Cameron. When off duty, young Tucker was known to be a heavy drinker.

October 15, 1892, found Tucker off duty and in South McAlester. After making the rounds of the saloons with several of his friends, Tucker decided to look for some sport on "Chippy Hill," the town's "red light" district. Accompanied by a friend named Wilson, Tucker knocked at the door of one of the brothels. He was refused admittance by Lulu Mays, the madam. In his drunken condition, it seemed to the off-duty lawman that the madam was in another part of the house. To try to frighten her into opening the door, Tucker drew his pistol and fired through one of the panels. As chance would have it, Lulu Mays had stepped into the parlor;

she was standing directly in the path of the ball which struck and killed her instantly.

As soon as he had learned what he had done, Tucker turned himself in. He was taken to Fort Smith. At the trial which was held in the second week of March 1893, the defense argued that Tucker was intoxicated when he committed the crime, "and as the victim of his bullet was only a common prostitute it was not worth while to execute an otherwise good man" for the death of a "low and degraded woman." Judge Parker didn't agree. The law and he regarded a drunken man as responsible for his acts. The life of the madam was given the same value in the court as the most upright member of society. Although Tucker was a law officer, Parker saw that he was convicted of murder. [53]

John Gourko worked in the Alderson coal mines in the Choctaw Nation. The young Italian immigrant had quarreled with one of his fellow workers. Threats against Gourko's life were made. Gourko, fearful that the other man would do him bodily injury, stepped aside. Securing a pistol, he returned and shot the aggressor, who when searched proved to be unarmed.

Brought to trial in May 1893, Gourko employed Barnes and Reed to represent him. They contended that the crime for which their client was on trial was manslaughter, not murder. Judge Parker took a different view. He instructed the jury in such a manner that on May 22 a verdict of murder was rendered. [54]

Alexander Allen, age 15 years, lived with a colored family named Marks on the Cherokee lands, four miles south of Coffeeville. The Markses were tenants of John Morgan, a well-to-do white man. Marks had several children with whom the young Negro played.

In the same neighborhood lived William Henson, his wife, and their three sons, of which the eldest was Phillip, age 18. The Ernes, who lived close by, had two sons, George and Willie.

Shortly after Alexander had moved in with the Markses in May 1891, Phillip Henson and the Erne boys were out in the Henson field planting watermelons. The Marks boys and Alexander walked up. Words were exchanged, and remarks made which Alexander construed to be a personal affront, uttered because he was a Negro. These epithets grated on his nerves..

Two days later, May 14, the Erne boys and Phillip Henson passed through a field not far from the other side of the fence. The whites were shocked to see that the young Negro was brandishing a pistol. He commanded them to halt. Walking over to them, Alexander struck Phillip several times with his fist and then opened fire. The first shot was wild, the bullet whistling off into space. As Phillip grasped for the weapon, the Negro pulled the trigger twice, sending two missles crashing into his body. Young Henson died within a few minutes.

The young murderer raced to the Marks' house, procured a valise into which he packed his few belongings, harnessed a horse to a cart, and headed for Coffeeville. Two days later, Alexander was arrested at Edna, Kansas, by Deputy Marshal N. M. Clifford. Alexander was taken to Fort Smith and jailed. While awaiting trial before the August 1893 term of court, Alexander tried the patience of his jailers. He was probably the worst prisoner the guards had ever been called on to handle. It was necessary to keep him shackled a great part of the time. He never missed an opportunity to perform a mean, contemptible act. Alexander was punished severely, but one might have well dealt out punishment to the walls for whatever effect it had, unless to make him worse.

Alexander's attorney lost his fight to save the boy from a murder conviction, as the jury on October 11 brought in a verdict of guilty. 55

Judge Parker sentenced Hicks, Tucker, Gourko, and Allen to be executed on December 27, 1893. The attorneys for the condemned lost no time in carrying the cases to the Supreme Court. While awaiting the high court's review, stays of execution were granted.

The Supreme Court on Monday, December 4, 1893, reversed the decision of the Court for the Western District in the case of Allen v. United States. Several days before, the high court had sustained the appeal filed by John Hick's lawyer.

Colonel Frederick, who had represented Allen and Hicks, had increased his prestige among the members of the Fort Smith bar by his efforts to secure retrials for his clients. On December 15 the Fort Smith Elevator informed its readers that Allen's was the fifth case in which Frederick had secured a reversal. The other men saved from the gallows by Colonel

Frederick were: Robert Hall, John Graves, and John Brown. In the Brown case, Frederick had been assisted by Colonel Grace. This was the largest number of reversals secured by a member of the Fort Smith bar. [56]

One month later, the Supreme Court on January 3 ruled on the writs of error filed by the attorneys for Marshall Tucker and Famous Smith. In the Tucker case, the judgement of the lower court was affirmed, while in Smith's it was reversed and "remanded for action in accordance with the opinion of the court." The high tribunal believed that testimony demonstrated that both Smith and his victim, Gentry, were Indians, thereby jurisdiction in the case should rest with the Indian courts. [57]

Gourko's lawyers in their writ of error claimed that their client wasn't guilty of murder. The high court agreed, and a new trial for Gourko was ordered. [58]

Many months were to pass before Judge Parker and the officers of the court saw the last of Hicks, Allen, Tucker, Smith, and Gourko.

In view of the decision of the Supreme Court, Judge Parker ordered the Smith case nolle prossed and the prisoner released. [59] A compromise was worked out between the court and the attorneys for Gourko. The defendant was allowed to change his plea from innocent to manslaughter. In passing sentence on Gourko, Judge Parker observed, "This man was guilty of murder and nothing less. I only consented to a plea of manslaughter on account of the almost utter impossibility of getting the jury to convict a man of the crime he is guilty of on these cases which have been reversed. I consented to a partial vindication of the law rather than none at all." Gourko was sentenced to serve eight years in the Columbus Penitentiary and pay a fine of $1,000. [60]

Hicks was found guilty of murder at his retrial. Once again, Colonel Frederick carried the case to the high court. A third trial was ordered. It proved a charm for the defendant, because this time the jury acquitted him. [61]

Colonel Frederick saw Alexander Allen convicted of murder a second time by a Fort Smith jury. A successful appeal was made to the Supreme Court. At his third trial, Allen was convicted and given a life sentence in the Columbus Penitentiary. [62]

Judge Parker was instrumental in saving the life of Marshall Tucker, the only murderer convicted at Fort Smith in 1893 whose sentence the high court had upheld. Upon Parker's recommendation, President Cleveland commuted Tucker's death sentence to imprisonment for life. The reason cited by Judge Parker was no "deliberate intent to take human life." 63

* * *

One man, the well-known gunman Henry Starr, was called on to face a murder charge at the November 1893 term of the Court for the Western District. The Starr story was given considerable national publicity.

Henry Starr was born December 2, 1873, in a log cabin near Fort Gibson. His father was "Hop" Starr, half-breed Cherokee son of the old Cherokee outlaw, Tom Starr, and brother of Sam Starr, the husband of Belle. If there was an inherent bad streak in Henry's nature, it came from the Starrs. His mother was half-Irish and a highly respected woman. At 16, Henry went to work on the Half Circle Box ranch south of Coffeeville. In the fall of 1890, he was employed on the Open A, and when their cattle were shipped in the spring of '91, he got a job with the Roberts brothers. 64

By this time, Starr was a hard-riding cowboy--five feet nine and one-half inches tall, strong and handsome of athletic built, with straight black hair, dark brown eyes. He didn't use tobacco, coffee, or hard liquor. Henry looked like a man who could be trusted. 65

Then, in June 1891, Henry was arrested by Deputy Marshal Wykoff of the Muskogee Court on a charge of introducing whiskey into the Indian Territory. Starr swore that the whiskey found by Wykoff in his buggy belonged to a friend who had asked him to haul it to Nowata. Court records fail to support his claim. The friend was never identified; Starr pled guilty, and after paying a fine was released.

In February 1892, Henry was arrested for horsestealing by Jasper Brendine. The case, however, was dismissed in the U. S. commissioner's court. Six months later, Starr stole two horses and was released on a bond posted by his cousin, Kale Starr, and Chief Harris of the Cherokee Nation. Starr failed to appear for trial; the bond was forfeited, and his bondsmen offered a reward for his capture. While a fugitive on this charge,

Starr entered into a career of crime that graduated him into the class of the Jameses, Youngers, and Daltons. [66]

Accompanied by a Delaware half-breed, Ed Newcome, and Jesse Jackson, a white man, Starr held up the Missouri Pacific express office at Nowata. He robbed the Shufeldt and Son store at Sequoyah. [67]

Meanwhile, Detective H. E. Dickey of the express company had been investigating the Nowata robbery. He had gone to Fort Smith to get a warrant for Starr's arrest. While there he obtained a deputy's commission for Floyd Wilson. The two men started after Starr. Detraining at Nowata, they on December 13, 1892, picked up Starr's trail south of Lenapah. Henry was traced to the ranch of Albert Dodge in the California Creek country. Starr had worked for Dodge before becoming an outlaw. Dodge told the officers that he had seen Henry ride past his place several times. Remounting their horses, Dickey and Wilson spent most of the night scouring the countryside.

On the following day, the officers returned and were having dinner with Dodge. Before they finished, Starr rode by the house. Spotting the fugitive, Wilson leaped up from the table and rushed to the stable, where he found Dodge's horse saddled and bridled. Wilson untied the animal and started in pursuit.

As soon as he discovered what was about, Henry reined up his horse and dismounted. Wilson dropped from his saddle also; the pair stood confronting each other not more than 30 yards apart. Wilson called on Starr to surrender. To add emphasis to his command, the deputy fired a shot over the bandit's head. Starr replied with a shot from his rifle. "An empty shell" jammed in Wilson's Winchester. Throwing down his rifle, the deputy drew his revolver. Starr "discharged his Winchester several more times at the brave marshal," knocking him down. While the deputy lay on the ground, too badly wounded to defend himself, the outlaw strode forward shooting him in the chest. When he reached the prostrate man, he bent over and held the muzzle of his pistol so close that the blaze spouting from it singed the dead officer's clothes.

Dickey heard the shooting and hurried to the scene, but Starr had escaped. [68]

The slaying of Wilson "established" Starr among the remaining desperados of the West. He organized a "hard-riding, fast-shooting gang." On the afternoon of June 5, 1893, Starr and his confederates held up the People's Bank at Bentonville, Arkansas. There was a fierce gunbattle with the citizens, and the gang escaped with $11,000. In rapid succession the Chelsea railroad station, a Missouri, Kansas & Texas train at Pryor Creek, stores at Nowata and Chouteau, the bank at Aldrich, Missouri, and the Caney Valley Bank of Caney, Kansas, were held up. Three thousand dollars were obtained at Aldrich and $2,000 at Caney. 69

"Always on the go, always pursued, but somehow always managing to avoid capture," the gang had only one clash with the marshals. In a brush with Deputies Ike Rogers and Rufe Cannon near Bartlesville, Jesse Jackson was shot three times. Starr and Newcome escaped. Rogers notified Chief Marshal Yoes at Fort Smith, "about two hundred shots were fired; we are still on the trail of Starr and his confederates and will yet run them down." 70

With the law hard on their heels, the Starr gang broke up. Starr and Kid Wilson, the only survivors of the Bentonville raid, headed West. They stopped at Colorado Springs. Rumors that the two men were in town reached the ears of the police.

It so happened that William Feuerstine of Fort Smith was also in Colorado Springs at this time. On Monday, July 3, 1893, Feuerstine saw Starr on the street and recognised him. Feuerstine lost no time in alerting the authorities. Upon investigating the matter, the police discovered that Frank and Mary Jackson, and John Wilson of Joplin, Missouri, had registered at the Spaulding House. A close watch was established on the suspects' movements.

Early the next afternoon, July 4, Jackson and Wilson came out of the Spaulding House and sauntered up Telon Street. They entered the store run by Oppenheim brothers. There, they bought a lot of expensive clothes and a good, gold watch and chain. Jackson and Wilson impressed on the proprietors that they were Easterners out to see the sights. It was accordingly arranged that two members of the firm would secure a carriage and the entire party would spend the rest of the day at Manitou Springs.

The party stopped at the Spaulding House for Mrs. Jackson. Closely shadowed by detectives, the group drove out to the springs. It was about dark when the party returned. The Jacksons dismounted from the carriage at the Spaulding House, while Wilson accompanied the driver to the stables.

An hour later, Jackson came downstairs. Upon being informed that the dining room was closed, Jackson walked outside. The anxiously awaited hour had come: Jackson and Wilson had separated. After walking about two blocks, Jackson entered the Cafe Royal, and ordered supper. While he was eating, Chief Dana and Captain Gathright walked in. Turning, they pinioned Jackson's arms and wrists. Meanwhile, Detective Atkinson and his deputies entered and leveled their revolvers at the suspect. Frisking Jackson, the police relieved him of a Colt's .45 revolver.

After being taken to the station, the suspect asked, "Who do you think you've got?"

"Henry Starr," answered one of the officers.

"You're right," was the reply.

Wilson was shadowed to a brothel. When the officers knocked, the madam opened the door, and they rushed in calling on the Kid to throw up his hands. This he did. Like Starr, Wilson was captured without a struggle. The last of the trio, who proved to be Starr's wife, was found in bed at the Spaulding House. Under her pillow was $1,460 in greenbacks, and in a valise nearly $500 in gold. [71]

Starr and Wilson were returned to Fort Smith by Deputy Marshal William Smith. At Fort Smith, four indictments for robbery and one for murder awaited Starr.

Wilson was tried and convicted for participation in the Pryor Creek train robbery and sentenced to 24 years' imprisonment at Brooklyn.

Henry Starr was tried for the murder of the deputy marshal. While he didn't deny killing Floyd Wilson, Starr claimed "self-defense...that he didn't know Wilson was an officer" and that the deputy had given him "no notice of his character or mission."

Mrs. Padget, who had witnessed the slaying, testified that she heard Wilson shout, "Hold up; I have a warrant for you."

Starr had replied, "You hold up."

In answer to a question of the district attorney, the woman stated that four weeks before the killing, Starr had told her that he guessed the marshals were hunting him "for jumping his bond." 72

Parker in making his charge to the jury observed:

> If a man stands up and obstructs arrest, prevents arrest, armed with deadly weapons, and using them in a way that is threatening, then the officer has no time, nor is he called upon to make proclamation. The officer must stand on the offensive and overcome the danger and take his man or overcome him by violence, if necessary.

The judge added:

> When we enter upon the execution of as grave design as the taking of the life of individuals, we must enter upon it with clean hands and a pure heart. If we have created a condition that leads to a deadly result, the law of self-defense does not apply...if we create that condition by doing a wrongful thing upon our part, which would naturally or reasonable or probably produce a deadly result...because we are wrong in the first place.

Referring to Henry Starr, the judge noted, "He was a fugitive from justice...he had forfeited his bond and was up in that country, hiding out from his usual place of abode, to avoid arrest...."

"It is a fact, "Parker continued:

> that becomes pertinent to you to take into consideration...from what transpired...that he knew Floyd Wilson was an officer, and was seeking to arrest him....It takes men who are brave to uphold the law here. There is no protection unless the law is upheld by men of this kind....If you are satisfied of the fact, beyond a reasonable doubt, that Floyd Wilson was a man of this kind, that he was properly in the execution of the high duty devolving upon him, and while so properly executing it, by the light of these principles of the law I have given you, his life was taken by this defendant, your solemn duty would be to say that he is guilty of the crime of murder, because...the law is to be vindicated. You are to stand by the nation. You are to say to all the people that no man can trample upon the law, wickedly, violently, and ruthlessly; that it must be upheld if it has been violated.

Parker concluded his charge "in strong terms, expressed indignation at the homicide, and urged argumentatively the necessity of vindicating and upholding the law." 73

Taking their cues from Judge Parker, the jury on November 13, 1893, found Starr guilty of murder. In pronouncing sentence upon Starr, the judge remarked, "You tried this brave officer, condemned him to death and executed him with a Winchester; and now it is only simple justice that you die at the end of a rope." Starr was accordingly sentenced to die on February 20, 1894. 74

Starr's attorney quickly filed a writ of error on grounds that Parker's charge to the jury was "not consistent with due regard to the right and duty of the jury to exercise an independent judgement." In sustaining the writ, Chief Justice Melville W. Fuller wrote for the majority of the high court:

> Whatever special necessity for enforcing the law in all its rigor there may be in a particular quarter of the country, the rules by which, and the manner in which, the administration of justice should be conducted, are the same everywhere; and argumentative matter of this sort should not be thrown into the scales by the judicial officer who hold them....The judgement is reversed, and the cause remanded, with a direction to grant a new trial. 75

Parker was shocked and demanded:

> Does it mean that it is part of the government to send a man out into that Golgotha to officers, and command them, in the solemn name of the President of the United States, to execute these processes, and say to them, "Men may defy you; men may arm themselves, and hold you at bay; they may obstruct your process; they may intimidate your execution of it; they may hinder you in making the arrest; they may delay you in doing it by threats of armed violence upon you; and yet I am unable, as chief executive of this government, to assure you that you have any protection whatever!" What a mockery, what a sham! What was this posse to do? What was he commanded to do? To go into the Indian country and hunt up Mr. Starr, and say to him that on a certain day the judge of the federal court at Fort Smith will want your attendance at a little trial down there, wherein you are charged with horsestealing, and you will be kind enough, sir, to put in your attendance on that day; and the judge sends his compliments, Mr. Starr? Is that his mission? Is that the message from this court that is to be handed to Mr. Starr upon a silver platter, with all the formalities of polite society? Is that what Floyd Wilson was employed to do. 76

Starr in the fall of 1895 was retried before Judge Parker. Having been given a lease on life by the Supreme Court, the outlaw felt the worst he could get was a conviction of manslaughter. Friends of the dead deputy marshal were uncertain of the result, many believed it would be impossible to secure another conviction. Starr took the stand and corroborated the most damaging testimony against himself. He admitted under cross-examination that he advanced on the fallen Wilson, and was standing almost over the prostrate lawman when the last shot was fired. [77]

"The wicked flee when no man pursueth," thundered the white-haired judge:

> but the righteous are as bold as a lion. A man is to be judged by his consciousness of the right or wrong of what he does....If he flees from justice, if he goes to a distant country and is living under an assumed name because of that fact, the law says that is not in harmony with what innocent men do, and jurors have a right to consider it as an evidence of guilt...a presumption of fact...a silent admission by the defendant that he is unwilling or unable to face the case against him...a confession that comes in with other incidents, the corpus delicti being proved, from which guilt may be cumulatively inferred. [78]

Once again, Starr was convicted of murder and sentenced to die.

"Reversed and remanded for a new trial," ruled the Supreme Court. Flight of the accused didn't raise a "legal presumption" of guilt so that an "inference of guilt" could be drawn therefrom.

Two years later, in March 1898, after Parker had left the bench, Starr was allowed to plead guilty to manslaughter and was sentenced to be imprisoned at Columbus for five years. [79]

Chapter XVI

Justice is Meted Out to the Cook Gang

Grover Cleveland was inaugurated on March 4, 1893. With Cleveland back in the White House, there would be Federal jobs for deserving Arkansas Democrats. George J. Crump on May 29 replaced Jacob Yoes as marshal for the Western District. The new jailer would be J. M. Baxter, while Judge Clayton was replaced by James F. Read as district attorney. As to be expected, a number of other court officers and guards at the U. S. Jail also were replaced, victims of the spoils system. [1]

Frank Strong of the Department of Justice visited Fort Smith at the beginning of November 1893, and inspected the U. S. Jail. He reported to the Attorney General on November 4 that he had found many improvements since his previous visit in 1888. At this time, there were 168 prisoners, nearly all from the Indian Territory, confined in the U. S. Jail.

Jailer Baxter, Strong described as a man, "who seems to administer the duties of his office in a very satisfactory manner." The new jail, Strong reported:

> is a fairly well constructed building, with iron cage opening into a corridor surrounding it. The floors of the galleries are made of cast iron open work, which is objectionable on some accounts, chiefly because dust and sweepings are continually falling through on those below, and because they can be broken with comparative ease. During a recent attempted rising by the prisoners, these open gratings were broken through, and gave the rebellious inmates decided advantages. The steam radiators in the corridors are very dirty, and completely covered with tobacco juice sent down from the upper tier men. Jailer Baxter said he would have them scrubbed and cleaned at once, but said, (what is evidently true), that it is almost impossible to prevent the men from spitting on the walls and floors below. It is no easy task to control nearly 200 hardened and desperate men, shut up in the building with a few guards, and with but few methods of restraint at hand.

Marshal Crump told Strong that he was having the furnace and boiler room cleaned, to get ready for cold weather. Strong told Jailer Baxter that after the furnace and boiler room had been cleaned, "it should <u>be kept</u> so," and not permitted as it had been in the past from "want of

attention, to become nearly buried in dust and trash...."

The jail, Strong found, was "poorly lighted with oil lamps, and although gas fixtures are provided, they are not used," because as Jailer Baxter explained, of the expense involved. Strong informed the Attorney General that "if the gas bills did not so greatly exceed in amount the cost of lighting with oil," he would recommend that gas be substituted.

As Strong discovered, the prisoners were fed by a contractor who was allowed 25 cents a day per man. The contractor was permitted to use a room in the jail in which to store his supplies, while the food was "cooked on a large range furnished by him, in the jail kitchen."

Strong pronounced the "arrangements for executing criminals" as crude and unsightly. "Unless some reasons exist," he wrote, "for preserving intact the rude appliance by means of which so many criminals have been executed, it should be replaced by a newer arrangement, decently enclosed, where those who are sentenced to death may meet their fate amid surroundings more suggestive of the sacredness and majesty of the law than are the weather-scarred beams and boards now devoted to the purpose."

Strong was impressed with the prison hospital, which he described as "roomy and well lighted, and well adapted for the purpose,--a far better one than I have seen connected with any Southern jail."

In closing his report, Strong observed:

> On the whole, while there is much that might be improved upon, the jail at Fort Smith is no longer, at least, an institution to be ashamed of, and answers its purpose comparatively well. Such expenses as are requisite, from time to time, for plumbing, small repairs etc., when requested by the marshal, should be allowed, as it is apparent to one who visits the place that they are frequently imperatively necessary. [2]

* * *

Millard Fillmore Ince rode into Fort Smith on Wednesday morning, December 13, 1893. Calling upon S. B. Braswell, Ince reported that he had killed Jenkins at Cherokee Station on the Valley road. Ince claimed that

he and Jenkins had spent the night drinking and quarreling. Jenkins had awakened first, and Ince told him to keep quiet as he wished to sleep. They argued. Jenkins called Ince a liar. Whereupon, Ince got up, picked up an ax, and killed his drinking partner.

Braswell took Ince to see Marshal Crump. At first, the marshal believed Ince a crank. But after questioning him closely, the lawman determined to investigate. He called for Jailer Baxter and told him to lock Ince up.

Accompanied by Deputy Marshal G. P. Lawson, Crump rode out to Cherokee Station. There he found everything just as Ince had said. Jenkins, the man Ince claimed to have killed, was lying on his back with his watch on his breast. The deceased had $8 in his pocket. On the lapel of his coat was his GAR button. At the time of his death, Jenkins was 55 years old. and blind. He had made a precarious living by peddling. [3]

* * *

For Christmas dinner 1893, the prisoners had fruit, cake, and onions added to their usual meal. Jailer Baxter treated his charges to a good strong toddy. One hundred and nine out of 112 prisoners accepted the treat. John Hicks, Sam Downing, and David Vaughan declined to indulge.

From July 1 to December 27, a check of the jail register showed that 554 prisoners had been committed to Mr. Baxter's keeping. At the moment, there were 16 prisoners in the U. S. Jail convicted of murder. Several of these men's cases were in the hands of the Supreme Court-two of whose sentences had been affirmed, while three or four had been granted new trials. [4]

* * *

Only three men were found guilty by the Court for the Western District of capital offenses in 1894.

Willie Johnson was brought to trial before the February term of court. Two Negro families, the Russells and the Johnsons, lived near Muskogee. There was bad blood between the two families. On a hot July evening in 1893, Sherman Russell started home from church with a girl whom Willie Johnson "fancied." Before the couple reached the girl's home, they were

overtaken by Sam Woodward and Willie Johnson. A quarrel ensued; Russell was killed. Woodward, who Johnson claimed had fired the fatal shot, was never captured. The jury on March 7 found Johnson guilty of murder. The verdict was appealed and a new trial ordered. This time, Johnson received a life sentence. [5]

Dennis Davis was a Negro sharecropper. In 1893 he agreed to raise a crop of sorgham for Solomon Blackwell. According to the agreement reached by the men, who lived near Eufaula, Davis was to have half the crop, but he was to harvest both shares and haul the stalks to the mill.

Davis, however, gathered only his share, leaving Blackwell's standing in the field. The two Negroes argued and threats were made. Davis returned to his cabin, secured a gun, and crept up to the field in which Blackwell was working. Taking aim from ambush, Davis killed Blackwell. Davis wasn't very bright; he told a number of his friends what he had done.

When Davis was arraigned before the November term of court, Judge Parker appointed four lawyers (I. D. Oglesby, F. S. Jones, W. B. Cravens, and Emanuel Mayes) to defend him. At the trial, they alleged that their client was insane. The jury disagreed. On November 17 a verdict of guilty was rendered. Judge Parker sentenced Davis to be executed on April 2. Before the date for the hanging arrived, Davis was declared insane and sent to an asylum. [6]

The Hermes, father and sons, had taken up land in the Creek Nation, near Eufaula. One of their neighbors was Thomas Thompson, an 18-year-old Creek.

Thompson got drunk on June 8, 1893, and rode by the Hermes' cornfield. Seeing the senior Hermes and two of his sons, Thompson let go with a whoop, which he intended as a challenge. Riding off, the young Indian went to his home and armed himself. Shortly thereafter, he returned to the field. While Charles Hermes was turning his horse, after reaching the end of a furrow, Thompson shot and killed him.

Thompson was convicted on December 4 by a Fort Smith jury and sentenced to the gallows. The case was appealed to the Supreme Court by

the Indian's lawyers. A new trial was ordered. A lighter sentence was imposed as a result of the second trial. [7]

* * *

Wednesday, April 18, 1894, was a busy day at the U. S. Jail. Marshal Crump and 15 guards marched 56 convicted prisoners to the depot. These men had been sentenced to the U. S. Penitentiary at Brooklyn. Crump calculated that it cost the government $4,000 to transport the men to their new quarters. The departure of these felons left 117 inmates in the U. S. Jail. [8]

Deputy Marshal Joe Nix was out hunting whiskey peddlers on the morning of August 3. Near Vian, in the Cherokee Nation, he spotted a Negro on the porch of Calvin Lacey's cabin. From a distance, the Negro looked like Andy Hunter, an escaped convict. Actually, it was Bill Ford, a young Negro, who had moved to the Territory three years before from Pine Bluff. Not knowing what Nix wanted, Ford took to his heels. As he did, he picked up an old army musket. Nix chased Ford several hundred yards, firing as he ran. Finding that he was about to be overtaken, Ford wheeled and fired at his pursurer, filling him full of turkey shot. After being blasted, the lawman turned and started to walk toward Lacey's cabin. Before he had gone one hundred yards, he collapsed and died.

Ford rode into Fort Smith and surrendered to the authorities on the 6th. He told the U. S. commissioner that when he saw Nix coming after him, he believed him to be drunk, and had fired in order to save his life. When the grand jury met and heard the evidence, it refused to indict Ford. [9]

One of the female inmates of the jail shocked the community by accusing Jailer Baxter and his son, Jinks, of adultery. The woman was Minnie Peyton of Krebs. She had been arrested for larceny and brought to Fort Smith. Miss. Peyton occupied a room in the jail adjoining the hospital. Captain Baxter and his friends swore that the charges were part of a conspiracy to get rid of him, because of his strict enforcement of regulations.

Since Captain Baxter had lived at Fort Smith for years, the Fort Smithites was aghast to learn of Miss. Peyton's charges. So great was public confidence in Captain Baxter that almost every member of the Fort Smith bar volunteered his services to defend the jailer.

The case was heard by Judge Parker in the second week of October. There were eight or ten witnesses in the case, all of whom were prisoners serving sentences or awaiting trial. The principal witness for the prosecution, Minnie Peyton, testified that she was a strumpet or in other words a "sporting woman." The testimony of the government witnesses was full of discrepancies and contradictions, while the story told by Baxter's two witnesses seemed straightforward.

When Baxter took the stand, he denied the charges. He said that on the day in question, he had been called to Minnie's room, when she complained that somebody had taken a bath in her room, and had splashed water all over the floor and the bed. When he entered, Minnie had slammed the door. As soon as he had investigated her complaint, he reopened the door and went out. The jury returned a verdict of not guilty, having stood ten to two for acquittal on the first ballot. [10]

James E. Davis, who was charged with assault with intent to kill, made his escape on Saturday, October 6. When a group of prisoners were taken to the courthouse for arraignment, he slipped away. When his name was called, there was no response. He was the first man to escape since Crump had taken over as marshal. [11]

J. D. Berry of Franklin county took charge of the U. S. Jail on November 1; he relieved Bras Parker, who had been in charge since Captain Baxter's retirement. [12]

When the Elevator went to press on November 15 there were 176 prisoners confined in the U. S. Jail. The building was reportedly "uncomfortably full, and with the limited number of guards on hand the force is constantly on the qui vive."

In view of this situation, Jailer Berry ruled, "Hereafter visitors will be admitted only on Tuesdays, Thursdays, and Sundays, and the visits will be limited to fifteen minutes." Berry cited his reasons for curtailing

visitor privileges as (A) The increased number of prisoners. (B) The increased demands for interviews. (C) The limited number of guards and jail attendants. Since the first of the year, the Washington authorities had reduced the number of guards by three and abolished the position of assistant jailer. These economy moves had cut Berry's personnel far below the "real needs of the jail and entailed additional burdens upon the force which remains..." 13

Deputy Marshal John M. Beard and Pulse, a member of the Cherokee Light Horse, rode out of Claremore on Sunday, December 9. They held a warrant for the arrest of Jim Price, a tough wanted on a larceny charge by the Fort Smith court and the Cherokee authorities. Price was reportedly holed up at his father-in-law's cabin.

As they approached, Robert Hendrick's, the lawmen spotted Price sitting in the yard. Price had already sighted the officers. Divining their intentions, he threw his Winchester to his shoulder and drew down on Beard. The deputy, seeing that Price planned to resist, started to draw his revolver. Price was too quick. A bullet from the Winchester struck the lawman under the right eye, killing him instantly. Pulse would have met a similar fate, but for the intervention of Hendrick. After picking up the dead marshal's pistol and examining his papers, Price left the area, remarking that he was going to join the Cooks' gang. 14

Thus, the campaign to bring law and order to the frontier had claimed another victim.

The register of the "Hotel de Uncle Sam" listed 127 "guests" for Christmas. According to the Elevator, all the inmates were "in pretty good shape, the hospital rolls being very light." The prisoners had a good Christmas dinner, which "is more than nine-tenths of them would have had if they had been at home." 15

Several improvements were made in the jail at the end of 1894. The consulting room was provided with a large window, while the female ward in the hospital building was "greatly enlarged," and was separated from the male apartment. Heretofore, the quarters assigned the females had been cramped and had had very few conveniences. 16

The following year, Bill returned to the Indian Territory. Bill Cook was promptly arrested on the old whiskey charge and sentenced by Judge Parker to 40 days in the Fort Smith jail.

When released at the expiration of his term, Bill seemed well on his way to becoming a useful citizen. In 1893 he rode with Deputy Marshal Bill Smith's posse. The following spring Cook was charged with horsestealing. Once again, he became a fugitive, fleeing into the Creek Nation. About the same time, his brother, Jim, got into trouble. To avoid arrest by the Cherokee Light Horse, Jim went into hiding. A warrant was sworn out for his arrest by the Fort Smith court. Jim joined Bill. Together the Cooks organized a gang of thieves that within two months stole more than 50 head of horses in the area between Wagoner and Muskogee. [17]

During this period, the Cooks fell in with Crawford Goldsby. The "worst desperado who ever roamed" the Indian Territory. Goldsby had been born on February 8, 1876, at Fort Concho, Texas, where his father was serving in the 10th U. S. Cavalry. Goldsby's father was part white, part Mexican, and part Indian. His mother, Ellen Beck, was half-Negro, one-quarter white, and one-quarter Cherokee.

The parents went their separate ways when Crawford was seven, and the boy was taken to Fort Gibson. There, he was raised by an elderly Negress, Amanda Foster. She sent the boy to school at Cherokee, Kansas, for three years; he also spent two years at the Carlisle Indian Industrial School, Carlisle, Pennsylvania. Thus for the time and the section, Crawford was well educated. The fact that he was part Cherokee and had gone to school at Cherokee, Kansas, was a factor in fastening the name "Cherokee" on him. Just where the "Bill" came from is not known.

Meanwhile, Cherokee Bill's mother had married William Lynch of Fort Gibson. As happens many times with second marriages, there seemed to be no time for the issue of the first.

By the time he was 18, Cherokee Bill was a lusty, burly, brawling fellow who had never been curbed. He was convinced that he could whip all comers. One night Bill went to a dance at Fort Gibson; there he met his equal--a Negro named Jake Lewis. There was an argument. Bill invited Jake outside. Although Bill was larger, his youth was against him. Lewis

gave Bill a severe beating, then calmly went back inside and resumed dancing. Smarting from his defeat, Cherokee Bill decided to have revenge. Lewis worked for C. L. Bowden on the edge of Fort Gibson. When he went to the barn two days after the fight to feed and water Bowden's horses, Lewis found Cherokee Bill standing inside, revolver in hand. Bill fired a shot into Lewis' body. The Negro started to run and Goldsby shot him again. Lewis fell. Believing that he had killed the Negro, Bill mounted his horse and fled. Lewis, however, was only wounded.

The Cherokee police came to arrest Goldsby, but he managed to elude them. Leaving Fort Gibson, Bill headed for the Creek Nation. There, he fell in with Jim and Bill Cook. [18]

The United States Government in 1893 had purchased from the Indians the stretch of land that became famous as the Cherokee Strip. On June 1, 1894, more than a year after the sale of the "Strip" and nearly nine months after its opening to white settlement, Treasurer E. E. Starr of the Cherokee Nation, escorted by Captain Cockran and 50 picked gunmen, reached Fort Smith. After picking up $1,000,000, the treasurer and his escort proceeded to Tahlequah.

Treasurer Starr on June 4 began paying off the members of the Nation living in the Tahlequah and Going Snake districts. Each member of the Nation was to receive $265.70. Bill and Jim Cook, and Cherokee Bill were eager to get their hands on their share. On June 16 they started for Tahlequah. Because of their difficulties with the law, the three men felt that it would be best if they were not seen on the streets of the Cherokee capital. They accordingly stopped at Effie Crittenden's "Half-way House" on Fourteen Mile Creek. Effie Crittenden was a long time friend of the Cook family. The three fugitives gave Effie a note authorizing her to accept their share of the disbursement. Effie Crittenden went to Tahlequah and returned with the money.

The authorities soon learned that the three fugitives were staying at "Half-way House." It was believed by some people that Effie's ex-husband had tipped the police off in the hopes that his former wife would be killed. On July 18 Ellis Rattling Gourd organized a posse for the purpose of arresting

the Cooks and Goldsby.

It was starting to get dark as Rattling Gourd and his six men rode up to "Half-way House." Goldsby was sitting in the yard enjoying the beautiful July evening, when he heard the officers. Several of the deputies had been drinking heavily to bolster their courage and were making a lot of noise. Cherokee Bill dashed into the roadhouse, shouting for his confederates to "Look out for the Law!" In the gunbattle which ensued, Sequoyah Houston, a Cherokee marshal was slain, Effie Crittenden's husband, Dick, and his brother Zeke were wounded, while Jim Cook was shot seven times. After Houston fell, Rattling Gourd and three of his posse fled.

Bill Cook and Cherokee Bill carried the badly wounded Jim to Fort Gibson. There, they forced a doctor to dress his wounds. Before the doctor could finish, the law arrived. Bill Cook and Goldsby were compelled to flee; Jim Cook was captured. Tried by the Cherokee Court, Jim was sentenced to seven years in the penitentiary at Tahlequah.

Shortly after the fight at "Half-way House," Bill Cook organized the Cook gang. Besides Cook and Cherokee Bill, the gang was composed of Henry Munson, Curtis Dason, Chicken Skeeter, Long Gordon, the Verdigris Kid, Dynamite Dick, and Jim French. During the next several months, so many robberies were committed in the Cherokee and Creek Nations that the columns of the border press and the great Eastern dailies were filled with hair-raising tales, fiction as well as fact, about "Bill Cook, the Famous Outlaw." 19

The Muskogee-Fort Gibson stage on July 14 was held up by six masked men in the Arkansas River bottom. The passengers were relieved of their money and watches. One hour later, William Drew was held up on the north side of the river and robbed of $80 and a fine belt and pistol. On July 16 Bill Cook, Cherokee Bill, the Verdigris Kid, Henry Munson, and Curtis Dason stuck up a Frisco train at Red Fork.

A little after 10 a.m. on July 31, five armed men rode into Chandler and dismounted behind the Lincoln County Bank. Three went inside, while the two others stood guard at the door with their Winchesters. Two of the robbers covered President O. B. Kees and his brother Harvey, the

cashier, and demanded that they "cash up purty damn quick." The third man raced into the private office where Teller Fred Hoyt was lying down sick. Hoyt was ordered to unlock the safe. Already weak from his illness, Hoyt fainted. The bandit shot at him; the bullet missed and tore into the floor.

Meanwhile, the two men posted outside shouted that it was time to go. The three robbers who had entered the bank pocketed between $200 and $300 from the cash boxes and raced to their horses. J. M. Mitchell, whose barber shop was across the street, raised the alarm and was killed by one of the guards. The bandits left the town with a posse of citizens and two sheriffs in hot pursuit. Numerous shots were exchanged. One of the gang, Elmer Lewis, was shot in the hip and captured. The rest scattered and disappeared into the hills.

At 10 o'clock on the evening of September 21, the Bill Cook gang raided J. A. Parkinson & Co. store at Okmulgee, making off with over $600. On October 5 they crossed the Arkansas at the ferry between Muskogee and Fort Gibson, and held up a traveler near Fort Gibson, taking $19. The next day, Ed Ayres was robbed of $120.

"The record of bold and desperate deeds" was broken on October 19, when the gang held up and robbed the depot of the Missouri Pacific at Claremore. Less than two hours later, the agent for the Missouri, Kansas and Texas Railroad was relieved of his surplus at Chouteau 20 miles away. 20

On the dark and rainy night of October 20, a Missouri Pacific express approached Coretta. The train was making about 25 miles per hour. When the locomotive was within 100 feet of the switch, a man sprang from behind the embankment and threw the switch for the spur. As the locomotive rumbled on, the engineer spotted a string of boxcars. He applied the air and reversed the engine but it was too late. The locomotive crashed into the cars on the siding.

As the express came to an abrupt stop, the robbers opened fire. Two of them ran to the cab of the locomotive and ordered Engineer James Harris and Fireman Cottrell to come down. As soon as the trainmen had clambered out of the cab, the bandits marched them to the baggage and express cars. Firing through the doors, they forced Messenger Ford to admit them.

Meanwhile, two more of the robbers had taken position at the rear of the train to prevent anyone from escaping through the rear door of the sleeper. Two more mounted the platform between the smoker and the baggage car, and two others the platform between the first and second coaches. The bandits fired constantly. At the same time, the men who had entered the express car ransacked it. They got all the money in the local safe, $400, and commanded Ford to open the through safe. He told them that it was impossible. Satisfied with Ford's explanation, the bandits left the car.

The two robbers on the front platform worked their way through the first coach taking money and valuables. As soon as they reached the rear of the coach, the pair of men on that platform started through the second coach. Before they could finish their assignment, the whistle of a fast freight which was following the express was heard.

Conductor Dunklin, who was in the sleeper, raced to the back door with his lantern. Discovering two of the train robbers standing guard, Dunklin shouted, "Boys, don't shoot, we must flag that freight or all these women and children will be killed."

"Go and flag her down then," cried one of the bandits, "and G-d d--n you get a move on, too."

Dunklin raced up the track and stopped the freight thus averting disaster.

Bill Cook shouted for his men to assemble. The bandits jumped off the cars, secured their horses, and rode off. As they disappeared, they fired a parting volley at the stalled express.

Jack Mahara, the advance booking agent for Mahara's Minstrel Company, was struck in the forehead by a projectile and seriously injured. Walter Barnes of Van Buren was slightly wounded by a bullet grazing his cheek. Special officers Helmick and Dickson of the Missouri Pacific and Deputy Marshals Heck Bruner and Jose Casaver were passengers on the express, but the attack was so sudden that the embarrassed lawmen found themselves looking down the muzzles of Winchesters before they could make a move. Casaver lost his six-shooter to one of the bandits. The train was backed into Wagoner for assistance and to afford medical attention to the injured. 21

The Vinita Indian Chieftain on October 25 reported:

> The Cook gang...has opened a thriving highway robbery business along the road between this city and Fort Gibson, and within the past week three "knights of the grip" have contributed towards its support. James Wood of the Shibley-Wood Grocery Company, Van Buren, was met by two men near Menard and relieved of all his money and a valuable watch. Later, L. A. Wakefield of the Jacob Dold Packing Company, Kansas City, and F. B. Mittong of the Daughtery-Crouch Drug Company of St. Louis, were confronted near the same place by two highwaymen and made to fork over what money they carried. The two latter gentlemen had taken the precaution to leave their watches and all their money except $15 at Fort Gibson, for which they were roundly reprimanded by the outlaws. [22]

At the same time word was received by the marshal's office at Fort Smith that the Cook gang was operating in the Cameron area. There were rumors that the outlaws planned to sack the town. It seemed that the authorities were powerless to "encompass the gang or drive its members from the country." [23]

"There is apparently no effort being made to capture the gang or suppress their depredations," charged the Eagle-Gazette on November 1. [24] Appeals were addressed to the army to intervene to curb the lawlessness. "The capture of the desperadoes responsible for the depredations in the Territory cannot much longer be delayed," the editor warned. Drew M. Wisdom, Union agent at Muskogee, telegraphed the Office of Indian Affairs:

> My police force is not equal to the emergency and Marshal Crump at Fort Smith writes that he has not money to keep marshals in the field for a campaign. Affairs here are in a desperate condition; business is suspended and the people generally intimidated and private individuals robbed every day and night. I renew my recommendation and earnestly insist that the government, through the proper channels, take the matter in hand and protect its court and citizens of the United States, who are lawful residents of the territory. Licensed traders are especially suffering and they are here under suspense. The state of seige must be broken and something done to save life and property. [25]

Wisdom's telegram was referred to Secretary of the Interior Hoke Smith, who called the attention of the Secretary of War to the numerous complaints about the breakdown of law and order in the Indian Territory. Marshal Crump was called to Washington to report on the activities of

of the Cook gang. Attorney General Richard Olney was of the opinion that the government "should do everything legitimately within its power to prevent the interruption of interstate commerce and the detention of the United States mails."

"Abrogate the treaties; abolish the tribal relations; establish a territorial government," replied Secretary Smith. "If a territorial government were established, judges would be sent there to administer the laws and the governor who was appointed could see that they were enforced."

"The Cook gang must be killed out at once with Winchesters, at the cost of the government!" exclaimed Marshal Crump.

Attorney General Olney on October 27 authorized Crump to post a reward of $250 for each known member of the Cook gang. Parker was advised that "if these efforts fail, it is assumed that the military will be called into requisition."

C. J. Harris, Principal Chief of the Cherokees, offered $500 for Cook's head. "All the Light-horse guards and all the Indian police have been summoned for duty, and all United States marshals of the Territory have been put on the trail," reported the Eagle-Gazette of November 8. [26]

About noon on November 8, two men rode into Lenapah from the south. Since they were dressed in cowboy garb, they attracted little attention. The pair reined up in front of the Shufeldt and Son store. They dismounted and stood on the large platform scale and conversed in low tones, as cowboys will when they are unsure of themselves. Suddenly, bringing their Winchesters to the ready, the bandits cursed the onlookers and told them to get out of the way. Cherokee Bill entered the store and bellowed, "Hands up!"

There wasn't a man in the store who failed to heed the command. Turning to John Shufeldt, he demanded, "Take me to your safe and open it!"

Bill stuffed the money into his pockets. Next, he made a careful selection of goods. Then he marched Shufeldt to the front of the store, and glanced outside. The other bandit, the Verdigris Kid, had been firing random shots all the time Bill was in the store to keep people

from getting too nosey.

"Get some shells," the Kid yelled.

Bill walked back into the store and told Shufeldt to break out some cartridges. Shufeldt said they were in the rear of the store. Bill started back to get them. Parallel with the store, but separated from it by a vacant lot was a small restaurant. As Bill strode toward the back of the store, he looked across the open space. Several paperhangers were at work in the restaurant. Having heard the shots fired by the Kid, they had rushed to the windows to see the nature of the commotion. One of them Ernest Melton, was at the side window overlooking Shufeldt's store. Bill spotted him. Angered at being spied on, Bill let go an oath and threw his rifle to his shoulder. There was a sharp crack; Melton slumped to the floor with a bullet through his brain.

Snatching a handful of cartridges, Bill ran out to where the Kid was banging away. The two swung into their saddles and thundered out of town.

A posse was formed and started after the killers. The pursuit wasn't pushed with much vigor, and Bill and the Kid got away. Judge Parker was shocked. He issued an ultimatum, "Bring them in alive--or dead." As an added incentive, the judge arranged for a reward of $1,300 to be posted. People who had been thinking casually of capturing Cherokee Bill, now took it seriously. [27]

Six nights later, on November 14, a southbound passenger train of the Missouri, Kansas & Texas was held up by members of the Cook gang at Blackstone's Switch, about five miles south of Muskogee. The switch was thrown, and the express was run onto a track on which several boxcars were standing. Dynamite was used by the bandits in a vain attempt to force their way into the mail car. At the same time, several of the outlaws worked their way through the train relieving the passengers of their valuables. About $275 and eight gold watches were taken by the robbers. [28]

In August, the Creek Light Horse had trapped three members of the Cook gang at Bill Province's house, 14 miles west of Sapulpa. Lon Gordon and Henry Munson were shot and killed as they sought to escape, while

Curtis Dason was captured. Dason was escorted to Fort Smith and tried with Elmer Lewis, who had been captured at the time of the Chandler bank robbery. Judge Parker sentenced Dason to ten years and Lewis to fifteen years in the Detroit House of Correction. Bill Province and six other residents of the Creek Nation were brought to Fort Smith and charged with harboring the bandits. 29

Following the shooting at Lenapah and the robbery of the train at Blackstone's Switch, the deputy marshals made it so hot for the Cook gang that Bill and several of the members determined to go to Texas. En route, the gang held up a German emigrant named Beckley, who was bringing his family from Wewoka in the Seminole Nation to Tecumseh, Oklahoma. Besides robbing Beckley of his valuables, the bandits raped his eldest daughter. One of the gang unhitched a horse from the wagon and rode off with it.

The deputy marshals picked up the gang's trail and wired ahead to the Texas authorities. Texas Rangers intercepted the bandits in Clay county, near Wichita Falls. Skeeter, Snider, Farris, and Turner were captured and returned to Fort Smith. The first three threw themselves on the mercy of the court. Parker sentenced Skeeter Baldwin to 30 years, and Snider and Farris to 20 years in the Detroit House of Correction. Turner pled innocent and elected to stand trial. 30

Eluding the Texas Rangers, Cook struck out for Mexico. The Rangers were hot on his trail, so he rode southwestward. Captain Bill McDonald forwarded Bill Cook's description to the New Mexico authorities, alerting them that he was headed their way. On January 11, 1895, in a soddy on the Yates' ranch, a few miles southeast of Fort Sumner, Sheriffs C. C. Perry of Chaves county, New Mexico, and T. D. Love of Borden county, Texas, surprised Bill Cook and took him prisoner.

Cook in the custody of his captors arrived at the Frisco depot in Fort Smith at 1 a.m. on January 22. Notwithstanding the hour, a large crowd had assembled to see Cook escorted to the U. S. Jail. Within ten minutes of the time he stepped off the train, Cook was securely behind bars. His cellmate was Henry Starr. The next day a full force of guards were needed to manage the crowd which wished to see the noted outlaw.

When arraigned before Judge Parker, at 10 o'clock on the 22d, Cook entered a plea of not guilty to 4 counts of robbery. At his trial, Bill Cook offered no defense, except on two counts. The evidence against him was so overwhelming that his attorneys, Reed and Barnes, were unable to present much of a defense. On February 12 the jury reached a verdict of guilty; Parker sentenced Cook to 45 years' imprisonment at Albany, New York. 31

While Cook was in the Fort Smith jail awaiting transfer to prison, three members of his gang--Jim French, George Sanders, and the Verdigris Kid--were brought to Fort Smith, shot to death.

Jim French was a half-breed Cherokee. His mother was white. He had graduated with honors from the seminary at Tahlequah, where he learned a saddler's trade. In an altercation at Fort Gibson in 1891, French killed a Negro. From then until 1894, he sold whiskey and stole horses. After the "big payment" in the summer of 1894, French joined the Cook gang. When the gang broke up following the Texas fight, French returned to Catoosa, his old stamping ground. There, he joined forces with a small-time burgler, Jesse Cockran.

French and Cockran took a room at Mrs. Pruitt's Boarding House. About 9 o'clock on the night of February 7, French and his partner took three men (Fap, Williams, and"Old man" Shoulders) prisoner. Opening the door to their room, they marched their prisoners to W. C. Patton & Co. Store. The general store was closed, but Colonel Sam Irwin, the manager, was in his room at the back. French told Shoulders to knock at the door and call for Irwin.

Shoulders did as he was told. When asked to identify himself by Irwin, Shoulders shouted his name.

Shirley Wilkins, a young man from Abilene, Texas, had just reached Catoosa and was spending the night with Irwin. Before starting for the door, Irwin told Wilkins to get the shotgun which was standing in a corner. Wilkins secured the gun. As Irwin unlocked the door, he asked Shoulders who was with him. There was no reply. At this moment, Cockran jammed his Winchester against the door and fired. The door flew open. As it did, Wilkins blasted Cockran.

French rushed to a side window. Irwin started back to his room to get his pistol. The outlaw knocked out a light and shot Irwin.

Wilkins now fired at French but missed, the load crashing into the sill. French shot back but missed. Wilkins, his gun empty, took cover behind a dresser. All this time French was cursing and screaming that he would kill every son of a bitch in the store. Entering the room, French shouted for the man who had killed his partner. Finally, he changed his tactics. French said that if he would come out with his hands up, he wouldn't hurt him. Wilkins stepped out. French commanded him to pick up Irwin and lay him on the bed. He then compelled Wilkins to help carry Cockran into the store.

French now decided to kill Wilkins. As he prepared to gun down the youth, Colonel Irwin raised himself on one arm, pulled a revolver from under his pillow and fired at French. The ball ripped through the bandit's neck, just below his ears. French shot at Irwin but missed. The colonel fired again, but the ball struck the bed railing and glanced.

Dropping his gun, French fled from the store, the blood spurting from his wounds. He mounted his horse and rode to a cabin, three-quarters of a mile outside of town. Reining up his mount, French dismounted, ran inside the cabin, and fell on the floor before the fire. The frightened occupants of the house hurried to Catoosa and reported what had happened. A posse was organized and proceeded to the cabin.

The night was intensely cold. By the time, the posse reached the cabin in which French had taken cover, their fingers were so benumbed that they could scarcely handle their guns. The blaze in the fireplace made a bright light. As Tom Tansley crept up to the window, French heard him. Rising, French reached for his gun. Tansley, however, fired first, shooting the outlaw in the back of the head. As French collapsed, his right foot was pushed into the fire. The posse didn't wait to learn the result of Tansley's shot but rode back into town. Next morning, they went back to the cabin and found French dead.

Irwin died at 10 a.m. the next day. He was given Masonic rites and buried at Vinita. French's and Cockran's remains were placed aboard a train bound for Fort Smith. Cockran's body was identified

and claimed at Claremore. The body of Jim French arrived at Fort Smith on Saturday morning, February 9, and for several hours lay in an open coffin at the United States Jail. After it had been properly identified, it was turned over to a brother, who took it to Fort Gibson for burial. 32

At 7 a.m. on March 28, George Sanders, the Verdigris Kid, and Sam Butler rode into Braggs, a small station on the railroad nine miles east of Fort Gibson. There, they held up T. J. Madden's store. They were "taking things easy and had picked out a suit apiece" when alerted to the approach of Indian policemen Johnson Manning and Hiram Stephens. The bandits raced to the door. Butler fired first, killing Manning's horse. The police returned the fire; the Verdigris Kid dropped, shot through the chest. Sanders and Butler retreated toward their horses, keeping up a steady fire. Joe Morris, one of Madden's clerks, tried to cut them off and was slain.

At this moment, Deputy Marshal Ed Barbee galloped up. He dashed between the police and the outlaws, snatched up the Kid's Winchester and blazed away. Sanders dropped with a bullet hole in his temple and several through his body. Butler reached his horse and escaped. The dead outlaws were taken to Fort Smith and their bodies turned over to Marshal Crump. The guards brought Bill Cook to see the bodies. Laying his hand affectionately upon the coffin of his former comrade, the Verdigris Kid, he said, "This is the Kid." 33

A warrant was issued at Fort Smith charging Sam Butler with the murder of Joe Morris. On the night of August 1, 1895, Deputy Marshal John Davis trailed Butler to Henry Chambers' place near Island Ford on the Verdigris River. When Davis approached, Butler was lying under an apple tree. The moment he recognized the lawman, Butler sprang to his feet and fired. The ball struck Davis under the second rib on the right side. Davis fell from his horse, but regained his feet, returned the shot, hitting Butler in the chest, killing him instantly. Davis died an hour later. 34

* * *

Meanwhile, Cherokee Bill had run afoul of the law. Several days

before New Year's Day, information reached Fort Smith that Bill had attended a dance at the home of Ike Rogers near Nowata. Tuesday morning, New Year's Day, he had killed his brother-in-law, Brown, near Talala. Later in the day, Bill was reported in Nowata. Just before the north-bound train pulled into town, he robbed the agent of all the cash he had in his safe, about $39. [35]

Two of the deputy marshals, W. C. Smith and George Lawson, determined to capture Cherokee Bill. Smith learned that Bill was in love with Maggie Glass, who was part Negro and part Cherokee. Maggie frequently visited at the home of a relative, Ike Rogers. Rogers lived about five miles east of Nowata. Rogers had seen considerable service as a deputy under Marshal Crump. Smith prevailed on the ex-deputy to invite the girl to his house for a visit. An invitation was extended to Cherokee Bill at the same time.

Maggie, not knowing that she was to be used as a decoy, consented to the arrangement. Shortly after dark on the evening of January 29, 1895, Cherokee Bill rode up to the Rogers' house. Cherokee entered the cabin carrying his Winchester. Maggie, suspecting her kinsman, warned Bill that he was in grave danger. Bill, however, was drugged by love. He told Maggie that he would take his chances. If Rogers attempted anything, Bill whispered, he would show him "how long it would take him to commit murder." Bill proposed to let Ike Rogers make the first move, "then shoot him in his tracks."

Cherokee Bill watched Rogers closely, but the host was too wily to tip his hand. He treated the outlaw with great cordiality and sought to gain his confidence. Rogers asked Bill to spend the night. When Ike suggested that Bill lay aside his Winchester, the outlaw replied, "That is something I never do."

While Mrs. Rogers and Maggie were preparing supper, Ike joked with Bill and offered him a drink of whiskey doctored with morphine. Cherokee Bill refused the whiskey.

Meanwhile, Clint Scales, a neighbor and confederate of Rogers, dropped in for a chat.

After supper, it was suggested that they play cards. Bill and Rogers

played casino. While the game was in progress, Rogers kept a sharp watch for an opening, but Cherokee was not one to be taken off guard. The night wore on. Cherokee Bill talked to Maggie, but warily kept his eyes on his host.

At 4 a.m. Ike Rogers observed that it was bedtime. When they retired, Rogers and Bill laid down in the same bed. Rogers feigned sleep and waited for Bill to close his eyes. Whenever Ike felt that Bill was asleep and would start to feel his way toward the edge of the bed, the outlaw would reach for his Winchester.

After breakfast it began to look as if Bill would escape from Ike's and Scales' clutches. The group sat in front of the open fireplace. As they did, Bill held his Winchester across his lap, and began to talk of departing.

Rogers realized that he and Scales would have "to make a break on him pretty soon." In addition, he was afraid that Maggie might rush to the aid of her lover when trouble began. Rogers accordingly gave Maggie a dollar to buy some chickens at a neighbor's. Since he hadn't told his boys of his plans, Rogers sent them outside to do their chores.

Bill now decided that he wanted a smoke. Reaching into his pocket, the outlaw pulled out his tobacco and paper and rolled a cigarette. Not having a match, he stooped over toward the fireplace to light it. As he did, he turned his head for a moment. This gave Rogers and Scales their chance. Rogers snatched up a piece of kindling and struck the badman across the back of the head. Subsequently, Rogers swore that this blow would have killed an ordinary man. Bill sprawled to the floor. Scales and Rogers jumped him. Cherokee Bill, however, fought them off and scrambled to his feet.

When Bill grabbed for his Winchester, Mrs. Rogers snatched it away. A terrible struggle between the three men ensued. Cherokee Bill had tremendous strength, but the two men were finally able to wrestle him to the floor. Ike Rogers' faithful wife came running with the handcuffs, and the men snapped them around Bill's wrists. Bill pleaded and begged his captors to kill him or turn him loose. He promised Rogers horses and money. When Rogers declined the bribes, Bill cursed him.

While Ike guarded their prisoner, Scales went to harness the team and get the wagon ready to roll. The two men put Bill into the wagon. Scales drove, while Rogers rode behind.

Scales drove the wagon up out of the Verdigris bottom and onto the prairie. Suddenly, Bill wrenched free from the cuffs and grabbed for Scales' gun. Scales tumbled out of the wagon to keep from losing his Winchester. At the same time, Ike Rogers pointed his shotgun at the desperado, and commanded, "You'd better stop, Bill, because you are worth just as much dead as alive." Bill stopped.

At Nowata, Rogers and Scales turned their prisoner over to Smith and Lawson. While the marshals were en route to Fort Smith with their prisoner, they stopped briefly at Wagoner to change trains. A photographer rushed to the depot to make a picture. Five of the officers (Marshal Smith, Zeke and Dick Crittenden, Clint Scales, and Ike Rogers) lined up. On doing so, they placed Cherokee Bill next to Rogers.

Bill remarked that he wouldn't stand near Rogers. As he did, he threw his right arm around Dick Crittenden, and said, "Here's a fellow who once stood up and fought like a man, I will have my picture taken with him." At the same time, Bill felt for Crittenden's gun. Crittenden jerked away just in time. Had Cherokee seized the revolver, the story might have had a different ending. Subsequently, Bill remarked that "if he had secured the gun some of the men in the crowd, 'would have worn away wooden overcoats!."

Before allowing the photographer to continue with his work, Dick Crittenden removed his gun. The train then proceeded to Fort Smith, where a large crowd had collected at the depot to see the famous outlaw.

Bill and the officers came in on a special car from Cherokee Switch. The train arrived at 10:30 p.m. on January 30. Bill's hands were chained, and he was marched to the U. S. Jail. 36

During the fourth week of February, Cherokee Bill was placed on trial. At his trial before Judge Parker for the murder of Melton, Goldsby's lawyer, J. Warren Reed, sought to establish an alibi for his client. Several witnesses were introduced who claimed on the morning of November 6

that Cherokee Bill was in Fort Gibson, 80 miles from Shufeldt's store in Lenapah. From Fort Gibson, Bill had gone to Mrs. Cockrane's near Claremore, where he spent the night. The next morning, the 7th, he had ridden for the Creek Nation, staying all night with a friend. Consequently, on the morning that he was supposed to have killed Melton, Bill was 60 miles from Lenapah. One thing brought out at the trial was the rapidity with which the bandits moved from place to place. It was testified that on the night following the Red Fork robbery, the Cook gang had ridden 60 miles. Such testimony weakened Bill's alibi.

Reed refused to let Cherokee Bill take the stand. Instead, he called "Bud" Vann. "Bud", a Fort Gibson Negro, had been in Lenapah on the morning of November 9. He swore that Goldsby wasn't one of the robbers.

Several persons from Lenapah were called by the prosecution. They testified that several hours after the shooting of Melton, Vann had identified Cherokee Bill as one of the outlaws. Three other witnesses identified Goldsby as the man who had gunned down Melton. Marshal Smith swore that while he was bringing Bill to Fort Smith on the train, Goldsby had said, "I don't see how they can prove the killing on me, for there were others shooting besides me."

Arguments in the case began at noon on February 26 and lasted till 10:00 p.m. Judge Parker the next morning instructed the jury, taking only 15 minutes to make his charge. At last the jury filed out. Within 20 minutes, it had returned. Goldsby smiled when the verdict of guilty was announced. His mother and sister who had attended the trial wept loudly.

"What's the matter with you? I'm not a dead man yet by a long ways," Bill snapped.

That afternoon, having been returned to the jail, Cherokee Bill "engaged in a game of poker with Bill Cook and several kindred spirits, as if nothing had happened." 37

On Saturday, April 13, Goldsby was brought before Judge Parker to be sentenced. Asked if he had anything to say why judgement shouldn't be passed at that time, Bill replied, boldly and defiantly, "No, sir."

Judge Parker sentenced Cherokee Bill to be taken to the gallows on Tuesday, June 25. 38

Warren Reed asked for a new trial. Judge Parker overruled the motion. Reed refused to give up. An appeal was carried to the Supreme Court, and Judge Parker issued a stay of execution. The high court upheld the conviction. Undaunted, Reed laid the case before President Cleveland. With his petition asking for a pardon, the lawyer forwarded sworn affidavits by seven persons who claimed that they had seen Melton's killer and that Goldsby wasn't the man.

Back in the U. S. Jail, Bill became morose and unruly. The lower tier where the condemned were kept was called "Murderers' Row." While the prisoners were allowed the freedom of the floor and permitted to mingle during the day, at night they were locked in separate cells. Cherokee Bill's conduct affected the other prisoners. They told one another that "something terrible" was certain to happen. Bill Cook, while en route to prison at Albany, remarked that "no bars can hold Cherokee."

Few men had escaped from the old jail or the new one in the years Judge Parker had been at Fort Smith. A number of breaks had been forestalled in the planning stage, because of the inspection system instituted by Charles Burns. Routine inspections had turned up everything from brass knucks, three-cornered files, knife blades, slingshots, and pistols to tunnels and sawed bars. Most of the contraband had been smuggled in by friends, wives, and girl friends in cakes, pies, loaves of bread, and jugs of buttermilk, or hidden under petticoats. Sometimes these people used money to bribe a guard or trusty. Though poorly paid, the guards rarely took a bribe. The few who did lost their jobs, and at least one was arrested and sentenced to three years in the penitentiary. 39

Jailer Berry sensed trouble. On July 9 he ordered a search of the entire prison. Cherokee Bill and Henry Starr were escorted into the consultation room, while Berry rang the bell which sent the rest of the prisoners into their cells. In making their shakedown, the guards in checking Cherokee Bill's cell found a brass cartridge. Pressing their search,

the authorities located in a wash tub two buckets containing wet clothes. One bucket contained clothes; the other a loaded Colt's .45 revolver wrapped in a wet rag. The cartridges were similar to the one found in Cherokee Bill's cell.

On the tier above, the guards picked up nine additional cartridges. Sherman Vann, a Negro trusty serving 90 days for larceny, was suspected of complicity in the affair. When questioned by the authorities, Vann admitted that he had smuggled the weapon and ammunition into the jail in a bucket of lime. 40

The guards, however, had failed to find a second gun—a pearl-handled, .38 caliber revolver which Cherokee Bill had hidden in a hole in the wall of his cell. Cherokee had made the hole by removing a loose brick. The inside half of the brick had been broken off and the whitewashed end replaced.

At 6:30 p.m. on July 26, Cherokee Bill saw his chance. On the evening in question guard Lawrence Keating and Turnkey R. Campbell Eoff began checking in the prisoners for the night. The jail was composed of three tiers of cells. The lower tier was occupied by convicted murderers, men awaiting trial for capital offenses, and those charged with assault with intent to kill. On the second tier were men accused of larceny, while the third tier was populated by those charged with peddling whiskey.

On each tier, two rows of cells ran north and south on each side of the "bullpen." By pulling a lever connected to a long bar all the cell doors on each side could be closed and fastened at the top. It was Eoff's duty, after pulling the lever, to enter the corridor flanking the cells and lock each door separately with a key. Before starting to do this, he stripped off his sidearms and walked inside the corridor on the east side.

Guard Keating, wearing his six-shooter, remained outside the corridor and kept a sharp watch to see that each prisoner closed his cell door so that the locking bar worked properly. The bar could be thrown by a stick or similar object in the hands of a prisoner at the north end of the cell

block. On this occasion one of the convicts in one of the cells on the west corridor used a stick to trip the bar while Eoff and Keating were locking the cells on the opposite side, thus releasing the doors of all the cells on the side where Cherokee Bill was confined.

Eoff locked all the cells on the east side, Keating keeping abreast of him on the outside. When the turnkey passed around the south end and started locking the doors of the west row of cells, Keating kept pace. Cherokee's cell was "No. 20"; the third from the south end. Adjoining his cell on the south was the one occupied by convicted murderer Dennis Davis. A wad of paper had been jammed into the keyhole of the lock to Davis' cell. When Eoff inserted the key, it lodged in the lock. Turning, he called to Keating, "There's something wrong here."

As Eoff bent forward to examine the lock, Keating stepped closer to the bars. His attention was momentarily focused on the turnkey. At the same instant, Cherokee Bill leaped from his cell and shoved the muzzle of his revolver between the bars.

"Throw up your hands and give up that gun!" he commanded Keating.

The guard reached for his six-shooter instead. Bang! Bang! roared two shots. Keating staggered backward a mortal wound in his stomach.

When Cherokee Bill rushed from his cell, Eoff was standing within five feet of the outlaw. Being unarmed, he was in no condition to offer any resistance. He tried to jerk the keys from the lock. Failing to dislodge them, he left the keys hanging and raced around the south end of the cell and up along the east corridor. George Pierce, a ringleader in the attempted jail break, had emerged from his cell when the bar was thrown. Arming himself with a leg wrenched from a table, he started after the turnkey. Pierce, not knowing that the keys were dangling from the lock of Davis' cell, believed that Eoff had them. This probably saved Eoff's life, as Bill couldn't take good aim without hitting his confederate. A shot which he fired at Eoff went wild.

Meanwhile, the other guards had heard the firing. Bras Parker, Bill McConnell, and George Lawson were sitting outside the jail near the door at the time Cherokee Bill gunned down Keating. Led by Bill McConnell,

they dashed into the jail. Lawson had no pistol, so he jerked Parker's from its holster. Parker raced to the office for another. As the lawmen dashed down the corridor they met "poor Keating." McConnell asked if he were hurt. As he did, Keating fell crying, "Kill him, he has killed me!"

These were his last words. To keep some other prisoner from getting hold of Keating's pistol, McConnell grabbed it.

As he entered the cell block, Lawson spotted Pierce. A single shot sent Pierce scampering for cover. Cherokee Bill returned the guard's fire. Finding Lawson's fire too hot, Cherokee Bill retreated to the sink corner in the west side of the block. McConnell now opened fire.

Will Lawson, Deputy Marshal Heck Bruner, and several deputies heard the firing and raced to the jail to join in the fight. A wild gunbattle ensued. Whenever Cherokee Bill fired, he gobbled. It was an unearthly sound, halfway between the bark of a coyote and the gobble of a turkey gobbler. It was used as a death cry among the redmen of the Indian Territory.

Finally, there came a pause. Then a strange thing happened. Henry Starr, who occupied the north cell on the west side, called to the guards. He said that if they would promise not to kill him, he would try to talk Cherokee Bill into giving up his gun. The lawmen conversed a moment, then promised. Walking to Bill's cell, Starr talked him into giving up his weapon. Starr, as soon as he had possession of the gun, handed it to the guards. 41

According to an eyewitness:

> The greatest excitement prevailed from the time of the first shot which killed Keating, until late into the night. Crowds gathered in an incredibly short space. They heard the cannonade going on within the jail and some were frantic. Not less than 100 shots were fired, Winchesters, shot guns and revolvers being brought into play. To the person entering the jail after the firing ceased, excitement and confusion was apparent on every hand. Fire arms were at every step and the place was redolent with the smoke of gun powder. The prisoners were for the most part badly frightened and huddled in the corners of their cells. On the west side in the outside corridor, were twenty or more men, all armed to the teeth. Standing in the inside corridor, was the vile murderer, Cherokee Bill. Captain Berry, the jailer, was vainly endeavoring to induce him to tell who furnished

him the weapon. A steady refusal was the only response.

> Outside, the crowd continued to increase until it assumed alarming proportions. The cry "Lynch him!" "Hang him!" was frequently heard. The guilty wretch, himself, heard the shouts; he saw the temperament of the men; he feared he was about to be brought to a terrible death; with the cringing cowardice of a bully disarmed, he pleaded for mercy, for the protection of the law he had so many times and so lately outraged. [42]

Marshal Crump arrived from his home in the outskirts of town and took charge. He ordered the cell blocks surrounded. Keating was the father of four children and was a popular citizen of Fort Smith. He had served as guard at the jail for nine years. "Vengeance boiled in many breasts" and a "short but earnest consultation" was held and it was decided to kill the outlaw. One word from Crump and "justice, swift and certain," would have been "meted out."

Cherokee Bill pleaded with the officers, "Larry Keating was a good man. I didn't want to kill him indeed I didn't, but I wanted my liberty. Damn a man who won't fight for his liberty!"

Turning to Marshal Crump, Bill shouted, "Colonel I'm sorry this happened, but I couldn't help it. If I hadn't shot him he would have shot me. If I could have captured the jail as I expected and planned, no one would have been killed."

After the killer had surrendered his weapon, his cell was searched thoroughly before he was handcuffed and chained and locked back inside, and the jail cleared of bystanders. [43]

During the excitement, Georgia Brown, Bill's sister, was seen in the milling crowd outside the walls. She was promptly arrested by a constable and locked up in the city jail on a charge of disturbing the peace. [44]

On Monday, the 29th, Marshal Crump received a telegram from the Attorney General. He was authorized to hire three more guards. [45]

The newspapers were very critical of Jailer Berry. The Elevator informed its readers on August 2:

> While we regard Capt. Berry as one of the best and most accommodating men that has ever held that position, [Jailer] and a gentleman worthy of receiving favors

from his party, [the Democrats] we must be candid enough to say that he is not endowed with those qualifications necessary to handle the class of men that came under his care. Had a man like Will Pape been the jailer Cherokee Bill would long ago had been as tame as a pet poodle, for Pape knew just how to take the conceit out of such men and always did it.

But of course, when Captain Berry was appointed qualifications were not considered, it being Senator Berry's wish that his brother should have the place, and no one can blame him for accepting it." 46

Judge Parker, who was in St. Louis, was promptly notified of the attempted jail break and the death of Keating. Of all the killings which had occurred in his district, this one outraged him the most. Through the efforts of Reed and lawyers of his ilk, the guilty were being freed. Deputies were losing heart in bringing men in for trial. Lawbreakers were growing bolder. A decade before victory had seemed assured. The law had been treated with respect and had been putting down and controlling crime in the Territory. Now this was no longer true. Crime was increasing. Reporters from the St. Louis papers came to see him, and, wrought up over the death of the guard, Parker blasted the Supreme Court. 47

Though Cherokee Bill already stood condemned for the murder at Lenapah, Judge Parker insisted that he be indicted and tried for killing Larry Keating. The August term of court opened Monday, the 5th. Judge Parker had hurried home to be present. For the first time in three years the petit and grand juries were empaneled on opening day. The first case taken up was the murder of Keating. The grand jury returned the quickest indictment in the history of the court. It considered the evidence only 30 minutes. At 1 p.m. Cherokee Bill was arraigned before Judge Parker.

The ensuing trial set records for speed at Fort Smith. The jury brought in a verdict of guilty on August 12, just 16 days after Keating's death. (It was the only conviction ever obtained in Parker's Court for a murder committed in Arkansas. Parker had jurisdiction, because the killing had taken place on United States property.)

With the verdict in, Judge Parker complimented the jurors on their

speed (they had been out only 13 minutes) and good judgement. Parker sentenced Cherokee Bill to be hanged September 10. When he spoke, it was in cold, biting words:

> Cherokee Bill...you revel in the destruction of human life. The many murders you have committed and their reckless and wanton character, show you to be a human monster....You most wantonly and wickedly stole the life of a brave and true man....You most wickedly slew him in your mad attempt to evade the punishment justly due for your many murders....
>
> Keating...was a minister of peace; you were and are a minister of wickedness, of disorder, of crime, of murder.... You have had a fair trial, notwithstanding the howls and shrieks to the contrary. There is no doubt of your guilt of a most wicked, foul and unprovoked murder, shocking to every good man and woman in the land.
>
> I once before sentenced you to death for a horrible and wicked murder....I then appealed to your conscience by reminding you of your duty to your God and to your own soul. The appeal reached not to your conscience, for you answered it by committing another most foul and dastardly murder. I shall therefore say nothing to you on that line here and now.
>
> You will listen to the sentence of the law, which is that you...be hanged by the neck until you are dead.
>
> May God whose laws you have broken...have mercy on your soul. [48]

Again, Warren Reed appealed the case to the Supreme Court. Parker accordingly was compelled to grant another stay of execution. On December 2 the high tribunal affirmed the decision of the Court for the Western District in the Ernest Melton case. For the third and last time, Judge Parker on January 14 sentenced Cherokee Bill to die on the gallows. The date of the execution would be St. Patrick's Day, March 17, 1896. There was only one "avenue of escape" left and that was an appeal to President Cleveland. Attorney Reed's request for executive clemency was in vain. [49]

So keen was the interest in the hanging of Cherokee Bill that the Elevator came out with a special edition. Three days later, the regular issue of the Elevator carried a detailed story of Bill's life of crime and execution:

He played his last game of poker on Friday last [the 13th] with Charley Smith and Henry Starr, just before he changed cells. Monday his mother, was allowed to spend some time with her erring son. He made a will which was drawn up by his attorney...in which he gave his mother his farm near Talala.

[Cherokee Bill awakened] this morning [the 17th] at six, singing and whistling. He partook of a light breakfast about 8 o'clock, which was sent to him by his mother from the hotel. At 9:20, Cherokee Bill's mother and the old negress who raised him were admitted to his cell, and shortly after Father Pius, his spiritual adviser, was also admitted. The usual noise and a hubbub that is always heard within the big iron cage that surrounds the cells was noticeably lacking this morning. Cherokee Bill's fellow-prisoners, many of them under sentence of death, seemed to be impressed with the solemnity of the occasion, and an air of subdued quiet pervaded the jail. Many of the men who are already standing within the shadow of the gallows gathered in a group near the cell occupied by the condemned man and conversed in low tones. To his most intimate associates since his confinement Cherokee, distributed his small effects. Henry Starr, George Pierce and others were remembered.

By 10:30, the corridor in front of Cherokee's cell was crowded with newspaper representatives, deputy marshals and other privileged individuals, all taking note of the passing incident. Occasionally the condemned man would throw aside the curtain which concealed the interior of his cell and make his appearance at the grated door in order to give some instructions or to make some request of the officer who stood guard.

About 11 o'clock Marshal Crump, after a short conversation with Cherokee, announced that the execution would be postponed until 2 o'clock, in order to give his sister an opportunity to see him before the death sentence was carried out. She was coming in on the east-bound Valley train, and would not arrive until one o'clock. The 2000 or 3000 sight-seers surrounding the big stone wall and within the enclosure dispersed.

It was a struggling mass of humanity that had gathered on and around the steps and walls and when the time came there was a scramble even among those

who were provided with passes. There was a crush and a jam for a few minutes but order was at last restored in a measure and all awaited the moment when the door should open for the coming of the condemned man. On the inside there was a repetition of the scenes of the morning. Bill's mother had packed up several belongings of her son and was ready when called upon to take final leave. Her parting was an affectionate one but she strove as much as lay in her power to restrain her emotion.

Bill was affected by it, but following the example of his mother, gave little or no indication that he was other than perfectly composed.

"Well; I am ready to go now most any time," said he, addressing the guards.

He was taken at his word, and the jail was cleared. The crowd outside had swelled to increased numbers, all the available buildings and sheds being occupied. A pathway was cleared through the crowd, and very shortly after the clock struck two the door opened and the doomed man was brought forth, a guard on either side. The march to the gallows was taken up, and at Col. Crump's suggestion, Cherokee's mother and the old colored Aunty walked alongside Bill. Father Pius came next, the newspaper men following and the crowd bringing up the rear.

"This is about as good a day to die as any," remarked Cherokee as he glanced around. Arriving at the south end of the jail, he looked around at the crowd and said, "It looks like a regiment of soldiers."

He continued to look around at the crowd, eyeing them curiously.

At the door of the enclosure there was a jam. Everybody crowding up and there was a stop for a few moments. It took several minutes for everyone holding tickets to gain admittance, and by this time the condemned man and guards had mounted the scaffold. Bill walked with a firm step and taking up a position near the west wall of the gallows, waited for the end. [He was accompanied by his mother.]

Turning slightly and seeing his mother standing near, he said: "Mother, you ought not to come here."

The reply was: "I can go wherever you go."

Colonel Crump suggested to him that he take a seat until all was in readiness, but he replied: "No, I don't want to sit down."

The death warrant was then read, during which Bill gazed about as if a little impatient to have the thing over with. He was asked at its conclusion if he had anything to say, and replied: "No sir, without he (meaning Father Pius) wants to say a prayer."

The Priest here offered a short prayer, the condemned man listening attentively the meanwhile, and then as if knowing what was to come next, he walked forward till he stood upon the trap. Deputy George Lawson and others arranged the ropes, binding his arms and legs, and it was while this was being done that Bill spoke to different ones in the crowd below.

"Good-bye, all you chums down that way," said he, with a smile. Just then he caught sight of a young man in the act of taking a snap shot with a kodak and pulling it sharply back. [Bill's mother kissed him good-bye, just before the black cap was adjusted, and she remained on the scaffold without shedding a tear.] There was a creaking sound as [at 2:15] the trap was sprung and the body shot downward. The fall was scarcely six feet, but the rope had been adjusted carefully by Lawson and the neck was broken. The muscles twisted once or twice, but that was all....Twelve minutes from the time the trap was sprung, the ropes that bound his limbs were removed, also the handcuffs and shackles, and the body was lowered into a coffin and borne away and the crowd dispersed. At Birnie's, the coffin was placed in a box and then taken to the Missouri Pacific depot and put aboard the train. His mother and sister took it back with them to Fort Gibson. 50

LAW ENFORCEMENT AT FORT SMITH 1871 - 1896

Chapter XVII

Judge Parker Sends His Last Man to the Gallows

In addition to Cherokee Bill, nine other men were hanged at Fort Smith in 1896, Judge Parker's last year on the bench.

During the fourth week of August 1894, a "grey-whiskered" peddler, Mike Cushing, had attended the "Cherokee payment" at Saline Courthouse. Shortly thereafter, one of the Cherokees stumbled onto a dead horse. Nearby he found the badly charred remains of a man. The authorities were notified. An investigation showed that the horse was a grey and had been shot. A trail was found indicating that the corpse had been dragged from where the beast lay to where it was found. To do this, the murderer had cut the bridle reins and tied them about his victim's ankles. Underneath the deceased's chin, untouched by the fire, was a tuft of grey whiskers. Near the body were found bills and letters bearing the signature of Mike P. Cushing. Several witnesses came forward and swore that the charred corpse was that of the "grey-whiskered" peddler. A close examination revealed that the head had been "mashed to a jelly," while under one arm was a large hole, such as would be made by a blast from a shotgun discharged at point-blank range.

Webber Isaacs, a full-blood Cherokee, lived nearby. It was reported to the lawmen that Isaacs was carrying an unusually large sum of money. Like many another killer, Isaacs talked too much. He told Frank Rowe and Jim Downing that he and Jack Chule had done Cushing in. Isaacs was taken into custody and carried to Fort Smith. There, he was indicted on four counts, two charging him with the murder of Cushing and two naming the victim as an unidentified white man.

Isaacs' trial commenced on February 8, 1895. The prosecution called Rowe and Downing to the stand, and they repeated the story which they had told the deputy marshals. Isaacs when called to testify by his lawyer swore that the two key witnesses for the prosecution were liars. He admitted under cross-examination that the peddler had called at his cabin on the fatal day. But, he continued, Cushing had ridden off with Jack Chule. The next day, Jack had returned and told Isaacs that he had killed

the peddler.

The jury on February 15 returned a verdict of guilty. Judge Parker on April 13 set June 25, 1895, as the date for Isaacs' execution. Isaacs' attorney appealed to the Supreme Court. The high tribunal refused to interfere; the decision of Judge Parker's Court was affirmed. Since June 25 had passed, Parker called Isaacs back before him and resentenced him to die on the last day of April 1896. [1]

Charles Smith on the morning of September 27, 1894, was working in a blacksmith shop at Muskogee. He was engaged in cutting harness off some horses belonging to Mr. Newlin. John Welch, who worked in a nearby booth, argued with Smith. Threats were voiced; Smith shot and killed Welch. A member of the Creek Light Horse, Robert Marshall, sought to arrest Smith and got himself killed.

Smith's trial for the double killing began on Friday, February 15, the same day that another Fort Smith jury had declared Isaacs guilty. The lawyers for the defense (Marcum, Frederick, and Rutherford) argued that their client had shot both men in self-defense. J. B. McDonough prosecuted the case which was given to the jury on the 20th. After being out 2 hours, the jurors returned, and the foreman read the verdict, "guilty." Smith's lawyers appealed Parker's sentence of death to the Supreme Court. They were sustained. Convicted of manslaughter, Smith was sent to prison for ten years. [2]

John and George Pierce grew up in Texas county, Missouri. On November 21, 1894, they left their homes to look for work in the Indian Territory. John, who was 29 years old, owned a team of mules and a wagon; his brother George, ten years younger, had nothing but the clothes upon his back. The brothers were joined by William F. Vandever, who had a mare and colt, and $100 in his pocketbook.

At Spring River in the Cherokee Nation, the party stopped and worked for several weeks at a sawmill. After leaving the sawmill, the brothers and Vandever pushed westward.

On January 12 the party camped for the night at a ferry across the Grand River, opposite Fort Gibson, where they remained for about 48 hours.

The three men broke camp on the 14th and started toward Whiskey Ford. When next seen, the Pierces and Vandever had separated. The Pierces were spotted on the Tahlequah road with their former traveling companion's mare and colt hitched to the back of their wagon.

Andy Brown, who lived on the Tahlequah-Wagoner road, recalled having seen three men in camp about one-half mile from his cabin the evening before. Between 4 and 5 a.m., he had heard a shot; 30 minutes later two men drove off in a wagon, followed by a mare and colt. Stopping at his house, they had asked the way to Whiskey Ford. The same morning, as he rode by the camp site, his horse shied and Brown thought he saw blood. Getting the assistance of Dave West, a neighbor, Brown made a search and found a body about 150 yards from the abandoned camp. The deceased had been shot in the forehead.

Brown notified the authorities. Three deputy marshals led by Charles Lamb started in pursuit of the Pierces. Lamb and his men overtook the Pierces on January 15, as they camped near the roadside a short distance from Tahlequah.

When Deputy Marshal Lamb arrested the Pierces, they asked the charge. He replied, "murder."

"You'll have to prove it," one of the brothers snapped. They denied having a partner, but admitted that another man had camped with them at Whiskey Ford. After arresting the Pierces, the marshals took them first to Wagoner and then to Fort Smith.

John and George Pierce were tried before the February 1895 term of the Court for the Western District. On the stand, the Pierces testified that Vandever had shot a dog near Whiskey Ford. The owner had been so incensed that he had threatened to have Vandever arrested. Vandever had accordingly decided to leave them and take a train for Texas or California. Before leaving, Vandever had given them ten dollars to care for his mare and colt and return the animals to his family back in Missouri. A pair of boots and a suit belonging to the missing man had been found in the Pierces' possession. When the prosecutor asked about these items, the Pierce boys declared they had found the boots on the prairie and that the suit had been given to them by Vandever prior to his departure.

The Pierces claimed that a man named Voschel had stopped at their camp the night Vandever left for Coffeeville to catch the Texas train. If anyone had killed Vandever, the defense attorney (J. C. Byers) argued, it was Voschel. The jury agreed with the prosecutor, and the Pierces were convicted of murder on March 1, and on June 5 Judge Parker sentenced them to death. The execution was to take place on August 1. A long delay was occasioned by their attorney taking an appeal to the Supreme Court. The decision of the Fort Smith court was affirmed, and Judge Parker rescheduled the Pierces to die on April 30, 1896. 3

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While the February term of court was still in session, Jim Price, the man who had killed Deputy Marshal Beard, rode into Fort Smith on February 8 and surrendered to Deputy Marshal Heck Thomas. At a hearing before Commissioner Brizzolara, Price's lawyers argued self-defense. Satisfied with Price's story, the commissioner ordered him released. 4

Martin Wood, a trusty at the U. S. Jail, in early April played a dirty trick on Jailer Berry and Judge Parker. He was escorted from the jail over to the courtroom, where he asked that one day be taken off his sentence as he was anxious to get home. His request was granted. A few hours after Wood had departed, a six-shooter was reported missing from Berry's desk. Later, Judge Parker discovered that his silver drinking mug was "non-comeatibus," and suspicion at once focused on Wood. A telegram to a deputy marshal resulted in the finding of the pistol in Wood's possession but not the mug. Wood was promptly returned to the jail. 5

Frank Watson had been sentenced on December 3, 1894, to serve 12 months in jail. After being committed Watson was assigned duty in the hospital as steward. He was so faithful in the discharge of his duties, and "acted in such a gentlemanly manner" that he won the goodwill of all with whom he came in contact. Drs. Amos and Brookshear and Captain Berry became interested in his behalf. Judge Parker, when approached by these men, reduced Watson's sentence and ordered him discharged. 6

John Allison was found guilty by Judge Parker's Court on Monday night, May 27, of murdering his father on January 5, near Pryor Creek. Allison was

about 21 years old. The cause of the killing was family difficulties. The Allison family had lived in California. The father and mother had separated. William Allison had followed his wife and children to the Indian Territory. On January 5 William Allison had stopped at the Pryor Creek farm to see his younger children. As he started for the barn, where his son John was, the young man stepped out the door and shot the father three times with his Winchester. Two of the bullets struck William Allison in the head.

At the trial, the defense argued self-defense, claiming that the father had made a motion as if he intended to draw a pistol. The prosecution, however, proved that William Allison didn't have a gun on his person when he was shot. At this, the defense introduced testimony by other members of the family to show that the father was a man of violent temper, and that he had served a term in the penitentiary for shooting his son-in-law. They swore that he had threatened to kill the entire family. This claim couldn't be substantiated by the defense attorney. The jury and the spectators were of the opinion that Mrs. Allison and John were instrumental in having William locked up on account of the trouble he had had with the son-in-law. [7]

Jailer Berry on June 7 reported that there were 210 prisoners in the U. S. Jail. The jail was so crowded that it was necessary to put 3 or 4 prisoners in cells which were built to accommodate two. Notwithstanding that the Court for the Western District had been shorn of much of its jurisdiction the jail was unusually full. [8]

The situation didn't improve in June. Jailer Berry listed the daily average of prisoners as 213. Upon checking his records, the jailer discovered that June had been the busiest month the officers of the jail had ever experienced. [9]

Fayette Hudson escaped from the hospital on the night of July 21. At the time of his escape, Hudson had been in the hospital for almost a year with a bullet wound in the leg. On the night in question, Hudson had waited till the guard, B. D. Brown, dropped off to sleep, which he was permitted to do following the arrival of the 2 a.m. train. Slipping out of his bed without awakening any of the other patients, Hudson unlocked the inner door of the hospital with a key, which he had secured by some

unknown means. Passing downstairs, he opened the lower door without difficulty and was a free man. He left both doors unlocked, but closed the lower door, leaving the key on the inside.

The next day, Jailer Berry transferred five of the patients (John Brown, John Coleman, old man Johnson, Ben Hughes, and Dennis Davis) back to the jail. This left only eleven patients, counting the steward, in the hospital. 10

The August Grand Jury was called on to examine the U. S. Jail. When the grand jury filed its report on September 6, it was observed that the jurors had found over 200 prisoners confined "therein, taxing the capacity to the utmost, and necessitating the confinement of from three to four in a cell." As far as food was concerned, the jurors heard few complaints, beyond lack of variety. The sanitary condition of the jail, so far as plumbing facilities were concerned, was good. The bedding was filthy beyond all reason. In more than one-half the cells there were no mattresses. The only thing being used for bedding being a "few old and ragged blankets" which had not been washed, aired or sunned since issued to the inmates. A number of the cells were provided with "old straw ticks partly filled with old hay." All gave evidence of the need of insect powder to get rid of the vermin.

The jurors urged that the ticks used for mattresses be filled with fresh hay at least once every three months. In addition, the ticks and blankets should be washed every 90 days.

It was recommended that the prisoners be required to whitewash their cells at least once a month. Furthermore, they should be issued enough powder for the destruction of vermin and required to keep their person clean.

The grand jury urged that all prisoners that were unable to supply themselves with a change of clothes be furnished enough to admit of a change for the purpose of washing. The jail hospital was found to be in good sanitary condition. It was recommended that the patients, during the summer months, be furnished ice water. 11

* * *

Just as Judge Parker would conclude that he had crime defeated in the Indian Territory, it would break out again, sometimes more heinous and more revolting than it had been before. Shortly after the Cook gang had been crushed, the judge had to cope with as bad a group of outlaws as ever soiled the frontier--the Rufus Buck gang.

Rufus Buck was a full-blood Euchee living near Okmulgee in the Creek Nation. The other members of the gang were: Sam Sampson, Lewis Davis, and Maomi July, Creek renegades, and Luckey Davis, a Creek freedman--a mixture of Creek and Negro. At this time the intermarriage of Creeks and Negroes was considered to produce an especially dangerous offspring. Whenever a deputy was directed to go and bring in a Creek-Negro, he knew he had to watch his step. Sam Sampson, Lewis Davis, Maomi July, and Luckey Davis had been lawbreakers for months, Buck for years. All had been before Judge Parker for minor offenses and had served time in the Fort Smith jail.

During the short time, 13 days, that they operated, the Buck Gang established a record for savagery which made the Cooks, Starrs, and Daltons look like Sunday school superintendents. Indeed, they boasted that they would establish a record that would make the Cooks, Starrs, and Daltons fade into insignificance.

The crime wave instituted by the Buck Gang commenced on July 28, 1895, at Okmulgee. On that date Rufus Buck shot and killed a Negro deputy marshal. It was the opening move in a carefully laid scheme to get rid of an officer who was watching them before starting their reign of terror and destruction.

Thundering out of Okmulgee, four of the gang encountered Mrs. Wilson. The lady was moving from one farm to another with two wagons. With Mrs. Wilson was her 14-year-old-son and a young man. While they kept the woman, the bandits ordered the two men to drive on. Each member of the gang brutally assaulted Mrs. Wilson. When they released her, they shot at her feet as she fled from their abuse half dead from fright.

Two days later, at noon, the outlaws rode up to Henry Hassan's cabin, midway between Duck and Snake creeks. They told Mrs. Hassan that they would pay if she would cook them a good dinner. The house was off the main road, so she and her husband hadn't heard about Rufus Buck and his cohorts. After the gang had eaten, they drew their guns and forced Henry

to go out into the yard. While one of the men held Henry at bay with his Winchester, the others took turns assaulting his wife. Before riding off, the badmen amused themselves by making Henry Hassan and his hired man, who was present, fight each other and dance. As they danced, the band fired at their feet.

When they had finished, these "merry men" rode on. At Berryhill Creek, eight miles from Okmulgee, they met a man named Shafey, who was riding a fine horse. They told Shafey that they wanted to trade horses with him. He said he didn't want to trade, so they robbed him of his mount, saddle and bridle, $50 in money and a gold watch. Next, they discussed the most feasible method of killing the victim. It was put to a vote. The vote was three to two in Shafey's favor, so they let him go.

The unholy five next robbed a stockman named Callahan of his clothing and boots. For amusement, they told him to run for his life. While he was fleeing naked, they shot at him. By a bit of ill luck, they missed and Callahan escaped. At the same time, they shot and mortally wounded a Negro boy who was riding with the stockman.

Exhausted from the day's activities, the gang camped for the night. The next day, they rode to Gus Chambers' ranch on Duck Creek, ten miles from Sapulpa to steal horses. It was after dark when they arrived. Chambers put up a fight, and they shot his cabin full of holes.

On August 9 the raiders robbed Norberg's store near McDermott and Orcutt's store in the same locality. By this time, the countryside was in an uproar. The Creek Light Horse was ordered out. With the Light Horse rode Deputy Marshals Sam Haynes and N. B. Irwine. In addition, there were posses composed of Creeks who couldn't speak English and posses of whites who couldn't understand Indian, which presented the hazard of two of the groups meeting and each thinking the other was the Rufus Buck band. Deputy Marshals Bud Ledbetter, Paden Tolbert, _____ Jones, and _____ Wilson were hot on the trail of the Bucks.

Shortly after noon on the 10th, the posse headed by Haynes and Irwine came upon the bandits' camp a short distance from McDermott. Rufus Buck and his men were camped in a small valley at the foot of a high knoll.

The sky was clear; the August sun beat down; not a breath of air stirred. In wide-brimmed black and white felt hats, jean trousers,

high-topped boots with long-shanked spurs, vests flung open, fancy colored bandanas about their necks, and heavy cartridge belts around their waists, the bandits squatted in the shade of a clump of trees around a pile of ammunition, tobacco, clothing, and other booty they had carried away from Norberg's and Orcutt's stores. A dozen yards away their horses switched flies and fed on the half-dead prairie grass. The gang was so preoccupied in dividing the loot that the members were unaware of the approach of the posse until it had surrounded them from the other side of the knoll and opened fire.

Strange to say, none of the bandits were wounded by the initial volley. But the surprise was so sudden and unexpected that the outlaws didn't have time to secure their horses. With loud curses, each man grabbed his Winchester and fled to the top of the knoll, where they took cover in the tall grass and returned the posse's fire. The renegades would fire rapidly from their vantage point until they had emptied their magazines, when they would retire to the center of the little plateau to reload. For seven hours the battle raged, while the "brave and desperate" Indian police, deputy marshals, and Creek citizens sought to scale the hillock, and the desperados, shooting down from the high ground, drove them back.

As soon as he heard that the Buck gang was surrounded, United States Marshal S. Morton Rutherford for the Northern District of the Indian Territory left Muskogee and hurried to the scene. He reached McDermott only to find that the bandits were holding their own. "The constant 'pumping of lead' with the accompanying flashes, gave the appearance of a constant blaze of fire and the smoke at times hung over the knob until the belligerents were hidden from each other."

Finally, an elderly Indian leaped to his feet and shouted, "Let us stand up and fight like men; I've enough of this." At the same time, he pushed a dynamite cartridge into the chamber of his rifle. He was probably the only man in the entire posse who would have dared to shoot a dynamite cartridge from a weapon designed to withstand only the force exerted by gunpowder. Throwing his rifle to his shoulder, the old man squeezed off the round. The charge struck a tree behind which Rufus Buck was standing.

A fragment cut his belt. Tossing down his piece, Buck fled. This demoralized the gang and they scattered. All the members, except Lewis Davis were quickly captured and disarmed.

The worn out but desperate men were shackled and chained together and returned to McDermott. Rutherford posted a heavy guard. A large number of people thronged to the little village to get a look at the men who had conducted the reign of terror. At first, there were whispered threats, then lynching was talked openly.

Marshal Rutherford addressed the mob. He assured them that the outlaws would be delivered to the Fort Smith jail. There, they would be hailed before Judge Parker.

Rutherford's talk pacified the mob for a few minutes. Then talk began about recent cases being long-drawn-out affairs that were appealed to the Supreme Court. The mob thought of the repeated criticism of the tribes in general, and the Creeks in particular, for their laxity in upholding the law and their failure to assist in its enforcement as a cause for the high crime rate in their Nation. The Creeks had smarted under these accusations, and they saw an opportunity for retribution.

Rutherford realized that if he waited for morning none of his prisoners would leave McDermott alive. The roar of the mob increased; there were curses and threats. A large number of Creeks gathered near the marshal's camp and began posting sentries to see that neither the officers nor the prisoners left the village.

An ominous silence now enveloped the area. Rutherford and his deputies became uneasy for the safety of their prisoners. Rufus Buck and his men, having heard the threats, begged that they be saved from the mob. Rutherford spoke with his deputies. In the darkness, he believed, they could slip to safety but for the noise of the heavy chains that bound the bandits together. He told the badmen that the only way they could remain alive was to co-operate. They were to pick up their chains and carry them, while his officers tried to spirit them away. Anxious to save their lives, although they had little regard for the lives of others, the desperados picked up their chains and carried them silently for one-half mile. From there, the officers conducted them to Muskogee. At Muskogee, the outlaws were placed aboard a Fort Smith train.

The train pulled into the Missouri Pacific depot at Fort Smith at 11 a.m. on August 11, a Sunday morning. News of the approach of the train had caused considerable excitement. Several hundred men had assembled to "gaze upon the fiends in human form...." As the four prisoners clambered off one of the cars, with officers in front and behind, the chains clanking at every step, one of the spectators thought to himself, "If, by some manner of means those men could be unshackled and well provided with Winchesters, what a scattering there would be!"

Quickly the deputies marched their prisoners up Garrison Avenue. The crowd close behind them, "while the morning church bells tolled a requiem to the dead victims of this blood-thirsty gang." The only other sound was the clanking of their chains upon the sidewalk. Three blocks away, the iron gate opened into the old Garrison enclosure, the marshals and their prisoners passed through; the gate clanged closed behind as the Territory's most savage band of criminals walked within the majesty of Judge Parker's jurisdiction. [12]

Lewis Davis, who had been wounded in the gunbattle near McDermott, was lodged in the Fort Smith jail on September 3. He had hidden out in the woods until the first week of September, when he went to the home of an acquaintance, Richardson. Richardson lost no time in alerting the authorities. The next morning Davis slipped out of the cabin to wash. He carried his Winchester. Seeing nobody around, he rested his rifle against the cabin. As he did, Richardson snatched up the Winchester, while Deputy Marshal Irwine slipped out from a pile of brush and covered Davis with his six-shooter. [13]

Assistant District Attorney McDonough, who had prosecuted Cherokee Bill for the murder of Larry Keating, was assigned the case. McDonough spent a week collecting evidence associated with the gang's "most shocking, dastardly crime"--the rape of Rosetta Hassan. Indicted for this crime by the Fort Smith Grand Jury, the members of the Buck gang were arraigned before Judge Parker on August 20. They pled not guilty. Parker scheduled the trial for September 20. [14]

According to S. W. Harman:

court opened at 8:30. Within a short time the court room

was packed with an eager crowd, of all kinds and classes, and the whole motley throng, unmindful of the suffocating heat, sat through the trial, eagerly drinking in the loathsome details of the horrible crime; some out of pure depravity and for the mere sake of feeding upon a recital of an awful wickedness, others drawn thither by an inborn craving, as the buzzard or the vulture is attracted to the polluted carrion whose odor ascends to the heavens; others that they might gain a knowledge of the minutest details of the frightful crime and so work themselves to a pitch where they could more fully enjoy the punishment, even if inadequate, so certain to be dealt them.

Henry Hassan, the husband of the injured woman, was the first witness examined. He described how, on Monday, the fifth day of August, as he lay sleeping beneath an arbor, his wife sitting nearby preparing fruit for the family larder, the gang rode through the front gate. Awakening, he greeted them pleasantly and asked them if they were hunting. Buck replied in the affirmative and called for water. Sending his wife's little brother for a pail of fresh water he started to meet them and then discovering that one of the number was Lewis Davis, with whom he had previously had some slight difficulty, he knew he was at the mercy of the terrible band of whose recent depradations he had heard. He hesitated a moment, then started for a corner of the house, hoping to reach cover, then enter a door, inside of which hung his Winchester. He gained the corner safely, then ran towards the door and as he started to enter was stopped by Maoma [sic] July, who had entered from an opposite door and securing the coveted rifle now brushed his face with its muzzle, while Sampson at the same time covered him with a six-shooter. Hassan backed away, and the others coming up, Buck, with an air of bravado, said: "I'm Cherokee Bill's brother; we want your money." With vile curses they commanded Hassan to sit in a place designated, then ordered his wife and her mother to prepare dinner. The women hastened to cook a meal, and meanwhile Lewis Davis stayed with Hassan to keep him under control by threats of death, boastfully declaring himself to be Tom Root. [A notorious outlaw sought at that time.]. While the meal was being made ready the rest of the gang searched the house and appropriated $5.95 cash, a suit of clothing, some baby's dresses, together with various articles of feminine apparel, handkerchiefs and whatever struck their fancy. After having appeased their appetites, they came out and stood guard over Hassan while the negro went in to dinner, after which the assault on

Mrs. Hassan was made.

Having satisfied their lusts, they mounted their horses and ordered Hassan to go with them; just then a young man came, unsuspectingly, to the house from a little distance and they held him up, and marched both him and Hassan two miles away and, after dire threats of death, amused themselves by making the men dance while they fired random bullets at their bare feet. Their next amusement was to compel the men to jump into a pool of water, then forced them to wrestle and fight, then commanded Hassan to kill the other. Finally, when their ideas of fun were exhausted, they ordered the men to go home, warning them: "If you ever appear against us our friends will kill you." Hassan hurried to his home as soon as released, but found his wife was missing. She had been so wrought up over the ordeal through which she had passed, believing it the only means of saving her husband's life, the continued absence of the latter had caused her to believe her sacrifice had been useless, and that he had already fallen a victim to their love of crime, and finally, overcome with fear, she had fled to a nearby cornfield and hid. After a continued search, her husband found her, in a paroxysm of fear, nearly dead from apprehension. Hassan's story, as related on the witness stand, was straightforward, and was given with but little interruption on the part of the prosecuting attorney and none whatever by the attorneys for defense. Through it all the members of the gang sat unmoved, pretending an inability to understand English. If the testimony of the husband was listened to by the vast assemblage with thrilling interest, then there is no adjective capable of describing the interest shown during the time that the injured wife and mother was giving a recital of her wrongs.

The murmur of indignation that ran through the crowd when Hassan stopped speaking and retired, ceased as Mrs. Hassan was escorted into the court room and took her position on the stand, and but for the bustle occasioned by the shifting and craning of necks by the members of the crowd to secure a view of the witness, all was silent. Mrs. Hassan was a well-proportioned woman, of beautiful features, and a look that betokened a kindly disposition. She appeared to be about 30 years of age. She was very nicely dressed, but wore nothing that could be considered gaudy.

Her appearance was most modest and it was evidently with a great effort that she was able to sit there, cynosure of so many curious pairs of eyes. She still showed the effects of her frightful experience. She spoke slowly and in low but tremulous tones showing the strong nervous tension under which she was still laboring; at times her breath came quick, her bosom heaved, the hot blood surged to her temples and with her head bowed low she would give way to heart-rendering sobs, as the questions propounded by the prosecution or the court brought back with awful vividness the horrible scene through which she passed but a few weeks before. She related, much as her husband had done, the coming of the gang to her home, to ask for water, of her fears for the life of her husband, of the hastily prepared meal which she hoped might be the means of saving him. Urged to tell what occurred after they had eaten, she described between sobs, how Luckey Davis, the negro, had told her: "you have to go with me," and how she pleaded with him not to take her away from her babies; how he had replied, "We will throw the G-d- brats in the creek;" how he had commanded her to mount his horse and ride away with him, only desisting when she declared she could not ride; how he then ordered her to go with him a little way, and she hesitated and had finally obeyed, believing if she refused they would kill her and the rest of her family, and marched on, while the colored brute held the muzzle of his Winchester close to her head. She told how they continued until they reached the back side of the barn, out of sight of the house and 200 feet away, and of Davis then laying down his rifle and drawing a pistol from his belt--then paused.

Judge Parker said kindly, "Just go on and tell everything that occurred there. The law makes it necessary to tell it. It is a very delicate matter, of course, but you will have to tell about it."

"Did he tell you what to do?" asked Mr. McDonough.

"Yes sir," in a tone barely audible.

"What did he say?"

"He told me to lie down;" and the witness broke down completely, while her frame shook with convulsions and she sobbed like a child, yet as a child could not. The effect upon the audience was magnetic. They had listened with sympathetic eagerness, forgetful of their own existence even, and the result, when the climax was reached is indescribable; during the several minutes that elapsed before the witness could regain her composure there was the most profound silence, broken only by her sobs; the conditions, the awfulness of the crime committed, the story so clearly told and the woman in tears, had a reflex

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action upon the auditors, and a wave of sympathy swept through the room, and left scarcely a dry eye. Not one of the jurors, accustomed though they were to recitals of brutality; somewhat hardened no doubt, but who shed tears, sympathetic, manly, noble tears, of which they were not ashamed, neither had reason to be. It was a supreme moment, such as I never expect to experience again. The few women in the crowd gave way to a mighty surge of grief, and even Judge Parker, notwithstanding that he had been inured by many long years of experience with brutal crimes, removed his spectacles and while a suspicious moisture twinkled upon his lashes, drew a handkerchief from his pocket, wiped the lenses, he spoke a few words of gentle encouragement to the witness.

Let us draw a charitable veil before the remainder of her testimony, her unwilling description of what followed, and was repeated, one, two, three, four times, each one of the brutal ruffians taking their turn at the revolting crime while at all times, three of the gang remained on guard over the husband, ready to s end a bullet crashing through his brain, if he attempted a remonstrance or made an outcry. Gently the court drew from her that it was only for the sake of her husband and children, and through fear that they would kill her loved ones that she submitted to the indignities, and as she proceeded, the terrible iniquity of the deed came upon him with such power that Judge Parker became livid with rage; it were well for the prisoners that the law prevented him dealing out punishment then and there.

Without cross-examination Mrs. Hassan was allowed to step down from the witness stand and retire; the attorneys standing aside and bowing reverently as she passed out, bearing the sympathy of every one in the court room. At the conclusion, Assistant District Attorney McDonough rose, and in a subdued tone said to the jury:

"Gentlemen: You have heard the evidence. It was so plain it is unnecessary to argue the case. The court will give all necessary instruction, and we will expect a verdict of guilty at your hands."

Wm. M. Cravens, one of the five attorneys appointed for the defense, arose and said, simply, "May it please the court and you gentlemen of the jury, you have heard the evidence. I have nothing to say," then resumed his seat. It was probably the shortest plea for defense ever recorded.

Judge Parker then delivered a short but impressive charge and the jury retired. It required no effort on the part of any member of that jury to arrive at a verdict of guilty. They did not even take time to ballot. One of their number was chosen

foreman, his signature was affixed, and the jury at once returned to the court room, where in silence, the verdict was awaited. It read: "We, the jury, find the defendants, Rufus Buck, Lewis Davis, Luckey Davis, Sam Sampson and Maoma [sic] July guilty of rape, as charged in the within indictment.

(Signed) John N. Ferguson, Foreman. [15]

On Wednesday, September 25, a large crowd gathered in the courtroom to hear Judge Parker pronounce sentence.

"Rufus Buck, Lewis Davis, Luckey Davis, Sam Sampson, and Maomi July, stand up," the judge commanded.

"You have been convicted by a verdict of the jury, justly rendered of the terrible crime of rape. It now becomes the duty of this court to pass sentence upon you which the law says shall follow a conviction of such crime. Have you anything to say why the sentence of the law should not now be passed in your cases?"

"Yes, sah," Luckey Davis spoke up.

"What is it?" the judge retorted.

"I want my case to go to the Supreme Cote."

Judge Parker answered, "I don't blame you a bit."

He then continued, speaking to the five convicted rapists:

> I want to say in this case that the jury, under the law and the evidence, could come to no other conclusion than that which they arrived at. Their verdict is an entirely just one, and one that must be approved by all lovers of virture. The offense of which you have been convicted is one which shocks all men who are not brutal. It is known to the law as a crime offensive to decency, and as a brutal attack upon the honor and chastity of the weaker sex. It is a violation of the quick sense of honor and the pride of virture which nature, to render the sex amiable, has implanted in the female heart, and it has been by the law-makers of the United States deemed equal in enormity and wickedness to murder, because the punishment fixed by the same is that which follows the commission of the crime of murder.
>
> Your crime has been proven beyond question, and the evidence, showing the manner of its commission, exhibits it as of the most repulsive and adhorrent character. The proof shows that each of you first took part in the robbery of the house of Henry Hassan, and afterwards that each of you, in the most revolting and brutal manner, in turn,

outraged his wife, Mrs. Rosetta Hassan. Some of you held the family at bay. Some of you overcame all resistance by armed violence while each of you in turn committed this terrible crime against decency and virtue, and you all exhibited the most horrid and brutal depravity. The acts so aroused the indignation of your own people, the Creek Indians, that they were almost persuaded to take you from the officers and execute upon you summary vengeance. It was only through respect for the law, and the belief that it would be enforced in this court, that induced them to permit the officers to bring you here.

The enormity and great wickedness of your crime leaves no ground for the extension of sympathy to you. You can expect no more sympathy than lovers of virtue and haters of vice can extend to men guilty of one of the most brutal, wicked, repulsive, and dastardly crimes known in the annals of crime. Your duty now is to make an honest effort to receive from a just God that mercy and forgiveness you so much need. We are taught that His mercy will wipe out even this horrible crime; but He is just, and His justice decrees punishment unless you are able to make atonement for the revolting crime against His law and against human law that you have committed. This horrible crime now rests upon your souls. Remove it if you can so the good God of all will extend to you His forgiveness and His mercy.

Listen now to the sentence of the law which is, that you, Rufus Buck, for the crime of rape, committed by you upon Rosetta Hassan, in the Indian country, and within the jurisdiction of this court, of which crime you stand convicted by the verdict of the jury in your case, be deemed, taken and adjudged guilty of rape; and that you be therefor, for the said crime against the laws of the United States, hanged by the neck until you are dead; that the marshal of the Western District of Arkansas, by himself or deputy, or deputies, cause execution to be done in the premises upon you on Thursday, the thirty-first day of October, 1895, between the hours of 9 o'clock in the forenoon and 5 o'clock in the afternoon of the said day; and that you now be taken to the jail from whence you came, to be there closely and securely kept, until the day of execution, and from thence on the day of execution as aforesaid, you are to be taken to the place of execution, there to be hanged by the neck until you are dead.

May God, whose laws you have broken, and before whose tribunal you must then appear, have mercy on your soul. 16

Next, he pronounced sentence on each of the others. Since Maomi July didn't understand English, his sentence was interpreted to him by a Creek squaw. The condemned men "exhibited no sign" of remorse.

A stay of execution was issued, while the attorneys for the defendants appealed the case to the Supreme Court. The high court affirmed the decision of the Court for the Western District, and Judge Parker on April 27, 1896, resentenced the gang to hang on July 1, 1896. [17]

The Fort Smith Elevator of July 3 carried the story of the execution:

> It was seven minutes past 1 o'clock when the doors of the jail opened for the egress of the condemned men. As they passed out, many of their fellow prisoners called to them: "Good bye, boys." They responded in a rather low tone of voice. Rufus Buck was the first to come from the jail door. He was perfectly calm. The others followed, and were equally cool. All were clad in black suits, and Rufus Buck, Maoma [sic] July and Lucky [sic] Davis wore large boutonniers upon the left lapel of their coats. Father Pius, their spiritual adviser, accompanied them. Closely following upon the train toward the gallows were the sisters of Sam Sampson and Lucky [sic] Davis.
>
> When the prisoners entered the gallows enclosure they took a glance at its hideous paraphernalia and then ascended the steps without the least sign of emotion. They remained seated upon a bench while Colonel Crump read the death warrant. Most of the officers and the spectators seemed impressed by this part of the proceedings, and stood with uncovered heads. When this part of the preliminaries had been disposed of, Col. Crump asked the condemned men if they had any remarks to make. All except Lucky [sic] said they had not. Lucky [sic] simply said he wanted the priest to pray for him.
>
> Father Pius uttered a short prayer in silence, during which all present stood with uncovered heads.
>
> This over, the prisoners stepped upon the fatal trap. As they did so they recognized a number of persons among the crowd around the gallows and saluted them. Lucky [sic] Davis shouted "Good bye, Martha" to his sister, who was present. Rufus Buck's father, a big, heavy old man, got into the jail enclosure and attempted to come up the steps to the platform where his son stood; but he was stupidly drunk, and was escorted below.

The sister of Sam Sampson entered the gallows yard and stood until the black caps were placed in position....

It took but a short time to complete the work after the preliminaries had been arranged. The prisoners stepped forward...none of the condemned men except Lucky [sic] Davis showed any signs of trepidation, Lucky [sic] was nervous, and during the time Col. Crump was reading the warrants, showed his nervousness by restless movements and twitchings of his face. Beyond this he showed no signs of fear. When he stood upon the scaffold he was perfectly cool. He kept repeating prayers even after the black cap was placed over his head.

The trap dropped with its horrible "chug" at 1:28 o'clock. Lewis Davis died in three minutes, his neck being broken. The necks of Sam Sampson and Maoma [sic] July were also broken, and they died easily. Rufus Buck and Lucky [sic] Davis were strangled to death....Davis' body drew up several times before it straightened out. Rufus Buck did not suffer, unconsciousness coming over him as soon as the rope tightened around his neck and shut off his breath; but it was several minutes before the contortions of his body ceased. [18]

* * *

The U. S. Jail during the second week of October 1895 was given a thorough overhauling. In response to a requisition from Marshal Crump, the government had advanced funds to purchase 135 blankets. Such of the old blankets as were fit for use had been washed and patched. Ticks and blankets which were worn out were burned. Jailer Berry filed a requisition for 600 yards of bed tickings, enough for a bed for everyone, but received only 300 yards.

The new ticks were made by Mrs. Mary Kettenring and other female inmates in the hospital, who volunteered their services. Mrs. Kettenring and her assistants did the work in the very best style.

A walk through the hospital at this time showed very few on the sick list. Everything was neat and clean and in good shape. When the renovation had been completed, the jail would be in better condition than in years. [19]

Captain Berry's register on Tuesday, January 20, showed 226 prisoners, the greatest number in the jail "since it became a depository for criminals." [20]

On Sunday night, February 15, a fire broke out in the basement of the "Old Soldiers' Quarters," directly under the front part of the jailer's office. The blaze was caused by the explosion of a lamp which a boy was refilling from a barrel. As soon as the explosion occurred, the boy sounded the alarm.

The fire department was notified, and "Reel No. 1" reached the scene in less than three minutes. Chief Little was there shortly thereafter. By the time the chief arrived, the fire was burning fiercely and smoke was belching from the building. Seeing the situation, Chief Little called out a second reel. The fire had gained headway, and it required sharp work to bring it under control. "So fierce did it burn and so inflamable [sic] was the material upon which the flames fed, that it burned through the floor and into the stairway leading from the jailer's office into the hospital." Many people on inspecting the damage expressed surprise that the old building had been saved.

At the time of the fire, there were 16 prisoners in the hospital. They were "dreadfully frightened" at the prospect of being roasted alive. Through the barred windows they begged for help. Mrs. Kettenring "was especially persistent in her appeals for relief." The dense smoke added to the prisoners' fears.

Captain Gotcher was in charge at the jail. At the suggestion of Chief Little, the patients were removed to the jail. Two who were unable to walk were carried down on their cots. The hospital was directly over the jailer's office.

Prisoners in the jail were quiet; they seemed to feel that they weren't in any danger. Before the blaze was extinguished fears were expressed that the jail would have to be evacuated. Since there were 206 inmates, many of whom were hardened criminals, this would have been dangerous. [21]

According to the Elevator, "It is the greatest wonder that that portion of the jail in which the fire originated was not entirely destroyed. While it has brick walls, there is much wood work about it, all inflamable [sic]. In fact, the whole building is as but a tinder-box." [22]

The editor of the Siloam Springs Standard visited Fort Smith on February 28. When he returned home, he informed his readers that the traveler will find:

the old fort and its interior departments the most spectacular relics of early tough days on the border. The old gruesome scaffold...claims the attention of all who enter the old mossgrown walls. The scaffold is on a line with the wall, and behind is a grotto of heavy stone masonary 50 feet in diameter. This was once a bomb-proof magazine, but the top is now off, and cavities, in the masonary show where the big timber rested that supported the heavy roof of rock and earth. The next object of interest is the huge United States jail with its hundreds of prisoners.... 23

Because of governmental red tape, the jail and hospital in early March were without heat, consequently, many of the prisoners suffered from the cold. Several weeks before the jail's heating plant had failed. Before it could be repaired, permission had to be received from Washington. When Washington finally gave its consent, the Fort Smith plumbers were without the necessary repairs, which had to be ordered from St. Louis.

The government to make matters worse was slow in honoring Jailer Berry's requisition for blankets. 24

George Lawson and his two-man posse encountered Jack Chewie at his hideout on Little Springs Creek, Cherokee Nation. Hoping to surprise Chewie, the officers on the morning of March 28 cautiously approached the outlaw's cabin.

Lawson took cover, while his posse, Coowie Bourlard and Nick Mitchell went up to the cabin. One knocked and entered; the other stood on the porch. Chewie stepped outside and looked cautiously about. Lawson slipped around to the side of the cabin and called on Chewie to throw up his hands. Instead of doing as ordered, Chewie reached for his pistol. The officers fired. Chewie fell, as he was struck by several bullets. The badman's remains were brought to Fort Smith on the following day for identification. 25

Turnkey Eoff gave the walls of the lower corridor of the jail a good coat of "white-wash" during the final week of March. The editor of the Elevator felt this improved the looks of "things considerably." 26

Because of a smallpox scare there were only a few arrivals at the U. S. Jail during the second week of April. Taking advantage of the situation, the big room which served as the jailer's office was renovated. 27

During the same week orders were received for the guards to resume wearing uniforms. At the same time, a directive was received that each

new arrival at the jail was to be supplied with a suit of clothes and before being "committed to jail his carcass should be scrubbed in a bath-tub." The old clothes would be laid aside and saved if free from vermin, if not they were to be burned. 28

John and George Pierce and Webber Isaacs were hanged on April 30. The execution was "quietly conducted." Marshal Crump limited the spectators to newspapermen, officers, and physicians.

Webber Isaacs showed the effect of his long confinement in the U. S. Jail. When hanged, he was suffering from the effects of advance stages of consumption. His spirit, however, remained unbroken.

The Pierce boys held up well. On the 28th they were visited by their father, and on the following day their sisters came to see them. John Pierce's young son accompanied the girls. The "meeting was very affecting."

Tuesday afternoon, Webber Isaacs was baptized by Father Pius of the German Catholic Church. The Pierce brothers were baptized the same afternoon by Father Smythe. 29

Prior to the execution of the Pierces and Isaacs, Turnkey Eoff discovered that the gallows cross beam was "rotten through and through." Since there wasn't sufficient time to replace the beam, the hangings were carried out as scheduled. With another multiple hanging (the buck gang) pending, Jailer Berry on June 15 had the old cross beam replaced. When the old one was removed, it was so rotten it broke when dropped to the ground. Many pieces of the old beam were carried away by relic hunters. 30

On Sunday night, July 5, Jailer Berry discovered that five prisoners confined in the upper tier of cells had made arrangements for escaping by cutting a hole in the ceiling of one of the cells. An examination disclosed that given a few more hours, the prisoners would have been free. Already, they had a hole large enough for a man to crawl through. Only the slate ceiling was between them and liberty when they were discovered. The inmates had made arrangements for lowering themselves to the ground by tearing up blankets and plaiting them into a rope. The rope was over

30 feet in length and strong enough to support the weight of a large man. The instrument used to dig through the ceiling was a wire made from the handle of a large bucket, a bar of steel about three feet long, which had formed part of a bedstead, and several shorter pieces of steel obtained from the same source. The prisoners involved in the attempted break were: A. J. Davis, J. A. McHenry, Frank and Henry Smith, and Jim Gourd. [31]

* * *

James C. Casharago was the last man to die on the Fort Smith gallows. Casharago had been born in January 1870 in Faulkner county, Arkansas. His father was an Italian immigrant farmer. The elder Casharago was killed when he fell out of the loft of a stable, and his widow soon remarried a man named Jones.

Jimmy Casharago received a "limited" amount of book learning. As a youth, he gained the reputation of being "pleasant and companionable, agreeable of address and manners and of temperate habits." He had just one weakness--stealing. His mother took care of these petty thefts by making restitution.

When Jimmy was 18, one of his grandfathers died leaving him "a considerable property." Proceedings were instituted in chancery court to enable him to gain the benefit of his grandfather's estate before he had reached his majority. On April 29, 1888, Jimmy married Mary A. Salter, the 17-year-old-daughter of a prosperous Faulkner county farmer.

Jimmy was a spendthrift. His expenses exceeded his income. To make up the deficit, he resorted to forgery. During the latter part of June 1889, the law threatened to catch up with Jimmy, and he was compelled to leave home to avoid arrest. He was followed by the sheriff of Faulkner county, L. B. Dawson, and taken into custody. Jimmy was jailed in Conway. Breaking jail, he fled into the Boston Mountains.

Officers, advised of his whereabouts, went in pursuit. Forewarned, Jimmy eluded the authorities and struck out for eastern Arkansas. There, he found employment with a country merchant. For several months, he bided his time. Jimmy, before leaving his employer, rifled his trunk and carried

off many valuables.

In January 1890 Casharago was arrested in Obion county, Tennessee, for breaking and entering. Tried and convicted of burglary and larceny, Jimmy on February 20 was sentenced to a term of three years in the state penitentiary at Nashville. He was a model prisoner. Upon being released, Jimmy returned to Faulkner county.

Since he was still wanted in Arkansas, Casharago kept undercover. Shortly after his arrival, Jimmy borrowed a mule from his stepsister. Traveling into the adjoining county, Conway, Casharago mortgaged the mule for enough to purchase another. He then mortgaged both mules and bought a wagon; the team and wagon were put in hock for an assortment of merchandise. After loading the goods into the ill-gotten wagon, Casharago drove up into the mountains and began "Peddling." He was pursued, captured, and returned to the Conway county jail at Morrillton.

The day before his trial, Jimmy escaped and went into hiding at the home of an uncle in Faulkner county. The uncle knew of Jimmy's troubles with the law, but he couldn't bring himself to turn in his sister's child. The uncle accordingly gave Casharago a letter of introduction to an old friend, Zacharia W. Thatch, who owned a farm in Washington county. It was suggested that Thatch take the young man in, for the time being, and let him work for his board and room.

Casharago soon turned up at Thatch's Washington county farm. His pleasant and agreeable manners impressed the farmer. During the winter of 1894-95 there wasn't much work to be done, but Thatch attracted by his clean habits, let Jimmy stay. He developed a strong attachment for the young man.

In April 1895 Thatch decided to go west and look over the land in Oklahoma Territory that had recently been opened to settlement. Since his health wasn't too good, the farmer asked Casharago to accompany him. The travelers left Washington county with a two horse wagon, a camping outfit, and several extra horses for trading purposes. One of these horses was a valuable stallion. They traveled westward by easy stages. By May 13 found Thatch and Casharago camped on Rock Creek, several miles from Keokuk Falls, near the Creek Nation-Oklahoma line.

During the night, a farmer heard two shots near the horsetraders' camp. Since most men carried guns, he didn't attach much importance to the incident. Casharago the next morning broke camp and drove off. As he passed the house of a farmer named King, Casharago identified himself as George Wilson. He explained that his friend had started back to Arkansas on foot, but he was going to push on west, trading horses, and "seeing the country."

On the morning of May 26, a man named Lea discovered a badly decomposed body floating in Rock Creek near the abandoned camp. An examination showed that the dead man's skull had been crushed by a blow from a sharp instrument, while two fingers of one hand had been shot away. Weighted down with stones, the corpse had been thrown into the creek. The rocks had slid to one side allowing the body to rise to the surface. News of the gruesome find caused men to recall past incidents. The man who had heard the shots on the night of the 13th had second thoughts. Inspecting the abandoned camp site, the authorities found that blood had soaked into the ground; the ground had been dry and the blood had trickled into the cracks. Someone had tried to obliterate this evidence by building a fire, but when the ashes were swept aside, there was the bloodsoaked earth.

At the time that the body was discovered, "Wilson" was camped in the area. He was taken into custody by Deputy Marshal Large. The lawman had little difficulty identifying Thatch's remains. In "Wilson's" wagon at the time of his arrest, the authorities found Thatch's trunk containing papers and documents showing that he had been a man of considerable means. "Wilson" had had a mattress upon which were several patches. When the patches were removed, the authorities found blood stains.

When Deputy Marshal Large showed the suspect the body, "Wilson" identified it as that of his uncle Zacharia Thatch. When they examined "Wilson's" effects, the lawmen found traces of blood on his clothes and on an ax. "Wilson" had a ready explanation. He and his uncle had killed and dressed a prairie chicken. The officers were unable to confront "Wilson" with any evidence that he couldn't explain.

But it didn't quite work. "Wilson" was lodged during the first week of June in the Fort Smith jail and charged with murder. At his trial before the November 1895 term of Judge Parker's Court, "Wilson" testified that the body found by Len was not that of his uncle, Thatch. Thatch, he swore, had left him to go to the opening of the Kickapoo lands and had been seen on the streets of El Reno after the discovery of the body.

Judge Parker considered this a particularly cold-blooded murder; a fine man had been killed after doing kindness. The judge was especially aroused when the bloodstained earth was brought in and submitted by the prosecution. After the jury had found "Wilson" guilty, Parker in pronouncing sentence thundered:

> Even nature revolted against your crime; the ground cracked open and drinking up the blood held it in a fast embrace until the time that it should appear against you; the water, too, threw up its dead and bore upon its placid bosom the foul evidence of your crime.

"Wilson's" court appointed attorney (C. J. Frederick) appealed to the Supreme Court, but the high court upheld Parker's decision.

Casharago was resentenced by Judge Parker to be hanged on July 30, 1896. There were no unusual incidents connected with the execution. Casharago was pale--the effect of his long confinement in jail--but beyond that he showed no sign of fear. Services on the scaffold were brief. After the warrant was read by Colonel Crump, there was a brief service by Father Smythe. The hands of the doomed were tied, the black cap placed, and the trap sprung. The drop fell at 12 noon. [32]

Chapter XVIII

Parker Battles the Supreme Court

For 14 years, Judge Parker ran his court almost as he pleased. Congress then began changing the rules. In 1889, and again in 1891, congress passed acts which had a profound effect on the Court for the Western District of Arkansas and the Indian Territory. Till 1889, Parker's authority had been almost unlimited. Prisoners whom he sentenced to the gallows had only two alternatives: They could ask the judge for a retrial; or they could request the President to change their sentences.

In either case, Parker was in the driver's seat. He alone could allow or deny their attorneys' motion for a new trial, and his rulings were final. Finally, he could and did influence White House action in cases of presidential clemency. President Cleveland reported, "The judge is so little given to recommending pardons that...I think I am safe in following his judgement." [1]

From 1883 to 1889 criminal cases and court costs increased so steadily that Marshal Yoes, in his annual report of 1889, stated that "further reduction of the territory" was the "most likely" means of cutting expenses and the volume of work coming before the court.

Apparently all agreed that conditions were "bad" in the Court for the Western District. They were unable, however, to agree upon a solution. In this "turmoil of dissatisfaction" they focused their attention upon the tribunal's "character as a court of both original and final jurisdiction," and settled down to attacking the fact that "in its constitution by Congress, certain great principles of law which lie at the very foundation of common justice" had been ignored. As early as 1883, the editor of the Missouri Republican had complained:

> The Judge of the Fort Smith district alone has passed the sentence of death upon more convicted criminals than we care to guess at, not one of whom, red, white or black, ever had the poor privilege of having his case reviewed in any manner....The law vests the judges of these border district courts

with almost unlimited power; human nature prompts them to use it. [2]

In Washington in the late 1880's, Representative John H. Rogers and Senator James K. Jones of Arkansas took the lead in advocating appellate courts for the districts that had none, and called the Fort Smith court "a burning shame on American civilization." [3]

Congress on February 9, 1889, acted. The circuit court powers of the district courts of the Western District of Arkansas, the Northern District of Mississippi, and the Western District of South Carolina, three of the four districts complained of by the Attorney General, were abolished. After May 1:

> in all cases of convictions of crime, the punishment of which by law is death, tried before any court of the United States, the final judgement of such court against the respondent, may be re-examined, reversed, or affirmed by the Supreme Court of the United States upon a writ of error, under such rules and regulations as said court may proscribe. [4]

Thus, Judge Parker's Court was stripped of its right as a court of last resort.

While the language used in the act of 1889 was general, it was universally recognized that the primary purpose of this law was to provide an opportunity for a review of the numerous capital crimes being tried in Parker's Court. This enactment was followed by the Act of March 3, 1891. [5] Section Five of this act authorized a direct review by the Supreme Court in all cases tried in the district or circuit courts of the United States where there had been a conviction for a capital, or otherwise infamous crime. These two laws made it possible for the first time to secure a review of the vast number of homicide cases, and cases involving other crimes of violence tried in the Court for the Western District of Arkansas. [6]

Notwithstanding these enactments, Parker's Court continued to be unique in its vast territorial jurisdiction, and because of its competence to try what for a better term, might be called "State" crimes, as opposed to "Federal" crimes. As a result of the altered situation following the changing of the rules by congress, we find the Supreme Court during the

period 1891-1895 writing opinions upon a great number of questions of criminal law which never before, and would never again reach the high tribunal.[7]

Persons convicted of capital crimes were now able to appeal to the Supreme Court, where Parker had little influence. On February 2, 1891, the Supreme Court handed down the first two opinions in cases reaching it from the Court for the Western District of Arkansas under the Act of 1889. Both appeals had been made by attorneys for convicted murderers. These cases were reported as Alexander vs. United States and Crumpton vs. United States. In the Alexander case, the lower court's judgement was reversed, in the other it was affirmed.

The defendants in each case were represented before the Supreme Court by Augustus H. Garland. A former governor and senator from Arkansas, Garland had served Cleveland as Attorney General during his first administration. The government's case was argued by Solicitor General William Howard Taft. It was not an even match. Taft was an able lawyer who would in time become President and Chief Justice, but in 1891 he was young, and his training and background had taught him little about frontier murders. Garland was well equipped to help his clients. Besides being well acquainted with Fort Smith, he was rated one of the best lawyer-politicians in the Southwest.[8]

During the five years, 1891-1896, fifty written opinions were delivered by the Supreme Court in criminal cases which had been appealed from Parker's Court. In all of these cases, the defendant had been convicted of a crime committed in the Indian Territory. Only one of these cases involved what might be termed a "Federal" crime. The defendant in one of the remaining cases had been convicted of assault with intent to kill, in another of rape, and in the remaining 47 of murder.[9]

The Supreme Court ruled that 30 of the persons convicted hadn't had fair trials. Of these 30, 16 were discharged or won acquittal at their retrials. The remainder ended up in the penitentiary. Seven of these 14 were convicted of manslaughter at the retrial; the other seven were found guilty of murder. One of these, Mollie King, was sentenced to life imprisonment, under a statute of 1897, which allowed juries to

substitute imprisonment for the death penalty. The six others appealed to the Supreme Court a second time. Once again, the Court for the Western District was reversed. One of the six involved was sent to an insane asylum, while three were sent to prison. Two, John Brown and Alexander Allen, were for a third time convicted of murder and sentenced to be hanged. Brown won a third reversal from the Supreme Court and settled for a one year term. Allen's conviction was affirmed by the Supreme Court, but his sentence was commuted to life imprisonment by the President. [10]

These reversals didn't altogether stop the wheels of Parker's scaffold justice. The Supreme Court, after all, accepted 16 of Parker's death sentences. That left some business for the gallows--so much, indeed, that there were ten hangings during Parker's final year on the bench. Nevertheless, many worthless lives were saved.

Why these reversals? How was it that the learned justices of the Supreme Court let evil doers get away?

The Supreme Court's answer can be stated in two words: reversible error. On occasions Parker had gone beyond his jurisdiction in trying cases which belonged to the tribal courts. Sometimes the officers of the Court for the Western District had failed to follow proper trial procedure. Time after time, the justices concluded that Parker had deprived defendants of their rights by misquoting the law in giving his instructions to the jurors.

Where there was smoke there was fire. Since 1875 the Parker Court had been virtually unsupervised. During this period, the officers of the court had slipped into bad habits. Forms and documents were often filled out carelessly. In his charges to the jury, Parker had at times done violence to legal principles. [11]

This raises the question--was Judge Parker well versed in criminal law? In measuring his knowledge in the light of the numerous reversals, it is necessary to bear in mind that most of the criminal cases from his court were cases of first impression in the Supreme Court. That Court had heretofore dealt with few murder cases. Furthermore, on many of the questions involved, the state supreme courts had differed. This is illustrated by the opinion handed down in Davis vs. United States, 160

U. S., 469. Here, conflicting state authorities on the question of the burden of proof where insanity is a defense were cited and reviewed. The case was reversed, but a second conviction was affirmed in Davis vs. United States, 165, U. S., 373. [12]

Candor compels one to admit that Parker's charges to the jury were too long. He was prone to emphasize first the government's and then the defendant's theory of the case. His affirmances illustrate that he employed strong statements favorable to the prosecution which would have been in error except for the fact that they were cured by equally vigorous statements favorable to the accused. It was difficult for Judge Parker to frame his charges in colorless language. [13]

A case in question was that of Alexander Allen. When he was 15 years old in 1892, Allen had killed a playmate, because of taunts directed at his color--he was a Negro.

Allen's age and other mitigating circumstances might have been expected to result in a charge of manslaughter rather than murder. The youth's actions kept him from getting much consideration. In jail and in court he snarled, swore, and fought. He rejected kindness, and answered punishment with more defiance. Never before had the jailers encountered such a difficult prisoner.

Few grieved or protested when the judge charged the jury that "the flight of a defendant after a killing was an evidentiary fact which the jury might consider as tending to establish guilt." The jurors called it murder, and Parker sentenced Allen to the gallows. When the Supreme Court set aside this verdict, Allen was retried and found guilty a second time; and a third time, after a second high tribunal reversal. The Supreme Court upheld the third death sentence, but the President ruled against hanging. Allen ended up with a life sentence in the Columbus Penitentiary. [14]

In his interpretation of flight, Parker knew it was a fact to be considered at the trial, "a proper fact to be taken into consideration as evidence of guilt." But of itself, without supporting evidence, flight didn't prove guilt.

Parker knew this and often stated it correctly. Occasionally, however, the judge couldn't resist citing scripture against defendants, "The wicked

flee when no man pursueth, but the righteous are as bold as a lion."

Parker used this quotation from Proverbs 28:1 in charging the juries sitting in judgement of Sam Downing, alias Sam Hickory, Ed Alberty and Henry Starr. Each time, the Supreme Court in Hickory vs. United States, 160 U. S., 480; in Alberty vs. United States, 162, U. S., 499; and in Starr vs. United States, 164 U. S., 627, sent the case back to the Court for the Western District for retrial. [15]

"Fatally defective," wrote the Supreme Court. Good theology, perhaps, but bad law.

It was the same when Parker used the story of Cain and Abel to show that the testimony of a killer was bound to be false.

"Plainly erroneous," ruled the high court. "Men may testify truthfully although their lives hang in the balance."

Occasionally, the Supreme Court understandably objected to the tone of Parker's instructions to the jury.

"The charge...crosses the line which separates the impartial exercise of the judicial function from the region of partisanship...." wrote Justice Edward D. White in passing on Downing's second appeal. "Reason is disturbed, passions excited, and prejudices are necessarily called into play."

In this instance one can go along with White's reasoning. But it doesn't follow that the Supreme Court was always right in ruling against Parker. It wasn't. Whether we judge by law or common sense, the learned justices were often wrong. They stressed the form not the substance of the law; they based key decisions on doubtful technicalities. [16]

A number of Parker's reversals by the high tribunal called forth vigorous dissents by Justices David J. Brewer, R. W. Peckham and Henry D. Brown. Parker had sized up the situation in a number of criminal cases which some of the "cloistered members of that august" body couldn't appreciate. In Brown vs. United States, 164, U. S., 221, Parker had admitted testimony of the defendant's witnesses tainting the reputation for bad character of a government witness. There was proof of the good reputation of this witness, and cross-examination had developed that the reputation of the witness for bad character might have been inspired by the same desperados. In his charge, Parker observed:

> This reputation must grow out of the dispassionate judgement of men who are honest men and good men, able

and competent to make a judgement of that kind. ...
It is not the judgement of the bad people, the criminal element, the man of crime, that is to fasten upon a man and blacken his name.

When it saved John Brown's neck for the third time, the Supreme Court ruled that Parker had committed reversible error in stating that reputation could not be founded on the "judgement of bad people, the criminal element, the man of crime."

Case reversed, ruled the majority of the court, "the instruction was given too narrow and restrictive."

Justice Brewer drafted a vigorous and caustic dissent:

> Because this part of the charge is, as a whole, unobjectionable. The testimony referred to was admitted, and therefore held to be competent. The rule of law in reference to impeachment was correctly stated, and the objectionable matter was prefaced by a declaration of the court that it gives a matter of admonition. The admonition was just and sound. Reputation is the general judgement of the community in respect to the witnesses whose reputation is challenged and is not made up by the flippant talk of a few outlaws. [17]

Moreover, Brewer continued, there was a larger issue:

> After three juries, thirty-six jurors, have agreed in finding a defendant guilty...and such finding has each time been approved by the trial judge, the judgement based upon the last verdict ought not to be disturbed unless it is manifest that the verdict is against the truth of the case, or that the court grossly and prejudicially erred. [18]

Justices Brown and Peckham concurred in the dissent.

Justice Brewer supported Parker on several other occasions. He scolded his colleagues for specializing in the minor technicalities, the "refinement of criticism which offends common sense."

"Ought the deliberate judgment of twelve men as to the defendant's guilt, approved as it was by the judge who presided...," he asked in 1893 (Graves vs. U.S.) "be set aside for an error, if error it be, so frivolous as that?"

Brewer also objected to the Supreme Court's assumption that the Court for the Western District habitually was in the wrong.

"When," he asked in the Allen case, "did it become a rule of law that a

court of error should presume that the jury in a trial court were ignorant."

"We are not dealing with the mock scenes and shows of the stage...," Brewer added, when his fellow justices ordered a new trial for John Hicks. "Great injustice is being done to the government and wrong to the public," Brewer thundered.

Justice Brewer had common sense on his side--and one excellant legal argument. When considering criminal appeals, the Supreme Court was by its own rules supposed to confine itself to the issues raised by the prisoner's lawyer in his bill of exceptions. These exceptions had to be specific, and the prisoner's attorney was not allowed to appeal on points which he hadn't raised at the trial.

Despite such rules, the Supreme Court often decided Parker cases on points not raised by the prisoners' lawyers. Instead of insisting that the exceptions be specific, the justices allowed attorneys to take general exceptions, as to the whole of a forty-page charge. Time after time, Parker was reversed when "no sufficient exception was taken." In Allison vs. U.S. in 1895, the high court ruled, "exception was taken,not with much precision, but, we are disposed to hold, sufficiently to save the point." Similarly, in the Dennis Davis insanity case of the same year, the justices decided against Judge Parker, although they admitted that his position was "not without support by adjudications in England and in this country."

In other words, the Supreme Court was more likely to employ technical points against Parker than in his favor. [19]

The case for Judge Parker doesn't rest alone upon dissenting opinions. That he was far in advance of the thought of his time in criminal cases is clearly demonstrated by his reversal in Crain vs. United States, 162 U.S., 625, and the subsequent history of that case. Here, reversal was based on a minor defect in the court record, the "merest technicality." The defendant, who had been convicted of manslaughter, had suffered no injury by reason of this technicality, and his attorneys had not questioned this point. Justice Harlan in speaking for the majority used strong language:

> Neither sound reason nor public policy justifies any departure from settled principles applicable in criminal prosecutions for infamous crimes. Even if

there were a wide divergence among the authorities upon this subject, safety lies in adhering to established modes of procedure devised for the security of life and liberty. [20]

Harlan's language would lead a person to believe that there had been some serious infringement of the rights of the defendant in the trial, or some serious departure from settled principles which had resulted in an unjust conviction.

"To reverse the judgment..."wrote Justice R. W. Peckham in a dissenting opinion, "is...a sacrifice of justice to the merest and most formal kind of objection, founded upon an unjustifiable presumption of error and entirely at war with the facts."

Thus spoke the Supreme Court in April 1896, only a few months before Parker died.

Eighteen years later in 1914, the identical question of law again reached the Supreme Court in Garland vs. State of Washington, 232, U.S., 642. In this case in which the entire court concurred, it was observed in reference to its previous decision in the Crain case in a brief read by Justice William R. Day. According to the 1914 Court, the Court of 1896 had leaned too heavily upon English Common Law, and had overstressed a "wholly unimportant formality."

"Under present systems of law," Day wrote, there was no need and no excuse for "such strict adherence to the mere formalities of trial."

Continuing, Day observed:

> It is insisted, however, that this Court in the case of Crain vs. United States, 162 U.S., 625, held to the contrary....
>
> Technical objections of this character were undoubtedly given much more weight formerly than they are now....
>
> Holding this view, notwithstanding our reluctance to overrule former decisions of this court, we are now constrained to hold that the technical enforcement of formal rights in criminal procedure in the Crain case is no longer required in the prosecution of offenses under present systems of law, and so far as that case is not in accord with the views herein expressed, it is necessarily overruled. [21]

An intemperate outburst on Judge Parker's part against the Supreme Court helped trigger the impression among some individuals that the judge was either unversed in criminal law, or that he had become a judicial tyrant because of his long uncontrolled power.

Parker's open criticism of the high tribunal was caused by his resentment at the killing of Guard Larry Keating by Cherokee Bill. At this time, July 1895, Parker was vacationing in St. Louis. When the news reached the judge, he was reported by a St. Louis newspaper to have said, "For twenty long, laborious years...I have sought to protect innocent human life...to enforce and uphold the law of the United States against the man of crime." Now in the twilight of his career, he found his work threatened by the rulings of a higher court. It was like being stabbed in the back. Parker complained:

> Murders are...on the increase....I attribute the increase to the...Supreme Court....The murderer has a long breathing spell before his case comes before the Supreme Court; then...the conviction may be quashed... upon the flimsiest technicalities. The Supreme Court never touches the merits of the case. As far as I can see, the court must be opposed to capital punishment, and therefore, tries to reason the effect of the law away.

Seven months later, Judge Parker again spoke out against the Supreme Court's "mania for reversing murder cases." These "numerous and unwarranted reversals," he wrote in a letter for publication, tended to "embolden the man of blood, thus increasing murder."

"The people," he told a grand jury in February, "should demand of the courts that they discountenance intrigue and hair-splitting distinctions in favor of the criminal at the expense of life. This is the glaring evil that is sapping the life and power out of the nation."

Friends of the Supreme Court rushed to its defense and accused Parker of bad taste. How could a judge and a lawyer talk that way, they wailed.

"Honest and true criticism is not abuse," Parker roared. He had the "greatest respect" for the Supreme Court, but found it necessary to "condemn its most grievous errors and blunders in cases where there is no manner of excuse for their existence."

"No such line of crude, inconsistent, frivolous and absurd grounds for

the reversals of murder cases can be found as emanated from the appellate court of any civilized country," he observed. "They show want of knowledge of either the facts or the law of the cases. Many of them show the venom of the judges against the trial judge, apparently because they have to decide the cases. They seem to think he is the author of the crimes."[22]

Although he was on his death bed in September 1896, Parker held his ground. He wouldn't "dream of destroying" the right of appeal; but, he added, the government should set up a special appellate court, the judges to be learned in the criminal law. Supreme Court justices, he pointed out, were "men from the civil walks, and it is not surprising that they are liable to err in criminal cases."

"I would that the law would provide against the reversal of cases unless innocence was manifest....I would have brushed aside all technicalities that do not affect the guilt or innocence of the accused," Parker added.[23]

While raking the high court over the coals, Parker also sounded off against the Attorney General, the Solicitor General and their assistants. These Justice Department officers were supposed to speak for the Court for the Western District when cases were appealed to the high tribunal. But, said Parker, they botched their assignments frequently and let the defense attorneys steal the show.

In one way this was understandable. The average Attorney General of the 1890's knew little about criminal law and far less about the frontier. His aides were in a similar position, hence were unable to compete on equal terms with the experienced criminal lawyers who opposed them.

To make matters worse, it seemed to the judge that some of the Justice Department people didn't even try. Had they exerted themselves, they might have prevented several of the reversals of 1895 and 1896. They didn't even seem interested, however, on six occasions, they gave up without a struggle, confessing error and agreeing with the defense attorneys that there should be a reversal.

This was more than Parker could endure. It was bad enough to be reversed; it was worse to lose by default. In February 1896, he addressed an open letter to Attorney General Judson Harmon.

He was surprised, Parker wrote, at the "unprecedented and unwarrented,"

and "extraordinary and unwise" decision of the Justice Department to confess error in the "most diabolical and wicked murder cases."

"Liberty and ...life," he warned, "are precarious unless those in authority have sense and spirit enough to defend them under the law."

As judge of the Court for the Western District, Parker had done his bit. The "blood of the innocent murdered victims" wasn't on his head. "Could the Attorney General say as much?" the judge inquired. Or had he encouraged the bad men of the border, the "criminal horde" that Parker had been fighting for over 20 years?

Assistant Attorney General Edward B. Whitney replied for his chief.

Parker meant well, Whitney caustically commented, but he was ignorant or careless. Time after time the Justice Department had endeavored to instruct him, but the judge had continued to pack his charges with "very gross errors." These errors, Whitney continued, were:

> the more to be deplored because in most cases the prisoners are probably guilty and would have been convicted if the court had submitted the case with the very barest statement of law of murder and without any denunciation or attempt to usurp the jury's functions.

"The judge...is, on account of his great desire to secure convictions, the best friend of the criminals," wrote Whitney in closing, because "he insures them reversals, and thus gives them chances of escape which the most adroit criminal lawyers could not possibly accomplish."

"A bitter personal screed," snapped Parker when he read Whitney's letter:

> filled with the grossest misrepresentations, with manifest prevarications, and with lame attempts at the suppression of facts. It is not original, for I have heard it croaked by every fowl bird of evil, hissed from every wicked serpent of crime, and yelled by every Fustilarian for all these twenty years.

Warming up to his subject, Parker blasted Whitney's arguments as "outrageous," "wholly untenable," "radically wrong," "feeble and childish," "insulting," "filled with gall, with bitterness and poison." Whitney was "wholly incompetent," a "legal imbecile," "lacking in judgment or decency," "a man who has never tried a murder case in a trial court in his life," and who knew "absolutely nothing of criminal law, any more than he does of the

hieroglyphics on the Pyramids." Such "mental pygmies," by reason of their "ignorance" and "sublime impudence," stood "on the side of the man of crime, the man of blood."

Savage though it was, Parker's reply to Whitney was not mere denunciation. It was a spirited defense of the judge's position. Citing authorities, he argued that his instructions to the jury were legally sound.

In the end, Parker rested his case on moral rather than on legal grounds. Legal niceties aside, he and his court deserved better treatment than they received from the Justice Department and the Supreme Court. After all, he observed, he had "for four lustrums been aiding in the great battle between the law's supremacy and...human life and human rights on the one hand, and the bloody, wicked, unrelenting man of crime on the other." That was what was important.

Whitney couldn't agree. Others did, however. Parker had a job to do, a tough and nasty job; he had to fight the "worst band of desperadoes, murderers and outlaws to be found in any civilized land." Where possible, he had observed the rules of law, but he had little time to deal with technicalities.

Theodore Roosevelt's Attorney General, Philander C. Knox, said as much when he discussed the Parker trials, "Many of them were conducted without the regard to the rights of defendants which prevails in more settled and law abiding communities," Knox concluded, "and...many convictions were obtained which could not have been obtained elsewhere." But "this condition was perhaps the almost necessary result of the state of affairs which existed in the Indian Territory in the days when the Territory was infested with outlaws, and desperadoes, and murder and robbery were every day occurrences." 24

LAW ENFORCEMENT AT FORT SMITH 1871 - 1896

Chapter XIX

Judge Parker Passes Away

On September 1, 1896, one month after the execution of James Casharago, Parker's Court lost its jurisdiction over the country west of Arkansas. The act which encompassed the destruction "of the greatest court on earth" had been passed by the 53d Congress on March 1, 1896. Section 1 of the act provided that the Indian Territory was to be divided into three judicial districts to be known as the "Northern," the "Central," and the "Southern." Four places were designated for holding court in the Northern and Central Districts, and five in the Southern District. The President was authorized to appoint, with the advice and consent of the Senate, two additional judges for the Northern and Southern districts; the Federal judge previously appointed to preside over the Indian Territory was made judge of the Central District. The act gave to the United States courts thereby established in the Indian Territory exclusive, original jurisdiction over all offenses committed in the Indian Territory of which the court then had jurisdiction. After September 1, 1896, they were to have exclusive, original jurisdiction over all offenses against the laws of the United States committed in the Indian Territory, except such cases as the Federal courts at Paris, Texas, Fort Smith, Arkansas, or Fort Scott, Kansas, may have already proceeded against. All laws previously enacted conferring jurisdiction on United States courts held in Arkansas, Kansas, and Texas, as to offenses committed in the Indian Territory, were repealed as of September 1, 1896. The jurisdiction previously given to the Paris, Fort Smith, and Fort Scott courts, was to be given after September 1, 1896, to the Federal courts to be established in the Indian Territory, except those cases already commenced and on the dockets of said courts. [1]

Many people didn't feel that congress had acted wisely in the matter, when it had passed the law stripping Judge Parker's Court and those in Texas and Kansas of their jurisdiction in the Indian Territory. Numerous memorials and petitions were forwarded to Washington asking that congress

repeal the law. "But the labor for the repeal of the law was lost," a newspaper correspondent observed, "and the experiment of the administration of justice in the border country by local courts is under way. It was initiated in a portentous manner, the public celebration of the event in McAlester and other settlements of the so-called emancipated land."

"There be some talk of hangin' Judge Parker in effigy over thar," announced an irate Arkansan. But, he added, "They'd better be careful or we'll go over and hang a few of them before breakfast." [2]

As provided by congress that portion of the Act of 1895 went into effect on September 1, 1896, which stripped from the Courts for the Western District of Arkansas, the Eastern District of Texas, and the Third District of Kansas their jurisdiction over the Indian Territory.

On that date Court Crier J. G. Hammersly, who had been with Parker for 15 years, shouted "Oyez! Oyez! The Honorable District and Circuit Courts of the United States for the Western District of Arkansas, having criminal jurisdiction of the Indian Territory, are now adjourned, forever. God bless the United States and the honorable courts!" [3]

Judge Parker was not on hand to hear those historic words; he was lying home in bed, stricken with Bright's disease.

As September 1 approached, it was reported that for the first time the judge, always the example of strength and health, was too ill to hold court. "Dropsy. An affectation of the heart," the town gossips called it. Parker's doctor reported it was the result of the enormous amount of work he had accomplished in 21 years.

The days passed and the court opened each morning and closed each evening as was customary. Unable to preside in person, the judge kept in touch with all important matters and issued orders from his sickbed. The August grand jury had met and conducted its investigations, but withheld its report pending the judge's return. [4]

A vast number of cases accumulated. On August 24 Judge Caldwell, who was now a judge on the Eighth Judicial Circuit, issued an order for Judge Oliver P. Shiras of the Northern District of Iowa to proceed to Fort Smith and preside over the court for two days, August 27 and 28. The grand jury returned 187 true bills and ignored 58. On the following

day, 33 of the 58 indicted entered pleas of guilty, and Judge Shiras scheduled the remaining cases for trial during the November term of court.[5]

As the day approached that congress had designated for ending the criminal jurisdiction of Parker's court over the Indian Territory, the St. Louis Republic sent its famous woman reporter, Ada Patterson, to Fort Smith to interview the judge. She had been told that Parker was stern and cruel, and Miss. Patterson experienced an uncontrollable dread of the meeting. She secured an interview and found:

> He is the gentlest of men, this alleged sternest of Judges. He is courtly of manner and kind of voice and face, the man who has passed the death sentence upon more criminals than has any other Judge in the land. The features that have in them the horror of the medusa to desperadoes are benevolent to all other humankind.

When Miss. Patterson was admitted to the judge's sickroom, she found him "supported by pillows on a bed that has been one of pain to him for two months." Even in his "pitiable, physical weakness," she recalled:

> it was evident that it was a magnificent constitution with which disease had grappled and upon which she is trying her dreaded tactics of slow "wearing out." Judge Parker's frame is that of a powerful man, one who has rejoiced in a superabundance of vigor, a vitality evidenced in health by sunny spirits and a laugh that is infectious. He has great breadth of shoulders and a noble chest development. Eight weeks of suffering have not greatly reduced the color that contrast with his snowy hair and beard makes more pronounced. His blue eyes still have much of the fire of health. It is in the strong nervous hands that the ravages of illness are shown the most.

"I have not been sick for 45 years," the judge told Miss. Patterson. "My physician," he continued, "has told me that my condition has been brought on by overwork."[6]

The conversation then turned to the question of capital punishment. After Mrs. Parker had broached the subject, the judge spoke out, "I favor the abolition of capital punishment...provided...that there is a certainty of punishment, whatever that punishment may be. In the uncertainty of punishment following crime lies the weakness of our 'halting justice'."

Parker grew "wonderfully earnest" as he continued:

> The trouble is with the bench, and behind it a maudlin sentimentality that forgets and condones a crime upon which the blood stains have dried. The bench is indifferent and careless. The avarice, which is the curse of this age, has so poisoned the people that civil law for the protection of property concerns it more than the criminal law which protects life. "Which is of greater value, your house or your life?" asks the bench, and the people by its attitude in specific instances answers: "My house." Small wonder that the bench comes to take the same view and adjudges accordingly.
>
> The fault does not lie with juries. The persons who constitute them are usually honest men. We have had as fine juries at Fort Smith as could be found in the land. They have never failed me. Juries are willing to do their duty, but they must be led. They must know that the Judge wants the enforcement of the law.

"People have said to me," Judge Parker exclaimed, "You are the Judge who has hung [sic] so many men." Each time, Parker would answer, "It is not I who has hung [sic] them. I never hung [sic] a man. It is the law." 7

To curb the recent nation wide upsurge of crime, Parker would "remodel the appellate courts." The judge told Miss. Patterson that he had been misrepresented, when the press put him "in the attitude of opposing the courts of appeal."He would, however, remodel them. Parker:

> would like to see organized in the States and in the nation courts of criminal appeals, made up of Judges learned in criminal law and desirous of its speedy enforcement. To these courts...[he] would like to see sent full records of the trials and would have the case passed upon according to its merits as soon as possible. ...[He] would have brushed aside all technicalities that do not affect the guilt or innocence of the accused. ...[He] would that the law would provide against the reversal of cases unless innocence was manifest. The establishment of such courts would restore the public confidence in the law and its administrators. The party convicted should of course have the right of having his case reviewed upon writ of error, but the review should take place at once and it should be passed upon according to its merits.

"People have said that I am cruel," Parker observed, "but they do not understand how I am situated." Parker then tersely sketched for Miss. Patterson the situation which existed in the Indian Territory and told of the type of criminals with whom the Fort Smith court had to cope. These evil doers had been brought to Fort Smith, the judge remarked:

> where they could be tried by a disinterested jury, which the conditions made impossible in the Territory. They were brutes, or demons rather in human form. Their crimes were deliberately planned and fiendishly executed. Robbery was the chief incentive, and the victims were usually men with whom the murderers traveled on long, lonely rides across the plains.

"Cruel they have said, I am," Parker said:

> but they forget the utterly hardened character of the men I dealt with. They forget that in my court jurisdiction alone 65 Deputy Marshals were murdered in the discharge of their duty. The good ladies who carry flowers and jellies to criminals mean well. There is no doubt of that. But what mistaken goodness! Back of the sentimentality are the motives of sincere pity and charity, sadly misdirected. They see the convict alone, perhaps chained in his cell. They forget the crime he perpetrated and the family he made husbandless and fatherless by his assassin work. [8]

After discussing several of the men he had sentenced to the gallows for particularly revolting crimes, Judge Parker added, "Don't understand that what I say of these ruffians is directed against the Indians."

"Twenty-one years' experience" with the Indians, Parker told Miss. Patterson had taught him that "they are a religiously inclined, law-abiding authority-respecting people. The Indian race is not one of criminals. There have been sporadic cases of crime among them, it is true, but as a people they are good citizens."

Judge Parker smiled when the conversation turned to his differences with the Supreme Court. "The Justices are men from civil walks," he remarked:

> and it is not surprising that they are liable to err in criminal cases. Our chief point of difference was in the case of a man whom I denied bail, and whom the Supreme Court maintained should be granted bail. Upon my refusal the court declared its intention to issue a

writ of mandamus compelling me to give him his temporary liberty. It never did, however. My chief controversy was with the Department of Justice last winter. That was a stormy one.

My letters on that subject, he added, were published in The Republic.

"People have generalized in regard to my administration," the judge continued:

> They have called me a heartless man, and a bloodthirsty man, but no one has pointed to a specific case of undue severity. They are given to saying, "Judge Parker is too rigid," but they do not point to any one case and say, "He was too severe in this," or "He should have been more lenient in that."
>
> I have ever had the single aim of justice in view. No Judge who is influenced by any other consideration is fit for the bench. "Do equal and exact justice," is my motto, and I have often said to the Grand Jury, "Permit no innocent man to be punished, but let no guilty man escape." 9

After leaving Parker's house, Miss. Patterson visited the U. S. Jail. The jail she found was:

> a long, low structure of red brick, a portion of which, now is used as a hospital....An irregular wall, six feet high, encloses a half dozen acres....The inclosure has been narrowed and two of the old stone houses [the Commissary and the Quartermaster's Storehouses] stand, "spectral and still," just outside the wall. Two guards in gray uniforms were sitting on the veranda of the hospital when I climbed the romantic-looking old stile. The gates were closed for the night, and all who visit the jail at sunset or thereafter must make their entrance in that fashion. Tall cottonwood trees dotted the grounds....

"Where," Miss. Patterson asked a little nervousily, "where is the gallows?"

Nat Brown, one of the guards, pointed to an object to the right, a hundred yards from where the three were conversing. In the gathering shadows it looked to the correspondent not unlike the "shed" or "summer" kitchens which "country housewives believe add to the comfort and convenience of their respective menages. It was whitewashed and had "a sloping roof."

Brown asked Miss. Patterson if she cared to see the gallows, as he believed the door was unlocked.

"Not to-night, thank you," the reporter replied. "I can see it so much better in the morning," Miss. Patterson explained.

The guard's face was impassive as he doffed his hat and said, "Very well; good evening, miss."

Miss. Patterson looked back as she mounted the stile:

> The old jail had taken on the hue of the gray haze that had settled about the building, the trees and the low, broken wall. The figures of the guards on the veranda looked gray, too, and indistinct, and over at the right was that horrible shed-like frame, looming dread and white and menacing through the night shadows. [10]

The next morning, Miss. Patterson visited the gallows, which she found to be "a shade less repulsive in the all-revealing light." Before leaving the compound, the reporter talked with Jailer Berry and Deputy Marshal Lawson, the hangman.

Before returning to St. Louis, Miss. Patterson visited with several leading members of the Fort Smith bar.

"Judge Parker is a man of fine intellect and fine feelings," volunteered one of the attorneys, and "I have always contended that it is his sympathetic nature which has led to his condemnation of so many criminals." The others seated in the office looked inquiringly attentive. "It is a retrospective sympathy. His pity goes out to the families bereft by the hand of the assassin before him and he passes the sentence the man deserves. His is a mercy that is merciless."

After a number of stories concerning Judge Parker had been told, one of the lawyers remarked:

> "Judge Parkers' was a court in which there was a certainty of arrest and surety of punishment. It was what saved the Indian Territory from its threatened fate of becoming a barren waste. He was a man of unimpeachable integrity. No Judge was ever more revered by the bar." [11]

"Judge Parker is learned in the law," a prominent member of the Fort Smith bar told Miss. Patterson. "He is conscientious in the administration of it [the law]. He has a kind heart and a big soul. He is absolutely faithful to his home ties. All I could say of him for

days would be summed up in this: 'He is a good man.'"

Miss. Patterson concluded her story:

> "He is a good man." What a tribute that is from one man of the world to another! What music to the ears of the woman who loves that man!
>
> I am glad I have the honor of knowing this alleged cruel Judge. It is darkly indeed the press and people view him through the glass of distance. He is a Twentieth Century hero, worthy of fame of the most just of Romans. More than all, as the old lawyer said to me, while a moisture he was not ashamed of made the office belongings and the face of the visitor look misty and far away, more than all, "He is a good man." [12]

It was still the fervent hope of everyone connected with the court that Judge Parker would soon recover. During September and October the court's business was allowed to accumulate for his disposition. But on Monday, November 2, the date slated for the opening of the November term, Parker was still too sick to leave his home. Judge John E. Carland of the District of South Dakota was ordered to Fort Smith by Judge Walter Sanborn of the Eighth Judicial Circuit. Carland held court at Fort Smith during the remaining days of Parker's life. Because Court Crier Hammersly, in sounding the death knell of the famous jurisdiction, had also sounded the death knell of the judge.[13] On November 17 the end came at 2:45 a.m. -- two months and 17 days after his court had lost its authority in the Indian Territory.

The day of the judge's death:

> was hailed as a gala day by the prisoners in the...jail, awaiting trial. These were those whose cases had been listed on the docket before the arrival for the time for the finale of the court's jurisdiction over the Indian Territory, but it was well known that all such cases remaining on the docket would be taken up in their regular order the same as if the court's jurisdiction had not been reduced. Those who were awaiting trial had hoped, during the months Judge Parker was too ill to attend court, that he might continue confined to his bed until their cases were disposed of, hoping that with some other judge upon the bench they would stand better chances of light sentences or of possible acquittal. The announcement of Judge Parker's death was, therefore, the signal for a jubilee. Word was quickly passed from cell to cell. "The devil's shore

got de ole cuss dis time!" sang out a negro criminal. "Is he dead? Whoopee!" yelled another, and, almost in a twinkling, those prisoners nearest the ones first learning of Judge Parker's demise, took up the refrain, and for a brief period it looked as if pandemonium was about to break loose, but "Uncle Dick" Berry, the astute jailer, was on the ground and by a prompt action and energetic measures he quelled the disturbance, and the offenders were brought to understand that open contempt for Judge Parker, even when dead, would not be tolerated in the Federal jail. [14]

Throughout the Indian country, and in Judge Parker's big brick home on North 13th Street, where he had lived for the past 15 years, there was mourning. The funeral was at 2 p.m. the next day. It was the largest ever held in Fort Smith up to that time. Notable personages came from everywhere. Public and private business suspended. Flags flew at half-staff.

The casket stood in the big, old-fashioned front parlor of the Parker home, covered with flowers. Mrs. Parker and the judge's eldest son, Charles, sat at the head of the coffin. The room was filled with other members of the family and close friends, among them officers of the court and attorneys, Odd Fellows, members of the Dawes Commission, members of the GAR, and Knights of Honor. Father Smythe conducted the brief services, and the family and close friends filed out; then large groups outside passed through the room to look upon the figure in the casket.

Every vehicle in Fort Smith was pressed into service; on the sidewalks there was the steady tred of many feet. Among the walking mourners were hundreds of Indians, who had come to know and trust Judge Parker. When the funeral procession reached the National Cemetery, the coffin was removed from the hearse and carried to the grave. The carriage with Mrs. Parker and the immediate relatives drove up. While Father Smythe, assisted by Father Enright, performed the funeral services, the family remained seated in the carriage. The grave was filled and sprinkled with holy water. Pleasant Porter, Principal Chief of the Creeks, stepped forward and placed a wreath of wild flowers on the grave. [15]

LAW ENFORCEMENT AT FORT SMITH 1871 - 1896

Chapter I

The Court for the Western District Moves to Fort Smith

Notes

1 Laws of the United States, 23d Congress, Sess. II, Vol. IX, Chap. 161, pp. 128-129.

2 Ibid., Sec. 1.

3 Ibid., Sec. 20.

4 Ibid., Sec. 22.

5 Ibid., Sec. 24.

6 Ibid., Sec. 25-27.

7 U. S. Statutes at Large, V. 379.

8 Ibid.

9 U. S. Statutes at Large, 24th Congress, Sess. I, Vol. VI, Chap. 783, p. 594.

10 U. S. Statutes at Large, 28th Congress, Sess. I, Vol. V, Chap. 103, p. 680.

11 U. S. Statutes at Large, 32d Congress, Sess. II, Vol. IX, Chap. 24, p. 594.

12 U. S. Statutes at Large, 33d Congress, Sess, I, Vol. X, Chap. 24, p. 269.

13 Glen Shirley, Law West of Fort Smith, A History of Frontier Justice in the Indian Territory, 1834-1836 (New York, 1957), 14, 15-16.

14 Tri-Weekly Fort Smith Herald, March 3, 1871.

15 Ibid., March 21, 1871.

16 S. W. Harman, Hell on the Border; He Hanged Eighty-Eight Men,... (Fort Smith, 1898), 40.

17 Tri-Weekly Fort Smith Herald, March 28, 1871.

18 Ibid., April 18, 1871. Grant had named Roots to his new position on March 31.

19 Ibid., April 27, 1871.

20 Ibid., May 2, 1871.

21 Ibid., May 9, 1871. The Rogers' Building stood near the west corner of Second and A Streets.

22 Ibid., May 11, 1871.

23 Ibid., May 13, 1871.

24 Ibid., May 16, 1871.

25 Ibid., May 18, 1871. Two doors away form the Rogers' Building was a structure known as "The Hole in the Wall," from a saloon which before the Civil War had operated in the back room and was reached by a long, narrow hallway. Harman, Hell on the Border, 70.

26 Tri-Weekly Fort Smith Herald, May 18, 1871.

27 Ibid., May 20, 1871.

28 Ibid., May 23 and 25, 1871.

29 Ibid., May 25, 1871.

30 Ibid., June 3, 1871.

31 Ibid., June 6, 1871.

32 Ibid., June 10, 1871.

33 Ibid., June 20, 1871.

34 Ibid., June 15, 1871. Other criminal cases brought before the Court were: perjury, violation of the enfordement act, passing counterfeit money, violation of the revenue laws, commerical broker not paying tax, intimidating witness, extortian, and forfiture of recognizance.

35 Ibid., June 20, 1871.

36 Ibid., July 29, 1871.

37 Ibid., Aug. 15, 1871.

38 Ibid., Aug. 31, 1871.

Chapter II

Judge Story Resigns Under Fire

Notes

1 Western Independent, Feb. 8, 1872.

2 Ibid., April 18, 1872.

3 Ibid., Nov. 21, 1872.

4 Ibid.

5 Harman, Hell on the Border, 71-72.

6 Western Independent, Nov. 21, 1872 and May 22, 1873; Harman, Hell on the Border, 187-195; Records of Dispositions of Cases, 1872-1873, United States Court for the Western District of Arkansas; Shirley, Law West of Fort Smith, 1-8.

7 Harman, Hell on the Border, 196.

8 Western Independent, April 9, 1874; Harman, Hell on the Border, 197-199.

9 Western Independent, April 9, 1874.

10 Tri-Weekly Fort Smith Herald, May 16, 1874.

11 Ibid., June 13, 1874;.

12 Ibid.

13 Ibid.

14 Ibid., June 20, 1874.

15 U. S. Statutes at Large, 43d Congress, Chapter I, Section 533.

16 Ibid.,;43d Congress, Chapter II, Section 556, p. 93.

17 Harman, Hell on the Border, 43.

18 Western Independent, July 4, 1874.

19 Ibid;, July 16, 1874.

20 Ibid., July 9, 1874.

21 Ibid., July 18, 1874.

22 Ibid., Sept. 3, 1874.

23 Ibid.

24 Ibid., Sept. 10, 1874.

25 Ibid., Oct. 8, 1874.

26 Ibid., Oct. 15, 1874.

27 Ibid., Oct. 8, 1874.

28 Harman, Hell on the Border, 199.

29 Western Independent, Nov. 19, 1874.

30 Ibid., Dec. 3, 1874.

LAW ENFORCEMENT AT FORT SMITH 1871 - 1896

Chapter III

Judge Parker Hangs Six

Notes

1 Shirley, Law West of Fort Smith, 24, 25.

2 Harry L. Daily, "Judge Isaac Parker," Chronicles of Oklahoma, Vol. XI, No. 1, 673; Fay Hempstead, Pictorial History of Arkansas (St. Louis, 1890), 28.

3 Ibid.; Fred H. Harrington, The Hanging Judge (Caldwell, 1951), 48-49.

4 Daily, "Judge Isaac Parker," Chronicles of Oklahoma, Vol. XI, No. 1, pp. 673-674.

5 Hempstead, History of Arkansas, 461; William S. Speer, The Encyclopedia of the New West (Marshall, 1881), 28-29; Daily, "Judge Isaac Parker," Chronicles of Oklahoma, Vol. XI, No. 1, pp. 674-675.

6 Speer, Encyclopedia of the New West, 28-29; Shirley, Law West of Fort Smith, 27-28.

7 Cherokee Advocate, Dec. 21, 1872.

8 Ibid.

9 Daily, "Judge Isaac Parker," Chronicles of Oklahoma, Vol. XI, No. 1, 374-375; Harrington, Hanging Judge, 49-51.

10 Daily, "Judge Isaac Parker," Chronicles of Oklahoma, Vol. XI, No. 1, 375; Hempstead, History of Arkansas, 460.

11 Daily, "Judge Isaac Parker," Chronicles of Oklahoma, Vol. XI, No. 1, 375.

12 Harrington, Hanging Judge, 51-52.

13 Dallas T. Herndon, Centennial History of Arkansas, Vol. I, (Chicago, 1922), 898; R. H. Mohler, City of Fort Smith, 108.

14 Daily, "Judge Isaac Parker," Chronicles of Oklahoma, Vol. XI, No. 1, 375; Shirley, Law West of Fort Smith, 30.

15 Daily, "Judge Isaac Parker," Chronicles of Oklahoma, Vol. XI, No. 1, 375.

16 Western Independent, April 8, 1875.

17 Harman, Hell on the Border, 43-44.

18 Shirley, Law West of Fort Smith, 32.

19 Harman, Hell on the Border, 117-120.

20 Ibid., 135-140.

21 Ibid., 120-121.

22 Ibid., 71-72; Fort Smith Elevator, Jan. 15, 1886.

23 Harman, Hell on the Border, 201-204; Harrington, Hanging Judge, 40-41; Homer Croy, He Hanged Them High (New York, 1952), 33-38; Western Independent, Sept. 8, 1875; St. Louis Republican, Sept. 4, 1875.

24 Western Independent Dec. 10, 1874 and Sept. 8, 1875; St. Louis Republican, Sept. 4, 1875.

25 Harman, Hell on the Border, 207; Harrington, Hanging Judge, 41-42; Croy, He Hanged Them High, 37-42.

26 Western Independent, Sept. 8, 1875; St. Louis Republican, Sept. 4, 1875; Croy, He Hanged Them High, 42-44; Harman, Hell on the Border, 209-210.

27 Harrington, Hanging Judge, 39.

28 Western Independent, Sept. 8, 1875; St. Louis Republican, Sept. 4, 1875; Croy, He Hanged Them High, 45-46.

29 Harrington, Hanging Judge, 42-43.

30 Western Independent, Sept, 8, 1875; Harman, Hell on the Border, 211; Harrington, Hanging Judge, 43-44; Croy, He Hanged Them High, 46.

31 Western Independent, Sept. 8, 1875; St. Louis Republican, Sept. 4, 1875; Harman, Hell on the Border, 207-208; Croy, He Hanged them High; 44-45; Harrington, Hanging Judge, 44-45.

32 Western Independent, Sept. 1, 1875.

33 St. Louis Republican, Sept. 4, 1875.

34 Western Independent, Sept. 8, 1875; Harman, Hell on the Border, 211.

35 St. Louis Republican, Sept. 4, 1875.

36 Ibid.

37 Ibid.

38 Western Independent, Sept. 8, 1875.

39 Croy, He Hanged Them High, 50.

40 St. Louis Republican, Sept. 4, 1875; Western Independent, Sept. 8, 1875.

41 Western Independent, Sept. 8, 1875.

42 Croy, He Hanged Them High, 52.

43 Western Independent, Sept. 8, 1875.

44 Ibid.

45 Ibid.

46 Western Independent, Sept. 8, 1875.

47 Croy, He Hanged Them High, 52.

48 Western Independent, Sept. 8, 1875.

49 Ibid.; St. Louis Republican, Sept. 4, 1875; Croy, He Hanged Them High, 52-53.

50 Western Independent, Sept. 8, 1875.

Chapter IV

Judge Parker Sends Five to the Scaffold

Notes

1 Western Independent, Sept. 29, 1875.

2 Ibid.

3 Ibid., Dec. 23, 1875.

4 Harmon, Hell on the Border, 213, 215; Croy, He Hanged Them High, 55-56; Western Independent, April 26, 1876.

5 Western Independent, April 26, 1876; Harmon, Hell on the Border, 215-216; Croy, He Hanged Them High, 57-58.

6 Western Independent, April 26, 1876; Harmon, Hell on the Border, 216-217; Croy, He Hanged Them High, 58-59.

7 Western Independent, April 26, 1876; Croy, He Hanged Them High, 59-61.

8 Western Independent, April 26, 1876; Harmon, Hell on the Border, 218-219; Croy, He Hanged Them High, 61-63.

9 Western Independent, April 21, 1876.

10 Ibid.

11 Croy, He Hanged Them High, 64.

12 Ibid.; 63-65; Harmon, Hell on the Border, 211; Western Independent, April 26, 1876.

13 Western Independent, April 26, 1876.

LAW ENFORCEMENT AT FORT SMITH 1871 - 1896

Chapter V

Six More Men Stand on "The Gates of Hell"

Notes

1 Western Independent, Sept. 13, 1876.

2 Ibid.; Croy, He Hanged Them High, 67-68; Harman, Hell on the Border, 171-172, 220-221.

3 Western Independent, Sept. 13, 1876.

4 Ibid.; Croy, He Hanged Them High; Harman, Hell on the Border, 171-172. Marshal Fagan had been replaced as Marshal of the Court for the Western District by D. P. Upham on July 10, 1876.

5 Western Independent, Nov. 29, 1876.

6 Ibid.

7 Ibid., Dec. 6, 1876.

8 Ibid.

9 Ibid., Jan. 10, 1877.

10 Shirley, Law West of Fort Smith, 62.

11 Laws of the United States, XIX, 230.

12 Harman, Hell on the Border, 45.

13 Ibid., 45-46.

14 Western Independent, Feb. 28, 1877.

15 Ibid.

16 Ibid.

17 Harman, Hell on the Border, 176.

18 Western Independent, Oct. 17, 1877.

19 Ibid.

20 Ibid.

21 Harman, Hell on the Border, 176, 221; Western Independent, Jan. 16, 1878; Ronald A. Seeliger to Bearss, May 29, 1963. Mr. Seeliger is Newspaper Librarian at the University of Texas.

22 Harman, Hell on the Border, 176, 221-222; Western Independent, Feb. 27, 1878; Seeliger to Bearss, May 29, 1963.

23 Western Independent, Jan. 23, 1878.

24 Ibid., Feb. 27, 1878.

25 Ibid., July 31, 1878.

26 Ibid., Aug. 28, 1878.

27 Ibid., Oct. 9, 1878.

28 Ibid., Dec. 20, 1878.

29 Ibid., Nov. 13, 1878.

30 Fort Smith Elevator, Nov. 15, 1878; Croy, He Hanged Them High, 69-70; Harman, Hell on the Border, 221-222; Western Independent, Nov. 19, 1878.

31 Fort Smith Elevator, Nov. 15, 1878.

32 Western Independent, Dec. 11, 1878.

33 Ibid.

34 Ibid., Dec. 25, 1878.

35 Ibid., Feb. 12, 1879.

36 Harman, Hell on the Border, 130.

37 Western Independent, Feb. 12, 1879.

38 Ibid.

Chapter VI

The Battle Against the Forces of Evil Continues

Notes

1 Western Independent, March 9, 1879.
2 Fort Smith Elevator, Feb. 10, 1879.
3 Western Independent, March 25, 1879.
4 Fort Smith Elevator, April 11, 1879.
5 Ibid., April 18. 1879.
6 Western Independent, April 30, 1879.
7 Fort Smith Elevator, May 2, 1879.
8 Western Independent, May 7 and 14, 1879.
9 Ibid., May 21, 1879.
10 Ibid., June 4, 1879.
11 Fort Smith Elevator, June 13, 1879.
12 Western Independent, July 1, 1879.
13 Western Independent, July 30, 1879.
14 Ibid., Aug. 27, 1879.
15 Ibid., Sept. 3, 1879.
16 St. Louis Times-Journal, Aug. 26, 1879.
17 Western Independent, Sept. 10, 1879.
18 Ibid., Oct. 8, 1879.
19 Fort Smith Elevator, Aug. 8, 1879.
20 Ibid., June 20, 1879.
21 Ibid., Oct. 31, 1879.
22 Ibid., Nov. 21, 1879.
23 Ibid.
24 Western Independent, Nov. 12, 1879.
25 Fort Smith Elevator, Nov. 21, 1879.

26 Ibid., Nov. 28 and Dec. 5, 1879.

27 Western Independent, Dec. 10, 1879.

28 Ibid., Dec. 10 and 7, 1879.

29 Ibid., Dec. 10, 1879.

30 Fort Smith Elevator, Dec. 19, 1879.

31 Ibid., Dec. 19 and 26, 1879.

32 Ibid., Jan. 2, 1880.

33 Ibid.

34 Ibid.

35 Fort Smith Elevator, Jan. 9, 1880.

Chapter VII

A Year Passes Without Any Hangings

Notes

1 Harman, Hell on the Border, 225-226.
2 Fort Smith Elevator, Feb. 6, 1880.
3 Western Independent, Feb. 11, 1880.
4 Ibid., Feb. 25, 1880..
5 Fort Smith Elevator, Feb. 27, 1880.
6 Ibid., March 5, 1880.
7 Ibid.
8 Harman, Hell on the Border, 176, 224-225; Fort Smith Elevator, April 2, 1880.
9 Fort Smith Elevator, Feb. 13, 1880.
10 Ibid., Feb. 27, 1880.
11 Western Independent, May 12, 1880; Fort Smith Elevator, May 7, 1880.
12 Western Independent, May 19, 1880.
13 Fort Smith Elevator, June 11, 1880.
14 Ibid., June 18, 1880.
15 Western Independent, June 23, 1880.
16 Fort Smith Elevator, July 30, 1880.
17 Ibid., June 18, 1880.
18 Ibid., July 2, 1880.
19 Ibid., Aug. 6, 1880.
20 Ibid., Aug. 13, 1880.
21 Western Independent, Nov. 17, 1880; Fort Smith Elevator, Sept. 30, 1880.
22 Fort Smith Elevator, Sept. 17, 1880.
23 Ibid., Sept. 29, 1880.
24 Ibid.
25 Ibid., Oct. 1, 1880.
26 Ibid.
27 Ibid., Oct. 8, 1880.

28 Ibid., Oct. 15, 1880.

29 Harrington, Hanging Judge, 173-174

30 Fort Smith Elevator, Aug. 20, 1880.

31 Ibid.

32 Ibid., Sept. 3, 1880

33 Western Independent, Aug. 25, 1880; Fort Smith Elevator, Oct. 28, 1887.

34 Fort Smith Elevator, Aug. 27, 1880.

35 Ibid., Sept. 3, 1880.

36 Ibid., Oct. 22, 1880.

37 Ibid., Nov. 5, 1880.

38 Ibid., Nov. 19, 1880; Western Independent, Nov. 17, 1880.

39 Fort Smith Elevator, Nov. 26, 1880.

40 Ibid., Dec. 3, 1880.

41 Ibid., Dec. 17, 1880.

42 Ibid.

43 Ibid., Dec. 24, 1880.

44 Ibid., Dec. 31, 1880.

45 Ibid., Jan. 7, 1881.

46 Ibid., Jan. 28, 1881.

Chapter VIII

1881 Brings More Hangings

Notes

1 Fort Smith Elevator, Feb. 11, 1881; Western Independent, Feb. 23, 1881.

2 Fort Smith Elevator, Feb. 11, 1881.

3 Western Independent, Feb. 23, 1881.

4 Ibid., March 2, 1881; Fort Smith Elevator, March 4, 1881.

5 Western Independent, March 9, 1881; Fort Smith Elevator, March 11, 1881.

6 Fort Smith Elevator, March 11, 1881.

7 Ibid., March 18, 1881.

8 Western Independent, March 16, 1881.

9 Fort Smith Elevator, Feb. 11, 1881.

10 Ibid.

11 Ibid., March 25, 1881.

12 Ibid., April 1, 1881.

13 Ibid., April 15, 1881.

14 Ibid.

15 Ibid., April 22, 1881.

16 Western Independent, May 4, 1881; Harrington, Hanging Judge, 175-176.

17 Western Independent, June 8, 1881; Fort Smith Elevator, May 13 and June 10, 1881.

18 Fort Smith Elevator, May 13, 1881.

19 Ibid., May 20, 1881.

20 Western Independent, June 22, 1881.

21 Fort Smith Elevator, July 1, 1881; Harman, Hell on the Border, 230-231.

22 Fort Smith Elevator, July 8, 1881.

23 Ibid., July 22, 1881; Brizzolara had been elected mayor of Fort Smith in 1878.

24 Ibid.

25 Ibid., July 29, 1881.

26 Ibid.

27 Ibid., Aug. 5, 1881.

28 Harman, Hell on the Border, 231-233; Croy, He Hanged Them High, 73-79; Western Independent, Oct. 19, 1881; Fort Smith Elevator, Aug. 12 and 26, 1881.

29 Fort Smith Elevator, Aug. 26, 1881.

30 Ibid., Sept. 9, 1881.

31 Ibid.; Western Independent, Sept. 7, 1881; President Garfield had been shot on July 2 by Guiteau.

32 Fort Smith Elevator, Sept. 16, 1881; Western Independent, Sept. 14, 1881.

33 Fort Smith Elevator, Sept. 23, 1881.

34 Croy, He Hanged Them High, 78-79; Western Independent, Oct. 19, 1881; Fort Smith Elevator, Oct. 14, 1881.

35 Harman, Hell on the Border, 230; Western Independent, Sept. 7, 1881.

36 Fort Smith Elevator, Oct. 21, 1881.

37 Ibid., Nov. 4, 1881.

38 Ibid.

39 Ibid., Jan. 6, 1882.

40 Ibid., Dec. 2, 1881.

41 Ibid., Jan. 13, 1882.

42 Shirley, Law West of Fort Smith, 58-59.

43 Fort Smith Elevator, Feb. 3, 1882.

Chapter IX

1882 Sees Only One Hanging at Fort Smith

Notes

1 Western Independent, Feb. 8, 1882; Fort Smith Elevator, Feb. 10, 1882.
2 Fort Smith Elevator, March 24, 1882.
3 Ibid., March 10, 1882.
4 Harman, Hell on the Border, 172, 233-234; Fort Smith Elevator, Nov. 18, 1881, and March 17, 1882.
5 Fort Smith Elevator, Feb. 13, 1882.
6 Ibid., March 24, 1882.
7 Ibid.
8 Ibid., March 31, 1882.
9 Ibid., June 16, 1882.
10 Western Independent, July 5, 1882; Fort Smith Elevator, July 7, 1882.
11 Fort Smith Elevator, July 14 and 28, 1882.
12 Ibid., Aug. 11, 1882.
13 Ibid., Aug. 11 and 18, 1882.
14 Ibid., Sept. 1, 1882.
15 Ibid., Sept. 8, 1882.
16 Ibid., Sept. 22, 1882.
17 Ibid., Sept. 8, 1882.
18 Ibid., Sept. 22, 1882.
19 Ibid., Sept. 2[illegible], 1882.
20 Ibid., Sept. 22, 1882.
21 Ibid., Nov. 24, 1882.
22 Harman, Hell on the Border, 177, 237; Fort Smith Elevator, Nov. 24, 1882.
23 Western Independent, Dec. 13, 1882; Fort Smith Elevator, Dec. 15, 1882.

24 Fort Smith Elevator, Dec. 22, 1882.

25 Ibid., Dec. 27 and 29, 1882.

26 Ibid., Jan. 26, 1883.

27 Ibid., Feb. 2, 1883.

28 Ibid., Dec. 15, 1882.

Chapter X

Congress Reduces the Jurisdiction of Parker's Court

Notes

1 Fort Smith Elevator, Feb. 2, 1883.

2 Ibid., Feb. 9, 1883.

3 Harrington, Hanging Judge, 93-97; Fort Smith Elevator, Feb. 23 and March 16, 1883.

4 Western Independent, Feb. 28, 1883; Fort Smith Elevator, March 2, 1883.
Finch had been born a slave in Georgia. It was said that he had been previously tried but acquitted for murder in Maryland. At one time, Finch had served as a private in the 25th Infantry; he had been discharged for mutinous conduct.

5 Fort Smith Elevator, March 16, 1883.

6 Ibid., March 23, 1883.

7 Harman, Hell on the Border, 239-240; Fort Smith Elevator, March 30, 1883.

8 Fort Smith Elevator, April 6, 1883.

9 Harman, Hell on the Border, 240-244; Croy, He Hanged Them High, 80-82; Fort Smith Elevator, April 13, 1883.

10 Fort Smith Elevator, May 4, 1883.

11 Ibid., April 20, 1883; Western Independent, April 18, 1883.

12 Fort Smith Elevator, April 21, 1883.

13 Western Independent, May 9, 1883.

14 Fort Smith Elevator, March 23, 1883.

15 Ibid., March 30, 1883.

16 Ibid., April 20, 1883.

17 Ibid., May 18, 1883.

18 Ibid., June 1, 1883.

19 Ibid., July 13, 1883.

20 Ibid., July 6, 1883.

21 Ibid.

22 Harman, Hell on the Border, 248; Harrington, Hanging Judge, 23; Fort Smith Elevator, July 20, 1883.

23 Fort Smith Elevator, July 20 and 27, 1883.

24 Ibid., August 17, 1883.

25 Harman, Hell on the Border, 248-249; Harrington, Hanging Judge, 104-106; Fort Smith Elevator, Aug. 24, 1883.

26 Fort Smith Elevator, Aug. 24 and Sept. 28, 1883.

27 Ibid., Aug. 31, 1883.

28 Ibid., Oct. 5, 1883.

29 Ibid., Oct. 19, 1883.

30 Ibid., Oct. 26, 1883; Harrington, Hanging Judge, 172.

31 Fort Smith Elevator, Nov. 9, 1883.

32 Ibid., Nov. 30, 1883.

33 Ibid., Dec. 21, 1883; Harman, Hell on the Border, 248-249.

34 Fort Smith Elevator, Dec. 21, 1883.

35 Ibid., Dec. 21 and 28, 1883; Harman, Hell on the Border, 249-250.

36 U. S. Statutes at Large, 47th Congress, 2d Sess., Vol. 22, Chap. 13, pp. 383-390

37 Fort Smith Elevator, Nov. 9, 1883.

38 Ibid., Dec. 14, 1883.

39 Ibid., Jan. 25, 1884.

Chapter XI

Pressure Mounts for the Construction of a New Jail

Notes

1 Fort Smith Elevator, Feb. 1, 1884.
2 Harman, Hell on the Border, 244-246; Fort Smith Elevator, Oct. 19, 1883 and Feb. 29, 1884.
3 Harman, Hell on the Border, 246; Fort Smith Elevator, Feb. 29, 1884.
4 Croy, He Hanged Them High, 83; Harman, Hell on the Border, 247; Fort Smith Elevator, March 14, 1884.
5 Fort Smith Elevator, March 7, 1884.
6 Ibid., May 2, 1884.
7 Ibid., Dec. 14, 1883.
8 Ibid., March 14, 1884.
9 Ibid., May 9, 1884.
10 Ibid., June 6, 1884.
11 Ibid.
12 Ibid., Feb. 6 and 12, and June 13, 1884.
13 Ibid., June 20, 1884.
14 Ibid., July 4, 1884.
15 Ibid., July 11, 1884.
16 Ibid., July 11 and 18, 1884.
17 Ibid., July 11, 1884.
18 Ibid., Aug. 1, 1884.
19 Ibid., Aug. 22, 1884.
20 Ibid., Aug. 29, 1884.
21 Ibid., Sept. 5, 1884.
22 Harman, Hell on the Border, 250; Fort Smith Elevator, Sept. 12, 1884.

23 Fort Smith Elevator, Sept. 12, 1884.

24 Ibid., Sept. 5 and 12, 1884.

25 Ibid., Sept. 5, 1884.

26 Ibid., Oct. 3, 1884.

27 Ibid.

28 Boles to Brewster, Oct. 8, 1884 (National Archives, Dept. of Justice, (file 1884 - 648).

29 Fort Smith Elevator, Nov. 6, 1884.

30 Harman, Hell on the Border, 250-253; Fort Smith Elevator, Aug. 22 and Nov. 21. 1884.

31 Fort Smith Elevator, Aug. 15 and Dec. 10, 1884; Harman, Hell on the Border, 257.

32 Fort Smith Elevator, March 28 and Dec. 26, 1884; Harman, Hell on the Border, 253-254.

33 Harman, Hell on the Border, 251-252; Fort Smith Elevator, April 18 and Aug. 8, 1884.

34 Harman, Hell on the Border, 250-251; Fort Smith Elevator, Sept. 12, 1884 and Jan. 23, 1885.

35 Fort Smith Elevator, Nov. 14, 1884.

36 Ibid., Jan. 2, 1885.

37 Ibid., Jan. 9, 1885.

38 U. S. Statutes at Large, 48th Congress, Sess. I, Vol. 23, Chap. 177, pp. 69-72, and Chap. 179, pp. 73-76.

25 Ibid., April 23, 1886; Harman, Hell on the Border, 258.

26 Fort Smith Elevator, Oct. 30, 1885.

27 Ibid., Nov. 6, 1885.

28 Ibid., Aug. 28 and Sept. 4, 1885.

29 Harman, Hell on the Border, 285.

30 Fort Smith Elevator, Sept. 4, 1885.

31 Harman, Hell on the Border, 258-259; Fort Smith Elevator, Dec. 11, 1885.

32 Fort Smith Elevator, Dec. 11, 1885.

33 Ibid., Jan. 1, 1886.

34 Ibid., Jan. 15, 1886. The third time proved a charm for Letterman. When he was retried at the end of March, Letterman was acquitted. Ibid., March 26, 1886.

35 Ibid., Jan 22, 1886.

36 Harman, Hell on the Border, 259-260; Harrington, Hanging Judge, 99; Fort Smith Elevator, April 2, 1886.

37 Fort Smith Elevator, Dec. 11, 1886.

38 Miss Dawes'article appeared in "Lend a Hand," a Boston publication. The Society of Friends had sponsored Miss Dawes' study of conditions in the Fort Smith jail.

39 Southwest-Times Record, Jan. 8, 1934. Five years before, Dr. Bennett, who was serving as Physician for U. S. Jail," had received a request from Marshal Dell to report on conditions at the U. S. Jail. This request had been made in compliance with a recommendation made by the Fort Smith Grand Jury. Dr. Bennett on September 8, 1880 reported:

The building occupied as a U. S. Court room, and the lower portion of which the government prisoners are confined was built and used as a soldiers' quarters now nearly forty years ago.

The structure is a one and half story brick with stone basement extending two and a third feet below the surface of the ground. The floor is of rock several inches in thickness, the basement being divided into two cells by a thick rock wall running east and west. There are four open grated windows two and two thirds feet by four and one third feet in the front and rear walls of each cell.

Each cell is fifty-five feet long, twenty nine feet wide and seven and one third feet high, inside measurements, and contains consequently eleven thousand six hundred and ninety-seven cubic feet of space. There is also a paved and covered walk partially closed ten and a half feet wide and seven and a third feet high extending along the front and rear of the cells.

During the autumn, winter and spring months the stones of which the floors of the cell are comprised sweat and become damp so much so as often to completely saturate the blankets on which the prisoners sleep at night. Nor does a straw matting between the rock floor and the prisoner's body afford complete immunity from the dampness. The hair in the mattress absorbs moisture and very soon begins to mould and decay. And in addition becomes thereby a factor in the production of disease. The only remedy in my judgment would be to elevate the /word couldn't be read/ a foot or more above the rock floors. This might be done by light slotted portable wooden or iron bedsteads. Taking the average number of prisoners at 48 or twenty four to each cell it would require an hourly supply of thirty six thousand cubic feet of fresh pure air to maintain a healthy condition of the inmates of each cell. And the eleven and a half square feet of space afforded by each window gives an ample supply of fresh air for good ventilation. The other sanitary conditions of the jail are good including the water closets which are admirably arranged for the escape through flues of all gases arising from excrementitious deposits. Bennett to Dell, Sept. 8, 1880 (National Archives, Dept. of Justice, file 1884-648).

40 Fort Smith Elevator, March 5, 1886; United States Statutes at Large, 49th Congress, Sess. I, Chaps. 20, 21, 22, pp. 4-5.

Chap. 20--An act to provide for a building for the use of the Federal courts, post-office, and internal-revenue and other civil offices, and a United States jail, in the city of Fort Smith, Arkansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Secretary of the Treasury be, and he is hereby, authorized and directed to cause to be constructed at Fort Smith, in the State of Arkansas, on block five hundred and fourteen, as the same is described on the map of the reserve addition to the city of Fort Smith, Arkansas, as surveyed by George H. Lyman, and approved by the Interior Department November eighth, anno Domini eighteen hundred and eighty-four, and which block was heretofore reserved, selected, and set apart for that purpose,

a suitable building, with fire-proof vaults extending to each story, for the accommodation of the United States courts, post-office, and internal-revenue and other Government offices; and for this purpose there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of one hundred thousand dollars, to be expended under the direction of the Secretary of the Treasury, who shall cause proper plans and estimates to be made so that no expenditure shall be made or authorized for the full completion of said building beyond the amount herein appropriated: Provided, That the building shall be so situated as to leave an open space around the same of not less than forty feet in width.

Sec. 2. That the Secretary of the Treasury be, and he is hereby, authorized and directed to remodel and construct out of and from the building now owned and used by the United States as a United States court-house and jail, located within the walls of the abandoned military reservation at Fort Smith, Arkansas, a suitable jail for the care and confinement of United States prisoners; and for this purpose there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of fifty thousand dollars, to be expended under the direction of the Secretary of the Treasury, who shall cause plans and estimates to be made so that no expenditure shall be made or authorized for the completion of said building beyond the amount herein appropriated.

Approved, March 16, 1886.

41 United States Statutes at Large, 48th Congress, Vol. 23, Chap. 341, p. 482.

Chapter XIII

Marshal Carroll Moves the Prisoners into the New Jail

Notes

1 Harman, Hell on the Border, 284-285.

2 Fort Smith Elevator, March 26, 1886.

3 Ibid., April 9, 1886; Harman, Hell on the Border, 242.

4 Harman, Hell on the Border, 262-263; Fort Smith Elevator, April 9, 1886.

5 Fort Smith Elevator, April 9 and July 23, 1886.

6 Fort Smith Elevator, April 9, 1886.

7 Ibid., April 23, 1886.

8 Ibid.

9 Ibid., April 30, 1886.

10 Ibid. Rogers represented the Fort Smith area in the 49th Congress.

11 Ibid. Shortly after taking office, Marshal Carroll named Pryor to replace Burns as jailer.

12 Ibid.

13 Ibid., June 18, 1886.

14 Ibid., July 16, 1886.

15 Ibid., July 23, 1886.

16 Ibid.

17 Harman, Hell on the Border, 173.

18 Fort Smith Elevator, Aug. 27, 1886.

19 Harman, Hell on the Border, 267-268; Fort Smith Elevator, Aug. 27, 1886.

20 Harman, Hell on the Border, 268-269; Fort Smith Elevator, Sept. 10, 1886.

21 Harman, Hell on the Border, 264-267; Harrington, Hanging Judge, 111-115; Fort Smith Elevator, Sept. 24, 1886.

22 Harman, Hell on the Border, 268-272; Fort Smith Elevator, Oct. 1, 1886.

23 Fort Smith Elevator, Nov. 5, 1886.

24 Harman, Hell on the Border, 254-255; Fort Smith Elevator, Nov. 26, 1886.

25 Fort Smith Elevator, Oct. 15, 1886.

26 Ibid., Dec. 3, 1886. Marshal Carroll had awarded Mr. Johnston the contract for feeding the prisoners.

27 Ibid., Dec. 31, 1886.

28 Ibid.

29 Ibid., Jan. 7, 1887. Parrott's brother, who still lived in Kentucky, had succeeded in getting ex-Governor McCleary to approach President Cleveland in John's behalf.

30 Ibid., Jan. 14, 1887; Harman, Hell on the Border, 173.

31 Fort Smith Elevator, April 8, 1887.

32 Ibid., April 15, 1887.

33 Ibid.

34 Ibid., May 27, 1887.

35 Ibid., June 10, 1887.

36 Ibid., July 29, 1887. At the end of June, _____Carroll had replaced Neal Pryor as jailer.

37 Harman, Hell on the Border, 273-274; Croy, He Hanged Them High, 140-141; Fort Smith Elevator, Dec. 24, 1886, and July 15 and Aug. 5, 1887.

38 Harman, Hell on the Border, 272-273; Fort Smith Elevator, Jan. 28 and July 15, 1887.

39 Harman, Hell on the Border, 173; Fort Smith Elevator, Aug. 5, 1887.

40 Ibid., 285-286; Fort Smith Elevator, Aug. 5, 1887.

41 Fort Smith Elevator, Aug. 15, 1884,

42 Harman, Hell on the Border, 274-275; Fort Smith Elevator, Jan. 7 and Oct. 28, 1887. Although the grand jury had failed to indict Crow, many of the Fort Smithites felt that he was guilty of another murder. In August 1881 Uriah Henderson had mysteriously vanished. When last seen, he and Crow were traveling together through the Choctaw Nation,

about 40 miles from Fort Smith. Word reached Fort Smith at the end of the year that Henderson had been murdered and his body concealed in a ravine near the bank of the Poteau. Fort Smith Elevator, Jan. 4, 1884.

43 Harman, Hell on the Border, 286-287; Fort Smith Elevator, Sept. 16, 1887.

44 Harman, Hell on the Border, 275-276; Fort Smith Elevator, Sept. 16, 1887.

45 Harman, Hell on the Border, 287; Fort Smith Elevator, Sept. 23, 1887.

46 Harman, Hell on the Border, 287-288; Harrington, Hanging Judge, 72-73; Fort Smith Elevator, Oct. 28, 1887.

47 Fort Smith Elevator, Aug. 19, 1887.

48 Ibid., Sept. 9 and 16, 1887.

49 Ibid., Sept. 16, 1887.

50 Ibid., Sept. 30, 1887.

51 Ibid., Dec. 9, 1887.

52 Ibid., Nov. 18, 1887; Harman, Hell on the Border, 276-277.

53 Fort Smith Elevator, Dec. 30, 1887.

54 Ibid., Feb. 3, 1888.

55 Ibid., March 23, 1888.

56 Ibid., March 30, 1888.

57 United States Statutes at Large, 49th Congress, 1st. Sess. Vol. 24, chap. 422, p. 83.

58 Ibid., 49th Congress, 2d Sess. Vol. 24, chap., 320, p. 554.

Chapter XIV

Congress Moves to Curb the Court for the Western District

Notes

1 Fort Smith Elevator, Feb. 10, 1888.

2 Ibid., March 30, 1888.

3 Ibid., April 13, 1888.

4 Ibid., April 27, 1888.

5 Ibid., May 4, 1888.

6 Ibid.

7 Ibid., June 1, 1888.

8 Ibid., May 18, and July 6 and 13, 1888; Harman, Hell on the Border, 223-224; Shirley, Law West of Fort Smith, 223-224.

9 Fort Smith Elevator, July 6, 1888.

10 Ibid., Sept. 21, 1888.

11 Harman, Hell on the Border, 279-280; Fort Smith Elevator, April 6 and Aug. 24, 1888.

12 Harman, Hell on the Border, 288; Fort Smith Elevator, Sept. 21, 1888.

13 Fort Smith Elevator, May 6 and June 24, 1887; Harman, Hell on the Border, 289-290.

14 Fort Smith Elevator, June 28 and Oct. 19, 1888; Harman, Hell on the Border, 290-291.

15 Fort Smith Elevator, Nov. 9, 1888; Harman, Hell on the Border, 291-292.

16 Fort Smith Elevator, Nov. 9, 1888.

17 Ibid., Oct. 19, 1888.

18 Harman, Hell on the Border, 280-281; Fort Smith Elevator, Nov. 16, 1888.

19 Fort Smith Elevator, Nov. 23, 1888; Harman, Hell on the Border, 292-294.

20 Harman, Hell on the Border, 281-282; Fort Smith Elevator, Jan. 11, 1889.

21 Fort Smith Elevator, Jan. 11, 1889.

22 Harman, Hell on the Border, 174.

23 Fort Smith Elevator, Feb. 8, 1889.

24 Ibid., Feb. 15, 1889.

25 Harman, Hell on the Border, 299-300; Fort Smith Elevator, March 8, 1889.

26 Harman, Hell on the Border, 300-302; Harrington, Hanging Judge, 106-107; Fort Smith Elevator, Dec. 23, 1887, and March 29, 1889.

27 Fort Smith Elevator, April 12, 1889; Harman, Hell on the Border, 302-304.

28 Harman, Hell on the Border, 282-283; Harrington, Hanging Judge, 74-75; Shirley, Law West of Fort Smith, 225-226; Fort Smith Elevator, April 19, 1889. At the time of his execution on August 30, 1889, a Fort Smith newspaper described Spaniard as "a man of desperate and reckless character, who held human life at a very low estimate."

29 Fort Smith Elevator, April 12, 1889.

30 Ibid., April 19, 1889.

31 Ibid., April 26, 1889.

32 Ibid., May 3, 1889.

33 Ibid.

34 Ibid., May 17, 1889.

35 Ibid., May 31, 1889.

36 Ibid.

37 Ibid.

38 Ibid., July 12, 1889.

39 Ibid., July 19, 1889.

40 Ibid., July 26, 1889.

41 Ibid., Sept. 6, 1889.

42 Ibid., Aug. 30, 1889.

43 Harman, Hell on the Border, 311-312; Fort Smith Elevator, Aug. 30, 1889.

44 Harman, Hell on the Border, 313; Fort Smith Elevator, May 24, 1889.

45 Fort Smith Elevator, Sept. 27, 1889; Harman, Hell on the Border, 310-311.

46 Fort Smith Elevator, Oct. 18, 1889.

47 Harman, Hell on the Border, 312-313; Fort Smith Elevator, Oct. 11, 1889.

48 Harman, Hell on the Border, 313-314; Fort Smith Elevator, Oct. 11, 1889.

49 Fort Smith Elevator, Nov. 1 and 8, 1889.

50 Harman, Hell on the Border, 313.

51 Fort Smith Elevator, Jan. 17, 1890.

52 Ibid.

53 Fort Smith Elevator, Nov. 29, 1889, and Jan. 31, 1890.

54 United States Statutes at Large, 50th Congress, Sess. I, Vol. 25, chap. 10, p. 578.

55 Ibid., 50th Congress, Sess. I, Vol. 25, chap. 373, p. 583.

56 Ibid..

57 Ibid., 50th Congress, Sess. II, Vol. 5, chap. 113, pp. 655-666.

58 Ibid., 50th Congress, Sess. II, Vol. 25, chap. 333, section 1. The portion of the Choctaw Nation bounded as follows was detached from the Court for the Western District: From the southeast corner of the Indian Territory north to where Big Creek crosses the boundary between the Indian Territory and Arkansas, west along Big Creek and Black Fork to the confluence of Black Fork and Buffalo Creek, along the course of Buffalo Creek to the point where the old Military road from Fort Smith to Boggy Depot crosses the creek, then southwest along the road to Perryville Creek, northwest up Perryville Creek to the Missouri, Kansas & Texas Railroad, up the center of the mainline to the South Canadian, westward up the center of the main channel of the Canadian to the west boundary line of the Chickasaw Nation.

Chapter XV

The Supreme Court Gives Parker's Court a Difficult Time

Notes

1 Yoes to Attorney General, Oct. 22, 1889 (National Archives, Dept. of Justice File 1915-89).

2 Foster to Attorney General, Dec. 16, 1889 (National Archives, Dept. of Justice File 4 779-1889).

3 Fort Smith Elevator, Jan. 31, 1890.

4 Ibid.

5 Harman, Hell on the Border, 320-321; Fort Smith Elevator, March 1, 1890.

6 Fort Smith Elevator, May 2, 1890.

7 Ibid., July 11, 1890.

8 Ibid., Feb. 28, 1890.

9 Harman, Hell on the Border, 321-323; Fort Smith Elevator, June 6, 1890.

10 Harman, Hell on the Border, 317-319; Croy, He Hanged Them High, 152-154; Fort Smith Elevator, June 27, 1890.

11 Fort Smith Elevator, Aug. 8, 1890.

12 Croy, He Hanged Them High, 152; Harrington, Hanging Judge, 180; Harman, Hell on the Border, 317.

13 Harman, Hell on the Border, 319; Fort Smith Elevator, Feb. 26, March 4, and May 27, 1892; Daily, "Judge Isaac C. Parker," Chronicles of Oklohoma, XI, No. 1, 684; Harrington, Hanging Judge, 188.

14 Fort Smith Elevator, May 2, 1891.

15 Ibid., July 3, 1891.

16 Ibid.

17 Harman, Hell on the Border, 323-325.

18 Fort Smith Elevator, Oct. 3, 1890.

19 Ibid., Oct. 10, 1890.

20 Harman, Hell on the Border, 325-327; Fort Smith Elevator, Oct. 30, 1891.

21 Fort Smith Elevator, Aug. 21 and Dec. 18, 1891, and April 29, 1892; Harman, Hell on the Border, 328-329; Croy, He Hanged Them High, 101-102; Shirley, Law West of Fort Smith, 48.

22 Fort Smith Elevator, Feb. 5, 1892.

23 Ibid., April 29, 1892.

24 Ibid., Jan. 29, 1892, and June 8, 1894.

25 United States Statutes at Large, 51st Congress, Sess. I, Vol. 26, chap. 182, p. 720.

26 Daily, "Judge Isaac C. Parker," Chronicles of Oklahoma, XI, No. 1, 683.

27 Harman, Hell on the Border, 329-331; Harrington, Hanging Judge, 23, 155, 161, 163; Fort Smith Elevator, Nov. 30, 1891, and March 18, 1892.

28 Harman, Hell on the Border, 332-334; Fort Smith Elevator, Dec. 18, 1891, and Feb. 5 and March 25, 1892. Judge Shirley lived on Barren Fork, ten miles west of Going Snake Courthouse.

29 Harman, Hell on the Border, 344-351; Shirley, Law West of Fort Smith, 228-229; Fort Smith Elevator, April 1, 1892.

30 Fort Smith Elevator, May 6, 1892.

31 Ibid., July 1, 1892.

32 Daily, "Judge Isaac C. Parker," Chronicles of Oklahoma, XI, No. 1, 687-688.

33 Harrington, Hanging Judge, 184.

34 Harman, Hell on the Border, 334; Fort Smith Elevator, Dec. 18, 1891.

35 Fort Smith Elevator, Sept. 28, 1894.

36 Ibid., April 22, 1892.

37 Ibid., July 15, 1892; Harrington, Hanging Judge, 171.

38 Harman, Hell on the Border, 341-342; Fort Smith Elevator, Nov. 9 and 16, 1894.

39 Harman, Hell on the Border, 342; Fort Smith Elevator, Aug. 19, 1892.

40 Ibid.

41 Harman, Hell on the Border, 351-354; Fort Smith Elevator, Oct. 19, 1894.

42 Shirley, Law West of Fort Smith, 229-230; Harman, Hell on the Border, 335-339; Fort Smith Elevator, Sept. 2, 1892.

43 Fort Smith Elevator, Sept. 23, 1892.

44 Ibid., Nov. 3, 1893.

45 Ibid., Oct. 19, 1894; Harman, Hell on the Border, 353-354.

46 Fort Smith Elevator, Nov. 3, 1893, and June 15, 1894; Harman, Hell on the Border, 342.

47 Fort Smith Elevator, Nov. 9 and 16, 1894.

48 Ibid., June 29, 1894.

49 Harman, Hell on the Border, 338-339; Fort Smith Elevator, July 27, 1894; Shirley, Law West of Fort Smith, 229-230.

50 Harman, Hell on the Border, 339.

51 Fort Smith Elevator, Jan. 12 and Sept. 14, 1894; Harman, Hell on the Border, 339.

52 Fort Smith Elevator, Dec. 1, 1893; Harman, Hell on the Border, 339-340.

53 Harman, Hell on the Border, 357-358; Harrington, Hanging Judge, 121; Fort Smith Elevator, Jan. 12 and Aug. 3, 1894.

54 Harman, Hell on the Border, 340-341; Fort Smith Elevator, Dec. 21, 1894.

55 Fort Smith Elevator, Dec. 8, 1893 and May 25, 1894; Harman, Hell on the Border, 354-357.

56 Fort Smith Elevator, Dec. 15, 1893.

57 Ibid., Jan. 12, 1894.

58 Harman, Hell on the Border, 341.

59 Ibid., 339.

60 Fort Smith Elevator, Dec. 21, 1894.

61 Harman, Hell on the Border, 340.

62 Ibid., 356; Fort Smith Elevator, May 25, 1894.

63 Harman, Hell on the Border, 358; Harrington, Hanging Judge, 121; Fort Smith Elevator, Jan. 12 and Aug. 3, 1894.

64 Shirley, "He Outrobbed Them All," True West, December, 1955; Indian Chieftan, Dec. 22, 1892; Harman, Hell on the Border, 367.

65 Ibid.; Zoe A. Tilgham, Outlaw Days, 124.

66 Shawnee Herald, March 1, 1908; Harman, Hell on the Border, 370.

67 Shirley, Law West of Fort Smith, 176.

68 Harman, Hell on the Border, 370-371; Starr v United States, 153, U. S. 614, 14 Sup. Ct. 919.

69 Shirley, Law West of Fort Smith, 177; Harman, Hell on the Border, 364-365.

70 Fort Smith Elevator, Jan. 27, 1893; Shirley, Law West of Fort Smith, 177.

71 Fort Smith Elevator, July 7, 1893; Harman, Hell on the Border, 365-366; Shirley, Law West of Fort Smith, 178-179.

72 Starr V United States, 153, U. S. 614, 14 Sup. Ct. 919.

73 Ibid.; Shirley, Law West of Fort Smith, 180-181.

74 Fort Smith Elevator, Nov. 10, 1893.

75 Starr V United States, 153, U. S. 614, 14 Sup. Ct. 919.

76 Indian Chieftan, Sept. 19, 1895; Shirley, Law West of Fort Smith, 181-182.

77 Shirley, Law West of Fort Smith, 182.

78 Starr V United States, 164 U. S. 627, 17 Sup. Ct. 223.

79 Ibid.; Harman, Hell on the Border, 367.

Chapter XVI

Justice is Meted Out to the Cook Gang

Notes

1 Franklin to Bearss, Sept. 11, 1963. W. N. Franklin is the Chief Diplomatic, Legal and Fiscal Branch, National Archives and Record Service.

2 Strong to Attorney General, Nov. 4, 1893 (National Archives, Dept. of Justice File, 5484-93).

3 Fort Smith Elevator, Dec. 15, 1893.

4 Ibid., Dec. 29, 1893.

5 Ibid., March 9, 1894; Harman, Hell on the Border, 340.

6 Fort Smith Elevator, Nov. 23, 1894; Harman, Hell on the Border, 342.

7 Fort Smith Elevator, Dec. 8, 1893, and Dec. 7, 1894; Harman, Hell on the Border, 343.

8 Fort Smith Elevator, April 20, 1894.

9 Ibid., Aug. 10, 1894.

10 Ibid., Oct. 12, 1894.

11 Ibid.

12 Ibid., Nov. 9, 1894.

13 Ibid., Nov. 16, 1894.

14 Ibid., Dec. 14, 1894.

15 Ibid., Jan. 4, 1895.

16 Ibid., Jan. 11, 1895.

17 Harman, Hell on the Border, 642-647; Shirley, Law West of Fort Smith, 111-113.

18 Harman, Hell on the Border, 385-389; Shirley, Law West of Fort Smith, 122; Croy, He Hanged Them High, 173-175.

19 Harman, Hell on the Border, 389-391; Croy, He Hanged Them High, 175-176.

20 Shirley, Law West of Fort Smith, 114-115.

21 Daily Oklahoman, Oct, 23, 1894; Fort Smith Elevator, Oct. 26, 1894.

22 Vinita Indian Chieftain, Oct. 25, 1894.

23 Harman, Hell on the Border, 647.

24 Eagle-Gazette, Nov. 1, 1894.

25 Indian Chieftain, Nov. 1, 1894; Daily Oklahoma State Capitol, Oct. 26, 1894; Atoka Citizen, Nov. 22, 1894.

26 Eagle-Gazette, Nov. 8, 1894; Shirley, Law West of Fort Smith, 117-118.

27 Harman, Hell on the Border, 391-393; Croy, He Hanged Them High, 178-179.

28 Fort Smith Elevator, Nov. 16, 1894.

29 Harman, Hell on the Border, 647; Shirley, Law West of Fort Smith, 118-119.

30 Harman, Hell on the Border, 648; Fort Smith Elevator, Nov. 30, 1894; Shirley, Law West of Fort Smith, 119.

31 Harman, Hell on the Border, 650-653; Shirley, Law West of Fort Smith, 119-120; Fort Smith Elevator, Jan. 18 and 25, and Feb. 15, 1895.

32 Fort Smith Elevator, Feb. 15, 1895; Shirley, Law West of Fort Smith, 120-121; Harman, Hell on the Border, 653-657.

33 Fort Smith Elevator, April 5, 1895; Shirley, Law West of Fort Smith, 127.

34 Shirley, Law West of Fort Smith, 121-122.

35 Fort Smith Elevator, Jan. 4, 1895.

36 Harman, Hell on the Border, 394-399; Shirley, Law West of Fort Smith, 123-125; Croy, He Hanged Them High, 179-185; Fort Smith Elevator, Feb. 1, 1895.

37 Fort Smith Elevator, March 1, 1895.

38 Harman, Hell on the Border, 399-400; Shirley, Law West of Fort Smith, 125-126; Fort Smith Elevator, April 19, 1895.

39 Fort Smith Elevator, Oct. 21, 1887, March 23 and 30, and Aug. 3 and 24, 1888; July 25, 1890.

40 Ibid., July 12, 1895.

41 Ibid., Aug. 2, 1895.

42 Harman, Hell on the Border, 407-408.

43 Ibid., 408-409; Shirley, Law West of Fort Smith, 130-131.

44 Fort Smith Elevator, Aug. 2, 1895.

45 Ibid.

46 Ibid.

47 Croy, He Hanged Them High, 196.

48 Harrington, Hanging Judge, 146; Fort Smith Elevator, Aug. 16, 1895.

49 Fort Smith Elevator, Jan. 17 and March 13, 1896.

50 Ibid., March 17 and 20, 1896.

Chapter XVII

Judge Parker Sends His Last Man to the Gallows

Notes

1 Harman, Hell on the Border, 462-463; Fort Smith Elevator, Feb. 15, April 19, and Nov. 15, 1895.

2 Fort Smith Elevator, Feb. 22, 1895; Harman, Hell on the Border, 343.

3 Fort Smith Elevator, March 8 and June 7, 1895; Harman, Hell on the Border, 463-466.

4 Fort Smith Elevator, Feb. 22, 1895.

5 Ibid., April 12, 1895.

6 Ibid., May 3, 1895.

7 Ibid., May 31, 1895.

8 Ibid., June 7, 1895.

9 Ibid., July 5, 1895.

10 Ibid., July 26, 1895.

11 Ibid., Sept. 6, 1895.

12 Croy, He Hanged Them High, 160-167; Harman, Hell on the Border, 495-514; Shirley, Law West of Fort Smith, 159-174; Harrington, Hanging Judge, 23-24, 158-159; Fort Smith Elevator, Sept. 27, 1895.

13 Fort Smith Elevator, Sept. 6, 1895.

14 Shirley, Law West of Fort Smith, 164-165.

15 Harman, Hell on the Border, 505-511.

16 Ibid., 512-513.

17 Fort Smith Elevator, May 1 and July 3, 1896.

18 Ibid., July 3, 1896; Harman, Hell on the Border, 514.

19 Fort Smith Elevator, Oct. 18, 1895.

20 Ibid., Jan. 24, 1896.

21 Ibid., Feb. 21, 1896.

22 Ibid., Feb. 28, 1896.

23 Ibid.

24 Ibid., March 13, 1896.

25 Ibid., April 3, 1896.

26 Ibid.

27 Ibid., April 17, 1896.

28 Ibid.

29 Ibid., May 1, 1896.

30 Ibid., June 19, 1896.

31 Ibid., July 10, 1896.

32 Harman, Hell on the Border, 515-521; Croy, He Hanged Them High, 211-214; Shirley, Law West of Fort Smith, 197-198; Fort Smith Elevator, June 7, 1895, and July 31, 1896.

Chapter XVIII

Parker Battles the Supreme Court

Notes

1 Harrington, Hanging Judge, 179-180.

2 Indian Chieftan, Oct. 26, 1883.

3 Congressional Record, Aug. 16, 1888.

4 U. S. Statutes at Large, XXV, 655-666.

5 U. S. Statutes at Large, XXVI, 826.

6 Daily, "Judge Isaac C. Parker," Chronicles of Oklahoma, XI, No. 1, 683.

7 Ibid.

8 Ibid., 684; Harrington, Hanging Judge, 188.

9 Daily, "Judge Isaac C. Parker," Chronicles of Oklahoma, XI, No. I, 684.

10 Harrington, Hanging Judge, 180.

11 Ibid., 181.

12 Daily, "Judge Isaac C. Parker," Chronicles of Oklahoma, XI, No. I, 686-687.

13 Ibid., 687.

14 Ibid; Harrington, Hanging Judge, 128-129.

15 Daily, "Judge Isaac C. Parker," Chronicles of Oklahoma, XI, No. I, 687; Harrington, Hanging Judge, 181.

16 Harrington, Hanging Judge, 182.

17 Daily, "Judge Isaac C. Parker," Chronicles of Oklahoma, XI, No. I, 687-688.

18 Harrington, Hanging Judge, 184.

19 Ibid., 184-185.

20 Daily, "Judge Isaac C. Parker," Chronicles of Oklahoma, XI, No. I, 688.

21 Ibid., 689; Harrington, Hanging Judge, 183.

22 Daily, "Judge Isaac C. Parker," Chronicles of Oklahoma, XI, No. I, 685-686; Harrington, Hanging Judge, 185-186.

23 Harrington, Hanging Judge, 186-187.

24 Ibid., 187-191.

NOTES

Chapter XIX

Judge Parker Passes Away

Notes

1 United States Statutes at Large, 53d Congress, Sess. III, Vol. 28, chap. 145, p. 693.

2 St. Louis Republic, Sept. 6, 1896.

3 Harrington, Hanging Judge, 192.

4 Shirley, Law West of Fort Smith, 202.

5 Harman, Hell on the Border, 97-98.

6 St. Louis Republic, Sept. 6, 1896.

7 Ibid.

8 Ibid.

9 Ibid.

10 Ibid.

11 Ibid.

12 Ibid.

13 Shirley, Law West of Fort Smith, 204.

14 Harman, Hell on the Border, 100-101.

15 Shirley, Law West of Fort Smith, 205-206; Harrington, Hanging Judge, 103-194; Croy, He Hanged them High, 221-223.

ILLUSTRATIONS

I

ISAAC CHARLES PARKER

This picture of the judge was taken shortly after he reached Fort Smith in 1875. At that time Parker was 35 years old and the youngest judge on the Federal bench.



II

HECK THOMAS

One of the many Deputy Marshals who served the Court for the Western District of Arkansas.



III

GEORGE MALEDON

Long time guard and hang man at the U. S. Jail at Fort Smith.



IV

WILLIAM H. H. CLAYTON

District Attorney for the Court for the Western District for 14 of the 21 years which Judge Parker sat on the bench.



V

A GROUP OF DEPUTY U. S. MARSHALS

Following Parker's death, periodic reunions were held by the deputy marshals. This picture was taken of a group of the brave men with one of the wagons used to transport prisoners to the U. S. Jail.



VI

BELLE STARR AND BLUE DUCK

Belle Starr came to the aid of her admirer Blue Duck, when he was tried before Judge Parker for the murder of Wyrick.



VII

BELLE STARR'S HOME AT YOUNGER'S BEND, INDIAN TERRITORY, 1888.



VIII

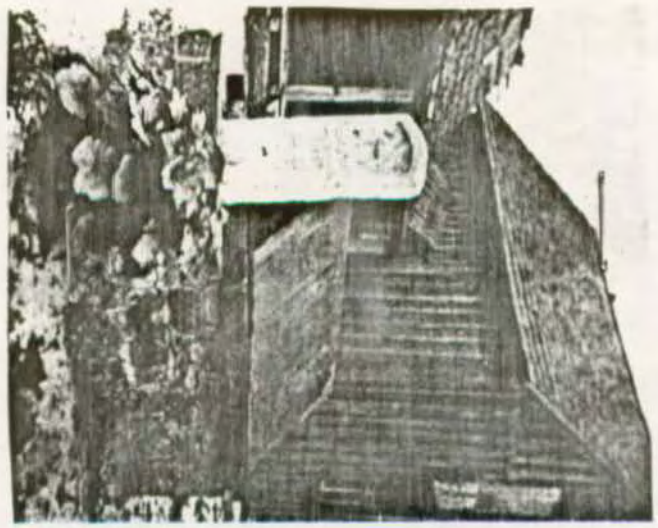
BELLE STARR'S SADDLE

Claims are advanced that Belle Starr was seated in this saddle on the day she was shot from ambush.

IX

BELLE STARR'S GRAVE AT YOUNGER'S BEND

On the tombstone which has disappeared was engraved an image of her favorite horse, a bell and a star, and the admonition to "Shed not for her the bitter tear...."



X

HENRY STARR

Leader of a gang of outlaws, Starr was convicted by a Fort Smith jury of killing Floyd Wilson and sentenced to death by Judge Parker. An appeal by Starr's lawyers to the Supreme Court won the condemned man a new trial. Convicted and sentenced to death a second time, Starr's attorneys again carried the case to the high court and were sustained.



XI

"KID" WILSON

A confederate of Henry Starr, Wilson was arrested in Colorado Springs, Colorado, and upon being convicted of armed robbery was sentenced to the penitentiary by Judge Parker.



XII

WILLIAM TUTTLE "BILL" COOK

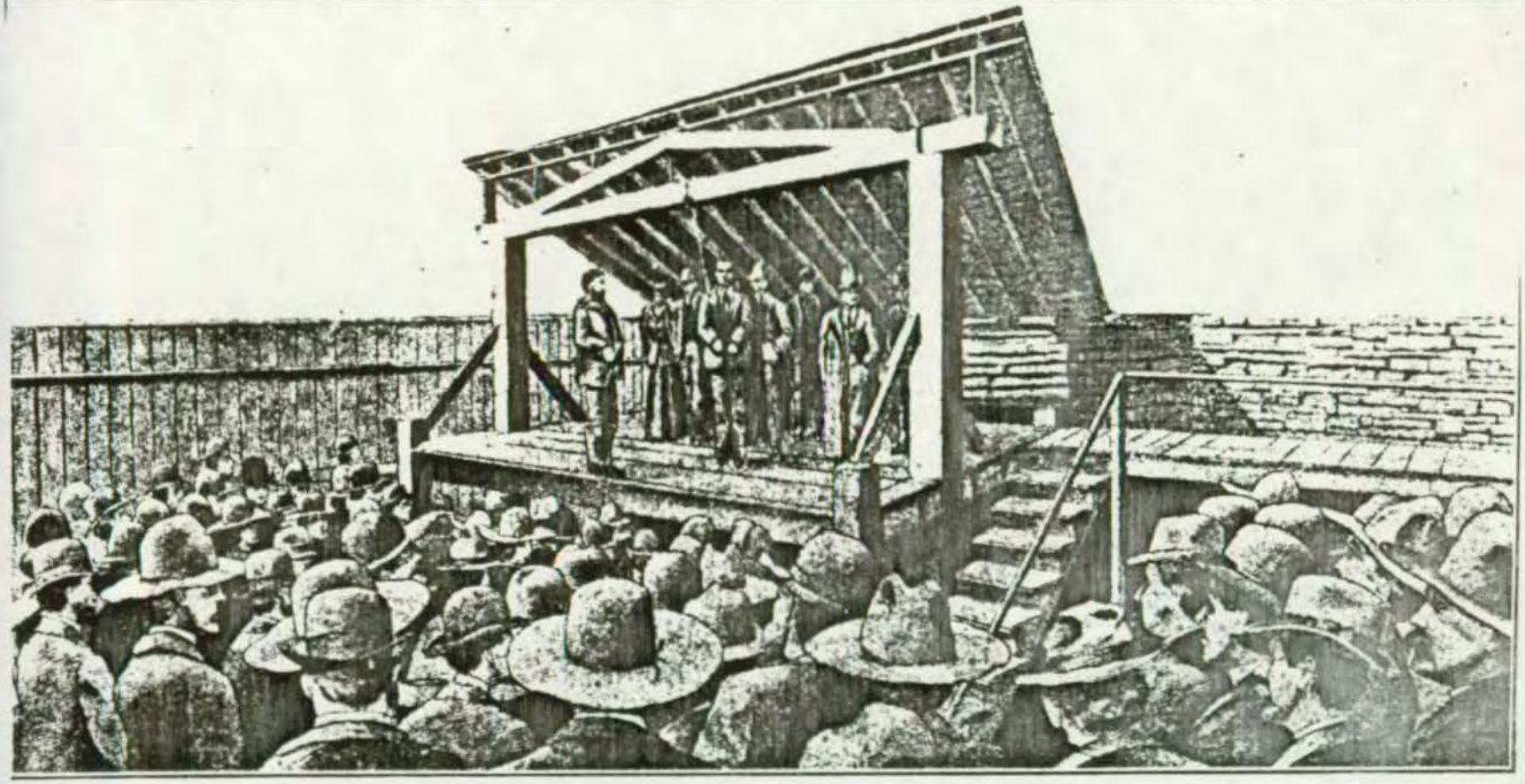
Cook, the leader of the notorious Cook gang, was sentenced by Judge Parker to 45 years' imprisonment.



XIII

THE EXECUTION OF "CHEROKEE BILL" GOLDSBY

March 17, 1896.



EXECUTION OF CHEROKEE BILL.

XIV

THE RUFUS BUCK GANG

Rufus Buck and the four members of his gang who were executed at Fort Smith on July 1, 1896, for the rape of Rosetta Hassan.



XV

JAMES C. CASHARAGO, ALIAS GEORGE WILSON

The last man to die on the Fort Smith gallows.



XVI

THE U. S. COURTHOUSE FOR THE WESTERN DISTRICT OF ARKANSAS

This photograph was made prior to 1887, when work on the New U. S. Jail was started.

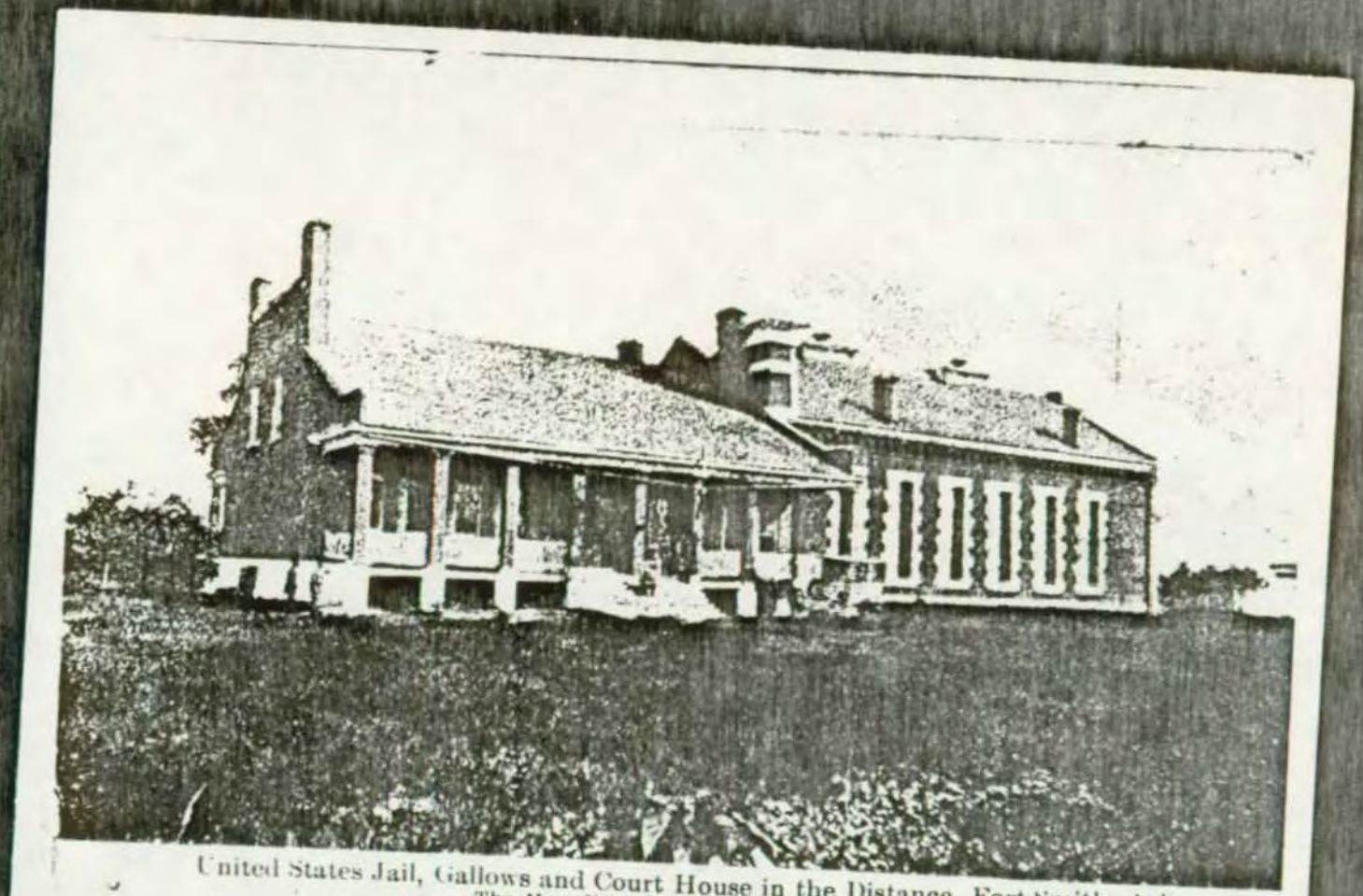
Old U. S. Jail, Fort Smith, Ark.



XVII

THE U. S. COURT HOUSE AND THE NEW U. S. JAIL AT FORT SMITH, ARKANSAS

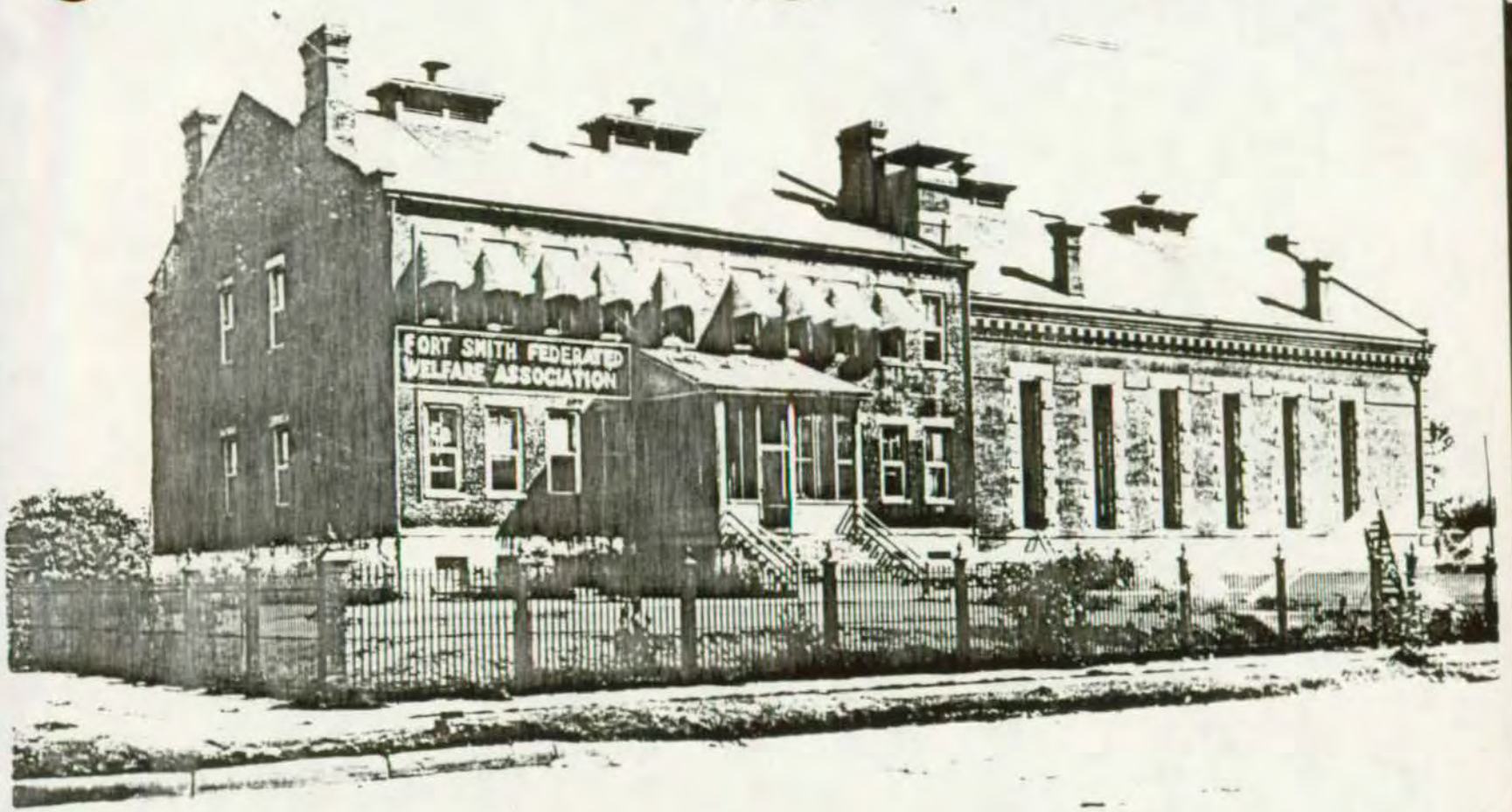
This photograph was made prior to February 1890, when the Court for the Western District moved to new quarters.



United States Jail, Gallows and Court House in the Distance, Fort Smith, Ark.
The Most Historical Court in the World.

XVIII

The Hospital and U. S. Jail, after they had been turned over to the City of Fort Smith, and prior to the 1956 restoration of Judge Parker's Court.

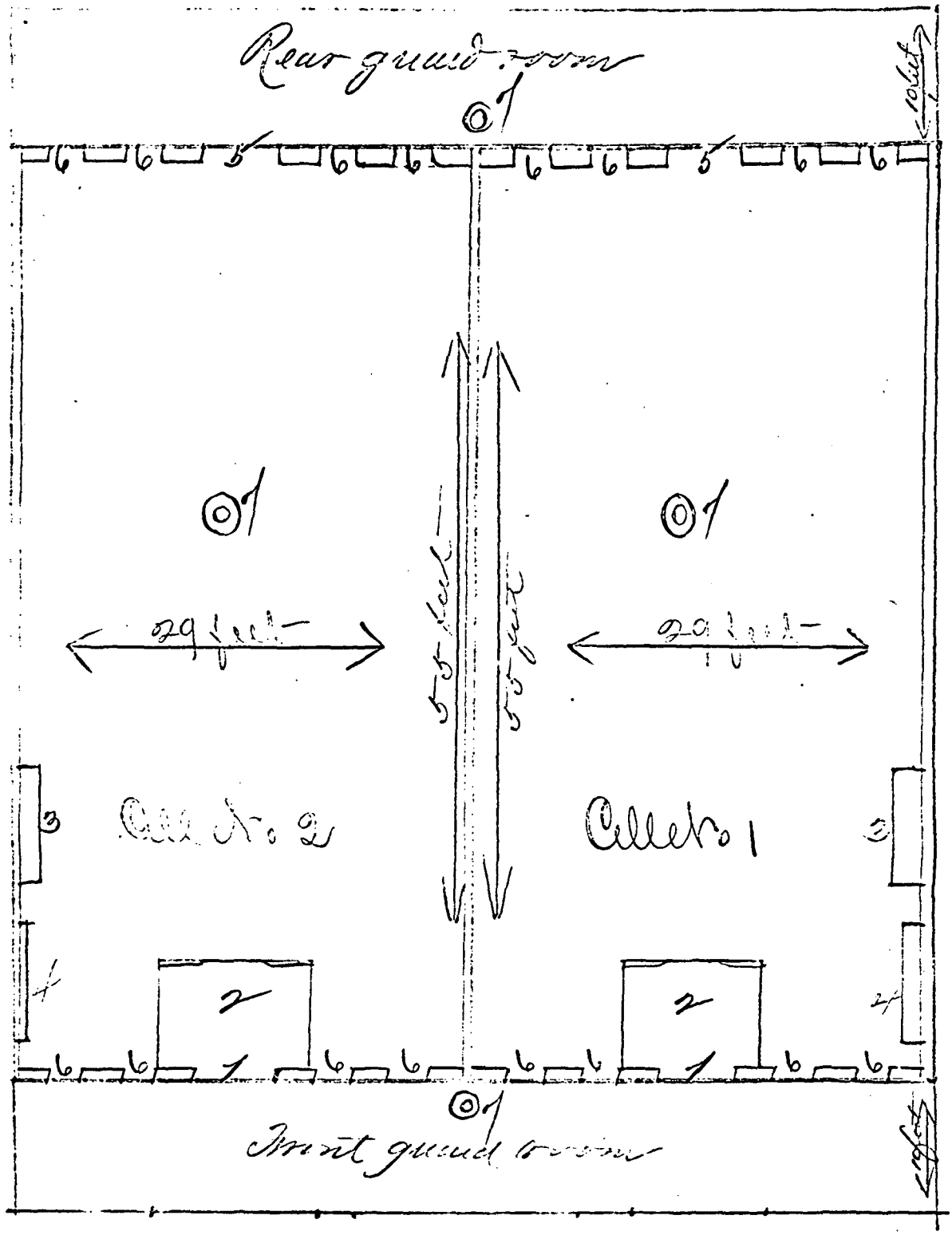

FORT SMITH FEDERATED
WELFARE ASSOCIATION

XIX

FLOOR PLAN OF THE U. S. JAIL, 1884.

Second Floor of the Jail at Fort Smith Arkansas

1. Main doors to cells, secured by wood door on the inside of the wall and iron bars door on the outside
2. Box rooms inside cells, to prevent rush being made upon the front doors, and used for Attorneys to consult clients
3. Urinal tubs set in old fire places with doors. flues to top of building
4. Sinks, for washing face and hands.
5. Old doors, now closed and not in use.
6. Windows, barred with iron both inside and outside the walls.
7. Stoves in cells and guard rooms.


Rear ground room
01
6 6 5 6 6 6 6 5 6 6
privt
01
01
29 feet
29 feet
35 feet
35 feet
3
Cell No. 2
Cell No. 1
3
4
2
2
2
6 6 1 6 6 6 6 1 6 6
01
Front ground room

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PLAN OF THE U. S. COURTHOUSE, OLD SOLDIERS' QUARTERS, 1889.

JACOB YOES,
U. S. Marshal.

S. A. WILLIAMS,
CHIEF DEPUTY.

DEPARTMENT OF JUSTICE.

United States Marshal's Office,

Western District of Arkansas.

Fort Smith, Ark., 1889

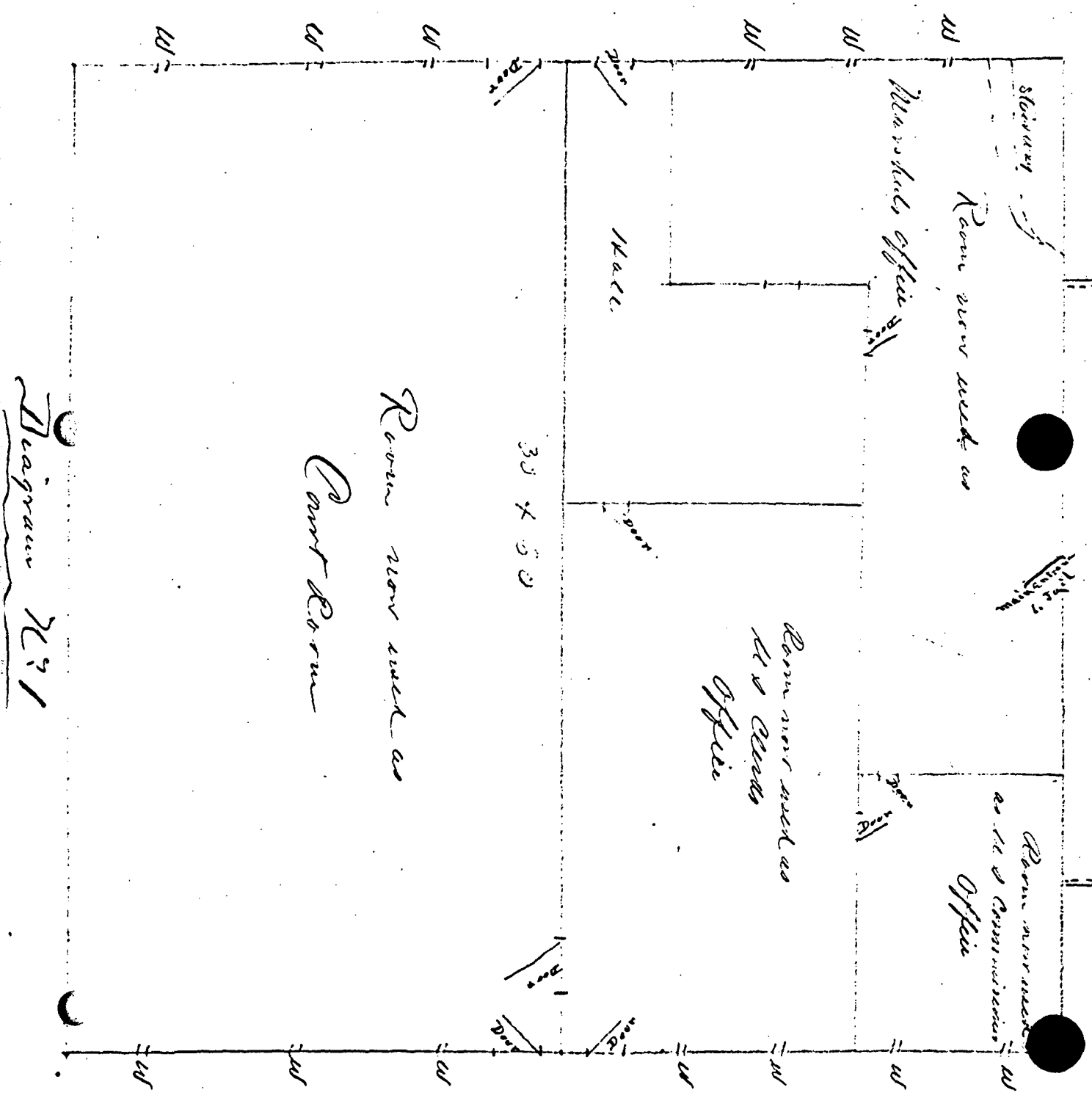


Diagram No 1

XXI

YOES' PLAN TO TURN THE OLD COURTROOM INTO A HOSPITAL.

JACOB YOES,
U. S. Marshal.

S. A. WILLIAMS,
CHIEF DEPUTY.

DEPARTMENT OF JUSTICE.

United States Marshal's Office,

Western District of Arkansas.

Fort Smith, Ark., ... 1889

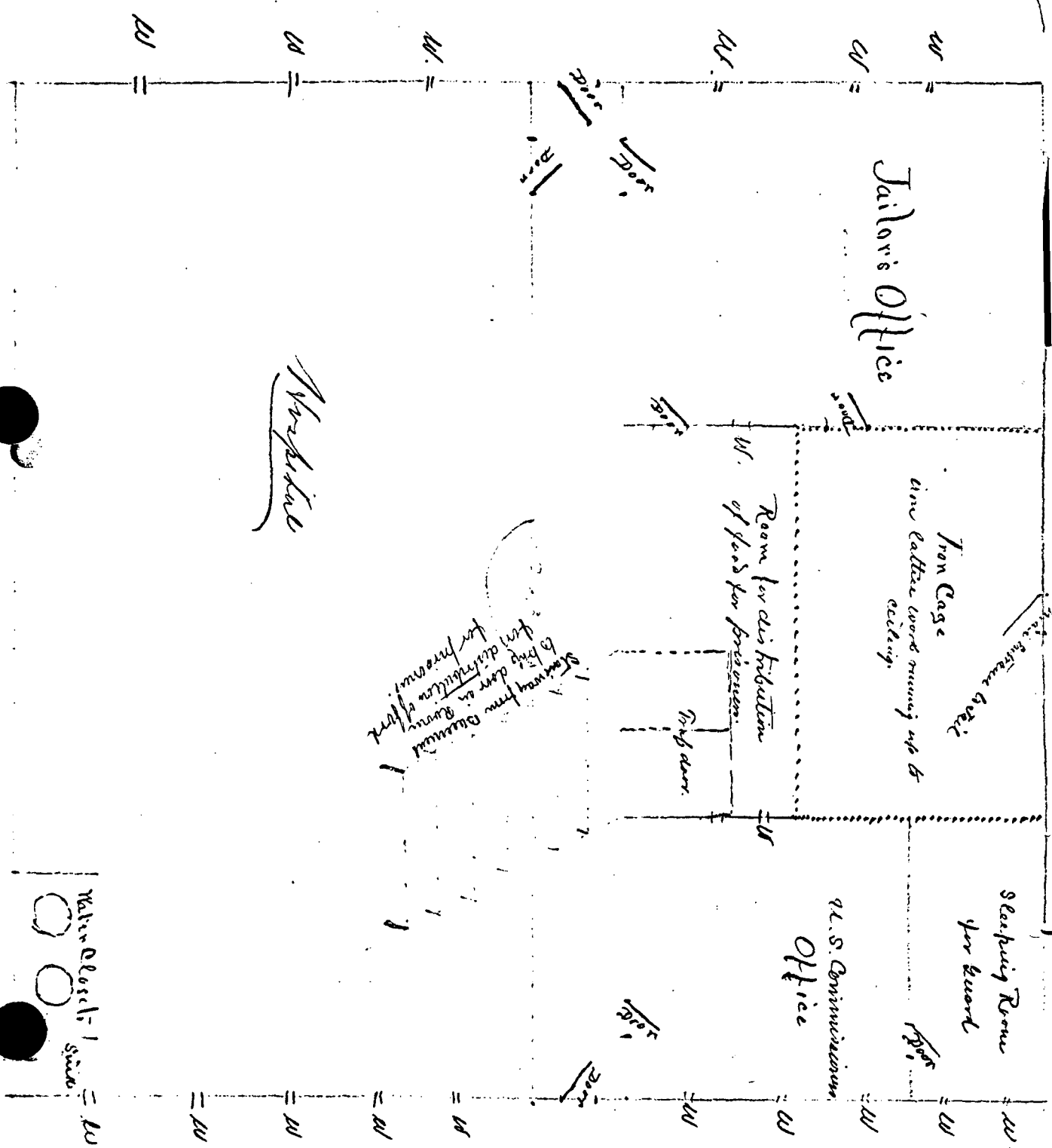


Diagram No 2