

~~The~~ first fort built and named Fort Smith, after General Thomas A. Smith or located was founded ~~xxxxxxx~~ by Stephen H. Long, a colonel in the Regular Army, and one of the members of the Pike and Long expeditionary force that went into Colorado. It may be remembered that Pike ^K discovered the great peak which bears his name and later was captured by the Mexican troops and taken into Mexico. Long came back down the Arkansas River, after enduring all manner of hardships and suffering.

The first fort was built on what was known as "Belle Point", so called by the early French settlers. It was in the Choctaw nation and many ^{of} the first houses, ~~and~~ stores, and a grave yard were located on Belle Point, sometimes called "Choctaw Strip." That early fort was abandoned however. But it was first garrisoned by sharpshooters from Fort Adams on the Mississippi River at Ellis Cliffs, where they were stationed after the Battle of New Orleans. They were the soldiers of Andrew Jackson. They were commanded by Capt. Stuart and came up to the new outpost in keel boats. While the fort was being constructed, the cantonment was called Cantonment Belknap, after the man who was to later be Grant's secretary of War. After this early fort was abandoned in 1824 it was deserted until about 1836 when it was again given notice as a desirable outpost and the government ordered a fort built. The new location was on the Arkansas side of the boundary line, but the fort was still called Fort Smith, as formerly. Many skilled artisans were brought into ^{the} new country to construct the walls of the fort and the buildings. With them came Doctor Main from New York, to look after their health. His descendants still live in Fort Smith and a granddaughter, Katie, married one of Judge Parkers sons. The stones that went into the great wall, which was twelve feet high, and the buildings which were commodious and ^{well} studily built, were quarried from a giant cliff that overlooked the Arkansas River at ~~what was called~~ "Belle Point," or at least a portion of it. Many of the

present day residents are descendants of those first arrivals. The Doctor Main^{he}, above mentioned, ~~was~~ was active in building up Fort Smith, and ~~also~~ built and equipped the first hotel of any importance, the Hotel Main, which for many years was the main hostelry of the city and is still a stand-by for the "old timers" who visit Fort Smith. Then, there were the Weavers, William Weaver having arrived almost immediately with the location and erection of the first fort and his son, J. Frank Weaver, who was for many years editor of the "Fort Smith Elevator" the principal newspaper of the section and said ^{To have} ~~of~~ had the widest circulation in those early days of any newspaper in the state, except the Little Rock Gazette. J. Frank Weaver, out of his own memory and the notes and writings of his father, contributed much to the written history of Fort Smith and vicinity. Many of his writings may still be found in the rusted old sheets of the "Elevator" and the "Herald". Extensive writings of his are on file in the Library of the city. Then there was Capt. Rogers, one of the earliest arrivals, and one who "staid put." He purchased from one Tygart the grant of land upon which the Fort was built and from him the Government purchased three hundred and six acres, to be later known as the fort side and "reservation." His descendants are still living in Fort Smith. The tract granted to Tygart was the first grant to a tract of land given by the government in ^{Sebastian} Crawford County. The original grant may be seen in the Dixie Book Shoppe, operated by Mr. Bill DeLaney, at 3000 Rogers Ave. in Fort Smith, and it was signed by President Andrew Jackson, in his own hand. It was Capt. Rogers also who first platted the original townsite of the city. It was surveyed and platted by John Harrell, surveyor of ^{Sebastian} Crawford county. Tygart was a clerk to Capt. Rogers, and later got a permit and was one of the early "sutlers" or traders at the post.

Then there were the Duvals. The father of Ben F. Duval, a prominent lawyer of the Parker Court days at Fort Smith, was one of the first arrivals in that vicinity, and his descendants are still residents there.

Ben T. Duval was called upon, as an expert, to give testimony in the famous trial of "Cherokee Bill" or Crawford Goldsby for the killing of Larry Keating in the old jail. The question arose as to whether the United States court had jurisdiction over a killing in Arkansas and the government contended that the jail was on a government reservation or government property, and therefore the court did have jurisdiction. That no other court could have jurisdiction. And the Government called Ben Duval as an expert witness in respect to the occupancy of the site by the government, and as to its history. His testimony, as revealed by the musty old files of the United States Clerk's office at Fort Smith, was in substance as follows:

"The wall was built in 1840- in 1844 the troops were camped where I now live in what is called Catholic Grove. They moved into the fort and they continued to occupy it continuously until April 1861 when it was captured by the Confederate troops. The wall was completed in 1844. It was recaptured in September 1863 by the federal troops and they remained there until 1870 or 1871, when they were removed and the property turned to the custody of the Secretary of the Interior. The court went over to occupy the site in 1822. We were in the trial of John Childers, the first man to be tried and hung by this court on this side of the river. The fort was located in 1817, over on the point there and that was abandoned in 1833 and reestablished in 1836 on 37. And Major Thomas and Capt. Alexander had officers quarters and soldiers barracks in there- the early fort was located on the point where the Petean river empties into the Arkansas. The walls of the new fort did not and do not occupy any part of the original fort site of 1833. The fort was established before the town was laid out. The grounds of the new fort were purchased from Capt. Rogers and at first enclosed in a rail fence- there were three hundred and six acres, and it never was any part of the town- the reservation of 306 acres. The first fort was in the Indian Territory- I saw the site surveyed for the new fort. The jail and the court house were and are in the site occupied as a fort.

From 1840 as man and boy, I have known the line to be right here with the line of Garrison Avenue, running from the river up to the section corner and then out on Towson Avenue. All this territory running down here at the river and running clear up to the forks of the road or at least to Garrison avenue was enclosed with a rail fence and occupied and used by the troops of the United States as a fort and this jail is within the limits of that, and I knew that that wall was built by the government and that it occupied it. It was known and called The Military Reservation and on it was built the fort. I knew the jail is within the reservation- I visited the officers of the troops often- Capt. Alexander, who was young and of a social disposition, was my friend, and I visited him often and I saw the men working on the old stone wall."

But we might state here, in order to keep the record straight, that the witness was mistaken about one thing in his testimony. There was a portion of the new fort built on the old 1817 site, or at least within the Choctaw nation. It was a small fraction of the northwest wall or what was intended for a cannon bastion. Perhaps there was ten or twelve feet of the construction over what the survey of 1872 showed to be the Arkansas and Indian Territory line. For there stands ~~there~~ today a monument or great square stone, set there by the surveyors of 1872, with the word "Choctaw" on the west side and "Arkansas" on the east side, and on the north side is carved the words "Initial Point." and on top of the old stone is a compass showing the directions; north, south, east and west. That stone stands upon the northwest bank of the Frisco Railway cut at the present time; and the wall that was over in the Choctaw territory was being torn down the day I visited the site. Great old limestone blocks, beautifully and carefully hewn, fitted together with mortar of lime, and looking as if they might withstand the centuries, were being torn away and carted off, where to, I was unable to find out.

And again Mr. Duval might have gone further in his testimony and recited the fact that in 1841 came to the new fort General ^{Zachary} Taylor, astride of his famous old horse "Whitey". Here he lived until he was called to the Mexican war in 1845- not that the war was on then, but he was called away in 1845 to the Mexican border- and he rode off on old "Whitey" down to Point Isabel in faraway "Lower Rio Grande Valley" and thence over to what is now known as Brownsville, ~~but referred to as the point objective~~ ^{and later to} ~~in those days as Matamoras, which is in old Mexico.~~ He rode old "Whitey" through the Mexican war. And the old stable and the old barn that housed old "Whitey" in Fort Smith, stood the ravages of time until a few years ago when it was torn down to make room for commercial progress.

General Taylor lived with his family in Fort Smith for four years, and during that time made but three excursions into the Indian country to the outlying forts that were under his command.

After General Tayler had whipped the Seminoles on their first and only pitched battle in 1840, on the shores of Lake Okachobee, he was located at Baton Rouge, La. when he was appointed Commander of the Western Department, and removed to Fort Smith. He came up on a steamer owned by a Capt. Pennywit and it was a tough trip, many shoals were encountered, and it was told that the general helped over the difficulties along with the other men of the packet, taking her turn with the men at the capstan.

The walls ^{of the fort} were built in a five sided arrangement and at the northeast corner was located the commissary. It stands to-day as a sort of museum. Within its walls were housed the supplies for all the forts of the Indian country, Fort Gibson, Fort Towson, Fort Coffee and Fort Wayne, important outposts of those early days. Within the yard, to-day, of the old commissary, stands two brass cannons—manners cast in the foundry of Paul Revere, in Massachusetts, in 1861. Perhaps the old cannons could tell a more thrilling tale than the one attempted here.

At the southeast corner of the enclosure was the powder magazine— it was torn down and upon its site was erected the famous "gallows" hereafter more fully commented upon. What was later used as the United States Jail was located most centrally in the enclosure. It stands to-day and is occupied by the United States Welfare Association. What a decided change from those days when it housed the fiercest outlaws of the West. Those old boys who languished within its dungeons awaiting their turn at the old gallows never once thought that the walls they pounded upon in fury would some day be occupied as a welfare home for the needy. Garrison avenue of the city of Fort Smith was the garrison parade grounds in those early days, whence comes its name. "Belle Point" above referred to, at least that portion not torn away by the quarrying for stone, was later known as "Coke Hill" and is to-day occupied by the poor and their shanties built of tin plates and old boards and whatnots.

Fowson Avenue of the Fort Smith of to-day was known in the early days at the "Texas Road" and the "Butterfield Trail." It was over that now well paved and cared for avenue that the lumbering stage coach wheeled away, loaded with human cargo for the far Pacific coast, to encounter the wild Indians of the plains and the deserts- the holdup men and the outlaws- with its shot gun guard mounted beside the driver and some times its "boot" loaded with gold. As late as 1875 it was the only semi-public utility connected with Fort Smith. Traversing, as it did, the Choctaw country, the plains of Texas, the mountains and deserts of New Mexico and Arizona; it was of the greatest interest to those early day citizens of the borderland ~~king~~ town, aside from being the only overland means of transportation. The river boats plied up and down the ~~Arkansas~~ Arkansas, tis true, as many as fifty within the month, but the overland stage held their imagination and pictured the romance, the glamor and the thrills of travel. It became the Wells-Fargo of the present time.

When the Frisco railroad eventually built into Fort Smith it split the old reservation in twain. Where its trains roar through the city to-day the soldiers of others days paraded and lounged about and dreamed of wars and lady loves and kin folks far away. And where the steam boats plied their sullen way up and down the turbulent waters of the Arkansas only shallows are now, except in flood times. On the spot where restless business wends its way to-day the stolid S eminoles were unloaded, likewise the Cherokee and perhaps the Choctaws and certainly, the Creeks. Long-fellow has pictured the brutality of the English toward the patient Acadian people but no one has sung the song of the Cherokee, the Creek and Seminole peoples. Of how they were "rested" away from their ancient homes and forced to take up their homes in a new and desolate wilds of the Western land. But we see the other fellows faults and have some trouble seeing our own.

In the early fall of 1882 five desperate looking men rode tired horses in a northwesterly direction to the crossing on the North Canadian River, ^{from} ~~in~~ the then Indian Territory, into "No Man's Land." They were making haste to escape out of the jurisdiction of the "Hanging Court" of Judge Isaac C. Parker at Ft. Smith, Ark. into the safety and seclusion of that section of the United States where no court had jurisdiction, known as ^{the Public Land Strip} ~~"No Man's Land."~~ As they arrived at the river's bank attention was called to a not too conspicuous sign board bearing the inscription "Fort Smith Five Hundred Miles." and with the contemptuous abandon of their type and time, they proceeded to fill it full of lead from their "forty fives." One rider, perhaps with more knowledge and experience, drew aside and with his dirk knife carved under the the wording of the board: " TO HELL"; thus inscribing his sentiments relative to the Ft. Smith criminal tribunal.

These five members of the famous Watson gang were riding away from the Indian Territory marshals into that strip of present day know as the "panhandle," Oklahoma/where there was no law and where the marshals were on no better footing than the bandits, and the gun was the balance of power. Trains had been robbed, men had been killed, the plunder had been cached, and escape must be made from the awful court of Judge Parker in Ft. Smith, whose marshals were at that moment hot on the trail of the outlaws.

"Wal, remarked Jeff Watson, the leader of the gang, " it even smells better after crossing that river for I could smell that ole jailhouse up to the very minute we passed that sign-board."

"Some smeller, I'd say" said little Black Jam Mills, " to carry five hundred miles."

" If you had ever been in that jail in the old barracks at Ft. Smith you could smell it five hundred miles, too" was the rejoinder

"How come," asked Black Jan, "I never heered about the jail, it were the worst I figured a feller should avoid. War you ever in the jail?"

"Yes, and many times the bread and meat laid around so long it was filled with worms and stunk like a dead polecat. I dont guess that thar jail was ever cleaned up since it was moved into the old barrack building. People were so crowded into the dungeons and holes in the ground that a grand juryman threatened to send some of the filth he found in the jail to Washington and that had the ole judge beggin for time. But the jail wasnt cleaned up and I know five fellers that died in the jail just because it was so damned filthy. Ole Judge Parker who is down there now, tho, I had heard, has made them clean it up."

"Dident know that ole buzzard ever did any thing that was right. From what I have heered it would tickle him to death to know that he men were held in a place like that."

"Thars where you are wrong. Parker is a just man, hard, it is true, but he'll give you a fair trial and if you can prove yourself innocent let you go free. I had to do that once when I was up for killin a feller down on the Poteau river, course it cost me two good ponies to get two Indians to swear to my innocence, but it was worth it cause Parker hangs them when convicted for killin."

"They tell me there aint no appeal from that court, gittin stuck there means hanging ~~xxxxxxx~~ shore nough."

"Thats a fact, when that ole judge says 'motion for new trial over ruled' it means some bodys gain to dance a jig on the sky line."

From the foregoing it will be seen that the jail and court for the Indian Territory held at Ft. Smith, Arkansas, was not held in the highest ~~man~~ esteem by those whose business it was to violate the law of that wild country. And so as a natural corollary it becomes necessary

to give a more or less lengthy history of one of the most amazing courts ever organized in the United States, and one of the most unusual records of hanging to be found in the annals of America.

The United States Criminal Court at Ft. Smith was established and opened for business on the second Tuesday in May, 1871 and from that day until the old bailiff, J.G. Hammersley, called out: "O yes", "O yes.", The Honorable District and Circuit Courts of the United States for the Western District of Arkansas, having criminal jurisdiction over the Indian Territory, are now adjourned. God bless the United States of America and these honorable courts" on the first day of September, 1896, more than 28,000 criminals stood before its bar. Under Judge Isaac C. Parker, alone, who took office May 10th, 1875, more than 9400 people were convicted and of this number, 344 were tried for crimes where the penalty was death, 174 were convicted, and 168 were sentenced to die on the scaffold of old George Maledon, the hangman, and 88 were actually hanged by Maledon. As many as six at a time were sent into eternity as Maledon sprung the trap. Five died in prison, one was shot while attempting to escape, two were pardoned and forty three had their sentence commuted by executive order of the President of the United States, four were given new trials and twenty three given new trials, after the right of appeal was granted from the court. One of the number was adjudged insane and placed in an asylum.

., ~~was~~ taking a ~~quick~~ squint at the official records of the old court for the ten year period just prior to January 1st, 1895 we find the astounding record: 7419 criminals were convicted; 305 of that number were for murder and manslaughter; 466 for assault with intent to kill; 1910 for selling liquor to the Indians, 2860 for introducing liquor in the Indian Territory, 97 for illicit stills 124 for violating the internal revenue laws, 65 for violating the

postal laws, 50 for counterfeiting; 24 for arson; 48 for perjury; 32 for bigamy; 27 for conspiracy, 59 for stealing government timber; ; 24 ~~xxxxxxx~~ resisting arrest; and 149 for other crimes too numerous to mention.

In order to give a more accurate idea of the situation a history of the territory covered by the jurisdiction of this court must be given. As early as the treaty with the Five Civilized Tribes of the Indian Territory of 1866, the Indian Territory was placed under the political jurisdiction of the State of Arkansas. An old postmaster's commission to the first postmaster at and in the Seminole Nation records: "E.J. ~~Brown~~ Brown is hereby appointed Postmaster at WE-W O-KA, Seminole Nation, State of Arkansas, this 13th day of May 1867." But the jurisdiction of the Criminal Court at Ft. Smith was not confined to the Five Civilized tribes territory, not by any means, it included Oklahoma Territory west to the Texas Line and from the Kansas line on the north to Red River on the South, except that portion now composing Cimarron, Texas and Beaver counties in Oklahoma, then known as "No Man's Land" because it was north of slave territory, did not belong to Kansas, Colorado or New Mexico and for many years was not a part of any state or territory.

Over this vast territory the outlaws of the west and southwest roamed and hid away and the outcasts from practically every state of the Union found refuge, many to be killed or hanged and many to reform and become good citizens or United States marshals.

And over this vast expanse the marshals hunted down the criminals and brought them to justice at the court of Judge Parker.

Ft. Smith, in those days was a city of some ~~three~~^{thirty} thousand souls and was located but a short distance from the Arkansas and Indian Territory line. Its early history dates back to 1813, when the

~~United States government established there a military post called Fort Smith in honor of Gen. Thomas A. Smith who established the post.~~
In the beginning a stockade of squared logs driven close together in the ground, with wooden block house and outbuildings, constituted the fort. This old fort was really over the line in Indian Territory about a hundred yards at a point called Belle Point ^{by the early French,} on the Poteau river in the Choctaw Nation. In 1824 the garrison was withdrawn and sent to Ft. Coffee in the Indian Territory and later to Ft. Wayne in the Indian Territory and still later to Ft. Gibson which had been established in the Cherokee nation in 1824. The old site of the fort was called the "Choctaw Strip" and was claimed by a Choctaw named Wall-Thomas Wall. After the garrison moved away and the fort was abandoned Wall returned and took up the land and later the "strip" was purchased by Campbell LeFlore, a famous attorney of the Choctaw nation.

* Because of the protection of the fort and the soldiers many settlers ~~were~~ located in the western portion of Arkansas and in its vicinity and as early as 1829 settlers began taking up grants of land. Arkansas, as a state, was admitted to the Union in 1836 and just prior to this time the various nations of Indians of the southeastern portion of the United States were being moved into the Indian Territory. The Cherokees were of three parties, each militantly opposed to the other, and fear arose among the settlers of Western Arkansas because of this strife; and wise counsel brought the reestablishment of the fort, not on the old site, but across the river on the Arkansas side. However it was still called Ft. Smith and at this point the Indians transported from the south and east; the Cherokees, the Creeks and the Seminoles and perhaps a portion of the Chickasaws and Choctaws were brought in boats and thence across land to Ft. Gibson where they were discharged into the "new lands" or reservations. \$42,000.00 was appropriated by

Congress for the purchase of sites and to build arsenals and buildings. Many of these buildings ^{at Ft Smith} were of stone, and the old ramparts, foundations and portions, even, of the old buildings may still be seen there. The entire ^{line} rank of buildings were enclosed with a stonewall, originally thirteen feet high and surmounted by an additional coping. It was within this enclosure that the stone buildings subsequently used as courthouse and jail under Judge Parker, were located. And just inside the wall at the ^{South} ~~North~~ east corner of the enclosure in 1873 was erected the "great gallows" from which were hanged more than four score of felons and over which presided that master genius of the "hangman's noose," the fearsome George Maledon. In 1871 the fort was again abandoned and the property turned from the War department to that of the Interior Department and placed under the supervision and control of the United States Marshal for the western district of Arkansas. It was at this time that the Criminal Court, later to become so renowned, was organized and established. In the mean time settlers had come from all sections of the Union and as early as 1880 a city of more than three thousand population comprised the city of Ft. Smith.

On June 30th, 1834, on the last day of the twenty third congress, an act was passed calculated to regulate trade and intercourse with ~~with~~ the Indian tribes and preserve peace on the frontiers. This act among other things provided:

Sec. 22; " That in all trials about the right of property in which a whiteman may be on one side and an Indian on the other, the burden of proof shall rest upon the white man whenever the Indian shall make out presumption of title in himself from the facts of previous possession or ownership."

Sec. 25:

shall apply

That so much of the laws of the United States as provides for the punishment of crime within any place ^{the} sole or exclusive jurisdiction of the United States shall be in force in the Indian Country. Provided: That the same shall

not extend to crimes committed by one Indian against the person or property of another Indian."

It may be well to state that by the treaty of 1866 with the several tribes of the Five Nations it was stipulated that the trial and punishment of an Indian charged with crimes against the person or property of another Indian was left to the tribal courts and that this right of tribal courts should not be disturbed in the Cherokee, Creek, Choctaw-Chickasaw and Seminole nations. But true to the traditional methods of encroachment of the white man and his laws upon the Indian this guarantee was but passing. It was not long until the Congress took away from the several nations their right to try their own offenders in their own courts or settle their own property rights in their councils. It would be interesting just here to give a narrative of the subtle abridgement of the Indians' rights and privileges, ^{but} suffice it to say that by Act of Congress of March 27th, 1854, the State of Arkansas was divided into two judicial districts and a court established at Van Buren, later to be removed to Ft. Smith and on the 10th day of May, 1875 Judge Isaac C. Parker was appointed and presided over a court that was destined to attract the attention of the entire civilized world. This court had exclusive, original and final jurisdiction over all of Oklahoma and Indian Territory and ^{except} ~~the act included~~ "No man's land," ~~but as to this last it did not function.~~ It, however, did not have jurisdiction over the Indian for crimes committed one against the other as heretofore mentioned. Under Judge Parker and the United States Marshal's office it became known for its vigor of pursuit and its surety of punishment. Not until 1883 was the jurisdiction lessened and then on January 6th, it was provided that:

"All that 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 Cherokee, Creek and Seminole Indian tribes, be annexed to and form a part of the United States

District of Kansas ~~and~~ AND THAT PORTION OF THE Indian Territory not so annexed to the district of Kansas for judicial purposes and not occupied by the Cherokee, Greek, Choctaw, Chickasaw and Seminoles Indian Nations, be annexed to and constitute a part of the judicial district known as the Northern District of Texas.

However this act did not effect those cases already pending in the court at Ft. Smith. Again in 1884 two bills still further lessened the territory of the court.

Congress on March 3rd, 1885 passed an act providing among other things

" Any Indian committing any crime against the person or property of any other Indian shall be subject to the laws of the Territory the same as all other persons, etc. etc., "

And again in 1887:

" That any Indian committing against the person of any Indian Policeman appointed by the laws of the United States or any Indian United States marshal, while lawfully engaged in executing any United States process or other duty imposed by the laws of the United States, the crime of murder, manslaughter or assault with intent to kill " should be subject to the laws of the United States

The process of nibbling away the Indian's rights to trials in tribal courts was going forward beautifully. Just how the untutored, ignorant savage was to be apprised of this change of law and procedure was not given by the congress. But nevertheless " ignorance is no excuse under the law " and Mr. Indian must look out, both for his own courts and the laws and courts of the white man. But in 1889 ^{beginning of the end} ~~the old court~~ ^{started} ~~given~~, so far as the Indian Territory was concerned, to the quaint old court at Ft. Smith; for on February 6th, 1889, the first "White Man's Court" in the Indian Territory was established and organized immediately at Muskogee.

And so passed the famous old court of Judge Parker so far as our narrative is concerned with its connection with the Indian Territory. It is of the time ^{the old court} ~~it~~ was in full swing, with its trials, its United States marshals, its ~~many~~ desperate characters, the romance and crime of its day, that we want to tell.

I want to tell you of old Judge Parker and his famous "hangman", George Maledon, of James Brazell, John Swain, Heck Thomas and a score of other intrepid men who served the process and enforced the orders of the old court- who hunted down the desperadoes and bad men and I want to tell you of the bad men themselves and of some of the famous trials had in the old court. Tell of a land where there were no roads, no towns, few settlements and a fort or two. Where men must travel in wagons and ^{on} horse back along trails made to be made as progress was made, without land marks or sign boards, where distance was a matter of pure guess work and locations were recognized by their proximity to some elevation known as "Sugar loaf mountain" or "Fox Hill", "Bald Hill" or "Chimney Mountain." It was by means of these hills or small mountains that meetings and appointments were to be had. "I will meet you at the east foot of Chimney Mountain" or some other such place was the usual mode of appointments. It followed that all points that were to be seen from a distance received their appropriate names. (And it was from this necessity that all the curious names were given in all new countries to points that were discernable from a distance. It was a matter of necessity in the uncharted space of the ~~frontier~~ ^{frontier} country".

In a territory where all the men "wanted" in more populous places of the United States made their way to find seclusion and pursue their furtive existence among the Indian people. A land where few questions were asked and suspicion was a needed virtue. Where the "long riders" of Parker's court were continually on the move seeking those whom the law desired. Where a "reward" and a chance recognition was the harbinger of death. Where a gun was of more importance than food and men carried their bed and their cooking outfit back of their saddle. A lonesome, far away country where game abounded and the streams were rife with fish. A land that appealed to adventurous men and boys- desperate men and boys.

A land that in less than fifty years was to develop into one of the prosperous, interesting states of the Union; teeming with industry, agriculture, fine cities, thousands of miles of paved roads; and where the outlaw ^{then} rode, churches and schools houses ^{now} grace the hills. Where the things written about herein have disappeared and in their stead have ~~the~~ come the culture and civilization of a great commonwealth. Where the hum of mills and the roar of cities, the din of the oil fields and ^{the} pastoral calm; the myriad schools and placid churches have taken the place of the roistering bad man and the stolid marshal. The transition, itself, has been a romance; swift, amazing and continuous.

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But first let me tell you of the master of this remarkable court at Ft. Smith: A man of average height, rather stoutish. Even at the time we write a face free from wrinkles and florid. Snow white hair, drooping moustache and chin whiskers, (rather heavier than what is commonly called a goatee) full lips and rather protruding ~~eyes~~ ^{look} ~~dark~~ ^{blue} eyes that ^{look} square ~~into~~ into one's gaze. ~~Dark~~ ^{Blue} eyes that can snap and sparkle with wrath and indignation but that are usually rather sleepy looking. At the time he ascended the bench at Ft. Smith he was thirty seven years of age having been born in ~~the~~ Belmont County, Ohio in 1838. From there he moved to Missouri in 1864, locating at St. Joseph, where he entered the practice of law. He was elected prosecuting attorney ^{of} Buchanan County. In 1868 he was made judge of the Twelveth judicial district of Missouri and in 1870 was elected to congress from the sixth Missouri district. He was reelected and served as a member of the committee on Territories, with James A. Garfield as chairman. In 1875 he was appointed Chief Justice of the Territory of Utah but his name was withdrawn by President Grant and he was appointed to the judgeship of the Western District of Arkansas.

He entered upon his duties as judge of the court at Ft. Smith on the 10th day of May, 1875, and proceeded to immediately bring out of confusion, and a degree of mistrust, the affairs of the court. The judge who had preceded him was not a strong man for the place and the desperate characters of the Territory had run riot and the juries were loath to bring in convictions. This was changed under Parker for the juries felt they were in the presence of a leader and one who was desirous of enforcing the laws. A fairly strong bar soon came to respect the new judge and a harmony, ^{had been} that ~~was~~ sadly lacking, was the result among the members of the bar. Difficulties of every nature faced the new judge. The former administration had been extremely extravagant and the authorities at Washington had become suspicious. Because of the strong undercurrent of antagonism and distrust, witnesses were difficult to procure or force in attendance upon the court. Judge Parker fearlessly attacked the difficulties and soon the bar and the people came to trust him, the officers of the court were imbued with fresh determination and the criminal element came to realize they had a real court and ^A stern judge with which to deal.

The court was without precedent; it was not only the trial court but within itself the court of last resort, for it was given exclusive and final jurisdiction over the crimes committed in the Indian Territories. As heretofore stated the criminals from every portion of the Union had sought refuge among the Indians in the territory. Hordes of desperate ruffians banded together and resorted to every device and scheme to thwart justice. During the eighties some sixty thousand ~~white~~ people inhabited the territory over which this court held jurisdiction. ^{whites} ~~There~~ were in no wise amenable to the laws of the several Indian nations and there was only the one court at Ft. Smith to hold them in check. During the administration of Judge Parker something over sixty five United States marshals were murdered and slain.

These officers were killed while in the discharge of their duties. Parker came to be looked upon ^{by} ~~as~~ desperadoes with awe and fear. To come before his court meant conviction and swift punishment from which there was no appeal. On the other hand the Indians and natives came to look upon him as a protector whose long arm reached to the faraway borders of Colorado and the panhandle of Texas. Better and more faithful officers of the court were enlisted and the task of cleaning up the criminal element went forward with dispatch. It took a resolute and determined man, indeed, to undertake the task that confronted Judge Parker when he ascended ~~the~~ ^{the} bench at Ft. Smith in 1875. At that time the old jail was crammed with prisoners awaiting trial and at the first term of the court eight men were tried and sentenced to hang. These men were Daniel ^{Evans} Evans, John Whittington, Edmond Campbell, James Moore, Smoker Manekiller, Sam Fooy, Frank Butler and Oscar Snow.

In Judge Parker two different character of men were to be found; while on the bench he was stern, inflexible and almost ruthless but off the bench and to lawyer and layman alike he was a most congenial companion, easily approached and a most excellent conversationalist. He was ^{not} thought to be too stern as a judge sometimes but no doubt he looked behind the man on trial and saw the results of the crime—the widow and orphans, the weeping mothers and the slaughtered father. He saw the reckless outlaw riding barzenly through the wilds of the territory killing and ravishing, murdering and robbing— a fearsome beast of prey. He saw the smoldering ruins of the humble home and heard the screams of the terror stricken victims, and this gave him strength and determination to stamp out the evil. Harsh measures had to be used to suppress harsh crimes and criminals. He realized that he and his court was the only source of protection. In the death and imprisonment of the few he realized the protection and safety of the

many. What seemed wanton cruelty to some was the only means of protecting the lives and property of the people under his jurisdiction; and he did not hesitate.

It is strange to relate that this man, who did not believe in capital punishment, sentenced more than one hundred and seventy men to die upon the scaffold and of these nearly a hundred met their fate on the old gallows in the stone walled enclosure of the ~~camp~~ fort site on the borderland of Indian Territory. All of these were for crimes committed in the Indian Territory, not ^{but} one from the state of Arkansas, for over that territory the court had no jurisdiction except for the violation of laws of the United States.

When the judge came to sentence his first man to hang, Daniel Evans above mentioned, he did so in a ringing voice, recounting the enorm^{ity}~~ousness~~ of his crime, and when he had finished he bowed his head in sorrow and wept. Of these eight men convicted at the first term over which Judge Parker presided the first six were hanged at one and the same time, Waledon springing the trap that sent all six men plunging eight feet down to their death.

This seems cruel and awful, so inhuman that the souls of those who called themselves more civilized revolts; but listen to some of their crimes, picture yourself one of their fathers or mothers or children; then consider the prevalence of such practice and remember that only two things will curb the fiendishness of men- fear and force. Force could not be on hand at the appointed time, but fear traveled with the ^{evil} ~~evil~~ doer and thinker. The misdirected sympathy of the spectator on such occasion is but the thoughtlessness of a feeble mind- a mind unappreciative of the philosophy of the criminal mind or the effect of swiftness and surety in punishment. Laws and regulations laid down for the protection and security of society in order to be effective must be enforced- enforced swiftly and harshly. For it is better that the law must die if the many can be thus protected.

one of the first
trials Judge Parker was
called upon to hear was
the murder of a man
witnesses)

~~xxxxxx~~ The body of a young boy, name unknown, but about twenty years of age was found on the bank of a small stream in the Creek Nation. A few miles away a pony, with a bullet hole in its head was found and a short distance away was found hidden ~~away~~ a saddle. The feet of the dead boy were naked but a short distance away a pair of well worn, heavy shoes were found in some bushes. In one of the pockets of the jacket worn by the dead youth was a slip of paper with the name "Seabolt" thereon. The investigation of these things brought to light evidence ~~from~~ ^{from} citizens of the vicinity that a short time before a man and a boy were seen in the neighborhood and it had been noticed that the boy was wearing a pair of fine, new boots, with high heels and fancy tops. The boy was riding a ~~fine~~ large bay horse while the man with him was riding a small gray pony, (similar to the one found shot in the head not far from where the body of the dead youth was found) and ^{wearing} a heavy pair of shoes, well worn. The investigation was pushed and a man answering the description of the one seen riding the gray pony was found near Eufaula in the Creek nation. He was stopping with his brother by the name of Evans and was in possession of a fine bay horse, and wearing a new, high heeled pair of boots with fancy tops. He explained that he had traded for the horse and the boots. He was arrested and taken to Ft. Smith and was later indicted. At his first trial the jury disagreed, standing eleven to one for conviction. He was remanded to jail and he was the first man tried before Judge Isaac C. Parker. He was prosecuted by the Hon. Wm. H. H. Clayton, the ~~was~~ District Attorney of the Western District of Arkansas. The trial took two days and ^{on} the evening of the first day, after the evidence of the government had been introduced, the prosecutor was sitting in his office pondering over the evidence and doubtful of conviction because of a missing link in the chain. His reveries were interrupted by the entrance of a strange man who said:

" My name is Seabolt. My home is near McKinney, Texas. I am the father of the boy murdered by Dan Evans now on trial. My son and Dan Evans, whose Parents live near Waco, left for the Indian Territory together. My son was riding a large bay horse and Evans a small gray pony. Just before my son left home I purchased for him a pair of new, high heeled boots and at the same time bought a pair exactly like them for myself. Here they are," and he raised his feet and displayed to the astonished persecutor a duplication of the boots that morning introduced in evidence,. " Just before my son left home one of the heels came off his boots and he replaced it by driving three ^{horse shoes} nails into ~~the~~ ^{it} same."

The next morning after the defense had rested its case the prosecutor called to the bailiff: "Bring in Mr. Seabolt." His testimony was given, the jury retired and soon returned with a verdict of guilty. Just before Evans was hanged he confessed his crime and said he had murdered the boy for his horse and boots.

It is barely possible that the father of this murdered boy did not think Judge Parker brutal, but just. Strange to say the sympathy of the many dwells with the living; no thought, apparently, is given to the grief occasion^{ed} by the prisoner on trial. Our sympathies are latently and subconsciously drawn to him who sits at the bar for trial irregardless of the brutality of his acts. Perhaps it is the Cain within us taking the viewpoint of the murderer. Perhaps its because we cannot readily visualize the victim whose life is snuffed out without trial or the sorrow and anguish of the living relatives, or the orphan children left to a precarious livelihood or the widowed mother left alone to support and nurish a brood of children. Suffice it to say the sympathies of the average citizen is with the accused- his statements, however absurd, are readily accpeted as truth. Friends come forward to assist in the defeat of justice. Lies and near lies are sworn in a misguided sense of loyalty

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and farceplay.

Since time immemorial the strange struggle for the prevention of crime has been going forward. In the beginning society thought to discourage the acts of crime by cruel and inhuman executions. To be "drawn and quartered" was the punishment for a hundred crimes in old England a few hundred years ago. Gradually this brutality was relaxed and the accustomed method was to "hang" on a gallows erected at the highest point in the community-- a public execution that the multitude might witness and be thereby deterred from crime. In our own country this method was adopted until most recent years when various means have been adopted and in many states the death penalty has been done away with altogether.

From the brutality of the beginning the pendulum has swung to an opposite extreme; and just as ridiculous extreme. Crime to be thwarted, discouraged and prevented must be met with punishment swift, unerring and certain. But to-day through a perverted sentimentality we find those convicted of the vilest crimes nurtured and pampered, housed and fed, provided with more comforts and conveniences than they ever knew before, and allowed to live off the tax burdened public without punishment, other than confinement, and not even allowed to work so that a portion of the expense of ^{their} keep may be saved. Societies of busybodies and sentimentalist are formed for the purpose of seeing that the jails and the prisons are made places of entertainment and pleasure. A harsh word to a brutal murderer by a warden or guard brings down upon the administration abuse and execration. Men who brutally murder, who rape the helpless maiden, who burn the homes of the humble, who rob and steal and embezzle must be treated with the utmost kindness and consideration. Picture shows and libraries are furnished; radios and band concerts are had; baseball teams and football teams must be allowed and the strictest attention paid to sanitary conditions that

the festive germ may not approach the person of the pampered pet of the society. Three square meals must be furnished in style and all during the period of incarceration the gentle soul is free from all responsibility and care. The only one who really suffers is the burdened tax payer who foots the bills ^{and perhaps a family that has done no wrong,} It all seems so futile and unreal. That men of such degenerate natures should receive ^{such} ~~the~~ consideration, care and protection is a burlesque on our criminal laws and upon the courts erected to enforce the same. It is in the nature of placing a reward upon misconduct and a penalty upon righteousness. And the same sentimentality raises its hands in horror at the mention of birth control or the sterilization of the habitual criminal or mental degenerate. We are a nation of emotionalists and sentimentalists disregarding judgment on one hand and the history and character of man on the other. We lay down laws ~~from~~ the protection of society and then straightway destroy the same by thwarting any punishment therefor.

This was not true in the famous old court of Judge Parker. He had a different vision and a different philosophy. And the result of his thought (even though ~~it~~ it went against the grain) justified his position. For he rid the territory of its worst characters, he subdued crime and the criminals. He made the territory a safe place in which to live. He afforded protection and security to the worthy by destroying and punishing the unworthy. When he started, crime was entrenched and arrogant and when he had finished, crime was dissipated and furtive. He proved the fact that swift and exact punishment did in fact deter crime and the criminal. The very fear that he placed in the hearts of the ruthless was a protection to society. The eighty eight that swung from the old gallows at Ft., Smith probably saved two hundred lives - lives of worth while people - people who were worthy of propagating the specie - while those who met their fates were not ~~worthy~~ of consideration or protection. Their hands were red with blood of innocent

people and their lives were forfeit. Such people only bring children into the world predisposed to crime. Society is best protected by their extinction.

This same Dan Evans in a careless and cheerful manner thanked the judge and his face took on a scornful smile as the stern old judge bowed his head and wept. Should such a life be preserved? Let each answer that question for himself, Parker knew it ~~xxxxxxxx~~ should not.

The next was James Moore a Native of Johnson County, Missouri who had moved with his parents when but a baby to Texas. Before his majority he had become a member of one of the notorious bands of outlaws infesting the territory. On the 6th day of August, 1874, he and another outlaw killed and robbed an old crippled farmer named Cox who lived in Washington County ^{Ark} near the site of the old Federal Barracks known as "Fort Wayne." Hunton, the other outlaw, and Moore took the old man's two horses and escaped into the Indian Territory. A citizens posse followed them to near Ft. Gibson and thence to Eufaula where one of the pursuers boarded a train while the others took the trail. At Atoka the man on the train saw the outlaws and, hastily gathering another posse, followed Moore and his companion over a hundred miles finally overtaking them on the Little Blue near the Red River, the southern boundary of the present State of Oklahoma. Brought to bay the outlaws opened a desperate fire and one of the posse by the name of William Spivey fell dead, a bullet in his brain. Moore got away and reached Caddo, a Station on the M.K. & T Ry (the only railway in the Territory at that time) and took a train to Eufaula where he hired a negro to convey him to the camp of a drover with a bunch of cattle enroute from Texas to Missouri. From there he sent a confederate by the name of Nowlin to Ft. Wayne to ascertain the lay of the land and to

make arrangements for the sale of the cattle which he proposed to steal from the drover after killing him. Nowlin proceeded to the vicinity of Fort Wayne, there represented the cattle to be his and endeavored to sell them. He was recognized and taken into custody and then and there confessed his part in the infamous plot and told the officers where Moore might be found. Two deputy marshals of ~~the~~ ^{Ft Smith} court on September 10th, 1874, approached the drovers camp and Moore seeing them attempted to escape, but on account of a bullet wound in his leg, received at the battle of the Little Blue, he got no further than a nearby ravine where he was found by the officers, his clothing saturated with perspiration caused by fear. He begged the officers not to shoot him. When told of the death of Spivey he was not remorseful but boasted: "If I have killed Spivey, he was the eighth man I have killed- niggers and Indians dont count."

Sam Fooy was a mixed blood Cherokee. He had a son living in the Indian Territory. He had a fair education, but in his confession which he made to a Mr. Weaver of Ft. Smith, he stated he had always preferred the association of bad boys and men during all his life. His father and uncle, James C. and Bend. Fooy of Memphis, Tenn. had both formerly lived in Ft. Smith. They later removed to the Indian Territory and there died. Sam's mother after ^{Weaver} remarried and by the confession it was learned that the step father of Sam had tried in every way to reform and make something of the fellow. His mother, a good Christian woman, had prayed with Sam to leave off evil ways and settle down and make something of himself but to all such appeals he turned a deaf ear. The Story of his crime may best be repeated from an article in the Fort Smith Independent of those days:

" A young white man, John Emmitt Neff, employed to teach school at Talaquan, had received as his recompense \$250.00, and started to tramp to the Illinois River. He was known as the "Bare Footed School Teacher". Night overtook him at the home of a Mrs. Stephenson, sister of Sam Fooy. The following morning Neff tendered a five dollar bill in payment of the fifty cents he owed the woman and as he had no change he promised to leave the money he owed at a certain store several miles away. He started off, accompanied by Sam Fooy, and was never again seen in life. About a year later a skeleton was found lying by the Illinois River at the foot of a high bluff; in the skull was embedded a leaden bullet. Some time ^{later} an Indian boy while exploring the fatal spot, found a partially bound book and on the fly leaf the name of the missing school teacher, his late residence and other memoranda, also a quotation ⁱⁿ Latin from Horace, book 1, ode 4, which read, in English: "Pale death treads with even step the hovels of the poor and the palaces of kings"; other articles were found nearby and were identified as being the property of the school teacher. Only a few weeks after the murder Fooy had confessed the crime to Stephenson, his brother in law, begging him to keep the terrible secret, and later told the deed to a young woman of whom he was enamored. The confession afterwards assisted in his conviction. He left a wife and three children at Webbers Falls in the Cherokee Nation; one of the later a young man about twenty eight years of age walked into the office of the Fort Smith Elevator one day in December, 1898, and seeing a piece of the old gallows beam hanging on the wall, requested a piece of it, saying, "My father was hanged from that beam."

The fourth of the sextette to be tried, sentenced and hanged at the first term of Judge Parkers remarkable court was John Whittington. He was native of Reynolds, Taylor County, Georgia. In 1870 he removed to the Chickasaw Nation, where at the time of his execution, his wife and mother and two children resided.

A letter written by him is extant in the archives of the old court entitled: "How I Came to the Gallows" and it was read to a crowd of curious sight seers by the Rev. H.M. Ganade just before the drop fell.

" My father taught me to be honest and to avoid 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 he had been my brother it would have been the same. If I had been blessed with good instruction I have had since I have been in prison I would be a good and happy man today with my family. Oh! what will become of my poor wife and two little boys who are away out on Red River? I fear that people will slight them, and compel them to go into to low, bad company on account of the disgrace that I have brought upon them. But I leave them in the hands of that gracious God in whom I have learned to trust. Oh! that men would leave off drinking altogether. And Oh! parents, I send forth this dying warning to you today standing on the gallows: TRAIN YOUR CHILDREN IN THE WAY THEY SHOULD GO. My father's example brought me to ruin. God save us all!

Farewell! Farewell!
Fort Smith, Arkansas, September 3rd, 1875. John Whittington.

On the Texas side of Red River not far from Whittington's home in the Chickasaw nation where he was tenant farmer for a citizen by the name of Simon James, was a saloon conducted by one Ottery. This rum dispensary was operated as near to the Indian Territory as it was possible to get and stay within the law. He enjoyed a good patronage from the people of the southern portion of the Territory. It was a desperate place and many men missing were last seen in the old saloon. Many murders were committed at the place and the desperate bad characters of the territory made it a "hang out" and meeting place. It was to this place that Whittington had gone one Sunday afternoon in company with a friend and neighbor by the name of Turner. Turner had on his person something over a \$100.00. After an afternoon of heavy drinking these two started towards their homes. When a short distance from the "hang out" but over the Red River and within the Indian Territory Whittington procured a heavy club and knocked his friend and neighbor off his horse and while he was on the ground jumped on him and cut his throat from ear to ear. He then proceeded to search the body and procure for himself the \$100.00 which he had seen Turner have. A son of Turner's had ridden out to meet his father and while crossing a small glade or opening in the timber he discovered Whittington in the act of slashing his father's throat. ^{the} ~~the~~ distance was too great, however, to see distinctly what was actually taking place, only being able to discern that a man, with two horses, was busy with something lying upon the ground. Not sensing any danger he rode forward to see what was going on and then recognized Whittington who immediately fled leaving the boy beside the bleeding corpse of his own father. The boy immediately gave chase and captured Whittington on the Indian Territory side of the river. The money was found on Whittington's person and his knife, still red with blood was also found and recognized near the dead body.

So it may be well to consider, in view of the letter and charge against the old father therein, whether it was the rearing or lack of the same or the greed for money without laboring therefor that prompted the act and paved the way to the "gallows". It is quite wonderful what some people will do to keep out of honest work. And it is quite as wonderful to note what alibies will be submitted when one draws near to their just punishment.

The fifth man was Smoker Man-killer a Cherokee from the Flint district of that Nation. He had a wife and a child. His mother and two sisters visited him at the old jail. They wept bitterly, not loudly and with noisy demonstration to attract attention, but quietly evidencing the deepest sorrow. Smoker sat through it all with the usual Indian stoicism in moody silence. He denied the crime for which he was convicted. Denied even knowing or being acquainted with William Short, the man he killed, although Short was a near neighbor and had been ~~shuh~~ for a number of years. He claimed that Dick and John Welch killed Short. The man was murdered on September 1st, 1874. It was claimed at the trial that while Short was out hunting turkey and other wild game he was met by Man-killer who greeted him pleasantly, speaking in Cherokee, then borrowed his gun and shot him dead. No cause was ever assigned for the brutal murder. However it was testified to at the trial that Man-killer openly boasted of the deed.

The sixth and last of the first to be hanged under Parker was Edmund Campbell, sometimes called "Heck". He was born in the Choctaw Nation on the old "Ring" far[^] not a great distance from the City of Fort Smith. He could read and write and had a wife and two children. It was proven at the trial that he, in company with his brother, Sam Campbell and a friend Frank Butler, went to the house of a colored neighbor by the name of Lawson Ross. There he murdered Ross and a young colored woman who was with Ross. Sufficient facts were adduced to leave

no doubt of the man's guilt. In fact all of these six men confessed before they were hung as did every one, so far as I can find or be informed, of those hanged under sentence of Parker's court.

On September 3rd, 1875, in the afternoon, on a gallows built to accomodate twelve victims at one time, these six people for the crimes above set forth were launched into eternity at one and the same time by George Maledon, the official hangman. This was the first time in the history of the United States that six people were hanged at the same time and only on the gallows of the old jail at Fort Smith was this ever to happen. ^{again} On April 21st, 1876 five people were hanged and later on six others were hanged at the same time. And on several occasion twos and threes and fours were sacraficed in order to make the Indian Territory a safe place in which to live.

During the year 1875 when Parker first took up his duties on the criminal court for the Indian Territory it was estimated that more than a half hundred murders were committed in the Territory for which no arrest was ever made. The appalling numbers of crimes will be more readily appreciated when it is understood that in the whole vast territory it was estimated that not more than sixty thousand people were to be found and the further fact that the court did not have jurisdiction over crimes committed by the Indians, one against the other. The country was wild, sparsely settled and entirely without road facilities and with only the M.K. & T Ry and ^a branch running from Vinita to Sapulpa built long after the first road was constructed. Every hanging was occasioned by murder. Not a conviction was ever had where a mutual combat, or what approximated mutual combat, was entered into. In is true that several of the many hanged where for killing officers or possemen while in pursuit of those who had committed a felony and gave battle.

Neither were any of the members of the more notorious outlaw gangs such as the James and Youngers; the Daltons or the Doolins ever executed under order of the Court. True it is that many of those who were executed were just as dangerous and more bloodthirsty. However the James boys and the Youngers, Daltons and Doolins had their rendezvous in the territory but these men, while robbers and killers in defense of their lives, were not the type of murderers that swung from Maledon's gallows.

The record for the November 1875 term of the court shows the following record: trials, criminal cases 91, found guilty 60, Not guilty 31. Sent to the penitentiary 61, sentenced to hang, 6. sent to jail 4 and the number of indictments returned were 150. And as appalling as this record seems it was stated that not one fourth of ^{these guilty of} the murders and other crimes committed were brought to justice.

During Judge Parker's reign he was often attacked and misrepresented by the press, not of his immediate locality, of course, for the press and the people there understood the difficulties under which he worked. But by the press throughout the nation where the true state of affairs could not be thoroughly known. He was represented as opposing the right of appeal and setting himself up as the last resort. While the act that organized the court made it the original, exclusive and FINAL tribunal relative to crimes committed within the territory, yet it was far from true that Parker himself opposed appeal. He favored and advocated courts of appeal, but insisted that such courts be so instituted as to give immediate and expeditious action. For Parker was of the opinion that it was necessary to administer swift and immediate punishment in order to plant the necessary fear in the minds of ^{sufficient} the criminals ~~that xxxxxxxxxxxxxx~~ to deter them from their crimes. To Parker it did not seem to be an act of cruelty to sentence blood thirsty men to die. He once stated: " I never hanged a man, it is the

sentences them to die. I am only the instrument of the law and of society. The good ladies who carry flowers and jelly 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 to his cell; they forget the crime he committed and the family he made husbandless and fatherless by his assassins work."

Some time before his death, in an interview, he is said to have stated:

"Crime in a general way has decreased considerably in the last twenty years, but murder is largely on the increase. Why, do you know, that in the last five years 43,000 persons, more than are in the regular army, have been murdered in this country? Parallel with these have been 723 legal executions and 1118 lynchings. Think of an average of 7317 murders a year. Last year 10,500 persons were murdered; that is at the rate of 875 a month, while five years ago the number of murders in the country were, for the year, 4290. There is a doubling of the murder rate in five years. This fearful condition does not exist because of defective laws; we have the most magnificent legal system in the world. The trouble lies in the fact that the bench is not alive to its responsibility. Courts of justice look to the shadow in the shape of technicalities instead of the substance in the form of crime. Every one knows, too, that corrupt methods are used to defeat the administration of the law. This is a dangerous condition, and the government cannot survive a demoralized people, swayed and dominated by the man of crime. We must have a remedy. Thinking persons realize this, but they are wrongfully looking toward the abolition of the jury system as a relief for these evils. I believe this is wrong. Not a jot or tittle of the dignity of the right of trial by jury should be abated. I have often said that

juries should be led. They have a right to expect that, and if guided properly they will render that justice which is the greatest pillar of society. Without it, with a bench weak and hesitating, even with the terrible penalty of death as the punishment for murder, that branch of crime will not diminish. It is the uncertainty of punishment that causes lack of fear in the man about to commit a crime. With a milder form of punishment, say the penitentiary for life, with the courts having strength to enforce convictions, without chance of a criminal being released after a few years by executive clemency or the forgetfulness that comes with time, even murderers would come to fear the law. But until such time as the infliction of punishment for crime becomes a surety crime will continue rampant, but give to the criminal mind the sureness of conviction and the certainty of punishment and there will be diminution in crime and not otherwise."

What if the old judge lived in these days of the gang murders and killings? He would tell you of the laxity of the laws, of the moral ^{degeneration} ~~determination~~ of the people. Not, in fact, laxity of the laws but of the enforcement of the laws. He would tell you how his court put the fear of God in the minds of the criminals of the Indian Territory and brought crime, as known to his court: murder, manslaughter and attempts to kill, to a minimum. What can be expected of a system that lays down a host of laws ^{for} the regulation of society and then proceeds to enforce none of them? There have come to be so many regulatory laws of people's conduct, not necessarily criminal conduct, but their deportment, personal deportment not associated with the relation of one person to another, that the people have become confused and derelict toward the enforcement of any of them. Disgust and resentment creeps into the people's minds and as jurymen they are inclined to take it out on all the laws forgetting that those crimes that are shocking and appalling to the sensitiveness of the average mind will proportionately

increase. Education is apparently being undertaken by regulation of the laws. That is not the purpose of laws. The rightful purpose is to inflict punishment on those ^{who} ~~of~~ commit CRIMES that are fundamental. It does not take a long treatise, called a statute, to impell people to the belief that rape, arson, murder, theft, embezzlement, kidnapping and burglary are crimes, but it becomes confusing to the average mind when the laws declare certain frauds as crimes, the sale of faulty securities where the buyer is as much at fault as the seller, the manufacture and sale of intoxicants, the lottery laws, the gambling laws and the laws against "raffles" even to the extent that the post office will not allow a statement of a harmless gift to the purchasing public to be given by a merchants association to go through the mails in the local newspaper. The people think of these things as regulations directed toward a class of people that should look out for themselves. The sale of a horse with the "heaves" is punished by imprisonment and a fine when in the ordinary course of trade the buyer should be on his guard for he is not obliged to buy until he has convinced himself of the soundness of the animal. All these things, and there are thousands of them on our statute books, make the average citizen resentful of all laws and their sympathy goes out to every one who stands at the bar of justice. If our laws were restricted to a few, and those few rigorously enforced there would be a lessening of those particular crimes. For the little children would become imbued with the idea that certain punishment would follow an infraction of such laws and build up a restraint, ~~and~~ during their formative period, against a breach of the law. After all, the best preventive of crime is in the home, around the fire-side, listening to the wholesome conversation and instruction of mother and father instilling into little minds the principles of honesty, sobriety, truthfulness. And when a country is filled with such homes it is safe, but if neglected, crime will continue to increase and the

percentage of youthful criminals will grow. Little minds, when impressed with the belief that certainty of punishment awaits the infraction of the laws, will ^{form} ~~for~~ a determination to avoid those evils, ^{a determination} that will dwell with it all through life and save it much suffering and distress. But when the conversation dwells upon the escape of the criminals the very reverse takes place.

This was the position, no doubt, that Judge Parker took for he studiously enforced the laws by direful punishment, although it was a matter of the bitterest sorrow to him to do so. He was called heartless and bloodthirsty, but no man ever appointed to a case of undue severity. His aim was to do justice, nothing less. "Do equal and exact justice", he was wont to say, "permit no innocent man to be punished but let no guilty man escape."

During Judge Parker's residence in Fort Smith he was recognized as a public spirited citizen. He was a great friend of the common schools of the city and community and President Rogers of the School Board of Ft. Smith spoke of Judge Parker as follows:

"During the year 1896 the public schools of Fort Smith suffered great loss in the death of Judge Issac C. Parker, one of the members of the Board of Directors."

During the number of years Judge Parker was serving the court at Fort Smith that court was always open. He opened court in the morning at eight o'clock and closed the same at dark. He was always in the best of health, vigorous and cheerful, until Congress on March 1st, 1895 provided that the court's jurisdiction would cease over the Indian Territory on September 1st, 1896. From that time forward he began to fail. It would seem that while a duty was to be performed he could push forward and maintain his vigor, but when the time came that told of the cessation of labors, he drooped and failed. For he died in the year 1896, ~~namely~~ November 17th.

A fact^{it} is that every individual is of mysterious interest to another individual. Subconsciously every person recognizes this fact and adopts it in their actions although probably ^{not} one out of a million has every analyzed the wonderful fact that every human being is a profound secret and mystery to every other^{one}.

A spare, slight figure of a man, riding a small weary looking pony made his way out of the Choctaw Nation where he had been occupied in a lumber mill for Principal Chief Ailen and National Councilor Riley, in the fall of the year 18~~86~~⁸⁷, following the old Butterfield trail road toward Fort Smith. Som etime after night fall he surmounted a small hill overlooking the town, halted his horse and sat looking down upon the community in which he ^{was} thereafter to become a prominent and grewsome personality. Sat his horse there, as the lights began to flash on in hundreds of houses, in solemn consideration of those darkly clustered houses, each enclosing its own secret; feeling perhaps that every room in every one of them held its own secret; that every pulsing heart in the hundreds of different breaths there held in some of its mental wanderings, a secret to some heart near to it;. realizing that every home held its mystery and its secret, its joys and its sorrows; its kindness and its horrors; realizing, perhaps, that to some other human, every coming and going held a profound secret and mystery; every movement of subtle interest could the secret thoughts be plumbed. As the silent, solitary figure sat his horse in silence, looking down upon the darkened city, perhaps his mind concieved such thoughts; perhaps, also, a premonition spoke in silent thought of the tragedies in which he was to play a part. Who can tell?

For the silent figure that sat its horse so solemnly and morosely was that of George Maledon soon to become the awful hangman of the Grim old "gallows" of Fort Smith.

Born on June 10th, 1830, in faraway Bavaria he accompanied his parents to the United States the following year. The family settled near Detroit, Michigan. Here he received what education he had, both in German and in English. When about twenty years of age he left that section of the United States and travelled into the West, seeking adventure in the new countries. Eventually he found his way into the Indian Territory and during the Civil war joined the Union Forces in Arkansas and fought during the duration of the war. After peace he found employment in the Choctaw Nation and in many ways became the trust^{ed} employee of the principal officials of that nation.

Riding his weary horse into the sleeping village he embarked upon a career that was to be ~~the~~ outstanding in the history of America. In all the history of the world, perhaps, no other man, but one, the ghastly Samson of the ~~Rev.~~ Guillotine during the French revolution, every legally killed so many of his fellow men. No other man in all the length and breadth of the United States ever approached the awful mark set by this man, George Maledon.

He was first appointed a deputy sheriff under John H. McClure of Fort Smith and when the court was transferred from Van Buren to Fort Smith he was offered and accepted a Deputy Marshalship under Logan S Root, and appointed turnkey in the famous old jail. In 1872 he was appointed a special deputy marshal and given charge of the executions of condemned prisoners of the court. He held this position until in ^{the} year 1894 and during this time he, with his own hands, hanged more than four score of unfortunate fellow creatures. He polished and gressed

the ropes- flexed and stretched the same; fashioned the hangman's noose, and when the time came adjusted the same about the neck of the convicted- some times, as heretofore mentioned, as many as six at a time; sprung the trap with his own hand that sent men by the score into eternaty. And during the same time he shot two men to death who were trying to escape from his awful death machine; shot two others who remained cripples until their call was made to the merciless old gallows, where ^{he}/completed the task by the rope he had commenced with lead.

An old manuscript gives a description of his famous gallows as follows:

"The scaffold where the executions were held, was built with a trap thirty inches wide and twenty feet in length, giving room for twelve men to stand thereon, side by side, at one time."

Six men were executed at the same time on two different occasions by one jerk of the fatal lever; three times five were hanged together and as many times were four thus hanged and on four occasions three men were dropped down together, while double hangings ^{re}we/too numerous to mention, in fact, became common place during those dreadful times.

Just why the scaffold should have been built of such dreadful dimensions, anticipating convictions in mass, ^{as} ~~was~~ it were, long before the old court began its terrible work, remains a mystery. How the mind of man could have contemplated such wholesale legal slaughter in advance of even indictment and trial must remain a mystery of those times that, it is hoped, will never repeat themselves. Perhaps the killings that had gone before prompted the anticipations of some fearful mind- some mind sensing ~~that~~ ^{that} justice that was to come. No one can tell, it must remain a puzzle.

Maledon is said to have preserved and took away with him, when he ceased his gruesome occupation, one hempen rope with which he had

hanged twenty seven people; one that he had used in like fearful manner eleven times; and another had launched nine downward into death.

George Maledon was a man of slight build, but five feet, five inches in height, weighing less than one hundred and forty pounds. Left Handed. Dexterous and deadly with his guns and calculating in his handling of prisoners. However he was kindly and good to his family and is said to have been respected and liked by those who knew him well. He never smiled and the expression of his eyes impressed one as indifferent to human feeling.

An old lady once asked him if he ever had qualms of conscience from his ghastly business, if the ghosts of the victims ever haunted his mind. His answer was typical: "No, I have never hanged a man that came back to have the job done over again. The ghosts of men hanged at Fort Smith never hang around the old gibbet."

He expressed regrets, many times, because of the necessity for hanging men but felt that he had only done his duty as an officer.

To illustrate his calculating turn of mind, his thoughtfulness in time of danger and stress, his killing of the negro prisoner Frank Butler will suffice. Butler was convicted of murder and during the trial he was brought out one night at the request of his attorney to the court of Judge Parker. Just as he stepped out from the old basement jail between Maledon and a guard he threw out both arms and knocked the guards backward and sprang away into the dark toward the great stone wall that enclosed the jail. Maledon calmly turned around and locked the prison door, drew his old army pistol and with unerring aim shot the negro dead. The stone which marked the spot where Butler fell was just seventy five ~~feet~~ yards from the basement door where he made his dash for escape.

Some shot in the dark! Butler's mother and father were discovered just over the wall waiting to receive their son, expecting him to be killed, perhaps, but preferring that way to eternity rather than Maledon's noose.

The awful old gibbet was located in the ^{South}~~North~~ east corner of the old enclosure built for the early day fort. It was a raised platform perhaps seven feet high, with steps and railing on the right hand side, leading up to the platform; there were ^{twelve}~~ten~~ steps in all leading to the traps. Two giant beams raised their heads and across the ^{top}~~top~~, another beam, more than twenty feet in length extended with indentations (twelve of them) for the ropes to rest. It was fastened to the upright beams by heavy iron clasps. From the end of the beam, from which the ropes were to hang, two upright timbers supported a covering of boards the entire length of the gibbet, giving an appearance not unlike the top of the ordinary baseball grandstand. A very thoughtful ~~skating~~ shielding of the intended victims from the sun, or perhaps the rain or storm. The trap doors were flush with the floor of the platform and were held in place by huge iron bolts that were withdrawn by a lever, operated from the back of the platform, and so arranged with chains as to allow the single pull of the lever to withdraw the bolts or rods thereby allowing the traps to swing free and downward. If need be all twelve at one pull of the lever or a lesser number, if so desired. These bolts or rods were kept greased and polished so that the withdrawing was practically noiseless and effortless. The plunge downward (which was exactly eight feet to the end of the rope) was simultaneous with the jerk of the lever- the lead wires, ropes and chains were kept taut. The executions were public and old timers state that on such occasions

people from miles around came in to sate their morbid, sickning curiosity. The tumbrils did not roll over cobble stones, nor the mob utter cries of hate but the Madame Defarges and the Mister Defarges were on hand, not with their knitting and their pikes, but with wondering eyes and open mouths and rententive minds to tell the gruesome details.

The gallows was burned by order of the officials of the City of Fort Smith. ^{in 1897.} Perhaps it should have been preserved as a matter of historical interest and an object lesson for which ever way one desired to consider it.

In 1894 Maledon ^{retired} tired of the business of killing his fellow men and entered the grocer business in Fort Smith, later removing to near Fayetteville, Arkansas, where he went into the truck and farming business. Some say he died there, a crazy man, others deny this statement and say he enjoyed a peaceful, contented life until his death. Around such men, and their eerie career, ever dwells that uncertainty of state which defies a clear understanding or definite information relative to their thoughts, actions and real personality. Every one has a different tale to tell, some out of lugubrious imaginings tell a wierd story of pricking conscience, of deranged mind and dreadful ravings. Tell it as first hand information, facts their own eyes have seen and ears have heard. While others, less visionary, relate a different story, a story of a casual, placid life; friendly and commonplace; doing the things that normal people do; saying the things that common place man would say. But about such woeful characters dwells that uncertainty- that un- reality- begotten of a strange and uncanny history record and occupation. The old folks tell of strange wanderings about the countryside, curious mutterings; ~~xxxxxxxx~~ unexpected visitations sudden disappearances; the quaint imaginings of morbid minds, no doubt.

But who among us coming at infrequent intervals upon such a character would not allow the natural thoughts to stray in wonderings about his thoughts and memories? Who among us in the telling might not garnish the truth with a little spice of fiction to make the tale more interesting? To see the eyes bug out in wonder and awe the teller on each repeated narrative seeks a new embellishment. And so the facts are lost in the telling and the investigator but finds the memory retaining those things of a startling nature. So the history of most remarkable characters are written no doubt. The speech, the spoken thoughts, the actions are creations of the oft repeated tales of not unkindly fabricators. The wierd precission and the wonderous speed of the gun of Billy the Kid is not allowed to wane by the telling of his historian. The mighty swordmanship of a William Wallace is not depreciated by the tale of a Jane Porter. The renoun of Jesse James is not lessened by the telling of his friends or near friends. And so it goes until the actual facts are lost in a more amusing fiction. Time defeats the facts but preserves the fabrication and the serious minded investigator must, of neccessity take what he finds.

* * * *

But the dreadful reputation of the old hangman still persists about the environs of Fort Smith, and whether the tales one hears be true or otherwise, some of those old men who still remain, religiously believe the same.

A few years ago the writer hereof and James Brazell, one of the old time United States Marshals of Parker's court were attending Federal Court in the old court house at Fort Smith. While strolling down one of the streets of the city one morning we came upon an old, decrepid, blear ^{and} eyed, bumish looking fellow. Apparently Brazell had known him in the past for he walked over to him and tapping him on the arm said: "Come with me."

"Who are you, I dont know you" replied the man

"George Maledon, is my name, and I want you." said Brazell

The old fellow started, and jerked away, and peered anxiously into Brazell's face, and said:

"No you're not, Maledon is dead- Maledon is Crazy- you're not Maledon" and turned and hastened away down the street, looking back over his shoulder once or twice ~~and~~ though expecting pursuit.

Jim Brazell laughed and watched him trotting away and then said to me:

"Maledon was the old hangman for Parker's court and I wouldnt be at all surprised but what my old friend there has been in his jail a good many times."

"Really, what kind of a man was Maledon" I asked

"A pretty good old fellow, he was just an officer and did his work as the law directed. He hanged a great many men, but I doubt if he ever thought much about it. They, every one, needed it."

"Did he actually go crazy?" I asked

"I have heard he did, but I doubt it very much. You can hear very near

anything. The last time I heard of him he was farming down near Fayetteville"

So here is the opinion, unbiased, by one who knew Maledon very well during his lifetime, and during the time he was pursuing his fearful calling.

Others I have talked with express the same opinion as Mr. Brazell but if the majority is to be accepted the terrible experience of this man of blood in the later years of his life ~~was~~^{was} sufficient to chill the blood and "make each particular hair stand ~~upon~~^{on} end like quills upon the fretful porcupine" as one once remarked about the ghostly appearance of his erstwhile father.

But even "hangmen" have their secret sorrows; their cares and woes that are concealed from the idle and curious. Such was too true of Maledon. In the 160th United States Supreme Court report at page 532 is to be found the case of Frank Carver vs. United States. The gruesome details of a useless killing are retold there. On March 25th, 1895, Frank Carver shot and killed Anna Maledon, the daughter of George Maledon, the hangman. Carver was a married man and had abandoned his wife and children for the Maledon girl, whom reputation said was of unsavory standing about Fort Smith. They had moved to Muskogee, ^{Ind. Terr.} and there on March 25th, 1895, while the defendant Frank Carver was in a drunken state and inspired by jealousy, the killing was done. Carver was tried in the Fort Smith court and convicted and by Judge Parker sentenced to be hanged. An appeal was taken to the Supreme Court of the United States and the cause reversed. Upon another trial Carver escaped the gibbet. Maledon had ceased his work as hangman at the time of the killing. It is said by some that the conduct of his daughter had brought such sorrow to the old man that he left Fort Smith and sought the seclusion of a farm near Fayetteville, where he died.

In seeking information relative to the old court I visited Fort Smith and by Mr. I.M. Dodge, the old Clerk of the court, was shown through the chambers and the old court room where Judge Parker held his court during the later years of his administration. It is a magnificent old room. There the Federal court is still held. Great panelled walls running fifteen feet high, finished in Cherry or some other red wood. The railed off portion for the accommodation of the attorneys constitutes more than two thirds of area. The seats for the spectators being limited, and yet I was told that during some of the trials at the old court as many as five hundred people were in attendance. During the trial of Boudinot for the killing of Stone at Talequah I am told by State Senator W.M. Gulager, ^{of Muskogee, Okla} literally hundreds of people came from all sections of the country to attend the trial and principally to hear Dan Vorhees of Indiana who defended Boudinot. In the southeast corner of the old courtroom hangs an enlarged picture of Judge Parker. Through carelessness, water has been allowed to damage the picture. I was told by Mr. Dodge that it was an exact likeness and the picture submitted herein is a copy thereof. ^S Nothing but kind words were to be found for the memory of Judge Parker among the old timers of Fort Smith. He was the great man of his day. And to refer to him as the "hanging judge" will immediately bring forth some expression of protest, such as: " he was the kindest of men"; "he had a duty to perform, and was man enough to do it" or " he was not cruel, he was kind." Some one is always quick to take the part of the remarkable old judge. And the instructions disclosed in the decisions of the United States Supreme Court which more than fifty times reviewed the records from Parker's court, shows a most remarkable force of expression, choicest of language and a clear and analytical mind. He must have been a thorough student of the criminal law. He had a knack of turning the usual resort of the harassed criminal in threats, self defense and the like against them.

For instance, when a defendant showed that threats had been made against him by the deceased, Parker was want to instruct the jury that this within itself showed that the defendant had become spiteful, revengeful and murderous and it was a circumstance to show the premeditation of the defendant in the killing. And in instructing as to self defense he was apt to refer to the unseen witness, the dead man, as speaking through the circumstances submitted in the testimony. Then again he would perhaps draw a quotation from the Bible as he did in the case of Hickory vs. United States, 160 U.S. 476 where he said:

"There are a great many exceptions filed here to almost everything said by the court, but I hope they wont take exceptions to this. There is a little bit of history illustrative of the conduct of men:

'And Cain talked with Abel, his brother; and it came to pass when they were in the field, that Cain rose up against Abel, his brother, and slew him. And the Lord said unto Cain, Where is Abel, thy brother? And he said, I know not, Am I my brother's keeper? And He said, what hast thou done? The voice of thy brother's blood crieth unto Me from the ground.' Am I my brother's keeper? From that day to the time when Professor Webster murdered his associate and concealed his remains, this concealment of crime has been regarded by the law as a proper fact to be taken into consideration as evidence of guilt, as going to show that he who does an act is consciously guilty, has conscious knowledge that he is doing wrong, and he there fore undertakes to cover up his crime."

Or again, listen to his charge where a United States marshal, Joseph Wilson, was killed and his body hidden and his horse killed and also hidden, and his saddle and guns concealed:

"And then, again, there stands before you a witness who was there, a positive witness who saw the killing. That witness is the defendant. Bear in mind when you are passing upon this case that the other witness to it cannot appear before you, he cannot speak to you, except as he speaks by his body as it was found, having been denied even the right of decent burial, by the dead body of his horse, by the concealed weapons and the concealed saddle, by the blood stains that were obliterated. He stands before you, although he is in his grave, speaking by the aid of the power of and the might of these circumstances in this case. You are to see whether they harmonize with this statement of this transaction as given by the defendant, bearing in mind that he stands before you as an interested witness, while these circumstances are of a character that they cannot be bribed, that cannot be dragged into perjury, they cannot be seduced by bribery into perjury, but they

stand as bloody, naked facts before you, speaking for Joseph Wilson and justice, in opposition to and confronting this defendant, who stands before you as an interested witness, the party who has in this case the largest interest a man can have in any case upon earth."

Of course such instructions reversed the cases, this very Hickory case was reversed by the Supreme Court twice, and upon the third trial a verdict of manslaughter was returned and the defendant sentenced to five years in the Columbus, Ohio, Penitentiary after serving more than five years in the jail at Fort Smith.

The Supreme Court, speaking through Justice White, caustically rebukes Judge Parker in the following language:

"Admonished by the duty resting upon us in this regard, we feel obliged to say that the charge which we have considered crosses the line which separates the impartial exercise of judicial from the region of partisanship where reason is disturbed, passions excited, and prejudices are necessarily called into play."

But the old Judge was not averse to "getting back" in his own way at the courts so caustically commenting upon his instructions, for in the case of Ellison vs. United States, 160 U.S. page 398 we find him charging the jury, among other things in this language:

"If he prepares himself in the latter way, and he is on the lookout for the man he has thus prepared himself to kill, and he kills him upon sight, that is murder, and it would shock humanity OR EVEN THE most TECHNICAL AND HAIR-SPLITTING COURT to decide otherwise."

Parker had stated that the juries looked to the judge of the court to lead them and he believed the judge should show that he was interested in seeing justice done. He certainly must have stood forth as a champion of conviction to the juries when he was in the full swing of his charge. But after fifteen years of unbridled sway, for during that length of time his was a court from which there was no appeal, not until 1889 was the right of appeal granted by congress from his judgment, it is but reasonable to expect that a trial judge would grow ungarded toward a reviewing or appellate court. I have carefully gone through the Supreme Court reports and am reasonably sure I have not found all those cases reviewed by that court but out of the thirty two found, six were affirmed and twenty six reversed.

In the cases of Crumpton vs. United States, 138 U.S. 958 and Alexander vs. United States, 138 U.S. page 954, the first of which was affirmed and the second reversed the defendants were represented by the Honorable A.H. Garland, former Governor ^{of} the State of Arkansas, later United States senator from that state and attorney general of the United States in Cleveland's cabinet while the government was represented by Hon. Wm. H. Taft, Solicitor, afterwards judge of the Court of Appeals for the Sixth Circuit, President of the United States and Chief Justice of the Supreme Court. So it must be admitted that Parker's judgments were ably attacked and as ably defended by these two illustrious men of our nation. These two cases last mentioned were the first appeals from the judgment of Parker's court. Prior to that time writs of habeas corpus had freed two or three from penitentiaries where men were incarcerated because of illegal confinement, usually jurisdictional matters.

It must be remembered that the government had to prove that one or the other of the parties to the murders were NOT INDIANS. That court had no jurisdiction over crimes committed by one Indian against another. The tribal courts had jurisdiction in those matters. And it can well be imagined that many cases arose where it was difficult indeed to prove that the person killed or the one killing was not a member of some Indian Nation. In the case of Famous Smith vs. United States, 151 U.S. page 67 Parker was reversed because it was not clearly shown that Gentry the man killed was not an Indian. Parker instructed:

" The meaning of that is, that he ^{was} a citizen of the United States; or, more correctly speaking, a jurisdictional citizen of the United States. If a man is an Indian by blood and goes out and lives among the white people, abandons his country, lives among white people who are citizens of the United States, and performs the duties of citizenship, or exercises such rights, that is evidence on his part of an abandonment of his people, and in this manner he may become a jurisdictional citizen of the United States."

This instruction was held to be error by the Supreme Court and the cause reversed. Once an Indian, always an Indian, in the opinion of the United States Supreme Court. And in that case because there was evidence that Gentry had participated in the payment of "bread Money" of the Cherokee nation, although he had been denied the right to vote in one of the counties or districts, the Supreme Court held that the Fort Smith Court had no jurisdiction in the matter under the instruction above set forth. But this shows the difficulties that were unusual to the ordinary trial court that many times confronted the court of Judge Parker.

As a matter of fact Judge Parker was many years ahead of his time (and the Supreme Court of the United States also) in regard to liberalizing what is commonly called ~~technicalities~~ " legal technicalities". For instance, this statement is ^{verified} ~~substantiated~~ by the highest court of our land. In the case of Crain vs. United States , 162 U.S. 1097, the Supreme Court reversed the conviction in Parker's court because the record before the appellate body did not affirmatively show that the defendant, Crain, had been formally arraigned in the lower court. There was a caustic dissenting opinion by Justice

Brewer, concurred in by Justice Brown ~~and~~ and Peckham in the Crain case. In 1914, or nearly eighteen years subsequent to the ruling in the Crain case the Supreme Court of the United States had occasion to again pass upon the same question. Time had brought a broader view and we find that great court saying:

"It is insisted, however, that this court in the case of Crain vs. United States, 162 U.S. 625 held the contrary ***** Technical objections of this character were undoubtedly given much more weight ^{5 our reluctance to over} rule former decisions of this court, we are ~~formerly~~ ⁴ formerly than they are now ***** Holding this view, notwithstanding ⁶ now constrained to hold that the technical enforcement of formal our reluctance to over

rights in criminal procedure sustained 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."

The shade of Judge Parker probably chortled on that uncharted shore in complete satisfaction when the above expression of the Supreme Court vindicated his memory in, at least, a slight degree.

The truth, probably, was that a majority of the members of the Supreme court were prejudiced. Not being able to appreciate the conditions confronting Parker, not being able to visualize the perjury, chicanery and absurd resorts of the criminal on trial, and viewing the many sentences of death coming before it, taking into consideration the absurdly long and tedious instructions to the trial juries and not having had the experience (and might say the complete understanding) in criminal procedure and practice that was Parker's, it was only natural that the court would look askance upon each separate and particular appeal. But Justice Brewer who came from the trial courts of Kansas was more appreciative. Had a better understanding and conception of conditions and criminal and it was he and Justice Brown and Peckham who were prone to cast their opinions with that of Parker, Greenleaf on Evidence, Vol. 1 page 69 and in note 25 reflecting the opinion of Mr. John Henry Wigmore, professor of Law at Northwestern University Law School, speaks of Judge Parker as " One of the Greatest American Trial Judges". Undoubtedly he was. No other judge of a court of the United States ever had the experience that was his. No other court of the United States ever had jurisdiction over the vast territory as did the court over which Parker presided. For fifteen years no other trial judge in these United States ever had the responsibility that was his; never had the character of

criminals with which to deal; unscrupulous, abandoned, fiendish and terrible. His was a federal court trying state crimes in a territory where now more than fifty district and superior judges are thought necessary to enforce the law.

But in the beginning I said that Parker's court did not have jurisdiction over "No Man's Land" or the "Public Land Strip". I made that statement out of memory but I have found it justified and a complete adjudication by the Supreme Court of the United States. In the case of Cook, et al., vs. United States 138 U.S. 907, appealed from the Circuit Court of the Eastern District of Texas, reviewing a conviction of several defendants who had killed a sheriff and several others on Beaver Creek, ^{in what is now Beaver County, Oklahoma,} in a controversy growing out of one of the many county seat fights in southwestern Kansas, the Supreme Court says:

" The plaintiffs in error, with others, were indicted in the court below at its October term, 1889, and were convicted and sentenced to suffer death, for the crime of murder alleged to have been committed on the 25th day of July, 1888, in that part of the United States designated in numerous public documents as the "Public Land Strip", but commonly called "No Man's Land." It is 167 miles in length, 34½ miles in width, lies between the 100th meridian of longitude and the Territory of New Mexico, and is bounded on the south by that part of Texas known as the "Panhandle", and by Kansas and Colorado on the north."

The court then goes on to explain that by an Act of September 9th, 1850, the north line of Texas was to be the south line of the Public Land Strip above described. This was because Texas was a "slave" state and did not care to take in the territory above described because that would place a portion of the state above the Mason-Dickson line in non-slave territory. The court then gives a history of the various Acts of congress giving jurisdiction to the court at Fort Smith, which embraced all of Indian Territory west to the 100th meridian, which was the east line of "No Man's Land".

Also the Act of 1883 which gave all the territory north of the Canadian River in Oklahoma to a Kansas Court and that south of the river and not occupied by the Five Civilized Tribes, to the North Texas District of the Federal court. Each time "No Man's Land" was omitted. The court says:

"The most significant, perhaps, of all the official documents of this class are the letters of the Attorney-General of the United States to the President under date of November 15th, 1887, and that of the Secretary of the Treasury, to the Speaker of the house of Representatives, under date of May 1st, 1888. The former describes the "Public Land Strip" as bounded etc ***** and says that it was not then embraced in any district established by law of the United States. The letter, speaking of the urgent need of legislation to enforce the Revenue Laws of the United States in the Public Land Strip, says that "the land referred to is not embraced in any judicial district, and not being within the jurisdiction of any United States Court the laws of the United States are inoperative, or, at least, cannot be enforced therein."

The court then held that the Eastern District of Texas acquired jurisdiction of "No Man's Land" by virtue of the Act of Feb'y 6th, 1889 and at the behest of the national officials in order to take this "unorganized territory out of the anomalous condition to a certain extent and open the lands to entry." This last referred to the Act of March 1st, 1889, opening Oklahoma to homesteaders. So from the time of the Republic of Texas to February 6th, 1889, the Public Land Strip was in reality "No Man's Land." A very interesting story might be written of this "strip" alone, but we are occupied with another matter.

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Several appeals were taken from Judge Parker's court attacking the method of drawing the trial jurors and it might be interesting just here to refer to the method. In Alexander vs. United States, *supra*, 122 U.S. Page 355 the Supreme Court sets out the method as follows:

"The court directed two lists of thirty seven qualified jurors to be made out by the clerk,, and one given to the district attorney and one to the counsel for the defendant; and the court further directed each side to proceed with its challenges independent of the other, and without knowledge on the part of either as to what challenge had been made by the other." The

government was allowed five challenges and the defendant, twenty.

It so happened that in the case mentioned above the government and the defendant each challenged the same two jurors, C.F. Needles and Samuel Lawrence. They just weren't satisfactory to either side. But the reviewing court while not directly approving the method adopted would not reverse the case on that point because the defendant made no objection at the time of the drawing. The opinion does not disclose when the defendant found out he had been "gipped" of two challenges he might have profited by had he known the government was dismissing the two ^{jurors} mentioned.

While all of the crimes for which prosecutions were had in the Court at Fort Smith were committed in the Indian Territory, ^{except one} the jurors drawn for the purpose of trying the offenders came from the Western Judicial District of the State of Arkansas. I judge some of those old boys who were being tried in those troublesome days may have questioned the fact that they were being tried by a jury of "their peers." Especially would a man from Kansas look with askance upon a jury drawn from Arkansas; but then a Kansan had no business being down in the Indian Territory killing people. But after the Act of 1883, giving the Kansas court jurisdiction of a portion of the Territory, when an Arkansawern was brought up before that court every thing was evened up. To have gotten a jury from the Indian Territory would have been out of the question even if the Acts of Congress would have permitted, for of the sixty thousand people resident of the Territory perhaps five thousand, only, would have been residents or rather, citizens, of the United States.

§ Honorable Harry P. Daily, in his Presidents address to the Thirty-fifth annual meeting of the Bar Association of Arkansas, has this to say regarding the character and disposition of Judge Parker:

" The truth is that Parker was stern and inflexible on the bench, because he was convinced that in that way, and in that way alone, could crimes of violence be stamped out. He did not lack sympathy. He simply refused to waste it on the murderer. Instead, his heart went out to the family of the victim.

He was a companionable man. The merchants up and down the main street knew him, and he was interested in their business and in the gossip of the day of the small border town. He liked people and they liked him. The cases which came to his court were so largely from the Indian Territory that he felt that the proprieties did not require him to live aloof. On the contrary, he led a social life in a simple fashion. He loved to visit his neighbors, to have them visit him, and to attend the civic and social functions of the town"

This was an expression of his neighbor and his friend for Judge Daily, while but a mere boy during Parker's administration, states the opinion of every man who intimately knew Judge Parker. He was the outstanding citizen of Fort Smith and yet he was never known to show brusqueness but on the contrary he was always kind voiced and considerate of every one who came in contact with him. He was a hard worker; he opened his court at eight in the morning and continued until dark This happened every day in the year except Sundays. He never took but one or two trips or vacations during the twenty one years he served as judge. Many, many night sessions were held. He was ever anxious to keep his docket up to date. This, no doubt, was the cause of his early death for he took but little exercise. The result was an accumulation of excess averdupois; for as the years went by he went from a man of about one hundred and sixty pounds weight to more than two hundred and twenty five. His greatest fault as a trial judge was in the length of his instructions. This was occasioned by his going into detail regarding the theory of the prosecution and then on the other hand a detailed statement of the theory of the defense. He was as painstaking in one as the the other.

And when at last he was called to the last great reckoning people from all over the Indian Territory and the State of Arkansas came to pay their respects to the dead jurist. Chief Pleasant Porter of the Creek Nation came from faraway Okmulgee bearing a garland of flowers. The flags of the city of Fort Smith were at half mast, literally thousands of people thronged the National Cemetery when he was laid to rest and the grief of the community was sincere and heartfelt.

He was a great man; he conducted a great court. More justice was administered there, under more peculiar conditions, than has been true of any other court of our country. He left the imprint of his character and firmness upon the country he, in fact, ruled over. He was, for fifteen years, an absolute monarch, more powerful over more than ~~one hundred~~⁷⁰ thousand square miles of territory, than any other man who ever lived in the United States. And, yet, withal, he was a kindly despot- his people bear us that memory- that distinction. He was loved by those who knew him well, by his neighbors and companions. They are still willing to take that fight up for him when something of a critical nature is said about him. He was the idol of the two hundred United States marshals who attended upon his court. They were pleased to be known as "Riders of Judge Parker's court." He was loyal and sympathetic toward them and their efforts and they were willing to fight to the death for him. And more than a hundred of them died while in the discharge of their duty; no greater loyalty could be shown than this. Yet he was prompt to discipline any who became overbearing or abusive, that would not be allowed. In all things was he considerate and thoughtful. He sentenced to hang, although he was not a believer in capital punishment, but it was the law. He was said to have been the finest judge of men. He made no mistakes in his appraisal of those who came before him. And he cleaned up a vast territory of its lawlessness because of his firmness.

He worked himself into an early grave striving to make the Indian Territory a safe place within which to live and his contribution to this objective cannot be overestimated. The fear that his firmness instilled in desperate men saved many a life and many homes. He was the embodiment of the law- inexorable, relentless, unyielding. To him the law meant what it said and he who violated it by infamous crimes must pay the price. This was mercy, not to the criminal, but to those whom the law sought to protect- the worthy. He held the greatest power ever given to one man in our country and he did not abuse that power. No greater tribute can be paid to any man than this. He had a duty to perform and he did it manfully and well.

Some eminent authority has written that a person's character and disposition is shaped and fixed in those years between two and four. This may be true, but the continuing years of youth are all responsive, in a very great measure, to environment and parental authority and treatment. The careful mother in the home can do more toward crime prevention than all the punishment ever devised. The knowledge of where the child is, his companions, his conduct while at play, and the continual keeping up with ~~his~~ the little fellow, is of paramount necessity toward the forming of proper character in the adult years. The impressions formed in early youth are the lasting ones; if they are good it betokens a fine, upstanding manhood; if neglected, the chances are for a warped and criminally inclined mentality. Over indulgence is the instrument of the Devil. More misery and grief, trouble and crime has come out ^{of the} parental penchant for indulging children, than any other one contributing cause. It is so easy to say 'yes' when 'no' would be better; it is so pleasant to indulge ~~rather~~ ^{to} than deny; that parents through their own selfishness unthinkingly and lovingly create a condition of mind that will ultimately bring untold misery upon one they would give their lives for. Self restraint is necessary in every stage and condition of life. And a child who has been pampered and petted and indulged in the home ^{and} at last forced to take up his career in the affairs of life has been cheated. Having been taught that his wish alone would bring that which was wanted he enters the business world ^{to} to find that he has competition and is faced at every turn by others striving for the same point. He has not been trained along this line; he becomes bitter and feels that the world is in a conspiracy against him. Out of his bitterness, and his former position of receiving just what he asked for, he has no aptitude to valiently strive for what he wants. Along

with this he is devoid of self restraint, he has not been taught in that much needed way. Then the cunning of the animal in him becomes uppermost and he pilfers and steals and this leads on to other things. Sparing the rod and spoiling the child accounts for the fact that more than seventy two per cent of the crime of the United States is committed by children under the age of twenty two years and that out of the host incarcerated in Sing Sing penitentiary ninety one per cent are children under the age of twenty one years. This is an appalling indictment of the parenthood of this nation. The congested districts and the unwholesome environments of the over populated cities and industrial centers contribute their part; but the loving mother in the home can safely steer and chart the course of the little one through the breakers if proper attention is given to early training. But many times the parent will indulge themselves by indulging the child because it is the easiest and pleasantest way out. Then the child is unfitted for its battle of life to the same extent it be overindulged.

A case in point is one of the famous trials and cases of Judge Parkers court, the case of United States against John Pointer. John was the son of highly respected parents of Eureka Springs, Arkansas. His parents were religious and right thinking but their very life was wrapped upon in son John. His merest wish was their command. They, undoubtedly, got a great pleasure out of making life pleasant and cheering for young John. Whatever John wanted he got, and if his parents chanced to refuse him, he simply overrode them and took it anyway and made them like it.

He was less than twelve years of age when he first attempted to burn a little boy in the ^{woods} and timber. It was a fiendish act, but all he received in the way of punishment was a slight reprimand. This contributed to his lack of self restraint, naturally.

A short time later while he and a little boy by the name of Stites were playing John became incensed at some opposition on the part of his playfellow and stabbed him with a pocket knife. This boy was his best friend and playmate. For this act the community took charge and John was arrested and placed in jail in Carrol county. He was defiant and stated that his parents would get him out. And they did. The attorney who defended him, well recognizing sympathetic feelings of the ordinary jurymen, on the day of the trial brought the old father, with tear dimmed eyes into the courtroom and seated him at the side of the wayward son. The statement that the mother was sick in bed and that a conviction and punishment would be her death was shrewdly injected into the trial. The jurymen were properly swayed and the youth got off with a fifty dollar fine, which his indulging father promptly paid. John remarked when he got back home " I knew the old man would pay up before he would let me go to jail."

The parents were grief stricken. They were reaping what they had sown in indulgence, lenience and forbearance during former years. The twig was making its growth into a limb of the tree.

About one year later John received the only real whipping he ever received, but not at the hands of the parents. The boy he had stabbed visited a ball game and John picked another quarrel with him and a fight ensued and the Stites boy out of his very fear, sick though he was, gave Johnny a flogging that was worth while. John went away and then slipped back and when the boy was not looking knocked him unconscious with a rock. Johnny then ran off and hid. For this he was never arrested, neither did he receive any punishment at home. The parents of the sick boy knew that any fine assessed would be paid by the father and he was not financial able to do so. So they just let the matter drop.

an officer of the law took charge of the horse and Johnny was arrested for horse stealing. The next day, believing Johnny's story to be true, the indulgent father hired a lawyer, made bond in the sum of a thousand dollars and through the efforts of a friendly justice of the peace a compromise was made and before the Missouri officer could arrive with proper requisition papers John was spirited away, and a week later with plenty of money furnished by the ever indulgent and doting father, walked into a hotel in Brownwood, Texas. There he registered as Mr. George Gray. He had now become a man. The history of this young man's career is slightly dim during his sojourn around Brownwood and the next we hear of him the people of Eureka Springs were saying that "John Pointer is back." He did not remain long however, because he was somehow made to feel his danger from the Missouri authorities and again pocketing much of the hard earned money of indulgent father together with a good horse and saddle he was on his way back to Texas. He disported himself indulgently, as was his wish, so long as his money lasted and then he wrote back home asking for more and saying he had surrendered his horse and saddle to the sheriff of Wise county, Texas, as a temporary bond.

About this time down in Texas, Ed Vandiveer or Samuel E. Vandiveer as the Supreme Court of the United States refers to him, was preparing to drive through the country with a friend by the name of William B. Bolding to Eureka Springs, Arkansas. Vandiveer was a crippled youth. He had known or known of Pointer in the Springs and when accosted by him and requested to allow him to accompany them home, refused. But John was not to be thus lightly refused, he followed them on foot after their departure, overtook them, renewed his request and out of their kindness of heart was accepted as a companion. Vandiveer even paid the additional expenses of John Pointer.

This all happened in December, about the 13th, 1891. On the Christmas day following the boys stopped at the home of Mr. W.G. Baird near what is now Wilburton, Oklahoma, in the Choctaw Nation. John Pointer there talked with Baird, asking about the purchase of some hay and other things. Baird, as was usual in those days of but few visitors and a deep interest in horses, gave a close inspection of the man and the team. He also met and remembered Bolding, but Vandiveer he did not see.

After leaving the Baird home the boys drove on a few miles and went into camp for the night. The next morning the dead bodies of Vandiveer and Bolding were found in a creek near the camp and Pointer, with the team and wagon and clothing of the murdered men was missing. He doubled back on his trail and was arrested a few days thereafter in South McAlester, where he was attempting to sell the team and wagon.

The United States marshals, inspecting the site of the camp, found indications of a cruel murder. Vandiveer had evidently been sitting near the fire mixing a pan of dough for bread or biscuits for breakfast, when he had been attacked with an ax and his head split entirely open. Blood and dough was strewn about the remains of the fire. On the body of Bolding was several large, gapping wounds, made with an ax. He apparently had tried to defend himself and was struck down into the fire as his hands were severely burned. He had been killed, after being wounded, trying to escape several steps from the camp as shown by the blood stains and tracks.

John Pointer was taken to Fort Smith and there placed in jail. and at the February, 1892, term of the Circuit Court, an indictment was returned charging him with the murder of Vandiveer and Bolding. The defendant pleaded not guilty and was ably defended, moved to quash the indictment, objected to the manner and mode of selecting the trial

jury, demanded that the government be required to elect upon which of the counts or "killings" it relied for a conviction. All of these motions and objections were overruled by Judge Parker and the case proceeded to trial and on March 26th, 1892, the trial jury found that John Pointer was guilty of the murder of both Vandiveer and Bolding, the verdict being signed by F.M. Barriok, Foreman. Parker sentenced John Pointer to hang for the murders. An appeal was taken to the Supreme Court of the United States being lodged there October 19th, 1893 and decided by that court January 23rd, 1894. The sentence of death was affirmed. He was hanged on September 20th, 1894. The braggart and boaster died.

A peculiar and interesting incident happened in connection with this case. I was seeking information relative to the court at Fort Smith and remembering that Judge George Crump of Harrison, Arkansas had been the United States Marshal (during Cleveland's administration), for the court I travelled up to Harrison hoping that some written memorandum or memoir had been kept by Judge Crump. There I met Arch Crump, a son of the old judge, whom I had known in Oklahoma, and who is a practicing lawyer. He informed ^{me} that he found nothing in the papers of his father of that kind, and while we were discussing the court and the old jail he said to me:

"I came very near hanging a man, myself, down there one time"
"That were you doing?" I asked, "prosecuting or defending?" he laughed at that and said:

"No, I was not practicing then, I was just a big footed boy hanging about the jail and getting acquainted with the desperate characters and men. One day a fellow by the name of John Pointer, whom I had known or known of in northern Arkansas, called me over to his death cell and asked: ~~XXXXXX~~ 'Ah, who is going to hang me?' I told him I didnt know, but more than likely old Waledon or Baxter and he replied: 'I dont want them old devils to hang me, they will get too much satisfaction out of it. Say, Arch, why dont you hang me?' I told him that 'I would be glad to do so' and went off to see my father.

I said: "Father, John Pointer wants me to hang him, how about it" and father was shocked and said "Why, Arch, ~~must~~ you mustn't do or think of a thing of that kind. You would always regret it. I won't have it, besides there are sixty five or a hundred deputy marshals around here whose business it is. Let some of them do that piece of business." But I insisted, I said, "But, Dad, John wants me to hang him, and besides I get \$25.00 for it." But I didn't get that job, what I did get was a dandy good talking to from father.

Now, the conduct of John Pointer as he was taken out to be hanged verifies this story of Arch Crump. Pointer was a boaster and bragger, and would have been glad to continue ~~that~~ pose of nonchalance to the very time the trap gave way under his feet. But he was not in fact courageous. As the time drew near for his execution he began to weaken. He asked for an hour's delay and fifteen minutes were granted. When he was taken outside the jail and his eyes rested on the "old gallows" he was visibly affected. He began to tell that he "had taken some capsules, and that he was poisoned". "If I hadn't taken that poison I would have stood it, all right" he said. On the scaffold he tried to talk but his mind was so confused that nothing he said was intelligible and he would stop and say something about "the poison" he had taken. He wanted to keep up a "front" to the very last. At last his knees gave way under him. ^{*} The bragger and boaster had become a craven thing, a disappointment even to himself. After the execution, an autopsy was held and it was disclosed that no poisonous substance of any kind had entered his system. He had desired to ~~kill~~ die as he had lived, a boaster and braggart, but his true nature asserted itself and he died a craven that he was.

This appeal found in the 151 U.S. at page 208, discloses a portion of the charge given by Judge Parker:

* This man had to be strapped to a board that held him up until the trap could be sprung.

" At this point it becomes necessary for us to ascertain what is meant by these expressions, willfully and with malice aforethought, because they are the characteristics that enter into the crime of murder; they must exist as a part of that crime; there can be no crime of this kind without them. It is necessary therefore for us to understand correctly, and to understand with precision and accuracy, exactly what the law means by them, because they have a legal meaning, they have a meaning that is peculiar to the law, and it is by the application of that meaning to the facts of the case, or the truth of the case, that you, as intelligent, impartial and dispassionate citizens, are able to arrive at a just and correct and honest conclusion. In finding their existence, it is not necessary that the proof should show that a motive for the act done exists."

There is a motive for every human act that is done by an individual who is sane, but some times it is undiscoverable; some times it cannot be fathomed; sometimes because of its inadequate character, because of its utter insignificance nature compared with a great offense of that kind, honest men, whose minds and hearts have not been corroded by the commission of crime overlook it, they pass it by. The law does not require impossibilities. The law recognizes that the cause of the killing is sometimes so hidden in the mind and breast of the party who killed, that it cannot be fathomed, and it does not require impossibilities, it does not require the jury to find it. Yet, if they do find it, it simply becomes an item of evidence in the case, which is only evidentiary at best, that is, it is only an item of evidence going to show whether a particular party may have committed an act, and sometimes goes to show the characteristics of that act; the law says, however, that whatever motive can be found, though it is not required to be found, it is the duty of the jury to find it,, though when they do find it they are not expected to hold it adequate; that it will be in proportion to the act done, because there is nothing on this earth that is in proportion to the crime of willfully and deliberately taking human life; there is no motive adequate to it; there is nothing that can be weighed upon the one side of the scale with the crime of deliberate and wicked murder upon the other side of it, and be pronounced by honest men an equal in weight to the crime committed. The law says that motive need not be proportionate to the heinousness of the crime."

The Supreme Court, commenting on these instructions and the facts disclosed by the record has the following to say:

"There was evidence before the jury tending to show that the murders in question were committed in order that the defendant might appropriate certain property of inconsiderable value in the possession of the murdered men. Under the circumstances, the enquiry would naturally arise in the minds of the jurors whether murder would be committed for reasons so trivial. The court after observing that all persons were apt to act on inadequate motives, and that the history of crime showed that murders were generally committed from motives comparatively trivial, said:

* So also, for the smallest plunder murders have been deliberately committed. We have an illustration of this in the trial of Muller, in England, in 1873, for the murder of Briggs. Briggs' watch was seen by Muller in a railway car. Briggs was asleep; the watch was exposed, and Muller killed Briggs by a sudden attack and succeeded in making his escape; he was afterwards arrested, convicted on circumstantial evidence, and before execution confessed the crime with the murder. Until the confession, the justice of the conviction was largely criticized on the ground that the stealing of the watch was not a motive that could explain a murder so bold, so cruel, and the chances of exposure so great." But the court added in the same connection: " But the reply to this is obvious Crime is rarely logical. Under a government where the laws are executed with ordinary certainty, all crime is a blunder, as well as a wrong. If we should hold that no crime is to be punished except such as is rational, then there would be no crime to be punished, for no crime can be found that is rational; the motive is never correlative to the crime, never accurately proportioned to it. Nor does this apply solely to the very poor; very rich men have been known to defraud others even of trifles, to forge wills, to kidnap and kill so that an inheritance might be theirs. When a powerful passion seeks gratification it is no extenuation that the act is ~~irrational~~ illogical, for when passion is once allowed to operate reason loosens its restraints."

Here in these instructions may be found incorporated, off hand and extemporaneously, ^{an} analysis ^{of} the law, the reasons for the rules of law; motives of crimes and criminals and their application to cruel and infamous acts, that would do justice to a studied, tediously written manuscript of some college professor. These give one an enlarged ^{an} insight into the mentality, the penetration and the expression of this most remarkable of trial judges.

Judge Parker was fortunate in having the wholehearted support of the community back of him in his fight on the crime of the territory over which he was supreme. He was not harraased by the criticism of those who foolishly looked to the extreme protection of the criminal on trial. The people and the press of the locality recognized the vicious and dangerous character of those who had allied themselves against organized society. The meager press of that day was unable to broadcast the career of the criminals and what is more important, less able to apprise the criminal of every effort of the officials. Today, by reason of the pernicious habit of the press in publishing the intimate details of the effort of the officials to apprehend the criminal, the criminal is enabled to escape. He is apprised of the intentions of the officials before they can conclude their actions. This costs the government much expense and time, and in many instances, the offender himself. The press, through a misdirected sense of duty, in this manner defeats the laws and the officials.

Not only is this true, but the press, through its extreme jealousy of the ~~criminals~~^{to} accused rights, broadcast a sort of license to the evil intentioned. Crime cannot be delt with leniently. What the more law abiding may look upon as a wholesome protection to ^a person on trial appeals to the criminal minded as a sort of liecense, becomes an encouragement to the evil minded.

The harsh, present day, commend upon extreme punishment also lends its encouragement to the criminal. In order to properly understand this to its full, one must place themselves at the viewpoint of the criminal. He has in his twisted mind a fund of mitigation, excuses and justification. Of course these ideas are opposed to the ideals of organized society.

Because of unwholesome environments of youth, and many times because of predisposition to crime by criminal parents, the criminal believes the world to be against him and he conjures up justification for his deeds where more rational minded people would never approach. Too much publicity to crime also sways and influences the youthful mind. Youth, in its natural antipathy to restraint, is more apt to take the part of the criminal than otherwise. The sensational news writers builds up a fabric about the lawbreaker that attracts the attention of immature minds in a most disagreeable manner. Only the certainty of punishment and a contemptuous opinion of the public toward crime and criminals will ~~extenuate~~ alleviate the present trend and wave of criminal conduct. Men would gladly steal a hundred thousand dollars if a sentence of five or six years would be the only result, but men desire the good opinion of their neighbors and society, and this is what, in fact, thwarts such conduct. We are fast becoming a criminal minded nation. We feel a flush of exultation at the escape of a criminal and only more serious consideration will dispell this first impression. The press and the moving pictures and a laxity of discipline in the home are the principal causes of the present day public opinion. After all proper moral education is the best and perhaps the only deterrent of such ideas. Prompt punishment, and extreme punishment, adds in a great measure to such education.

Judge Parker was fortunate in living and holding his court in one jurisdiction while his court functioned in another territory. The sympathy and the assistance of neighbors and friendly minded people of a community ^{toward an accused} was not present to embarrass the judge in his execution of the law. As a result he was enabled, to a most surprising extent, to clean up the worst rendezvous for criminals ever known in the United States. Very few, if any other, could have accomplished such magnificent results as did this learned judge.

But the local press of Parkers day had its tribulations because of the repeated hangings. As early as 1878 the Fort Smith "Elevator" in its issue of December 13th defended the necessity for the "hangings" that were then regularly taking place from Parker's court.

Some nearby town's paper published a squib to the effect " that we see two more men are to be hanged Friday December 20th, 1878, at Fort Smith. Fort Smith will be getting its name up for this after while". This produced a long article in the Elevator detailing the reasons. It was just about as much an apology as anything else. It showed the people of the border town to be "touchy" on that particular score. Among other things the paper said:

" Judge Parker has a duty to perform and is man enough to do it. His jurisdiction covers more than 70,000 square miles in the Indian country. That country is invested with the worst class of characters to be found in the nation. Only the law can protect them and under Judge Parker it is making a valient attempt. The hangings are done on United States government land, they are ordered by a United States Court, they are done by United States Marshals and they are of people who commit heinous crimes in the Indian Territory and not in Arkansas. It is not ~~Sebastian~~ ^{Sebastian} ~~Sebastian~~ ^{Sebastian} county that is doing the hangings, nor are the people citizens of ~~Sebastian~~ ^{Sebastian} county. It is the Federal government and it is doing a good work. If more hangings took place over in the neighborhood of the paper that published this slur ~~took place~~ it would be a good thing and the editor of the paper ought to be the first to suffer."

The following news item of the Elevator published on February 7th 1879, may be found showing the workings of the deputy marshals of the court:

"Deputy Marshal J.H. Smith came in Wednesday with seven prisoners Six negroes and one white. One for assault, six for larceny."

" Deputy Marshal J.C. Wilkinson has just reported with thirteen prisoners. We were unable to learn who they are or with what charged."

The issue of the Elevator of May 16th, 1879 carries an item that may show the desperate times of the Indian country in those early days:

"Bushwhacked."

News was received here in the early part of the week of the shooting of Mr. Calvin J. Hanks, a prominent Cherokee and member of the Council of the nation, on last Saturday evening about sundown, near Webbers Falls. He was just in the act of crossing the river when he was shot from the brush by some unknown party with a rifle, as the ferry boat was leaving the south bank.

His wound it is said will prove fatal, though he was still alive Tuesday. He was in this city last week in company with Mr. Hutton of Webbers Falls. He was a quiet, industrious man, and has many friends among the Cherokees in this state and in this city.

We have never known a man of good reputation, progressive in notions and inclined to be favorable to civilization, and particularly in case he was making money, that succeeded in living and getting out with any money to boast of from any of the nations. The plan of waylaying a man and taking his life, without giving him any opportunity to defend himself is a mark of savagery that should be removed to the Western plains and among those that do not pretend to great things in education and religion."

This was among one of the many criminal and savage crimes that Judge Parker had to contend. It was such cruel savagery as this that crowded his court and compelled him to hold in session continuously, starting at eight o'clock in the morning and closing at sundown, and many times holding night sessions. It was such things as this that embued him with the determination to stamp out such practice. Fort Smith people recognized the need of such a court; the necessity of the Indians demanded it, too.

Juries were drawn from the Arkansas counties, and those days so soon after the civil war, much may be found in the papers condemning the juries, the low type of men selected, the system by which they were selected, and the further fact that many of them were ignorant negroes.

The Elevator of June 30th, 1879, after writing a mean article about the juries generally has the following to say about the United States Court:

"As to the United States Court for the Western District of Arkansas, and what little we know of it, we are willing to say there has been a decided improvement in its management in many respects, the most noticeable of which and one that reflects great credit, is a greater absence of decided roughs that formerly characterized the marshal's deputies—a better police system, so that few outrageous scoundrels escape and less trading in deputy and peace accounts and less scandals."

Judge Parker's ideas had begun to take root. His demands for sobriety and honesty among the deputies, were having effect. He had inaugurated a different system for selecting the juries, and was procuring the better class of men from the Western District for that purpose. The confidence of the people was being drawn toward this conscientious judge. They were slow, and perhaps reluctant to give it, but the judge's conduct of affairs was continually demanding it. And when it was once fully given, Parker's duties were less trying, the results more lasting and the efficiency of the court at its best. Such a man as Judge Parker was entitled to the confidence of the people, and the people while slow to grant it because of past experience, went into it wholeheartedly when once they were convinced. It took a great man, a serious and earnest man, to accomplish this thing. No wonder the people of Fort Smith still demand justice for Parker's memory. No wonder they will speak up, when a slighting remark is made of the record of the old judge, and say: "Parker was a just man. He was a kindly and a good man." They believed in his motto:

"Do equal and exact justice. Permit no innocent man to be punished, but let no guilty man escape." and
"Let no politics enter here."

It must have been a great man, indeed, a wonderful personality, who could accomplish this purpose in that far borderland, infested as it was with criminals and the criminal minded. Every obstacle known to the cunning of the dissolute ~~were~~ thrown in his way. Every cunning design: perjury, frame ups, trickery of all kinds, were resorted to by the outlaws and their friends. And still he fought firmly forward with his gaze upon a righteous objective. That he gained that objective is demonstrated by the love and respect of the people whom he had come among from another state. A stranger he was, in their midst- a carpetbagger, an outlander; as the "hill-billies" would say a "furriner". But the very sincerity of the man gained their respect and esteem- the justice that he administered received their commendations. He became the great man among them, loved, respected; a kindly neighbor, interested in their affairs and their business- strolling down

the quaint, old fashioned streets; stopping to converse with the merchants and the citizenry- laughing at their ⁱⁿ jokes, commiserating with their troubles fighting their battles for law and order and eventually cleaning up a bad condition. He became their idol as well as their friend. He was elected to the presidency of the school board and it was through his untiring efforts that the greater part of the reservation belonging to the United States government was ceded to the school district. It was through his efforts that better facilities were afforded the school children of these early days. No wonder the people loved him. And yet the only mark of their esteem vouchsafed his memory was the designation of one of the shortest streets or avenues of the town as "Parker Avenue." His body lies in the National Cemetery with only the staid national head stone with its number and the words: "Corp Parker" to designate his resting place. At his side rests the good wife, with a similarly constructed stone and carved upon it: "Mary E. Parker. 1838-1936." But his memory was not for marble columns, but for loving hearts- it is still fresh in the minds of the people of Fort Smith. He needed no statute- he desired none. The memory of his worth has been stamped in lines of flame upon the memory of Fort Smith- upon the character of their children. Not all the marble nor all the bronze, fashioned by chisel and mould into blooming life could depict the faithfulness, the hardy fortitude and firm determination and the hope and trust that he left as a heritage to the people of that borderland city. He carved his own statute, he built his own monument in the hearts and memory of loving people. Marble nor bronze could retell the hardships, the trials, the courageous fight and the well earned success of this staunch partisan of law and order. Gold, chiselled marble could portray the likeness, but it could not portray the character, the force, determination and righteousness of this strange man. It would not tell of the perception and understanding or the kindhearted, gentle and sympathetic mind of this beneficent man. *character*

He came into the little border town on the old stage coach, a stranger to them all, and unwelcome; gave them twenty one years of almost continuous service and left them a great man, loved, respected and esteemed. ^{What} greater monument could proclaim his worth?

Some painter might paint a picture but could he make it eloquent with the virtues, the power and strength- could it tell of the potency, the effectiveness, the goodness and worth, the rectitude and integrity, the probity and firmness of this excellent man? Could it tell of the trials, the hardships and difficulties- the lack of confidence to overcome- the toil and perseverance? Could it tell of the resolve that no difficulty could stay? If it could then it should be painted and the artist should write thereunder the words of the St. Louis reporter who interviewed this estimable judge on his death bed: "A good man."

The records and files of the United States court having criminal jurisdiction over the Indian country from 1855 to September 1st, 1896, are kept in one fairly large room in the old federal building. In search of data and confirmation of written articles about the court I obtained leave from the kindly clerk to enter and explore. When the door swung back a gush of mouldy air rushed out into our faces, air foul with the reek ~~of~~ files telling stories of fouler crimes. I was kindly allowed to make my investigation in this musty chamber of the dead. As I turned on the dim lights in the old chandelier which hangs from the center of the ceiling, I could well imagine that the face of the condemned peered out from the jackets that enclosed the stories of their crimes. Here on the right was Cherokee Bill, bloodthirsty and bold; there on the left was Henry Star, cruel and cunning; and John Pointer, Wilken, Martin Joseph Whittington, Campbell and Dan Evans leered from the musty boxes. It was with a feeling ^{of awe} that I commenced to rummage about. Looking over the old indices one is overwhelmed by the vast amount of work accomplished. Great bundles of files and transcripts on all sides, reaching to ^{the} tall ceiling.

Boxes strewn about the floor filled with records depicting the arduous work of a vanished court, telling the tales of crimes committed and punishment imposed. Old records showing the orders of the court and old files showing the execution of the orders by the marshals. Here one is condemned to die and this other sent to some far away penitentiary to expiate their crimes. The grim ^{old} records disclose a wierd story of that borderland court. We pick at random the files in the case of United States vs. Martin Joseph. The records disclose that three murder charges were pending against this individual in 1883; Nos. 2410, 2427 and 2428. There is no transcript of the evidence to be had, nothing but the stern old orders to tell of the evidence adduced. But looking further we come upon the proceedings of the old United States Commissioner and there we find, in his firm old handwriting, rusty with the age of more than fifty years, a terse, concise narrative of the testimony of the several witnesses: Wm. Loftus, George Bruner, George Loftus, Chas. Henderson, Geo. W. Pounds and J.H. Mershon. Telling a tale of brutal murders, of shrewd concealment, of a drunkard's mouthings that led to the ~~stagnant~~ discovery of the bodies, and the persistence of the deputy United States marshal, J.H. Mershon. It is a typical case, so we will give the record as we found it in the old files room surrounded by the ghosts of many who expired on the old gibbet in Fort Smith:

"Indictment in No. 2428"

United States of America
Western District of Arkansas

In the District Court November, A.D. term, 1883.

United States
vs
Martin Joseph Murder.

The grand jurors of the United States of America duly selected, impaneled, and sworn and charged to enquire in and for the body of the Western District of Arkansas aforesaid, upon their oaths present:
That Martin Joseph, a negre and not an Indian, on the 20th day of April, A.D. 1883 at the Chickasaw nation, in the Indian country, within the Western district of Arkansas aforesaid, with force and arms in and upon the body of one Love Stevens, then and there being, feloniously, wilfully and of his malice aforethought, did make an assault; and that the said Martin Joseph

with a certain gun then and there charged with gunpowder and one leaden bullet with said gun, he the said Martin Joseph, in his hands then and there had and held, then and there feloniously, wilfully and of his malice aforethought, did discharge and shoot off, to, against and upon the body of the said Love Stevens and that the said Martin Joseph, with the leaden bullet aforesaid, out of the gun aforesaid, then and there, by force of the gunpowder aforesaid, by the said Martin Joseph discharged and shot off as aforesaid,, then and there feloniously, wilfully and of his malice aforethought, did strike, penetrate and wound her the said Love Stevens in and upon the left side of the head of her the said Love Stevens giving to her the said Love Stevens then and there, with the leaden bullet aforesaid, as as aforesaid discharged and shot out of the gun aforesaid, by the said Martin Joseph in and upon the left side of the head of her the said Love Stevens one mortal wound of the depth of four inches and of the breadth of half an inch; of which mortal wound she the said Love Stevens then and there instantly died.

And so the jurors aforesaid, upon their oaths aforesaid, do say that the said Martin Joseph her the said Love Stevens in the manner and by the means aforesaid, feloniously and wilfully and of his malice aforethought, did kill and murder, contrary to the forms of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Wm. H.H. Clayton, U.S. District attorney
Western district of Arkansas.
(this name ~~xxxxxx~~ in print)

Endorsed on the back:

No. 2428- A true bill. James A. Jay, Foreman.

Witnesses: Wm. Loftus, George Bruner,, Geo. Loftus, Chas. Henderson, Geo. W. Pounds, J.H. Mershon. *John Spencer* -

Filed Nov. 14 1882, Stephen Wheeler, Clerk.

And on the back of this strange old document in the quaint and almost illegible handwriting of the foreman of the trial jury are the words:

" We, the jury find the defendant guilty of murder as charged in the within indictment. A. Bobb, foreman."

There were no printed forms of verdicts prepared and given to the jurors for their convenience. After reaching a verdict in the old court the foreman of the jury simply wrote the verdict of the jury upon the back of the indictment, which was given into their hands by the judge of the court when they retired to consider of their verdict.

The first entry found upon what might be called the trial docket of the court clerk reads:

United States
Murder Indictment, no. 2428.
Martin Joseph.

On this day on motion of the defendant it is ordered that the names of Ned Roberts, John Taylor and Frank W. Lbur be substituted for those of Robert Cobb, Joseph Murray and Gel Vlassen in the subpoena for witnesses heretofore allowed in behalf of the defendant at the expense of the United States of America."

The next entry of March 15th, 1883 follows:

United States
vs Indictment for murder. No. 2420
Mar. in Joseph

On this day came the defendant by his attorneys, Duval & Gravens and files his motion for a continuance of this cause until the next term of the court."

and the same entry follos as to Nos. 2427 and 2428.

March 17th, 1883.

On this day comes on to be heard the application of the defendant heretofore filed for a continuance of the above entitled causes to the next term of the court and the court being well and sufficiently advised in the premises doth overrule said motion.

March 18th, 1883.

Order by the court that the indictments against the defendant in the causes numbered 2427 and 2428 be and the same are hereby consolidated and known as indictment No. 2427."

March 28th, 1883.

"On this day comes the defendant by his attorneys and files his motion to require the United States atty to elect upon what count of the indictment for murder he will rely, and said motion coming on to be heard and the court being well advised in the premises doth overrule the same."

March 29th, 1883.

" On this day comes the United States of America by Wm. H.H. Clayton, Esq. Atty for the Western District of Arkansas and come the said defendant in custody of the Marshal and by his attorneys, Messrs Duval & Gravens and Barnes & Mellette & James K. Barnes, Esq. and it appearing from the return of the marshal that the said defendant has been served with a duly certified copy of the indictment in this case and a list of the witnesses in this cause and has also been served with a full and complete list of the petit jury as selected and drawn by the jury commissioners for the present term of the court more than two entire days hitherto and having heretofore had hearing of said indictment and pleaded not guilty thereto it is on motion of plaintiff by their said attorney ordered that a jury come to try the issues joined; whereupon the whole of the regular panel of the petit jury were called into the box and now after challenge by both plaintiffs and defendant the following were selected for the trial of the case-to-wit: Allen Babb, Alexander C. Cook, Hugh L. Lyons, Alexander May, Edward Green, Daniel Sykes, Louis Jesse, Abram Walker, C.G. Weigand, Dick Thompson, Fred Wernye, William Wiley twelve good and lawful men of the district aforesaid who being duly selected, impanelled and sworn to try the issues joined and a true verdict render according to law and the evidence after hearing a portion of the evidence and there not being time to further progress with the trial of this cause they are by consent permitted to separate under instructions of the court until tomorrow morning at 8 o'clock.

Ordered that court adjourn until to morrow morning at 8 o'clock

I.G. Barker, Judge.

March 30th, 1883

Further hearing of evidence.

March 31st, 1883.

Further hearing of evidence.

On motion of the defendant it is ordered that an attachment be issued for Henry Stephenson returnable forthwith to bring him before the court here to answer for a contempt by him committed for not appearing as a witness in behalf of the defendant at the present term of this court when duly summoned thereto and now come Henry Stephenson in custody of the marshal and this cause come on to be heard the court after being well and sufficiently advised in the premises doth find for the defendant;

It is therefore ordered that the attachment be dismissed and that the defendant be discharged of and from the custody of the marshal and that he go hence without day.

On this day on motion of the defendant it is ordered that a subpoena be issued for Drs. Leo. E. Bennett, James E. Bennett and E.R. Duval returnable forthwith in behalf of said defendant at the expense of the United States of America.

Jury allowed to separate
Same order for April 3rd.
April 4th, 1883.

Apr 1-2 not mentioned

* On this day came the United States of America by W. H.M. Clayton, Esq. Atty for the Western District of Arkansas and came the said defendant in custody of the marshal and by his attorneys, Duval & Cravens, Barnes & Mellette and James E. Barnes, Esq., and now come the jury heretofore impanelled for the trial of the cause, to-wit:

(same names as above)

who took their seats in the jury box and after receiving the charge of the court retired in charge of the bailiff, duly sworn to consider of their verdict and after a short time returned into court here the following verdict upon indictment No. 2427, to-wit:

" We, the jury find the defendant guilty as charged in the within indictment.
(signed) A. Bobb, Foreman."

and also returned into court the following verdict upon indictment No. 2428 to-wit:

" We the jury find the defendant guilty of murder as charged in the within indictment."
(signed) A. Bobb, foreman."

upon motion of defendant's counsel the jury was duly polled. It is therefore ordered that the defendant be remanded to the custody of the marshal to await final sentence."

J.C. Parker, Judge,

May 3 1883.

*On this day comes the defendant by his attys Duval & Cravens & James E Barnes, Esq. and files his motion for a new trial and to set aside the verdict of the jury in this cause."

May 4th, 1883.

"On this day comes on to be heard the motion of the defendant for a new trial in above entitled cause and to set aside the verdict of the jury and the court being well and sufficiently advised in the premises, after hearing argument of counsel, doth overrule said motion."

May 5 1883

"On motion of Wm. H.M. Clayton, Esq. atty for the Western District of Arkansas the said defendant, Martin Joseph, was brought to the bar of the court in custody of the marshal of said district and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty heretofore returned against him by the jury in this cause on the 4 day of April, 1883, shall not now be pronounced against him he says he has nothing further or other to say than he has heretofore said;

Whereupon the premises being seen and by the court well and sufficiently understood it is considered by the court here that the said marshal of the district aforesaid cause the said Martin Joseph to be taken hence and him the said Martin Joseph safely and securely kept from the date hereof until Friday the 29th day of June in the year of our Lord one thousand eight hundred and eighty three and on that date and between the hours of 9 o'clock in the forenoon and five o'clock in the afternoon of the said day the said marshal cause the said Martin Joseph to be taken to some convenient place within this district to be appointed by the said marshal then and there between the hours of 9 o'clock in the forenoon and 5 o'clock in the afternoon on Friday the 29th day of June in the year of our Lord one thousand eight hundred and eighty three cause the said Martin Joseph to be hung by the neck until he is dead.

And it is further considered by the court that the United States of America do have and recover of and from the said defendant all the costs in and about this prosecution laid out and expended and that they have execution therefor.

And the clerk of this court is hereby required to furnish the marshal of this district with a duly certified copy of this judgment sentence and order which shall be returned by the marshal with a true and correct account of the execution of the same."

And a return of the marshal on this remarkable document duly recited that he had executed the same as follows:

"I certify that I have executed the within judgment set out and order by hanging the within named Martin Joseph by the neck until he was dead, at Fort Smith in the Western District of Arkansas between the hours of nine o'clock A.M. and 5 o'clock P.M. on the 29th day of June, A.D. 1883, as within I am commanded, in the presence of Drs. J.E. Bennett, Gilbert Hberle and others.

Thomas Boles, U.S. Marshal
By G.M. Barnes, Deputy."

And on the 2nd day of July 1883 there appears another entry in the crabbbed old handwriting of the clerk in cause No. 2410, which was an indictment against the same Martin Joseph (sometimes called Bully) for the murder of one Henry Loftus. This entry reads:

" On this day the death of the defendant in this cause being suggested to the court it is ordered that this suit be abated."

There seems to dwell a sort of regret about this old order of abatement that the defendant could not be hanged for this crime too. All these orders and sentences are found in what is denominated Common Law Record 19 United States court for the Western District of Arkansas.

And rummaging further among the files I brought to light the curious old motion for a new trial, written upon "fools-cap" paper, lined for the use of the pen, yellow originally and more yellowed by time, in the cramped and crabbed handwriting of one of the attorneys for the defendant. It is as follows:

* In the District Court of the Western District of Arkansas.

The United States

vs

Martin Joseph

The defendant moves the court to set aside the verdict of the jury and grant him a new trial in the above entitled cause:

First: Because the court erred to the prejudice of the defendant in overruling the motion of the defendant to require the government to elect upon which count in the indictment the prosecution would proceed.

Second: Because the court erred in consolidating the two indictments for the murder of Bud Stevens and Love Stevens.

Third: Because the court erred in admitting the testimony to be given at the trial as to the killing of Love Stevens and Bud Stevens which according to the testimony did not occur at the same time or at the same place.

Fourth: Because the court erred in admitting improper evidence against the defendant.

Fifth: Because the court erred in its instructions to the jury.

Jas. K. Barnes & W. M. W. Gravens

And in a different handwriting at the bottom of the paper the following causes for new trial were assigned:

"Because the verdict of the jury in this case was contrary to the law and the evidence."

W. M. W. Gravens
Jas. K. Barnes.

This last, it may be supposed from the placing of the names, was written by Mr. Barnes.

One may well believe there was a fine display of forensic argument upon assignments second and third of the foregoing motion for a new trial for to say the least it is unusual for a man to be tried upon two distinct crimes at one and the same time and especially two murder charges for killing two different people at a different time and place. Citation could be made to show such a procedure highly prejudicial, but no doubt the old judge had some argument on his side, too, for he was painstaking and skilled in the law. At least there was no higher court to challenge or arrest his judgment at that time. There was no appeal from his judgments. He could save time and expense by the method he adopted and there can be but little doubt as to the guilt of the defendant of both the charges, as the jury found. Present day criminal courts would raise their hands in holy horror at such a procedure, but we just wonder if the old jurist was not right.

But it may be more interesting to read the facts and circumstances that I found surrounding this queer old case. The Apalling and revolting facts:

Bud Stevens and Love Stevens had come to the Chickasaw nation in the Indian country a year prior to the time of their death on April, 1882. They located in a desolate spot in the midst of the Arbuckle mountains. In the state of Texas, from whence Stevens came, he was known and wanted as a horse thief and he chose this secluded spot to evade the authorities. His wife was a daughter of a respected family in Texas and was very young, something like seventeen or eighteen years of age. She had become enamored of Stevens and ran away from her home with him. Whether they were really married or not was unknown but at least they were living together in the nation as man and wife. The settlement in which they located was wild and inhabited by wild and lawless people. It was but a short time after they had located in the Arbuckles until Stevens began to ply his trade of stealing horses and in this manner came to know one Henry Loftus and Bully Joseph. One day Stevens was approached by these two and told they had located some

horses in a glade in the mountains that would be easily stolen. Stevens gladly accompanied the negroes on their nefarious business and when they had travelled far away from the little log hut of the Stevens and into a secluded spot in the mountains, Bully Joseph rode up behind him and shot him to death with a six shooter. The two then concealed the body and Joseph ^{led} back to the home of Stevens and there told his wife that Bud had been thrown from his horse and broken a leg and that he wanted her to come at once to his side. She hastily dressed and procured some liniment and bandages and proceeded away into the mountains with Joseph. Soon they were joined by Henry Loftus and after they had proceeded a short distance further the girl began to get suspicious and asked "how much further is it?" The two criminals then told her it was "just far enough" and dragged her from her horse and ravished her, each of them in turn. Then while she was sitting on the ground, hunkered up and crying, with her apron over her face, Martin Joseph, with a brutal laugh, shot her to death. They then took the body into the very top of the mountains and dragging it into a great cave with a sixty foot pit at the end of it threw the body into the pit. They had concealed the body of Bud Stevens among some rocks a considerable distance away. Joseph and ~~the~~ Loftus then went about their way as usual. Some enquiry was made when the absence of the Stevens became known but it was understood that he was a fugitive from justice and liable to move without notice or warning, and nothing much was thought about it. Things went along as usual for a couple of months when Loftus got drunk and in his maudlin mutterings disclosed the crime to his father and brother, George. Henry was the black sheep of the family, it seems, for the old man and the other brother were respected in the neighborhood. However they were afraid to say anything about the matter because of their fear of Bully Joseph. But finally, curbing their fear, they approached deputy marshal J.H. Hershen, and told him of what they had learned. He started an investigation. This investigation proved to be the death of Henry Loftus for on July 2nd, 1882,

Bully Joseph having learned of the tattling by Henry Loftus took advantage of a slight altercation between Loftis and another negro by the name of George Bruner, and shot Loftus in the back, killing him instantly. It was for this murder that indictment No. 2410, above mentioned, was returned. Joseph then fled the country. Marshal Mershon continued his investigation and with the assistance of the old man Loftus and his son George found the body of Bud Stevens where it had been concealed in the rocks. But the whereabouts of the body of Love Stevens remained a mystery until the marshal accidentally ran across a fragment of her clothing hanging to a thorn bush in the top of the mountains. It was then that the Loftus people remembered that Henry had said something about a cave. Search was continued for considerable time and finally it was located at a considerable distance from the place where the body of the husband was found. But the body could not be found in the cave, but at the far end what appeared to be a bottomless pit was discovered and on the edges of that same, where it had been protected from the weather and the winds, was discovered what appeared to be a disturbance of the accumulated dusts of time, as though a heavy body had been dragged. Mershon then went to a Mr. Chas. Henderson, a merchant of that vicinity, and he and Henderson proceeded to the spot where the body of Bud Stevens had been found. There they gathered up the bones of the unfortunate horse thief into "gunney" sacks and stored them away in the Henderson mercantile establishment until they should be needed by the authorities at Fort Smith. Mershon then got on the trail of Martin Joseph and finally captured him in the panhandle of Texas. He was taken to Fort Smith and lodged in the old jail and Mershon went back to Henderson's store and procured the bag of human bones, carried them to Fort Smith and stalked in the office of Wm. H.H. Clayton, District Attorney, dumped them upon the floor saying: "There is the horse thief's bones." Clayton enquired what horse thief and upon being told suggested that the bones of the girl wife should be procured also, if it be possible.

The marshal rebelled at first, stating that the pit seemed to be full of rattle snakes. But upon the insistence of the District attorney he gathered a posse of men, among whom was one John Spencer, a long, tall, Pennsylvania man. They proceeded to the cave and there Spencer was lowered into the pit. It was about fifty feet deep. He had scarcely reached the bottom when he yelled for them to lift him out, which was immediately done. His face was white and drawn and he said: "That dam place is full of rattle snakes" But after catching his breath and quieting down he announced that he was going back down into that place and get those bones, if they were there. He placed gloves on his hands, boots on his feet and donned two pair of overalls to protect, as much as possible against the bites of the snakes; and taking a lantern in one hand and his sixshooter in the other was again lowered into the crawling depths. The rays of the lantern disclosed the pit to be alive and crawling with snakes. He proceeded to shoot one of the larger snakes and the balance sought cover in the crevices. He then gathered up the bones and found some saddle bags, fragments of clothings and bed quilts which he placed in a sack fastened to his belt. Taking the dead rattle snake by the tail he yelled to be pulled up and almost caused a stampede when he appeared above the edge of the pit. However the officer had procured what he was after, the skull, bones and other evidences necessary to a proper prosecution. With these he returned to the District Attorney at Fort Smith. The skull disclosed that the woman had been shot with a pistol on the left side of the head, and the bullet had not passed entirely through. This bullet was fitted to the gun of Bully Joseph and occasioned the summoning of the several witnesses above subpoenaed at the expense of the United States to show that Joseph was in the habit of trading guns around and had in fact traded for the gun which he then possessed but a short time before. These witnesses, or at least some of them, were expected to testify also that the old Man Loftus and George, had known where the bodies were and were too familiar with the same to be innocent, and from

their familiar knowledge it would be presumed that they were the guilty parties and not Martin Joseph. The jury did not cotton to this idea but promptly returned the verdict of guilty above set out. One can visualize the tenseness of the court room, the craning necks of the jurors and the interested gaze of the attorneys for the defense, and perhaps the defendant him^{self}, as the bones of the murdered dead were placed in evidence. The gruesome evidence of the girl wife's skull as it was exhibited to the jury to show the death wound. The bloody clothing and the quilts and saddle bags of the innocent woman as she was led to her death by two lustful brutes. Can it be wondered that there was a tinge of regret in the old order of the court to abate the indictment against Joseph in No. 2410,?

Before he was hanged the brutal murderer confessed and gave the awful details of his deed. While the law may not have been vindicated in the consolidating of those cases, yet the Solomon like judgment of the old judge was. The hanging Judge! Can one blame the application of the supreme penalty to such a brute as Joseph? Why maintain alive such a character—why feed him and clothe him, hire guards to look after him and run the expenses of the lawabiding people up for such a life? There is no judgment in such a ~~course~~^{course}, it is pure sentimentality without reason.

But we turn from the rusty old files of 1883 to the transcript of the evidence in those after years when an appeal had been provided for from the court of Judge Parker in 1894 and 1895, in the trial of Cherokee Bill one of the boldest and most bloodthirsty wretches that ever sought seclusion in the Cookson Hills and the spreading prairies of the Cherokee nation.

The following account taken from facts found in the transcripts of the two cases in which this outlaw was convicted of murder, from old files in the United States clerk's office, and from an old account called "Hell on the Border" said to have been written and compiled principally by the attorney who defend^{ed} Cherokee Bill in both of his murder trials. So far

as I have been able to find, after checking and rechecking from every angle and method available, from the transcribed testimony of the trials, from old files of the newspapers of the day and from word of mouth of some of those who were familiar with the times, the following account is correct. It was in the second trial of Cherokee Bill that the testimony of Ben T. Duval hereinbefore referred to was given in reference to the old fort and the military reservation. At the first trial of Cherokee Bill the famous old United States marshal Heck Thomas gave testimony and told of his battle with Cherokee Bill and his confederates at Frank Daniel's place on Caney river near the old Sequayah ferry on November 16th 1894. This fight took place shortly after Cherokee Bill had robbed the Schufelt & Son at Lenapah, about 24 miles south of Coffeerville, Kansas, and Marshal Thomas and his men were in pursuit of the bandits and ran across them on a small prairie just south of the old Ferry aforementioned.

At that time in the territory many reckless and dangerous outlaws were roaming the hills; killing, robbing and making life miserable for the authorities and the decent people of that section. Among others were the following as shown by the evidence in the trials above mentioned: Verdigris Kid, Bill Cook, "Skeeter", Curtis Dason, Wm. Lucas., Jim Turner, Sam Brown, Jim French, Bill Doolin, Tulsa Jack, Slaughter Kid, Bitter Creek and Joe Booker. These men were all famous in their time for their daring deeds of outlawry and cold blooded killings, train robberies, bank robberies, hold-ups and general rousedness. It was with and among these that Cherokee Bill held forth. They were his familiars and friends. Cherokee Bill was less than twenty one years of age at the time he was hanged, so his sister swore in the first trial, she said: "I am twenty one years old and Crawford is younger than I am". The testimony also showed that Cherokee bill was living at the home of one George Baker about eight miles from Sapulpa, now in Creek County, Oklahoma.

Tulsa, the present day "oil capitol of the world" was of such minor

importance in those days that many of the witnesses, living within but a short distance of the place did not know "just where it was". Many of the places well known in those days are long since gone and forgotten, but they did not know about Tulsa. One witness~~es~~ being asked if the country between Claremore and Ft. Gibson was being fenced up answered: it " was fenced up terribly." Another testified that he was out "wild hog hunting" near his place which was close to Claremore, Oklahoma, but being asked where Tulsa was, he replied " I dont know jest where it be." The testimony of these old cases shows that in that day and time it was not unusual for the outlaws to ride up to a home at midnight and ask for food and receive it. The unusual thing~~s~~ was to see them in the day time. What ~~was~~ would be most unusual to the present day citizen of that section of the state was ordinary and commonplace in 1894. For instance Cherokee Bill aroused a clerk in ^a store at Sapulpa at midnight to buy a hat, coat and vest on the 17th day of December, 1894, and the clerk, Bert Gray, testified that ~~he~~ he hung the clothing discarded by the famous outlaw on exhibition next day and that " I took the hat out and shot a hole through it just for to pass the time." The goods sold to Cherokee Bill were not paid for and the ~~clerk~~ clerk, Gray, stated they were charged to the account of Cherokee Bill and that he wrote an order for the money on his mother as he had some money with her, but " didnt feel like going around there for it." He also testified that Cherokee Bill had ordered a new repeating rifle just a short time before and wanted to get it that night, that it was " a 3856" calibre. Judge Parker asked the witness: " Q. Who did you charge that new gun to? A. I didnt really charge it to any one. I never made any charge for it. Q. Do you sell goods in that way? A. It was like this: he said he would get the money and pay us or give an order on his mother." Their credit was good, whether it was because they paid or because of their gun, who can say? One of the witnesses in the case testified that Cherokee Bill and Curtis Dasin and Bill Cook robbed the store at Red Fork. Another that they held up the trian at Corretta Switch.

They were a busy bunch of outlaws for they robbed Seales store at Wetumka, July 18th in what is now Hughes county, Oklahoma; Robbed a Train at Red Fork ~~Sept 13th~~ robbed Parkinson's store at Okmulgee, September 14th, an express office at ~~Shawnee~~ Choteau October 9th; the train at Coretta switch Oct. 30th; A.E. Donaldson October 22nd and Schufelt's store at Lenspah on November 8th all in the year 1894. It was during the robbery of this last place that Earnest Melton, a painter and paper hanger was killed and for which Cherokee Bill was hanged. This tigerish man had probably killed many men prior to that time, if the facts were really known, and not surmised, but it is well known that he had killed a man by the name of Richards at Nowata and his brother in law, George Brown near Ft. Gibson, and finally killed Lawrence Keating while in the federal jail at Fort Smith awaiting the action of the Supreme Court of the United States on his ~~sense~~ ^{sentence} to hang in the Melton killing. He was a desperado of the first water, his crimes were legion, and yet there were many who bewailed the fact that he was hanged. ~~That was the need of keeping such a man alive; they don't explain; he just should have been kept alive and in confinement and housed and fed at the expense of the good people of the land.~~

Crawford Goldsby or Cherokee Bill was born in Texas, near old Fort Concho, February 8th, 1876. His mother was a mixed blood negro and Cherokee Indian by the name of Ellen Beck. His father a soldier with the Tenth Cavalry in the United States regular army. Later on he was relieved from the army and became a substantial farmer near Cleveland, Oklahoma, where he was known as William Scott. He was a Mexican mixed with white and Indian blood. When the boy was quite young his parents separated and he and his sister Georgia, went to live with their aunt Amanda Foster, near Ft. Gibson. At the age of seven he was sent to school at Cherokee, Kansas for three or four years and then to a Catholic Indian school at Carlisle, Penn. During these years he was considered just the ordinary, good natured boy. Nothing rough or brutal. But his mother continually counselled him to "Stand up

for yourself and take nothing off nobody." The negro ^{resentment} ~~testament~~ in her makeup was moulding the boy for his desperate career. When he returned from the school in Pennsylvania he was about twelve years of age, at an age when if proper discipline and teaching had been his he might have resulted in an entirely different character. During this time his mother had remarried to a man by the name of William Lynch, of Fort Gibson, and the boy was not welcome there. He became resentful and sullen. He fell into the company of desperate men and boys and at the age of eighteen had become a man, husky and powerful. It was at this time that he encountered his first difficulty. He was in attendance at a dance in Fort Gibson in that part called "old-town" and got into a difficulty with Jake Lewis, a grown man of thirty or more years in age. The boy invited him out to do battle, the invitation was accepted and the older man gave him a good whipping. A couple of days after this Lewis, who was employed by a man by the name of O.L. Bowden in Fort Gibson, started out of the barn where he had been doing some work and was met by Crawford with a shotgun in his hand. He said he was going to kill Lewis and did fire a shot into his body; Lewis ran and the boy fired another shot at which Lewis fell and the boy believing that he had killed him fled and went "on the scout." The authorities of the Cherokee Nation endeavored to arrest him but he left that section and took up his haunts in the western section of the Creek Nation and near Wewoka, the capitol of the Seminoles. There he met and fell in with the Cook brothers who had become desperate characters of that section and of old Oklahoma Territory. He and Bill and Jim Cook held up the Wewoka Trading Company at Wewoka and forced the manager, Mr. O.L. Long, to accompany them a few miles north of the trading post, where he was turned loose. This was in the spring of 1894.

During the first part of June of that following year E.E. Starr who was treasurer of the Cherokee nation commenced the payment of some six million and a half dollars to the citizens of the Cherokee Nation at Talequah and at the Going Snake school house. This was the payment for the "Cherokee Striped

opened to the white settlers in September, 1893. Crawford and the Cooks started to Talequah to get Goldsby's share of the payment which amounted to something like \$285.00 but as they did not care to be seen in that neighborhood because of the charges pending against Jim Cook and Crawford they stopped at what was in those days known as the "Halfway house" on Fourteen Mile creek, it being about that distance from Talequah. The "Halfway House" was a place where travellers between Fort Gibson and Talequah usually stopped for their meals. It was kept in those days by one Effie Crittenden who had one Bob Hardin, a brother in law of the Cooks, employed as a cook. Effie and her husband had lately separated and were on decidedly unfriendly terms. This, of course the boys did not know, so after they have given an order ~~af~~ to the Crittenden woman to get the Cherokee payment and it had been received, they decided to spend a few days there and rest up from their labors. This got them into a desperate gun fight for the husband of the Crittenden woman finding out that the boys were at the "Halfway House" put the officers onto their hang out. On July 16th Ellis Rattling Gourd and a posse of seven men on that Monday night, just after dusk, approached the house to capture the wanted men, but some of them were drinking and made a good deal of noise and Goldsby who was sitting out in the yard under a tree heard them coming and gave the alarm. In the posse were Sequyah Houston, Dick Crittenden, the husband of the landlady of the midway hostelry, his brother Zeke, Bill Nickel, Issac Greece, Hicks and Bracket. Goldsby and the Cooks ran for their rifles and opened fire on the officers. A regular battle ensued in which Houston was killed and Jim Cook was wounded a half dozen times. When Houston was unhorsed the officer beat a retreat leaving the Crittendens to carry on. Dick Crittenden shot the gun out of Jim Cook's hand from around the corner of the house, but they were not disposed to prolong the battle and hastened away into the darkness of the night.

It was at this place and because of this fight that Goldsby acquired the sobriquet of "Cherokee Bill." Next day after the battle the officers returned and asked if Crawford Goldsby was with the Cooks. Effie Crittenden replied that he was not, that the men with the Cooks was Cherokee Bill. From that time forward Crawford was known as Cherokee Bill.

After that fight at the "Halfway House" Cherokee Bill and the Cooks organized their "gang" proper. Besides themselves it was composed of Henry Munson, Curtis Dasin, "Chicken", Long Gordon, "Skeeter" and Sam McWilliams who was afterwards called the "Verdigris Kid." Jim French later on joined the gang.

The robbery of the Schufelt store at Lenapah, a little town on the Missouri Pacific railway a few miles ^{with} of Coffeenville, Kansas was the scene of other robberies in those days. Henry Starr had robbed it a short time before and near that place Starr had killed Floyd Wilson. The local outlaws, Dooley Benge and Clyde Berbour harassed the place for a short time but were soon captured and killed. One of the Schufelts was the postmaster at Lenapah. Just before noon on November 8th two men rode into the town at a rapid pace from the south. It was nothing ^{un}usual and their presence was given scant attention. They rode up to the Schufelt store and dismounted on the platform scales and Cherokee Bill accompanied by Jim French or the Verdigris Kid, it was never known which, went into the ~~same~~ store and ordered the Schufelts and their clerk to throw up their hands. This was done promptly, then the smaller of the men went out in front and began to shoot up and down the street to keep the crowd away. Cherokee Bill required the old man Schufelt to go back to his safe and get the money out of it. Afterwards he took him to the front of the store and made him open the cash register. The man in front called him to procure some shells for their guns and again old man Schufelt was ordered back to the back of the store to get the cartridges. While they were going to the back of the store they passed a door on the north side of the ~~main~~ building. And just across a lot to the north

was a restaurant building with a window in the south side and next to the building where the robbery was going on. Earnest Melton, a painter from Texas, was in the eating house, and hearing the shots fire rushed to the window to see what was going on. Just then Cherokee Bill happened to pass the north door in the mercantile establishment and seeing Melton looking across at the Schufelt store, ~~Cherokee Bill~~ ^{he raised} his rifle to his shoulder and fired on Melton, striking him directly in the forehead, killing him instantly. None of the cartridges fit the weapons of the outlaws and so they got on their horses and rode away?.

It was just a week after this that Heck Thomas and his forces had the battle with the outlaws at the Daniel's place and Thomas testified that in that battle he captured Cherokee Bill's horse and got "his black hat with a white plume in it." It was there also that Bill was lightly wounded by Heck Thomas. But the outlaws escaped and were lost track of, although the officers searched the neighborhood of Sapulpa where the gang had their hold out. Strategy and double dealing was thereafter resorted to in order to get Cherokee Bill into custody. Deputy marshal Smith learned that Bill was in the habit of "laying up" with Ike Rogers, who lived five miles east of Nowata, in the Cherokee nation. That there was a negro girl at the place whom Cherokee Bill was courting by the name of Maggie Glass. Rogers had been a deputy marshal himself. He was a mixed blood and a ^{no}count, worthless character who had been harboring outlaws, and particularly Cherokee Bill.

Rogers was approached and offered a sufficient reward to interest him in the capture of the out^{law}. Rogers first act was to have the girl, Maggie, return to his ^{home} as she had been over to a neighbors, and Cherokee Bill was notified of her presence at the Rogers home and requested to come on a visit. Shortly after dark on the 29th day of January, 1895, Bill appeared at the home of Rogers, and from that time until midforenoon of the following day Rogers and Cherokee Bill were mentally sparring for an opening, Rogers to overcome and capture the outlaw and Bill to have a reasonable opportunity to shoot Rogers to death. Cherokee Bill had become suspicious of his erswhile friend, and after watching the movements of Rogers the girl, Maggie Glass, also got suspicious and begged Bill to leave. But apparently he was interested to know just what Rogers had in ^{his} mind and was willing to test his watchfulness against that of his host. Rogers was afraid to commit any overt act and was as wiley as a fox, yet all the time he was looking for an opportunity to get the drop on the desperado. He treated the outlaw with the greatest kindness in order to gain his confidence and urged him to stay all night. He even suggested that the outlaw lay aside his rifle and to this Bill answered: "That is something I never do."

Bill was then offered whiskey to drink, doctored up with knock out drops but Bill refused to drink. He was watchful, he seemed to sense some motive in every act of Rogers. It is just the greatest wonder in the world that he did not kill the man on the spot. But prior to that time he and Rogers had been the best of friends, he had brought needed grocers and clothing to the ex-marshal's home and the man Rogers had given him refuge. It was the wild animal of the man sensing danger, no doubt, that caused his suspicions of Rogers. Supper was eaten, Bill with his rifle across his knees, ever watchful. After supper cards were proposed and still Bill played with his gun across his knees. The guns of Rogers and a friend named Clint Seales, who was working in concert with Rogers and who had come in after supper, of course were laid aside. Either of the two men knew it to be too dangerous to attempt to handle a gun of any kind.

The card game continued until very nearly day break. The men played with the careless of movement but watchfulness of eyes that nervous men will assume while trying hard to appear calm under stress. Cherokee Bill appeared to be rather enjoying the conditions for he by that time fully understood that his host had something desperate in mind. But still he tarried on, curious no doubt, to find out exactly what it was. He was to find out, but not that night. He and Rogers slept together in the same bed that night- that is they lay in the bed together, each of them too watchful to close his eyes. Every time Rogers made a movement, Bill would sit up in bed watchful and on guard. It seemed that it had all been ^a futile undertaking for Rogers when breakfast time came and he had almost given up hope.

Rogers, however, in his own way made a statement soon after the capture that has been preserved and it will be best to let him tell his own tale with the readers making allowance at all times for a braggart and a coward;

"I had been instructed by Col. Crump to get him alive, if possible, and I didnt want to kill him but I made up my mind to kill him if I couldnt get him any other way. Scales and I had our guns hidden where we could get them in a hurry but we didnt want to give him any show to fight. After breakfast we talked along for some time and he began to talk of leaving. He and Scales and I sat in front of the open fireplace. I knewed that we had to make a break on him pretty soon and I was afraid the girl would take a hand in it, so I gave her a dollar to buy some chickens at a neighbors, so as to get her out of the way. I also sent my boys away as I had not told them of my plans. Bill finally took a notion that he wanted to smoke and he took some paper and tobacco from his pocket and rolled a cigarette. He had no match, so he stooped over toward the fireplace to light it, and turned his head away from me for an instant. That was my chance and I took it. There was a firestick lying on the floor near me and I grabbed it up and struck him cross the back of the head. I must have struck him hard enough to have killed an ordinary man but it only knocked him down. Scales and I then jumped on him but he gave one yell and got on his feet. My wife grabbed Bill's winchester and we three tussled there on the floor full twenty minutes. I thought once I would have to kill him. his great strength with his 180 pounds weight, being almost too much for me and Scales, but finally we got a pair of handcuffs on him. He then plead and begged me to release him or kill him. He promised me money and horses, all I wanted. Then he cursed. We put him in a wagon and Scales rode with him and I went on horse back, and started for Nowata. On the way Cherokee broke his handcuffs and grabbed at Scales gun and Scales had to fall out of the wagon to keep from losing his rifle, while I keep Cherokee covered with my shot gun. At Nowata we turned him over to Bill Smith and George Lawson."

It might be well to remember that this man Ike Rogers who so betrayed and captured his friend as in his own statement set forth, had for the last several years depended upon the man he betrayed for his scanty grub and victuals. Outlaw, though Cherokee Bill was, and justified no doubt as the law is in resorting to such means to capture such men, yet the very soul of the ordinary citizen revolts at the conduct of this man Rogers. And before your wrath arises too high let me state that not long after the occurrence above related, Ike Rogers met a deserving death at the hands of a brother of Cherokee Bill, Clarence Goldsby. In such men as Rogers no such thing as loyalty or appreciation exists. He would kill or capture his friend for a small reward. Surely no one will regret the death of Ike Rogers.

Deputy Marshal William Smith and George Lawson took Cherokee Bill to Fort Smith by the way of Waggoner. There they stopped to have a photograph taken of the outlaw, a copy of the same is still in existence. Cherokee refused to allow Ike Rogers to stand close to him, but he placed his hand on the arm of Dick Crittenden, with whom he had been at mortal combat at the "Halfway House" not so long before. He could stand a man who would fight but not one who would betray a friend. During the trip to Fort Smith the deputy marshal swore at the trial, Cherokee Bill asked him: "I don't see how they can prove the killing on me, for there were others shooting besides me". This was some of the most damaging testimony at the trial of this desperate man for the killing of Earnest Melton.

The jury that tried the case were out but a short time when they filed back into the court room and the clerk read their verdict of "guilty of Murder." Cherokee Bill simply smiled, but his mother and sister who were present in the court room broke down and cried.

After his conviction an appeal was taken to the Supreme Court of the United States and while that appeal was pending and on the 26th day of July, 1895, just after six o'clock, in an attempt to break jail, he killed Lawrence Keating, one of the guards of the jail. For this he was tried almost immediately, and again convicted of murder.

In the trial of Cherokee bill for the killing of Melton a witness for government ~~the defendant~~ who was particularly irritating and dumb was being cross examined by Mr. Barnes for the defense as to whether or not he had been talking with the principal witness for the government, Schufelt, out in the hall of the court house. The witness confessed he had been talking to him but not about anything that had to do with the case, the attorney then got sarcastic and enquired:

Q. Oh! you and he were just talking about your financial matters in New York?
A. No sir, I have never been in New York."

One can well imagine that the old judge smiled in his little goatee at the futility of sarcasm on a witness ~~as snaky~~ so seriously disposed.

On the other hand it is quite doubtful if Judge Parker allowed himself much levity of any kind during these trials. Particularly during the second one for the killing the guard. At the time of the killing he was in Saint Louis, Missouri, and on hearing of the killing he rushed home to open a term of court and see that the law was vindicated for there was serious talk of taking Cherokee Bill out and mobbing him. While in Saint Louis he was interviewed by newspaper reporters and gave a statement that is well worth repeating here. It is a harsh appraisal of the appellate court's delays:

"What is the cause of such deeds, you ask? Why, the cause lies in the fact that our jails are filled with murderers, and there is not a sufficient guard to take care of them. There are now fifty or sixty murderers in the Fort Smith jail. They have been tried by an impartial jury; they have been convicted and have been sentenced to death. But they are resting in the jail, awaiting a hearing from the Supreme Court of the United States. While crime, in a general way, has decreased very much in the last twenty years, I have no hesitation in saying that murders are largely on the increase. This has been noticeable, chiefly in the last two years. I attribute the ~~xxxxxx~~ increase to the reversal of the Supreme Court. These reversals have contributed to the number of murders in the Indian Territory. First of all, the convicted murderers have a long breathing spell, before his case comes before the Supreme Court; then when it does come before that body, the conviction may be quashed, and wherever it is quashed it is always upon the flimsiest of 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. That is the sum total of it. Next, the guard at the Fort Smith jail ought to be doubled. In speaking as I do of the Supreme Court, I am mistaken, of course, of the wise and merciful provision of the law, which ~~allows~~

that it is better that ninety nine guilty ones should escape than that one innocent man should suffer. Nor am I devoid of human sympathy because I have endeavored to carry out the law justly and fearlessly. But sympathy should not be reserved wholly for the criminal. I believe in standing on the side of the innocent. Take that man Keating. He was a quiet, peaceable, lawabiding man. Is there no sympathy for him and his wife and children who have been deprived of his protection and support? Was not his life worth more to the community and to society at large than a hundred murderers? If one man can shoot another in self defense, cannot the third, representing society, extend its protection in a similar manner, though, of course, in a strictly legal and judicious manner? Now, as to the condition of the Indian Territory in the matter of murderers; these are confined at least, to a great extent, to what I call the criminal intruders- men who have committed crimes in the States and come to the Indian Territory for the purpose of refuge. Take the resident population and it is as orderly and quiet as any to be found anywhere. During the twenty years I have been engaged in administering the law there, the contest has been one between civilization and savagery, the savagery being represented by the intruding criminal class of which I have spoken. I have never found a time when the Indians, the Cherokees, the Osages, all of them- have not been ready to stand by the courts in the carrying out of the law. The United States government in its treaties, from the days of Andrew Jackson down to the present time, stipulated that this criminal element should be kept out of the country, but the treaties have only been made to be broken. The said treaty was made when the last strip was ~~annexed~~ purchased. But this is the old story over again. "