THE UNIVERSITY OF OKLAHOMA

GRADUATE SCHOOL

THE WORK OF JUDGE PARKER IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS - 1875 to 1896

A THESIS

SUBMITTED TO THE GRADUATE FACULTY

in partial fulfillment of the requirements for the

degree of

MASTER OF ARTS

BY

JAMES OAKLEY MURPHY

Norman, Oklahoma

1939

THE WORK OF JUDGE PARKER IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS - 1875 to 1896

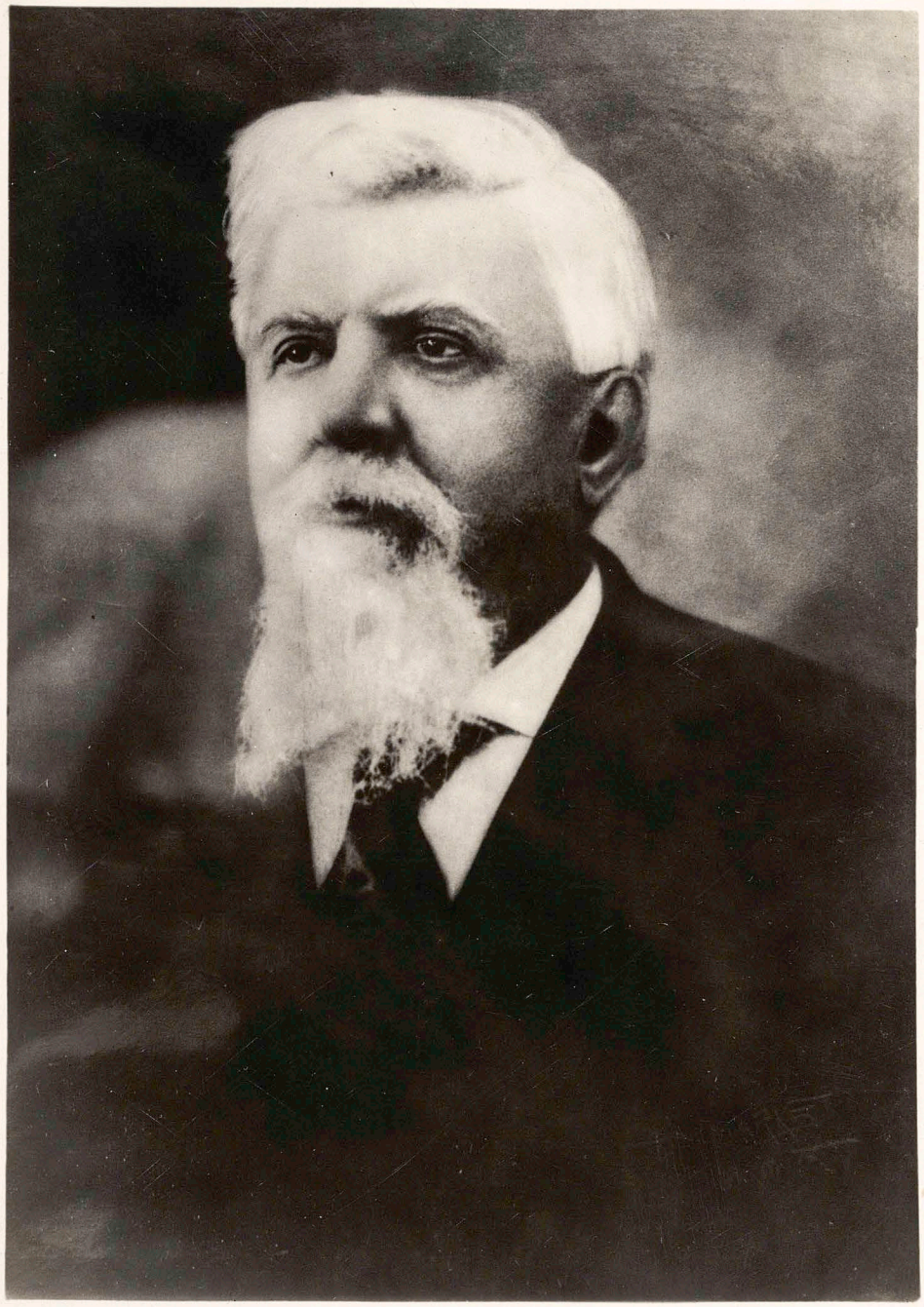
A THESIS

APPROVED FOR THE DEPARTMENT OF HISTORY

ACKNOWLEDGMENT

To Dr. E. E. Dale, head of the Department of History, for the suggestion of the problem and for giving me a view of history as a live and human subject, to Judge Heartsill Ragon, of the Federal District Court for the Western District of Arkansas and his assistants, particularly Clerk W. S. Welshear, Mrs. Katie Pardue, public librarian of Fort Smith and her assistants, and to the staff of the Oklahoma Historical Society, who have placed all available material at my disposal, to Mrs. L. M. Morris who assisted in arranging the original manuscript, and to Mrs. Edith Townes for patient constructive criticism and to others who have assisted the writer, grateful acknowledgment is made.

TABLE OF CONTENTS



ISAAC C. PARKER

THE WORK OF JUDGE PARKER IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS - 1875 to 1896

INTRODUCTION

Will Rogers opened his charity lecture in Fort Smith in 1931 by saying, "I am one of the Indians that Judge Parker didn't hang." He further characterized the early Oklahoma attitude as well as that of other parts of the country by saying, "I never much liked this place. We used to get too many coffins back from here." Currently, Isaac C. Parker, the judge of those famous years, is known as the "Hanging Judge" with little appreciation of why he hanged men.

Beyond the facts most commonly known lie others more vital to American history that tell why men were hanged at Fort Smith. What manner of man was this judge? What kind of society did he serve? Whose laws established his jurisdiction? When these have been learned one may know why men were hanged at Fort Smith and also know from what the present society has grown. On these and questions that impinge upon them this study is designed to throw light from authentic sources.

CHAPTER I

THE JUDGE: HIS APPOINTMENT, BIOGRAPHY, AND FAMILY

The first judge to serve the western district of Arkansas after the conclusion of the Civil War at which time the court was removed to Fort Smith, was Judge William Story who held the office from April 1872 to June 1874.[1] Story was a young man who had drifted into the state during the era and had managed to obtain the appointment from President Grant. He was a weak and vacillating judge under whose administration many disorders existed while the expense of the court during fourteen months reached the sum of $400,000.00, prisoners languished in jail, and trials were few and far between. Witnesses were often forced to sell their ponies to pay expenses of attendance at court and to walk or manage the best they could to return to their far distant homes. Charges of bribery and misconduct were lodged against Story and a committee composed of Colonel Ben T. Duval, Judge John H. Humphrey, and District Attorney Newton J. Temple were summoned to Washington as witnesses before the Judiciary Committee whose attention had been directed to the state of affairs in the western district of Arkansas. In June of 1874, to escape impeachment, Judge Story resigned.[2]

---

[1] Common Law Records of the United States' Court for the Western District of Arkansas, IV., 1-117. (hereafter cited as Com. Law.)

[2] Fort Smith Elevator, (Fort Smith, Arkansas), Jan. 8, 1897. (hereafter cited Elevator.)

When this vacancy occurred in the judgeship of the federal court for the western district of Arkansas, the Arkansas senators, Powell Clayton and Stephen W. Dorsey, both Republicans, requested an out-of-state appointment.[3] The split in the Republican ranks within the state over the Brooks-Baxter War, which was caused by reconstruction misgovernment of the state, was a prime factor in placing Parker on the bench in the western district of Arkansas for the bitterness caused by the so-called Brooks-Baxter War was so wide spread throughout the state that scarcely a man capable of holding the position was free from the factional spirit engendered. To avoid adding this strife to the disorderly condition already existing in the court for the western district of Arkansas, the president and senate agreed to make an out-of-state appointment, which in itself was a precedent setting procedure in appointing federal judges.[3]

Isaac C. Parker, a resident of St. Joseph, Missouri, was selected and appointed by President Grant to fill the vacancy on March 24, 1875, and assumed the duties of the court immediately. The first term of court under him opened on May 10, 1875, although he had performed many duties of the court before the opening of the term.[4]

Perhaps no judge ever came to a bench under more trying circumstances. The court to which Parker was appointed had fallen into disrepute throughout the district under the carpet-bagger regime which had been officially ended by a congressional resolution just one month before Parker received the appointment. The people of the district looked upon another

---

[3] Ibid.

[4] Com. Law. V., 118.

appointment by President Grant with considerable misgiving and all the more so because the appointee was an out-of-state man and endorsed by the Republican senators who had been placed in power by the carpetbaggers.

At the time of his appointment, Parker was serving his second term as representative in the forty-third Congress from the St. Joseph, Missouri, Congressional District. During his first term in Congress he served as chairman of the Committee on Expenditures of the Navy Department and member of the Committee on Territories. In spite of the re-districting of his congressional district so that it contained a Democratic majority of three thousand, Parker was re-elected by a majority of more than one hundred and forty-three votes.[5] His second term afforded him richer experiences. He was appointed to the Committee on Appropriations, a committee of which every member was later to receive higher honors. Perhaps his most distinguished work in Congress was the engineering of the Indian Appropriation Bill of 1872, and the pressing of a measure to organize a territorial government for the Indian country in the western district of Arkansas, a measure he was unable to pass.[7]

Parker's early training and political convictions had to some extent fitted him for service in the south for until the outbreak of the Civil War he had been an ardent Democrat and was president of the first Stephen A. Douglas club organized in Missouri.[8] Early in 1861 he espoused the

---

[5]Fay Hempstead, History of Arkansas, I, 461.

[6]Encyclopedia of New West, 1881, 28-29.

[7]The Vindicator (Atoka, Creek Nation) Sept. 27, 1876.

[8]Hempstead, op. cit., 461.

Republican principles and remained a strong adherent of the party thereafter.

Parker was not a novice in court work for in 1859 he began the practice of law in St. Joseph, Missouri, where he practiced for fourteen years. There he made friends and established a professional reputation that soon led him into public office, and a career of public service.

From April 1861 to April 1864 he occupied two positions of public service. During this time he served as city attorney for St. Joseph and was also a corporal in the state militia under Generals Rosecrans and Curtis. He saw little active service in battle although he was engaged in several skirmishes, but most of the time he was detailed as assistant provost marshal at St. Joseph.[9]

In the November election of 1864 he was chosen for a Republican presidential elector and cast his vote for the re-election of Abraham Lincoln. At this same election he was also elected state's attorney for the ninth judicial circuit and held the office until September of 1867. In November of 1868 he was elected judge of the ninth judicial circuit for a term of six years. He was serving in this position when in 1870 he received the nomination as representative to Congress for that district.[10] Since he felt it was improper to hold a judicial position while campaigning for a political office, he resigned his position of judge and successfully made the race for the position he was to fill until he accepted the appointment to the judgeship for the western district of Arkansas.

Parker was evidently destined to become a federal judge. Before he

---

[9] Encyclopedia of New West, 28-29.

[10] Hempstead, op. cit., 461.

was appointed to the judgeship for the western district of Arkansas, President Grant had already appointed him Chief Justice for the newly formed Territory of Utah, but before he was confirmed by the Senate to this position the Republican senators of Arkansas requested that he be appointed to the vacancy existing in the western district of Arkansas. Upon receiving this request, the President withdrew the previous nomination and appointed him judge of the United States District Court for the Western District of Arkansas, at a salary of $3,500.00 per annum. At the time of his appointment Parker was the youngest judge on a federal bench, he then being only thirty-seven years of age.[11]

Judge Parker came of English ancestry. His father, Joseph Parker, was a native of Maryland, though the family had originally settled in Massachusetts. Parker's father was a farmer of remarkable energy who migrated to Ohio in his early life and there married Jane Shannon, a native of Belmont County, where Isaac C. Parker was born October 15, 1838. Isaac's maternal ancestors were famous as public officers. His grandfather was the only one of six brothers who did not at some time hold an official position. One great uncle, Wilson Shannon, was twice governor of Ohio, minister to Mexico, member of Congress, and later governor of Kansas. His father and mother were both respected for their industry, strong domestic discipline, intellectual strength, but mild and kindly dispositions; strong traits of character also attributed to their son, Isaac.[12]

---

[11] Ibid., 460.

[12] Ibid., 29.

When Parker was a lad, he could attend school only when he was not actively employed on his father's farm but he rapidly acquired a knowledge of the common school subjects and then by private study he became versed in English literature. He began teaching school when he was seventeen years of age as a means of promoting the study of law on which he had determined a year previously. For four years he alternately taught school and attended Barnesville Academy studying law. He was fond of discussion and took an active part in the argument over the Kansas-Nebraska question, which was the absorbing topic of the day.[13]

After beginning his practice of law at St. Joseph, Missouri, in 1859, Parker returned to Ohio and married a boyhood sweetheart, Mary O'Toole, whom he brought back to St. Joseph. At the time of his appointment to the judgeship of the western district of Arkansas he had a family of two sons.

Judge Parker at once became a useful and distinguished citizen of Fort Smith, where he was to reside for twenty-one years, the remainder of his life. He was an active member of two fraternal organizations of that early day, the Odd Fellows Lodge and the Knights of Honor. Although he and the honorable Mr. John H. Rogers, who was the representative for the fourth Congressional District of Arkansas, in which Fort Smith was located, belonged to opposing political parties, they worked together untiringly for the welfare of the city and the public schools in particular.[14] Both Rogers and Judge Parker were members of the city's board of education for several years. Parker is given the credit for drawing up the bill providing

---

[13] Ibid., 28.

[14] Herbert Beck, Personal Interview , 1939.

for the donation of the old military reserve to the schools of Fort Smith and Rogers is credited with having pushed the measure through Congress.[15]

Judge Parker is reported to have possessed a kindly and religious disposition.[16] His home was regarded as an open court of counsel to the poor and unfortunate people around him. It is said that he gave alms liberally and had no ambition to become rich. From the admonitions given to men about to be sentenced to death, it is evident that he had strong faith in a divine Being, although he was not identified with any religious denomination until just before his death, when he joined the Catholic church, of which his wife was already a member.[17]

The two sons of Judge Parker received their public school education in Fort Smith and grew to manhood there. Both of his sons, Charles Chandler, and James J., entered the law profession. Charles, the older, began his practice in Saint Louis, but James J. entered a law firm in Fort Smith.

The only descendants of Judge Parker in 1939 are the children of his younger son, James J. Parker, who married Miss Kate Bailey, the daughter of a pioneer physician of Fort Smith. This family now lives in Fort Smith and is highly respected for public service; one member during the year past received the award of the Junior Chamber of Commerce for public service.[18]

While the city of Fort Smith often resented the aspersions cast upon

---

[15] Irving M. Dodge, deputy court clerk 1896, Memoranda W. P. A. Form 3, 1936.

[16] Indian Chieftain (Vinita, Indian Territory) Nov. 19, 1896, 2.

[17] Elevator, files 1878 to 1896, i. e. Jan. 17, 1896.

[18] Kate Bailey Parker (daughter-in-law of Judge Parker, Ft. Smith, Ark.) Personal Interview , 1939.

it because of the large number of hangings that occurred there, and regretted the morbid influence of the public executions, it has in many ways honored Judge Parker and his memory is held in high esteem by the city's outstanding citizens. His old home site was purchased for the location of the public library where a marker in his honor is placed and one of the ward schools is also named in his honor. Markers have been set up by the civic clubs at many points throughout the city that were in some way connected with the work of the court over which he presided.

The entire district over which Judge Parker presided was soon to feel the effect of his strong character. Whereas his predecessor was noted for seldom having a trial, Judge Parker gained notoriety among the bar for seldom adjourning.[19] Court convened at eight thirty in the morning and recessed for one hour at noon, and often continued into the night, observing only Sunday, the Fourth of July, and Christmas for holidays. While the docket was seldom cleared of all business it was not the court's delay that prevented the speedy disposition of all business.[20]

Respect for the court was rapidly restored. The bar changed from a sullen attitude to one of high respect and energy. Residents of the district in both the Indian country and Arkansas at once recognized the changed spirit in the court's management for witness fees were paid promptly and law enforcement was now energetically prosecuted.[21]

Not only did Judge Parker rejuvenate the court in discharging its

---

[19] Harry P. Daily, Isaac C. Parker, (address before Arkansas Bar Association) 1936.

[20] Com. Law., 1875 to 1896.

[21] Atoka Vindicator (Atoka, Creek Nation) Dec. 29, 1875, 4.

duties, but he began a rigid policy of requiring the people of the district to discharge their duties to the court. One of his first official duties in the court was to swear in his marshal and appoint two hundred deputies. When witnesses failed to answer the subpena the Judge at once issued an attachment for their appearance in court, a procedure that was given wide publicity and commendation.[22] His slogan is reported to have been: "For justice, all places a temple and all seasons summer."[23]

---

[22] Ibid.

[23] Indian Chieftain, Nov. 19, 1896, 2.

CHAPTER II

THE UNUSUAL DISTRICT TO WHICH PARKER WAS APPOINTED

The federal court district to which Isaac C. Parker was appointed in 1875 had its beginning in the days when the vast Louisiana Purchase was being organized into territories. In 1834 Congress divided the country lying west of Missouri into two sections and assigned all the territory lying north of a line fifty miles north of the present northern boundary of Oklahoma, and extending to the Mexican possessions, to the Missouri judicial district; and all the land bounded on the north by the above mentioned line, on the south by the Red River, on the west by the Mexican possessions, and on the east by Missouri and Arkansas to the Arkansas judicial district.[1] By this provision, the judicial district of Arkansas then included what is now the entire states of Oklahoma and Arkansas and a strip of country fifty miles wide across southern Kansas. The seat of the court was located at Helena in the southeastern corner of the Arkansas Territory where it remained for seventeen years.[2]

On March 3, 1851, Congress made two divisions of the judicial district of Arkansas, the eastern and the western divisions, to be presided over by the same judge dividing his time between them. Helena retained

---

[1] *Laws of the U. S.*, IX, 128-129.

[2] *Ibid.*

the seat of the court for the eastern division, and Van Buren, on the western side of the state located within a few miles of the Indian Country, was designated as the seat of the court for the western division.[3]

In 1854, when the Kansas-Nebraska Territory was organized, the size of the judicial district of Arkansas was reduced. This reduction in territory was indicative of a process that was to eventually reduce this oversized, unwieldy, and impractical judicial unit of government to one in which the administration of justice could be speedily and efficiently administered, in conformity to the ideals of American justice.

In the creation of the Kansas-Nebraska territory, all the Osage country within the Arkansas judicial district lying north of the present northern boundary of Oklahoma, an area of approximately fifteen thousand square miles, was taken from the judicial district of Arkansas and annexed to the new Territory which became a part of the state of Kansas in 1861. At three later dates, 1871, 1883, and 1896, the district was to witness similar losses in territory, once in Arkansas and twice in the Indian Country, to other judicial districts as the population in the old district grew to unwieldy numbers, until in 1896 all territory beyond the present boundary of the district had been annexed to, or created into, other judicial districts.

The most famous district ever carved from the Arkansas judicial district was the western district of Arkansas, a district that geographically coincided with the western division of the Arkansas judicial district with the exception of a few counties in northeastern Arkansas.

The western division of Arkansas became a separate and distinct

---

[3] United States Statutes at Large, XVI, 471. (Hereafter cited as Stats.)

judicial district by an act of Congress March 3, 1871.[4] This act provided that the court should be removed from Van Buren to Fort Smith and a large area of Arkansas territory in the northeastern part of the state was dropped from the new district.[5] The act provided that Benton, Washington, Crawford, Scott, Polk, Franklin, Madison, and Carroll counties in Arkansas and "all that part of the Indian Country lying within the present judicial district of Arkansas" shall constitute a new judicial district to be styled the Western District of Arkansas.[6] Since at that time Crawford County was much larger than it is at present, the western district of Arkansas then included almost half the state of Arkansas and all the present state of Oklahoma. This area, approximately seventy-four thousand square miles, having a population of approximately sixty thousand people, was the district to which Isaac C. Parker was appointed in 1875.[7] It was not the vast area included in the jurisdiction of the court for the western district of Arkansas that made it significant in the judicial history of the United States, but the dynamic forces of the district and their struggle for peace and orderly government.

The society of the western district of Arkansas was similar to that of any frontier country at the same stage of development, with a few forces other than the ordinary frontier modifying it. This part of the United

---

[4] 9 Stats. 594.

[5] Ibid., XVI, ss 5, 472.

[6] Ibid., IV, 594.

[7] Fort Smith Elevator, (hereafter cited as the Elevator), Nov. 18, 1878.

States was different in its political development from any other in American history. As the unusual forces within the district are enumerated and understood, the significance of the work of Judge Parker in the federal court for the western district of Arkansas from 1875 to 1896 is appreciated.

The Indians of the Five Civilized Tribes of the southeastern states had been removed into the land west of Arkansas before the creation of the judicial district of Arkansas. After the close of the Civil War, the Indians of the great mid-western plains were also removed to the Territory and given reservations on the lands forfeited by the Nations as a result of their joining the Confederacy during the Civil War.[8] By treaties with the Indians as separate nations, the United States had recognized their civilization and allowed them to retain their tribal form of governments.

So long as the Indians held the country to themselves, no matters of litigation or prosecution came before the United States courts for the Indians' courts were able to enforce their laws among their own people; but when white men began to enter the Indian country, an element of society came into being over which the Indians had no jurisdiction.[9] This intrusion of the white man began a conflict in the Indian country that resulted first, in a series of short-lived Indian Wars and, secondly, in a long era of individual and mass crime.

The Indian Wars were successfully terminated in the spring of 1875, the same year that Parker came to the bench in the western district of Arkansas.[10] The individual conflict, however, between the Indian and the

---

[8] 14 Stats., 799-803.

[9] 163 U. S. Rep., 380.

[10] Charles Evans, Lights on Oklahoma History, 140-141.

white man continued for almost half a century and was responsible for a high percentage of the business that came before the court of Judge Parker from 1875 to 1896.

This dual society of nations within a nation, with its two systems of law and widely differing customs, created many problems for both the Indians and the United States. The intruding whites took advantage of the tribal custom of holding land in common to secure a foothold in the Indian country. Since the Indians were not permitted to sell their land the white men resorted to leasing as a means of securing the use of the land and obtained leases for land wherever they chose from individual Indians. Since no land offices were maintained, confusion resulted for the same tract of land was sometimes leased to more than one person by different Indians. Confused claims were inevitable and domestic strife followed.[11] The Indians themselves were powerless to oust white men who gained a foothold among them in this manner for only the federal courts could deal with cases in which white men and Indians were parties. The injustice suffered by the Indians was often denounced by editors in both Fort Smith and the Indian country, but little or nothing could be done by people outside of the Territory to relieve the condition.

In the years before the railroads entered the Indian country, cattle and wagon trails leading from Texas pastures and towns to railheads in Kansas crossed the Indian country in several places. A type of transient criminal haunted these trails. Frequently robbery and murder were committed on these trails when hired hands and travelling companions turned

---

[11] Elevator, Dec. 27, 1878.

out to be criminals.[12]

With the advent of railroads into the Indian country, the character of intrusion became worse. Now that access to the Indian country was easy, it became the refuge for all kinds of criminals and fugitives from the surrounding states. The vast area of sparsely settled country was an ideal outlaw's lair, for here robbers and murderers were often undetected for months and even years.[13] While it was the presence of the Indian in the land that gave occasion for the development of crime, it was not the Indians who were brought most frequently to the court of Judge Parker, but this white, black, and foreign element of the population styled by Parker himself as "criminal intruders".

Perhaps no better description of the criminal society of the Indian country can be given than the following editorial defense of Fort Smith in 1878.

> Why are men hanged at Ft. Smith? The average citizen of our country has not the remotest idea of the vast extent of this court's jurisdiction. It extends to the eastern boundary of Yell County (Arkansas) to the northern boundary of Boone (Arkansas), and to the southern boundary of Little River County (Arkansas), thence westward throughout the Choctaw, Cherokee, Chickasaw, Creek, and Smminole countries extending seven hundred miles west, or as far as a deputy marshal dare go. It is not surprising that law is violated, some tried, some convicted, and some hanged, especially when nearly every white man that enters the Indian country wants fast money, or escape from law. Here they live desolate lives ...where no law exists...where fun and frolic abound...fast ponies run...red and yellow tape dangle from bridles and broad hat brims, and dangling spurs hang on the heels of the fastest riders and greatest rowdies. All appear to be jolly fellows, well met. It is from this population the deputy marshals gather the demons, the fiends in human form, some of whom are negroes and Indians but the large portion are our own race...called Christian people...

---

[12] Ibid., Dec. 20, 1878.

[13] Ibid., 1878-1896 files.

> We think it is true that no person living in the western district outside of the Nations has ever been found guilty and hung at Ft. Smith by the U. S. Marshals or sheriff of Sebastian County.[14]

Another and later editorial column stated:

> Trials of the worst criminals would make sensational reading in the east, but pass as occurrences so common as to be wholly uninteresting to western readers. Let it be understood that none of the desperadoes and murderers are from Arkansas, but are principally refugees from various states that go into the Indian country to carry out their hellish intentions which they cannot do in the States. Here the watchful marshals frequently entrap them, sometimes however, at great personal danger and with loss of life.[15]

The lawlessness of the region was a natural result of the traditional attitude of the white man toward the Indian and his property. From the time of the earliest colony, disregard for the rights, property, and life of the Indians had been practiced. The white men who entered the Indian country could see no reason for respecting Indian claims here more than elsewhere.[16]

Although the Indian country had been set aside for the Indians and rigid restrictions placed on others who entered the country, so many other people were living among the Nations in 1878 that the complexion of the population was said to resemble closely that of the neighboring states.[17] Indian agent, Robert L. Owen, in 1886, described the society of the Indian Territory as "intruding cow-men, intruding farmers, coal and timber thieves, and whiskey peddlers".[18] Parker's court was the only

---

[14] Elevator, December 13, 1878.

[15] Ibid., November 21, 1879.

[16] Ibid., December 21, 1878.

[17] Elevator, December 19, 1878.

[18] Victor E. Harlow, Oklahoma, 224.

protection the Indian had against this invading horde.

The following report in 1889 shows the distribution of the population in the Indian Territory and its character:

Indians:

Creeks, natives and adopted freedmen	14,200
Cherokees, natives, adopted whites and other Indians and freedmen	24,000
Choctaws, natives, adopted whites and freedmen	18,000
Chickasaws, natives, adopted whites and freedmen	6,000
Seminoles, natives, adopted whites and freedmen	2,600
Total citizen population - - - - - - - - - - -	65,200

Whites:

Farm laborers, mechanics, under permit and their families	45,600
Licensed traders, government employees, employees of railroads and mines and their families	25,000
Interlopers and criminals principally refugees from border states, their families	35,000
Claimants to Indian citizenship	4,000
Sojourners, prospectors and visitors	3,000
Total non-citizen population - - - - - - - -	112,600 [19]

Liquor was always a source of crime in the western district of Arkansas. A grand jury report to Judge Parker in 1887 stated that ninety-five per cent of the crime was directly attributable to liquor.[20] Frontier taverns and dance halls were frequently the scenes of drunken brawls which resulted in trials before Parker's court.[21] Whites, blacks,

---

[19] Report of Supt. of Union Agencies, 1889, 35.

[20] Elevator, July 29, 1887.

[21] Ibid., June 6, 1879.

Indians, half-breeds, foreigners, and liquor presented a troublesome company. From 1889 to the close of Parker's term, a transition in ranch life that created lawlessness was taking place in the western district of Arkansas and the Oklahoma country. The large grazing lands were being broken up into small farms and hundreds of cow-boys, who were ill-fitted for farm hands, were being thrown out of work. While some of them became resentful toward society and lived by depredation, some of the stronger characters among them became marshals to help enforce the law. Their previous lives of riding and shooting fitted them for whichever course they chose. Some of the worst gangs were the result of this age of pastoral transition.[22] Ranchmen were often friends to both the marshal and his quarry, for in many cases both had been employees of their ranchman host. The lines separating the outlaw and the officer, and the law abiding citizen and the outlaw, were very thin.

A description of the society of the Indian Territory does not describe all the judicial difficulties created, for this polyglot section of American society was entirely different in its legal set-up from any other in the United States. The Indian country within the western district of Arkansas was many nations within a nation, each possessing its own system of laws and courts. The United States through its various treaties had recognized the Indian's right to maintain his own law and order of society in so far as it did not contradict the Constitution of the United States. These treaties expressly allowed the Nations to maintain their local judiciaries and gave Indian courts exclusive jurisdiction

---

[22]Harlow, op. cit., 292, 293.

in all matters, civil and criminal, arising in the Nations in which members of the Nations by nativity or adoption were the only parties.[23]

When an offense occurred in which whites, blacks, foreigners, and Indians were engaged, difficulties over jurisdiction might arise for jurisdiction was not determined by color or race alone. In the reconstruction treaties of 1866, the Indians had agreed to free their slaves and grant them the rights, privileges and immunities of their citizens.[24] Previous treaties had already established the immunities of adopted or naturalized citizens of the Nations and consequently the slaves when freed and adopted, even though they were negroes, became Indians in the sight of the law and enjoyed the immunities of the Indians.

A judge of the United States' Court was compelled to know the laws of the Indian nations in order to prevent error in asserting jurisdiction and the laws of the Nations were not identical in bestowing citizenship.[25] Evidence other than appearances had to substantiate the significant statement of the indictment, 'a white man and not an Indian', or 'a negro and not an Indian', in order to establish the jurisdiction of the United States' courts, for if it was proved during the trial that both parties to the crime were Indians, either by blood, treaty, or adoption, the indictment was quashed and the case dismissed for lack of jurisdiction.[26]

Contemporaries saw the possibilities of, and feared, the existence

---

[23] United States Statutes at Large, VII, 478-481; XIV, 769-775 (hereafter cited as Stats.)

[24] Ibid., VII, 475-481.

[25] U. S. Rep. 380-384.

[26] Ibid.

of a no-man's land of jurisdiction as a result of the Nations on their frontier. One writer contended that a criminal might completely escape justice if he were an Indian by blood, but one who had been disowned by his Nation. If the crime were against another Indian the federal courts could have no jurisdiction and since his Nation had disowned him it would not assert jurisdiction, consequently, he would be a man to whom no jurisdiction applied. No record of such a case has been found, however, such possibilities existed.[27]

The jurisdiction of Judge Parker's court was a limited jurisdiction extending only to criminal matters arising in the Indian country between Indians and others until 1890 when the jurisdiction for lesser crimes was given to the federal courts established in the Indian Territory.[28] The business of Parker's court was chiefly of a criminal nature for only civil matters arising in Arkansas came within the jurisdiction of his court, since all executory contracts with the Indians were void according to the intercourse laws of 1837.[29] In addition to the special laws governing the relation of the white men and the Indians, the general laws of the United States for the punishment of crimes committed in the sole and exclusive jurisdiction of the United States were laid upon the district.[30] At no time did Parker's court have jurisdiction over matters either criminal or civil in which Indians only were parties.[31] This so-called limited jurisdiction consumed practically all the time of the court. Matters coming

---

[27] Elevator, Jan. 3, 1879.

[28] 26 Stats., 81.

[29] Laws of U. S., IX, 594-595.

[30] 26 Stats., 81.

[31] U. S. Rep., 380, 612.

before the court from the Arkansas side of the district were insignificant in number and mostly of a civil nature. Thus the court was practically an Indian Territory court although it was located in a small frontier town in an adjoining state.

Fort Smith, at the time of Parker's appointment, was a frontier town in character as well as size, with a population numbering between two and three thousand whose chief means of transportation were the river and horse drawn carriages.[32] In 1876 the Little Rock and Fort Smith railroad had been extended through the Indian Territory to a point across the river from Fort Smith, but no bridge spanned the river to connect the town and depot. Ferry boats and skiffs were the only means of conveying merchandise and passengers from the depot to the city throughout most of Judge Parker's term, until 1891 when Jay Gould promoted the construction of a combination railroad and wagon bridge.[33] The court was a prolific source of income to the city at that time with a yearly expenditure ranging from two hundred fifty thousand to four hundred thousand dollars, most of which was spent in Fort Smith.[34]

With the completion of the railroad and the bridging of the river, Fort Smith grew rapidly. From 1880 to 1890 its population jumped from 3,099 to 11, 311. The next decade, however, saw little growth in the population since in 1900 it numbered only 11,587.[35]

For a town of its size, it could boast of numerous newspapers. The

---

[32] Dallas T. Herndon, Centennial History of Fort Smith (1896), 858.

[33] R. H. Mohler, City of Fort Smith, 108.

[34] Elevator, Dec. 19, 1879.

[35] Herndon, op. cit., 858.

Fort Smith Herald founded in 1852 and purchased by Frank Parks in 1870; the Thirty Eighth Parallel edited by George M. Turner; The New Era edited by Valentine Dell, later a U. S. Marshal; The Fort Smith Elevator established in 1878 by John Carnall and Son, and the Times founded in 1882, all served the city and surrounding country during Judge Parker's time, besides other papers of shorter life not mentioned.[36]

The New Era, published by Valentine Dell, was the first republican paper in Arkansas. Of them all, the Times only continues to serve Fort Smith and is now the largest paper published in northwest Arkansas. The Elevator of all the newspapers seems to have been the most prominent during the term of Judge Parker and in the latter years of his term this paper carried a rather full and detailed account of the court's work, and particularly of the hangings.[37] Generally, the Elevator would give a brief history of the condemned's crime.

Only one bank, the First National, had been established in 1872 at 600 Garrison Avenue, where it stands at the present time. Between 1880 and 1890 two more banks were founded, the American National and the Merchant's National.[38]

Although the population was small the city was the chief center of commerce and trade, since river navigation then afforded a low cost means of transportation. Located, as it was, on the frontier, wholesale houses were established and the town became the distribution center for a large

---

[36] Mohler, op. cit. ,108.

[37] Elevator, Dec. 1890 ff

[38] Mohler, op. cit., 131-133.

region of the eastern Indian Territory and much of western Arkansas.

Since the western district of Arkansas when created in 1871 succeeded the western division of the judicial district of Arkansas, the court over which Judge Parker came to preside was also the successor of the court for the western division and, consequently, continued its work.

The first session of court for the western division of Arkansas was held at Van Buren in the lower story of the county court house in May, 1854, with Judge Daniel Ringo presiding.[39] Judge Ringo continued to hold court in Van Buren until 1861, when, because of his sympathy with the Confederacy, he resigned and turned over all court records to his clerk, John B. Ogden. Ringo was then appointed by President Davis of the Confederacy to the same position in the Confederate court established at Helena, Arkansas.[40] Federal court in the western district of Arkansas ceased for the period of the Civil War and practically all court records were destroyed when a raid was made on Van Buren in February, 1863, by a company of federal soldiers and the court house was burned.[41] By some unknown means one record was saved of court proceedings under Judge Ringo from December 3, 1955, to December 13, 1860.[42]

When the court for the western district of Arkansas was removed from Van Buren to Fort Smith in 1871 it was located at South "A" and Second Street.[43] The first session of the court held in Fort Smith was conducted

---

[39] Common Law Records of U. S. District Court for the Western District of Arkansas, 1855-1860 (hereafter cited as Com. Law.).

[40] Arkansas Gazette, (Little Rock, Arkansas) Jan. 20, 1860.

[41] Irving M. Dodge (Deputy U. S. Court Clerk, 1890) Memoranda, 1936.

[42] Ibid., W. P. A. Report I, 3.

[43] Ibid.

in the second story of an old brick building. On the night of November 13, 1872, this building burned. The next morning at the time for convening court, an adjournment was taken to November 15, at the Sebastian County circuit court room, then located on the first floor of the Kennedy Building, now the LaFlore Hotel, where a two days' session was held. Marshal Logan H. Roots then received permission from the Department of Interior to open the large brick building within the garrison enclosure, which had been used as a soldier's barracks during the Civil War, but was then standing idle.[44] This old barracks served as federal court-house and jail, and sometimes as federal prison, during all but three years of Judge Parker's term. This building and a later jail annex is standing in good repair today (1939) and is used and known as the welfare building for the city of Fort Smith.

The basement of the court-house was used for the jail. The jail accommodations for the court were always poor and were criticised by the attorney general and humane societies.[45] According to Harmon, its author, the jail atmosphere on a hot summer day inspired the title of the book, "Hell of the Border."[46] The jail was composed of two cells, each twenty-nine by fifty-five feet in size, in which the chief source of light and ventilation was the small basement windows. Buckets placed in the old basement chimneys answered the purpose of toilets, while kerosene barrels cut in half were used for bath tubs. In spite of the hard work of the jailer

---

[44] Ibid.

[45] Anna L. Dawes, Lend A Hand, 1-4.

[46] S. W. Harmon, Hell on the Border, Introduction.

and the vigilance of the court, it was a foul smelling place and always dark and damp.[47]

Judge Parker's court was directly over the jail, on the first floor of the building. It had the advantage of being surrounded by verandas and ventilated by a number of windows. This old barracks building housed the famous court from 1872 until the completion of the first Federal Building in 1893. The new building was located at south Sixth Street and Rogers Avenue, two blocks directly east of the old barracks.

The gallows from which so many were swung to death was a strong structure of heavy timbers located a short distance south of the court-room and jail within the same garrison enclosure. The "I" beam from which so many were hanged was a twelve by twelve inch timber supported on similar timbers. The four traps were long enough to accommodate twelve men at once. The gallows was never taxed to capacity, although multiple hangings were not unusual. Every vestige of the gallows has been destroyed and its definite location is now known only to a few of the oldest citizens of Fort Smith.

In 1939 little remains of the famous court of Judge Parker, except the records, some furniture, and the old barracks courthouse and jail, for in 1936 a new federal building replaced the one built in 1893. The high stone walls surrounding the garrison enclosure that held the morbid throngs away from the executions in the latter years of the court have been torn away and the ground is used for recreational purposes.

The social and political character of the district over which Parker presided has also undergone changes fully comparable to that at the court's

---

[47] Dawes, op. cit., 2.

buildings. The frontier society and cattle trails, the Indian Nations and criminal intruders, have all given way to an orderly commonwealth. Instead of the population of sixty thousand in 1875, and three hundred thousand in 1896 at the death of Parker, the old district in 1939 has a population of two and three quarter millions of people. Crime still occurs, but the responsibility of dispensing justice devolves upon many courts and judges instead of the one.

CHAPTER III

A COURT OF LAST RESORT, 1875-1889

The western district of Arkansas not only possessed the unusual characteristics set forth in Chapter Two but, in addition, possessed during most of Judge Parker's term a final authority over all criminal matters under its jurisdiction. So incongruous is this with the American philosophy of justice that any consideration of the work of the court during this period is dominated by the thought of finality - a court of last resort - although the court's problems of operation, the physical and legal difficulties, are equally worthy of exposition as an integrated activity leading to one end - the final disposition of the cause, just or unjust. How did it work? Why did it exist?

When Parker had sworn in his marshals and called to his aid two hundred deputies, sixty-five of whom were to be killed during his term, there began in the language of the judge, "a fight between this court and the lawless element of that country" that continued unabated for twenty-one years.[1] The deputies of the court had little protection other than their own discretion and skill for federal law of those days provided very little punishment for resisting an officer serving the processes of law. A year's imprisonment was the only penalty attached to resisting a federal officer. "To a man who will risk his life to avoid arrest, a year's

---

[1] Elevator, May 8, 1896.

confinement is a small matter," the attorney general contended.[2] The dangers marshals and deputies faced are hard to appreciate now, for then they were often compelled to travel hundreds of miles on horseback or in wagons with prisoners of desperate character.[3] The papers of the time were replete with news items of this kind:

> U. S. Jail Filling Up. Dwight Wheeler, deputy U. S. marshal and Ed. Burns came in Saturday from a forty-two days trip in the Indian country, bringing six prisoners, two for murder, two for assaults, one for larceny, one for introducing whiskey in the Indian country, three whites, two Indians, one negro.[4]

Again, "J. H. Smith, one of the oldest deputies on the force brought in nine prisoners, seven of them Indians charged with murder." Another stated: "two deputy marshals have just returned from a forty day's trip with eighteen prisoners, five of which are genuine Osage warriors charged with larceny."[5]

Officers were frequently ambushed by criminal gangs in attempts to deliver a fellow criminal. Fierce gunfights under such circumstances sometimes resulted in the death of the officer and the escape of prisoners.[6]

How distances of two and three hundred miles were ever covered by the marshals and their posse in wagons and on horseback with prisoners is a marvel. Wounded prisoners sometimes died on the way to Fort Smith or became critically ill. A marshal would sometimes leave his posse to bring in the able bodied prisoners while he himself would bring a wounded

---

[2] Rep. Atty. Gen., 1884, 14.

[3] Elevator, January 10, 1879. [4] Ibid., Aug. 1, 1879.

[5] Ibid., Aug. 15, 1879, see also Oct. 17, 1879; Jan. 10, 1879; Dec. 27, 1889.

[6] Ibid., Oct. 22, 1880.

prisoner to Fort Smith by train.[7]

The daring and morale of the marshals was appreciated by the law abiding citizens of the district who often commended them for their tireless efforts. Even when appropriations were short and fees delayed, the marshal's work continued. One observing editor commented, saying, "the failure of Congress to appropriate funds for the payment of the marshals seems to have little effect in this district."[8] The morale of the deputies is suggested by the phrase, "The Men Who Rode for Parker." They no longer thought of themselves as mere deputy marshals.[9] Another writer said of them that the days of knighthood and chivalry did not produce a more valiant and fearless body of men than the two-hundred deputies who served the processes of the court for the western district of Arkansas.[10] The marshal's job in the western district of Arkansas was a hard one. A contemporary once wrote that, "the office of marshal in other places is kind of a matter of form, but the marshal's office in the western district of Arkansas is very different on account of its vast territory and the immense amount of business transacted."[11]

The matter of bringing in the law breakers was only a part of the marshal's work, for it was the duty of this corps of workers to secure the witnesses. Witnesses were difficult to obtain because the law failed to provide sufficient punishment for intimidation, or harm to afford the witness a sense of security. It was no uncommon sight to see a deputy mount

---

[7] Ibid., Dec. 27, 1889.

[8] Ibid., Aug. 15, 1879.

[9] Harry P. Daily, op. cit., 9.

[10] Hempstead, op. cit.

[11] Elevator, July 30, 1880.

and ride post haste while trial was in progress to bring a needed witness or serve process on a newly discovered accomplice.[12] Bonds for appearance were often required of witnesses who were needed in another term of court or at a later time in the same term.[13]

The marshal's office was responsible for the disbursement of all funds appropriated for the operation of the court. This involved a large amount of accounting and demanded men of unquestioned integrity. Witness fees amounted to the greatest single item of court expense during the entire time of Parker's jurisdiction over the Indian country. The attorney general continually complained about this item and once stated, "the court in the western district of Arkansas and the one recently provided at Paris, Texas, require an expenditure of money in the payment of witnesses that very largely depletes the appropriation made by Congress for that purpose."[14] Witness fees were never less than $41,000.00 annually during this period of the court and reached at one time the staggering figure of $137,240.00 in 1889.

It was not uncommon for a witness to be paid thirty or forty dollars for mileage besides his attendance fee.[15] Witnesses almost always numbered into the hundreds and at one time reached three thousand for a term of court. While the expenditure for witnesses was excessive in this district, it was true to form for the entire judicial system for the witness account was always the heaviest item of court expenditure.[16]

---

[12] History Northwest Arkansas, (Goodspeed Publishing Co. 1889), 723.

[13] Com. Law., IV, V.

[14] Rep. Atty. Gen., 1889, 22.

[15] Ibid., "Marshal's Report", Oct. 25, 1889.

[16] Ibid., 1875-1889.

Unforeseen circumstances immeasurably increased court costs and hardships on prisoners and witnesses. When funds were exhausted and court forced to adjourn, as frequently occurred, the expense of trying the case mounted since the long distances to be travelled, compelled witnesses to be present at all times during the term until he was called. When funds were exhausted and witnesses returned home to await the next term, the mileage fees doubled. Morshal Yoes stated in his report that his future estimates of witness costs would be based upon the condition that funds be available for immediate trial. Local editors complained of the injustice suffered by prisoners and witnesses because of such circumstances. The long period of forced confinement upon prisoners awaiting trial was regarded by the local people as punishment before trial or conviction.[17]

It was not the fault of the court that shortage of funds occurred. For some reason not fully understood at Fort Smith, appropriations simply failed to arrive in time to keep the court from being forced to adjourn. Forced adjournment for this cause had occurred so often that it was complained of being monotonous.[18] It was not uncommon for a part of the court expenditures throughout the judicial system to go unpaid for two or three years. In spite of these conditions the attorney general commended the court for its efficient dispatch of business.[19]

The expense of the marshal's office, fees for himself and deputies was the second largest item of court expenditure and always ranked second to the witness account.[20] An outmoded statute requiring the marshal to

---

[17] *Elevator*, Nov. 15, 1878.

[18] *Rep. Atty. Gen.*, 1878,-79,-81.

[19] *Ibid.*

[20] *Ibid.*, 1878-1896.

clear all business before leaving office prevented the office from being conducted as efficiently and economically as possible. The fee system by which both the marshal and his deputies were paid was expensive and wasteful for it is estimated that this method cost the government ten dollars for every dollar received by the marshal or his deputies.[21]

Notwithstanding the fact that the marshal's office was a patron's award, little criticism, if any, was ever directed toward it. On the contrary, however, the office was praised for its noteworthy work and loyal assistance to the judge on the bench. While the glamour of years has enshrouded the deputies of Judge Parker's court, and nothing should diminish their glory, they were nothing more than average, courageous, law abiding citizens of the frontier whose life there had trained them for this work. The Winchester and the six-shooter were common accessories of both the officers and the outlaw which were never laid away nor allowed to rust. Without these men, the court would have been useless as a law enforcement agency.

No accurate list of deputies can be made, but the marshals for Judge Parker's entire term were:

Name	Date appointed
James F. Fagan	July 2, 1874
Daniel O. Upham	July 11, 1876
Thomas Boles	Feb. 20, 1882
John Carroll	May 21, 1886
Jacob Yoes	May 28, 1889
George J. Crump	May 29, 1893[22]

---

[21] Ibid., 1883, 22.

[22] Dodge, op. cit.

In addition to the veritable army of deputy marshals, Parker was aided by a line of vigorous attorneys. Col. William H. H. Clayton served the court during the greater part of Parker's term and is the most famous of them. He was credited with possessing unusual skill in marshalling evidence and using it to the best advantage. Many cases coming before the court were based on circumstantial evidence and sometimes the court room throngs were surprised at the strength of the case Clayton would present from circumstantial evidence. A new reporter once commented that Clayton almost convinced him on a case about which he had already formed a different opinion from hearing the evidence.[23] When the funds of the court permitted Clayton was aided by one or more able assistants.

The juries of Judge Parker's court came from the Arkansas side of the district. This condition was one of the chief objections to the court in the Indian country since the people there felt that they were being tried by foreigners.[24] Juries were well treated by the judge and were praised by contemporary writers for the way they upheld the law.[25] Old jurors state that Parker was very solicitous of their welfare and would order the bailiff to see that hot food was prepared for a jury that had deliberated past the scheduled meal time.[26]

The pay of jurors was then only $2.00 per day, a matter of concern to the grand jury and people of the Indian country. They feared that

---

[23] Elevator, Dec. 26, 1879.

[24] Harlow, op. cit., 217-18; see also Chieftain, Jan. 8, 1877.

[25] Hempstead, op. cit., 462.

[26] H. F. W. Steinsick, Personal Interview, Apr. 28, 1939.

only shiftless and incompetent men would do jury service at that rate. The grand jury recommended that the pay be raised to $3.00 per day in order to secure the services of men who were industrious enough to have other occupations and were not interested in doing jury service because it was easy work.[27]

The conditions under which the court worked during this period were considered intolerable by many. Physical accommodations, the criminal code and procedure, and the immense amount of business before the court were all criticised by the attorney general. The jail at best was demoralizing.

As early as 1883 the attorney general called the attention of Congress to the jail at Fort Smith. In that year he wrote:

> The jail consists of two basement rooms in which fifty to one hundred prisoners are always kept. It is totally unfit for use as a jail, being always damp and unhealthy. Nothing separates the foulest murderer from the detained witness. Young and old, innocent and guilty are crowded together. A physician is in charge constantly, but in spite of his efforts, after a few months confinement strong men leave the jail physical wrecks or permanently diseased.[28]

Sebastian County at that time had no jail. Consequently there was no chance to relieve crowded conditions however many prisoners were brought in. In 1885 his report again stated:

> ...this place, dignified by the title United States Jail, but which in reality is little better than a pen, in which white, black and Indian prisoners are indiscriminantly huddled ...is a standing reproach. It is under the supervision of the United States marshal. This officer has done the best he could with the materials at hand, and it is not his fault that he is a nominal warden of the most miserable prison probably in the whole country.[29]

---

[27] Elevator, July 29, 1887; see also Vindicator, Feb. 16, 1876.

[28] Rep. Atty. Gen., 1884,150.

[29] Ibid., 1885, 30.

After repeated complaints both from officials and humane agencies, an appropriation was passed and a new jail was built in 1886.[30]

The executioner, George Maledon, was one of the most efficient officers of the court and is reported to have never done a bad job. Maledon was as skilled in performing execution by hanging as any modern executioner is with his modern devices for execution. He kept several ropes for the purpose and gave them a careful treatment in an oily, pitchy substance in order to insure against slipping. It was stated by the Chickasaw Indians that "launching a man into eternity had no more effect upon Maledon's nerves than a dose of oil".[31]

Maledon was also an expert pistol shot. Although he was small of stature, he carried two guns and could shoot equally well with either hand. One negro prisoner cheated the gallows by attempting to escape from Maledon on the evening before his execution. It is said that he had agreed with his father and mother that he would die in this manner rather than by hanging. Consequently his parents were waiting outside the gate to take his body, for they knew what to expect of an attempted escape from Maledon.[32] While the executions are a gruesome story, they are the basis for the notoriety of the court, because they were the most spectacular incidents of the court's work throughout its jurisdiction over the Indian country.

All the officers of the court, members of a frontier society, and citizens of a small frontier city, discharged the duties of law and order

---

[30] Rep. Atty. Gen., 1886, 20.

[31] Chickasaw Chieftain, Oct. 23, 1891.

[32] Harmon, op. cit., 44.

in a significant era.

During this period, 1875-1889, the size of the western district of Arkansas was again reduced, approximately one third, by an act of Congress January 6, 1883. By this act, all that part of the Indian country lying north of the Canadian River and east of Texas and the one hundredth meridian not set apart and occupied by the Cherokee, Creek, and Seminole Indian tribes was annexed to the United States Judicial District of Kansas. The federal courts at Wichita and Fort Scott were vested with the exclusive and original jurisdiction of this section.[33] The act further provided that all that part of the Indian country not annexed to Kansas and not set apart and occupied by the Cherokee, Creek, Choctaw, Chickasaw, and Seminole tribes should be annexed to the United States Judicial District known as the Northern District of Texas. The United States court at Graham was given exclusive and original jurisdiction over this section.[34]

These two divisions constituted the third reduction of territory in the western district of Arkansas. The same authority was bestowed upon the courts of the rearranged territory that was held by Parker's court and full recognition was required to be given to all pending action of his court.[35] The reduction in territory appears to have been another step in the much needed reorganization of the federal judicial system. Criminal business, however, continued to increase after the reduction of territory, for the population of the district was now three times as large as contained by the original district.[36]

---

[33] Stats., 400.

[34] Ibid.

[35] Ibid.

[36] Report Indian Agent Union Agency, 1889.

Even though Parker's court was in the main a criminal court and properly held no civil jurisdiction over the Indian country, some civil cases of far reaching consequences came to his court in this period. Criminal cases, such as timber thefts and trespassing, dragged questions of civil rights into the court. Out of these cases came two famous decisions affecting the title of the Indian's land, one in 1882 and another in 1885, which received both praise and censure from the Indians.[37]

In 1882 Parker held that the lands of the territory were not public lands in the meaning of the law, consequently, the people of the territory were without recourse against timber thieves who came across the border. Parker contended that there was no law on the subject and consequently no jurisdiction in his court over the matter. The Cherokee loudly protested the decision.

The decision of 1885 held that the Cherokee Strip was properly a part of the Cherokee Nation and within the jurisdiction of the court of the western district of Arkansas. The case arose over a trespassing charge in which the offender was taken to Parker's court but was claimed by the court at Wichita, Kansas, as being in its jurisdiction. Only land not belonging to the Cherokees was assigned to the Kansas court. By asserting the jurisdiction of the western district of Arkansas, Parker had established the Cherokee's title to 8,000,000 acres of land. The Cherokees praised this decision and Parker was forever afterward regarded as their best friend.[38]

---

[37] Cherokee Advocate, June 2, 1882.

[38] Indian Journal, (Muskogee, Indian Territory), Apr. 30, 1885; see also Indian Chieftain, Nov. 19, 1896.

Newspapers in both Arkansas and the Indian Territory consistently stated that the court from the beginning was the world's largest criminal court.[39] No effort will be made to establish the truth of those contentions, but it will soon be evident that the claim, if true at all, does not rest, as some have stated, upon the court's unique authority as a court of last resort. In comparison with the operation of other courts in the United States, this claim can be better substantiated on the basis of the cost of operation and on the character of the criminal cases than on any other.

With the exception of the federal courts for the District of Columbia, the court for the western district of Arkansas annually averaged a greater expenditure for operation and disposed of more cases in criminal procedure than any other court of the federal judicial system. In the matter of expenditures above all else the western district of Arkansas could claim to be the greatest criminal court in the United States, with the exception of the District of Columbia. During the period from 1875 to 1889, the annual cost of court operation ranged from $100,000.00 to $243,665.97.[40]

The statutory provisions governing the realm over which this court held jurisdiction are responsible in a large measure for the burden of the court in criminal matters. A brief survey of these provisions suggest, but do not fully disclose, the character of criminal business coming to Judge Parker's court. The act of March 1, 1837, establishing the intercourse

---

[39] Indian Chieftain, Nov. 19, 1896; see also Elevator, Dec. 13, 1878.

[40] Rep. Atty. Gen., 1887, 1888, 1889.

laws, placed many restrictions on the relations of the whites and Indians. It was entitled, "An Act to Regulate Trade and Intercourse With the Indian Tribes and Preserve Peace on the Frontier." Consequently, the court for the western district of Arkansas had the burden of enforcing this law so laden with tedious provisions for the protection of the Indian that anything near perfect enforcement was impossible. Perhaps no statute so minute in detail exists now.

No person was permitted to trade with the Indians in the Indian country without a license from the superintendent of Indian affairs, or his agents. To secure a license, the applicant was required to give a penal bond of not to exceed $5,000.00. The bond must be secured by one or more sureties and a new license was required every three years for a trader throughout the Indian country. The penal bond required in securing the license was regarded as a pledge for the faithful observance of the laws governing trade and intercourse with the Indians.[41] Only citizens of the United States could secure a license and foreigners were required to secure a permit from the President of the United States in order to even enter the Indian country.[42] Heavy penalties were provided for violation of the intercourse laws. Any person other than an Indian who attempted to reside in the Indian country and trade without a license was to be fined $500.00 and forfeit his merchandise to the government.[43]

Specific prohibition was made against any person, other than an Indian

---

[41] Laws of U. S., IX, 129.

[42] Ibid.

[43] Ibid., 130.

in the Indian country, receiving from an Indian, a gun, trap, or other articles commonly used in hunting, or any implement of husbandry or cooking utensil. To receive clothing, other than furs or skins, from an Indian was an offense against the federal government punishable by a fine of $50.00 and forfeiture of the goods.[44]

Hunting and trapping save for subsistence was prohibited on penalty of a $500.00 fine and forfeiture of goods. Without the Indian's consent no grazing of livestock was permitted in the Indian country under pain of a fine of one dollar per head of stock so grazed, but the law was difficult to enforce. Any attempt to settle in the Indian land or to mark out boundaries or make surveys was punishable by a fine of $1,000.00 and removal. In order to discourage buying, the law declared no purchase of land from an Indian was valid, and in addition a $1,000.00 fine was provided for such offenses.[45] The whites, however, often avoided the law on this point by leasing land from the Indian year after year until they virtually possessed it.[46] To prevent Indians avenging themselves of wrongs suffered at the hands of the white men, the law stipulated that injury and damage to the Indian should be made good in double the amount, provided that the Indian did not privately avenge the wrong.[47] Indian agents were authorized to remove all intruders by force if necessary, but the army was seldom, if ever, used for this purpose.

The United States laws rigidly prohibited intoxicating liquors in the Indian country, for the law forbade any person to sell, exchange, give,

---

[44] Ibid., 131.

[45] Ibid.

[46] Elevator, Dec. 27, 1878.

[47] Laws of U. S., IX, 132.

barter, dispose of any spiritous liquor or wine to an Indian in the Indian country, or introduce or attempt to introduce such liquors into the Indian country. The court's docket was crowded with the familiar form of indictments, "introducing liquor into the Indian country," and "violation of internal revenue law," and "illicit distilling of liquors."[48]

Indian agents and officers of the government were authorized to search any suspect, persons, boats, or carriers of any kind in order to prevent liquors from being carried into the Indian country.[49] Deputy marshals from Parker's court in their vigilant effort to prevent liquor from being "introduced" often searched travelers, railroad passengers, and hunting parties. In order to enlist the aid of the population in apprehending violators, the law provided that confiscated goods be divided equally between the informer and the United States Government.[50] In all cases, the offender's license was revoked and suit brought on his bond. Distilling liquors within the Indian country was also prohibited under penalty of forfeiture and a fine of $1,000.00. Agents were authorized to use the army if necessary to wipe out illicit stills. While the law authorized the use of the army, if necessary, to enforce these provisions as a duty under the treaties with the Indian Nations, Parker's court was the most active agency in executing the law.[51] The Indian police of the Nations also did creditable work in disrupting the liquor traffic.

The vigorous work of the officers to prevent liquor reaching the Indians, provoked many complaints from white people passing through the

---

[48] Com. Law., 1875-1896.

[49] Laws of U. S., IX, 133.

[50] Ibid., 134.

[51] Ibid.

Territory for the white man's idea of constitutional rights failed to square with the necessity of vigilant law enforcement in the Indian country. It seems there should have been little reason to doubt the wisdom of rigid precaution in preventing liquor from reaching the Indians, yet editors at Fort Smith criticised deputies who enforced the law by searching suspects.[52]

Any attempt to classify the criminal cases coming before Judge Parker's court is a difficult task, however, two classifications will be given, one as compiled from the court records, and the other as used by the attorney general in making his annual report. From the court records a classification can be made according to the indictments returned by the grand jury and for which the defendant stood trial. This classification names the crime committed and reveals the specific nature of the offense better than any others, though it is more difficult and less accurate than the classification under general headings as given by the attorney general.

Current impressions of Judge Parker's court have arisen from the capital cases, although they numbered less than five per cent of the business in his court. The mention of Parker's court invariably brings the remark, "Oh, yes! he was the hanging judge."[53] One young fellow stated, "He'd hang ye by the neck for anything." From these statements one would conclude that only capital cases were heard in the court and only capital sentences given; or that capital sentences were given regardless of the crime committed.

The disposal record of the court tells quite a different story. During

---

[52] Ibid.

[53] Personal Interviews, 1939.

Parker's first term, beginning on May 10, 1875, to the conclusion of the calendar year, two hundred and five criminal cases were disposed of. Of these, larceny ranked first with 109 cases, murder second with twenty-five cases, assault third with twenty-three cases, illegal liquor selling fourth with twenty-one cases, and introducing liquor into the Indian country ranked fifth with sixteen cases.

The disposition of the twenty-five murder cases disclosed that eight men were sentenced to hang one of whom had his sentence commuted, seven were acquitted, and the crimes of the remainder were reduced to manslaughter and they received prison sentences ranging from two to six years each. Other lesser offenses including arson, purchasing equipment from soldiers, forgery, intimidating witnesses, resisting officers, obstructing process, and violating the postal laws were punished by fines and jail and prison sentences.[54]

It does not appear that the court grew callous because it possessed final authority. In the year 1888, the last year the court possessed final jurisdiction, it disposed of 552 criminal cases, of which number thirty-two were for murder, yet only four men were hanged, twenty were acquitted, and eight received sentences totaling fifty years imprisonment. In this year murder cases ranked fn fourth place, and violation of the liquor laws held first place in number.[55]

The general classification of crime used by the attorney general affords a basis of comparison between this district and others of the federal

---

[54] Record of Disposition of Cases U. S. District Court for Western District of Arkansas, 1875. (Hereafter cited as Rec. of Disp.)

[55] Rec. of Disp., 1888.

judicial system. From the attorney general's report it would appear that many other districts were as bad in law breaking as the western district of Arkansas was, although the character of their violations differed. In the years for which comparative data can be had, the western district was usually exceeded in number of criminal cases by some other district, however, it was always near the top. In 1877 Parker's district terminated 154 criminal cases; while Texas terminated 744, of which, however, 646 were quashed. In 1880 Parker's district had 146, and the southern district of New York 136. The yearly business of Parker's court ranged from 517 cases in 1883, to 724 cases in 1886; whereas the yearly dusiness of the northern district of Georgia ranged from 771 in 1883, to 832 in 1886.[56]

During the remaining three years of exclusive jurisdiction, 1887, 1888, and 1889, the western district of Arkansas terminated 350, 552, and 590 cases, respectively, while the northern district of Georgia terminated 617, 593, and 825, respectively.[57] Practically ninety per cent of Georgia's cases arose under the internal revenue laws whereas those of the western district of Arkansas were almost equally divided between the internal revenue laws, the intercourse laws, and miscellaneous prosecutions. Paradoxical as it may seem, the western district of Arkansas with its famed criminal record was always exceeded by the District of Columbia in criminal cases and cost of court operation throughout this period.[58]

The large number of heavy criminal matters resulting in capital sentences attracted considerable attention and labelled the court as the

---

[56] Rep. Atty. Gen., 1883, 1889, 1885, 1886.

[57] Ibid., 1887, 1888, 1889.

[58] Ibid., 1878-1889.

most unusual in the United States.

On March 1, 1837, an act entitled, "An act to deal with affairs in the Indian country," was passed to extend the jurisdiction of the United States District Court for the district of Arkansas. This act provided that:

> The district court of the United States for the District of Arkansas shall have the same jurisdiction and power in all respects whatever that was given to the several district courts of the United States by an act of Congress approved March 30, 1802, entitled, 'An act to regulate trade and intercourse with the Indian tribes and preserve peace on the frontier,' or by any subsequent acts of Congress, concerning any subsequent acts, crimes, offenses, or misdemeanors which shall be committed against the laws of the United States in any town, settlement, or territory, belonging to an Indian tribe in amity with the United States, of which any other district court may have jurisdiction.[59]

Fourteen years later, on March 3, 1851, when Congress passed an act to divide the district of Arkansas into two divisions and authorized its time and place of holding court, it determined the authority of the court by stating that:

> ...in addition to the ordinary jurisdiction and powers of a district court it shall within the limits of its respective district, have jurisdiction of all cases, civil and criminal, except appeals and writs of error, which now are, or hereafter may be by law made cognizable in a circuit court, and shall proceed therein in the same manner as a circuit court, and an appeal or writ of error shall be prosecuted from a final decree of judgment of said district court to the Supreme Court of the United States in the same manner that appeals and writs of error now are, by law, from a circuit court of the United States.[60]

When the western district of Arkansas was created in 1871, succeeding the western division of Arkansas, it operated under this empowering legislation. While the wording of this act would seem to authorize appeals on

---

[59] Laws of the United States, IX,128 (hereafter cited as U. S. Laws).

[60] 9 Stats., 594-595.

a writ of error to be taken to higher courts, in operation the converse was true for most cases arising in the western district of Arkansas in which an appeal might be desired. In numerous cases the Supreme Court held:

> That this court has no general authority to review on error or appeal the judgments of the Circuit Courts of the United States in cases wherein their criminal jurisdiction is beyond question; but it is equally well settled that when a prisoner is held under the sentence of any court of the United States in regard to a matter wholly beyond or without the jurisdiction of that court, it is not only within the authority of the Supreme Court, but it is its duty to inquire into the cause of commitment when the matter is properly brought to its attention, and if found to be as charged, a matter of which such a court had no jurisdiction, to discharge a prisoner from confinement.[61]

According to this rule, only those matters in which the jurisdiction of a circuit court was held in question could appeals or writs of error be brought before the Supreme Court for review. Consequently when both circuit and district court powers were bestowed upon certain courts by the act of March 3, 1851, under which the court for the western district of Arkansas operated from 1871 to 1889, Parker's court was empowered as a court of last resort in criminal matters for eighteen years. Since the predominating matters brought before Parker's court were of a criminal nature, no appeals were taken on writ of error until the law was changed specifically authorizing appeals in criminal cases of a certain kind.

Thus from 1851 this court possessed both district and circuit court jurisdiction throughout its realm and its decision was final in all criminal matters. While it has been stated that no other district court in the United States ever possessed such jurisdiction, there were two other

---

[61] 110 United States Reports, 651-653 (hereafter cited as U. S. Rep.); also U. S. Rep., 310; 145 U. S. Rep., 571.

district courts that possessed such authority for the Act of 1889 establishing the right of appeal from this court also named two other courts to which it extended, the Northern District of Mississippi and the Western District of South Carolina.[62]

The freakish legislation by which the court for the western district of Arkansas possessed both original and final jurisdiction - was a court of last resort - appears innocent enough, but it was deadly in its operation. The responsibilities of a court of last resort did not affect the courage of Judge Parker nor cause him to compromise his philosophy of law enforcement. He fulfilled the demands of the law conscientiously though it was contrary to his natural disposition. Federal statutes during this period made no allowance for degrees of murder such as were recognized in the various states. A conviction for murder in a federal court then compelled the judge to sentence the convicted person to death. Executive clemency was the only resort for one who was so unfortunate as to be convicted, a provision the attorney general felt to be defective since juries sometimes refused to convict when the indictment was for murder but they felt the circumstances should have reduced the degree of crime.[63] When juries returned a verdict of guilty in murder cases, Parker pronounced the law as it was written, a duty from which many judges shrank.[64] Although the attorney general recommended that the statute be changed to recognize degrees of murder, thereby removing the necessity for the death penalty on

---

[62] House Report No. 3613 on H. R. 11793. 50th Congress, 2nd Sess.

[63] Report of U. S. Attorney General, 1889, 20.

[64] Ibid.

every conviction of murder, the law was not changed during this period.[65]

The first term of Judge Parker's court produced the first sextette hanging in the western district of Arkansas. As many as three had been hanged simultaneously before. From the May term of 1875 to August 30, 1889, fifty-six men were hanged in Fort Smith. The following list of the executed covers the period of Judge Parker's work in which he exercised the jurisdiction of a court of last resort:

No.	Name	Race or Nationality	Date of Execution
1	William Moore	white	Sept. 3, 1875
2	Sam Fooy	Indian	" " "
3	William Whittington	white	" " "
4	Dan Evans	white	" " "
5	Smoker Mankiller	Indian	" " "
6	Ed Campbell	negro	" " "
7	Aaron Wilson	negro	April 1876
8	Isham Seeley	white	" "
9	Gibson Istanubee	Indian	" "
10	Orpheus McGee	Indian	" "
11	William Leech	Indian	" "
12	Osey Sanders	Indian (Cherokee)	Sept. 8, 1876
13	Sinker Wilson	Indian (Cherokee)	" " "
14	Sam Peters	Indian (Choctaw)	" " "
15	John Valley	Indian (Peoria)	" " "
16	John Post Oak	Indian	Dec. 20, 1878
17	James Diggs	negro	" " "
18	Henri Stewart	white (Harvard graduate)	Aug. 9, 1879
19	William Elliot, alias Colorado Bill	white	" " "
20	George Padgett	white	Sept. 9, 1881
21	Patrick McGowan	white (Irish)	" " "
22	William Brown	white	" " "
23	Amos Manley	Indian	" " "
24	Abler Manley	Indian	" " "
25	Ed Fulson	Indian (Choctaw)	June 13, 1882
26	Robert Massey	white (Texas cowboy)	April 13, 1883
27	Martin Joseph	negro	June 29, 1883
28	W. H. Finch	negro	" " "
29	Tee-o-let-sa	Indian	" " "
30	Thomas L. Thompson	Indian	June 11, 1884

---

[65] Rep. of Atty.Gen., 1888-89.

No.	Name	Race or Nationality	Date of Execution
31	Jack Womankiller	Indian	June 11, 1884
32	John Davis	Indian	" " "
33	William Phillips	white	April 11, 1885
34	William Parchmeal	Indian (Cherokee)	June 26, 1885
35	James Arcine (murder in 1873)	Indian (Cherokee)	" " "
36	James Wasson	negro	April 28, 1886
37	Joseph Jackson	negro	" " "
38	Lincoln Sprole	white	June 23, 1886
39	Calvin Jones	negro	" " "
40	Kitt Ross (respite from June 23)	Indian	Aug. 6, 1886
41	John T. Echols	white	Jan. 14, 1887
42	James Lamb	white	" " "
43	Albert O'Dell	white	" " "
44	John Stephens	white	" " "
45	Pat McCarty(twice respited)	white (Irish)	April 8, 1887
46	Seaborn Green	Indian (Creek)	Oct. 7, 1887
47	Silas Hampton	Indian (Chickasaw)	" " "
48	Owen D. Hill	white	April 27, 1888
49	Jackson Crow	white	" " "
50	George Moss	white	" " "
51	Gus Bogles	negro	Jan. 25, 1889
52	Richard Smith	negro	" " "
53	Malachi Allen	negro	April 19, 1889
54	James Mills	negro	" " "
55	Jack Spaniard	Indian (Cherokee)	Aug. 30, 1889
56	William Walker	negro	" " "

[66]

From the time the court was located at Fort Smith through January, 1875, there had been seven executions, of which five were Indians and two were white. Indians figured most frequently in the hangings. Of the fifty-six persons hanged from 1875 to 1889, twenty-three were Indians, thirteen were negroes, and twenty were whites. Cherokee Indians outnumbered other tribes in being condemned in Parker's court during this period. Respites were sometimes granted until the attorney general could gather sufficient information to advise the President. After full information was

---

[66] Elevator, Jan. 17, 1890.

gathered, if the case did not justify commutation or pardon the respite expired and the condemned went to the gallows. There was no appeal.

The local community had become sensitive at the jibes of other regions of the country about the hangings that took place in its midst. Dissatisfaction existed in several circles but nothing more than reduction of territory had been done to modify the operation of the court in behalf of justice, although public conscience revolted at the thought of a court possessing both original and final jurisdiction.

CHAPTER IV

THE GREAT WORK, THE GREAT COURT AND GREAT JUDGE CEASE

An arrested state of development characterized the federal judicial system at this time, resulting in a chaotic order from the Supreme Court throughout the entire system, consequently district courts, particularly the western district of Arkansas suffered from this imperfect organization.[1] There were yet several courts of original jurisdiction having no superior appellate courts and some courts, such as Parker's, were loaded with both the district and circuit court jurisdiction. The attorney general continually urged upon Congress the necessity of reorganization for these conditions were causing delays that virtually amounted to a denial of justice.[2]

Vast territories were under the jurisdiction of one court. The eighth circuit was composed of nine states, twelve districts, and twenty-five divisions. To administer justice efficiently under such conditions was an impossible task.[3] All the courts had more than they could do and the conditions in the eighth and ninth circuits were unbelievably bad.

---

[1] Rep. Atty. Gen., 1884, 1885, 1886, 1887, 1888, 1889, and 1890.

[2] Ibid., 1885, 36-43.

[3] Ibid., 1889, 19.

In 1887 a grand jury's report to Judge Parker summarized the condition in the western district of Arkansas as follows:

> ...the task of law enforcements in this district is too great for Marshal Carroll and his trusted deputies. The dangers are too great to risk. It would require the might of the United States Army backing the marshals to efficiently cope with the conditions. The task is too great for yourself, your honor, and your pay is insufficient for the vast duties you perform.[4]

Criminal cases increased steadily from 1883 to 1889. The expenditures of the court, in like manner, increased steadily with the single exception of the year 1887. Marshal Yoes stated in his annual report of 1889 that he believed the further reduction of his territory was the most likely means of reducing his expenses and the amount of business to come before the court.

Apparently all observers agreed that conditions in the western district of Araknaas were bad, but agreement upon a solution for the problem was not so easily reached. In the turmoil of dissatisfaction, however, attention became focused upon the tribunal's character as a court of both original and final jurisdiction, an anomaly of justice, then existing in four federal districts of the United States.

Representative John H. Rogers of Fort Smith, and Senator James K. Jones of Washington, Arkansas, took the lead in advocating the establishment of appellate courts for districts that had none. Congress was loathe to act on this important matter which advocates of the measure characterized as a burning shame on American civilization.[5] Finally, through the persistent effort of Rogers and Jones a bill was passed to remedy this

---

[4] Elevator, July 29, 1887.

[5] Congressional Record, Aug. 16, 1888; see also H. R. Report 3613, 1888.

mal-development of the judicial system in three of the four districts so affected.

Under this law, Judge Parker's court ceased to exercise the jurisdiction of a court of last resort on May 1, 1889.[6] The act which was passed on February 6, 1889, was entitled, "An Act to Abolish Circuit Court Powers of Certain District Courts of the United States and to Provide for Writs of Error in Capital Cases, and for Other Purposes," and stated:

> There shall be, and is hereby, established a circuit court of the United States in the western district of Arkansas, for the northern district of Mississippi and the western district of South Carolina, respectively, as the said districts are now constituted by law...that hereafter in all cases of conviction of crime, the punishment of which provided by law is death, tried before any court of the United States, the final judgment of such court against the respondent, be re-examined, reversed, or affirmed by the Supreme Court of the United States upon a writ of error, under such rules and regulations as said court may proscribe. Every such writ of error shall be allowed as of right and without requirement for any security for the prosecution of the same as for costs.[7]

This statute ended the court's jurisdiction as a court of last resort and established the right of appeal from its judgment directly to the Supreme Court. The notice of appeal from a sentence of death served as a stay of execution until the Supreme Court handed down its decision, and since the convicted person had all to gain and nothing to lose, appeals were readily taken and increased in number as the years went by.

During the succeeding seven years a total of fifty criminal appeals were taken to the Supreme Court from the western district of Arkansas. The following table shows the total number of appeals and the action of the

---

[6] 25 Stats., 655.

[7] Ibid., 655-656.

Supreme Court upon them during Judge Parker's term.

Year of Decision	Number Affirmed	Number Reversed	Total
1891	1	1	2
1892	0	2	2
1893	1	5	6
1894	2	6	8
1895	3	5	8
1896	6	18	24
Total	13	37	50

[8]

The sentence of Judge Parker's court was carried out in due time in all cases in which the judgment of his court was affirmed, unless in the meantime executive clemency had been secured.

Forty-eight of the appeals were appeals from death sentences taken on writs of error and two were appeals taken by demurrer. These forty-eight cases held the fate of fifty-two men, one case having three men joined in one indictment and another having two.[9] Reversal did not always mean acquittal to those who appealed from the judgment of Parker's court, since all but four cases which were dismissed for non-jurisdiction were remanded for new trials which resulted in varying penalties.

---

[8] U. S. Rep., 138 to 165.

[9] Ibid., 657.

The following table shows the final disposition of the thirty-seven cases, in which the judgment of Parker's court was reversed.

Year of Decision	Acquitted on Retrial	Quashed or Noll Pros.	Plead Guilty or Convicted of Manslaughter	Sentence Commuted after later Conviction	Executed After Later Appeal	Unrecorded or Continued	Total
1891	0	1	0	0	0	0	1
1892	1	0	0	0	0	1	2
1893	2	0	0	1	1	1	5
1894	0	1	3	1	0	1	6
1895	1	0	1	1	1	1	5
1896	2	2	6	1	0	7	18
Totals	6	4	10	4	2	11	37

Before final disposition was made of the cases reversed by the Supreme Court, all had been arraigned and come to trial twice, and four had been tried three times. As the result of appeals from 1889 to November, 1896, only fifteen out of the fifty-two original sentences of death were executed.

[10] Ibid., 138 to 165.

Some of the difficulties under which the western district of Arkansas worked that were common to all federal district courts of the era were due to defects in the code of criminal procedure which had not been revised for a century and pleading was verbose and technical. A misspelled word or defect in the reproduction of an instrument set forth in the indictment was sufficient ground for an appeal or motion to quash. Such technicalities were the more serious because of the rule by which such errors were brought before the court. An attorney for the defense might hold the knowledge of such a technical error a secret until the trial was complete, and then compel a new trial by filing a writ of error.[11] In this period of the court's work from 1889 to 1896, technicalities were a matter of great concern, since expensive retrials were forced upon the court which was already overburdened. The attorney general repeatedly recommended the revision of criminal procedure.[12]

The technicalities of court proceedings plagued both the original and appellate courts. The Supreme Court on more than one occasion criticised the manner in which appeals were taken from Judge Parker's court. The bar that practiced in this court seems to have been able, but it appears to have disregarded legal forms. The form of appeals from the western district of Arkansas was characterized by the Supreme Court as being, "in the careless manner that prevails in the western district of Arkansas."[13] While the appellate court criticised the erroneous form in which exceptions were

---

[11] Rep. Atty.Gen., 1883, 23.

[12] Ibid., 1884, 1885, 1886.

[13] 164 U. S. Rep., 388.

taken, it patiently sought out whatever error might be found and fully upheld the American principle of presumption of innocence.[14]

Judge Parker became impatient at the endless exceptions taken in his court.[15] The Supreme Court, in its decisions, strove to improve the effieiency of Parker's court by constructive criticism, but nevertheless appeals based upon improperly drawn bills of exception increased through the years.

The chief errors to which the defense filed exceptions were found in the court's charges to the juries. There was scarcely a bill of exceptions filed in all the appeals in which this error was not alleged, however, many exceptions were taken to procedure of trial such as the manner of selecting the jury. In one appeal the defense claimed thirty-four assignments of error, most of which were found in the judge's charge to the jury.[16] The Supreme Court did not act upon all the assigned errors in an appeal, but usually acted upon only one in reversing the judgment of the court, which in the case just mentioned was an error in jurisdiction. The errors upon which appeals were taken require more extensive treatment than can be given here and are reserved for more complete exposition in the following chapter.

Now that appellate jurisdiction had been established, other vital considerations concerning the court at Fort Smith came to the foreground and continued to press for determination during the next six years. During this period (1889-1896) the court of the western district of Arkansas

---

[14] 164 U. S. Rep. 221.

[15] Ibid., 150, 50.

[16] U. S. Rep., 138 to 165.

became involved in the struggle of the Oklahoma and Indian Territories for statehood which was to end the court's jurisdiction over those areas. Earlier proposals had been considered but nothing to this end accomplished until 1890.

On May 2, 1890, an act of Congress provided for the establishment of a temporary government in the Territory of Oklahoma and the enlargement of the jurisdiction of the United States court in the Indian Territory.[17]

The original bill proposed in Congress in January of 1890 proposed to withdraw the jurisdiction of all three courts: the one at Paris, Texas; the one at Fort Smith; and the one at Wichita, Kansas; from both the Oklahoma and the Indian Territories and to create a new court exercising original jurisdiction over all the Indian country similar to that then held by the different United States courts. The Kansas representative in Congress, Mr. Perkins, assented to the change, but both Mr. Rogers of Arkansas, and Mr. Culberson of Texas raised strenuous objections to the proposed change.[18]

Strong opposition arose over the proposed act in the Indian Territory as well as in Arkansas and Texas. To the Arkansas and Texas people it was a serious loss of valuable patronage. To the Indian people in the Territory it meant further encroachment of the white man while the whites within the Territories felt that it was nothing but another natural and justifiable extension of civilization.[19]

A very similar act had been introduced in Congress in 1872 by Judge Parker when he was serving his first term as representative from Missouri.

---

[17] 26 Stats., 81.

[18] Elevator, Jan. 17, 1890.

[19] Weekly Advocate (Tahlequah, Indian Territory), May 12, 1880.

The Indians had bitterly opposed the measure at that time and saw very little change in the bill as proposed in January of 1890.[20]

The Indians at that time looked upon the effort to enlarge the jurisdiction of the federal court in the Indian Territory as proposed by the bill of 1872 and the original draft of the one in 1890 as being an effort to oppress them just as the South had been oppressed under the carpetbagger regime.[21] They feared that a criminal court within the territory would be used by the white men within their country to imprison them unjustly and confiscate their lands since Indians were not to be permitted on the juries.[22]

The Choctaws boldly asserted that the United States Court was not needed for the Indians but for the white people in the country. They further contended that justice would be more readily attained in Judge Parker's court at Fort Smith and Judge Bryant's court at Paris, Texas, where the judges were appointed for life than it would in a court where the judge was appointed only for four years, as was proposed in the acts of 1872 and again in the original bill of January, 1890.[23]

Most of the opponents of the bill were willing to compromise and agree on establishing a court of limited jurisdiction in the Territories, consequently, in May, 1890, a measure in modified form was passed by which federal courts for the Indian Territory were established at Muskogee, South McAlester, and Ardmore. Their jurisdiction was limited to civil

---

[20] Indian Chieftain, Oct. 26, 1883.

[21] Vindicator, Sept. 27, 1876.

[22] Ibid.

[22] Elevator, Mar. 2, 1894.

matters and minor criminal offenses.[24] All capital criminal offenses were yet to be tried at Fort Smith and Paris, Texas.

Kansas evidently cared little for relinquishing its jurisdiction over the Indian country since the Cherokees had established their claim to the Cherokee strip placing it under the jurisdiction of the western district of Arkansas.

While Arkansas and Texas had managed to retain most of the court business in the Territories, growing sentiment in Oklahoma and the pressing need for a better administration of justice were forces not to be easily turned aside. The attorney general was now making specific recommendations for modifying the judicial state of affairs for both Oklahoma and the Indian Territories. He contended that the outgrown district worked a tremendous hardship upon men charged with crime and upon witnesses by compelling them to travel several hundred miles to court, a procedure that was also enormously expensive. Both were sufficient reasons for a change, he contended. Specifically, he recommended that felonies be tried in the courts of the Indian Territory.[26]

In spite of Indian opposition and whatever opposition was offered by Arkansas and Texas, outside jurisdiction over the Territories was destined to be abolished. The whites within the Territories were pressing irresistibly for complete local government and in addition the increasingly chaotic and lawless conditions, believed in official circles to be traceable to the

---

24 Vindicator, (Atoka, Creek Nation) Wed. 27, 1876; see also Chieftain, Oct. 26, 1883.

25 Indian Journal (Muskogee, Indian Territory) Aug. 30, 1885.

26 Rep. Atty. Gen. 1890, 13-14.

cumbersome judicial system, were becoming intolerable. If those who advocated as a remedy for the conditions the act of May 2, 1890, had seriously hoped it would satisfy the demand for local courts in the Territories or relieve the crowded docket of Parker's court, they were soon to be disillusioned.

Since only civil matters and the most trivial criminal offenses were entrusted to the jurisdiction of the courts created at Muskogee, South McAlester, and Ardmore by the above mentioned act, practically none of the evils complained of by the attorney general were relieved. Again in 1893 the attorney general in a lengthy statement to Congress, called attention to the state of affairs which he characterized as a "maladministration of justice" by saying:

> The population of this area is now 250,000 with 200,000 whites by no means all intruders. For these 200,000 there are no courts, no magistrates, no schools, no local peace officers. The courts at Muskogee, South McAlester, and Ardmore try chiefly civil matters, and do not reach the grosser criminal offenses. Criminal matters go to two courts outside the territory, Paris, Texas, and Fort Smith, Arkansas. It is hard to imagine the injustice of the hundreds of miles of travel for both the accused and witnesses and then maybe the case not reached or continued to the next term of court. The cost to the government is enormous. The court docket is crowded impossibly.
>
> Lawlessness is encouraged by the difficulties of investigation of crime and punishment. As I reported two years ago the number of deputy marshals killed averages twenty a year in the Indian Territory; as many outlaws and unoffending citizens are killed in attempts to enforce and vindicate the laws. For the year ending January 1, 1893, seventy-three cases of homicide were brought to the attention of the Fort Smith and Paris courts.
>
> A great amount of crime is chargeable to the Indian Territory due to the immunity it affords from detection and punishment. The United States attorney for Oklahoma reported on September 6, 1893, that, "Last week at Ingalls in this Territory, near the Creek line, in an attempt to arrest seven notorious murderers and professional robbers, three of your deputies and a number of your citizens were killed in the fight."

> Last week on the Seminole line, five men organized a new band of murderers and robbers under written articles of agreement. A constant reign of terror exists along these borders. In the past year large county seats like Coffeyville, Kansas, and Bentonville, Arkansas, and a large number of small towns like Mound City, and Cheneyville, Kansas, and Ingalls, Oklahoma, have been captured and robbed, and the citizens killed, the outlaws returning securely concealed in these reservations. The Sheriff of Payne County started out this week with a posse of one hundred men to serve papers and make arrests, if possible, near Ingalls.
>
> The system is as wasteful as it is inefficient. The expenses of the entire courts of the United States serving a population of 65,000,000 amounts to $4,528,676.87. The Indian Territory with less than one twentieth of the population amounted to $625,226.00 or between one seventh and one eighth of the whole. Some remedy should be found...
>
> It is claimed that treaty stipulations hinder. If this is true new treaties should be made. It occurs to me, however, that the treaties of 1866 do not hinder...In them it is stipulated that the Indians agree: "to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of rights of persons and property in the Indian Territory, provided however, that such legislation shall not in any way interfere with or annul the present tribal organizations, legislatures, judiciaries, rights, laws, privileges and customs." It appears possible to further enlarge the provisions of 1890 establishing courts in the Indian Territory so as to give United States citizens a local court in which the administration of justice may be secured as in other sections without interfering with the Indian courts and tribal organizations.[27]

The newspapers of the time also bore witness to the lawlessness of the region particularly to the operation of outlaw gangs.[28] From these reports it appears that the conditions of which the grand jury in 1887, and Marshal Yoes in 1889, complained had only grown worse.[29] A comparison of the business of Parker's court in this period with that of the previous period presents a bad picture. The business now coming before Parker's court from 1889 to 1896 was practically twice as great as that of the previous

---

[27] Rep. Atty. Gen., 1893, 20-21.

[28] Elevator, Aug. 12, 1892; see also Oct. 14, 1892; Nov. 4, 1892; Apr. 7, 1893; July 7, 1893.

[29] Rep. Atty. Gen., 1889, 19.

period of the court's work.[30]

The cause of all this lawlessness which had increased in spite of the vigorous effort of the court was perplexing. No one felt that the court and its officers were shirking their duty for it was plain to be seen from the records of prosecution and convictions that the utmost vigilance was being exercised. To assign any definite cause is yet difficult, but it was during these years in which the great pastoral transition mentioned in Chapter Two was taking place and the population in the Indian country also had grown from 60,000 in 1875 to 250,000 in 1895, an increase of four hundred per cent.[31]

During these years of crime there had developed, however, a citizenship that was willing to assume the responsibilities of local government. In 1896, Judge Parker pointed with pride to the development of citizenship in his district as being the result of conscientious law enforcement. He stated that, "At my first term of court it was rather hard to get good, honest men to come out of that country and testify against desperadoes, but now it is different. People are willing to risk danger when they know that their effort is not spent in vain."[32] To the fact that the Territories were developing in citizenship the attorney general also bears witness as early as 1892, when he stated, "The contention that qualified juries cannot be had is baseless. The prosecution of 'Sooners' for perjury, in which there were fifteen cases and all convicted, I am pleased to report, proves that juries are made of law abiding citizens."[33]

---

[30] Rep. Atty. Gen., 1875 to 1896.

[31] Ibid., 1893, 20-21

[32] Elevator, May 8, 1896.

[33] Rep. Atty. Gen., 1892, 20-21.

While it appears that Congress thought the Territories were incapable of a larger measure of local government, the intolerable conditions of disorder caused by a rapidly growing population whose chief agencies of justice were located hundreds of miles away compelled action. On March 1, 1895, an act of Congress was passed stripping criminal jurisdiction over the Territories from outside courts and reorganizing the judicial system of the Territories. That part of the act repealing the jurisdiction of courts outside the Territories stated:

> All laws heretofore enacted conferring jurisdiction upon United States courts held in Fort Smith, Arkansas, Fort Scott, Kansas, and Paris, Texas, outside the Indian Territory as defined by law, as to offenses committed in said Indian Territory, as herein provided, are repealed to take effect September 1, 1896.[34]

In ending the jurisdiction of Judge Parker's court over the Indian Territory the Act of March 1, 1895, provided that original jurisdiction should be exercised by three federal districts, the northern, central, and southern. The northern district was composed of all Creek and Cherokee country, all country occupied by the tribes of the Quapaw Indian agency, and the Miami Townsite Company. The places of court were designated as Vinita, Miami, Tahlequah, and Muskogee. The central district was composed of all Choctaw Country and places of holding court were South McAlester, Atoka, Antlers, and Cameron. The southern district was to include all the Chickasaw Country, and the places of holding court were Ardmore, Purcell, Pauls Valley, Ryan, and Chickasha. Two new judgeships were created, one for the northern and one for the southern district. The judge then presiding

---

34 28 Stats., 974.

over the court of the Indian Territory was to become the judge of the central district. The judges were appointed for a tenure of four years at a salary of $5,000.00 per year. Each district was to have an attorney, marshal, and deputies. The judges were authorized to appoint as many deputies as necessary in cases of emergency.[35]

A court of appeals was created to review all criminal cases on writ of error from these districts. This court was composed of the judges of the three districts, no judge to sit in appellate court on a case from his own district. The senior judge in all cases was designated as the directing judge of the court of appeals. In case of divided opinions the judgment of the lower court was to be affirmed. By an act of Congress, February 8, 1896, the Eighth Circuit was extended to include all cases of suits at law and equity in the Indian Territory.[36]

While the period from 1889 to 1896 was frought with the controversies of appeal and jurisdiction, the work of the court varies only in minor details from that of the preceding period. Violation of the intercourse laws again ranked first in causes coming before the court with internal revenue violations ranking second, and miscellaneous prosecutions third. A few cases of postal law violations and pension law violations came.[37] Convictions ran into high numbers for a revision of the liquor laws in 1892 classifying lager beer as a spiritous liquor increased the liquor cases.

---

[35] Ibid.

[36] 29 Stats., 6.

[37] Rep. Atty. Gen., 1895, 5.

The physical accommodations of the court during this period were considerably better than those of the previous period. The February term of court in 1890 opened in a new federal courthouse which served the district until 1936. In this building Judge Parker had a large well equipped courtroom and a comfortable private office and library.

Jail quarters were considerably improved over those of 1875 to 1889. An annex had been built which provided three decks of cells arranged one above the other. Murderers were kept in the lower tier, assault and larceny prisoners in the second, and whiskey peddlers in the third and top tier. A hospital was badly needed for wounded and sick prisoners who needed isolation and better medical attention. No place but the basement previously used for a jail was available and this was damp and unhealthful. Prisoners chose to remain in their cells rather than go to the basement hospital.[38] St. John's hospital in Fort Smith, of whose board Parker was president, proposed to supply nurses if a hospital could be provided with comfortable beds.

Several attempts to escape from the jail were made but the vigilance and heroism of the guards always prevented it. Steel cutting saws were once smuggled into jail in biscuits sent in by a prisoner's wife, but were discovered before they could be used, and at another time pistols were smuggled to prisoners. Stern methods were sometimes used to maintain discipline. Once after a general fist fight, the two leaders were handcuffed high to the wall and left standing on a narrow iron stringer six inches from the ground until they were ready to apologize and assure good behavior.[39] They

---

[38] Elevator, Feb. 28, 1890.

[39] Ibid., Oct. 3, 1890.

stubbornly refused for two days and a half and then yielded.

During this period many notorious outlaws were to come before the court, some to be sentenced to prison and some executed. The two most notorious were Henry Starr and Cherokee Bill, or Crawford Goldsby as was his real name.

Henry Starr could be compared to some of the more modern robbers whose career of crime led to murder. Starr had killed Deputy Marshal Floyd Wilson who was attempting to arrest him for robbing the railway express. Starr was arrested in Colorado Springs and brought to trial before Judge Parker. In 1894 he was sentenced to death and again in 1896, but appealed his case both times and finally plead guilty to manslaughter in 1897. He is one whom appeal saved from death.

When Starr was arrested with his wife and his partner, Kid Wilson, they had $500.00 in gold and $1,460.00 in bills, the loot supposedly taken from the bank at Bentonville, Arkansas. Four indictments, besides murder, one for horse stealing and three for robbery, were lodged against Starr when he was brought to trial. He was possessed of higher intelligence than the ordinary criminal and while in jail incited a mutiny of the prisoners in the homicide row that resulted in one negro's being wounded.[40]

Crawford Goldsby, alias Cherokee Bill, was another notorious outlaw and the most vicious ever confined in the Fort Smith jail during this period. His career of crime was black and he boasted of having killed several men before he was tried in Judge Parker's court and sentenced to hang.

---

[40] Ibid., July 7, 1893.

After he was convicted, his case was appealed and while awaiting the decision of the Supreme Court pistols were smuggled to him with which he attempted a wholesale jail delivery that resulted in the murder of a jail guard, Larry Keating. He was at once tried and convicted a second time of murder before the Supreme Court's decision was received. Shortly after the second conviction, the decision of the Supreme Court was received, affirming the judgment of Parker's court.[41]

Judge Parker was in St. Louis when the news reached him of the attempted jail break led by Cherokee Bill and of the murder of the guard. He is said to have lost his composure and railed on the delay of justice and the Supreme Court. The citizens of Fort Smith were scarcely restrained from mob violence at the murder of Keating.[42] Whatever appeals meant to the cause of justice there is no doubt that the privilege added one more innocent victim to the long list of the officers slain by outlaws in the western district of Arkansas.

One entire gang of five men, known as the "Buck Gang", was executed by the court at Fort Smith. The gang was scarcely a year old when it was brought to trial for rape. There were no extenuating circumstances and no effort was made to appeal the case. Four of them were Creek Indians and one was a negro. All five were hanged at one time in May, 1896.[43]

Regardless of how revolting the offense was, Judge Parker always gave an extensive lecture to the condemned before sentencing him, admonishing him to repent of his sins and set himself right with his Maker.

---

[41] Ibid., July 1, 1896; see also Hell on the Border.

[42] Ibid.

[43] Elevator, May 1, 1896.

Practically all, even Cherokee Bill, availed themselves of spiritual advisers and when the day of execution arrived stated that they were prepared for death.[44]

It has been claimed that Parker in some cases refused to invoke the mercy of God upon the condemned.[45] In the large number of sentences reported through the local paper no mention has ever been found of such an incident, which would have been so unusual as to have warranted special notice. To the contrary all sentences reported in full ended with the benediction, "May God, whose laws you have broken and before whose dread tribunal you must then come, have mercy on your soul."

The six year struggle that culminated in the act of March 1, 1895, to become effective September 1, 1896, by which Parker's court was relieved of jurisdiction over the Indian Territory, had affected Judge Parker personally, a feeling he could poorly conceal. His views and that of the attorney general were far apart on the question of placing the jurisdiction over higher crimes in the courts of the Territories. While the attorney general did not hesitate to recommend it, Judge Parker doubted its wisdom and questioned the sincerity of the motives for such a change. In speaking to his grand jury in February of 1896 regarding the trust reposed in the people of Arkansas for enforcing the law in the Indian Territory he said:

> That trust is soon to pass from you, and when history is written it can never be said that the jurisdiction was taken away because the people of Arkansas were remiss in their duty. It was a desire for gain at the expense of law enforcement that caused the change.

---

[44] Elevator Files, 1875-1896.

[45] United Features Syndicate, Times Record, March 27, 1939.

> Until that country is blessed with statehood...the cause of justice could best be served by allowing the courts to remain where they are. It is urged against this court, the terrible expense of bringing prisoners and witnesses from a distance. When this court had jurisdiction of all of Oklahoma to the Colorado line the protection of life and property was as good or better than that now afforded, and the expense was less than that now required to pay the salaries of the officers of the Indian Territory courts. By the act of Congress last March, despite the general cry for economy, the salaries of the court officials in the Indian Territory were increased $104,000.00.[46]

To another grand jury in May, 1896, in speaking of the lawlessness of the district when he first came to preside at Fort Smith, Parker said: "I fear the same reign of terror will again prevail when jurisdiction of higher crimes are taken away from strong outside courts and given to Indian Territory courts."[47]

During the period from 1889 to 1896 twenty-seven men were hanged, making a total of eighty-three executions during Parker's term, and ninety on the famous gallows at Fort Smith, up to this date. Perhaps no other instrument of legal executions in the United States had been used more. The "I" beam of the gallows, from which men were hanged, had been changed once; the first served from 1862 to 1886 and the second from 1886 until the destruction of the gallows by the city council after hanging ceased to be the manner of execution. It was used only a few times after the jurisdiction over the Indian Territory ceased.

Social conditions were now changing and much concern was being felt in Fort Smith over the influence of the court and its gallows on the people of the city and district for large crowds always gathered on execution day.

---

[46] *Elevator*, Feb. 14, 1896.

[47] *Ibid.*, May 8, 1896.

The school board and other prominent citizens petitioned the attorney general to discontinue public hangings. In September, 1894, Marshal Crump ruled that hereafter none but physicians, newspaper men, attendants and officers would be permitted to enter the garrison enclosure at executions.[48] Thereafter, until the destruction of the gallows, executions were privately conducted.

Because of the illness of Judge Parker for the first time in twenty-one years, a substitute, Judge O. P. Shiros of Dubuque, Iowa, was called to conduct court for the August term of 1896 and to receive the grand jury's report. The grand jury returned one hundred and eighty-seven true bills and ignored fifty-eight.

On September 1, 1896, the day designated by Congress to end the criminal jurisdiction of Parker's court over the Indian Territory, a newspaper, the St. Louis Republic sent a reporter to interview the judge. In this interview the Judge reveals his personal views on crime and law enforcement and summarizes the work of the court during his term.

According to the judge's statement, during his term there had been 13,490 cases docketed in his court; 9,454, or about seventy percent were convicted by a jury or entered pleas of guilty; 344 were tried for capital offenses, of which 151 were convicted; of these eighty-three were hanged, one killed attempting to escape, four died in jail, two were pardonned, and sixty-one commuted.[49]

In speaking of his long term of service, Parker said, "I did not

---

[48] Ibid.

[49] Elevator, Sept. 18, 1896.

expect to stay here more than a year or two when I came. The President said to me, "Stay a year or so and get things started," but I am still here." His wife spoke up at this point of the interview and said, "Yes, and it was the biggest mistake of your life. It has broken you down! The Judge is only fifty-eight." The Judge answered, "No, Mary, not a mistake, for we have been able to arrest the floodtide of crime here as we would not have had opportunity to do elsewhere."[50]

The great jurisdiction of the court over the Indian Territory had come to an end September 1, 1896. The great judge died November 16, 1896.[51] A new jurisdiction and a new judge came into being and the old district together with the vanishing frontier and its colorful frontier conditions faded into the obscurity of a normal federal judicial district. Sixty-two years of judicial history had passed, the greater part of the time a void, but with a century of judicial labor crowded into the life of one man in the last twenty-one years of the era. The floodtide of crime had risen and was yet to reach a crest in spite of one of the most diligent efforts at law enforcement known to American history by "One of the Greatest American Trial Judges".[52]

---

[50] Ibid.

[51] Parker's Family Bible, (in possession of Mrs. Kate Bailey Parker, 1100 South 22 Street, Fort Smith, Ark.)

[52] Greenleaf on Evidence, I, 69.

CHAPTER V

THE PHILOSOPHIES OF THE JUDGE AND ERRORS OF THE COURT

The "errors of the court" to which the consideration of this chapter is directed are those held by the Supreme Court to be "reversible errors" in the thirty-seven cases in which it reversed the judgment of Parker's court from 1889 to 1896 and remanded the cause for new trial. The legal term, error, pertains only to the conduct and procedure of a trial and does not concern itself with the evidence of the case establishing the guilt or innocence of the party making appeal. Error, as designated by the Supreme Court in all the cases coming before it from Judge Parker's court, meant that either some technical rule of trial procedure had been violated or that the Judge had misstated the law to the jury.

A "writ of error", the legal instrument by which appeals were taken to the Supreme Court, was, when properly drawn, a statement of the specific violations of trial procedure or misstatement of law that had occurred during the trial of which the defense attorney had properly taken notice. Some writs of error contained numerous assignments of error. In such cases the Supreme Court usually selected the one, if any, obvious error and ignored all others, however at times it pointed out

several errors in an effort at constructive criticism.[1] Since an appeal from the judgment of Parker's court served as a stay of execution and was granted as a right without cost to the appellant, appeals were taken even when guilt was obvious, notice of appeal was no proof of innocence, nor was a decision of the Supreme Court reversing the judgment of Parker's court proof of innocence. The fact of guilt or innocence remained yet undetermined by reversal and was a matter that could be established only by subsequent trial, for guilt and innocence were not the points in issue in an appeal to the Supreme Court.

The decisions of the Supreme Court and the final disposition of the cases, in which the judgment of Parker's court was reversed, commend the errors of the court to further consideration. All the decisions of the Supreme Court in reversing Parker's judgment were not unanimous. Of the thirty-seven decisions reversing the judgment of his court, there were ten dissenting opinions in which two or more justices usually concurred. In final disposition of the cases reversed and remanded for new trial, sixteen convictions were secured. Consequently a determination of the errors of the court and their causes are worthy of exposition. Judge Parker looked upon the alleged errors to which exceptions were taken and upon which the Supreme Court reversed his decisions as being mere technicalities having nothing to do with the guilt or innocence of the accused. He felt that they did not establish the right or wrong of a case and were only hindrances to the cause of justice.

---

[1] U. S. Rep., 138-168; i. e. 151.50.

Some of the technicalities upon which the Supreme Court reversed Parker's judgment were characterized by dissenting justice as a sacrifice of justice and were later removed by revision of the code of procedure.[2] Nevertheless it was then the trial procedure required by law and when obviously violated obligation to duty required the appellate court to recognize the breach and reverse the judgment of the lower court and order a new trial in which, if guilt existed, it could be established in spite of hindering technicalities.

A review of the thirty-seven reversals of Judge Parker's court shows that twenty-one reversals were assigned because of the language of the charges to the jury; seven because of the admission of incompetent evidence; five because of no jurisdiction, and four because of the improper statement of the law in the charge to the jury.[3]

Fortunately, Judge Parker, himself, in his famous interview of September 1, 1896, the day on which his jurisdiction over the Indian Territory ceased, reveals the cause of most of the errors that occurred in his court. In this interview the judge stated his philosophies as a trial judge, which in all fairness to this great character are the bases for most of the errors cited in the appeals. The two following quotations are significant as causes of error:

> I would like to see courts of criminal appeal...made up of judges learned in criminal law and...bring before them a full record of the trial. I would brush aside the technicalities that did not affect the guilt or innocence of the accused...and provide law against reversals unless innocence was manifest....The fault

---

2 U. S. Rep., 138-165.

3 Ibid.

> does not lie with juries...they have never failed me, juries are willing to do their duty, but they must be led. They must know that the judge wants the enforcement of law.[4]

The philosophy of the judge that caused him to brush aside the technicalities of trial procedure and to attempt to lead the jury and let them know that the judge wanted the enforcement of law led the court into reversible error.

The errors made in charging the jury are obvious outgrowths of the judge's philosophy that the jury needed guidance. Judge Parker evidently felt that the law was a subject matter beyond the experience of the average juror. This led him to make long discourses from the bench to the jury. His charges often amounted to fifty pages and one contained seventy-three pages of legal sized, double spaced typewritten material; in fact few were found to contain less than twenty pages. In his elaborations he often quoted Scripture, gave illustrations and used figures of speech. He felt this manner of charge was only employing language within the experience of the lowly trained juror to make plain the language of the law. Dissenting justices of the Supreme Court also took this view, however, the majority felt that this type of charge infringed upon the rights of the accused,[6] for sometimes his charges went beyond mere exposition. Parker's charges were characterized by the Supreme Court as being, "inaccurate, prolix, argumentative and prejudicial toward the defendant".[7]

---

[4] Elevator, Sept. 18, 1896.

[5] Charges of the Court, manuscript in storage U. S. Court Clerk, Ft. Smith, Ark.

[6] 150 U. S. Rep. 551.

[7] 160 U. S. Rep., 70.

In the matter of misstatement of the law to the jury, Judge Parker erred continually on three different points: the law regarding competence of evidence, flight from scene of crime, and self-defense. Parker's strong feeling against corrupt and lawless characters often caused him so to explain the rule of evidence as to take the evidence away from the jury. His statements to the jury confused the law of the weight of evidence and the competence of evidence. "A jury," he said, could only accept testimony from pure sources and must cast aside testimony from other sources as so much worthless matter." Character witnesses, Parker held, must also be of good character or their testimony was incompetent evidence. He held in another case that a witness's violent dislike for the slain was incompetent evidence since it was based upon passionate judgment. The Supreme Court held:

> Evidence of the reputation of a man for truth and veracity in the nnighborhood of his home is equally competent to affect his credibility as a witness, whether it is founded upon dispassionate judgment, or upon warm admiration for constant truthfulness, or natural indignation at habitual falsehood; and whether his neighbors are virtuous or immoral in their own lives. Such considerations may affect weight, but do not touch competency, of the evidence offered to impeach or support his testimony.[8]

In this case, however, three justices dissented from the opinion of the Court and stated: "The trial judge's instruction to the jury was within the law on competency of evidence; and that the admonition to the jury did not exclude the evidence regarding reputation." They agreed with Parker that reputation was the general judgment of the community and not the flippant talk of outlaws, however, Parker had so defined reputation as to make it equivalent to character.

---

[8] 138 U. S. Rep., 553; see also 161 U. S. Rep. 85; 164 U. S. Rep., 221.

In many cases that came before Parker's court the defendant had become a fugitive from justice after committing the offense for which he was then being tried. Parker allowed himself to err in attaching a theory of "presumption of guilt" because of flight from the scene of the crime for he thought that a man who had committed a justifiable homicide would desire an investigation of the incident in order that his innocence might be recognized.[9] He was wont to quote from the Bible specific instances of guilty flight, such as Cain's flight after slaying Abel.[10] Another partial quotation, "The guilty flee but the righteous are as bold as a lion." The Supreme Court held these statements to be prejudicial to the defendant and cited both Scriptures and the origin of the law on the matter of flight. The Supreme Court cited the case of Jacob's flight from Laban as the flight of the innocent and stated that Jacob's reason for flight: "Because I was afraid," might be the cause of the flight of any innocent man.[11] Too, they pointed out that the weight of law given to flight was an old English law and custom of requiring one who fled to forfeit his goods even though he were later acquitted.[12] In modern times, they held, flight was to be taken as a circumstance only, carrying such weight as the evidence supported, but not to be regarded as a "presumption of guilt". In all cases but one in which this fact existed, the Judge's comments on flight were held to be reversible error.[13]

---

[9] Charge to Jury, "Thornton v U. S.", 32.

[10] Ibid.

[11] 160 U. S., 408.

[12] Ibid.

[13] 160 U. S., 408.

The Court's attitude toward self-defense also led to reversible error and considerable controversy between Judge Parker and the solicitor general. The plea of self-defense was almost invariably the resort of the defendant in Parker's court. Seldom did the defense deny the fact of killing, but endeavored to mitigate the offense by attaching to it the necessity of self-defense. The weakness and the strength of such a plea can readily be seen. Almost all men in the Indian country carried a "forty-five" or a Winchester and a brace of forty-fives, and could fire or draw almost as "quick as a wink". In giving the law on self-defense Parker often stated to the juries that they should find the evidence to show that the defendant had retreated and in every way possibly open to him had tried to avert taking his assailant's life even to employing acts of less violence, such as disabling his assailant, and that he had killed only when all other means in his power to save his own life and that of his assailant had been exhausted. He further held that it was the duty of the defendant to get out of the way, if he were attacked and feared injury; to prevent a conflict in the interest of his own life that might be lost, and in the interest of the life of the one attacking.

In another case Parker states that, "only in one's dwelling was one permitted to stand and kill". The Supreme Court held that "one assailed on his own grounds, without provocation, by a person armed with a deadly weapon apparently seeking his life is not obliged to retreat, but may stand his ground and defend and...neither murder nor manslaughter can be charged against him.[14]

---

[14] 162 U. S., 499.

In yet another case, in stating the law of self-defense he held that arming oneself prior to a difficulty in which another was killed indicated malice aforethought and necessarily prevented the grade of crime's being reduced to manslaughter and was murder. The Supreme Court held that, "if one after an altercation was led to believe he needed a means of self-defense and secured a gun then killed his adversary, the case was either murder or manslaughter as the circumstances justified."[15]

Because of the oft-recurring errors in stating the law on self-defense and to save time for the Supreme Court, the solicitor general began confessing error in cases coming from Parker's court to the Supreme Court. Judge Parker took offense at this action and through an open letter published in the Saint Louis Globe Democrat in February, 1896, vigorously assailed the solicitor. A bitter controversy resulted in which the issues developed into personalities.

The solicitor general characterized Parker's interpretation of the law of self-defense as being obsolete and applicable only to an age in which swords, spears and knives were used as deadly weapons. The idea that a modern defendant being attacked with firearms could delay killing in self-defense until he had attempted to disable his assailant or that he might successfully retreat in the face of such an attack was ridiculed by the solicitor general. He further contended that if Judge Parker would confine himself to a statement of the law instead of going into an oration on the merits of the case that he could easily avoid the innumerable errors.[16]

---

[15] 153 U. S., 183.

[16] Elevator, Feb. 21, 1896.

The solicitor further criticized Judge Parker for refusing counsel in making his charges to the jury. The Department of Justice had instructed the district attorney to point out to the judge the correct law governing cases before he instructed the jury. Efforts to carry out this instruction had only met with rebuffs for the district attorney, the solicitor contended.[17]

Parker, in his reply to the solicitor's open letter, stigmatized the solicitor as a "legal imbecile", as "croaking the tune of every serpent of crime for the past twenty years". He characterized Solicitor Whitney's criticism of him as a "string of falsehoods". In this controversy Parker warmly criticised the action of the Supreme Court in reversing so many decisions from his court as a "mania for reversal". He further termed the numerous reversals as "unwarranted" and attributed the large increase in crime to the "unwarranted reversals." Later in the year, May 8, 1896, he characterized the purpose of the appellate court as a means of knifing the trial judge in the back and allowing the criminal to go free.[18] The controversy was one of the most bitter and vituperative ever conducted through that newspaper.

The motive for the controversy was assigned to political reasons by The Saint Louis Republic. For some unstated reason Judge Parker, who began the controversy by sending an open letter to the Saint Louis Globe Democrat, did not send a copy of his letter to the solicitor general but allowed him to learn of it from the newspapers, an action that created

---

[17] Ibid.

[18] Elevator, May 8, 1896.

considerable speculation regarding his motive.

Judge Parker's criticism of the Supreme Court was also directed at its inexperience in criminal matters. He contended that the judges of the Supreme Court were men whose experience had been in the field of civil law and that they were not familiar with nor interested in criminal law. He further contended that none of the appeals from his court had been fairly presented to the court since they were not orally argued.

The classification used in the foregoing discussions do not reveal all the specific errors on which reversals were made, but do give an accurate grouping of the errors as they were pointed out by the appellate court. In all, the one great error of Judge Parker was that of extensive elaboration in his charge to the jury. He seldom, if ever, failed to state the law accurately in some part of his instruction and then in his elaborate exposition of the case made the fatal error when he again stated the law in part or in paraphrase in such a manner that the defense readily took exception to the statement and cited it as error.[20]

The judge's philosophy of law and law enforcement was not that of a reckless man but of a conscientious citizen whose sympathies were always directed toward the unfortunate victims of crime, the law abiding citizens. Judge Parker felt that courts were the guardians of law and order and that efficient law enforcement in his district would promote culture and civilization. In speaking to his grand juries he revealed his sense of obligation to society by saying:

---

[20] Charges, op. cit.

Prosecute every violation of the mail laws. The mails make a school house out of every home. They go everywhere, and through the various newspapers and periodicals they carry are enlightening and educating the nation....

I can conceive of no more vicious or immoral institution than an illicit distillery. It is hidden in some out-of-the-way hole in the mountains...every night...track the boys to it as you could a fox to his den. It won't be long until the whole neighborhood is engaged in brawls,disturbances, and feuds and all traceable to that miserable little wild cat still. Three fourths of the crime in this court is caused by liquor.

The intercourse laws are important....This law would appear harsh outside of this Indian country, but when the results of liquor with that mixed and reckless population is considered it is a necessity.[21]

The man of crime in the Indian country fears this court above all things...criminals know they have a slender chance of defeating justice. The dread of punishment has spared the lives of thousands in the Indian country from the hand of the assassin. It is not what comes after conviction, but the certainty of arrest and conviction that deters the criminally minded. If this prevailed over all the country we could burn our gallows. I am sorry to say that it does not, and that crimes, especially crimes against human life, are on the increase. The increase of crime is directly traceable to the manner in which assassins are dealt with, and lynchings follow in direct sequence of dereliction of courts.[22]

One out of every sixty homicides have been legally punished while at the same time lynching has occurred for one out of every forty. The number killed last year was 10,500; greater than the United States Army at the beginning of the Civil War....Protection of life is the great issue, not tariff...people should demand that courts... discontinue hair splitting distinctions in favor of the criminal at the expense of life....a glaring evil is stalking the country in favor of the criminal through the protection of the appellate courts.

Mobs do not occur where courts make an honest effort to enforce the law. In the twenty-one years I have presided over this court, only three instances of mob violence have been reported and one of these very recently. It was on the Oklahoma border where it is easy to dodge back and forth. The perpetrators escaped justice on the charge of murder but were convicted of assault, and since then five of the witnesses against them have been foully assassinated in the Oklahoma country, that country where the government's money is squandered and no one ever convicted of murder.[23]

---

[21] Elevator, Feb. 7, 1896.

[22] Ibid.

[23] Ibid., Feb. 14, 1896.

In his famous interview of September 1, 1896, he lamented the maudlin sentimentality and avarice of his time which he felt definitely weakened the attitude of the court's in enforcing law. On this he said,

> The avarice of this age places a greater value on civil law for the protection of property than on criminal law for the protection of life. Which is of greater value, your house or your life? asks the bench...and the people in specific instance answer, my house.... The trouble is with the bench and behind it a maudlin sentiment that forgets and condones crime upon which the blood-stains have dried. The bench is not alive to its responsibilities....The good women who carry jelly and cake to criminals in jail mean well, but have poorly directed sympathy. They fail to see the widow and fatherless caused by the work of that assassin.[24]

Judge Parker's attitude toward the Indians was entirely different from the impression one might receive from the list of executed. On the above mentioned occasion he said:

> Indians are not criminals. They are law-abiding people. It is not they who violate the laws in the Indian country. It is another class, 'criminal intruders' I call them. The government in 1828 gave the Indians the land to the west with the solemn promise to protect their rights. No protection has ever been given but through these courts.[25]

The courts referred to were at Paris, Texas, under Judge E. E. Bryant, and his own.

Peculiar as it may seem, Judge Parker disliked capital punishment. To the Republic Reporter he said,

> I favor the abolition of capital punishment, provided, that that there is a certainty of punishment, whatever that punishment be. In the uncertainty of punishment following crime, lies the weakness of our halting crime.

When asked about the executions, Judge Parker replied: "It is not I who have hung them. I never hung a man. It is the Law.[26]

---

[24] Elevator, Sept. 18, 1896.

[25] Ibid.

[26] Ibid.

These are the philosophies of a man who performed for American society a task that now appears almost impossible. He had but one goal, the enforcement of law. He believed that to be his one mission of life from which the fear of errors and criticism should not keep him.

Of him the Cherokees said:

> American civilization has produced a multiplicity of characters, but only one Parker. When President Grant appointed him to the western district of Arkansas, he performed an act that in itself should make him justly famous. It was from the beginning the greatest criminal court in the world and Judge Parker rose grandly to the occasion.[27]

---

[27] Indian Chieftain, Nov. 19, 1896.

BIBLIOGRAPHY

I. MANUSCRIPT MATERIALS:

Irving M. Dodge, Memoranda W. P. A. 1936. Historical Research Division, W. P. A. Old Post Office Building, Little Rock, Ark.

Charge of Court, U. S. v Charles Hawkins, Nov. 1894.
Charge of Court, U. S. v Enich Thomons, May, 1894.
Charge of Court, U. S. v Alexander Allen, May, 1894.
Charge of Court, U. S. v John Allison, May, 1895.
Charge of Court, U. S. v Frank Carver, May, 1895.
Charge of Court, U. S. v Thomas J. Thornton, Aug., 1895.
Charge of Court, U. S. v Geo. and James Pierce, Feb., 1895.
Charge of Court, U. S. v Alexander Allen, Aug., 1895.
Charge of Court, U. S. v Charles W. Akers, Aug., 1895.
Charge of Court, U. S. v George McElroy, et al., Aug., 1895.
Charge of Court, U. S. v Den Duff, Aug., 1895.
Charge of Court, U. S. v Carl Rowe, Aug., 1895.
Charge of Court, U. S. v James Mills, Feb., 1896.
Charge of Court, U. S. v James, John, and Allen Nofire, May, 1896. Clerk's Storgge, United States District Court, Fort Smith, Ark.

Common Law Records, U. S. Dist. Court for Western District of Ark. I, IV, V.

Records of Disposition of Cases, 1875-1896. U. S. Dist. Court for Western District of Arkansas.

Parker's Bible, Family Records, possession of Kate Bailey Parker, daughter-in-law of Judge Parker.

II. PRINTED DOCUMENTS

Congressional Record, v. 19, Pt. 8, Aug. 16, 1888.

House Report No. 3613, 50th Congress, 2nd session.

United States Reports.
Volumes 138, 142, 146, 150, 151, 152, 153, 155, 157, 158, 159, 160, 161, 163, 168, 165.

U. S. Statutes at Large.
Volumes 26, 81, 27, 260.

Attorney General's Report
Volumes for Following Years: 1871, 1873, 1877, 1880, 1881, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1892, 1893, 1895, 1896, 1897.

Laws of U. S.
Volume 9.

IV. NEWSPAPERS

Arkansas Gazette, Nov. 18, 1896; Dec. 6, 1878.

Fort Smith Elevator Files, Dec. 17, 1878 to Jan. 1, 1897.
Carnegie Library, Fort Smith, Arkansas.

Indian Chieftain, (Vinita, Indian Territory), Oct. 26, 1883; March 9, 1893; Feb. 13, 1896; Nov. 19, 1896.
Oklahoma Historical Society Files, Oklahoma City, Okla.

The Vindicator, (Atoka, Creek Nation), Dec. 29, 1875; Feb. 16, 1876; Dec. 28, 1876.
Oklahoma Historical Society Files, Oklahoma City, Okla.

Indian Journal (Muskogee, Indian Territory), Aug. 30, 1885.
Oklahoma Historical Files, Oklahoma City, Okla.

Cherokee Advocate (Tahlequah, Indian Territory), Jan. 6, 1872; Aug. 31, 1878; June 2, 1882.

V. BIOGRAPHIES AND SPECIAL ACCOUNTS

Harry P. Daily, Isaac A. Parker, 1936, Address to Arkansas Bar Association, Private printing.

S. W. Harmon, Hell on the Border, 1898, no place.

Anna L. Dawes, pamphlet, Lend A Hand, Indian Rights Association, Philadelphia, Penn., 1886.

VI. GENERAL WORKS

Victor E. Harlow, Oklahoma, Harlow Publishing Co., Oklahoma City, Oklahoma.

Charles Evans, Lights on Oklahoma History, Harlow Publishing Co., 1929.

Hempstead, Fay, Pictorial History of Arkansas, 1890. N. B. Thompson Publishing Co., St. Louis, Mo. (out of print)

Hempstead, Fay, Historical Review of Arkansas, I, 1911 (3 vs) Lewis Publishing Co., Chicago, Ill. (out of print)

Hallum, John, Biographical and Pictorial History of Arkansas, 1887. Parson & Co., Albany, N. Y. (out of print)

Speer, W. S., Encyclopedia of New West, 1881.
United States Biographical Publishing Co., Marshall, Tex. (out of print)

Dictionary of American Biography, XIV, 1934 (20 vols)
Charles Scribner's Sons, New York. Oxford, London, England.

APPENDIX

Judges for the Western District of Arkansas

Name	Date of Appointment	By Whom Appointed
William Story	April, 1872	President Grant
Isaac C. Parker	March 19, 1875	President Grant
John H. Rogers	December 15, 1896	President McKinley
Frank Youmans	June 30, 1911	President Taft
Heartsill Ragon	May 17, 1933	President Roosevelt

United States Marshals for the Western District of Arkansas

Logan H. Roots	March 31, 1871	William A. Britton,	June 19, 1872
James F. Fagan	July 2, 1874	Daniel R. Upham	July 11, 1876
Valentine Dell	July 30, 1880	Thomas Boles	Feb. 20, 1882
John Carroll	May 21, 1886	Jacob Yoes	May 28, 1889
George J. Crump	May 29, 1893	Solomon F. Stahl	June 1, 1897
" Reappointed	March 5, 1902	John F. Mayes	March 6, 1906
Andrew J. Russell	Sept. 30, 1922	" Reappointed	1918
" Reappointed	1926	Cooper Hudspeth	March 1928
John C. Riley	April 7, 1936	" Reappointed	1932

United States District Attorneys: in order shown

James H. Huckleberry	William H. H. Clayton	John I. Worthington
N. J. Temple	James F. Read	J. Virgil Bourland
M. H. Sandels	James K. Barnes	Emon O. Mahony
Steve Carrigan	S. S. Langley	
W. N. Ivey	C. E. Barry	

Summary of Criminal Appeals to Supreme Court

Title	Citation	Decision	Date
1. Alexander v U. S.	138 U. S., 353	Reversed	Dec. 1891
2. Crompton v U. S.	138 U. S., 361	Affirmed	Dec. 1891
3. Boyd v. U. S.	142 U. S., 450	Reversed	Dec. 1892
4. Lewis v U. S.	146 U. S., 370	Reversed	Dec. 1892
5. Collins v U. S.	150 U. S., 62	Affirmed	Dec. 1893
6. Hall v U. S.	150 U. S., 76	Reversed	Oct. 1893
7. Holder v U. S.	150 U. S., 91	Reversed	Oct. 1893
8. Graves v. U. S.	150 U. S., 118	Reversed	Nov. 1893
9. Hicks v U. S.	150 U. S. 442	Reversed	Nov. 1893
10. Allen v U. S.	150 U. S. 550	Reversed	Dec. 1893
11. Famous Smith v U. S.	151 U. S. 50	Reversed	Jan. 1894
12. Tucker v U. S.	151 U. S. 164	Affirmed	Jan. 1894
13. Hickory v U. S.	151 U. S. 303	Reversed	Jan. 1894
14. Pointed v U. S.	151 U. S. 396	Affirmed	Jan. 1894
15. Sarlls v U. S.	152 U. S. 570	Reversed	Apr. 1894
16. Gourko v U. S.	153 U. S. 183	Reversed	Apr. 1894
17. Starr v U. S.	153 U. S. 614	Reversed	May 1894
18. Thompson v U. S.	155 U. S. 271	Reversed	Dec. 1894
19. Johnson v U. S.	157 U. S. 320	Affirmed	Mar. 1895
20. Allen c U. S.	157 U. S. 675	Reversed	Dec. 1895
21. Babe Beard v U. S.	158 U. S. 550	Reversed	Dec. 1895
22. Brown v U. S.	159 U. S. 100	Reversed	June 1895
23. Isaacs v U. S.	159 U. S. 487	Affirmed	Nov. 1895
24. Goldsby v U. S.	159 U. S. 70	Affirmed	Dec. 1895
25. Allison v U. S.	160 U. S. 203	Reversed	Dec. 1895
86. Davis v U. S.	160 U. S. 469	Reversed	Dec. 1895
27. Hickory v U. S.	160 U. S. 408	Reversed	Jan. 1896
28. Carver v U. S.	160 U. S. 553	Reversed	Jan. 1896

29. Smith v U. S.	161 U. S. 560	Reversed	Mar. 1896
30. Pierce v U. S.	161 U. S. 576	Affirmed	Jan. 1896
31. Thronton v U. S.	161 U. S. 578	Reversed	Jan. 1896
32. Lucky v U. S.	161 U. S. 578	Reversed	Jan. 1896
33. Davenport v U. S.	162 U. S. 40	Reversed	Jan. 1896
34. Alberty v U. S.	162 U. S. 499	Reversed	Apr. 1896
35. Wilson v U. S.	162 U. S. 613	Affirmed	Apr. 1896
36. Crain v U. S.	162 U. S. 625	Reversed	Apr. 1896
37. Talton v Mayes	163 U. S. 376	Affirmed	May 1896
38. Lucas v U. S.	163 U. S. 613	Reversed	May 1896
39. McElroy v U. S.	164 U. S. 76	Reversed	Nov. 1896
40. Brown v U. S.	164 U. S. 221	Reversed	Nov. 1896
41. Acers v U. S.	164 U. S. 388	Affirmed	Nov. 1896
42. Allen v U. S.	164 U. S. 492	Affirmed	Nov. 1896
43. Rowe v U. S.	164 U. S. 546	Reversed	Nov. 1896
44. Starr v U. S.	164 U. S. 627	Reversed	Apr. 1896
45. King v U. S.	164 U. S. 701	Reversed	Oct. 1896
46. Dyer v U. S.	164 U. S. 704	Reversed	Dec. 1896
47. Mills v U. S.	164 U. S. 644	Reversed	Jan. 1897
48. Nofire v U. S.	164 U. S. 657	Reversed	Jan. 1897
49. Carver v U. S.	164 U. S. 694	Reversed	Jan. 1897
50. Davis v U. S.	165 U. S. 373	Affirmed	Feb. 1897

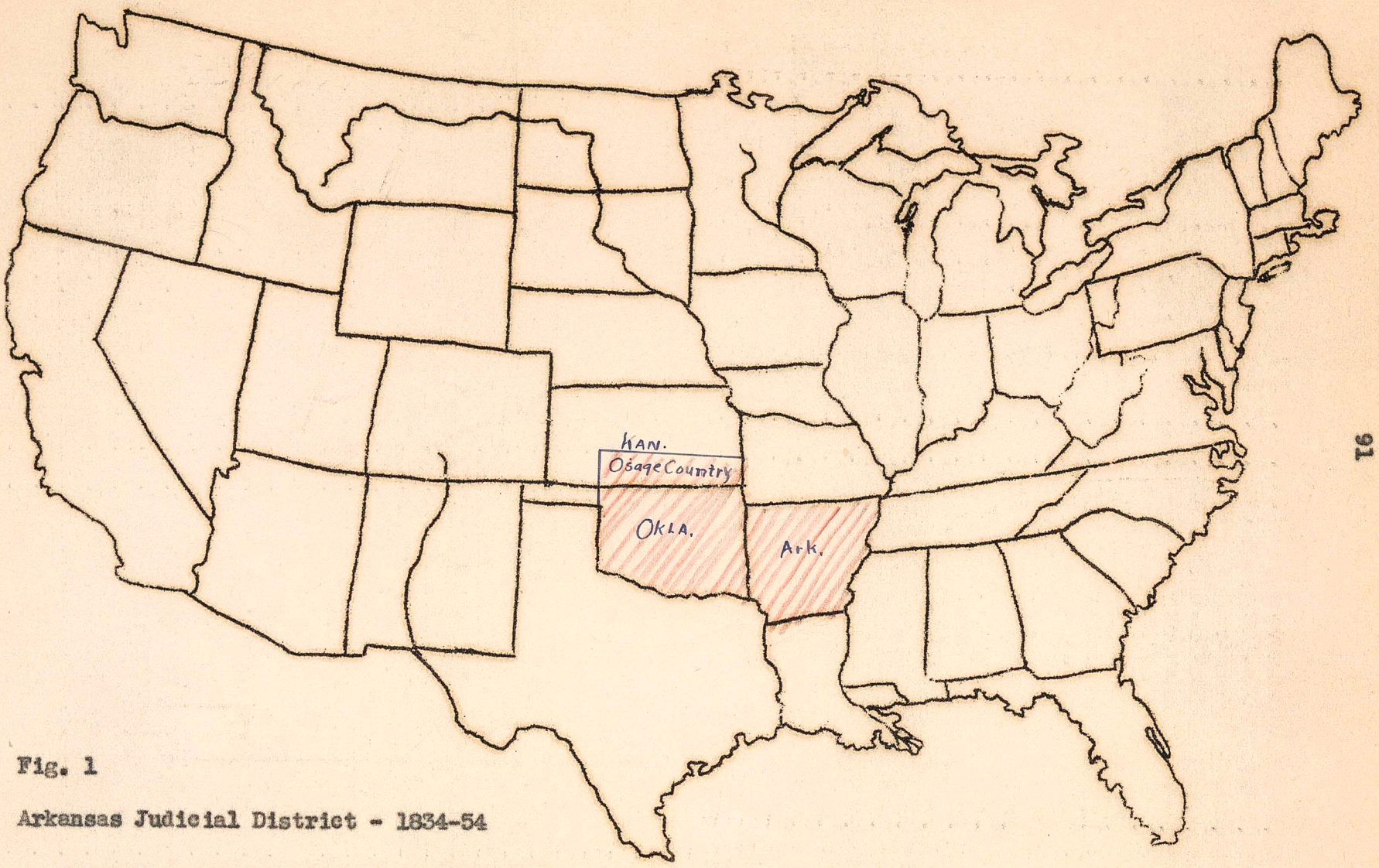


Fig. 1

Arkansas Judicial District - 1834-54

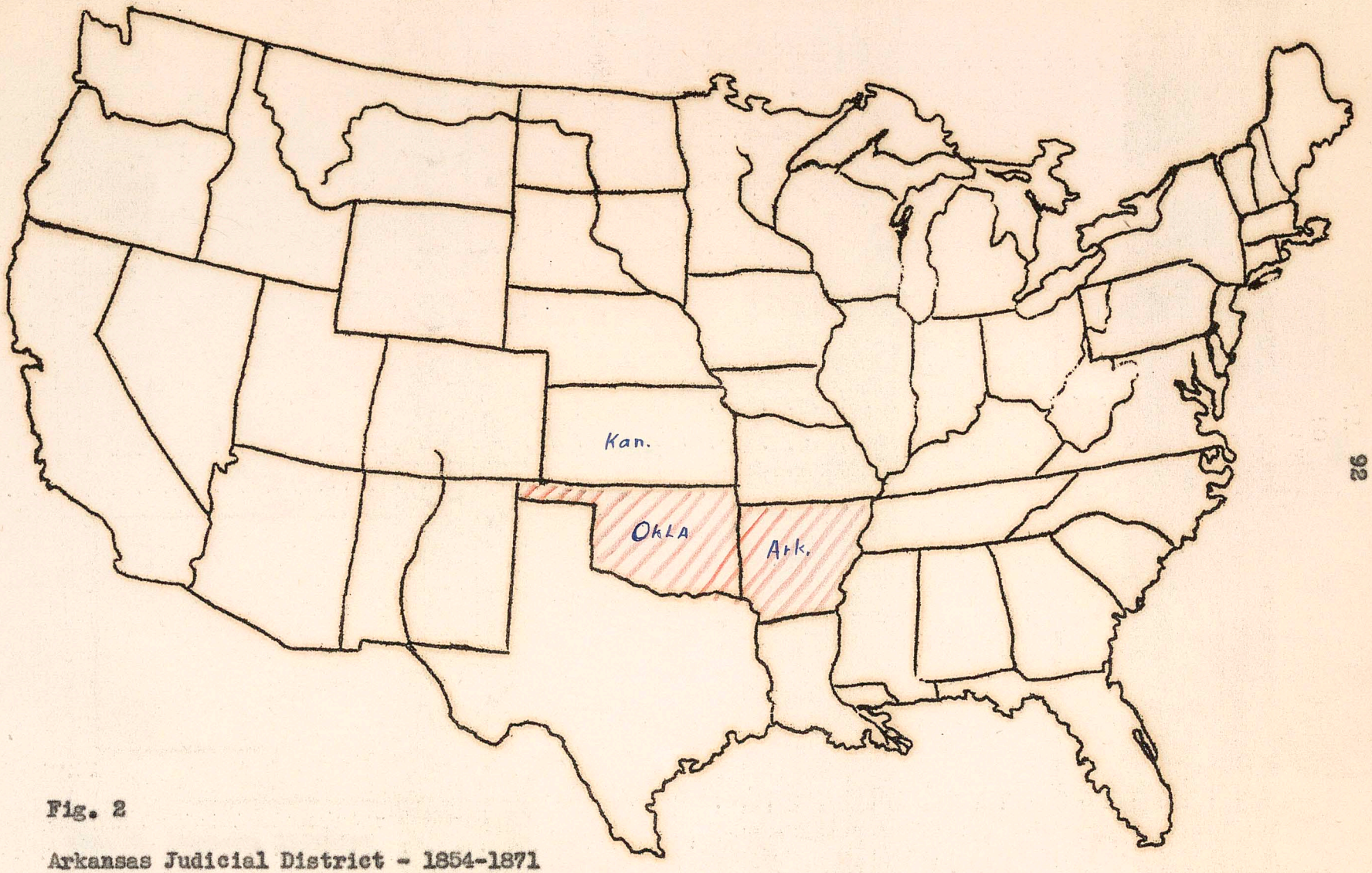


Fig. 2

Arkansas Judicial District - 1854-1871

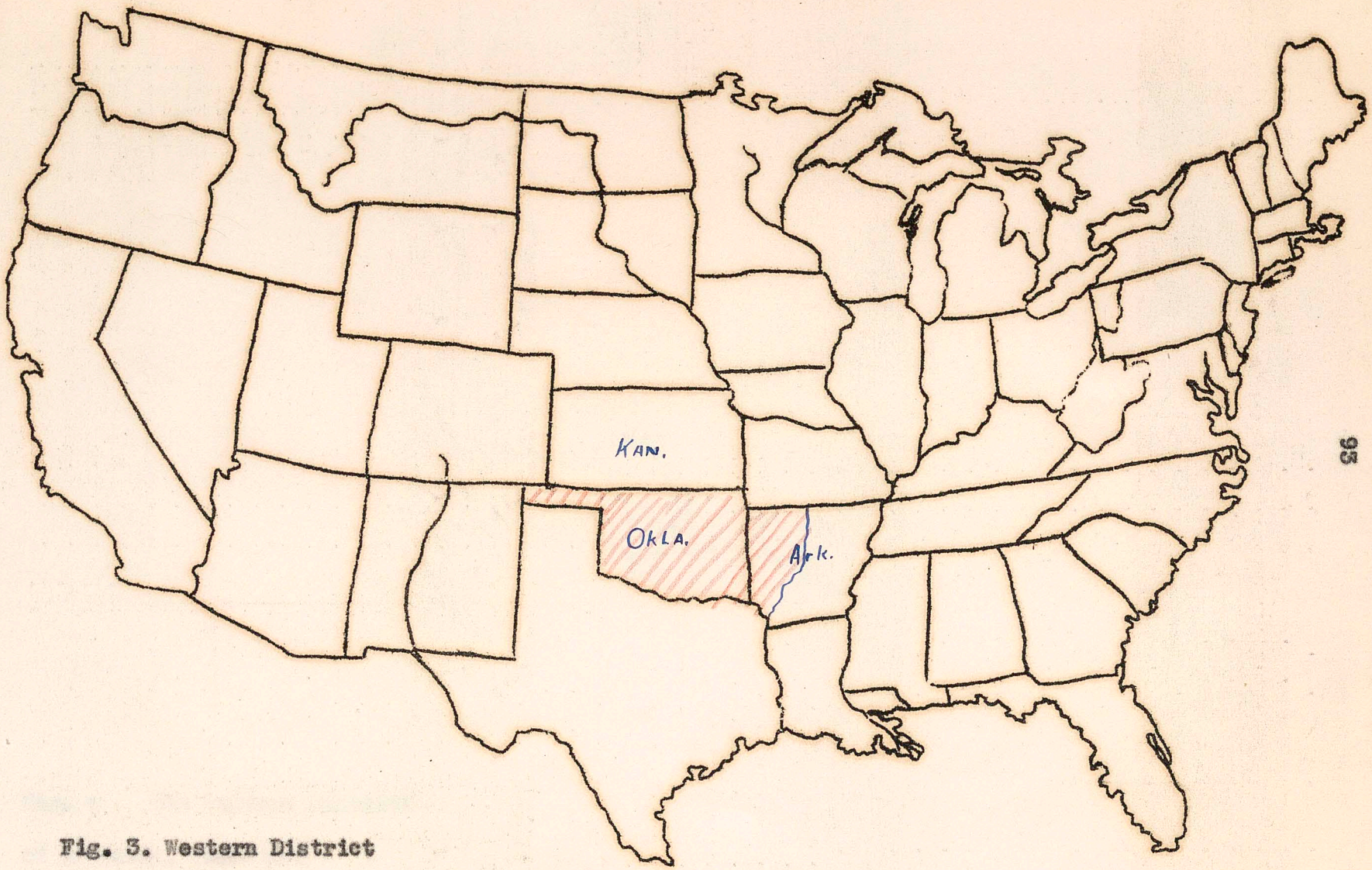


Fig. 3. Western District of Arkansas 1871-1883

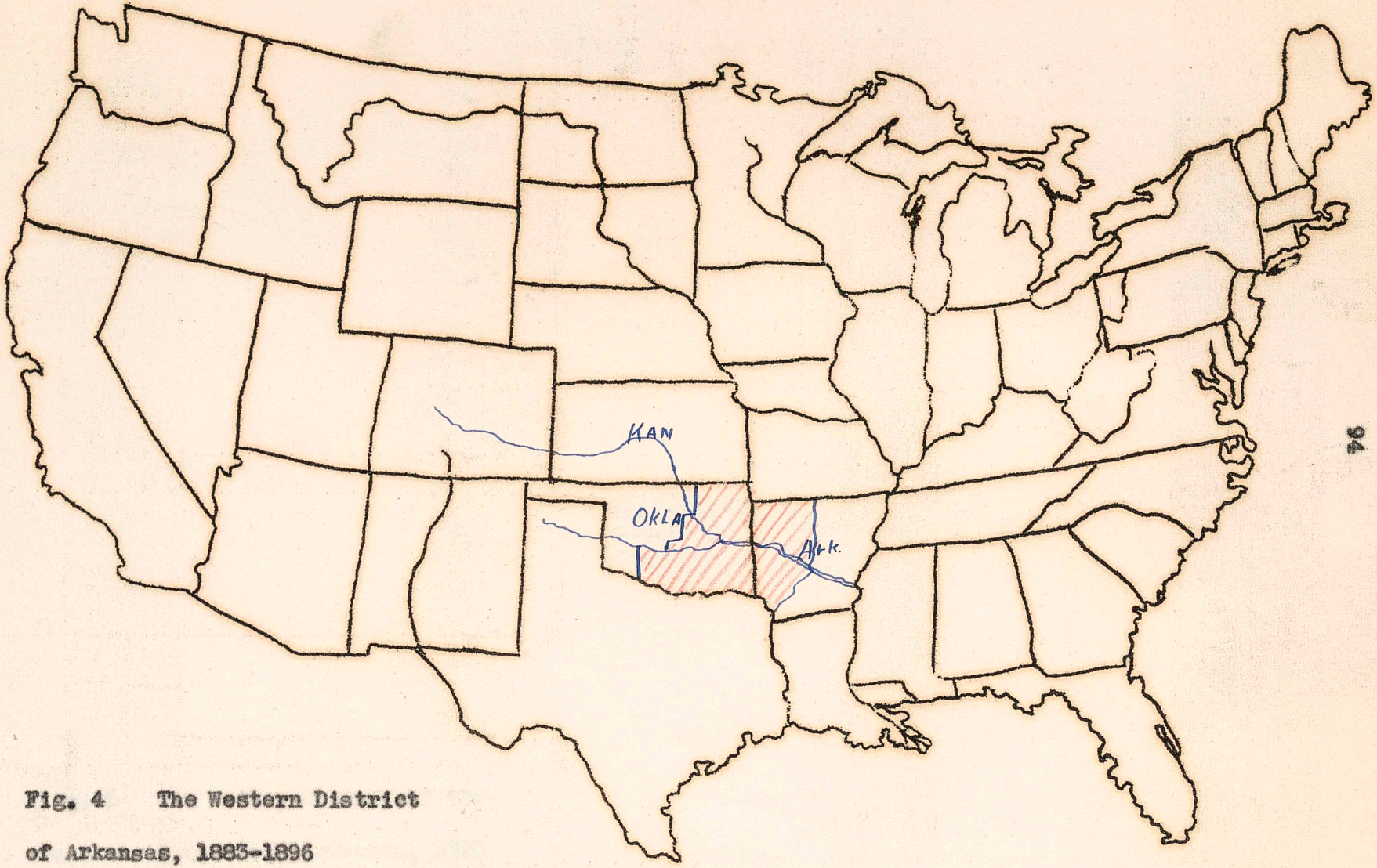


Fig. 4 The Western District of Arkansas, 1883-1896

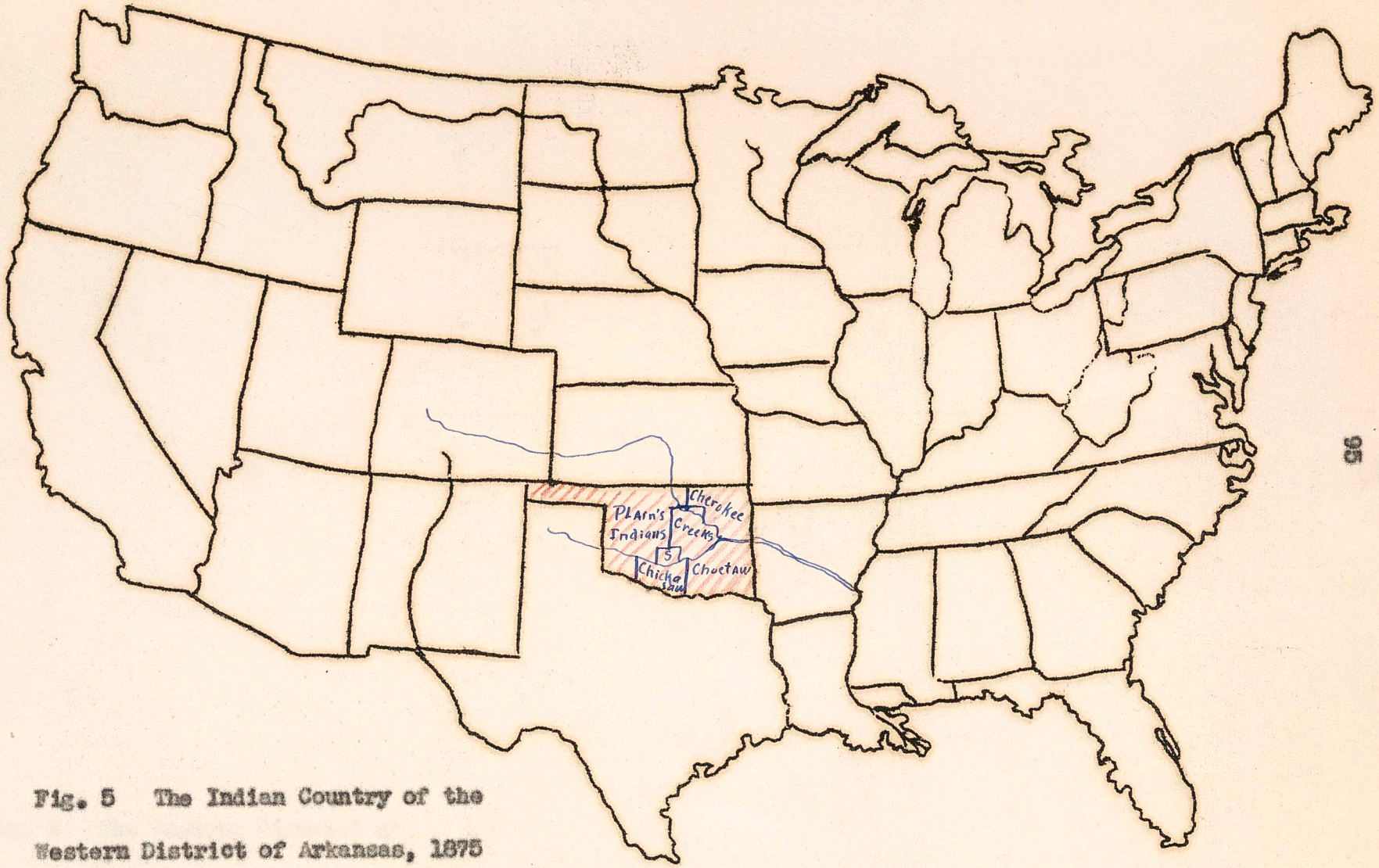


Fig. 5 The Indian Country of the Western District of Arkansas, 1875

s Seminole Reservation

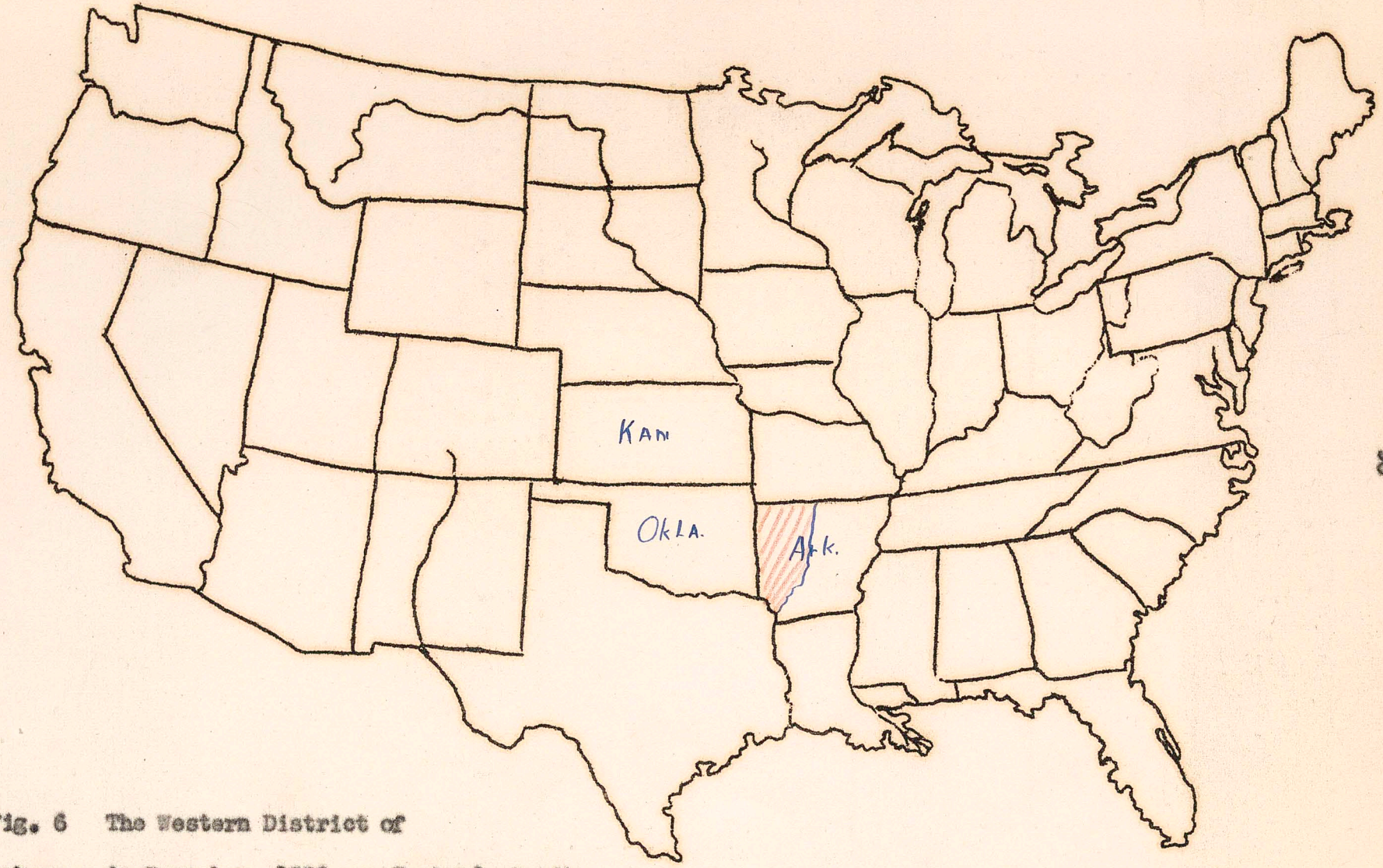


Fig. 6 The Western District of Arkansas in December, 1896, on Parker's Death