

## WESTERN DISTRICT OF ARKANSAS.

JUNE 1, 1874.—Recommitted to the Committee on Expenditures in the Department of Justice and ordered to be printed.

Mr. SENER, from the Committee on Expenditures in the Department of Justice, submitted the following

### REPORT:

[To accompany bill H. R. 3577.]

#### IN THE MATTER OF THE WESTERN DISTRICT OF ARKANSAS.

*The committee to whom was referred a resolution of the House dated February 16, 1874, in the words and figures following, to wit: "Resolved, That the Committee on Expenditures in the Department of Justice be directed to inquire into the expenses, disbursements, and general management of the western judicial district of Arkansas since its reorganization in 1871," respectfully report:*

That they have had the same under consideration, and, in the discharge of their duty, have been governed by the terms of said resolution, and by the one hundred and third rule of the House of Representatives, which prescribes more fully and accurately the duty of this committee, as well as of the committees of expenditures in the several departments of the Government, and they submit the following as the result of their investigation.

The evidence, statements, and exhibits herewith presented and made a part of this report occupy 316 pages, and show the amount received by the marshals, beginning 1st of July, 1870, and ending 1st of July, 1873, and a general statement of their disbursements for the same period. During this period William A. Britton, John N. Sarber, and Logan H. Roots were the marshals of said district, William A. Britton being in office at the commencement of the disbursements, 1st of July, 1870, was superseded by Logan H. Roots on or about July 1, 1871. Roots was confirmed as his successor March 31, 1872, and held the office until June 19, 1872, when he was suspended, and William A. Britton was designated marshal in his stead. His nomination being rejected February 3, 1873, he was succeeded by John N. Sarber, the present marshal, who was confirmed by the Senate March 18, 1873.

Your committee, in rendering their report, must necessarily deal with the general results of their investigation. The evidence sustaining their conclusions, and filed with this report, is referred to as justifying the conclusions which they reach. Within the period of the three years embraced in the resolution, the expenditures in this district, in the judgment of your committee, have been extraordinarily large; and, in response to the line of inquiry directed by the rule of the House, are not in all

cases, in their opinion, supported by sufficient vouchers establishing their justice and amount.

For the year ending June 30, 1871, the disbursements by William A. Britton and Logan H. Roots, who held, during that year, the office of marshal, were \$137,958.55; \$95,195.06 of which is alleged to have been disbursed by William A. Britton, and \$42,763.79 by Logan H. Roots, whose term, in that year, was a month and a few days. During the year ending June 30, 1872, under Logan H. Roots's administration, the expenditures of the western district of Arkansas reached the extraordinary sum of \$321,653.43; and for the year ending June 30, 1873, the amounts alleged to be actually disbursed were \$197,514.13, of which Logan H. Roots is alleged to have disbursed \$38,849.27; William A. Britton, \$138,665.04, and John N. Sarber, \$20,000; and notwithstanding these extraordinary disbursements within these three years, there have been further paid at the treasury \$24,834.60 on account of William A. Britton's administration during the fiscal year 1872-'73; and there are unpaid and unadjusted claims, growing out of William A. Britton's last administration which have been certified by the First Auditor, but not as yet allowed by the Comptroller, amounting to \$42,098, such claims being held by persons other than William A. Britton. In addition to these, there is a balance claimed by William A. Britton as still due to him, of \$18,965.04, so that the expenditures, if these last recited claims be ultimately allowed, will aggregate for the year ending June 30, 1873, the amount of \$264,447.01, and making a sum total of expenditures in the western district of Arkansas, through the marshals, for the three years from June 30, 1871, to June 30, 1873, of \$724,059.29.

The report of the Attorney-General, Mr. Akerman, for the year ending June 30, 1871, does not show the amount disbursed during that year to clerks, attorneys, and commissioners, and does not, as in the succeeding years, give the items by districts.

For the year ending 1872 there was paid for the western district of Arkansas, to district attorneys, \$3,915; to clerks, \$2,027 25; to commissioners, \$4,404.45; in all \$10,346.07.

For the year ending June 30, 1873, there was paid out to district attorneys, \$2,529.85; to clerks, amount not reported; to commissioners, \$2,367.08; showing an expense of about three-quarters of a million of dollars, in round numbers, in the period of three years, for the administration of justice in the western district of Arkansas.

In the year 1836 the State of Arkansas was admitted into the Union, and up to the year 1851 there was but one judicial district for the State.

In the year 1851 the State was divided into two judicial districts, and the western district was created, but with the same judge for both, and a separate district attorney and marshal for each district.

The western district of Arkansas is a peculiar district. It is the only district court of the United States with circuit court powers, and with common law power; its common law powers and jurisdiction being exclusively confined to all cases arising in what is known as the Indian country. Its district and circuit court powers and authority, in the State of Arkansas, not differing from other courts of the same jurisdiction elsewhere in the United States.

The western district of Arkansas was created by act of Congress approved March 3, 1851. (9 Stat. at L., 594.) The first section provides that the counties of Benton, Washington, Crawford, Scott, Polk, Franklin, Johnson, Madison, and Carroll, and all that part of the Indian country lying within the present judicial district of Arkansas, should constitute a new judicial district to be styled the "western dis-

trict of Arkansas," and the residue of said State shall be and remain a judicial district, to be styled "the eastern district of Arkansas," The second section provides that the judge of the district of Arkansas should hold two terms per year, at Van Buren, for the trial of all cases, civil and criminal, as provided for by the existing laws, &c. The third section confers circuit court powers. The fourth provides for district attorney, marshal, &c.

The full history of the Fort Smith (formerly the Van Buren) court, and its jurisdiction in connection with the act just quoted, is as follows: By section 24 of the act entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved June 30, 1833, (4 Stat at Large, p. 733,) all that part of the Indian country west of the Mississippi River, bounded on the north by the north line of lands assigned to the Osages, produced east to Missouri; on the west by the Mexican possessions; south by Red River; and east by the west lines of the Territory of Arkansas and State of Missouri, was annexed to the Territory of Arkansas; and by section 25 of the same act, the laws of the United States providing for the punishment of crimes committed within any place within the sole and exclusive jurisdiction of the United States, are declared to be in force in said Indian country, excepting cases of crimes committed by one Indian against the person or property of another Indian. And by sections 26 and 27 of the same act, violations of any of its provisions or regulations are made judicially cognizable in the district court having jurisdiction over said Territory.

By section 4 of the act for the admission of Arkansas into the Union, approved June 15, 1836, (5 Stat. at Large, p. 51,) the State is made one judicial district, and the district court is clothed with jurisdiction of all causes, except appeals and writs of error cognizable in a circuit court, and by an act to extend the jurisdiction of the district court of Arkansas, approved March 1, 1837, (5 Stat. at Large, p. 147,) that court is clothed with like jurisdiction and powers conferred on other district courts by the act approved March 30, 1802, to regulate trade and intercourse with the Indian tribes, and by subsequent acts of Congress, concerning crimes, offenses, and misdemeanors, committed against laws of the United States in any town, settlement, or territory belonging to any Indian tribe in amity with the United States.

Then comes the act of March 3, 1851, (9 Stat. at Large, p. 594,) the substance of which is heretofore sufficiently stated.

And by the act authorizing terms of the United States district court at Helena, Ark., and for other purposes, approved March 3, 1871, nineteen other counties are added to the western district; the courts are to be held at Fort Smith instead of Van Buren, and authority is conferred on the President to appoint a judge for the district; and the judge up to that time presiding over both districts is made judge for the eastern district only, and his jurisdiction restricted to the portion of the State not included in the western district.

Thus it will be seen that the jurisdiction of this court is a very large one. The country embraced in the district is extensive, and has a migratory population. No evidence has been produced to show any great lawlessness among the Indian tribes, who have courts of their own which have exclusive cognizance of all cases between Indian and Indian. During the period embraced within these expenditures a railroad has been built through the Indian Territory. A large number of laborers and contractors for a while constituted a transient population of that Territory. Besides, the cattle-drovers that pass yearly

through the Indian Territory are reported as committing at times excesses. Necessarily there was during this period more or less crime committed that undoubtedly added something to the expense of the court at Fort Smith, and time was consumed and expense incurred in the determination of the causes growing out of the construction of the line of railway through the Indian Territory. But your committee, in the seven weeks of examination which they have given to this matter, have been unable to discover any sufficient explanation of these very large expenditures. On the contrary, public rumor in the vicinity of one of the courts, to wit, the Fort Smith court, and statements of witnesses called to testify in this case, concur in the opinion that these expenditures were not only large and unauthorized, but in many cases were fraudulent and unjustifiable. Neither of the marshals has attempted any real explanation. Logan H. Roots has neither appeared in person nor by counsel. William A. Britton has appeared in person and by counsel, and has been permitted to cross-examine the witnesses who have been before the committee with great latitude. He himself first offered and then declined to be sworn, in order to make a statement in his own vindication. The allegations against the district, as presented in the testimony before the committee, sustain in every respect the results of the investigations made under the direction of the Department of Justice by Mr. L. B. Whitney, who was specially deputed to visit Fort Smith, and to ascertain all that he could touching the expenditures of public money in that district, the extraordinary character of which had aroused the suspicion of the accounting officers of the Treasury.

The report of Mr. Whitney, a most capable, and, as your committee believe, a most honest detective, is furnished in connection with the evidence accompanying this report, and made a part of the same. This report, sustained as it is by the witnesses who have been called before the committee, shows a lamentable state of morals among the court officials in the western district of Arkansas.

A large and unauthorized number of deputy marshals, a like large and unauthorized use of *posse comitatus*, under the law of 1858, which allowed not exceeding three in each case; and not only a large and unauthorized number of deputy marshals and *posse comitatus*, but by the testimony presented, vouchers made upon accounts-current, and paid by the Treasury for fraudulent *posse comitatus* and fraudulent deputy marshals, men who never rendered service, and yet in a large number of cases charged for service that was never rendered, and for more mileage, in many cases, than was traveled.

Notwithstanding the large amounts of money furnished from time to time upon the requisition of these marshals' certificates in cases numbering more than thirteen hundred were issued for the payment of witnesses, jurors, jail-guards, deputy marshals' fees, and *posse comitatus* service, and for other services rendered under or by direction of the marshals. These certificates, thus improperly issued by the marshals, were sold upon town, hawked about the streets, and at one time sold as low as ten cents on the dollar, and in many instances at one-third their face value; when, at the same time, the Treasury Department, upon the requisition of the marshal, approved by the Attorney-General, was furnishing money for court expenses in this district.

It is shown by the testimony, and not denied, that writs were antedated in order to cover more time than was necessary in the arrest of the parties. Parties were arrested in order to make fees, and a ring existed in Fort Smith, consisting of Scott, postmaster, Lanagan and



Baer, who did a wholesale business in the purchase of these certificates of the marshal. Not only so, but a national bank was organized in Fort Smith during the incumbency of Logan H. Roots, with a capital of \$50,000, three-fifths of which was owned by him, and of which Baer, one of them, was president; and this bank, in the language of one of the witnesses, purchased a large amount and made a good deal of money out of these vouchers, issued, no doubt, some times fraudulently, but in many instances for the just and necessary attendance of jurors and witnesses and other proper expenses of the district. [See pages 32, 33, 34, 87, 121, 177, and 223, of the testimony.] In one instance a witness testifies that he bought the certificate honestly due a negro witness for 25 cents on the dollar, and this witness was a trusted deputy marshal. Deputy marshals were employed whose characters, it turns out on the investigation, were notoriously bad, and were well known to be so to their employers before they were appointed.

Such, in brief, is an outline of the manner in which the business of the marshal's department, as touching the expenditure of the public funds, has been conducted in this district—in the language of the detective, sustained by witnesses, “a stench in the nostrils of the community.”

So much, at present, for the marshal's department.

Over this district there presided for two years the judge appointed in 1871, William Story. It is not the province of this committee to speak as to his impeachment, nor is it their purpose to touch that question. It is enough for them to say this: that the records of his court show that parties have been bailed after conviction for capital offenses, and while awaiting sentence, and while motions were pending for new trials which were never acted on; that, notwithstanding the requirement of law that he shall examine and approve the accounts-current of the marshal before allowing the same, he has signed, at least in one instance, a blank account-current, which was filled up by the marshal, for over \$20,000, the same being allowed and paid at the Treasury. It is true that the witness who deposes to that fact further states that no injury was done the Government. But this is a witness (one Donnolly, chief clerk under both marshals, Britton and Roots) who stands before the committee testifying to the fair fame and character of this district, as against every other witness who has testified before it; a witness who, by his own statements, denied one day what he admitted the next; a witness who, in the judgment of your committee, left the witness-stand without stating what he really knew in the premises; a witness whose interest and whose clear purpose it was to conceal and not to reveal. So much for the judge of the western district. His statement is also given; the opportunity was afforded him to appear and answer; he was not coerced, but was permitted voluntarily to explain; his explanation is lame, disconnected, and, in the judgment of your committee, unsatisfactory, dealing, as it does, in mere generalities.

Some of the commissioners of that department are not blameless. In many cases warrants were issued for the apprehension of parties, who, upon their arrival at Fort Smith, were either released on “straw-bail” or discharged altogether.

But to the actual, absolute, practical history of what has been done we refer now to the statements filed by the clerk of that district:

In 1871 the number of days' session of the court at Fort Smith for the whole year was 81; in 1872, 137; and in 1873, 100. The judge, in his statement, admits that the business is falling off. In that time there

was allowed to grand jurors about \$15,000; to petit jurors about \$33,000; and to witnesses, the number being about 3,350, there was allowed about \$118,000, the clerk receiving from the United States in that time about \$7,000. For the May term of 1871 there were 12 civil cases continued from last term, and 36 civil cases commenced; total number of civil cases, 48; disposed of, 42. During the November term, 1871, there were 16 civil cases continued; civil cases commenced, 31; total number of civil cases, 47; disposed of, 30. For the May term, 1872, there were 17 civil cases continued; new cases, 41; total number, 58; disposed of, 29. November term: Continued civil cases, 29; new cases, 60; total, 89; disposed of, 51. May term, 1873: Civil cases left over, 38; new cases, 42; total, 80; disposed of, 36. November term, 1873: Civil cases, 44; new cases, 63; in all, 107; disposed of, 26; undisposed of, 81. May term, 1871: Criminal cases from last term, 27; number of persons indicted, 84; total number, 111; convicted, 29; acquitted, 23; not arrested, 12; contempt, 7; 1 contempt continued from last term.

November term 1871:

Criminal cases from last term.....	28
Number of persons indicted.....	238

Total.....	266
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Convicted.....	51
Acquitted.....	45
Recognizances forfeited.....	9
Nolle pros.....	17
Continued.....	77
Abated.....	1
Not arrested.....	38
Contempt.....	18

May term, 1872:

Criminal, from last term.....	76
Number of persons indicted.....	174

Total.....	251
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Convicted.....	45
Acquitted.....	31
Recognizances forfeited.....	48
Nolle pros.....	50
Continued.....	46
Not arrested.....	26
Contempt.....	18

November term, 1872:

Cases from last term.....	46
Indicted.....	206

Total.....	252
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Convicted.....	61
Acquitted.....	21
Recognizances forfeited.....	64
Nolle pros.....	46
Continued.....	40

Abated.....	1
Not arrested.....	19
May term, 1873:	
Criminal cases from last term.....	40
Indicted.....	84
Total.....	<u>124</u>
Convicted.....	35
Acquitted.....	7
Recognizances forfeited.....	16
Nolle pros.....	30
November term, 1873:	
Criminal cases from last term....	32
Indicted..... the same.....	69
Total.....	<u>101</u>
Convicted.....	23
Acquitted.....	10
Recognizances forfeited.....	10
Nolle pros.....	20
Continued.....	33
Contempt.....	15

This is the exhibit of the Fort Smith business; the whole amount of expenditures, as certified by the records of the court, being about \$175,000 of the \$750,000 actually expended and claimed to be due and unpaid on account of expenditures; the balance, with the exception of the allowances for the Helena court, as shown by its records, amounting to about \$36,000, being paid out upon vouchers made by the marshal's accounts-current, which accounts-current are made up of vouchers on printed forms, and approved by the judge out of court, no minute being required, under existing laws, on the records of the court as to the same.

This court at Helena is one of the courts that was established with the creation of this new judge in 1871. In the September term, 1871, the court sat 15 days; cases disposed of, 15; it had 139 witnesses; and paid to grand-jurors \$2,076.50, and to petit-jurors \$2,911.60. At the March term, 1872, there were 17 days' session and 35 cases disposed of, and there were 231 witnesses. At the September term, 1872, there were 9 days' session and 46 cases. At the March term, 1873, there was a day's session and 18 cases. There has been no term since, and there are only 16 cases on the docket. For this, as before stated, there has been expended or allowed, as the records of the court show, \$36,000, making the allowances according to the records of the court, about \$200,000 of the \$743,000, and showing about \$543,000 paid out upon the marshal's accounts-current alone, as before explained. In addition to this large expenditure, there is now due to Wm. A. Britton, as he alleges, \$18,000, and to various other parties, claiming through Wm. A. Britton's administration, some \$42,000; that is to say, there has actually and absolutely been paid out of the Treasury about \$683,000 in three years, in the western district of Arkansas, for alleged expenditures upon vouchers and accounts-current returned and approved by the Treasury, and there is alleged to be still due some \$60,000.

This is, in brief, the condition of the western district of Arkansas, as found by your committee in the investigation which they have made. The abuses which mark the judicial expenditures of that district seem to your committee to be these: great laxity in the making up and in the allowance of marshal's accounts and actual fraud in the matter of *posse comitatus* and deputy marshal's accounts. The remedies which we would suggest for such evils are these: The *posse comitatus* law for that Territory should be modified so as to allow only one posse in each case, and only on the direct order of the judge of the district ought a larger number hereafter to be allowed. And if it is argued that these posses have to be hurriedly employed, the answer is that it is but one day's travel from Little Rock to Fort Smith, so that a deputy marshal at the latter place, upon an urgent case properly made out, can, upon short notice, obtain the sanction of the judge for any assistance required.

In future, not only in the western district of Arkansas, but in all other judicial districts of the United States, every item of judicial expenditure should be allowed at the Treasury only upon the certificate of the court, with the seal of the court attached by the clerk that the items have been allowed in open court, are proper and necessary, and are certified to the Treasury for payment. Nor should this be done without the presence and examination under oath in open court of the parties making the claim for service, the district attorney or his sworn assistant being present and his presence noted upon the record.

But, in the judgment of your committee, the great measure of reform needed for the western district of Arkansas is the abolition of the district itself, and the annexation of the territory comprising it to the eastern district, so that hereafter there shall only be one district and one judge for the territory now embraced in both districts. It is not within the province of your committee, nor have they the disposition, to criticise the action of the Congress that created a separate judge for each district; but an inspection of the statements rendered under the seals of both courts at Fort Smith and at Helena, as to the days of session and amount of business done by each in connection with the statement found on page 315, in regard to the number of days of session and the amount of business done in the court at Little Rock, satisfy your committee that two districts in the State of Arkansas are unnecessary, and, in the judgment of your committee, one or the other should be abolished. The district court in the eastern district has only one place for holding its terms, and holds but two terms a year; and while the statement herewith appended shows two hundred and thirty-three days of session, it also shows that the court was held from day to day with slight expense, merely for the accommodation of the resident bar, who took their own time to look after their cases, and this is shown by the fact that in the two hundred and thirty-three days only three hundred and forty-nine cases were disposed of, and that there were only thirty-nine days within the fiscal year, from June, 1872, to June, 1873, in which jurors were in attendance; whilst in the western district of Arkansas there were one hundred and one days of session, all told, in 1873, and there were not over three hundred cases disposed of; thus showing that in the two districts not over seven hundred cases were disposed of in all during the year, or an average of two a day of every character. Contrast this with the fact that a judge of one of the districts adjoining the capital has made an equal number of orders and decided on an equal number of cases in one hundred days. In this opinion of your committee that it would be well to consolidate these two districts, they are sustained by the statements herewith filed of one of the representatives

in Congress from Arkansas, Hon. Mr. Wilshire, and of a number of citizens. Nor does the judge of the western district, who has appeared and made his statement before your committee as to the general management of his district, say aught that changes in any manner the judgment of your committee. It is proper to say that he was heard patiently and attentively for nearly three hours, and that his statement, *in extenso*, is published by your committee as a part of the results of this investigation. Your committee are further strengthened in this view of the premises by the fact that for twenty years, from 1851 to 1871, one judge did the whole work of both the eastern and the western districts of Arkansas, the same powers of jurisdiction being conferred upon the court, and nearly the same territory being annexed to it, and the same character of cases being brought before it for hearing and determination. If in the year 1872, or during the building of the Kansas and Texas Pacific Railroad, there was an increase of business in the western district, it is not now asserted or alleged that any such necessity exists.

The only question which now remains to be considered, if the question of the expediency of the abolition of this judicial district and court be admitted, and we think it cannot be successfully denied, is the power of Congress to abolish a court inferior to the Supreme court. To sustain the right of Congress so to legislate, your committee will quote as a precedent the action of the Congress in 1802, which repealed, upon the recommendation of President Jefferson, the act passed in 1801, in the last hours of the administration of the elder Adams, which created sixteen new circuit judges. It is true this repeal was violently contested and its constitutionality denied; but it is likewise true that the repeal went into effect, the judges went out of office, and, after the repeal, ceased to draw salary. Such legislation, coming from the men who either helped to make the Constitution or else lived under the inspiration that brought that instrument into existence, will surely be considered sufficient authority for the action which your committee now recommend.

All of the large expenditures in Arkansas have grown up since the creation of the western district. Nearly all of this vast sum of three-quarters of a million of dollars, for which such trifling results in the way of court business are presented, have been expended in the western district under the present judge. Your committee have a statement before them of the expenditure for the courts in previous years. In the year 1858 it was only \$25,000, in 1859 only \$19,000, in 1860 only \$16,000. Then came the gap of war. In 1866 it was only \$15,000, in 1867 only \$24,000, and in 1868 \$34,000. The State was divided in 1851. In 1850 the expenses of both judicial districts, with all the power concentrated in one court that is now conferred upon the two, were only \$12,000, and in the year preceding this division the expenses, it is true, mounted up to \$108,000.

Your committee believe that with the abolition of the district, and such legislation as they recommend for the proper examination, recordation and transmission of accounts in that and other judicial districts of the United States, every door to fraud will be closed, and the administration of justice can be more successfully maintained in the territory now comprising the western district than at present. They therefore unhesitatingly recommend the abolition of the present western district, the annexation of its territory and the transfer of its business to the eastern district, and that the whole district, as thus reformed, shall hereafter be known and called the district of Arkansas, with one judge,



district attorney, and marshal for that district, instead of the duplicates of each of these officials, as now existing by law. Your committee also believe that one other duty devolves upon them. The statements filed and the exhibits show that \$42,000 of claims against the United States from parties who claim under or through Britton still remain undecided. They also show a claim of \$18,000 alleged to be due to Britton himself, and the facts, as developed in the case, show that the vouchers of Logan H. Roots are at least tainted with grave suspicions of fraud, if indeed they are not actually fraudulent, to a very large amount of the expenditures during his administration.

It is not the purpose of a legislative committee to settle these questions. Their investigations can only be in the nature of a primary inquest, but they conceive their duty not discharged if they fail to make some recommendations in the premises.

They, therefore, recommend that, as touching the expenditures of these marshals, the whole question be referred to the Attorney-General, with directions to employ competent counsel; and that he be afforded all facilities for making full and thorough judicial investigation into the character of these claims that are due, and also into the character of the allowances that have been paid out of the Treasury, and that no part of said claims be paid until a report is made to this House, certifying in his judgment, what portions of said claims should be allowed.

As touching the administration of John N. Sarber, which has begun quite recently, your committee have not taken much testimony, but enough is disclosed to cast upon him a suspicion, which your committee think it the duty of the Attorney-General fully to investigate, with all the facilities at his command.

Nor would this report be complete if your committee failed to say that the Comptroller's Office has furnished every proper facility for the investigation of these matters, and that before payment of the claims which have been allowed by the Comptroller, and upon which suspicions of fraud rested, that officer took all proper precaution within his power to protect the Treasury from imposition and fraud.

There is one fact in the case which is unexplained, and which your committee think should be noted. It is this: the officer in the First Auditor's Office, Mr. L. S. B. Miller, whose duty it is to pass in judgment upon the claims of the western district of Arkansas, had a son in Britton's office as a clerk at a time that important claims were audited and allowed; a son who left Washington and went to the western district of Arkansas, as an employé of Britton's, after slight acquaintance, and who was employed without any special reasons, so far as your committee is advised, as to his fitness or his competency, at an apparently unreasonably large salary. This committee feel no disposition to pass a harsh or unnecessary criticism, but this is a circumstance that creates grave suspicions, which the examination of Mr. Miller failed to remove.

NOTE.—On pages 63 and 64 the witness, W. H. Nettle, refers to two packages of vouchers brought from the Treasury Department, one containing the accounts which had been allowed at the Treasury, and the other containing those which had been disallowed or suspended for explanation by the marshal, for reasons set forth in Exhibit O.

INVESTIGATION OF EXPENSES, DISBURSEMENTS, AND GENERAL  
MANAGEMENT OF THE WESTERN DISTRICT OF ARKANSAS,  
UNDER RESOLUTIONS HOUSE OF REPRESENTATIVES, FEB-  
RUARY 16 AND MARCH 2, 1874.

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COMMITTEE ON EXPENDITURES  
IN THE DEPARTMENT OF JUSTICE,  
*Washington, D. C., March 18, 1874.*

The committee met at 11 a. m. Present, Mr. Sener, chairman, Mr. Durham, and Mr. Speer.

William A. Britton, late marshal of the western district of Arkansas, appeared in person and by his counsel, James S. Robinson, esq., and asked that he might be permitted to attend at this and all such meetings of this committee, said William A. Britton claiming that he was to be affected by the results of the investigation; and the committee assented to his request.

STATEMENT OF HON. WILLIAM J. HYNES.

Hon. W. J. Hynes, Representative at large from the State of Arkansas, mover of the resolution under which the committee is proceeding, appeared before the committee in response to their request.

The chairman informed Mr. Hynes that the committee was now ready to proceed with the investigation ordered by the House of Representatives, on a resolution offered by Mr. Hynes on the 16th of February last, directing the committee to inquire into the expenses, disbursements, and general management of the western district of Arkansas, since the organization of the district in 1871, and requested Mr. Hynes to give the committee such suggestions and such information as he could give touching the investigation.

Mr. HYNES. I introduced the resolution after having seen charges against the management of the western district of Arkansas as to extravagance in expenditures. I had seen statements of what seemed to me and seemed to the country as extraordinary expenditures in the marshal's office of that district. I had sometimes noticed in the New York papers, and in some of the State papers of Arkansas, specific charges of fraud and corruption and collusion, and I desired to ascertain, for the credit of the State, and for the benefit of the Government, and in justice to the Treasury, as well as in justice to all the parties whose names were mentioned, whether those charges were true, or how far they were true. I have no personal knowledge of the facts at all; I know nothing about them. I live some two hundred miles from Fort Smith, where the court sits, and I am not personally cognizant of any of the facts, if they are facts. I cannot state anything here that would be evidence, or that would enlighten the committee further than has been published in the newspapers. I know that under a legitimate administration of the office the expenses there would be extraordinary, owing to the extraordinary jurisdiction of the court, running, as it does, from that of a police court up to that of a circuit court of the United

States. I wanted to ascertain, for my own information and for the information of the country, whether extraordinary expenses were due to the extent of jurisdiction, or were due to mismanagement or corruption; and if they were due to mismanagement or corruption I wanted a remedy applied. If they are due to the extent of jurisdiction of the court and the wide scope of cases which it has cognizance of, I wanted to ascertain that fact, and whether it was possible, by any legislation, to correct it. In fact I wanted to find out what the trouble was, and what was the proper cure.

The CHAIRMAN. You spoke of allegations of collusion between parties as matters of public repute. Who are the parties to whom you allude?

Mr. HYNES. It is some time since I read the statement on the subject, and I should not like to venture upon giving any names without refreshing my memory from the newspaper articles, even if they were worth putting on record. I understood that what was published in the New York papers was contained in the report of Mr. Whitney, special agent of the Department of Justice, who was sent down there to investigate.

The CHAIRMAN. I thought you meant by public repute the sentiment of the people of Arkansas. You do not allude to that?

Mr. HYNES. No, sir. I alluded only to what I have seen in the newspapers.

The CHAIRMAN. Neighborhood reputation would be a thing that this committee could take cognizance of.

Mr. HYNES. I do not reside in the neighborhood, and do not like to venture upon an opinion.

The CHAIRMAN. Who is the judge of that district?

Mr. HYNES. William Story.

The CHAIRMAN. Who is the present marshal of that district?

Mr. HYNES. John N. Sarber.

The CHAIRMAN. Who was his predecessor?

Mr. HYNES. William A. Britton, I believe.

The CHAIRMAN. Who is the present clerk?

Mr. HYNES. James O. Churchill.

The CHAIRMAN. Where does he reside?

Mr. HYNES. At Fort Smith, I believe.

The CHAIRMAN. Has he been clerk ever since 1870?

Mr. HYNES. Yes. Mr. Britton was only marshal for a short time during the period which my resolution covers. Logan H. Roots was the marshal from the spring of 1871 until the summer of 1872.

The CHAIRMAN. Then there were three marshals within the period which your resolution covers—Mr. Roots, Mr. Britton, and Mr. Sarber?

Mr. HYNES. Yes.

The CHAIRMAN. Were they all?

Mr. HYNES. They are all.

The CHAIRMAN. And the clerk is the only one during that time?

Mr. HYNES. The present clerk is the only incumbent of that office during that time.

Mr. DURHAM. Are all the courts for that district held at Fort Smith?

Mr. HYNES. No, sir; there is a court held at Helena, on the Mississippi.

Mr. DURHAM. Are there but these two points where a court is held?

Mr. HYNES. Only these two points.

Mr. DURHAM. Have you any idea of the length of time it would require to do the business of that court?

Mr. HYNES. I am not familiar with the extent of the docket there.

I never have practiced in that court. I should, therefore, only state it inferentially; I should say it has an extraordinary jurisdiction and that it would take a good deal of time and attention. I should judge that it was the most extensive docket in the United States.

The CHAIRMAN. Have you any names of witnesses to suggest?

Mr. HYNES. No, sir; I could not state any witnesses who know any particular facts.

The CHAIRMAN. Then you cannot aid this committee by making any suggestions as to witnesses to be examined?

Mr. HYNES. I might suggest a long list of persons who might possibly know something, but I could not suggest anybody who I could say knows anything.

The CHAIRMAN. You cannot suggest the names of any witnesses who would come with any facts which they could prove?

Mr. HYNES. No, sir; I cannot.

The CHAIRMAN. Who is the immediate Representative in Congress of the Fort Smith district?

Mr. HYNES. I do not know anybody who more immediately represents it than I do. The judicial district runs through both the first and third congressional districts. Mr. Hodges represents the first congressional district, in which Helena is situated, and Mr. Wilshire represents the third congressional district, in which Fort Smith is situated.

By Mr. ROBINSON, counsel for Mr. Britton:

Question. State to the committee the relative position of Helena and Fort Smith to each other.—Answer. Helena is on the Mississippi, in the extreme eastern territory of the State. Fort Smith is on the line of the Indian Territory, on the extreme western boundary of the State.

Q. State as nearly as you can what proportion of the State of Arkansas is comprised within the western judicial district.—A. As a rough statement, I will say two-thirds.

Q. State whether you are conversant with the extent of the western district of Arkansas or the Indian country.—A. I understand it embraces all the Indian Territory.

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WASHINGTON, D. C., *March 21, 1874.*

Present: The chairman, and Messrs. Durham, Speer, and Sheats.

JAMES AULD sworn and examined.

By the CHAIRMAN:

Question. Please state your name, age, and occupation.—Answer. James Auld; age, 47; clerk in the office of the First Comptroller of the Treasury.

Q. How long have you been a clerk in that office?—A. Since 1857.

Q. How long have you had control of the disbursements of the western district of Arkansas?—A. I have had the general supervision of all marshals' accounts since 1861.

Q. These papers which you present are a correct general statement of the expenses and disbursements, as shown by the books of your department for those three years?—A. Yes, sir; as nearly correct as we could make them.

Q. Take them up, one by one.—A. The first, which is marked A, (see appendix,) is a general statement of the accounts of the marshal for the western district of Arkansas for the fiscal year ending June 30, 1871,



beginning July 1, 1870, or about that time. We cannot make these exact, for the reason that before the close of this year the law did not require an annual settlement of marshals' accounts, and this begins with the balance on hand from the previous fiscal year.

Q. Will you be kind enough to identify the general amounts in this statement? State what the balance was at the beginning of the year.—A. \$7,659.65.

Q. State the amount of money advanced to the marshal during the year.—A. There was advanced to William A. Britton \$81,495.82. He was marshal when the year began. And there was advanced to his successor, Logan H. Roots, \$40,763.79. The expenditures of William A. Britton were \$95,195.06. You understand that in giving this amount advanced to Mr. Britton I did not put in this balance on hand of \$7,659.65. I mentioned that previously as coming to him from the unexpended balance. That was the balance in his hands. Then there was a balance due him at the close of the year of \$6,039.59. That was subsequently paid, but this does not show it.

Q. You state that that amount that appears to have been due him as of that year has since been settled?—A. Yes; it has. I do not find that fact stated here, but I have no doubt that it was subsequently paid. Now, the compensation of Marshal Britton and his deputies and his disbursements during that year were \$95,195.06. The compensation of Marshal Roots and his deputies and his disbursements amounted to \$42,763.79.

Q. Making a total disbursement for that year of what?—A. One hundred and thirty-seven thousand nine hundred and fifty-eight dollars and eighty-five cents. The next statement, marked B, (see appendix,) is a general statement of the accounts of the marshal of the western district of Arkansas for the fiscal year ending June 30, 1872. There was advanced and paid to Logan H. Roots \$317,922.25. The compensation of marshal and deputies and the disbursements amounted to \$321,653.43, leaving a balance due the marshal of \$3,731.18.

Q. For that entire fiscal year Logan H. Roots was the marshal?—A. Yes, sir. In making up the statement of the marshal's official emoluments, which are limited to \$6,000 a year for his personal compensation, there was found to be a surplus of \$3,731.18, and the balance of this account has been retained in the Treasury to pay that surplus.

Q. Has there been any other settlement than this?—A. It has not been settled for the reason that we had no money out of which it could be paid.

Q. So that it really has been taken out of the Treasury and not put back? It has not been covered into the Treasury, as it ought to have been by the marshal. As I understand, Root had a surplus of \$3,731.18 over and above his emoluments, which he ought to have paid into the Treasury?—A. Not until he got it. He had not got it. On the settlement of this account, if we had paid him that, then he would have had; but as it stands, it stands really as if there was no surplus. The next is statement marked C, (see appendix,) a general statement of the accounts of the marshal of the western district of Arkansas for the fiscal year ending June 30, 1873. There was advanced to Logan H. Roots, for serving process that was in his hands when he went out of office—serving it after the 1st of July, although it was issued prior to the time when he was superseded—there was paid to him for such service \$38,849.27, and that was just the amount of his compensation and disbursements. William A. Britton was sworn into office on the 5th of July, 1872.

By Mr. SPEER :

Q. That was his second appointment, was it not?—A. Yes, sir; the second appointment.

Q. Can you give the date of his first appointment, or when he was removed?

The CHAIRMAN. That is practically shown in this statement, I suppose.

A. Logan H. Roots was appointed April 13, 1871. That was the close of Mr. Britton's first term. We have not got the date of Mr. Britton's first appointment.

By the CHAIRMAN :

Q. He was in office at the beginning of this statement of 1870?—A. Yes, sir; he was appointed in the spring of 1869. There was advanced to William A. Britton \$119,700. The compensation of marshals and deputies, and the disbursements, as shown by the accounts rendered to the Department but not yet all adjusted, amount to \$138,665.14, and there are other accounts yet to come, of which we have no positive information.

Q. What is the amount furnished the marshal as of that year?—A. I will come to that in one moment. The next marshal was John N. Sarber. His oath of office was dated May 6, 1873. There was \$20,000 advanced to Sarber, and his compensation and disbursements amounted to \$17,973.26.

Q. That is for a little over thirty days?—A. No, sir; it was twenty-five days in May and the whole of June, but you know these expenses are not confined to days. They never sent a complete account. That is the difficulty we have in making up these statements; always bills come in afterward. The advances and payments to all the marshals for that year amount to \$178,549.27. There have been payments to persons holding claims against the United States which were payable by Marshal Britton, but were not paid by him, to the amount of \$24,834.60. There are now claims of like description on file in the Treasury Department, but not yet paid, to the amount of \$42,098.

Q. Who are those claims filed by; Marshal Britton?—A. They have got into the hands of other persons.

Q. But they are claims growing out of his administration?—A. Yes, sir; jurors' fees, witnesses' fees, employment of guards, and the expense of keeping prisoners, and the expense of convicts in the penitentiary.

Q. Any part of it connected with Marshal Sarber's administration?—A. No; nothing connected with him.

Q. All connected with Marshal Britton's administration—all the unadjusted claims?—A. Yes, sir; and this (referring to statement) is the balance that has been found due him by the First Auditor, but it has not yet been certified by the Comptroller. The balance due him is \$18,965.14, according to the Auditor's report.

Q. What is the explanation of the difference as certified by the Auditor between \$18,000 and the \$42,000 that are claimed as growing out of his administration? You state here that there are \$42,000 of unadjusted claims now before the Department for consideration.—A. Yes, sir; and if Marshal Britton had paid those claims his balance would be that much greater.

Q. There would then be due him \$42,000?—A. There would be \$42,000 in addition to the \$18,000.

Q. But he has not paid those claims?—A. No, sir.

Q. Then, as a question of administration by the marshals, is it not

always the custom of the marshals—is it not their duty to pay all claims against the United States growing out of affairs in their Department?—A. Yes, sir; it is their duty.

Q. Is it usual for marshals to fail to pay, and for claims to come up in any other way?—A. It is not usual when they have the means, but the account shows that Marshal Britton had not money enough.

Q. What is the reason that he did not have money enough? Does not the United States always have money enough in the judiciary fund to pay its expenses?—A. Well, there have been deficiencies, but that does not appear to be the only reason.

Q. We want the reasons as explicitly as you can state them.—A. When the marshal makes a requisition for money, he addresses it to the Attorney-General, and he refers it to the Treasury Department to know the condition of the marshal's accounts, and requests the Comptroller's views as to whether the advance should be made or not. The Comptroller returns it with his opinion, and the Attorney-General directs the advance, or so much of it as he sees proper.

Q. Then, as to all the judicial districts of the United States it is the custom, as I understand you, for the marshals to make application to the Attorney-General for so much money, to be disbursed in their respective departments?—A. Yes, sir.

Q. That application is sent to the Comptroller for his opinion, and he certifies as to whether, in his judgment, the money should be furnished or not?—A. Yes, sir.

Q. And then, upon the return of the requisition, approved by the Attorney-General, so much money is granted to him as the Attorney-General approves for? Am I correct?—A. Yes, sir.

Q. Then, why has it been at any time in the history of these accounts that you are now speaking of, as far as your knowledge goes, that either the Comptroller has failed to certify to the amount that the marshal has required, or that the Attorney-General has failed to approve that recommendation of the Comptroller?—A. It would only be a matter of opinion on my part to say why the Attorney-General has not made the advance.

Q. As far as you know of the Comptroller's action in the premises, has the Comptroller made all the requisitions that this marshal has sent for?—A. I could not answer that without seeing the records.

Q. Do you know that he has failed to approve of any requisitions?—A. In some instances he has; I don't know as to any of the requisitions put in during this period.

Q. Do you know the reason of his failure to approve?—A. Generally it was because the accounts of the marshal show a balance in his hands at the time the requisition was made to be so large that his bond would not admit of it. The bond is for \$20,000.

Q. As to the western district of Arkansas, have there been any other reasons than that why the Attorney-General has failed to approve the requisition of the marshal?—A. I cannot answer that without seeing the book.

Q. Who can answer that?—A. The Comptroller can answer it; or the books of his office will show, or the Attorney-General.

Q. I want to know now, who can show, so far as the Treasury is concerned?—A. The Comptroller of the Treasury, Mr. Tayler.

Q. And you have no knowledge?—A. I have no certain knowledge.

Q. Was it because any marshal's accounts that have been rendered there have been deemed improper, and because those accounts have been held up, that money was not furnished?—A. I don't think that was the reason given.

Q. You think that was not the reason?—A. No, sir.

Q. And yet you say that here is \$18,000 balance due this marshal, and \$42,000 claims made, making \$60,000?—A. And \$24,000 that have been presented outside of that.

Q. And \$24,000 more presented outside of that!—A. Yes, sir; but you will understand, Mr. Chairman—

Q. Do you mean to say that there is \$24,000 in addition to \$18,000, which makes \$42,000, or do you mean to say there is \$42,000, and \$18,000, and \$24,000?—A. \$24,000 paid to holders of certified vouchers, \$42,000 now claimed by them, and \$18,000 due the marshal by the Auditor's report.

Q. You mean to say that there is now unsettled accounts against the western district of Arkansas of \$24,000?—A. No; those have been paid outside of the marshal's account. The advance to all the marshals amounted to \$178,000.

By Mr. SPEER:

Q. For what year?—A. For the year ending June 30, 1873. There were paid to other persons \$24,834.64. That was for jurors' fees, witnesses' fees, expenses of convicts and prisoners.

Q. Were they not paid by the marshal?—A. They were payable by the marshal, but he did not pay them.

By Mr. SHEATS:

Q. Would not the marshal have to approve those accounts before they could be paid here?—A. Not necessarily.

By Mr. DURHAM:

Q. Were not his certificates out for them?—A. Yes, sir; the certificates and the vouchers. The vouchers were generally approved by the marshal.

By the CHAIRMAN:

Q. What do you mean by "generally approved by the marshal?"—A. Where the marshal has not paid a claim, and it cannot be paid without knowing that he has authorized the service, he gives a certificate that the service was rendered, and that the amount is due and has not been paid by him.

Q. Is that the only certificate that is necessary for that character of claims?—A. That is about all that is necessary in claims for services of guards and keeping prisoners.

Q. Do you mean to say that the approval of the judge is not necessary?—A. We have not held it to be altogether necessary as to those accounts—as to some of those, the penitentiary bill, for instance, and keeping prisoners in the jail. Where they come in the marshal's account they must be approved, but I do not know that it has been ever decided that they could not be paid without the approval of the judge.

Q. But you have the certificate of the marshal?—A. Yes, sir.

Q. Do you have any approval or certificate of the clerk?—A. We have as to jurors' fees and the fees of witnesses.

Q. Was any part of this \$24,000 certified by the judge or by the clerk?—A. There was \$10,531.95 paid upon the orders of the court to jurors, and \$3,770.70 paid to witnesses upon the order of the court or of the commissioner before whom they testified. As to the expenses of convicts and prisoners, for which \$10,531.95 was paid, I cannot say how they were certified.

Q. The vouchers would, of course, show how they were certified?—  
A. Yes, sir.

Q. Then the amount that is outstanding now is the \$18,000 which Marshal Britton has expended, and which he has not yet been re-imbursed for from the Treasury, and the \$42,000 claimed by other parties to be due who have their claims filed before the proper officers?—A. Yes, sir.

Q. Making a balance due by the Department of something over \$60,000, which has not been paid?—A. Something over \$60,000, as the papers show.

By Mr. SPEER:

Q. What does your office require in order to accept the marshal's vouchers?—A. We require the affidavit that the law prescribes, of the marshal himself, that the services have been actually and necessarily performed, and that the disbursements have all been made in good faith; and, in addition to that, the accounts have to be certified by the district judge, and as to the jurors and witnesses, as I stated before, the order of the court is required.

Q. Before whom is the affidavit of the marshal made for the correctness of the vouchers?—A. It may be made before any officer competent to administer an oath in the district.

Q. In the western district of Arkansas the affidavits of the marshal were made before the judge?—A. I have got one of his accounts here; I don't know that that was always the case. It was made before the clerk in that instance. [Hands paper to Mr. Speer.]

Q. Are these vouchers returned, receipts for the payment of money to witnesses and jurors, or are they simply a statement of the amounts paid?—A. They give a receipt for every cent that is paid.

Q. Who gives that?—A. The witness and the juror. Their receipts are taken on a roll generally—a pay-roll, and we have a certified copy of the order of the court authorizing the payment of so much money to these different persons. We compare that with the receipted rolls.

Q. If the marshal and the judge were acting in concert it would be an easy matter for them to cheat the Government, and it would be beyond your power to know it?—A. Certainly.

Q. The Department of Justice has been in funds since its organization in 1871; there have been appropriations each year for more than its expenses, have there not?—A. Not at all times. There is a large deficiency for the year ending June 30, 1872, and the year ending June 30, 1873. There is a deficiency for this last year of nearly \$300,000.

Q. How did that arise?—A. By the heavy expenses.

Q. In 1871 and 1872 were there funds enough to supply the western district of Arkansas in all departments?—A. There was in 1871, but not all the time in 1872, I think.

Q. Do you know whether the Department approves of marshals issuing certificates or checks for the amount of witnesses' fees and other court expenses, and having them sold at a large discount and bought up?—A. The Department does not approve of that.

Q. Do you know whether that was done in this western district of Arkansas?—A. Yes, it was done; we have evidence of that.

Q. Was there any necessity for that?—A. I don't know that I could answer that question only from what I have heard.

Q. Was it done by the marshal of the western district of Arkansas when he had funds at his command to pay the expenses?—A. I don't know that, sir.

Q. Do you know the extent to which it was done by him?—A. I do



not. We have some certificates or bills, that is, accounts, that are numbered as high as 1300. I presume from that that 1300 of those due-bills were issued during the last fiscal year mentioned there.

Q. When there are no funds to hold the court is it not usual for the judge to adjourn it instead of running it on the credit of the marshal? Has it been the practice, within your knowledge, within any other judicial district of the United States, for the marshal to run the court upon his own due-bills or checks?—A. Not within my knowledge.

Q. Was it done in this case, or was the marshal in this case continued in office after the knowledge of this conduct on his part came to the Department here?—A. He was in office after the report was made by the agent who was sent to investigate, but none of the certificates had then been sent to the Department.

Q. Supposing a marshal wants a hundred thousand dollars. what is the process by which he gets it out of the Treasury?—A. He never could get so much as that. He is limited to the amount of his official bond, which is \$20,000. When he is appointed he addresses a requisition to the Attorney-General for as much money as he thinks will be necessary to pay the expenses of the next term of the court, and in the western district of Arkansas \$20,000 has not been sufficient to pay the expenses of any term of court at Fort Smith, according to the marshal's accounts, at any time since 1871. So that the process is, in that district, for instance, he would make a requisition, and \$20,000 would be sent him to begin with. Then after he had expended that he would send in his account, showing that fact, that it was all expended, and making another requisition for \$20,000 more, and that would be sent, and so it would go.

Q. Could not he pay by these certificates and checks and send in an account showing that he had expended the money, when he had only paid out those checks or certificates, and get another \$20,000?—A. He would have to take the receipts of the persons to whom he gave the checks, and send the receipts to the Department here, or we would have no knowledge of the fact.

Q. That could be done in that way?—A. Yes, sir.

Q. Was not that done to your knowledge in that district?—A. It appears that it was done, from the accounts that have been received since.

Q. When the marshal had the money sent to him?—A. I don't know that he had the money at the time that he issued the checks; that is a matter that I could not know.

Q. Was this marshal (Britton) a resident of Arkansas when he was removed the last time?—A. That I don't know.

Q. Or had he absconded?—A. I don't know.

Q. Is there anything in your office to show?—A. No, sir.

By Mr. SHEATS:

Q. I understand you to say that there had been vouchers filed in the office here to the amount of \$42,000 that should have been paid by the marshal?—A. They were payable by him in the first instance.

Q. Is the marshal and his securities bound by those vouchers?—A. No, sir; they are claims against the United States payable by the marshal in the first instance.

Q. And he had not the money and he gave certificates that this service had been rendered, and those vouchers are presented here and are paid?—A. Some of them are paid.

By Mr. SPEER:

Q. Does the Comptroller pay simply upon the marshal's statements

that the services have been performed, without any other proof?—A. He has the receipt of the person rendering the service—you mean as to these claims?

Q. Yes.—A. Some of them he does pay upon the certificate of the marshal that they are not paid, but we generally have the means of comparing them with other papers to see that the statement in regard to them is probably correct.

By Mr. SHEATS:

Q. It seems from your statement that there is an unsettled balance due the marshal of eighteen thousand some hundred dollars?—A. That is the balance that appears upon the report of his account which has come from the First Auditor to the First Comptroller.

Q. That is due him yet?—A. Due him yet, according to that report.

Q. There seems to be forty-odd thousand dollars of vouchers filed before the Auditor given by the marshal?—A. They are not all vouchers given by the marshal; they are claims against the United States which were payable by Marshal Britton, but were not paid by him.

Q. Do the reports in his office show that he ever had the money to have paid those accounts? Were the advances to him equal to the indebtedness of the office?—A. Judging from the fact of the balance due him, notwithstanding this large amount of outstanding claims it would seem that he had not the money to pay all of them.

By Mr. DURHAM:

Q. To make that point clear just turn to your memorandum and show how much was furnished Mr. Britton for that year.—A. There was furnished to Mr. Britton \$119,700.

Q. How much does he claim to have paid out of that?—A. The money paid out and his own compensation amount to \$138,000.

Q. Is there anything in your Department showing how Mr. Britton came to be removed the first time?—A. No, sir.

Q. Or Mr. Roots either?—A. No, sir.

Q. Nothing in the Department showing for what cause?—A. No, sir.

Q. Have there been any citizens of the State of Arkansas outside of the claimant, Mr. Britton, here, asking your Department to pay \$18,000 to Mr. Britton?—A. Not in that way. Gentlemen have called at the office with the view of having his accounts settled.

Q. Please state whether or not they were recommending its payment.—A. No, sir; they were not recommending any payment.

By Mr. SHEATS:

Q. Do you know the reason why he has not been paid that \$18,000?—A. The reason that the accounts have not been finally adjusted is that the appropriation for the year ending the 30th of June last is exhausted, and there is no money to pay any balance that might be found due him or any other marshal. For that reason there has been no final settlement of those unpaid claims.

Q. It is not, then, because the justice of his account is disputed?—A. That would be a matter to be considered when we took up the account to make the final settlement, and the account has not been finally settled—it has not been taken up.

Q. I did not know but it had been audited, though?—A. Yes, sir; it has been audited by the Auditor.

Q. He does not audit unless he is satisfied it is correct?—A. Well, the Auditor is satisfied according to his report that this balance is due the marshal. After the examination of the account he is satisfied that this sum is due.

By Mr. DURHAM :

Q. What was said by these parties when this settlement was demanded ?—A. Well, they have stated that Mr. Britton was here in the city at a heavy expense, and was anxious to get home and have all his accounts closed up.

Q. Who were they ?—A. One was this gentleman, here, Mr. Robinson ; another was Mr. Cutler, whom I do not know anything more about than that ; another was Senator Dorsey, and I cannot recollect any others just now.

Q. Who is Mr. Cutler ?—A. I only know that he told me that was his name ; I understood at the time that he was an agent for the marshal, or an attorney.

Q. There has been no further recommendation, as I understand, from any person that they should be paid ?—A. No, sir.

Q. In giving the number of these due-bills, did you give it in dollars, or did you just give the number of the due-bills ?—A. I just gave the number of the due-bills, taking it from the number that I found on one of them. I think it was as high as 1300.

Q. Would you remember a list of them if you were to see it ?—A. No, sir.

By the CHAIRMAN :

Q. I find in the marshal's expenditures of the western district of Arkansas for the fiscal year ending July 1, 1872, the expenditure certified to be \$243,000. I find by your statement made here, that the expenditures for that year were \$321,000 (the expenditure as given by the Attorney-General in his report for 1872.) Now you certified those expenditures to have been \$321,000. Will you explain that discrepancy ?—A. The report of the Attorney-General is made up from the requisitions. I think that some of these warrants that are charged in this Treasury statement were not included by the Attorney-General in his—that he did not put them in the proper account.

Q. It is a simple account ; it is a marshal's account ?—A. Well, he does not know what money is actually advanced. He draws a requisition.

Q. Don't you advance to the extent of his requisition ?—A. Yes, sir.

Q. Then why don't he know the amount ?—A. It has happened that there was no money to the credit of the appropriation after he drew the requisition, but that was not the case here.

Q. But would not he draw requisitions to the extent of your allowance ?—A. Yes, sir.

Q. Well, he only shows \$240,000, and this shows \$320,000 ?—A. There is a mistake in his statement.

Q. Now, in 1873 I find the report of the Attorney-General, his statement of the expenditures for that department, \$185,000 ; I find your statement to be \$264,000 ; will you explain that ?—A. He knows nothing about these unpaid claims.

Q. How much is there of unpaid claims ?—A. Forty-two thousand and \$18,000. His ought to agree with the balance, and if it does not is wrong.

Q. Will you look at these papers and see if you can identify them—a telegram from your office in response to an inquiry of mine ?—A. Yes, sir.

Q. You see these two telegrams, marked D and E, (see appendix,) to me at the House of Representatives, dated March 4 and March 5. Will you state if they are the approximate expenditures of the west-

ern district of Arkansas for the years that they indicate?—A. They are, as near as we could make them in the short time that was given.

Q. You said just now, in response to Mr. Sheats, that these last accounts of Mr. Britton, to the extent of \$18,000, had come to you with the proper certificate of the Auditor, and that they were hung up because of the deficiency in the judiciary fund?—A. That was the reason.

Q. Is there any other reason? In other words, to talk plainly and squarely, is there any taint of fraud or suspicion attaching to the marshal's account in the western district of Arkansas?—A. There have been charges of that kind.

Q. Now, tell us all that you know touching these charges; be specific.—A. Well, I know nothing outside of the papers that are in the Department.

Q. State what papers are in the Department that you have passed upon.—A. The accounts of the marshals.

Q. State all the badges of fraud about those papers that you are familiar with, or have been acquainted with, that have been brought to your attention officially.—A. We have suspected that the signatures to the vouchers were in some instances not genuine, and we have suspected that more mileage was charged than the actual travel called for.

Q. You use the word "some." That is a very indefinite expression. Please be accurate. State with all the definiteness and accuracy you can what you mean by "some"—whether it means much or little.—A. I feel at a great loss to answer that. I should like to give you all the information you want, but I cannot say how much. It is a mere conjecture and I cannot fix any amount.

Q. You have been passing upon those accounts for the last three years?—A. Yes, sir.

Q. How many times have you been led to believe that vouchers that were brought before you to pass upon quasi-judicially were fraudulent?—A. I cannot say.

Q. One time?—A. I may say that I have suspected that those vouchers were not all correct every time that I took up an account.

Q. Where are those vouchers?—A. In the Department.

Q. I am informed by you, unofficially, that they take up a great deal of space. It would be very cumbersome to bring them all here?—A. Yes, sir.

Q. Can you furnish us the vouchers that you more especially regard as fraudulent?—A. Do you confine your request to the years specified there, 1870 to 1873?

Q. We would take them up to this time if it is possible.—A. All the accounts that have been adjusted and certified by the Comptroller contain with them a statement of differences, and in that statement of differences the vouchers objected to are mentioned. They are either suspended or disallowed. Whatever outside of that we may have suspected of course no weight could be attached to, because we don't know anything about them, but wherever we had sufficient reason for suspending or disallowing a charge it was disallowed or suspended.

Q. Do I understand you then to say that you have allowed no account that you regarded as fraudulent?—A. We have allowed no accounts where the suspicion of fraud was sufficient to justify us.

Q. Of course; but I mean to ask you this question: Do you mean to say that you have passed no voucher that you have had reason to suspect, without having the knowledge sufficient to justify the suspicion?—A. We have had to pass vouchers where we were afraid they were not all right.

Q. How many of such have you passed?—A. I could not give the least idea of that.

Q. Have there been few or many?—A. There have been a great many, but they could not be pointed out now because there was no mark put upon them; there was just a general impression that the expenses were greater than they should be.

Q. Is there anything in your Department that will show the number of cases tried in the western district of Arkansas?—A. It might be gathered from the accounts of the clerks. They render an account of fees in all cases.

Q. How long would it take you to prepare such a statement in your office for the last three years?—A. It would take three or four days, I suppose. They may have that information in the Department of Justice.

Q. Is there anything now that you have not disclosed to this committee that you are prepared to state that will facilitate this committee in this investigation?—A. I know of nothing more. My information, of course, is gathered altogether from the accounts themselves.

Q. How many times has the western district of Arkansas been subjected to examination at the hands either of your Department or the Department of Justice by detectives specially sent for that purpose?—A. Twice; once by request of the Comptroller and once by request of the Attorney-General.

Q. Do you know who made those examinations and reports?—A. The first was made by a person named Johnson.

Q. Who is that person; is he now in the service of the Government?—A. I have his report here; it was sent to the Comptroller with that letter from Mr. Whitley.

Q. Do you know whether Mr. Johnson is now in the detective service of the Government?—A. I do not.

Q. Then there were two occasions on which this Department was investigated at the request either of the Treasury or by direction of the Attorney-General?—A. Yes, sir.

Q. What was the general character of the reports on both occasions?—A. They both were very adverse to the marshal.

Q. Who were the marshals that these reports were adverse to?—A. In both cases William A. Britton.

Q. Has there been any report to the Attorney-General or to your Department that involves Logan H. Roots?—A. No, sir; no written report.

Q. Have there been complaints not in writing?—A. There was one.

Q. By whom?—A. By Mr. Whitney.

Q. What was the general character of that report?—A. Very adverse to the marshal.

A. Is not this the largest judicial expenditure in any district of the United States?—A. It is.

Q. Very much the largest?—A. Very much.

By Mr. SPEER:

Q. Can you tell us what was the annual cost of the district of Arkansas—the whole State—before this western district was formed?—A. The State was divided in 1851. The expenses in 1850 were about \$12,000.

Q. The annual expenses?—A. For that year; I did not look any further.

By Mr. SHEATS:

Q. What was the expense of the State of Arkansas in 1869?—A. It



is put here at \$56,000. That is approximate; it is not so exact as these other statements.

By Mr. SPEER:

Q. What was the increase of expenses in the western district of Arkansas between 1871 and 1873?—A. These are the only reliable papers I have, and this is not complete for 1873, because we have other claims that have come in. There was an increase of \$126,448.

Q. The expense of 1871 being what?—A. \$137,959.

Q. And of 1873?—A. \$264,447.

Q. With some sixty or seventy thousand dollars unpaid accounts?—A. No; what I have mentioned now includes them, because they will have to be paid some time.

Q. What was the cause of that increase of expenses in that time?—A. Well, I only know from the marshal's accounts. It would seem to be from an increase in the business, judging from the marshal's accounts.

Q. Don't the expenses of the other districts of the United States in the South decrease?—A. They have increased since the war.

Q. Have they been increasing ever since the war? Have they not been decreasing since 1871?—A. I could not say as to all of them. North Carolina may not have increased. I would have to look at the books.

Q. Were there any Ku-Klux trials in this western district of Arkansas?—A. I think not.

Q. Then there was no increase on that account?—A. No, sir.

By Mr. SHEATS:

Q. Did you pay a large number of vouchers to Mr. Roots that you suspected of being fraudulent when you paid them?—A. No, sir; I could not say anything about Mr. Roots except that there was a statement made—

Q. I ask, did you not do it—if you did not suspect them in paying them?—A. O, just the same kind of general suspicion that I spoke of a while ago.

Q. How much was that—those that you suspected of his accounts?—A. It is just general; I may say that it applied to all his accounts.

By the CHAIRMAN:

Q. You spoke just now, in response to Mr. Speer, of having heard of a number of other claims that are yet to come in.—A. Yes, sir.

Q. Can you state what the character of those claims and the amount of them are?—A. I cannot give the amount, but we have had statements that a number of claims for expenses of courts at Helena have not been rendered yet by Marshal Britton, some that he will present, and some that other parties hold for fees of jurors, witnesses, &c.

Q. In addition to these statements that you have already made?—A. Yes, sir.

Q. And you have no knowledge what the amount of these unrepresented claims is?—A. None whatever.

Q. How did you get those statements?—A. We have had letters from one or two other persons, and the fact that the marshal had other claims was mentioned verbally in the office.

Q. Who were these letters from?—A. I think that one was from a person named Chamberlin, at Helena.

The WITNESS. You asked me whether any vouchers had been passed which we had reason to suppose were not correct, or words to that effect. I would say that the vouchers referred to in the report of Mr.

Johnson were finally allowed, notwithstanding we thought that they ought not to be allowed, in this report here which relates to Mr. Britton's first term, (statement marked F, see Appendix,) and the allowance was made by the Comptroller after correspondence with the Attorney-General as to whether they would have to be allowed after the failure to find a bill of indictment.

By the CHAIRMAN:

Q. What about a bill of indictment?—A. After that report was sent in, the district attorney for the western district of Arkansas was requested to prosecute the marshal and his clerk, and the commissioner, E. J. Brooks, and these vouchers that are here referred to, were sent to the district attorney, but the grand jury ignored the bill, and then it was that the vouchers were allowed at the Treasury. Because the grand jury ignored the bill, the Attorney-General thought that the vouchers would have to be allowed.

Q. What was the amount of those vouchers?—A. Between \$3,000 and \$4,000, I think.

By Mr. DURHAM:

Q. Who was the Attorney-General at that time?—A. I don't remember whether it was Mr. Akerman or Mr. Williams.

By Mr. SHEATS:

Q. What year was that?—A. It must have been 1871.

Mr. SHEATS. It was Mr. Akerman then.

Mr. Robinson asks for the papers and for the resolution under which the committee is acting, and they are furnished him.

Cross-examined by Mr. ROBINSON:

Q. When you spoke of the disbursements for the western district of Arkansas, you spoke about marshals' and deputy marshals' expenses, &c. Did not you mean by the aggregate amount here, the total expenditures for all purposes?—A. Just what is mentioned there; they are all specified there; all that the marshal has to pay.

Q. When you spoke about vouchers and about certificates, when you used the word "voucher," did you mean a claim against the United States?—A. Yes, sir.

Q. By either witness, juror, deputy marshal, *posse comitatus*, or whatever he is?—A. Yes, sir.

Q. When you spoke of due-bills, if I understood you, you referred to due-bills that were given by the marshal, but were not vouchers against the United States?—A. Yes, sir.

Q. You speak of forty-odd thousand dollars and \$24,000. That \$24,000 you say has been paid?—A. It is so stated there.

Q. That has been paid to individuals, has it?—A. To individuals, not to the marshal.

Q. Did the marshal charge in his accounts any of those that have been presented to the Department for that \$24,000?—A. Not to my knowledge.

Q. Now, there is an item of \$42,098 here; did the marshal, in any of his accounts, charge for any of the expenses alluded to in that item?—A. I think he did for a portion of it—not for a portion of that, but there were in the accounts some vouchers to which a part of that relates—a comparatively small amount.

Q. Examine that and tell the committee whether the marshal is charged in his account for that amount?—A. Those claims have not

been examined at the Department, and I cannot say whether they are in the marshal's accounts or not. I have no idea that they are as a general thing. The most of them I am pretty sure are not; but I am not so positive that none of them are in the marshal's accounts, because those claims have not been all examined.

Q. Tell me definitely, then, whether that item has been charged for in any account-current against the Government by the marshal.—A. This \$42,000?

Q. Yes, sir.—A. I cannot say, when I have not examined the vouchers. My opinion is that it has not; but I don't know positively, because those papers have not been examined.

Q. You were examined by the committee to know if the marshals in the western district of Arkansas have not always had money with which to pay the liabilities of their district; what is your answer to that? From what you know, from the accounts in your office at different times and the amount advanced, have the marshals had the money there to pay the accounts against the Government?—A. Not at all times.

Q. You spoke a while ago about a certain number of due-bills—1,300 I think you mentioned?—A. I found that number on one of the due-bills.

Q. Have you not evidence in your office of a large number of those due-bills having been paid?—A. We have statements to that effect; I cannot say now whether they are conclusive or not—whether they are satisfactory.

Q. Have you evidence in your office that Mr. Britton paid a large number of those due-bills since their issuance?—A. There is some evidence on that point.

Q. Have you a number of those due-bills on file?—A. Yes, sir.

Q. About how many have you on file?—A. They amount, I think, to about \$5,000.

Q. That is the amount, but do you know about how many due-bills you have?—A. I do not know the number.

Q. How did the office come into possession of those due-bills?—A. They were collected by an agent of the Department of Justice, and sent by him to that Department, I think; at any rate, they came indirectly to our office.

Q. You were asked about persons who called. Did the persons calling there not always tell you that they wanted you to deduct out of the amount due Mr. Britton those due-bills and pay them?—A. The persons who presented the bills?

Q. No; you were asked if there were not persons from Arkansas who were trying to get those accounts of the western district of Arkansas settled in the Department?—A. His question was, whether they were trying to get the payment of the balance, \$18,000.

Q. Now, I ask you if the persons, or any of them, that were trying to get the settlement of that balance with Mr. Britton of \$18,000 did not all the time tell you that they wanted deducted out of whatever was due Mr. Britton an amount sufficient to pay all those due-bills that he had issued?—A. Whatever was said on the subject was to the effect that the due-bills might be deducted from the account of the marshal.

Q. In the eighteen thousand and odd hundred dollars that was audited in the Auditor's Office were all the due-bills in your office deducted?—A. They were, so far as I know.

Q. You testified about some reports. Is there a report in your office, or has there been one there, made by Mr. Whitney?—A. It was there.

Q. In the settlements in the Auditor's Office was not that report made

the basis of the settlement?—A. It was sent to the Auditor with the vouchers.

Q. Did not they settle those accounts in accordance with the statements made in the report of Mr. Whitney?—A. I don't know. I have not examined the accounts since they came from the Auditor.

Q. Were not those accounts examined in your office before they were sent to the Auditor's Office?—A. They were not.

Q. Did not Mr. Nettle examine, under the authority of the Comptroller, the accounts of Mr. Britton by the report made by Mr. Whitney before they went to the Auditor's Office?—A. I think not.

Q. Was there nothing done to those accounts there?—A. There was something done, but I do not know how far the examination extended. I know he had the report and the accounts, but whether he went into a final and thorough examination I am not advised.

Q. Was there any examination had on them there?—A. There was a partial preliminary examination in connection with the report.

Q. Is it usual to examine accounts in the Comptroller's Office before they go to the Auditor's Office?—A. It is not usual.

Q. Is not the Auditor's Office the place where they should be first examined?—A. It is.

Q. You told the committee in relation to the difference in the expenditures in the Department of Justice between 1871 and 1873. Are you acquainted with the western district of Arkansas territorially?—A. Only from the knowledge that I get from the accounts and from the map.

Q. Are you acquainted with any of the public improvements that have been made through the Indian country between 1871 and 1873?—A. I know the fact that railroads have been built through that Territory.

Q. Can you tell this committee what particular railroad has been built through that country in that time, and the length of it?—A. I don't know.

Q. You told the committee that the claims in this \$42,000 or \$24,000 here were paid principally or would be paid upon the order of the court?—A. Witnesses and jurors.

Q. If Mr. Britton does not charge in his accounts for these witnesses or jurors and you pay them upon the order of the court, is he responsible in any way for them?—A. No, sir.

Q. Is Mr. Britton responsible in your Department for anything but the money advanced and the accounts presented by him?—A. No, sir.

Cross-examination suspended and the committee adjourned until 10 o'clock Tuesday next.

WASHINGTON, D. C., *March 24, 1874.*

Present, the chairman, Messrs. Speer, Durham, and Sheats.

Cross-examination of JAMES AULD resumed.

By Mr. ROBINSON :

Question. In your examination the other morning you filed that report marked F here. Did I understand you to state in that examination that the grand jury had passed upon the matter contained in that report?—Answer. That is what I did state.

Q. And that you paid these vouchers referred to in your report after the grand jury had passed on it?—A. Yes, sir.

Q. And you were officially informed of that fact?—A. Yes, sir.

Q. Did I understand you to state that the reason that you refused to pay those vouchers was that that report was filed in your office by this agent of the Government?—A. No, sir; not in the first instance.

Q. What was it?—A. The reason was that we suspected that the signatures to the vouchers were not genuine; that they were not made by the men who professed to have signed them.

Q. Did you refer these vouchers to that agent, and were they laid through the prosecuting attorney before the grand jury of that district?—A. Yes, sir.

Q. They ignored the bill upon those vouchers?—A. Yes, sir.

Q. And your office paid them?—A. Yes, sir; it amounted to that; the Comptroller certified them.

Q. You told the committee the other day, if I remember rightly, that you thought there was an excess of mileage charged in the accounts, and that was one reason why they were refused to be paid. Did you not say so?—A. No, sir; I did not say that was the reason why they were refused to be paid. I said that was one of the grounds of suspicion that attached to the accounts.

Q. Where did you get that idea of excess of mileage from?—A. From the great distances generally charged. It appeared from the accounts that a great majority of the arrests were made a long way from the court.

Q. Can you give us any other data from which you received that information?—A. I cannot.

Q. Did you state the other day that the report of the last agent sent out by the Government was one of the reasons upon which you decided that there was excess of mileage?—A. I did not.

Q. You said a minute ago that a great many of those accounts showed arrests made at long distances from the court?—A. Yes, sir.

Q. Do you know what distances from the court the various points referred to in those writs are?—A. Not precisely; but, as an instance, the marshal would charge for travel from Fort Smith to the Chickasaw Nation, and he would charge a greater number of miles than we could see on the map from any point in the Chickasaw Nation to Fort Smith.

Q. Has a marshal, in making his charge, reference to the actual point where the party is arrested or to the actual distance traveled to that point?—A. I could only explain what the marshals have explained to me—that they do charge for the travel actually performed in going to that point.

Q. Is not that right?—A. That is a matter of construction of the law. The wording of the law is that mileage is to be computed from the place of service to the place of return.

Q. Did I understand you to state the other day that the \$42,000 which you referred to there, were accounts in your office that were not settled?—A. Accounts and certificates that were not yet settled.

Q. Do you know that you will settle them and pay them?—A. I do not. That is, I would say that of any account.

Q. You spoke of the eighteen thousand some odd hundred dollars due Mr. Britton. Did I understand you to state the other day that those accounts had never been adjudicated in the Comptroller's Office, to the best of your judgment?—A. Yes, sir; the account of which that balance is certified.

Q. I understood you to state the other day that no part of the accounts of this eighteen thousand some odd hundred dollars had ever been acted upon in the Comptroller's Office?—A. Yes, sir.

Q. You told the committee that you spoke entirely from information

in the vouchers themselves in regard to the distances charged for by the deputy marshal, did you not?—A. From information?

Q. Yes.—A. No; from the vouchers themselves.

Q. Did you state to this committee that the evidence you had of an excess of mileage was alone from statements in the vouchers?—A. From statements in the vouchers and the knowledge of the country that we gathered from the map. I did not state with reference to any particular one of the vouchers or of one account.

Q. Have you made in your office any adjudications upon the testimony independent of what you now state?—A. Yes, sir.

Q. Have your adjudications been wholly upon the independent testimony as stated in public papers?—A. I think in the last settlement that was the case—the last adjustment of the account.

Q. That was upon a different state of facts?—A. Yes, sir.

Q. Did Mr. Nettle, a clerk in the Comptroller's Office, examine these accounts—the accounts you testified in relation to—previous to their being sent to the Auditor's Office?—A. He went through them, but there was no formal official examination.

Q. Did your office give a statement of differences in relation to any of these accounts?—A. To the accounts that were examined, but not to those that had not been passed upon by the Auditor. With regard to the question that you asked before, I would say that when I said that in suspecting excess of the mileage we had been wholly governed by what I saw in the vouchers and on the map. That was my own personal examination of the accounts, but Mr. Nettle has examined the later accounts of Mr. Britton, and I do not speak for him.

By the CHAIRMAN:

Q. Who is Mr. Nettle?—A. He is a clerk in the Comptroller's Office, under my direction.

By Mr. ROBINSON:

Q. Has there been any statement of differences given to William A. Britton, late marshal of the western district of Arkansas, within the past few months?—A. Yes, sir.

Q. Did you examine that before it was given?—A. Yes, sir.

Q. Are the reasons that are stated therein correct, as far as you could ascertain or tell?—A. I don't know how to answer such a question as that. That is an official paper. You might as well ask me whether anything is correct that the Comptroller certifies.

Q. I ask you if you had examined it and found it correct.—A. As far as I know it is correct.

Q. Were the balances settled by Mr. Whitney's report?—A. In the last adjustment you speak of?

Q. Yes, sir.—A. The adjustment was made in connection with that report, and the suspensions and disallowances were, many of them, made because of that report.

Q. Did you allow anything that Mr. Whitney said in that report, made from his investigations, was fraudulent?—A. Not to my knowledge.

Q. Then, I understand you that the result of indebtedness to Mr. Britton is so much, after taking out all that Mr. Whitney says in his investigation of that matter is tainted in any way?—A. No, sir; for the reason that the Auditor, in going through with the last account of Mr. Britton, took up some of the suspensions and disallowances that had been made by the Comptroller and allowed them, and they were incorporated in that balance.



Q. I understand you that the Auditor allowed some of the disallowances and suspensions that you had suspended or disallowed in your office?—A. I will say some of the suspensions; I am not sure about the disallowances.

By the CHAIRMAN:

Q. You stated just now that the Auditor had allowed some disallowances and suspensions. Am I to understand from this that the accounts of a marshal in the first place go to the Auditor, and if he certifies them they are turned over for payment to the Comptroller?—A. Yes, sir.

Q. And then, upon the certificate of the Comptroller, a warrant issues?—A. If there is payment to be made.

Q. Then how does it happen that after a claim has been allowed by the Auditor, sent to the Comptroller and disallowed by him, that the Auditor can again take it up and allow it and again certify it?—A. When a subsequent account is rendered the marshal explains the previous disallowance or suspension, and if that explanation is satisfactory to the Auditor he puts it in to be again acted on.

Q. What is the general rule of the Department as to computing mileage?—A. The general rule is to compute by the most direct traveled route between two points—the usual traveled route.

Q. You said in response to Judge Robinson that the bill was ignored upon the vouchers before the grand jury, as I understood you?—A. Yes, sir.

Q. Were those vouchers carried from here to Arkansas to be examined there?—A. Yes, sir. I am pretty sure that the originals were sent.

By Mr. SPEER:

Q. Sent to whom?—A. To the district attorney. I have a letter to that effect, if the committee would like to have it.

By the CHAIRMAN:

Q. All that you know is that those papers were sent?—A. Yes, sir.

Q. Do you know the fact, of your own knowledge, that they were before the grand jury?—A. I have such knowledge as I got from correspondence.

Q. With whom?—A. There was a copy of the district attorney's report furnished to the Comptroller's Office by the Attorney-General.

Q. Who was the district attorney?—A. His name was Huckleberry.

Q. Do you know the contents of this letter; have you that letter?—A. I have a copy of one from the district attorney, here, but it is not the one that shows that fact.

Q. Can that letter be furnished?—A. I will try and find it. I only speak from memory now; I know that copies of the papers were sent to the district attorney, and the Attorney-General was informed that the originals would be forwarded if necessary, and I think they were.

Q. Can you furnish the committee anything in the shape of a statement with the signature of the Auditor that these vouchers that you identify were sent, and can you furnish the letter of the district attorney showing that these papers were before the grand jury?—A. I will see what can be furnished, and bring whatever bears upon the point before the committee.

Q. You said on Saturday, in response to an inquiry of Judge Durham, that several persons had pressed the payment of these claims at the Department. Among others you mentioned Senator Dorsey. Did Senator Dorsey come in his capacity as attorney or in his capacity as Senator?—A. He said he came as a friend of Mr. Britton.

Q. Did he use any improper means, or did he use the ordinary means that a Senator uses, to secure claims?—A. The ordinary means of a Senator.

Q. Is there anything in those claims to show that Senator Dorsey has any personal interest in the affair?—A. I have never seen anything.

By Mr. SPEER :

Q. You say he used "the ordinary means of a Senator?"—A. I mean to say that he came in and said that he and several other friends of Mr. Britton were anxious to have the accounts adjusted; that the marshal was here and that he had been kept out of his money a long time, and they wanted a settlement.

Q. Was Senator Dorsey urging the settlement of those claims after Mr. Whitney had made his report showing these frauds?—A. Yes, sir.

Q. And after he knew it was made, and the character of it?—A. Yes, sir.

Q. He knew the report and the character of it, and still urged the payment of these claims after that?—A. Not the *payment*; the settlement of the account.

Q. Was this district attorney a friend of the marshal's—this man Huckleberry?—A. I don't know.

Q. Was he removed?—A. I don't remember that, either.

Q. Is he district attorney now?—A. He is not the present district attorney.

By the CHAIRMAN :

Q. Who is the present district attorney?—A. N. J. Temple.

By Mr. SPEER :

Q. When was Mr. Temple appointed?—A. I don't know that, either.

Q. Were there charges of fraud against the old district attorney?—A. I have never heard of any. I don't know whether he was removed or whether he went out of office when his term expired. Mr. Temple has been in, I think, about two years.

Q. When these vouchers were sent to Arkansas, was it for the purpose of having the district attorney draw a bill of indictment against the marshal?—A. Yes, sir.

Q. For forgery?—A. For whatever charges were involved in this report.

Q. Did he draw the bill against the marshal?—A. I think he did.

Q. The marshal summoned the grand jury under the law?—A. That I don't know.

Q. There was a bill, then, pending before the grand jury against the marshal, and the marshal summoned the jury and the bill was ignored?—A. It was against the late marshal. After Mr. Britton went out of office the first account that he rendered here contained these objectionable vouchers, and the Comptroller of the Treasury requested Mr. Whitley to have an investigation of the vouchers made, and Mr. Johnson went and made the investigation and made that report. The Comptroller requested the Attorney-General to have a judicial investigation, and he forwarded the papers to the district attorney, and whatever we knew afterward came through his office.

Q. Was any complaint made to you about the character of the jurors who were summoned there?—A. Except anonymously, there was not.

Q. What was the complaint that came to you?—A. That they had been selected by the marshal; but, as I say, it was an anonymous paper, and amounted to nothing.

Q. Selected by the marshal for the purpose of ignoring the bill?—A. Yes, sir.

Q. Were there complaints of the general character of the jurors in the western district of Arkansas?—A. No, sir.

Q. Were there any charges that they were selected on account of their friendliness to the marshal, or of their ignorance and incapacity?—A. I don't remember, but I think it was rather as to their friendship to the marshal. You will understand that these complaints were, as I said before, not from any person, but simply in a paper without signature, or otherwise verified.

Q. Was there a further complaint that the marshal could convict any person or acquit him if desired?—A. I don't remember.

Q. Were there any charges of connivance between the judge and marshal?—A. No, sir.

Q. Any complaints made of the judge?—A. No, sir; it did not go before the judge.

Q. As to the general administration of justice?—A. Under marshal Britton?

Q. Under any of the marshals?—A. No, sir; the first that we have heard is in that report of Mr. Whitney's, as far as I can remember, in reference to anything wrong on the part of the judge.

Q. Who were the securities of Mr. Britton, on his official bond?—A. I cannot answer that now.

Q. Judge Robinson, the counsel, was one of them, was he not?—A. At that time I think he was not, but I don't know. It was during his first term, or after he went out of office at the close of his first term, that that investigation was made.

Q. Do you know what influences reinstated him after this cloud was over?—A. No, sir.

By Mr. SHEATS:

Q. Was it in order to make a bill of indictment against Mr. Britton, or Mr. Roots, that these vouchers were sent down to that district?—A. Against Mr. Britton.

Q. Was Mr. Britton marshal at the time?—A. No, sir; he had just gone out of office, and Mr. Roots had recently been appointed, and this jury was summoned during Mr. Roots's administration.

Q. Not summoned by Mr. Britton?—A. No, sir.

By the CHAIRMAN:

Q. Here are three statements. I wish you would take them up in order and explain them.—A. These are statements made up hurriedly, but I believe they are substantially correct. The first, which is marked G, (see appendix,) is a statement of the number of cases tried or otherwise disposed of in the United States courts for the western district of Arkansas. The second (H) is a statement showing the nature of the proceedings in the cases disposed of; and the third (I) is a statement of the number of cases in which warrants were issued for the arrest of persons charged with crime, before the United States commissioners in the western district of Arkansas.

The WITNESS. The question was asked me at the last meeting whether the Comptroller had recommended the advance asked for by Mr. Britton—the first advance asked for by Marshal Britton. His request was dated the 6th of July, 1872, and the amount he requested was \$20,000. It was returned to the Attorney-General on the 12th of August, with the recommendation that \$20,000 be advanced. The next was dated the 9th of September, for \$26,867. It was returned to the

Attorney-General on the 18th of September with the recommendation that \$26,200 be advanced. The next request bore no date, it was for \$55,297, and on the 8th of November, 1872, the Comptroller recommended an advance of \$13,500, and then on the 9th of November, the next day, he recommended that the balance, \$41,797, be sent making the amount asked for in the request.

Q. Was the bond for more than \$20,000?—A. No, sir; I will explain that in a moment. The next requisition was dated the 16th of December for \$42,000. On the 24th of December the Comptroller recommended an advance of \$41,000. The three first of these recommendations were adopted by the Attorney-General, but on the fourth, for \$41,797, he only directed an advance of \$20,000.

Q. The Attorney-General himself cut it down?—A. Yes, sir. Then, again, on the 5th of January he directed an advance of another \$20,000.

Q. The Attorney-General?—A. Yes, sir; making \$40,000 of the \$41,797 recommended by the Comptroller. Then, on the last requisition, for which the Comptroller recommended \$41,000, the Attorney-General recommended the advance of \$21,000, so that the Attorney-General, during Mr. Britton's administration, did not send all the money that the Comptroller had recommended. These requisitions and recommendations were all made before any report of any investigation of the affairs of the marshal's office by Mr. Whitney. In answer to a question of Mr. Sheats, I have to say that if the marshal, when we send him \$20,000, sends in an account showing that he has disposed of all that \$20,000, and that, in addition to his disbursements, his own compensation and that of his deputies amounts to \$20,000 more, \$40,000 could be sent him.

You wanted to know on Saturday whether there was any other objection to passing the accounts of the marshal than the want of money. I, of course, meant to be understood as stating what would be the case if this committee had never taken the matter in charge. The accounts had been in the office since November, and the marshal was urging settlement, and nothing more had been done with the report of Mr. Whitney, and the Comptroller, as I understood, did not see any way by which he might prosecute the investigation; and having no means of going further, I took it upon myself to say that if there was an appropriation we would have to dispose of the account in some way; that was what I meant by adjusting the account. The Auditor had reported this balance to be due to the marshal and it must be acted upon in some way.

Q. As soon as there is an appropriation?—A. I think it could not be delayed any longer, and that is what I gather from the record.

Q. Do you mean to say that pending this investigation there would be a settlement of these accounts?—A. No, sir; certainly not; but when the accounts were made out by Mr. Britton, he had taken receipts from different persons, witnesses and jurors, without actually paying them the money, and he had made up his accounts in that way; he had given them due-bills, and some of those due-bills were collected by Mr. Whitney, but only about 120 or thereabouts—I don't know the exact number—and we found some high numbers on one of them—one of them as high as 1300. The Comptroller wanted Mr. Britton to show all the payments made, or all the receipts taken for which no payments were made, in order that they might be thrown out of his account, in all cases where due-bills had been given instead of money. He replied that it was impossible to do that, but affidavits have been filed that all such charges have been taken out of his accounts now by him; that he did not claim any credit of that kind in the account, but that wher-

ever due-bills may be outstanding, they were given to his deputies, with which we have nothing to do; he settles with his deputies and we pay him. The due-bills that we objected to are issued to jurors and witnesses who have claims against the United States—the deputies' claims are against him.

Q. Do those claims in the nature of due-bills go to form a part of that \$42,000?—A. Yes, sir.

Q. If I understood you correctly on Saturday, you look upon these as in the nature of valid claims against the United States, if not valid claims? Did I understand you correctly?—A. Well, sir, it is simply whether we should pay the marshal the amount of those due-bills or pay the parties who hold them.

Q. Then you look upon them as valid claims?—A. Yes.

Q. It makes no difference whether you pay the marshal or them?—A. No, sir; and for that reason I put them into the \$42,000. The Comptroller does not know certainly that the marshal has withdrawn all the charges of that character from the accounts. When I say he does not know it, I mean that he does not know it any other way than by the—

Q. By the vouchers?—A. The vouchers don't show.

Q. What will enable him to detect?—A. There would be no other way that I can see than for the marshal to produce the stub-book from which these checks were taken. But the marshal has made this proposition, and that is what I commenced with. He has shown by these affidavits that there is a very small number of those claims outstanding given to either jurors or witnesses or any one, except to deputies, and he proposes to make a bond of indemnity to the United States to cover all such claims as a security for the persons holding those due-bills; that if any improper allowances were made in his account because of those due-bills, that he would make it good, and that his bond would be held for them. When I mentioned the matter to the Comptroller he declined to give any final decision, but he said that he would decide when an appropriation was made to furnish money to settle all the accounts that are now waiting that appropriation; and that was another reason why I stated that we were only waiting for that appropriation in order to settle that account. It had no reference to any investigation going on here.

Q. Do I understand you that claims or debts incurred on behalf of the United States by the marshal are first liquidated upon vouchers furnished by the marshal and approved by the judge?—A. The marshal may take the responsibility of paying them, and then presenting his account to the judge, and he approves that.

Q. That is one mode of payment?—A. It is the regular mode.

Q. But it is not the only mode?—A. What other do you understand?

Q. These \$42,000 of claims are not certified by the judge?—A. Not all of them.

Q. Then do you hold any of those claims valid that are not certified by the judge?—A. The law requires that the accounts of the marshal shall be certified by the judge, and it is a very unusual thing for any claims payable by the marshal to come to the Treasury direct, and we always prefer that they should be certified by the judge or approved by him, and I don't know that you will find a single instance that they have been allowed without that approval; but the law does not require that the vouchers shall be certified by the judge unless it goes into the marshal's account.

Q. Have you, in your capacity of supervising the payment of these



marshal's accounts, ever known of the payment of any claims by the Comptroller without the approval of the judge?—A. No, sir.

Q. Have you known of any other accounts growing out of the marshal's disbursements that have been allowed—of any claims?—A. I don't know of any now.

Q. Do you mean to say that, if allowed, this \$42,000 would be the first that would be allowed?—A. The first to take precedence of what others?

Q. Not to take precedence of any. I ask you, do you mean to say that if these claims, to the extent of \$42,000 in the nature of claims that ought to have been satisfied by the marshal, but have not been, and which came up directly to the Treasury of the United States, should be allowed, that they will be the first claims of that character that will be allowed by the United States?—A. No, sir.

Q. When did you know of other claims, and how often, of like character, that will be allowed?—A. We have already allowed in that district to the amount of \$24,000 of that kind of claims.

Q. Have you allowed that kind and character of claims in any other district?—A. Only, perhaps, in a single instance or so where the marshal has overlooked it.

Q. Why, then, has there been on the part of the accounting officers of the Treasury this special interposition, if I may use that expression, in behalf of these claims in the State of Arkansas?—A. I don't see that there has been any interposition. The parties had claims against the United States; they could not get the money from the marshal, and they came to the Treasury to try and get it there.

By Mr. ROBINSON :

Q. Will you tell the committee how long Marshal Britton has been here trying to settle those accounts?—A. I think he came here in November, and I have seen him from time to time since.

Q. You told the committee a few moments ago that his bond was only \$20,000?—A. It was \$20,000.

Q. Have you not a bond on his last term to the amount of \$70,000, justified to in double that amount? Do you remember how that is?—A. I do not remember. I know that the bond required by the statute is \$20,000.

Q. Was there not an additional bond required at his last term, owing to the expenditures of that district?—A. There was an additional bond.

Q. Was that additional bond filed?—A. Yes, sir.

Q. Do you know what the aggregate amount of his bonds are?—A. I do not. It is more than \$20,000. I know that each of them is as much as \$20,000.

Q. The next thing is, if Senator Dorsey when he was there asking the settlement of those claims; if he only asked in your office to settle with Mr. Britton, and give him a statement of the differences between the Government and Mr. Britton; is not that all he asked for?—A. I don't know; I don't remember that that was what he asked. I ought to say that Mr. Dorsey has been at the office several times without being in my room. I think he has been only once in my room, and I don't remember that he made any such request at that time.

Q. You have got a jurors' and witnesses' account of \$11,673.70. Do you not always have a jurors' and witnesses' roll with an order of the court to it?—A. Always when we allow it. I was giving here all we knew that would be claimed, so far as we knew. I can say that we



have an order for those that were paid, and I believe that we have for the others.

Q. Do you ever pay witnesses or jurors without what is called a witnesses' and jurors' roll, and that roll with an order of the court upon it for payment?—A. We always have the order of the court whatever form the receipt of a witness may be in; sometimes a witness may come alone.

Q. Do the witnesses in the United States court not always sign a roll?—A. They always sign receipts—a roll it may be, but a receipt anyway.

Q. Is there not an order of the court just below on the roll requiring you to pay, and certifying that the roll is correct?—A. Those things take different shapes in different districts. We have always, however, a certified copy of the order of the court to pay.

Q. And you have, as I understand, a certified order for that item?—A. We have in that that has been paid, and. I think we have in the other.

Q. Was there not in this eighteen thousand and some odd hundred dollars some witnesses' and jurors' rolls too?—A. There are witnesses' rolls.

Q. Are there not jurors?—A. I can tell by this roll. There are jurors there.

Q. You have orders of the court to pay them?—A. Yes, sir.

Q. I want to ask you about the number of cases which you say are disposed of in the United States district court for the western district of Arkansas. I don't understand this statement. Is the number given here limited to the court?—A. That is shown by the district attorney's account. It is limited to the number of cases that his account shows in the court.

Q. Is there not a large number of cases in that district outside of the numerical account which will increase the expenses largely?—A. There is a statement that shows that.

Q. Can you tell this committee the difference in expense in arresting a prisoner in the Indian country and in arresting a prisoner in the States?—A. I cannot, sir.

Q. In arresting a prisoner in the Indian country is not a marshal entitled, upon starting, to so many posses to aid in arresting in that country?—A. Yes.

Q. Is he so allowed in the States?—A. No, sir.

Q. Then in that district it would increase the expense in arrests largely?—A. It would increase the expense in proportion to the time taken and the distance traveled. That increase would be in going to the place where the arrest is made, because in any other district he might employ as many guards as were necessary returning with prisoners. In the western district of Arkansas he has his posse, but in North Carolina, or the western district of Texas, he would employ guards to bring in the prisoners.

Q. He would not be allowed to take them with him in making the arrests?—A. No, sir.

Q. In the Attorney-General making recommendations for amounts of money, and in their being certified to by the Comptroller, is that not governed largely by the number of accounts on file by that marshal at the time the requisition is made?—A. That is the case, as explained by the chairman awhile ago.

Q. Is it not customary for the Treasury Department to advance to

marshals over the amount of their bonds, where the accounts are on file exceeding the amount in the Auditor's Office?—A. Yes, sir.

Q. Have you not found, in your examinations, due-bills to the same persons—say an account against the United States for \$100—have you not found different numbers of due-bills to cover that \$100?—A. I think there are such cases, but I cannot call any to mind. I have been told, however, that that was the case.

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WASHINGTON, D. C., *March 26, 1874.*

Present, the chairman, and Messrs. Durham and Speer.

A. J. FALLS sworn and examined.

By the CHAIRMAN:

Question. You have been called this morning mainly to verify some of the statements of the Attorney-General made yesterday. The statement of expenditures of the western district of Arkansas, as furnished by the Treasury Department, shows an expenditure of \$321,000 for the fiscal year ending June 30, 1872, whereas your printed report for that year shows an expenditure by the marshals of \$243,809. Can you explain the discrepancy?—Answer. I will state that I did not make this statement out, but I presume it occurs in this way: This statement [referring to printed report] is for money advanced by the Attorney-General within the fiscal year. This statement, [referring to written statement,] I presume, covers all advances for services and expenses incurred in that time.

Q. Have you any personal knowledge of any frauds in the western district of Arkansas?—A. Personally, I have not.

Q. What official knowledge have you of any frauds or any mismanagement in that department?—A. All I know is from reading the reports made to the Department.

Q. Furnished by the detectives?—A. Yes, sir.

Q. Are there any statements in any other form than the reports made by any parties?—A. Not that I recollect of. As you are aware we have a very large correspondence.

Q. You supervise the correspondence?—A. Yes, sir.

Q. Have or have not the expenditures in that district been regarded as honest?—A. Well, I cannot say that they have. I have seen through the newspapers that the expenses of the courts were heavy, but with my knowledge of what the expenses of the courts are, I should not think they were, except in some districts.

Q. I mean the western district of Arkansas?—A. Yes, sir.

Q. Are there any charges on file in your Department affecting the late marshals, William A. Britton and Logan H. Roots, or the present marshal, John N. Sarber?—A. Nothing, I think, except what has been embodied in those reports. My recollection is that there were some affidavits attached to them, which I merely glanced at; I did not read them all. Of course I don't recollect what is on the files.

Q. You are the disbursing clerk of the Department?—A. Yes, sir; acting disbursing clerk. You are aware that we do not disburse this money to the marshals. I am the chief clerk, and I disburse for the Department, pay off the Metropolitan Police, and pay the expenses of the United States jail in this District.

Q. Do you get any extra compensation?—A. No, sir; except, as all disbursing clerks do, I get \$200 a year.

Q. Are you required to give any bonds as disbursing clerk?—A. Ten thousand dollars.

Q. Have you any information, or anything in your possession that you could furnish us, that would facilitate us in this examination, touching the western district of Arkansas?—A. Nothing that I know of now, except by looking over the records to see if there is anything there. We have a large mass of correspondence (which I am having copied) with the marshal and the judge of the western district of Arkansas, in regard to reducing expenses in that district. The correspondence will show that the Attorney-General has done all in his power—has written, written, written, and done everything that he could to keep the expenses down.

Q. How long have you been connected with the Attorney-General's office?—A. I went there when the Department of Justice was first organized.

Q. Is there any legislation that could be suggested, that would protect the Government against any improper expenses on the part of the marshals, judges, or clerks, in the several districts of the United States?—A. There is an act of Congress—it is in the 11th Statutes—which authorizes deputy marshals in the western district of Arkansas to employ a posse. That has caused, as I understand, a very heavy expense. The deputies are sent out to bring in their men; they say it is necessary to have this posse, and of course the marshal cannot be personally cognizant of what is necessary. I have often thought that if that law was modified it would result in a considerable saving to the United States.

Q. What modification would you suggest?—A. I believe the law allows three in the Indian country. I would suggest that they be reduced to one, and in extraordinary cases, say two, the necessity to be proved to the satisfaction of the judge and marshal and the accounting officers of the Treasury. In that way I think the expenses could be somewhat reduced.

Q. I do not see how the accounting officers of the Treasury could approve of the expenditure; it would be in the discretion of the judge?—A. I will amend that by saying to be under the affidavit of the marshal, and certified to by the judge. We some time ago wrote to Judge Story upon that subject, and called his attention to that act, and asked if he would not be particular to supervise accounts of that character and to require in each case the deputy to make affidavit as to the actual necessity of a posse, and where there was no necessity not to allow the accounts.

Q. Did you get any response from Judge Story?—A. Yes, sir, and he has been co-operating, as far as I know, with the department with a view to economy. You are aware there are a large number of United States commissioners throughout the country—sixteen hundred and odd—and that makes a very heavy expense.

Q. Could you recommend any law that would provide for a reduction of those?—A. I could not now, but a commissioner is paid fees, and it is to his interest, of course, to have as many cases as he can. He gets \$5 a day for his services, and if he has three or four cases he can hear one to-day, another to-morrow, and so on. Every time he sits as commissioner he gets his per diem. That makes a great many cases in the courts, which all tends to increase the expenses of the Government.

Q. You think that there ought to be a salary substituted in lieu of

fees?—A. I am not prepared to say that—but something should be done.

Q. Has it ever been a matter of consideration with the Department what measures should be had to effect a change or a remedy for this wrong or grievance?—A. The Attorney-General has often spoken with me in regard to it, and with others, and I have sometimes suggested that these commissioners should be subject to some one besides the judge. Now they are appointed by the circuit court, and are responsible to no other officer of the Government.

Q. They are all subject to removal by the judge?—A. Yes, sir. We have had considerable correspondence with the judges in regard to commissioners throughout the country, urging upon the judges to require these commissioners to be economical and not multiply cases. That is specially so in North Carolina.

Q. That very suggestion is a reflection on all the commissioners?—A. Of course I do not mean to say that all the commissioners do that, but there are a good many who do so.

By Mr. DURHAM :

Q. Just state to us what are your duties from beginning to end?—A. I am the chief clerk.

Q. What are the duties of a chief clerk?—A. I supervise the correspondence and write most of the letters. We have a stenographer and I dictate most of the letters to him, but, of course, letters involving questions of law the Attorney-General attends to personally, or he refers them to the Solicitor-General or one of the assistant attorneys-general. I disburse for the Department, for the Metropolitan Police force, and pay all the expenses of the United States jail in this District.

Q. Is that all the disbursing you do?—A. I act as disbursing officer of the Department; I disburse such appropriations as they have there.

Q. Who disburses the contingent fund?—A. I do.

Q. How do you get the money that you disburse?—A. Draw it from the Treasury.

Q. Upon whose order?—A. The Attorney-General's; that is, upon his requisition.

Q. What is the manner of paying it out?—A. As the bills are presented they are paid by me to the parties presenting them. They are examined by one of the assistants.

Q. What becomes of the vouchers?—A. They are filed.

Q. In what part of the Treasury Department?—A. They are first audited by the Auditor and Comptroller and then filed in the Register's Office.

Q. Will your books, together with these vouchers, show all the moneys disbursed by the Department of the contingent fund?—A. Yes, sir.

Q. The vouchers show what the money was paid for?—A. Yes, sir.

Q. And they are finally lodged with the Register of the Treasury?—A. Yes, sir.

Q. Are you having made up, according to the request of this committee, a statement of all that account?—A. I am.

Q. You have nothing to do with the payment of marshals in the various districts?—A. No, sir.

Q. You have simply control of the contingent fund, together with what is paid out here for expenses in this District?—A. Yes, sir, and also such other appropriations as may be placed under the control of the Attorney-General.

By the CHAIRMAN :

Q. Do you know whether any officers belonging to the Department of Justice have become useless or unnecessary connected with your office ?

—A. I don't know that I do.

Q. They are fully employed all the time ?—A. As far as I know, sir.

By Mr. DURHAM :

Q. Can there be any reduction, according to your judgment, in the clerical force or any other kind of force, in your Department ?—A. Down on my particular floor there cannot. Very often I feel that I ought to have more. On the library floor there is a law clerk and two assistants ; I am not able to say how fully their time is occupied, as I have very little to do with law questions.

Q. What are their duties ?—A. To make preliminary examinations of questions of law for the Attorney-General.

Q. Do you know of any day-laborers or anything of that kind that could be dispensed with ?—A. In the summer we could do with less, but in the winter I don't know as we very well could. Very often the Attorney-General, the Solicitor-General and their assistants come there and require their services for different duties ; and then they have a great deal of running to and from the Printing-Office, and they are kept pretty well occupied.

WASHINGTON, D. C., *March 31, 1874.*

Present, the chairman, and Messrs. Speer, Durham, and Sheats.

L. B. WHITNEY sworn and examined.

By the CHAIRMAN :

Question. Please state your name, age, residence, and occupation.—Answer. L. B. Whitney ; forty-one ; Cleveland, Ohio ; belong to the secret-service division.

Q. For how long have you been a member of that division ?—A. I was appointed two years ago last December.

Q. We are now investigating the expenses, disbursements, and general management of the western district of Arkansas since the first day of July, 1870. We want you to tell this committee all that you know in regard to that district ; how your information was obtained ; if you have made any visit to that district ; under what authority you went, and how long you remained ; and, in brief, all that will enable this committee faithfully and honestly to respond to its duties under the order of the House.—A. In November, 1872, I was directed by Colonel Whiteley to come to Washington—I received my orders by telegraph. I came here. Mr. Whiteley met me here, and we went to the Attorney-General's office. There I received instructions from the Attorney-General to go to Arkansas to make an investigation into the affairs of the United States marshal's office. The Attorney-General said that from papers filed in his office that they had received from there—vouchers, &c.—they had reason to suspect there were frauds being perpetrated, and wished me to go down there and see what evidence I could obtain. I was to go down there and, if possible, get acquainted with the Deputy marshals and officers of the court, and see in what manner the frauds were being perpetrated, if any were being perpetrated. Under those instructions I went down there. I got there, I think, the 2d of December, 1872—to Fort Smith—and remained there until the last of January. From there



I went to Little Rock. I left Arkansas, I think, some time about the 16th of February, as near as I can remember. I went by way of Muscoga, in the Indian Territory. On my way from there I rode in the stage with a gentleman from Fort Smith, and in conversation with him, in going from Muscoga to Fort Smith, I learned that he had been a merchant there for some time, and he told me a good deal of what was being done at Fort Smith. I learned that marshals' checks, as he called them, were being circulated there in payment of witness fees, jurors' fees, &c. When I came there I found those checks in circulation, made the acquaintance of some deputy marshals who had checks issued by the marshal, Mr. Britton. I saw those checks. They (the deputy marshals) claimed that Mr. Britton stated to them there was no money there by which he could pay them, and he issued to them a check. I think the check read something like this, "United States Marshal's Office." "There is due" John Smith, "from the United States," twenty-five dollars, or whatever the amount may be, "for services as a witness;" and it would be signed "W. A. Britton, by J. W. Donnelly, clerk," or by W. A. Britton alone. It seemed that it was his individual check, more for convenience for himself. I found those in circulation there; almost everybody in the town had them—the boarding-house keepers had them, and almost everybody. I don't know as I am exactly right in the phraseology of the check, but it amounted to the same thing. I also learned that the deputy marshals were in the habit of bringing up prisoners, and that the commissioners were in the habit of antedating warrants. For instance a marshal would come in to-day with one prisoner, or three or four prisoners, that he had picked up over in the Indian country, for violations of the law of one kind or another. This court, you understand, has jurisdiction of all manner of offenses—it is common-law jurisdiction. They would make an affidavit against a party, charging him with an offense, and a warrant would be issued to-day and dated back—say, for instance, a warrant issued on the 31st day of March would be dated back to the 28th day of February, covering a period of thirty days, when the fact was, the warrant was issued to-day. I also found that in some cases they would charge for a *posse comitatus* when they were not employed in the case, but they were charged in making up their accounts to the Government. These warrants would be antedated to cover the time that this deputy marshal said he had been out in the Indian Territory looking for these men. Suppose a deputy marshal should go out to-day, although he had no particular case, perhaps, that he would be looking for, and if he was fortunate enough to find a man that had been committing an offense in the Indian Territory, he arrested him and brought him to Fort Smith, and the commissioner would date the warrant as being issued on the 28th day of February. I found that that practice prevailed to a very great extent. The purpose was to cover the time that this officer might charge his per diem and for the services of his *posse comitatus*, covering this period which was antedated. I also learned, and it is so stated in my report, that the marshal-in-chief received one-third of all fees that were returned by a deputy marshal. For instance, if the deputy marshal returned a fee of \$300, \$100 went to the marshal-in-chief. I have known of cases where they brought in a number of prisoners at a time; I have learned the fact, as stated in my reports, and by affidavits in my reports from the officers who have brought in the prisoners, that when they would bring in a number of prisoners they were only allowed, as I was informed, to charge fees upon one warrant—that is, to charge their per diem, sub-



sistence of prisoners, &c., upon one warrant—consequently they would go to other men in Fort Smith, men who had never been out of the city of Fort Smith, and they would make a return of one warrant against a defendant and charge full fees upon it, charge for their service and mileage, the same as though they had been out, and also for the *posse comitatus*. The affidavits of some of the parties who have done this are on file here. I also learned that men live in Fort Smith and hold commissions as deputy marshals who loan their commissions to other men; two or three different times colored men who could not read nor write have taken their commissions. For instance, a man who had a commission as deputy marshal would say to another man, "Take this commission and go over into the Indian country and make arrests." This man would take the commission and make the arrest and bring him a prisoner, and then the deputy marshal, who had remained in Fort Smith, would make the return and charge his fees the same as if he had been out and made the arrest. I found that a Mr. Harris held a commission and loaned it to parties to go out and make the arrest; his accounts were sent up here. I also learned that the city marshal, Mr. J. C. Duff, held a commission and did the same, and another officer there also. I learned of several of them. I made mention of it in my report, and I have the affidavits of men who did the service, borrowed the commissions to go and make the arrests. I think everything that I could state here in connection with these cases is stated in my reports. From personal knowledge, any further than what I have stated, I don't know as to Mr. Britton; I saw but very little of him while I was in Fort Smith the first time; shortly after my arrival there he went to Little Rock, and it was rumored there upon the street, by some of the deputy marshals and very many of the citizens, that he had run away. There was no truth in the report, but there was an indignation-meeting got up by several of the deputy marshals, and finally a delegation of them went down to Little Rock to see Mr. Britton, as they claim, to get some money, and I think they did get some money. After I got through my investigation at Fort Smith I went to Little Rock to see Mr. Britton, but he was too sick. These certificates that were issued by Mr. Britton were bought up, as a general thing, by Mr. Lanigan, Mr. Scott, and Mr. B. Baer. Mr. Scott was the postmaster—James G. Scott, I think, is his name. Mr. Lanigan is a merchant there, a man I think of considerable wealth, so reputed, doing a large business there; and Mr. Baer, I think, is the president of the First National Bank of Fort Smith. I learned that these certificates that were issued by Mr. Britton were being bought up by these parties and some of them by other parties; but then they were small dealers outside of Lanigan, Scott, and Baer. These checks were selling from twenty to fifty or sixty cents on the dollar. Witnesses and jurors, and all men who held them, were complaining very bitterly—cursing the Government and the court, and everybody else that was connected with it, claiming that there were frauds being practiced in issuing these checks. They claimed that Mr. Britton, when they would come to him for money, would say to them that the Government had not furnished him any money; he had no money to pay them, but would give them in lieu this check, and would say to them, "This will be good some time; I may have some money in a month, and I may not have it for two or three months, but this will be paid when I get money." They could not hold the certificate, and consequently would have to dispose of it at the best figures they could, and would have to sell it. When I first got there they were fetching forty or fifty cents, and they dropped down to twenty.

I know some of them sold for twenty. They were called marshal's checks and witness-checks. They were designated as "deputy-marshal checks," "witness-checks," &c. They were Mr. Britton's individual checks, but a person would say, "I have a witness-check or a deputy-marshal check," but they were Mr. Britton's checks. They were printed checks, mostly, with the exception of filling in the time. There are some of these checks in the Department, that I gathered up and sent here. I think I have described the check in my report—just how it reads. Well, these people were buying them up, and it was the impression of the witnesses and men to whom these checks were issued that Mr. Britton, Mr. Scott, Mr. Baer, and Mr. Lanigan had an understanding between them that he should issue the checks, and they buy them up and then divide. I tried to learn that fact definitely while there, but I could not say positively that such was the fact. It was my impression that there was something of the kind, but I cannot say definitely that it was the fact. I called upon Mr. Donnelly, Mr. Britton's chief clerk, to give me a statement of what had been done with the money that the Department had sent to Mr. Britton. He made a statement in writing. He also remarked that he had opportunities to make a great deal of money there, if he had been a man to avail himself of it. Speaking of the court in session then, the adjourned part of the November term, he said that when they commenced the term that Mr. Lanigan and Mr. Scott came to him and said: "Mr. Donnelly, if you will issue certificates to the witnesses, jurors, &c., and give us a chance to buy them in, we will divide with you." Donnelly said that he did not enter into the arrangement; but the certificates were issued, however, and they bought up a very large amount of them. There was a check came on there to Mr. Britton while I was there of \$20,000, and I think Mr. Britton, at the time the check came, was at Little Rock, attending the senatorial convention there, and Mr. Scott took the check and went to Little Rock and got the check cashed and took out whatever was due him, some seven or eight thousand dollars of these checks that he bought in; and I don't know but more, for I heard it stated in two different ways; one man stated \$13,000 and another \$7,000 or \$8,000. Mr. Scott himself, I think, said \$7,000 or \$8,000—that he deducted that amount from the check. The check was sent to the post-office, and Mr. Scott got it out of the office and took it to Little Rock and saw Mr. Britton, as I understood, and got the money, and when he returned, after deducting his amount and a certain amount for Mr. Lanigan, he told me that he left with Mr. Britton a portion of the check, and he returned to Mr. Donnelly, the clerk, some \$2,000 or \$3,000 out of the \$20,000. The major part of the check was consumed in redeeming Mr. Britton's checks that had been issued that term of court, and the balance was turned over to Donnelly to pay juror fees, &c.

Q. Will you identify in your statement who Mr. Donnelly is?—A. He is a clerk of Mr. Britton. He was also a clerk for Logan H. Roots. He was under Mr. Britton's first administration, and then, after the appointment of Mr. Roots, he was his clerk; and then, after the re-appointment of Mr. Britton, was again in his office as a clerk.

By Mr. SPEER:

Q. Did you say that these checks fell to twenty cents on the dollar while you were there?—A. Yes, sir.

Q. How long after that was it that the \$20,000 came?—A. It was at that time. During the time the \$20,000 was there, and was devoured up in the manner I tell you, they depreciated quite fast.

Q. At the time the \$20,000 were there these checks were selling at twenty cents?—A. Yes, sir; Mr. Britton, as I understood from Mr. Scott, usually deposited in Scott's office in the safe of the post-office. Scott's office was the depository of the marshal, on account of his having a safe there. I know that the money was deposited in that safe, because Scott told me so.

I have seen Judge Story, and I had a talk with him before I called on Mr. Scott. Judge Story's court was then in session, and he wanted some money sent there by the Department, to defray the expenses of his court. I said to him, "Judge, the Attorney-General has just sent \$20,000 here." "Well," his reply was, "that has all been gobbled up." I said, "Who has got it?" He said, "Scott and Lanigah, and a portion of it has gone to pay Britton's debts down in Little Rock." I said, "Won't that be the result if there is more money—won't it be gobbled up, too?" "No," he said, "the money can be sent here to somebody to disburse, paying the expenses of this court." He had a dispatch, and he wanted me to join with him in sending it to the Attorney-General, saying that the court was in session, and there was a large number of witnesses in attendance, and that he would necessarily have to adjourn the court unless the Department sent him money. I refused to join him in the dispatch to the Attorney-General. He then showed me a dispatch from the Attorney-General, in which he replied, as I understood, in answer to a dispatch of the judge asking for a certain amount of money—I think it was \$46,000 that he asked for—that he claimed Mr. Britton had vouchers here in the Department showing the indebtedness, and asked that this money be forwarded upon those vouchers: whether the amount was \$46,000 or not I don't undertake to state definitely. I saw the dispatch from the Attorney-General to Judge Story, saying at such a day—I think it was on the 11th of January or about the fore part of January: "We sent you \$20,000. If it had been honestly expended, it would have been sufficient to pay the expenses of your court." Signed by Mr. Williams. I then said to the judge that I could not join him in a dispatch, for I did not think he could get any more money until there was an investigation. The judge then made a remark that he should hold his court any way, and emphasized the word; and I guess he did.

Q. Have you any knowledge in regard to the judge's collusion in the arrest and discharge of prisoners?—A. I have no definite knowledge of it any more than hearsay.

Q. Tell us what knowledge you have and from whom you got it.—A. One of the deputy marshals, Floyd C. Babcock. He is now a United States commissioner, appointed at the solicitation of Judge Story, and I am informed he is a relative of the judge. On my first visit there and on my way from Muscoga to Fort Smith—Muscoga is in the Indian Territory—I staid over night at the same house with Babcock, got a little acquainted with him, and when I got to Fort Smith, westopped at the same hotel, and we got into conversation about the deputy marshals, and about the marshals generally, and the marshal's checks, and he was saying to me that they were considered not worth anything. He said: "I have just sold to Judge Story two checks for a man at Fort Gibson. He gave me forty cents on the dollar for them," and he designated the man's name to whom the checks belonged. The name is not mentioned in this report, as I see, but I have a minute of it at home. The amount of the check was \$160, if I remember correctly, and he said that Judge Story bought them from him and could get the money, or would get the money, or something to that effect, as soon as it came. I stated in my first report that I had learned that Judge Story was dealing in these

marshal's checks, and that is the authority I had for stating it in my report, that this man Babcock stated to me that he let Judge Story have two of those checks.

Q. Did you mention that to Judge Story?—A. I did not.

Q. Was the man's name Hough whose checks the judge bought?—A. I cannot undertake to say.

By the CHAIRMAN :

Q. Have you any other evidence on this point of collusion—any other conversation with a deputy marshal?—A. I heard deputy marshals say that they believed it. This was the phrase: "The judge stands in with it."

Q. What deputy marshals said it?—A. A man by the name of Ish. Fleming. He had a large amount of the claims, and wanted to sell them to me. At that time I was representing myself there as a book-agent, and that I was there partially for my health; and I had a great many offers to buy these claims.

Q. Have you stated that you went there in that capacity?—A. I have not. I went there in the capacity of book-agent, under the name of A. H. Pettibone. It was no trouble to get these checks.

Q. What was the common sentiment there?—A. The common sentiment there was that the United States district court was a stench in the nostril of the community.

Q. That was the general opinion of almost everybody there?—A. Of almost every person—that this United States marshal's office was run in the interests of a very few men, and that they had a very ruinous way for all men in Fort Smith—business men, merchants, boarding-house men, and everybody else; that the United States court was a curse to them instead of being a benefit.

Q. We want you now to make these statements and affidavits a part of your testimony.

[Mr. ROBINSON objects to having these statements allowed as true, but is satisfied to have them entered as part of witness's statement.]

A. My first report is not here. My reports were sent under the instructions of Colonel Whiteley. Every commissioned officer has to make a report every seven days to the chief of the division. My reports are made four times a month, and then this report is made from my report. This is my report in January. I have read these reports, and consequently I identify them. The first report, dated January 18, 1873, is marked K. [See Appendix.] The next is dated January 26, 1873, and is marked L. [See Appendix.] The next is dated February 7, 1873, and is marked M. [See Appendix.] I asked Mr. Donnelly to make a statement in regard to moneys received, and here is his statement in M. The summarized, general, full report is marked N. [See Appendix.] It is dated October, 1873. This affidavit was taken on the 5th day of September, 1873. It is the last affidavit I have taken in Fort Smith.

Q. All those affidavits in the report were taken by you at the times and places on the faces of the affidavits?—A. Yes, sir. But as to the parties making the affidavits I will say this—that I know nothing about them, any further than that they appeared before me and made their statements that they had been deputy-marshals, or were deputy-marshals, of Mr. Britton and Mr. Roots, and some of them had acted as *posse comitatus* or special deputies under the present marshal, John N. Sarber.

Q. If there is anything peculiar in the manner of making these affidavits, just state it.—A. Many of them were diffident about making

affidavits. They claimed that if they came up and made statements, they were in danger of being assassinated. They seemed to be afraid to make statements. When they would come to my office they would come in the back way, claiming that they did not want to be seen coming there by parties. However that may be, I don't know—I am simply giving their statement. But the statements that they made to me, many of them, seemed to be frank and honest statements, and they seemed to be men of integrity. Some of them were ignorant men, as you would see in every case. I would take their statements and read every statement over to them, and if they wanted to change it I would make the changes they would request.

Q. Did I understand you to say that nearly all these men had held official relations with the marshal?—A. Yes, sir; they all stated that they had.

By Mr. SHEATS:

Q. They knew who you were when they made the affidavits?—A. They did, sir.

By the CHAIRMAN:

Q. Did they furnish this testimony voluntarily?—A. Yes, sir.

Q. No pay nor emolument?—A. I paid Mr. Scovell \$5, but he got some men—he assisted me in getting some other proof; I simply paid him for his time. Mr. Shoemaker had a horse, and I paid \$6 for that, and paid the board of the horse.

Q. Have you stated anything yet as to the returning marshals; did you not find a large number of men certified as returning marshals?—A. Yes, sir; I have so stated in my reports that there was a class of men in Fort Smith called returning marshals, who did not do any service as deputies.

Q. Did you find the names of deputy marshals who were myths?—A. It is so stated in my reports, and substantiated by Mr. Shoemaker and by Mr. Scovell, that there were no such men in existence; that they were supposititious persons in the marshal's office, and when a man came in from the Indian country with a large number of prisoners, the name of John Smith would be signed to a warrant as deputy marshal, and John Smith would charge for his services; per diem, subsistence of prisoners, *posse comitatus*, &c.; would be charged upon the warrant, when, in fact, there was no such man as John Smith—he was entirely a myth.

Q. How long were you there?—A. I was there something over two months.

Q. How long after you went there was it before your official position became known to Logan H. Roots; was he ever there while you were there?—A. He came there while I was there.

Q. Did he know what capacity you were acting in?—A. I went away, I think, the next day.

Q. Did Mr. Britton know your official capacity?—A. I don't know that he did, but he was not there; he was down at Little Rock. But Mr. Story, the judge, the district attorney, the commissioners, and the postmasters learned of my official capacity before I was aware of it, I think, for there was a letter directed to me came under an official seal from the Department. It was arranged that my mail-matter should be sent to New York, and the chief of the secret-service would direct it to me, so that it would not bear the official seal of the Department here, and they would not suspect. The letter came to me under an official seal



from the Department, and that letter was opened when I got it, or it had been opened. There were two or three of my letters opened after that. They would be opened in this wise. [Illustrating.] After they had been opened two or three times I called the attention of the young man in the office. I sent to the Department for a package of vouchers—I wanted to get some vouchers that bore the names of some of the deputy marshals that I had talked with—I sent to the Department for a certified lot of those vouchers, and I directed them to seal them up so safely that it would be impossible to open them without violence. They came, and when they came the whole end was torn off, and they had made such a terrible job of it they had got worn out, and the vouchers had evidently been out and examined, for they were tied up with a piece of twine and then sealed up, and when I got them the seal had been broken. I got it out of the office, and I called the attention of this clerk to it. I said, "It is strange that all my letters get opened in transportation here." "Well," he says, "I don't know." I said, "This has evidently been opened by some person who wanted to see what was inside of it." He said, "I think it has, but it has not been done in this office." That is the way they became cognizant of my position there. I then was satisfied that my presence was known there to the most of them, for just about that time this practice of antedating warrants stopped; they changed the practice all of a sudden; men and officers that had been out in the Indian country, and had not heard of my being there, came in, and the warrants were dated the day that they made the affidavit, and many of the prisoners were released and told to go; that they would not stand any such way of dating warrants. Well, I went to Judge Story—I knew that there was no use of longer concealing myself—I went to him and handed him a letter that I had from Judge Williams, the Attorney-General, and told him of my capacity. I also told the postmaster. The moment that I handed Judge Story my letter, "O!" he said, "I knew you were here ten days ago." "Did you?" "Yes." "How did you know it?" "I have a man in Washington who keeps me posted there, and I knew you were here, and knew your business. I suppose you are here to look over Britton's accounts." "Well," he says, "you will find enough rascality here—a good deal of it." And he said, "I have got some deputy marshals' accounts here now to be approved that are fraudulent. There are men in the town, that I know are in town, that never have been out to do service as deputy marshal, and still they charge for their services, and I know them myself, and they never have been out, and still their accounts are here." I said, "Have you ever made a report of this fact to the Department?" He said, "No; I did not consider it my duty to act as judge and detective at the same time."

By Mr. SHEATS:

Q. Did he say that he approved those vouchers?—A. He did not. He said that he should make a statement to the Attorney-General now, in regard to it.

By the CHAIRMAN:

Q. Did you ask him if he had ever approved those accounts?—A. Yes, sir. He said that he had no knowledge of the number of miles traveled—that those deputy-marshals had traveled—but he approved them; and he said that he could not say positively whether the number of miles were traveled or not.

Q. These cases that he had passed upon were fraudulent, though he had not the means of detecting it?—A. I do not so understand it.



Q. Was that the only conversation that you had with him?—A. I had two or three conversations with him, but it was more upon the—

Q. Tell us exactly what transpired in those conversations. You were there as a detective when you talked with this judge?—A. It was after this conversation, or when I would not join Judge Story in a dispatch to the Attorney-General asking for more money.

Q. Was that prior or subsequent?—A. Subsequent. Then Judge Story did not come to see me very often. I don't think I have had, after that, more than one or two conversations with the judge, but at every conversation it was in relation to money—he wanted money sent to him.

Q. He wanted money sent to him to aid Britton in getting his accounts through?—A. He said that the Department owed Britton money.

Q. That was after the time that he said that many of those accounts that he approved were fraudulent?—A. Yes, sir.

Q. Was there anything else that bears upon the proper expenditure of money, said by Judge Story to you?—A. I talked with Judge Story about the commissioners. I told him there was a good deal of complaint about the commissioners—that Mr. Brooks was charged with antedating warrants; that he received a fee for doing it. He said that he looked upon Mr. Brooks as fit for the position of commissioner; that he was a thoroughly honest man, and that he did not believe any of the stories about Mr. Brooks.

Q. Did you ever have any talk with him as to his opinion of Roots?—

A. Yes, sir; he said that Mr. Roots was a very honest gentleman; that during his administration he had the entire confidence of the people of Fort Smith; that he always paid his indebtedness promptly, and that he was looked upon as a very kind and upright, honest gentleman. What I mean by paying his indebtedness is the debts of his office.

Q. And that he had conducted the marshal's office honestly?—A. Honestly and properly.

Q. Did you ever have any talk with him about this after that?—A. On my second visit to Fort Smith, Judge Story never came near me—no, sir; I never had a chance.

Q. He gave you no assistance?—A. I never had any chance to have any conversation with Judge Story; I met Judge Story one or two evenings at citizens' houses, but never had any conversation with Judge Story, only in the presence of Judge Bartlett and some others—never had any conversation with him in regard to business alone.

By Mr. SPEER:

Q. Have you any knowledge of Judge Story accepting money or notes for the release of prisoners, and from whom?—A. On my second visit to Fort Smith, in August, 1873, the second or third day after my arrival in Fort Smith, they held a bar-meeting there, called, as I understood it, by some of Judge Story's friends, and at that bar-meeting Judge Robinson opposed a resolution offered indorsing Judge Story, by stating that it could be proved that Judge Story had accepted a bribe from one Frank J. Nash, of Fort Gibson, in the Cherokee Nation, Indian Territory. Well, I saw the notes that were purported to be given. The facts, as stated at this bar-meeting, were that this man Nash was charged with introducing liquor into the Indian Territory; was indicted and arrested upon *capias*, and brought by Marshal Roots or Marshal Roots' deputy to Fort Smith; that he arrived at Fort Smith some time early in the morning, upon the boat, and went to Judge Story's office; that the matter was there arranged that a *nolle pros.* should be entered in the

case of the Government against Nash upon the payment to Story of \$2,500, and the payment to a man by the name of Huckleberry, who was then United States district attorney, of \$500, making \$3,000 in all. It was claimed by Judge Robinson that there were two notes given, one to Judge Story for \$2,500 and one to Huckleberry for \$500. Judge Robinson at this bar-meeting stated that he had the proof, that he had an affidavit, and that he had the notes that were given, and that the notes that were given were paid at maturity; and that the money was paid to a man of the name of B. J. Brown, who paid it to Judge Story. Before going to Fort Smith in August, the Attorney-General gave me a copy of the affidavit made by Nash, and also a copy of the letters sent by Judge Robinson to Judge Williams, stating the transaction as between Nash and Story in regard to the settlement of this case, and he directed me to make an investigation of the facts, and also stated in his letter that L. B. Whitney is authorized to investigate this matter. That was directed to Judge Robinson. When I got to Fort Smith, I called on Judge Robinson and stated to him that I had authority from the Attorney-General to make an investigation of the facts. He then said, "I have the notes," and went and got the notes.

By Mr. SPEER, (showing witness the notes:)

Q. Are these the notes?—A. Those are the notes; this is the note to William Story for \$2,500:

FORT SMITH, ARK., June 20, 1872.

Three months after date I promise to pay William Story \$2,500, payable without defalcation or discount, due September 20, 1872.

WITNESS continued: There is a portion of Nash's name missing, but enough of it is left to see.

Q. What part of the note is erased, if any?—A. The note should read, without any erasure, "Three months after date I promise to pay to the order of William Story \$2,500, for value received, negotiable and payable without defalcation or discount."

Q. What words are erased?—A. "To the order of" and "for value received, negotiable and" is erased.

Q. William Story there—is that the name of the judge?—A. That is the name of the judge. This is the second note, for \$500:

FORT SMITH, ARK., June 20, 1872.

Three months after date I promise to pay to James Huckleberry \$500, payable without defalcation or discount, due September 20, 1872.

The WITNESS continued: The same portion is missing—Frank is plain here and a portion of the Nash.

Q. Are there any erasures in the note?—A. There are the same erasures—"to order of" and "for value received, negotiable and" is erased.

Q. Both notes are printed?—A. Both notes are printed in part, and part writing; James Huckleberry, the payee of the \$500 note, was, at the date of the note, United States district attorney—so I am informed; I do not know of my own knowledge.

Q. You know nothing about this transaction whatever?—A. I do not.

By the CHAIRMAN:

Q. This was openly stated at a public bar-meeting in the town of Fort Smith?—A. It was.

Q. Did you ever have any talk with Judge Story or Huckleberry about it?—A. I did not.

Q. Do you know that this is the signature of Frank J. Nash?—A. I do not.

Q. Do you know that these papers [pointing to the notes] were ever in the possession of Judge Story or Huckleberry?—A. I do not; I have seen an affidavit made by Nash.

By Mr. SPEER :

Q. Is this the affidavit or a copy of it? [showing a paper.]—A. That is the affidavit purported to be made by Nash.

Q. The maker of the two notes?—A. Yes; Mr. Robinson went at my suggestion to get this affidavit, or rather to bring Nash to me at Fort Smith, and instead he took his affidavit and brought it to me and said that this was the affidavit of Mr. Nash; I do not know Mr. Nash's handwriting; I never saw Mr. Nash. [The affidavit was again shown to the witness for identification.]

The WITNESS continued: I saw this affidavit in Fort Smith in the hands of Judge Robinson.

Q. Affidavit of whom, made when, and dated when?—A. It is the affidavit of Frank J. Nash.

Q. Dated when?—A. It is dated August 19, 1873.

Q. Just read that affidavit.

The witness read the affidavit, as follows:

I was arrested in June, 1872, by Deputy Marshal C. D. Mesler, who advised me to go with him to a steamboat then lying at the wharf at Fort Gibson, where I would find Col. Logan H. Root, United States marshal for the western district of Arkansas. The charge was for introducing spirituous liquor into the Indian Territory and selling the same without license, (to the best of my knowledge.) I secured the services of B. J. Brown, attorney at law, (whose residence is at Van Buren, Arkansas.) On the trip to Fort Smith he gave me every assurance that the matter could be arranged. Upon my arrival at Fort Smith I did not go immediately on shore, as it was about three o'clock in the morning. After I had breakfast, I called upon Mr. Huckleberry, United States district attorney, in company with Mr. B. J. Brown. I did not hear all the conversation between Mr. Huckleberry and Mr. Brown, but I heard enough to satisfy myself that my case was the subject of conversation. During the morning of June 6, 1872, in the United States court-room for the western district of Arkansas, the case of the United States vs. Frank J. Nash was called. Although I was present in the court-room, I heard no response. In the afternoon of the same day, just as court had adjourned, to the best of my knowledge, it was intimated to me by a go-between that a compromise could be effected, Judge Story and Mr. Huckleberry both present, and impossible for them not to have heard the conversation, as at the time we were engaged in conversation relative to my case, Judge Story himself saying to me that the lowest penalty provided by law was a fine of \$1,000 and six months' imprisonment in the penitentiary. The disgrace of going to the penitentiary was more than I could stand, when I had unwittingly violated the law, thinking that the United States Government would protect me, as one of its officers had granted me permission to introduce liquor. I, therefore, was open for a compromise, which was effected by my giving my note in favor of Judge William Story for \$2,500, and one in favor of James Huckleberry for \$500. Both notes are dated June 20, 1872, and given at three month's time. Both notes were paid at maturity or a few days after. The notes are in the possession of James S. Robinson. Judge Story, as I said before, was present when the offer or chance for a compromise was broached. So was Mr. Huckleberry. I was arrested on Wednesday, June 5, 1872, arrived at Fort Smith about three o'clock June 6, 1872. The case was *nolle prossed* on the afternoon of my arrival at Fort Smith. The *nolle pro.* was not read in the court-room that afternoon, but I was told by my attorney, B. J. Brown, that it was all right. The go-between in this matter was B. J. Brown, my attorney, and unless he perjures himself, will testify that Judge Story and Mr. Huckleberry took the notes with which I bought off criminal prosecution. By agreement, when the notes were presented for payment they were to be paid, which was done in my case at Fort Gibson.

FRANK J. NASH.

Sworn to and subscribed before me this 19th day of August, 1873.

JOHN B. JONES

United States Agent for Cheke.

By the CHAIRMAN:

Q. Do you know anything of the whereabouts of Frank J. Nash?—A. I am advised that Frank J. Nash is in one of the Eastern States. He has left the West and can be found. I am told that a gentleman has agreed to give me information whereby I can get to him.

Q. Did these notes to Story and Huckleberry, as you have seen them and identified them, have any indorsements?—A. No, sir.

Q. Did you ever have any talk with Mr. Britton about the extra expenditures there?—A. Yes, sir.

Q. If you have had, state fully all such conversation.—A. Well, Mr. Britton has always been unable to give me any detailed statements as to expenditures in his department; he has always claimed to me that he trusted the management of his office entirely to J. W. Donnelly, his chief clerk, and when I went to Fort Smith to collect in all the accounts, Mr. Britton's with the rest, Mr. Donnelly was not there, and Mr. Britton said to me, when I presented the letter to him, (for I had a letter to Mr. Britton from the Attorney-General directing him to deliver all his papers to me for examination and transmission to the Department,) that Mr. Donnelly was out of town, and he asked that I would wait a day or two for his return; he said he knew nothing about his accounts himself, and that Mr. Donnelly could give me more information than he could; I waited for him to return.

Q. Did you ever charge Mr. Britton with having returned more *posse comitatus* than he needed or that served in the execution of these warrants?—A. Yes, sir; Mr. Britton has repeatedly told me, when I have spoken to him about *posse-comitatus* accounts, that these *posse-comitatus* accounts, as a general thing, he knew very little about; he said that men had served as *posse comitatus* that he knew nothing about, and that he never paid much attention to it, and could not tell who had served or he had seen as *posse comitatus*; he said he did not know who had served as deputy marshals; many of his deputy marshals he did not know. I found that Mr. Britton, as nearly as I could learn, had 147 men in his service as deputy marshals.

By Mr. SPEER:

Q. At one time?—A. At one time. I asked Mr. Britton, and asked him repeatedly, why he had so many deputy marshals, and his answer was that the state of things there at that time, being about upon the eve of a governor's election, that the peace and dignity of the Commonwealth demanded that he should have this force of deputy marshals to protect the citizens in their votes—in the right of suffrage; that it was to avoid a collision between the two parties.

Q. Did you ever charge him with having returned the names of deputy marshals or men as *posse comitatus* who were not really in existence?—A. I never did, for the papers did not show that Mr. Britton had ever done this thing; the papers only showed that it had been done by the deputy marshals.

Q. Did you find the names of several of the deputy marshals on the tombstones?—A. No, sir; I found names that did not exist; Mr. Britton could not identify them.

By the CHAIRMAN:

Q. Could anybody identify them?—A. No, sir; they could not be found.

Q. How many of such?—A. I cannot tell.

Q. One?—A. O, yes, sir.

Q. Ten?—A. Yes, sir; more than ten.

Q. Twenty? Fifty?—A. I presume that there were a hundred; these were *posse comitatus*; some were deputy marshals—probably about a dozen men that had returned papers as deputy marshals that I could not find.

Q. And Mr. Britton said he could not tell who they were?—A. He said he had given commissions to men that he did not know anything about; his explanation was that they would be recommended to him by some man; that this man would vote a certain ticket, provided that he was appointed deputy marshal, or he could bring to bear a certain influence.

By Mr. SPEER:

Q. Political influence?—A. Yes, sir; that is Mr. Britton's explanation of it—that he appointed a great many of them on the ground that they would bring to bear a certain political influence.

By the CHAIRMAN:

Q. Were these men appointed merely to preserve the peace without pay, or were they appointed and their names found on the rolls as having received pay?—A. Perhaps I neglected at the proper time to state that all the pay that a deputy marshal receives as compensation is made up in fees that he returns. If a deputy marshal returns no warrants, makes no arrests, and makes no papers, as I understood it in that district, he got no pay; consequently he was dependent on the fees he got to pay him for his service as a deputy marshal. One third of all fees went to the marshal, the balance to the deputy marshal making the arrest.

Q. Did all these deputy marshals who were appointed manage to discharge some duty, or apparently some duty, and did they all receive some pay; are they all accounted for in the vouchers of the Treasury Department as having received pay?—A. I could not state that any more than I have seen papers returned; how many names there are on the vouchers I do not know; I found a certain set of men returned papers, but how many I do not know.

Q. Did I or not understand you to say that some men were returned as deputy marshals having discharged duty and rendered services and received pay who could not be found?—A. Yes, sir.

Q. Did I understand you to say that men acted as the *posse comitatus* who could not be found, who did not exist, and who had received pay?—A. Yes, sir.

Q. Can you give any near estimate of the amount of money drawn by these supposititious marshals, to use your own expression, upon the Treasury of the United States, upon vouchers furnished by Mr. Britton and approved by this judge?—A. No, sir, I cannot. I can only state that there is an affidavit on file here by a deputy marshal, who states that fraudulent vouchers have been sent on here under Mr. Britton's and under Mr. Roots's administrations, very much more under Mr. Roots's administration than under Mr. Britton's, very much more; the man making the affidavit stated that if the vouchers were placed before him by the Department, he could pick the supposititious names in which these vouchers had been returned, and that he would guarantee to select out \$100,000 of fraudulent accounts that had been presented to the Department.

Q. Who stated that?—A. B. F. Shoemaker.



By Mr. SPEER :

Q. By whom did he state that those fraudulent vouchers had been returned?—A. Under whose administration?

Q. Yes, sir.—A. He states that they were returned under Logan H. Roots; but he also states that some were returned under Mr. Britton's administration; but the larger portion of them under Mr. Roots's administration.

Q. What was the result in brief of your investigation there; did it satisfy you that that district was thoroughly corrupt?—A. Yes, sir; it was the opinion of the attorneys at the bar there that the judge was entirely incompetent; they did not seem to have any respect for him; they looked upon him as entirely incompetent for the position he held.

The committee adjourned to 2 p. m.

The committee re-assembled at 2 o'clock p. m. Present, the chairman, Mr. Speer, Mr. Durham, and Mr. Sheats.

The examination of Mr. Whitney was resumed as follows:

By the CHAIRMAN:

Q. You have now made general statements against the marshals of the western district of Arkansas, and indeed you have given testimony that involves the general management of that western district, and you have filed as exhibits here your own reports to the Attorney-General; have you furnished to the committee all the evidence in your knowledge, going to show the corrupt state of affairs there existing; and have you given to the committee, so far as your knowledge goes, all the suggestions that will enable them properly to investigate this matter?—A. I have; there were men came to me and gave me partial statements, and I gave the names to the chairman of the committee, Mr. Sener, the names of the same men who came to me and said they would make statements if they were outside of Fort Smith and could be protected.

By Mr. SPEER :

Q. Of whom were they afraid?—A. They claimed to be afraid of assassination from some of the deputy marshals or some of the parties interested in the marshal's office; I gave the chairman the names of the witnesses.

By the CHAIRMAN :

Q. Now, go on and fill up that skeleton as well as you can.—A. There is a paper gone from my reports, I discover in looking over them, one that I obtained that is not now in my reports; the last time I saw my reports at the Comptroller's office it was there.

[The reports were shown the witness.]

WITNESS continued: The paper that is gone from my report is a list of cases that was given to Mr. Benjamin F. Shoemaker at the time he went before the grand jury, as he swears in his affidavit here. It was to cover a list of cases that was handed him to make an affidavit to before the grand jury, that he had had the warrants in his possession, and that he returned the warrants, and upon the warrants he charged the service of a *posse comitatus* in each case, as the warrants purported when they were sent up to the Department by Marshal Britton; and in the affidavit he states that he never employed the men that were named in the warrants that were sent to the Department by the marshal, but that he handed the writs in to Marshal Britton and to Mr. Donnelly, with no returns made upon them, with the understanding that the writs would be by them returned *non est*, as he states here. But the writs, as he states, were



returned, and the service of *posse comitatus* charged on each writ, and that, when he next saw the writs or heard from them, they were at Fort Smith, and being used there as testimony looking to the indictment of Mr. Britton, Mr. Brooks, and Mr. Donnelly; and when he was taken before the grand jury, this paper purported to be list of the cases which he must identify as having been in his possession, in which were returned a *posse comitatus* charged upon them. That paper, when I saw it in the Comptroller's Office, was attached here (pointing) to this affidavit. A copy of the cases is embodied in this affidavit.

Q. It is not there now?—A. No, sir.

The chairman of the committee stated that, on the 18th March, he addressed a letter to the Hon. R. W. Tayler, First Comptroller, asking him if he could explain the absence of the paper in question from this report, and that, on the 19th March, the Comptroller addressed him the following letter:

TREASURY DEPARTMENT, FIRST COMPTROLLER;  
Washington, D. C., March 19, 1874.

SIR: Search has been made for the paper mentioned in your letter of the 18th inst., but it cannot be found. When last seen it was between two leaves of Mr. Whitney's report, and the clerk from whom the report was taken when handed to you, thinks it was in place, but not pasted in, at that time.

Hon. J. B. SENER,

*House of Representatives.*

The chairman of the committee said that he desired to state distinctly that no such paper was there to his knowledge or recollection, and that he never saw it.

WITNESS continued: I cannot think of anything else more than what I have stated in my report.

By the CHAIRMAN:

Q. When you went there, did you seek the assistance of these marshals or their deputies in this investigation; did they proffer any assistance, or did they aid you in any way?—A. Not the slightest in the world, more than their affidavits.

Q. These deputy marshals?—A. I do not understand the question—how they aided me in getting testimony?

Q. Did they help you, either Roots or Britton, to get at a true exhibit of the condition of the western district of Arkansas?—A. They did not.

Q. Was it suggested to you at any time by any party that you had better leave there? While you were there were you in any bodily apprehension?—A. I do not know, from my own knowledge, that I was.

Q. Did you not state to me that you left there late in the evening, and when you had not thoroughly finished your investigation, because of threats brought to your attention?—A. Yes, sir; Colonel Fuller said to me that there was a party—I do not know how much truth there is in this—preparing to assassinate us, and he said to me that it had been tried once, and, the night I left, it was going to be done; he said he got it direct from one of the police there, and he says, "I want to get you out of the State; I want you to get away from here; I know what I am talking about; if you don't get away to-night we are going to have trouble;" and he hitched up his team and carried me away.

By Mr. SPEER:

Q. Who is Colonel Fuller?—A. Colonel Fuller was the mayor of the city.

By Mr. SHEATS :

Q. Which side was he supposed to be a friend of?—A. I do not think that Colonel Fuller was in sympathy with these deputy marshals or this marshal. I do not know that he had any antipathy against the judge, nor against the marshal. He stated to me that he had been a prison-keeper under Mr. Britton, and was removed by Mr. Britton. Mr. Fuller came to me and volunteered to give me information when I was down there the first time, and he made an affidavit, which is on file here, in regard to several cases; and gave me, as I supposed at that time, some valuable information. When I went back the second time to collect up those accounts, I took with me A. H. Pettibone; but about ten or eleven days after I got there he got a dispatch that his wife was taken sick with the cholera, and he came immediately home. Judge Robinson at this time had gone up into the Indian Territory to see this man Nash to get his affidavit, or to get him to come down and see me. While he was gone I employed Fuller to assist me in the collecting of those accounts. I had to get some one to assist me. Fuller was the only one I knew there, or that I could rely upon, and I employed him, and he staid with me and helped me in the collecting in of those accounts. I paid him for his services.

By the CHAIRMAN :

Q. What do you mean by "those accounts"?—A. The accounts that I collected in—the marshal's accounts—the vouchers, and certificates, and so forth.

Q. Were these accounts that you collected in fraudulent or genuine?—A. Genuine and fraudulent together.

Q. Did you make a designation of such as were genuine and such as were fraudulent?—A. As far as my knowledge of the accounts, I did; those that were good I certified as correct, and those that I had reason to suspect were fraudulent, or had proof that would warrant me in saying that I suspected they were, I made a minute on them that they were fraudulent.

Q. Could you identify those accounts if you saw them?—A. I think I could.

Q. When you went to the western district of Arkansas were any specific instructions given you by the Attorney-General as to what matters, in the judgment of the Department of Justice, were fraudulent, or were you just clothed with a general commission to go there and inquire into the condition of Arkansas matters?—A. I was instructed by the Attorney-General to go there and investigate there generally.

Q. You got no specific instructions?—A. No, sir; his instructions were general to me to look after affairs in the western district of Arkansas, and if I discovered any frauds there, to report them to him—to give him a general idea of how the business was conducted in the marshal's office.

Q. Did the Treasury Department or the Attorney-General furnish you any claims to investigate, which, in your judgment, were fraudulent? In other words, did they give you specially in charge any claims to look up and see if they were fraudulent?—A. They gave me copies of vouchers of accounts that had been sent to the Department by Marshal Britton—a very large amount.

Q. About what amount?—A. I cannot tell; I had a very large bundle of them.

Q. Can you mention anywhere near an approximation of the amount?

—A. O, thousands of dollars. I do not know that I have looked them over to see.

Q. Twenty thousand or fifty thousand dollars?—A. O, yes, sir.

Q. One hundred thousand dollars?—A. Probably somewhere from \$50,000 to \$100,000. I took copies of the vouchers that had been sent by the marshal to find the parties purporting to have done the services—the deputy marshals and the *posse comitatus*. When I went the second time, in August last, I was instructed by the Attorney-General to go down and collect in those accounts, and he specified what character of accounts I was to collect in and receive. Mr. Britton's individual check, or certificate, whatever he calls it, that was given for services as *posse comitatus*, or for services of deputy marshals—I was not to receive those. He did not regard that as an indebtedness against the United States, and consequently I was not to receive them. And for all checks given for services as witnesses, to ascertain if the witnesses had performed service, and were in attendance; and for supplies furnished, or other work done upon the jail, &c., I was to receive those accounts and transmit them to the Department, which I did. I found there was a very great number of accounts, marshal's certificates, out there, that had been given for services as *posse comitatus* or deputy marshal; these I did not collect in, or rather I collected in a very few of them, and sent them up more to show what they were than for anything else.

Q. You say you carried a large number of claims to ascertain which were correct and which fraudulent, and you made an investigation; state, in brief, what was the general result of that investigation—how much of it, in general terms, was fraudulent, how much of it was genuine, according to your best information.—A. I never made a calculation to know how much was fraudulent and how much genuine. The first time I went down, I made no calculation as to that; I simply took the copies of these down for the purpose of ascertaining, for instance, whether John Smith, about whom the account states that he went out into the Indian Territory and made the arrest of such a defendant, to see if there was such a man as John Smith or such men as his *posse comitatus* living in Fort Smith, or if there was such a defendant arrested at such a time.

Q. Did you find any such cases—such *posse comitatus* and such deputy marshals—not to exist?—A. I did, sir.

Q. As you have stated before?—A. Yes, sir.

Q. And to what extent did you find such fraudulent accounts?—A. Most of those *posse comitatus*, upon the rolls sent to the Department, were said to reside at Fort Smith; there were some three hundred and odd names of men purporting to reside in Fort Smith, and out of that number I disremember just how many I found that did live in Fort Smith, but I think it was twenty or thirty.

Q. Out of the three hundred?—A. Yes, sir; and the balance, I could not find that they had a residence anywhere; they were entirely unknown.

Q. Had these alleged accounts found form and shape in the nature of approved vouchers; in other words, had these alleged accounts been sworn to by Britton and approved by the court?—A. This, Mr. Chairman, must go on a roll; for instance, here is the district and the judge approves here, [illustrating,] and then the vouchers are designated on this roll, number 1, and so on down the roll.

Q. Were they regularly listed, sworn to by Britton, and approved by the judge, those vouchers which you found to be fraudulent?—A. Yes, sir.

Q. And you say that out of three hundred that you went to investigate, you found no more than thirty genuine names, *bona-fide* residing in Fort Smith?—A. Yes, sir.

By Mr. SPEER :

Q. Did you make inquiry as to whether such persons ever lived in Fort Smith?—A. They were entirely unknown by men that I inquired of there.

Q. Either their then existence or past existence as citizens?—A. Yes, sir.

By the CHAIRMAN :

Q. Were they regarded as real persons or myths?—A. They were regarded as myths; I am speaking now of the *posse comitatus*.

Q. And also a number of the deputy marshals?—A. I did not ascertain the fact at that time. I learned that fact from Mr. Shoemaker and others, whose affidavits are on file.

Q. Who was this Mr. Shoemaker; what had he been?—A. He came into Fort Smith as a *posse comitatus* for one Powers, and Powers held a commission as marshal under J. N. Sarber. Shoemaker had been deputy marshal under Britton's first administration; he was then a deputy marshal under Roots, and then was again appointed under Britton's second administration.

Q. Did you find any of these fraudulent vouchers sworn to by Logan H. Roots and approved by the judge?—A. I do not think that I had any of Logan H. Roots's accounts at that time.

Q. Did you ever have any of Logan H. Roots's accounts to investigate?—A. No, sir.

By Mr. SPEER :

Q. You say, then, that it was the practice of Marshal Britton to place upon the rolls of the deputy marshals the names of a large number of fictitious persons with claim for services alleged to have been performed by them, amounting in the aggregate to thousands of dollars, which persons did not exist at all and which services never were rendered?—A. I did not state that; you misunderstand me.

Q. Answer me.—A. The deputy marshals are the men who return the service of these *posse comitatus*.

Q. Then do you state that either by the marshal or by the deputy marshal returns were made of services alleged to have been performed by persons whom you found not to exist, not to be in being there, and which services you found never were performed to the amount of thousands of dollars?—A. Yes, sir; affidavits are here of men who have been returned as *posse comitatus*.

Q. Then all claims of that character which were paid by the Government were fraudulent?—A. Not all claims.

Q. Of that character?—A. Yes, sir; of that character.

Q. Can you state the amount of such claims; what is your best judgment as to the amount?—A. I can only be governed by the affidavit of Mr. Shoemaker, who says that he could pick out \$100,000 if he were here and had access to the vouchers that had been returned. He claims that he has returned fictitious persons as a *posse comitatus*; he states in his affidavit that he has.

Q. Under the law, could such fraudulent claims be made by deputy marshals or the marshal without the collusion of the United States judge?—A. I cannot say.

Q. Can you state whether the Government pays any such claims or

vouchers without the approval of the judge of the district?—A. No, sir; I do not think they do; I am not familiar enough with it to state.

Q. Had not all the vouchers or claims placed in your hands the approval of the judge upon them?—A. Yes, sir.

Q. And of those you believe now \$100,000 are fraudulent?—A. I only fix that estimate on the statement of Mr. Shoemaker here in his affidavit that he could pick out that amount.

Q. Of the accounts which had upon them the approval of the United States judge, how many did you find to have been made by persons who had no existence in the western district of Arkansas?—A. I am not able to state that myself.

Q. From \$50,000 to \$100,000?—A. Well, I could only be governed by this: Mr. Britton tells me that the Department here have deducted from his accounts of some \$24,000 or \$25,000 that were handed to me to investigate, and upon my report they have deducted some \$6,000 or \$8,000 that was fraudulent, and this was only a part of some \$60,000 that I collected in.

Q. How much of the accounts which were placed in your hands, having upon it the approval of the United States judge, did you find to be fraudulent?—A. I cannot state what they were.

Q. About how much?—A. Well, I should think perhaps in \$60,000 I would be very safe in saying that from \$20,000 to \$25,000 of it was tainted more or less.

Q. Had all the accounts that were placed in your hands been approved by the United States judge?—A. No, sir; I do not think this last.

Q. Were any accounts sent here for payment without the approval of the judge of the district?—A. Yes, sir, very many of them; I cannot tell unless I could see the accounts; some of the accounts were for supplies furnished, and the parties who furnished the supplies would just make out a bill and bring it in to me.

Q. Of the accounts, amounting to from sixty to a hundred thousand dollars, which were placed in your hands before you went to Fort Smith by the Attorney-General, had all of them upon them the approval of the district judge?—A. Those accounts—I had nothing to do with them; those were already presented.

Q. But were they all approved by the judge?—A. Yes, sir. When I spoke of the \$60,000, I was speaking of the amount that I collected in in August in Marshal Britton's checks—coal, marshal's office, and witness' fees, and so on.

Q. Vouchers to what amount were placed in your hands here by the Attorney-General before you went to Arkansas?—A. There was no definite amount.

Q. About?—A. I cannot say; perhaps fifty to a hundred thousand dollars.

Q. Were those accounts or vouchers all approved by the judge of the district?—A. O, yes, sir.

Q. How much of those did you find were fraudulent when you went there?—A. I cannot state, sir.

Q. About how many?—A. I can only speak of the names of the *posse comitatus*, but how much their accounts amounted to I do not know; there was over two-thirds of them fraudulent.

Q. Could it or was it possible, in your judgment, that the judge of that district could have approved those vouchers without knowing that those persons were fictitious?—A. My opinion in the matter would be no more than that of any other man.

Q. Was the judge a resident of Fort Smith?—A. He was; yes, sir.

Q. These parties whose names were upon the rolls, whom you found to be fictitious, were alleged to be residents of Fort Smith?—A. They were; yes, sir, many of them.

Q. What is the population of Fort Smith?—A. Well, I think that perhaps 1,500 would be a large estimate.

By the CHAIRMAN :

Q. Did you find anybody who knew these people?—A. Very few of them.

Q. The people that you say were mythical, did you find anybody that pretended to know them?—A. No, sir.

By Mr. SPEER :

Q. Did you go to the grave-yard to take off the names from the tombstones for the purpose of learning whether these names had been gathered from the tombstones?—A. No, sir; I did not.

Q. Did persons tell you that names had been taken from the tombstones?—A. No, I do not know that they did. Let me explain here that I went over the vouchers that had been presented from time to time, and took such vouchers as myself and Mr. Hodges, the clerk in the Department of Justice, supposed were fraudulent, and wherever I would find the writing of the name looked a little suspicious, I would take a copy of that voucher. I took that along with me and copies of the roll. I took copies of those and then went down to hunt up the men to see if they were in existence.

Q. You seem sensitive about the reputation of the Attorney-General?—A. Not at all. I simply want to put you right upon the record; if you suppose these vouchers were furnished me, when I went down, they were not.

Q. Can you state in whose handwriting these names were upon the roll?—A. They were in the handwriting of Mr. Donnelly, the chief clerk of Mr. Britton.

Q. Were they all in his handwriting?—A. I think they were.

Q. Can you state whether the approval of the judge to that roll or account against the Government was in the handwriting of William Story, the judge of that district?—A. I never saw any of Judge Story's writing—only his signature.

Q. From that do you believe it is in his handwriting?—A. From that I think it was his writing.

By Judge DURHAM :

Q. Did you, in any of these investigations, hear any intimation of the custom or habit of the judge to prolong the court, thereby and with the view of increasing jurors' fees, witness fees, and so forth?—A. I heard this—that a great many cases were brought there that never ought to be there, for the purpose of making costs and fees. I do not know that have ever heard it exactly as you have propounded the question.

Cross-examined by Mr. Robinson, counsel for W. A. Britton :

Q. All that you state here is from hearsay information, is it not?—A. Nothing from my own knowledge; simply what I gathered from conversation with others.

Q. All that you have stated here to this committee is the result of conversation with others, and nothing from your own personal knowledge?—A. Nothing that I saw of myself. If you will particularize; if you will make your question—it is pretty general, to be sure—but if you



will ask me in relation to any particular case, I will answer you as properly as possible.

Q. Is that your answer, sir?—A. Do you ask me in relation to my report—either one of them?

Q. No.—A. Will you be kind enough to tell me if you are asking me in regard to Judge Story, or in regard to Mr. Britton?

Q. Do you know anything about what you have testified to of your own personal knowledge?—A. Well, I cannot tell. I can state this, that I know from information that none of this *posse comitatus* lived in Fort Smith.

Q. Do you know anything about which you have testified to of your own personal knowledge?—A. No, sir. If you ask me in relation to Judge Story it is simply from hearsay. If you ask me in relation to *posse comitatus* I have to take the statements and affidavits of deputy marshals. I rely also upon the statements and affidavits in my report.

Q. When you were there last August in the investigation of the marshal's office, was Mr. Britton in office at that time or was he out?—A. He was out of office.

Q. How long had he been out of office at that time?—A. I am unable to state. I know that he was out of office, but I cannot state how long he was out of office. I don't think he was very long out.

Q. State to the committee the location of Fort Smith, in the State of Arkansas.—A. Fort Smith is on one side of the Arkansas River and the Indian Territory is on the opposite side. It is in the northeastern corner of the State.

Q. When you spoke about Mr. Shoemaker's affidavit a while ago did you mean to say that all the frauds that were referred to in that affidavit were frauds committed during Mr. Britton's time as marshal?—A. Not at all, sir. I think I so stated it.

Q. What did you mean by your gross sum in relation to those frauds in regard to the administrations of marshals?—A. In answer to that I shall have to say that I was controlled by the affidavits of Mr. Shoemaker and others as to the amount of frauds. I had to take their statements in fixing the amount of frauds at \$100,000.

Q. You mean to say that the estimate of \$100,000 covered the administration of Mr. Britton's first term, Mr. Roots's and Mr. Britton's second term?—A. Yes, sir.

Q. The checks that you describe in your examination-in-chief as Mr. Britton's checks, I will ask you if they are not all signed officially by Mr. Britton as United States marshal?—A. Yes, sir; they are.

Q. Did you learn during that investigation that those due-bills were issued for the want of money in the marshal's office to pay the expenditures of the district?—A. I learned that that was the reason given by Mr. Britton. I learned this from the persons holding the certificates—that Mr. Britton said there was no money there to pay them.

Q. You said something about antedated writs. Did you learn during the course of the investigation that that was done by the order of Judge Henry C. Caldwell, who had formerly been judge of the district, and who is now judge of the eastern district?—A. I was so told by Mr. Churchill, the present clerk of the court, that it was a practice that prevailed prior to the administration of Mr. Britton.

Q. Did you understand from Mr. Churchill that that was done by order of the court in cases where offenses were committed in the presence of deputy marshals, or where information was brought to them of offenses in the Indian country for the express purpose of covering only the actual expenses of transportation and of deputy marshals in making

arrests?—A. I don't know as it was so extensive as that, but Mr. Churchill stated to me that the practice originated under Mr. Caldwell of antedating writs, and it was recognized as the practice in his court.

Q. In connection with that have you ever heard aught against the moral worth or legal ability of Judge Caldwell?—A. I did not.

Q. In the expenditures of the western district of Arkansas in such cases would the marshal be responsible for making arrests upon antedated writs? Could it be said to be fraud upon his part if he paid them?—A. Well, I don't know that I could be a judge of that.

Q. Is it not the duty of United States commissioners to issue writs?—A. Yes, sir.

Q. Is it presumed that the marshal knows that the commissioner antedated them or dated them properly?—A. I think that there might be a great many of these writs antedated that Mr. Britton might not know anything about, but it seemed to me that he ought to know whether these deputies were out that length of time.

Q. The marshal's office and commissioner's office are in separate and distinct places?—A. One of the commissioners has his office in the same building with the marshal.

Q. From your knowledge of transactions of that kind, does not the marshal pay accounts that are properly presented, sworn to, and properly fixed up—the marshal in any district?—A. I suppose it is the duty of the marshal.

Q. You told us that you gathered when there that deputy marshals had returned warrants who had never served them. Will you please to name those deputy marshals?—A. I cannot without seeing the paper. I could only be governed by this statement of Mr. Shoemaker.

Q. I understand you, then, that all you know about deputy marshals returning warrants which they did not serve, is found in that Shoemaker affidavit?—A. No, sir; if you will remember, I was asked by the chairman of the committee if I had given all that I knew in regard to the case, and had given all the statements that I received down there. I answered by stating that I had given the names of men who made statements to me, but I was not asked to state the names here to the committee.

Q. Did you state to the committee in your examination-in-chief that this man Shoemaker swore there that he had made such returns himself?—A. Yes, sir.

Q. Did you see any of those returns that he said he made?—A. I did not.

Q. Did Mr. Shoemaker swear to the vouchers that he returned as myths himself?—A. He would undoubtedly have to, I think; that is the course that all the vouchers take.

Q. And he swears there that he did return them as myths?—A. He swears there that he could take the vouchers for the services of *posse comitatus* and select those which are fictitious. The deputy marshal does not swear that these men performed the service as *posse comitatus*.

Q. I ask you did Mr. Shoemaker tell you that he had returned warrants as deputy marshal that he did not serve?—A. He told me that he had returned fraudulent accounts.

Q. Deputy marshal's accounts?—A. Yes, sir; he said that if he was here at the Department he could pick out \$100,000 of accounts—"I have made the returns of them myself."

Q. Could Mr. Shoemaker make the return of a deputy marshal's account without first swearing to it?—A. That is the course that all

vouchers take; but I was going on to speak in regard to the *posse comitatus*—

Q. You state in your testimony that he swears there that he did swear to those false accounts?—A. He states in his affidavit there that he made returns of false accounts.

Q. And he would have to swear to them to do it?—A. Undoubtedly he would.

Q. Did he state that he returned any *posse comitatus* accounts that were myths or fraudulent?—A. He did.

Q. Can a *posse comitatus* return an account without it had been properly sworn to, and collect the money on it?—A. Not a live *posse comitatus*; not a real person.

Q. Was Mr. Shoemaker a live *posse comitatus* or a dead one?—A. Mr. Shoemaker was a live marshal, and at the time I saw him, he claimed to have done service as a *posse comitatus*, and he was in the flesh and blood, all right seemingly. Mr. Shoemaker stated to me that he had returned men as *posse comitatus*. I disremember their names. He would take the account, and go to Mr. Brooks, who was a United States commissioner, and he would get Mr. Brooks to put his signature there as a United States commissioner, that the affidavit or voucher would be signed by a cross-mark, or a name in full, and that Mr. Brooks would certify to it the same as though the real party was before him that had served as *posse comitatus*, when there was no party there, but the man who claimed to have done the service as *posse comitatus* was not before him at all. But he would certify it, and they would fill it up; he would certify that this man was before him, and swear that he had done service as *posse comitatus*. Mr. Churchill's office is in the same building where the court was held.

Q. In your examinations there did you ever identify Mr. Britton with any knowledge of a fraud of that description?—A. No, sir; I don't know that I did, but I have the affidavits of men whose names were put in as a *posse comitatus*, who swore they never did service.

Q. Did you, during your investigation there, in regard to the manner in which these things were fixed up, ever identify Mr. Britton with any knowledge in regard to this matter, or these persons?—A. I did not from my own knowledge. I can only take the affidavits of these men.

Q. Mr. Shoemaker says he did this. Did he tell you that he got the money on those fraudulent accounts?—A. On some he did, and he was paid a certain percentage on some of them.

Q. Was the examination as to Mr. Britton *ex parte* by you?—A. You (Mr. Robinson) were present one day, and Mr. Britton and Mr. Donnelly also.

Q. Was Mr. Britton, or any person representing him, present at any time when you took any of the testimony referred to in these affidavits?—A. No, sir; I think not.

Q. In your examination-in-chief, you spoke about some letters having been received by you at Fort Smith that had been opened.—A. They had the appearance of having been opened. I don't know from my own knowledge that they were, but they had that appearance.

Q. Did Mr. Britton or any one under him have anything to do with the post-office?—A. No, sir; I don't think they did.

Q. You spoke in your examination-in-chief about a draft for \$20,000 that was received there in the absence of Mr. Britton at Little Rock, that was taken, you say, by Mr. Scott to Little Rock, and a portion of it taken out by him, and the balance divided out in certain directions. How do you know that fact?—A. I learned it from Mr. Scott and Judge Story.

Q. You stated that Judge Story told you that a portion of that went to pay Mr. Britton's debts. What debts were alluded to?—A. He did not particularize.

Q. Did you understand from that conversation that the debts alluded to were some due-bills that you specified that were sent down to Little Rock for payment by Mr. Britton of John H. Rogers?—A. I know that there was a mass of accounts sent down. I think the amount was some \$2,000 or \$3,000.

Q. You understood the indebtedness, that which was called Mr. Britton's, to be debts that had accumulated against the Government?—A. Judge Story did not so state, but I presume that was it.

Q. I understood you that when that \$20,000 was exhausted that it was claimed that there was \$46,000 or thereabouts due Mr. Britton on the part of the Government?—A. It was so stated by Judge Story.

Q. You stated in your examination-in-chief something about supposititious names in the marshal's office. To whose term of office do you refer?—A. Mr. Shoemaker refers to both Mr. Britton and Mr. Roots, but more particularly to Mr. Roots—that I only gather from his affidavit.

Q. If my memory serves me, the larger portion of it refers to Mr. Roots?—A. It does.

Q. And if my memory serves me the dummy marshals—I think that is the word used in there—they all refer to Mr. Roots's term?—A. The affidavit will speak for itself.

Q. You stated in your examination-in-chief that Mr. Britton did not know some of his deputy marshals?—A. It was so stated to me.

Q. Are you acquainted with the manner of doing business in the marshal's office?—A. I have been connected with the United States marshal's office in Cleveland, and my office at present is in the marshal's office in Cleveland. I am not familiar, however, with all the workings of a marshal's office, and am quite unfamiliar with the workings of one in Arkansas.

Q. Is it not often the case that special deputies are appointed to do special services that the marshal never sees?—A. O, yes, sir. Well, I cannot say as it is, because our districts are not as large. I think in our districts the marshal knows all his deputies and sees them, for his district is not very large, and he has only three or four deputies.

Q. In regard to the number of persons that you state could not be found there as *posse comitatus*, you mean to say that you could not find them when you were there, and that you could get no information in regard to them?—A. I don't know.

Q. You did not mean to say that there was no such persons there ever before?—A. I could not ascertain that they were there, nor could I find anybody that did know them.

Q. Did you examine all the printed forms for *posse comitatus* that you had in your possession? The *posse comitatus* accounts are generally printed, are they not?—A. Yes, sir.

Q. Did you examine any of them?—A. Yes, sir.

Q. Is not every one of them signed at Fort Smith?—A. I think, perhaps, it does occur there; but in some of them the residences are signed Van Buren, or such a place, designating where he lives.

Q. Are not all the residences specified in the blanks, Fort Smith, without any reference to any other location at all?—A. I won't undertake to say that they are all or are not. I could refresh my memory by seeing the vouchers here.

Adjourned till to-morrow at 10 a. m.

WASHINGTON, D. C., April 1, 1874.

Present: The Chairman, Messrs. Sheats, Speer, and Durham.

Cross-examination of L. B. Whitney continued by Judge Jas. S. Robinson.

Question. In your examination-in-chief yesterday you said you thought that there was a number of the vouchers which mentioned Van Buren as the place of residence of the *posse* that you had examined.—Answer. That was on the cross-examination; I saw some of them where the parties purported to live in Van Buren.

Q. Where was the court held, if you know, before it was held at Fort Smith?—A. Held at Van Buren.

Q. Where was the court held during Mr. Britton's first administration as marshal?—A. I think it was held at Van Buren.

Q. Where was it held during his last administration?—A. At Fort Smith.

Q. Then, if I understood you in your examination-in-chief yesterday, you told the committee that one-third of the fees of deputy marshals went to the marshal?—A. So I understood, sir, from the deputy marshals.

Q. Do you understand that to be the fact?—A. Yes, sir; that was my understanding there.

Q. Are you or are you not aware of the fact, that a United States marshal cannot receive to exceed \$6,000 per annum, and that anything he receives over that from fees is payable into the Treasury of the United States by him?—A. I understood that such was the law.

Q. Then, if one-third of the fees would be over the sum of \$6,000, they would not go to Mr. Britton, according to your understanding, would they?—A. Well, I know it would be so in districts other than the district of Arkansas; I do not know how it is there; there is special legislation for that district, as I understand, and I do not know how it is there.

Q. If there is no special exception with regard to that district, you answer that he could not get more?—A. Than the \$6,000?—yes, sir; what he receives over that, he would have to return to the Government.

Q. Has the marshal any interest in *posse* accounts?—A. Well, sir, I do not know he has; the payments of *posse comitatus* accounts are, I think, directly to the *posse* who performs the service.

Q. When you went to Arkansas the last time, did you go there for the purpose of collecting up all the outstanding claims that were there as claims against the Government of the United States?—A. Yes, sir.

Q. About what was the gross amount of your collections?—A. I think I collected in sixty-odd thousand dollars—sixty or sixty-two—somewhere in that neighborhood; I do not know just the amount.

Q. What amount of that sixty-odd thousand did you receive from Mr. Britton?—A. I think I received \$24,000 or \$25,000—perhaps a little more.

Q. I will ask if Mr. Britton is responsible for any frauds that may be in the accounts outside of those he presented as claims against the Government himself?—A. Well, I can only answer this—that you have stated to me that Mr. Britton had an indirect interest in all the claims that were presented; of course, a deputy marshal presenting a claim presented it as his claim; he claimed that Mr. Britton had no interest in it.

Q. What I want to get at is this: has the Government anything to do



with Mr. Britton in regard to any other claims than those which he presented himself?—A. In the settlement of the claims as held by others, I do not think they have; I think every man receives his own claims.

Q. Then, in this \$25,000 or thereabouts that you received from him in that examination in Arkansas, did you in this report mark each one of them that were to your mind, from the evidence given, fraudulent?—A. I did, sir.

Q. Did you mark the \$35,000 and odd dollars outside of Mr. Britton that you collected up in the hands of individuals, as the evidence conveyed to you, were fraudulent?—A. Yes, sir; and those the evidence showed to be correct I marked them as correct; each claim is not so marked, but all that there was any suspicion about I marked as being suspicious.

Q. Does Mr. Britton have to settle with the Government in his official capacity for those \$35,000 accounts that are outside of his statement to you at all; does he have anything to do with them?—A. I do not know that I am competent to answer that question. I do not know anything about the operations of the Second Auditor or the Comptroller; I do not know how they settle their claims.

Q. Is Mr. Britton responsible for all the money that he receives to be disbursed in that department?—A. Yes, sir, he is.

Q. From this report that you made, if a settlement was made by that report with Mr. Britton, would justice be done to the Government?—A. Well, sir, I made that report from observation and statements made to me, and when I made the report I supposed the report was pretty near correct, or I should not have made it; I supposed I was making an honest report, and I supposed my report explained the frauds as I understood them to appear.

Q. I insist upon an answer to my question; if the Department settles with Mr. Britton by your report, will justice be done the Government?—A. Well, it is only just my opinion so far as that goes; I thought that perhaps it would; the Department of course may take a different view of it.

Q. Testifying yesterday, you stated that Mr. Britton was at Little Rock attending a senatorial convention; will you please tell us what convention that was?—A. At the election of Mr. Dorsey.

Q. Allow me to ask you if Mr. Britton was a candidate for the United States Senate at that time himself?—A. I heard it so reported—that he was a candidate.

Q. When you used the word "convention," you did not mean to convey the idea of a convention for United States Senator?—A. O, no, sir; I meant a legislative body.

Q. Did you, in your examination-in-chief yesterday, state that there was an affidavit filed here of Mr. Fuller's, or by Mr. Fuller?—A. Yes, sir; a statement made by Mr. Fuller; it is not an affidavit; it is a statement made to me by Mr. Fuller.

Q. Will you please tell me when that was filed, and by whom?—A. I sent it to the Department in my report—in January, I think.

Q. When was it filed here, and by whom?—A. It is in my report; I have seen it there.

Q. In your examination yesterday, you stated to the committee that you had given to the chairman names of parties who had told you in Arkansas that they were afraid to testify on account of threats of violence, and so forth; will you please give us their names?—A. John Scott is one. I gave those names to the chairman; I do not know that it would be proper to state them.



Q. Just state the names.—A. John Scott is one. There was a man by the name of Hood offered to make a more thorough statement if he was up here before the Department.

Q. Is that Richard Hood?—A. Yes, sir.

Q. Any others?—A. Mr. Scott said he could find two or three other deputy marshals that would come here. I could not see them, but Scott told me that he could furnish men if they could come here and be protected.

Q. Give us the names of those you have given to the chairman.—A. The names of the men I have given as witnesses?

Q. Yes, sir; as witnesses upon that point.—A. Columbus C. Ayers is another one. I think that is all.

Q. You told us yesterday in your examination that there were persons came in to testify before you that came in at back doors, and so forth. Please tell us who they were.—A. Shoemaker for one.

Q. Any others?—A. John Duval.

Q. Any others?—A. Well, I do not remember; they would come in at different times.

Q. Those are all you recollect?—A. Yes, sir.

Q. Did you have written instructions from the Attorney-General when you went there to make this investigation?—A. In regard to collecting in the accounts?

Q. Did you have written instructions when you went to Arkansas the last time to collect accounts and make investigations generally of the district?—A. Yes, sir, I had.

Q. Have you those written instructions?—A. Not here; I have at home. I had verbal instructions from the Attorney-General to report any and all frauds that I saw there—if I saw anything in connection with the present marshal, to make a report of it.

Q. You state that those written instructions are at home?—A. Yes, sir.

Q. Will you be kind enough to furnish them here as a part of your testimony in answer to this question?—A. I will do so as soon as I can. I would like to qualify that statement. My written instructions were to collect in all of those accounts. At first the instructions embodied my investigation into the marshal's office, but it was then taken and stricken out; but my instructions were to investigate all frauds I could find.

Q. Were you directed in those instructions as to the manner in which you should conduct that investigation?—A. Partially so; I was instructed to give notice in the papers there of my arrival there and what my mission was.

Q. Were you, in those written instructions received from the Attorney-General, instructed as to the manner in which you should hold that investigation?—A. No, sir; I do not think I was.

Q. Did you, at the time you came to Fort Smith last on this investigation, bring to Mr. Britton, and deliver to him, a letter from the Attorney-General?—A. Yes, sir.

Q. Do you know what that letter contained?—A. Not all of it; I can state the general contents of it.

Q. Will you state the general contents, if you please?—A. Mr. Britton was requested by the Attorney-General to present his accounts to me for investigation and transmission to the Department.

Q. Who was present when you examined the witnesses, of whom you have given the affidavits in that report?—A. Major Pettibone, in some

instances, and myself and the witnesses; and Colonel Fuller and myself, and the witness giving the testimony, in others.

Q. What was Colonel Pettibone's relation to you?—A. He was my assistant; he was sent there by the Attorney-General.

Q. As far as Mr. Britton was concerned, the examination of those witnesses was *ex parte* and secret as to him?—A. Mr. Britton was not present at the examination, I think.

Q. You were asked yesterday in the examination-in-chief if Mr. Britton aided you in any manner in that investigation down there. You answered, if I remember, "No, he did not."—A. Yes, sir.

Q. I would ask you now if Mr. Britton, either in person or by counsel, made application to you to be present and take part in your examinations there?—A. You did, sir.

Q. What did I represent myself as?—A. As Mr. Britton's counsel.

Q. Did you or did you not refuse me that permission?—A. I refused to let you see the statements made.

Q. Did not you refuse to let me be present when the examination of the witnesses would go on?—A. When the examination of witnesses was as to accounts other than Mr. Britton's I did.

Q. Did not you refuse to allow me the privilege of being present in the examination of witnesses in relation to Mr. Britton's accounts?—A. O, no, sir; you were present when Mr. Britton's accounts were examined.

Q. Is that all the examination that was ever made of them by you?—A. I looked them over, and marked those that Mr. Britton said he did not identify and said he did not know the posses or the marshals; you were not present then.

Q. Did not you refuse me, as the counsel of Mr. Britton, to be present at the taking of any testimony in relation to Mr. Britton's accounts? Testimony I am talking about.—A. I refused, Mr. Robinson, to let you see the affidavits that I had taken in relation to those claims.

Q. Did not you refuse to let me cross-examine those witnesses?—A. Well, you did not ask to cross-examine; you simply wanted to see the statements, and I refused to let you see them.

Q. Had you taken any evidence when I made that application to you?—A. Yes, sir.

Q. Whose had you taken?—A. I had taken James Scovill's, the deputy marshal's, and I had taken several posse statements from some colored men, I think.

Q. Do you remember the day when I made application to you?—A. Yes, sir; after you had come back from the Indian Territory.

Q. Allow me to ask whether it was not before I went to the Indian Territory?—A. No, sir; I had not taken any evidence when you went to the Indian Territory.

Q. You are satisfied of that?—A. Yes, sir. Mr. Britton had not presented any claims, and consequently there was no need of his presence there. He asked me to wait until Mr. Donnelly returned before he presented his claims, and Mr. Donnelly, his chief clerk, came in your absence.

Q. Did you refuse me the permission to examine the witnesses in that investigation that were sworn and examined before you?—A. I did, sir.

Q. Did you refuse me the privilege, as the counsel for Mr. Britton, to introduce any testimony there to contradict, to modify, to explain, or correct any statements that might be given before you?—A. Yes, sir, I did. I would like to make an explanation here. Some of the parties making these affidavits before me made their affidavits with the express

understanding that in their affidavits what statements were made should not be known by parties in Fort Smith while they (the affiants) were there. They claimed that they would be in danger of assassination or something of that kind if it were known that they had come up before me and made statements.

Q. I will ask you if I, as the counsel of Mr. Britton, asked you if you would allow Mr. Britton to be present in person and examine those witnesses, after you had refused me?—A. I did refuse that as to any accounts outside of Mr. Britton's accounts.

Q. But I ask you, did you refuse it at all hazards, and that you said you would not allow him to be present to cross-examine or to make any proofs that he might want to make before you?—A. In regard to the affidavits that I had taken, you mean?

Q. I mean simply the question that I have asked you.—A. I said to Mr. Britton that he should be present, and I wanted him present when he presented his claims, but only his claims.

Q. Did not you refuse for Mr. Britton to be present when you were examining the testimony given in these affidavits, and did not you refuse him the privilege of cross-examination or of the introduction of any proof that would go to explain? Did not you refuse that?—A. I did, upon any other claims than his own.

Q. Did not you refuse it upon his own, so far as these affidavits are concerned?—A. I refused to let him see the affidavits.

Q. Did not you refuse him the privilege of cross-examining those witnesses?—A. I have stated to you that I did.

Q. Did I ask you the privilege for Mr. Donnelly, the chief clerk of Mr. Britton, who understood all those accounts and who could explain them better than any other person—that he might be present during the examination of those witnesses for the purposes of cross-examination, and might introduce proof, inasmuch as you would not let Britton be there—is that the fact?—A. I made the same statement in regard to Mr. Donnelly that I did in regard to Mr. Britton.

Q. You stated in your examination-in-chief that you published in the newspapers in that country your business; what papers did you publish in?—A. I published in the Independent and the New Era.

Q. Where were they printed?—A. At Fort Smith.

Q. What did you publish in those papers was your business there?—A. That I had come to collect in the outstanding accounts against the Government and to transmit them to the Department.

Q. Did you publish a notice that you had come there to investigate the marshal's office of the western district of Arkansas?—A. I do not think I did.

Q. Then you published to the country there that you simply came there to collect up the outstanding accounts against the Government of the United States connected with the marshal's office?—A. Yes, sir.

Q. You were asked yesterday, in your examination-in-chief, who was your clerk there, were you not?—A. Yes, sir.

Q. Who did you answer was?—A. I answered that Major Pettibone was for a time, and then Colonel Fuller was.

Q. How often had you been to Fort Smith before you made this final investigation?—A. I had been there once before.

Q. How long did you stay there before?—A. I got there about the 1st December, 1872, and left Fort Smith the last of January, and went to Little Rock some time in February.

Q. What time did you go back again and leave again?—A. I went back in August and left in September, 1873.

Q. When you were there the first time, did you have the acquaintance of Colonel Fuller?—A. I did.

Q. After you left there the first time, and before you came back the second time, did you write any letters to Colonel Fuller?—A. I think I did. I received one or two letters from him and I think I answered them.

Q. Allow me to ask you, if in those letters you wrote to Colonel Fuller that you were taking an interest as far as he was concerned in his getting the marshal's office, or being the marshal of the district?—A. I think I might have said so. I wanted to see him marshal of that district. I did want it.

Q. Did you state in those letters that you were working to that end?—A. I do not know that I did. I do not remember what I did state to him. The aid or comfort I could give Mr. Fuller in that direction would be very small. I say I do not know what I did state in the letter, but it was my wish that he should be marshal of the district, and I presume I so stated to him.

Q. That was before you came back to make the last investigation?—A. Yes, sir.

Q. Where did you write those letters from?—A. My home is in Cleveland, Ohio. I think that probably all the letters I did write I wrote from Cleveland.

Q. How many did you write upon the subject of getting Fuller the marshalship—of using your influence for Fuller for the marshalship of the western district of Arkansas?—A. I do not know that I ever wrote more than one; perhaps I might; I cannot say what was in that one. I know I regarded Mr. Fuller as a very honest man and I wanted to see him marshal of the district.

Q. When you came back to Fort Smith, you employed Mr. Fuller as your clerk?—A. I did, after Mr. Pettibone was called home by a telegram, saying that his wife was sick; he left me there without any clerk, and I employed Mr. Fuller to assist me there.

Q. Did you have any conversation with any persons in Fort Smith; if so, with whom and where, in regard to the employment of Mr. Fuller as clerk?—A. Before or after I employed Mr. Fuller? Yes, sir, I presume I did after I had employed him.

Q. Did you have any conversation with any persons there before you had done so?—A. No, sir; I had no idea of employing Mr. Fuller until I had employed him; I did not know the exigencies of the case would require me to employ him.

Q. Who did you have a conversation with, and where?—A. I do not know that I ever had any conversation—you made some objections to my employing Mr. Fuller, and I explained to you why I had employed him.

Q. Where was that conversation?—A. That was in my room, I think.

Q. I will ask you if it was not in the parlor of my house?—A. No, sir.

Q. Was not Colonel Pettibone present at the time?—A. No, sir.

Q. I will ask you, if, before you employed Colonel Fuller, you were told by me the relations that existed between him and the parties that you came there to investigate?—A. I do not know that it ever was; I knew there was no sympathy between Mr. Fuller and some of the parties in Fort Smith.

Q. Did not I tell you that Edward J. Brooks and Colonel Fuller had had a street fight on account of politics?—A. Before I employed him—O, no, sir,

Q. Did not I tell you that he was angry at Mr. Britton because Mr.

Britton had discharged him, upon the application of the citizens of Fort Smith, as jailer at Fort Smith?—A. You did, but it was after I had employed him.

Q. Did not I tell you at the same time of the feeling between Mr. Fuller and Mr. Donnelly, Mr. Britton's chief clerk?—A. My answer will be the same as it is in all the rest—yes, after I had employed him.

Q. Did not I tell you the feeling that was between Mr. Fuller and Mr. Scott about which you have talked here?—A. I do not know that you did.

Q. Did I do it or not?—A. I do not think you did.

Q. I will ask you if I did not ask you at the same time if you were going to employ Mr. Fuller, and tell you that the people there would not believe that you were going to make a correct investigation of those parties, if you did?—A. Not before I employed him.

Q. Did I do that?—A. No, sir.

Q. I did not do that?—A. No, sir.

Q. Did you reply to me in that conversation that Mr. Fuller was an honest man and that you would employ him?—A. That was the time you came back from the Indian Territory, after Mr. Fuller was in my employment.

Q. Did you say that he was an honest man and you would employ him?—A. I told you that he was an honest man and I had employed him; he was already in my service.

Q. Did I reply to you, "True, Mr. Fuller is an honest man, but there are a number of honest men here that do not bear the same relation to the parties to be investigated that Mr. Fuller does?"—A. If I may be allowed to explain here, I will explain all that conversation.

Q. Answer my question.—A. That occurred in my room after you had returned from the Indian Territory; Fuller was present at this conversation.

Q. I ask you if you did not have that conversation with me in my parlor at night in the presence of Colonel Pettibone, before I went to the Indian Territory?—A. No, sir; while Pettibone was there to assist I had no occasion for the services of Mr. Fuller at that time.

Q. You told me a minute ago that that conversation was in your office and in the presence of Colonel Fuller.—A. Yes, sir, the most of it.

Q. What was that conversation you alluded to?—A. You came there and asked to see the affidavits that I had taken. I refused to let you see the affidavits—the proof that I had taken; you then turned to Colonel Fuller and said, "You are here learning the secrets of our citizens of Fort Smith," and you said "You are putting yourself in a position to be assassinated."

Q. I said that?—A. Yes, sir; and you said to him "Why, Colonel Fuller, I would not stand in the position you are in for the world." Colonel Fuller said, "I am here acting as clerk for Colonel Whitney; I am getting \$5 a day for my services; I am paid for my services; I have a right to be here." You then said, "Why, Colonel Fuller, you know you are antagonistic to Colonel Britton and to our friends here, and you are here giving this man proof against Britton; you are standing in a bad position." I know you and Colonel Fuller had some pretty high words over it, and the colonel seemed to get pretty nettled under it.

Q. Who was present in the room when that conversation was had?—A. I think you and I and Colonel Fuller were there.

Q. Who else?—A. I do not remember of anybody else.

Q. C. D. Mesler, was he there?—A. No, sir; not on that occasion;

you and Mesler came afterward, and I do not know but what a portion of the same conversation was rehearsed again.

Q. Did I tell Colonel Fuller that he was by means of that secret investigation getting possession of things that he would use against these persons politically afterward, without giving them an opportunity to defend themselves; and did I tell him furthermore that he ought not as an honorable man, to take that sort of advantage?—A. That is about just what I have stated.

Q. Did I state that?—A. I think perhaps you did.

Q. Do you say upon your oath that I said to Mr. Fuller that he was in danger of being assassinated?—A. You said he was putting himself in a position to be assassinated; that was your language.

Q. You say that?—A. I do sir.

Q. You told us in your examination-in-chief yesterday that you left there under apprehensions of assassination?—A. Yes, sir.

Q. How long did you stay in Fort Smith when you were there in that investigation?—A. The last time?

Q. Yes, sir.—A. I went there in the fore part of August, and left some time in September.

Q. Did you go about there as your business called you?—A. I did.

Q. Did anybody molest you?—A. Not the slightest in the world.

Q. Anybody offer to molest you?—A. Not that I am aware of any more than what came to me by other parties. I do not know anything about it; only what was told to me by other parties.

Q. Did any assassinations occur while you were there of any kind? Did you hear of any there in the place—Fort Smith?—A. Yes, sir; not in Fort Smith, but about there.

Q. Did the citizens of Fort Smith treat you civilly and properly?—A. They did.

Q. Did any parties offer to do you violence in any way that you know of?—A. Not the slightest in the world that I know of of my own knowledge.

Q. Then, if I understood you in your cross-examination yesterday, you stated that Colonel Fuller was the man that communicated this to you, and that he got it from some policeman there?—A. Yes, sir.

Q. Will you please give us the name of that policeman?—A. He was a colored man, a policeman, by the name of Green, I think.

Q. Did you have any talk with Green yourself about this?—A. The assassination? Green came down there one night to stay at the hotel to see what was going to be done. It was not by my solicitation; Fuller sent him there, from an intimation that Green had made to Fuller that something was to be done, and he had this man Green come down there to watch my room. The next day Fuller and myself were on the street and Green came to us and said, "Look out for yourself; there are some men who are going to do you some injury now," and Fuller sent Green to get his horse and buggy, and we got it and drove away.

Q. Who did Green say they were?—A. He did not say; his conversation was more to Mr. Fuller than to myself; it was not to me, but to Colonel Fuller.

Q. I will ask you if all the time you were there, Mr. Britton was home in the country there?—A. No, sir; he went away once while I was there; where, I do not know.

Q. Does he live at Fort Smith?—A. He lives at Van Buren.

Q. Do you know if Edward J. Brooks was home during the time you were there?—A. A portion of the time, and a portion of the time he was away.



Q. Was James O. Churchill at home while you was there?—A. I think he was.

Q. Was Sarber there while you were there?—A. No, sir; he went away.

Q. Were you interested in getting the marshal's office of the western district of Arkansas for Mr. Fuller, and did you so write him?—A. Well, now, Judge Robinson, I have stated about all in connection with that; I have said that I considered Colonel Fuller a thoroughly honest man, and wanted him to have that marshal's office.

Q. And you worked to that end?—A. All the work I have done was to suggest it to him; I never asked a Representative or a Senator about it at any time; I only said to the Attorney-General that he would be the best man for marshal there was there.

Q. Were you interested as a partner in that scheme, and did you so write?—A. O, no, sir.

Q. Were you interested in getting the marshal's office in that district for Mr. Fuller for a consideration, and did you so write?—A. O, no, sir; I had no interest in his being marshal, except I wanted to see him marshal.

Q. Did you contemplate going there to live yourself if Mr. Fuller got to be marshal?—A. O, no, sir; there ain't money enough in the district of Arkansas to get me to go there.

Q. Did you write a letter to Mr. Fuller dated in the month of February, 1873, in which you stated to Mr. Fuller that you wanted him to be the marshal of the western district of Arkansas, and that you would use all your influence in the Department of Justice to that end?—A. I will say, yes, sir. I do not remember the date of the letter, but I might have written such a letter. I have no doubt I did; I was very anxious that he should be marshal of the district.

By Mr. SPEER:

Q. Were any threats made to you by Judge Robinson, or any friend of Mr. Britton?—A. No, sir.

Q. Attempting to control you in your investigation?—A. O, no, sir.

Q. Nor by any other friends of Mr. Britton?—A. Not that I am aware of, of my own knowledge. All the threats I speak of is what came to me by Colonel Fuller; I do not know of any being made against me.

By the CHAIRMAN:

Q. Then, as I understand you, you left this place under apprehension of bodily hurt with the single intimation of Colonel Fuller that your life was in danger, and nobody else ever threatened you?—A. Yes, sir.

Q. Did anybody else ever threaten you?—A. No, sir.

Q. Did anybody but Mr. Fuller bring you such information?—A. No, sir.

Q. Did anybody ever threaten you on the street by manner or gesture?—A. Nothing more than what I have stated this police-officer said—there were two men that were after us.

By Judge ROBINSON:

Q. Do you know of any person being offered money during that investigation to testify generally against the marshal's office for the purpose of putting out the incumbent that was in and putting in Mr. Fuller?—A. O, no, sir.

By the CHAIRMAN:

Q. Do you know where Mr. Fuller is?—A. I do not; I would like to see Mr. Fuller very much.

Q. You do not know how he could be reached by process?—A. No, sir.

The committee adjourned to 2 p. m.

The committee re-assembled at 2 p. m. Present: The chairman, Messrs. Williams, Speer, Durham, and Sheats.

WILLIAM H. NESSLE sworn and examined.

By the CHAIRMAN :

Question. What is your residence?—Answer. Washington.

Q. Occupation?—A. Clerk.

Q. Your age?—A. Thirty-three years of age; I will be thirty-three in July.

Q. Will you state to the committee where you are employed?—A. I am clerk in the Comptroller's Office, Treasury Department.

Q. How long have you been in such employment?—A. For the past two years.

Q. Have you had the control and management of the disbursements of the western district of Arkansas in the Comptroller's Office?—A. I do not know that I have had control; I have examined several of the accounts.

Q. That is your duty, is it?—A. Yes, sir.

Q. What is that bundle?—A. That is compensation and disbursements for the western district of Arkansas.

Q. Have these accounts been allowed or rejected?—A. A portion of them have been allowed and a portion of them rejected; part has not passed our office yet.

Q. Just state in brief the grounds on which they were allowed and rejected.—A. The statement of differences in the account explains why the items are disallowed. The allowances are allowed because they are supposed to be proper and legal. That [showing a statement] explains the difference between the amount of the claim by the marshal and the amount allowed here by the Comptroller. These items go to make up the difference, and opposite each sum is the reason for disallowing or suspending.

By Judge DURHAM :

Q. Is this the list [pointing] that you have made out?—A. Yes, sir; that is a list I made up myself; that is what I call a statement of differences.

Q. Does this form a part and parcel of the bundle you have here?—A. Yes, sir; that is made up from the vouchers.

(The paper was marked Exhibit O. See Appendix.)

Q. You state that this exhibits a full statement of those matters and the reason of their rejection, as stated in the paper itself?—A. Yes, sir.

Q. Does this embrace the whole of the list of accounts, so far as you have examined?—A. That embraces this bundle, [pointing;] it has nothing to do with this, [pointing.]

Q. Will this list show the amount of accounts in the aggregate, as well as each individual account?—A. No sir, it will only show the balance that is claimed by the marshal in his last account-current; it shows the balance in figures claimed by the marshal in his last account-current, not the items, and it will show the items of difference made in each account-current in the Treasury adjustment.

Q. You do not mean that it embraces every item in that bundle, [pointing,] but it embraces the items of difference?—A. Only the items of difference.

By Mr. SHEATS:

Q. The items that are correct are not on that at all?—A. No, sir.

By JUDGE DURHAM:

Q. Does the statement show under what marshal—Britton or Roots?—A. Yes, sir.

Cross-examined by J. S. ROBINSON:

Q. Is this statement of differences subject to the marshal giving reasons why the statements therein are not correct and having it re-audited and go into the Comptroller's Office again?—A. Yes, sir.

Q. Has that been done?—A. It has not been acted upon by the Comptroller.

Q. Did you bring this, the reasons assigned by the marshal why the items here ought to be allowed him after this statement of differences was served upon him?—A. No, sir.

Q. Was that in your office when you brought this here?—A. I do not know whether it was or not; it was a few days ago.

Q. This is a statement of differences with the reasons assigned for disallowance in the Comptroller's Office?—A. Yes, sir.

Q. The marshal has filed since that time objections to this paper, and stating reasons why they are proper and ought to be allowed; and have not those objections been audited in the Auditor's Office?—A. Yes, sir.

Q. When you made out this statement of differences, did you have any other documents before you at the time save and except the vouchers of the marshal?—A. Yes, sir.

Q. What did you have?—A. Mr. Whitney's report and accompanying affidavits.

Q. You settled those vouchers and made those disallowances by that report, did you, for the reasons stated in it?—A. I used that, of course; I did not make all of them for the reasons stated in those affidavits, but the greater portion of them; wherever I referred to the affidavits I used those.

Q. Are there not twenty-one or twenty-two items in there disallowed as mileage in relation to the Chickasaw Nation?—A. I cannot answer that without counting them over; the mileage is disallowed.

Q. Upon whose testimony is that?—A. J. H. Smith.

Q. Will you turn to his testimony and read out what he says about it?—A. "Three hundred miles will take a person to the limits of the Chickasaw Nation."

Q. Will you turn over to J. H. Miller's testimony in relation to the distance of the Chickasaw Nation?—A. He says: "On the same trip I arrested Wallace, Hall, and Phillips; I found them at the extreme limit of the Chickasaw Nation, 500 miles from Fort Smith."

Q. Will you please turn to Mr. Scovill's testimony on that same subject?—A. "He found him in the Chickasaw Nation, 450 miles from Fort Smith."

Q. Will you please look now for Mr. Ross's testimony upon the same subject?—A. "The defendant was arrested in Chickasaw Nation, about 350 miles from Fort Smith."

Q. Will you please turn to Josiah Foster's testimony?—A. "Arrested Thomas Dana in the Chickasaw Nation, about four hundred miles from Fort Smith."

Q. All these items disallowed here for mileage were disallowed by an excess over three hundred miles in the Chickasaw Nation?—A. Yes, sir.

Q. And that on the testimony of Mr. Smith alone?—A. Yes, sir.

Q. Did you see these other four witnesses swearing to larger distances?—A. I saw that, when I went along.

Q. Did you again see that the vouchers were sworn to as to those distances also in addition?—A. If I remember rightly, some of the vouchers had the affidavit of the deputy—a sort of a general affidavit; he don't particularize and say he traveled so many miles; he swears to the correctness of the vouchers, but in some cases they don't make the affidavit—forget to, I suppose.

Q. What I was going to ask you is this: the 21 vouchers here you refused to allow for any excess of mileage over three hundred miles upon arrests in the Chickasaw Nation upon the testimony of Mr. Smith?—A. Yes, sir.

Q. Did you have any right by which you could give more weight to the testimony of Mr. Smith than you would to the four others?—A. Well, I thought so—yes, sir.

Q. Why?—A. That affidavit of Smith refers particularly to mileage; there is none of the other deputies made that kind of an affidavit.

Q. Will you look at Scoville's affidavit again?—A. "He arrested William Gosnell and John Johnson, both white men, charged with larceny, found them at Antelope Hill, in the Chickasaw Nation, five hundred miles from Fort Smith."

Q. Did you see that when you went over them?—A. Yes, sir.

Q. Then you took Mr. Smith's testimony in preference to all those others, and the affidavits on the vouchers?—A. I took Mr. Smith's affidavit because he referred to that one point particularly, while the other affidavits are general.

Q. Is not that positive, when he says Antelope Hill is five hundred miles from Fort Smith?—A. That is in the general affidavit.

Q. Does he not say that that place is five hundred miles in the Chickasaw Nation?—A. He says it.

Q. Now, have not you disallowed a good many of those accounts on Mr. Scoville's testimony more than on any other man's?—A. I cannot answer that question without looking through the statement and counting up the items.

Q. In your disallowances here, you disallow several items for the reason that you say it is proved in that report that the deputies did no riding under Mr. Britton?—A. Yes; "never did any riding."

Q. Will you please turn to that affidavit, and see if Mr. Shoemaker does not speak in regard to Mr. Roots's administration, and not a word in regard to Mr. Britton's on that subject?—A. I think that is the case.

Q. There is another item here, \$2,598.45; why was that disallowed?—A. For the reasons given in the statement here.

Q. This was not disallowed on account of any fraud, was it, in the witness-rolls, or anything of that sort?—A. I did not look through the witness rolls.

Q. What did you disallow it for?—A. I disallowed it for the reasons stated there.

Q. Are not all witness-rolls paid by order of the court?—A. Yes, sir; an order of the court has to accompany any account for the payment of witnesses.

Q. They are different from the payment of deputy marshals and posses, and so forth?—A. Yes, sir.

Q. This account is not suspended for any fraud that you found in any orders of the court or allowances? Answer yes or no.—A. No; the disallowance is stated there plainly.

Q. This item of \$2,000 odd, is that disallowed at all?—A. No, sir; it is not disallowed, it is simply a suspension—suspended for explanation.

Q. This bundle of accounts [pointing] has gone through your office, and this statement of difference is made as the result of the determination there?—A. Yes, sir.

Q. Is it not undergoing a re-examination, or has it been re-examined in the Auditor's Office?—A. Yes, sir.

Q. Then the examination upon this bundle is not completed yet?—A. No, sir; the examination of the marshal's explanations is not yet completed.

Q. The items suspended are all the items that you called the attention of the committee to?—A. Yes, sir.

Q. Then you do not state that this is a final adjudication of these suspensions and disallowances in your office?—A. No, sir; they are to be considered again if the marshal makes explanations.

Q. And the explanations are there?—A. Yes, sir.

By Judge DURHAM:

Q. Until the marshal's explanations or statements were made to the Department, these were suspended?—A. I may suggest, as is set out in that list, some of them are suspended and some are disallowed. Those that we disallow we generally disallow, and consider it final; but there are instances where items are disallowed and the disallowance revoked, but where we suspend we need an explanation.

Q. It is the custom of the Department to re-examine again, in connection with the marshal's statement?—A. He makes an explanation and sends it to the Auditor, and that has to be examined again.

Q. That has to be gone over in respect to these explanations?—A. Yes, sir; these items have probably been explained, and we have not yet acted upon them.

Mr. Robinson requested that Mr. Britton's explanations in respect to the items of difference should be sent for by the committee.

JOHN B. JONES sworn and examined.

By Mr. DURHAM:

Question. Your age?—Answer. Forty-nine.

Q. Residence?—A. Tahlequah, Cherokee Nation; I am the United States agent for the Cherokees.

Q. Is your location embraced within the boundary of the western district of Arkansas?—A. Yes, sir.

Q. How long have you been living there?—A. I have been living there since 1868.

Q. Have you been acting as Indian agent since that time?—A. Since 1871.

Q. What had you been doing prior to that time?—A. Part of the time I had been pension-agent at Fort Gibson, and part of the time I had been engaged in preaching.

Q. Will you examine the affidavit, referred to by Mr. Whitney in his testimony of yesterday, purporting to have been signed and sworn to by Frank J. Nash, and state in whose handwriting that affidavit is, and before whom that affidavit was made?—A. This affidavit is in the

handwriting of Frank J. Nash himself; he wrote it in my presence, and I administered the oath to him.

Q. And is the name at the end of that your signature?—A. Yes, sir.

Q. Does it bear its true date?—A. So far as I remember, it does.

Q. Do you know Mr. Nash personally?—A. Yes, sir.

Q. How long have you known him?—A. I have known him since about 1867 or 1868.

Q. What was his general standing in the community where he lived?—

A. When I first knew him, he was a clerk in the Commissary Department, and he was afterward clerk for his brother.

Q. Did you ever hear his veracity, either on or off oath, questioned?—

A. No, sir.

Q. Do you know anything about the pecuniary management of this Department down there, going to throw light, as far as the marshal or the judge are concerned?—A. I know that it is common rumor, that many complaints have been made to me in my official capacity, that harassing and unjust prosecutions have been in the habit of being made for several years past; that marshals trump up cases; that is, they have the reputation of trumping up cases and taking men to Fort Smith for the purpose of getting fees; that is the general report, and has been for quite a number of years.

Q. Do you know anything about these overcharges in distance?—A. Not unless I could hear the items. I could tell pretty near; I am pretty well acquainted with the country.

Q. Are you acquainted with the extent of that judicial district?—A. My knowledge extends principally north of the Arkansas River.

Q. Starting at Fort Smith, what is the distance that you would strike the boundary-line of that district at any one point—the farthest point?—A. Westward, the district is very extensive.

Q. How far?—A. Must be two hundred and fifty miles, nearly three hundred miles—somewhere about there—maybe more. It is a wild country out there. When you get off the settlement of the Cherokees, then you go into a wild country.

Q. You think it may be as much as three hundred miles?—A. I would not be surprised.

Q. How far is it up to the line of the Chickasaw Nation?—A. That is south of the Arkansas; I cannot say that.

Q. As far as you are acquainted in the other direction, how far is it up to where there are no white men or inhabitants?—A. It is from Fort Smith, I should think, something over two hundred miles to the Kansas line, and then westward, my distance of three hundred miles, I think, is short.

Q. How far is it from Fort Smith out in that direction; could a man go without having an escort to strike these wild Indians; how far could he go before he would be in danger of being scalped and killed?—A. I should think it was nearly two hundred and fifty miles from Fort Smith to the Osage country; all the rest are civilized Indians.

Q. How far is it from Fort Smith to Fort Sill?—A. I have never been out there; it is a long ways; it is the other way.

Q. In your opinion do white men ever get beyond that except under escort; beyond Fort Sill, are they in danger?—A. They are in danger before they get there, as far as my information is concerned.

Q. Who occupies the country there—from Fort Sill to Fort Smith?—A. I think it is the Arapahoes, the Cheyennes and Comanches and Kiowas.

Q. Are they friendly?—A. Wild.



Q. You say you know nothing of your own personal knowledge about these overcharges, but you have heard a great deal said upon that subject?—A. Yes, sir.

By Mr. SPEER:

Q. When this affidavit of Mr. Nash was made before you, charging corruption upon the part of the United States judge and district attorney, did you make a report of the facts to the Attorney-General?—A. I made a report of the facts before the affidavit was taken; I took a memorandum from Mr. Nash himself, and I came to Washington on other business, and from the memorandum I wrote a paper and filed it in the Attorney-General's office.

Q. Have you a copy of that paper?—A. Not with me.

Q. Was any action taken upon your report?—A. I think there was an investigation made.

Q. By whom?—A. My understanding was that that was one cause for the sending of this detective, who has been before you; the Attorney-General promised me that he would see it through.

Q. Judge Story has continued to preside in that district from that time up to this?—A. Yes, sir.

Q. Was this charge of corruption upon his part publicly made there and a matter of notoriety?—A. It was not publicly made at the time I took the memorandum, but by the time I took the affidavit it had got considerable notoriety.

Q. It was generally known in that neighborhood?—A. Yes, sir.

Q. What was generally believed?—A. I believe it was generally believed.

Q. Do you know where Mr. Nash is now?—A. I do not; I inquired of his brother three weeks ago and he could not tell me.

Q. Has he left that country?—A. Yes, sir.

Q. Do you know for what reason?—A. No, sir; but it is in connection with this case, I understand.

Q. The fear of prosecution?—A. Either that, or else he has been paid to go away.

Q. Paid by whom?—A. The impression is that he is paid by Story and Huckleberry. I cannot swear to that, but that is the rumor; that is believed.

Q. Have you, for the last three years, had a general knowledge of that country and its condition?—A. Yes, sir.

Q. From your knowledge of the condition of the country, and from the account of the expenses, now seen by you, of the marshal, do you believe they are honest?—A. My impression is that they are very exorbitant. I have no exact knowledge on the subject.

Q. Was it a matter of notoriety there that the marshals were in the habit of making exorbitant charges for mileage, *posse comitatus*, and so forth?—A. No, sir; the notoriety was principally this, that they got up cases in order to get the mileage, so far as my impression is, but that they received the regular money.

Q. Did you make a report of that to the Attorney-General?—A. I have reported it to the Indian Department several times.

Q. That such was your belief?—A. My annual reports show it.

Q. For several years?—A. For two years, at any rate.

Q. Do you know of any arrests they have made for political purposes?—A. No, sir.

Q. Any discharges from arrest on promise of political action by the parties arrested?—A. Not that I know of; but frequently a man is ar-

rested on some charge and goes down to Fort Smith and comes back as deputy marshal or a posse.

Q. The man who is arrested?—A. Yes, sir; I do not know the process or manipulations.

Q. That is frequently done?—A. Yes, sir.

Q. Then he turns around and arrests some one else and takes them down?—A. Yes, sir.

Q. And he comes back a deputy?—A. I won't follow it out quite so far as that.

Q. Are these arrests more frequent before elections?—A. No, sir; not that I know of.

Q. They are perennial?—A. Yes, sir; I know of one case in which a colored man was induced to sell a deputy marshal, or a posse, 20 cents' worth of tobacco; he was immediately arrested by another deputy marshal that was in his company, and taken to Fort Smith.

Q. How many miles?—A. About one hundred and twenty miles—somewhere in that neighborhood—and it cost him \$70 or \$80—about all that the poor fellow could raise, and about three or four weeks' time; and he came to me on his way back, and called at my house and told me about it.

Q. The amount of expenses went to the posse that arrested him?—A. Not that I know of; I suppose the lawyer's fees and such kind of things as that.

Q. What was his name?—A. Jack Davis.

Q. He was induced by one of the party to sell the tobacco?—A. Yes, sir.

Q. Then was arrested by another of the party?—A. Yes, sir.

Q. Give us the names of the posse as far as you know them?—A. It happened that I met the posse fording Grant River; I cannot give the date; I think it was '72.

Q. Now give us the number of persons that were in the posse and their names?—A. I know the name of only one; that was a man by the name of Freeman; I do not know his first name.

Q. Is he an old or young man?—A. An old man.

Q. E. S. Freeman?—A. A cross-eyed man. I understood him to be the deputy marshal.

Q. How many as a posse had he?—A. Only one. I think they were both deputies.

Q. Who was it that induced the negro to sell the tobacco?—A. It was Freeman that induced him to sell the tobacco.

Q. And the other one arrested him?—A. Yes, sir.

Q. And he and Freeman took him to Fort Smith?—A. Yes, sir.

Q. Were rumors frequent of such conduct on the part of marshals?—A. I cannot say that they were frequent, but that is not an individual case.

Q. This is one of many cases of a similar kind?—A. I will hardly use the word many, but one of some other cases.

Q. Do you know who acted as his lawyer in Fort Smith—the negro's lawyer?—A. I do not.

Q. Was he taken without warrant or information made against him?—A. I should not suppose that; he told me that they stepped aside a little way to fill a blank; that is my impression.

Q. Do deputy marshals carry blank warrants?—A. I believe they do; I have known them to.

Q. Wherever they can meet a man that they can entrap they write his

name in the blank and arrest him?—A. They have sometimes cases in which they do not know the name of parties and go prepared and fill in.

Q. What took that marshal out to that country at this time?—A. I cannot say; Jack Davis said they had several other persons when they went down; they came several days before they went down.

Q. Do you know that the marshals go out on exploring expeditions to see if they can find anybody?—A. I cannot say that they do.

Q. Is such the belief, the rumor there?—A. It is rumor there that they do.

By Mr. WILLIAMS:

Q. Do you know how far it is from Fort Smith to Antelope Hill?—A. I do not know where Antelope Hill is situated.

Q. Do you know how far it is from Fort Smith to the further extent of the Chickasaw Nation?—A. No, sir; not definitely enough to answer that question.

By Mr. SHEATS:

Q. How long has Story been judge down there; appointed since the war?—A. Yes, sir; I went down to Van Buren on the 7th January, 1871, and he was not the judge then. No, sir; I mean it was in November of 1870 that I went down, and he was not the judge then; and I think he became judge soon after that.

Q. Do you know whether he is a citizen of Arkansas or not, or whether he is imported in there?—A. I think he is a citizen of Wisconsin.

Q. What denomination of preacher were you before you were appointed?—A. I was a Baptist.

Q. You are still?—A. I am still; I preach whenever I have the opportunity.

By Mr. DURHAM:

Q. You gave the name of one of those marshals that was engaged in that matter about the tobacco, but you did not give the name of the other?—A. I could not give the name of the other; I met them in the river. I knew Freeman, but I did not know the other.

Cross-examined by Mr. ROBINSON:

Q. All that you stated in regard to that tobacco and the arrest was from hearsay and the statement of the colored man?—A. The statement of Jack Davis.

Q. You know nothing of the facts yourself independent of that statement?—A. Nothing about the arrest. I happened to be in the neighborhood at the time and met the party.

Q. Do you know the boundaries of the western district of Arkansas?—A. I am not positive as to them.

Q. Do you know the distance from Fort Smith west to New Mexico?—A. I do not.

Q. Do you know the distance from Fort Smith to Okmulgee?—A. My impression is that it cannot be less than a hundred miles.

Q. What distance is it from Fort Smith to the Creek Nation?—A. About seventy-five miles.

Q. What distance is it from there to Okmulgee?—A. Forty-five miles; but I supposed there was a shorter way of getting there.

Q. Do you know the distance from Okmulgee to the Seminole agency?—A. The Seminole agency is called a hundred miles from the Creek agency.

W. H. NESSLE recalled.

By Mr. DURHAM:

Question. Did you hear the statement of Mr. Jones in regard to the arrest of Jack Davis?—Answer. Yes, sir.

Q. Have you examined the accounts in the bundle that you referred to awhile ago, and did you find the marshal's account made out there?—A. I find the account of the posse in the case; I have not looked for the marshal's account.

Q. Examine and state the number of miles charged for in that posse voucher.—A. Charges for six hundred miles transportation; that is the number of miles stated in this voucher.

Q. In the examination and comparison of the accounts, as between the posse and the marshal, is it usual to charge the same in both?—A. Yes, sir.

By Mr. SPEER:

Q. Who makes that charge for six hundred miles?—A. It is stated here that he traveled six hundred miles.

Q. Who traveled?—A. The posse—William Pope.

Q. Who makes that statement?—A. William Pope; he is the posse in the case against Davis.

Q. Was he paid that amount?—A. He was not paid mileage; he was paid \$3 a day.

Q. How many days are charged?—A. Twenty-eight days.

Q. How much was he paid for that arrest?—A. Eighty-four dollars.

Q. That amount has been paid by the Government for that arrest?—A. Yes, sir; it has been paid that posse for his part of the fee.

Cross examined by Mr. ROBINSON:

Q. Was not E. S. Freeman the deputy marshal, as testified to by Mr. Jones?—A. Yes, sir.

Q. Is that the deputy marshal in that paper?—A. I was simply looking over the vouchers in the case for the voucher against Jack Smith, and I find it so; it is the same charge, same year.

Q. Do you know whether that was in Mr. Britton's time? Is it not returned by Mr. Britton in his accounts?—A. Yes, sir; it is in Mr. Britton's account.

Q. Did you hear Mr. Jones's testimony?—A. I heard a portion of it.

Q. One of the deputy marshals was E. S. Freeman?—A. I believe it was Freeman.

Q. F. N. Shannon would make two?—A. Yes, sir.

Q. The posse, William Pope would make three. Can that be the same case that Mr. Jones testified about?—A. I could not say.

Q. Did not you hear Mr. Jones say that there were only two? Now, I ask you if this paper does not disclose three, to wit, E. F. Freeman, F. N. Shannon, and William Pope?—A. Yes, sir; it does.

By Mr. DURHAM:

Q. Has that account been passed upon as correct?—A. That has been passed in the Auditor's Office, but not through our office.

Q. You are a tolerably good scribe?—A. I can do a little at it.

Q. Does not that signature seem to be in the same handwriting as in the body of the affidavit? [Referring to deputy marshal's voucher produced by witness.]—A. I think it bears a resemblance.

Q. What is your opinion about it?—A. There is a very close resemblance.

By Mr. ROBINSON:

Q. Tell me if the body of the written paper and the jurat there are in the same handwriting?—A. No, sir; I should not think they were. I do not profess to be an expert in the matter; it is my opinion.

LIBERTY BARTLETT sworn and examined.

By Mr. DURHAM:

Question. Please state your name, age, residence, and occupation.—

Answer. Liberty Bartlett; sixty years of age; Little Rock, Ark.; special commissioner taking testimony in Government claims, and special agent.

Q. How long have you been living at Little Rock?—A. Fourteen years; I went there about a year before the war.

Q. Have you been acquainted with the workings of this judicial department in the western district of Arkansas; and, if so, for how long?

—A. By information since the formation of the district, which was, I believe, in 1871.

Q. Have you known the judge and the marshals operating there since that time?—A. I knew the judge previous to his coming there.

Q. Had he been United States circuit judge in some other district before he went there?—A. He was circuit judge in the State circuit.

Q. Where does Judge Story live?—A. He resides at Fort Smith. His family has been for the past year out in Minnesota, where his wife came from. I think he has been married since he was appointed United States judge. He was a State judge previous to that, and resigned that position for this when the district was formed.

Q. If you know anything about extra and extraordinary charges made by marshals in the management of the affairs of that district just state it.—A. All the information I have is gathered incidentally there at Fort Smith taking testimony in Government claims. I went up there the 1st of August, 1873, took a room at the hotel, and a day or two after Mr. Whitney came there and took a room adjoining mine.

Q. Is that the gentleman who testified here yesterday?—A. That is the same one. He came there. It was two or three days after he came there before I knew his business. He had taken a room adjoining me and we became acquainted, and in that way I was frequently in his room when he was taking evidence—depositions; and the witnesses in coming to his room passed my door and frequently came in to inquire where Mr. Whitney's room was. My attendance there was accidental. I was every day two or three times in the room when Mr. Whitney was examining witnesses.

Q. Did he get at that testimony down there with difficulty or otherwise?—A. I am not aware of any difficulty in obtaining the witnesses. They seemed to go in freely, those that passed my room. I was very little acquainted with the workings in there, but from what I saw there I thought Mr. Whitney was treating the matter very fairly.

Q. Do you remember the names of the witnesses that you heard depose in that case?—A. No, sir; I don't remember the names or the number; there was quite a large number; I think there were some ten or twelve a day.

Q. Do you know anything of the extraordinary expenses in that district?—A. Only what I heard witnesses state. I supposed one thing that I was called for was for the purpose of stating what I heard or what was the impression in the neighborhood there.

Q. If you know anything in regard to that, state it.—A. When I first



arrived there and met with several of the leading old citizens there that were interested in the community, I found that they generally, all of them, spoke of the management and conduct of the court, and I could mention one name, Dr. Main—

Q. It was a rumor that there were extravagances in the management in that department?—A. Yes, sir. And he felt an interest in this investigation that Mr. Whitney was carrying on; he was glad it was being done, and he spoke of Judge Story particularly and of a movement that had been made by the citizens there to have Judge Story removed, for the reason of the rumors and statements that he had been interested in these stealings, as he called it; that is, the rumors of it.

Q. And that there was a degree of interest felt that he should be removed from the office on that account?—A. A movement made in that direction to have the court purified; that it was a disgrace to the community, and besides it was destitute of any dignity and had a bad effect.

JAMES S. ROBINSON sworn and examined.

By the CHAIRMAN:

Question. What is your residence, age, and occupation?—Answer. I reside in the city of Fort Smith, Arkansas; I am going on forty-five years of age; I am a lawyer by profession.

Q. And have been a practitioner in the western courts of Arkansas?—A. Yes, sir.

Q. You are the same James S. Robinson who appears here as counsel for William A. Britton, in this investigation?—A. Yes, sir.

Q. Just state all you know in regard to the notes exhibited to and identified by Mr. Whitney and to that affidavit.—A. On the 12th day of May, 1873, I was informed in the city of Fort Smith, Arkansas, in the office of E. J. Brooks, United States commissioner, by Cyrus R. Stevenson, that a corrupt transaction had taken place between Frank J. Nash and William Story, the judge of the court, and James H. Huckleberry, the United States district attorney. Mr. Stevenson told me that Mr. Nash had communicated it to him as a Mason—I being a Mason myself; and he told me that Mr. Nash had the utmost confidence in my integrity, and that he would confide it to me, the whole of the matter, if he had an opportunity, and that I was the only man in the western district of Arkansas to whom he would communicate all the facts. At that time I did not know Mr. Nash at all; had never spoken to him in my life. The transaction, Mr. Stevenson said, had occurred on the 6th day of June, 1872, in a case in which the United States was plaintiff, and Frank J. Nash defendant, upon a charge of introducing and selling whisky in the Indian country without a license. I hold the indictment in my hand: "Western district of Arkansas, United States court, No. 181, filed June 13, 1872; signed a true bill; John J. Colton, foreman of the grand jury, James O. Churchill, clerk."

In this case, Mr. Stevenson informed me that a *nolle prosequi* had been entered on the 6th day of June, by and with the consent of Judge Story and James H. Huckleberry, Judge Story receiving, as a consideration for his consent, a note in the sum of \$2,500, and James H. Huckleberry a note in the sum of \$500. He said to me, "I understand you are going up to investigate the Going-Snake tragedy, and I would be glad if you would meet me at Fort Gibson on the night of the 19th of May, and I will introduce you to Mr. Nash." On the night of the 19th I was there, pursuant to agreement. On the morning of the 20th

of May, 1873, I was introduced to Mr. Nash, and in the lodge-room over Nash's store, in Fort Gibson, the colloquy occurred between him, myself, and Cyrus R. Stevenson; Mr. Nash requiring of us that we would not divulge the facts that were going to be stated by him to us until he would be safe from prosecution for his part in the transaction. That promise was made by Mr. Stevenson and myself, and Mr. Nash, after getting that promise from us, proceeded to state to me that he had given to Judge Story a note for \$2,500, and a note to James H. Huckleberry for \$500, and that the case, at the previous June, was dismissed in consideration thereof; that he was brought to Fort Smith in the morning, at about 3 o'clock, of the 6th of June; Nash then told me that he had the notes down-stairs in his safe, and went out of the room and brought the notes back to me and placed them on the desk, writing out a pencil statement, at that time, of his own, that I have with me.

By Mr. SPEER:

Q. Are the notes exhibited to Mr. Whitney the same notes presented to you by Mr. Nash?—A. Yes, sir, the same notes. Before I go any further, just allow me to say this, that it had become public rumor all over the country—I heard it from Texas from General W. L. Cabell, and I heard it through the Indian country from divers persons, among them the Indian agent, who is here present, John B. Jones—I heard that Nash had been fleeced and that it had broke him up.

By the CHAIRMAN:

Q. You heard it as a matter of public and general rumor?—A. Yes, sir, notorious. Further, Mr. Story knew it long before those notes came into my possession, and sent for Cyrus R. Stevenson to his private office to know what he knew about it; if you have him here he will tell you that was before I knew anything of the transaction, only what I had heard rumored throughout the country. Mr. Nash told me in that conversation that the reason he had given these notes was that he had no ready money with him at the time, and that he had invested all the means he had in a stock of merchandise just a short time before and could not get up that amount of money, and that it was understood at the same time that he could not and dare not tell it, and hence the notes were given; he stated to me that he paid those notes in United States currency; there is his own pencil-writing for it.

By Mr. SPEER:

Q. To whom?—A. I suppose to the parties.

Q. Did he say so?—A. I do not think he did. I do not remember that he did. He told me that he had paid the notes in United States currency about the time of maturity or a short time thereafter, and that those were the notes that he had paid and that were given to Story and to Huckleberry. As to the original transaction, personally I know nothing only what was communicated to me by Mr. Nash and what was sworn to before Mr. Jones, and that is now in my possession. The gentleman here (Mr. Jones) will prove that that is the handwriting of Mr. Nash himself.

(The witness here identified the affidavit of Frank J. Nash, sworn to before John B. Jones on the 9th day of August, 1873, and in the handwriting of Mr. Nash.)

Witness continued: Every word is in his handwriting, except the jurat put there by Judge Jones. I have another affidavit here. This affidavit was taken on the day of the conversation I had with Mr. Nash in the lodge-room, written in that pencil-writing by Mr. Nash himself.

This is written by me from that pencil-writing given me as a statement by which to write it by Mr. Nash. This is dated the 20th June. This is sworn to before Floyd C. Babcock, United States commissioner. In regard to that, Mr. Babcock was not allowed to see what this affidavit contained. The reason for that is, this Mr. Babcock is a relative of Judge Story, and was not allowed to see it because we had made an agreement with Mr. Nash that we would not divulge the matter. It is to the same purport as the other.

By Mr. SPEER :

Q. How do you know that Judge Story had knowledge of these rumors—the rumors of this corrupt transaction of his?—A. I know it by Mr. Stevenson telling me that he sent for him, and telling me what the interview was before him.

Q. Is Mr. Stevenson here?—A. He will be; he has been sent for.

Q. Did Mr. Stevenson say that the judge denied it or admitted it?—A. Well, sir, I would not be positive; there was so much said about it, I would not be positive about it; I do not think he admitted it; I never heard that he did.

Q. State whether Mr. Nash left that country for fear, or what has become of him.—A. That is the understanding.

Q. What is the understanding?—A. That he left there for fear he would be arrested for bribery, the matter having gotten out that this transaction occurred. Mr. Stevenson, the same day that we had this transaction in the lodge-room, wrote a letter to J. W. Donnelly at Fort Smith, stating to him what had occurred, and what was in my possession. Donnelly was chief clerk in the marshal's office. His brother-in-law, Edward J. Brooks, is United States commissioner. He told Brooks, and Brooks told Judge Story. I never told him; I never told anybody till the matter got out that Nash fixed up his business and left.

By the CHAIRMAN :

Q. What was the standing and character of Nash?—A. There is the agent of the whole country here; he can say better than I; I have told you that I did not know Mr. Nash at all.

Q. Do you know the public estimation in which he is held?—A. He stood well; I never heard it gainsaid.

Q. Do you concur in this opinion that he left because of fear of bodily injury? You say it was public opinion that he left for fear of bodily injury.—A. For fear of prosecution.

Q. You concur in that opinion, do you?—A. That is my opinion.

Adjourned to to-morrow, April 2, 1874, at 10½ a. m.

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WASHINGTON, D. C., April 2, 1874.

Present: The chairman *pro tem.*, and Messrs. Durham, Speer, and Sheats.

WILLIAM H. NESSLE recalled.

By Mr. SPEER :

Question. When these vouchers of these marshals reach the Treasury Department into whose office do they first come?—Answer. The office of the First Auditor.

Q. Who is the First Auditor?—A. D. W. Mahan.

Q. Who is his chief clerk?—A. His name is Seaver; I don't know his initials.

Q. Who was his chief clerk?—A. Mr. Seaver has been chief clerk since I have been in that Department.

Q. Was there a gentleman by the name of Miller a clerk in that office?—A. Yes, sir.

Q. What is his name?—A. L. B. S. Miller.

Q. Is he a clerk there now?—A. Yes, sir.

Q. How long has he been there?—A. Six or eight years; eight years, I will say.

Q. Do you know whether Mr. Miller had a son who was a clerk in Mr. Britton's office in Arkansas?—A. I don't know whether he was a clerk in Mr. Britton's office or not.

Q. Was he a clerk in that department?—A. I heard that he was a clerk in Mr. Britton's office, but I don't know personally.

Q. His father passes the vouchers and accounts through his hands in the Auditor's Office?—A. Yes, sir.

Q. What did you say was the amount of vouchers that were passed by the Auditor that were suspended or disallowed in the Comptroller's Office?—A. I don't believe I said any amount.

Q. Do you know the amount?—A. The statement will show.

Q. A large amount of vouchers were passed by the Auditor that were suspended or disallowed by the Comptroller?—A. Yes, sir; we made quite a large disallowance.

Q. When did this son of Mr. Miller go as a clerk to Mr. Britton?—A. I think it was about a year ago.

Q. At whose instance did he go?—A. I don't know anything about it. I heard he had gone there.

Q. Where had he been before he went there?—A. I don't know that. I think he lived here in Washington.

Q. Where is he now?—A. He is a clerk in the Quartermaster-General's Office.

Q. He has returned from Arkansas?—A. Yes, sir; he returned some months ago.

Q. Were these accounts passed by the Auditor while he was a clerk in Arkansas?—A. I believe there was action on them while he was out there.

Q. Action in the Auditor's Office?—A. Yes, sir. I don't know whether the accounts were passed while he was out there or not. I presume they acted on them.

Q. Mr. Miller, the father, is still in the Auditor's Office?—A. Yes, sir; he has charge of the judicial division in the First Auditor's Office.

Q. These accounts, then, would pass through his hands for approval?—A. He examines them himself.

Q. That is his business?—A. Yes, sir; the clerks of that division in the Auditor's Office each have certain districts, and one of Mr. Miller's is the western district of Arkansas.

Q. Do you know whether there was a hitch in the accounts of that district before his son was sent to Arkansas as clerk?—A. In the Auditor's Office?

Q. Yes.—A. Not that I know of. Everything passed right along. The hitch was in our office, if there was any.

Q. Who have been urging the payments of these claims from Arkansas?—A. I don't know personally; I have heard said that the Arkansas delegation was there to have the accounts acted upon.

Q. To have the Comptroller act upon the accounts that the Auditor had passed?—A. Yes, sir.

Q. You mean all the members from Arkansas and two Senators?—A. That is what I understood; yes, sir. I don't know personally that they

were there. I heard from persons in the office that they had been there.

Q. Were there any additional proofs of the correctness of these accounts or vouchers, or was it simply personal?

Mr. ROBINSON. I wish to know if a Senator or a Member of Congress has not the right to go—

(The chairman rules Mr. Robinson's remarks out of place.)

Q. I was asking you whether there was any additional proof furnished to the Comptroller, or whether he was asked simply from political considerations to allow these claims?—A. I don't know; I don't think there was any additional proof.

Q. The Comptroller had suspended or disallowed them because he believed they were fraudulent?—A. Partly so; yes, sir.

Q. Because of suspicions as to their being fraudulent?—A. Yes, sir.

Q. When the Arkansas delegation called upon him for their payment or approval did they furnish any additional evidence to him?—A. Not that I know of.

By Mr. DURHAM:

Q. Do you know that these Arkansas delegations, Senators and Representatives, applied to the chief in your Department; do you know that they applied to the Comptroller; did you see them there?—A. I have seen Senator Dorsey. He has been in our room in relation to the accounts.

Q. Did he make any statements about them?—A. He talked with Mr. Auld.

Q. Any others besides Senator Dorsey?—A. No, sir; I don't know of my own personal knowledge of any others.

Q. Who is the chief of your department?—A. Mr. Auld is the chief of my division, and the Comptroller is Mr. Taylor. We examine the accounts, and the Comptroller does not know much about the details.

Q. Have you made any examination of those papers further than you stated yesterday in relation to these matters; I mean those papers about which you were examined yesterday?—A. No, sir.

Q. What is this statement you have got here this morning?—A. That is the explanation by the marshal of suspensions and disallowances made by the accounting officers.

Q. Is that the explanation which the marshal gives of these suspended and rejected claims?—A. Yes, sir.

Q. And is this the paper filed by him in your Department?—A. Yes, sir.

Q. Will you make this paper a part of your statement?—A. Yes, sir.

[Paper with accompanying affidavits, marked P. See Appendix.]

Q. Has the marshal filed any other explanation than that in your office upon those claims suspended and rejected?—A. Not that I know of. This paper has not been acted upon in the Comptroller's Office.

Recross by Mr. ROBINSON:

Q. Do you know when this settlement that that abstract refers to, disallowances and suspensions, was stopped in your office, and what it was stopped for?—A. That account was taken up by me over a year ago, and I partially examined it, and I was directed to lay it aside for the reason, I presume, that the Department of Justice was going to send a man out to investigate, and to wait until his report came in.

Q. Now was not that account audited in the Auditor's Office, and sent in to your office before the report was made by Mr. Whitney, upon which you subsequently acted?—A. Yes, sir.

Q. When you took up the account and examined it the last time you had Mr. Whitney's report to examine it by?—A. Yes, sir.

Q. And did so, did you?—A. Yes, sir.

Q. And your disallowances were predicated upon that report?—A. Not all of them; a portion of them were.

Q. Will you tell me what portion was not?—A. You will notice in the statement of differences the first item was suspended on account of the nature of the case.

Q. The great bulk of them you say are?—A. I referred to Mr. Whitney's report.

Q. Did you ever hear any of the conversation by any of the Arkansas delegation in your office or at any other place in regard to the settlement of Mr. Britton's accounts?—A. Well, Senator Dorsey was in our room; I don't know what he said, only I knew he was there in relation to Mr. Britton's accounts.

Q. Have any other persons been there to get a settlement of Mr. Britton's accounts other than the Arkansas delegation?—A. You have been there several times.

Q. Did you understand that I was the counsel representing Mr. Britton in the settlement of those accounts?—A. I so understood.

Q. In any conversation had with you or with Mr. Auld, or with any other officer that you know of in the Comptroller's department, was a suggestion made by me that those accounts should be settled only according to every right thereof?—A. That has been what you have asked, so far as I know; you wanted them settled and everything that was fraudulent thrown out.

Q. In regard to Mr. Miller, is it his duty, owing to his position as a clerk in the Department, to pass upon the accounts of the western district of Arkansas, and many others?—A. Yes, sir.

Q. That is his duty?—A. Yes, sir.

Q. Is there any other officer in there whose duty it is, specifically, to do that, except him?—A. No, sir; it is his duty; he has that district assigned to him by the head of the office.

Q. Then, whether his own son was a clerk in one office or another, that is a duty he has to perform?—A. Yes, sir.

Q. Did he have those duties to perform before his son went there?—A. Yes, sir.

Q. Has he had those duties to perform since his son left there?—A. Yes, sir.

Q. Have you ever heard any person urge the settlement of Mr. Britton's accounts, in your office or any other, upon political considerations?—A. No, sir.

By the CHAIRMAN *pro tempore* :

Q. In regard to that statement of disallowances, was not young Mr. Miller sent out after the Auditor had passed formally on that list?—A. Yes, sir; I think he went out after that.

By Mr. ROBINSON :

Q. When did Mr. Miller pass on that account?—A. December 6, 1872. It was passed on by the Comptroller, January 29, 1874.

Q. Was not that account stopped in the Comptroller's Office by an order from the Attorney-General, and not by any action of the Comptroller's Office at all?—A. That is something I cannot answer. I was only instructed to lay the account aside because of some detective being sent out there.



Q. Are you positive that Mr. Miller was ever in Arkansas after that account was audited?—A. He went out about a year ago.

Q. Are you positive that he went out after that account was audited?—A. I am not positive. As I said before, it was about a year ago that he went out there.

Q. How do you know he went out there?—A. He told me himself he was out there.

Q. Did he tell you himself that he went out there to act as the clerk of Mr. Britton?—A. He did not tell me what he went out there for, but it was rumored and reported in our office that he went out there for that purpose; he told me himself that he went out there, but did not say what for.

Q. Can you tell this committee who Mr. Britton's chief clerk has been all the time—without change?—A. No, sir.

Q. Have you not been in the habit, while Mr. Britton was in office, of examining his accounts, in the Comptroller's Office?—A. Yes, sir.

Q. Don't you know that J. W. Donnelly was Mr. Britton's chief clerk during all those accounts?—A. I don't know that personally.

Q. Can you find an account in your office signed by Mr. Miller as the clerk of Mr. Britton?—A. No, sir; Donnelly has had the reputation of being his chief clerk.

Q. Have you seen a great many accounts signed by him?—A. Yes, sir; I have seen a great many in his handwriting.

Q. Did you see one in Mr. Miller's?—A. There is one here.

By Mr. SPEER:

Q. I want to know when the Auditor allowed these suspended vouchers—was it in January or February last?—A. I think it was in February last, 1874.

Mr. WHITNEY recalled.

By Mr. DURHAM:

Question. In regard to this young man Miller, state whether or not you saw him in Mr. Britton's office?—Answer. No, sir; I did not see him in Mr. Britton's office, but I saw him about there, and I learned that he was an attaché of Mr. Britton's office when I was there the first time.

Q. That was what time?—A. December, 1872.

Q. Have you made another examination about these fraudulent claims, as you supposed, since you were examined before?—A. Very few.

Q. Do you desire to make any further explanation in regard to them?—A. I don't know that I can make any further explanation just now.

By Mr. SPEER:

Q. Young Miller had been connected with the marshal before you reached there in December, 1872—you found him acting there as an attaché in the office when you reached there?—A. Yes, sir.

Q. How long before that you did not know?—A. I cannot tell you. I learned this from Mr. Fuller.

Recross by Mr. ROBINSON:

Q. Did you ever see him do any acts in the marshal's office?—A. No, sir. I learned that he was there at a salary of \$250 a month.

Q. How did you learn that?—A. I learned that from Mr. Fuller. He was then the prison-keeper.

Adjourned.

WASHINGTON, D. C., *April 7, 1874.*

The committee met at half past 10 o'clock a. m. Present: The chairman, Mr. Williams, Mr. Speer, Mr. Durham, and Mr. Sheats.

L. B. S. MILLER, after being duly sworn, testified as follows:

By Mr. SENER, (chairman:)

Question. Will you give to the committee your name?—Answer. L. B. S. Miller.

Q. What is your age?—A. Fifty-six years.

Q. What is your business?—A. Clerk in the First Auditor's Office, Treasury Department. I have been for thirteen or fourteen years a clerk in that office.

By Mr. SPEER:

Q. Was it your duty to pass upon the accounts of the western district of Arkansas?—A. Yes, sir; I have that district, together with nineteen or twenty other districts on my desk, and have had ever since the courts were opened after the war.

Q. When accounts are approved by you, they are as a matter of form approved or signed by the Auditor, are they not?—A. Yes, sir.

Q. He makes no personal examination of them himself, but relies on your examination?—A. Some of them he examines, but I presume he does not examine many of them.

Q. Were there accounts from the western district of Arkansas before you in the year 1872?—A. Yes, sir; from 1865 up to this time.

Q. Do you remember the amount of the accounts of Mr. Britton?—A. I do not. He was appointed marshal in the last week of June, 1872, and then was re-appointed. I think his first account was sent on in September, 1872, following.

Q. Did you pass his accounts in the Auditor's Office?—A. I did.

Q. All of them?—A. I think so.

Q. They then went to the Comptroller's Office?—A. Yes, sir.

Q. And many of them were there disallowed, were they not?—A. Various items were disallowed and suspended in all the accounts; in fact that occurs in the accounts of all marshals; to a greater extent in some than in the accounts of others.

Q. To what extent were the items suspended or disallowed in Britton's accounts in the Comptroller's Office?—A. The first account of Mr. Britton's was stated by days. When the second account came it was examined in our office, sent into the Comptroller's Office and there examined, and was ready to send down to the files-room, when an order came from the Department of Justice to hold it up. At that time I had it ready to state, and it was held on my desk.

Q. What was the amount of the last account?—A. About thirty or forty thousand dollars. It was passed, I think, some time in January, and sent into the Comptroller's Office.

Q. And why did you pass it in January?—A. Mr. Whitney brought from Arkansas a whole lot of vouchers, together with Mr. Britton's last account, and it was examined in the Comptroller's Office, in connection with Mr. Whitney's report. At the same time they took the account that was on my desk, and examined it. Then, when they got through, they brought them all in to me to state, and I re-examined them.

Q. Had you any additional evidence with which you could pass the account?—A. I had this report of Mr. Whitney.

Q. That report was dead against the account, was it not?—A. Only as far as certain posse vouchers were concerned.

Q. Did you allow the posse vouchers?—A. I allowed all that there was no evidence of fraud in. All that that report condemned, I disallowed.

Q. To what amount did you disallow them?—A. To the amount of about eight or nine or ten hundred dollars—somewhere in that neighborhood.

Q. Had you a son appointed by Marshal Britton in 1872?—A. My son went to Arkansas as Marshal Britton's clerk, in 1872.

Q. What compensation was he to receive?—A. The boy told me he was to receive \$2,000 a year.

Q. Do you not know that he got \$250 a month?—A. I do not know any such thing.

Q. What age was the boy?—A. He was then twenty-four years old; he is now twenty-six. He staid in Arkansas some six weeks from the 1st July, 1872, and came back, I think, on the 17th August with Marshal Britton's bond; that was, I think, on the 17th August; and he was taken sick, and was not well until some time in October. He staid here until after Mr. Britton's nomination was rejected by the Senate, and then he went back.

Q. What did he do after he went back?—A. I do not know.

Q. Had you and Mr. Britton any acquaintance previous to 1872?—A. I knew him before.

Q. Had you any acquaintance until you became acquainted with him as marshal?—A. No, sir.

Q. Had your son any acquaintance with him before that time?—A. I think not. I do not think that he ever saw my son until he saw him in 1872.

Q. Do you know how they happened to meet?—A. I do not.

Q. Was your son connected with the Auditor's Office here?—A. Not at all.

Q. How did he become acquainted with Mr. Britton?—A. That I do not know. He must have come across him in some way, at the hotels or somewhere else.

Q. Did Mr. Britton speak to you on the subject of your son's going to Arkansas with him, or you to him?—A. Never a word.

Q. Did your son consult you about going?—A. He did, after the offer was made to him.

Q. Where is your son now?—A. He is clerk in the Quartermaster-General's Office, now in this city.

Q. What is your son's name?—A. Charles E. Miller.

C. C. AYERS, after being duly sworn, testified as follows:

By Mr. SPEER:

Question. What is your name?—Answer. C. C. Ayers.

Q. Where do you live?—A. Fort Smith, Arkansas.

Q. What is your age?—A. Twenty-four years.

Q. What is your business?—A. I have been acting as deputy marshal.

Q. State when and how long you have so acted.—A. In September, 1870, I was appointed deputy marshal by Captain Britton. I was re-appointed under Logan H. Roots in 1871, I think. Then I was suspended. I was re-appointed in July, 1872. Then I was suspended. Then I was re-appointed under General Sarber.

Q. Are you still acting as deputy?—A. I have been up to the time we were all suspended—within the last two months.

Q. Suspended by whom?—A. By Mr. Sarber.

Q. For what?—A. As he says, for the want of funds to run the office.

Q. What were your duties as deputy marshal?—A. To serve warrants and other process in the Indian country and throughout the district.

Q. Anything else? Tell us all your duties.—A. There was nothing else except serving during court.

Q. How many deputies were there?—A. At different times there were different numbers. I could only tell you what I heard others say. There were so many that I do not know how many there were.

Q. You have some approximate idea of the number, have you not?—A. When Captain Britton first took charge of the office in 1872, my understanding was that there were to be twenty-five deputies; that number was increased at the time of the election, by how many I do not know.

Q. About how many were there at the time of the election; what was your judgment and belief as to the number? I want the truth.—A. That is what I propose to give you.

Q. I am not asking you the number; I am asking you what your belief is as to the number?—A. There was a great number of deputy marshals; I do not know how many there were.

Q. Have you been in conference with Captain Britton on the street here since you came to Washington?—A. I saw him, and he asked me what they expected to prove.

Q. Do you believe there were 1,000 deputy marshals under Captain Britton?—A. They said there were from 180 to 257 under Captain Britton; that was the report.

Q. And in July it was understood that there were to be but 25?—A. That was my understanding.

Q. Why was this large increase of deputy marshals made between July and the election?—A. I do not know, except that crime was on the increase, and there was a railroad building there.

Q. Do you believe that because there was a railroad being built there, that was the reason for an increase?—A. Well, it always appeared to me as if a fewer number of deputies could have done the work.

Q. That is not any answer to my question.—A. You want my judgment?

Q. I asked you whether you believe that that was the reason of the increase, the building of the railroad there?—A. That is the only reason I know of.

Q. Do you believe in good faith that that was the reason?—A. My belief and my knowing would be quite different.

Q. I am asking you your belief?—A. If I would tell you what I believed I would want to know what to found my belief on.

Q. Was it the rumor of the country?—A. It was the street-talk.

Q. What was the street-talk?—A. That the number was increased for the purpose of carrying the election.

Q. After the election, was the number of marshals decreased?—A. The commission of crime immediately ceased.

Q. How many of the 257 deputy marshals were re-appointed after the election?—A. Well, sir, after the election, if you remember, Captain Britton's account was stopped, he was at Little Rock sick. There was no money in the marshal's office to do the business, and there was no more business transacted; there were no more arrests made; I never made any arrests from November, 1872, until May, 1873; I never made any more arrests under Captain Britton after the fall term of the court.

Q. How many marshals of the 257 were re-appointed after their discharge?—A. I do not know. I was re-appointed myself, and I do not know how many others.

By Mr. SHEATS:

Q. Were there any deputies after the election in May or June?—A. There were some five or six, but they never done any duty. I never got any pay when there was no work to do.

By Mr. SPEER:

Q. And from November until May, for the crimes that were committed, the marshal would not send any of his deputies to arrest the offenders?—A. The marshal at that time was lying at the point of death. At the time the senate rejected his nomination, no more arrests were made till Mr. Sarber took charge of the office in 1873.

Q. During October, 1872, can you give us the number of arrests that were made?—A. I cannot.

Q. Were there many?—A. There were a great many.

Q. For what offenses?—A. For most every offense on the statute-books—selling liquor without license, giving liquor to Indians, &c.

Q. Were there any cases compromised that you know of?—A. No, sir.

Q. Were there any parties brought to Fort Smith on charge of having committed offenses and then released?—A. Parties were sometimes brought there on writs issued by a commissioner, and the evidence being insufficient against them they were released.

Q. Did you ever arrest parties without any charge having been made against them beforehand? I mean original information filed in the commissioner's office?—A. Yes, sir; I did.

Q. Was that customary?—A. It was up to a certain time.

Q. To what time?—A. I think in the last of November or December, 1872, that ruling was made.

Q. You ceased to arrest without a warrant after the election of 1872?—A. No, sir; the election had no effect on it, whatever. After November, 1872, we ceased to make arrests in almost any shape, for there was no money to go out on. I stated awhile ago that there were no arrests made. A deputy marshal went out about Christmas and brought in a prisoner without a warrant. The prisoner was tried and convicted.

Q. When you went out and brought in a prisoner without a warrant, was the warrant antedated?—A. No, sir.

Q. When was it dated?—A. If a deputy went out and arrested a man it was dated at the time of the offense. But if the party was arrested upon information, the warrant was dated back from the time that the arrest was made, or from the time that you left Fort Smith.

Q. Did you go out into the Indian country to hunt up offenders, or did you act upon your previous knowledge that the offenses had been committed?—A. There are good citizens there who are in danger of their lives, and the deputies go around there to hear legitimate reports.

Q. What do you call legitimate reports?—A. Going around and arresting men who we are told by reliable persons have committed offenses.

Q. And upon a man telling you that an offense had been committed, you would go out and arrest the party who he alleged committed it?—A. Yes, sir.

Q. Who makes the charge against him there?—A. The witnesses who have seen it; we take the witnesses along.

Q. Do you have a subpoena for them in your pocket?—A. Men who have done wrong, it is unnecessary to subpoena them.

Q. Where do you get the subpoena?—A. We serve an old one upon hem.

Q. What day does it command them to be present?—A. Forthwith.

Q. What does that mean?—A. At once. Everything is to be laid aside, and they are to appear at once.

Q. Where do you get those subpoenas?—A. There is a great deal of crime committed in that Indian country. I have known a deputy marshal to have as high as eighty writs at one time. They go out and arrest men whom they have warrants for, and in their travels they find a great many new cases and they arrest the parties.

Q. Who issues these warrants and those subpoenas?—A. The writs and subpoenas of commissioners.

Q. I am asking you who issues them.—A. We have indictments found by the grand jury, and then we have United States commissioners' writs and subpoenas.

Q. You have no court subpoenas for parties to be arrested, have you?—A. O. yes. If a witness goes before the grand jury and testifies that such a crime has been committed in the Indian country, the grand jury finds a bill.

Q. Does a witness go before the grand jury before there is a bill sent there or before the grand jury has any information?—A. When an offense is committed he goes to a prosecuting attorney and tells him, that is, if it was during a session of the court. If a deputy marshal knows an offense has been committed, he goes to a prosecuting attorney or to the clerk of the court, states the case to him, states the information, gives the names of the witnesses, and they are sent up to the grand jury, and then a bill is found and the writ issued upon that, and we serve that warrant.

Q. Then the first that a defendant would know that there had been a charge against him is that there had been a bill found?—A. Yes, sir; these fellows are not tied to that country; they are here to-day and somewhere else the next day.

Q. Is it customary for the grand jury to find bills without any charge having been filed beforehand, or any warrant having issued?—A. It is customary at times, if the court is in session and a crime is committed and the parties come there for redress—

Q. You have told us that before; what I want to know is, if that is a customary practice?—A. Yes, sir; it is customary and legitimate.

By Mr. SENNER:

Q. Did you ever give any testimony before Mr. Whitney?—A. No, sir.

Q. What was your compensation?—A. We were paid by the amount of work we done, per diem and mileage.

Q. Was that understood when you were appointed?—A. Yes, sir.

Q. That it depended upon your work?—A. Yes, sir.

Q. Then you were interested in getting up as many cases as possible?—A. Yes, sir; legitimate cases.

Q. Do you know how many arrests you made while you were deputy marshal? Have you any idea of the number?—A. No, sir.

Q. Can you give any approximate estimate?—A. It has been so long, I declare I cannot tell you.

Q. Can you tell whether it is one or fifty?—A. It is more than one.



Q. Is it as many as fifty?—A. I think I made as many as forty arrests.

Q. Do you know the character of the cases you arrested; did you arrest any for murder?—A. Yes, sir.

Q. How many?—A. Two.

Q. What was the character of the rest of the cases?—A. Larceny.

Q. What else?—A. Selling whisky, introducing whisky, &c.

Q. Do you know how many were convicted of those you arrested?—A. No, sir.

Q. Do you know whether one or ten were convicted?—A. There was one hung. I think, sir, there were some six or eight of my cases convicted, and some are on the docket yet.

Q. Can you tell the committee about how much compensation you drew for your services?—A. I drew from Capt. Britton during his last term of office \$250 and odd. I drew nothing upon the first.

Q. Did you draw anything from Logan H. Roots?—A. I did.

Q. How much?—A. I think my ten per cent., when he paid me off, was \$114.50; that of course would make \$1,140 I drew from Logan H. Roots as deputy marshal.

Q. I do not know that I clearly comprehend you about that \$1,140 from Logan H. Roots. How do you mean, your compensation of 10 per cent.?—A. When we make returns we get an account, and the marshal retains one-third of all the deputy's earnings.

Q. Did both Marshals Roots and Britton do that?—A. Yes, sir; they retain one-third of all the deputy's earnings. The 10 per cent. rule was established by Colonel Roots; it was not the rule under Mr. Britton. The 10 per cent. rule was established in case the accounts should be disallowed in the Auditor's Office in Washington; then he would have some redress to get his money. If our accounts were disallowed, that 10 per cent. would pay him back.

Q. And that was the compensation and all the compensation you drew?—A. Yes, sir. O, hold on! Captain Britton, in the first place, I think it was in August, 1872, when the first money came on from the Department at Washington, drew \$20,000, and I drew \$400; that makes \$457 that I drew from Captain Britton; and I drew \$1,140 from Colonel Roots.

Q. Then you drew in all about \$1,800?—A. Yes, sir.

Q. Did that include the one-third to the marshal, or was it exclusive?—A. It was exclusive.

Q. And that was the amount of your fees for arrests and mileage?—A. Yes, sir.

Q. Can you tell this committee about how many days you were engaged in making these arrests?—A. We would go on a trip and be gone from twenty-five to thirty days.

Q. State to the committee what direction you would take when you left Fort Smith, and where you traveled.—A. It would be hard telling what direction we would take. We would be after a man, and, not finding him in the direction we first took, we would have to take another direction.

Q. You have been over that Indian country, have you?—A. Yes, sir.

Q. Just think and say in what direction you traveled, naming the points on the map; how long you tarried at the different places, and what places you visited within the time you made these arrests.—A. The greater part of my business was in the Cherokee Nation up to last summer. Fort Gibson is in that territory. At times we would have to go to Chatoupa, which is on the border of the Indian Territory. Then we

would have to go to Elgin, Kansas, which is also on the border. Chautoupa is within a mile and a half from the line. In making these arrests we would travel from two to three hundred and fifty miles.

Q. How far did you travel at any one time in making an arrest?—A. In making the arrest of one Henry Armstrong, I traveled three hundred and fifty miles.

Q. Is that the longest distance you traveled in making any one arrest?—A. Yes, sir. Let me see. There were the Wells boys that I arrested on the borders of Kansas; I had to ride three hundred and seventy-five miles to get them. It has been ruled that they would only allow us mileage to the place of arrest, and oftentimes the ride to the place of arrest would not pay our board.

Q. You say you never traveled over three hundred and seventy-five miles in making any one arrest. Do you recollect whether you ever charged more than three hundred and seventy-five miles on any one of your vouchers? You recollect we have those at the Treasury.—A. In the Wells case I think I made returns for four hundred miles; that is the most that I remember.

Q. And you are quite certain that you never charged for any one arrest more than four hundred miles?—A. If I did, it has slipped my mind. This arrest was under Captain Britton, in August, 1872.

Q. Did it ever happen, in making arrests, that you charged for *posse* that did not go with you?—A. No, sir.

Q. Was it ever the case that there were parties known in Fort Smith as returning marshals who did not act?—A. It has been said so there. I made my own returns.

Q. Who said it?—A. The most I ever heard about it was after Mr. Whitney came there.

Q. How many deputy marshals were in the marshal's office there?—A. I do not know how many there were. Rumor said that from the last of June to the fall term of the court, in 1872, and until after the election, there were two hundred and fifty-seven.

Q. Speaking now from your knowledge of this marshal's office, your knowledge of how matters have been conducted in the western district of Arkansas, during the terms of these two marshals, Britton and Roots, do you know of any frauds in the expenditures of the public money out there of your own knowledge?—A. Of my own knowledge I do not. I have seen things that were said to be frauds. To be definite, I want to know certainly what you mean.

Q. You know what fraud means?—A. Yes, sir.

Q. You know what the western district of Arkansas is?—A. Yes, sir.

Q. You understand what is meant by the expenditure of public money there?—A. I do.

Q. Well, now, putting all those things together, if you know anything that is wrong, I want you to tell it to this committee.—A. In regard to fraud, I know nothing of any one of these returns except my own. There was said to be fraudulent returns made, but I never saw them making them.

Q. Did you tell any one that you knew any of these things, or that you had reason to believe them?—A. No, sir.

Q. Did you have any talk with Mr. Whitney while he was there?—A. I never saw him in my life. I understood he was there during our September term of court, in 1872. I did not see Mr. Whitney at all to know him.

By Mr. SPEER:

Q. What do you mean, in answer to the question whether you know of any frauds, by saying, you have "seen things?"—A. Well, I have seen men there that were said to be returning deputies, but I have never seen them make any returns. They lived there. But of my own knowledge I know nothing of it.

Q. Was it common rumor that they were deputies?—A. Yes, sir. If they made returns the books will show. I do not know whether they did or not.

Q. You say Mr. Britton was re-appointed about the 1st of July, 1872?—A. Yes, sir.

Q. And you were re-appointed deputy, under him?—A. Yes, sir.

Q. And in August you drew \$400?—A. I did not draw \$400 for myself. My brother, Ben. Ayers, was a posse with me; he drew \$90 for thirty days, and Thomas H. Blackard drew as posse \$90; that made \$180; the balance was for my marshal fees. Captain Britton paid out that money. This other \$257 that was paid me, I drew from the chief clerk.

Q. Did you ever get any valuable consideration from any defendant for his release?—A. Never, sir.

Q. Do you know of any person who did?—A. No, sir.

Q. Do you know of any arrangements made with a prisoner to release him upon conditions?—A. No, sir.

Q. Were your accounts all sworn to by you?—A. That style was first adopted there when Mr. Miller came on as clerk for Captain Britton. Under Colonel Roots we did not have to swear to our accounts. Under Captain Britton we had to swear to every account. Before that we had to certify that our accounts were correct.

Q. When you were re-appointed in July, 1872, you were sworn to your accounts?—A. Yes, sir.

Q. Before whom were you sworn?—A. It was optional with us whether we would go before Colonel Churchill or a commissioner.

Q. Did you swear to your accounts in blank?—A. No, sir. We first swore to the correctness of the account, then took it to the marshal's office where one-third was deducted from it, ten per cent. was retained in the office subject to the approval of the account at the Department in Washington, and then if the money was in the office we got a check for the rest.

Q. Do you know of any accounts that were made out and paid after July, 1872, that were not sworn to?—A. No, sir.

Q. When Captain Britton had no money did you have your accounts discounted?—A. No, sir.

Q. Did others?—A. Yes, sir; I have seen them sell for 30, 40, and 50 cents; they got down to two bits the cart-load, and finally they were not worth anything.

Q. Who were the purchasers of them, usually?—A. Different parties.

Q. Name them.—A. Captain Scott, the postmaster, bought a great many of them; and Polk & Jacob, dry-goods merchants there, bought some of them.

Q. Were they friends of Captain Britton?—A. I do not know, sir. Mr. Lanagan, also, bought some of them.

Q. Who is Mr. Lanagan?—A. A merchant, doing business at Fort Smith. It was said that he bought some of them, but I never sold any to him. The deputies told me I could go up there and sell them for ten per cent. discount.

Q. Do you know what arrangement there was between Captain Scott and the marshal?—A. I do not.

Q. Were those parties afterward paid the amount in full?—A. They may have the accounts yet.

Q. Did Mr. Churchill buy any?—A. No, sir; I do not think Colonel Churchill ever dealt in such paper in his life.

Q. Did Story ever buy any?—A. No, sir; I think not.

Q. Did Brooks buy any?—A. No, sir; I never was recommended to him to sell.

Q. When these accounts would be given to you, and the marshal had no money, would the marshal say to you, "Go to Captain Scott there, and he will cash it for you?"—A. No, sir.

By Mr. SENER:

Q. He did not ask you if you were told to go to him, did he?—A. No, sir; I was told by Captain Britton myself to hold on to my accounts and that he would pay them all.

Q. And you did hold them?—A. Yes, sir. Mr. Whitney has some of my accounts now.

Q. Do you know how many deputy marshals there are in that district now acting under appointment?—A. We were all suspended; I was suspended with the rest a short time ago, and I do not think there are any acting.

Q. The country is more peaceable, is it?—A. No, sir.

Q. Is not the country peaceable now, as far as you know?—A. No, sir; the last trip I made I heard of six different murders committed, and if there was money to run the district the arrests could be made. This hundred-thousand-dollar system has ruled us down some out there.

Q. Did you ever go out with a posse, get men to violate the law, and then arrest them?—A. No, sir.

Q. Do you know of that ever being done?—A. No, sir; but I know this: a man could go out with \$5, get a man to make an affidavit each way, and have a dollar left.

Q. But you could not arrest a man on \$5 and have a dollar left?—A. We do not propose to do that kind of business there.

Q. Who are the men that were said to be returning marshals? What are their names?—A. There is Christopher Duff, Eli Root, and Ely Loefer. Now, remember, I do not know this of my own knowledge; all I know is that they were said to be returning marshals. I never saw them in the Indian country.

Q. Why was it that these vouchers or these sums due by the Department of Justice to those people out in Arkansas sold as low down as two bits the cart-load?—A. My understanding was that the men at Fort Smith were fighting Captain Britton, and made it a point to retard him as much as possible in all his movements. It was stated that fraud after fraud was committed, and men did not know whether to buy or not; they would like to make some money, but if they bought the paper they did not know when they would get their pay.

Q. What is the lowest sum that you know to be *bona fide*—honest and fair—that was sold?—A. I bought a claim once for 25 cents on a dollar. An old darkey came up, and I gave him 25 cents on the dollar; and I went down to Mr. Barry and sold it to him. I knew it to be an honest claim.

Q. How much was the claim?—A. Thirty-odd dollars, I believe; and I gave him 25 cents on the dollar for the claim. I do not know what Mr. Barry, to whom I sold it, received.

Q. Do you recollect the darkey's name?—A. I do not.

Q. Do you recollect the case in which the darkey was a witness?—A. No, sir. It has been ruled by Colonel Churchill, if a man would swear to the number of miles he traveled and the number of days he had been in attendance on the court, he would then give him a witness's certificate. The man would then sign the roll and get his money.

By Mr. DURHAM:

Q. Do you know who drew that \$20,000 check?—A. I think Mr. Britton himself drew it.

Q. Did Mr. Scott or Mr. Britton pay you this \$450?—A. Mr. Britton paid me. I left my account with a friend and it was paid.

Q. Suppose you were to arrest a man to-day, seventy-five miles from Fort Smith, and you were to travel one hundred and fifty miles in a zigzag course in getting to Fort Smith, in making up your account for what distance would you charge?—A. One hundred and fifty miles. It makes no difference how zigzag the travel would be—

Q. Suppose you heard that a man committed a crime in a town one hundred miles from Fort Smith, you would go there, and not finding him you would trace him fifty miles in each direction, and suppose you were to arrest him at the point you originally went to; in such a case for what distance would you charge in making up your account?—A. I would charge for the actual number of miles that I traveled in making the arrest.

Q. And the posse in the same way, what would he charge?—A. The posse gets a per diem from the time he leaves Fort Smith.

Q. When you start out on hunting expeditions do you go with blank warrants in your pockets?—A. No, sir; that is against the law.

Q. Upon what do you make the arrest?—A. I arrest upon the statements of good, reliable citizens. If there is evidence sufficient as we think to bind the party over, we have him committed to jail until the grand jury meets.

Q. Under these fees are you entitled to so much a day during the time you are engaged in making the arrest, until the matter is disposed of?—A. No, sir.

Q. Are the marshals entitled to per diem from the day of arrest until the case is disposed of?—A. No, sir; they are only entitled to mileage and actual subsistence. The guards get 10 cents a mile. The posses are paid per diem from the time they leave Fort Smith until they return. They furnish their own subsistence.

Q. Do you know of any of this money that has been advanced for the purpose of running that department down there, to have been used for political purposes outside of that you have stated?—A. No, sir.

By Mr. SPEER:

Q. Is your father here?—A. Yes, sir.

Q. What is his name?—A. Willard Ayers.

Q. What is he engaged in?—A. He is a watchman in the Treasury Department.

Q. When was he appointed?—A. Last March.

Q. At whose instance was he appointed?—A. I do not know; I think upon his own merit.

Q. Do you know when he was subpoenaed here?—A. He was never subpoenaed here.

Q. Where was he living at the time of his appointment?—A. He came on to Washington to see about his pension. He came on as a delegate to the convention of the Mexican war soldiers that was held here.

By Mr. SHEATS:

Q. Do you know of any Ku-Klux in Arkansas?—A. We had none there. There was said to be an organization there, but whether there was or not I do not know.

Q. You spoke a while ago about there being an increase of deputy marshals just before the election. Was there more violence about the time of the election than at any other times?—A. We had a pretty hot time there during that election.

Q. Were these deputy marshals not appointed to keep peace during the election—was not that the reason given?—A. We had positive instructions to see that order and quiet were maintained during the election; it was not intended to influence anybody or anything. A great many of the deputy marshals voted with the democratic party.

By Mr. SPEER:

Q. Name some of those who voted with the democratic party—give their full names?—A. Neal Burney, Hugh McGuire, and then there were some that lived in the Indian Territory that did not vote at all who were deputy marshals.

Q. You have named all that you can recollect that voted the democratic ticket, have you?—A. That district is a large one. Those two hundred and fifty-seven deputies were appointed in our district.

Q. Have you named all the democrats that you can think of now?—A. I was trying to think of a fellow's name, and what I heard him say. He was a deputy marshal, but I do not remember his name. I heard him say on the day of election that he was going to vote for Greeley, for he thought this thing was gone by the board, as far as Captain Britton was concerned, and he proposed to be on the safe side.

Q. The other two you named as democrats went over for the same reason, did they?—A. Possibly; Mr. McGuire got a good place. There were many influenced that way out there.

Q. Are these three all you can think of?—A. I believe they are at this time.

On motion of Mr. Durham the committee adjourned to 2 o'clock p. m.

At 2 o'clock p. m. the committee re-assembled.

JAMES O. CHURCHILL, after being duly sworn, testified as follows:

By Mr. SENER:

Question. What is your name?—Answer. James O. Churchill.

Q. What is your age?—A. Thirty-eight years.

Q. Where do you reside?—A. Fort Smith, Arkansas.

Q. What is your business?—A. I am clerk of the United States district court for the western district of Arkansas.

Q. How long have you been thus acting?—A. Since March, 1868. I was appointed in December, 1867.

Q. We are now investigating in this committee the expenses, disbursements, and general management of the western district of Arkansas since the 1st day of July, 1870; and the object of summoning you here is to be informed as to what you know touching those matters; and I will ask you to give this committee, first, in general terms, any information that will facilitate them in their investigation. The expenditures in that department were, for the year 1871, \$248,000; for the year 1872, \$370,000; and for 1873, \$264,000. State if you regard these as ordinary or extraordinary, and then proceed with your answer.—A. They are more than they ever have been before. For the year 1872, the



expenses are more than any year before, I think. So I suppose they should be considered extraordinary. All I can state in regard to the expenses is what is shown by the records; and that is, the compensation allowed witnesses and jurors during the respective terms of the court. The expenses of the marshal, or any of his deputies, do not appear upon my records; that is, for serving processes of all kinds—writs, subpoenas, scire facias, executions, except executions in civil cases; these are shown in the fee-books, but these expenses are mainly, I suppose, in criminal processes. Those do not appear upon the record of the court proper; they appear only in the marshal's office. I very seldom see them, and never in an official capacity, except possibly to swear a deputy marshal to his account, and a marshal to his final account, which could be done before any magistrate. That is all that I can state in regard to the general matter of the expenses. All that I know anything about is what appears on the record. There are many accounts that I never see. The marshal brings in his accounts to me, and I swear him to them; I do not examine them; it would take me a week to do so, and then I could not tell whether they were correct, in fact, or not.

Q. You mean to say that he brings in a batch of accounts and swears to them all?—A. No, sir; when he makes out an account-current for any time that he may see fit, he brings it in to me with the accompanying abstracts and signs each special account, and swears to the correctness of them; then I put on the certificate and seal. If I examined each one specially I could not tell whether it was right or not.

Q. That is a duty that you perform as commissioner or clerk?—A. Usually as clerk. The general accounts of the marshal do not appear upon the records of the court. It requires an order in the payment of witnesses and in the payment of jurors; but in the payment of deputy marshals it does not; that is prescribed by law.

Q. Can you furnish this committee with a statement, showing the number of terms of your district and circuit courts in each year, the number of days' session of each court, the number of hours of each court?—A. I cannot furnish the number of hours, but I can furnish you with the rest of the statement.

Q. Can you furnish a statement showing the number of cases tried and disposed of, and the number of cases civil and criminal on your docket?—A. Yes, sir.

Q. Can you furnish a statement showing the amount that has been allowed in the last three years by your court for jurors attendance and mileage, and witnesses' fees and mileage?—A. Yes, sir; they are all shown by the records.

Q. Does the circuit judge of your circuit ever come there?—A. No, sir; it is a district court with circuit court powers. Cases go directly to the supreme court from that court.

Q. Do you mean to say that the act organizing that judicial district provides for no circuit court there?—A. Yes, sir; but it gives that court circuit court power, as will be seen in Brightley.

Q. Will your records show the number of witnesses who have been summoned in all cases in your court for the last three years?—A. Yes, sir; but not in what particular cases summoned. Nor does the law so require us to keep it. The law requires witnesses to be summoned generally for the United States.

Q. But you allow him only attendance in one case?—A. He is only allowed one per diem and one mileage. He may go before the grand jury or the court half a dozen times, but he will only get his dollar and

a half each day. Such an account would be disallowed as witness having two per diems.

Q. How long would it take you to furnish the statement? You have your records here, have you?—A. Yes, sir; I suppose not less than twenty-four hours; possibly I might have to ask for more time.

Q. Have you got those records here?—A. I have, sir.

Q. Will you produce them and let us look at them?—A. (Records produced.) This is the common-law record, in which all judgments are entered in common-law cases, civil and criminal. This book commences on December 2, 1869, and ends January 13, 1872, inclusive.

Q. Have you an index to that book?—A. I have.

Q. Is it with it?—A. It is.

Q. Now, you have other books following that?—A. Yes, sir.

Q. Are they here?—A. They are. They are the same size as this.

Q. How many pages are in this book, (referring to book No. 1)?—A. Five hundred and eighty-four. Book No. 2 is from January 15, 1872, till January 24, 1873, inclusive.

Q. How many pages are there in that book, (referring to book No. 2)?—A. Five hundred and eighty. This book (No. 3) is from January 25, 1873, to February 28, 1874, inclusive. This is the book that is now used.

Q. Almost the entire expense of the United States Government is on the criminal side of the court. The only expense on the civil side is the expense of the jurors?—A. Yes, sir; sometimes there are a few witnesses in attendance in civil cases where the United States is a party. In civil cases where the United States is not a party the witnesses are paid by the parties.

Q. Give us a statement of the civil cases tried in your court in which the United States was not a party.—A. I could compile such a statement from the records.

Q. Would not your office show expenses of forfeited recognizances, *scire facias*, &c.? You serve a notice on a *scire facias*; does not the notice come back to you found or not found?—A. No, sir; not on these books. Where it is entered on the docket, a judgment is entered on the party; that is an evidence of service.

Q. Have you got your dockets with you?—A. Yes, sir; some of them. I had no authority to bring only what was specified. I brought all the commissioner's writs that have been filed with me, and all the orders and record books, and the judge's docket.

Q. Have you got the commissioner's writs with you?—A. Yes, sir.

Q. Have you counted them?—A. No, sir; I have an abstract of them.

Q. Have you the abstract with you?—A. Yes, sir.

Q. Will you produce it?—A. Yes, sir. (Abstract produced and marked Exhibit Q.)

Q. This contains the names of all the defendants and all the plaintiffs?—A. Yes, sir.

Q. Does this include those that have been discharged by a commissioner as well as those sent to court?—A. It includes all that have been returned to me.

Q. Do you know how many this includes?—A. I have not counted them. That is an abstract of all I have with me.

Q. Can you, with the records of your court, show how many of these cases were sent to court?—A. I think I could by the records. I would have to take the two in connection and examine each one. I could make an abstract of the number of cases.

Q. To be frank with you, what we want to know is the number of

cases brought before a commissioner and the number of cases that were not, and how many cases were discharged by the commissioner without ever seeing the court-house.

By Mr. SPEER :

Q. What is your salary ?—A. It depends upon the fees. I have no salary.

Q. What does the law allow you ?—A. Not to exceed \$3,500 a year as clerk. It never has come to that.

Q. Have you kept a list of all the fees received ?—A. No, sir ; but the Comptroller's Office will show the amount received.

Q. How do you know that it has not amounted to \$3,500 ?—A. Because I am obliged to make up an emolument-return at the end of each six months, and I never have had to pay any money back into the Treasury.

Q. What is an emolument-return ?—A. It is the amount of compensation earned by the clerk of the court or district attorney from January 1 to June 30, and from July 1 to December 31 of each year. This is sent to the Attorney-General.

Q. I do not understand what it is yet.—A. It is a statement of the fees and compensation earned by the clerk of the court, specifying how much earned from individuals.

Q. Do you give in that return to the Attorney-General the amount received by you in each case ?—A. No, sir ; not specifically.

Q. Now, if you keep no record, how can you make up a summary ?—A. I have to make up a clerk's account, which possibly would amount to thirteen or fourteen hundred dollars for six months. That goes to the Comptroller, and he examines it and sends me a statement. I take this statement of the Comptroller and keep an account of all the other fees earned, and at the end of the year, on the 31st day of December, I make up my emolument-return for the last six months, in which are entered all these fees.

Q. Have you the book here containing that account ?—A. No, sir.

Q. Have you the original account, as kept by you day by day ?—A. No, sir ; I make up the account from the common-law record, the papers in the case, and the docket.

Q. The records you have exhibited here contain no account of fees ?—A. No, sir ; it tells whether a man is discharged or convicted. When a prisoner pleads guilty, I get a docket-fee of \$2 ; when he is found guilty or acquitted by a jury, I get a docket-fee of \$3.

Q. I turn here now to page 202, (book 3,) the case of the United States *vs.* W. A. Rankin and James A. Dunham ; where is the record of the fees charged and received in that case ?—A. That indictment was brought in by the grand jury, and had to be filed. For that I got ten cents, what the law prescribes.

Q. I am not asking what the fee is that the law prescribes ; but I am asking for the record of the fees you charged and received.—A. It would not be allowed to be put in there by any person.

Q. Where did you put it ?—A. You will find it in the fee-books in my office ; you will not find it in the common-law record ; if you did, I would be discharged immediately.

By Mr. SENER :

Q. Do you or do you not in each case keep the taxation of costs in that case ?—A. Yes, sir.

Q. Suppose I should go into your office at any time and ask for the papers in the case of A. B. against C. D., in a civil case ; upon the pro-

duction of the papers in that case would they show the fees charged?—  
A. The fee-book would show that; and my return sent to the Comptroller is an exact copy of the fees taxed in the case; where the United States is a party these fees are taxed, not only from the records, but from the papers in my office.

By Mr. SPEER:

Q. I ask you where that book is in which it does appear.—A. It appears in the fee-book.

Q. You did not say that before.—A. I did, but you did not understand me exactly. I make up my fee-book from the record and all the papers in the case.

Q. Where is the book now that will show that?—A. That book is in the clerk's office.

Q. Can you have it here? You have brought here—A. Just what I was required to bring.

Mr. SPEER. If you can furnish it, I request that you furnish it. You will telegraph to Fort Smith and produce before this committee a book showing the fees of your office from the time you became clerk until now; and showing the fees taxed and received in each case.

The WITNESS. I will do so.

Q. Do the defendants ever pay the costs in any case?—A. Very seldom.

Q. Your fee-book will show by whom they were paid?—A. Yes, sir. All moneys of that character are sent to the Treasury.

Q. Will your books show in all cases who paid the costs?—A. I do not think they will. In ninety-nine cases in one hundred they are paid by the United States; but there are a few cases where forfeiture of recognizance is set aside and the case dismissed at the defendant's cost, and if the costs are but seven or eight dollars the defendant comes and pays them.

Q. Why do you say that in ninety-nine cases in one hundred the Government pays the costs; are the defendants always insolvent?—A. Nearly always. I am speaking now of where the United States are interested.

Q. Where one party sues another, the United States not being interested, who pays the costs?—A. If neither party pays them, I lose them.

Q. Does the Government pay the costs in a case of that kind?—A. No, sir; if presented it would be disallowed by the accounting officers of the Treasury.

Q. Where a defendant is convicted and sentenced to pay the costs, is he imprisoned on failure to pay them?—A. It depends on how the order is entered by direction of the court. But the United States would have to keep him his lifetime in most cases if they kept him until he paid them.

Q. Where the order is that he be remanded to the custody of the marshal until the costs are paid?—A. No judge in that section of the country would make an order of that kind; for many of these people have nothing, and many of them have no friends. It is sometimes ordered that he be imprisoned for two, three, or four days unless such costs are paid. A conditional order of that kind would be almost unnecessary.

Q. Were you the clerk in 1872?—A. I was.

Q. Who was your deputy?—A. James M. Harrub.

Q. You have had a deputy all the time?—A. I think so; I cannot say that I have all the time.

Q. Do you follow any other business?—A. No, sir.

Q. Have you more than one deputy?—A. When the court is in session I usually have two and sometimes three. They are paid out of my fees.

Q. And you paid for the three if your fees would not amount to more than \$3,500 a year?—A. I am also a United States commissioner.

Q. By whom were you appointed?—A. By Judge Caldwell.

Q. When?—A. In 1868 or 1869.

Q. As commissioner you are a committing magistrate?—A. Yes, sir.

Q. Take informations, issue warrants, and grant hearing?—A. Yes, sir.

Q. When a party is brought before you as commissioner do you hear both sides and discharge him if in your judgment the evidence is not sufficient?—A. Yes, sir.

Q. Are you commissioner now?—A. I am.

Q. As commissioner, have you been in the habit of issuing blank warrants?—A. No, sir.

Q. Are you in the habit of antedating them?—A. I am.

Q. When did you begin that?—A. Some time in 1868.

Q. When did you quit it?—A. About December, 1872.

Q. What was the object in antedating them?—A. To give the marshal the power he had by law or should have.

Q. I am asking you the object in antedating them?—A. If they were not antedated the marshal could not receive any compensation whatever in many cases.

Q. Would it not be better to change the law instead of having you disregard it?—A. That I don't know.

Q. You as a sworn officer of the court sign your name to a paper and date it a week or a month beforehand?—A. That is the custom which has been in vogue for the last twenty-five years in that district, as I am credibly informed.

Q. Why did you quit it in 1872?—A. Because the judge told me they would pay it the same as if dated when the party was brought in, but they never have.

Q. Tell us what your fees amount to as commissioner, a year?—A. I think they have amounted to about \$1,500 or \$1,600. I am not positive as to that. I cannot tell without referring to the Comptroller's statements.

Q. Were the costs of the posses taxed by you?—A. No, sir. I seldom knew whether a deputy marshal had a posse or not.

Q. Does your docket or record as commissioner contain a statement of the costs?—A. No, sir.

Q. When you made a return to the district attorney or the court, did your transcript show what had been done before you?—A. Yes, sir; it showed all the evidence in the case.

Q. It did not show the costs?—A. No, sir. The district attorney was usually present at the examination.

Q. When you issued a warrant and antedated it, were there no costs taxed on the back of it?—A. Yes, sir.

Q. When it came back to you with the person, you would see the amount of costs on the back of it?—A. Certainly.

Q. But it was not your business to know whether they were correctly taxed or not?—A. No, sir.

Q. Suppose you discharged the prisoner, what did you do then as to the costs of his arrest?—A. It was not in my sphere of duty.

Q. The costs of arresting him, what became of them?—A. That in-

formation is in the marshal's office; I have nothing to do with the marshal's costs.

Q. Did the marshal not return the costs?—A. He is not required to do so.

Q. And did you not return them to the district attorney?—A. They were there in the office for his examination.

Q. Do I understand you now to say that the marshal would make the arrest, then take the warrant without indorsement from you and give it to the district attorney, and claim such costs?—A. No, sir.

Q. What is it, then?—A. If the marshal should leave Fort Smith and go to Fort Sill, and a murder should be committed while he was there, he would arrest the murderer; then go before a commissioner and make an affidavit, or information; the writ is then dated at the time of, or previous to the arrest; then the marshal taxes his costs on the back of the writ, and the case in the mean time is taken up and examined.

Q. Then you return it to the district attorney?—A. I do not hand it over to the district attorney.

Q. I am talking now about you as commissioner, and not as clerk. Did you file your commissioner's papers in the same office that you filed your papers as clerk?—A. In the same office, but they are kept separate and distinct from my papers as clerk.

Q. Have you any means of furnishing the committee with the number of warrants issued by you as commissioner, and the disposition made of each case?—A. I have not here.

Q. Have you any means of furnishing us here now with the cost received by you in each case before you?—A. No, sir; it can be found in the First Comptroller's Office.

Q. Have you a docket as commissioner which shows what was done in each case?—A. Yes, sir.

Q. Are the costs taxed in that docket?—A. No, sir.

Q. Where did you keep your costs or fees as commissioner?—A. When I made up my account I taxed them up. I keep a copy of that account. I made up the account to send to the Comptroller of the Treasury.

Q. You sent him an account of your fees as commissioner?—A. Yes, sir.

Q. For what purpose?—A. To have it paid is the main purpose of it. It is not sent to the Comptroller first, but to the Auditor.

Q. Were you never paid by defendants?—A. No, sir.

Q. In a single case?—A. Not in a single case.

Q. What are you allowed for issuing a warrant?—A. One dollar.

Q. For a return?—A. Five dollars a day for an examination.

Q. For a hearing?—A. Yes, sir.

Q. Do you ever charge for less than a day for a hearing?—A. The law does not recognize less than a day. If I put in an account for half a day they would say I was a fool.

Q. You never tried them whether they would or not, did you?—A. No, sir.

Q. Have you in every case in which a warrant was issued charged for a day?—A. No, sir. I suppose I have got one hundred warrants that have never been served.

Q. What is the largest number of days for which you have charged in any one case?—A. The tobacco case of Bostwick & Ryan. I think I was engaged in that case for six or seven days continuously. That was the longest case I ever had. The fees in that case I presume amounted to between \$35 and \$40.



Q. Is there any other commissioner at Fort Smith besides yourself?—

A. Colonel Brooks is a commissioner.

Q. Which of you issued the most warrants?—A. I suppose Colonel Brooks did; I was clerk of the court.

By Mr. DURHAM:

Q. You are allowed \$3,500 a year, are you, as clerk?—A. No, sir; my fees are not to exceed \$3,500.

Q. Is any part of a civil process, as between man and man for instance, or between firms, included in that?—A. Certainly.

Q. Whether the Government is a party or not?—A. Yes, sir.

Q. This bill that you refer to, then, will show your fees in all classes of cases that are tried in your court and service rendered by you?—A. Yes, sir.

Q. What is the rule of United States commissioners in sending on for further trial; is it upon probable cause shown, or must there be very great cause shown?—A. There is no rule. It is a matter of common sense and judgment and law in the case.

Q. Then whenever there was a lack even of probable cause, as a matter of course, under oath you have him discharged?—A. Yes, sir.

Q. Is not that your understanding of the law by which you and other commissioners are governed?—A. Yes, sir.

Q. Do you know anything about any fraudulent expenditures of moneys on the part of these marshals down there?—A. Not of my own knowledge; only what I have heard on the street.

Q. To what extent has that street talk been indulged in?—A. When there were so many of these accounts around Fort Smith, many different parties holding them, I being an officer of the court they would frequently ask me, "What is the prospect of this bill being paid?" I told them I knew nothing about it. Then they would generally say, "Well, do you think it will ever be paid?" and I would tell them that I did not know.

Q. You have heard the charge made openly in Fort Smith that they had what they call returning marshals?—A. The only way that I heard that was in Mr. Whitney's report.

Q. Did you ever hear persons speak of it in Fort Smith?—A. No, sir; not before I saw his report.

Q. Do you know the number of marshals who have been acting at any one time in that district; or have you any information by which you may show that?—A. No, sir; I know there were a great many. Mr. Ayers gave the number much higher than I thought. I supposed there were one hundred and forty or one hundred and fifty during the fall of 1872.

Q. Taking the basis of one hundred and fifty, is that number of marshals required to perform all the duties of marshal in that district, according to your judgment, at anyone time?—A. That is a question that is very hard to answer.

Q. I take your position, occupying the position that you do as clerk and United States commissioner?—A. That district extends many hundred miles in the Indian country. We hear of murders and robberies all the time now; and what number of men would be required to keep it as peaceable as this district here—whether one hundred or one hundred and fifty would do it, I do not know.

Q. Have they no State or territorial organization?—A. No, sir.

Q. No police regulation outside of the — A. Yes, sir; they have

what they call a light-horse there, but they have no authority to interfere in any case in which a white man is interested.

Q. These prosecutions that are here, is the larger number of them from that country?—A. They are nearly all from that country.

Q. Do your records show what was done with the case, for instance, of the United States *vs.* Frank J. Nash?—A. (Looking at the record.) There [indicating] is where the indictment was found.

Q. Well, when was the indictment found as shown by your records?—A. June 3, 1872.

Q. When was it dismissed?—A. (Looking at the record.) June 6, 1872.

By Mr. SPEER :

Q. By whom is that entry made in the record on page 197?—A. By my deputy clerk.

Q. Was it entered in the regular course of business?—A. I presume it was.

Q. Do you believe this entry, from the appearance of the handwriting, to have been entered at the time it bears date?—A. Yes, sir.

By Mr. DURHAM :

Q. Whose handwriting is this?—A. The same clerk whose handwriting is on page 198.

By Mr. SPEER :

Q. Can you account for this cramped hand at the bottom of the page?—A. Only in this way; it was the very question I asked him before I came away.

Q. What was that question?—A. The one you ask. He told me he did not know, but he supposed that as I had two minute-books or blotters, one of which I kept in the court-room, and sent to him when I had a page or two of minutes written, he presumed that this day's record was entered nearly, and it was probable the adjourning order was made, and there was no other space for this last proceeding of the day without erasing the adjourning order.

Q. How did you happen to call his attention to that before you left home?—A. Because the case was pending here.

Q. Where was it pending?—A. Before the Judiciary Committee. It was one of the charges against Judge Story, and I had the curiosity to see what the entry was.

By Mr. DURHAM :

Q. Have you the record-book showing the dismissal of the prosecution of this suit?—A. Yes, sir.

Q. Whereabouts on the page is the order dismissing this case found?—A. At the bottom of the page.

Q. Is the handwriting in which that order is made of the same size that it is on the same page of the book and the same size as on the page following it?—A. No, sir.

Q. State whether or not there are two lines of writing to each line on the ruled paper in making up that order?—A. There are three lines—I think there are more than that—[after counting]—there are four lines.

Q. Is it or not true that there are only three ruled lines on the paper, and that there are seven lines of writing?—A. Yes, sir; under the caption.

Q. And it is much finer handwriting than on the same page or on the succeeding page?—A. Yes, sir.

Q. Do you find that kind of writing or that kind of interlining on any

page of that day's proceedings?—A. Well, I want to look before I answer that question.

By Mr. SENER :

Q. When was the first time that you saw that paper—you say you did not enter it?—A. I probably saw it the next day.

Q. Did the fact of its strange entry attract your attention?—A. Not that I recollect of.

Q. Did you ever ask your clerk how it came to be so entered at the time?—A. I do not know, except as stated before.

Q. Is it charged upon your memory whether you did or not?—A. I have no recollection either way.

Q. Do you read in open court each morning the record of each day's proceedings?—A. Sometimes it goes over for several days before it is read.

Q. Are the court orders always read in open court before being signed?—A. The rule of the court is that they are to be read before being signed.

Q. Do you read these orders as clerk?—A. I generally read them.

Q. Do you recollect whether or not you read that order as entered?—A. I do not.

Q. Did that case of Nash ever go before a commissioner?—A. No, sir. Witnesses testifying in other cases brought this case out before the grand jury. That was my understanding; I was not in the grand jury room.

Q. Do you know the fact that that record was made at the time it purports to have been made, or has been made since—on that day, I mean?—A. I could not swear to that. I think it was made before the record was signed; in fact, I am satisfied, in my own mind, that it was. I know it was.

Q. In fact, you say, you know; now how do you know?—A. I know it from custom, that is all. I ought not to say that I know unless I saw it entered. I did not see the record made.

Q. Do you recollect ever to have seen that order before your attention was called to this matter three weeks ago?—A. Yes, sir; I saw the order when I first heard about this Nash case; it was some time in June, I think, or the latter part of May, 1873.

Q. Then did the strange character of that order attract your attention at that time?—A. I do not recollect.

Q. Do you recollect any other order in your books that is cramped into the same space as this is?—A. I think so. I do not know. [The witness here examined the book, and, after some five minutes' examination, said:] I am unable to find any such other entry just now. I am confident there are such.

By Mr. SPEER :

Q. What clerk made that entry?—A. James M. Harrub.

Q. Where is he?—A. In Fort Smith.

Q. What did Mr. Harrub say when you called his attention to it?—A. He did not recollect about it.

Q. Did you tell him it looked suspicious?—A. I said it looked different from any other in that part of the book, it being entered in such a small space.

By Mr. DURHAM :

Q. Were you in court during the whole of that day?—A. No, sir.

Q. Do you remember being in court at the time?—A. I do not recollect.

By Mr. SPEER :

Q. Had you heard that the district attorney received \$500 and the judge \$2,500 for entering a *nolle prosequi* in this case before ?—A. I heard so sometime in May or June, 1873. I told the judge what I heard.

Q. Did he tell you he heard it before ?—A. I do not recollect what he said then.

Q. Did you tell the district attorney about it ?—A. I expect he knew about it; he was there.

Q. Did the judge inquire who told you ?—A. I think it was sometime in June, 1873, he asked me who told me.

Q. Did you tell him ?—A. I told him that I heard one or two speak of it.

Q. Did he take any steps to investigate the matter ?—A. He did. He got the grand jury to examine all the witnesses they could find.

Q. Was Nash in that neighborhood then, or had he left ?—A. I do not know.

Q. Do you not know that he had to leave there ?—A. No, sir; I never heard it before.

Mr. SPEER. I want you to present before the committee a statement of all the cases in which informations were made before you as commissioner since June, 1870, showing the amount of fees in each case.

Adjourned to 10 o'clock a. m. to-morrow.

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WASHINGTON, April 8, 1874,

The committee met at ten o'clock. Present: Messrs. Sener, chairman, Williams, Durham, and Sheats.

JAMES O. CHURCHILL cross-examined.

By Mr. ROBINSON, (counsel for W. A. Britton :)

Question. Are writs returned to you, as clerk, by the United States commissioners in cases where the parties are discharged by them ?—

Answer. No, sir.

Q. Then there is a larger amount of expenditure upon that class of cases about which you cannot testify as clerk or commissioner ?—A. There is.

Q. Is there any other clerk in the western district, and, if so, where; and are there not a number of commissioners who return their writs to him ?—A. There is a clerk at Helena, of the Helena court, and I suppose that there are a number of commissioners that return to him. I never was in that office in my life, and I do not know, personally, whether they return to him or not, or what the number is, but I suppose they do.

Q. Is not that the practice ?—A. I do not know; I never was in his office; they may return to the clerk's office in that part of the district; I have never been in Helena since the war.

Q. Those commissioners that are outside of your boundaries do not return to you ?—A. No, sir.

Q. The antedated lists about which you testified in your examination-in-chief, were they issued only in cases which occurred in the presence of the deputy marshals, and about which they had information, and it was necessary to make the arrests or the offenders would have escaped justice; and were the writs only antedated to cover the actual time of the arrests, the transportation and subsistence of the prisoners, the pay of

guards, &c.?—A. That question is substantially correct; but where defendants are turned over by Indian agents, by officers of the Army at the different posts and in the different sections of the Indian country, these are cases in addition to those you mention. Those three classes of cases are the only ones, I think, in which writs are ever antedated, and then only after an examination of the deputy by the commissioner to see that it is right and proper to do so, and I understand from old deputy marshals who served 20 or 25 years ago that that was the practice then, or no papers were made out until the deputy returned his prisoner; I mean in the above classes of cases.

Q. Who authorized you to issue such writs as commissioner in that district?—A. In the spring of 1868, when I was first appointed commissioner, I refused to antedate writs, but I was informed that such was the practice, and always had been, and Judge Caldwell spoke to me and said (I cannot give his exact words, but the substance was,) that the marshal could be paid for his services in no other way.

Q. Did he authorize you in such cases as you have specified to antedate writs?—A. That was the general instruction that he gave me; that where parties were arrested in the commission of crime in the Indian country, they could not travel one hundred or two hundred, or three hundred miles to get a writ; if they did, the offender would be in Texas, or somewhere else, so that the arrest must be made immediately, and in such cases the marshal was entitled to pay for his services.

Q. Have you been corresponded with upon that subject by any of the officers of the Department?—A. Yes, sir.

Q. Have you that correspondence?—A. I have my answer to the inquiry.

Q. Who corresponded with you upon that subject?—A. The First Auditor.

Q. Have you the letter written to you by the First Auditor upon that subject?—A. I have it, but not here.

Q. Did you answer that letter?—A. I did.

Q. Have you the answer that you wrote to the First Auditor upon that subject?—A. I have.

Q. Will you please produce it?—A. I have it here, but it is not my property.

By the CHAIRMAN:

Q. Whose property is it?—A. It belongs to the First Auditor's Office.

Q. Have you withdrawn it from there?—A. No, sir; it was given to me by Mr. Miller yesterday morning. He had it, and gave it to me, and I told him I would like to keep it for a time, as I did not know but the subject might be called up here. The letter is as follows:

PORT SMITH, ARK., *February 25, 1874.*

SIR: In reply to your letter (L. B. S. M.) of the 13th instant, asking the following questions:

1st. Have you ever antedated writs given to deputy marshals?

2d. If you have, you will (please?) state why you did so, and upon what authority.

In answer I will respectfully state, that I have antedated writs in three classes of cases.

1st. Where prisoners have been turned over to the deputies in the nation by military officers and Indian agents.

2d. Where parties were arrested in the commission of crime.

3d. Where it was impracticable to procure a writ previous to the arrest, without giving the offender an opportunity to escape; for instance, where the deputy was from fifty to four hundred miles from a commissioner, and the offender was charged with high crime, which would probably cause him to flee the country, or the offender was

of the Ishmaelitish and transitory population which has overrun that country since the building of the railroads. An examination as to the time spent in endeavoring to arrest, time of arrest, and character of the case, was always had by me before issuing the writ, and only in the above classes of cases, and where it was necessary to cover the actual time and expenses of the officer, were such writs issued. I have refused to issue writs in many cases where the deputies have arrested parties without writs, especially, during the months of August, September, and October, of 1872.

In reply to your second question I answer, I did it because such has been the practice in this district, as I am credibly informed, for the last quarter of a century under Judge Daniels, Judge Ringo, and Judge Caldwell, and because on my refusing to do so when I was first appointed commissioner in the spring of 1868, Dr. L. C. White, the then marshal, complained to Judge Caldwell, then judge of this district; whereupon he instructed me so to do in cases where the ends of justice demanded it for the purpose of punishing offenders, and to secure deputies the compensation fairly earned by them, and because by no possibility could the Government be defrauded by such a course, the amount to be paid to the marshal for his services depending upon his sworn statement.

This practice was continued unquestioned until the latter part of November, 1872, when our present judge directed all of the commissioners to date writs as of the day they were issued, stating that deputies would be entitled to their fees for actual services without regard to the issuance of the writ. It has been the understanding that the practice was known to the Department, and was intended to remedy an absolute ruling on a class of cases, of which I give three or four samples occurring lately.

The first is the case of Charley Williams, a very desperate character, who was sentenced to the penitentiary, made his escape, and was arrested by Deputy-Marshal (now commissioner) Babcock without a writ.

The second is that of Lum and Young Wolfe, who were tried, convicted, and hung for murder; arrested without a writ by Deputy-Marshal T. E. Lacey. Accounts for these cases, I am informed, were presented to the Comptroller, embracing the actual time and expense, and were disallowed.

The third is that of Edward Craig, who was tried and convicted of larceny. The actual expense of the deputy in this case in bringing in the prisoner was over \$80. He has not been allowed anything.

The fourth is that of Caesar Chicot, C. Thompson, Joe Colbett, and Fenton Kemp, arrested by J. H. Smith at the request of the Indian agent for the Choctaws and Chickasaws and charged with murder, (since indicted by the grand jury.) The actual expense for feeding the prisoners on the way (one hundred and ninety miles) was \$81; the deputy's personal expenses after taking charge of them, \$27; allowing nothing for his time. He thus paid out \$108, to say nothing of the necessary guards and their expenses. A special account was in this case sent to the Department and disallowed. A copy of the correspondence relating thereto is herewith appended.

Cases of which the above are samples were the occasion, as I understood it, for the ruling.

Very respectfully,

JAMES O. CHURCHILL,  
*United States Commissioner.*

D. W. MAHON, Esq.,  
*First Auditor, Washington, D. C.*

OFFICE OF UNITED STATES MARSHAL  
FOR WESTERN DISTRICT OF ARKANSAS,  
*Fort Smith, Ark., July 9, 1873.*

SIR: I have the honor to transmit herewith account of fees earned by Deputy United States Marshal J. H. Smith in the case of the United States *vs.* Caesar Chicot, Coleman Thompson, Joe Colbert, and Fenton Camp, indicted for murder in the Indian country. The facts in the case are substantially as set forth in accompanying certificates of Deputy Smith and United States District Attorney N. J. Temple. Deputy Smith arrested these parties in the Chickasaw Nation without a writ, and brought them to this place at his own expense.

I understand that, under a ruling of the former judge in cases of this nature, writs were dated back to cover the day of arrest, thereby securing to the deputy making the arrest his mileage, subsistence, &c., of prisoners.

Under the ruling of Judge Story, the writs are dated the day the prisoners are reported at this place.

It will be seen by Deputy Smith's account that he had the prisoners under guard nine days, and had traveled one hundred and ninety miles when he reached this place, on which day the writ was dated, thereby depriving him of his fees for feeding, guarding, and mileage.

It will also be seen that Deputy Smith has made no charge for endeavoring to arrest, but has only charged his actual expenses incurred in bringing these parties to justice.



The parties arrested are desperate characters, who have long been a terror to the peaceable citizens of the Indian country. Had Deputy Smith delayed making the arrests until such times as he could have obtained a writ, these desperadoes would have gone unwhipped of justice.

In view of these facts, as well as the instructions of his honor, Judge Story, under which Deputy Smith was acting in good faith, I would most respectfully ask that the account be allowed.

Also, that some definite course of action be marked out for my future guidance in in reference to the arrest of criminals without writs.

Unless accounts of this nature be allowed, or the writs be dated back to cover the day of arrest, many of the most desperate characters in the Indian country will escape justice.

I am sir, very respectfully,

J. N. SARBER,  
*United States Marshal.*

Hon. R. W. TAYLER,  
*First Comptroller, Washington, D. C.*

TREASURY DEPARTMENT, FIRST COMPTROLLER'S OFFICE,  
*Washington, D. C., July 18, 1873.*

SIR: In answer to your inquiry of 9th instant, I have to state that in my opinion the charges of Deputy Smith for arresting four men in the Indian country, and for summoning witnesses to testify against them, without processes either from a United States Court, or a commissioner, or a justice of the peace, cannot be allowed in your accounts, or in any accounts, as no compensation for such services is prescribed by law.

Very respectfully,

R. W. TAYLER,  
*Comptroller.*

JOHN N. SARBER,  
*United States Marshal, Fort Smith, Arkansas.*

By Mr. ROBINSON:

Q. Tell the committee how *posse* accounts are made out, if you know, and what you have to do with them, either as commissioner or clerk.—  
A. Necessarily nothing.

Q. Tell us how they are made out.—A. They are made out in the marshal's office upon blanks that they have—written out by a clerk, I presume. Two-thirds of them, probably, I never see. Those I do see I never examine, because I wouldn't know anything about them if I did, as they oftentimes come to me to swear to an account, the case having been before another commissioner; and I merely ask them if the contents are correct and true, and then I swear them to the correctness of the account, sometimes as commissioner and sometimes as clerk.

Q. Does the *posse* make out his account?—A. You mean does he render the number of days? I presume he does. I have never seen one made out that I now recollect.

Q. Have you ever examined them at all?—A. No, sir; I have read a blank through, but I have never examined them, and could not state the contents.

Q. Is not the correctness of the account certified to by the deputy marshal under whom the *posse* did the service?—A. Yes, sir.

Q. Is not the *posse* in addition then sworn to the correctness of the account?—A. Certainly. The *posse* is first sworn. Those accounts are made out in this way: His name is signed on this part here, [indicating on a sheet of paper,] and then on the left lower corner is "sworn to and subscribed before me," &c. Over here [on the other side of the sheet] is the certificate of the deputy marshal that John Smith, or whoever it may be, has rendered the services stated in this account. That is the usual printed form.

Q. Has the marshal of the district anything to do with that, except to pay it upon proper examination when presented in proper form?—

A. I would not want to answer that question. I am not certain whether his name appears on it or not. It is a matter to which I have paid but little attention, and I would not like to testify positively in regard to a thing about which I am uncertain.

Q. What have you to do with the fees of marshals?—A. Nothing.

Q. You testified yesterday on your examination-in-chief, that there were some police regulations in the Indian country. Did you mean to say that in cases between Indian and Indian, their local courts had exclusive jurisdiction?—A. That is my understanding of the law—that it is only between Indians and Indians; that they have no authority to interfere in any case in which a white man, and, in most cases, a negro, is one of the parties either as defendant or otherwise.

Q. Did Logan H. Roots, as marshal of the western district of Arkansas in 1872, file an application in open court asking that a certain class of prisoners charged with high crimes should be taken from Fort Smith to the penitentiary at Little Rock for safe-keeping?—A. Yes, sir; I think such an application was made; it is very familiar to me, and I know some of them were sent, and I think the application was made in court; I think it was filed in open court, though I would not swear positively as to that.

Q. Did I, James S. Robinson, examine that application in your office on the evening of the day that it was filed, after the court had adjourned?—A. You may have done so.

Q. Did I?—A. I won't swear that you did, but I think you did examine it.

Q. Do you remember my taking a memorandum from which to make out a protest to present in the court against that the next morning?—

A. I think you did that. I would not state whether it was that evening or the next evening, or the exact time, but I recollect your taking the names of the defendants, and the protest being presented in court.

Q. Did I return the next morning before court opened and ask to examine that paper, and did you tell me that it had been withdrawn and another one substituted in its place?—A. That may be. I cannot recollect those little incidents.

Q. Did you not tell me that in the presence of Campbell Leflore in your clerk's office?—A. In your question a moment ago you say that first paper was filed, and if I answered that it was filed I wish to change that. I say I do not know whether it was filed or not—that is, marked on the back as "filed."

Q. Did I not call your attention to it?—A. That may be.

Q. Did you not tell me in the presence of Campbell Leflore the next morning before court opened that that paper had been withdrawn, and another one substituted in its stead?—A. I may have done so. I cannot say. If that was the case, very likely I did say so.

Q. Turn to page 197 of the Record that we were looking at yesterday, and state whether there are at the bottom of the pages of that day's proceedings blank portions of the pages left, and if so, how many such blanks are there in that day's proceedings?—A. There are eight, but they vary; some are five lines, some four, and some six.

Q. Are you satisfied that that preceding order on that page, 197, was written before that judgment and sentence was entered?—A. I think it was.

Q. Are you satisfied from the record that it was?—A. I am.

Q. Are you satisfied that page 198 of the record was written before the Frank Nash case was written in on page 197?—A. I am.

Q. Was that record written in there the day that it states there that

it was written?—A. I presume so; I do not know of my own knowledge, because I did not write it.

Q. Don't you know that that record (the Frank Nash record) was not there for six months after this record was made?—A. No, sir; I am satisfied in my own mind that it was there within two days afterward.

Q. Did you see it there within two days afterward?—A. No, sir; I would not swear to that, because I recollect nothing at all about it; I never paid any attention to it until a year afterward, when I heard about this Nash case, and then I turned to see when the indictment was found and when the *nolle pros.* was entered in the book.

Q. Did you ever hear anything like this, that the entry was omitted upon the judge's docket, and that that was the reason why this entry was not made?—A. No, I never heard that.

Q. Did your deputy clerk tell you that the reason that that record was not placed there was because he could find no entry upon the judge's docket from which to make it?—A. I do not recollect his ever telling me that; I do not recollect ever having any conversation with him in regard to it until just previous to my coming away, when I happened to look at the record, and saw this order entered down at the bottom here, and I inquired of him how it was, and he said he presumed that the record had been written all up and the adjourning order put in, and that this having been done that day it was put on the vacant space. That is what he told me. I will state here the *modus operandi* by which I keep my notes in court. I have two old memorandum-books or blotters, not records of the court, but just memorandum-books for my own use. One of them I keep in the court-room during the morning hour, and enter in it, in pencil, all the motions, &c., everything done, and as soon as the morning business is entered I usually send it in to my office and my deputy takes it, and I take another book, while he goes on with the entries, so that often at the adjournment of the court the record is all written up, but it is not read over till the next morning, and oftentimes it is not read over for several days, when there is not much of it.

Q. Do you know of any lawyer going there to examine this record, and inquiring of that deputy clerk why it was thus made, and what his answers were?—A. I do not. The records are open to every one at all times. They are subject to inspection at any time; and all the lawyers in court may have examined them or inquired of him about them; I have no knowledge of it.

Q. Turn to Common Law Record Book 69, page 119.—A. Here it is.

Q. What record is that on page 119?—A. That is the record of Samuel Smith.

Q. Read it.—A. "United States *vs.* Samuel Smith; murder; number 28. Now, on this day this case came on to be heard on motion for a new trial heretofore filed herein, whereupon the court, being well and sufficiently advised, doth sustain the same. It is therefore ordered that this cause be continued until the next term of this court, and that said defendant be admitted to bail in the sum of five thousand dollars."

Q. Will you tell the committee whether that record has been erased?—A. I judge it has; it has that appearance.

Q. Tell the committee the words that are written over what you believe to have been erased.—A. "*Court being well and sufficiently advised doth sustain the same. It is therefore ordered.*" Those appear to be the words that have been re-inserted.

Q. Will you state to us, a clerk long in business as such, whether the words you have read there have been inserted since that record was

made, and other words underneath stricken out?—A. I think they have since it was made, and since it was signed, both.

Q. Will you tell the committee, if you know, what words were stricken out?—A. I can tell that by referring to another page of this record; it is all in there, but I would prefer just to commence at the beginning, and state the thing from beginning to end. I knew nothing of this until my attention was called to it by the district attorney.

Q. Is that the correct judgment in that case?—A. I think it is.

Q. Were you in that court when that judgment was made?—A. I cannot say as to that.

Q. Then, why do you say you think it is the judgment that was made first by the court?—A. I think so. My attention was never called to it until long afterward, but I think it was the judgment that was made.

Q. By what authority did you erase that record?—A. I did not erase it.

Q. By what authority did any person erase that record and put in those words?—A. No authority whatever; and without my knowledge. I never knew anything about it until afterward, and as soon as I did know it I wrote a motion stating the whole facts, which were spread upon the record.

Q. Was not that record changed, and did not your motion come in for a *nunc pro tunc* order, something like a year after that was done?—A. I presume so; the papers will show exactly.

Q. Did you tell the committee that you were present in court when the judge made that order?—A. I cannot say that I was present, but I recollect the circumstance.

Q. Do you say that that is the order of the court on that motion for a new trial?—A. I say, I think it is; I won't swear positively.

Q. What was the necessity for scratching that out and putting those other words in the record?—A. Now you ask me a question that I do not know how to answer. It was not done by me or by my order, or with my knowledge.

Q. By whose order was it done?—A. By no one's at all that I know of. I never knew anything about it until after it had been done.

Q. Had there been a verdict of guilty against Smith for murder in the first degree?—A. Yes, sir.

Q. Then this is a judgment upon a motion for a new trial?—A. Yes, sir; apparently.

Q. You told me you would tell the committee what was in that record before it was erased; now tell them.

At this point the committee took a recess until 2 o'clock.

After recess Mr. CHURCHILL was further examined by Mr. ROBINSON as follows:

Q. I want the words that were struck out of that record, if you know them.—A. I never struck them out, and I cannot say.

Q. Do you know what words were in that record that were scratched out?—A. I can give you the order as it did stand, from a copy that Colonel Duval had. I asked him for it at the time I got up my motion in regard to this very case, and he said he copied it from the record, so I suppose it was so, and I set it out to be the record as it was.

Q. You don't know anything about what was scratched out of that record, only what Duval told you?—A. No, sir; because I did not scratch it out myself, nor write anything in, nor have anything to do with it.

Q. Will you tell me when that was scratched out, if you know?—A. It appears to have been scratched out on the second day of July, 1873.

Q. And what is the date of that first record?—A. That is May 25, 1872.

Q. It was over a year afterward, when it was scratched out?—A. Yes.

Q. Did you give to Colonel Ben. T. Duval a certified copy of the record before it was changed?—A. I think not.

Q. Did you give any certified copies of the record to any other person before it was changed?—A. Not that I recollect.

Q. Did you write the record entry of 1872?—A. No, sir.

Q. Who wrote that?—A. My deputy clerk, James M. Harrub.

Q. Who scratched out that portion of the record that was scratched out?—A. I did not see it scratched out.

Q. Who did it?—A. I did not see it, and therefore I don't know; I suppose he did it.

Q. Was that done by him as your deputy clerk without your order, and without any order of the court?—A. It was done without my order and without my knowledge.

Q. Without any order of the court, is my question.—A. I don't know anything about that. I say it was done without my order and without my knowledge.

Q. That original entry, you say, was in 1872?—A. Yes, sir; the original entry was.

Q. Is that young man still a deputy clerk of yours?—A. He is.

Q. Why do you keep a deputy clerk in your office who will mutilate the records?—A. Because he is the best clerk that I have ever had. He is a young man that never had any experience in judiciary matters; he works from 8 o'clock until dark, and he is a man in whom I think there is no guile, and this change was made by him without knowing what he was doing, without knowing the crime that he was committing. There was nothing felonious in it, nothing of the kind.

By Mr. DURHAM:

Q. You think it was a mistake of judgment?—A. Yes, sir; there was nothing felonious or willfully wrong about it. He is a young man, who is very steady, and works from morning till night at his desk, and has no vices whatever.

By Mr. ROBINSON:

Q. Well, you have two records of the judgment upon the same motion for a new trial. Which one of those is right?—A. I suppose that this last one is right.

Q. What, then, was the necessity for the alteration if this was right?—A. Now, you come back to the alteration; that I say was done without my order or instructions of any kind, and without my knowledge. It is a question that I know nothing about. I knew nothing about it until after it was all down, and my attention was called to it by the district attorney.

Q. In point of fact, is that record of 1872 true?—A. I think it is.

Q. Do you know it to be true?—A. I don't know. I could not swear positively that I was in the court-room at the time, for I am often in the court-room only a few minutes, and then go to my office and stay there half an hour or an hour, and come into the court-room again, and so on through the day.

Q. Please tell the committee if Newton J. Temple, the present prose-

cuting attorney, was one of the attorneys on the part of the Government in that Smith case.—A. I believe he was.

Q. Did Benjamin T. Duval, William M. Cravens, M. L. Cabel, and Judge Webb, of Kansas, and Judge Bennett defend Smith?—A. They were the defendant's attorneys.

Q. If that judgment was true, sustaining the motion for a new trial, would not those gentlemen who were defending Smith know it?—A. They ought to know it.

Q. Did not Benjamin T. Duval tell you that he never knew anything about a new trial being granted, but that the court overruled the motion for a new trial?—A. He may have done so.

Q. Didn't he tell you so?—A. Well, sir, I don't recollect it. When did he tell me so?

Q. I don't know that he did; I merely ask if he did?—A. Well, that is the point. I don't recollect.

Q. Have not you understood from the attorneys in that case on both sides that the record was false as it is changed now?—A. I have heard a great deal of talk about it—I have heard Colonel Duval, and Mr. Temple, and Mr. Humphreys, and others speak about it, saying that they did not understand that that was the case—I have heard that conversation.

Q. Were those judgments, the judgment of 1872 upon the motion for a new trial, and the judgment here at pages 128-129 in 1873, intended for the same thing?—A. The same case—the same judgment.

Q. Then this (of 1873) is a *nunc pro tunc* order for that, (of 1872)?—A. Yes, sir.

By Mr. DURHAM:

Q. You stated yesterday that you were not in court when that order dismissing the prosecution against Nash was made?—A. I do not recollect being in court at that time. I have no recollection of the case.

Q. You undertook to explain this morning about keeping what is called a minute-book?—A. Yes, sir; private memorandum-books of my own.

Q. Does your minute-book of that day show any minute of that order to dismiss that prosecution against Nash?—A. I don't know whether it does or not.

Q. Has your attention ever been directed to your minute-book on that point?—A. It has not; but I have my minute-books here, and I will examine them between now and to-morrow and see. They are my private property; they are not the records of the court, and I brought them with me for my own information.

By Mr. ROBINSON:

Q. What time was Nash brought to Fort Smith for trial?—A. I think it was the second day after he was indicted, but I wouldn't swear positively. The indictment was found on the 3d day of June.

Q. Didn't he get there on the morning of the 6th?—A. It may have been the 6th.

Q. Was not the case *nolle prossed* on the evening of the same day that he got there?—A. On the evening of the same day I think it is entered here; he may have got there the evening before; I don't know, but I think it was the first day that he appeared in court.

Q. Turn to Common-Law Record of 1873, page 53, and read over that entry.—A. (Reading.) "Now, on this day it appearing to the court that one Frank Nash has attempted to convey the impression that he unlawfully and corruptly agreed to pay money to officers of this court



for the purpose of procuring a *nolle prosequi* by the Government in a certain case pending against him wherein the United States were plaintiffs, and the said Nash was defendant, in which the said defendant was charged with unlawfully introducing and selling spirituous liquors in the Indian country, and that said officers did unlawfully and corruptly receive money as a consideration for entering and causing to be entered a *nolle prosequi* in said case; therefore it is ordered that the said Frank Nash do show cause in writing forthwith why he should not be punished as for a contempt."

Q. Was there any paper filed, any affidavit or charge of any kind filed in your office upon which that order was based?—A. I think not; I don't recollect any.

Q. That order was made by the judge himself?—A. By his direction.

Q. Where did Mr. Nash live at the time that order was made?—A. I understand he was living at Fort Gibson.

Q. What is the distance to Fort Gibson from Fort Smith?—A. Seventy or seventy-five miles.

Q. Did Nash make this statement referred to in this order in open court or in the presence of the court?—A. Never, when I was present in court.

Q. Was he there at all when the order was made?—A. Not to my knowledge.

Q. Had he been there?—A. Not to my knowledge.

Q. Was he not brought there afterward?—A. He was brought there afterward.

Q. Did he make use of that language in open court, in the presence of the court, before that order was issued?—A. I never heard it.

Q. That is the first order in the case?—A. I think it is; you have referred me to that page, and it reads as if it was the first.

Q. Did Nash return, by the deputy marshal from Fort Gibson, an answer to that in writing?—A. The deputy marshal brought an answer.

Q. Was that in the court?—A. It was given to me in the court.

Q. Did Judge Story examine that document?—A. I gave it to him.

Q. Is there a copy of that answer on this record?—A. No, sir; the answer is not copied in the record.

Q. Do you remember that there were exceptions taken to that order upon the ground that it was indefinite and uncertain and ambiguous, in not specifying who the officers of the court were, and what the offense charged was?—A. There was such a motion made by you, I think. I cannot say as to the time, whether it was about this time or afterward.

Q. In that same motion that contained the exceptions—the answer of Nash in writing—was it not stated at the conclusion that he could not answer that rule truthfully without subjecting himself to a criminal prosecution in that court?—A. That is something like the substance of it.

Q. After that answer was filed in court, what other proceeding was instituted?—A. Here is the record-entry made. It is dated June 23, 1873:

UNITED STATES vs. FRANK NASH.

Now, on this day, the marshal having returned into court here that he had duly served, by delivering a copy thereof, the order heretofore made against Frank Nash on the 17th day of June, 1873, to show cause, if any he could, why he should not be punished as for a contempt, and the said Nash having failed to make any sufficient response to said rule, it is ordered an attachment be issued against the said Frank Nash, returnable forthwith, to bring him before the court here to answer as for a contempt by him committed in neglecting and failing to properly respond to said order.

Q. Will you give us the attachment?—A. The attachment I have not with me. That is the order upon which the attachment was issued.

Q. Was that attachment served, and the party arrested on it?—A. He was brought there.

Q. By the attachment?—A. I presume so.

Q. Was he held by that attachment?—A. I think he was.

Q. How long was he held under the attachment?—A. That I cannot say.

Q. Will your records tell you?—A. I think they will. Here is the entry on which I presume he was discharged. It is dated July 28, 1873:

UNITED STATES }  
*vs.* } Contempt. No. 100.  
 FRANK J. NASH. }

Now, on this day, this cause came to be heard on the answer and pleas to the jurisdiction heretofore, to wit, on the 7th day of July, instant, filed in response to the rule made against the said Frank J. Nash on the 17th June, 1873, and the court having heard argument of Benjamin T. Duval, esq., counsel for defendant, and being sufficiently advised, doth order that the said Frank J. Nash be, and he hereby is, discharged from said rule.

Q. What I want to know now is, whether upon a comparison of those two you can tell the committee how long Nash was in prison under that attachment?—A. I cannot say what day the attachment was served; I can tell when it was issued; he may have been arrested four or five days afterward. The time between the two orders is from June 23 to July 28; he was not in prison, to my knowledge.

Q. Was there an additional response filed to the original rule by Frank G. Nash?—A. Yes, sir.

Q. Was that answer sworn to?—A. I think it was.

Q. Did that answer, filed in that court, set up in it that he could not answer to that rule without subjecting himself to a criminal prosecution in that court?—A. There was one of them did; whether it was the additional response that did or the original one, I don't know, but that was in one of the responses.

Q. Did Frank J. Nash file an affidavit under oath in the attachment-case in court?—A. There was one affidavit, if not more, filed.

Q. In that affidavit did he state that he could not testify truthfully to that attachment, or to that rule, without subjecting himself to a criminal prosecution in that court?—A. I think that was set forth in the paper.

Q. Were there two pleas filed to the jurisdiction of the court, one in the rule case and one in the attachment case?—A. There were two or more pleas filed; in what particular case I cannot say, without seeing them.

Q. Were they pleas to the jurisdiction of the court?—A. I think they were.

Q. Does not your record show that?—A. We will see; here is the record. This is dated July 5, 1873.

UNITED STATES }  
*vs.* } Contempt.  
 FRANK NASH. }

Now, on this day comes said defendant by his attorney, J. S. Robinson, esq., and files an additional response herein, and also files two separate pleas to the jurisdiction, and affidavit of defendant.

Q. Didn't you hear the counsel of Frank J. Nash urge that court to test the question upon the pleas to the jurisdiction, and didn't he refuse?—A. Well, I don't recollect whether I was in the court-room or not. Naturally, it would come up on those motions.

Q. Did it ever come up on those pleas, and were they ever disposed of?—A. I don't recollect about that; I suppose the record will show about it; it seems to me they did.

Q. Did Judge Story pass upon those pleas separately, as he should have passed upon pleas to the jurisdiction on the first question?—A. I don't know about that.

Q. Did he pass upon them separately?—A. He ordered no separate entry, so I suppose he took them up collectively; from which particular one this result is deduced, or whether it is from both of them, I don't know.

Q. Is there spread upon your record a statement made by the grand jury upon which a rule was issued against R. A. Sheldon, Cyrus R. Stevenson, and James S. Robinson?—A. There is.

Q. Turn to it and read it.—A. On the 16th day of July, 1873, appears the following entry:

Now, on this day come the grand jury in and for the western district of Arkansas, and file a report in the following words and figures, to wit:

GRAND-JURY ROOMS, FORT SMITH,  
July 16, 1873.

*To the honorable the United States court for the western district of Arkansas:*

We, the grand jury for the above-named district, would beg leave to submit the following statement: We have made every effort in our power to have a certain witness, C. R. Stevenson, summoned to appear before us by placing a subpoena in the hands of one deputy marshal R. H. Sheldon; said Sheldon got the subpoena from M. P. White, clerk of the United States marshal's office, about 3 o'clock p. m., on the 15th instant, and went up town, as he said, to serve the subpoena. About half after 4 o'clock p. m., the foreman of the grand jury, by consent of the marshal, asked Sheldon for said subpoena, in order to place it in other hands to be served on said Stevenson, when Sheldon denied having it in his possession; shortly after said Sheldon left this place for Van Buren, and this morning he comes and returns said subpoena "*non est.*" We also state, in connection with this, that Mr. Stevenson was seen in this city, on the streets, by several jurors, 20 minutes after Sheldon left this place for Van Buren. We have also learned from evidence produced before us, that Stevenson knew that a subpoena was out for him, and that he came here for that purpose; but, after seeing the attorney J. S. Robinson, in the Nash case, very suddenly absented himself. We therefore pray for this honorable court to issue an order that said witness, C. R. Stevenson, might be brought before us.

Very respectfully, &c.,

J. M. COLLINS,  
Foreman Grand Jury.

Q. Please read the order that the court entered up upon that.—A. "Whereby it is ordered that the said Sheldon, Stevenson, and J. S. Robinson show cause why they should not be punished as for a contempt."

Q. Was there any process of the court served upon Stevenson when that order was issued?—A. None of which I am aware.

Q. Does the grand jury in that statement ask for a rule against Sheldon, or against Robinson?—A. No, sir; they do not.

Q. The rule is entered, though, by the court?—A. Yes, sir; that is shown by the record.

Q. Did Cyrus R. Stevenson respond to that rule?—A. I think he did afterward.

Q. In his response to that rule, didn't he swear that he never had a word with me (J. S. Robinson) upon the Nash case that day, nor any information from me that there was a subpoena out for him?—A. I think that is the substance of his response.

Q. Was it not in consequence of that order made there that James S. Robinson was afterward stricken from the roll of attorneys by Judge Story?—A. I might answer that by saying that that was probably the final result. It was in proceedings relating to this case that it was done.

Q. I am mentioned there as attorney in the Nash case; was that an employment by Nash in a case where Judge Story was charged with bribery by Nash?—A. I presume you were employed by Nash; I don't know; the record shows that you were his attorney, I think.

Q. Was Sheldon discharged from that rule upon his answer?—A. He was, on July 19.

Q. When James S. Robinson was disbarred by the court, was there any charge or charges preferred against him touching his professional conduct?—A. None that I know.

Q. Was he not stricken from the roll momentarily?—A. Yes, sir.

Q. Was it not just this: "Mr. Clerk, strike the name of Mr. Robinson from the roll of attorneys; Mr. Marshal, put him outside the bar?"—A. That was about the language.

Q. Was I engaged at that time in the defense of four men for murder, and was the trial then pending?—A. You were the attorney of record; I think there were four defendants.

Q. Did I ask Judge Story to suspend that order until I could at least conclude that case?—A. Do you mean at that time?

Q. Yes, right there.—A. You said something, and I think it was in regard to that case.

Q. Was Judge Story's only reply, his saying "Mr. Marshal, put him outside the bar?"—A. I heard that; whether it was in response to your question or not, I am not able to say.

Q. Have you ever known a charge against me affecting my professional conduct, that is, a charge of malpractice, fraud, dishonesty, or anything of that sort, affecting my professional character?—A. I prefer not to answer that now, Mr. Robinson.

Q. Why do you prefer not to answer it now?—A. Because, if I should say no, the records, in some people's view of them, would not sustain the answer.

Q. What are the records then? Was there ever a charge preferred against me of any kind during Judge Story's administration?—A. No, sir, no charge; there was an order for a rule; that is what I have reference to, and that is what I mean when I say that if I should answer no to your question the record would not sustain me, because it shows that there was an order for a rule made against you.

Q. Was not that order dismissed?—A. Well, the response was considered sufficient.

Q. That was under Judge Calwell, was it not?—A. No, sir, it was under Judge Story.

Q. Do you mean an order touching any professional misconduct of mine?—A. I don't know; it was in regard to the filing of a motion.

Q. That was for contempt, was it not?—A. It was in some murder case in which you filed a motion for the continuance of the case on an application for a witness, which the court desired that you should amend for certain reasons that I do not now recollect.

Q. And I refused to do it?—A. You refused to do it, and that is set forth, and then the rule was made against you.

Q. Did that affect my honesty or dishonesty?—A. O! honesty—you didn't say honesty in your question; you say professional conduct, and I answer you in this way, because, if I said no to your first question, the records would show there was a rule against you.

Q. But was there any charge against me of professional misconduct?—A. No, sir, I have never seen any charge in our court except two, one of which is referred to above; these were dismissed.

Q. Do you know what I mean? Is there any charge on your records

touching my honesty as a practitioner at law?—A. O, no, sir, I know nothing about that.

Q. Were not both those rules discharged?—A. I think they were, on the responses filed.

Q. Did you ever hear any charges against my professional character—charges of fraud, malpractice, dishonesty, or anything of that sort in my profession as a lawyer?—A. No; I don't know that I have in our court except as above stated. I never saw any charges there except as stated.

Q. Was there any rule issued by Judge Story against James S. Robinson to show cause why he should not be stricken the roll?—A. I would have to refer to the record to answer that. I think there was no rule issued. I think it was done in open court without any rule.

Q. Was there any charge filed in open court?—A. No, sir; no charges filed.

Q. Did I have any hearing in open court?—A. No, sir; not that I know of.

Q. It was done summarily and momentarily?—A. Yes, sir.

By the CHAIRMAN:

Q. Is there any further explanation that you want to give about these records?—A. There is only one thing; that is, in reference to the Smith case, in which my official integrity is concerned. I wish to say a word by way of explanation in regard to this erasure of the record in the Smith case. Colonel Duval, an attorney at law, came to me, and desired a transcript of the case of Samuel Smith for murder. He was one of the defendant's attorneys. I showed my deputy clerk, Mr. Harrub, how to make it out; that is, by first entering the bringing in of the indictment with a copy of the indictment, and all orders made since, and all papers filed, forming a transcript of the case; and told him when he had it finished to bring it to me and I would sign it and send it to Colonel Duval; a day or two after that he brought the papers to me and said they had been compared and were correct, as I had requested they should be made. I signed the transcript, put on the seal of the court, and sent it to Colonel Duval. Two or three days after that, I cannot state the exact time, I was in the office of the district attorney, Mr. Temple. He spoke to me, and said, "Did you know that the records in your office had been changed?" or words to that effect. I said, "No; and I don't believe they have." He said they had been, and told me it had been done in the Smith case. I said, "Let us go and see." I immediately went to the office with him. He told me the page on which the erasure and change had been made. I took the book down, laid it upon the desk, and saw that a change had been made, as he had told me. My deputy, Mr. Harrub, was writing at a desk near by. I spoke to him, and said, "Mr. Harrub, what does this mean; how is it that this record has been erased and changed?" He said, very quickly and innocently, "I did it myself the other day, when I was making Colonel Duval's transcript." I asked him how he came to do that, and if he did not know that he could not touch the record after it had been signed. He said that he saw it was such a plain mistake that he did not think of even coming to me and speaking about it; that it was his own error, and he had corrected it. I then went immediately to Colonel Duval's office (I cannot say whether Mr. Temple went with me or not, but he went over to town with me) and told Colonel Duval and Mr. Cravens (I knew that they knew of it, as Mr. Temple told me that they had told him) that the record in the Smith case had been changed without my knowledge.



Mr. Cravens said, "Don't you suppose that Judge Story had it done?" I said, "I didn't believe he would do such a thing as that," and said, "let us go and see." I immediately went to my office with Mr. Cravens. Some one was at the office when we arrived, and I asked Mr. Harrub to go into the court-room with me. He did so, and I told him I would stand between him and all harm, if he would tell me the truth, and asked him if Judge Story or any other man had told him to erase that record or change it in any manner. He said, "No, no one did; I did it when I was copying the record." He said this in a perfectly simple, childlike way. I turned to Mr. Cravens and said, "There, Mr. Cravens, is all I know about it." This was in the court-room, when Mr. Harrub, Mr. Cravens, and myself only were present.

By Mr. SHEATS :

Q. Did that erasure and interlineation change materially anything that was in the record?—A. I will explain that when I get through. That day or the next day, as soon as I saw Judge Story, I immediately told him that the record had been changed in that case, and told him all the circumstances about it. I told him that I was going to file a motion, as soon as the court met, stating all the facts, and would ask that it be spread at length upon the record, as, I being the clerk of the court, it looked as though it had been done through my malfeasance, or whatever it might be called. I cannot say the exact time that this transcript was copied, but it was a very few days afterward—it might be a week afterward—that the court opened. A few days after I filed this motion in court, on July 10, 1873. This alteration was during the May term of the court, but the court may have adjourned. On examining the record, I see that it was during the recess of the court that this erasure was made—a short recess of a few days. The following motion was entered upon the record, at my request, on July 10, 1873.

UNITED STATES }  
*vs.* } Indictment for murder.  
 SAMUEL SMITH. }

And now on this day comes James O. Churchill, the clerk of this court, and suggests and gives the court here to understand and be informed that at the May term, on the 25th day of May, 1872, an order was entered of record in the words and figures following, to wit:

"UNITED STATES }  
*vs.* } Murder.—No. 28.  
 "SAMUEL SMITH. }

"Now, on this day this cause came to be heard on motion for a new trial heretofore filed herein, whereupon the premises being seen and by the court well and sufficiently understood, it is ordered that this cause be continued until the next term of this court, and that said defendant be admitted to bail in the sum of \$5,000.

That James M. Harrub, his deputy clerk, while engaged in transcribing the record and proceedings of this court in said cause on the second day of July instant, discovered a misprision of his own in said entry in not showing that the motion for a new trial therein referred to was granted, erased the words "without his knowledge premises being seen and by the court well and sufficiently understood, it is ordered" where they occurred in said entry and inserted in their stead the following: "court being well and sufficiently advised doth sustain the same. Therefore ordered:" and that by such erasure and interpolation the said entry is made to read as follows, to wit:

"And now on this day this cause came to be heard on motion for a new trial heretofore filed herein, whereupon the court, being well and sufficiently advised, doth sustain the same. It is, therefore, ordered that this cause be continued to the next term of this court, and that said defendant be admitted to bail in the sum of \$5,000."



And on motion of said James O. Churchill, and the truth of such suggestions appearing to the satisfaction of the court, it is ordered that the original entry in said cause be preserved and perpetuated by inserting it here:

"UNITED STATES }  
                   *vs.* } Murder.  
 "SAMUEL SMITH. }

"Now, on this day this cause came to be heard on motion for a new trial heretofore filed herein, whereupon the premises being seen, and by the court well and sufficiently understood, it is ordered that this cause be continued to the next term of this court, and that said defendant be admitted to bail in the sum of \$5,000."

That is all I asked to be put on record. What I am now about to read was ordered by the court on its own motion, without the suggestion of the clerk:

It further appearing to the court that said record is erroneous, it is ordered that a proper record be made now for then, which is as follows:

UNITED STATES }  
                   *vs.* } Indictment for murder.—No. 28.  
 SAMUEL SMITH. }

Now, on this day this cause came to be heard on motion for a new trial heretofore filed herein, whereupon the court, being well and sufficiently advised, doth sustain the same; it is, therefore, ordered that the verdict of the jury heretofore returned in this case be, and the same is hereby, set aside and held for naught. It is further ordered that this cause be continued to the next term of this court, and that the defendant be admitted to bail in the sum of \$5,000.

By the CHAIRMAN:

Q. That was a *nunc pro tunc* order?—A. Yes; that last was a *nunc pro tunc* order by the court.

Q. A *nunc pro tunc* order with the body of the prisoner not before the court?—A. Yes, sir.

By Mr. ROBINSON:

Q. Was Samuel Smith admitted to bail?—A. He was.

Q. Has he ever returned to the court since?—A. He has not.

Q. This order, then, was made when he was in default of bail?—A. I don't think the forfeiture against his bond had been taken at that time.

Q. Has he ever been in court since?—A. No, sir; his bond has been forfeited.

By the CHAIRMAN:

Q. Was there any motion on the bond?—A. I think this district attorney asked for a judgment.

Q. Then there was a motion upon the bond by the district attorney?—A. I think so.

Q. Did execution issue upon the motion?—A. I think execution issued.

Q. When was the return?—A. I think there has been no return.

Q. What is the character of the bondsmen?—A. They are said to be good.

Q. And no return has been had?—A. No return. There was a certificate of ten or twelve physicians filed after the motion for the new trial that the man was insane.

Q. Were those witnesses brought into open court and questioned?—A. I do not now recollect about that.

Q. Would not a state of facts of that sort make its impression upon you?—A. I think that if the physicians had been brought to court I would recollect it.

Q. Were you not generally present?—A. No, sir; not always; sometimes I am there only about ten minutes a day.

Q. Does the record show that they were ever examined?—A. I cannot say whether it does or not.

Q. Have you any knowledge of any such record?—A. I cannot recollect. I would have to examine it to see whether the record shows that or not.

By Mr. ROBINSON:

Q. Is that *nunc pro tunc* order true in point of fact?—A. You asked me that yesterday, and I said I did not recollect whether I was in the court-room at the time that this motion came up or not, but I thought it was. I give the same answer that I gave yesterday.

Q. I asked you about the other, not that one. Do you know of a case of the United States against one Leflore for murder?—A. Yes, sir.

Q. Was he tried and convicted of murder in the first degree?—A. He was.

Q. Was he bailed by the court, and no new trial ever granted by the record?—A. I don't recollect about that. I know he was admitted to bail by the court.

By Mr. DURHAM:

Q. After conviction?—A. After conviction.

Q. In what sum was he admitted to bail after conviction?—A. Twelve hundred dollars, I think, was the sum.

Q. Does your record show that there never was a new trial granted in that case by the court?—A. Here is the entry in that case. The verdict was, "We, the jury, find the defendant guilty in the manner and form as charged in said indictment; whereupon said defendant, George W. Leflore, was remanded to the custody of the marshal to await final sentence." This was on the 23d December, 1871. The motion was filed on the 26th December, 1871, at the same term.

By Mr. ROBINSON:

Q. When was it disposed of?—A. January 15, 1872, it was taken up.

Q. The same term?—A. The same term. The order made January 15, 1872, (same term,) is as follows:

UNITED STATES	}	Murder.
<i>vs.</i>		
GEORGE W. LEFLORE.		

Now, on this day comes the plaintiff, by J. H. Huckleberry, esq., attorney for the western district of Arkansas, and said defendant, by his attorneys, Messrs. Rogers and Leflore, and a motion for a new trial came on to be heard; whereupon the court not being well and sufficiently advised in the premises, doth take the same under advisement; and it is ordered that this cause be continued to the next term of this court, and said defendant, George W. Leflore, be admitted to bail in the sum of \$1,200.

By Mr. SHEATS:

Q. And there never was any other order made after that granting a new trial?—A. I think not.

Q. Was there any record or any order showing that the judge ever decided that motion for a new trial?—A. Here is the next entry in the case, which is made on June 27, 1872:

UNITED STATES	}	Murder.—No. 32.
<i>vs.</i>		
GEORGE W. LEFLORE.		

Now, on this day come the United States of America, by James H. Huckleberry, esq., attorney for the western district of Arkansas, and file their motion for a continuance of

this cause for reasons therein stated; whereupon the premises being seen by the court, and well and sufficiently understood, it is ordered that this cause be continued to the fourth Monday of October, A. D. 1872.

By Mr. DURHAM :

Q. Is it true that he did give bail, and was discharged from custody under that order of January 15, 1872?—A. I think he left. The bail was given and he left.

By the CHAIRMAN :

Q. Was he present when that motion for a new trial was called up?—A. I cannot say; I suppose he was. Here is the record of October 28, 1872 :

UNITED STATES	}	Murder.—No. 6.
<i>vs.</i>		
GEORGE W. LEFLORE.		

On this day, satisfactory evidence having been produced in court that the defendant herein is dead, it is ordered that the prosecution be abated and the indictment dismissed.

Q. But the motion for a new trial never was decided?—A. No, sir.

By Mr. DURHAM :

Q. The motion for a new trial never was acted upon by the judge?—A. It does not appear by the record that it was.

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WASHINGTON, April 14, 1874.

IRVING W. FULLER sworn and examined.

By the CHAIRMAN :

Question. State your age, residence, and occupation.—Answer. I am thirty-six years old; residence at Fort Smith, Ark., and my occupation has been that of a merchant. I have resided in Fort Smith since the 1st of June, 1865.

Q. Were you in Fort Smith at the time when L. B. Whitney, a detective in the secret service, was there investigating alleged frauds in the western district of Arkansas?—A. I was.

Q. Did you render Mr. Whitney any service in connection with that investigation?—A. I was mayor of the city at the time, and I swore witnesses for him, and did some writing for him—acted in the capacity of a clerk. I was authorized at that time, as mayor of the city, to administer oaths.

Q. Please examine carefully the report now handed you, and say what affidavits therein contained were made before you.—A. The following persons were sworn before me, and made these affidavits in my presence: John Duval, James M. Scovil, J. H. Willard, Richard Hood, J. H. Smith, J. H. Minhart, James O. Wilkinson, W. C. Ross, Josiah Foster, James Hodges, Gustavus L. Gardner, Talis Carter, Henry Jones, Nathan Williams, T. E. Lacey, J. M. Riggs, Eugene Merchand, and Tid Cooper.

Q. State how and under what circumstances you took those affidavits; in other words, state whether the parties came before you voluntarily or not, and whether the papers were written out in your presence, and, in brief, all that you know about those papers.—A. The statements

were made in my presence in a room in the Saint Charles Hotel, at Fort Smith, and, so far as I know, the witnesses appeared there upon their own motion.

Q. Were those statements reduced to writing in your presence?—A. They were.

Q. And the witnesses appeared there on their own motion and testified voluntarily?—A. So far as I know.

Q. Do you know all those witnesses?—A. I do.

Q. Will you state to the committee what is the character of those witnesses?—A. Well, I don't know exactly what you want me to state.

Q. You have been mayor of Fort Smith, and as mayor have had police jurisdiction?—A. Yes, sir.

Q. And when a witness came up you knew very well what his character was?—A. Yes, sir.

Q. Now, we want you to tell the committee the character of the witnesses who made those affidavits.

Mr. DURHAM. Their character for truth and veracity.

A. Well, I know nothing against any of the witnesses.

Q. What was their reputation in Fort Smith as truthful and respectable citizens?—A. They were United States deputy marshals and posses, and stood as well as that class of people usually stand in the community. I never heard anything against any of them.

Q. Do you mean to say that United States deputy marshals stand very badly?—A. No; I don't mean to say exactly that, either. I would say they were credible witnesses.

Q. State what knowledge you have, if any, in regard to alleged improper expenditure in the marshal's department of the western district of Arkansas. Tell the committee all you know on that subject, whether under the administration of Logan H. Roots, William A. Britton, or John M. Sarber. Take first William A. Britton, the one first in office.—A. Well, sir, I cannot say positively that any money was wrongfully expended during his first administration, only from what was generally supposed to be the case. I don't want to testify to anything but what I know, and I cannot point out any one item to fasten improper expenditure on his first administration there. All I can say is that he did not pay the debts of his office, and that his credit as United States marshal ran down very low, and that the office was loosely managed. I will say that much.

Q. What do you mean by that?—A. Well, the debts of the Government were not paid, and the credit of the marshal's office ran down to fifty cents on the dollar; in fact, no one would trust the United States marshal's office for any amount of money, and it was very difficult to do business with it; that is what I mean by loose management.

Q. So that you know nothing touching the first administration of the marshal's office by William A. Britton, except what you have detailed, that in any way shows the affairs of the office to have been managed disreputably or discredibly?—A. I think it was discreditable to allow the Government debts to go to protest.

Q. But you know nothing else save what you have mentioned?—A. I know nothing else; I had nothing to do with it; the office was at Van Buren, and I resided at Fort Smith.

By Mr. SHEATS:

Q. Was it Mr. Britton's fault that the credit of the office went down, or was it because of the want of funds in the office?—A. Well, it was mismanagement in some way. He did not have the money there or he

did not manage the office as a man would naturally manage his own business—with proper judgment.

By the CHAIRMAN:

Q. Do you mean to say that Mr. Britton refused to pay the debts of the office when he had the money, or was it his excuse that he did not have the money to pay them?—A. The great trouble was that certain men could get the money and no one else. That was the general complaint. I never applied for money myself, and had no account with the office, and know nothing about it except in a general way.

Q. Do you know anything in regard to alleged improper expenditures in the second administration of Mr. Britton, when he had his office at Fort Smith?—A. It is a very difficult matter for me, at this time, to make an itemized statement.

Q. Do you want delay to consider your answer?—A. No; I don't think I can answer, except in a general way, as to the management of the office. I know of some accounts that were paid that ought not to have been paid.

Q. What were they?—A. Well, I am satisfied that I know of several posse accounts that were charged for that ought not to have been paid.

Q. Just name them.—A. That is a difficult thing to do at this present time; I can name a few, perhaps. During the time that Mr. Whitney and I were gathering in these accounts of Mr. Britton I saw among them some posse accounts and some marshals' accounts where I was satisfied they charged for more miles than they ever traveled. I knew where some of the prisoners were arrested, and I know that the accounts were overcharged in several instances; if I had those accounts here to look them over I could pick out readily the ones that I refer to. I think these affidavits cover some of the posse accounts that I refer to.

Q. You cannot recollect the names now?—A. No, sir.

Q. Of none of them?—A. No, sir; I would not like to state any of them positively; posses and marshals are making out their accounts all the time, and it is difficult to determine which one is improperly charged.

Q. Then, if I understand you correctly, you know of no single account in which you can now say the charges were extravagant or improper?—A. I cannot name a single account at present.

Q. And yet you state to the committee that you know there are some?—A. Yes, there are some—and if I could see the accounts and overhaul them I could readily pick them out.

Q. Do you know anything of a *posse comitatus* being charged for that did not render any services?—A. I do.

Q. State what you know about that.—A. Well, I had a memorandum of those posse accounts, but I have not got it here. It is at Fort Smith.

Q. Can you give the names of the men that were charged for, that rendered no service?—A. I have quite a list of them—about two-thirds of a sheet of legal cap paper; I should think there were as many as twenty-five or thirty.

Q. The names of men who never rendered any service?—A. Well, I don't know in every instance that they had rendered no service, but in some particular cases that I was aware of they did not render any service.

Q. Can you name a case?—A. I don't recollect the names of the parties nor the names of the cases.

Q. How large is Fort Smith?—A. It has about 2,500 inhabitants.

Q. Don't you know every man, woman, and child there?—A. Yes, sir.

Q. And yet you cannot name these men?—A. Well, as a general thing the names were of parties unknown to me.

Q. Names of persons who did not live there; there were no such people?—A. No such people living in Fort Smith.

Q. People that you never saw or heard of?—A. Not until I saw their names returned as posses.

Q. You have said that they did not render any service?—A. In some instances I knew they did not. I was in charge of the jail awhile, and I knew when marshals brought in prisoners, the place where prisoners were arrested, and all about it, and if I had my list here I could identify the cases.

Q. Can you telegraph for that list and get it?—A. I cannot; it is among my papers.

By Mr. DURHAM:

Q. Can you send it after you get back?—I can.

Q. Will you send it with an affidavit that it is the list named by you, and make it a part of your statement here?—A. I will do so. I think Colonel Whitney has a list of these accounts of posses that were unknown.

Q. Do you know anything about improper charges on the part of the returning officers?—A. No, sir; I do not know, of my own knowledge, of any returning marshals at all.

Q. How many deputy marshals were there in Fort Smith at any one time, to your knowledge?—A. Of my own knowledge I know of only thirty or forty.

Q. Was that the largest number there at any one time?—A. I was told by Colonel Britton and others that he had upwards of one hundred at one time.

Q. Were they all in Fort Smith?—A. I suppose they were some of them in the Indian Nation and in the State. I was acquainted with thirty or forty myself.

By the CHAIRMAN:

Q. There is a statement of yours in this report of Colonel Whitney's?—A. Yes; he showed me a written statement that I made. I think it was the second time he was at Fort Smith. He wished me to make a statement of what I thought was the condition of affairs in the marshal's office, and just before he was ready to leave the city I sat down and wrote out my ideas about the state of affairs there. Colonel Whitney showed me that statement yesterday.

Q. In a report by Mr. Whitney, dated February 7, 1873, there is contained a statement made by you which I will have read by the clerk.

The clerk read the statement as follows:

I was appointed United States jailer August 15, 1872, under Marshal W. A. Britton, and continued in that capacity until the 18th day of January, 1873. I was conscious that great frauds were being perpetrated on the Government. I knew a great many prisoners were brought in and placed in jail that should not have been arrested at all—that they were only arrested that the marshal and his deputies could make money by bringing them in; as high as sixty-five prisoners were in and out of jail in one month, most of them having remained from ten to thirty days without an examination before the commissioner, and after examination would be discharged—the complaint either being ignored or the prisoner turned loose on "straw bail." I know of a great many deputies that were paid for posses that they never had; that it was the practice to pay the deputies for hundreds of miles never traveled, and allow for days in search of prisoners reported "*non est*;" that the deputies were not out of town, and this known to Mr. Britton and his clerk, Mr. Donnelly. I know that deputies have charged for



guarding and transporting prisoners that had walked the whole distance—there were upwards of one hundred deputies riding—a majority of whom were the worst men in the country, and opponents of the republican party; a number of whom on charges of murder and whisky-selling in the nation, themselves were held to answer before the United States court and had been admitted to bail, and before court drew their claim against the Government and ran away. I know deputies to return writs that had been served by their posses hundreds of miles away, when they have never been out of town, nor the posse returning as posses. I believe there was an understanding between E. J. Brooks, United States commissioner, and the deputies, that all cases should lay in jail, or not be finally acted on for ten or twenty days, that they might get their pay—all this being known by W. A. Britton, and no effort by him to correct the dishonest practice. I myself repeatedly notified him that men were being brought in continually guilty of no crimes whatever, and the usual reply was, "That is business of the office." Shortly after Mr. Britton took control of the office he gave me a commission as deputy. I made one trip through the nation and to Topeka, Kans. I found that a deputy marshal was considered a thief and rascal all through the country, and when I returned I informed Mr. Britton of the feeling in the nation—told him how certain ones of his deputies had been reported to me and the charges against them; he paid little attention to it, so the same deputies continued to ride. I told him I believed I would quit. He insisted on my retaining my commission, and said he would place me in something more satisfactory to my tastes in a few days, at the same time saying that there were some more *scire facias* for Kansas, and as some of my friends lived up there I had better make another trip. I declined. He said "Here," handing me several papers to be served in Kansas, "take these and send them up by mail to some of your friends and let them serve them. You can return them and get just as much for serving them as though you went yourself." I declined the proposition, saying I did not propose to make money in that way.

I think there were great frauds committed in the repair of the jail and court-house. In the jail I had most of the repairs made by prisoners. I am sure I could have done all the work there has been done for seven or eight hundred dollars. Out of all the moneys received Mr. Britton has not paid out to the men that earned the money more than \$10,000. The Government promises to pay went begging from the first of this man's administration at 50 cents on the dollar, and now it cannot be cashed for 10 cents. The usual course pursued was to have some friend to buy up the marshal's paper (Government vouchers) at the lowest rate possible, and when the money came turn the same over to his friend and no one could get a dollar, but must submit to this shave. My guards at the jail going without pay for three months, I was asked to resign by Mr. Britton, the real cause being the continual complaints by me at not receiving our money—when I knew the money was here all the time; and the Government owes me now for services as jailer over \$250, and the men for sixty to seventy-five days' services. During November, 1872, Mr. Britton said to me that Mr. Donnally and his clerks had been making all the money; that he took a \$30,000 draft and arranged with Captain Scott, postmaster, and Major Lanigan, merchant, to furnish him currency for his draft; that he drew five or six thousand dollars on the same when they notified him that they held his paper (Government vouchers) for the balance, and that he must not draw any more; that Donnally made a big thing and that in the future he would control all drafts for money; that I should have a chance to make some money out of the next draft if I wished to. He said no more about it, but the same parties continued to get the drafts and all future drafts, the last one for \$20,000 received ten or fifteen days ago. I was told by one Edward Czarnikow that he was buying Government vouchers for Britton; that he bought them as much below 50 cents on the dollar as he could, as W. A. Britton only allowed him 50 cents on the dollar for them. I had loaned a deputy (Neis) \$20 to make a trip on during the summer; (this was in December, 1872, Czarnikow told me this.) I went to him with a posse account and asked him to buy it at this time, belonging to the same Neis, in order to get my \$20. I have seen one Hook and Gerrord buying marshal's vouchers, and was told that Britton furnished the money to them to buy for him; they had no means of their own.

I think that a "ring" consisting of Marshal Britton, J. W. Donnally, T. G. Scott, postmaster, and E. J. Brooks, as commissioner, with the aid of the deputies, have defrauded the United States Government out of at least 45 per cent. of all the claims the marshal has brought against the Government. During December, 1872, I complained to Britton that \$3 per day did not compensate me for the responsibility I had as jailer, and told him I thought I should have \$4 per day instead of three—when he said he did not care if I got ten—that would be all right with him, and to make out my account for \$4 per day for November, December, and continue to do so; if Judge Story would approve them it was all right, saying, I am going to put you in the way to make "big money" when the next draft comes. Don't get impatient; go slow, and you shall be satisfied. When Mr. Britton was first appointed the contract to feed the United States prisoners was awarded to myself and Mr. Lytle for 45 cents per day, but before I had got bake-ovens erected, and was ready to commence to comply with the contract, Mr. McLoud

bought the feeding of the prisoners away from me, and I was to be paid ten dollars per day and expenses to canvass for the republican party instead, from the time he was first appointed, or at least \$2,000 for the campaign. None of said promises were ever complied with, and Mr. Britton talked in this way to me feeling that he and his clique had acted in bad faith. I am the present mayor of the city of Fort Smith; was elected in November last, it being my second term.

I. W. FULLER.

FORT SMITH, ARK., *January 20, 1873.*

When I first took charge of the United States jail, among the number of prisoners confined in jail was one Samuel McGee, charged with murder, and Osborn Moore, with a like offense, who stated, when the doctor was ordering clothing for the prisoners, that they had been examined by Commissioner E. J. Brooks, and bound over to court to answer said charge; that about a month afterward the father of said McGee and the friends of Moore arrived, and after staying away for five or six days, brought an order from the said E. J. Brooks discharging the said Moore and McGee; the father at the same time telling me that it cost him ten head of horses to get the boys out. All parties were Choctaws and spoke broken English. I continued to question him about it and he said the lawyer told him not to tell. It was generally understood that the said lawyer (H. A. Rodgers) was in partnership with E. J. Brooks, and, as I had been instructed by W. A. Britton to turn loose all prisoners that either commissioner should order released, and to obey all their orders, I released said McGee and Moore.

I. W. FULLER,  
*Mayor of Fort Smith.*

Q. That is a statement that Mr. Whitney returns in his report which is marked as an Exhibit M. Did you make such a statement, Mr. Fuller?—A. I did.

Q. Do you now repeat the statements therein made?—A. I do.

By Mr. DURHAM:

Q. Are the statements therein true, so far as you know and believe?—A. I believe they are true.

Q. Do you now make that written statement a part of your testimony here?—A. Yes, sir. I don't know anything there that I wish to change; that is just what I thought generally at the time, and what I think now. The substance of the statement there is true, so far as I know and believe. I believe that at the time I made that I made it on my conscience, and I so state it now; I do not know anything to the contrary. There is nothing there that I wish to change. There are some statements in there that I do not know of my own knowledge to be true, I only believe them to be true.

By the CHAIRMAN:

Q. That statement has now been read through in your hearing; do you wish to alter or contradict anything that is therein contained which you state of your own knowledge?—A. No, sir; I don't know that I do. It is an opinion as I understand it—that statement made there. I was asked for my opinion of the state of affairs and I gave it, and there are some things that I state positively, and other things that I state as a matter of opinion. That is the way I understand it. The substance of what I stated there, and in fact I believe most of the sentences there, are what I believed to be true at the time, and what I believe now.

Cross-examination by Mr. ROBINSON:

Q. Do you know James Hodges, familiarly known as Jim Hodges, at Fort Smith?—A. Yes, sir.

Q. Is he white or colored?—A. He is a colored man.

Q. What is his reputation at Fort Smith for truth and veracity?—A. I don't know; I never had any business with him; I rather looked upon Jim as a scaly sort of a fellow—not very reliable.

Q. Do you know Talis Carter?—A. Yes, sir.

Q. What would you say as to his reputation for truth and veracity?—A. I never heard it questioned; I know he drinks some, and gets drunk once in a while, like a good many other people.

Q. Have you never heard his reputation for truth and veracity questioned?—A. No, sir.

Q. When those accounts that you speak of ran down to 50 cents on a dollar in Fort Smith, were you not told by the marshal and by his clerk, and persons connected with the office, that there was no money in the office to pay them?—A. Well, they were at about 50 cents from the first.

Q. But were you not informed that there was no money to pay them?—A. I was told that there was money at times, and at times that there was no money; sometimes they told me there was no money, but that they expected money.

Q. That does not answer my question.—A. Well, I will answer your question, yes, sir.

Q. In your examination-in-chief you said that there were a number of posses that had been paid for more mileage than they ever rode?—A. Yes, sir.

Q. Then the objection to the accounts in your estimation is not to the accounts themselves, but to the excessive amount?—A. Yes, sir; that is what I mean.

Q. How do you know that those posses did not ride the distance that they swear they did?—A. Because I knew where the prisoners were arrested.

Q. How did you know that?—A. I knew that from what the prisoners told me, and what the posses themselves in a few instances told me.

Q. You then made the calculation from the place where the prisoners were arrested by the marshal, and inferred that the posses rode with the marshal from the place of the arrest to the jail?—A. Yes, sir.

Q. Do you know what extent of travel was done in going there and hunting up their prisoners?—A. I know that in some instances the marshal was not gone but a few days from town, and I knew that he had charged for more miles than he had ridden.

Q. You only knew that from the statements of the prisoners?—A. I knew it from the statement of the prisoners, and from the fact that I knew the day that the marshal and the posse left town.

Q. Did you ever travel in the Indian country much as a deputy marshal?—A. No, sir.

Q. Do you not know that a good many of those deputy marshals do their traveling in the night in order to arrest prisoners that they could not come upon in the day-time?—A. Yes, sir; I believe that is so.

Q. You told us that there were a number of accounts of posses that never did any service; can you name them?—A. I cannot do that.

Q. You told us about the number of marshals that Mr. Britton had at one time; I think you said he told you about a hundred?—A. Yes.

Q. Were you present at a public meeting in the United States court-room before it was burned down—the night before the election of 1872?—A. Yes.

Q. Do you know that there were about seventy-five deputy marshals appointed that night?—A. There was quite a number appointed, I believe. I don't know the number.

Q. What were they appointed for?—A. To keep the peace; there was some talk of a difficulty there in Fort Smith.

Q. Then they were not appointed for traveling service on the marshal's force?—A. No; not those that were appointed that night.

Q. Was not that the time that it was said that Mr. Britton had a large number of marshals?—A. No; I think he had a very large number prior to that time, and that those were additional deputies that were appointed just for service at election.

Q. Did not you state in your examination-in-chief that, with this exception, from thirty to forty deputy marshals would have been his range?—A. I stated that I only knew of, or had personal acquaintance of, thirty or forty deputy marshals, and when he said he had a hundred I didn't know who they were.

Q. You knew there were a large number appointed that night?—A. Yes.

Q. And you knew they were appointed for the purpose of keeping the peace on the day of the election?—A. It was said to be for that purpose, and I understood it so.

Q. Don't you know that a large number of men left Fort Smith and went to Greenwood with the avowed purpose to take possession of the polls by force?—A. No, sir; I don't know that of my own knowledge. I have heard it, though.

Q. What was the general report about that?—A. I heard that quite a number of democrats had gone in the direction of Greenwood for the purpose of capturing the ballot-boxes.

Q. Did Marshal Britton dispatch a large number of deputies on the day of election, to prevent the taking of those polls?—A. I don't know that. I understood that in the evening after those parties had left he sent some deputies in that direction to protect the polls. That is what I understood. I did not see it.

Q. Was it not notorious that our men had gone to Greenwood to take possession of the polls, and that a large number of marshals had been sent there by Marshal Britton?—A. I saw a large number of men with overcoats on their saddles starting off in that direction, and I knew them to be democrats.

Q. Were they armed?—A. Yes, sir; I saw a dozen or fifteen ride out of town in the direction of Greenwood.

Q. Don't you know by information that a large number gathered there at Greenwood, more than the number that you saw?—A. I heard there did.

Q. Do you not know, or were you not informed, that a large number of arms were stacked in the back room of the mayor's office at Fort Smith for the purpose of taking possession of the polls on the day of the election, and that Mr. Brazillaro was at the head of it?—A. No, sir; I did not know that they were in the mayor's office. I understood they were in the gunsmith's shop, on the other side of the street.

Q. Was not Mr. Brazillaro at the head of the affair?—A. I understood so.

Q. What was his politics?—A. I believe he was chairman of the democratic central committee.

Q. And were not the efforts that were made by the republicans who assembled in the court-house the night before made in view of these arms being there, and the prospect that they would be used the next day?—A. Well, it had been talked about through the town that the democrats were going to have justice, as they called it, done to them at that election, and that they were going to have justice at the point of the bayonet, if they could not have it in any other way. There was a good deal of feeling in the matter, and it was reported that they had organized five companies in the county for that purpose, and a night or two before the election the republicans got together and organized.

Q. Don't you know that the citizens of Fort Smith, irrespective of party, seeing that a collision was imminent, met together the evening before the election and held a peace-meeting, and appointed a police from each of the parties to try to keep the peace there on the day of the election?—A. There was such a meeting held there, and I think there were ten democrats and ten republicans appointed. I was appointed on one side. It was agreed that the democrats should take care of their men, and that we should take care of ours, and that no collision should take place.

Q. In your statement that has been read here you use the words "straw-bail;" you mean by that worthless bail, do you?—A. Yes, sir.

Q. Is the marshal's office a bailing office?—A. No, sir; I state there somewhere that the prisoners were examined before the commissioner and allowed to go on straw-bail.

Q. The marshal is not responsible for that, is he?—A. No, sir.

Q. You say here, "I know of a great many deputies that were paid for *posses* that they never had;" name them, if you please.—A. I could not name the *posses* that I referred to. What I mean by that is that I have heard deputy marshals say that they were charging for two *posses* whether they had them or not.

Q. Name those who said so?—A. James Fitz Henry told me so, and Mr. Stevenson told me so. They said they were in the habit of charging for two *posses*; that the law allowed them two, and they did it.

Q. Can you remember any others?—A. There was quite a number of others; I believed it to be the practice to charge for more than they had.

Q. You say that it was the "practice to pay deputies for hundreds of miles never traveled, and allow for days in search of prisoners reported *non est*;" you mean to say that you heard that, too?—A. Yes, sir; I heard that general report. They kept a time-book in the marshal's office, and each deputy was allowed to use up time.

Q. You make this statement, "that the deputies were not out of town, and that that was known to Mr. Britton and his clerk, Mr. Donnelly;" will you please connect Mr. Britton and Mr. Donnelly with that statement by your own knowledge, or is that hearsay, too?—A. What I mean by that is, that there were marshal's accounts made out there in cases where I felt satisfied that Mr. Britton and Mr. Donnelly knew that the marshals were not absent from town during the time that they charged for in those accounts, but I do not know it from personal knowledge.

Q. You say, "I know that deputies have charged for guarding and transporting prisoners that had walked the whole distance;" tell us the names of the deputies and the prisoners?—A. Several prisoners told me that they had walked the whole distance. It was a practice to make prisoners walk, as a general thing. That is what the prisoners told me, and I have heard some deputies say so.

Q. Name the deputies that told you so.—A. Well, I saw a whole drove of prisoners brought down by Mr. Johnson, 16 or 17, and they said they had walked the whole distance, and some of them were foot-sore.

Q. Did you see the account that Mr. Johnson made out for that service?—A. I saw some of the accounts.

Q. Can you name some of the prisoners, so that we can identify the trip?—A. I don't know that I can name the prisoners. I did not charge my memory nor make any memorandum, and it is some time since.

Q. You say "there were upward of one hundred deputies riding, a majority of whom were the worst men in the country"—a majority; that would be over fifty; will you name those bad men?—A. Well,



some of the men riding there, I don't know that I can pick them out, but I consider them very bad men, and so do you.

Q. I am asking you to tell me who they were.—A. There were a good many of them that I don't think I would employ.

Q. You decline to name any of them, then?—A. I would rather not name them, sir. I know that some men that were riding there were charged with murder and were out on bail, and they turned around and ran away just before the court met.

Q. Were they specials or generals?—A. I don't know.

Q. Did you see their commissions?—A. Yes, sir.

Q. Will you name some of the men?—A. I will name Davis—I don't recollect the names of the others.

Q. You say, "I know deputies to return writs that had been served by their *posses* hundreds of miles away when they had never been out of town, and the *posses* returning as *posses*;" who were they?—A. That was done in several instances; I cannot say exactly who they were; but I know the marshal was in town; I can name them if necessary.

Q. You say, "I believe there was another understanding between E. J. Brooks, United States commissioner, and the deputies, that all cases should lie in jail, or not be finally acted on for ten or twenty days, that they might get their pay;" do you know that, or is that a mere surmise of yours?—A. Yes, sir; that was an opinion.

Q. When you wrote this opinion you did not expect to see it in this committee-room?—A. I did not care where I saw it.

Q. What state of feeling existed between you and E. J. Brooks, the United States commissioner?—A. Well, sir, we are not friends.

Q. You have been anything but friends?—A. We have been enemies, to be sure. I bear the man no malice, however. We have been opponents for the position of mayor, and other things.

Q. You went so far as to have a fight, you and he, didn't you?—A. I believe we had a little trouble.

Q. You say now that that was an opinion so far as the understanding between the deputies and Mr. Brooks was concerned; now, is this an opinion or is it a fact, "all this being known by William A. Britton, and no effort by him to correct the dishonest practice;" what do you know of your own knowledge about that?—A. I don't know of my own knowledge. It was just what I believed then. I believed that he did know all these things, and I believe it now; that they brought in prisoners and did not bring the witnesses, and then afterward the witnesses did not appear. He might not have known all the instances, but he knew some instances at least. I am satisfied that I myself called his attention several times to the way that the deputies were in the habit of bringing in prisoners and not bringing in the witnesses, and some of the prisoners told me that the deputies refused to allow the witnesses to come.

Q. But Mr. Britton in Fort Smith had no power to control the action of his deputies away off?—A. Well, I thought it was his duty as marshal to right it.

Q. But he could not right what was past, and what you were telling about?—A. No, sir;

Q. You say "of all the moneys received, Mr. Britton has not paid out to the men that earned the money more than \$10,000;" do you mean to state that as a fact?—A. I do not know it of my own knowledge, but I believe that was so during that administration. I believed from what I learned that the men that earned the money didn't get it.

Q. You make a statement here that Mr. Britton and others bought up this paper?—A. I do not know that Mr. Britton bought it up.



Q. You say that he had it bought up?—A. Well, there were parties buying it up.

Q. Do you know of your own knowledge of Mr. Britton's having any connection whatever with the parties buying it up?—A. No more than what I was told, and I knew that certain parties always got the money.

Q. What are Mr. Britton's circumstances now; is he a poor man or a rich one?—A. I really do not think that Mr. Britton has made money out of the marshal's office; in fact, I know he has not; but other parties have done it for him. I am satisfied he is a poor man; I do not believe he could pay his debts to-day, or in six months from to-day; but other parties got the money; that is my opinion.

Q. Are Major Lanagan and Thomas G. Scott, the postmaster, of whom you speak, now here in Washington?—A. I believe they are; I saw them both yesterday.

Q. During the time of Mr. Britton's last administration how long was he in bed at the point of death; was he not for months?—A. I cannot state that. I know he was sick for some good length of time toward the close of his last administration.

Q. Did he not hold the office the last time only from July until the 4th of March following?—A. He held office until he was removed. I do not recollect when he went into office and when he went out.

Q. Do you not recollect that he came in at the close of the May term of the court?—A. I believe he did.

Q. You know that he held office no longer than the next spring?—A. O! he held until the next fall; I think he was some twelve or thirteen months in office; I don't know exactly, but it is a matter of record.

Q. In the winter was he not confined to his house, and to his bed for some three months, unable to attend to any business at all?—A. I believe he was; it was thought several times that he was dead.

Q. The time you speak of, your guards going without pay at the jail—was it during that period?—A. No, sir; before that time, during the time that Mr. Britton had money, and during the time that \$33,000 and \$20,000 drafts went to other parties.

Q. Who got those drafts?—A. Captain Scott and Major Lanagan got them I believe; that is, I was told they got them; I don't know of my own knowledge.

Q. You said in your examination-in-chief that you were asked to resign as jailer by Mr. Britton; do you know of your own knowledge how you were removed from the office of United States jailer?—A. It was a polite way of removing me; he wrote me a letter and asked me to resign, and I did so.

Q. Did he send you in that letter a petition that he had received from leading citizens of Fort Smith and leading members of your own party to remove you?—A. He said that he was requested by the republicans to remove me, but "the republicans" consisted of this man Captain Scott and one or two others that he had got to sign the request. Mr. Britton afterwards told me himself that I was removed at the suggestion of Mr. Scott, and that he was not responsible for it; that he was entirely satisfied with me as jailer, but that Mr. Donnelly was afraid that I was watching him and wanted me removed.

Q. What is the feeling between you and Mr. Donnelly?—A. We are not good friends.

Q. You have been very bitter enemies?—A. Yes. It was on account of Mr. Brooks's matter. He was a friend of Mr. Brooks.

Q. In this statement you say, "During November, 1872, Mr. Britton said to me that Mr. Donnelly, his clerk, had been making all the money; that he took a \$33,000 draft and arranged with Captain Scott, postmaster,

and Major Lanagan, merchant, to furnish him currency for his drafts; that he drew \$5,000 or \$6,000 on the same, when they notified him that they held his paper (Government vouchers) for the balance, and that he must not draw any more;" did he tell you that those drafts went to pay the Government vouchers that those men had in their hands?—A. He said it just as I said it there. Of course it went to pay the indebtedness of the marshal's office.

Q. When you stated to the committee, in your examination-in-chief, that one Edward Czarnikow was buying up the paper of the Government, did you mean to say that he was buying up that paper in collusion with Mr. Britton?—A. Yes, sir; Czarnikow told me that he was buying the paper for Britton, and that Britton only allowed him 50 cents.

Q. What business does Czarnikow follow in Fort Smith?—A. He is a merchant.

Q. Did you ever hear any conversation between Czarnikow and Mr. Britton in relation to the matter?—A. No, sir; I never did.

Q. Did you ever have any conversation with Mr. Britton alone upon the subject?—A. I never did.

Q. Did you have the conversation with Czarnikow when he was drunk or when he was sober?—A. Well, sir, he usually is pretty tolerable drunk, but I don't know whether he was drunk that time or not; I don't think he was; I went to him early in the morning, I think, at the time he told me this; but generally he is pretty full of whisky.

Q. You told the committee that one Hook and one Gerard were buying up these marshal's vouchers?—A. Yes; I saw them buying some.

Q. Did they buy those vouchers to your knowledge with any collusion or understanding with Mr. Britton?—A. None at all that I know of.

Q. Don't you know that many other persons bought vouchers in that way when they were in market?—A. Certainly; I bought some myself.

Q. Do you know whether Mr. Whitney bought any when he was out there?—A. I heard him say that he did. It was only one or two, I believe, little checks, or something of that kind.

Q. Do you know what he paid for them?—A. I do not. I think it was 50 cents.

Q. Do you know whom he got the money from when he sold them?—A. I do not.

Q. Upon your examination-in-chief you told the committee that you had a conversation with Mr. Britton in which you told him that \$3 per diem was not sufficient pay for you at that time, and that you ought to have \$4 a day, and that Mr. Britton told you that you might charge \$4 a day, and get it provided the judge would approve it?—A. Yes, sir; there was nothing wrong in that.

Q. Didn't you, at the time when you made that declaration, know that by law you were entitled to but \$3 per diem?—A. I did not. I did not know that the amount was regulated by law for the jailer.

Q. Had not you collected your fees many times before that?—A. I had been paid my monthly salary.

Q. How much were you paid every time you were paid before that conversation occurred?—A. Three dollars a day.

Q. How much were your guards paid?—A. Two dollars.

Q. Didn't you know that that was the law?—A. No, sir.

Q. Have you never been told that that was the law?—A. I have been told that the guards were entitled to \$3 a day, but nothing was said in regard to the jailer, and I supposed that I could get \$4 a day; and I talked with Mr. Britton, and also went and talked to Judge Story about it, and they both agreed to it.

Q. Did you ever present an account for \$4 a day?—A. No, sir; I was removed soon after that.

Q. Did you go and see Judge Story in regard to the approval of an account of yours for \$4 a day?—A. Yes, sir.

Q. Did he agree to approve it?—A. He agreed to it; he had no objection. He said I had a great deal of responsibility. I was there day and night, and I was entitled to it.

Q. Did he say to you that he would make an additional allowance upon his record in consideration of extra services of yours, or anything of that sort?—A. No; he said it was all right; if I made out the account he wouldn't object to approving it at \$4 a day, for he thought that I earned it, and I thought so myself.

Q. In this statement of yours you say: "I am the present mayor of the city of Fort Smith; was elected November last, it being my second term." Was that true?—A. Yes, sir; I was elected the second term. I was elected in fact three times, and that was my second term.

Q. You did not act as mayor but once, did you?—A. No, sir; I was elected as I say a second time, when Brooks refused to turn over, but I got the certificate.

Q. You stated here that one Samuel McGee, charged with murder, and Osborn Moore, with a like offense, "were among the prisoners in jail when you took charge, and that when the doctor was ordering clothing for the prisoners, they stated that they had been examined by Commissioner E. J. Brooks and bound over to court to answer said charge, and that about a month afterward the brother of said McGee and the friends of Moore arrived, and, after staying around for five or six days, brought an order from the said E. J. Brooks discharging the said Moore and McGee." Do you tell this committee that these men were ever tried for that offense of murder before E. J. Brooks, and bound over to your jail, and afterward released?—A. No, sir; but I say that when they drew clothing the prisoners were asked if they had been bound over, and these prisoners said they had.

Q. Do you know who the counsel of McGee and Moore was?—A. I think I talked with you in regard to the case.

Q. Don't you remember this, that when McGee and the friends of Moore came the witnesses came there for the first time, and that upon examination the prisoners were discharged?—A. I don't know that, because the prisoners were in jail when I took charge of the jail, I think.

Q. Were there any other persons under that charge as well as those you have mentioned—were there not two of the McGees?—A. I believe there was the old man and the son and this Moore.

Q. Was there not another Moore?—A. There may have been.

Q. You speak about its costing ten head of horses to get the boys off; do you know who got those horses?—A. No. I saw some horses in the possession of this man Rodgers.

Q. Don't you remember that I [J. S. Robinson] got those horses?—A. I do not. I recollect telling you at the time, or shortly after that conversation, that they said that they had paid ten head of horses to get out.

Q. During all this period that you have covered by this statement and by your testimony generally, was there not between the present counsel here of Wm. A. Britton and yourself the most intimate and friendly relations?—A. Yes, sir; there always have been; I have been a little provoked at him sometimes, and he has at times, I suppose, been provoked at me, but we are friends now and always have been.

WASHINGTON, D. C., April 15, 1874.

The committee met pursuant to adjournment. Present: Messrs. Sener, chairman, Williams, Speer, Durham, and Sheats.

Cross-examination of I. W. FULLER, by Judge ROBINSON, counsel for W. A. Britton:

Question. In your examination-in-chief yesterday and cross-examination, did you answer all that you knew of your own personal knowledge in relation to the matters about which you testified?—Answer. I think I did, sir.

Q. Did you answer all that you know, by information, and by opinion, as you gave it on yesterday?—A. I intended to do so.

Q. As far as you know now, you have so testified?—A. Yes, sir.

Q. In your examination-in-chief yesterday you told this committee that you resided in the city of Fort Smith. Do you so reside there?—A. Yes, sir.

Q. You told the committee, also, that you had been a merchant; what is your present occupation?—A. I do not know what it is exactly; I am out of business.

Q. When and where did you first become acquainted with Mr. Whitney?—A. At Fort Smith.

Q. At what time, or about what time?—A. I think it was in March. Judge Story introduced me to him; that was the first time I ever saw him to know him.

Q. What year was that?—A. I think the year 1872. I was introduced to him by Judge Story on the steps of the court-house in Fort Smith.

Q. Did you become very intimate friends during the time of his stay there at that time, or at a subsequent time?—A. At that time I only saw him two or three times before he left.

Q. Did Mr. Whitney return there before the time he went down to make this investigation about all these writs? Understand my question, now, before you answer it. When was the next time that you saw Mr. Whitney after he left that time?—A. At Fort Smith.

Q. Do you state to this committee that Mr. Whitney was there but twice to your knowledge?—A. I believe he was there three times.

Q. Did you not become intimately acquainted with Mr. Whitney the second time that he was there?—A. I had some conversation with him. I felt friendly towards him. I feel so now.

Q. Did Mr. Whitney, after he left there the second time, and before he came back there the third time, write you any letters upon business?—A. Yes, sir; we corresponded several times.

Q. Where were those letters written from?—A. Some from Washington, and some from Cleveland, Ohio.

Q. Was the business generally, in those letters, in relation to the marshal's office of the western district of Arkansas? Was it not mainly on that business?—A. No, sir; it was not.

Q. Did Mr. Whitney write you from Cleveland, Ohio, or from Washington?

Mr. SPEER. We will have to stop that, Judge Robinson; that is not a cross-examination; you must not travel too far out of the way.

Q. I will ask you, then, Colonel Fuller, if, in any conversation had with you at the Saint Charles Hotel, in the presence of Mr. Whitney, J. S. Robinson stated to you that you were in danger of assassination. I ask you to say whether that is true or not.—A. You did not say so. You went on to say, in your excited way, that you would not be in my

place, as clerk for Mr. Whitney, for all the money in Fort Smith. Those are the words that you used.

Q. Who was present at that time when that conversation was had?—A. I think, perhaps, Mr. C. D. Mesler. I do not know whether he was there at the time you made this remark or not, but I think he was.

Q. In that investigation did I ask permission to examine and cross-examine the witnesses that should be brought there to testify?—A. You did.

Q. Was it refused?—A. It was in this way: Colonel Whitney told you that whenever he took up the accounts of Colonel Britton that you could come there and cross-examine Colonel Britton as much as you pleased; but when he took up the accounts of other parties that he did not want you to be present.

Q. Was I present at any of the examinations there?—A. No, sir.

Q. Was Mr. Whitney present at any of them? I am asking you now about your evidence.—A. No, sir.

Q. Was Mr. Donnelly present at any of them?—A. No, sir.

Q. Did not Mr. Whitney, in your presence, refuse to allow us to be present when any witnesses were being examined?—A. No, sir. He told you that you might be present during the examination of Mr. Britton's accounts; but that he did not propose to have you present when the accounts of others were up for examination.

Q. Do you state that upon your oath, Colonel Fuller?—A. I do state it upon my oath, and I state it most emphatically.

Q. Do you know of Mr. Britton going there and making the request in person?—A. Judge Robinson, you usually came there.

Q. Do you know of Mr. Britton going there and making that request?—A. Yes, sir.

Q. Did Mr. Whitney grant it to him?—A. I do not know whether he did or not.

Q. Was the request made there that Mr. Donnelly, the chief clerk of Mr. Britton, and who knew more about the settlement of his accounts than any other person, should be present during that examination for the purpose of cross-examining witnesses, and correcting, explaining, or contradicting, as the case might be?—A. I heard such a request made.

Q. Was it granted?—A. It was, as far as the accounts presented by Mr. Britton were concerned. Mr. Whitney emphatically gave you to understand that when parties came there to make affidavits touching the management of the marshal's office, and the way those accounts were made up, that you could not be present.

Q. Those affidavits that you mentioned in your cross-examination on yesterday were made in the presence of yourself and Mr. Whitney?—A. Yes, sir.

Q. Are they mainly in relation to the conduct of the marshal's office during the time that Mr. Britton was marshal of the western district of Arkansas?—A. They touch the whole management of the office.

Q. Are they mainly in relation to William A. Britton's management of the office as marshal?—A. I think the bulk of them are.

Q. Was he present during the examination of any witnesses touching the accounts referred to in the affidavits?—A. I do not know whether he was or not. What I mean is this: that during the examination of some of them he might have been, but during the examination of most of them he was not present.

Q. Was any person present for him during the time that you took a single line of that testimony?—A. I do not know. It seems to me that



there was an affidavit or two taken in regard to accounts that Colonel Britton presented when you were present.

Q. Who were the witnesses?—A. I do not know.

Q. Did you ever hear me ask a witness a question in that room?—A. You came there when we were examining some witnesses. I do not recollect what witness was under examination when you came there.

Q. Did Mr. Britton or Mr. Donnelly cross-examine any witnesses?—A. I don't think they did.

Q. Do you not know, Colonel Fuller, that we were not allowed to do it?—A. I have answered that question once before, and I told you no.

Q. Were you informed there that that was a secret, *ex parte* investigation, and that we wished to get in there that we might have justice done us?—A. I believe I heard you make that assertion to Colonel Whitney.

Q. Did you not understand me to be the counsel of William A. Britton?—A. You so represented yourself, and I so understood it.

Q. Have you those letters?—A. I do not know whether I have or not. A short time ago in Saint Louis I burned up nearly all my letters.

Q. Did you not tell us some time ago that you had them?—A. I have some of them.

Q. How many letters did you get?—A. I do not know.

Q. You got several, did you not?—A. Yes, sir.

Q. Colonel Fuller, do you remember driving up to my house one Sunday evening and taking me out in your buggy, when you were driving that large gray horse of yours, and having a talk with me in regard to the marshal's office while we were riding out?—A. I believe I asked you about it; I recollect driving you out one Sunday evening.

Q. Did you have any talk with me that evening in regard to the marshal's office?—A. I think I did.

Q. Did you not state in that conversation that you had received a letter from L. B. Whitney from Cleveland, Ohio, in which he promised you his influence to procure for you the marshal's office of the western district of Arkansas?—A. I believe I did.

Q. Did you not state to me at the same time that Mr. Whitney was a very shrewd man and very popular with the Department of Justice, and that you had no doubt that through his influence you could procure the appointment?—A. I do not know that I stated that.

Q. Is not that the substance of what you said then?—A. Perhaps I so stated. I have nothing to cover up in regard to it.

Q. Did you not state to me at the same time that you wanted my influence—that I was a personal and political friend of the Senators—to get the confirmation; that you had no doubt about the appointment, but that you feared the confirmation, and that with my influence you could get your confirmation?—A. No, sir; I do not think that I said anything of the kind.

Q. Do you recollect of having repeated conversations with me upon the same subject in the presence of my family, in Fort Smith, after that time?—A. I have talked with you several times about it. You were as much disgusted about it as I was.

Q. Did you ask me in the city of Washington, at No. 607 E street, in my room, to support you for the marshal's office, and did you not say that you believed if I would do so you could be confirmed; that you had the "dead-wood" upon the appointment as far as the Department of Justice was concerned?—A. Yes, sir; I did; but I do not know that I used the expression that I had the "dead-wood" upon the appointment.



Q. And after I refused to do that, did you not offer to employ me to do it in the presence of old man Ayers?—A. I do not know that I made any proposition to employ you.

Q. State whether you did or did not?—A. I do not recollect whether I did or not. I know you offered to assist me in getting the appointment. You have repeatedly offered to do it.

Q. Did you tell me, in that conversation that I have mentioned on that Sunday evening in Fort Smith, that Mr. Whitney said he would aid you if you thought he could procure you the marshal's office?—A. I think I did, sir.

Re-examined by Mr. DURHAM:

Q. Do you know one of those deputy marshals named R. Fitzhenry?—A. I know one named Robert Fitzhenry.

Q. Do you know one named C. D. Messler?—A. Yes, sir.

Q. And one named C. Duff?—A. Yes, sir.

Q. And one named Harris?—A. Yes, sir.

Q. And one named Lightley?—A. Yes, sir.

Q. And one named Cairns?—A. Yes, sir; I know them all.

Q. Did any of these men do any riding as deputy marshals?—A. Yes, sir, they did. Mr. Fitzhenry was a regular deputy.

Q. Did they draw fees as deputies?—A. I do not know whether they did or not.

Q. You spoke in your examination about certain parties buying up the marshal's paper at a low rate; did any of these parties tell you that they bought for Mr. Whitney?—A. Mr. Czarnikow told me he was buying up for Mr. Whitney.

Q. You were jailer at one time?—A. Yes, sir.

Q. Who succeeded you?—A. C. D. Messler.

Q. Is he the same Messler that was one of the deputies?—A. Yes, sir.

Q. Who had the appointment of jailer?—A. The marshal.

Q. Do you know of a man by the name of Benjamin F. Shoemaker?—A. Yes, sir.

Q. Who was he?—A. He was a deputy marshal.

Q. Did he make an affidavit?—A. He did.

Q. Was it intended to embrace all these men that made affidavits in your answer as to their general veracity and reputation; and, if so, was the name of Benjamin F. Shoemaker included in that?—A. I do not know whether it was or not.

Q. Is Benjamin F. Shoemaker a reputable man for truth and veracity?—A. I never heard it questioned. He served in my regiment for three years.

Q. You say he served in your regiment; which side were you on?—A. On the Union side. My regiment was the First Missouri Cavalry.

Q. How long did you serve?—A. I served from the 1st day of August, 1861, to the 24th day of April, 1865.

Q. Something was said a little while ago about whether or not Judge Robinson said anything about assassinating you. When you were taking that affidavit up there was there any attempt to assassinate you at any time growing out of these matters, or do you any personal injury or harm?—A. That is a subject that I hoped would be avoided; but if I am compelled to answer, I will tell all about it. I think there was.

Q. To do what?—A. To do us injury. I think there was a combination to prevent these reports reaching Washington and to smother this investigation. I saw from the very first that, after I went in to assist

Mr. Whitney, all these men that I thought were my friends were turned against me, and among them was Judge Robinson; he was as wrathful as he could possibly be toward me; he would pass me by on the street and not speak to me. I saw that there was a great feeling against me in consequence of my assisting Mr. Whitney, and I did not hardly know how to account for it. Judge Robinson remarked several times to me, says he, "You are doing wrong to assist these men, and you are making enemies here; you ought not to do it, and I would not do it for all the money there is in Fort Smith." I told him that I did not see what harm there was in my staying there and assisting him; and that if there was any wrong done, the Government had a right to know it. I had nothing to do but to swear witnesses at the request of Mr. Whitney. I had no feeling about the matter at all. Well, this ran along from day to day, and I saw that the feeling was becoming more intense. I saw that the reason of it was because a great many people held accounts, and they did not know when they would be paid or if they would be paid at all. I held some accounts myself. The feeling continued. I continued to go ahead, and told my friends there that I did not care a cent what the people said; I undertook to assist Mr. Whitney and I intended to do it. After a while I heard that a certain man said that he was going to lick me, and that man was John Porter, a deputy marshal. I asked what for? "Well," said they, "there are parties who are putting him up to do it." Parties came to me and told me that John Porter and a man by the name of Devine were going to do Colonel Whitney and myself injury. These men had been in town for several days, going around drinking. They had their horses saddled and their six-shooters on. Devine called me down and tried to get up a difficulty with me; at the same time he had his six-shooters and his hands in his pockets. I told him I had nothing with me; that I was not armed, and he had his hands in his pockets, and I believed that he intended to kill me if he could get me into a difficulty with him. He went off. I talked him out of the difficulty. I did not want to have any difficulty with him. He assailed me two or three different times in the same way. I then went to a friend of mine and asked him why these men, Porter and Devine, wanted to get up a row with me. "Well," says he, "they are put up to do it." Well, it continued that way for some time. One morning Mr. Whitney came to me, and said that certain men climbed over the fence and looked into my room. Says I, "Did they?" "Yes," he says, "Mrs. Fleming says she saw them." About that time—that night—some one turned my horses out of my barn into my front yard. On learning of it, I thought I would get up and dress myself and turn them in again, but after a while I concluded I would not. The next day Mr. Whitney and myself talked for a while together and compared notes, and I made up my mind that it was a plan laid to get me into a difficulty. A policeman told me that the horses of both these men were hitched back of the Saint Charles Hotel. The next day Mr. Whitney and I went to a barber's shop to get shaved, and as we were going in this man Devine said, "Colonel Fuller, I want to see you." I said to him, "Devine, you know I want to have nothing whatever to do with you;" at the same time I held my hand on a pistol in my pocket. I knew he intended to get me into a fight and kill me. I immediately turned around and walked past him, and he went on to his horse. Mr. Whitney and I then walked up to the barber's shop, and just before we went in we saw three men going into a whisky shop. I came out and these men pointed up the street; they saw me watching them, and they turned

around and walked off. While in the barber's shop I exchanged pistols with Mr. Whitney. They rode up Garrison avenue, fully half a mile up to the place where this other man, Porter, was staying; and directly I saw him and John Fuller riding down the street. Colonel Whitney and I went down and across the street. I then told Colonel Whitney that in order to save all further difficulty we would leave for Washington; and he and I got ready and started off that evening.

Q. These two men, Porter and Divine, who were they?—A. Deputy marshals.

By Mr. SPEER:

Q. Of whom?—A. Mr. Sarber, I believe. They formerly had been deputy marshals under Mr. Britton.

By Mr. DURHAM:

Q. Do you know whether they have any unpaid accounts or not?—A. I do not know whether they have or not.

By Mr. SPEER:

Q. Are they still there?—A. I do not know whether they are or not.

By Mr. SHEATS:

Q. But it was Devine that tried to get up the row with you, was it?—A. Yes, sir; parties came to me and said that John Porter was going to lick me.

Re-examined by Judge ROBINSON:

Q. How long have you known me, Colonel Fuller?—A. I cannot say exactly; I have known you for several years.

Q. Do you now state to this committee that from what you have known of me I am capable of going into a combination to assassinate a man?—A. I did not say that.

Q. Were not the first angry words that ever occurred between you and myself in the room in the presence of Mr. Whitney, when I asked him if I could be present at the examination to interrogate those witnesses?—A. I never had an angry word with you before that, and I was surprised that you should talk to me the way you did then.

Q. Was it not in reference to the manner in which you were conducting that investigation?—A. No, sir; you undertook to find fault about my being connected with it in any way. I never bore Colonel Britton any malice at all.

Q. Did I not tell you there that you were a citizen of Fort Smith, and, occupying the position that you did, to wit, that you were at enmity with Brooks and had offered to fight him; that you and Mr. Scott had a difficulty there, and that Mr. Britton had turned you out as jailor, and that the people would not say that the investigation was correct?—A. You did not state all those things. You told Mr. Whitney that he ought not to have employed me. And I was surprised that you should—friend as you always appear to be to me—come to make that kind of request from Mr. Whitney, and say that I was prejudiced against those parties, for I was not prejudiced against them.

Q. You said in your examination just now, "I think there was a combination to do me (you) an injury;" who do you think was in the combination?—A. The parties that I had expected to do me injury are the men that I have named. I do not know who put them up to it, or whether they were put up to it. I do not know that, but some of my friends told me so.

Q. John Porter never said anything about it at all?—A. No, sir.

Q. You spoke about Devine having two six-shooters; I will ask you if it is not the practice of deputy marshals there to carry six-shooters.—

A. It is.

Q. You told us that you and Mr. Whitney were together when Devine tried to get up a quarrel with you?—A. Yes, sir.

Q. Did Mr. Whitney hear that conversation with Devine?—A. I do not know whether he did or not. We were together.

Q. Was it not impossible for him not to hear it?—A. I could not say whether he heard it or not.

Q. What sort of tone of voice was it?—A. It was loud; but every once in a while some one would call Mr. Whitney aside, and say "Whitney, I want to see you."

Q. Did Mr. Devine ever offer violence to you in any of those talks?—A. He did.

Q. How?—Q. By threatening me.

Q. What did he threaten?—A. He called me a damned scoundrel.

Q. What else did he call you?—A. He went on in a very insulting way talking with me.

Q. Do you know of your own knowledge that Mr. Britton had anything to do with that little trouble between you and Mr. Devine?—A. I do not think he had; and I will say that I do not think you had.

By the CHAIRMAN:

Q. What do you know as affecting Logan H. Roots's administration as marshal?—A. I do not know anything of my own knowledge.

Q. You know no frauds of your own knowledge connected with Logan H. Roots's administration as marshal?—A. No, sir; only what I have heard; nothing of my own knowledge; it was usually reported and talked about.

C. C. AYERS recalled for cross-examination by Judge Robinson:

Q. In your testimony the other day before this committee you gave a large number of deputy marshals. I wish now to ask you if you were present the night before the election at the United States court-room in Fort Smith at a public meeting then and there held?—A. Yes, sir; I was.

Q. Was there not a large number of deputy marshals appointed and commissioned that night?—A. Yes, sir; there were a great many special commissions given out that night; I could not state how many, but I think there must have been seventy-five or one hundred commissions issued that night.

Q. What were the purposes for which they were commissioned?—A. There was at that time considerable excitement in regard to the election; it was thought that a conflict would take place between the two parties; the democrats thought they had a right to vote under the franchise of the United States, and the State laws said that they could not vote; and those appointments were made to sustain the State authorities and keep peace at the polls.

Q. Were not those deputies appointed that night with positive instructions to take no part in the election only as they might be called upon to protect the State authorities at the polls?—A. Yes, sir.

Q. Did you hear it so stated?—A. Yes, sir.

Q. Did you hear it in that meeting that the prime object of the appointment and of everything pertaining to it was to avoid bloodshed, and to have peace at the election, and to allow every person to vote who was on the books of registration?—A. Yes, sir.

Q. Were you at a meeting of the citizens of Fort Smith, held at the State circuit-court room in Fort Smith, the day before the election ?—

A. I was there the latter part of it.

Q. Was it not agreed in that meeting of citizens, irrespective of party, that there was danger of collision the next day at the polls ?—A. Yes, sir; that was the general feeling.

Q. I will ask you if there was not a special police appointed by that meeting, consisting of an equal number of both parties, to keep peace at the election ?—A. Yes, sir, there was; and they were chosen from among the best citizens of Fort Smith. They were appointed as special police to keep peace at the polls.

Q. When you spoke of a large number of deputy marshals you meant to include them, did you not ?—A. I spoke of the large number of deputy marshals in this way: the subject of there being so many deputy marshals was not talked of until Colonel Whitney came in. I never saw these other deputies, but I know that a great many were appointed that night.

Q. Were not those appointed that night appointed only for the election and no longer ?—A. It was a special commission for the time being.

Q. Did those men appointed that night ever do any service except during the election ?—A. That was all I knew them to do.

Q. I will ask you if you can tell this committee how much railroad was built in the Indian country during Mr. Britton's last administration ?—A. I think when Colonel Roots was succeeded by Mr. Britton that the railroad was then completed to Muscovia, and it is nearly two hundred miles from there to Red River.

Q. Then I understand you to state that the Missouri, Kansas and Texas Railroad, was built, during Mr. Britton's last administration, through the Indian country to the length of nearly two hundred miles.

—A. Yes, sir.

Q. I will ask you if, during the building of that railroad, the business of the court at Fort Smith was not very much increased ?—A. Yes, sir; it was. As a natural consequence the building of that railroad brought there a great many men of the very worst character.

Q. Was there not a large number of hands employed in the building of that road ?—A. Yes, sir.

Q. Were there not contractors and sub-contractors ?—A. Yes, sir.

Q. And were there not a great many laborers employed in getting ties, &c. ?—A. Yes, sir.

Q. Did not all the crimes committed by those men have to be heard by the court in Fort Smith ?—A. Yes, sir.

Q. Were not all difficulties between white men and negroes, and difficulties between white men themselves, brought to Fort Smith for trial ?—A. Yes, sir.

Q. Were there not a great many whisky-sellers along the line of that road ?—A. Yes, sir.

Q. Were there not a great many murders and larcenies perpetrated on the line of that road ?—A. Yes, sir.

Q. Then, you state that the building of that road greatly augmented the business of the court at Fort Smith ?—A. Yes, sir; it could not help but do so.

Q. While that road was building were there not a great many herds of cattle driven from Texas through the Indian country to wherever the road was completed, for shipment ?—A. Yes, sir.

Q. I will ask you if all the difficulties that occurred between the hands and the employers, or between the hands, employers, and citizens

of the country, were not cognizable in the court at Fort Smith?—A. Yes, sir.

Q. And did it not bring there a considerable amount of business in addition to the local business?—A. Yes, sir.

Q. I will ask you if there is not every fall, and particularly before that road was built through there, an immense emigration from the Northwestern States down through that Indian country to Texas?—A. Yes, sir; and from Texas back.

Q. I will ask you if that is not a source of crime also—their transit through that country?—A. Yes, sir. In traveling through that country, of course, there are a great many parties who make their living by stealing. The movers are generally "on the make," and they like to have a few more head of cattle when they leave than they had when they first started, and, of course, if an opportunity offers they take a few more head along. All this increases, of course, the number of cases before the court.

Q. Will you tell the committee, as far as you know, how many forts there are in that Indian country?—A. I only know of three. Only two are occupied—Fort Sill and Fort Gibson.

Q. State to the committee if a large amount of business does not come from those forts, injuries perpetrated by soldiers upon citizens.—A. Yes, sir; there is considerable business in that court from Fort Sill.

Q. Did you not have a great many soldiers to try in that court for offenses committed upon citizens by them in the country?—A. Yes, sir; and for offenses committed by soldiers upon soldiers; a great number of witnesses came in those cases.

Q. You state that there is a large amount of business in the court there growing out of difficulties between soldiers and citizens; do the soldiers ever murder any citizens?—A. I have known of some cases; but I could not designate them as a large number of cases. I know there have been some cases of that kind brought there. I remember four distinctly.

Q. Are you generally in attendance at the meetings of the court during the time of meeting at Fort Smith?—A. Pretty nearly all the time.

Q. Are there not a large number of soldiers as witnesses and parties there?—A. Yes, sir.

Q. I will ask you if there was not a number of cases brought there where the difficulties occurred between soldiers outside of the forts?—A. Yes, sir.

Q. And all this about which you have testified has nothing whatever to do with what you call the local business of the country?—A. What do you call local business?

Q. I mean this: these four cases that you say you remember distinctly, are they separate and distinct from the amount of business that grows up local to the country?—A. Yes, sir, they are.

By the CHAIRMAN:

Q. Were you ever given a list of warrants and requested by Mr. Britton to swear to them, in regard to *posse-comitatus* accounts?—A. No, sir; I was once given a list by another man; but I was never given it by Mr. Britton.

Q. Who were you given it by?—A. By Mr. Fitzhenry.

Q. What sort of accounts were they?—A. There was no account about it. Mr. Fitzhenry approached me one day, I think it was in May, 1871, just after Mr. Roots had been succeeded by Mr. Britton, and I had



been appointed deputy by Mr. Britton, and he represented to me that Mr. Britton was in trouble, and that he had always been a friend of mine and wanted my assistance. I told him that anything I could do for Mr. Britton I would do. He then left me and the next day he came back and brought me a list in pencil of a number of *posse-comitatus* accounts that he wanted me to go before the grand jury and testify that I had these parties with me. I did not tell him at that time whether I would or would not go before the grand jury; but I had taken good care to get a trip out in the Indian country, and never went before it.

Q. You were asked to swear to the accounts of posses that you never had?—A. Yes, sir; by Mr. Fitzhenry.

Q. Had you ever any talk about this matter in the presence of a Dr. Roland?—A. A man would have been very foolish at that time to have any talk in the presence of Dr. Roland; for he was there, as I understood it, as a United States detective.

Q. And you never had a talk with Mr. Britton about these accounts when Dr. Roland came along, and Mr. Britton told you to say nothing about it?—A. After I got this paper I met Mr. Britton on the street and showed it to him, and he said: "Don't show that on the street." That was near Mr. Messler's, and while the grand jury was in session.

Q. Whose handwriting was it in?—A. I could not swear positively as to that. I have seen a great deal of Mr. Donnelly's handwriting, and it looked to me like his.

Q. Do you know the amount of the accounts?—A. I do not. It was merely a memorandum to refresh my memory when I would go before the grand jury.

Q. Then you do not know that any other deputies requested you to swear to any such list?—A. I know what I heard.

Q. No party in your presence was ever requested to swear to any such list?—A. No, sir.

Q. You say that Mr. Britton told you not to show it there?—A. I approached him on the street one day and pulled out of my pocket the list, and asked him to explain himself, and he said, "Don't show that here."

Q. Was there any one present at the time?—A. I do not know whether there was or not.

Q. Did he ask you to swear to it or not to swear to it?—A. All the talk on that subject I had was with Mr. Fitzhenry. Where he first approached me was on Washington street, near the post-office.

By Mr. SPEER:

Q. The grand jury at that time had charges before them against Mr. Britton?—A. That was my understanding. They were investigating in regard to the charges of the marshal's office.

Q. And one of those charges was that a large number of fraudulent or fictitious names had been returned by deputy marshals as *posses comitatus*?—A. Yes, sir; that was my understanding.

Q. When Mr. Fitzhenry brought you this list of names, in whose handwriting was it?—A. Well, as I tell you, I have seen a great deal of Mr. Donnelly's handwriting, and it looked to me like his.

Q. Who was Mr. Donnelly?—A. He was chief clerk in the marshal's office.

Q. How many names were on the list?—A. That I do not remember.

Q. About how many?—A. I could not tell you.

By Mr. DURHAM:

Q. Look at that, and see if that is the list which was given you, (handing list to witness?)—A. No, sir; this is not the list.

Q. About how many names were on the list?—A. I do not know. I returned some *non est* writs.

Q. Were the names of the persons on that list known to you?—A. No, sir.

Q. What request was made of you when the list was handed you? What was the substance of the words used?—A. Well, he said here was the list of *posses* that I must swear that I had when I went before the grand jury.

Q. Had you been subpoenaed before the grand jury?—A. No, sir; if I had been I could not have left.

Q. How did he know you were going before the grand jury?—A. It is a very easy matter when one is in constant attendance before the court to get out a subpoena for any one that is wanted.

Q. How long after this was it that Mr. Britton told you not to show it on the street?—A. I think it was the next day.

Q. What did you want to show it to Britton for?—A. I did not understand it exactly, and I wanted to understand it better.

Q. And how did you come to understand it?—A. I understood it myself.

Q. Why did you want to show it to Mr. Britton?—A. I wanted to know what he would say about it.

Q. And he told you to put it up; he did not want you to show it on the street?—A. Yes, sir.

Q. Did you ever go back to him about it afterward?—A. No, sir.

Q. You left purposely, did you?—A. I had business in the Indian country; I had to go and arrest some one who stole a pair of horses and a wagon.

Q. Had you any talk with Mr. Britton when you came back?—A. No, sir.

Q. Did you tell him you were going away?—A. No, sir. Mr. Britton had a rule that, when we were going out on a trip, we would have to tell him we were going. I called at the office for that purpose, but did not see him, but I saw Mr. Donnelly, the chief clerk, and he told me I would have to go before the grand jury the next morning.

Q. Had you any talk with Mr. Donnelly afterward, or with the person who gave you the list?—A. No, sir.

Q. It did not offend you in any way that he requested you to swear to those fictitious persons, did it?—A. It did not offend me for the reason that I did not intend to do it. I did not propose to make any enemies there. I proposed to glide along and keep myself clear of any such thing as that, and at the same time be friends with all.

Q. Did you not resent it, that he wanted you to commit perjury?—A. No, sir.

Q. Was it not common talk there that you did not take any offense at it?—A. I do not know anything about that. I know that I did not swear to it.

Q. Do you now remember anybody that was on the list given to you?—A. No, sir. I was trying to remember the names of the *non est* writs that I returned, but I cannot do that.

Q. Do you know whether there was any pay ever drawn on those or not?—A. I do not.

Q. You are not able now to give one single name that was on that list?—A. I thought for a long time that I had the list, but I find that I have not.

Q. You say you went off to arrest some one that stole a pair of horses

and a wagon. Who suggested that to you?—A. Mr. Burn, the man that saw the property taken. He lived at Fort Smith.

Q. When did he first speak to you about it?—A. As it happened, this thing came up about the same time.

Q. How long did it take you to make the trip?—A. It took me some ten days.

Q. And he made the application to you about the time that you had been notified to go before the grand jury, and you preferred to go into the Indian country rather than going before the grand jury?—A. Yes, sir.

Q. Did you report to Mr. Roots before going away?—A. Mr. Roots was not in the office, and I reported to Mr. Donnelly, the chief clerk, and he said I would have to go before the grand jury the next morning.

By the CHAIRMAN:

Q. And you say you never went before the grand jury, as requested?—A. Yes, sir.

Re-examined by Judge ROBINSON:

Q. Did you ever have any conversation with Mr. Fitzhenry in the presence of Mr. Britton?—A. No, sir.

Q. Did you ever have any conversation with Mr. Britton beyond that stated by you immediately before showing him the paper on the street?—A. No, sir.

Q. When Mr. Donnelly told you that you would have to go before the grand jury in the morning, had Mr. Donnelly been Mr. Britton's chief clerk?—A. Yes, sir.

Q. It was wholly, then, upon your own motion that you did not go before the grand jury?—A. Yes, sir.

Mr. WHITNEY recalled:

By Mr. DURHAM:

Q. Something was said about exceeding your authority in making the investigation. Examine that paper, and say whether or not that is a copy of your letter from the Attorney-General on the subject. (Handing paper to witness.)—A. Yes, sir.

The letter of instructions is as follows:

DEPARTMENT OF JUSTICE, *Washington, D. C., June 11, 1873.*

SIR: Having been detailed by Colonel Whitely, chief of the secret service division, to proceed, under directions of this Department, to the western district of Arkansas, for the purpose of collecting all outstanding claims against the Government, arising during the administration of the office of United States marshal of that district, by William A. Britton, esq., I have to request that you will proceed to Fort Smith with as little delay as possible, and advertise in such number of newspapers as you may deem proper, your presence and the purpose for which you are there, and request all parties having claims of the character above referred to, to present them on or before the — proximo.

You will scrutinize all claims presented, and when you find them in the hands of third parties, you will ascertain the amounts they have paid to the original holders for them, and indorse on each claim the amount so paid.

I have learned that in reference to the accounts of deputy-marshals, that it has been the practice of dating the warrants back so as to enable these deputies to draw more per diems than they are properly entitled to. I wish this matter thoroughly investigated, and whenever you can learn that such a practice has obtained, you will endeavor to find out what the proper date of the warrant should be, and indorse it on the claim.

As to the certificates issued by the marshal for the fees of witnesses and jurors and *posse comitatus*, &c., you will see that each certificate bears on its face the name of the

case in which it is alleged the witness, juror, or marshal serves; and when the name of the cause cannot be given, you will decline to receive the certificate.

You will inquire particularly into jailor's bills for keeping prisoners, for repairing jail, furnishing stationery, and all similar claims.

Let your investigations in regard to this matter be as thorough and detailed as possible. I wish you to investigate generally, any and all matters that may arise, which, in your opinion need looking into.

You will from time to time forward the claims you have collected to this Department, with your report thereon.

You will confer with the present marshal, who, I presume, will allow you a desk and office room in his office.

Very respectfully,

GEO. H. WILLIAMS,  
*Attorney-General.*

L. B. WHITNEY, Esq.  
A true copy.

The committee here adjourned to 2 o'clock p. m.

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WASHINGTON, D. C., April 16, 1874.

Present: Messrs. Sener, chairman, Durham, and Sheats.

JAS. O. CHURCHILL, clerk of the western district of Arkansas, recalled and examined.

By the CHAIRMAN:

Question. Have you the statement which you promised to produce to this committee?—Answer. I have it here. I think the statement is as nearly accurate as it is possible to make one embracing so many calculations.

Q. You believe it to be approximately correct?—A. Yes, sir; it embraces the number of days, in each term, during the years 1871, 1872, and 1873; the compensation allowed the grand jurors for each term; the compensation allowed petit jurors; the number of witnesses in attendance at each term; the compensation allowed them; the amount received by the clerk from the United States, which I see is \$5 more than the Treasury Department books show; the number of civil cases and their disposition; the number of criminal cases, embracing the number of persons, there being no other way of showing it properly, as in many cases there would be several parties, one of whom might be tried and convicted, and the others acquitted or the cause continued as to them; the number of persons acquitted; the number convicted; the number of recognizances forfeited; the number *not proessed*; the number continued from term to term; the number abated on account of death; the number not arrested; the number pardoned, and the number of contempt cases and their disposition. I have also added to the statement some remarks, giving the reason of the action had, about which you may desire to inquire more fully. At the May term, 1872, there were some fifty cases *not proessed*, and in my remarks I show the cause of it. Twenty-two of these were cases against Creek negroes; their status had not previously been determined, but it was decided at that term that they were subject to the Creek laws, and their cases were all *not proessed* at that term of court.

Q. What was the character of the offenses charged against them?—A. Assault with intent to kill; selling whisky; introducing whisky; murder, and the like. The nollies entered in 1871, 1872, and 1873 were many of them entered on account of the absence of witnesses. They

were, most of them, of a migratory class connected with the Missouri, Kansas, and Texas Railroad, which was constructed during that time. Many cases were presented to the grand jury that do not appear in this statement; this appertains only to the court proper. There were also many cases presented to the grand jury that were ignored after being continued for one term for the same reason, namely, the witnesses not appearing. There were a great many Irishmen and railroad men of other nationalities working on this road, and they were constantly getting into trouble; many of them getting into fights with deadly weapons; starting whisky-shops without license; shooting and killing, and committing many different offenses. Numbers were arrested and taken before the commissioner, and a clear case made out against them, and they were committed to jail or gave bail. The witnesses, however, had to be released on their own recognizance. We had no jail that could hold a thousand witnesses; nor is there any law allowing such commitment, except in special cases, and commissioners were obliged to take their personal recognizances to appear at the following term. When the case was called by the grand jury, in a great many instances, the witnesses would not appear, and the cases would be continued to the next term, when, if they did not appear, the grand jury would have to ignore the charge. My fees, during the year 1873, appear to be \$2,584.05, which is disproportionate with the amount of business transacted. The reason of that is, that the November term of 1872 extended into the year 1873, and most of the business of that term was during that year, (1873.) My statement is, for the calendar year, from January 1 to December 31, at least \$2,200, or \$2,300 of the \$9,000, was paid out of the clerk-hire, reducing it down to about \$7,000. I have drawn, as shown by the books of the Treasury, from July 7, 1869, to this date, (April 16, 1874,) as United States commissioner, the sum of \$7,058.05.

Q. How much labor are you allowed to employ under the law?—A. All I am willing to pay for. It comes out of my own pocket if the fees are less than \$3,500 a year; if they are over that, they probably would give me an allowance. If I received \$4,000, the Department would no doubt allow me \$500 for a clerk out of the \$3,500. I can spend as much as I please. I pay one of my clerks \$60 a month, and have had him for nearly two years.

Q. Where does your profit come in?—A. I am losing money by it now every day, as there is no business being done. The bankruptcy cases since 1867, both voluntary and involuntary, do not exceed 110. The clerks' fees vary from \$18 to \$33, and there are but three or four cases that exceed that amount. In fully thirty of these cases the clerks, marshals, and printers' fees have not been paid to this date. They are due from the parties now. They have not received their final discharge. Fifty-five of these cases were filed with my predecessor. The practice in our court is, when a party files a petition he gives to the clerk \$100, fifty of which he at once pays over to the register, and the other fifty is divided among the marshal, the printer, the clerk, and the assignee; and in many cases there were but \$60 deposited.

Q. Is not that an arbitrary practice?—A. No, sir. It is a custom. Fifty dollars is paid to the register. The clerk and the marshal are not required to lift a hand unless they are paid for it, nor should they be, as they never would be paid in many cases if they did. There is another matter to which I desire to call your attention. There has been something said about interlineations in the record, and I wish to explain what was the practice of Judge Caldwell, who is considered by the bar generally to be one of our ablest district judges, in regard to the record,

which has been the practice ever since. The record of the proceedings of the day is made up by my deputy or myself in the office. This record is usually read in court the next morning, and it very often occurs that the attorney on one side or the other wants it more explicit or specific, or more fully set forth, and the only way it can be done is by interlining. In the case of H. B. Claflin & Co., that has been alluded to, the record was made up by my clerk perfectly correct, and in accordance with the minutes, which is as follows: "Now on this day come the defendants, by their attorneys, Messrs. Duval & Cravens, and file their motion to suspend the order granting a new trial herein for reasons therein stated," just exactly in compliance with the order. The next morning the attorneys asked that the record be made more explicit, and here are the interlineations: "and file their substituted motion" "in lieu of one filed 19th of May, 1872." This interlineation was made in open court at the request of the attorneys and by consent of the court; and most of these interlineations were made in the same way. In the case of Frank Nash the entry is not an interlineation. It is a full entry, made in too small a space.

Q. Do you know what is the amount of the costs upon warrants issued by you as commissioner that never reached the court?—A. No, sir.

Q. Have you any data by which you can furnish us that information?—A. No, sir. I cannot. They are filed with the different commissioners.

Q. I refer to those issued by you as commissioner.—A. No, sir.

Q. How many commissioners are there?—A. I could not say. There are three who do most of the business. There are five or six who do but little.

Q. All at Fort Smith?—A. No, sir.

Q. How many reside in Fort Smith?—A. Colonel Brooks and myself at Fort Smith; Mr. Babcock is at Fort Gibson; we three do most of the business. Mr. Harrison resides at Fayetteville; he does but little business. There is one other in the Indian country; he has done no business at all, and there are three or more in the southern part of the State. Mr. Turner, of Van Buren, is a commissioner; he has done no business.

Q. In this statement you have exhibited here, do you include all the costs except the fees of deputy marshals and *posse comitatus*?—A. I will have to think about that; there may be some incidental fees not included.

Q. Are there any other fees except those of deputy marshals and *posse comitatus* not included in this statement except some incidental matters?—A. Bailiffs are not included.

Q. They are paid by the marshal?—A. Yes, sir.

Q. Not paid by order of the court?—A. No, sir. I did enter an order for the payment of bailiffs upon the record, but I was notified by the Department that it was disallowed in my account, and that it was unauthorized. Since then I never have made any such entry. They are paid \$2 a day by statute.

Q. How many bailiffs are there?—A. Five bailiffs and a crier, I believe.

Q. What use have you for that number of bailiffs?—A. I am speaking of what the law is; that is the number allowed by statute.

Q. What is the duty of a bailiff?—A. He takes charge of the prisoners; takes charge of grand and petit juries. I have seen three juries out at a time, each in charge of a bailiff. They keep order in court-room, escort prisoners from the box to the jail, make fires in the court-room, &c.

Q. There are, then, no other expenses except deputy marshals and *posse comitatus*, except what you have named?—A. None that I think of now.



By Mr. ROBINSON :

Q. During Mr. Britton's administration was there not a large expense incurred by the burning down of the United States court-house, one having to be fitted up, and also a jail for the prisoners?—A. Yes, sir. There are other expenses that I now recall. The marshal has to pay for the feeding of the prisoners in the penitentiary at Little Rock, pay for the guards, and keep the jail in proper condition at Fort Smith, pay the physician, and so forth. He pays 75 cents a day for feeding the prisoners at Little Rock. That is what the keeper is allowed.

By Mr. SENER :

Q. The marshal has to pay that, too?—A. Yes, sir. We had one man sentenced there for fifteen years, and there are many, I think, in there for five years. Their expenses for board, clothing, and medical attendance are chargeable to this district.

By Mr. ROBINSON :

Q. Do you remember that there was a court-house, clerk's office, marshal's office; grand-jury room, petit-jury room, and jail for the prisoners fixed up in consequence of the burning down of the old court-house during Mr. Britton's administration?—A. Yes, sir. That was on the 14th of November, 1872.

Q. That was a rented building?—A. Yes, sir; the one that was destroyed by fire.

Q. Didn't it have to be lighted up and fitted up and grates fixed in it?—A. Yes, sir.

By Mr. SENER :

Q. Do you mean to include in your statement in regard to the expenses in the western district of Arkansas a large number of writs that have been issued by commissioners, and that were discharged, and not returned to you?—A. No, sir; the statement filed shows none of these expenses.

Q. Who has done the greater portion of the business there, you or Brooks?—A. I suppose Colonel Brooks has done more than I have. I could not take cases during term of court.

Q. Do you know how many cases you have tried during the last three years that have not gone to court?—A. I could not say.

Q. As many as one hundred?—A. No, sir; I do not think I have had that number.

By Mr. ROBINSON :

Q. When you were clerk of the court, in term-time were you not engaged principally in the business of the court?—A. Yes, sir; I have stated that I never take a case during term-time if I can consistently avoid it.

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WASHINGTON, D. C., *April 20, 1874.*

Present: Messrs. Sener, chairman, Williams, and Sheats.

C. W. PIERCE, physician, residing at Fort Smith, Ark., sworn and examined.

By the CHAIRMAN :

Question. How long have you resided at Fort Smith?—Answer. Eight years.

Q. We are investigating here the expenditures in the western district of Arkansas from the 1st of July, 1870, to the present time. Do you know of any improper expenditures on the part of the clerks of the marshal's office there?—A. I believe I do not. I have been in the employ of the marshals there—the last three of them—as physician to the United States jail.

Q. You have been summoned here before the Judiciary Committee?—A. Yes, sir.

Q. You have been a resident of Fort Smith during the entire time, and you know nothing of improper *posse-comitatus* accounts, or of deputy marshals being returned as having served process which they had not served?—A. Not to my knowledge.

Q. You know nothing about any improper expenditures in that district by Marshals Britton, Sarber, or Roots?—A. No, sir; there are many rumors, but of my personal knowledge I know nothing.

NOTE.—This witness, who was in attendance upon the Judiciary Committee, was summoned at the repeated and urgent request of Archibald Young, who had been acting as substitute United States attorney for the western district of Arkansas, and wrote the committee that he could produce witnesses to prove the "most foul corruption ever perpetrated on any country."

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WASHINGTON, D. C., April 22, 1874.

Present: The chairman, and Messrs. Durham and Williams.

JAMES W. DONNELLY sworn and examined.

By the CHAIRMAN:

Question. State your name, residence, and occupation.—Answer. James W. Donnelly; age, 31; residence, Fort Smith, Ark. My occupation has been clerk.

Q. How long have you been a resident of Fort Smith?—A. Since 1866.

Q. You are now in Washington on a summons from the Judiciary Committee of this House?—A. Yes, sir.

Q. Since the 1st of July, 1870, have you been connected in any way with the marshal's office for the western district of Arkansas? If yea, state what your relation has been to the marshal or his office.—A. I was chief clerk for Mr. Britton up to his removal the last time, and I was also clerk for Mr. Roots.

Q. During Mr. Britton's first term were you his chief clerk?—A. Yes, sir.

Q. Do you know of any improper expenditures of the public funds in the western district of Arkansas during the period of service of those marshals? Answer first as to Marshal Britton's term of office.—A. No, sir; I do not.

Q. Do you know of any returns made for mileage in which a greater amount of mileage was charged or allowed than was actually traveled by the deputy marshals?—A. No, sir; I do not.

Q. Do you know of any *posse comitatus* who were charged for and never rendered the service?—A. No, sir.

Q. Do you know of any deputy marshals who were returned as having rendered service, but who had never rendered service?—A. I do not.

Q. Did you make out the accounts of William A. Britton as marshal?—A. Yes, sir.

Q. Did you make out all those accounts?—A. Well, I received the returns of the deputies and handed them over to the clerks in the office to be made out, and supervised the making up of the accounts to forward to Washington.

Q. And you are prepared to say that all these accounts were properly made out?—A. Yes, sir.

Q. And were for the exact amount of the services performed by the marshals and the *posse comitatus*?—A. As reported by them to me.

Q. And, so far as your knowledge or information goes, they were correct in all respects?—A. Yes, sir.

Q. Do you know anything of the antedating of the writs?—A. I understood that some writs were antedated.

Q. I do not want your understanding; I want your knowledge.—A. I never saw a writ antedated.

Q. You have no reason to believe that writs were antedated?—A. O! I have reason to believe that there were writs antedated—reason from rumor; of my own knowledge I do not know.

Q. Do you not know a single instance in which writs were antedated?—A. No, sir; I cannot say that I do.

Q. Were you present in Fort Smith when Mr. Whitney, the detective of the Department of Justice, was there investigating the condition of the western district of Arkansas with reference to expenditures?—A. During his first visit I was there all the time; the second time I was in Western Illinois part of the time.

Q. Do you know anything of deputy marshals getting up cases in order to obtain fees?—A. No, sir; I do not.

Q. You know nothing of deputy marshals increasing their fees by overcharges for mileage?—A. No.

Q. Or in charging for *posse comitatus* never employed?—A. No, sir.

Q. Or in getting warrants antedated, in order to put in bills for services not rendered?—A. Nothing of my own knowledge; I have invariably taken their statements except only when, in my opinion, there was too much charged, and I have very often cut it down.

Q. Did you ever cut down any?—A. Yes, sir; often.

Q. Was there any agreement between the marshal and his deputies that the marshal should retain one-third of all the fees received by the deputy marshals?—A. Yes, sir; there was such an understanding.

Q. Do you know of any failure on the part of the marshal to pay the expenditures of the courts, fees for witnesses, and jurors?—A. Not when he had money.

Q. Do you know, when he did not have money, that that was the case?—A. Witnesses and jurors, I believe, with one or two exceptions, have always received their pay in United States currency.

Q. Promptly?—A. Promptly, immediately on their discharge.

Q. Do you know of due-bills being issued to deputy marshals and *posse comitatus*?—A. Yes, sir.

Q. And what they were quoted for?—A. No, sir; I do not know what they were quoted for; I do not know what they sold for in the market.

Q. Do you know how many deputy marshals were said to have resided in Fort Smith?—A. During Marshal Britton's service quite a large number; I could not say how many.

Q. About how many?—A. At one time we had quite a large number.

Q. Mr. Whitney says 249; do you know whether that was about it?—

A. I do not know how he arrived at that.

Q. Was that too much or too little?—A. At one time it was not too much.

Q. Of those, as reported by Mr. Whitney, only 46 were residents of the place.—A. I could not say how many were residents of the place.

Q. It is charged that one deputy brought in several prisoners at a time, and that then Marshal Britton got other persons to make warrants for them, and thus drew pay, mileage, and subsistence for them; do you know anything of that charge?—A. Nothing of my own knowledge.

Q. Do you believe that to be true or false?—A. I believe it to be false; there may be truth in some parts of it.

Q. Will you state in what parts you think it true and what parts false?—A. I remember in one or two instances that the deputies sent for certain men to come out there, and they went out and made a trip there. What case it is I do not know; that is all I can answer in that case.

Q. That is no answer at all.—A. That is the best I can do, sir.

Q. You will have to answer it one way or the other.—A. The deputy that took the writs, that started out with the writs, found that he did not have assistance enough, and sent in to Fort Smith for some deputy or deputies to come out and assist him in making the arrests. This deputy had been gone some time, and this party that he sent for went out and assisted in making the arrest, and I believe received the same compensation that the first one did.

Q. Two men received pay for doing one service?—A. No, sir; not one service; there were several prisoners; there were several writs. I cannot swear that I know about the truth or falsity of it. If that explanation of mine cannot be received, that is all I know about it.

Q. Mr. Whitney reports that it is ascertained that persons are arrested by special marshals, without precept or process of any kind, at long distances from Fort Smith; that upon their arrival at the latter place no charges were preferred against them, but that they were simply plundered of their property and allowed to go; do you know anything of that?—A. I believe it to be false; I know of no such case.

Q. Do you know anything of deputy marshals being in the habit of loaning their commissions?—A. Nothing, of my own personal knowledge.

Q. Did you state to Mr. Whitney that all the money sent for the November term of 1872 had been expended for court purposes, and that you had some splendid opportunities to make money?—A. I told him, I presume, that the money had been expended.

Q. Did you tell him that you had had some splendid opportunities to make money since you had been in the office?—A. No, sir.

Q. Did you tell him that at the commencement of the term of the court Scott and Lanigan had proposed to you, Donnelly, that if you would issue certificates or checks to witnesses or others, that they, Scott and Lanigan, would buy them up and divide the profits with you, and that this you refused to do?—A. I refused to do it. I told him that parties had made such a proposition to me, but I mentioned no names.

Q. You did tell him that?—A. I told him that parties had made such propositions.

Q. Were they the parties?—A. No, sir; they were not.

Q. Who were the parties?—A. I cannot recall their names. They were parties that were holding a lot of checks—parties I had no intercourse with—met me in the street, and requested me to go into this proposition.

Q. You mean to say that parties made such propositions as this to you, and you do not recollect their names?—A. Yes, sir; I do.

Q. And you say you did not tell Whitney that Scott and Lanigan made such propositions to you?—A. No, sir; I mentioned no names to him.

Q. Did you issue such checks?—A. Yes, sir.

Q. Did Scott and Lanigan buy them up?—Yes, sir.

Q. And yet you did not tell Mr. Whitney that Scott and Lanigan made such a proposition to you?—A. No, sir.

Q. Did Mr. Whitney ask you to furnish a statement of what had been received from the Department at Washington, and how the same had been expended?—A. Yes, sir.

Q. Did you make such a statement?—A. I believe I did.

Q. Is this your handwriting? [Letter attached to Exhibit M here shown witness.]-A. I believe it is.

Q. That is the statement you rendered?—A. Yes, sir.

Q. Is this the only interview you ever had with Mr. Whitney? You were not there when he made the last investigation?—A. I was there part of the time.

Q. Did you have any interview during that last investigation?—A. Yes, sir.

Q. Did you give him any information?—A. No, sir.

Q. Furnish him any facilities?—A. I was not called upon. I offered to do what I could. On the first interview I had with him I told him I would wait his wish there, and any time he wanted to see me he could send for me. I waited a week or ten days for him to send for me.

Q. So far as you have been testifying you have referred entirely to Marshal Britton?—A. Yes, sir.

Cross-examined by Mr. ROBINSON:

Q. Was there great excitement in the State of Arkansas, in the year 1872, about the State and national elections?—A. Yes, sir.

Q. Was there in the public mind, at your place, Fort Smith, an apprehension of collision between the political parties?—A. Yes, sir.

Q. Was there a large number of deputy marshals appointed for the purpose of keeping the public peace at the election, and no other purpose?—A. There was.

Q. State, if you can, something like the approximate number in the western district of Arkansas.—A. In the district there were fully three hundred men appointed for that purpose.

Q. About how many would you state, as near as you can, were appointed at Fort Smith for the purpose?—A. We had, I presume, fifty men appointed for that purpose there, at Fort Smith, in addition to the regular force there.

Q. I would ask you if any of that large number, about which you have testified, that were appointed for the purpose of preserving peace at the elections, have returned any accounts against the United States Government?—A. No, sir.

Q. Then, when your attention is called to a large number of deputy marshals, you include them in that number?—A. I do.

Q. Were you present, the night before the election, at a public meeting held in the United States court-room, on Washington street?—A. I was.

Q. Where there was a large number of persons commissioned to aid in the preservation of peace during that night?—A. There was.

Q. Was any charge made against the Government for that service?—  
A. No, sir.

Q. Do you know whether any portion of the posse fees goes to the marshal?—A. No, sir.

Q. How are they paid?—A. The *posse comitatus* are paid \$3 a day.

Q. Was there any agreement between the marshal and the posses that he was to receive any portion of their fees?—A. No, sir.

Q. You were interrogated in your examination-in-chief as to excessive mileage? Do you know of any accounts that were returned to the Government, in which excessive mileage was charged?—A. I do not. I received the reports entirely of the deputies.

Q. I will ask you if you were the chief managing clerk in the office?—  
A. Yes, sir.

Q. Did you make up the accounts—abstracts, accounts current, and so forth?—A. Yes, sir. I did my share of the work—had clerks, of course, to assist me. I supervised the work.

Q. Then you state that, as far as you know, there were not returned to the Government any cases in which there was excessive mileage?—  
A. No, sir.

Q. Are you acquainted with the distances in that country?—A. I am not. I have never been out but once, and no further than Gibson station, Muskoga.

Q. How does the marshal of the western district of Arkansas obtain his remuneration for his services?—A. It is a matter that is left entirely to the marshal himself, but he cannot let the deputies receive more than three-fourths of their fees.

Q. And out of that residue he gets his remuneration?—A. Yes, sir.

Q. And if there is any excess over \$6,000 he must pay it into the Treasury of the United States?—A. Yes, sir.

Q. Were you, in your capacity as chief clerk, the general disburser of the public moneys that were placed there for the purpose of paying the expenses of the western district of Arkansas at Fort Smith?—A. Yes, sir. I was appointed for that purpose by Mr. Britton.

Q. I will ask you if at any time when there was public money there for the purpose of paying the expenses of the court, the fees of jurors, witnesses, deputy marshals or any other parties were refused to be paid?—A. Never, when we had money on hand.

Q. Then you state they were always paid when there was money?—  
A. Yes, sir.

Q. Was the reason of the issuance of due-bills to different parties for their fees that there was no money to pay them?—A. That was the case.

Q. Would they have been issued by you or by the marshal's office, if there had been money there to pay them?—A. No, sir.

Q. Did a number of persons besides Lanigan and Scott, to your own knowledge, purchase those due-bills—that is, that you can remember?—A. I cannot say, because nearly every citizen in town was interested in those due-bills.

Q. Boarding-house-keepers?—A. Yes, sir.

Q. Lawyers?—A. Yes, sir; Mr. Johnson; R. M. Johnson purchased tickets to my own personal knowledge.

By the CHAIRMAN:

Q. State who R. M. Johnson is.—A. A citizen of Fort Smith; he is a gentleman of elegant leisure. He is from Fort Smith.



Q. Born there?—A. He was not born there, but has lived there for the past forty years.

Q. Did not come in on the tide of the war?—A. No, sir.

By Mr. ROBINSON:

Q. Have not you paid to me a considerable amount of money for those due-bills?—A. I remember paying you some money, but I cannot say whether it was for due-bills or not.

Q. Do you remember paying me considerable sums of money at different times?—A. Yes, sir.

Q. I will ask you if you paid to A. M. Hawkins a considerable sum of money?—A. I believe I did pay him at one time something between six and seven hundred dollars for due-bills.

Q. Did you pay to Mark Jackson a considerable sum for due-bills?—A. I cannot say.

Q. Did you pay to Mr. Hook a considerable sum for due bills?—A. Yes, sir; I paid him once.

Q. Have you paid to a great many ladies about the place that keep boarding-houses for those due-bills?—A. I cannot say that I have paid any ladies at all.

Q. Did you pay their husbands, then?—A. I presume I did. There were so many that I cannot remember their names.

By the CHAIRMAN:

Q. Did the judge ever sign in blank any of those certificates of pay on the Treasury?—A. For Colonel Britton, he did not, sir.

Q. He supervised all the accounts before he signed them?—A. Yes, sir.

Q. Will you be kind enough to tell us about Logan H. Roots's administration?—A. He spent \$320,000 in one year.

Q. You were his chief clerk?—A. Yes, sir.

Q. Everything lovely in that line, too?—A. I am ready to answer any questions.

Q. Were all the expenditures of the marshal's office for that year justified by law?—A. Yes, sir.

Q. Were the claims from time to time satisfied and discharged by Mr. Roots supported by sufficient vouchers establishing their justice as to character and amount?—A. They were, to the best of my knowledge.

Q. Have you any reason to believe that any claims so satisfied were false and fraudulent?—A. I have no reason to believe that they were.

Q. Do you know of any improper allowances to deputy marshals?—A. No, sir.

Q. Do you know of any deputy marshals returned as having rendered service, who did not render service?—A. No, sir; I do not.

Q. Do you know of any *posse comitatus* reported as having done service who did not render service?—A. Not from my own knowledge.

Q. Have you any reason to believe in your official capacity that such accounts were allowed?—A. No, sir; I do not believe that I have. I have sometimes had doubts, but at the same time I knew nothing about it.

Q. You were the confidential clerk of Mr. Roots as of Mr. Britton; do you mean to tell this committee that every single expenditure made by Logan H. Roots, every single account returned by him, every single voucher returned to the Treasury, were all proper and right, untainted by fraud in any way whatever?—A. To the best of my knowledge I believe so, sir.

Q. Did you know anything about the arrest, May, 1870, of Joseph Nipp and Johnson for introducing liquor into the Indian Territory?—A. No, sir; I cannot remember anything about arrests at all, there were so many.

Q. Did you ever hand a man by the name of Shoemaker a voucher reported for services rendered as *posse comitatus* in the arrest of Nipp and Johnson, and ask him to go before Frank Austin, clerk of Crawford County, and he would certify them?—A. No, sir, I did not.

Q. Was there ever any effort made to indict you and Brooks and Britton for conspiracy?—A. Yes, sir.

Q. What about that; what was the conspiracy?—A. There were a lot of *posse-comitatus* vouchers suspended here in the Treasury Department for examination. I received the information by a statement of differences that was forwarded to Mr. Britton, in which these vouchers were all referred to by the numbers that they bore on the abstracts, and I learned then that they were to be examined by the grand jury.

Q. Did you have any talk with a man by the name of Shoemaker about these matters?—A. I do not remember saying anything to him, with the exception of one time.

Q. When was that time?—A. Since I was notified that these vouchers were suspended for examination, having referred to them in the statement of differences, and knowing what they were, I immediately found out what deputies had made these returns, and made slips of them. I presume I handed one of those slips to Shoemaker and told him those vouchers were in his accounts, and that they were suspended for examination.

Q. Did you ask him to go before the grand jury and swear to that?—A. No, sir, I did not.

Q. Did the judge ever sign any of these returns to the Treasury in blank during Logan H. Roots's administration?—A. There was an account-current presented to me when I went to close up my accounts at one time. When it was, or what term of the court it was, I cannot say. It bore Judge Story's signature.

Q. It was handed to you and bore Judge Story's signature in blank?—A. Yes, sir.

Q. What was the amount of that account-current, to the best of your recollection?—A. I cannot say. I cannot remember the amount.

Q. Do you recollect whether it was one or ten thousand dollars?—A. It was a large amount.

Q. As much as \$20,000?—A. Yes, sir; I presume that much or more.

Q. Who filled that return up afterward?—A. I did.

Q. Did you swear to it before Story?—A. No, sir.

Q. And yet the certificate that was appended to it certified that you did?—A. No; I had no certificates of my own at all. Our vouchers are placed upon abstracts, which run from No. 1 to No. 6, and each voucher is placed upon its proper abstract and there numbered, and the number carried forward to the voucher. After the vouchers are abstracted, we drop them and take up the abstracts and place them upon the account-current, opposite the proper number. The account-current then goes to the judge with the vouchers, if he requires them, or without them, and he examines and approves.

Q. Could you, if you were to see this account-current at the Treasury, identify it?—A. No, sir.

Q. You recollect no single entry upon it that would enable you to detect it?—A. No, sir.

Q. Have you no recollection at all of the amount except that it was a very large amount?—A. It was a large amount. They were all large amounts—all our accounts.

Q. Suppose as much as \$50,000?—A. It might not have been that much.

Q. But it was a very large amount?—A. A large amount.

Q. Was that the only one you ever saw signed in blank?—A. That is the only one.

Q. Did you ever hear any explanation why Judge Story did so sign it in blank?—A. I believe Judge Story had just adjourned court, or else he had gone to Wisconsin. I made up my abstracts, and as I got through and was ready to make up my account-current, I believe I said to Colonel Roots, "It is a pity Judge Story is away; our accounts will have to go to Wisconsin, or wherever he is, to be proved." Mr. Roots said, "Well, here is something that the judge gave me," or "that I received from the judge, and you will take it and make it up." He handed it me, or else directed me to go to the safe and get it, and I received this blank, signed by Judge Story.

Q. Is the signature, "examined and approved" on it?—A. "Examined and approved" is on the voucher.

Q. You know that to have been the genuine signature of Judge Story?—A. Yes, sir.

Q. From comparison and a general knowledge of his handwriting?—A. Yes, sir.

Q. You made up all the rest of the accounts-current?—A. Yes, sir.

Q. That is the only one that was signed in blank?—A. That is the only one I ever saw. I am satisfied it is the only one he ever did.

Q. Could not you tell us what year it was?—A. It was during the administration of Colonel Roots. That was in 1871 to 1872.

Q. What are your semi-annual terms?—A. May and November.

Q. It must have been one or the other?—A. I never taxed my memory with it.

Q. Cannot you determine whether it was just after he came into office or just before he went out?—A. It was soon after he came into office.

Q. November?—A. I presume it was between the November and May terms; that account, however, would get credit on the November term of the court. Accounts following after the term—for the six months following the term—go on as expenses of that term.

Q. It was an account-current?—A. Yes, sir.

Q. Did Judge Story usually examine those abstracts, or did he just sign whatever you presented to him? But first answer in respect to this particular case.—A. The vouchers, abstracts, nor anything else in this case, had never been out of my possession. I cannot swear that he did not.

Q. Can you swear that he did?—A. No, sir.

Q. To the best of your knowledge and belief do you believe he ever did?—A. No, sir.

By Judge DURHAM:

Q. Do you know that Judge Story ever saw those accounts?—A. No, sir, I do not.

Q. Well, were they not in your possession all the time?—A. Yes, sir, they were all in my possession, in bulk. A few of the vouchers may have been out in the hands of the other clerks, or of Colonel Roots, but the bulk of the vouchers were in my possession.

Q. If I understand you correctly, this certificate of approval was simply in blank, and his name signed to it?—A. Yes, sir.

Q. Do not you know that Judge Story never did examine those accounts?—A. I believe he never did; but I cannot swear to that. I do not know that he never did.

Q. If they were in your possession all the time, would you not have known it if he got them and examined them?—A. He might have come into my office in the evening.

Q. Were they in a safe?—A. Yes, sir.

Q. Did you have the key of it?—A. Yes, sir.

Q. You say Roots might have shown them to him?—A. Yes, sir.

Q. Did you ever hear Roots say that he had examined them?—A. No, sir.

Q. You had general custody and control of the papers?—A. Yes, sir.

Q. And you were in the habit of making these abstracts and the account-current?—A. Yes, sir.

By the CHAIRMAN :

Q. Did Story examine the other accounts?—A. Yes, sir; I believe he examined every other account but that.

Q. How long after Story went away before you saw this account-current signed in blank?—A. Might have been a week or ten days; it was fully a week.

Q. Could you have made up your account-current the day Judge Story left, by a little diligence?—A. Well, I cannot swear; I do not know; I cannot remember the day he left; I presume if it was pushed I could have done it.

Q. You kept your matters up pretty well, did you not?—A. Yes, sir.

Q. Did Judge Story ever refuse to sign any accounts that you made up?—A. I was trying to think; I cannot say how many times he did.

Q. On what ground did he usually refuse to sign these accounts?—A. Chiefly on the ground of informality.

Q. Did he ever suggest to you the making up of any account?—A. There was a deputy a year ago, I believe it was a little over a year ago, went out and arrested a man, I believe for murder, and he had no writ; he came in, brought the man into Fort Smith, and reported the case to me, and he had a writ dated the day he left Fort Smith, and asked me to make out his account. I made it out, and allowed him \$2 for services. He told me he could not accept that. I told him I knew he could not, but that was all a man could get on that writ. He went to Judge Story, and Judge Story ordered me to make up the account and give him services back to the day of the arrest. I refused to do it. I told him that I could not collect the money from Washington. He said he would order me to appear in court the next morning, and if I did not he would probably fine me for contempt. Finally he requested me to make up the account in the usual way, and send it to him, and he would send it on to Washington and see if it was allowed. He did so, I believe, and the amount was not allowed.

Q. What length of time did it cover by coming back?—A. Fifteen or twenty days, I think.

Q. Why did he take such a friendly interest in this man; do you know?—A. The impression I had in regard to it was that he put a stop to this dating back of writs, and I asked him then, "What is a deputy going to do for fees when he goes out, sees a horse stolen or a man murdered, arrests him, and brings him in without a writ; what is he going

to do?" "O, well," he says, "he can make an affidavit of the facts and send it forward to Washington and have it allowed." I told him I knew he could not do that, and when he ordered me to do this I supposed it was carrying out his intentions, as he declared it to be.

Q. What was your compensation as supervising clerk?—A. Two thousand dollars a year.

Q. Any perquisites?—A. No, sir; I had no perquisites at all.

Q. You got a certain salary?—A. Yes, sir.

Q. Do you know of any other cases in which Judge Story interfered with the making up of your accounts, either under Marshal Britton or Marshal Roots?—A. I cannot remember.

Q. Are you the chief clerk under Marshal Sarber?—A. No, sir; I have nothing to do with his office; I staid there four or five days showing his chief deputy around the office and explained the business to him, for which I received no compensation. I was in no capacity whatever.

By Judge DURHAM:

Q. About that account, I understood you to state that you thought the judge had been out of town several days, before your attention was called to that blank certificate; now, Mr. Donnelly, do not you know the fact that these accounts were made up after Judge Story had left that town and gone to Wisconsin, or wherever he did go?—A. The accounts were not made up; there was a good deal to be done; there was such a large number of them, and unless we worked late into the night we could not get our accounts up to a certain day; for instance, if the judge calls for them, we could not always be ready for him; the accounts were all made up and in abstract, which took several days, and then passed from there to the account-current; the account-current was not made up when Judge Story left.

Q. You are not prepared to say but what even some of the accounts themselves were made up after he left?—A. Some of the accounts themselves might have been made up.

Q. What is your best recollection now upon that subject?—A. I presume there were a few.

Q. Did you ever know this to occur, that where the account had been made up in the name of a particular party that it was refused, but you were told by the judge that if the account was made up in another man's name it would be allowed?—A. I believe I do, sir.

Q. State what it was, and, if that thing occurred more than once, how often did it occur; and if you can, give the amount?—A. I cannot give the amount; it is in the name of a deputy by the name of Johnson. An account was sent to Judge Story for his approval; that is, the account-current of vouchers. Upon looking them over he objected to this Johnson account, I believe, and said that he could not approve it. This I was informed and received from Colonel Roots; I was not present at all, and the account was withdrawn and handed back to Johnson, and I believe he got somebody that was with him at the time to swear to the account under his own name; who it was I do not say.

Q. You do not know in whose name the account was afterward made out?—A. No, sir; we were very much hurried, and I worked there till 3 o'clock that morning to get ready.

Q. Did you supervise those accounts, and do you know the change was made?—A. I did not know that it was the same account.

Q. Do you know that the judge, of your own personal knowledge, re-

fused to certify it in the name of the original party?—A. Not of my personal knowledge; I received this from Colonel Roots.

Q. He did, afterward, though, certify the account, after it had been changed in the name of the other party; that is, as you understand?—A. Yes, sir; I do not know that Judge Story knew that the account had been changed.

Q. Was the amount of any considerable size?—A. I do not think it amounted to more than \$200.

Q. Do you know of any other instance?—A. No, sir; I do not.

The committee adjourned to to-morrow at 10 o'clock.

WASHINGTON, D. C., *April 23, 1874.*

Present, Messrs. Williams, Durham, and Sheats.

JAMES W. DONNELLY further examined.

By Judge DURHAM:

Question. Have you examined that bundle, (pointing?)—Answer. Yes, sir.

Q. After having examined that, can you select the one that you referred to yesterday in your examination as having been signed in blank?

—A. I cannot.

Q. Have you examined that carefully to ascertain which was the one?

—A. Yes, sir; I went over them one or two times, and I cannot identify them.

Q. Neither by date nor the amount?—A. No, sir.

Q. Nor by the term for which they were made?—A. No, sir.

Q. Have you examined the signatures to each one of these accounts-current this morning?—A. I have.

Q. Are they all genuine?—A. Yes, sir.

Q. And do you now, after having made that examination, reiterate the statement you make yesterday that there was only one of them signed in blank?—A. Yes, sir.

Q. Do you state now, before the committee, that all of them were examined and signed by the judge prior to being passed over to you as the clerk, except this one?—A. Yes, sir.

Q. As I understood you, you say that you cannot identify which one it was that was signed in blank?—A. No, sir.

Q. Do you know where the district judge was at the time you filled up the account-current and sent it on; was he in or out of the State?

—A. I believe he was out of the State; I am not positively certain.

Q. Do you know, you rather intimated yesterday that he had gone to Wisconsin?—A. That is the impression I have now.

Q. That he had gone to the State of Wisconsin?—A. Yes, sir.

Q. Was he formerly a resident of that State before his appointment?

—A. No, sir; he resided in Arkansas.

Q. At the time he was appointed?—A. Yes, sir.

Q. Do you know where he was born and raised?—A. No, sir; I do not.

Q. Do you know where he came from to come to Arkansas?—A. No, sir.

Q. You remember what you said yesterday in regard to when this account was signed?—A. I thought yesterday that it might have been



probably between the May term and November term, 1871; I cannot swear to it, however.

Q. Have you thought about the thing since your testimony yesterday?—A. Yes, sir.

Q. Are you able, after thinking of it, to make now any statement upon that subject?—A. I am; I cannot state that it was between those two terms.

Q. Your recollection is entirely at fault now when it was or the amount, and you cannot identify it in this bundle now?—A. No, sir.

Q. Is the one you refer to in this bundle?—A. If all the accounts-current are there, it is—all that were returned to the Treasury Department.

Q. The question is this: is the account-current, to which you referred in your examination yesterday, which was signed by the judge in blank, in this bundle of accounts?—A. I can swear positively if I examine the balances carried forward from one account-current to the other until the final closing of the accounts; that I have not done.

Q. Do you know that Judge Story did not see the vouchers and abstracts that you placed over his signature upon the account-current that was signed by him in blank?—A. No, sir; I cannot swear positively as to that.

Q. What do you say on that subject?—A. I have never known that Judge Story saw the accounts or the abstracts before he approved that account-current.

Q. What is the usual practice of approving accounts-current—whether after they are filled up or before?—A. After they are filled up.

Q. At what term of the court did Logan H. Roots take charge as marshal of the western district of Arkansas?—A. May term, 1871.

Q. Did Judge Story leave the State of Arkansas at the adjournment or about the adjournment of the May term of 1871? If so, where did he go, and when did he return?—A. He left Fort Smith; whether he left the State or not I am not certain. My impression is he went to Wisconsin. He and Colonel Roots, I think, went together. I do not think he returned before the November term following.

Q. Now, sir, was not that account-current signed in blank after Judge Story had left to go, as you understood, to Wisconsin, and before he returned from Wisconsin?—A. Judge Story left several times; left the State to go to Wisconsin, I think; if he had only been away once I could positively swear. I cannot swear positively to that—that that account was approved between May and November, 1871.

Q. I suggest for your recollection if Mr. Roots did not notify you that he had received that account-current approved by Judge Story, to be filled up afterward, for the reason that he was going to leave the State and would not be there when the account was made up?—A. We had some conversation upon that point, but what it was I cannot positively swear.

Q. Was Judge Story in Fort Smith when that account-current was taken out of that safe signed in blank, and which you filled up over his name?—A. He was not.

Q. Was he, to your knowledge, in the western district of Arkansas?—A. No, sir.

Q. In regard to those vouchers and abstracts, I will ask you if Judge Story ever examined the vouchers or the abstracts that you put in that account-current that was signed by him in blank?—A. As I testified yesterday, I cannot positively swear that he did not. Colonel Roots had the key to the safe, and he was very often in the office without me.

Q. Can you swear that he did?—A. I cannot swear that he did. The key was left in a drawer, and when Colonel Roots wanted it, he went there and got it.

Q. You have examined the accounts-current?—A. I have.

Q. They are all accounts-current of Logan H. Roots, of the western district of Arkansas?—A. Yes, sir.

Q. Was any other one of them, within your line of duty, to your knowledge, done as that one was?—A. No, sir.

Q. That was, then, out of the usual order of transacting the business?—A. Yes, sir.

Q. Did you know that that account-current was in that office, signed in blank by the judge, until it was given you, or you were notified of the fact by Logan H. Roots, the marshal?—A. I did not.

Q. Can you tell about the amount that you placed over that signature in that account-current?—A. I cannot. It was, however, a large amount, about the usual amount of the returns.

Q. Let me call your attention to this a little further. Do you know of Judge Story leaving the State to go to Wisconsin from the May term, 1871, to the end of July, when Logan H. Roots went out in 1872, except between the May and the November term, 1872? Think now.—A. I cannot swear positively to that. He very often left Fort Smith to attend terms of court at Helena, and they were very short terms, and I do not know whether he went to Wisconsin or any other point in the United States.

Q. You know that he was out of the State between the May term, 1871, and the November term, 1871?—A. That is my impression that he was. I cannot swear that he was.

Q. Did not he tell you so himself, that he had been to Wisconsin?—A. No, sir.

Q. Did not he come with Colonel Fuller from that part of the country?—A. He never told me. We were never intimate enough.

Q. Did not he go to Wisconsin to marry his wife, and did not he marry her in Wisconsin, and bring her back?—A. Yes, sir; but at what time I cannot say. I do not know when he was married.

Q. Did not you state when you got done fixing up your abstracts, and went to get a blank account-current to make it out and fill it up—did not you state to Logan H. Roots that those accounts would have to go to Wisconsin to be approved by the judge, inasmuch as he was not there in Arkansas?—A. I stated to Colonel Roots that I had got my abstracts ready for the account-current, that it was a pity Judge Story was not in town, and that the accounts would have to be sent to him. Whether I said to Wisconsin or not, I cannot recollect. Then it was that this blank account-current was handed to me.

Q. In what manner was that account or accounts forwarded here to the Department for adjudication?—A. I cannot say.

Q. How was it sent; I mean, by mail, or did it come by hand, or in what manner?—A. Colonel Roots very often brought his accounts himself. Sometimes he took them to Helena with him; sometimes we sent them by mail, I presume, oftener than any other way. When they were sent by me, I always sent them by mail.

Q. Did you send that package by mail?—A. I cannot say.

Q. What is your best judgment on that subject?—A. If I were able to identify the account I could probably say, because I think I did not send it by mail.

Q. I will ask whether there were any jurors' abstracts in that account?—A. I cannot say. If it was between the terms there would be

no juror abstracts at all. I can say that the first account-current is not the one.

Q. The court was in session at that time?—A. The court was in session at that time.

Q. Are you satisfied that the accounts are all here, having examined them?—A. Yes, sir.

Q. Can you say, after satisfying yourself on that point, that you are enabled to identify the account referred to?—A. I am unable to identify it. I can identify accounts that were made out during court that way, but as for telling between the courts I cannot.

Q. Have you examined that bundle to see how many were made in term-time and how many out of term-time?—A. No, sir; I did not look at that. The following are the accounts which I can identify as being made up in term-times, or at times when Judge Story was there: 1, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 18, 19. Part of these accounts were made for the Helena term at Helena. The accounts that I cannot say about are 2, 3, 4, 10, 12, and 16.

Q. Now, re-examine those six accounts and see whether or not you can discover that one—the one that we have talked so much about?—A. I am pretty positive that No. 2 is not the one, because the figures are made up by Colonel Roots.

By Mr. SHEATS:

Q. Was the one that was signed in blank made up by you?—A. Yes, sir. It is not No. 3, because that is for payments made on Mr. Britton's previous term. No. 16 I do not think is the one, because it is a very small amount. As for the other three I could not swear positively. I mean 4, 10, and 12.

By Judge DURHAM:

Q. Well, sir, after looking at those three, according to your best judgment, which is the one?—A. I could not state; I could not say.

Q. I will get you to state whether or not Nos. 10 and 12 are not for expenses at the May term, 1872.—A. For the May term, 1872. It occurred between the November term, 1871, and the May term, 1872.

Q. Will you give the total amount of Nos. 10 and 12. That is, No. 10, [pointing;] what is the total amount?—A. No. 10 is \$25,835.55.

Q. What is the total amount of No. 12?—A. \$20,778.61.

Q. No. 4—for what term are those expenses?—A. November term, 1871.

Q. What is the amount of that?—A. It is \$20,041.74, dated September 27, 1871.

Q. And what date is No. 10?—A. February 29, 1872.

Q. And No. 12 is what?—A. April 18, 1872.

Q. After this examination are you or not satisfied it is one or other of those three that was signed in blank?—A. I am pretty well satisfied it is one of those three, but which one I cannot say.

Q. Did you state in your examination-in-chief yesterday that the account that was signed in blank was made to the November term, 1871?—A. No, sir; I did not say positively; I thought it was my impression; but since that I have thought over the matter, and I cannot say.

Q. You are positive it is one of those three?—A. I am pretty well satisfied, but I am not positive.

Q. You say these are not, (showing the thirteen)?—A. Yes, sir.

Q. If these are all the accounts, are you not positive it was one of those three?—A. I am pretty positive it is one of those three.

Q. Could it be otherwise?—A. No, sir. After the close of the May term expenses commence for the November term.

Q. You stated in your examination-in-chief yesterday that there was an account presented by a deputy marshal to the judge for allowance; that he refused to allow that account, and that the account was made out in the name of another party who had never done any service, and that he allowed and approved that account. State, if you please, the deputy marshal that presented the account first; and, second, in whose name it was made out the second time.—A. The account was presented by Deputy Marshal W. H. Johnson. Whose name it was made out again in I do not know. Colonel Roots came back to the office and said the judge refused to approve the account-current with that account in it; he then sent for Johnson, and said that the judge refused to approve his account; that he would have to fix it, as he had already done the service. Mr. Johnson stated that he had had some men with him that he did not return as posse, and asked him to be allowed to return the writ for them; he said the man was in jail or admitted to bail, and the service was performed; the account was made out over again and presented to Colonel Roots; I inserted it in the account-current, put it on the proper abstract, and the account-current was taken back to Judge Story; whether he knew anything about it or not I do not know, because I never had any conversation with Colonel Roots after seeing his signature to the account.

Q. Was the man in whose name it was made out the second time and allowed by Judge Story a deputy marshal at that time?—A. I cannot say; I do not know the man.

Q. Did you ever hear Judge Story say that if that account was made out in another name from the one presented that he would allow it?—A. I never heard Judge Story say anything about it at all.

Adjourned.

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WASHINGTON, D. C., April 23, 1874.

JAMES W. DONNELLY recalled and further examined.

By Mr. DURHAM:

Question. Did you state, upon your examination-in-chief, that you filled up the account-current yourself that was signed in blank?—Answer. I did.

Q. And you state that that (No. 12) is not the one?—A. That might be the copy. I may have made up the original, and this may be the copy made by Anderson. As I have stated, I made up the account-current myself, but that might be a duplicate of the original. We always required duplicates.

Q. When you got that account-current out of the safe, or when it was handed to you out of the safe, in blank, was it in duplicate?—A. Yes, sir.

Q. Both signed?—A. Yes, sir.

Q. At what place did you fill up that account-current that was signed in blank?—A. Fort Smith.

Q. At what time is the court held at Helena?—A. The second Mondays in March and September.

Q. At what times are the courts held at Fort Smith?—A. The second Mondays in May and November.

Q. Think now.—A. I know it.

Q. You stated, in your examination-in-chief, that you were positive that it was one of these three accounts?—A. Yes, sir.

Q. Look at that (No. 10) and tell the committee what term that would go to.—A. To the May term, 1872.

Q. Did you fill up that No. 10?—A. Yes, sir; those are my figures—my writing.

Q. Did you fill up that one, (No. 4)?—A. Yes, sir.

Q. Did you fill that one up, (No. 12)?—A. I presume I filled up the original.

Q. I asked you whether you filled that up.—A. I did not.

Q. Did you fill up both duplicates that were filled up?—A. I can't say positively that I filled up the duplicate. I generally filled up the original, and the duplicate was copied from the original.

Q. At the time you filled up that original, and may have filled up the duplicate, where was Judge Story?—A. He was absent from Fort Smith.

Q. Do you know where public reputation said he was?—A. I do not.

Q. Did you forward to the Department the accounts-current that you filled up that were signed in blank? If so, how and when did you do so?—A. I don't know. I can't say whether I forwarded them by mail or whether Colonel Roots took them.

Q. Where was Mr. Churchill, the clerk of the court, at that time?—A. I presume he was in Fort Smith. He has been absent several times. I cannot say positively that he was in Fort Smith, but he has been there generally all the time.

Q. Have not the accounts-current that have been made up at Fort Smith generally been sworn to before the clerk, Mr. Churchill?—A. I think you will find, by examination, that invariably the accounts at Fort Smith have been sworn to before Colonel Churchill.

Q. Then, can you give this committee any reason why that account, which was signed in blank, should be taken to Helena to be sworn to when there was the clerk's office next door?—A. In one or two instances when the accounts were ready for approval Judge Story, I believe, was at Helena, and Colonel Roots went over there to attend court, and forwarded the accounts from there.

Q. That was to get the approval of the judge?—A. Yes, sir; and in addition to that, to get the balances from the Helena accounts transferred to his account at Fort Smith.

Q. That would not be the case where the account-current was already examined and approved, and signed by the judge, would it?—A. No, sir; he might, however, have taken them over to Helena to get the balance from the last Helena account transferred to his account at Fort Smith.

Q. Is not account-current No. 10 the one that was signed in blank?—A. I cannot state positively.

Q. Taking all the circumstances that you have stated, that they were always sworn to when the judge was present, and that he happened to be out of the way at this time, would not it be natural for you to come to the conclusion that account No. 10 is the one?—A. No, sir; I can't be positive, because, as I stated before, very often he had to take them over to Helena.

By Mr. ROBINSON:

Q. Are there any expenses for the Helena court in No. 10?—A. No, sir; there never is any expenses, but the balance might be there from the Helena term.

Q. Would it show there as from the Helena term?—A. No, sir; it would not.

Q. What would it show?—A. It would show just the balance carried forward; it would be included in the general balance.

Q. Did you go into the clerk's office with Colonel Roots at the time that he swore to this No. 10 before Mr. Churchill?—A. Sometimes I went in and sometimes I did not. I can't swear to the particular times.

Q. Can't you recollect, from the circumstance that the account was signed in blank and was filled up by you, whether you went into the office with Colonel Roots when he swore to it?—A. I cannot swear to it at all, sir.

Q. The time that that account, No. 10, bears date at Fort Smith, February 29, 1872, how long would that be before the court at Helena?—A. That could be arrived at only by finding out on what day of the month the second Monday in March was.

Q. Would not you say that if that account was already examined and approved by the judge at Fort Smith, there would be no necessity for its going there to be examined and approved again? If you filled it up and it was examined and approved, would there be any necessity for its going anywhere for a further confirmation?—A. Certainly not.

JAMES AULD recalled:

By Mr. DURHAM:

Question. Examine that bundle, and state the number there are, and whether or not they are the accounts-current as returned to your office, all the accounts of Marshal Roots.—Answer. This bundle contains nineteen accounts-current, which are all the accounts rendered to the Treasury Department by Logan H. Roots, late marshal for the western district of Arkansas.

Q. Have you examined for the dates of the reception of those accounts-current?—A. Yes, sir; I have, for those three that were referred to on Saturday, Nos. 4, 10 and 12. I find on file in our office three letters from the marshal which, from the dates, evidently refer to these three accounts. No. 4 is dated at Helena, Ark., on the 27th of September, 1871. That is the letter which I suppose to refer to account No. 4, being of the same date as that account. In that letter he says that he has that day transmitted to the First Auditor of the Treasury an account. That letter was received at the First Comptroller's Office on the 2d of October, 1871. I don't know the date when the account reached the Treasury Department, but if it was mailed the same day, the presumption is that it would get there about the same time. The next letter that I will mention is dated April 18, 1872. That I suppose refers to account No. 12, being of the same date as that account. That was written at Helena, by the marshal, and in it he says that he has that day transmitted to the First Auditor an account. This was sworn to before the clerk of the United States district court at Helena, on the 27th of September. No. 12 was sworn to before the same clerk on the 18th of April, 1872. Now as to No. 10; the third of these three, a letter from the marshal, dated at Fort Smith, February 29, 1872, was addressed to the Comptroller, in which the marshal says that he has that day transmitted to the First Auditor an account-current and vouchers. Account-current No. 10 bears the same date as the letter of February 29, and was sworn to before the clerk of the United States district court at Fort Smith.



Q. Are you an expert in handwriting?—A. I don't profess to be. I, of course, have examined a great deal of writing.

Q. Tell the committee whether those three accounts are made out in the same handwriting or not.—A. I should say they were not all three in the same handwriting.

Q. Are any two of them in the same writing?—A. I think No. 10 and No. 4 are in the same writing. No. 12 is in a different writing.

Adjourned to Tuesday next at 10 a. m.

WASHINGTON, D. C., April 28, 1874.

Present: Messrs. Sener, chairman, Speer, Durham, and Sheats.

BENJAMIN F. SHOEMAKER sworn and examined.

By the CHAIRMAN:

Question. Please state your name, age, residence, and occupation.—Answer. Benjamin F. Shoemaker; thirty-three years old; present residence Newton County, Missouri; I do not know as I have much of an occupation at present; I was formerly a deputy marshal.

Q. Since the 1st July, 1870, have you at any time been engaged as a deputy marshal in the marshal's office for the western district of Arkansas?—A. I have.

Q. Please state for what periods, and under whom you have served.—A. In January, 1870, I was appointed deputy marshal under William A. Britton. I believe it was in January, and I served under him after that time till May, 1872, I think, although I am not positive about dates.

Q. Did you serve under Logan H. Roots?—A. Yes, sir.

Q. When did you serve under him, during the time you have stated?—A. No, sir; after that. I think it was in June, 1872, that I got my appointment under Logan H. Roots.

Q. Did you never serve again under William A. Britton?—A. Yes, sir.

Q. When?—A. I think it was in June, 1873, that I was appointed again under William A. Britton. I won't be positive about the month.

Q. During those terms of service as deputy marshal did you make arrests?—A. I did.

Q. Did you make many?—A. I probably averaged one a month, or perhaps more.

Q. Did you ever make arrests of prisoners, and return parties as *posses comitatus* who did not accompany you?—A. I did.

Q. By whose order or authority or suggestion did you do that—who told you to do it?—A. I think I had my first intimation on the subject from J. W. Donnelly—that gentleman there, [pointing him out.]

Q. Was he the chief clerk of William A. Britton as marshal?—A. He was.

Q. How many times did you do that to the best of your recollection?—A. I can't tell you; quite a number of times. I do not know how many.

Q. Do you recollect a special case in which you did it?—A. The first case, I think, was that of Joseph Nipp and Johnson.

Q. What was that for?—A. I caught them introducing whisky into the Indian country, near the Kansas line.

Q. Was there any *posse comitatus* employed by you in arresting them?—A. I cannot say whether there was more than one or not. I do not remember.

Q. Did J. W. Donnelly, the chief clerk in the marshal's office, hand

you vouchers purporting to be for services rendered as *posse comitatus* in the arrest of Nipp and Johnson?—A. I think he did.

Q. What did he tell you to do with them?—A. I would have to get them signed, probably.

Q. By whom?—A. I would have to get them signed by some official competent to take an affidavit.

Q. Who were the persons that were named in those vouchers?—A. I do not remember.

Q. Were there any such persons in existence, or were they supposititious persons?—A. There were no such persons.

Q. Did Donnelly and Britton know whether you had or had not any posses with you at that time?—A. I told Mr. Britton that I had a posse; that I hired a man and paid him out of my own pocket; that I could not bring the prisoner myself.

Q. Did they allow you any part of the money on those vouchers?—A. I got one of the vouchers. I do not remember whether I got more than one in the two cases or not.

Q. Did the practice of returning supposititious persons as *posse comitatus* prevail generally or not?—A. I think it did.

Q. Do you know any other parties who returned the names of persons as posses who really did not serve as such?—A. Yes; I know one man, C. R. Stevenson.

Q. He was in the habit of returning posses who had not served?—A. Yes, sir; he used to ride with me at that time.

Q. Was he a deputy marshal?—A. He was.

Q. Did he tell you he did those things?—A. I do not know as he ever told me.

Q. But you know the fact?—A. Yes, sir.

Q. How did you know it?—A. I saw him sign them.

Q. And you knew that no such parties had rendered service?—A. I think they had not.

Q. How many posses did they usually return for every prisoner?—A. The deputy generally returned one posse.

Q. Any more ever?—A. Yes, sir; there were cases when two were returned, but the deputy got the benefit of only one.

Q. Who got the benefit of the other?—A. I do not know, sir, unless it was the office.

Q. Where was the United States court held in 1870?—A. It was held at Van Buren.

Q. Who was the judge?—A. Judge Caldwell.

Q. Did Mr. Roots retain pretty much the same deputies that Mr. Britton had?—A. A good many of them.

Q. Did J. W. Donnelly hold the same position under Mr. Roots as he held under Mr. Britton?—A. He did.

Q. What do you know about Britton, Roots, and Donnelly being indicted by the grand jury for a conspiracy?—A. The first information I had of that—C. R. Stevenson told me that they were put under bonds. I think that was along in the earlier part of 1872, or perhaps in 1871. The fall following I had it from C. R. Stevenson that there was a lot of posse accounts that had not passed here in Washington, but were sent back to the office, and that, among the rest, there was a lot with my name signed to them—posse accounts gotten up on *non est* writs. The writs were returned as *non est*. The statement was that E. J. Brooks, when he signed his name, signed it simply "E. J. Brooks," and did not sign it as United States commissioner. I understood that was the way they were detected in Washington, and they were sent

back there for investigation by the grand jury. C. R. Stevenson came to me and told me that there was a lot of them in my name, and said there would have to be something done about it in order to smooth the thing over.

Q. He told you that the thing would have to be managed and smoothed over?—A. Yes, sir.

Q. Have you stated all you know about that?—A. No, sir. When the grand jury convened in the latter part of November or December, I was asked if I would father those accounts. I refused at first to C. R. Stevenson; but we had another talk about it, and it was arranged that I should see the foreman of the grand jury.

By Mr. SPEER:

Q. Arranged by whom?—A. Donnelly, Stevenson, and myself. I went and saw the foreman of the grand jury, and had a talk with him in regard to it.

By the CHAIRMAN:

Q. Tell us what you said to him, and what he said to you.—A. I do not remember all that I said to him. I said something in regard to those accounts; told him that I did not feel disposed to swear to those accounts as to those men having been employed by me; and we had some more talk about it, and he said that those questions would not be asked me.

Q. What questions did he say would be asked you?—A. I was asked the question whether it was customary for deputy marshals to have posses in the Indian country, and I answered that it was. He asked me if I had those warrants in my possession, where the names appeared as posses in the cases, and I told him I had a portion of them.

Q. Is that all he asked you?—A. I disremember what other questions were asked me.

Q. Were those substantially all the questions that were asked you?—A. I disremember. I think that he asked me some other questions probably, but I disremember what they were.

Q. How many of these posse accounts were there?—A. I do not know how many appeared in my name. It amounted to over \$1,000.

Q. Were there any of them genuine? Had any of those men done service as posse?—A. No, sir.

Q. None of them?—A. No, sir.

By Mr. SPEER:

Q. They were all fraudulent, and all paid?—A. It was my understanding that they were paid.

Q. Who got the money?—A. I do not know, except William A. Britton got it. It was my understanding that they were all paid.

Q. What was the name of the foreman of the grand jury?—A. Henry E. McKee.

Q. Is he alive now?—A. I cannot tell; I have not heard of his death.

Q. Where does he live?—A. At Fort Smith, the last I knew of him.

Q. Who summoned him on the grand jury?—A. I do not know.

Q. Is that all you know about that conspiracy? Was there any indictment found?—A. No, sir.

Q. Those accounts were held up to await the action of the grand jury?—A. That was my understanding.

Q. Who told you so; anybody connected with the marshal's office? Did Britton or Donnelly ever tell you so?—A. I do not remember whether

they did or not. Donnelly and myself had one talk before I went before the grand jury.

Q. Did Britton have a talk with you on the subject?—A. No, sir.

Q. What did Donnelly say to you at that time?—A. The night we had conversation with Donnelly—Stevenson and myself—the arrangement was made for me to see Henry E. McKee, the foreman of the grand jury. Donnelly remarked that he did not want to be indicted under that. I was a little offish about making the proper testimony in regard to the accounts, and he said he could not stay there and stand the investigation, or something of that kind.

Q. Did Donnelly say that he had made arrangements with the foreman of the grand jury for you to see him?—A. He said that he would make an arrangement the night we had this talk.

Q. That he would make such arrangements that you would not be asked anything to embarrass you under oath?—A. I believe that was about the talk.

Q. You were sworn to tell the truth and the whole truth?—A. Yes, sir.

Q. And you intentionally concealed a portion of the truth?—A. Yes, sir.

Q. At the suggestion and instance of Mr. Donnelly?—A. Yes, sir.

Q. To protect him and Britton?—A. Yes, sir.

Q. Did they pay you for that?—A. No, sir.

Q. Did they promise you any pay?—A. No, sir.

Q. Did they say that if you did not they would be indicted?—A. I do not remember that they did. I do not remember what Mr. Donnelly said; but he said that he could not stay there and have the investigation go against him, or something of that kind.

Q. When you saw the foreman, did he tell you that Mr. Donnelly had seen him?—A. No, sir.

Q. Did you understand, from the way that he talked to you, that Donnelly had seen him?—A. I did; he was looking for me.

Q. What did you say when you approached him?—A. I told him that I came to have a talk about the accounts of the office.

Q. What did you say to him? Did you tell him to ask you so and so?—A. I told him that I could not swear that those men were ever in my employ.

Q. And he said he knew as to the accounts?—A. No; he said those were questions he would not ask.

Q. He said he would ask general questions?—A. Yes, sir.

Q. What time of night did you see him?—A. I went to his house about 7 or 8 o'clock in the evening, but he had company that night, and he told me that he could not see me, but to come back the next night; and I went back the next night, about 7 or 8 o'clock.

Q. That was at his private house?—A. Yes, sir.

Q. Who was in the grand-jury room when you went there to testify?—A. Five men belonged to the grand jury.

Q. Only five?—A. Five, I believe; that was all I saw.

Q. Do five grand jurors constitute a quorum there?—A. I do not know.

Q. Who were the five present?—A. Henry E. McKee, the foreman, was there, and Mr. Lockhart, the clerk of the grand jury, and Mr. Temple, who was acting as prosecuting attorney.

Q. That is only three?—A. I do not know the names of the others.

Q. Mr. Temple is the present district attorney?—A. Yes, sir.

Q. Then there were but two members of the grand jury?—A. Two, I think.

Q. Two who were inquiring about this bill?—A. I did not see any others.

Q. How many grand jurors were sworn that time?—A. About twenty-one, I think.

Q. What time was it that you were before the grand jury?—A. About 7 o'clock in the evening.

Q. Don't you know that they were sitting there without the knowledge of the other grand jurors?—A. I do not know that.

Q. Don't you believe that?—A. I do.

Q. Before you went up to the grand-jury room, were you handed by Donnelly a list of cases containing the names of posses, to which you were to swear?—A. I was.

Q. How many names were on the list?—A. I disremember the number—7 or 8 or 10.

Q. Were they all false or fictitious?—A. They were.

Q. And he wanted you to swear that these persons performed services?—A. I do not know that he asked me to.

Q. What did he mean by handing you the list?—A. He said that was the list that I would have to answer for.

Q. You knew it was false at the time?—A. I did.

Q. And he knew it was false?—A. He did.

Q. Knew there were no such persons?—A. I knew there were no such persons.

Q. You had handed in these very receipts before?—A. Yes, sir.

Q. Were the names of any such persons on them?—A. No, sir; not when I handed them in.

Q. Then Donnelly was endeavoring to suborn you to testify falsely?—A. I do not know whether that is the name of it or not.

Q. Was there a list of fraudulent or fictitious deputies kept in the office, to be signed to warrants when the warrants were returned?—A. There was.

Q. Who kept that list?—A. I do not know.

Q. In whose office was it kept?—A. In the marshal's office.

Q. And when a warrant was returned the names of those fictitious persons were put on it as having served as *posses comitatus* or deputy marshals?—A. Yes, sir.

Q. That was the habit of the office?—A. A portion of the time, it was.

Q. Was it done in all cases?—A. Not in all cases.

Q. Was it done in all cases when it could safely be done without detection?—A. It was done in a case where a deputy had a good many prisoners.

Q. And they divided the proceeds, one-third to the deputy, and two-thirds to the marshal and clerk?—A. No, sir; two-thirds went to the deputy, and one-third went to the marshal and clerk.

Q. You say they gave you those writs to have them properly sworn to. Whom did you go to to have them properly sworn to?—A. I went to more than one person.

Q. Name the persons.—A. The first person I ever went to was Frank Austin, who was acting as county clerk in Crawford County.

Q. Who was the next person you went to?—A. I reckon E. J. Brooks was.

Q. He was a United States commissioner?—A. Yes, sir.

Q. Appointed by Judge Story?—A. I do not know who he was appointed by.

Q. Who was the next person?—A. John Pritchard, the United States district clerk.

Q. Who else did you go to?—A. That is all.

Q. Did they all sign the *jurat* which had never been made? Did they certify that you had appeared and sworn to the contents of the affidavit when you had not done so?—A. I do not quite understand you.

Q. When you went before those officers with those writs, what did you do, and what did they do?—A. They certified that those men had done service, and had been before them, and had been sworn.

Q. There were no such persons to go before them?—A. No, sir.

Q. You were there?—A. I was.

Q. You saw this done?—A. I did.

Q. And you returned the writ as if it had been honestly sworn to?—A. Yes, sir.

Q. And that you did repeatedly, at the request of the marshal and of Donnelly?—A. I do not know as I ever had more than one intimation from them that I could do such a thing.

Q. It did not take more than one intimation?—A. It was to my pecuniary interest to do such a thing.

Q. Were you not told by Donnelly to keep a list of the fraudulent names you used, so that if there was trouble you could account for them?—A. I think I was.

Q. Don't you know you were?—A. It is my recollection that I was.

Q. When did you leave Arkansas?—A. In August or September last.

Q. Where did you go?—A. I went from there to my home, at Fort Gibson, in the Cherokee Nation, and from there to Missouri.

Q. Did any of those parties try to get you away when this investigation came on?—A. I do not know that they did.

Q. Did you have any communication with any of them?—A. I heard them talk. They tried to get me not to go down to see Whitney.

Q. Who did?—A. Messler was the first man.

Q. Who else?—A. Mr. Britton asked me if I was going down.

Q. Did he tell you not to go?—A. I do not know that he did. He told me—

Q. Who got you to go to Missouri?—A. I went there on my own responsibility.

Q. Did you have any communication with any other parties while you were there?—A. No, sir.

Q. Didn't they try to get you not to come here?—A. No, sir.

Q. Didn't they try to get you to go away from Missouri, to avoid the process of the Sergeant-at-Arms?—A. No, sir.

Q. Didn't you write to Mr. Whitney that they tried to get you to go away?—A. I wrote to Mr. Whitney that I believed they were trying to get me out of the way.

Q. A man named Johnson?—A. He wanted me to sign an affidavit that I had never made oath to certain facts touching Marshal Sarber's office.

Q. Who is Johnson?—A. A deputy marshal there. He has been serving under Britton, Roots, and Sarber.

Q. What town do you live in?—A. Newtonia.

Q. Your knowledge of the business of the marshal of that district is, that it has been fraudulently conducted, and that that has been done systematically?—A. I suppose it was.

Q. For the purpose of robbing the United States?—A. I suppose to get the money from the United States.

Q. Was the judge a party to those frauds?—A. I do not know.



Q. Do you know of other deputies doing as you did?—A. I know of one.

Q. That was the course of business in the office; the way the business was done?—A. According to my understanding it was, sir.

By the CHAIRMAN:

Q. Did Stevenson tell you when you went before the grand jury that the warrants that the deputies had handed into the office were all returned, and two posses had been charged in each case?—A. All the *non est* warrants returned at the time that Mr. Britton went out of office; it was my understanding that they were returned in that way.

Q. Were you ever told so by anybody else?—A. I think not.

Q. C. R. Stevenson did not tell you that?—A. C. R. Stevenson did tell me that.

Q. That was one sort of accounts that you were asked to speak to before the grand jury?—A. Yes, sir; those were the accounts.

Q. Do you recollect the names in any of those accounts?—A. Yes, sir.

Q. Give them to the committee.

A. One was Suttbeck, for introducing spirituous liquors. Another was Dirtpot; another was Shire & Shire, for introducing spirituous liquors; another was Keese, and another was Hutgut.

Q. All the posses that were charged in those cases were fictitious and fraudulent?—A. So far as my knowledge goes, they were.

Q. Were there any such cases as those? Do they have such names there?—A. O, yes, sir; there were such names out there.

Q. Were any such parties ever arrested?—A. Not at that time; they had not been arrested up to that time; they had not been found.

Q. Do you believe there were such persons in existence?—A. O, yes.

Q. Do you believe that they committed such offenses as were charged against them?—A. O, yes, sir.

Q. Was there any such man as Sanford Mosley among them?—A. Yes, sir.

Q. Sam. Bread?—A. Yes, sir.

Q. One Iron?—A. Yes, sir.

Q. Wabanah?—A. Yes, sir.

Q. Did Stevenson tell you that if you did not swear that these were genuine writs and posses the marshal would be dismissed from the service?—A. He said that those could not ride any longer that did not back the office in the investigation.

Q. Did Donnelly tell you any such thing?—A. No more than to say that he could not stay there and have the investigation go against him.

Q. Do you allude to the grand jury investigation or to the Whitney investigation?—A. The grand jury investigation.

Q. Who told you about a detective being there from Washington, investigating those matters?—A. Mr. Stevenson.

Q. Did Donnelly tell you anything about it?—A. I don't remember that he did.

Q. He never had a talk with you?—A. At one time he had a talk with me, before I went before the grand jury; the talk was that I was to go and see Henry E. McKee; that was all the talk he had.

Q. Did Donnelly ever tell you that they were trying to indict him, and that if they did he should "jump the country"?—A. I believe he said something to that effect.

Q. Did he ever tell you that he used the boys well, and he hoped they would stand by him when he was in trouble?—A. He said something to that effect, I think.

Q. This talk was in the presence of C. R. Stevenson ?—A. Yes, sir.

Q. Was Donnelly, then, persuading you that you must swear to these warrants? Did he tell you that the object of both himself and Stevenson was to have you swear that you had made a return of these warrants, and charged the *posse comitatus* for these prisoners ?—A. I refused to do such a thing.

Q. I know ; but did he ask you to do it ?—A. He said that he wanted me to help him to get out of it.

Q. What did you understand by that ?—A. To evade the investigation by making a false impression before the grand jury.

Q. Didn't he ask you to swear to that ?—A. I don't think he did ; I don't remember that he asked me pointedly to swear to it. He merely asked me to help to get him out of it.

Q. False swearing was necessary to do that ?—A. I suppose that was what he meant.

Q. Was that what you understood from the interview ?—A. It was.

Q. What did you tell him ?—A. I told him that I would not swear that I had those men in my employ.

Q. Did you tell him that if all the deputies came up and forfeited a certain amount returned, you would do it ?—A. I told him if they all came up, I would do the best I could for him, but I would not say that I had all those men in my employ.

Q. Did you go to the house of the foreman of the grand jury ?—A. Yes, sir.

Q. Who was the marshal at that time ?—A. Logan H. Roots.

Q. Did Logan H. Roots know of these facts ?—A. I don't think he knew anything about that investigation ; I don't know that he did.

Q. Have you no reason to believe that he did ?—A. No, sir. I have reason to believe that it was trying to be kept from him—the knowledge of this investigation.

Q. Roots was no party, then, to this effort to suppress the investigation by the grand jury ?—A. No, sir.

Q. Where did this occur ?—A. At Fort Smith, in the grand jury room—the investigation.

Q. Did you ever have any interview in Marshal Root's office with a number of deputy marshals about this matter ?—A. The night of the investigation we were talking about it.

Q. Who was there ?—A. Quite a number of deputies.

Q. You recollect who they were ?—A. Mr. Owens, Mr. Peevey, Robert Lamson, William McElmore, and quite a number of others. I don't remember how many more.

Q. Did you have any talk that evening with Donnelly ?—A. He handed me a list of posses that appeared against my name.

Q. The *non est* writs on which posses had been charged ?—A. Yes, sir.

Q. What did he tell you ?—A. He said that those were the cases that were against my name, and that would be investigated.

Q. What was the object in giving you that list ?—A. To refresh my memory, I suppose.

Q. Did he tell you what it was necessary that you should do with it ?—A. I don't remember whether he did or not.

Q. Did he tell you whether it was necessary that you must swear to it or not ?—A. I don't remember whether he did or not.

Q. Wouldn't a thing of that sort make an impression upon you ?—A. He merely handed me a list, and told me that it was the list that belonged to the cases that were against my name.

Q. What did you understand, that you were to do with that list ?—

A. I understood that I was to look over it so that I should not make any mistake when I went before the grand jury.

Q. When you went before the grand jury, what were you to swear—that those were *non est* writs, and that there were posses?—A. That there were posses.

Q. And yet you say that with those *non est* writs there were no posses?—A. No, sir; I returned no posses with them.

Q. Did Donnelly send you into the grand-jury room?—A. I was called into the grand-jury room; I don't think he called me.

Q. He did not direct you to go there?—A. He told me I would have to go there.

Q. What questions were asked you—just simply questions that were agreed upon between McKee and yourself to be asked?—A. I don't remember any others.

Q. Where was the judge all this time; was he within town?—A. Yes, sir; he was in the town.

Q. Where did he stop?—A. I don't know.

Q. You don't know where he boarded when he was in Fort Smith?—A. I know the house, but I don't know the name. I believe it was Mr. Shumar's at that time.

Q. How were the deputies taken up into the room; were they all taken up at once?—A. No, sir; they went up one by one—or that is the way they came down.

Q. Did all of them alternately go up?—A. No, sir; not all the deputies serving in the western district.

Q. All these that you have named?—A. I think they did.

Q. When they went up what did they do?—A. I don't know.

Q. Did they sign any statements; do you know?—A. One of them asked me the next day, if I had signed, and I told him I had not.

Q. They did not swear you then?—A. They swore me, but I never signed to what I had sworn to.

Q. Did any of the rest of them?—A. He said they did.

Q. Who said that?—A. Robert Lamson.

Q. Did you see Donnelly furnish these other marshals with a list of the case sin which they had been required to make oath, to refresh their memories?—A. No, sir.

Q. Did you see him furnish them in cases in which *posses comitatus* had been returned?—A. No, sir.

Q. Do you know if they were furnished?—A. One of the men told me that he had a list of the posses.

Q. Did you see that list in his hand?—A. He had a memorandum-book in his hand—I don't know that he had a list.

Q. Did you ever see your name signed to that statement that you made; did you ever see it afterwards in writing?—A. No, sir; not the statement that I made before the grand jury.

Q. Where is this man Stevenson?—A. He is up in the Cherokee Nation.

Q. Do you know where he is now?—A. No, sir.

Q. Did you and Stevenson, just before the November, '71, term of the court, bring any prisoners from Fort Smith to the Indian country?—A. No, sir; I think not. Yes, I believe we did.

Q. Do you recollect how many you brought?—A. I think it was six or seven.

Q. Who made out the bills for those?—A. I don't know.

Q. Who made out the warrants?—A. I cannot say.

Q. Did you make them out?—A. No, sir.

Q. Who else could have made them out?—A. Mr. Stevenson gave me part of the money.

Q. How much?—A. \$200.

Q. Did he give you any reason why he did not give you the rest?—A. Yes, sir; he said that he lent James W. Donnelly \$150, I believe.

Q. Did he tell you anything else?—A. He said that one Dr. Roland was there, and that they agreed to pay him \$500.

Q. What did they give Roland \$500 for?—A. For making a favorable report of that proceeding; that was my understanding from him.

Q. What investigation?—A. The investigation of these posse accounts of William A. Britton.

By Mr. SHEATS:

Q. Who was this man Roland?—A. He was a man formerly in Fort Smith, who used to be United States district marshal, but he has been living in Washington City here.

Q. Is he living here now?—A. I cannot say whether he is or not.

By the CHAIRMAN:

Q. Was Britton present the evening that you went before the grand jury?—A. He was in the marshal's office.

Q. What did he say to you when you came down out of the grand-jury's room?—A. I believe he asked me if I got through all right, or if it was easy enough done, or something of that kind; I disremember the words, but it was something similar to that.

Q. When did you first go to work under Logan H. Roots?—A. I reckon it was May or June, '72.

Q. Was your commission dated?—A. I believe it was.

Q. Why was it dated back?—A. In order that I could make a return.

Q. For whom; for yourself or for any one else?—A. For any one else. I made the return and got the money.

Q. Did you do the service?—A. No, sir.

Q. How much money did you get; do you recollect?—A. Not very well; something over a hundred dollars.

Q. The law is, that if you make a half dozen arrests you can only charge full fees in one case, is it not?—A. I don't know what the law is.

Q. Did Roots give any orders about the matter?—A. When we first went to riding for Logan H. Roots that was the understanding, that we had full fees on only one case.

Q. Then suppose you brought in more than one prisoner; how did you manage that?—A. By other deputies returning who had not been out.

Q. Did Roots know of that?—A. I am not positive whether he did or not.

Q. Did Donnelly know of it?—A. I reckon he did; I don't know; we returned to him.

Q. Don't you know that he knew it?—A. I have just told you that I returned to him.

Q. Did you ever talk with Donnelly on the subject?—A. I don't know that I did.

Q. Do you mean to say that the chief clerk would ask no question in such cases; would not know what was going on?—A. I suppose he knew what was going on.

Q. It was a small town; he would know who was out, would he not?—A. He knew who was riding and who was not, I reckon.

Q. When you wanted a posse put in, whom did you put in? Did you have any special names?—A. Yes, sir; I did.

Q. What were some of the names you used?—A. I used that of George M. Conrad as a posse and deputy both.

Q. Was there any such man?—A. No, sir; not that I know of.

Q. It is very important to know whether Roots knew of these matters; do you know him personally?—A. Yes, sir.

Q. Did you ever talk with him?—A. Yes, sir.

Q. Talk with him familiarly?—A. Well, I suppose so.

Q. Did he know these things?—A. I reckon he did. I ain't certain that he did or that he did not.

Q. Did he live in Fort Smith?—A. Yes, sir; he staid there most of the time.

Q. Could he help knowing it if he used his ears and his eyes?—A. I think not, sir.

Q. In some cases you say two supposititious posses were returned; how did you divide the money?—A. I got two-thirds of the fees.

Q. Who got the other third?—A. It was my understanding that the office got it.

Q. Was there any list of deputies, who, in reality, did not exist, kept in Marshal Roots's office, to your knowledge?—A. Yes, sir.

Q. Where was that list kept?—A. On the time book of the real, deputies.

Q. What was the purpose of keeping that list of supposed deputies?—A. In order to keep the time correctly.

Q. I mean, what was the object of keeping a list of these deputies that did not exist?—A. To keep the time correctly, as you would those of the real deputies; the same as keeping the correct time on real deputies.

Q. What use did they have for false deputies?—A. To get more money, I suppose.

Q. Was that list of false deputies kept so as to use their names as deputies?—A. Yes, sir.

Q. In what contingency?—A. Where a man could not return a writ himself he would put somebody else's name upon it.

Q. Were those known as dummy marshals?—A. I suppose they were.

Q. Were there similar lists of posses too?—A. Yes, sir.

Q. Can you call to mind a single case in which that was done?—A. I have returned George M. Conrad in that way as a marshal.

Q. Do you know of any other deputies who have done the same thing?—A. I am not positive, but it was generally considered that that was the way they did it.

Q. Were or were not all those false and fraudulent accounts made with the knowledge and consent of Logan H. Roots, and J. W. Donnelly as chief clerk?—A. I should judge they were.

Q. Did Marshal Roots state to you, at a time when a number of deputies were present, that he would not pay on final settlement the 10 per cent. for the deputy marshals, that they ought not to expect the 10 per cent. when they used false deputies?—A. He did not say false deputies.

Q. What did he say?—A. Special deputies.

Q. What was a special deputy?—A. It was a false deputy, as I understand it.

Q. Did E. J. Brooks ever certify to any posse accounts that were fraudulent and false?—A. He has done so for me.

Q. Did he know that they were when he certified to them?—A. I suppose he did.

Q. Could you pick out the fraudulent claims that have been presented by these other deputies, if you saw them now?—A. I think I could.

Q. How much do you think was paid out fraudulently during the administration of Logan H. Roots, so far as your knowledge goes?—  
A. I have but very little idea; I should judge a good many thousand dollars.

Q. About how many thousand dollars?—A. Maybe fifty or sixty or seventy thousand dollars.

Q. To your knowledge?—A. Well, I merely guess from the way that I returned myself.

Q. Was there any difficulty in telling a real marshal from a false one if they had the false list there?—A. I would think there would be if a man saw their names there and did not know whose names they were.

Q. Were you regarded as a confidential deputy, and treated as such?—  
A. No, sir; not exactly. Mr. Stevenson was, and I rode with him.

Q. Who were the confidential deputies, as near as you can tell?—A. Stevenson was one, J. C. Owens in his lifetime was one, and Mr. McGuire, Charles Robinson, Mr. Messler, Mr. Fitz Henry, and Mr. Robert Donnelly.

Q. Can you give us the whereabouts of any of those men now?—A. I cannot; I have not been in that country for six or eight months.

Q. Who did most of this business of certifying, Mr. Brooks or Mr. Pritchard; which of them did the most of it?—A. It would be hard to tell; I presume Brooks did.

Q. Did J. W. Donnelly ever tell you to keep a memorandum of the fictitious names that you had signed in order that you might refer to them and be on your guard in case the Department ever undertook to investigate those claims?—A. He told me to keep a list of the names that I returned for fear of an accident, or something of that kind.

Q. The fictitious names?—A. Yes, sir; that is the way that I understand it.

Q. Did R. C. Kearns, C. D. Messler, Charles Robinson, Robert Donnelly, Mr. Fitz Henry, and William Griffith, deputies, do any of the riding?—A. Yes, sir; some.

Q. Did they do much of it?—A. Very little.

Q. Did they make returns?—A. They made the returns, as a general thing. They generally filled up pretty well.

Q. Did they ever make returns in cases in which they did not serve?—  
A. Yes, sir.

Q. Do you know of any instances in which they did that?—A. Mr. \_\_\_\_\_ did for me. I don't remember whether the balance of them ever did or not. Their time always showed on the books as fully as anybody else's.

Q. Would they make returns and swear to the service?—A. I can't say as to whether they swore to it or not.

Q. The vouchers will show that, will they?—A. I suppose they will.

Q. Didn't they have to swear to returns when they made them?—A. I suppose they did. I did.

Q. Didn't every man?—A. Yes, sir, as a general thing. So far as I know, they did.

Q. Was Kearns Marshal Roots's cashier?—A. I believe he was.

Q. What did Griffith do?—A. He was working for Kearns; superintending his livery-stable.

Q. What did Messler do?—A. He was a saloon-keeper.

Q. What did Robinson do?—A. At that time he was city marshal of Fort Smith.



Q. Who was Robert Donnelly?—A. He was a brother of James Donnelly's. He was a deputy marshal.

Q. Who was Fitz Henry?—A. He was a deputy marshal.

Q. Did he have any particular designation there?—A. Sometimes they called him the returning deputy and affidavit-man.

Q. Did you ever go to Messler and ask him to make returns for you?—A. Yes, sir.

Q. What did you say to him?—A. I never went to him more than two or three times. He generally said that he had only a few days; his time that he had returned was some other party's, or something of that kind.

Q. At that time had he ever been out of Fort Smith?—A. He had, once or twice.

Q. At the time he made these returns had he been out?—A. I am not certain, but I don't think he had.

Q. Then, if I understand you right, these men that you have named did little or no riding, and yet drew fees?—A. Yes, sir.

Q. After William A. Britton received his second appointment, did you apply for an appointment as deputy?—A. I did.

Q. Did he give it to you promptly?—A. He gave it to me in the course of a week or ten days.

Q. He did? What did he say?—A. He said that I had been using some threatening language against him in regard to the way that he had been conducting his administration as marshal of the western district of Arkansas.

Q. You say here, in a statement you made at Fort Smith, "I do know that deputies were permitted by Britton and Donnelly to make false returns. They were to return men as posses that were never employed. I have done it myself, and have known other men to do the same thing." Do you repeat that observation here now?—A. I have done it myself, sir, and I have seen C. R. Stevenson do the same thing.

Q. You say, "I do know that deputies were permitted by Britton and Donnelly to make false returns." Now state to us in what your knowledge consists.—A. Well, sir, I made false returns myself by Britton's and Donnelly's permission; they allowed us to make them.

Q. In what did their allowance or permission consist? State exactly what you know about it.—A. Mr. Donnelly first mentioned to me that I could do such a thing.

Q. Did Britton ever tell you that?—A. I think not.

Q. Then why did you say that Britton knew of this thing?—A. I don't know how he could help knowing it.

Q. Was he present about the office?—A. Sometimes he was there.

Q. Were there any other names that you put into false or fraudulent questions besides Conrad?—A. Yes, sir.

Q. Give us the names.—A. I put in a man by the name of Moody.

Q. Any other?—A. I used the name of Beeks.

Q. Did any such men ever do any service, or were they entirely fictitious?—A. They never did any service.

Q. Did Britton have a large number of deputy marshals riding during his second term?—A. At one time he did.

Q. How many?—A. One hundred and forty or one hundred and fifty, about election time.

Q. Were those marshals paid, or were there volunteers to keep the peace?—A. Those that made arrests and brought in prisoners were paid, I should judge.

Q. Do you mean to say that there were one hundred and forty or one hundred and fifty that were paid ?—A. I don't know whether they were all paid or not.

Q. Do you mean to say that there were one hundred and forty or one hundred and fifty riding ?—A. I don't know whether they were all riding or not.

Q. You say there were as many as that ?—A. That was my understanding ; that at one time there was that number.

Q. Was that understanding from observation or from information received ?—A. I saw a great many of them.

Q. Did you see them provided with horses ?—A. No ; they generally provided their own horses.

Q. Did you provide your own horses ?—A. Yes, sir.

Q. What time was it that he had this large number of deputy marshals ?—A. In 1872 ; about the time of the presidential election.

Q. Did you ever know Sarber before he was appointed deputy marshal ?—A. I saw him before he was appointed.

Q. Where was he ?—A. He lives on the Arkansas River between Fort Smith and Little Rock.

Q. Is he a native or an imported man ?—A. He is an imported man. He came from Kansas I understood.

Q. Do you know anything about the management of the marshal's office under his administration ?—A. Very little. I only made one or two trips under him, I believe.

Q. Whom did you arrest on those trips ?—A. The first time, I arrested a man named Mitchell.

Q. Did you arrest any others ?—A. Yes, sir ; two others. I was along when they were arrested.

Q. When you arrived at Fort Smith, were you given any voucher to make up for services of posses ?—A. Yes, sir.

Q. What occurred ?—A. I got a voucher for \$57, I believe, made up in Sarber's office.

Q. Was anybody else given a voucher ?—A. Yes, sir ; John A. Smith was given a voucher for about the same amount.

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WASHINGTON, D. C., *April 29, 1874.*

Present : Messrs. Sener, chairman, Williams, Speer, and Sheats.

The examination of B. F. SHOEMAKER was continued as follows :

By the CHAIRMAN :

Question. You left off yesterday in stating about the arrest of Mitchell and others, and the arrival at Fort Smith ?—Answer. I made one more trip.

Q. On what occasion was that ?—A. I went out with Colver, the deputy marshal. I went out as his posse. We arrested and brought into Fort Gibson and Fort Smith five or six prisoners, six I believe. Michael Shane and another party gave bond at Gibson ; we brought Henry Blaylock, alias Powers, and one Scott to Fort Smith, where they were put in jail.

Q. How many days were you engaged in making those arrests ?—A. We were out some thirty-five or forty days. We were out from Fort Smith about that long.

Q. How long was it after you made that arrest until you got the prisoners into Gibson and Fort Smith, in jail there?—A. A week or ten days.

Q. What sort of a voucher did you make out for your time of service, do you remember?—A. I got \$111 as a posse account; thirty-seven days, I believe. A portion of the writs the deputy was allowed the same number of days on.

Q. And the deputy was who?—A. Colver.

Q. Proportionally he was allowed the same number?—A. Proportionally, yes, sir.

Q. Did you have a posse?—A. I was a posse; I was not a deputy marshal under Sarber's administration.

Q. You were the only *posse comitatus* then on that occasion?—A. No, sir.

Q. Was there another posse?—A. Yes, sir; his name was Robert French.

Q. Colver made those arrests?—A. Yes, sir; we made those five or six arrests; us three.

Q. Do you know anything about how the vouchers were made out; do you know whether any false posses were charged?—A. Not in that case. I think not; not as I know of.

Q. Did they make out, and were they allowed, the deputy marshal and yourself, a full voucher for arrest and subsistence in each case?—A. I think there was in that case; in the case of Colver.

Q. If I understand you right, these arrests of six people were made at one trip and all brought in at one time together to Fort Gibson and Fort Smith?—A. Yes, sir.

Q. Was there one single allowance or were there several allowances for as many prisoners as there were?—A. If we brought in six prisoners, we had six different allowances; there was a return made on each writ.

Q. And really the same time was occupied in the arrest of all, was there not?—A. In the travel there was the same time; the arrests were made on different days.

Q. It was all within this time that you speak of?—A. The arrests were all made within fifteen or sixteen days.

Q. Do you know anything of a ring being formed at Fort Smith for the purchase of certificates for pay? Do you know anything about the marshals issuing certificates for what was due witnesses and others?—A. No, sir, I do not know any more than I never heard any of the officers say so.

Q. Did you ever see any certificates issued?—A. Men took them and got their accounts shaved—different parties—witnesses.

Q. Who shaved them?—A. This Mr. Scott and Mr. Lanigan.

Q. Who was Scott?—A. Scott was postmaster part of the time.

Q. Who is Lanigan?—A. A merchant there.

Q. What did they generally give for these certificates?—A. From 40 to 90 cents. I have sold my returns for 50 cents.

Q. And they afterward got the full value of them?—A. I presume they did.

Q. Were Britton or Roots mixed up in any way with these operations to purchase these certificates?—A. I cannot say whether they were or not.

Q. Did they ever advise you to sell them?—A. No, they told me I could go and get them shaved there. Britton and Donnelly both told me so; they said they would buy them.

Q. Why did they say they did not pay you the money?—A. They did not have the money.

Cross-examined by Mr. ROBINSON:

Q. Do you know what time Mr. Britton took possession of the marshal's office as marshal of the western district of Arkansas the first time?—A. He was marshal when I came to Van Buren.

Q. Do you know when he ceased to be marshal the first time?—A. I think he held possession of the office till about the 11th of May, 1871.

Q. You said in your examination-in-chief, "I returned *posse-comitatus* accounts, who did not render service; the first case is Nipp and Johnson; Donnelly gave me two vouchers. I told Mr. Britton that I hired a man and paid him out of my own pocket." Who was that man that you hired?—A. I do not know his name; I have forgotten his name.

Q. Was that case during Mr. Britton's first administration?—A. It was, sir.

Q. You stated that Mr. Donnelly gave you two vouchers?—A. He did.

Q. What did you do with those two vouchers?—A. I sold them at a discount in Van Buren.

Q. Who did you sell them to?—A. I disremember; to Williams & Co., or Mr. Brown, I think.

Q. Did you sell those two vouchers to B. J. Brown?—A. I do not know whether I sold them both or not. I do not know whether I sold either one of them to B. J. Brown or not. I sold one or two of them in Van Buren.

Q. Before whom were those posse accounts certified; those two now?—A. Before Frank Austin, I think.

Q. In what capacity was Frank Austin acting when he so certified?—A. He was acting as county clerk of Crawford County, Arkansas.

Q. Where is Mr. Austin now, if you know?—A. I do not know where he is.

Q. Did you state, in your examination-in-chief yesterday, that Mr. Austin certified those two vouchers, without any person appearing before him upon them?—A. It is my recollection I did.

Q. Is that true?—A. I think it is.

Q. Do you know whether it is true or not?—A. I do not remember of any person being there at the time Mr. Austin certified to it.

Q. Will you state to the committee, yes or no, whether any persons, as parties representing to have done that service appeared before Frank Austin at the time?—A. To my recollection, there was no party there.

Q. What names were in those vouchers?—A. That I cannot tell you.

Q. Did you not know at that time, according to your testimony, that you were perpetrating a fraud upon the United States in getting from the United States money that had not been earned by you or by any other person?—A. I had paid a *posse comitatus* for coming down with those prisoners.

Q. Then you took that in lieu of what you had paid out?—A. Yes, sir, that is the way I considered it at that time.

Q. Did you make that trip, upon which you arrested Nipp and Johnson, in company with any other deputy marshal?—A. I did not.

Q. Where did you make the arrest at?—A. South of Baxter.

Q. How many miles south of Baxter?—A. I suppose it was four or five miles.

Q. In the Indian country?—A. Yes, sir.

Q. You stated that C. R. Stevenson was a deputy marshal in the western district of Arkansas at the same time you were?—A. Yes, sir.

Q. You stated that he returned *posse comitatus* in cases where no services were rendered?—A. I did.

Q. Please state the cases specifically.—A. I cannot do it. I disremember what they were.

Q. Cannot you give us some of them?—A. No, sir. I probably could pick the accounts out if I had the accounts placed before me.

Q. Did you ride with C. R. Stevenson as deputy marshal for some time?—A. I did.

Q. Were any of those cases returned while you were riding together?—A. Yes, sir.

Q. And can you not tell the committee any of the names of the parties that were thus returned as *posse comitatus*?—A. I probably could pick them out if I saw them.

Q. Cannot you tell this committee some of the names or cases in which they occurred?—A. Mr. Stevenson had a man by the name of Pigeon, from the Creek Nation, for murder. I brought down at that time Alonzo Cullen, for larceny. We both returned posses. We had no posses with us.

Q. Do you allude to Jesse Pigeon?—A. I forget his first name. He was a young man tried there at Van Buren for murder.

Q. How many posses did you return in those cases?—A. I think there were two on each return.

Q. And you say that you had none?—A. We had no posses.

Q. Did you report those names to the office as in your service as posses?—A. I do not know but that I did.

Q. Did not you report them at the office as your posses?—A. I cannot say whether I did or not.

Q. Could you have obtained vouchers for them as posses without reporting them to the office?—A. I have done such a thing.

Q. I am asking you about this case. Could you have obtained vouchers from the office without reporting that you had them?—A. I did it previously.

Q. In this case that you are down to now?—A. I disremember whether I reported the names or whether they were made up.

Q. Why is it that your recollection is so bad about all these things?—A. That was three or four years ago, and I never calculated to be called here to testify to this at that time; I did not tax my memory with it.

Q. It seems that you remember the Pigeon case and the other case you mentioned; why cannot you remember this just as well?—A. I remember very well that we brought those men down there.

Q. And can you give me the names of the persons you returned as *posse comitatus*?—A. I cannot.

Q. What did you do with those accounts?—A. Sold them in Van Buren, I reckon.

Q. In those two cases that you have mentioned, did Stevenson and yourself report those cases to the office; make return of writs and report posses?—A. We returned our writs to the office; got our returns for them; there were two posses issued; I do not know whether I sold both *posses* or not, or whether the office took one or not.

Q. Nothing in that account made any impression on your mind?—A. I am satisfied I got one and sold that.

Q. Are you satisfied that you got more than one?—A. There were two made out; I am satisfied of that fact.

Q. Who did Stevenson return as posses in that?—A. I cannot tell you.

Q. How long did you and Stevenson travel together as deputy marshals?—A. Something nearly two years, I judge.

Q. And you cannot tell this committee the names of any posses that you returned in any cases during that time?—A. O, yes.

Q. I mean during Mr. Britton's first administration?—A. I say that has been three or four years ago, and I disremember.

Q. These of Jesse Pigeon's and others, who were they certified before?—A. I think before Frank Austin; I never got any posse accounts certified to in Van Buren, unless they were before Frank Austin.

Q. Where does Mr. Stevenson live?—A. The last time I heard of him he lived in the Cherokee Nation.

Q. Has he a wife and family?—A. He had a wife and family at that time.

Q. Has he a settled home?—A. He has.

Q. In your examination-in-chief yesterday, you spoke of having *posse-comitatus* accounts certified to before E. J. Brooks, United States commissioner?—A. Yes, sir.

Q. Where did E. J. Brooks hold his office at that time; what place?—A. In the Fishback block in Fort Smith.

Q. How many *posse-comitatus* accounts did you have certified to before him that were returned?—A. I cannot tell you.

Q. Did you have any?—A. I did, sir.

Q. Name them, the cases and the posses.—A. I do not know as I am able to do it; I think I had one by the name of Moody and one by the name of Beaks; I think I have had others.

Q. Was that during Mr. Britton's first or second administration?—A. I never had any accounts certified to in Mr. Britton's first administration.

Q. When you speak of accounts being certified to before E. J. Brooks do you mean to say that Mr. Brooks put a jurat to them when there was no person present to make the oath that the jurat indicated?—A. He certified to accounts of mine when there was no party there present, only me and him; I mean not in Britton's first administration.

Q. Can you give the committee about how often you done that?—A. No, sir; I could not.

Q. Could you pick out the accounts that you had certified to before E. J. Brooks that you would state to this committee are fraudulent?—A. I think I can.

Q. When you were appointed to office under Mr. Britton did you take an oath of office?—A. I do not know that I did the first time.

Q. Did you the last time take an oath of office?—A. I think I did, and gave bonds.

Q. Did that oath of office require of you the faithful performance of your duty as a deputy marshal in the western district of Arkansas?—A. I presume it did.

Q. In what sum did you give bonds?—A. Five thousand dollars.

Q. Do you know that you were discharging your duty faithfully as a deputy marshal under your oath of office when you were making out and getting money from the Government for those accounts?—A. I had the precedent set before me of older deputies.

Q. Does precedent allow to forswear yourself?—A. I cannot say that it does.

Q. You have stated to this committee, in your examination-in-chief, that those accounts were fraudulent?—A. They were.

Q. The grand jury, about which you have testified in your examination-in-chief, will you please tell the committee what term of the court



that grand jury was held to?—A. The court that convened in Fort Smith, May, 1871, I believe—no, sir; I am mistaken—it was in November, 1871.

Q. Who was marshal from the May term, 1871, including the November term, 1871?—A. Logan H. Roots.

Q. Then you mean to say that Logan H. Roots selected that jury, and not William A. Britton, before which you went?—A. I do not know who selected the jury. I was not there. I did not see who selected it.

Q. Could William A. Britton summon a juror to the November term to your knowledge? Was he marshal to do it?—A. No, sir.

Q. If I understood your examination yesterday, you stated that all those things that were going on in the office in relation to the grand-jury concerns were kept, you believed, from Mr. Roots, and that he had no connection with it?—A. I do not think that he knew of the meeting of the grand jury that night.

Q. Did not you state that he knew nothing of the conversations that were going on between Mr. Stevenson and the deputies and yourself?—A. I do not believe that he knew anything about it.

Q. Then the grand jury you went before was not selected by Mr. Britton?—A. No, sir; of course not. It is my impression it was not.

Q. Who did you state was foreman of the grand jury?—A. Henry E. McKee.

Q. Where does he live?—A. In Fort Smith, the last time I knew of him.

Q. Was your evidence before that grand jury taken in writing?—A. I believe it was.

Q. You have stated yesterday that you did not subscribe it?—A. No, sir; I did not.

Q. Do you write your name?—A. I did not at that time, nor did I authorize any one to sign my name.

Q. Can you write your name ordinarily?—A. I had then my right arm in a sling from a gunshot wound.

Q. So you could not write then?—A. Not conveniently; I could not write my name on account of my right arm being wounded.

Q. You had no conversation with Mr. Britton in regard to going before that grand jury at all?—A. I have no remembrance that I had any.

Q. You stated that the conversation that you had in relation to it the day before you met at the office in the evening was with Mr. Stevenson before you went to the office that evening?—A. Yes, sir.

Q. All you know up to the time of meeting at that office is hearsay, through Mr. Stevenson, is it not?—A. Are you talking about the conversation that Stevenson, Donnelly, and I had afterward?

Q. The conversation that you mention in your examination-in-chief, when you and Stevenson went down to the river before you went to the office in the evening?—A. Yes, sir.

Q. All you know in regard to those lists and in regard to what was to go on was in a hearsay conversation from Stevenson to you?—A. What Stevenson had told me.

Q. Have you stated in this affidavit here that was exhibited to you yesterday, that you had no conversation with Mr. Donnelly; that all the conversation that was had, was had with Mr. Stevenson at that office in the evening; though in the presence of Mr. Donnelly, Mr. Donnelly did not participate in it?—A. I do not think that I have said that.

Q. You went to see Mr. McKee twice?—A. Yes, sir.

Q. You had no conversation with him the first evening in relation to

the accounts about which you testified at all?—A. No, sir; he met us at the gate.

Q. On the second evening you had a conversation with him?—A. Yes, sir; in his parlor.

Q. In relation to the matters about which you were to testify?—A. Yes, sir.

Q. Was any other person present except Mr. McKee and yourself at the time that you had that conversation?—A. That conversation in regard to those matters?

Q. I understand you did not have but one in regard to those matters?—A. The last time I went to see him there was no other person present except Mr. McKee and myself.

Q. Did Mr. McKee invite you to his house to have that conversation?—A. He told me to come up. When I first went up the first evening, he told me he could not see me that evening, but to come up the next evening.

Q. Will you tell the committee that conversation upon this subject, as nearly as you can?—A. I went into Henry McKee's house and I told him that I had come in regard to some posse accounts—in regard to the accounts that had come back from Washington. I told him that I was not disposed to testify that I had those men in my possession, and I was sent there for the purpose of getting to elude the general question that I had them. I told him that I would not swear that I had had those men in my possession or my employ that were on those posse accounts.

Q. How long after you had that conversation before you went before the grand jury, or a part of the grand jury?—A. I disremember whether it was the next evening. It was a few evenings afterwards. I aint certain whether it was the next evening or not.

Q. Did you state to the committee, in your examination-in-chief, that the district attorney for the district was present when you were examined?—A. I do not think that I did. Mr. Temple was acting district attorney. He was not district attorney at that time. He is now district attorney.

By the CHAIRMAN :

Q. Was he present?—A. He was present.

By Mr. ROBINSON :

Q. Who did you state, in your examination-in-chief, swore you in that grand-jury room?—A. Mr. Lockhart. I believe he was clerk.

Q. Who examined you in that grand-jury room?—A. I believe Mr. Lockhart, Mr. McKee, and Mr. Temple all examined me.

Q. Who did the writing while you were under examination?—A. Mr. Lockhart, I believe.

Q. Was that writing read to you when it was concluded?—A. It is my recollection that it was not.

Q. Are you positive that Mr. Temple was present there?—A. I am positive that Mr. Temple was there.

Q. Was there any other witness before the grand jury at the same time you were?—A. No, sir.

Q. Then you do not know, of your own knowledge, what any of those other witnesses testified to in that case?—A. No, sir.

Q. How many persons do you say (members of the grand jury) were present at that time?—A. Five was all I saw in the room. There was Henry E. McKee, Mr. Lockhart, Mr. Temple, and two men whose names I do not know. They were all members of the grand jury.

Q. Was Mr. Temple a member of the grand jury?—A. No, sir.

Q. Do you state to this committee that you did not swear to the truth and validity of those accounts in that grand-jury room?—A. I do.

Q. And you say so now?—A. I did not swear that I ever had those men in my employ before that grand jury.

Q. I ask you if you swore before that grand jury that those accounts which you had a list of were correct?—A. No, sir; I did not swear that they were correct.

Q. You stated, in your examination-in-chief yesterday, that a portion of the money that you should have received upon a trip as a part of your division, between yourself and Stevenson, went to pay Rowland to cover up frauds as a detective or Government agent down there at that time?—A. That is what I was told.

Q. Who told you that?—A. C. R. Stevenson. I never got the money.

Q. Was Rowland there at that time?—A. He was, I think.

Q. Where does he live?—A. I do not know.

Q. Do you not know that that money was borrowed from Mr. Stevenson to pay a debt to Benton G. Brown, for money that had been borrowed from him, to pay Rowland upon entirely other matters, unconnected with this case altogether?—A. I do not.

Q. Did Mr. Stevenson tell you that that money was to pay money that had been borrowed from Benton G. Brown?—A. No, sir; he did not—not borrowed money.

Q. Did Mr. Donnelly ever propose to you, at any time or place, to swear falsely?—A. I do not know as he ever came out and said in so many words to do such a thing.

Q. The last trip you made under Mr. Britton, how many posses did you get?—A. I think I had only one posse; I do not remember.

Q. Are you certain about that?—A. I cannot swear; I had a regular posse living with me; I do not remember whether there were any fraudulent posses returned or not.

Q. What was his name?—A. John A. Smith.

Q. Did you ask Mr. Donnelly at that trip, when you had but one posse, to allow you another?—A. I might have done so.

Q. Did Mr. Donnelly at that time ask you if you had that posse with you?—A. He might have asked me that; I do not remember whether he did or not.

Q. Did you not ask him whether he could not allow you another posse, more than you had?—A. I might have done so. I have asked him that.

Q. Did he tell you he could not for the reason that you did not have another?—A. I do not remember having any such conversation with Mr. Donnelly; I might possibly; I might have had; I do not remember it; I have asked him such questions; I am satisfied of that, and I might have asked him then; I do not think I got more than one posse at that time.

Q. You wanted another, did you not?—A. Yes, sir.

Q. You did not get him?—A. I do not know whether I did or not; I do not think I did.

Q. Do you remember that case?—A. The last trip I ever made under Britton; I disremember what prisoners I brought down. I think the last trip, I brought down one Henry Paris for one, and I think I had some papers that were from the office at Fort Gibson—some prisoners that I had arrested and brought in there before the commission. I am not positive that they were the men that I had the last trip.

Q. Did Mr. Donnelly tell you to keep your accounts, that there was

no money to pay them, and that when money came in they would be paid?—A. I disremember whether he did; he has told me such things. I knew that there was no money there. I kept my accounts.

Q. What did you do with the accounts?—A. I guess they are here in Washington now.

Q. Tell us what one it is?—A. I do not know what accounts they are.

Q. What did you do with that account?—A. The last trip under Britton? They are here in Washington now.

Q. But what did you do with it?—A. I turned over to Mr. Whitney, I think, all the accounts I had.

Q. Can you pick that account out of the rest?—A. I presume I can.

Q. Would it show you the date the last work was did?—A. Yes, sir; it would show the date of the last work I did, if it is in the office.

Q. On what trip was it that you attempted to return Perry Duval as a *posse comitatus*?—A. November, I reckon; I do not know what time it was.

Q. You did attempt to do that, did you?—A. I did not only attempt to do it, but I did return it.

Q. Was he a posse under you, when you returned him?—A. No, sir.

Q. What did you return him as a posse for, when you knew he was not?—A. He came to me and said he had been lying there sick, and wanted to get some pay.

Q. Did Mr. Donnelly or Mr. Britton tell you to do that—to return Perry Duval for the reason that he had been lying around there sick?—A. No, sir; I do not know that they did.

Q. Did Mr. Donnelly or Mr. Britton know that you had returned him without service?—A. I cannot say as to that.

By the CHAIRMAN:

Q. Do you believe they knew of that?—A. I believe they did know that I returned him without service, because he was lying around down there sick; he was in town all the time.

By Mr. ROBINSON:

Q. Do not you know Duval was sick at Fort Gibson when you returned him as a posse?—A. No, sir; he was not in Fort Gibson at that time.

Q. Did you return him at other times?—A. I never returned him only once, I believe.

Q. How was Mr. Donnelly or Mr. Britton to know that the accounts certified to by you, and sworn to by Duval, were not correct? Did Duval swear to that service?—A. I suppose he did.

Q. And you certified to it?—A. I reckon I did.

Q. Did you swear to it?—A. I do not know; I reckon I did if it was necessary.

Q. Was not it necessary for you to do it on your accounts?—A. I believe it was.

Q. Did not you know, then, that you were swearing to that which was not true in point of fact?—A. Yes, sir.

Q. You swore to a good many of those things, did you not, in the marshal's office under Mr. Britton?—A. Yes, sir.

Q. Is this the only one that you have sworn falsely to?—A. I suppose not, sir; there have been a great many sworn to falsely down there.

Q. Where did you swear to those accounts? Place I am after now.—A. I believe it was at J. O. Churchill's office.

Q. Who was Mr. Churchill?—A. He was clerk—district clerk of the court.

Q. Did you swear to any before anybody else?—A. I suppose I swore to some before E. J. Brooks, but I ain't positive to that account being sworn to before Churchill, but I believe it was; it was either Brooks or Churchill.

Q. Where is Mr. Brooks's office, from the marshal's office?—A. In the Fishback block, about 250 yards.

Q. Is not the office of E. J. Brooks in the city of Fort Smith?—A. Yes, sir.

Q. And the marshal's office upon the military reservation of Fort Smith?—A. Yes, sir.

Q. Are they not some quarter of a mile apart?—A. Not quite so far as that; I suppose 250 yards.

Q. It is open all the way between?—A. There is a stone wall between.

Q. Does the marshal now what posses the deputy takes out in the Indian country, and those that he says he had with him when he returned—can he know?—A. I suppose not every time.

Q. Have you brought any cases and had them tried before E. J. Brooks in the city of Fort Smith?—A. Yes, sir.

Q. Have you had your posse accounts made out in the city of Fort Smith before you reported your accounts to the marshal's office at all?—A. Certainly not; the posse accounts are all made out in the office; our entire accounts are made out in the office. Our prisoners are either bound over or set at liberty, and we take our writs and return them to the office, and our accounts are made out there, after they are tried, by the direction of the deputies.

Adjourned.

WASHINGTON, D. C., April 30, 1874.

All the members of the committee present.

COLUMBUS C. AYRES recalled.

By the CHAIRMAN:

Question. Did you ever have a warrant for Newton Morton?—Answer. My brother did, I think, have an attachment.

Q. You either did or you did not.—A. Is it a writ of attachment?

Q. It was a *capias writ*, issued by Churchill, as clerk of the court for the western district of Arkansas, upon one Newton Morton.—A. Yes, sir; I assisted in serving that writ. I do not think we made service upon but one of the parties. You will find that three parties are charged in the same writ. I think it was on Newton Morton, Lock Morton, and a woman called, I think, Ann Rebecca Morton.

Q. Do you recollect what *posse comitatus* you had on that occasion?—A. None, sir.

Q. You are certain of that?—A. We were not allowed any *posse comitatus* on that—yes, sir; I am sure of it; at least I never see any *posse comitatus*.

Q. What did you do with the warrant?—A. It was served on Lock Morton. There in that court the deputy is allowed, in attachment cases between courts, to take out a bond and have it filed before responsible parties. We took that bond at Cincinnati, Ark., for Lock Morton.

Q. You feel quite certain that you had no *posse comitatus* in that case?—A. O, there was none at all.

Q. Did you have a warrant against a Chickasaw Indian, charged with

an assault with an intent to kill, in the Indian country?—A. Was it not information?

Q. That is what they say here—assault with intent to kill.—A. I suppose it is an information filed.

Q. Do you recollect anything about it?—A. Is it a writ that the name was unknown?

Q. Just simply a Chickasaw Indian, with the name unknown.—A. Yes, sir; I remember having such a writ as that.

Q. Do you recollect how much travel you did in making that arrest?—A. That arrest was never made. I returned that writ *non est*, as well as I remember. It is a good while since I attended to these writs, and I never taxed my memory with it. If I saw the papers I would recognize my own writs. As near as I remember, I made no arrest on that. I think I returned the writ *non est* in May, 1871. It was issued, probably, in November, 1870.

Q. You say there was no arrest ever made?—A. No, sir.

Q. No *posse comitatus* could have served on a writ that you did not execute?—A. No, sir.

Q. Look at those papers, [showing,] and see if you can tell in whose handwriting they are.—A. No, sir; I cannot. I am hardly expert enough to tell that.

Q. Did you have any list of these names furnished you the night you were before the grand jury?—A. As I stated before in my examination-in-chief, there was simply a slip of paper handed me by Mr. Fitzhenry; and as to going before the grand jury, I do not know when any parties went before the grand jury. I never went before the grand jury at all.

Q. You do not remember any names being embraced in any list that was given you when you went before the grand jury?—A. It has been so long ago I cannot swear positively, but it seems I remember James Colbert, but Colbert is a very common name out there. We have a great many Colberts on the list. I think there was a Colbert on the list that I was handed.

Cross-examined by Mr. ROBINSON:

Q. Do you know, when you leave Van Buren or Fort Smith to go into the Indian country to arrest a prisoner, whether you are going to find him or not?—A. No, sir; you go to make the attempt; you go to hunt him; you do not know whether you will find him or not.

Q. Do you take *posses* when you start, without any reference as to whether you will find him or not, when you have a writ to execute?—A. When a writ is in your hands, the law is to take a posse, and proceed to make the arrest; you do not know positively whether you will find the prisoner or not.

Q. Then, if you were to take a posse with you, and you failed to find the party that you went to arrest, and you make your return *non est*, would not you be entitled to the posse that went with you?—A. You would be entitled to a *per diem*, which is two dollars a day, and the posse would be allowed his fee *per diem*—no mileage.

Q. Then you did not intend to tell this committee that there are no *posses comitatus* allowed upon *non-est* returns?—A. No, sir; I was speaking of those.

Q. Are not *posses comitatus* allowed just the same upon writs returned *non est* as upon writs served, where the service is to be done in the Indian country?—A. As I stated before, that is the law, and it is perfectly right they should have it.

Q. Do you know that you ever had that writ in your hands in your



life, (attachment against Newton Morton?) Do you know whether there were more attachments against Newton Morton than the one you had?—A. There might have been more, but no more that I knew of. I went with my brother, Willard Ayers.

Q. You mean to say this: You do not know whether you ever had that writ that that posse account calls for at all?—A. For Newton Morton? I do not know anything about this, for I never saw this paper.

Q. Do you tell this committee that you rendered the service as a deputy marshal? Look, now, and see if you did.—A. All I know is that I held a writ of attachment for one Newton Morton, (myself and my brother,) and that I returned a *non-est* writ.

Q. Did you return any service on a writ of Newton Morton?—A. No, sir. The writ was returned not served on Newton Morton.

Q. Was not it the same writ for all of them?—A. As I remember it, it was three parties in one writ. It has been so long ago, I cannot remember those writs.

Q. When you make arrests, and posses are made out for the posses does not the posse account show if there have been more than one, or just one, arrested?—A. Yes, sir. It is usual that it is specified as it is in there in the *posse-comitatus* account, what the writ was for, and the charge, and also the persons named individually in the writ. These are two *posse-comitatus* accounts on the same writ.

Q. In the making up of posse accounts, if you have two or more names on the writs, are not all their names mentioned in the account and below that? If there is but one person arrested, is it not so specified in the posse accounts?—A. Say you go out with a writ for three; two or more parties, all in the same writ; if you make service on one, you bring him into Fort Smith and make up your posse account, one for service, and one for *non est*; the posse has to swear that he went to assist in executing a certain writ, and of course you give the names without specifying the parties.

Q. Are you not entitled to as many posses in making the arrest of one party upon the writ as you would be upon all of them?—A. Yes, sir; you are entitled to that; you are entitled to three posses. I think the law is that—on each writ:

Q. Look at that name (James Colbert) and tell me if you know it.—A. I know a man of that name.

Q. Where does he live?—A. Choctaw Nation.

Q. Say if you know a man by that name, (Henry Baldwin.)—A. No, sir; I do not.

Q. Do you know a man by that name, (John Brighton?)—A. No, sir; I do not know him.

Q. Do you know a butcher living at the town of Perryville, Choctaw Nation, by that name?—A. No, sir; I do not.

Q. Do you know one there by the name of Harry Baldwin?—A. No, sir; I do not.

Q. You were examined a few moments ago with regard to a paper that was given you by one B. Fitzhenry, containing names of persons upon it; did you ever have any conversation with James W. Donnelly or W. A. Britton upon that subject?—A. I never did with Mr. Donnelly or Mr. Britton, more than I have stated in my examination-in-chief.

By Judge DURHAM:

Q. I will ask whether or not when you start out in search of anybody, do you start with your posse; you stated in your examination-in-chief

that you started out with blank capiases?—A. They accused us of starting with blank warrants, but I think we have never done that.

Q. Do you start with your posses?—A. As a general thing we do; for it is very hard to trust a posse in the Indian country; they are all leagued together there.

Q. Do I understand you to say that when you returned that writ *non est*, the posses make out their accounts,—do you charge for these posses?—A. We do not charge; the posses charge for themselves the per diem; if they actually do the service, they are entitled to their pay.

Q. But whether you make an arrest or not?—A. We do not expect them to do their work for nothing.

Q. Is that a customary thing now?—A. For a man to take his posses with him from Fort Smith? Yes, sir.

Q. And to make out their returns and get their allowances whether there is any arrest or not?—A. It has never been customary with me. I only speak of my own accounts.

Q. Do not you know that it has been customary with others?—A. I do not know anything of others' accounts.

Cross-examined by Mr. ROBINSON:

Q. When you go into the Indian country with a writ to serve upon a party, and take with you *posse comitatus* for that purpose, and you return from the Indian country with that *posse comitatus* and fail to make the arrest, do they make accounts in cases like that for allowance for their services?—A. Of course they do; if they actually do the service they are entitled to the fees.

By Judge DURHAM:

Q. Have not posses who have gone with you, where you have returned *non est*, made out their accounts and got their pay?—A. I do not remember ever having returned a posse upon a *non-est* writ.

Q. Or did they make it themselves?—A. You make the return of your service on the writ, and when you make return of that writ, the marshal or his clerk asks you who are your poses, and you can say, and of course he makes up your accounts according to the deputy's statement, and then the posse's account is handed to the posse to swear to, and he goes before the commissioner or clerk to swear to it and it is paid.

Q. You make the return?—A. A posse would not be acknowledged by the marshal.

The examination of B. F. SHOEMAKER was continued as follows:

By Mr. ROBINSON:

Question. You stated yesterday that you turned over the Perry Duval account, with other accounts of yours, to Mr. Whitney, when he was at Fort Smith engaged in that investigation?—Answer. I believe that Mr. Whitney got it in Fort Smith. It is in Washington now.

Q. Who did he get it from?—A. I do not know but what he got it from the bank.

Q. What did you do with the deputy marshal voucher that had the name of Perry Duval in it as your *posse comitatus*?—A. I am not positive whether I turned that over to Mr. Whitney or not, but I think I did; I am not satisfied that I did, however.

Q. You turned it over, you mean, in Fort Smith?—A. Yes, sir.

Q. Where was Mr. Whitney staying, in Fort Smith, when he was

making that investigation?—A. He was staying at the Saint Charles Hotel.

Q. Where did Perry Duval board while he was sick at Fort Smith?—A. He boarded at the Saint Charles.

Q. Did Mr. Whitney tell you, when you presented that account to him, that he knew it was false of his own personal knowledge?—A. I think he did.

Q. And that now you must testify as to what you knew of the balance of those affairs or he would put you in the penitentiary on that?—A. I do not think he said so.

Q. Tell us if he did.—A. He said he knew it was false and fraudulent, and he was going to have a thorough investigation of the affairs there.

Q. Did not he say that you would have to testify?—A. I told him that he could not scare me or any one else. I do not know whether he told me that I had to testify or not, but I told him that he could not make me testify. But I would have testified long before if I had been called upon.

Q. After Mr. Whitney told you that he knew, of his own personal knowledge, that that account was fraudulent, what was done with that account?—A. I do not know what Mr. Whitney did with it.

Q. Did you withdraw that Perry Duval account you had sworn was correct, and that you now swear is false, from the accounts that were turned over to the Government, or did you still attempt to put it through and collect it?—A. I acknowledged to Mr. Whitney it was fraudulent—that Perry Duval never rendered the service.

Q. But did you still press the claim, or did you take it back?—A. I do not know what Mr. Whitney done with the account.

Q. What did you do with it?—A. I never had the account after it left my possession.

Q. Did you not give it to him to forward to the Department?—A. No, sir. I supposed it was forwarded to the Department.

Q. In looking over the accounts, did you bring that one, or did you look for it?—A. I never saw it.

Q. Did you look for it?—A. No, sir.

Q. Did you inquire for it?—A. No, sir.

Q. Did not you attempt last summer before Mr. Fuller, and in the presence of Mr. Whitney, to swear to the truth of that Perry Duval account, and were you not prohibited from doing so by Mr. Whitney telling you that he knew it was false?—A. No, sir. I do not think that I attempted to swear to anything at all. I never did swear to that as a genuine account. Mr. Whitney was writing some evidence down. I told him I could save him some trouble—I would not swear to that document; he was just wasting his time, making out such an affidavit as that, when I would not swear to it.

Q. But you had sworn to it before?—A. Yes, sir.

Q. Did Mr. Britton or Mr. Donnelly ever supply the information that you could get your certificate cashed at Lanigan's or Scott's office?—A. Yes, sir.

Q. Do you understand the meaning of that question?—A. I think I do.

Q. Did you state in your examination-in-chief that they told you to go and get your money at those places; that they were paying, after you had asked them where you could get it?—A. I believe that was the purport of it. I do not see any difference in the question.

Q. What do you know about a ring being formed at Fort Smith for

the purpose of buying up the marshal's certificates?—A. Of my own personal knowledge, I do not know anything about it.

Q. All you know is from your own presumption and hearsay?—A. Yes, sir.

Q. You say that you did not attempt to make an affidavit before I. W. Fuller, at Fort Smith, in the presence of Mr. Whitney last summer to swear to the truth of that Perry Duval account?—A. I never made out any affidavit to that account.

Q. Did you attempt it?—A. I was questioned on it.

Q. That does not answer my question.—A. I do not remember that I was sworn when that came up.

By the CHAIRMAN:

Q. Did you go there and try to be sworn?—A. No, sir. I did not go there and try to be sworn to that account.

Question repeated.

A. No, sir; I do not think I made any such affidavit, or attempted to make such an affidavit.

By Mr. ROBINSON:

Q. Was there such a conversation occurred in your presence as that I have alluded to?—A. After I had told Mr. Whitney that I did not come there to be scared into making an affidavit about the marshal's office of the western district of Arkansas, I said I had come there, and any evidence I had there, in my possession, he could have it freely; that he might have had it long ago, if he had asked for it.

Q. Did you tell him before he detected you in the Perry Duval account or after?—A. I was aware that he had got the account before.

Q. Who gave him that account?—A. Perry Duval himself. Perry Duval told me so—that Mr. Whitney knew it was not all right.

Q. What was Perry Duval?—A. He rode there as a posse—made several trips under different deputies; at the time he did make this account, he was lying there sick.

Q. How did the conversation occur between you and Mr. Whitney, in which you told him that you could not be scared into making an affidavit?—A. He commenced writing out an affidavit; he commenced writing in regard to my papers. I was sitting at the table very close to see what he wrote.

Q. And when that conversation occurred, you were refusing to make an affidavit?—A. I told him he could not get me to swear to anything. He could not force me to swear to any affidavit at all.

Q. But, after he told you what he had got on you, you did swear?—A. It is my impression that he did not tell until——

Q. Did not he tell you before you made that affidavit?—A. I do not think he did; it is my recollection that he did not.

Q. Who wrote that affidavit—that affidavit you signed?—A. Mr. Whitney.

Q. Who was present when he wrote it?—A. Mr. Fuller.

Q. Were any other persons present?—A. No, sir; it is my recollection that the conversation in regard to the Perry Duval account happened after I had commenced making my affidavit, and I told him that I was willing to make any affidavit in regard to the affairs there. It is my recollection that the conversation about the Perry Duval account happened after I had commenced voluntarily to make my affidavit there.

Q. During whose administration as marshal was that Perry Duval *posse-comitatus* account made?—A. Last term of William A. Britton.

Q. I will ask if the Perry Duval named is mentioned in that affidavit of yours at all.—A. I do not remember that it is.

Q. It was not put in here at all?—A. I do not remember that it is in there.

Q. Why was not it put in there?—A. That is more than I can tell you.

Q. You state that Mr. Whitney knew, at that time, of that Perry Duval account when he was writing out that affidavit?—A. Before he ever commenced writing my affidavit, he knew it, and I knew he knew it—two or three or four days before.

Q. Still you state to this committee that that account is not in this affidavit that you made there before Mr. Whitney; you say he wrote it?—A. I do not know that it is in there at all. I do not think it is. It is my recollection that it is not in there.

Q. Was not that account left out of this affidavit by agreement between you and Mr. Whitney, that if you would testify in regard to the balance he would let you off in regard to that?—A. No, sir; there was no such agreement made between us. If it was I was out of my head or drunk.

Q. Read there, commencing "the second administration of Mr. Britton," [showing.] Tell me whether that Duval matter is in your affidavit?—A. I do not see it, sir.

Q. During the time that you were deputy marshal, was it the custom for the deputies to make their reports to Mr. Donnelly, and him to make the returns from their reports?—A. Yes, sir.

Q. And for him to make the returns from their reports?—A. Yes, sir, to make returns from their reports.

Q. Did you report to Mr. Donnelly the *posse-comitatus* account of Perry Duval in your deputy-marshal account?—A. When I made out my returns it is my impression that I told him Duval was a posse.

Q. Did not you have to put it in your deputy-marshal account that you presented to Mr. Donnelly for settlement, that he was your posse in this case?—A. I suppose I gave Mr. Donnelly Mr. Perry Duval's name. He made the account out.

Q. But from your report of the matter?—A. Yes, sir.

Q. Did Mr. Donnelly ever refuse to allow you all the claims claimed by you on your writs?—A. Yes, sir; he has. On all the fees of my writs; sometimes I would want them made larger, and he was not willing to make them larger.

Q. And he would refuse them in cases of that kind?—A. Yes, sir, when it was not consistent.

Q. Did you ever see C. R. Stevenson make his reports to J. W. Donnelly, as a deputy marshal, for his services, and for the services of his *posse-comitatus*?—A. I have been in the office when he did do it; have stood around the desk when he was making them out.

Q. Mr. Donnelly made out the accounts, then, for Mr. Stevenson and the *posse-comitatus*, as Mr. Stevenson reported them?—A. As a general thing he did.

Q. Were you and Mr. Stevenson riding together at that time?—A. Yes, sir.

Q. Have you and Mr. Stevenson fallen out and separated since that time?—A. Mr. Stevenson and I have never had any hard words. There is a little difference of opinion between us. We have never had a quarrel or anything of that kind. I have always spoken friendly to him and he to me.

Q. But you do not feel as kindly to Mr. Stevenson as you did when

you were riding with him as deputy marshal?—A. I do not know that I do.

Q. When Mr. Stevenson made those reports to Mr. Donnelly were you a partner in the proceeds—reports of the accounts for deputy marshal's service, and for *posses-comitatus*?—A. I generally had my prisoner to return, and he generally had his. He took the proceeds of his man and I took the proceeds of mine.

Q. When he was making those reports, you stood by and heard them?—A. I think I have.

Q. Did you ever make any objection in the presence of Mr. Donnelly, by which to call his attention to the accounts, whether they were fraudulent or not, any of them?—A. No, sir; I do not know as I did.

Q. Have you ever seen your affidavit taken by Fuller, since last summer?—A. I saw it there.

Q. Have you ever seen it before—or a copy of it since that time?—A. I have, a copy.

Q. Who furnished you with a copy of that affidavit?—A. Mr. Whitney.

Q. When did Mr. Whitney furnish you with a copy of that affidavit?—A. When we were coming here.

Q. That was furnished you for the purpose of posting you up as to what you would swear when you got here?—A. I requested to see it if he had it.

Q. How did you know he had it?—A. I did not know he had it.

Q. But you requested to see it?—A. Yes, sir.

Q. Have you that copy?—A. No, sir.

Q. Where is it?—A. I do not know.

Q. Did Mr. Whitney tell you he had it?—A. No, sir; he did not tell me he had it until he pulled it out and handed it to me.

Q. You told the committee in your examination-in-chief, that you had a conversation with Mr. Britton after you came down out of the grand jury room, when you had been up there, in reference to those *posse-comitatus* accounts upon *non est* writs. Did you do that? Now tell us what that conversation was.—A. The conversation I had with him was this: he was standing there, and asked if it was easy enough done, or if I got through all right.

Q. Was that all the conversation you had with Mr. Britton upon that subject?—A. I believe it was; he only spoke a few words to me about it. I took it that that was what he was driving at, whether I had got through or not all right.

Q. You stated in your examination-in-chief yesterday that there was an arrangement between Mr. Donnelly and the foreman of the grand jury; please tell us what that arrangement was, if you know.—A. Mr. Donnelly told me that he had an arrangement for me to see Mr. McKee before I went before that grand jury.

Q. Was that arrangement made?—A. Mr. Donnelly told me to go up there; I suppose it was.

Q. You never heard anything transpire between Mr. Donnelly and the foreman of the grand jury?—A. No, sir.

Q. Nor did you hear from the foreman of the grand jury that any arrangement had been made between Mr. Donnelly and him—did you tell us so yesterday?—A. That is all—only what I have said.

Q. Did you receive, when at Fort Smith, any money from Mr. Whitney?—A. Yes, sir.

Q. How much money did you receive from Mr. Whitney?—A. Five dollars.



Q. What service did you render Mr. Whitney for that money?—A. I rendered him no service for it; he told me that he would pay my expenses if I would stay there. I told him I wanted to go home. He asked me if \$5 was sufficient to pay my board and my horse's board for a day or two; he gave me \$5 to keep me there.

Q. Where did you first settle when you came to Arkansas?—A. I suppose I settled in Van Buren when I first went to Arkansas; I staid in Fayetteville.

Q. Where did you settle all the time?—A. I first went to Fayetteville and staid there four or five weeks; I went down from there with the sheriff of Washington County to Van Buren; and there is where I made my home. When the marshal's office was moved over to Fort Smith, I went over there; I staid there till I moved up with C. R. Stevenson in the Indian country.

Q. How long did you live in the State of Arkansas; about how long?—A. From the time I first went there until I moved out of it was about twelve or fourteen months. During that time I was away five or six months; I was shot and staid in Missouri.

Q. After you left the State of Arkansas where did you live?—A. I lived in the Cherokee Nation.

Q. After you left the Cherokee Nation where did you live?—A. I lived where I used to live in Missouri; Newton County; before I went to Arkansas.

Q. Where did you go from when you went to Arkansas?—A. I went from Newton County, Missouri.

Q. Where were you when the war closed?—A. I went to my home where I was raised, in Indiana.

Q. Were you in Texas when the war closed?—A. Yes, sir.

Q. What business were you engaged in in Texas when you were there?—A. I went to buy cattle there.

Q. Were you arrested in Texas?—A. Yes, sir.

Q. What for?—A. Passing counterfeit money.

Q. Are you a fugitive from justice now?—A. I do not think I am.

Q. Did you pay a guard \$500 to get out?—A. No, sir.

Q. Have you been tried for it?—A. No, sir.

Q. Why not, if you were arrested?—A. I did not pass any counterfeit money.

Q. But why have not you been tried?—A. I do not know why.

Q. Did not you escape from the custody of the guard?—A. The guard turned me loose.

Q. Did not you pay him \$500 to do it?—A. I did not pay him a cent.

Q. What court did that writ issue out of?—A. What writ?

Q. The writ under which you were arrested.—A. I was not arrested under any writ.

Q. Were you arrested by the military authorities?—A. Yes, sir; I suppose I was; I was seized.

By the CHAIRMAN:

Q. Was all this interesting personal history known to Wm. A. Britton and Logan H. Roots at the time they employed you?—A. Britton told me he had heard it; he said he knew it.

Q. Before he appointed you?—A. Not before he appointed me. After he appointed me the second time he knew it. I was at Van Buren awhile, and a rumor came there from Missouri that I had passed counterfeit money in Texas, and Britton, I believe, ordered my papers to be taken away from me; but after that he sent to me to keep my papers,

and it was all right. Upon that I do not think there was anything more than a rumor. I never passed a dollar of counterfeit money, and it cannot be proved by anybody.

Q. On what ground did he say it was all right? Did he investigate the matter?—A. I think he had.

Q. Was it on the ground of approbation or not he took your papers and then he returned your papers and kept you in office? Did he explain that to you?

[Mr. Durham objected to any further examination of the witness by the committee until the cross-examination was concluded.]

By Mr. ROBINSON:

Q. What officer was in command of the troops that arrested you?—

A. I do not know, sir.

Q. Where was the arrest made specifically?—A. Huntsville, Texas.

Q. How long were you kept under arrest?—A. Five or six hours.

Q. Was that in the night or the day time when you were turned loose by this guard?—A. I suppose it was quite dark.

Q. Did you stay in that part of the country after you got loose?—A. I staid there three or four days.

Q. Did you go publicly around in the town of Huntsville in the presence of the troops?—A. No, sir.

Q. Did you not keep yourself secreted and concealed during that time from those troops?—A. I suppose I did.

Q. Then, if you had not passed any counterfeit money and felt that you were innocent of the charge, why did you secrete yourself and keep out of the way of those troops? Ought not you, in justice to yourself, to have demanded a trial, if you were innocent?—A. I did demand it.

Q. When?—A. The evening I was arrested.

Q. Did you get any?—A. No, sir. They told me they would mob me.

Q. Who told you that?—A. The soldiers.

Q. Name them.—A. I do not know who they were.

Q. You do not know the commander's name?—A. No, sir.

Q. What command did the troops belong to?—A. I do not know that. There was infantry and some cavalry there.

Q. Had you been buying cattle in that section of the country?—A. Yes, sir.

Q. Who were you charged with passing counterfeit money to? Give us their names.—A. I do not know.

Q. Where did you first know Colonel I. W. Fuller?—A. I knew him in the Army. I soldiered with him.

Q. Where?—A. First Missouri Cavalry.

Q. Anywhere else but in that regiment?—A. No, sir. I knew him in the First Cavalry.

Q. Did you know him anywhere else but in the Army?—A. Yes, sir. He was promoted to lieutenant-colonel of the Third Arkansas Cavalry.

Q. Were you in the Third Arkansas Cavalry?—A. No, sir.

Q. Your commands were separate?—A. Yes, sir.

Q. You did not know him in that?—A. I had seen him frequently.

Q. Did you know him as you knew him when he was in the Missouri Cavalry that you speak of—as intimately?—A. I did not see him so often, of course.

By Judge DURHAM:

Q. You spoke of certain accounts that had been returned that were false and fraudulent, as I understood you?—A. Yes, sir.

Q. You promised to make an examination at the Treasury Department and to pick out such vouchers for *posse comitatus* service and for deputy marshals that were false and fraudulent; have you done so?—A. I have.

Q. Are you prepared now to identify them before this committee?—A. What we have picked out, I am.

By the CHAIRMAN:

Q. [Showing account of G. T. Morris, for seven days' services as *posse comitatus*, from the 6th to the 12th May, at \$3 per day, \$21, in a case against Joseph Nipp and J. B. Johnson, charged with introducing spirituous liquor into the Indian country in the jurisdiction of the district.] Look at that; do you say that is a fraudulent voucher?—A. Yes, sir.

Q. Do you know the circumstances under which this was made out?—A. No, sir.

Q. How was it made out?—A. J. W. Donnelly made them out and handed them to me.

Q. Who signed that name?—A. I do not know; I suppose I did. I do not recollect that I did.

Q. Who suggested this name to you?—A. Mr. Donnelly told me that I could sign anybody's; those names were signed. I was told that I would have to sign that name corresponding with that up here.

Q. By whom?—A. J. W. Donnelly.

Q. Whose handwriting is that in?—A. Mr. J. W. Donnelly's, I think.

Q. Do not you know it is, if he made it out and handed it too?—

A. I am satisfied it is J. W. Donnelly's handwriting.

Q. Was this made out in your presence?—A. No, sir.

Q. He handed it to you, though?—A. Yes, sir.

[The voucher was marked No. 1.]

Q. [Showing a voucher for S. L. Stowell, for seven days' services as *posse comitatus*, from the 6th to the 12th May, 1870, both days inclusive, at \$3 per day \$21, in the case of Joseph Nipp and J. P. Johnson, charged with introducing liquor into the Indian country.] Is that a fraudulent voucher?—A. That is a fraudulent voucher.

Q. And that name, who signed it?—A. I do not know whether I did or not.

Q. Do you think you did?—A. I suppose I did.

Q. Who told you; who suggested it to you?—A. That name corresponded up there; I had to sign the name corresponding.

Q. Who handed you this to sign?—A. J. W. Donnelly.

Q. Do not you know whether you wrote it or not?—A. I think I wrote it.

Q. Do not you know it; you know it or you don't know it?—A. Now, I would hate to swear to it.

Q. Do you swear to it to the best of your belief and knowledge?—A. Yes, sir.

[The voucher was marked No. 2.]

Q. [Showing a voucher for Arthur S. Chancey, seven days' services as *posse comitatus* from the 6th to the 12 May, both days inclusive, at \$3 per day, \$21, in the case of Joseph Nipp and J. P. Johnson, charged with introducing spirituous liquors into the Indian country, and signed Arthur S. Chancey, his mark.] Do you know anything about that?—A. I do not know whether I signed it or not; to the best of my knowledge, I signed that.

Q. Whose handwriting is that witness'?—A. That is James W. Donnelly's.

Q. Do you know any such man as Arthur S. Chancey?—A. No, sir

Q. Do you know any such men as Morris or Stowell?—A. No, sir.

Q. The body of that is made out in the same handwriting?—A. Yes, sir.

By Judge DURHAM:

Q. You think you subscribed the name of Clancy?—A. It looks like my handwriting.

Q. Why did you put his mark to it if there was no such man?—A. You will find I did in many of the papers.

Q. Do you know he could not write his name?—A. I imagined the man could not write his name.

Q. That was more completely to carry out the fraud?—A. Yes, sir; that was more completely to carry out the fraud.

[The voucher was marked No. 3.]

By the CHAIRMAN:

Q. [Showing a voucher of Wm. P. Shoney for seven days' service as *posse comitatus* from the 6th to the 12th May, 1870, both days inclusive, at \$3 a day, \$21, in the case of Joseph Nipp and J. P. Johnson, charged with introducing spirituous liquor in the Indian country.] Is that a fraudulent voucher?—A. That is a fraudulent voucher.

Q. Who handed you that sign?—A. Mr. J. W. Donnelly.

Q. As he did the rest?—A. Yes, sir; he handed them altogether at one time.

Q. Do you recollect whether you signed that or not?—A. It is my impression that I did; it looks like my handwrite.

By Mr. DURHAM:

Q. That last one before this seems to be witnessed by Mr. Donnelly; can you tell me why that one is witnessed and this is not?—A. I cannot; to the best of my knowledge that is his handwriting.

Q. Had you seen him write often?—A. I have seen him write many a time.

Q. You do not know any reason why the one is witnessed and the other not?—A. No, sir; it is customary to witness; if a man cannot write his name, to have competent man to witness the mark.

[The voucher was marked No. 4.]

By the CHAIRMAN:

Q. [Showing voucher of George M. Comrade, of Fort Smith, nineteen days' service from July 27 to August 14, 1872, as *posse comitatus*, in the case of Joseph Bean, charged with intent to kill in the Cherokee Nation.] Do you know anything about that?—A. That was under Wm. A. Britton's last administration.

Q. Is that a fraudulent voucher?—A. That is a fraudulent voucher.

Q. Whose handwriting is it made out in?—A. J. W. Donnelly's, to the best of my knowledge.

Q. Who handed it to you to sign?—A. I do not know whether J. W. Donnelly did or not; I got it out of the marshal's office from Mr. White or Mr. Donnelly.

Q. Who is White?—A. He was the head clerk in the office.

[The voucher was marked No. 5.]

Voucher No. 5 is set forth in full as a sample of the fraudulent vouchers identified by the witness.

NOTE.—The matter printed in roman letters is printed in the original ; that part printed in *italics* is written.

UNITED STATES OF AMERICA,

To *Geo. M. Conrad, Dr.*

1872.

For 19 days' service as posse comitatus from *July 27* to *Aug. 14*, 1872, both days inclusive, at \$3 per day, \$57.

UNITED STATES OF AMERICA,

Western district of Arkansas :

I, *Geo. M. Conrad*, of *Fort Smith*, in the county of *Sebastian* and district aforesaid, being duly sworn, depose and say that on the *27th* day of *July*, 1872, I was employed under and by virtue of the third section of act of Congress of June 14, 1857, by *B. F. Shoemaker*, U. S. deputy marshal for said district, at my usual place of residence, as one of his posse comitatus, to assist in executing a *capias writ* issued by *Jas. O. Churchill, esq.*, U. S. commissioner for the western district of Arkansas, dated the *8th* day of *July*, 1872, against *Joe Bean*, charged with *assault with intent to kill*, at *Cherokee Nation*, in the Indian country, within the jurisdiction of the said district, returnable to the office of said commissioner at *Fort Smith*, in *Sebastian County, Ark.*, *forthwith*, 187 ; and that, as such posse comitatus, I proceeded in company with said marshal to *Cherokee Nation*, in the Indian country aforesaid, and there assisted him in making the arrest of said *Joe Bean*, and immediately thereafter in bringing said *Bean* to *Fort Smith* before the U. S. commissioner; that no posse comitatus could have been employed at a nearer point to the place where the said deputy informed me he expected to find the said *Bean*, to wit, *Cherokee Nation*, than my place of residence aforesaid; that I actually traveled from my said residence to said place of arrest for the purpose aforesaid 250 miles, and in the transportation of said *Bean*, and was actually and necessarily employed 19 days, as set out in the foregoing account, as posse comitatus, solely in the execution of said process and transportation of the said *Bean* as aforesaid; that I furnished the means of, or actually paid for my own travel or transportation, and that I have received from said marshal, and signed duplicate receipts therefor, the sum of *fifty-seven* dollars in lawful currency of the United States in full satisfaction and payment of my said expenses and services; that I have never received or been paid, or agreed to receive or expect to be paid, any other compensation, remuneration, or consideration whatever for said expenses and 19 days' services from any person or persons or sources whatever. So help me God.

(Signed)

GEO. M. CONRAD.

Subscribed and sworn to before me this *22d* day of *August*, 1872.

EDW. J. BROOKS,

United States Commissioner, Western District of Arkansas.

[Indorsements.]

I have examined the within account, and certify that the services were performed as herein stated, and that the amount charged therefor is reasonable and just, and that I have no interest in the same.

B. F. SHOEMAKER,

Dep'y U. S. Marshal, West. Dist. of Ark.

Received of *Wm. A. Britton*, United States marshal for the western district of Arkansas, *fifty-seven* dollars in full of the within account.

GEO. M. CONRAD.

By the CHAIRMAN:

Q. (Showing a voucher of Antoine Beak's for ten days' service from the 15th to the 24th July, 1872, at \$3 a day, \$30, in a case against Geo. Holt, charged with larceny at the Cherokee Nation, in the Indian country.) Is that a fraudulent voucher?—A. That is a fraudulent voucher.

Q. Who signed the name there?—A. I signed the name there.

Q. Do you know whose handwriting the body of it is in?—A. I think that is Mr. White's.

Q. Do you know who handed this to you to sign?—A. If Mr. White made it out, he did; I believe that is Mr. White's handwriting.

[The voucher was marked No. 6.]

Q. [Showing voucher of Pierce Moody for nineteen days' service as *posse comitatus*, from the 6th to the 24th July, 1872, both inclusive, at \$3 a day, \$57, in the case against Alexander Conyers, charged with larceny in the Cherokee Nation.] Is that a fraudulent voucher?—A. That is a fraudulent voucher.

Q. Who signed that name?—A. I did.

Q. Who filled up the body of it?—A. I should judge Mr. White did; it looks like his handwriting.

Q. These last three vouchers all represent that these parties lived at Fort Smith; do you know any such people there?—A. No, sir; there are no such people there.

[The voucher was marked No. 7.]

Q. [Showing voucher of Geo. W. Carey, for 27 days' service as *posse comitatus*, from the 9th August to the 4th September, both days inclusive, at \$3 a day, \$81, the usual statement in the body of the certificate as to where the *posse comitatus* lived being left blank, in a case against Jesse Pigeon, charged with murder at the Creek Nation, in the Indian Territory.] Is that a fraudulent voucher?—A. There was no *posse* come down with Jesse Pigeon.

Q. You know that fact?—A. I came down with Jesse Pigeon myself.

Q. You do not know who signed that name?—A. I do not.

Q. You do not know anything about that voucher except that there was no *posse* in the case?—A. There was no *posse* in that case; there was no *posse* traveled from Fort Gibson to Fort Smith.

Q. You regard that as a fraudulent voucher?—A. Yes, sir.

[The voucher was marked No. 8.]

Q. [Showing a voucher of Smith Townsend, 27 days' service as *posse comitatus*, from the 29th August to the 4th September, both days inclusive, at \$3 a day, \$81, in the case of Jesse Pigeon, charged with murder in the Cherokee Nation.] Do you know who signed that?—A. I do not.

Q. Do you know who made it out?—A. To the best of my belief, it is Mr. Donnelly's.

Q. And you say there was no *posse comitatus* in this case?—A. There was no man rode from Fort Gibson to Fort Smith.

Q. Who was the marshal that brought down Pigeon?—A. C. R. Stevenson.

Q. Did you come along?—A. Yes, sir.

Q. And you know there was no *posse comitatus*?—A. Yes, sir.

[The voucher was marked No. 9.]

Q. [Showing a voucher of Charles F. Beavers, for 27 days' service, from the 9th August to the 4th September, at \$3 a day, \$81, in the case of Jesse Pigeon, for murder.] Is that a fraudulent voucher?—A. I judge it is; there was no *posse* come down with Pigeon.



Q. Whose handwriting is that in?—A. I should think it was J. W. Donnelly's.

Q. The body of it?—A. Yes, sir.

Q. You do not know who signed it?—A. I do not.

[The voucher was marked No. 10.]

Q. [Showing a voucher of James Mann, for 26 days' service as *posse comitatus*, from the 8th August to the 2d September, 1870, both days inclusive, at \$3 per day, \$78, in the case against Alonzo Manly, charged with larceny in the Cherokee Nation, Indian Territory.] Do you know anything about that?—A. I brought Manly down.

Q. Was there any *posse comitatus*?—A. No, sir.

Q. That is a fraudulent voucher, then?—A. Yes, sir; that is fraudulent.

Q. Who signed that name?—A. I believe I did it myself.

Q. Whose handwriting is the body of it?—A. J. W. Donnelly's, to the best of my belief.

[The voucher was marked No. 11.]

Q. [Showing a voucher of Hiram Henshaw, for 26 days' service as *posse comitatus*, from the 8th August to September 2, both days inclusive, at \$3 per day, \$78, in the case of Alonzo Manly, ——— Henshaw being described as of Sebastian County.] Is that a fraudulent voucher?—

A. That is a fraudulent voucher.

Q. Who signed that name to the best of your knowledge and belief?—A. I judge I did.

Q. Whose handwriting is the body of that paper in?—A. J. W. Donnelly's, I should judge.

[The voucher was marked No. 12.]

Q. [Showing voucher of Timothy Gray, for 26 days' service, from the 8th August to the 2d September, at \$3 a day, \$78, in the case of Alonzo Manly, Gray being described as of Sebastian County.] Whose handwriting is signed to that paper?—A. I do not know. I suppose it is mine.

Q. You think it is yours, to the best of your knowledge and belief?—A. There is one of those posses I do not think I ever signed, but I do not know which is the one. I do not recollect ever signing but two *posse comitatus* accounts in the case of Manly. I rather believe that to be mine. I might have signed all three, but I have no recollection of but two fraudulent accounts being handed to me.

Q. Whose handwriting is the body of the paper in?—A. J. W. Donnelly's.

Q. What distance did you really travel in this arrest?—A. From where I arrested Alonzo Manly to Fort Smith. We came by way of Fort Gibson. Is about 100 miles.

[The voucher was marked No. 13.]

Adjourned to 2 o'clock.

On re-assembling, the examination of Mr. Shoemaker was continued, as follows:

By the CHAIRMAN:

Q. [Showing voucher of John Shobe, for twenty-three days' service as *posse comitatus*, from the 26th May to the 17th June, 1870, both days inclusive, at \$3 a day, \$69, in the case of one Ellis, for larceny committed in the Creek Nation, Ellis being described as of Crawford County.] Look at that. Is that a fraudulent voucher?—A. We brought

down Ellis; there was a Shobe came down with us; he lived in Chetopa, Kansas.

Q. That was a genuine voucher?—A. I do not know; we brought Ellis down.

Q. You believe that to be a genuine voucher?—A. Shobe was with us some five or six days.

Q. Not more than that?—A. I think Stevenson may be three or four days' ride from Chetopa, and it was about three days' ride from Chetopa to Fort Gibson; we generally rode it in three or four days, and from Fort Gibson to Fort Smith we generally rode in three or two and a half days.

Q. There could not be twenty-three days' service as a *posse comitatus* in that case?—A. Shobe went down there; he did not go from Fort Smith; he went from Chetopa, Kans., down there; that is where his family lived. I was not with Stevenson at the time he got Shobe, but at the time he came to Fort Gibson Shobe was with him.

Q. Whose handwriting is that signature?—A. I do not know.

Q. It is not yours?—A. No, sir; I do not think it is.

Q. Whose handwriting is the body of the affidavit?—A. J. W. Donnelly's, to the best of my belief.

[The voucher was marked No. 14.]

Q. [Showing the voucher of John Kilpatrick, for twenty-three days' service as *posse comitatus*, from the 26th May to the 17th June, both days inclusive, at \$3 a day, \$69, in the case of one Ellis, charged with larceny, in the Creek Nation.] Do you know anything about that?—A. John Kilpatrick never rode in the arrest of that man; he did not go into Fort Smith or Van Buren with us.

Q. Do you know that signature? Do you know whose handwriting it is?—A. No, sir, I do not know; it looks very much like mine, but I do not think I did it.

Q. Do you know in whose handwriting the body of it is?—A. I think it is J. W. Donnelly's.

Q. You were present with C. R. Stevenson when he made this arrest?—A. I was; and traveled from Fort Gibson to Fort Smith with Ellis.

[The voucher was marked No. 15.]

Q. [Showing voucher of John Hughes, for sixteen days' service as *posse comitatus*, from the 19th June to the 4th July, both days inclusive, at \$3 per day, \$48, in the case of Emile Boquet, charged with assault with intent to kill, in the Cherokee Nation.] Do you know anything about that?—A. There was no such man came with us two back.

Q. Do you know whose signature is to that voucher?—A. I do not know anything about it. I think there was a John Hughes in that country.

Q. But you say he did not serve in that arrest?—A. He did not; I was with Mr. Stevenson; Stevenson and I arrested Boquet, near Fort Gibson, and we had some more prisoners down there, and Stevenson left directly after we arrested him, and I took him down to Fort Smith.

Q. And you say that no such man was a *posse comitatus* on that trip?—A. No, sir.

Q. Do you know whose signature that is?—A. No, sir; I do not.

Q. Whose handwriting is the body of the affidavit?—A. J. W. Donnelly's.

[The voucher was marked No. 16.]

Q. [Showing voucher of Jonas Shobe, for 16 days' service as *posse comitatus*, from the 19th June to the 4th July, both days inclusive, at

\$3 a day, \$48, in the case of Boquet.] Do you know anything about that?—A. There was no such man with us. I do not know such a man at all.

Q. Whose handwriting is that signature; do you know?—A. I do not.

Q. Whose handwriting is the body of it?—A. J. W. Donnelly's.

[The voucher was marked No. 17.]

Q. [Showing voucher of John Ames, for 8 days' service as *posse comitatus*, from the 18th November to the 26th November, at \$3 a day, \$24, in the case of Alexander Coulson and Huston Bengé.] Do you know anything about that?—A. I know nothing about that.

[The voucher was marked No. 18.]

Q. [Showing voucher of Gadson Lewis, for 9 days' service as *posse comitatus*, from the 18th to the 26th November, at \$3, \$27, in the case of Alexander Coulson and Huston Bengé.] Do you know anything about that?—A. No, sir.

Q. [Showing vouchers marked 20, 21, 22, and 23.] Do you know anything about these?—A. I know nothing about them.

Q. Here is a voucher of the deputy for his compensation, voucher No. 36, on Abstract 4, for fees and expenses for making the arrest of one Lamb, charged with introducing spirituous liquors into the Indian country; warrant dated February 21, 1870; returned by B. F. Shoemaker *non est*; here is 30 days endeavoring to arrest, from March 27 to April 25.—A. I was out about that time, and I remember returning a *non est writ*.

Q. Were you out 30 days with it?—A. I do not remember having that writ. I think the man that was with me had the Lamb writ.

Q. Did you return it?—A. I think I did.

Q. Why did you return it if you did not have it?—A. I think he gave it to me there at the office, to return.

Q. In the case of the United States against Ferguson, charged with introducing spirituous liquors into the Indian country, served by B. F. Shoemaker, at Chetopa, Kansas. Total expenses, \$90.25. What about that?—A. We brought Ferguson down there and had him at the same time I had Ellis; about the same time.

Q. Were all these proper expenditures?—A. I think that is pretty high correct; may be a little large. I do not know anything about that.

Q. There is one voucher here in the case of Paris Green, charged with introducing spirituous liquors in the Indian country, served May 12, 1870, by B. F. Shoemaker, at Cincinnati, Arkansas, a bill of expenses amounting in all to \$64.90. What about that; is that a correct account? You had guards?—A. No guards.

Q. So much of that, then, the \$24 for guards, is fraudulent?—A. The number of them is. A guard was employed. I have no recollection of returning guards on that writ.

Q. So far as the guards are concerned it is a fraudulent charge?—A. So far as the guards are concerned it is fraudulent.

Q. Who made out that account?—A. It looks like J. W. Donnelly's.

[The voucher was marked No. 24.]

Q. Here is one in the case of Joseph Dudley.—A. The guards are not charged for in this one.

Q. Is that correct?—A. That was my brother's—about eighty miles' travel. I do not think there is anything very wrong in that case. I arrested Joseph Dudley, and I traveled from Fort Gibson to Fort Smith. The way I traveled was 125 miles, and there are only 75 charged.

[The voucher was marked No. 25.]

Q. Here is one in the case of the United States against Nipp and Johnson, made by B. F. Shoemaker.—A. There is no charge for guards.

Q. Here is one in the case of the United States against Manly for larceny. Is that a correct voucher?—A. I arrested Alonzo Manly. That was made up as large as the law would allow.

Q. Was it made up any too large?—A. Yes, it was.

Q. In what respect—how?—A. I did not feed him that many days.

Q. How many days did you feed him?—A. I did not travel that many miles. I traveled about one hundred miles, and I fed him six or seven days.

Q. Whose handwriting are all these made out in?—A. J. W. Donnelly's, to the best of my belief.

[The voucher was marked No. 26.]

By Mr. DURHAM:

Q. Just state what there is incorrect or fraudulent in this one in the Boquet case?—A. In this Boquet matter Stevenson arrested him. He did not travel more than ten or fifteen miles all the time from Fort Smith to Fort Gibson. Stevenson was not along all the time. He did not travel with the prisoner.

Q. Did he have any posses with him?—A. No, sir; he had no posses.

Q. Do you know how long he had that prisoner in charge?—A. Some three or four or five days. We had him after we got him to Yan Buren, waiting for trial. I think we held him out of jail. It took us three days to go down there, and I think we were four or five days.

Q. Seven days for feeding prisoners is not regular?—A. No, sir. That is about all I know about that.

[The voucher was marked No. 27.]

Q. Do you know anything about these vouchers marked Nos. 28 and 29?—A. I know nothing about them.

Q. Does that embrace all the fraudulent vouchers that you know anything about, after having made this examination?—A. As far as they could find, it is.

Q. Have you examined through all the returns made there?—A. O, no, sir.

Q. You spoke about a man by the name of George M. Comrade a little time ago in your examination. Was his name copied on the books of the office by Mr. Donnelly?—A. Yes, sir.

Q. Did he know that there was no such man as that?—A. I suppose he did. I think he saw me sign the name at the office. He was standing there.

Q. As a fictitious or supposititious person?—A. That was the understanding. I do not know the conversation we have had, but that should be the fictitious deputy I should use.

Q. Is there any paper there you want to show us?—A. I kept this [producing a slip of paper on which was written "Geo. M. Comrade"] as a copy to sign his name by.

Q. Was that agreed upon by you and Mr. Donnelly?—A. Yes, sir.

Q. And you swear that this is the identical slip you had at that time, and you kept that as a copy?—A. I kept that as my guide to sign Comrade's name as well as my own. I kept that to show that it corresponded to the name of Geo. M. Comrade in the office.

Q. And to sign it in that way?—A. Yes, sir.

Q. M. or N., Comrade, or Conrade?—A. I always wrote C-o-n-r-a-d-e.

Q. I will ask whether or not there was any agreement between you and Mr. Donnelly to use any other name except that of Conrade?—A.

I do not remember of any other name that I used now. I think I have had spurious deputies besides Conrade. Probably I have used Moody and Beaks also as deputies. I have used them as posses.

Q. I will ask whether or not Mr. Donnelly suggested to you other names that might be used and that he would fill up, and suggested that you should sign them at the bottom?—A. He has handed me posse accounts, with the names of people in that I had never seen before.

Q. Did you ever hear of any such persons?—A. No, sir.

Cross-examined by Mr. ROBINSON :

Q. Has that paper been in your possession ever since you first made it by which to make those returns?—A. It has, sir.

The committee re-assembled at 3.30 p. m.

Judge ROBINSON was recalled and examined by Mr. SPEER as follows :

Question. You are the counsel of Mr. Britton here?—Answer. I am.

Q. Do you ask of the committee the privilege of having Mr. Britton sworn before them?—A. I do, sir; I expect to use him as a witness before this investigation is through.

Q. In the application that you have made to the committee you have certain witnesses therein named to be subpoenaed. Are you willing to have that verified under Mr. Britton, or your own?—A. By his; not mine.

Adjourned.

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WASHINGTON, D. C., May 1, 1874.

Mr. ROBINSON recalled and examined.

By the CHAIRMAN :

Question. Do you offer, on behalf of Mr. Britton, to produce the persons who are alleged to be supposititious in any of these cases? Can you do that?—Answer. I do not know.

Q. Will you ask Mr. Britton to see if you can produce the identical persons who acted as *posse comitatus* in these cases?—A. I do not suppose any man on earth can do that.

Q. Can you produce them out there before any well-known persons whom we would authorize to consider the question of identification?—A. I cannot say as to that.

Q. Consult Mr. Britton and see if you can furnish the persons, or any single one of them, that are alleged to be supposititious?—A. I know a good many of them myself.

Q. Those persons that are named here?—A. Yes, sir. I can testify that some of them are real persons. I do not know whether they did the service or not. If I can ascertain the whereabouts of a number of these men, will the committee send for them?

The CHAIRMAN. I think we can authorize a commission to take the proofs.

Mr. NESSLE recalled and further examined.

By the CHAIRMAN :

Question. Will you look at that paper, which we will designate as U, and state if it is a copy of the report of the action of the grand jury in an alleged case of forgery against William A. Britton, J. W. Donnelly,

and E. J. Brooks, in the western district of Arkansas in 1871, as transmitted to the office?—Answer. It was transmitted to the office of the Attorney-General—yes, sir.

Question. Now what is this, marked V?—A. That is the letter of the the United States district attorney, transmitting the report—J. W. Huckleberry, dated December 27, 1871, and Fort Smith, district attorney's office.

Q. [After reading Shoemaker's testimony in the report.] Are these the fraudulent vouchers that were sent out to Arkansas?—A. Yes, sir.

Q. Were those papers or copies of them sent?—A. The papers were never sent.

Q. Will you count them and see how many there are?—A. Eighty-nine.

Q. Are there among those some alleged fraudulent vouchers made out by Shoemaker?—A. Yes, sir.

The examination of B. F. SHOEMAKER was continued as follows:

By the CHAIRMAN:

Question. What do you know about these?—Answer. Seventy-one of them I know nothing about.

Q. Here is a voucher—J. H. Dennis, for services as *posse comitatus*, seven days, from April 1 to April 7, 1871, both days inclusive, at \$3 a day—\$21; in the case of Sutbeck, charged with introducing spirituous liquors into the Indian country. Is that fraudulent?—A. Yes, sir.

Q. Who signed that name—do you know?—A. I do not.

Q. Who filled up the body of it?—A. It looks like Robert or J. W. Donnelly. I think J. W. Donnelly did it, though.

Q. Was that one of the vouchers before the grand jury?—A. That was one of the names that was handed to me on the paper.

Q. Did you ever see this original voucher there?—A. I never did.

Q. Did you testify in regard to that voucher there?—A. I did not.

[The voucher was marked No. 30.]

Q. Here is a voucher of Samuel Collier, for 27 days' service, as *posse comitatus*, from the 28th January to the 23d February; do you know anything about that; who signed that name, do you know?—A. I do not.

Q. Do you know anything about that voucher?—A. All I know about that voucher is, the deputy was not in Fort Smith at the time of this investigation before the grand jury.

Q. Do you know anything of that voucher?—A. The deputy was not in Fort Smith to my knowledge; that is all I know about it. He was not in Fort Smith when these papers were sent back, and the time before the grand jury.

Q. Do you know whether that is a true voucher or not?—A. I do not. [The voucher was marked No. 31.]

Q. Here is a voucher of George Royce, thirty days' service, \$90, from the 16th of January to the 14th of February, 1871, in a *capias* issued by Churchill against Isaac Key for murder. Do you know anything about that?—A. I never saw it before I was in this room.

Q. Is that a true or a fraudulent voucher?—A. It is fraudulent so far as I am concerned.

Q. Whose name is signed to it?—A. George Royce.

Q. Who signed it?—A. I do not know.

Q. Did you sign it?—A. No, sir.



Q. Who filled it up?—A. Either J. W. or Robert Donnelly, from the handwriting.

Q. Why do you say it is fraudulent?—A. I never saw this piece of paper till I came in this room.

Q. Why do you say it is fraudulent?—A. It represents that I did the service.

Q. You did not do it?—A. No, sir. I was wounded.

Q. Do you know any such man as George Royce?—A. No, sir.

Q. Does any such man live in Fort Smith?—A. No, sir.

Q. He is represented to be in Sebastian County. Is Fort Smith in Sebastian County?—A. It is, sir.

Q. Do you know any such man there?—A. No, sir.

Q. You say it is fraudulent because you were not doing any service at that time?—A. I was not doing any service, because I was shot in December.

Q. Under what circumstances?—A. I arrested a man, and turned him over to another man to guard. The prisoner was George Perry, for passing counterfeit money, five hundred and odd dollars. I was in a little town on the border of Missouri, and they wanted to mob me, and good citizens that I knew told me that I never would get out alive. A lawyer came up with a party of men, and told the prisoner to get out and leave, and that I had no right to keep him. I had a warrant, issued in the western district, and I told him not to leave me, and he did not leave me at that time. The lawyer's name was Nye. A man afterward came up and wanted to know if I had any objection to his talking with Mr. Perry. I told him I had not.

Q. In short, were you shot?—A. Yes, sir.

Q. In making the arrest?—A. I had made the arrest, and turned the man over to this man to guard, and they both went off and got arms, and I was shot.

Q. You had done nothing improper?—A. No, sir.

Q. You were behaving yourself?—A. Yes, sir.

[The voucher was marked No. 32.]

Q. The next voucher is one of Henry Lubin; twenty-seven days, from the 28th of January to the 23d of February, 1871, \$81. Do you know anything about that voucher?—A. No, sir.

Q. Did you not pick that out?—A. Yes, sir; I wanted to state to you that at the time of the investigation the man was not in Fort Smith that I know of.

Q. Which man?—A. The deputy.

Q. What is his name?—A. Foy.

Q. What is the force of that?—A. He was not in Fort Smith at the time the grand jury met.

Q. And this is one of the vouchers identified before the grand jury?—A. Yes, sir.

Q. And that is the object you have?—A. Yes, sir.

[The voucher was marked No. 32.]

Q. Here is a voucher, Elias Reed, 30 days' service, from the 16th January to the 14th February, 1871, \$90. Do you know anything about that voucher?—A. I know nothing about it.

Q. Why did you pick it out?—A. Because my name is signed there.

Q. Then it is a fraudulent voucher?—A. Yes, sir.

Q. You made no such arrest?—A. No, sir; there was no arrest made on any of these at all.

Q. It says it is assisting to execute a *capias*, and you say you did not

execute such a capias?—A. No, sir; they were returned *non est*, as I understand, all these papers.

Q. Whose handwriting is this signature?—A. I do not know.

Q. Whose in the body of the paper?—A. Robert or J. W. Donnelly's.

Q. It represents this man as living in Sebastian County; do you know any such man?—A. I do not.

[The voucher was marked No. 34.]

Q. The next voucher is E. A. Jackman, 15 days, from the 1st to the 15th January, 1871, at \$3 a day, for arresting Sheres and Shires; what about that?—A. He was never arrested; there was no *posse comitatus* used for him.

Q. It is a fraudulent voucher?—A. Yes, sir.

Q. Whose handwriting?—A. J. W. or Robert Donnelly's.

Q. Whose handwriting is the signature?—A. I do not know.

[The voucher was marked No. 35.]

Q. Here is a voucher of Enoch Brown, as *posse comitatus* in the same case, 15 days, \$45; do you know anything about that voucher?—A. I do not.

Q. Do you regard it as fraudulent?—A. Yes, sir.

Q. No *posse comitatus* employed in that case?—A. There was never any *posse comitatus* employed in that case.

[The voucher was marked No. 36.]

Q. Here is a voucher of William Ward, as a *posse comitatus*, 30 days, \$90, in the case of Big Skia Tooke *et al.*, from the 20th June to July 18, 1870; do you know anything about that?—A. I never had that man.

Q. Did you hunt him?—A. I did.

Q. Did you make any arrest?—A. No, sir; I have had a *posse comitatus* hunting that man, but never had him.

Q. Do you know any such man as William Ward?—A. No, sir.

Q. Do you know whose signature that is?—A. No, sir.

[The voucher was marked No. 37.]

Q. Here is a voucher of Charles Frost, 30 days' service, same dates, in the same case. Did you have any such *posse comitatus* as that?—A. I had no Charles Frost at all; it is fraudulent, so far as I am concerned; I know nothing about it.

Q. Do you know in whose handwriting that signature is?—A. No, sir.

Q. Do you know in whose handwriting the body is?—A. They are like J. W. or Robert Donnelly's.

[The voucher was marked No. 38.]

Q. Here is a voucher of Frank Williams, 17 days' service, \$51, for services as *posse comitatus*, in the case of Wahoohah for introducing spirituous liquors. Do you know anything about that?—A. No, sir.

Q. Did you have that writ?—A. No, the writ was handed me to return.

Q. And you returned it *non est*?—A. Yes, sir; I never hunted Wahoohah.

Q. Did you have any *posse comitatus* in that case?—A. No, sir, I did not.

Q. Do you know whose handwriting the signature is in?—A. No, sir, I do not know.

Q. Who handed you these writs to return *non est*?—A. If I remember rightly, J. W. Owens gave me that writ to return.

Q. Who is Owens?—A. He is now dead.

[The voucher was marked No. 38.]

Q. Here is a voucher of Asa Beckwith, for 17 days' service, at \$3

a day, \$51, in the same case. Did you have any such man with you?—  
A. I did not.

Q. You had no *posse comitatus*?—A. No, sir.

Q. That is a fraudulent voucher?—A. So far as I know.

Q. Do you know in whose handwriting the signature is?—A. I do not.

Q. Whose is the body of it?—A. J. W.'s or Robert Donnelly's.

Q. Have you ever heard of such a man as Asa Beckwith?—A. No, sir.

[The voucher was marked No. 39.]

Q. Here is a voucher of Charles Beck, 14 days, from the 15th to the 28th February, 1871, \$42, for services as *posse comitatus* in a case against Olas Hutgut. Did you have any such *posse comitatus* in that case?—  
A. No, sir.

Q. It is a fraudulent voucher, in your opinion?—A. Yes, sir.

Q. Whose handwriting is the body of it?—A. J. W. Donnelly's.

Q. Whose handwriting is the signature?—A. I do not know.

[The voucher was marked No. 40.]

Q. Here is the voucher of Geo. Arrington, 7 days, from April 1 to April 7, 1871, \$21, for services as *posse comitatus* in the case of Sutbeck, charged with introducing spirituous liquors into the Indian Territory. Do you know anything of that voucher?—A. I had no such man with me.

Q. Did you ever make any such arrest?—A. I never did.

Q. You made the return *non est*?—A. I did.

Q. Whose signature is that at the bottom?—A. I do not know.

Q. Do you know any such man as George Arrington?—A. I do not.

[The voucher was marked No. 41.]

Q. Here is a voucher of Ned Hawkins, 30 days, \$90, from 1st to 30th March, 1871, for services as *posse comitatus*, in a case against Sanford Moseley, for murder. Do you know anything about that?—A. I had the warrant for Moseley.

Q. Did you have any such man as a *posse comitatus*?—A. No, sir.

Q. That is a fraudulent voucher?—A. It is, so far as I am concerned.

Q. Do you know whose handwriting this signature is?—A. No, sir.

Q. In whose handwriting is the body of it?—A. J. W. or Robert Donnelly's.

Q. Do they write much alike?—A. Something alike.

Q. Who is Robert Donnelly? Was he a clerk in the office?—A. He is a brother of J. W.'s, in the office. He has done considerable writing in the office. At the time they were fixing, J. W. Donnelly, Mr. Willard, who was a cousin of Britton's, and Robert Donnelly, were at work on Britton's papers.

Q. Anybody else?—A. No, sir. I do not know any one else at work. I see others in the office there.

[The voucher was marked No. 42.]

Q. Here is a voucher of Charles Harris, 30 days, \$90, in the same case, against Moseley, a *posse comitatus* in assisting to execute the *capias*. Do you know anything about that?—A. I do not.

Q. Is it a true or fraudulent voucher?—A. Fraudulent.

Q. In your opinion?—A. Yes, sir.

Q. Do you know in whose handwriting the body of it is?—A. I should think it was Robert or J. W. Donnelly's.

Q. Whose signature is that?—A. Charles Harris's.

Q. But I mean whose handwriting?—A. I do not know.

Q. You returned no such man as *posse comitatus*?—A. I did not.

[The voucher was marked No. 44.]

Q. Here is a voucher of Robert Anderson, 30 days, from the 8th

April to the 7th May, 1871, \$90, in the case of William Island, charged with murder. Do you know about that?—A. I know nothing about it.

Q. You had no such *posse comitatus*?—A. I had not.

Q. You regard it as fraudulent?—A. I do.

Q. Do you know whose signature it is?—A. I do not know.

Q. Whose handwriting is the body of the paper?—A. J. W. or Robert Donnelly's, I should think.

Q. Do you know any such man as Robert Anderson?—A. I do not.

Q. You had no such man with you?—A. I had not.

[The voucher was marked No. 45.]

Q. Here is a voucher of William Boles, from the 15th to the 28th February, 1871, 14 days, \$42, in the case of Oola Hutgut, charged with resisting an officer. Do you know anything about that?—A. I never hunted Oola Hutgut. I had no posse with me.

Q. Did you have that man with you?—A. No, sir.

Q. Do you know any such man?—A. No, sir.

By Mr. ROBINSON:

Q. I would like the committee to ask the witness whether, in many of these cases about which he has testified, he simply returned the warrants at the request of other deputies, who told him that they had done the service, and the *posse comitatus* were returned who had actually been with those deputies in the cases; that is, if the warrants were simply made out in his name?—A. I never had any such talk with other deputies; the reason why I got these writs was that I had not writs enough in my possession to fill up my entire time that I had lost, while I was lying wounded, lying off, doing nothing; and the deputies gave me enough warrants, so that I could fill in all my time.

By the CHAIRMAN:

Q. How were you paid for your time?—A. I was allowed \$2 a day on these *non est* writs, less one-third, that went to Britton.

Q. Have you reason to believe that these men rendered any service of this sort for anybody else?—A. I do not know that they did; possibly they might; they might have rendered service in these cases.

Q. Did you know any such man as Boles?—A. I think there is a man by the name of William Boles at Van Buren; I do not think he ever rode any. The man I know is Bolan, not Bowles.

[The voucher was marked No. 46.]

Q. Here is a voucher of Francis Mays, 30 days, from the 8th April to the 7th May, 1871, in the same case of Wm. Island for murder. Do you know anything about that?—A. No, sir.

Q. You know nothing about this at all?—A. No, sir.

Q. Why did you identify it?—A. I know it is my name there; I regard it as fraudulent.

Q. Do you know any such man as Francis Mayes?—A. No, sir; I do not know of Francis Mays; I know of some Mays.

Q. Did any such man ride with you as *posse comitatus*?—A. No, sir.

Q. Whose handwriting is the signature?—A. I do not know.

[The voucher was marked No. 47.]

Q. There is a paper (showing) that purports to be the testimony taken solemnly before the United States grand jury in the western district of Arkansas, and you are represented as having sworn that each and all of these men rendered the service for the time specified in these several vouchers. You have here to-day testified that they did not, and that they were fraudulent vouchers. Will you be kind enough to explain how you reconcile this testimony? Did you give this testimony before the grand jury of the western district of Arkansas?—A. I did not.

Q. Then, how do you explain the fact that such testimony is recited and reported here as having been given?—A. I suppose they wrote it out themselves.

Q. Without any authority from you?—A. I stated before that grand jury I had been a deputy marshal.

Q. You did not state before that grand jury that the men's names, to wit, Royce, Reed, Jackson, Brown, Ward, Frost, Williams, Beckwith, Beck, Boles, Anderson, Mays, Hawkins, Harris, Arrington, and Dennis, whose vouchers have been presented to you to-day, rendered the service; you did not state they rendered service for the time specified?—A. No, sir.

Q. And that they were proper vouchers?—A. No, sir.

Q. You gave no such testimony?—A. No, sir.

Q. And you were never before any grand jury, you say, out there, but these five men, at the time you spoke of?—A. Five men are all that were in the grand jury when that testimony purports to have been taken; five men were all I saw.

Q. There were no such sixteen men there?—A. No, sir.

Q. And you never made on oath any such statement as is here presented?—A. No, sir.

Q. Were the original vouchers that you have seen here to-day before you in that grand-jury room?—A. I never saw those vouchers before I saw them here this morning.

Q. Did you see a list of them?—A. J. W. Donnelly handed me a list of them.

Q. In the grand-jury room?—A. No, sir; in the office.

Q. Before you went to the grand-jury room?—A. I do not know but that it was the day before I went; it might have been the day before the grand jury convened that I had a list of them; I ain't positive.

Q. Was there no Bible presented to you to take an oath upon in that room?—A. I do not remember of any Bible being there.

Q. Would not you recollect if any Bible was presented to you?—A. I do not remember that there was any Bible there.

Q. Were you asked to hold up your right hand?—A. I was, but I could not; my arm was in a sling.

Q. What form of oath did they administer to you?—A. They swore me to answer the questions propounded.

Q. Did you consider yourself sworn before that grand jury?—A. Yes, sir; I considered myself sworn before that grand jury.

Q. And you considered that what you said was said under the solemn sanction of an oath?—A. Yes, sir.

Q. And that you were legally and morally responsible for the consequences?—A. I supposed I was.

Q. Then, did you make the statement to the grand jury that is expressed in that paper?—A. I did not.

Q. And you made only the statement that you stated you made in your examination-in-chief?—A. To my recollection, that was all they asked me. I said that it was customary for deputies to have posses riding in the Indian country.

Q. State all you stated there.—A. Probably I said some other things.

Q. Try and recollect some other things.—A. I disremember just now what they asked me.

Cross-examination by Mr. ROBINSON:

Q. You stated in your examination-in-chief that some of the deputies in the western district of Arkansas gave to you those writs to return,

and you returned them, or a portion of them, *non est*?—A. Three or four of those writs.

Q. In returning those writs did you swear to them that you had done the service yourself?—A. No, sir; I do not think I swore to it.

Mr. NESSLE was recalled and further examined, as follows:

By the CHAIRMAN:

Q. Were these original vouchers ever sent out?—A. No, sir; they were never called for.

Q. What were sent out?—A. Copies.

Adjourned.

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WASHINGTON, D. C., May 5, 1874.

Present, Messrs. Sener, chairman; Williams, Durham, and Sheats.

HENRY E. MCKEE, a witness introduced on behalf of Mr. Britton, sworn and examined.

By Mr. ROBINSON:

Question. Please state to the committee your age, residence, and occupation.—Answer. Age, 43; residence, Fort Smith, Ark.; and business, engaged in attending to some mail contracts now.

Q. Were you foreman of the grand jury for the western district of Arkansas, at the November, 1871, term?—A. I think I was; I was at one time, and I think that was the time.

Q. See whether you can satisfy yourself about the date; it is a matter of some importance.—A. That was about the time; I could not swear to it without the records. [The witness is shown the report of the grand jury to the Attorney-General, to refresh his memory.]

Q. Is that your signature to that document?—A. That is my signature; it was at that term of the court that I was foreman.

Q. Tell the committee whether, when you were acting as foreman of the grand jury at that time, one Benjamin F. Shoemaker, a deputy marshal of that district, was before you as a witness in relation to any accounts; tell all about it in your own way.—A. Well, before I tell all about that, I want to know whether I have any right to tell about it. We took an oath not to tell except in a court of justice; is there any difference between this tribunal and that?

By Mr. DURHAM:

Q. Was that the charge of the judge to you?—A. That is my recollection. We took an oath not to tell unless in a court of justice.

[The committee, after discussion, decided that the witness might answer the question.]

A. He was a witness before the grand jury.

By the CHAIRMAN:

Q. State under what circumstances he appeared then, and the reasons why those circumstances existed.—A. Well, he was a witness in a great many cases before the grand jury. He was in this case brought against Britton, Donnelly, and Brooks. That case was before the grand jury, and was there upon papers that he furnished to the grand jury—copies of vouchers which indicated, of course, what they were. Some of the vouchers showed processes served by this man.



Q. Who swore Mr. Shoemaker before the grand jury?—A. I did.

Q. When he was sworn before the grand jury was it in the night or in the day time?—A. I cannot say. I will tell you the circumstances exactly. We were pretty well crowded with business, and some of the grand jurors boarded out of town some two or three miles. The town was so full that they could not get accommodation in it. These witnesses were almost all officials—deputy marshals—and they were anxious to get away, and the district attorney had made a request that we should take their testimony in writing, and that he or his assistant should be present when every witness was examined; and I think he suggested that we have night sessions for the purpose of taking the testimony of these official witnesses, but some of the jurors objected, saying that they could not be in town at night; so an arrangement was made that the testimony should be reduced to writing before as many of the jurors as could be present at night, and in the morning the witnesses should be brought in, and the testimony read over in their presence, and verified, and that any of the jurors should have the right to ask any additional questions they chose; and that is the way the testimony of those witnesses was taken. My recollection is that some of them were examined in the day-time and some in the night, but I cannot state as to him particularly.

Q. You say, then, that their testimony was taken in writing?—A. Yes, sir; in writing.

Q. Were not the deputy marshals kept busy as officials, during the day-time, in attendance upon court, in conveying prisoners from the jail to the court-house, and from the court-house back to the jail; in acting as bailiffs for the grand jury, &c., and as watchers of prisoners on trial in the court-house; and was not that the reason that it became necessary to examine them at night, or as you have described?—A. I remember that we did have difficulty in getting deputy marshals when we wanted them. The reason for it was this: We adopted the rule of examining all the witnesses in every case at once, and there was a deputy marshal in almost every case, and we found difficulty in getting the deputy marshals in the day time.

Q. Did you examine Shoemaker and take his testimony in writing?—A. Yes, sir.

Q. Who wrote that testimony?—A. I don't know whether I did or Mr. Lockhart; sometimes I wrote the testimony, but generally Mr. Lockhart.

Q. Take that testimony and examine it all through, and state who wrote it, and whether you see any difference in the handwriting.—A. [Examining the paper.] I should say that is Mr. Lockhart's writing.

Q. What position did he occupy?—A. He was clerk of the grand jury.

Q. Will you examine Shoemaker's testimony in detail, and read it all over to yourself? Have you read over Mr. Shoemaker's testimony?—A. I have done so.

Q. Did he give that testimony before the grand jury?—A. He did; certainly.

Q. Was it read over to him when the grand jury were all present, or sufficient, at least, to find a bill?—A. It was when they were all present, I think.

Q. How many composed that grand jury?—A. Twenty-three.

Q. And you state that it was read over to him when there were at least sixteen present?—A. Yes, sir.

Q. You state positively to this committee that he swore to what he stated there to that grand jury?—A. I do.

Q. How long was that grand jury in session?—A. I do not know exactly; some 24 or 25 days.

Q. Was that the only time you were ever summoned as a grand juror?—A. The only time.

Q. How long have you been a resident of that district?—A. About ten years.

Q. Did you have any knowledge of this man Shoemaker before?—A. No, sir.

Q. Did you ever see him before?—A. Never saw him, to my knowledge.

Q. He details very circumstantially an interview which he says took place with you at your house on one occasion. Did he come to see you before the meeting of the grand jury and talk over with you what his testimony should be?—A. I cannot say whether he did or not. It is likely enough that he did. There were a great many witnesses, perhaps over one thousand, in the city at the time, and every one wanted to be examined first, so as to get away as soon as possible. I could not walk the street without meeting some who would talk to me about their testimony and endeavor to have themselves examined among the first. They came to my house at all times. I could not eat a meal without being called out by one of them.

Q. How was Shoemaker sworn before that grand jury?—A. I do not know that I can state the oath. It was the oath usually administered, in the form given to me by the clerk.

Q. Did he place his hand on the Bible or was he sworn by uplifting his right hand?—A. I think he was sworn by uplifting his right hand.

Q. Do you recollect why he did not sign his statement at the conclusion of his examination?—A. I do not know about that. I do not think it was considered of any importance.

Q. Were the original vouchers before you?—A. We had certified copies of the original.

Q. At the time that this testimony was reduced to writing how many of the grand jury do you think were present that night?—A. I think it was at night. I do not know particularly. Sometimes there were not more than five present, but generally there were ten or twelve.

Q. How many were present when this gentleman was examined?—A. I could not tell as to that. They were coming in and going out all the time.

Q. What was the charge against Mr. Britton at the time?—A. He was charged with forging these vouchers, I think; something of that nature. The paper that you have before you shows what it is.

Q. Who was present in the grand-jury room when Shoemaker was examined, beside him and yourself?—A. Either Huckleberry or Temple, I could not say which. There were no witnesses examined in this case without the presence of one of the district attorneys.

Q. Have you a distinct recollection that one of them was present?—A. Yes, sir; I have.

Q. And you have no distinct recollection who else was present?—A. No, except members of the grand jury and the attorney.

Q. Who were present of the grand jury?—A. Lockhart was present. This is his handwriting, [referring to the testimony of Shoemaker.] Dr. Johnson was there, I think, and Hanlin was present, and many others; I cannot recollect their names.

Q. Was there more than one witness in the grand-jury room at one time?—A. Only one at a time.

Q. Did you tell Shoemaker when he came to see you that all you would ask him would be a few questions as to what was the usual custom of the marshal's office?—A. No, sir; I did not.

Q. Did not promise him anything of that sort?—A. No, sir; I did not know what questions would be asked him. They would be suggested by the papers in the case.

Q. Was there any understanding between you and this witness that you were to ask him, for example, if it was the custom of the marshal at that time to have *posse comitatus* and deputy marshals in these raids, in lieu of the question whether he had *posse comitatus* on these special occasions?—A. No, sir; there was no such understanding. The questions that were asked him were suggested by the papers before us. The papers suggested who the posse were, and he was asked whether he had such or not. Every question that was asked was suggested by the papers. Sometimes one juryman would ask one question and some another, just as it would strike them.

Q. Then you asked this question specifically, whether he had a posse in this case?—A. Yes, sir; we were very specific as to dates, and if you will take the papers you will find that every witness was specifically questioned as to date and amounts, and everything of the kind. The testimony was made complete of every witness.

Q. And you feel very certain that not only was this testimony reduced to writing in the presence of some four or five of the jurymen, but that every line, and every syllable, and every sentence, of this deposition or statement, was afterward carefully read to the witness in the presence of at least sixteen of the jurymen?—A. Yes, sir.

Q. Was he sworn in the presence of sixteen men or only when five were present?—A. He was sworn before the whole of them.

Q. The whole of them or sixteen?—A. In the presence of at least sixteen.

By Mr. DURHAM:

Q. What were you engaged in at the time you were summoned as a grand juror?—A. I had been in the mercantile business.

Q. Who was your partner?—A. Edward Brooks.

Q. Is he United States marshal?—A. Not while he was in partnership with me.

Q. At the time you and Brooks were merchants together who was your clerk?—A. Mr. Mensey was my book-keeper. I had a half dozen clerks.

Q. Was Shiver at any time?—A. No, sir; he was teller in the bank of which I was an officer.

Q. Had Brooks anything to do with the bank?—A. He was a director in the bank.

Q. I believe you stated you never were foreman of a grand jury but that one time?—A. Yes, sir.

Q. How long before that time had you been told that there had been fraudulent charges against the marshal?—A. I do not know that I had been told that before; I was only there two or three months of the year. They just caught me there and summoned me on the jury.

Q. Would you have known what Mr. Shoemaker had sworn to if that statement had not been presented to you now?—A. I had a general idea.

Q. You remember the fact that he was before you and that his statement was taken down?—A. Yes, sir.

Q. But you could not recollect particulars of it unless you had read that statement?—A. No, sir.

Q. I do not understand that you have given a satisfactory reason why you did not require Shiver to sign that statement?—A. I did not know that it was necessary. In fact I did not know whether he signed it or not. It was the usual way of doing business.

Q. After the statements were made they were read over in the presence of the witnesses?—A. Yes, sir.

By the CHAIRMAN:

Q. Did Shoemaker come to your house more than once that you recollect of?—A. I do not recollect that he did.

Q. Do you recollect who was with him when he came there?—A. No, sir; I do not recollect that anybody was.

Q. Did you have any talk with Stevenson and Shoemaker together about this matter?—A. I do not recollect that I ever did.

Q. Did you ever have any talk with Mr. Pratt about the matters that were pending before you?—A. No, sir; I avoided that purposely.

Q. Who summoned you on this grand jury?—A. I cannot tell that. Some deputy marshal called on me, and served the notice.

Q. Was Brooks in the office at that time?—A. Yes, sir.

Q. What other witnesses were examined?—A. I do not recollect the names of them. There were a great many. A man by the name of Taker, I think. I would recognize the names if I saw them. I think also a man by the name of McGuire testified.

Q. Do you recollect anything about McGuire's testimony?—A. Not distinctly. It was like the rest; it was about the vouchers.

Q. Do you know whether this testimony was returned exactly as it was written at the time, or was it afterward copied?—A. I see my own handwriting in this testimony.

Q. You do not understand the question, I presume. Do you know whether this was the testimony exactly as it was taken down, while the witness was there, or was it afterward copied off?—A. That is it exactly as it was taken down at the time. I see in this statement my own handwriting, for I took the testimony in the absence of Mr. Lockhart, and I know this could not have been put in the copy, because I put it in the original at the time.

Q. Who kept this testimony from time to time; I presume it was not all taken at one night or one sitting?—A. No, sir; it was kept there in my possession or Lockhart's. It was generally locked up in the desk.

Q. How many nights was it kept?—A. Probably two or three nights.

Q. Do you know who had this testimony any one night?—A. It was never out of the possession of the grand jury.

Q. Who specifically had charge of it?—A. Either Lockhart or myself. It was generally locked up in the desk in the grand-jury room, of which he kept the key.

By Mr. SHEATS:

Q. Were there several indictments presented by this grand jury against other parties?—A. Yes, sir; probably two hundred.

Q. Was this examination conducted in Brooks's and Britton's case like all the rest?—A. Certainly; only the testimony in these cases was reduced to writing, and it was not in the others.

Q. But in the examination of witnesses the cases were not varied from the other ones?—A. It may have varied from them a little, from the fact that in ordinary cases the district attorney himself examined

witnesses, and some I did. In these cases there were no witnesses examined except by the district attorney and the grand jury, and the witness were examined by the attorney who was allowed to ask questions.

By Mr. ROBINSON:

Q Did you make any arrangement with Britton, Shiver, or Brooks, or any one, to screen them from this prosecution?—A. No, sir.

Q. Did you have any talk with them in relation to this subject?—A. No, sir; I especially avoided that.

FREDERICK W. SCHEURTE, a witness introduced by W. A. Britton, sworn and examined.

By Mr. ROBINSON:

Question. State your age, residence, and occupation.—Answer. I am thirty-eight years of age. At present I reside at Saint Louis, and I am special agent of the Post-Office Department.

Q. Do you know Benjamin F. Shoemaker?—A. I do, sir.

Q. How long have you known him?—A. I have known him since 1868.

Q. Where have you known him?—A. In Arkansas and in the Indian Territory.

Q. Are you acquainted, in the country in which he is living, with his reputation for truth and veracity?—A. I am.

Q. What is that reputation?—A. Bad.

Q. From your knowledge of his reputation since 1868 in the countries in which he has lived, would you believe him under oath?—A. Not if he was interested.

By the CHAIRMAN:

Q. How long have you been special agent of the Post-Office Department?—A. Seven years.

Q. Where were you appointed from?—A. I was appointed from Arkansas.

Q. Upon whose recommendation?—A. I had quite a list of recommendations. I had just resigned from the Regular Army, and was appointed by Governor Randall.

Q. Did you have any Arkansas influence?—A. It was principally New York influence that got my appointment.

Q. Did you have any Arkansas influence?—A. Yes, sir; I believe I had. Mr. McDonald, before he was Senator, recommended me; he and Mr. Wheeler, of New York.

Q. Did any of the marshals recommend you?—A. No, sir; I never had any recommendation from them.

Q. What specific acts of wrong doing or rascality, or anything of that kind, do you know in regard to Shoemaker?—A. I do not know any, personally myself.

Q. You say that if he was interested, you would not believe him?—A. No, sir.

Q. Suppose he was not interested, would you believe him?—A. No, sir, I would not.

Q. Why do you say so?—A. I have known persons whom he has wronged out of money.

Q. I thought you said you did not know any wrong-doing yourself?—A. If I said so, I take that back. I did not understand your question.

Q. Then you do know of some wrong that he has done?

By Mr. DURHAM:

Q. Did you ever hear his oath called in question?—A. I think not.

Q. And why do you say you would not believe him on oath?—A. Because I have heard so many dishonest acts of his that I would not like to have any dealings with him.

Q. But honesty and veracity are two different things. It is true one may bear on the other, but did you ever hear anybody say that this man Shoemaker had sworn falsely?—A. I have not. I have heard men say that they would not believe him on oath.

Q. Did you ever hear of him being put on oath in Arkansas, or in the Territory?—A. I have not.

Q. Still you have heard people say that they would not believe him under oath?—A. Yes, sir; they did not go into the details of it.

Q. Do you know Mr. Shoemaker personally?—A. Yes, sir.

Q. Have you had any dealings with him?—A. No, sir; I lived in the same town of Van Buren with him, and I saw him every day.

Q. You say you have had no dealings with him?—A. Not that I remember just now.

Q. I am requested to ask whether you did not sell him a carriage on one occasion?—A. Yes, sir.

Q. Did you require cash, or did you trust him?—A. I do not remember now, it is so many years ago; I was selling out at the time.

Q. Can you tell by what sort of process of thought it is that you remember that people told you that they would not believe him under oath, and yet you do not remember having had direct transactions with him?—A. I remember having direct transactions with him. I have traveled a great deal through the Indian Territory, and I have heard people speak of him very often.

Q. When I first asked you whether you had any direct personal transactions with him, you did not recollect of any; now, by what sort of ratiocination is it that you remember that people told you that they would not believe Shoemaker under oath, and yet do not remember this transaction?—A. It is by a process of memory.

Q. Your memory serves you on one side, but does not on the other?—

A. I beg your pardon; I remember that I sold the gentleman a carriage.

Q. You did not until I reminded you.

By the CHAIRMAN:

Q. Where did your acquaintance with Shoemaker spring up?—A. We lived in the same town together, in the town of Van Buren.

Q. Did you first meet him there?—A. Yes, sir.

Q. Do you recollect any single gentleman of prominence and standing that would not believe Mr. Shoemaker on oath?—A. I have heard our merchants in Van Buren say so.

Q. Can you name one of them?—A. Mr. D. C. Williams, Mr. Ralston, and others.

Q. Was that a mere playful remark, or were they in earnest?—A. I believe they were.

Q. Mr. Britton lived in the same town with Shoemaker?—A. I believe so.

Q. Lived in the same town where these people were publicly stating that they would not believe Shoemaker under oath?—A. Yes, sir.

Q. How big is the town?—A. About twelve hundred inhabitants.

BENJAMIN F. SHOEMAKER recalled and further examined.

By the CHAIRMAN:

Question. Have you examined those ten vouchers in the package now shown you?—Answer. I probably saw some of them at the Department.



Q. Just look over them very rapidly, and if you know that there are any of them fraudulent, just state what you know about it.—A. This (marked 48) is fraudulent; a case against Joseph Dempsey. This (marked 49) is fraudulent; charge of murder; J. S. Saunders employed by R. Fitzhenry, and Johnson Chapman under B. F. Shoemaker, deputy marshal. This (marked 50) is fraudulent; case against William Henson; B. F. Shoemaker, deputy marshal; \$187.75. This (marked 51) is fraudulent; W. H. Hendricks, posse under R. Fitzhenry, deputy; arrest of Joseph Dempsey; \$48. This (marked 52) is fraudulent; United States *vs.* Daniel O'Connell, for introducing liquor into the Indian country; \$410.25. I made the arrest of O'Connell; but he went down by himself; we did not travel with him only a few miles.

Q. There were no posses accompanying him?—A. No, sir.

Q. And that charge in that account is incorrect?—A. Yes, sir. This (marked 53) is fraudulent; Thomas H. Gardner, posse under H. Fitzhenry; arrest of Dempsey; \$48. This (marked 54) is fraudulent; William Ward, posse under B. F. Shoemaker, arrest of George Holt; \$30.

Cross-examination by Mr. ROBINSON:

Q. Look at voucher 49, and tell me if that is your signature?—A. That is my signature, I suppose.

Q. You certified that to the marshal's office of the western district of Arkansas as being a fact?—A. I signed that.

Q. What is the certificate that you signed?—A. (Reading.) "I have examined the within account, and certify that the service was performed as herein stated, and that the amount as charged therefore is reasonable and just, and that I have no interest in the same."

Q. You certified that as correct?—A. Yes, sir.

Q. And now you say it is fraudulent?—A. Yes, sir.

Q. Examine voucher 54, and tell me whose signature that is?—A. That is my signature.

Q. And you signed that certificate upon the return of that voucher as correct?—A. Yes, sir.

Q. And you now say it is fraudulent?—A. Yes, sir.

Q. Examine voucher 48, and tell me why you say it is fraudulent?—A. Simply because there was no such man traveled with Joseph Dempsey.

Q. How do you know that?—A. We employed no man; I was along with Fitzhenry, and helped to arrest Dempsey.

Q. How do you know that this is the same time when you were along with Fitzhenry, and helped to arrest Dempsey?—A. The dates correspond.

Q. What date did you make that arrest?—A. It was along in the last days of October, or in the first days of November, 1870; we got into Van Buren on the 10th of November—Fitzhenry and I did.

Q. Who reported that voucher 48?—A. I don't know, sir; I suppose Fitzhenry did.

Q. How do you know that that report of Fitzhenry's is not correct?—A. Because we employed no posse.

Q. Were you with him?—A. I was with him.

Q. Where did you make the arrest?—A. We made the arrest in the Cherokee Nation, about fifteen miles above Rock Creek, on the railroad.

Q. Do you know whether Joseph Dempsey was arrested more than once during that year?—A. I don't know that he was.

Q. Nor you don't know that he was not, either, do you?—A. No, sir.

Q. Then all that you know about it is, that there was no posse along

at the time you assisted to make the arrest?—A. Yes, sir; he was arrested for murder.

Q. Nos. 54 and 49, who reported them to the office as correct?—A. I suppose I did.

Q. Don't you know that you did?—A. Yes, sir.

Q. And you reported those posses to the office as having had them with you?—A. I suppose I did.

Q. No. 50, who reported that case to the office?—A. I returned the writ into the office.

Q. Did you swear to that service?—A. I guess I did.

Q. And you swear here this morning that it is not a correct voucher?—A. I didn't do the service.

Q. You swear now you did not do it?—A. I do.

Q. And you swore then that you did do it?—A. Yes, sir.

Q. Is that James O. Churchill's signature to that document?—A. I think it is.

Q. When you went before Mr. Churchill and swore to the correctness of that account, didn't you know at the time that it was fraudulent?—A. I did.

Q. You presented that account against the Government and committed perjury, getting the money, did you?—A. I swore to it, sir.

Q. And it is not true?—A. It is not true, sir.

Q. Do you know that man who signed that document there, (Gardner)?—A. I don't know as I do, sir; I know a Gardner; I don't know what his first name is.

Q. Don't you know Thomas H. Gardner?—A. I don't know as I do.

Q. Don't you know a young man named Gardner, who lives out from Fort Smith a short distance, in the Arkansas bottom?—A. No, sir.

Q. Haven't you had him ride with you as a posse?—A. No, sir.

Q. You never had a man of that name?—A. I have no recollection of having any man of the name of Gardner riding with me.

Q. You said you knew some Gardners. Tell us the names of the Gardners you know.—A. I know a John Gardner.

Q. Do you know Gustavus Gardner?—A. No, sir.

Q. Do you know that family of Gardners that live about two miles from Fort Smith? Is John Gardner all the Gardner you know?—A. I believe that is all the Gardner I know down in that country.

Q. Did you present that account, No. 52, for payment as a correct account?—A. They made out that account for me.

Q. Did you present that account for payment?—A. I told them that I arrested O'Connell.

Q. Did you present that account for payment?—A. No, sir; they did not pay anything at that time.

Q. Did you present that account for adjudication?—A. I suppose I did.

Q. Did you represent that it was a correct and true account?—A. Yes, I judge I did.

Q. Did you draw the money for that account?—A. No, sir.

Q. Did you sell it to anybody and get any pay for it?—A. No, sir.

Q. Has it ever been paid yet?—A. I suppose William A. Britton got the pay for it.

Q. Have you got any pay for it?—A. I have got some money, but nothing direct for that.

Q. Didn't you get money that covered all your accounts?—A. No, sir; I don't think I did.

Q. Didn't you get money that covered all your accounts for 1870?—

A. No, I don't think I have. I have never had any settlement with Britton, but I think he owes me some money yet for my services in 1870.

Q. Did you present that account at that office for allowance and payment?—A. I returned the writ; they made out those papers.

Q. They made out those papers according to your return?—A. Yes, sir.

Q. You returned it then; didn't you know at the time you returned it that it was false?—A. I knew I did not travel with Mr. O'Connell.

Q. Why then did you, under your oath of office, make that false return?—A. I don't know as I had ever taken any oath at that time.

Q. You hadn't?—A. I think not.

Q. You knew you were making out a false return against the Government?—A. I knew I didn't travel with him.

Q. Didn't you know you were making out a false account against the Government?—A. Yes, sir.

Q. Do you state here that at the time this account was made out you had not taken your oath of office as deputy marshal?—A. I don't remember ever taking any oath as deputy marshal up to that time.

Q. Had you taken the oath?—A. I have no recollection of it.

Q. Did you take one at all?—A. I think not in 1870; I gave no bonds.

Adjourned.

WASHINGTON, May 6, 1874.

Present, Messrs. Sener, chairman, Williams, and Sheats.

WILLIAM P. ROSS sworn and examined.

By the CHAIRMAN:

Question. Please state your age, residence, and occupation.—Answer. My age is fifty-four; residence, Fort Gibson, Cherokee Nation, Indian Territory; at present principal chief of the Cherokee Nation.

Q. Were you ever arrested in the Indian country just within the jurisdiction of the western district of Arkansas on any charge? If so, state the charge, and about what time you were arrested.—A. I was arrested while I was attending a meeting of the Cherokee National Council, of which I was a member, at Tahlequah, in November, 1870, on a charge of resisting the process of the United States court.

Q. Who arrested you?—A. I was arrested by a deputy marshal by the name of Dean.

Q. How far were you carried?—A. I was not taken anywhere by the marshal. There were two of us arrested at the same time, Mr. Bengé and myself; and ex-Governor Fletcher, of Missouri, was in Tahlequah at the time, and he kindly proffered to act as our attorney, and he and Mr. Bengé and myself got a conveyance and went to Van Buren.

Q. How many miles was that?—A. Between sixty and sixty-five miles.

Q. Was there any *posse comitatus* employed in taking you to Van Buren?—A. None at all, sir. Governor Fletcher gave the marshal assurance that we should appear at Van Buren at a certain time.

Q. You did not go to Fort Smith at all?—A. It was before the court was removed to Fort Smith. I think it was in November, 1870. I can't give the precise date, but I think that was the month.

Q. Was a man by the name of McCoy arrested with you?—A. Not at

the same time—not that I recollect of. There were a number of other persons arrested and taken to Van Buren on the same charge.

Q. Did you know a man by the name of John S. McCoy?—A. I cannot recollect McCoy at present—yes, I knew John S. McCoy.

Q. Was he arrested at the same time?—A. I am not certain, but I think Mr. McCoy was arrested before in what is called the Coowees-koowee district.

Q. You don't recollect anything about his being arrested at the same time?—A. I don't think he was arrested at Tahlequah, but he was arrested on the same charge and taken to Van Buren.

Q. You were arrested by Dean; do you recollect his given name?—A. I do not.

Q. Was his name George F. Dean?—A. I think his name was George F. Dean. I knew his family very well; I don't know his first name, though.

Q. Was he any relation to the marshal, or to any of his deputies?—A. I don't think that he was.

Q. How far do you say it was from where you were arrested to Van Buren?—A. Between sixty and sixty-five miles.

Q. Not further than that?—A. Not usually so called in that country, and I don't think it is more than that.

Q. Was that the only charge on which you were ever arrested and taken by the marshal or any of his deputies?—A. It is the only time during a residence of more than thirty years in that western country that I was ever before that court.

Q. Were you convicted?—A. No, sir; discharged without coming to trial at all; it was *noll prossed*.

Q. Before the commissioner?—A. Before the court; court was in session.

Q. In this case against you and McCoy, which is put down as of the 18th of November, 1870, the date of the writ and this *posse-comitatus* account, there is an account for four posses for nine days' services, traveling three hundred miles in making those arrests. The first *posse comitatus* is J. S. Jones, the second W. J. Roberts, the third Charles S. Strickland, and the fourth C. R. Smith; and they are all for \$27 apiece and for three hundred miles traveling. Just look at these papers and see whether you are satisfied that no such *posse comitatus* acted in your case.—A. [The witness having examined the papers.] I know there was no such *posse comitatus* that accompanied me to Van Buren; I know that perfectly well.

Q. You know, you say, that you were without any *posse comitatus*, upon the assurance given by Governor Fletcher to the marshal that you would report there without any such guard being necessary?—A. Yes, sir.

Q. Do you know of any such guard as those posses named?—A. I have no personal acquaintance with any such parties, although there may have been such men there.

Q. Do you know, of your own knowledge, whether there are such men?—A. I do not, sir; I do not recollect any such men at present. I will state, though, that the marshal, with Mr. Bengé and myself, was arrested on the same charge at Tahlequah. He was arrested by a deputy marshal by the name of Jerden, I think, and two or three hours afterward I was arrested by a deputy by the name of Dean. There were three or four or five persons with those marshals. There was one of them at Tahlequah in the morning, whom I supposed to be a posse, but

they had no occasion to use them so far as either of us was concerned, and no person at all accompanied us to Van Buren excepting a driver.

Q. How long did it take you to make the trip from Tablequah to Van Buren?—A. We left Tablequah Friday morning, and got into Van Buren early on Saturday morning, and were discharged that evening, and came off.

Q. It took you less than two days to go to Van Buren?—A. Yes, sir; we were discharged inside of two days.

By Mr. SHEATS:

Q. Did you live at Tablequah?—A. I lived at Fort Gibson, twenty-one miles west of Tablequah.

Q. Where is your usual place of residence?—A. Fort Gibson.

Q. You are well known in that country, being the chief of the Cherokee Nation?—A. I have lived there over thirty years, and I suppose I am pretty well known.

Q. How far is Fort Gibson from Van Buren?—A. Between sixty-five and seventy miles.

By the CHAIRMAN:

Q. Were you avoiding the process?—A. Not at all.

Q. Were you concealing yourselves?—A. Not at all; I was not aware that there was any charge against me until the deputy came and arrested me.

Q. Do you spend most of your time in Fort Gibson?—A. All my time, unless I am absent on business; I have been at Tablequah attending council for a week or two.

Q. In the usual range of your business how far do you go from Fort Gibson?—A. Ordinarily not more than fifteen or twenty miles, but occasionally I go farther.

Q. You speak of Mr. Bengé being arrested on the same morning; do you know whether a posse accompanied him?—A. Mr. Bengé went in the same ambulance that Governor Fletcher and I went in.

Q. A young man by the name of Benjamin F. Shoemaker has testified in this case; do you know him?—A. I know this Mr. Shoemaker, [indicating Mr. B. F. Shoemaker;] he is the only one that I know.

Q. How long have you known him?—A. I have had more or less acquaintance with Mr. Shoemaker for four or five years, as well as I can recollect.

Q. Do you know his reputation for truth and veracity, whether it is good or bad?

Mr. SHEATS. I think, Mr. Chairman, that is rather an embarrassing question to ask Mr. Ross.

The WITNESS. I have no objection to answering the question. So far as my acquaintance with Mr. Shoemaker goes I know nothing prejudicial to his character, nor to his reputation.

Q. Have you heard his reputation for truth and veracity impeached?—A. I have not.

Q. You have known him four or five years, you say?—A. I have had more or less acquaintance with him, but I have not been particularly intimate with him. Part of the time he has resided in the town where I live, or adjoining it, and I have known him occasionally in the discharge of his duties as deputy marshal, and I have never known his character for truth and veracity to be impeached.

Cross examined by Mr. BRITTON:

Q. Was there an arrangement between you and the deputy that you

should be permitted to go on your parole to Van Buren?—A. Yes, sir, Governor Fletcher gave the deputy marshal assurance that we should appear at Van Buren as soon as we could get there.

Q. If you were permitted to go on your parole, were not the deputies entitled to be allowed their posses who started from Fort Smith to find you?—A. I don't know what would be the law.

Q. Would that deprive the deputies of their fees, if they sent around the country and hunted after you?—A. That depends upon the law. I am not aware of what the law is on the subject. I am merely stating the facts.

Q. Do you know S. L. Griffiths, of Little Rock, who was formerly a resident of Fort Smith?—A. Yes, I know him; he resided there previous to the war.

Q. Do you know that C. R. Smith, one of the posses on your arrest, is his relative?—A. I do not recall Mr. Smith to mind at present.

Q. Clifton R. Smith?—A. I cannot recall at present the names of any of the persons who were there, except Mr. Dean and Mr. Jerden, the two deputies who made the arrests.

Q. Do you know anything about the distance that they traveled to find you on that occasion; whether they went to Fort Gibson, or to any other place, hunting after you?—A. I do not. I suppose, however, that they went direct to Tahlequah, for the reason that it was well known that Mr. Bengé and myself were members of the national council, which was in session there. However, that is a mere supposition.

Q. Do you know George F. Dean personally?—A. I saw Mr. Dean then, and I saw him afterward; I know his family; I knew Dr. Dean, and I had an acquaintance with Mr. Dean's sister.

Q. Do you know anything about Mr. George F. Dean's reputation; whether it is good or bad?—A. I supposed his reputation was good. I never heard anything to the contrary.

Q. From your knowledge of the family, and of Mr. Dean himself, do you believe that he would swear to a false account?—A. No, sir; I would not suppose that Mr. Dean would do so, from his general reputation. My acquaintance with Mr. Dean himself is limited.

Q. Do you know any of the parties that were with Dean or Jerden?—A. I cannot recollect any of them at present.

Mr. WILLIAM A. BRITTON being present, and being informed by the chairman that the committee were now ready to receive any sworn statement that he desired to make in this cause, stated that, while he might refute considerable of the testimony that had been given against him on this examination, he did not think it looked very well for a man to be a witness in his own case, and therefore he would not like to do it, unless it was a case of great necessity.

The CHAIRMAN. Do you regard this as a sworn or an unsworn statement?

Mr. BRITTON. I regard this as sworn. I will say further that if other witnesses shall be brought here at a future time, and if I think it necessary to make my statement in the case, I will do so; but only under such circumstances.

The CHAIRMAN. When you say that you believe that you could refute the statements that have been made here, do you mean that you could furnish the committee any documentary evidence in refutation, or merely your own statement?

Mr. BRITTON. It would be simply my own oath, sir, as near as I can recollect now. I don't know but I might furnish documentary evidence too, but I don't think of any now.



WASHINGTON, D. C., *May 12, 1874.*

BEN. T. DUVALL, who has heretofore made a statement before the committee, being recalled and further examined, testified, under oath, as follows :

By the CHAIRMAN :

Question. We are considering, in this committee, the expenses, disbursements, and general management of the western district of Arkansas since July, 1870 ; have you any information that you can give this committee touching improper expenditures in that department on the part of the marshal, the clerk, or the commissioners ?—Answer. I have no personal knowledge of improper expenditures, not having had those intimate relations with the marshal and the disbursing officer that would enable me to know positively, or to indicate specifically, any improper expenditures. There has been a good deal of complaint among those who reside in the town, and who have had business connection with the office. A greater portion of the time the marshal's office was without money, or said to be so, and the witnesses and jurors, when discharged, received marshal's vouchers.

Q. You made some statement to me about the existence of a bank ; please give the history of that bank, and of the purchase of vouchers by it —A. I was going on to state that those persons received vouchers which had to be sold in order to raise money, and along about the 1st of April, 1872, while Mr. Roots was marshal, the National Bank of Western Arkansas was established with a capital of \$50,000. I think the bank was established in 1872. Mr. Roots was appointed marshal, I think in 1871, and the bank was established in 1872. It had a capital of \$50,000, of which Roots was the owner of three-fifths, as appeared from the statement made by the bank. He took \$30,000 of the stock. They are required by law to keep in a public place in the bank the names of the stockholders and the amount of their debt, and I examined the book which hung up by the cashier's desk. That bank I think went into operation about the 1st of April, 1872.

Q. Who were the other stockholders ?—A. The other stockholders were Richard C. Kearns, B. Bear, Arthur Gunter, E. S. Mitchell ; and Elias R. Duvall, my brother, had a small share in it, a thousand dollars.

Q. Was that the first national bank that was established at Fort Smith ?—A. No, sir ; there had been a bank there, the First National Bank of Fort Smith, which had gone into liquidation. During the time that Mr. Roots was marshal, and after the establishment of this bank in which he was interested, the vouchers that I speak of that were issued for the payment of the expenses of the court were purchased freely at that bank, usually from about 25 to 30 or 35 per cent. discount. The bank made money I know out of the vouchers, because I had means of knowing from the interest of my brother, in which I had an indirect interest. I know that a large part of the profits of the bank grew out of the dealing in those vouchers.

Q. Have you any means of knowing what amount of vouchers they bought ?—A. No, sir.

Q. Did you ever hear any statement of it from any of the officers ?—A. I have heard from some of the officers that they had purchased a large amount and made a good deal of money out of them.

Q. What officers stated that to you ?—A. I think I learned it more particularly in conversation with my brother.

Q. Was he one of the officers ?—A. He was one of the directors of the bank.

Q. Is that all the history of that bank you can give us?—A. The bank is still dealing in the vouchers which are issued from the marshal's department.

Q. Issued by the present marshal, Sarber?—A. Yes sir. At the adjournment of the last term of the court there was no money there to pay the jurors, and a large number of them sold their vouchers to the bank at 30 per cent. discount.

Q. Is Sarber connected with the bank?—A. No, sir; not nominally, and I don't know that he has any connection with it at all. Most of the jurors who sold their vouchers, so far as I know, sold them to the bank for 30 per cent. discount. Some of them borrowed some money at the rate of 75 per cent. and deposited their vouchers as collateral, and gave their notes, payable in 30 days, at 2 per cent. a month. There was a good deal of dissatisfaction among the jurors at the time they were discharged, and they drew up a communication to the Department of Justice complaining of it.

Q. Do you know what position Logan H. Roots held in that bank?—A. He was vice-president. After he ceased to be marshal he transferred a portion of his stock to his brother, P. K. Roots, who then succeeded Mr. Mitchell as cashier, and is still cashier of the bank.

Q. Has Roots organized any other banks up there?—A. No, sir. He is president of the Merchants' National Bank, at Little Rock.

Q. How long has he been president of that bank?—A. About a year. I believe he has a bank also at Arkadelphia that he is connected with; I don't know whether it was organized under the national bank act or not. His connection with that commenced about the time that he became president of the other bank. He might have been president of the Merchants' Bank of Little Rock eighteen months; I know that he became president of it since he ceased to be marshal.

Q. How long have you known Logan H. Roots?—A. I first became acquainted with him in 1866.

Q. Is he an old citizen of Arkansas?—A. No, sir; I think he came from Indiana. He came there with the Army, as a commissary or something at Duvall's Bluff.

Q. Was he reputed to be a man of means when he came there?—A. I don't know whether he was or not. I have heard that he made a good deal of money in the Army, but know nothing of that. He was elected to Congress before he was marshal, and had served one term in Congress.

Q. None of these banking enterprises were started until after he was marshal?—A. No, sir. The bank at Fort Smith was created after he became marshal, and the one at Arkadelphia. The Merchants' National Bank, at Little Rock, was in operation in 1866, when I went home after the close of the war. Whether he had any stock in it I don't know, but my impression is that he acquired his stock a short time before he became president of it. In 1868 I think the bank came very near breaking, and I think it led a rather sickly existence for several years.

Q. Do you know anything of the present administration of the marshal's office at Fort Smith?—A. Nothing of my own knowledge. Being an outsider, I only know what the general impression is. There are just about the same complaints against the present administration that there have been against the former administrations, the same difficulty of having no money to pay the debts of the office as they accrue.

Q. You mean to say that Sarber does not pay the debts against the Government promptly, as they mature?—A. I understand that he does not.

Q. And that people have to sell their vouchers?—A. That has been the general custom. He has paid out some money at times, but it lasts usually only four or five days, and then it stops, and the same practices are resumed.

Q. Has he now resumed payment?—A. No, sir; I understand there is no money there. There was none when I left home.

By Mr. ROBINSON:

Q. Do you know it to be a fact that the Department here has refused to furnish him money on account of some complaints received from that country?—A. I know this, that in a small transaction that we had (the collection of the fees of a dead juror) we received a check on the treasurer at Saint Louis, and it was understood that no moneys were furnished direct to the marshal at all now, and that all checks were to be made on the treasurer at Saint Louis.

By the CHAIRMAN:

Q. Do you mean that the Treasury undertakes the business of paying each separate juror?—A. Yes, sir.

Q. Just explain that.—A. I understand that any person having claims against the Government in the marshal's department signs a voucher in the marshal's office. The marshal then draws a draft upon the assistant treasurer at Saint Louis for the money, and he is required to specify in the draft what the money is for. I know this because the draft that we got for the fees of a deceased juror was sent to Saint Louis to be cashed, and it was sent back because it did not specify on the face of it what it was for.

Q. What was the state of facts when you left home as regards the condition of the Indian country in relation to crime; is it peaceable or otherwise; is there any failure to have justice done; is there murder, rapine, and ravage, or anything of that sort going on in it?—A. The reports which come up from that part of the district indicate that there is a good deal of lawlessness and violence. When I left home it was understood that there were only a few deputies who held their commissions, and I don't think there are more than one or two acting now. The reason they gave was that there was no money to pay their expenses, and, therefore, they would not do anything. They claimed that there were large arrearages due them from the marshal's office, and it was necessary for them to have money in order to make these trips into the Indian country, and they could not get it. At times the marshal has discharged all his deputies, and then there would be some of them restored. In point of fact, there really seemed to be no business doing in the marshal's office when I left there.

Q. Just state any reports which you believe to be well authenticated as to crime in the Indian country.—A. Well, the reports published there in the newspapers, and coming from other sources, indicate that there is a good deal of crime being committed in that country.

Q. And that is not being checked, punished, or corrected?—A. No, sir.

Q. And you believe those reports to be well founded?—A. I believe a great portion of them to be true; I could see nothing in them which indicated a disposition to exaggerate.

Q. How long have you been practicing law in that country?—A. I have been practicing twenty-five years.

Q. Have you had the run of the business there for the last three or four years?—A. Yes, sir; I have been familiar with it, and have been doing a good deal of business in the criminal branch of that court, but

not so much as Mr. Robinson and some other attorneys there; we did not seek that so much.

Q. At the time of the building of this railroad was there an unusual amount of crime, owing to the loose character of the population that floated in there to build that road?—A. That is evidently the case.

Q. That increased legitimately the expenses of the district?—A. Yes, sir; it naturally increased the expenses, because a large number of persons were brought there and engaged in building the road, and it gave greater facilities for the introduction of whisky.

By Mr. ROBINSON:

Q. Were not the persons of the class that were introduced there as contractors and as hands and as sub-contractors for the building of that road all amenable to that court if they committed any crime?—A. O yes, sir.

Q. How long were they engaged in building that road?—A. A little over two years, I believe.

Q. What is the distance, as near as you can state, from Gibson's Station to Red River?—A. I never traveled it. I don't know.

Q. Is not Gibson's Station a little north of west from Fort Smith?—A. Yes, sir.

Q. What is the distance from Fort Smith to Red River?—A. It is about 200 miles. I think the road was built during Marshal Roots's term of office from Chetopa, which is on the northern line to Fort Gibson's Station, which is near old Fort Gibson, and I think that then during the last term of Mr. Britton it was finished to Red River.

Q. There was no portion of that road built after Sarber went in?—A. O, no.

The CHAIRMAN. How would it do if there was a consolidation of those districts to have, instead of commissioners, as now appointed, a resident commissioner at Fort Smith, with a respectable and adequate annual salary, whose duty it should be to investigate all cases that might be brought in there, and to take all certificates and acknowledgments that might be necessary for accounts, &c.?

Mr. DUVALL. I think that would be a great improvement upon the present system, and I think it would be well to have the law so modified that the commissioner should hold no other office, and that he should not hold it directly from the judge, so as to be under the judge's control.

The CHAIRMAN. Let him be appointed by the Attorney-General, say, and removable at his pleasure, and charged, not only with the duty of hearing all cases primarily as a justice of the peace, but also with the duty of investigating the correctness of all accounts presented for certification.

Mr. DUVALL. I think it would be a most admirable change.

Judge WILLIAM STORY, of the western district of Arkansas, appeared before the committee.

The CHAIRMAN. Judge Story, you have appeared here this morning in response to the following notice that has been addressed to you by the clerk of this committee:

WASHINGTON, May 7, 1874.

SIR: I am directed by the committee to say to you that they will hear any statement that you desire to make touching any of the matters connected with the western district of Arkansas, now under consideration before this committee, on any day

between this and Tuesday that may best suit your convenience. The testimony that has been taken is open to your inspection, under the charge of the clerk of the committee.

Very respectfully,

E. C. ROWE, *Clerk.*

Judge WILLIAM STORY.

The object of the committee in inviting you here is not to force you to make any explanation, but only to suggest to you that the committee are considering two questions: First. The expenses, disbursements, and general management of the western district of Arkansas, which, in the judgment of the committee, to say the least of it, have been very large, and to a large extent not justified. They would be very glad to hear any statement that you could make that would satisfy their minds on the point of the necessity or propriety of the expenditures in the western district of Arkansas for the time specified. In the second place, the committee are considering the question of the necessity of two judicial districts in the State of Arkansas, and whether the public interests would not be served and a just economy in the interests of the Government promoted, by the consolidation of the western district with the eastern, so that there might be but one judicial district in the State of Arkansas; and upon that point the committee are ready to hear any views that you may be ready to submit, not under oath, or any statement that you may desire to submit under oath; and they are ready to hear you now, or, if you desire, they are willing to adjourn until to-night at 7 o'clock, when they will meet at this room, and when you can present any argument or make any statement that you think proper.

Judge STORY. As to that first point, I can say now that it is a matter which, it appears to me, rests entirely with the marshals. The judge has no control over that matter. The judge has a duty to perform when the accounts are presented—to certify to them, unless he is satisfied that they are fraudulent. A large proportion of the judges refuse to certify to more than that the services appear to have been rendered, and that the amounts are the amounts allowed by law. That is the certificate made by the judges of the eastern district of New York and of the eastern district of Arkansas, and by a number of other judges. Apparently, they seem to think that the duty they have to perform is a nominal one, and such, apparently, is the impression of the chief of the auditing officer of the Treasury Department, who passes upon those accounts. I will proceed, however, to make a statement of the items and of the expenses of the district, giving the items as near as I have been able to get them.

The CHAIRMAN. Do you wish this statement to be regarded as sworn or unsworn?

Judge STORY. This is a matter which could not well be sworn to; it is more an argument showing that the expenses are reasonable, than it is anything else.

Here the committee adjourned until this evening, May 12, at 7 p. m.

The committee re-assembled at 7 p. m.

The CHAIRMAN. There is now a quorum of the committee present, and on consultation with this quorum since you were here this morning, the committee desire me to say to you, first that you are here voluntarily to make any statement that you may deem proper in this matter, but that the committee prefer that any statement that you may make should be under oath, in justice both to you and to them.

Judge STORY was then duly sworn, and continued his statement as follows:



In regard to this matter of Mr. Nash, I desire to state this, that I know nothing in regard to it whatever of my own knowledge; that Mr. Nash never paid to me any money, either directly or indirectly, nor did anybody else for him, or in his name, pay me any money, nor did I receive any compensation of any kind whatever, nor were any inducements of any kind whatever held out to me to permit a *nolle pros.* to be entered in that case, except the representations made by the district attorney in open court, and by Mr. B. J. Brown, who was his attorney in court, that Mr. Nash had a permit from the Secretary of the Interior to introduce liquor into the Indian country. I will say further that at the time the proposition was made to enter a *nolle pros.* I objected thereto, more for the reason of having the question decided as to whether the Secretary of the Interior had authority to permit the introduction of liquor there, as I believed at the time that no one but the Secretary of War had that power, and I stated that if Mr. Nash would enter a plea of guilty, I should suspend sentence, as a matter of course, until a pardon could be procured, which would be undoubtedly obtained for him on a proper representation of the facts, my object being to have the attention of the Secretary of the Interior called to the fact that he was unwittingly, as I supposed, issuing permits without authority. I desire to say that the statement, under oath, of Mr. Nash, that he showed to me his permit is false; that I never saw any permit from any person whatever, but took the statement of the district attorney and of Mr. B. J. Brown on that point. I will say further that no person at any time, or under any circumstances, ever offered me any pecuniary inducement of any kind to influence my official action. I believe I have now covered all the points, but if there is anything else that any member of the committee wishes to interrogate me on I shall be glad to answer.

By the CHAIRMAN:

Q. I suppose you can say that you were never offered and that you never received any bribe?—A. Well, sir, I will make use of that expression; no one ever did offer me any money and I never received any compensation or anything whatever for permitting a *nolle pros.* in that case. That is a matter that I left always with the district attorney, unless there was some special representation to me that he was acting in violation of his duty, and I do not know that such a case ever occurred, or that I ever refused to allow the district attorney to *nolle pros.* a case. I do not know, indeed, that under the Federal practice, I would have the right to do so. The Attorney-General often orders a *nolle pros.* to be entered by the district attorney, and I doubt whether the judge in a Federal court has authority to refuse to allow it to be done; while on the State bench I felt that I had a right to exercise an advisory power but in the Federal courts I did not know that I had that power, the practice in the two courts being different.

The CHAIRMAN. There seems to be something about this, record which touches the general management of the district of Arkansas. I suppose you have seen that the record of the Nash case is at the lower end of the page in a very compressed space, on the record-book of the court, as if it was not entered regularly and in term-time.

Q. We had that impression when it was exhibited to us. Have you any explanation to make as to how it was entered?—A. I think I can satisfy the committee that there is nothing in that that can excite any suspicion under any circumstances. The *nolle pros.* in that case was called up. I had permitted the crier to adjourn court, when Mr. Brown,



as I recall it, stated that there was a case that he wished to dispose of and could dispose of by consent of the district attorney, before court adjourned, and when he spoke the crier waited, and this conversation in regard to entering this *nolle pros.* took place at that time. After that took place the court was adjourned.

The clerk keeps a minute-book, and usually when a trial is going on there is no business disposed of; it is an unusual thing for any business to be disposed of in such cases unless there is some special reason; for instance, a party wishes to get off, and his attorney calls it up and it is disposed of; but most of these cases are disposed of at the morning hour, if there is a *nolle pros.* to be entered. But I think some representations were made in this case that the party wished to get away, and if a trial had been going on previous, (though I do not know, as I have not referred to the record,) the clerk might very naturally have stepped out from the court-room and gone to another room, and his book been given to the deputy to write up the record, and then, after the deputy had written up the record, Mr. Churchill, in looking it over, might have found that he had left this out, and it is a very usual thing to find that some portion of the record has been left out that ought to have been entered up. If it is a matter of any importance it is just agreed between the attorneys that it shall be entered as of the day following. Sometimes the clerk enters it in, if he has room in the space there. I thought I noticed that Mr. Nash himself, in his statement, testified that the *nolle pros.* was entered on the 6th day of June; that is the day on which it appears to have been entered, but I do not know anything about that; my attention was never called to it. He speaks of it as transpiring on that day. I don't know anything about that; I never heard of it, and it never was suggested to me until Mr. Churchill's attention was called to it here in the committee-room—I think, here. He spoke of it one day casually, and said that his attention had been called to it, and he said that he intended to show the committee that there were other places where the records were written in the same way, and that there was nothing singular about it. I don't know whether he did or not. If any of the members of the committee desire to ask any further questions I have not the slightest objection.

By the CHAIRMAN:

Q. You may proceed with the next part of your statement.—A. The next matter that I think of is, there was some testimony here, I believe, in regard to the approval of an account in blank. I don't know what the testimony was in that case.

Q. The matter was this: Mr. Donnelly, who was the chief clerk, both under Mr. Britton and Logan H. Roots, testified that during the administration of Logan H. Roots as marshal, on one occasion—and he thought it was, I think, at the November term of 1872—you signed a warrant in blank, or an account-current in blank, against the Government for some \$25,000; that is to say, he said he thought it was about that amount, and he afterward identified three accounts-current, if I recollect rightly, and it was one of those three, and they, all of them, were about \$25,000 each; that is about the substance of his statement.—

A. Mr. Donnelly is mistaken in regard to that matter. From my memory in regard to that matter, it cannot be. I have been trying to think about it. This is what transpired, to the best of my recollection: In February, 1872—the latter part of February or the 1st of March—I was making preparations to hold my court at Helena. My wife was sick; and, in order to take her with me, it was necessary that I should go by

boat. The river was very low, and I had been for a week or ten days waiting for the boat to go up the river, but on account of the lowness of the water the boat was detained for some time, and did not, in fact, reach the town. Just after the boat, or about the time the boat, came, Roots brought a set of accounts to me—I think this was in the last of February—and asked me to approve them, stating that he could not transcribe them on to the accounts-current, because he had to get a balance from his Helena courts—that is my recollection—and that it would take some little time; and, if I recollect right, he said that Mr. Donnelly was not well and could not attend to the matter on that day, and that he would have to meet his brother at Duvall's Bluff and get the balance. When the account goes up, if there is a balance due the marshal or a balance due the United States, that is transferred from these abstracts on to this account-current. It is a purely formal matter, which could be rectified in Washington, as a matter of course, if any error took place; but Colonel Roots is a man who is exceedingly careful about his accounts—always went over them himself in person—and in whom I had the greatest confidence that his accounts were correct. He brought these abstracts to me, and asked me to approve of them. I said to him, "Colonel Roots, I cannot do that; I do not know anything about your accounts, for I have not gone over them, but I would rather there should be no informality whatever." He said, "Judge, if you don't approve these accounts, there is no use going to Helena; I won't have any money for that court." I told him then to take the accounts and go before Colonel Churchill and swear to them, and swear that they were correct, and that he would transcribe them correctly on to the account-current. He did. I took the accounts and examined them, and then, believing it was my duty under the circumstances to approve those accounts before I left, I attached my signature to that paper, and I believe that I did right, and that if I had not there would be no money to pay the witnesses. While Roots was marshal, and until just before he went out, jurors and witnesses were always paid. After he went out, not that I wish to be understood as reflecting upon Mr. Britton at all, but Mr. Britton had not the means and could not command the means that Mr. Roots could. Mr. Roots sometimes, I know, had the Government in his debt as high as fifty and sixty thousand dollars; and these are amounts that could not be raised by Mr. Britton. After he went out, jurors and witnesses were not paid sometimes, and at one term of the court I was very credibly informed that persons actually starved to death for want of being paid their fees—witnesses who were brought there, as I was informed.

Q. That was during Britton's term?—A. That was in December, 1872.

Q. Who was marshal then?—A. I think Mr. Britton was marshal at the time, but Mr. Britton claimed that the Government was very largely in his debt, and his accounts, as they came to me, showed that the Government was in his debt.

Q. You made a remark to me this morning which I would like you to make before the full committee, if I understood you correctly, and it was this: that you regarded, and so did the district attorney, as you understood, and some of the other judges, the signing of these accounts as a formal matter.—A. You misunderstood me; I said this: that most of the judges appeared to regard the duty of the judge as a purely formal matter, and as certifying in substance merely that the judge has examined the accounts. The judges have no authority to call witnesses before them and take testimony as to the correctness of the charges, and having no means of finding out whether the services have been actually performed, the judge certifies to the only things of which he is

judicially cognizant; that the amounts are, in fact, allowed by law for the services, if the services have been, in fact, rendered. The chief of the auditing division wrote me a letter in regard to some accounts. I have not the letter, but I have a quotation from it in a letter which I sent to Mr. Williams; and though it is not as strong as if I could give you the whole of it, I can give you enough of it, I think, so that you can see what he says. I will furnish the committee with a copy of it. Mr. Britton presented some accounts to me for approval, and I refused to approve them, because there was not sufficient evidence to satisfy me that the services had been performed; that is, I asked for additional affidavits; but, perhaps, in making this statement, I had better wait until I come to that at another point.

Shortly after I was appointed I received a letter, transmitted by the Attorney-General, which had been sent to him from the Secretary of the Interior, forwarding a petition of Messrs. Adair and some one else in the Indian country, asking for the appointment of commissioners in the Indian country. I immediately made every effort I could to get parties who would be satisfactory, and to appoint them. After considerable difficulty I persuaded a young man, in whom I had great confidence, to accept the appointment, and go to Fort Gibson. He went there with about a thousand or fifteen hundred dollars in money, and staid there until he had spent it all, and finally he had to leave without having paid his expenses while there. He had a sick wife, and left. I afterward appointed another one, who is still there, in compliance with this request, and he has, I believe, performed his duties very satisfactorily to the Department. The Attorney-General spoke to me very highly of him. I speak of this matter because the Attorney-General has written several letters in respect to the matter.

[Judge Story then read the following letter:]

HELENA, ARK., March 9, 1872.

DEAR SIR: Inclosed you will find a bill proposing a new division of the State of Arkansas into judicial districts. The object of the bill is, as its title indicates, to facilitate the trials of criminal causes and reduce expenses in the western judicial district of Arkansas.

The expense of holding the last term of the court at Fort Smith was about \$75,000. Unless some change is made the next term will cost not less than \$100,000. There were two hundred and twelve persons indicted at the last term, and it is estimated there will be at least three hundred persons for trial at the next term. During my last session of court there I was enabled to continue all of the more important cases until the latter part of the term, quite a number being continued until the spring session. In May next most of the important cases must be pressed for trial early in the term. About thirty persons will probably be tried for murder and perjury. Some of these cases will occupy at least one week, sitting ten hours a day, while from five to fifteen hundred persons, witnesses and others, must be kept waiting. When I adjourned court in February to attend to business here, there were forty persons in jail, fifty or sixty on bond, and eleven were brought in for examination before the commissioner the same day. There is more business at Fort Smith than I can well attend to, and more than twice as much as there is at Little Rock and Helena combined. Within the last three weeks two deputy marshals have been killed in different portions of the Indian country, and unless we are permitted vigorously to enforce the laws it will be but a short time before a marshal cannot ride in that country except with a squad of soldiers. Nearly one-half of the expense is occasioned by prisoners and witnesses being brought in from a long distance for examination before the commissioner, who are bound over and then permitted to go home, to return again at the next term. My experience is that both the Government and defendants are better prepared for trial, as a rule, when first brought in than at any other time, and under this bill the cases would go before the grand jury and be tried at once. The number of witnesses and the length of time they would be in attendance upon the court would be greatly reduced. I need not tell you how this bill will save thousands of dollars to the Government each year. A moment's glance at the map of Arkansas will satisfy you that the proposed division is much better than the present one, and will of itself save the Government considerable

expense. Outside of the question of expense, justice demands that the prisoners should have an opportunity to be tried. I think it very important that the bill should pass at this session, but believe it can only be done by the attention of the respective judiciary committees being called to the bill and its immediate passage requested by you.

Being informed that you were, like myself, anxious to reduce the great expense of that court, I have taken the liberty to write to you on the subject. By informing me as soon as possible what action, if any, will probably be taken in the matter, you will enable me to forward the object of the bill, and greatly oblige

Very respectfully,

WM. STORY,

Judge Western District Arkansas.

AN ACT to facilitate the trials of criminal causes and reduce expenses in the western judicial district of Arkansas.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of January next the counties of Benton, Carroll, Boone, Marion, Fulton, Izard, Searcy, Newton, Madison, Washington, Crawford, Franklin, Johnson, Pope, so much of Van Buren as is west of range thirteen (13) west, Sarber, Sebastian, Yell, Scott, Montgomery, Polk, Pike, Sevier, Little River, Hempstead, and Lafayette, in the State of Arkansas, and the Indian country west of said State, shall be the western district of Arkansas, and the residue of said State shall be the eastern district of Arkansas, and the judge of said eastern district shall hold the terms of the United States district court now required by law to be held at the city of Helena in said State.*

SEC. 2. *Be it further enacted, That while the business of the court requires it to be done for the purpose of justice and to prevent undue expenses and delay in the trial of criminal causes, the judge of the district court in and for said western district is hereby authorized to hold terms of said court on the first Monday in each month, and all process, pleadings, and proceedings shall be returnable at such term of said court as may by rule be prescribed.*

Mr. Britton was re appointed and entered upon his duties on the 6th day of July, 1872, just at the close of the May session of the court. I spoke of the fact that my wife was sick in February, and I had, after taking her to Helena, and staying during the month of March, taken her to her parents, where she still was, and she was quite unwell, and I necessarily felt it my duty at the adjournment of court to go there to her parents at Milwaukee. While in Milwaukee I called on Senator Carpenter, and represented to him that there was a law peculiar to this western district of Arkansas, which was known to us as the posse law. It is a law which authorizes the marshal to employ and ostensibly limits him to the employment of three persons as posse, but in fact the law has been so construed by the Department here, and by all of the marshals ever since the law was passed, which was in 1858, as authorizing them to employ three persons for every writ that is taken out, and to pay those persons employed as posse \$3 a day.

A very large proportion of the expenses of the western district of Arkansas is caused by this law, which is peculiar to the district. I think nearly one-third of the expenses of the district two or three years ago was charged to these posses. Since the expenses have run up so much there has been an effort to avoid that as much as possible, but I am still under the impression, and so stated to Senator Carpenter, that I thought that the law was directly or indirectly responsible for over one-third of the expenses of the district. Bad men living in the Indian country, having nothing to do, would report some outrage or something they alleged was an outrage, make an affidavit of it, perhaps, and report it to the marshal, and have a warrant sworn out, and they knowing, or professing to know, exactly where these parties were, would very naturally be employed by the marshal as a posse. I think these men stirred up crime—a great many men stirred up crime and reported offenses—

for no other purpose than the purpose of being employed as posse; that is the conclusion I have come to after careful examination of the expense of the district, and how it was incurred. I told Senator Carpenter that it ought to be repealed. The marshals have always insisted that if it was repealed it would be very difficult indeed to serve the processes of the court, for it was dangerous for them to ride through the country; but the more I saw of it the more I became convinced that that law was a law under which many outrages were perpetrated, and that if fraudulent accounts were made out at all they could be made under this law, and would be more likely to be made under this law than in any other way. In the other accounts it was almost impossible for there to be any fraud, except so far as they might report an amount of mileage that they had not in fact traveled, but it was exceedingly difficult to tell whether a person had been out with the marshal or not. Often a person who goes out as a posse, after going with the marshal, as I am informed, would be sent off for some witness, and is not necessarily with the deputy marshal himself, but away; and in quite a number of cases where my attention was called to the matter, I have had the posse come before me and sworn, and I have cross-examined him specially as to where they traveled and where they were, but in no instance where they were brought before me did I ever discover any frauds perpetrated by them; but I have heard so much and so many charges in regard to frauds committed in that district that I felt it important, if possible, to sift it out, and in a good many cases where I had no authority to bring these parties, I did bring them before I approved the accounts. One time I insisted that all the posse accounts should be sworn to before me for some time, but I found I had not much time to do anything else, and I had to give it up. Of course these were the accounts that I examined and cross-examined these parties on, and they would not be very apt to come before me with fraudulent accounts when it was understood, or was being known, that I was examining them; but if any of those accounts were fraudulent—and I am informed that there is testimony showing them to be fraudulent—I think you will find them on examination to be almost all these accounts under the posse law.

Q. Do you think the posse law ought to be repealed?—A. I do, sir.

Q. Where would you confide the authority to employ posse when necessary? I suppose in some cases it is absolutely necessary in that Indian country to have posses; in striking out that posse law you would do one good thing and one bad thing.—A. I probably cannot explain that answer better than to read a letter from Attorney-General Williams to me, dated November 3, 1873. I will furnish the letter to the committee. I desire to state that I had called Mr. Williams's attention to this law before, in October, previous to this time, beside having written several letters to him. I think I wrote a letter, of which I have not a copy, at the time I wrote to Senator Carpenter. Here is an answer to the letter, dated November 15, 1873:

A 2.

UNITED STATES DISTRICT COURT, CHAMBERS,  
Fort Smith, Ark., November 15, 1873.

SIR: Your favor of the 3d instant, in which you call my attention to the third section of the act of June 14, 1868, and ask me to "direct the marshal to instruct his deputies hereafter not to summon a posse except in extreme cases," &c., has just been received. In reply, permit me to say that your letter gives me great satisfaction. I have long felt that this law was responsible, directly and indirectly, for nearly one-third of the



expense of this district. I understand that a large proportion of the posse are bad men, who stir up crime and report frivolous cases in order that they may be employed as such.

I urged the repeal of this law last winter until I became wearied. Not only has the attention of the marshal been called by me on a number of occasions to the great liability of abuse of this law, but I have personally instructed each deputy, as he appeared before me to take the oath of office in substantially the language used by you. During the last year an immense reduction has been made in this respect as compared with former years, but in spite of all I can do deputies continue to employ posse, and any general affidavit showing the necessity for their employment that you can devise, will be made in every case by the deputy summoning the posse, and as a rule with the utmost sincerity. There is always an apparent reason for their employment. When this apparent reason is an *absolute necessity* it will usually be impossible for me to determine. I do not think there is ever an "absolute necessity" to employ posse under the act of June 14, 1858. In addition to the authority conferred by this law, there exists the same authority to summon guards as is given to other marshals, and in cases of great difficulty the soldiers stationed at Forts Gibson and Sill might be employed.

I have directed the marshal to instruct his deputies as requested by you. I suggest that the marshal be instructed hereafter not to employ posse under this law. You request that "I exercise great vigilance, and whenever, in my opinion, notwithstanding the affidavits, the deputy did not require assistance, I disallow the account." The act of 16th August, 1856, provides that before the accounts of the United States marshal \* \* \* are presented to the accounting officers of the Treasury Department they should be examined and certified to by the district judge, and the same shall be subject to revision upon their merits by the said accounting officers. Most of the district judges either refuse to have anything to do with these accounts, or treat the duty as purely formal. That such is the understanding of the accounting officers of the Treasury Department appears from a letter written by Mr. Miller, the chief of the judiciary division of the First Auditor's Office, in response to a letter from Mr. Britton, stating that I would not approve certain accounts until I had additional affidavits that the services had been performed. Mr. Miller says: "We do not consider this essential here, inasmuch as the marshal himself swears to the whole account. The law does not require it, and it is not done in any other part of the United States, except in the northern district of New York. But, aside from this, the judge's approval is not conclusive one way or the other. \* \* \* We understand that there are a great many things in a marshal's account that the judge knows nothing about; and, also, that he does not have time to give all of these accounts a careful and critical examination, and if he did, he would not know whether the charges are all made in accordance with our rules and precedents; so that, all things considered, his approval really amounts to nothing, except as the law requires, he must sign his name to them."

I have not so considered the duty, however, but have supposed that Congress deemed the judge the best and perhaps the only person who could prevent, if by any means they could be prevented, the presenting of accounts for purely fictitious services to the accounting officers; and in no district in the United States are greater precautions taken for this purpose than are taken by me. I have supposed, and such is the general understanding, that the discretion rests solely with the marshal, as to what is an economical or extravagant expenditure of the funds for the services rendered by him, being responsible for the exercise of that discretion only to the officers authorized to revise his accounts on their merits and the power that appointed him. While there are many and strong reasons why the judge should not attempt to dictate to the marshal in this respect, I have assumed, during the last year, to exercise this power, and have refused in several instances to approve the account simply because, in my judgment, the expenditures were not economical. The marshal thought they were, and that it was not a question for me to decide; a difference of opinion in which the marshal, very probably, was the better advised.

Am I to understand that the Department expects or desires me to examine each voucher and judge of the propriety of the service and of the reasonableness of the expenditure? I will most heartily co-operate with you in all efforts to reduce the expenses of the courts of this district; and if such is your desire, I will, as far as possible, have each voucher sworn to before me, and cut it down to the lowest possible amount. I simply ask you to remember that not only the marshal and deputies, but a large proportion of the lawyers and many of the people, are to a greater or less extent dependent upon the court; that the vigilant performance of this duty, especially when the authority is doubtful, necessarily results in unpopularity. It will save you from trouble, and me from embarrassment, to have my authority undoubted. Your letter has already been of considerable service to me in this respect.

I think of no other suggestions at present, further than are contained in the draught for a bill which I sent you a few days since, the receipt of which I trust you will acknowledge. The effect of the legislation suggested will be to reduce the expenditures



of the district fully one-third, and will enable me to devote my personal attention, if desired, to every voucher. I have no hesitation in saying to you that from that time the expenditures in this will be as satisfactory as the expenditures in any district in the United States.

Very respectfully,

WM. STORY,  
*District Judge.*

Hon. GEORGE H. WILLIAMS,  
*Attorney-General, Washington, D. C.*

In response to that I received a letter dated November 25, 1873.

A 3.

DEPARTMENT OF JUSTICE,  
*Washington, November 25, 1873.*

SIR: I have received your letter of the 15th instant in regard to affairs in your district, and it gives me pleasure to find that you are co-operating so heartily with me in the matter of reducing expenses in your district.

I trust that hereafter there will be no occasion for complaints as to extravagance in the marshal's office. I shall write him, as you suggest, in regard to instructing his deputies not to employ *posse comitatus* except in most extreme cases. I will thank you, whenever the accounts of the marshal are presented, to give them your personal, careful supervision, especially those where there may be charges for services of this kind.

The act of August 16, 1856, (11 Stats. at L., 49,) provides, "that hereafter, before the accounts of the United States marshals, district attorneys, and clerks are presented to the accounting officers of the Treasury Department for settlement; they shall be examined and certified to by the district judge of the United States in the district in which the officers presenting the accounts officiate, whether in the States or Territories, and the same shall be subject to revision upon their merits by said accounting officers, as in case of other public accounts." I do not know what this means, unless it is for the purpose of giving the judge power to revise and disallow accounts which are improperly presented. In many instances it is obvious that marshals could make up accounts, the fraudulent character of which no one in this city could be acquainted with, but which the judge, being on the ground and having a general knowledge of the business of the office, would be able to detect. This, I think, was one of the causes which led Congress to pass this law. At all events, I think it is broad enough to authorize the judge thoroughly and carefully to scrutinize the marshal's accounts, and reject so much thereof as, in his opinion, is improper.

When Congress shall meet I will transmit a copy of the proposed bill you forwarded to me to the chairmen of the Judiciary Committees of the House and Senate.

Very respectfully,

GEO. H. WILLIAMS,  
*Attorney-General.*

Hon. WM. STORY,  
*United States District Judge, Fort Smith, Ark.*

In October I came to Washington to have a conversation in regard to the expenses of the district, and to obtain from the Attorney-General his views in regard to what could be done, and what changes were necessary, and to confer with him in regard to certain statements that had been made about certain officers in my court. I may state here I made no appointments myself, with the exception of these two commissioners I have referred to.

Q. Give us their names.—A. Edmund B. Bastian was the first, and he was succeeded by Floyd S. Babcock, who is sworn to be a relative of mine, but who is not a relative of mine in any way whatever. I don't know that I can recall the name of the other person, but he is appointed under the recommendation of Colonel Leflore and a number of other prominent men. I think he refused to act, and I was about to make another appointment when Colonel Leflore stated to me that he thought he would act, and as there was no one in whom I had confidence to appoint, he held the appointment from that

time following. Mr. Williams sent me an indorsement of Mr. Parsons, and stated that he did not know anything about him, and suggested his appointment if it was satisfactory. There was some objection raised to his being appointed agent there, and it was also stated that Colonel Leflore's nominee had determined to act, but I think there is no one who has acted at all. I think Colonel Leflore's nominee, whose name I think is Carter, declined to act from the time he was appointed, though he holds a commission as such up to the present day, or, if he has acted, he has acted in very few cases. What I desire to speak of is this: there was a statement reflecting upon the officers of the court, Mr. Churchill and Mr. Brooks.

Q. Are they your appointees?—A. They are not my appointees; they were appointed by Judge Caldwell, and they remained there under his appointment; I have made no change in any officer at all, but about these two officers it was stated that there were reflections made in regard to them, and when here in October I called attention to that matter, stating that if there were any charges against those parties, I thought that it should be presented to them, and that they should have an opportunity to exculpate themselves; that I had no wish to keep any officer there who was neglecting his duty, but that I had heard charges of the gravest character against almost every man there, and that I had no reason to believe these charges were true, for I had spoken to Mr. Brooks about it, and told him that for a year I had been watching him in regard to this matter. I said that if the Attorney-General had anything against any of these gentlemen, I hoped he would present it to me. He stated that he would examine the record, and then called my attention to a letter written in relation to the appointment of the commissioners. I desire to put that on record. [The copy was marked A 4.] I received no reply to that letter, and I called the attention of Mr. Brooks and Mr. Churchill to the fact that I had written this letter and the other; both were anxious that the matter should be presented to the Department, and if there were any charges, that they should have an opportunity to exculpate themselves. I then wrote a letter to Washington, stating that I hoped that if there were any charge against these officers they should have an opportunity to exculpate themselves. September 10 I wrote a letter to Mr. Taylor, the Comptroller of the Treasury, in regard to the expenses of the district, and stated to him that from examining the accounts from all the districts, and from his knowledge of the affairs of that district, he might be able to suggest some means of protecting the Government from any extravagance in the accounts or from any frauds, and he sent me this reply, dated September 25, 1872:

TREASURY DEPARTMENT,  
*First Comptroller's Office, September 25, 1872.*

SIR: Your letter of the 10th instant was duly received. I can think of no change in the form of the marshal's accounts that would be likely to increase the existing restrictions upon extravagance in the use of the public money advanced for defraying expenses of the courts. Whatever forms might be prescribed, the care and the disbursement of the funds would still necessarily devolve upon the marshal, and its economical expenditure largely depends upon his integrity.

If satisfied that additional affidavits to the accounts would afford a remedy for extravagance, I should be at a loss to know what particular items required them, but it has sometimes seemed as if affidavits to official papers frequently made up were in certain cases regarded as mere idle forms.

The heaviest expenses in your district are on bills for serving process. Having no means here of verifying the statements respecting the number of miles traveled, and the number of days alleged to be occupied in performing the travel, and the necessity for taking so much time, the examination of deputy marshals' bills and of bills rendered by guards is a very unsatisfactory proceeding.

If any change tending to reduce expenses should occur to me, I shall gladly avail myself of your offer to give effect to suggestions having that end in view.

Very respectfully, your obedient servant,

R. W. TAYLOR,  
*Comptroller.*

Hon. WILLIAM STORY,  
*United States District Judge, Fort Smith Arkansas.*

I was kept away from Fort Smith by my court at Helena, and by the sickness of myself and my wife, until October 26, at which time I returned to Fort Smith. On my return I wrote to the Attorney-General in regard to the number of marshals that had been employed; I have not a copy of the letter here with me. About this time, in a casual conversation with Mr. Churchill—I don't know how the conversation came up, but something was said about the number of persons that had been brought there during my absence, and I asked Colonel Churchill how it happened that so many persons could be brought in—I said "Why did you issue writs?" and he made the remark that the parties were brought in before the writs were issued; and I said to him, "Colonel Churchill, you don't mean to tell me that you issued the writs after they were brought in." He said "Yes; it is very strange, but it has been the practice all the time." I said "What did you do?" He said, "We date the writs to cover the time that the marshal represents that he has been out, or has been endeavoring to arrest these parties." I do not profess to give you the exact words, but this is the substance of our conversation. It struck me as it would probably strike any one else, when his attention was first called to it, as a very great outrage, and I spoke up, and I said, "My God, colonel, you don't mean to tell me that you have been doing this right along?" Said he, "Yes; we did it under Judge Caldwell's instructions." I told him then that it must be stopped, and he said, "What are you going to do? Here you are out in the Indian country; you see a murder committed while you stand there; will you wait until you go and get a writ? Or, you know a horse has been stolen, and the man is only a short distance away, but is getting out as fast as he can; would you come down here and get a writ?" I said "No; there is no necessity for a warrant in such cases. The common law regards it as a misdemeanor for a man to see a felony committed and not to make an effort to arrest it, and I am satisfied that an officer would be entitled to the pay just the same as though the writ had been issued, and in future I want the writs to be dated the day they are issued, and have the facts appear on the papers. I don't want anything to appear on the papers that is not exactly as it occurs." I gave orders to Colonel Churchill and to Colonel Brooks to date the writs the day they were issued, and stated to them that I would make strong efforts to see that the marshals should be paid for their services.

Q. When was this?—A. This was shortly after I came back, which was the 26th of October, 1872. I afterward made some examination in regard to the matter, and was informed by some one who had been deputy under Judge Ringo, that such had been the practice for more than twenty years previous. I think it was under Judge Ringo, or it may have been his predecessor, before the western district was created. They said that they never thought of making out these writs, or having these writs issued, until after the parties had been arrested, and that that had been the practice in the district for over twenty years. This man Babcock at one time was the deputy marshal under Mr. Britton, and while deputy marshal under Mr. Britton he arrested two men for murder without warrants. Those men were brought down, indicted,

tried, convicted, sentenced, and hanged for murder. He arrested a man by the name of Charley Williams, who had been sentenced to a term in the penitentiary. He discovered that he was in the Indian country, and he arrested him and brought him in. Then, a deputy marshal, an Indian, a citizen of one of the nations, brought in some parties charged with murder, without having a writ. I presented these matters to Mr. Taylor, the Comptroller of the Currency. I think I had presented them also to the marshal, or to Mr. Donnelly, who was representing the marshal, and I had insisted that he should pay these parties, for there could be no question in my mind but that the Government was liable on these accounts. I afterward presented the matter to Mr. Taylor. Mr. Taylor, however, refused to pay them, and at the present time holds and rules that a man may see a murder committed in that country, and that, if he arrests the murderer and brings him down without a warrant, he is entitled to no pay for his services. In the latter part of December I drew a bill, and sent it to Senator Carpenter, to repeal this posse law. I wrote to him a second time in January. I also wrote to Mr. Taylor about this time, urging him to use his influence to secure the repeal of this law, as he had given me to understand that this law was wrong and ought to be repealed. About this time, some time in January—about the 14th or 15th, I think—I was called upon by a gentleman who represented himself as a secret-service agent—Mr. Whitney—the first information that I had in regard to such a person being there. At this time the court commenced its session, and there were two hundred and sixty-five persons held there for trial—some forty in jail. The marshal informed me there was no money. I sent a telegram telling Attorney-General Williams that these parties were here, and asking for money, and two or three telegrams passed between us, of which I think you have copies.

Then I had this conversation which I speak of in October with Mr. Williams. At the suggestion of the committee, and understanding that you desired it, I have prepared a short statement here showing the increase of crime in that country, and why the expenses were so large during those years, and I desire to say here that while I was in Washington, a year ago last February, I told Mr. Williams that the railroad having been completed there would be no necessity for the expenses of the district exceeding from this time forward \$100,000 the first year, and after that \$75,000 or \$80,000, unless the expense of keeping prisoners should amount to more than I could determine upon—that is, that the court being now freer, and not overrun as it had been, there would be probability of more convictions than fewer, and yet the expense would be less. During those years the expenses of the district have been within the sum that I represented to him at the time. This is the statement :

GENTLEMEN : In response to your letter asking me to make a statement of the jurisdiction, amount of business, what legislation is needed, and other facts of interest concerning the western district of Arkansas, I reply : This district extends from the Mississippi on the east to the Territory of New Mexico on the west, a distance, by the usual routes of travel, of nearly eight hundred miles. It embraces an area larger than the combined States of New York and Pennsylvania, with a court exercising a more varied jurisdiction, probably, than any other court in the world. In its jurisdiction over nearly three-fifths of Arkansas, it has both district and circuit court powers, and is by turns an admiralty, bankruptcy, common-pleas, chancery, criminal, and exchequer court. In the Indian country, with an area nearly one-half larger than the State

of New York, it is a criminal and police court, trying, with all the formality of a criminal court of the highest jurisdiction, all offenses that are punished by an act of Congress, from murder to petty larceny. It has jurisdiction over all offenses arising from treaties with the Indian tribes, all offenses arising under the revenue laws, all offenses under the intercourse laws, such, for instance, as the giving of a drink of spirits to an Indian or the carrying a pint of liquor across an imaginary line extending for nearly one thousand five hundred miles. It will be seen from the foregoing that the criminal business of the western district of Arkansas must necessarily be much greater than all the courts of New York, Pennsylvania, and Ohio combined. And when you recall the fact that it is the criminal business that causes the chief expenses of the courts—the Tichborne case is an illustration of this, costing England, it is said, nearly a million dollars—and that the expense of arresting criminals in this district is necessarily much greater in this district than in any other, on account of its vast size, and that nearly one-third of the expense arises under the posse law, a law peculiar to this district, while it is not fair for these reasons to compare the expenses of the western district of Arkansas with those of New York, Pennsylvania, and Ohio, yet from the best information I can obtain, more persons have been arrested in this district during the two fiscal years preceding June 30, 1873, than in all these States combined. They have been transported in a section of country where it is exceedingly expensive. The late large increase of expense in that district was caused by the introduction of a large number of desperadoes into the territory, arising from the building of the Missouri, Kansas and Texas Railroad. This is shown by the fact that for the fiscal year ending June 30, 1871, when for a short time parties had been working on the Missouri, Kansas and Texas Railroad, the expense for the year was 100 per cent. greater than for any previous year. That this additional expense was not caused by any change in the law or officers is apparent from the fact that neither the marshal nor myself entered upon our official duties until the 13th May, from which time court lasted till July. During the session of the court, no business could well be transacted except such as was already before it. At this session ninety-one persons were tried. Rapid progress was made by the railroad, throwing a large number of white men, many of them of the worst character, into the Indian country, and at the next term of the court at Fort Smith, two hundred and thirty-three persons were indicted, thirty-seven for murder, sixty-two assaults with intent to kill, sixty larcenies, fifty introducing and selling liquor, twenty-four various offenses—manslaughter, perjury, and so forth. About this time, in the winter of '71, or the spring of '72, the Indian country became a perfect pandemonium—a refuge for the worst species of desperadoes, red, white, and black. In the summer, I think it was, of '72, Secretary Delano went down to Fort Gibson and found such a number of desperadoes congregated there that he telegraphed a special report to the President, of the state of affairs existing there. In the annual report he says, speaking of the Atlantic and Pacific, and Missouri, Kansas and Texas Railroad “In addition to the inevitable influx and congregation of desperadoes and outlaws at the successive termini of these new roads through the Indian country, and at all principal points along their completed routes, in which respect the history of the progress of the Union and Central Pacific Railroads is only repeated, the result of their construction has been to direct new attention to the Indian Territory, and it has required persistent action on the part of this Department to prevent the reservations of the various tribes from



being lawlessly violated by trespassers from the adjoining States." At another place he says: "At some towns, springing up on the line of the roads, desperate white characters have congregated in large numbers, causing great excitement and alarm to the Indians, as well as inflicting much actual mischief. As elsewhere indicated it was in one instance found necessary to invoke the aid of the military forces of the Department of Missouri, and with their assistance to deal summarily under the act of 1834 with the gangs of desperadoes who threatened the peace of the Territory, and even defied the authority of the Government of the United States."

In another place he says: "The work was promptly and judiciously accomplished without any violent collision with the intruders, about one thousand five hundred of whom were removed."

In this connection it will not be unpleasant or unprofitable to read from an article on "the Great South," in Scribner's Monthly, depicting the state of society in this part of the country at that time. [Judge Story read several pages of the article referred to.]

I intended, gentlemen, to call your attention to the different changes in the law, that I thought would reduce expenses, but I see it is late, and probably you are wearied, and I will present that to you in a short form in writing.

While the district attorney is here I would like to speak of a certain matter which I would prefer to allude to in his presence.

Q. First, did you ever discover or detect any frauds within the three years of the administration of Logan H. Roots, or Wm. A. Britton, or J. N. Sarber, in their administration of the affairs of the western district of Arkansas as marshals?—A. I never did.

Q. Did you ever have reason to believe that any frauds were committed in that office during their respective administrations?—A. I cannot say that I ever did have any reason to believe that any frauds were perpetrated. I have heard charges made repeatedly against, I think, every officer that has ever been out there, by some one who appeared to be the enemy of the men at the time, but whenever I have heard anything of this kind, I examined and sifted it as far as possible, and I never did discover in any case what I thought was a fraud.

Q. You know nothing of any false or fraudulent vouchers by deputy marshals, or any false or fraudulent vouchers on the part of alleged *posses comitatus*?—A. I do not. There was an account presented to me at one time—in looking over my memoranda, I do not now exactly recall what it was or exactly what the time was—an account of Wm. H. Johnson that was presented, which he had sworn to, and on looking over my memoranda, I found that he could not have been at the time where he stated he was. I called the attention of Mr. Whitney to it, and I called the attention of Mr. Temple to it.

Q. Was that a deputy marshal?—A. He was a deputy marshal.

Q. What did you do in the premises?—A. I called the attention of Mr. Whitney and Mr. Temple to it.

Q. You regarded it as a fraudulent voucher?—A. I did, until the matter was afterward explained to me.

Q. How was it explained?—A. It was explained this way: That this writ had been placed in the hands of Mr. Johnson; that he gave it to another deputy marshal, who did, in fact, perform the services; and that it seems in some instances they had been in the habit—and I am informed that such has been the practice in most of the other districts of the United States—for one deputy marshal to give his writ, if he has it, to



another deputy marshal and let him perform the service; and the service, as it was stated to me and sworn to, was performed by another person and the man brought in, and under these circumstances I told Mr. Johnson that I thought, in making his statement and stating his account to be just and correct, it was not stating what was absolute verity; and while I felt that he had not intended to commit perjury at all, I hoped he would not present another account of the kind, or something of that kind.

Q. Among other things that have been brought to our attention in the general management of the western district of Arkansas by the inspection of the records is the fact that, in one or two cases—I do not now recall the names of the cases—a motion has been entered and considered, and a man bailed after conviction. Do you recollect any such action in your court?—A. Yes, sir.

Q. Do you recollect the name?—A. Well, I cannot say; I recollect two cases in which a man was bailed after conviction.

Q. Is there any explanation of that? That has appeared in testimony, and I thought I would give you an opportunity of making any statement on the other side which you deem proper.—A. These two cases have been examined in the other committee, and the testimony, substantially the facts as I gave them to you, appear from other witnesses.

Mr. DURHAM. Do you desire to give any explanation?—A. I do not if the committee do not.

The CHAIRMAN. I merely state the fact that so much has appeared here, so that if you desire to make any explanation, you may do so.—A. One party by the name of G. W. Leflore was indicted and convicted of the crime of murder. After his conviction, the district attorney, Mr. Huckleberry, stated to me that he had grave doubts as to the guilt of the party. One of the witnesses, who professed to be Mr. Leflore's friend, was the most damaging witness for a friend that he ever saw, he said; and he had some reason to believe that this witness was the man who committed the murder. Mr. Leflore, who was confined at the time in jail, was paralyzed, as the doctors stated to me; and the doctor further stated to me, and it is so testified in the other committee, that the man would have died if kept in jail; that the party was in such a condition that if kept until the next term he would die. I consulted the district attorney in regard to the matter. The party was in such a condition that it was utterly impossible for him to escape. We were inclined to grant a new trial, and thought it was not a case in which we could pass sentence upon him, and I do not recollect now the time when bail was given. I was under the impression that it was shortly after the conviction; but Mr. Huckleberry, in his statement the other day, said it was later, and I am not certain in regard to the matter. But believing the man would die, and that under no circumstances could I sentence him, and wishing to take further time to examine the testimony, and knowing that it was impossible for him to escape, as a matter of mercy and justice, I took bail in that case. The party afterward came back and died in jail.

The CHAIRMAN. Was that the only case?—A. That was the only case in which a party was bailed, without a new trial being granted. In the case of a person by the name of Smith, the party was convicted of the crime of murder. The principal defense set up was that of insanity. After his conviction a motion was made for leave to examine the prisoner by physicians, and I think on the same day that this motion was made the question was argued by a number of attorneys, some of whom were from a distance, stating that they would file a motion for a new

trial, as soon as the report of the physicians was made. Some attorney, I do not recall whom, was arguing the matter, and I recollect making a statement to this effect. He was arguing the question and this was before the motion itself was filed, telling me what the substance of it was and that they wished to file additional affidavits, that the verdict was not according to the evidence and contrary to the instructions of the court; and I stated to them that they need not argue on those two points, because I was well satisfied that it was not in violation of the instructions of the court, for if I had been a juror I thought I should have found as the jury did. They afterward presented filed affidavits of newly discovered evidence, the attorneys themselves stating under oath that they had no knowledge of this additional evidence, and the statement of fifteen physicians, every one in the section of country with the exception of Dr. Pierce, who was the only physician who testified that he did not think the party was insane, and on examining the statements of the physicians, who certified that the party was idiotic, they testified, by the way, not that he was insane, but idiotic and had not sufficient reason to be able to decide between right and wrong, or will-power to control his action. I spoke of it to the district attorney, Mr. Huckleberry, and called his attention to it, and asked him what he thought about it. He had argued it, he said, and he did not care much in regard to the matter; but he had a very important case on trial then, and if I granted a new trial he hoped I would not have the record read that morning, because it would demoralize the jury in the next case. He said he had a very important case and there was a great deal of difficulty in getting verdicts, as he claimed.

Q. Was that difficulty of getting verdicts due to a bad case or bad jury, or the bad attorney?—A. That would be a matter of opinion; I would not want to say in regard to that. That would be purely a matter of opinion as to whether the juries were bad. I must confess I have very often thought as I sat in a case that the verdict of the jury was wrong; whether the record was read or not, I do not recollect. But it has been stated that the record was changed. I desire to state that if that record was changed, and I presume it was, that it was done without my knowledge and without my consent, and that I never knew that any change was contemplated, or had been made until after it was made.

Q. Are you in the habit of reading the orders of the court daily?—A. Yes, sir; as a rule. We do not always do it; sometimes there is a press of business or something or other; for instance, the clerk not having written it up, which necessarily delays it; but ordinarily it is read.

By Mr. DURHAM:

Q. I want to ask you on the question of the probability of detecting any fraud that might occur in the presentation of accounts, would you not think it advisable that all accounts presented, whether they are made by *posse comitatus*, or marshals, or others, should be required to be sworn to personally before some proper person, either the United States commissioner or in open court?—A. All of our accounts that are presented to me, with the exception of certain accounts that are made up from the records of the court, are sworn to. For instance, since I have been there, Mr. Churchill has kept a record of the witnesses, and he has a formal affidavit to which every witness and every juror attaches his signature. The affidavit is then sent in to the marshal, and he authorizes payment. The clerk enters this in a book, and then gives a paper to the juror or witness certifying that there is so much owing. That is taken to the marshal, and the marshal then puts his name on

the rolls. The accounts of the posses and of the marshals are all of them sworn to in this way, in this district, and in the western district of New York; they are the only districts in which this is done, in which the posse swears to his account, and the marshal swears to his account.

By the CHAIRMAN:

Q. Have you any further explanation to make about the Smith case?—A. According to the best of my recollection it was suggested by some attorney that they would file a motion for a new trial when they filed the certificate of the physicians, and these two grounds were argued before the motion was filed. I say that is the best of my recollection; but I am not testifying positively that that was so.

Q. You do not remember then that the motion for a new trial was not based particularly upon newly-discovered evidence accompanied by the affidavits of the counsel and the evidence as to the newly-discovered evidence?—A. I think that was all filed together, but I think that was not filed until they, after the argument on the other ground, had been met.

BEN, T. DUVALL, recalled and examined by the chairman as follows:

Question. You examined here at my request a list of some 58 vouchers for *posse comitatus* service?—Answer. Yes, sir.

Q. How many of the names did you identify as being persons you know?—A. Only one, Clifton R. Smith.

Q. All of these names purported to be citizens of Sebastian County?—A. Some Sebastian, some Washington, and some Crawford; the most of them, I think, from Sebastian County.

Q. Sebastian County contains Fort Smith?—A. Yes, sir.

Q. And you only knew one of them—Clifton R. Smith?—A. Yes, sir.

Q. You have stated in your former testimony how long you have been a resident of Fort Smith?—A. Yes, sir; I have practiced law there 25 years.

Cross-examined by Mr. J. S. ROBINSON:

Q. I will ask if the accounts that you examined are all on printed forms.—A. I believe they are—the most of them, if not all.

Q. I will ask you if in the printed forms in *posse comitatus* cases the county is not printed in without any reference to the residence of the party at all?—A. I think not; they were written in.

Q. Are not many of the posses that ride in the district of Western Arkansas transient young men that are here for a trip and are gone?—A. I am not personally acquainted with them in that shape as posses, I know that a great many of the men employed about the marshal's office were transient men. I do not know a deputy marshal from a posse as a general thing. I know a good many of the deputy marshals personally; but some of these may be posses. I regard all of these men about the marshal's office as marshals.

Q. In the last three years, from the amount of business that has been done there, there has necessarily been a great many posses?—A. I suppose there were; there has been an immense amount of business there.

Q. You know only a very few of that large number of posses?—A. Do you mean personally?

Q. Yes, sir.—A. I am not acquainted with a great many of them intimately. I do not know any of these men that I have seen here in the committee-room.

Q. You do not know them ; but you do not state that there were not such persons there ?—A. I cannot assert that they were not real living, veritable persons.

By the CHAIRMAN :

Q. But you did not know them by name and sign ?—A. No, sir ; I know Smith.

By Mr. ROBINSON :

Q. Will you look at that name sir, [showing witness voucher No. 1.] Do you know a man by the name of " Budd " Morris ?—A. No ; I know there was a man there by the name of Budd Morris, indicted for murder. I defended a party of four, of which Budd Morris was one. There was only one of the four called, and I defended him for murder.

Q. See if that account is not dated long prior to that matter ?—A. Yes ; it is prior—1870. The murder for which these men were indicted occurred in the spring of 1873, I think.

Q. This account is dated 1870 ; now look and see if that is not the man that you defended in 1873 ?—A. No, sir ; I did not defend him at all. I defended a man by the name of Richardson.

Q. That was in the State court ?—A. Yes, sir ; I do not think Morris's name was in the indictment, but anyway the witnesses all testified about Budd Morris ; I don't know what his real name was.

Q. I will ask you if you remember that Budd Morris, as we call him, lived in Crawford County, at the upper edge, near the mountains ?—A. My understanding was that he lived near Evansville, at the edge of Washington County, near the line.

Q. Where was he tried ?—A. He was not tried at all.

Q. Where was the indictment found ?—A. At Crawford.

Q. Is not Evansville right there close to the line of Washington and Crawford County ?—A. Evansville is at the foot of the mountain and the line of Washington and Crawford Counties is at the top of the mountains, while Evansville is at the foot.

Q. Do you know where Budd Morris lived from Evansville, whether he lived in Crawford or Washington ?—A. I do not know the man ; I never knew him by sight. All I know about Budd Morris—the most of what I did know of him, was in connection with this matter. The testimony disclosed the fact that he lived at or about Evansville.

Q. The indictment was in Crawford County ?—A. The murder was in Crawford County. They were indicted for the murder of some horse-thieves.

Q. Do you know Charlie Strickland, from Fayetteville, Washington County ?—A. I know there is a family by the name of Strickland that live on the mountains.

Q. I am asking you about a family that lived in Fayetteville. Do you know a young man by the name of Charlie Strickland, that used to run with John Reed ?—A. I know him.

Q. Do you know whether he rode as a posse ?—A. No, sir ; I know there was a family on the road, about two miles from Fayetteville, by the name of Strickland.

Q. Are there many of those names that sound familiar to you, and as though you knew there had been such men in the country ; although you have no special knowledge of them ?—A. There are a number of the names that are familiar to me. I know the name of William Ward.

Adjourned at 10.30 p. m.

WASHINGTON, D. C., *May 13, 1874.*

Present: Messrs. Sener, chairman, Durham, and Sheats.

NEWTON J. TEMPLE sworn and examined.

The CHAIRMAN. You may make your statement.—Answer. All I wished to state is what I stated last night in relation to the account of Johnson. Colonel Whitney, I think, called it to my attention when I went out, and Judge Story said there was a fraudulent account. I told him that he ought to put it before the grand jury and give it to me, and he never did it.

The CHAIRMAN. What was the amount for?—A. I do not know; he never showed it to me.

Q. Do you know for what service it was?—A. It was deputy marshal; he spoke to Colonel Whitney about the same thing.

Q. It occurred during your period as district attorney, and you wish to make this statement in vindication of yourself.

Cross-examined by Mr. ROBINSON:

Q. About what time was it that Mr. Whitney brought that matter to your observation?—A. I do not know; it was a while after the court-house was burned.

Q. It was while Mr. Whitney was in Arkansas the last time?—A. It was the first time, I think.

Q. I would ask if there was a term of the court held by Judge Story after that communication had been made to you by Mr. Whitney?—A. I do not recollect. The court-house was burned at the November term of the court, and Colonel Whitney called my attention to it, and I went down and saw Judge Story about it, and he told me that he knew it was fraudulent from the fact that he knew Johnson was there when the court-house was burned; and he could not have been absent; it was after that time; I do not recollect how long.

Q. Mr. Whitney conveyed that information to you after the court-house was burned, and after the adjournment of that term of the court. Mr. Whitney was not there till February following?—A. I do not recollect whether it was adjourned or not. I hardly think it was; it was the adjourned January term of the court.

Q. Was there a grand jury at what is known as the adjourned January term of the court?—A. I do not recollect.

Q. Let me call your attention to this. Do you remember my return from Little Rock, just before the meeting of that term of court, and holding a consultation with you in regard to that term of court?—A. I cannot recollect it.

Q. Do you remember the jury-commissioners that were selected for that term of court, consisting of T. H. Scott, Edward J. Brooks, and somebody else that I do not remember now—see if that was not the grand jury that was to meet at the adjourned January term?—A. I tell you that court holds a few weeks and adjourns over, and they have juries there and turn them over, and I do not recollect who they were. There are half a dozen adjourned terms. They change the jury so much that I cannot recollect.

Q. When you made a request to Judge Story to furnish you with that account that was fraudulent against W. H. Johnson, was it furnished you, or any information given you in regard to it that you might lay it before the grand jury?—A. No; I told Judge Story that he ought to lay it before the grand jury, or let me do it, and that is the last I heard of it.

Q. Was that at the May term of the court, 1873, or at what is known

as the adjourned May term, meeting on the 26th of June, and going on through July up into August. Was there a request made of you by Judge Story to dismiss the case?—A. Yes, sir.

Q. What reason did you give him publicly, and in open court, for not doing that thing?—A. I told him, as I recollect, it was not in condition to be *nolle prosequi*. I told him that I could not *nolle prosequi*. There had been a conviction for murder in the first degree, and I told him that I thought I had no right to do it under the law.

Q. Did you also tell him that the man was in default of his bail at that time?—A. I do not recollect.

Q. Was he in default of his bail at that time?—A. Yes, sir.

Q. I will ask whether Judge Story pressed you publicly in the court, and privately out of the court, to dismiss that case?—A. He understood I had the right to do it, and he thought I ought to do it.

Q. Was the defense that was set up before the jury that tried Samuel Smith insanity?—A. Yes, sir; that was one of the defenses.

Q. Was that issue canvassed before the grand jury; and was that verdict found upon that issue?—A. They found him guilty over all the defenses.

Q. Are you one of the prosecuting lawyers in that case?—A. Yes, sir.

B. F. SHOEMAKER recalled and further examined.

By the CHAIRMAN :

Q. You have been at the Treasury since you testified here before, and have made an examination of vouchers to see which of them are fraudulent within your knowledge; were any of those vouchers made or created during the administration of Logan H. Roots?—A. Yes, sir; they were.

Q. Within your knowledge, what accounts were fraudulent that were made and created during Logan H. Roots's administration?—A. I would have to make a rough guess at it; I imagine I could go up there and pick out \$10,000.

Q. And you are ready now so to identify them when this committee or any other competent tribunal calls on you so to do?—A. Yes, sir; there are accounts up there yet we did not find, that I did not see, that to my own personal knowledge I could pick out as fraudulent.

Q. That you know of your own knowledge are fraudulent?—A. Well, if they are gotten up in the same manner as those I have looked at, they are fraudulent: I do not know how the returns are made; but if they are the same way they are fraudulent; I judge they are.

By Mr. SHEATS :

Q. What do you mean by gotten up in the same way?—A. The returns, the posse accounts.

Q. Do you mean the posses that are represented as serving under you or other people?—A. Serving under me and people I did business with.

JAMES AULD recalled and examined.

By Mr. DURHAM :

Q. Has any payment been made to either of these marshals, either Roots or Britton, since this investigation has been going on?—A. No, sir.

Q. The last was made to Mr. Britton?—A. I do not think any payments have been made to Mr. Britton. There was an advance made to



him. That is, in the account you have here—the statements sent in here shows the moneys advanced to him, and I do not suppose there has been any payment since.

Q. We understand there has been a payment of \$1,000?—A. It is a misunderstanding.

Q. When was the last payment—can you turn to those accounts and see?—A. It was long before this investigation; since he went out of office he has not had a dollar.

Q. Have any of these old accounts been paid since this investigation has been pending?—A. There was a number of vouchers presented by different parties holding them—vouchers for services that accrued for services while he was marshal, and that got in the hands of other people, and several of them have been adjusted and paid, and one of them was paid to Mr. Robinson.

Q. When was that paid?—A. About a month ago.

Q. Paid to Mr. Robinson, the attorney, or to Mr. Britton?—A. He was not paid as an attorney.

Q. But it is the same man who is the attorney?—A. Yes, sir; these vouchers were for the services of guards employed at the jail there, and they made up the complement, as we understood, of the whole number of guards at that time. Some part of that complement had been previously paid to others, and when these came in we looked to see if they had been charged before by any one, and we found they had not been, and Mr. Robinson made affidavit that they were his property; that he had purchased them, and that they were correct. They were certified by the jailer—the fact that these men served as guards during the time stated and the writing was the same as previously, and altogether we had no doubt about the correctness of the vouchers, and they were paid to Mr. Robinson.

Q. Were they all of them for jail accounts?—A. Yes, sir.

By Mr. SHEATS:

Q. Have any of Logan H. Roots's accounts been paid since this investigation has been going on?—A. No, sir; he sent in three small certificates to the Auditor's Office that were audited, and they are now in the Comptroller's Office; but they have not been paid.

By the CHAIRMAN:

Q. How much do they amount to?—A. Not more than \$200 or \$300—just a fragment that he had not collected when he made up his former account.

Q. You have been present when Mr. Shoemaker has been making these investigations as to the vouchers?—A. Yes, sir; most of the time; a great part of the time.

Q. And you have heard his statement?—A. That he has made here? Yes, sir.

Q. How did he impress you, while he was making that investigation?—A. So far as we could judge, he seemed to have a very thorough knowledge of the accounts; he would take one up and examine it and say, "I do not know anything about this," and he would lay it aside. He would take up another voucher and say, "I know that these men that are charged here as a posse did not perform that service." "How do you know that?" we would say, and he would reply, "Because I saw the prisoners going down in the wagon. They stopped at my house. There was no posse with them. This deputy was along." Then we put that on this list, and so he went through them; a great many things he

would say, "I do not know about that, but I believe it to be a fraud." "Well, why do you believe it?" we asked. "Well, on general principles, because it looks like a fraud." That we would not put down.

Q. He seemed to have a familiarity with the way of doing business?—A. Yes, sir; he showed clearly that he knew how the business was conducted, and had personal knowledge of a great many of the vouchers that were not in his own name.

Q. He knew, or seemed to know, how they were got up?—A. Yes, sir.

Q. Did he profess to find his name forged to any of the vouchers?—A. Yes, sir; frequently.

Q. Did you then compare it with what he said to be his true signature?—A. Yes, sir.

Q. How did it impress you?—A. It seemed to be in a different handwriting, though I did not undertake to judge about that. That was his own testimony, that it was forged.,

The chairman here announced that the investigation was closed, and the committee adjourned to meet at the call of the chairman.

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## STATEMENTS.

### *Statement by Attorney-General Williams.*

WASHINGTON, D. C., March 25, 1874.

Present: The chairman, Messrs. Speer, Sheats, and Durham.

Hon. GEORGE H. WILLIAMS, Attorney-General, appeared before the committee in response to their request, and made the following statement:

Question. Have you in your possession any letters or memoranda that will throw any light on the subject of these expenditures of the marshals for the western district of Arkansas?—Answer. I have a number of letters that I have received in reference to these expenditures.

Q. Have you any suggestions to make that will facilitate the committee in making this investigation?—A. I don't know of anything that can be done to ascertain the facts as to the expenditures of the money in that district, except to examine such persons living there as may have knowledge upon the subject. The money is furnished by the Department of Justice to the marshal, upon his requisition. He makes a requisition for a certain amount of money. It is referred to the First Comptroller of the Treasury for information as to the state of the marshal's accounts, and he, as it is understood, examines those accounts, and then recommends that a certain amount be paid or advanced to the marshal, and accordingly that amount, or a less amount, is advanced. Frequently I advance a less amount than is recommended by the Comptroller, but never any more than he recommends. After the money goes into the hands of the marshal, he expends it and returns his vouchers to the Treasury Department, and the Comptroller and Auditor decide as to whether those vouchers are satisfactory; whether or not the marshal is entitled to credit for those vouchers, and I suppose if there is fraud in the disbursement of money it must be in the creation of those vouchers, in some way.

Q. Do you regard these expenditures as ordinary or extraordinary?—

A. I think the expenditures were extraordinary.

Q. Are there any reports sent to your office by the district attorney or clerk that would show any necessity for those large expenditures?—

A. I am not quite certain whether there are any letters on file or not from those officers. There are letters there from the judge of the court, and I think there are letters there from other officers of the court and other persons, but I am not confident as to who did write these letters. I have no doubt that the western district of Arkansas is a very expensive district. I am satisfied that with an honest expenditure of money there the amount necessary to transact the judicial business must necessarily be very large, on account of the jurisdiction of the court over a vast Indian country, and the great expense incurred in bringing parties to trial; but at the same time I have long been of the opinion that the expenditures were larger than were necessary, and I have endeavored to reduce them in every way in my power.

Q. Among the duties of this committee is this: To adopt such measures as are necessary to provide more perfectly for the proper application of the public moneys, and to secure the Government from demands unjust in their character or extravagant in their amount. Have you any suggestions to make that may help to secure the Government from improper demands on the part of those in its employ? In the State courts no account can be paid through the Treasury, or audited by the Auditor, that has not been sworn to in open court and certified to by the clerk. The marshal's vouchers, now, as I understand, are frequently formally signed by the judge without being read, and as to many of the marshal's expenditures no record is made in the court in regard to them.—A. I understand that the accounts of the marshal are submitted to the judge of the court and he certifies as to whether or not they are correct, and the statement of the account with the vouchers are transmitted, with the certificate of the judge, to the Treasury Department, for settlement. I do not understand that there is any record kept in the court of the items of the account, and I don't know as to whether or not that would be practicable. I have recommended in my report that the district attorneys should be salaried officers, and I have also recommended that marshals be paid salaries instead of fees, although there would be more difficulty in making a marshal a salaried officer than making a district attorney a salaried officer. But it appears to me that if the district attorneys were paid salaries, there would not be so much object to multiply suits and prosecute frivolous cases for the purpose of making fees. District attorneys may be honest in that way, and the same is true also of the marshals, but I am very confident that it would be of advantage to the Government, and save expense, to abolish fees for district attorneys and pay them salaries, and possibly to do so with the marshals, paying the marshal a salary and his necessary fees required for traveling and serving process.

Q. You mean a compensation for his public services in connection with the Government?—A. Yes.

Q. You do not mean the question of his civil matters?—A. I think it would be as well to make the marshal account for all the fees he receives to the Government, or include them in his salary, so that he would know exactly what he is to get for his services, and then whether there was much or little business he would get the same pay. My idea in reference to district attorneys is this: Different district attorneys have, of course, different responsibilities. In some districts there is a large amount of business and great responsibilities, in other districts

there is comparatively little business and slight responsibilities. I suggest in my report to fix a maximum compensation for district attorneys, and then allow the Attorney-General to graduate the fees in accordance with the amount of business which they transact, as I do now in reference to the compensation of assistant district attorneys. I fix their pay, and their compensation ranges now from \$5,000 to \$1,000, according to the labors which they have to perform. I suggest \$6,000 as the maximum that the district attorneys should be paid, and in some districts I have no doubt that I could get good men to perform the duties of the office for \$1,000, and so ranging from the highest to the lowest. Now, the Department of Justice is subjected to an enormous expense which is entirely beyond my control, and, to some extent, beyond the control of anybody. There are now about sixteen hundred commissioners in the United States who have power to issue warrants, hold to bail, summon witnesses, and so on. Persons are at liberty to go before these commissioners and make complaint, warrants are issued, witnesses are summoned on both sides, examinations had, and these expenses are charged to the United States; and these men are entirely beyond my reach. They are appointed by the judges and are removable by the judges; I have no control over them. I have written to the judges in various districts on that subject, where I have become satisfied that the expenses were unnecessarily large before these different commissioners. I have in some cases recommended their removal, and in others urged upon the judge to give instructions in respect to these matters.

Q. Would you suggest a limitation as to number that each judge might be allowed to appoint?—A. That would be impossible, because the districts differ so much in size. I do not see very well how there could be any limitation put upon the power of the judges in that respect. Recent legislation of Congress has so much extended the jurisdiction of the Federal courts, that a great many more are necessary now than in former times. That is true with reference to what is called the enforcement law in the Southern States, and more especially in reference to the internal-revenue laws.

Q. I supposed that the necessity for the enforcement law had almost entirely passed away?—A. There is not as much business now—as many prosecutions, under these laws, as there were. I think to a very great extent, at this time, the prosecutions of that description have ceased. There are complaints made all the time from different parts of the country for violation of those laws, and prosecutions are commenced and carried on of that description, but not as many as before.

Q. I find in the report of the expenditures of the western district of Arkansas, as returned to us by the officers of the Treasury, the supervising clerk, the disbursements for the year 1872 were returned as \$321,000. Your annual report for that year makes the disbursements for that district \$243,000. Can you explain the discrepancy?—A. I am not able to explain the disparity. These tables that are published in my report are prepared by the chief clerk, with the assistance of the clerk who supervises the accounts, and are incorporated into the report, and I, of course, am not able to give the accounts personal examination, so as to ascertain whether the statement is or is not correct; but I suppose that the statement was made from the condition of the accounts as represented in the Treasury Department. [Examines statement.] There appears to be, you observe, "August 24, 1871; October 9, 1871; October 16, 1871; November 24, 1871." Those four accounts seem to belong to the year 1871. These are the disbursements for 1872, and

they have got in accounts for 1872 and 1873. There must be some mistake about that statement.

Q. Here is a statement for the fiscal year ending June 30, 1871?—A. I do not understand that statement at all. He has in there accounts for 1870, 1871, and 1872. How they should be embraced in a statement of the disbursements for 1871 is more than I can understand. You will have to call for an explanation upon the accounting officers of the Treasury, and upon Mr. Falls, the clerk.

Q. The accounting officer is Mr. Taylor?—A. I suppose he can explain it.

Q. As I understand you, you say you will furnish the committee the correspondence touching the western district of Arkansas?—A. I will furnish you with all the correspondence that I have on the subject. I have a statement that was made out this morning that I can furnish. William A. Britton was confirmed April 16, 1869; Logan H. Roots was confirmed March 31, 1871; Logan H. Roots was suspended January 19, 1872; William A. Britton was designated June 9, 1872; William A. Britton was rejected by the Senate February 3, 1873; John N. Sarber was confirmed March 18, 1873. He is the present marshal.

Q. Will the papers show the reasons for Logan H. Roots's rejection or suspension?—A. I am not sure. I know what the reason was. He was suspended because the Department was not satisfied with the expenditures of the public funds in that district, and for the reason that it was believed that the expenditures were unreasonable and extravagant. That was the reason.

Q. Mr. Roots was merely appointed in lieu of Mr. Britton, at the time he succeeded Mr. Britton?—A. Yes, sir.

Q. Did the same reasons govern the Department in the substitution of Roots for Britton?—A. I am not able to speak, of my own personal knowledge, upon that subject, because Roots was marshal when I became Attorney-General, but I am inclined to think that it was the same reason. I am not able to speak definitely upon that subject. Mr. Roots was suspended on that ground, I know. Mr. Britton was appointed during my absence. I was absent for two or three months in Oregon, and during my absence Mr. Britton was designated, after the suspension of Mr. Roots, and then he was nominated to the Senate, and then the papers in my possession were submitted by me to the Judiciary Committee of the Senate and Mr. Britton was rejected.

Q. Under his second appointment he never was confirmed by the Senate?—A. No, sir; he never was. He simply acted by direction of the President, in his second term.

Q. These disbursements in Arkansas were such as to provoke suspicion on your part, and you sent one or more agents there to investigate the matter?—A. Under the impression, judging from the vast amount called for by the marshal, that there were unnecessary, if not illegal expenditures of money there, and that there were outstanding accounts, notwithstanding all the money that had been advanced to the marshal, and because persons holding those accounts were importuning the Department for payment, I called upon Colonel Whitley to send a man to me whom I could appoint to go into the western district of Arkansas to ascertain the condition of the accounts there arising under the administration of the marshal, gather them up, ascertain whether they were fraudulent or otherwise, and make a report of his discoveries and proceedings. Colonel Whitley accordingly sent Mr. Whitney to me and I authorized him to go into that district and make this examination, and he made several reports I suppose. I received I think two or three reports from Colonel Whitley,



who embodied in his reports substantially what he said had been found in the district. I did not feel satisfied with the expenditures that were made in that district, and that was the cause of my action in the matter. I could not learn the particulars, and if the committee proceed with this investigation they will find the same difficulty. Representations were made on one side in reference to the matter, and contradictions on the other, and it became a mass of confused and conflicting statements about business, and I of course was not able to determine exactly what the facts were, and I thought that I would be more likely to ascertain the truth by sending a man down there for that purpose. I had no business, of course, with the accounts. My object was to ascertain whether or not Mr. Britton ought to be continued in office. That was the object I had in view especially, though of course I was anxious to know whether any frauds had been committed or not. This man was sent down there during the administration of Mr. Britton. These reports were turned over by me, after I had seen them, to the Treasury Department to be considered in connection with his accounts.

By the CHAIRMAN :

Q. Did you ever have occasion to send a detective to investigate the affairs while Mr. Roots was marshal?—A. No, sir; I don't think anybody was ever sent for that purpose; I do not remember that there was.

Q. Will the papers that you furnish us show the reason for the removal of Mr. Roots?—A. I am not able to answer that question—whether the papers show it or not.

Q. The files of the Department will show it?—A. Well, it may be that the files of the Department would not show it, because the Attorney-General might become satisfied that he ought to be removed from matters not appearing upon the files.

Q. He was not removed in your day?—A. Yes, sir; he was removed since I became Attorney-General, but during my temporary absence from the Department, although it was understood that I was altogether dissatisfied with his administration of affairs at the time I left to go to Oregon, and during my absence he was superseded by the appointment of Mr. Britton. But whether the files of the Department will show the grounds upon which Mr. Roots was suspended I am not able to say, because it may have been the judgment of the Attorney-General, in view of the large expenditures, that there ought to be a change, at any rate to see if greater economy could not be introduced into the marshal's office in that district.

By Mr. SPEER :

Q. Have you any idea what the fees and emoluments of the marshals, and district attorneys, and clerks, are where they amount to most?—A. I am not able to speak definitely upon that subject. Six thousand dollars is the maximum now fixed by law as the amount of fees which they are respectively entitled to receive, but the district attorneys in some places greatly exceed that amount, and I suppose the fees of the district attorney of New York are very largely in excess of that amount—three or four times more than that amount, and so in some of the other districts. When an officer of the Government is sued, for example, for any official act—and suits of that description are originating all the time in all parts of the country—I am called upon, by the head of the department to which that officer belongs, to direct the district attorney to defend him, and for these services he is entitled to compensation like any other lawyer. There are services for which the statute fixes the fees.



The fees are paid to the district attorney for services rendered when the United States are a party to the suit.

Q. Who fixes the amount for such services?—A. There is no amount fixed for services; the fees are fixed by the statute.

Q. I understood you to say he was paid extra in that class of cases?—A. I determine the amount. He is paid such compensation as the Attorney-General thinks proper to pay; and in the examination of titles for public buildings the district attorney is employed; that is business outside of his services for which fees are fixed by law.

By Mr. SHEATS:

Q. Will any other lawyer that you may employ outside of the district attorney in these cases get paid?—A. Yes, sir; but it is usual to employ the district attorney for such purposes, and fees are paid to him for such services ranging from \$500 to \$5,000. Where it is required to investigate the title, as in the site for the post-offices in Chicago, Saint Louis, or Philadelphia, or any of those places, where the site embraces a large number of different parcels of property it becomes necessary to investigate the title for each piece of property and give an opinion upon it, and where it is necessary sometimes to have proceedings to condemn the property, the district attorneys are paid; and I have known as high as \$5,000 to be paid for such services, which was, perhaps, less than any other lawyer competent to do the business would do it for.

By Mr. SPEER:

Q. How are the clerks of those courts paid?—A. They are paid by fees. There is a fee-bill which fixes the compensation for the clerks of the courts for services rendered as clerk.

Q. Do the clerks observe that fee-bill, or do they lump their charges?—A. I have no reason to suppose that they disregard the fee-bill; they come under the supervision of the court.

Q. I was informed some time ago that the emoluments of a clerk in Virginia were \$100,000. Have you any knowledge of that kind?—A. I have no knowledge, but I think it is an absurd statement for anybody to make. Clerks are entitled to \$3,500 a year compensation for their services, to be paid out of the fees which they receive if their fees amount to that sum, but if they receive fees in excess of the \$3,500 a year for their services as clerk, they are bound to account to the United States for that excess.

Q. Have any of the clerks of the United States declined to make a report to you of the amount of their fees?—A. Three clerks have and I have named them in my last report—one in Illinois, one in Alabama, and one in Georgia. I have addressed letters to them and letters to the judges, but they made no report to me since I have been Attorney-General, and as the clerks are not subject to my control, I knew of no way to effect my purpose except to report.

By the CHAIRMAN:

Q. Do any of the clerks of the United States turn in any fees in excess of \$3,500?—A. O, yes, sir; all the clerks, with the exception of these three, make their emolument returns, and I don't know how many, but a considerable number of them return moneys to the United States in excess of the \$3,500.

By Mr. SPEER:

Q. Were there any charges made against the integrity of the judge of the western district of Arkansas?—A. Charges have been made to

me respecting the integrity of the judge of the western district of Arkansas.

Q. Were they made in writing?—A. I think they were. I had various persons to see me and talk with me upon the subject, and I think there are papers on file with reference to that matter. I might as well say, in respect to all of these Arkansas matters, that so much has been said to me by different persons about them, and so much written on the subject, that I cannot now distinguish between what was said and what was written, but I can say that charges have been made to me against the integrity of the judge, and I think that writings to that effect are in my Department, but I am not very positive on that subject.

Q. Were these charges of collusion between the judge and the marshal in the expenditures of the Government funds?—A. I could not say positively on that subject. I believe you have the reports of Colonel Whiteley here; possibly there may be in those reports some expression or implication of that kind, and there may be other papers on file in my Department to that effect, but I don't remember any at this time.

By the CHAIRMAN:

Q. Or the marshal or any officer who is paid—the clerk or the district attorney?—A. Well, there was a charge made to me as to a *nolle prosequi* in a certain case in which it was alleged that the district attorney had received a certain sum of money from the defendant and the judge had received a certain sum of money from the defendant, to have the *nolle prosequi* entered, but I feel bound to say that I do not believe that statement in respect to either the district attorney or the judge. I consider the statement, as far as I have been able to examine it, a fabrication.

Q. Was the charge in writing?—A. I think they are in writing to that effect on file in my Department.

By Mr. SPEER:

Q. Do you remember who made that charge?—A. I do not. It may be that it is signed by several persons, and it may be by one. And it is possible that all this may have come to me without any written communication upon the subject, but I know that persons have been to me and exhibited what they considered evidence of that fact.

Q. Do you recollect whether Judge Robinson, the counsel here present, made that charge?—A. I believe he did, sir.

Q. And the prosecuting attorney, Mr. Temple?—A. I remember now, since you mention it, that these charges were made against the judge, and I referred the subject, if I am not mistaken, to the district attorney for an investigation and a report upon the subject, and I do not think the district attorney has ever made any definite report as to his views.

Q. The charge was that the present United States judge (Story) received \$2,500 and the district attorney (Huckleberry) \$500, for having the *nolle prosequi* entered?—A. That was the charge as to the judge. I don't remember the amount as to the district attorney, but it is true that the judge was charged with receiving \$2,500 and the district attorney a certain sum for entering a *nolle prosequi* against one Nash.

Q. It was alleged that Nash had given his notes for that amount and afterward paid them?—A. That was alleged—that Nash had given his note to the judge for \$2,500, and the note was exhibited to me with the name of the maker torn off.

Q. Drawn to the judge?—A. I think it was drawn to the judge.

By the CHAIRMAN :

Q. Who have been the district attorneys for the western district of Arkansas since 1870?—A. That report of mine will show. Huckleberry was one and Temple was another. I don't know whether there have been any others or not.

Q. Are there any other of these judicial districts in which, in your judgment, there have been extraordinary and unwarrantable expenditures? Our object is the same as yours—to find out what has been done, with the view of correcting the evils in the future by finding the points at which the leaks have occurred, so that we may stop them hereafter.—A. I have explained the irregularities at the different points to the marshals and different officers in the district, and protested against the expenditures, but I am not able to say that they have been unwarranted or illegal. They have appeared to me to be very large, and I have endeavored to have them reduced. That is true as to the expenditures in Dakota Territory; it is true also of North Carolina.

Q. How about the districts of New York?—A. Well, I don't know that I can complain particularly of the districts of New York.

Q. South Carolina?—A. They have been pretty large, but still there has been a vast amount of business in the Federal courts there; and the expenses necessarily have been very large, but they were larger than I think they ought to have been, and I have had a great deal of correspondence with the marshals and the officers there, and I think I have succeeded in having them reduced, and the business has been to a considerable extent reduced.

Q. Will you furnish us with this correspondence also?—A. Yes, sir. I will add two other States. It appears to me that the expenses at this time are very large in Iowa and Kansas, but I am not prepared to say that they are not warranted by law. But they are very large, and I have been endeavoring to have them reduced.

By Mr. SPEER :

Q. Have the judges not recently resigned?—A. Yes, sir; in Kansas.

By the CHAIRMAN :

Q. The districts of Mississippi seem to be large, too.—A. Well, they are pretty large, but I am aware that there has been a good deal of business. It is possible they are larger than they ought to have been, but they were not so much disproportioned as to attract my attention.

Q. Northern district of Georgia?—A. You will find them large in pretty much all the Southern States, growing out of the action of the numerous commissioners and numberless prosecutions under the enforcement act, and for illicit distilling. I have a letter which I received from Judge Dick, of North Carolina, in which he says there are a thousand illicit distilleries running in his district now.

By Mr. SPEER :

Q. What, in brief, are the duties and powers of those United States commissioners?—A. United States commissioners have the power, upon complaint, made by any person, that any criminal statute of the United States has been violated, to issue a warrant for the arrest of the persons accused, and then to proceed with an investigation, with a view of discharging the party or holding them to bail; witnesses are summoned at the instance of the party making the complaint, and of course witnesses are summoned at the instance of the party accused, and the commissioner proceeds like any other magistrate, examines the witnesses, and decides whether or not the party shall be discharged or held to

bail, and all these expenses are charged to the United States, and you can see, where there are sixteen hundred commissioners, that necessarily those expenses must be very large.

Q. They correspond to the justices of the peace in the United States?—

A. Justices of the peace under State jurisdiction.

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WASHINGTON, D. C., May 1, 1874.

*Statement of Mr. Ben. T. Duvall.*

I reside at Fort Smith, Ark; I am a lawyer by profession; I am nearly fifty years of age, and have practiced law there about twenty-five years; I practice in the Federal courts and all the courts.

The CHAIRMAN. We are considering the question, among other things, as to the necessity of two judicial districts in the State of Arkansas. Have you any opinions or suggestions to make to help the committee in the consideration of that question?

Mr. DUVALL. There have been two judicial districts there since 1853, when the western district was established. But until 1871 the courts of both districts were held by the same judge. Judge Ringgold was the first judge. He held the courts till the breaking out of the war. After the war Judge Caldwell was appointed, about 1865. The people of the State were not consulted in regard to the arrangement of the new district. In 1871 the western district was enlarged by adding a good deal of the eastern portion of the State so as to include Helena in the western district, and a court was established there; Judge Story received the appointment. So far as I was concerned, as a member of the bar, I had never heard of such a thing as making a new judgeship was in contemplation. The people were not consulted about it so far as I know. I was then in pretty full practice in the Federal courts, and I never heard the question mooted at all among our citizens, or among the members of the bar, prior to the announcement of Judge Story's appointment. There are two terms of court, the spring term and the fall term. The affairs of the district were as well executed before the change as they have been since. There may have been some increase of business, but the cases have been of a small and unimportant character.

The CHAIRMAN. It was only during the construction of the railroad that the increase was; does such increase continue still?

Mr. DUVALL. There is an increase, but I attribute it more to the manner of conducting the business of the courts than to anything else. There has been a large force of marshals appointed, and that and the building of the railroad there added to the business, because the building of the railroad brought a large number of persons into the country who were likely to violate the law.

The CHAIRMAN. And the finishing of the railroad has put a stop to that?

Mr. DUVALL. Yes; a large proportion of the business has been for violation of the Indian intercourse law, and for small larcenies, &c. There have been a number of murder cases, but I do not think that the percentage of such cases has been larger than heretofore. There are sometimes six or seven murder cases on the docket at one time, but I have known as many as seventeen men to be imprisoned there for murder.

I do not know any reason why that district should be continued under its present organization. The change was made without consultation with the people, and without any petition from the people, or from the members of the bar.

The CHAIRMAN. And in your opinion there is no need for an additional judge there, Judge Caldwell being adequate to do all the business?

Mr. DUVAL. Yes; he is a very active man, and is one of those men who dispatch more business in an hour than Judge Story would in a day.

The CHAIRMAN. How many days ought a judge, who is fairly able and industrious, to require to discharge the business of each term at Fort Smith?

Mr. DUVAL. I suppose somewhere between thirty and forty days, or about two or two and a half months during the year; it certainly ought not to exceed three months. Judge Caldwell used to dispose of a large number of cases in two weeks; he hardly ever held court there over two weeks.

The CHAIRMAN. Was there any complaint that Judge Caldwell did not fully discharge the duties?

Mr. DUVAL. No, sir. On the contrary, Judge Caldwell was regarded by the people and by the members of the bar as a most excellent judge. He discharged his duties fully, promptly, and efficiently. He gave general satisfaction. I never heard any complaint against him in my life.

The CHAIRMAN. Are you well acquainted with Judge Caldwell?

Mr. DUVAL. Yes, very well.

The CHAIRMAN. Did you ever hear him complain that his duties were too onerous before the creation of the new district?

Mr. DUVAL. No, sir; I never heard him make any complaint of the kind. On the contrary, I heard him frequently express the pleasure which he had in holding court there, and saying that he looked forward with pleasure to the association with members of the bar, and that the discharge of that duty was a matter of delight to him. He regarded it as a pleasure to come to Van Buren.

Mr. DURHAM. From your knowledge of the business, were the two districts combined, could one judge perform the duties?

Mr. DUVAL. Yes; Judge Caldwell could, I know, and any competent judge could.

Mr. DURHAM. Do you think that it is advisable for this committee to recommend the abolition of that western district?

Mr. DUVAL. Yes, with the branch court at Fort Smith.

The CHAIRMAN. You mean that such a recommendation would be in the interest of the Government, and would not militate against the interests of the people of the State?

Mr. DUVAL. I do.

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WASHINGTON, D. C., May 7, 1874.

*Statement of John T. Humphreys.*

I am a lawyer by profession, practicing law at Fort Smith. I have been practicing there and at Van Buren for twenty-three years. I am a citizen of Arkansas.

The CHAIRMAN. You have heard the statement of Mr. Duval, and I

wish you to state whether you concur with him, or whether you dissent from his views. You can make any statement which you desire.

Mr. HUMPHREYS. I have been practicing in the Federal court over, I think, twenty-three years. The same length of time I have been practicing in the other courts of the State. I concur most heartily with the views expressed by Mr. Duval. I know Judge Caldwell personally well. I believe him to be fully able to discharge the entire duties of both districts as judge. In fact, as Mr. Duval properly remarked, I know that it was a source of pleasure to Judge Caldwell to come up to hold court.

Mr. DURHAM. Do you concur also in saying that the committee should recommend the abolition of that district?

Mr. HUMPHREYS. Yes. There is a reason, too, which is worth some consideration. If you take the shape of the western district of Arkansas, you will see that a large portion of it lies on the Mississippi River; that another large portion of it is on the West Arkansas border, and that it is only linked together in the north by one county in width. The question of mileage from one portion of the district to the other is worthy of consideration, I suppose. Before the creation of the western district of Arkansas the eastern district comprised all that is now in the Helena part of the district. How much business there is at Helena I cannot say. I should not suppose that there would be very much. I am sure that there is not much ever transacted there. I am satisfied that Judge Caldwell could and would hold both courts. I think it would give him pleasure to do so. That is generally the sort of remark which I have heard from him.

The CHAIRMAN. Was this court at Helena established since the appointment of Judge Story?

Mr. HUMPHREYS. I think that the bill which created the western district established a court at Helena. There were two courts up to that time in the State: one at Little Rock and one at Van Buren. The same bill, I believe, also created a court at Fort Smith.

Mr. SHEATS. Would you suggest the abolition of the court of Helena or should you recommend it to be retained?

Mr. HUMPHREYS. I do not think that it is necessary to recommend the abolition of that court. I should think that a change of the terms in that portion of the district would be desirable. There are a great many counties included in the Helena district, to which Helena would, perhaps, be nearer than Little Rock. That thing would be worth consideration. It would be advisable, in my judgment, in considering this matter, to leave the western district with its criminal jurisdiction and its Indian jurisdiction, on account of its contiguity to the Indian Territory, and to save the mileage of witnesses, &c., to Fort Smith. I desire to be distinctly understood as recommending the putting of all the Federal courts in that State under the charge of one judge. I believe that one judge is sufficient to hold all the courts, and I would have either two or three places for holding court. I think that two places would be better. I think that it would be judicious and economical, and that the whole bar of Arkansas would concur with me. Perhaps there might be some little opposition from the town of Helena. They might not like to have their court taken away, but I think that in all probability two places for holding court, certainly, would be sufficient.

The CHAIRMAN. Are there now two district attorneys for that State?

Mr. HUMPHREYS. Yes.

The CHAIRMAN. Two marshals?

Mr. HUMPHREYS. Yes.



The CHAIRMAN. If one judge could do all the judicial business, would it be necessary to have two marshals and two district attorneys?

Mr. HUMPHREYS. I think it would be necessary to have two district attorneys. I know that it would be necessary to have two marshals, on account of the extent of country to be traveled over. The marshal at Fort Smith of course could have deputies, but I think it would be necessary to have two marshals, and have one of them at Little Rock.

The CHAIRMAN. How would you frame a law re-annexing the western district again to the eastern district with one judge and retaining two marshals?

Mr. HUMPHREYS. It has just been suggested to me by Mr. Robinson, and the same idea was in my own mind, that we could draft such a bill, and, if the committee desires it, we will do so and submit it to the committee. I would suggest, first, a repeal of the present law which created the western district, and then I would go on and enact such a law as would carry out the views I have expressed.

Mr. SHEATS. Do the Indian Territory and Arkansas compose one judicial district?

Mr. HUMPHREYS. No, sir; they compose two districts.

Mr. SHEATS. What do you propose to do with the judge after you abolish the district?

Mr. HUMPHREYS. Of course, if the district is abolished, the office of judge falls. If Congress declares that the courts of the western district shall be held by the judge of the eastern district, that will at least place the present incumbent of the western district in other fields of labor.

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WASHINGTON, D. C., May 7, 1874.

*Statement of James S. Robinson.*

The CHAIRMAN. You have heard the questions that have been asked Messrs. Duval and Humphreys, and you may make any statement you desire to make on the same subject.

Mr. ROBINSON. Before the act re-organizing what is called the western district of Arkansas, there were twelve original counties in the State extending from the northern boundary to the eastern boundary and all along the Indian line, which were allotted to that district. New counties have been cut out of some of those old counties. When the act re-organizing the district was made there were attached to these twelve old counties (which were then seventeen or eighteen in number) some twenty-one counties, including Helena on the Mississippi River, and a court was established at Helena. The court then, after the re-organization, allotted certain portions of the district to go to Fort Smith. All the cases from the Indian country go to Fort Smith and cases from certain portions of the State also go to Fort Smith and the remainder go to Little Rock. At the time of the re-organization these counties that were attached went to the eastern district of the State. Now they go to Helena. During the time of Judge Caldwell the court was held at Van Buren for the western district of Arkansas, Van Buren being five miles from Fort Smith.

There was no sentiment towards Judge Caldwell other than that of favor as an eminent, pure judge. I never heard a lawyer or citizen say aught against him. He is a man of ability; a man of great dispatch of ability. There has been a good deal of complaint since the re-organization of the

district, both by the people and the profession. My own opinion is that the people of the State and the profession in the State would be greatly benefited by a change which would place that district again under Judge Caldwell's administration. But, I say to this committee that I had a consultation with Judge Caldwell last fall, and that he is more than willing to assume the duties of the position, onerous though they be.

The CHAIRMAN. You mean to say that it is in the interest of economy to the Government that the whole State of Arkansas should be under one judicial head who is thoroughly competent, and who has the energy and capacity to attend to the duties of the position?

Mr. ROBINSON. Yes, and Judge Caldwell is the man.

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WASHINGTON, D. C., May 8, 1872.

*Statement of Mr. N. J. Temple.*

I am about forty years of age. I reside at Fort Smith. I am a United States district attorney for the western district of Arkansas. I have been living in that district about fourteen years, and have been in office nearly all the time as State prosecuting attorney.

The CHAIRMAN. We are considering the question of the necessity of two judicial districts in Arkansas, for the dispatch of public business, and in the interest of the people. Please to give us your views on that subject if you have any well-considered views.

Mr. TEMPLE. My impression is that one judge can do all the business of the State.

The CHAIRMAN. That is to say for the territory embraced within the Indian Territory and the State of Arkansas; and that these three courts of Helena, Fort Smith, and Little Rock may be held by one capable, intelligent judge, of good health and good mind.

Mr. TEMPLE. I think so.

The CHAIRMAN. You have thought maturely about this thing, and this is your well-considered view?

Mr. TEMPLE. I have been thinking of it a good deal, and that is my well-considered view.

The CHAIRMAN. How long have you been district attorney?

Mr. TEMPLE. Since June, 1872, I think.

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WASHINGTON, D. C., May 9, 1874.

THOMAS M. GUNTER appeared before the committee.

The CHAIRMAN. Please state your age, residence, and occupation.

Mr. GUNTER. Fifty-two years of age; Fayetteville, Washington, Ark.; lawyer.

The CHAIRMAN. This committee is considering, with the view of reporting to the House, the question of the advisability of consolidating

the eastern and the western districts of Arkansas, for the purpose of saving expense to the Government. Do you think that those two districts could be consolidated, and that one judge could discharge all the judicial duties of the two districts, in the interests of the people and of the Government?

MR. GUNTER. I have not practiced in that court but little since the war. Before the war they were consolidated, and the courts were held by Judge Ringgold, rather an aged man, and he transacted the business then; and from the best information I could get, the business is about the same now, and could be transacted by one judge, and it would be a saving of expense.

THE CHAIRMAN. You live in the territorial limits of the present western district of Arkansas?

MR. GUNTER. I do; about sixty miles from Fort Smith, and fifty-five from Van Buren. It is part of my district. At least, I live in the same judicial district.

LUCIEN C. GAUSE appeared before the committee.

THE CHAIRMAN. Please state your age, residence, and occupation.

MR. GAUSE. Age, thirty-five; residence, Jacksonport, Ark.; occupation, lawyer.

THE CHAIRMAN. You have heard the statement which Mr. Gunter has made; do you concur in them?

MR. GAUSE. I do, sir.

THE CHAIRMAN. Do you live within the territorial limits of the western district of Arkansas?

MR. GAUSE. I do; and I will state, further, that the manner in which courts are now conducted, or rather the division of them, so far as that part of the State in which I live is concerned, is a perfect nuisance. We have to go to Helena, about 150 miles, by water, to have our business transacted, when our natural business is with the court at Little Rock, or some other place.

THE CHAIRMAN. You think it would be advisable to discontinue the Helena court?

MR. GAUSE. I think so sir, because it is too expensive. What I want to say is this: that the way we are situated now, in the center of that district, we are compelled to go over to Fort Smith or to Helena, and to go to either place is a very great expense. If the district was all one, and we could be allowed to make our choice as to which court we should bring our suits in, I think it would be greatly to our benefit, because we are allied to Little Rock by natural communication.

E. C. BOUDINOT appeared before the committee.

THE CHAIRMAN. Colonel Boudinot, you have heard the questions I have asked Mr. Gunter, and his replies, in which Mr. Gause has concurred; state whether you concur or non-concur in them.

MR. BOUDINOT. I concur fully in what has been said by General Gunter and Mr. Gause. I have practiced in that court a good deal during the last fifteen years, and I know pretty well what the business of the court is. I have no doubt in the world but what one judge could perform the duties just as well now as he did before the war.

MR. GUNTER. I might have stated, Mr. Chairman, that I am advised (I did not have it from Judge Caldwell) that he has stated that he would have no objection to holding all the courts—that he is capable of doing the work, and would willingly do it.

WASHINGTON, D. C., April 10, 1874.

Hon. JAMES B. SENER, M. C.,

*Chairman Special Committee to Investigate  
Western District of Arkansas, &c. :*

I have the honor to submit the following statement:

I was prosecuting attorney for the western district of Arkansas for three years, from 1865 to 1868, since when I have been circuit judge in and for the fifth circuit of Arkansas, and still hold the latter position. I believe my opportunities have enabled me to form a correct and reasonable judgment, and am convinced that one judge can, with all ease, transact the business for the entire territory embraced in both districts. While I was prosecuting attorney the labor was performed by one judge, easily and without trouble, and I believe can be done as readily now. In my opinion, therefore, the western district should be abolished.

Very respectfully,

E. D. HAM,

*Judge Fifth Circuit, Arkansas.*

I, J. M. Johnson, secretary of state of Arkansas, am well acquainted with the affairs in the western and eastern districts of Arkansas, and know that the business in both districts can be transacted by one judge. This would be a great saving to the Government, and would meet the approval of the people of the State.

Very respectfully,

J. M. JOHNSON,

*Secretary of State.**Statement of Hon. W. W. Wilshire.*

WASHINGTON, D. C., May 21, 1874.

Hon. W. W. WILSHIRE appeared before the committee and made a statement as follows:

By the CHAIRMAN:

Question. State your name, age, residence, and occupation.—Answer. W. W. Wilshire; Little Rock, Ark.; age, 44; occupation, lawyer.

Q. You have been on the supreme court bench?—A. Chief justice of the supreme court of Arkansas.

Q. You represent the Little Rock and Fort Smith district?—A. Yes, sir.

Q. They are both in one district?—A. Yes, sir.

Q. This committee are considering the question of the propriety of recommending the consolidation of those two districts; do you think that the interests of the Government and the business of the district could both be served by one judge instead of two?—A. Yes, sir; I think that it would be manifestly to the interest of the Government in a pecuniary point of view to consolidate the district, and I know that one judge can transact the business of the whole State and hold the courts both at Little Rock and Fort Smith. Furthermore, when I was at Little Rock some two months ago, Judge Caldwell, who is the judge of the eastern district, and who used to hold both courts, told me that he was

perfectly willing to do it, if the western district was abolished and the State made to constitute one district, the same as was the case up to 1851, when the western district was created. Judge Caldwell told me that he was perfectly willing to hold a court both at his place and at Fort Smith, and I know that it would be more satisfactory to our people—the people of the whole State—to have that done than to keep up the western district as it is now, with Judge Story as judge; because, while I have never practiced in Judge Story's court, not living in his district, I know from representations made by men all over his district, of both parties, that his course of conduct has been such as to bring his court into perfect contempt. No one has the slightest respect in the world for him, and believing that to be true, I think it would be for the best interests of those people, and certainly more economical for the Government, to abolish the western district and make the entire State to constitute one district, with Judge Caldwell as judge.

Q. Then, do I understand you to say that certainly the best interests of the Government would be promoted in the way of expenditure, and you think the people could be as well served and litigation would not be delayed by the service of one judge instead of two?—A. I think the interests of the people would be better served, and I am satisfied that the interests of litigants will be promoted by it, because Judge Caldwell is a splendid judge, and a rapid man in the discharge of business, and he is a just man.

Q. That is his public reputation?—A. Yes, sir; and if you want any information on that point, call on Judge Miller, of the United States Supreme Court. Judge Miller used to hold our circuit court for several years—until these courts were established. It is to every interest that this should be done, and Judge Caldwell said he was perfectly willing to hold the courts at both places—at Little Rock and Fort Smith.

Q. Would that include the present jurisdiction over the Indian Territory?—A. Yes, sir.

## APPENDIX.

### EXHIBIT A.

*General statement of accounts of the marshals for the western district of Arkansas for the fiscal year ended June 30, 1871.*

DR.	WILLIAM A. BRITTON.	CR.	
To warrants on the Treasurer—		By compensation of marshal and	
August 10, 1870 .....	\$15,000 00	deputies .....	\$45,156 65
October 27, 1870 .....	38,000 00	By disbursements—	
December 22, 1870 .....	20,000 00	To jurors .....	4,340 40
June 15, 1871 .....	5,000 00	To witnesses .....	10,556 10
September 12, 1871 .....	7,097 58	For expenses of prisoners .....	4,819 20
March 4, 1872 .....	4,398 24	To <i>posse comitatus</i> and for con-	
Balance on hand from previous year..	7,659 65	tingencies of court.....	30,322 71
Balance.....	6,039 59		
	<u>95,195 06</u>		<u>95,195 06</u>
LOGAN H. ROOTS.			
To warrants on the Treasurer—		By compensation of marshal and	
May 5, 1871 .....	\$20,000 00	deputies .....	\$8,934 39
June 28, 1871 .....	20,000 00	By disbursements—	
Balance paid by warrant on Treas-		To jurors .....	5,951 15
urer April 8, 1873 .....	2,763 79	To witnesses .....	12,953 55
		For expenses of prisoners .....	5,366 85
		To <i>posse comitatus</i> and for con-	
		tingencies of court.....	9,557 85
	<u>42,763 79</u>		<u>42,763 79</u>

### EXHIBIT B.

*General statement of the accounts of the marshals for the western district of Arkansas for the fiscal year ended June 30, 1872.*

DR.	LOGAN H. ROOTS.	CR.	
To warrants on the Treasurer—		By compensation of marshal and	
August 24, 1871 .....	\$20,000 00	deputies .....	\$106,760 59
October 9, 1871 .....	20,000 00	By disbursements—	
October 16, 1871 .....	15,309 00	To jurors .....	28,702 20
November 21, 1871 .....	28,500 00	To witnesses .....	94,526 35
January 8, 1872 .....	50,000 00	For expenses of prisoners .....	20,907 85
February 14, 1872 .....	15,000 00	To <i>posse comitatus</i> and for con-	
May 21, 1872 .....	25,000 00	tingencies of court.....	70,756 44
May 25, 1872 .....	50,000 00		
June 12, 1872 .....	20,000 00		
March 14, 1873 .....	13,000 00		
May 29, 1873 .....	61,113 25		
Balance, (retained to close account for surplus emoluments) .....	3,731 18		
	321,653 43		321,653 43

### EXHIBIT C.

*General statement of the accounts of the marshals for the western district of Arkansas for the fiscal year ended June 30, 1873.*

DR.	LOGAN H. ROOTS.	CR.
To warrants on the Treasurer—		
August 9, 1872 .....	\$1,714 92	
October 26, 1872 .....	3,588 00	
December 26, 1872 .....	24,850 98	
March 13, 1873 .....	8,695 37	
	<hr/>	
	38,849 27	
		By compensation of marshal and deputies .....
		\$20,990 97
		By disbursements—
		To jurors .....
		192 00
		To witnesses .....
		191 30
		To <i>posse comitatus</i> and for con- tingent expenses of the courts .....
		17,475 00
		<hr/>
		38,849 27



## WILLIAM A. BRITTON.

To warrants on the Treasurer—		By compensation of marshal and	
August 13, 1872 .....	\$20,000 00	deputies .....	\$58,861 47
September 20, 1872 .....	26,200 00	By disbursements—	
November 8, 1872 .....	13,500 00	To jurors .....	4,781 50
November 9, 1872 .....	20,000 00	To witnesses .....	27,920 45
December 5, 1872 .....	20,000 00	For expenses of prisoners .....	8,365 53
December 30, 1872 .....	20,000 00	To <i>posse comitatus</i> and for con-	
Balance .....	18,965 04	tingencies of court .....	38,736 09
	<u>138,665 04</u>		<u>138,665 04</u>

## JOHN N. SARBER.

To warrant on the Treasurer—		By compensation of marshal and	
May 28, 1873 .....	\$20,000 00	deputies .....	\$4,938 66
		By disbursements—	
		To jurors .....	663 80
		To witnesses .....	5,706 45
		For expenses of prisoners .....	4,130 85
		To <i>posse comitatus</i> and for con-	
		tingencies of court .....	2,533 50
		Balance .....	2,026 74
	<u>20,000 00</u>		<u>20,000 00</u>

Advances and payments to marshals per foregoing statement .....	\$178,549 27
Payments to persons holding claims against the United States which were payable by Marshal Britton, but were not paid by him—	
Jurors' fees .....	\$10,531 95
Witnesses' fees .....	3,770 70
Expenses of convicts and prisoners .....	10,531 95
	<u>24,834 60</u>
Claims of like description filed in Treasury Department, but not yet paid:	
For services of <i>posse comitatus</i> .....	\$11,967 00
For support of convicts .....	4,869 00
For support of prisoners in jail .....	7,471 20
For jurors and witnesses .....	11,673 77
For deputy marshals, bailiffs, &c .....	6,117 03
	<u>42,098 00</u>
Balance due Marshal Britton, according to report of First Auditor, not yet certified by Comptroller .....	18,965 14
Expenses for fiscal year 1873, so far as presented .....	<u>264,447 01</u>

## EXHIBIT D.

HOUSE OF REPRESENTATIVES UNITED STATES,  
Washington, D. C., March 4, 1874.

From Treasury Department March 4, to Hon. J. B. Sener, M. C., House of Representatives.

Expenses of courts in Western Arkansas for marshals' account, approximately correct: 1869, \$56,000; 1870, \$108,000; 1871, \$248,000; 1872, \$370,000. District enlarged, and Judge Story appointed in March, 1871.

R. W. TAYLOR.  
Comptroller.

## EXHIBIT E.

HOUSE OF REPRESENTATIVES UNITED STATES,  
Washington, D. C., March 5, 1874.

From Treasury Department March 5, to Hon. J. B. Sener, House of Representatives.

Approximate statement of expenses of court in Western Arkansas: In 1858, \$25,000; 1859, \$19,000; 1860, \$26,000; 1866, \$15,000; 1867, \$24,000; 1868, \$34,000. State was divided in 1851. Expense in 1850, \$12,000.

R. W. TAYLOR,  
Comptroller.

## EXHIBIT F.

TREASURY DEPARTMENT, SOLICITOR'S OFFICE,  
SECRET SERVICE DIVISION, WASHINGTON, D. C.  
NEW YORK BRANCH, 52 BLEECKER STREET,  
New York, August 3, 1871.

SIR: I have the honor to transmit herewith copy of report of George H. Johnson, special operative of my division, who was, in compliance with your request contained in your letter of June 21, detailed to visit the western district of Arkansas, and there to make investigation in regard to the genuineness of a number of signatures to receipts upon vouchers presented to the Department by W. A. Britton, late United States marshal for the above district.

Very respectfully,

H. C. WHITLEY,  
*Chief Secret Service Division.*

Hon. WILLIAM HEMPHILL JONES,  
*Acting Comptroller of the Treasury.*

H. C. WHITLEY, Esq.,  
*Chief Secret Service Division, Treasury Department:*

SIR: I have the honor to submit special report of operations conducted pursuant to instructions received from you on the 30th day of June, 1871, directing me to proceed to Fort Smith and Van Buren, Ark., for the purpose of investigating certain supposed frauds existing in the accounts rendered to the Comptroller of the Treasury by one W. A. Britton, late United States marshal western district Arkansas. On my way to destination, on steamer, I became acquainted with the present United States marshal, Logan H. Roots, esq. In conversation with him I gained information which would help me in my investigation in regard to the employing of guards or posse by the deputy marshal. He informed me that when they employed men they took them from the starting point, the marshal's office, and men they knew. He also informed me they often employed and paid the Light Horse Cavalry stationed in the Indian Territory to make arrests for them; and there being no other way provided for the marshal to get his money refunded, he, Mr. Britton, would turn the account in to the Comptroller in the shape of vouchers purporting the amount to have been paid to a regularly-employed posse by a deputy marshal, when in reality no such service had been rendered as set forth in the vouchers, and thereby showing an irregularity in the accounts rendered by him; and it may be in a measure owing to this practice that I was unable to trace names on papers in my possession. On the morning of July 14 I arrived at Fort Smith and commenced my investigation on the vouchers in which the services rendered and the receipts signed by persons said to be residents of Sebastian County and employed at Fort Smith. I called on the postmaster and had a conversation with him in regard to his knowledge or acquaintance with residents of the place and vicinity. He could not furnish me any definite information of men sought, but said they had a full county registry of names at the county clerk's office. I called at the office and requested to see the register; it was furnished me. I searched it and was unable to find a name similar to the ones in the vouchers, although the men on the vouchers are said to be residents of the county. I had a conversation with a citizen who had lived in the place a number of years and well acquainted with residents of the place and vicinity. I named over my list of names to him, and out of the forty-five he knew a George Arrington, alleged to have been employed by Deputy Marshal B. F. Shoemaker, in connection with one J. H. Dennis, as his posse to make an arrest. I found George Arrington, and on inquiry of him if he had ever been so employed he said he had not. I inquired of him if he could give me any information of men I named over to him; he could give me no information. I conversed with several citizens of the place and could gain no information of names of men said to be or had been residents of Fort Smith or vicinity. I heard that Deputy Marshal John Ingle was in the place. I sought him out and after a general conversation with him I asked of him if he knew of parties by such names as I mentioned to him said to be residents of Sebastian and Crawford Counties. He said he did not. I then asked him if he knew men by the names of Orman Clark, Jacob Murray, Samuel Bright, and Dick Holder, and where I could find them. He said he could not

I asked him if during the last six months he had not employed such men to go with him in the Indian country to help make arrests. He said no. He told me when he employed a posse, he always took men he knew well, and could rely on in any emergency. The four names above mentioned are men alleged to have been employed by Deputy Marshal John Ingle, since the 1st of January last. The said men named appear signed to the vouchers as having been paid certain sums for services rendered by late United States marshal, and sworn to such service by United States Commissioner Edw. J. Brooks. The first two named are said to be residents of Sebastian County, and the last two Crawford County. I called on James O. Churchill, esq., clerk of the United States district court; had a conversation with him. I could not obtain any information from him to further my object. I asked him if he knew any one I could go to who could furnish me any reliable information in regard to residents of the county or men who were in the habit of going into the Indian country as posse. He said he thought he could. He referred me to a man by the name of John Messler, a saloon-keeper, who had once been a deputy marshal a number of years. I paid him a visit; got into conversation with him, and found he was well acquainted in the county and Indian country. I asked him if he could give me any information of certain names of men that I wished to find. He said he could if they were in the locality. I mentioned over the names to him. He failed to recognize any of them; he said they were all strange to him. I was beginning to make up my mind the men did not exist. While in his place I was introduced to Deputy Marshal Hugh McGuire. I got into conversation with him on the Indian country and his mode of life. He was very communicative. I asked him if he was acquainted with such and such men, naming them from my book. He said no. I asked him if any men by name of R. S. Farr, Samuel Hoyt, Albert Amory, Robert Hill, Solomon Baxter, and George Riddle had ever been employed by him to go in the Indian country to help him to make arrests. He said no. He told me as a general thing he took his brother-in-law with him on all his trips. The six men named are purported to have been employed by Deputy Marshal Hugh McGuire as posse or guard, and paid certain sums of money for such service by the late United States marshal, W. A. Britton, and the vouchers sworn to before United States Commissioner Edward J. Brooks. The services are alleged to have been rendered since January 1, 1874. I had a conversation with J. G. Peery, an ex-deputy marshal under W. A. Britton. I asked him if he could furnish me any information of men named. He could not. I asked him if he was acquainted with or had ever employed Edward Flack, James Hawthorne, F. M. Lacy, or James Hawkins. He once knew, but at present did not know of their whereabouts. Lacy, he told me, had once been a deputy marshal. The four men named are alleged to have been employed by Deputy Marshal J. G. Peery as posse or guard, and paid, for service purported to have been rendered, certain sums of money by W. A. Britton, late United States marshal, and the vouchers sworn to before United States Commissioner Edward J. Brooks. I made inquiries of different citizens, but could gain no further information in regard to finding the other deputy marshals. I found it would be impossible to get at them, as they were off on duty in the Indian country, scattered over a large tract, and could not be located, and no telling when they would come in, they being absent at times from ten to ninety days at a time, and to go into the Territory to attempt to find any of them, I would have had to purchase a pony and take a guide along, an outlay that I was unable to meet. And, under the circumstances, I could not make as thorough an investigation as I should have wished, as I see from the start that the evidence of fraud would have to be obtained from the deputy marshals. On Sunday, the 16th, I was in company with a Captain Thomas Scott, a lawyer and late United States commissioner of the district, and while in his office the conversation drifted on Mr. Britton's business while a United States marshal. He informed me that he had conducted his affairs very loose, he being in the habit of discounting his vouchers, and being in debt generally. He told me he held some \$3,000 of Mr. Britton's vouchers which he had paid. He got them out. I asked him if he would let me look over them. I asked him if he knew the parties signed to them. He said most of them. I could not find any of the names similar to the ones in my possession. I asked him if he ever knew men by the names I mentioned to him from my book. He did not recognize any of them.

After my numerous inquiries from old residents and deputy marshals and could get no clues to names, after four days' close application to my work, I concluded to call on J. H. Huckleberry, esq., United States district attorney, and advise with him. I went to Van Buren and found him at his residence. I made myself known to him, and stated the case to him, and, according to my instructions from you, if evidence of fraud on the vouchers could be obtained, I was to lay the whole matter before him for prosecution. When I told him what I had accomplished he thought I had procured good evidence for him to make a clear case against W. A. Britton, late United States marshal, and those connected with him. He said the deputies that I had talked with satisfied him of a fraud all through the vouchers, and their evidence was enough to make a clear case; and during the investigation Mr. Britton's accounts would come under a strict examination by him, and all concerned in the fraud would be prosecuted. He

informed me that he would open communications with William Hemphill Jones, Acting Comptroller of the Treasury, in reference to the case. Deeming that I had done my duty to the best of my ability, according to the instructions given me, I left the matter in J. H. Huckleberry's hands.

I am, sir, very respectfully, your obedient servant,

GEORGE H. JOHNSON,  
Special Assistant Secret Service Division.

#### EXHIBIT G.

*Statement of the number of cases tried, or otherwise disposed of, in the United States district court for the western district of Arkansas, during the following years respectively, as shown by the accounts of the United States district attorney for said district, viz :*

	No. of cases.
In the fiscal year ended June 30, 1870.....	141
In the fiscal year ended June 30, 1871.....	145
In the fiscal year ended June 30, 1872.....	389
In the fiscal year ended June 30, 1873.....	263

#### EXHIBIT H.

*Memorandum showing nature of the proceedings in the cases disposed of in the United States district court for the western district of Arkansas, in the fiscal years ended June 30, 1870, and 1873, respectively.*

	1870.	1873
Jury trials, (nature of verdict not stated).....	56	66
Jury trials, and convictions.....	3	5
Pleas of guilty, and judgments by court in criminal cases.....	19	69
Discontinuances, by <i>nol. pros.</i> , &c.....	19	44
Proceeding on recognizances.....	16	39
Actions <i>in rem</i> .....	28	15

#### EXHIBIT I.

*Statement of the number of cases in which warrants were issued for the arrest of persons charged with crime, before United States commissioners, in the western district of Arkansas, during the periods below specified, viz :*

	Cases.
In the fiscal year ended June 30, 1868.....	81
In the fiscal year ended June 30, 1869.....	112
In the fiscal year ended June 30, 1870.....	295
In the fiscal year ended June 30, 1871.....	277
In the fiscal year ended June 30, 1872.....	667
In the fiscal year ended June 30, 1873.....	659

#### EXHIBIT K.

BOSTON, January 18, 1873.

SIR: I have the honor to acknowledge the receipt of a letter from your office under date of the 13th instant, stating that Mr. L. B. Whitney, of my force, who is operating in Arkansas under my directions and at the request of your Department, had written you that he had made four reports to me of his operations, and requesting me to forward to you copies of these reports or an abstract of the same.

In reply thereto I have to say that Mr. Whitney has made the reports, as he states, which were addressed to me at New York. Absence from that place upon special business here has prevented my sending forward at an earlier date an abstract of the information obtained by him. These reports are now before me, and from them I learn

that he arrived at Fort Gibson on the 2d of December, 1872, but too late to meet Mr. Sherman, of the Department of Justice, who had left there a day or two before.

Mr. Whitney left Fort Gibson on the 4th of December, arriving at Fort Smith on the evening of the 5th, under the assumed name of A. H. Pettibone, and having with him a Mr. D. M. Petton as an assistant.

Upon reaching Fort Smith he formed the acquaintance of some of the United States deputy marshals appointed by Marshal Britton, and had conversation with several of them, from which he inferred that frauds were being perpetrated in the district as follows:

The deputy marshals, who number one hundred and forty, are entirely dependent upon fees arising out of cases before the courts for their compensation. Hence it is for their interest to get up as many of these cases as possible, and they roam over the Territory manufacturing cases or taking up those that have very little, if any, foundation in fact. Mr. Whitney states further that one-third of all fees returned by the deputy marshals as due them is retained by the marshal-in-chief, together with ten per cent. of the gross amount, and that after these deductions are made the marshal issues a check in the form of a due-bill for the balance, and that these due-bills cannot be cashed for more than 50 cents on the dollar. He also says that these due-bills are bought up by Postmaster Scott and Judge Story, United States judge for the district, at a discount of 50 per cent. Mr. Whitney states that he attended court for several days, and listened to several causes which were being tried and which he found were of an exceedingly trivial character, but in which large fees were charged; they were causes, nevertheless, and had been sent before a grand jury, and had been presented before the court upon indictments found by that body.

Under date of December 23, 1872, Mr. Whitney says: "I find on copy of abstract No. 6, purporting to be an abstract of contingent expenses of the district court of the United States for the western district of Arkansas, at and previous to the November term, (1872), the names of two hundred and fifty-five persons said to reside at Fort Smith, and to have served from time to time as a *posse comitatus*. Marshal Britton, on oath, states that he has paid said men for services as aforesaid the sum of \$23,610. From information obtained I find that only forty-six of the men whose names are mentioned in said abstract reside in Fort Smith; the balance of the names are entirely unknown in this country, and of those who do reside in Fort Smith only twenty-five have ever served as a *posse comitatus*."

Mr. Whitney reports further, under the same date, that he made the acquaintance of one Charles A. Fleming, formerly one of the United States deputy marshals, and a resident at Fort Smith for upward of twenty years. He says that Mr. Fleming informed him that many of the deputies now employed are thieves, murderers, &c.; that they are permitted by the marshal-in-chief to range the whole country and make arrests, when and where they please, without process or warrant; that persons are arrested and brought to Fort Smith for the most trifling offenses, simply because the deputies are allowed an enormous bill in such cases; that where one deputy brought in several prisoners he would get other persons to make returns on the several warrants obtained from the commissioner, and thus draw separate mileages, posse fees, and subsistence in each case, and that this was allowed to be done by United States Commissioner Brooks and Marshal Britton. Mr. Whitney says further:

"Marshal Britton, on oath; states, as per abstract, that in September last he paid Deputy Marshal Charles A. Fleming \$271. Mr. Fleming states that he (Britton) has never, at any time, paid him such an amount. My abstract also shows that S. L. Watson, of Fort Smith, has been paid by Marshal Britton \$156 for services as *posse comitatus*. There is but one Watson in Fort Smith; his name is S. Watson; he is a negro. He takes care of Britton's horses. My abstract also shows that John T. Lyth has been paid by Marshal Britton \$240.50 for services as deputy marshal. Mr. Lyth is a livery-keeper. Mr. Britton's horses board at his stable. He has never rode as a deputy. My abstract also shows that J. W. Venney, of Fort Smith, has been paid by Marshal Britton \$345.40 for services as deputy marshal. Mr. Venney is a merchant of this place. He states that he has never been employed in any such capacity."

Mr. Whitney says that at the commencement of the court there were two grand juries in attendance. One of these bodies was composed of respectable citizens, who had been selected by what is termed a jury commission. The members of this body were notified by the jury commissioners to attend, which they did; but Marshal Britton, instead of serving them with a summons, summoned a jury of his own selection, while the jury selected by the jury commissioners were told by the court that their services were not required.

Mr. Whitney says that at the commencement of the present term of the court there were one hundred and fifty prisoners in jail; that six of these had been sent to the penitentiary, sixty-six remained in jail awaiting trial, while the remainder have been discharged, thus showing that the majority of the cases have no foundation in fact.

As an evidence that the United States commissioners at Fort Smith are in the habit of issuing and dating warrants to suit the convenience of deputy marshals who had



been to the Indian country and made arrests without process, Mr. Whitney cites the following cases:

"On the 23d day of December, 1872, Deputy Marshal Wilkinson brought to this place, (Fort Smith,) from Chickasaw Nation, an Indian woman whom he had arrested without process or warrant. On his arrival here he went before Commissioner E. J. Brooks and made affidavit, whereupon a warrant was issued charging the woman with larceny. The marshal testified that a negro had told him that the woman had stolen some cattle, and that upon that information he had made the arrest. Upon this testimony alone the commissioner committed the woman to jail. The next day, by order of the United States attorney, the woman was discharged. The United States commissioner certifies that he issued the warrant on the 2d of December; and the marshal is permitted to charge service for himself and posse from the 2d to the 23d of December, when, in fact, the commissioner had never heard of the case until it was brought to his office, as above stated, (*i. e.*, December 23.)"

Mr. Whitney reports further, that on the 26th day of December, 1872, he had a conversation with one Perry Duval, who states that he had been riding as a *posse comitatus* with different deputy marshals for the past eighteen months; and for the past six months he had been riding with Deputy Marshals C. C. Ayers and J. H. Smith. Duval says:

"We would go out and gobble up everybody that we could get hold of. Marshal Britton told us to arrest any person that there was any charge against and bring them to Fort Smith; that we could get warrants when we got here. We did so. Britton said he could only allow us thirty-five days' services in any one case, but when we came in with a large lot of prisoners we would get other deputies to make returns of some of the warrants and draw the fees. They were allowed 10 per cent. for making the return and swearing to it. C. D. Mesler held a commission as a deputy marshal. He would often make returns for us. Mesler was a particular friend of Marshal Britton. Britton knew that Mesler never rode as deputy marshal. Deputies always returned from two to three hundred miles more than was actually traveled. In one case we returned nine hundred miles, when in fact we had not traveled two hundred. \* \* \* The commissioners would always date the warrants just as we wanted them to. Marshal Britton would always deduct one-third of all fees returned by a deputy. He then would deduct 10 per cent. from the balance, which he said must remain in his hands as a contingent fund. He always kept the 10 per cent. Britton always paid the men in checks. His checks were always worth about seventy-five cents on the dollar until this term of court. Now they are not worth anything. Britton always said that the Government did not furnish any money. Britton would give us a check, and send us to the postmaster to get it cashed at a discount. Britton made deputy marshals of men that he knew to be horse-thieves and murderers. Marshals would often come in from a trip, and report that they had subpoenaed witnesses and the witnesses would not attend, whereupon an attachment would be issued. Marshals were allowed as much for serving an attachment as they were for serving a warrant. I know of a number of such cases, when in truth and in fact the witness was never served with a subpoena. Their statements to the contrary would never avail them anything. The marshal would always be believed, and his statement taken as true before the commissioner."

Mr. Whitney seems to think that the nature of his mission has become known from the fact that his correspondence has been tampered with. One package, containing certain vouchers sent to him from your Department, and which had been wrapped and sealed with unusual care, reached Mr. Whitney with the end broken, and having every appearance that the vouchers had been taken out of the wrapper and returned again. He says further that Marshal Britton left Fort Smith some ten days previous to the forwarding of his last report, dated December 31, and that it is reported that he has left for good. Mr. Whitney says further that there is a ring or combination in Fort Smith, formed for the purpose of carrying out the frauds above alluded to, and it is composed of United States Marshal Britton, United States Commissioner E. J. Brooks, Postmaster James G. Scott, J. W. Donly, clerk for United States marshal, and H. A. Pierce, editor of a small newspaper called the Patriot. Mr. Whitney gives it as his opinion that the Government will never be able to arrive at a thorough investigation of the frauds perpetrated in the district until its agents can have free access to the office of the United States marshal, which could only be done by the removal of the marshal from office, and the appointment of a successor fully in the interest of the Government. He is of opinion, also, that the other parties named in the above combination, to wit, Brooks, Scott, and Donly, should also be removed from office; and adds that when these removals are made, such men as Fleming, Duval, and others will come forward and verify their statements under oath; but that, so long as these men are in power, they fear them, and dare not make any public utterance regarding them. Mr. Whitney seems to think, also, that Judge Story, the district judge, has favored the operations of the ring above named, and cites many things in relation to Judge Story that have no special bearing upon the case, except by inference, and hence I omit them, pre-



ferring to wait until something of a more tangible character in this direction may be developed.

Mr. Whitney concludes his report by saying:

"I think the Department would be doing justice in refusing to pay all deputy-marshal and *posse-comitatus* accounts that have been presented to the Department by Marshal Britton during his appointment. I do not believe there is one in ten that is entitled to receive a third of what they have returned, and in many cases the entire account is a fabrication."

It would seem, from the reports thus far made by Mr. Whitney, that some prompt action should be taken looking to the removal of the judicial officers of the district, in regard to whom, as Mr. Whitney says, there has accumulated some positive and a good deal of circumstantial evidence of their having defrauded the Government of large sums of money by means of fraudulent accounts. Such a measure would be the means of bringing forward many witnesses now kept back through fear of the officials at present in power, whose testimony would enable the Government to arrive at the full extent of the frauds and bring the perpetrators to punishment.

Respectfully submitted.

H. C. WHITLEY.

*Chief Secret Service Division, Treasury Department.*

Hon. GEO. H. WILLIAMS,

*Attorney-General United States, Washington, D. C.*

#### EXHIBIT L.

NEW YORK, January 26, 1873.

SIR: I have the honor to submit the following information as supplementary to my report to your Department under date of the 18th instant, relative to frauds now being perpetrated in the office of the United States marshal for the western district of Arkansas.

Mr. Whitney, who has been operating in that locality under my direction, reports from Fort Smith, under date of the 7th instant, that the evidence of fraud and corruption in the office of United States Marshal Britton accumulates daily. He cites several instances where persons are arrested long distances from Fort Smith without precept or process of any kind; and states that upon their arrival at Fort Smith no charge is preferred against them, but that they are simply plundered of their property and then released.

The following case, which is one out of many which has come to Mr. Whitney's knowledge, will serve to illustrate the mode by which the people are being robbed by the United States officials:

On the 17th day of December, 1872, United States Deputy Marshal John Duval arrested two colored men named Hudson Gaines and Scott Ellis, without warrant, at a place known as Walnut River, in the Chickasaw Nation, and brought them to Fort Smith, where he preferred a charge against them of stealing cattle. Both the colored men were owners of good horses, upon which they rode to Fort Smith. Upon arrival at that place the marshal informed his prisoners that they would need a lawyer, and volunteered to introduce them to one. He then took them to the office of Mr. Leflore, a brother-in-law to the deputy marshal, and who undertook the management of the case. On the 1st instant the negroes were told by Deputy Marshal Duval that they could go home as he had concluded not to prosecute them. The men then went for their horses, and were told that the horses had been taken by the attorney as his fee for clearing them. The negroes answered that they had had no trial. The marshal replied that they would have had a d—d hard time if it had not been for the lawyer. The negroes then applied to Mr. Temple, United States assistant district attorney, and were told that nothing could be done for them and that they had better go home. They then applied to Judge Story, and were told that the attorney could keep the horses; and they were compelled at last to start for their home, three hundred miles away, without conveyance or money.

The following case is cited by Mr. Whitney as showing the immorality and corruption existing among the officials:

On the 28th day of December, 1872, Deputy Marshal James Wilkinson brought to Fort Smith from the Cherokee Nation a young woman whom he had arrested without warrant and took her before United States Commissioner Jas. O. Churchill, and made affidavit against her, charging her with larceny. A warrant was then issued—December 28—and dated December 9, thus affording the marshal opportunity to charge service for himself and *posse comitatus* from the 9th to the 28th of December. In default of bail the woman was committed to await the action of the grand jury. On the 30th of December a warrant was issued for Deputy Marshal Wilkinson charge

ing him with having intercourse with her while she was his prisoner. A compromise was at once effected, and the woman discharged. A *nolle pros.* was entered by the district attorney, the marshal having first assigned his fees in the case to the attorney. The woman when arrested had a good horse, upon which she rode to Fort Smith. Upon her discharge she was told that her horse had been confiscated, and she was left to get to her home, a distance of three hundred and fifty miles, as she best could.

Mr. Whitney thinks his correspondence has been tampered with, and that in this way his mission has become known to the officials. He argues this from the fact that the United States commissioners have made a sudden change in their practice of antedating warrants, and now have them bear the date of the day upon which they are issued. A little inquiry in this direction disclosed the fact that Judge Story had issued an order to the commissioners that warrants must not hereafter be antedated. Mr. Whitney states further that the deputy marshals are very indignant over this order, and say they will make no more arrests.

As an illustration of the working of this order, Mr. Whitney cites the following case:

On Monday, the 6th instant, Deputy Marshal Flick brought to Fort Smith four prisoners from the Indian country whom he had arrested without warrant. These he took before the commissioner and demanded warrants. He was told that warrants would be issued, but that they could not be antedated. The deputy then said he did not want any warrants bearing date of their issue, and at once released his prisoners and told them to go home.

Mr. Whitney says other marshals on their way to Fort Smith with prisoners will pursue a similar course.

Mr. Whitney in concluding his report says he has been advised that United States Marshal Britton, whose absence from the district was mentioned in my report of the 18th, will not return until after the 4th of March, at which time it is supposed he will be superseded, and that E. J. Brooks, at present United States commissioner in the district, will be appointed as his successor. Mr. Whitney says this would simply perpetuate the present condition of affairs, as Brooks is one of the ring by whom the Government and the people have been defrauded.

He states further that he is informed that the Hon. Powell Clayton, United States Senator from Arkansas, will urge the appointment to the marshalship of some one of the persons named in my report of the 18th instant, whom Mr. Whitney believes to be in the combination formed for the purpose of defrauding the Government.

Comprehensive abstracts of Mr. Whitney's reports will be forwarded to your Department from time to time, immediately upon their receipt from that officer.

Very respectfully,

H. C. WHITLEY,  
Chief Secret Service Division.

HON. GEORGE H. WILLIAMS,  
Attorney-General, Washington, D. C.

#### EXHIBIT M,

NEW YORK, February 7, 1873.

SIR: I have the honor herewith to continue my report relative to investigations made at the request of your Department, as to irregular and fraudulent practices perpetrated in the office of the United States marshal of the western district of Arkansas, in the disbursements of the public funds; and to state that, in my opinion, sufficient evidence has been obtained by Mr. L. B. Whitney, whom I have detailed for this service, to warrant a thorough investigation of the affairs of that office by competent accountants, or a commission fully authorized to act from your Department.

You will observe by my previous report in this matter, dated January 26, 1873, that Mr. Whitney at first conducted his mission secretly, he having arrived at Fort Smith, ostensibly as a book-cannasser, but that he became convinced that his mail-matter had been tampered with, and in this manner the object of his business had become known. He now reports under date of January 23, 1873, that by the 13th of that month he had pushed his investigation privately, to such a point as to lead him to consider further concealment of his real business as unnecessary; that on that day, the 13th, he attended court, when United States district Judge Story made a brief charge to the grand jury, saying among other things, that the Government had sent no money to the district to pay the expenses of the court; that he had sent a dispatch to Washington asking that the money be sent, and that in case none came, he should adjourn court until funds were furnished wherewith to pay jurors and witnesses.

Mr. Whitney further says, that on the evening of January 14, he called at the residence of Judge Story and introduced himself in his official capacity; that Judge Story told him he supposed that he, Whitney, was there to look after the accounts of Mar-

shal Britton, and added that he had been informed of his presence and his mission ten days before.

Mr. Whitney replied that he had called to make some inquiries about Mr. Britton and his manner of doing business, and states that Judge Story then said that Marshal Britton had conducted his business very loosely indeed; that he, Britton, knew very little about the affairs of the office, which was conducted almost entirely by J. W. Donnelly, the chief deputy; that Mr. Britton was away and would not probably return before the 4th of March, and that in the mean time he would doubtless be superseded; that the Department had acted very strangely in not sending money to defray the expenses of the court; and that money sufficient to pay the expenses of the term had never been sent to the district at any one time; that of the \$20,000 sent there about the 1st of January, 1873, \$8,000 had been paid to Postmaster Scott at Fort Smith, who during the months of November and December, 1872, had bought up Britton's checks, and that the balance, with the exception of \$2,000, had been used by Britton at Little Rock, Ark., to pay debts; that he was well aware that a great deal of fraud had been practiced in the district; that he knew of some deputy marshal's accounts that were entirely fraudulent; that marshals had made affidavit that they were in the Indian country performing service, when, in fact, he knew they were in Fort Smith the whole time; that deputy marshals would loan their commissions to men to go into the Indian country, and that upon their return with prisoners the deputies would obtain warrants, and the men who made the arrests would be returned as a *posse comitatus*; that there was a class of men who were called "returning marshals," who never did any riding, but who remained in town, and when a deputy came in with several prisoners they, the returning marshals, would make a return and swear to the account for a certain portion of the fee.

Judge Story further stated that he knew Commissioners Brooks and Churchhill had been in the habit of dating warrants back, but that, within a few days past, he had issued an order to the commissioners that their warrants must bear date the day they were issued; that hereafter no warrants must be dated back.

When questioned as to the large number of trifling cases that were sent before the court by the United States commissioners, Judge Story said that it was not the fault of the commissioners; that the marshals would arrest these ignorant people without warrant and, in case they were not held to bail by the commissioners, they, the marshals, would get no fee.

Mr. Whitney reports further that he called on Thomas G. Scott, postmaster at Fort Smith, and asked him if he did not take a check for \$20,000 to Mr. Britton to sign; and further if he, Scott, knew what was done with the money. Mr. Scott replied that he did take such a check to Mr. Britton, and that he, Scott, received \$7,000 of the money in payment for certificates that had been paid out by Britton during the November term, and which he, Scott, had brought in; that Britton kept \$3,000 of the remaining thirteen, and that the balance was turned over to J. W. Donnelly, Britton's chief deputy.

Mr. Whitney reports a second interview with Judge Story, in which the latter desired him to send a dispatch to the Attorney-General, requesting money to be sent to the district, which Mr. Whitney of course refused to do.

Mr. Whitney reports further that on the 17th of January he had an interview with J. W. Donnelly, Marshal Britton's chief deputy, to whom he was introduced by Judge Story. In reply to questions put by Mr. Whitney, Mr. Donnelly said he would give him all the information he could.

He stated that all the money sent to the district for the November, 1872, term had been expended for court purposes; that he had had some splendid opportunities to make money since he had been in the office; that at the commencement of this term of court, Postmaster Scott and Mr. Lanigan had proposed to him, Donnelly, that if he would issue certificates or checks to witness and others, they, Scott and Lanigan, would buy them up and divide the profits with him; that this he refused to do, (although Mr. Whitney has the evidence that Donnelly did issue the checks and that Scott and Lanigan bought them up.) Upon being asked by Mr. Whitney to furnish a statement of the amount received at the office from the Department at Washington, and also how the same had been expended, Mr. Donnelly said he would make a statement in writing, which he did, and the same is herewith appended, marked Exhibit A.

Mr. Whitney reports further that on the 20th of January Mr. J. W. Fuller called upon him in reference to the frauds that had been perpetrated in the district in the disbursement of the public funds; that Mr. Fuller stated that he had until recently been the keeper of the United States prisoners at Fort Smith, and knew that serious frauds had been perpetrated in the office of the United States marshal. His statement was of a most important character as corroborating the testimony already gathered by Mr. Whitney, and the latter requested him to reduce it to writing. This Mr. Fuller has done, and the same is herewith appended, marked Exhibit B.

Mr. Whitney concludes his report with an earnest request that no more money be sent to the district until an investigation has been made of the accounts of the

marshal's office; and adds that not one in ten of the accounts rendered by the deputy marshals and the men that claimed to have acted as a posse is entitled to receive the amount charged, while many of them can be sworn to be entirely fraudulent.

I respectfully recommend Mr. Whitney's appeal for an investigation to the early consideration of your Department.

Very respectfully, your obedient servant,

H. C. WHITLEY,  
Chief Secret Service Division.

HON. GEO. H. WILLIAMS,  
Attorney-General, Washington, D. C.

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*Exhibit A.*

OFFICE UNITED STATES MARSHAL,  
WESTERN DISTRICT OF ARKANSAS,  
Fort Smith, January 17, 1873.

DEAR SIR: Some time in the latter part of August I received the sum of \$20,000. That amount was disbursed in paying the indebtedness of the marshal, on the 31st day of August, 1872.

In addition to the above amount I borrowed money to pay indebtedness I owed beyond the amount of money received from the Treasury Department.

I then went to Helena, where I received a draft for \$26,000. I sent to Fort Smith \$10,000, which was the only money received at Fort Smith from the latter part of August until some time in the latter part of November, when I received the sum of \$33,500. The last-mentioned sum was disbursed by paying to the parties from whom I had borrowed money to defray current expenses, the amount of my indebtedness to them and to the holders of my due-bills, until the amount of the drafts were exhausted.

In December I received a draft for \$20,000, which was disbursed in the same way; and on the — day of January, 1873, I received another draft for \$20,000; which I also disbursed in the same way, excepting the amount of \$2,000, which I made a *pro-rata* distribution among the deputy marshals and guards at the jail. Out of this last draft I have paid as follows:

B. J. Brown, \$1,000, borrowed for expenses November term, 1872.

R. C. Kerens, \$1,500, borrowed for expenses November term, 1872.

R. M. Johnson, \$700, borrowed for expenses November term, 1872.

T. G. Scott, \$761, borrowed for expenses November term, 1872.

T. G. Scott, \$5,024, due-bills issued during November term, 1872.

T. G. Scott, \$4,128, vouchers to Abstract 6, filed with marshal during November and included in his account to the Department.

T. G. Scott, \$1,375, vouchers to Abstract 3a, filed with marshal during November and included in his account to the Department.

T. G. Scott, \$647, jail vouchers.

J. H. Rogers, \$2,700, attorney for certain deputy marshals.

On hand, \$2,000, to be disbursed among jail-guards and deputy marshals.

In borrowing money from my friends I was compelled to make a promise that I should also protect them in the amounts they held in my due-bills.

Since I have been in office the Government has never, with one exception, advanced to me promptly the amounts due me on my accounts and official bond.

Very respectfully, &c.,

WM. A. BRITTON,  
United States Marshal,  
By J. W. DONNELLY.

L. B. WHITNEY, Esq.,  
Secret Service Division Treasury Department, Fort Smith, Ark.

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*Exhibit B.*

I was appointed United States jailer August 15, 1872, under Marshal W. A. Britton, and continued in that capacity until the 18th day of January, 1873. I was conscious that great frauds were being perpetrated on the Government. I knew a great many prisoners were brought in and placed in jail that should not have been arrested at all; that they were only arrested that the marshal and his deputies could make money by bringing them in; as high as sixty-five prisoners were in and out of jail in one month,

most of them having remained from ten to thirty days without an examination before the commissioner, and after examination would be discharged, the complaint either being ignored or the prisoner turned loose on "straw-bail." I know of a great many deputies that were paid for posses that they never had; that it was the practice to pay the deputies for hundreds of miles never traveled, and allow for days in search of prisoners reported *non est* that the deputies were not out of town, and this known to Mr. Britton and his clerk, Mr. Donnally. I know that deputies have charged for guarding and transporting prisoners that had walked the whole distance; there were upward of one hundred deputies riding, a majority of whom were the worst men in the country, and opponents of the republican party, a number of whom charges of murder and whisky-selling in the nation themselves were held to answer for before the United States court, and had been admitted to bail, and just before court drew their claim against the Government and ran away. I knew deputies to return writs that had been served by their posses hundreds of miles away when they had never been out of town, and the posse returning as posses. I believe there was an understanding betwixt E. J. Brooks, United States commissioner, and the deputies, that all cases should lay in jail or not be finally acted on for ten or twenty days, that they might get their pay, all this being known by W. A. Britton, and no effort by him to correct the dishonest practice. I myself repeatedly notified him that men were being brought in continually guilty of no crimes whatever, and the usual reply was, "that is business for the office." Shortly after Mr. Britton took control of the office he gave me a commission as deputy. I made one trip through the nation and to Topeka, Kans. I found that a deputy marshal was considered a thief and a rascal all through the country, and when I returned I informed Mr. Britton of the feeling in the nation; told him how certain ones of his deputies had been reported to me, and the charges against them; he paid little attention to it; so the same deputies continued to ride. I told him I believed I would quit; he insisted on my retaining my commission, and said he would place me in something more satisfactory to my tastes in a few days, at the same time saying that there were some more "si fas" for Kansas, and, as some of my friends lived up there, I had better make another trip. I declined; he said, "Here," handing me several papers to be served in Kansas, "take these and send them up by mail to some of your friends and let them serve them; you can return them and get just as much for serving them as though you went yourself." I declined the proposition, saying I did not propose to make money in that way.

I think there were great frauds committed in the repair of the jail and court-house. In the jail I had most of the repairs made by prisoners. I am satisfied I could have done all the work that has been done for seven or eight hundred dollars. Out of all the moneys received, Mr. Britton has not paid out to the men that earned the money more than \$10,000. The Government promises to pay went begging from the first of this man's administration at 50 cents on the dollar; and now it cannot be cashed for 10 cents. The usual course pursued was to have some friend buy up the marshal's paper (Government vouchers) at the lowest rate possible, and when the money came turn the same over to his friend; and no one could get a dollar but must submit to this shave. My guards at the jail going without pay for three months, I was asked to resign by Mr. Britton, the real cause being the continual complaints by me at not receiving our money, when I knew the money was here all the time; and the Government owes me now, for services as jailer, over \$250, and the men for sixty to seventy-five days' services. During November, 1872, Mr. Britton said to me that Mr. Donnally, his clerk, had been making all the money; that he took a \$33,000 draft and arranged with Captain Scott, postmaster, and Major Lanagan, merchant, to furnish him currency for his draft; that he drew five or six thousand dollars on the same, when they notified him that they held his paper (Government vouchers) for the balance, and that he must not draw any more; that Donnally made a big thing, and that in the future he would control all drafts for money; that I should have a chance to make some money out of the next draft if I wished to. He said no more to me about it; but the same parties continued to get the drafts, and all future drafts, the last one for \$20,000 received ten or fifteen days ago. I was told by one Edward Czarnikan that he was buying Government vouchers for Britton; that he bought them as much below 50 cents on the dollar as he could, as W. A. Britton only allowed him 50 cents on the dollar for them. I had loaned a deputy (Neis) \$20 to make a trip on during the summer; (this was in December, 1872, Czarnikan told me this.) I went to him with a posse account and asked him to buy it, at this time belonging to the said Neis, in order to get my \$20. I have seen one Hook & Gerrard buying marshal's vouchers, and was told that Britton furnished the money to them to buy for him. They had no means of their own.

I think that a "ring," consisting of Marshal Britton, J. W. Donnally, T. G. Scott, postmaster, and E. J. Brooks, United States commissioner, with the aid of the deputies, have defrauded the United States Government out of at least 45 per cent. of all the claims the marshal has brought against the Government. During December, 1872, I complained to Britton that \$3 per day did not compensate me for the responsibility I had as jailer, and told him I thought I should have \$4 per day instead of three, when he



said he did not care if I got ten; that would be all right with him, and to make out my account for \$4 per day for November and December and continue to do so; if Judge Story would approve them it was all right; saying, I am going to put you in a way to make "big money" when the next draft comes; don't get impatient; go slow and you shall be satisfied. When Mr. Britton was first appointed, the contract to feed the United States prisoners was awarded to myself and Mr. Little for 45 cents per day, but before I had got bake-ovens erected and was ready to commence to comply with the contract Mr. McLeod bought the feeding of the prisoners away from me, and I was to be paid \$10 per day and expenses to canvass for the republican party instead from the time he was first appointed, or at least \$2,000 for the campaign. None of said promises were ever complied with, and Mr. Britton talked in this way to me, feeling that he and his clique had acted in bad faith.

I am the present mayor of the city of Fort Smith; was elected in November last, it being my second term.

J. W. FULLER.

FORT SMITH, ARK., January 20, 1873.

When I first took charge of the United States jail, among the number of prisoners confined in jail was one Samuel McGee, charged with murder, and Osborn Moore, with a like offense, who stated, when the doctor was ordering clothing for the prisoners, that they had been examined by Commissioner E. J. Brooks and bound over to court to answer said charge; that about a month afterward the father of said McGee and the friends of Moore arrived, and after staying around for five or six days, brought an order from the said E. J. Brooks discharging the said Moore and McGee; the father at the same time telling me that it cost him ten head of horses to get the boys out. All parties were Choctaws, and spoke broken English. I continued to question him about it, and he said the lawyer told him not to tell. It was generally understood that the said lawyer (H. A. Rogers) was in partnership with said E. J. Brooks, and as I had been instructed by W. A. Britton to turn loose all prisoners that either commissioner should order released, and to obey all their orders, I released said McGee and Moore.

J. W. FULLER,  
Mayor of Fort Smith.

#### EXHIBIT N.

NEW YORK, October 6, 1873.

SIR: I have the honor to submit the following report of operations conducted pursuant to instructions received from your Department, directing investigations to be made into a series of frauds alleged to exist in the office of the United States marshal for the western district of Arkansas. These investigations, as you are aware, have extended over a period of several months, and by this report it will be observed that the officers detailed to the service of making them have concluded their labors in the district and have been recalled. In order, therefore, that a clear understanding may be had of their operations from first to last, it is essential that the reports made from this office to your Department upon the same subject, under date of January 18, January 26, and February 7, 1873, should be taken in connection with this, and you are respectfully referred to them for such facts as may not be found herein.

A brief *résumé* of these reports will show that the investigation was commenced, under my direction, on the 2d day of December, 1872, at Fort Smith, Ark., and that there were at that time one hundred and forty special deputy marshals holding commissions under the then United States marshal, (Mr. W. A. Britton,) all of whom were dependent for compensation upon fees arising out of cases brought before the United States courts; that it was for their interest to get up as many of these cases as possible, and increase their fees by overcharges in mileage, in charging for *posse comitatus* never employed, and in getting warrants antedated in order to allow them to put in bills for days of services which were not rendered.

It was ascertained by the officers detailed to make the investigation that one-third of all fees returned by deputy marshals as due them were retained by the marshal-in-chief, together with 10 per cent. of the gross amount, and that after these deductions were made, due-bills were issued for the balance, and that these due-bills could not be cashed for more than 50 cents on the dollar; that of two hundred and fifty-five persons said to reside at Fort Smith, and to have served from time to time as *posse comitatus*, there were really only forty-six who were residents of the place; the balance of the names being unknown in the country, although Marshal Britton had made oath (by voucher No. 6, abstract of contingent expenses of the district court of the United States for the western district of Arkansas) that he had paid to these two hundred and fifty-five persons the sum of \$23,610.



The officers learned, further, that when one deputy brought in several prisoners at a time, by the aid of one posse, he would get other persons to make return on the several warrants obtained from the commissioner, and thus draw mileage, posse-fees, and subsistence in each case; that in some cases names were sworn to in the marshal's accounts as having been paid large fees by him for services as deputy marshals, when the persons named never rendered any such service, and so stated to the officers. Upon page 6 of my report to your Department on the subject of this investigation, (bearing date January 18, 1873,) will be found several cases of this class of fraud. It was further ascertained that persons were arrested by special marshals without precept or process of any kind, at long distances from Fort Smith; that upon their arrival at the latter place no charges were preferred against them, but that they were simply plundered of their property, and allowed to go. Pages 2 to 5, inclusive, of my report on the subject of this investigation, dated January 26, 1873, contain the record of several cases of this character. It was further learned that some of the deputy marshals were in the habit of loaning their commissions to parties (not marshals) who would go into the Indian country and hunt up cases of violations of the law, and that, upon their arrival at Fort Smith with prisoners, the deputies would take out the warrants, make a return upon them as if they had personally made the arrests, and name the parties to whom they had loaned their commissions as a posse. This was carried to such an extent that there was a class of men in Fort Smith who were known as "returning marshals." Page 4 of my report upon this subject, dated February 7, 1873, gives further details as to this class of cases, and the same report shows conclusively that Marshal Britton was fully conversant therewith.

It will be observed by the report herewith submitted that, in pursuance of further instructions from your Department; these investigations were resumed on the 2d of August, and concluded in the early part of September. Mr. L. B. Whitney of this force was detailed to the service, (assisted by Mr. J. W. Fuller, mayor of Fort Smith,) and was authorized to receive and examine such claims as might be presented to him. Upward of \$60,000 in these claims has been received by this office, and several affidavits secured showing the fraudulent character of a large number of them, all of which have been transmitted to your Department.

Special attention is respectfully invited to the statement made by Mr. Whitney relative to the manner in which the United States marshal's office is at present conducted at Fort Smith, (p. 28,) in which he sets forth that it is equally as bad under Marshal Sarber as it had been under Marshal Britton. Attention is also called to the affidavits of Benjamin F. Shoemaker and Elbert Davis in support of Mr. Whitney's statement, and which will be found appended hereto, marked A and B.

Respectfully submitted.

H. C. WHITLEY,  
*Chief United States Secret Service.*

Mr. Whitney arrived at Fort Smith on the 2d of August, pursuant to instructions, to make a final investigation into these frauds, and to get such documentary evidence in substantiation of the facts previously reported by him as could be made available for testimony. On the 4th he had interviews with Judge Story, Marshal J. N. Sarber, United States District Attorney N. J. Temple, and Commissioner James H. Churchill, and informed them fully as to the nature and object of his mission.

On the same day he had a notice inserted in the New Era newspaper, requesting all persons holding claims against the United States arising in the office of W. A. Britton, late United States marshal of the western district of Arkansas, to present them to him for examination and transmission to the Department of Justice. A similar notice was inserted in the Independent, also a weekly newspaper, published in Fort Smith.

On the 6th he had an interview with ex-United States Marshal Britton, and presented to that person a letter from the honorable Attorney-General, requesting Mr. Britton to present all his claims to him (Whitney) for examination. Britton stated that his chief clerk, Mr. J. W. Donnelly, was out of town, and would not return for several days. Meantime the accounts began to be presented to Mr. Whitney, and were found to be in a variety of confused and complicated forms, such as commissioner's certificates, clerk's certificates, *posse-comitatus* accounts, deputy marshal's accounts, and many of them in Mr. Britton's certificates. The claims came in slowly at first, there being many of them in the hands of innocent holders, who seemed anxious to learn what course would be pursued by the Government in relation to them before bringing them forward. Up to the 8th only about \$12,000 worth of the claims had been presented, and the majority of these had been offered by parties other than those to whom the accounts were originally rendered. Under his instructions to examine the claims presented by deputy marshals and *posse comitatus* with the utmost care, all statements by such parties were required to be made under oath, and it was further required that the original owners of the claims should also be brought forward for examination.

Among others holding claims of the character above alluded to, was a Mr. P. K

Roots, cashier of the National Bank, who stated that the claims presented by him had been left at the bank as collateral, and a few for collection; and further, that it would be impossible to produce the parties to whom the claims were made payable, as they were pretty much all strangers, and yet the parties named in the claims swore (in rendering their accounts to the marshal) that they were all residents of Fort Smith. This seemed to be one of the principal facts leading to the conclusion that a large number of the claims were partially or entirely fraudulent.

During the course of his investigations Mr. Whitney learned that the United States commissioners were in the habit of dating warrants back in order to allow the deputy marshals and *posse comitatus* to return a very large account for services which were never performed. Thus (Mr. Whitney says) deputy marshals would start out into the Indian country to hunt up cases of violations against the laws, being, as a general thing, accompanied by one or two men; that, on reaching Muskogee, Fort Gibson, or Boggy Depot, they would institute inquiries for persons who had committed violations, *i. e.*, introduced liquor into the Indian country, or committed an assault or any other depredation; and having discovered an alleged guilty party or parties, would pursue and arrest him or them, and take him or them to Fort Smith. The deputy marshal would then go before the United States commissioner and take out warrants in each case, the commissioner antedating the same to cover large costs. To illustrate, should the deputy marshal arrive at Fort Smith on the 15th of August with his prisoners, warrants for their arrest would be dated the same as if issued on the 15th of July, thus enabling him to charge fees for thirty-one days' services for himself and *posse comitatus* (of from one to three men) in each case, making an average expense to the Government of from three to five hundred dollars on each warrant.

In substantiation of the facts as above set forth, Mr. Whitney procured the affidavits of the following-named parties, who had acted as *posse comitatus* and deputy marshals of the district under ex-Marshall Britton:

*Posse comitatus*.—Eugene Marchand, Henry Jones, James Hodges, Talis Carter, Gustavus L. Gardner, Nathaniel Williams, J. M. Riggs.

*Deputy marshals*.—J. M. Scoville, J. H. Minehart, W. C. Ross, J. H. Williams, John Duval, Josiah Foster, J. H. Smith, Richard Wood, J. E. Wilkinson.

The originals of these affidavits have, as you are aware, already been forwarded to your Department. Copies of a few of them are herewith submitted for more convenient reference.

#### STATE OF ARKANSAS, Sebastian County, ss :

This day personally appeared before J. W. Fuller, mayor of the city of Fort Smith, Ark., Eugene Marchand and Talis Carter, who, being duly sworn, depose as follows:

Our names are Eugene Marchand and Talis Carter. We live at Fort Smith, Sebastian County, State of Arkansas. Sometime in the latter part of August, 1872, we made an agreement with one W. A. Harris, deputy United States marshal, as follows:

Mr. Harris agreed to loan us his commission as deputy marshal, with the understanding and agreement that we were to travel in the Indian Territory and make arrests of parties and bring them to Fort Smith. That upon our arrival here with prisoners, he (Harris) would procure warrants from the commissioner and make the return thereon; and after deducting the expense of feeding prisoners while *en route* to Fort Smith, the balance of all fees in the case was to be divided equally between the deputy, Mr. Harris, and ourselves. The first trip we made in the Indian Territory was in September, 1872. After leaving Fort Smith, the first place we stopped at was Stringtown. We inquired of an acquaintance if he knew of any persons who had committed any violations in the Territory lately; he said he did not. We went from there to Boggy Depot, at which place we made a like inquiry; and was informed by a Choctaw boy that one Caesar Chicocat had, some time previous to our coming, stolen a pony. We immediately commenced to look for Chicocat, and shortly thereafter found him, and started with him for Fort Smith. On our arrival at Fort Smith we delivered our prisoner to Deputy Marshal W. A. Harris, who took him before Commissioner E. J. Brooks, and made an affidavit charging the defendant with larceny. We arrived in Fort Smith with our prisoner on the 25th day of September, 1872. We arrested him near Carriage Point, on Red River, in the Chickasaw Nation, two hundred miles from Fort Smith. Our prisoner brought his own horse with him. The prisoner was discharged by commissioner. His horse was taken by an attorney. We were allowed pay for twenty-four days' services as *posse comitatus*, at \$3 per day. We were taken by Deputy Marshal Harris before United States Commissioner E. J. Brooks to swear to our account. Marshal Harris made the return of the warrant, and swore to the service. We had no warrant for the defendant when we left Fort Smith; the warrant was obtained after we returned. We were instructed by Deputy Marshal Harris to go into the Indian country, and if we could find any person against whom we could make a case, to arrest him and bring him in, and he would attend to the warrant. We

did so. At the time we made the arrest we notified the witnesses to appear. It took us about six days to come to Fort Smith after we had arrested the defendant. The commissioner dated the warrants back, so we could get our fees. Deputy Marshal Harris was not with us on our trip.

EUGENE MARCHAUD and  
TALIS CARTER.

Sworn to before J. W. Fuller, mayor, August 11, 1873.

STATE OF ARKANSAS,  
Sebastian County, ss:

Personally appeared before the undersigned, J. W. Fuller, mayor of Fort Smith, Henry Jones, of the county and State aforesaid, who, being duly sworn, deposes as follows:

I live at Fort Smith. I am at present driving stage for the El Paso Stage Company. Some time about the 1st of October, 1872, in company with Deputy Marshal E. A. Minehart, we started out to go to Atoka, in Choctaw Nation, to arrest Isaac Fulsom, charged with murder. After spending eleven days' time in looking for Fulsom we concluded to give up the search, but while we were looking for Fulsom we learned that one Richard Childs, some time previous to our coming, committed an assault on one Munroe Reed, whereupon Marshal Minehart arrested Childs and delivered him to me to bring to Fort Smith, which I did. Marshal Minehart summoned as witnesses Munroe Reed, Tuck Downing, and Caesar Chicoot. I started for Fort Smith with Deputy Marshal Eugene A. Klim, who had two prisoners which he was taking to Fort Smith. One of his prisoners was Munroe Reed, the other Wilson; he arrested Wilson for peddling whisky. Klim and myself brought the three prisoners to Fort Smith; no other person or persons were with us. We arrived in Fort Smith on the 20th or 21st day of October, 1872. I am positive as to time, for there was a circus in town the next day after our arrival. We were thirteen days coming from Atoka to Fort Smith. Klim and myself rode on horseback and our prisoners walked. Deputy Marshal Minehart was not with us when we came to Fort Smith. When we left Atoka he said we might bring in the prisoners and he would make a further search for the man Fulsom. About two weeks after our arrival in Fort Smith Minehart came in, bringing Fulsom. Minehart directed me, when I left Atoka, to bring my prisoner to Fort Smith and deliver him to William Ish, his partner, which I did. Mr. Ish was also a deputy marshal; he took the prisoner and put him in jail. After Minehart came in the prisoner was taken before a commissioner for examination. A warrant was obtained for Richard Childs after Marshal Minehart came into town. We had no warrant when the arrest was made; the warrant was dated back to cover our time. Witnesses that Mr. Minehart had summoned or notified to appear in this case had been in town for over two weeks waiting for him to come in. A few days after the examination of the case before the commissioner, Mr. Minehart came to me with an account for services as a *posse comitatus*. I signed my name to the paper but was not sworn to the account. The account was made out for thirty-four days' services as *posse comitatus*. I was just fifteen days engaged in the Childs case; that will cover the time from the date of his arrest until I delivered him to Deputy Marshal William Ish, in Fort Smith. Marshal Minehart agreed to give me \$3 per day for my services as a *posse comitatus*. Minehart made the return of the warrant and swore to the account before Commissioner E. J. Brooks.

HENRY JONES.

Sworn to before J. W. Fuller, August 11, 1872, at Saint Charles Hotel, in Fort Smith, Ark.

STATE OF ARKANSAS,  
Sebastian County, ss:

Personally appeared before the undersigned, J. W. Fuller, mayor of the city of Fort Smith, Ark., Gustavus L. Gardner, who, being duly sworn, deposes as follows:

I reside at Fort Smith, Sebastian County, Arkansas. During the year 1872 I was riding as a *posse comitatus* for Deputy Marshal William Wheeler. During 1872 I made three trips to the Indian Territory. About the last of August or first of September, 1872, I made my first trip with Deputy Marshal Wheeler to the Indian country. We arrested Samuel Lareau, Andy Saunders, and Daniel Fields. Lareau and Saunders were charged with introducing liquor, and Fields was charged with horse-stealing. We had no warrants for any of the men at the time they were arrested. Mr. Wheeler made affidavit before United States Commissioner Brooks and obtained warrants after we had got back to Fort Smith with our prisoners. Fields was discharged by commissioner. We notified witnesses to appear in each case. There was no other guard or *posse comitatus* in the above cases. I think it is about sixty-five miles to the place where we found the prisoners.

The second trip that I made to the Indian country was in the latter part of September or early in October, 1872. On this trip we arrested two men, Daniel Dixon, charged

with assault with intent to kill; also, Mc—— can't remember his name. Mr. Wheeler arrested them and handed them over to me to bring to Fort Smith. I got into Fort Smith with my prisoners on Saturday and put them in jail. Mr. Wheeler came in the next Monday. He brought in two more prisoners. He and Deputy Marshal Stevenson rode together and divided fees. When the deputies came in they made affidavits and obtained warrants. No *posse comitatus* but myself rode with them on the above trip. We had no warrants for the arrest of the parties when we left Fort Smith. The warrants were dated back so that we could draw our fees. Commissioner Brooks issued the warrants.

The third and last trip that I made to the Indian country with Deputy Marshal Wheeler was on the first day of November, 1872. At Fort Gibson we arrested one Moses Downing, charged with selling liquor to Indians. We arrested him and returned immediately to Fort Smith. Fort Gibson is eighty-five miles from Fort Smith. We had no warrant for the arrest of Downing. When we arrested him Mr. Wheeler made affidavit and obtained a warrant before E. J. Brooks after our return to Fort Smith. He also gave me an account for services rendered as *posse comitatus* in the arrest of Downing, for thirty-two days services, \$96, from November 2, 1872, to December 2, 1872. There was no other *posse comitatus* or guard along but myself. The defendant, Downing, was discharged. I think there was some eight hundred miles' travel charged on the warrant. The warrant was dated back by the commissioner.

GUSTAVUS L. GARDNER.

Sworn to before J. W. Fuller, mayor of Fort Smith, Ark., August 13, 1873.

STATE OF ARKANSAS,

Sebastian County, ss:

Personally appeared before me, J. W. Fuller, mayor of Fort Smith, Ark., Nathanie Williams, who, being duly sworn, deposes as follows:

On the 8th day of October, 1872, in company with James Hodges, I left Fort Smith to go to the Indian Territory. James Hodges is a colored man. He was riding as a *posse comitatus* for Deputy Marshal Frank Ronnels. Ronnels held a commission as United States deputy marshal and loaned it to Hodges with the agreement that he would divide fees with Hodges in the cases that he brought in. I also went along with Hodges as a *posse comitatus*. We arrested George Johnson for introducing liquor into the Indian country. We found Johnson at a spring where we stopped to get a drink. He gave us a drink of whisky from a canteen he had, and we arrested him and took him to Fort Smith. Deputy Marshal Ronnels made an affidavit and obtained a warrant. The warrant was dated back by the commissioner. Ronnels made the return of the warrant. He was not with us. James O. Churchill issued the warrant. Hodges and myself received from Ronnels an account for services as *posse comitatus*.

We also arrested James Herring under Ronnels's commission. Herring was brought in, put in jail, got out on bond, and died during term of court. Ronnels made the return of the warrant in this case. Ronnels was not along when we arrested Herring. We got him in the Choctaw Nation about fifteen miles from Fort Smith. I swore to *posse comitatus* account in last-named case before Commissioner James O. Churchill. Frank Ronnels is a member of the police force in Fort Smith, and was at the time we were riding and making arrests under his commission.

NATHANIEL WILLIAMS.

Subscribed and sworn to, August 14, 1873.

STATE OF ARKANSAS,

Sebastian County, ss:

Personally appeared before me, J. W. Fuller, mayor of Fort Smith, Ark., Talis Carter, who, being duly sworn, deposes as follows:

Some time about the middle of October last, 1872, I left Fort Smith in company with Deputy Marshal Donaldson to hunt up cases. The first stop we made was at Boggy Depot. There we learned that a party by the name of Love had committed some violations. Love lived on Red River. We started to arrest him. On our way we met a man who had come from Texas, Ben. Frazur; he was on horseback. I stopped him and told him I wanted to search him. I found in his pocket a bottle of whisky. I thereupon arrested him. I had no warrant for the arrest of Ben. Frazur. I was riding as a *posse comitatus* for W. A. Harris. I had his commission as a deputy marshal. Mr. Harris had agreed to give me one-half of all the fees that were returned. On the same day that I arrested Frazur, Deputy Marshal Donaldson arrested three men, viz: Andrew Jackson, one Shannon, and Abe ——, a young Choctaw Indian. Jackson was arrested for an assault with intent to kill; Shannon was arrested for stealing a cow; and Abe —— was arrested for introducing liquor into the Indian country. Tid Cooper was riding with Henry Donaldson as his *posse comitatus*. We all came into Fort Smith together; there was no other *posse comitatus* or guard with us. Deputy Marshal Donaldson had no warrants for the men that he brought in. He made affidavit

and obtained warrants after we had returned to Fort Smith. The warrants were dated back so they could charge their fees. Deputy Marshal Harris made the affidavit and obtained the warrant against Benjamin Frazur. Harris also made return of the warrant and swore to the service. He was not with me during any portion of the time. The prisoners were examined before United States Commissioner E. J. Brooks. Marshal Harris gave me an account all made out for \$63 for services as a *posse comitatus*. He said Mr. Brooks had made it all right. We got into Fort Smith a few days after the Presidential election. We were at Boggy Depot on the day of the election.

TALIS CARTER.

Sworn to before Mayor Fuller, August 12, 1873.

In alluding to the affidavits made by parties who had acted as *posse comitatus* in the District, Mr. Whitney says: "The men making these affidavits (with the exception of some five or six others, whose names I have) are the only ones out of three hundred and thirty-seven, who have sworn that they reside in Fort Smith, that I can find. I have made diligent inquiry for each and every one. I am clearly satisfied that many of them do not and never did exist, except in the imagination of men who have, and do now, run this marshal's office. Marshal Britton and his clerk, J. W. Donnelly, both tell me that they do not know but very few of the men that have been returned as *posse comitatus*."

Of the affidavits made by the deputy marshals, Mr. Whitney says: "That made by Deputy Marshal J. M. Scoville, formerly from Detroit, Mich., is free and candid. By his statement the Government will save \$26,000, as that amount can be deducted from the claims, which his statement will cover as being fraudulent. By the statement of Deputy Marshal John Duval, the Government will save about \$11,000. Deputy Marshal Hood makes an honest statement in corroboration of the affidavit of Deputy Marshal Scoville, and his statement will save quite an amount to the Government."

Of the affidavits made by several of the marshals above alluded to, Mr. Whitney says many of them are an assemblage of false statements, made in the hope of backing up their fraudulent claims, but that they bear the evidence of falsity upon their face, and that sufficient proof can be adduced, showing that the makers are not entitled to one penny of the amounts claimed.

Up to the 31st of August claims against the Government arising in the office of Ex-Marshal Britton had been presented to Mr. Whitney to the amount of \$60,000 in gold. These seem to have been scattered all through the country; some being in Texas; some in the Indian territory; some in Helena, Ark.; but a large majority being in the hands of attorneys for collection. The National Bank also (Mr. Whitney says) hold an enormous amount of the claims, some of which, the bank officers state, have been left with them for collection, but the most of them as collateral.

Mr. Whitney reports further, that in addition to other obstacles which arose in the way of his obtaining information, threats and intimidations were uttered against such witnesses as were willing to come forward and testify to the fraudulent character of the claims. That just as soon as any person showed a disposition to impart any information, he was threatened with assassination, or was given a commission as a special deputy marshal by the present United States marshal, J. N. Sarber, and sent where he could not be recalled; and that threats and intimidations were used against himself and his assistant, Colonel Fuller, to induce them to abandon the investigation.

Having obtained vouchers in all the claims possible, Mr. Whitney forwarded the same to the Department of Justice, and left Fort Smith for Washington.

Before leaving he made some investigation into the affairs of the marshal's office, as conducted under the present United States marshal, J. N. Sarber, and makes the following statement in relation to the same, which is herewith submitted, as nearly as possible in his own words:

The present marshal of this district, Mr. J. N. Sarber, is conducting his office precisely as it was conducted by W. A. Britton. The same men are riding as deputy marshals. I certainly cannot see any change, except in numbers. He has not quite as many as Britton had, but what he has are of the old stock. Those whom he has not commissioned as regular deputies he has given appointments to as specials. Warrants are dated back as of old. Posses are returned the same.

Very many of the posses returned are men and boys, some of the latter being not above twelve or fourteen years old. A father is permitted to return his young son as posse. This has been done by this man Sarber. On the 2d day of September W. H. Johnston, one of Britton's old deputies, now a deputy under Marshal Sarber, brought in seventeen prisoners and six posses. He came through Fort Gibson, right past a commissioner, with his prisoners and witnesses, instead of stopping at Fort Gibson to give them an examination before the nearest commissioner. Upon arriving at Fort Smith seven of the prisoners were discharged. They were brought up for little trifling



offenses, too small to notice; still, they will cost the Government from two to four hundred dollars in each case.

In substantiation of his charges that the present marshal, J. N. Sarber, is conducting the business of his office in a corrupt manner, Mr. Whitney submits the affidavits of Benjamin F. Shoemaker and Elbert S. Davis, citizens of Fort Smith, Ark. These affidavits, like those already forwarded to your Department, are sworn to before J. W. Fuller, mayor of Fort Smith, and are herewith annexed:

## A.

THE STATE OF ARKANSAS,

*Sebastian County, ss:*

This day personally appeared before me J. W. Fuller, mayor of the city of Fort Smith, Ark., Benjamin F. Shoemaker, who, being duly sworn, deposes as follows:

I reside at Fort Gibson, in the Chickasaw Nation, Indian Territory. In January, 1870, I was appointed a deputy United States marshal by W. A. Britton, then marshal of the western district of Arkansas. I served as a deputy under W. A. Britton until his successor, Logan H. Roots, was appointed. During the summer of 1870 I made arrests of a few prisoners, and returned the warrants, in which I had not returned any person as a *posse comitatus*. Some time in May, 1870, I arrested Joseph Nipp and one Johnson for introducing liquor into the Indian country. At the time I made return of the warrant I did not return any person as a *posse comitatus*. None were employed by me at the time I made the arrest. Some two months after the arrest and return of the warrants, Mr. J. W. Donnelly, chief clerk in Marshal Britton's office, handed me a couple of vouchers purporting to be for services rendered as a *posse comitatus* in the arrest of Nipp and Johnson. I was told by Mr. Donnelly to go before Frank Austin, clerk of Crawford County, and he would certify to them. I did so. The persons whose names appear in the vouchers were entirely supposititious. J. W. Donnelly and Britton knew that I did not have any posse with me at the time I made the arrest. From that time on, through W. A. Britton's entire administration, the practice of returning supposititious persons as posses prevailed to a very great extent. Generally, two posses were returned for each prisoner. One of the posse accounts went to the deputy and the other was taken by the office; if the deputy kept both accounts, one was charged to him on the books of the office. That was in cases when both posses were constructive. I have seen where they have been charged to me on the books of the office. We were told that the posse accounts could be used to defray our expenses, and our fees on warrants would be allowed, less one-third. I have often seen R. C. Stephenson return warrants in which men were returned as posses that never were employed. At this time the United States court was held at Van Buren, Crawford County. Hon. H. C. Caldwell was judge. In May, 1871, William Story was appointed United States judge, and the court was moved from Van Buren to Fort Smith. Logan H. Roots was at this time appointed marshal of the western district of Arkansas, as the successor of W. A. Britton. Pretty much all of the deputies who had served under Britton were given commissions and retained by Roots. J. W. Donnelly was given the same position under L. H. Roots as he had held under W. A. Britton—chief deputy. Just at this time Robert Donnelly and Willard, a cousin of W. A. Britton, were engaged in preparing Britton's accounts, and getting them ready, as I was informed, to forward to the Department. J. W. Donnelly was superintending the preparing of the accounts. E. J. Brooks was also assisting, as I was informed. The deputies were notified by Britton and Donnelly to hand in all writs and warrants in their possession which they had received during the administration of W. A. Britton. All of the deputies had more or less warrants which they had failed to serve. These warrants were all handed in to Mr. W. A. Britton and Donnelly. The following are the warrants which I had in my possession and handed in:

United States *vs.* Sut Beck; charge, introducing liquor.

United States *vs.* Sanford Mosely; charge, murder.

United States *vs.* Big Skia Took, Dirt Pot, One Murphey and Sam Bread; charge, murder.

United States *vs.* Shiars & Shiars, charge; introducing liquor.

United States *vs.* One Ireland; charge, murder.

United States *vs.* Oo-lur-hut-gut; charge, resisting officer.

United States *vs.* Wa-ha-na; charge, introducing liquor.

United States *vs.* Isaac Keyes; charge, murder.

I was told by Mr. J. W. Donnelly, at the time I handed in my writs, that they would be returned *non est*; that I would be allowed \$2 on each writ, less one-third, which would go to Britton. I asked Donnelly if I could not be allowed a posse account in one of the cases; he said I would not be entitled to an account for service of a posse on a writ that was returned *non est*. Some time in the fall of 1871, in September, I think, W. A. Britton, E. J. Brooks, and J. W. Donnelly were arrested. At the November term, 1871, testimony was about to be introduced before the grand jury for the purpose of indicting Britton, Brooks, and Donnelly for conspiracy.



One evening during the session of the grand jury for the November term, 1871, R. C. Stevenson came to me, and asked me to take a walk. We walked down to the river. Mr. Stevenson told me that Britton, Brooks, and Donnelly were in trouble. I asked him what it was about. He said the warrants that the deputies had handed into the office, to be returned *non est*, were all returned, and two posses had been charged in each case—two posses to each person named in the warrants—and he further said that the deputies would have to swear that the accounts were genuine; if they did not they would be dismissed from the service. He told me that Deputy Marshal John Engle had refused to father any portion of the accounts; but in case he did not father what had been charged to him, he would be dismissed. We finally walked up to Marshal Roots's office; J. W. Donnelly was there; we immediately commenced to talk about the accounts that had been returned from the Department. I was informed that a detective was here from Washington making an investigation of Britton's claims; Mr. J. W. Donnelly remarked that they were trying to indict him, and, if they did, he should jump the country; he said he had always used the boys very well, and he hoped they would stand by him now when he was in trouble. Donnelly did the most of his talking through R. C. Stevenson; the main object of both was to have me say that I would swear that I had made return of the warrants and charged two posse accounts for each prisoner. I told Mr. J. W. Donnelly that I could not swear that I ever returned any person as a posse on the warrants which I handed in to him in May, to be returned *non est*. I said to Mr. Donnelly that if all the deputies came up and fathered a certain amount of returns, I would. Mr. Donnelly said he would see Mr. Henry E. McKee, then foreman of the grand jury, and I could have a talk with him.

The following evening, according to appointment made by J. W. Donnelly, I went with C. R. Stevenson to Henry E. McKee's dwelling-house. He met us at the gate, and told us that he could not talk with us that evening, and requested us to call the next evening. The next evening I went up alone. He immediately commenced to interrogate me about the warrants I had returned. I stated to him just what I had done with the warrants; that I had handed them into the office, expecting them to be returned *non est*. I told Mr. McKee that I could not swear that I had returned any man as a posse on the warrants which I had delivered to Britton and Donnelly in May. I made no return on the warrants whatever. He then said he would ask me, when I came before the grand jury, if I did not have the warrants in my possession during Britton's administration, and if it was not customary and necessary to have one or more posses when traveling in the Indian country. I told him that I could answer such questions very easily. A few evenings after the interview with McKee I was notified to appear at Marshal Roots's office. When I got to the office, I found a number of the deputy marshals there. Among them was J. C. Owens, Robert Lampson, J. G. Peevey, John Engle, R. Fitzhenry, and others, all old deputies, who had served under Britton, and was then deputies under Marshal Logan H. Roots. On my arrival at the office Mr. J. W. Donnelly gave me a written list of the cases in which I would be interrogated by the grand jury. He told me to examine it so that I would make no mistake. He also intimated to me that, if it became necessary, I must swear that the men whose names appeared upon the list was employed by me as a *posse comitatus*. After examining the list which had been handed me, I was directed by Mr. Donnelly to go up into the grand jury room. This was about 9 o'clock in the evening. There was only five members of the grand jury present. I don't know the names of all of the grand jurors that were there. Henry E. McKee, foreman; James A. Lockhart, clerk of the grand jury; and Newton J. Temple, United States district attorney, are all that I knew that were in the room at that time. Mr. Lockhart, clerk of the grand jury, swore me; Mr. Temple and McKee interrogated me. They had a bundle of papers. They called over the cases which were on the list that Donnelly had handed me. They asked me if I had ever had the warrants for the parties named. I said I had. They then asked me if it was not customary for marshals to have posses riding with them when in the Indian country. I told them it was. They simply asked me the questions which McKee agreed should be asked on the evening of our interview. The deputies were taken up into the grand jury room one at a time, and made their statement. The next day each of the deputies went before the grand jury, and signed the statement he had made the evening before. Each of the deputies was provided by J. W. Donnelly with a list of the cases in which posses had been returned, and they were required to state that they were employed by them. I saw a similar list to the one he gave me in the hands of one other deputy; hence I infer that each were supplied with a like list, only covering different cases which had been fraudulently returned in their names. I myself did not go up to sign my name to the statement I had made before the five men in the evening. I was told it was not really necessary. I am certain that my name was signed by some one else. I was not called before the grand jury again in this case.

Just before the November term of the court, in 1871, Mr. R. C. Stevenson and myself brought to Fort Smith from the Indian country seven or eight prisoners. Stevenson attended to making all the returns. Our fees amounted to six or seven hundred dollars. Stevenson gave me \$200. He told me that he had to let J. W. Donnelly have \$150;

that Donnelly had to give a man by the name of Dr. J. C. W. Rowland \$500 as hush-money for making a favorable report of Britton's claims at Washington. Mr. Stevenson told me that Colonel B. J. Brown, of Van Buren, now State senator, paid Rowland the money. I am certain that a portion of my fees went to pay Rowland.

The first work that I did under Logan H. Roots's administration was in May, 1871. In the early part of May, Mr. R. C. Stevenson brought to Fort Smith six or seven prisoners. He had arrested them somewhere on the line of Kansas. About this time I was given a commission as deputy. My commission was dated back some fifteen days to enable me to make a return of a warrant for R. C. Stevenson. Marshal Roots had ordered that a deputy would only be allowed to return one warrant and charge full fees in cases where he brought in a number of prisoners at a time. Stevenson at this time gave warrants to different deputies to return and swear to the account. I think I only returned one posse on the warrant that I returned. We put in the name of any one we saw fit. Roots knew how the returns were being made. Marshal Roots got one-third of all fees returned. He also deducted 10 per cent. from the balance, which he held until our accounts were settled at Washington. In cases when two supposititious posses were returned, one went to the office, the other to the deputy making the return.

On the books in Marshal Roots's office was kept a list of deputies who in reality did not exist. The names were kept there for the purpose of being signed to returns when a deputy came in with more than one prisoner. The dummy marshal would also return posse accounts. I have been permitted to use some of these false deputies myself, and I know of other deputies who have done the same thing. All of these false accounts were made with the knowledge and consent of Marshal Roots and J. W. Donnelly. Marshal Roots stated at one time, when a number of the deputy marshals were present, that he would not pay on final settlement the 10 per cent., for we ought not to expect the 10 per cent. when we used the false deputies. During Logan H. Roots's administration as marshal, United States Commissioner E. J. Brooks certified to a number of *posse-comitatus* accounts for me that were fraudulent and false. He certified to several when no one was present who claimed to have done service. I could pick out the fraudulent claims that have been presented by myself and other deputies, if I were in Washington and could see the accounts. During the administration of Logan H. Roots, there was over \$50,000 of fraudulent accounts presented and paid.

Each *live* deputy who had the confidence of Logan H. Roots and J. W. Donnelly, could make return of a warrant and sign to the return the name of a supposititious deputy. The office could always tell when the account came in, that it was fraudulent, for they had the names of the fraudulent or supposititious deputies that each real deputy was to use. The names of the supposititious deputies were kept on the time-book in the office just the same as any of the real deputies. None but confidential deputies were allowed to return warrants and sign to the return the name of a man as deputy marshal that did not exist.

J. C. Owen, C. R. Stevenson, Hugh McGuire, R. Fitz Henry, W. H. Johnson, Robert Donnelly, Lee McLemore, George Brown, George L. Dean, Robert Lampson, J. G. Peevey, John Engle, William Griffith, and R. C. Kerns, and C. D. Messler, Charles F. Robinson, and John Scott, were confidential men in the office; they could return any persons they saw fit as marshal or posse, and the accounts would go through all right. As a general thing Commissioner E. J. Brooks done the certifying. George M. Conrad is the name that I was allowed to sign to returns on warrants as a deputy marshal, and have often returned *posse-comitatus* accounts to which the name of George M. Conrad was signed. I was told by J. W. Donnelly to keep a memorandum of the fictitious names I had signed, and the cases in which they had been returned, so that I could refer to them and be on my guard in case the Department should ever attempt to investigate the claims. R. C. Kerns, C. D. Messler, Charles Robinson, Robert Donnelly, R. Fitz Henry, and William Griffith were regarded by the deputies who done the riding as the returning marshals. They remained in Fort Smith, and when a deputy brought in more than one prisoner one of the above men would return one of the warrants and swear to the service. R. C. Kerns was Marshal Roots's cashier; William Griffith worked for Kerns in his livery-stable; C. D. Messler kept a genteel saloon; Charles Robinson was city marshal of the city of Fort Smith; Robert Donnelly was a brother of J. W. Donnelly; R. Fitz Henry was the *fugleman*; he was called the *affidavit-man* of the office. The accounts on file at Washington, I think, will show that these men were on duty pretty much the whole time. I have often been to Messler to have him make return of a warrant and swear to the service, when he would tell me that he could not, for he was already returned by some other marshal, when in fact he had not been out of Fort Smith. It was notorious among the deputies that the last-named men done no riding, still they drew as much fees as other deputies.

After W. A. Britton had received his second appointment as marshal, in 1872, I asked for an appointment as deputy; he hesitated about giving it to me; he said that he had heard that I had been blowing about some of the transactions in the office during his former administration. He finally gave me an appointment, but I was

not allowed to know many of the secrets of the office. I do know that deputies were permitted by Britton and Donnelly to make false returns; they were allowed to return men as posses that were never employed. I have done it myself, and have known other deputies to do the same thing. I could pick out the accounts. I could also pick out over fifty false deputy accounts that has been returned under Britton's last administration. The false accounts were almost invariably certified to by Commissioner E. J. Brooks and Deputy United States Clerk J. C. Pritchard. We generally gave Brooks and Pritchard \$5 for certifying to a fraudulent account. Conrad, Beeks, and Moody are the names that I generally put into false posse accounts. None of them ever done any service. They are entirely supposititious. After Britton's second appointment he retained all of the old deputies that had served under him during his first administration, and also under the administration of Roots. Britton also employed a large number of new men after his second appointment. He had at one time one hundred and fifty men riding as deputy marshals. The present United States marshal, Mr. J. W. Sarber, has in his employ many of the old deputies that served under Britton and Roots. I am clearly of the opinion that the accounts are being manipulated just the same as they were under the administration of Britton and Roots. I saw enough in his office yesterday morning to convince me of that fact. I am satisfied that C. R. Stevenson and Hugh McGuire got two fraudulent posse accounts from the office yesterday. On or about the 26th of June, 1873, I was employed by Deputy United States Marshal Joseph Bowers to ride as his posse; he employed me at Fort Gibson, in the Cherokee Nation, at which place we arrested James and George Eldridge for harboring Jacob Cravens, a horse-thief. At or near the same place we arrested John Thompson, charged with larceny. We found the above persons about seventy-five miles from Fort Smith. After the arrest of the above-named persons we started for Fort Smith. On our way we arrested one Mitchell, charged with larceny. We arrived in Fort Smith on the last day of June or the first day of July, 1873. We had Mitchell in custody about two days. On our arrival in Fort Smith I was given a voucher for nineteen days' services as a *posse comitatus*, \$57. John A. Smith was given a voucher for same amount. Elbert Davis was also given a voucher for services as a *posse comitatus* in the arrest of Mitchell; his voucher, I think, was for \$60. About six weeks previous to my coming down to Fort Smith on the above trip Deputy Marshals F. A. Calvert and Charles Hunt came to Fort Gibson; they were about there for some time. While there, a man by the name of Barber came into Fort Gibson to deliver himself up to some marshal; he and another man had got into a fight and he had killed the man, as he said, in self-defense. Some four days after Barber came in, they arrested a man by the name of William Usry; after the arrest of the last-named they started for Fort Smith. I am told that they returned a very large fee-bill for the arrest of the prisoners. I don't know who they returned as a posse. They arrested the prisoners at Fort Gibson, seventy-five miles from Fort Smith. William Usry was in custody about three days.

On the 1st day of September instant I came to Fort Smith with Deputy Marshal T. A. Calvert; we brought in as prisoners Henry Blaylock *alias* Powell, and John Scott. Before starting from Fort Gibson we had arrested Michael Shean and Thomas Conners; they went before the commissioner at Gibson and gave bonds for their appearance at Fort Smith on the 10th day of November next. After Shean and Conners had given bond we started with Blaylock and Scott to come to Fort Smith. On our arrival here we gave the bond which Shean and Conners had given, to the clerk. I was given a voucher for thirty-seven days' service as a *posse comitatus* in the arrest of Conners and Shean. The deputy marshal was allowed to charge his full fees for services and subsistence of the prisoners Shean and Conners, just the same as though they had brought them in. It was well known in the office that Shean and Conners was not brought to Fort Smith. There was three posses returned. My voucher was for \$111. I sold my voucher to the bank. I was told by Marshal Calvert that I would have to get Mr. Maine, Sarber's chief clerk in the office, to O. K. my voucher before the bank would take it. I took the voucher to Maine and he put O. K. on it; I then went to the bank and got my money, 75 cents on the dollar; that is what the bank is now paying for vouchers issued by Sarber.

BENJAMIN F. SHOEMAKER.

Subscribed and sworn to before me this 5th day of September, A. D., 1873.

I. W. FULLER,  
Mayor of Fort Smith, Ark.

B.

THE STATE OF ARKANSAS,  
Sebastian County, ss :

Personally appeared before me, I. W. Fuller, mayor of the city of Fort Smith, Elbert Davis, who, being duly sworn, deposes as follows :

In the latter part of June last, 1873, I was employed by Joseph Bowers, deputy

United States marshal at Fort Smith, Ark., to ride as his *posse comitatus*. We left Fort Smith, I think, about the 20th or 25th day of June to go to the Indian Territory. Our first stop was at Fort Gibson, in Cherokee Nation, at or near which point we arrested James and George Eldridge for harboring Jacob Cravens, a horse-thief; at or near the same place we arrested John Thompson, charged with stealing hogs and cattle. After the above prisoners were arrested they were taken to Fort Gibson and placed in my charge to guard, while Mr. Bowers and a man by the name of Benjamin Shoemaker went out to hunt up more prisoners. After remaining in Gibson about three days after the arrest, we started to come to Fort Smith. On our way we arrested a man by the name of Mitchell and brought him to Fort Smith; he I think, was charged with stealing cattle. We brought four prisoners to Fort Smith; Deputy United States Marshal Bowers, Benjamin Shoemaker, John Smith, and myself were the only persons that came to Fort Smith in charge of the prisoners. We were about four days coming from Fort Gibson to Fort Smith, seventy-five miles. Our prisoners came on foot. I think we arrived in Fort Smith about the 10th of July. Benjamin Shoemaker and John Smith live at Fort Gibson; they were employed by Mr. Bowers to help guard the prisoners; they served about seven or eight days. About ten days after our arrival in Fort Smith with our prisoners, Deputy Marshal Joseph Bowers gave me an account for twenty-two days' services as *posse comitatus* in the case of the Government against Mitchell. I don't think that the deputy had any warrant for Mitchell at the time he was arrested, for we got him as we were coming in. We only had Mitchell in custody three days. My service-account was made out before James O. Churchill, United States commissioner, for the arrest of Mitchell. I did not put in twenty-two days' service as *posse comitatus* in this case. I was only in charge of Mitchell three days; the deputy marshal charged four hundred miles travel on the warrant. After getting from Deputy Marshal Bowers my account for service as a posse, I went to United States Marshal J. N. Sarber to get my pay; according to my account I was entitled to \$66. Mr. Sarber said he could only pay me \$33; he said there was two other men that would have to be paid the same amount in the case, and he did not think the judge would allow quite so big an account; consequently he paid me only one-half. I have since been informed by Mr. Sarber's clerk, who is a particular friend of mine, that the full amount of each posse account in the Mitchell case was charged to the Government; the name of the clerk who gave me the information is W. D. Allnut. I don't know who was returned as a posse in the other cases; the whole proceedings were kept from me as much as possible; there was no need of three posses. After getting my account from Deputy Marshal Bowers I went to the office of Chief Marshal Sarber. I presented my account, and he told me to hold it for a few days; he said he had not settled with the grand jury and witnesses that were in attendance at court, and he could not tell whether he would have money enough or not; he told me to come in next day. I went in the next day and he told me to come in again; he kept putting me off from day to day. I went to his office one morning and told Mr. Sarber's clerk that I had got tired of running after my money. The clerk said he would give me Mr. Sarber's certificate for it; he made out a certificate for \$66. I took the certificate, and just as I was going out of the gate I met Marshal J. N. Sarber. I told him that the clerk had given me a certificate for the amount due me, \$66; he said it would be a long time before I could get any money on the certificate; he said that Judge Story had allowed only one-half of each posse account, which would be \$33 to each—Shoemaker, Smith, and myself. I then told him that the trip had cost me \$40. Mr. Sarber then sat down and gave me a check on the bank for \$40; whereupon I gave him the certificate that had been given me by his clerk. I thought very strange that Mr. Sarber would give me a check for \$40, when he told me the judge would only allow \$33. Consequently I asked his clerk, and he told me that the full amount of \$66 was charged up to the Government on the abstract.

ELBERT S. DAVIS.

Sworn to and subscribed before me this 20th day of August, A. D. 1873.

I. W. FULLER,  
Mayor of Fort Smith, Ark.

THE STATE OF ARKANSAS,  
Sebastian County, ss:

Personally appeared before me, I. W. Fuller, mayor of the city of Fort Smith, John Duval, who, being duly sworn, deposes as follows:

Am a resident of Fort Smith, Ark. In July, 1872, I was commissioned a deputy United States marshal under W. A. Britton, then marshal of the western district of Arkansas. About the 19th or 20th of July, 1872, Deputy Marshal A. D. Irwin and myself left Fort Smith to go into the Indian Territory. We agreed to travel together and make arrests, and on our return to Fort Smith we would divide all fees made. On this trip we arrested Margaret Carter, one French, and Thomas Brackett. Carter and French were arrested for selling liquor, and Thomas Brackett was arrested for intimi-

dating witnesses; at the time of the arrest we summoned as witnesses, Dock Beck and one Avery; we had no warrants at the time we made the arrests; we had no subpoenas; we just notified the witnesses to appear. On this trip we had as posses, Hamp Willis, J. M. Riggs, and J. C. Irwin. On our return to Fort Smith, about the 10th of August, we went before Commissioner E. J. Brooks and got warrants, which were by him dated back to cover twenty-two days' services for ourselves and our *posse comitatus*. In making returns of the warrants in the above case we returned one posse to each prisoner.

Gilbert Myers, then a clerk in Commissioner E. J. Brooks's office, told me that I could just as well get pay for three posses in a case as one, and if I would give him one of the posse accounts he would fix it for me with Brooks so that it would be all right. On the 17th day of August, 1872, Deputy Marshal A. D. Irwin and myself went again to the Indian Territory. On this trip we arrested Henry Bruner and Henry Chalk; we returned to Fort Smith on the 17th day of September, 1872. Zeke McLaughlin was the only man employed by us as a *posse comitatus* on this trip; we employed him at Armstrong Academy, two hundred miles from Fort Smith; we had no warrant for Henry Chalk at the time we made the arrest; I am not certain whether we had a warrant for Bruner or not. On our arrival in Fort Smith we took our prisoners before Commissioner James O. Churchill. Shortly after the examination of the prisoners before Churchill, I met Commissioner E. J. Brooks at C. D. Messler's saloon. I asked him if he wanted to make a few dollars; he said yes. I then handed him a posse account and asked him to certify to it. I then told him that the account was all made out except the signing the name of the man that purported to have done the service. Gilbert Myers made out the account; it was drawn in favor of J. M. Riggs for thirty-two days' services as a *posse comitatus* in the arrest of Henry Bruner. Brooks told me to sign J. M. Riggs's name by cross-mark and then sign my own name as a witness. He showed me how and where to write it. After I had written Riggs's name he certified to it. I then gave him a ten-dollar bill, which he put in his pocket. J. M. Riggs was not with me as a posse in the above case, and was not present at the time I signed his name. There was no person present except Commissioner E. J. Brooks and myself. Zeke McLaughlin, our posse, lives at or near Armstrong Academy. He came into town as the posse of A. D. Erwin. He was with us about fifteen days.

In October, 1872, I went to Sherman, Tex., to arrest James A. Clark and his wife. J. C. Irwin, son of Deputy Marshal A. D. Irwin, went with me as my posse. I arrested defendants, and they gave bail before Commissioner Williams, at Sherman, for their appearance at Fort Smith at the November term. I left the defendants and returned to A. D. Irwin's house in Choctaw Nation. Afterward went and arrested one Benjamin Hilderbrand, and took him to Fort Smith. Young Irwin was not with me at this time as my posse; he had gone to Fort Smith with a running horse. I returned to Fort Smith early in October. Deputy Marshal A. D. Irwin was here when I came in. Shortly after my coming in Irwin started for the Chickasaw Nation to summon Daniel Green and others as witnesses. On the trip he arrested and brought in Tom Kitchen, charged with horse-stealing. On his arrival he went before Brooks and got a warrant, which was dated back. He was allowed twenty-three days' service. C. P. White, clerk in Britton's office, made out a posse account for George Holland in the Kitchen case; he was allowed twenty-three days—\$69. The account is fraudulent; there was no such man employed. The account was certified to by J. C. Pritchard, deputy clerk. About the same time Deputy Marshal Irwin gave me a warrant for the arrest of Daniel Green, the man that he had brought in as a witness. Green, Harrison, and Pitman were charged with an assault, with intent to kill. I found Green at the City Hotel in Fort Smith. I arrested him about the 14th or 15th of November. It was after the presidential election. The warrant was returned by Marshal Irwin. The warrant was got out before Brooks. He dated the warrant back twenty-three days. Thomas May and J. C. Irwin were returned as posses in the Green case. They were allowed twenty-three days each, \$69 apiece. They were not employed; the whole case is fraudulent. United States Clerk J. C. Pritchard certified to the accounts. There was no Thomas May; he is a myth; entirely supposititious.

JOHN DUVAL.

Subscribed and sworn to before me this 1st day of September, A. D. 1873.

J. W. FULLER,  
Mayor of Fort Smith, Ark.

THE STATE OF ARKANSAS,  
Sebastian County, ss :

This day personally appeared before J. W. Fuller, mayor of Fort Smith, Ark., James M. Scovill, who, being duly sworn, deposes as follows:

Am a resident of Fort Smith, and have been for the past five years. In July, 1872, I was appointed a deputy United States marshal by W. A. Britton, then marshal of the western district of Arkansas. On the 13th day of August, 1872, I left Fort Smith in



company with Deputy Marshals Richard Hood and J. C. Wilkinson to go to the Indian Territory to arrest David Ballew and such others as we could find that had committed any violations. At the time of our leaving Fort Smith we entered into an agreement that we would travel together and make arrests, and on our return the fees should be equally divided between myself, Wilkinson, and Hood. We took with us from Fort Smith as a *posse comitatus* Charles Lawson, William Spence, and Silas Putnam. The first prisoner we arrested was David Ballew; we found him near the Chime agency, on Little River, some four hundred and fifty miles from Fort Smith. We took him to Cherokee Town, in the Chickasaw Nation, when he gave us a kind of a bond, secured by a note of \$500, signed by himself and Dock Shurley, for his appearance in Fort Smith on the 20th day of September, 1872, whereupon we discharged him from custody. By this means we got rid of boarding and guarding him to Fort Smith. I think we arrested the defendant, Ballew, on the 24th or 25th of August. We next arrested John Johnson, a negro, charged with larceny, or horse-stealing; we found him in the Chickasaw Nation, four hundred and forty miles from Fort Smith. We had no warrant for his arrest.

We next arrested one Davis, charged with larceny. We found him in the Chickasaw Nation, four hundred and fifty miles from Fort Smith. I think we arrested Davis on the 27th day of August.

On the 29th day of August, or thereabouts, we arrested William Gosnell and John Johnson, white men, charged with larceny. We found them at Antelope Hill, in the Chickasaw Nation, five hundred miles from Fort Smith. We made the arrest without warrants; simply on information.

On the 30th or 31st day of August we arrested one Goodridge and one Painter, charged with larceny. We found them in the Chickasaw Nation, four hundred and fifty miles from Fort Smith. After the arrest of Goodridge and Painter we started immediately for Fort Smith. I think we arrived in Fort Smith on the 25th day of September, 1872. I am positive about the time of our arrival in Fort Smith, for it was the birth-day of my child. The next day we went before United States Commissioner E. J. Brooks and made affidavits, and got warrants for each of the defendants except David Ballew; he was the only prisoner for which we had a warrant at the time we left Fort Smith. Commissioner Brooks dated the warrants back so that we could get in our time thirty-six days in each case. W. H. Johnson, a United States deputy marshal, made the return on each of the warrants. I signed the return to the warrants in the case of Gosnell and Johnson, and Goodridge and Painter. Richard Hood signed the return to the warrant in the case of Davis. J. C. Wilkinson signed the return to the warrant in the case of David Ballew. Deputy Marshal Robert Hargrove signed the return to the warrant in the case of John Johnson. In the case of Gosnell and Johnson I returned Charles Lawson as a *posse comitatus*. In the case of Goodridge and Painter I returned Silas Putnam as a *posse comitatus*. J. C. Wilkinson returned William Spence as a *posse comitatus* in the case of David Ballew. Richard Hood returned — Van Horn as a *posse comitatus* in the case of Davis. Robert Hargrove returned Henry Harrison as a *posse comitatus* in the case of John Johnson.

Deputy Marshal W. H. Johnson made out an account for Nute Martin, as a *posse comitatus* in the above case, which was allowed and paid. Nute Martin, Henry Harrison, — Van Horn was not with us as a *posse comitatus*, or otherwise. Robert Hargrove was not with us. We told Mr. W. H. Johnson that neither of the last-named parties, Martin, Harrison, Van Horn, or Hargrove were with us on the trip. We made out the papers for each of them, and got them certified to. Deputy Marshal W. H. Johnson took for his services for making the returns, &c., the posse account that was made out for Van Horn. Nute Martin gave me \$25 and Johnson \$15 for being put in as a posse. Hargrove gave us one-half of the fees that was charged on the warrant which he returned. Our posses were allowed thirty-six days each. Each posse account amounted to \$108.

JAMES M. SCOVIL.

Subscribed and sworn to in my presence this 27th day of August, A. D. 1873.

J. W. FULLER,

Mayor of the city of Fort Smith, Ark.

THE STATE OF ARKANSAS,  
Sebastian County, ss :

Personally appeared before me, J. W. Fuller, mayor of Fort Smith, J. H. Willard, who, being duly sworn, deposes as follows :

In 1872 I was deputy United States marshal under W. A. Britton, then marshal of the western district of Arkansas. In October, 1872, I went to the Indian Territory to make arrests of different parties. I took with me the following-named persons as a *posse comitatus* : William Roberts, John Lane, Charles Anderson, Thomas Maxwell, John Simpson, William Fernandé, and Calvin Baker. All of the above-named were with me as my *posse comitatus*. I was gone from Fort Smith twenty-six or twenty-eight days. I arrested and brought to Fort Smith six or seven prisoners. On this trip I ar-



rested William Hollis. I found him near the reservation above Fort Sill, three hundred and fifty or three hundred and sixty miles from Fort Smith. My posses were with me at the time I made the arrest. On the same trip I arrested Wallace Hall and Ashley Phillips. I found them at the extreme end of the Chickasaw Nation, five hundred miles from Fort Smith. My posses were with me. We were twenty-six or twenty-eight days in making this arrest. On this trip I arrested Thomas Burns and one Pompey. I found them at the extreme end of the Chickasaw Nation. At the time of this arrest I had two or three of my posses with me. Was about twenty-six or twenty-eight days in making this arrest. The above defendants were about four hundred and fifty miles from Fort Smith. On this trip I arrested Henry Crosby. I found him at Red River Station, about four hundred and fifty miles from Fort Smith. I arrested all of the prisoners in one day and one night. After the arrest I started immediately for Fort Smith. I was about ten days going from Fort Smith to the place of arrest. I arrested Henry Crosby, William Hollis, Thomas Burns, and one Pompey. Hall and Phillips were arrested by my posse. We spent about one day and night making the arrests. It took us about eighteen days to come from the place of arrest to Fort Smith. We took our prisoners before E. J. Brooks, United States commissioner, for examination. I swear that I had warrants for all of the defendants when I left Fort Smith. The warrant were issued by E. J. Brooks. I also swear that I summoned my posse at and took them from Fort Smith with me on the above trip. William Fernande resides in Fort Smith. John Simpson did live in Fort Smith when I employed him; I don't know where he lives now. Thomas Maxwell lives in Texas. I can't tell where Calvin Baker lives. John Lane lives in the Choctaw Nation. Charles Anderson lives at Red River, in Texas. When I got in the vicinity of Fort Sill I divided my posses. I sent two or three to make the arrest of Hall and Phillips. They lived in west of Fort Sill. I arrested my prisoners about forty miles west of Fort Sill. Hall and Phillips were still south of me about thirty miles. I am at present a deputy marshal under J. N. Sarber.

JOS. H. WILLARD.

Subscribed and sworn to before me this 22d day of August, 1873.

J. W. FULLER.

THE STATE OF ARKANSAS,  
Sebastian County :

Personally appeared before me, J. W. Fuller, mayor of Fort Smith, Ark., Richard Hood, who, being duly sworn, deposes as follows :

I am a resident of Fort Smith, Ark. In July, 1872, I was appointed a deputy United States marshal by W. A. Britton, the marshal western district of Arkansas. On the 13th day of August, 1872, in company with J. C. Wilkinson and J. M. Scoville, I left Fort Smith to go to the Indian Territory to make arrests of any and all parties that had committed violations. I think that John Johnson was the first prisoner we arrested; David Ballew was the first prisoner we arrested, and John Johnson was the second. George Davis was the next man that we arrested. We next arrested William Gornell and John Johnson. We next arrested Goodridge and Painter; they were charged with larceny. William Spence, Charles Lawson, and Silas Putnam were with us as a *posse comitatus*. There was none others with us. Deputy Marshal Robert Hargrove was not with us. Van Horn was not with us. Henry Harrison was not with us as a posse. Nute Martin was not with us as a *posse comitatus*.

Deputy Marshal W. H. Johnson made the return on each of the warrants. He made the return and the deputies signed them. I don't know anything about the posse accounts. I had no posse with me. If a posse is returned as being with me, it is fraudulent. Henry Harrison, Nute Martin, and Van Horn was not with us as a *posse comitatus*. Robert Hargrove was not with us on the above trip.

his  
RICHARD + HOOD.  
mark.

Witness:

L. B. WHITNEY.

Subscribed and sworn to before me this 1st day of September, 1872.

J. W. FULLER,  
Mayor of Fort Smith, Ark.

THE STATE OF ARKANSAS, Sebastian County :

Personally appeared before J. W. Fuller, mayor of Fort Smith, John Smith, who, being duly sworn, deposes as follows :

I reside in Fort Smith. In May, 1872, I was appointed deputy marshal by W. A. Britton. Sometime about the last of August, 1872, I was taken sick at a place called Blue River, in the Chickasaw Nation, at which place I was compelled from sickness to remain for three weeks. I left the Chickasaw Nation, about the last of September, 1872, and went to the Choctaw Nation, to a place called Atoka. I was compelled to remain by sickness at Atoka for about four or five weeks. I came into

Fort Smith just after the presidential election in November, 1872. I brought in no prisoners; neither did I arrest any while on the above trip. I did not arrest L. Hendrix or Charles Sands in October, or at any other time. I did not serve any subpoenas in the case of the United States against Isaac Fulsom during the month of October, 1872, or at any other time. There was no other John Scott riding as a deputy marshal. My name to the return of the warrant in the case of the United States against L. Hendrix and Charles Sands is a forgery. I never signed the return, and do not know the parties. My name to the return of the subpoena in the case of the United States against Isaac Fulsom is also a forgery. I never gave J. H. Minehart, or any other man, permission to sign my name to a return of any warrant, subpoena, or other paper, before Commissioner E. J. Brooks, or any other person. Commissioner E. J. Brooks knows me very intimately.

JOHN SCOTT.

Subscribed and sworn to before me this 4th day of September, 1873.

J. W. FULLER,  
Mayor of Fort Smith, Ark.

STATE OF ARKANSAS, *Sebastian County*, ss :

Personally appeared before me, J. W. Fuller, mayor of Fort Smith, Ark., J. H. Smith, who, being duly sworn, deposes as follows :

I am a deputy marshal; did serve as a deputy United States marshal under W. A. Britton. About the 9th day of December, 1872, I employed Perry Duval to ride with me as my *posse comitatus*. We went into the Indian Territory to make arrests. I had several writs for persons in the Indian Territory. About the 15th of December we arrested William Harrison at Zeddick Harrison's old homestead, in Choctaw Nation, about one hundred and eighty miles from Fort Smith. We took defendant to Boggy Depot, and left him in the custody of Clay Freney, who was then acting as my posse. Duval and Freney were to remain and guard the prisoner, Harrison, while I went out to get some other prisoners. I was gone from Boggy Depot about five days. During the time I arrested Edward Craig, for stealing a pair of mules from Jesse Bean, of Chickasaw Nation. I brought Craig to Boggy. On the 22d day of December, 1872, I left Boggy Depot to come to Fort Smith. Some time between the 15th and the 22d of December the man William Harrison, that I had arrested and left with Duval and Freney to guard, had made his escape. On the 22d day of December Mr. Duval and myself started for Fort Smith with our prisoner, Edward Craig. Freney remained at Boggy Depot. We arrived in Fort Smith on the 27th day of December. We had no warrant for Craig at the time we arrested him. I intended to return Perry Duval as a *posse comitatus* in the case of Craig, but I found, on my arrival in Fort Smith, that Judge Story had ordered the United States commissioner to date the warrants and other writs the day they were issued. It had formerly been the practice to antedate warrants so that deputy marshals could return their time and service. Mr. Churchill told me that he could not date the warrant back in this case; consequently I could not get pay for Duval as a posse. Some ten days after my return with Craig, Perry Duval came to me and asked me to go to the court-house. He said Judge Story had agreed to give him a posse account in some case where a warrant had been returned *non est*. Judge Story directed that an account for nineteen days' service as a *posse comitatus* be allowed to Perry Duval for services rendered in the arrest of William Harrison. At the time I had not returned the warrant against William Harrison, nor did not until some time in May last. I did not think Duval was entitled to any account for service as a posse in the case of William Harrison. He performed no service to speak of in that case. I acted entirely under the instruction of the judge. Three hundred miles will take a person to the limits of the Chickasaw Nation. I am not really sure that the warrant was not returned at the time the posse account was made out.

J. H. SMITH.

Subscribed and sworn to before me this 21st day of August, 1873.

J. W. FULLER,  
Mayor of Fort Smith, Ark.

THE STATE OF ARKANSAS, *Sebastian County* :

Personally appeared before me, J. W. Fuller, mayor of the city of Fort Smith, Ark., J. H. Minehart, who, being duly sworn, deposes as follows :

I reside in the Choctaw Nation. I am at present serving as a deputy United States marshal under J. N. Sarber, marshal western district of Arkansas. I was a deputy United States marshal under W. A. Britton in 1872. I received my commission as a deputy marshal under Britton the latter part of July or early in August, 1872. My first trip to the Indian Territory was in August. Can't tell who was my posse on this trip; did have one; can't tell his name. My second trip to the territory was in September, 1872. On this trip I arrested Richard Childs, for assault with intent to kill. I found him near Middle Boggy, in Chickasaw Nation, about two hundred miles from Fort

Smith. I arrested Childs and brought him to Atoka, in Choctaw Nation, one hundred and forty-five miles from Fort Smith. At Atoka I employed a man by the name of Henry Jones to act as my *posse comitatus*, to take Richard Childs to Fort Smith. The next day after I employed him he started for Fort Smith with prisoner. He could come to Fort Smith in ten days. After I delivered Childs into the custody of Jones, I started out to hunt for one Isaac Fulsom. I arrested Fulsom in the Chickasaw Nation, about two hundred and fifty miles from Fort Smith. Immediately after the arrest of Fulsom I started for Fort Smith. I spent no time looking for Isaac Fulsom before I arrested Richard Childs. I did not have the man Henry Jones with me at any time when I was looking for Fulsom. I employed Jones after I had arrested Richard Childs. I got into Fort Smith about two weeks after the arrival of Jones and Childs. I instructed Jones to deliver the prisoner to William Ish, a deputy marshal at Fort Smith. I made an affidavit before Commissioner E. J. Brooks when I returned to Fort Smith, and got a warrant for Richard Childs. I had no warrant for Childs at the time I made the arrest. I did not get into Fort Smith until after the presidential election. William Ish and myself were partners and divided fees. I don't know whether Ish returned the warrant in the Richard Childs case or not. I might have returned the warrant. Ish was not with me when the arrest was made. I can't say whether I made an affidavit before Brooks to get the warrant or not. Mr. Ish might have got out the warrant. The defendant was examined before commissioner after I returned to Fort Smith. At the time I returned to Fort Smith with Fulsom I brought in Lem. Reynolds, Charles Sands, and one Hendrix. I arrested Lem. Reynolds on Red River, in Chickasaw Nation, two hundred and fifty miles from Fort Smith. I arrested Hendrix and Sands in Chickasaw Nation, about two hundred and fifty miles from Fort Smith. I had, as posse in the above cases, Jack English and Wagoner. I don't know where Wagoner lived; he was a transient man. I found him in Fort Smith. Don't know where Jack English lives. Have not seen Wagoner since the trip was made; have seen English once. I think I left Fort Smith on the 11th day of October, 1872, and returned on the 13th day of November, 1872. That is the time that I allowed my posses. I can't tell how long after the arrest of Fulsom it was that I arrested Lem. Reynolds. It might have been three or four days and it might not have been more than one day. I did not return any posses except Jones, English, and Wagoner. I had warrants for Fulsom and Reynolds. I had no warrants for Sands or Hendrix. Warrants were got out for Sands and Hendrix, after my return to Fort Smith, on the 13th day of November, 1872.

J. H. MINEHART.

Subscribed and sworn to in my presence and before me, this 23d day of August, 1873.

J. W. FULLER,  
Mayor of Fort Smith, Ark.

I, J. H. Minehart, further state that I arrested L. Hendrix and Charles Sands; that the full amount of the service charged therein is correct; that the whole amount is due and unpaid; that no other person is entitled to any part thereof; that I made the arrest of the defendants myself.

J. H. MINEHART.

Same day and same time.

J. S. Scott has sworn that he did not arrest Sands and Hendrix.

THE STATE OF ARKANSAS, *Sebastian County*, ss :

Personally appeared before me, J. W. Fuller, mayor of Fort Smith, Ark., James C. Wilkinson, who, being duly sworn, deposes as follows:

I am now a resident of the city of Fort Smith; until quite recently my home has been in the Indian country, mostly at Cheyenne and Arapahoe agency. I am a deputy United States marshal. Was a deputy under W. A. Britton, late United States marshal western district, Arkansas. Some time in month of August, 1872, I arrested David Ballew, charged with introducing spirituous liquor in Indian Territory. William Spence and Richard Hood arrested defendant near north fork of Canadian River, in what is called leased district, or a little west of it, some forty-six miles from Fort Smith; the prisoner was delivered to me by Spence and Hood; William Spence came with me to Fort Smith as a posse. Mr. Spence lives at Wichita agency; at the time of the arrest, Mr. Spence was living at Fort Sill, in Comanche Nation. I had come to Fort Smith previous with some property which I had seized. I had employed Spence to come with me, and after obtaining warrant for defendant, we returned to make the arrest, and Mr. Spence was employed as my posse. I only returned one posse in this case.

J. C. WILKINSON.

Subscribed and sworn to before me this 13th day of August, A. D. 1873.

J. W. FULLER,  
Mayor of Fort Smith, Ark.

THE STATE OF ARKANSAS,  
Sebastian County, ss :

This day personally appeared before the undersigned, J. W. Fuller, mayor of the city of Fort Smith, Ark., W. C. Ross, of the county and State aforesaid, who, being duly sworn, deposes as follows :

My name is William C. Ross. I live at Fort Smith, Sebastian County, Arkansas. I have lived here in Fort Smith for two years—it will be two years in November next. I have been employed as *posse comitatus* and deputy marshal. I was deputy under Logan H. Roots, United States marshal. Was also a deputy under the administration of W. A. Britton, United States marshal. I am now holding a commission as deputy marshal under the present United States marshal, J. N. Sarber. I have four *posse-comitatus* accounts against the United States, to wit, first, the claim of T. J. Carter for services rendered as *posse comitatus* in arresting Samuel and Marcus Duke, charged with introducing liquor into the Chickasaw Nation. The defendant was arrested in Chickasaw Nation, about three hundred and fifty miles from Fort Smith, at a place known as Whiskey Trail, in Chickasaw Nation. T. J. Carter, the man who served as my *posse comitatus*, lives at Boggy Depot. The service of my *posse* commenced from the time I left Fort Smith, where they were employed, in which place they were when I returned. Boggy Depot is one hundred and fifty miles from Fort Smith. Martin Johnson was also a *posse comitatus* in the arrest of Samuel and Marcus Duke. Johnson, at the time he served as my *posse*, lived in Chickasaw Nation. Johnson received an account from the marshal for the same number of days and same amount of travel as Carter. Martin Johnson is now in the penitentiary. I bought the claims of T. J. Carter and Johnson. Have since traded claims off: I paid face value, dollar for dollar. They were my *posses*, consequently I accommodated them. I also bought *posse-comitatus* claim of T. J. Carter in case of Zack T. Tranthem and Mexican Joe. I was the marshal that served the warrant. T. J. Carter and Martin Johnson were my *posse*. The defendants were arrested on Red River, two hundred miles from Fort Smith. I can't state how many days we were out in making the arrest. I had warrants for the parties before I left Fort Smith. I traveled one hundred miles additional to the two hundred miles stated, looking after these prisoners, before their arrest. Frank O. Bine had a warrant for the arrest of Emily Grayson. He knew that I was going into the part of the county in which the defendant lived, and he wished me to take the warrant and bring her in. When I left Fort Smith I went out for the purpose of arresting Bill Hays, charged with murder of John Zek. I followed Hays to Kansas. I left Fort Smith on the 1st of October, 1872, and returned on the 30th. I did not find Hays, and on my return from Kansas I arrested Emily Grayson and brought her to Fort Smith. It was about three hundred miles from Fort Smith to the place where we made the arrest. I think we were thirty days following Hays. My two *posse comitatus* were with me the whole time.

W. C. ROSS.

Sworn to and subscribed before me this 11th day of August, 1873.

J. W. FULLER,  
Mayor City of Fort Smith.

THE STATE OF ARKANSAS,  
Sebastian County, ss :

This day personally appeared before me, J. W. Fuller, mayor of Fort Smith, Josiah Foster, who, being duly sworn, deposes as follows :

I live at Van Buren, Crawford County, Arkansas. On the 20th day of February, 1871; I was appointed deputy marshal under W. A. Britton, at that time marshal of western district of Arkansas. I served as such deputy during his administration, or until his successor, J. N. Sarber, was appointed. Some time about the 13th day of October, 1872, I left Fort Smith, Arkansas, for the purpose of arresting Thomas Dana *et al.* I arrested Thomas Dana in the Chickasaw Nation, about four hundred miles from Fort Smith. I had a warrant for the arrest of Dana when I left Fort Smith. The warrant, I think, was issued by Commissioner E. J. Brooks. I took with me as a *posse comitatus* from Fort Smith, for the purpose of assisting in making arrest, Iram Branham and John C. Foster. On my return to Fort Smith, I made out an account to each of them for twenty-seven days' services as a *posse comitatus* in the case of United States against the said Thomas Dana. No other guard or *posse comitatus* was employed in the above case. I don't know John Murray. He was never a *posse* or guard in the arrest of Thomas Dana for me.

JOSIAH FOSTER.

Subscribed and sworn to before me this 12th day of August, A. D. 1873.

J. W. FULLER,  
Mayor of Fort Smith, Arkansas.

John C. Porter has returned a warrant for the arrest of Dana at same time "Fraud."

THE STATE OF ARKANSAS,  
Sebastian County, ss :

This day personally appeared before me, J. W. Fuller, mayor of the city of Fort Smith, James Hodges, who, being duly sworn, deposes as follows :

Am a resident of Fort Smith, Ark. In 1872, during the administration of W. A. Britton, marshal of the western district of Arkansas, I was employed at different times by Christopher Duff and Frank Rounds to serve as a *posse comitatus*. Duff and Rounds held commissions as deputy marshals under W. A. Britton. Mr. Duff was city marshal of the city of Fort Smith. Mr. Rounds was a member of the police force. My first trip to the Indian Territory was, I think, in August, 1872. Mr. Duff loaned me his commission with the understanding and agreement that I would arrest and bring in prisoners. He would remain in Fort Smith and make the return of the warrant, and we would divide the fees. The first prisoner I brought in was Dr. Herring, charged with introducing liquor into the Indian country. The prisoner lived about ten miles from Fort Smith, in the Choctaw Nation. Nathaniel Williams was with me. I took him along as a posse. Mr. Duff was not with me. He made the return of the warrant when I returned to Fort Smith. I think I only got \$6 in this case. The next trip was in September, 1872. I had a warrant for a man by the name of George Johnson. Nathaniel Williams went with me as a *posse comitatus*. We arrested Johnson at Mrs. Pulcher's, about one hundred and sixty miles from Fort Smith. We were four days going from Fort Smith to the place where we arrested prisoner. We were five or six days looking around the country. After we got the prisoner we started immediately for Fort Smith. We were five days coming in. When I arrived in Fort Smith I put my prisoner in jail, and gave Marshal Duff the warrant, which he returned. He made out my account for service as a *posse comitatus* in this case for twenty-five days. I think he gave Nathaniel Williams a voucher for same amount. We were out fifteen days. Deputy Marshal Duff was not with us. E. J. Brooks issued the warrant.

In October, 1872, I made a trip to the Indian country for Deputy Marshal Frank Rounds. He also gave me his commission, with the agreement that we would divide the fees. I think I left Fort Smith on the 30th day of October, 1872. I went to Smith Paul Valley to arrest one George Yates. Smith Paul Valley is in the Chickasaw Nation, one hundred and seventy-five miles from Fort Smith. It took me six days to make the trip from Fort Smith to Smith Paul Valley. I spent about eight days looking for prisoner. It took me six days to come to Fort Smith. I made this trip entirely alone. Deputy Marshal Rounds made the return of the warrant before commissioner, and swore to the service. He did not arrest the prisoner. He gave me a voucher for services as a *posse comitatus* in this case. He allowed me for twenty days service as his posse.

JAMES HODGES.

Witness: L. B. WHITNEY.

Sworn to and subscribed before me this 18th day of August, 1873.

J. W. FULLER,  
Mayor of Fort Smith, Arkansas.

THE STATE OF ARKANSAS,  
Sebastian County, ss :

This day personally appeared before the undersigned, J. W. Fuller, mayor of the city of Fort Smith, Ark., Gustavus L. Gardner, of the county and State aforesaid, who, being duly sworn, deposes as follows :

My name is Gustavus L. Gardner. I reside at Fort Smith, Sebastian County, Arkansas. During the year 1872 I was riding as a *posse comitatus* for William Wheeler, deputy marshal. I was allowed \$3 per day for my services. During the year 1872 I made three trips with Deputy Marshal Wheeler into the Indian Territory to make arrests. Some time about the last of August or 1st of September, 1872, I made my first trip with Mr. Wheeler to the Indian country, for the purpose of arresting Samuel Lareau and Andy — and a man by the name of Dan Fields. Lareau and Andy were charged with introducing liquor, or being retail liquor-dealers. Fields was charged with horse-stealing. We found the prisoners about eighty-five miles from Fort Smith. We found Lareau at Gibson, sixty miles from Fort Smith. Mr. Wheeler received information, while at Gibson, from some negroes, that the said Lareau and Andy had attended a negro dance, and had given to some parties some whisky. Whereupon Mr. Wheeler proceeded to and did arrest the parties. He also received information in regard to Fields's stealing horses. The offense had been committed some two years previous. Lareau and Andy were charged with selling liquor some week or ten days previous to our coming into the nation. Mr. Wheeler made affidavit against the parties before Commissioner Brooks, on our return to Fort Smith. We had no warrant at the time we made the arrests. At the time of making the arrest Mr. Wheeler notified the witnesses to appear, which they did. On this trip I was out fifteen days; sixty-five miles travel.



The second trip that I made to the Indian country as a posse with Deputy Wheeler was in the latter part of September or early in October. We went to Fort Gibson. Mr. Wheeler arrested a man by the name of David Dixon; charge, assault with intent to kill. He also arrested another man, Mc——, (can't remember his name.) They were both handed over to me to bring to Fort Smith. Mr. Wheeler remained in the Indian country. I was the only person that was with the prisoners while en route to Fort Smith. I arrived in Fort Smith on Saturday, and Wheeler came in on Tuesday following, bringing in two more prisoners. Stevenson, another deputy marshal, was with him. Wheeler and Stevenson rode together, and divided fees. When the deputies came in they made affidavits against the prisoners and obtained warrants. No *posse comitatus* but myself rode with them on the above trips. I was out twelve days. I received a posse account for twelve days' service. I swore to my account before Colonel Brooks, commissioner.

The third and last trip that I made to the Indian country with Deputy Wheeler was on the 1st day of November, 1872. Our first stop was made at Gibson. At this point we got information that one Moses Downing had been selling liquor in the Indian country; we immediately started out to find him; after traveling for several days searching for him, we returned to Fort Gibson, where we found and arrested him, and immediately started for Fort Smith. When we arrived at Fort Smith, Mr. Wheeler took the prisoner to jail. I can't be certain whether it was the next day after our arrival in Fort Smith that Mr. Wheeler made an affidavit against the prisoner. I am certain it was very soon after. I did not make the affidavit. Mr. Wheeler made the affidavit, and obtained the warrant, after he had put the man in jail. We did not see the man sell any whisky. I received in this case a *posse comitatus* claim for \$96, for thirty-two days' services, from November 1, 1872, to December 2, 1872. Actual distance from Fort Smith to Fort Gibson, seventy-five miles. There was no *posse comitatus* or guard along but myself.

GUSTAVUS L. GARDNER.

Sworn to and subscribed before me this 11th day of August, 1873.

J. W. FULLER,  
Mayor of Fort Smith.

[Downing was committed and a colored witness in the case was committed. They attempted to make the witness swear to a lie. The witness was kept in jail for a long time. Downing was acquitted, and then they tried to put up a job on the witness. The case is fraudulent. Don't think from the posse's statement that there is much due.]

THE STATE OF ARKANSAS,  
Sebastian County, ss :

This day personally appeared before me, J. W. Fuller, mayor of the city of Fort Smith, Ark., Talis Carter, of the county and State aforesaid, who, being duly sworn, deposes as follows:

My name is Talis Carter. I reside at Fort Smith, Ark. Some time about the middle of October last, 1872, I left Fort Smith in company with Deputy Marshal Donaldson, to go into the Indian country to hunt up cases. The first stop we made was at Boggy Depot, where we made inquiry of an acquaintance in regard to violations. We were informed that some parties by the name of Love had committed some violations. Love lived on Red River. We started to arrest them. On our way we met a man that had come from Texas. He was on horseback. We stopped him and searched him, and found in his possession two bottles of whisky, whereupon we arrested him. I was riding as a posse for Mr. Harris, and had his commission. I brought my prisoner to Fort Smith and delivered him to Deputy Marshal Harris. The prisoner's name was Benjamin Frazure. Deputy Marshal W. A. Harris, on my arrival in Fort Smith with prisoner, went before Commissioner E. J. Brooks and made an affidavit and obtained a warrant charging defendant with introducing liquor into the Indian country.

Deputy Marshal Harris was not with me on this trip—he remained in Fort Smith. I had no warrant for prisoner. When I arrived in Fort Smith, Mr. Harris returned the warrant in this case and swore to the service; he also made out my account for service as a *posse comitatus*. I never swore to any account for service as a *posse comitatus* in this case. Mr. Harris brought the account to me all ready made out. He said that Brooks had made it all right. I think my service account in this case amounted to \$63. On the above trip Deputy Marshal Donaldson arrested Andrew Jackson; one Shannan; and Abe ——, a Choctaw Indian. Jackson was arrested for assault; Shannan was arrested for stealing a cow; and Abe was arrested for introducing whisky into the Indian country. Tid Cooper was riding with Henry Donaldson as his *posse comitatus*. We all came into Fort Smith together. There was no other *posse comitatus* or guard with us. Donaldson had no warrants for the men that he brought in; he made affidavit and obtained warrants before Commissioner Brooks; the warrants were dated



back so that we could get our fees. We were at Boggy Depot the day of the presidential election; we arrived in Fort Smith some number of days after the election. Tid Cooper was the only posse that was riding with Deputy Marshal Donaldson.

TALIS <sup>his</sup> + CARTER.  
mark.

Attest: L. B. WHITNEY.

Subscribed and sworn to before me this 12th day of August, A. D. 1873.

J. W. FULLER,  
Mayor City of Fort Smith, Ark.

THE STATE OF ARKANSAS,  
Sebastian County, ss :

This day personally appeared before the undersigned, J. W. Fuller, mayor of the city of Fort Smith, Ark., Henry Jones, of the county and State aforesaid, who, being by me first duly sworn, deposed as follows :

My name is Henry Jones. I live in Fort Smith, Ark. I am at present driving stage for the El Paso Stage Company. Some time about the 1st of October, 1872, in company with Deputy United States Marshal Minehart, I went to Atoka, in Choctaw Nation, to arrest Isaac Fulson, charged with murder. We were seven days going from Fort Smith to Atoka, one hundred and fifty miles. We spent eleven days' time at Atoka looking for Fulson, after which we concluded to abandon the search; but, while there, Deputy Marshal Minehart learned, that one Richard Childs, some time previous to our arrival, had committed an assault on one Monroe Reed, whereupon Minehart arrested Childs and delivered him to me to bring to Fort Smith, which I did. Minehart also summoned Monroe Reed, Tuck Downing, and Cezar Chicocat as witnesses. I started for Fort Smith in company with Deputy Marshal Eugene A. Kline. He had two prisoners; one of them was Monroe Reed, the man on whom the assault was said to have been committed, the other was called Willis. He told me that he arrested him for peddling whiskey. Kline and myself brought the three prisoners from Atoka to Fort Smith. No other person or persons were with us. We arrived in Fort Smith on the 20th or 21st of October, 1872. I am positive as to time, for there was a circus in town the next day after our arrival. We were thirteen days coming from Atoka to Fort Smith. Kline and myself rode on horseback, and our prisoners walked. Mr. Minehart was not with us when we left Atoka. He said he was going into the Chickasaw Nation to try to find Fulson. About two weeks after my arrival in Fort Smith, Minehart came in, bringing Fulson, who he said he had captured in the Chickasaw Nation. Minehart directed me when I left Atoka to bring Childs to Fort Smith, and deliver him to William Ish, his partner, which I did. My prisoner Childs was taken by Ish and put in jail. After Minehart returned to Fort Smith, Childs was taken before Commissioner Brooks for examination. The witnesses that Minehart had summoned in the Childs case were in Fort Smith waiting for Minehart to come in. Minehart had no warrant for Richard Childs at the time he made the arrest. He got the warrant when he returned from the Chickasaw Nation, which must have been early in November, 1872. A few days after the examination of the case before Commissioner Brooks, Mr. Minehart came to me with an account which he said he had made out for me. I went with him to E. J. Brooks's office. I signed my name to the paper; the commissioner charged me 50 cents. I was not sworn to the account at all. The account was made out for thirty-four days' service as *posse comitatus*, which is not correct. I am only entitled to service for fifteen days in the Childs case. I am positive that the warrant for the arrest of Richard Childs was issued by Commissioner Brooks after our return from Atoka.

HENRY JONES.

Sworn to and subscribed before me this 11th day of August, 1873.

J. W. FULLER,  
Mayor of City Fort Smith.

THE STATE OF ARKANSAS,  
Sebastian County, ss :

Personally appeared before me, J. W. Fuller, mayor of Fort Smith, Nathaniel Williams, who, being duly sworn, deposes as follows :

Some time in the month of July, 1872, I was employed by Deputy United States Marshal Donaldson to ride with him as a *posse comitatus*. We went into the Indian country to hunt up cases. While out on a trip, we learned that one James McIlvoy had committed an assault on some person. We arrested McIlvoy near Middle Boggy, about one hundred and sixty-five miles from Fort Smith. At the same place and at the same time, or thereabouts, we arrested Mrs. O'Shay for selling liquor. We started immediately for Fort Smith. Deputy Marshal Donaldson and myself were the only persons in

charge of the above-named prisoners. Deputy United States Marshal James Herron, and his posse, F. C. Robinson, came to Fort Smith with us; they also had two prisoners; they arrested them at or near the same place where we got ours. We had no warrants for any of the prisoners. I think the warrants were issued by E. J. Brooks. Donaldson had two prisoners and Herron had two. They had only two men riding as posse, myself and F. C. Robinson. I can't remember the names of the prisoners that Herron brought in; they were two Irishmen. I received a posse account for twenty-five days' services. The warrants were dated back by the commissioner. Deputy United States Marshal Herron returned one of his witnesses as a posse. He summoned the man to appear as a witness, and when he got here he put in an account for him as a posse. He found the man at Little Boggy. We left Fort Smith about the 20th of July, and returned about the 18th of August, 1872. Marshal Donaldson gave me a voucher for twenty-five days' services as a *posse comitatus*.

NATHANIEL WILLIAMS.

Subscribed and sworn to before me this 18th day of August, A. D. 1873.

J. W. FULLER,  
Mayor of Fort Smith, Ark.

THE STATE OF ARKANSAS,  
Sebastian County, ss :

Personally appeared before me, J. W. Fuller, mayor of the city of Fort Smith, T. E. Lacy, who, being duly sworn, deposes as follows :

Am a resident of Muskogee, Creek Nation, Indian Territory. Some time about the 18th of October, 1872, I was employed by Deputy United States Marshal David L. Winton to serve as his *posse comitatus*. At the time I was so employed my home was at Muskogee, though I was in Fort Smith, in attendance before United States commissioner, as a witness. We went to the Indian country to arrest Williard Robinson. We arrested him at the Arkansas bridge, ninety miles from Fort Smith. After arresting Robinson we went after a man by the name of Phillips, up near the Kansas line. We arrested him, and he afterward escaped. On this trip we arrested and brought to Fort Smith four prisoners, to wit, Williard Robinson, Morris Tucker, One Tibbits, and Grace Musgrove. I only assisted in the arrest of Williard Robinson and Phillips and Tibbits. Deputy Marshal Winton, Van Horn, and myself were the only parties that were in charge of the prisoners. I did not assist in the arrest of Grace Musgrove. We had warrants for Williard S. Robinson, William Phillips, and one Tibbits. I don't think the marshal had any warrants for Morris Tucker or Grace Musgrove. The first that I knew of the arrest of Grace Musgrove, I saw her in a wagon with the other prisoners as we were about to start. I was handed an account for service as a *posse comitatus* in the Musgrove case. James Donley handed me the account. The account was for twenty-eight days' services. I was really in the employment of Deputy Marshal Winton thirty-eight days. I was only engaged three days in guarding Grace Musgrove to Fort Smith. I did not know that I was to be returned as a posse in her case. I had rendered service in other cases but not in hers. Mr. Winton, while at Muskogee, employed a man by the name of Smith, as a posse. He come with us to Fort Smith.

T. E. LACY.

Subscribed and sworn to before me this 19th day of August, 1873.

J. W. FULLER,  
Mayor City of Fort Smith, Ark.

On the 20th day of August, 1873, W. T. Armstrong was returned as a *posse comitatus* in the case of the United States vs. Nat. Hawkins, charged with larceny in the Indian Nation. Thirty days' services as *posse comitatus*, in assisting T. E. Lacy to arrest Nat. Hawkins. Lacy lives at Muskogee. On the 1st of July, Lacy told me that he had some prisoners arrested and was guarding them. He said he would not bring them to Fort Smith until he got warrants. He was not out doing service.

L. B. WHITNEY.

THE STATE OF ARKANSAS,  
Sebastian County, ss :

Personally appeared before J. W. Fuller, mayor of the city of Fort Smith, Ark., J. M. Riggs, who, being duly sworn, deposes as follows :

I live in Sebastian County, about two miles from Fort Smith. I am a farmer. I know Mr. John Duval; he was deputy marshal under W. A. Britten. I know E. J. Brooks; he is United States commissioner. I never signed my name to a voucher or claim before Commissioner Brooks, purporting to be for services rendered in the arrest of Henry Bruner, charged with assault with intent to kill. I never served with Deputy Marshal Duval as a posse in this case. I did not sign my name, by cross-mark, to the account, voucher, or claim for service as a *posse comitatus* in the arrest of Henry Bruner aforesaid. I did not authorize Mr. Duval, or any other man, to sign my name or make

my mark to any voucher, account, or claim for services in case aforesaid. I can write my name. I never sign my name by cross-mark. I was not present when my name was signed. Commissioner E. J. Brooks never certified to an account for me for services rendered as a *posse comitatus* in the case of the United States against Henry Bruner.

J. M. RIGGS.

Subscribed and sworn to before me this 23d day of August, 1873.

J. W. FULLER,  
Mayor Fort Smith, Ark.

THE STATE OF ARKANSAS,  
Sebastian County, ss :

This day personally appeared before me, J. W. Fuller, mayor of the city of Fort Smith, Ark., Eugene Marshand and Talis Carter, of the county and State aforesaid, who, being duly sworn, depose as follows:

Our names are Eugene Marshand and Talis Carter. We live at Fort Smith, in the county of Sebastian, State of Arkansas. Some time in the latter part of August, 1872, we made an agreement with W. A. Harris, deputy United States marshal, as follows: Mr. Harris loaned us his commission as deputy marshal, with the understanding and agreement that we were to travel in the Indian country and make arrests of parties and bring them to Fort Smith; that upon our arrival here with prisoners Mr. Harris would procure warrants from the commissioner and make the return thereon, and after deducting the expense of feeding prisoners while *en route* to Fort Smith, the balance of all fees in the case was to be divided equally between the deputy marshal, Mr. Carter, and myself. The first trip that we made in the Indian country was in September, 1872. After leaving Fort Smith the first place that we stopped at was Stringtown. We inquired of an acquaintance if he knew of any person that had committed any violations in the Territory lately. He said he did not. We went from there to Boggy Depot, at which place we made a like inquiry, and were informed by a Choctaw boy that one Cezar Chicot had some time previous to our coming stolen a pony. We immediately commenced to look for Chicot, and shortly thereafter found and arrested him and started with him for Fort Smith. On our arrival in Fort Smith we delivered our prisoner to Deputy Marshal W. A. Harris. Our prisoner brought his own horse with him to Fort Smith. About two days after our arrival here the deputy marshal made an affidavit before Commissioner Brooks, and obtained a warrant charging the defendant with stealing a horse. We arrived in Fort Smith on the 25th day of September, 1872, with our prisoner. We arrested the prisoner near Carriaga Point, on Red River, in Chickasaw Nation, two hundred miles from Fort Smith. The prisoner was discharged by the commissioner. His pony was given to an attorney for defending him, (Attorney Gage.) Deputy Marshal Harris made out our account for services as *posse comitatus*. We were allowed twenty-four days' service, at \$3 per day. We were taken by Deputy Marshal Harris before Commissioner E. J. Brooks to swear to our accounts. Marshal Harris was not with us during the above trip. He remained in Fort Smith. There was no person with us on the trip except the prisoner named. Deputy Marshal Harris made the return of the warrant and swore to the service before Commissioner Brooks. He did not obtain the warrant until we got to Fort Smith with the prisoner. Commissioner Brooks dated the warrant back so that we could put in our full time. I am positive of the above, for Brooks demanded his fees before he issued the warrant. When we left Fort Smith on the 2d day of September, 1872, Deputy Marshal Harris nor either of us had any information of any violation having been committed by the said Cezar Chicot, or any other person. We were instructed to go into the Indian country and if we could find any person against whom we could make a case, to bring them in. We did so.

Eugene Marshand further states that Deputy Marshal Harris met him on the street and handed him his account for service as a *posse comitatus* in this case, telling him to go before Commissioner Brooks and swear to the account; that he, Harris, had seen Brooks and made it all right.

EUGENE MARSCHAND.

his  
TALIS + CARTER.  
mark.

L. B. WHITNEY, witness.

Sworn to and subscribed before me this 12th day of August, 1873.

J. W. FULLER,  
Mayor City Fort Smith, Ark.

STATE OF ARKANSAS,  
County of Sebastian, ss :

This day personally appeared Tid Cooper, late a posse to H. C. Donaldson, United States deputy marshal for or under W. A. Britton, United States marshal for the west-

ern district of Arkansas, during the year 1872. I left Fort Smith on or about the 16th day of October, 1872, and had writs for several persons, but had no writ for See Ammon; but when near old man Rencod's we learned that See Ammon had stolen a cow from Wm. Colbert, near Boggy Depot, one hundred and fifty miles from Fort Smith. We did not arrest See Ammon when we went up, but continued on through the Choctaw Nation to Read River, and arrested two men for selling whisky. Had no writs for the whisky men, but caught the men with the whisky, and brought them to Fort Smith, and obtained writs for them after we returned to Fort Smith, and the writs were dated back to cover the time from the day the men were arrested. Think the writs were got out before Commissioner J. O. Churchill, United States commissioner.

From Read River we returned back through Boggy Depot, and arrested See Ammon, and brought all three prisoners to Fort Smith. We were gone twenty-four days from the time we left Fort Smith until we returned. I made no other claim against the Government for my services on this trip. The posse account I swore to calls for \$72. There were no other posse with us. I live in Fort Smith, Sebastian County, Ark., and have lived here for five years. I am a colored man.

his  
TID + COOPER.  
mark.

Sworn to and subscribed to before me this 12th day of August, 1873.

J. W. FULLER,  
Mayor City Fort Smith, Ark.

Nathaniel Williams, colored, states on oath: I rode as *posse comitatus* with Mr. F. Rounds. On the 8th of October, 1872, left Fort Smith to arrest one George Johnson. Gone about eleven days. Found the man near Boggy Depot. Boggy Depot is one hundred and fifty miles distant. Went on horseback to Boggy Depot, and then twenty miles farther. Went in three days and a half. Arrested no one else, and subpoenaed no one. James Hodges arrested the man. Hodges was riding under Round's commission. I saw the commission of Rounds in Hodges's hands. George Johnson was at a spring in the Indian country. He had a canteen of whisky. He gave me and Hodges a drink, and it was for this that he was arrested. Rounds was not along, and did not leave Fort Smith. Rounds made the return of the warrant. Johnson is a young Indian—a Chickasaw. Jim Hodges was giving Rounds one-half of the proceeds, and was riding for him on his commission at that rate. Johnson was brought in and examined before the commissioner—Churchill. He gave bond, went away, and I have never seen him since. If he has been tried I don't know it. We went out to hunt up cases. Knew there were violations, and we went out to stir them up. Hodges and myself arrested James Herring, (under Round's commission;) found him fifteen miles from town. He was brought here, put in jail, got out on bond, and died during term of court. I got no voucher or pay as *posse comitatus* in case of Herring. It was somehow fixed up so that I got nothing. Think Rounds made the return on the warrant. James Hodges and myself were the ones who arrested Herring. Rounds was not along. I swore to *posse comitatus* account before Churchill. Donnelly made out the account, and told me to have it sworn to before some commissioner.

NATHANIEL WILLIAMS.

Subscribed and sworn this 8th August, 1873.

L. B. WHITNEY.

#### EXHIBIT O.

##### *Amended statement of differences.*

Balance due the late marshal per his last account-current.....	\$34,883 31
Balance due the United States per this statement .....	8,991 60
Difference .....	43,874 91
Arising as follows:	
Differences outstanding, per report 38,938 unexplained, (credited in account, November term, 1872, part 3, report 43,368) .....	807 41
Amount of warrants 1602, and 1613 charged herein, not credited by the marshal, (credited in account, November term, 1872, part 3, report 43,368) .....	33,500 00
Differences now made:	

*Account, September term, 1872, district court, Helena.*

1. Abstract 4, voucher 7.—Case <i>vs. R. M. Davis</i> ; all fees of Deputy Penfield suspended for nature of complaint .....	\$29 84
2. Abstract 5, voucher 1.—Overcharge for support of Henry Reed, a United States prisoner. From July 1 to August 31, is 62, not 81 days, as charged; disallowed 19 days, at 75 cents each .....	14 25
3. Abstract 6, voucher 8.—Amount paid for telegraphing suspended until it is shown that the same is properly chargeable to the United States .....	33 00
4. Commissions charged in this account more than allowed .....	95

*Account, November term, 1872, part 2, district court, Fort Smith.*

5. Abstract 3.—All disbursements to witnesses for attendance on commissioner's courts suspended for evidence of payment, and until a complete exhibit is made of all the due-bills issued by the marshal, and until those that have been redeemed by him are filed here. It is proved that the marshal issued due-bills to witnesses, and others, whom he did not pay, and then claimed credit for alleged payments .....	2,598 45
6. Abstract 4, voucher 11.—Case <i>vs. J. T. Brackett</i> , mileage on subpoena, transportation of prisoner, and meals for prisoner while traveling, disallowed, as deputy had no writs. If any process was served, it was done at Fort Smith. (See Whitney's report to the Attorney-General, Deputy Duval's affidavit) .....	52 25
7. Abstract 4, voucher 11.—Case <i>vs. French</i> ; like disallowance as in item 6, and for like reasons .....	126 75
8. Abstract 4, voucher 11.—Case <i>vs. Bruner</i> ; all charges in excess of three hundred miles to serve process in Chickasaw Nation and transportation returning to Fort Smith disallowed. Deputy J. N. Smith, in his affidavit filed with Whitney's report to the Attorney-General, states that three "hundred miles will take you to the limits of Chickasaw Nation," (three hundred and fifty miles charged) .....	13 00
9. Abstract 4, voucher 14.—Deputy Fitzhenry, all charges for services suspended for evidence that the same were actually rendered as charged. Deputy Shoemaker makes affidavit (filed with Whitney's report) that Deputy Fitzhenry never did "any riding" .....	649 90
10. Abstract 4, voucher 15.—Case <i>vs. Transportation of prisoners and guards</i> ; meals for same and mileage on subpoena disallowed. If any process was served it was done at Fort Smith, the marshal obtaining the warrant after return from the Indian country .....	144 00
11. Abstract 4, voucher 15.—Case <i>vs. McGrew</i> , like disallowance as in item 8, and for like reasons (three hundred and twenty-five miles) charged .....	6 50
12. Abstract 4, voucher 16.—Cases <i>vs. Clish vs. Brown</i> ; like disallowance as in item 8, and for like reasons, (335 miles charged) .....	16 80
13. Abstract 4, voucher 17.—Case <i>vs. one Thomas</i> ; like disallowance as in item 8, and for like reasons, (400 miles charged) .....	26 00
14. Abstract 4, voucher 18.—Case <i>vs. James Murphy</i> ; like disallowance as in item 10, and for like reasons .....	122 85
15. Abstract 4, voucher 22.—Case <i>vs. Williams</i> ; like disallowance as in item 8, and for like reasons, (355 miles charged) .....	14 30
16. Abstract 4, voucher 24.—Error in addition of voucher, \$439.70; should be \$437.70 .....	2 00
17. Abstract 4, voucher 25.—Case <i>vs. Marshal and Klein</i> , mileage on <i>sci. fas.</i> served in Cherokee Nation, September 7, disallowed, as the same is charged and allowed on two other <i>sci. fas.</i> served same locality, same day .....	12 00
18. Abstract 4, voucher 26.—Case <i>vs. Merrill</i> , Deputy Irwin, mileage on subpoena served in Chickasaw Nation, 2d September, disallowed for like reasons as in item 17 .....	18 00
19. Abstract 4, voucher 26.—Case <i>vs. H. Chalk</i> ; like disallowance as in item 6, and for like reasons .....	66 50
20. Abstract 4, voucher 29.—Case <i>vs. Frahm</i> ; like disallowance as in item 8, and for like reasons, (400 miles charged) .....	26 00
21. Abstract 4, voucher 31.—Case <i>vs. Vaunoy</i> ; like disallowance as in item 8 and for like reasons, (375 miles charged,) .....	19 50



22. Abstract 4, voucher 31.—Case <i>vs. McCauley</i> ; return transportation of prisoner and two guards, R. and S. P. Brown, and meals for prisoner, disallowed for like reason as in item 10.....	\$148 50
23. Abstract 4, voucher 39.—Case <i>vs. Huson</i> ; return transportation of deputy and prisoner, mileage on subpoena, and meals for prisoner, disallowed as in item 10, and for like reasons.....	67 75
24. Abstract 4, voucher 48.—Deputy Robinson; all fees suspended as in item 9, and for like reasons.....	118 25
25. Abstract 4, voucher 55.—Deputy Scott; all fees in the three cases in this voucher disallowed. Mr. Scott, in his affidavit, states that he was sick the entire period covered by the voucher, and returned to Fort Smith without making a single arrest. (See affidavit with Whitney's report).....	537 50
26. Abstract 4, voucher 56.—Deputy Donnelly; all fees suspended as in item 9, and for like reasons.....	469 70
27. Abstract 4, voucher 57.—Case <i>vs. Elborn</i> ; like disallowance as in item 8, and for like reasons, (325 miles charged).....	6 50
28. Abstract 4, voucher 58.—Case <i>vs. Spaniard</i> , Case <i>vs. McGhee et al.</i> , and <i>vs. Marshal</i> ; like disallowance as in item 8, and for like reasons, (325 miles charged).....	22 00
29. Abstract 4, voucher 59.—Cases <i>vs. Andy Saunders</i> , \$99.75 <i>vs. Moses Downing</i> , \$141.75, and <i>vs. Sam. Larnie</i> , \$81.75; like disallowance as in item 10, and for like reasons. (See Gardiner's affidavit).....	323 25
30. Abstract 4, voucher 60.—Case <i>vs. Ballew</i> ; return transportation of deputy and prisoner, \$96, and meals for prisoner while traveling, \$40.50, disallowed, as prisoner was discharged on bail, near place of arrest. (See Deputy Scoville's affidavit with Whitney's report to the Attorney-General).....	136 50
31. Abstract 4, voucher 61.—Case <i>vs. Groswell &amp; Johnson</i> . Like disallowance as in item 6, and for like reasons. (See Deputy Scoville's affidavit.).....	205 80
32. Abstract 4, voucher 65.—Case <i>vs. Finn</i> and <i>vs. Hamlin</i> . Like disallowance as in item 8, and for like reasons, (350 miles charged).....	18 00
33. Abstract 4, voucher 66.—Case <i>vs. Warfield &amp; Edmonds</i> . Like disallowance as in item 8, and for like reasons, (350 miles charged).....	21 00
34. Abstract 4, voucher 67.—Deputy Wessler. Like disallowance as in item 9, and for like reasons. If this item is again considered, deduct overcharge for mileage to Chickasaw Nation, as in item 8, (325 miles charged).....	169 60
35. Abstract 4, voucher 71.—Case <i>vs. Semmons</i> . Service of subpoena by Deputy Hawkins, and mileage on same to Creek Nation; suspended for names of witnesses.....	13 00
36. Abstract 4, voucher 72.—Case <i>vs. Ellis</i> . Like disallowance as in item 8, and for like reasons, (375 miles charged).....	19 50
37. Abstract 4, voucher 73. Cases <i>vs. Jim. Christian et al.</i> , \$54; <i>vs. J. Stultz</i> , \$24; <i>vs. W. Dreve</i> , \$16, and <i>vs. E. Dreve</i> , \$36. Like disallowance as in item 8, and for like reasons, (450 and 400 miles charged).....	130 00
38. Abstract 4, voucher 75.—Case <i>vs. Charles Davis</i> . Like disallowance as in item 10, and for like reasons. (See Deputy Scoville's affidavit, with Whitney's report).....	217 20
39. Abstract 4, voucher 77.—Case <i>vs. Cheatam</i> . Like disallowance as in item 8, and for like reasons, (350 miles charged).....	3 00
40. Abstract 4, voucher 80.—Case <i>vs. Cook &amp; Rice</i> . Like disallowance as in item 10, and for like reasons.....	136 10
41. Abstract 4, voucher 80.—Case <i>vs. Rector et al.</i> Service of subpoena at Baxter Springs, Kans., by Deputy Ayers, and mileage on same suspended for evidence that the marshal or one of his regular deputies actually performed the travel and personally served the writ.....	13 00
42. Abstract 4, voucher 83.—(In part.) Charge, "Larceny in the Indian country." Deputy W. S. Birnie. All fees suspended until name of defendant is stated.....	165 25
43. Abstract 4, voucher 85.—Case <i>vs. Thomas Dana</i> . Like disallowance as in item 6, and for like reasons. (See Deputy Foster's affidavit with Whitney's Report).....	152 70
44. Abstract 4, voucher 88.—Case <i>vs. Hock</i> . Like disallowance as in item 10, and for like reasons.....	41 25
45. Abstract 4, voucher 89.—Case <i>vs. Keys</i> . Like disallowance as in item 8, and for like reasons, (350 miles charged).....	13 00
46. Abstract 4, voucher 91.—Case <i>vs. Moore</i> . Like disallowance as in item 8, and for like reasons, (400 miles charged).....	26 00



47. Abstract 4, voucher 95.—Case <i>vs. Duke &amp; Duke</i> . Like disallowance as in item 8, and for like reason, (350 miles charged).....	\$21 00
48. Abstract 4, voucher 95.—Case <i>vs. Trancham and Joe</i> . Return transportation of Deputy Ross disallowed, as same is charged and allowed in case <i>vs. Duke &amp; Duke</i> , who appears to have been brought in at the same time. (See Deputy Ross's affidavit) .....	26 00
49. Abstract 4, voucher 99.—Case <i>vs. Byrd</i> . Like disallowance as in item 10, and for like reasons .....	53 75
50. Abstract 4, voucher 100.—Case <i>vs. Ridge and vs. Blackwat</i> . Like disallowance as in item 8, (375 miles charged).....	31 50
51. Abstract 4, voucher 101.—Case <i>vs. Kerl</i> . Like disallowance as in item 8 and for like reason, (350 miles charged) .....	13 00
52. Abstract 4, voucher 102.—Case <i>vs. 5 horses, 1 wagon, &amp;c.</i> Expenses of keeping horses 30 days, suspended for vouchers.....	105 00
53. Abstract 4, voucher 104.—Case <i>vs. Davie</i> . Like disallowance as in item 8 and for like reasons, (400 miles charged).....	26 00
54. Abstract 4, voucher 105.—Case <i>vs. George Johnson</i> . All fees disallowed. Deputy Rounds did not make the arrest, nor was he with the party who did. (See M. Williams's affidavit).....	82 40
55. Abstract 4, voucher 110.—Cases <i>vs. Mutz and vs. Garvey et al.</i> Like disallowance as in item 8, and for like reason, (350 miles charged) ....	26 00
56. Abstract 4, voucher 111.—Case <i>vs. Connor et al.</i> Like disallowance as in item 9, and for like reasons. (Messler) .....	293 80
57. Abstract 4, voucher 112.—Case <i>vs. Perkins</i> . Like disallowance as in item 8, and for like reason, (425 miles charged).....	32 50
58. Abstract 4, voucher 113.—Case <i>vs. Buhring</i> . Like disallowance as in item 9, and for like reasons. (Messler, deputy).....	110 40
59. Abstract 6, voucher 4.—Amount paid J. H. Willis as posse in case of one French, disallowed. Marshal had no warrant for the person arrested and could not legally employ a posse. (See Duval's affidavit.) .....	66 00
60. Abstract 6, voucher 5.—Amount paid P. H. Geiger for services as posse in Case <i>vs. Henry Buren</i> , disallowed, as Mr. Geiger performed no service and was not of the party who made the arrest. (See Deputy Duval's affidavit).....	96 00
61. Abstract 6, voucher 6.—Amount paid J. W. Riggs for services as posse in Case <i>vs. Brackett</i> , disallowed as in item 59, and for like reasons. ....	27 00
62. Abstract 6, voucher 16.—Amount paid W. Watie as posse in Case <i>vs. Andy Saunders</i> , disallowed for like reason as in item 60. (See Gardiner's affidavit) .....	90 00
63. Abstract 6, voucher 18.—Amount paid Geo. Bennett for services as posse in Case <i>vs. L. Larue</i> , disallowed for like reasons as in item 60. (See Gardiner's affidavit).....	90 00
64. Abstract 6, voucher 19.—Amount paid F. Jones for services as posse in Case <i>vs. Larue</i> , disallowed for like reason as in item 60. (See Gardiner's affidavit).....	90 00
65. Abstract 6, voucher 34.—Amount paid Thomas Anderson for services as posse in Case <i>vs. Hawkins &amp; Looper</i> , disallowed for like reason as in item 60. (See Scott's affidavit).....	84 00
66. Abstract 6, voucher 34.—Amount paid C. H. Myers for services as posse in Case <i>vs. Anderson</i> , disallowed as in item 60 .....	84 00
67. Abstract 6, voucher 35.—Amount paid William Baxter for services as posse in Case <i>vs. Anderson</i> , disallowed as in item 60 .....	84 00
68. Abstract 6, voucher 59.—Case <i>vs. R. D. Galloway</i> for services as posse in case <i>vs. Huson</i> , disallowed as in item 59 .....	21 00
69. Abstract 6, voucher 64.—Amount due John C. Foster for services as posse in case <i>vs. Josiah Brown</i> , suspended for witness to + mark to affidavit .....	96 00
70. Abstract 6, voucher 114.—Amount due Wm. Livingston for services as posse in case <i>vs. John Smith</i> , suspended for witness to + mark to receipt.....	87 00
71. Abstract 6, voucher 115.—Amount due Sut. Beck as posse in case <i>vs. Alvord</i> , disallowed; Mr. Beck has not been paid, as a certificate for amount due him is held by another party, (see letter of Sanborn & King, dated October 24, 1873, with this account) .....	108 00
72. Abstract 6, voucher 124.—Amount paid F. M. Van Horn for services as posse in case <i>vs. Goodrich &amp; Painter</i> , disallowed, as in item 60, (see Scoville's affidavit).....	108 00
73. Abstract 6, voucher 134.—Amount paid Jonas Schaub for services as posse in case <i>vs. Ballow</i> , disallowed for like reason as in item 60, (see Scoville's affidavit).....	108 00

74. Abstract 6, voucher 1137.—Amount paid R. P. Wilson for services as posse in case <i>vs.</i> Goodrich & Painter, disallowed as in item 60, (see Scoville's affidavit) .....	\$108 00
75. Abstract 6, voucher 160.—Amount paid Robert Casey for services as posse in case <i>vs.</i> Trantham and Mexican Joe, disallowed for like reason as in item 60, (see Deputy Wilkinson's affidavit) .....	42 00
76. Abstract 6, voucher 177.—Amount paid Frank Thomas for services as posse in case <i>vs.</i> Davis, disallowed for like reason as in item 60, (see Scoville's affidavit) .....	108 00
77. Abstract 6, voucher 182.—Case <i>vs.</i> two mules, one wagon, &c. Amount due Daniel Webster for publishing notice of marshal's sale, suspended for receipt .....	3 00
Commissions charged in this account more than allowed .....	81 96
	<hr/> 43, 877 91

Deduct following credit differences, viz :

Abstract 4, voucher 86.—Account for November term, case <i>vs.</i> J. French, service for subpoena on two witnesses in the Chickasaw Nation, nothing charged, allow .....	\$1 00
Abstract 4, voucher 106.—Case <i>vs.</i> Dickson, error in addition of fees, \$84.50 ; should be \$86.50 .....	2 00
	<hr/> 3 00
Showing the above difference .....	43, 874 91

W. H. NESSLE.

COMPTROLLER'S OFFICE, January 29, 1874.

39, 328.

#### EXHIBIT P.

*Statement of differences, account William A. Britton, late United States marshal.*

Item 9. Deputy Fitzhenry. All charges for services suspended for evidence that the same were actually rendered as charged. Deputy Shoemaker makes affidavit (filed with Whitney's report) that Deputy Fitzhenry never did any riding .....	\$649 90
Item 24. Suspended as in item 9, Charley Robinson .....	\$118 25
Item 26. Suspended as in item 9, Robert Donnelly .....	469 70
Item 34. Suspended as in item 9, C. D. Mester .....	169 60
Item 56. Suspended as in item 9, C. D. Mester .....	293 80
Item 58. Suspended as in item 9, C. D. Mester .....	110 40
	<hr/> 1, 161 75

Shoemaker says not one word in relation to these men as to their riding under Britton; he does not say that they did no riding for Britton. All his testimony in relation to that subject is in relation to Roots's administration. Please examine his affidavit and the correctness of our statement will be verified. We refer to affidavits herewith filed as evidence in this matter, and respectfully ask attention to them.

W. A. BRITTON,  
Late Marshal Western District Arkansas.  
By his counsel, JAMES. S. ROBINSON.

Item 42. The name of the defendant is Joseph Bowlin.

Item 17. This should be allowed for the reason that deputy marshals are allowed mileage upon all writs placed in their hands and served by them.

Item 3. This should be allowed, (see affidavit upon the voucher,) as the same was necessary and proper in the transaction of the business of the United States.

Item 41. This should be allowed for the reason that Baxter Springs is only a few miles beyond the line of the district, and the travel was actually performed.

Items 77 to 182. This should be allowed. (See statement of Mr. Britton upon the voucher.)

Items 52 to 102. This should be allowed. (See affidavit upon the voucher proving payment in full to J. C. Wilkinson.)

Item 25 and Abstract 4.

Items 65, 66, 67, Abstract 6.

These vouchers should be allowed, for the following reasons:

1st. Scott was evidently mistaken as to time; it was the last of September when he left Fort Smith, instead of the last of August, and this is apparent when we calculate the time specified by him. He says about the last of August he was taken sick at a place called Blue River; staid there three weeks, and staid in the Choctaw Nation four or five weeks; came into Fort Smith after the presidential election. Now, this statement gives him a part of the month of August, all of September and October, and a part of November; say one week in August. September and October together have sixty-one days, divided by seven makes eight weeks and five days, and, as he came in after the presidential election, say two weeks in November, making a total of eleven weeks and five days. So that the mistake is patent upon the face of the affidavit as to time. Give Scott the longest time he claims, but eight weeks, and give us the benefit of his doubt, "four or five weeks," and we have but seven weeks. Now, place it in the last of September, give him one week in that month, four weeks and three days in October, and two weeks in November, and you have a total of seven weeks and three days. Surely this must be right.

2d. The officer testifies that Scott was sworn before him in Fort Smith on the 24th of September, and each of the posse sworn on the same day and at the same place before the same officer. I submit, would not an officer be sure to have the time correct, and would not his jurat be evidence of the time in preference to an individual who did nothing to direct his attention to the time?

3d. When Mr. Whitney took the affidavit of Scott it is patent that it had nothing to do with these vouchers. Mr. Whitney put no mark upon them suggesting that they were fraudulent. Scott was not examined in relation to them, but wholly in reference to other matters; his affidavit is in reference to the case of the United States *vs.* Hendrit and Sands, and the service of a subpoena in the case of the United States *vs.* Isaac Fulsome, neither of which is in these vouchers, and we hope that this will be looked into fully.

4th. We refer with confidence to the signature of Scott to the voucher and to each one of the posse accounts, and assert that they are *his genuine signature*, and ask that a comparison be instituted between the signature to the vouchers and his signature to the affidavit taken by Mr. Whitney, and made a part of his report, and other signatures on vouchers from time to time on file in the office made by him. From which we conclude that Mr. Scott was only mistaken as to time; that he actually rendered the service specified in the voucher; and we are satisfied that had his attention been called to these cases, he would have stated they are correct.

Item 26. This should be allowed for the reason that deputy marshals are entitled to mileage upon all writs placed in their hands and served by them.

Items 54 to 105. This should be allowed. There is no allusion whatever to the case in the affidavit of Williams.

Item 30. This case should be allowed for the reason that the prisoner did not come to Fort Smith upon his unlawful bail that he had given in the Chickasaw Nation, but wholly failed, and Deputy Wilkinson had to return and re-arrest him, and bring him to Fort Smith; and this is what the voucher and posse accounts are for.

Items 75 to 160. This should be allowed. Not one word in Wilkinson's affidavit about the *posse comitatus* or case in which the service was rendered.

Abstract 4, voucher 8. Case against Bruner. All charges in excess of 300 miles to serve process in the Chickasaw Nation and transportation returning to Fort Smith disallowed. Deputy J. N. Smith, in his affidavit filed with Whitney's report to the Attorney-General, states that 300 miles will take you to the limits of Chickasaw Nation.

350 miles charged	\$13 00
11. 335 miles charged	6 50
12. 335 miles charged	16 80
13. 400 miles charged	26 00
15. 335 miles charged	14 30
20. 400 miles charged	26 00
21. 375 miles charged	19 50
27. 325 miles charged	6 50
28. 325 miles charged	22 00
32. 350 miles charged	18 00
33. 350 miles charged	21 00
36. 375 miles charged	19 50
37. 450 and 400 miles charged	130 00
39. 350 miles charged	3 00
45. 350 miles charged	13 00
46. 400 miles charged	26 00
47. 350 miles charged	21 00
50. 375 miles charged	31 50

51. 350 miles charged.....	\$13 00
53. 400 miles charged.....	26 00
55. 350 miles charged.....	26 00
57. 425 miles charged.....	32 50

Total ..... 523 60

In this matter there are now before the Department twenty-one sworn statements by the parties who did the service that they traveled the distances actually charged and made the arrests in the Chickasaw Nation. Are not twenty-one affidavits superior to one? But, in addition, Scoville's affidavit, taken by Whitney, and set out in his report as being entitled to great credit, says: "We next arrested John Johnson, a negro charged with larceny or horse-stealing. We found him in the Chickasaw Nation, 440 miles from Fort Smith." "We next arrested one Davis, charged with larceny. We found him in the Chickasaw Nation, 450 miles from Fort Smith." "We arrested William Gosnell and John Johnson, white men, charged with larceny. We found them at Antelope Hill, in the Chickasaw Nation, 500 miles from Fort Smith." "We arrested one Goodridge and one Painter, charged with larceny. We found them in the Chickasaw Nation, 450 miles from Fort Smith."

Next in Whitney's report is the affidavit of Joseph H. Willard. He says: "I arrested Wallace Hall and Ashley Phillips. I found them at the extreme end of the Chickasaw Nation, 500 miles from Fort Smith. I arrested one Thomas Burns and one Pompey. I found them at the extreme end of the Chickasaw Nation. This arrest of the above defendants was about 450 miles from Fort Smith."

In this report is the affidavit of W. C. Ross: "The defendant was arrested in Chickasaw Nation, about 350 miles from Fort Smith."

Again, Josiah Foster, in his affidavit in this report, says: "I arrested Thomas Dana in the Chickasaw Nation, about 400 miles from Fort Smith."

Here he rests, confident that the above disallowances will be reviewed, and, upon review, be allowed him, as they are just and proper.

W. A. BRITTON,

*Late Marshal of the Western District Arkansas,*  
By his counsel, JAMES S. ROBINSON.

Cases in which it is alleged writs were antedated:

Item 6. Case <i>vs.</i> J. T. Brucket, mileage on subpoenas, transportation of prisoner, and meals for prisoner while traveling. Disallowed, as deputy had no writs. If any process was served, it was done at Fort Smith. (See Whitney's report to the Attorney-General, Duvo's affidavit).....	\$52 25
Item 7. Case <i>vs.</i> French. Like disallowance as in item 6, and for like reasons.....	126 75
Item 10. Case <i>vs.</i> Transportation of prisoner and guards, meals for same, and mileage on subpoena. Disallowed. If any process was served it was done at Fort Smith, the marshal obtaining the warrant after return from the Indian country.....	144 00
Item 14. Case <i>vs.</i> James Murphy. Like disallowance as in item 10, and for like reasons.....	122 85
Item 19. Case <i>vs.</i> H. Chalk. Like disallowance as in item 6, and for like reasons.....	66 50
Item 22. Case <i>vs.</i> McCauley. Return transportation of prisoner and two guards, R. and S. P. Brown, and meals for prisoner. Disallowed for like reason as in item 10.....	148 50
Item 23. Case <i>vs.</i> Huson. Return transportation of deputy and prisoner, mileage on subpoena, and meals for prisoner, disallowed as in item 10, and for like reasons.....	67 75
Item 29. Cases <i>vs.</i> Andy Sanders, \$99.75; <i>vs.</i> Moses Downing, \$141.75; and <i>vs.</i> Samuel Larne, \$81.75. Like disallowance as in item 10, and for like reasons.....	323 25
Item 31. Case <i>vs.</i> Gosnell and Johnson. Like disallowance as in item 6, and for like reasons.....	205 80
Item 38. Case <i>vs.</i> Chas. Davis. Like disallowance as in item 10, and for like reasons.....	217 20
Item 40. Case <i>vs.</i> Cook & Rice. Like disallowance as in item 10, and for like reasons.....	136 10
Item 43. Case <i>vs.</i> Thomas Dana. Like disallowance as in item 6, and for like reasons.....	152 70
Item 44. Case <i>vs.</i> Hock. Like disallowance as in item 10, and for like reasons.....	41 25
Item 49. Case <i>vs.</i> Byrd. Like disallowance as in item 10, and for like reasons.....	53 75

Item 59.	Amount paid J. H. Willis as posse, in case of one French. Disallowed. Marshal had no warrant for the person arrested, and could not legally employ a posse.....	\$66 00
Item 61.	Amount paid Jim Riggs for services as posse, case <i>vs.</i> Brackett. Disallowed as in item 59, and for like reasons.....	27 00
Item 68.	Case <i>vs.</i> R. D. Galloway, for services as posse, in case <i>vs.</i> Huson. Disallowed as in item 59.....	21 00
Total amount.....		1,972 85

These arrests were made in good faith, were actual cases, the services actually performed, the parties actually tried, many of them indicted, tried; sentenced, and now in the penitentiary, or have served their time out. Some of these parties were arrested with the stolen property in their possession, others with positive proof at the time of their guilt. Some in the act of selling spirituous liquors in the Indian country without paying the special tax; others caught in the act, of introducing spirituous liquors into the Indian country in violation of the intercourse law, ranging from Fort Smith, the place of holding court, and of obtaining writs, from seventy-five to five hundred miles in the Indian country, and to have attempted to obtain writs by returning to Fort Smith to obtain them, and then returned to have the parties arrested. The violators of the law would have escaped justice with impunity. It was alone in this class of cases that arrests were made without writs. And the Hon. Henry C. Caldwell, who was judge of the district court of the western district of Arkansas for many years, and at present judge of the eastern district of Arkansas, ruled that in such case the arrests must be made as any other course would only tend to the escape of the violators of the law, should an attempt be made after the violation to obtain writs. That the intention of the law evidently was to arrest persons who had violated the law and committed crimes, whether the officer had a writ or not, and especially in such an unprotected country as the Indian country. No person ever questioned the purity, learning, and integrity of that learned judge. The present incumbent has followed the ruling of his predecessor, until complaint by the Department, and yet believes that ruling right. We submit to the Department, would it not be an act of great injustice to Mr. Britton to disallow these vouchers?

1. He followed the ruling of the most eminent judge in the Southern States, who was well advised of the country and the necessity of making this class of arrests.

2. That the present incumbent believed the ruling right and still believes it, and only changed it on complaint of the Department, which change has been made since the cases referred to in the above list.

3. That they are genuine cases; that the service was actually performed.

4. That the marshal has actually paid for the services rendered in these cases in pursuance of the ruling of the court, and his acquiescence therein.

We ask that these disallowances be reviewed, and upon review that they be allowed, as in justice and right we believe they ought to be, and as we believe they will be now that the facts are made apparent, and we refer to the affidavits herewith filed.

W. A. BRITTON,

*Late Marshal Western District of Arkansas,*

By his counsel, JAMES S. ROBINSON.

Item 69.	Amount due John C. Foster for services as posse in case <i>vs.</i> Josiah Brown. Suspended for witness + made to affidavit.....	\$96 00
Item 70.	Amount due William Livingston for services as posse in case <i>vs.</i> John Smith. Suspended for witness to + mark to receipt.....	87 00
Total amount.....		\$183 00

We submit that these items should be received, and upon review the disallowances be set aside, and the allowances made for the reason that the vouchers are each sworn to before the proper officer, and certified to by him in due form of law, and that is conclusive upon the signing and swearing, and is not only equal, but superior, to the signature of any witness to the mark. The law presumes the officer did his duty as stated until the contrary is shown, and inasmuch as Mr. Britton is in possession of them, properly receipted, (and neither Foster nor William Livingston sets up any claim to them, nor any person for them,) that they are his, and that he paid them as specified in the manner required by law.

W. A. BRITTON,

*Late Marshal Western District Arkansas,*

By his counsel, JAMES S. ROBINSON.

Item 48.	Case <i>vs.</i> Tranchum and Joe. Return transportation deputy Ross disallowed, as same is charged and allowed in case <i>vs.</i> Duke and Duke, who appears to have been brought in at the same time.	\$26 00
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Admit that Tranchum and Joe were brought in at the same time that Duke and Duke were, does that prove that in the account in the case of Duke and Duke the proper charge for feeding in the prisoners Tranchum and Joe, and transporting them, is therein included? The amount of this charge shows that it is alone for feeding Tranchum and Joe and transporting them to Fort Smith, and therefore not included in the other account, and we ask that the same be allowed us.

There are many others in this disallowed and suspended list to which we cannot refer at present, but will call attention hereafter.

Item 5. All disbursements to witnesses for attendance on commissioners, courts suspended for evidence of payment, and until a complete exhibit is made of all the due-bills issued by the marshal, and until those that have been redeemed by him are filed here. It is proved that the marshal issued due-bills to witnesses and others whom he did not pay, and then claimed credit for alleged payments..... \$2,598 45

We respectfully ask a review of this suspension, as such suspensions would operate ruinously, by placing it beyond the power of the party ever to comply. 1st. He cannot file an exhibit in the Department of all those that have been redeemed, for the reason that he has paid several thousand dollars of them, and destroyed them as he would any other, believing that after payment they were worthless, and, as a matter of course, unnecessary to his settlement with the Government. (Affidavit marked Exhibit A.)

2d. He asks a review of this suspension for the reason that when Whitney was at Fort Smith, in the State of Arkansas, he collected every one that could be found in the country, and forwarded them here, and gave receipts to the parties owning them; and he here states that there is not, out of the class specified in this suspension, as he verily believes, the sum of one thousand dollars; that he is anxious to pay them, but cannot for the want of the means to do it with; that he is willing for the Government to withhold the sum of one thousand dollars for the payment of those that are outstanding, as that amount will redeem all that are out, less his settlements with his deputies.

He here proposes, if the Government will furnish the means to pay all the liabilities for which this suspension is made, that he will give bonds, with such securities as the Government will be satisfied are ample and sufficient, in double the amount advanced, and will at once proceed and pay them off, and then he will be able to make a clear statement under oath which will be entirely satisfactory. This he cannot do without the means, as he has not the means of his own. In this event he would be able to settle everything, and be done with the matter.

He protests earnestly, but respectfully, against Mr. Whitney's report being used in the settlement of his accounts for the following reasons:

1st. That the so-called investigation was secret.

2d. That the testimony taken was all *ex parte*.

3d. That the counsel of Mr. Britton was refused by Whitney the privilege of being present at the examination, or to take any part in the proceedings.

4th. That Mr. Whitney refused to give Mr. Britton the privilege of being present at the investigation, or to introduce any proof whatever to explain, modify, or contradict any that might be adduced; in fine, would not allow him in or about the examination or investigation.

5th. That Mr. Whitney would not allow James W. Donnelly, Mr. Britton's chief clerk during the time he was marshal, to be present during that so-called investigation and examination.

6th. For the reason that the evidence on file shows that Whitney was in a combination with the clerk to obtain the marshal's office of the western district of Arkansas. Reference is here made to the affidavits, now on file in the Comptroller's office, of James S. Robinson, Willard Ayers, and William A. Britton.

All of which is respectfully submitted.

WILLIAM A. BRITTON,  
Late Marshal Western District of Arkansas,  
By his counsel, JAMES S. ROBINSON.

All of which is respectfully submitted.

WILLIAM A. BRITTON,  
Late Marshal.

*Affidavit of William A. Britton.*

WASHINGTON CITY, District of Columbia :

Personally appeared before the undersigned authority, William A. Britton, who being duly sworn, states that he was marshal of the western district of Arkansas during



a part of the years 1872 and 1873, and that during said time Robert Fitzhenry, Robert Donnelly, C. D. Mesler, and Charles F. Robinson, among others, were commissioned by me as deputy marshals; that Fitzhenry and Donnelly rode a great deal as such, and were among my active deputies during the time that I last held the office; that C. D. Mesler, though not a constant riding deputy marshal, yet made for me several important trips in the Indian country, and during which time he had a man attending to his saloon for him by the name of Fowler; that Charles F. Robinson rode several trips for me upon important service during that time, and I here state that the accounts suspended upon Shoemaker's affidavit are just and true in relation to these men, (though his affidavit says nothing about them in my time whatever.) He further states that the suspensions set out in the items in the statement of differences, numbered 6, 7, 10, 14, 19, 22, 23, 29, 31, 38, 40, 43, 44, 49, 59, 61, and 68, were actual *bona fide* cases, in which there were violations of the criminal-law—some of a grave character; that these arrests were made in good faith; the services actually performed for which the charges are made; many of them were indicted, tried, and sent to the penitentiary; some of them are there now, and others have served their time out; some of these were arrested with the property they had stolen in their possession; others with positive, at the time of their arrest, of their guilt; some in the act of selling spirituous liquors in the Indian country without first having paid the special tax; others caught introducing spirituous liquors into the Indian country in violation of the intercourse law; and these cases being distant from Fort Smith, the place where court is held and where writs are obtained, from seventy-five to five hundred miles, and to have attempted to obtain writs and return to arrest the parties, they would in the mean time have escaped the officers of the law with impunity; it was alone in this class of emergencies that these arrests were made without writs.

The Hon. Henry C. Caldwell, who was judge of the district court of the United States for the western district of Arkansas for many years, and at present judge of the eastern district of Arkansas, that in such cases as those suspended in the abstract of differences for the reason that writs were dated back, he ruled that the parties must be arrested, as any other course could only tend to the escape of the violators of the criminal law; that the intention of the law was to have its violators arrested by the proper officers when they were well advised by seeing the parties, or from positive information obtained, whether they had a writ or not, and he also directed the United States commissioner, James O. Churchill, in such cases to date the writs back so the deputy marshals could get paid for their actual service. The present incumbent followed the ruling of his predecessor until complaint was made by the Department, and still says that the ruling was right, especially in such an unprotected country as the Indian country in the western district of Arkansas, but that he changed his ruling to gratify the Department. All the arrests disallowed in the "statement of differences" were made before the ruling was changed.

He further states that when Mr. Whitney was at Fort Smith, in the western district of Arkansas, last summer, he collected together nearly all the due-bills that had been issued to witnesses and others, except deputy marshal due-bills, and gave receipts to the owners for them, and forwarded them to the Department at Washington; that they are there on file at present; that he desires them paid out of any funds that may be found due him as late marshal of the western district of Arkansas, and he positively states that to the best of his judgment and belief, there are not out, beyond those collected by Mr. Whitney and those paid off by himself, to exceed the sum of one thousand dollars, less his deputy marshal due-bills, which amount, he states, he is willing shall be withheld until payment can be made, and that he will pay the same as soon as he can obtain the means with which to pay them; that the reason they are not paid is that he has no means whatever to pay them with.

He further states that he paid to James S. Robinson fourteen hundred and forty dollars for that amount of those due-bills; that he paid to John H. Rogers the sum of about twenty-one hundred dollars for that amount of those due-bills; that he paid James H. Huckleberry about seven hundred dollars for due-bills; that he paid Mr. Davie about three hundred dollars for due-bills; R. C. Kearns about eleven hundred dollars for due bills; John Reed over two thousand dollars; A. M. Hawkins over three thousand dollars; Mark Jackson five hundred dollars; William Griffith five hundred dollars; Mr. Hook fifteen hundred dollars; and many others that he cannot now remember; that this sum of thirteen thousand one hundred dollars was paid by him in person, and the due-bills destroyed; that it is simply impossible for him to produce them, or to show what particular ones they were by name, number, or amount.

WILLIAM A. BRITTON.

WASHINGTON CITY, District of Columbia:

Subscribed and sworn to before me this the 10th day of February, 1874.

[SEAL.]

JOS. T. K. PLANT,  
Notary Public.

*Affidavit of James S. Robinson.*WASHINGTON CITY, *District of Columbia* :

Personally appeared before the undersigned authority, James S. Robinson, who, being duly sworn, states that during the last time that William A. Britton was marshal of the western district of Arkansas, I resided in the city of Fort Smith, in the State of Arkansas, where I now reside ; that I have often, during said time, seen Robert Fitzhenry and Robert Donnelly get on their horses and start to the Indian country on trips as deputy marshals ; that during said time I was out in the Indian country upon professional business and collecting debts that were due me. I saw Robert Fitzhenry in the Choctaw Nation with two prisoners on his way to Fort Smith. On the same trip I met Robert Donnelly at Fort Gibson, on his way to Fort Smith, with prisoners that he had arrested in the Creek Nation. I know they rode as deputy marshals. Charles F. Robinson was a deputy marshal. I heard of his riding some. Know of but one trip at that time of my own personal knowledge. C. D. Mesler rode several trips. My means of knowledge was this : Mesler kept a saloon ; my office was in the same building. We were intimate friends. I knew when he was gone, and what he went for. I generally defended the men that Mesler arrested. He did not ride regular. Fowler attended his saloon in his absence. William A. Britton paid me for due-bills I had bought from parties, as stated in his affidavit. Rodgers informed me that he had paid him as stated. I have lived in the western district of Arkansas six years. Have been laboriously engaged in the practice of the law, and especially in the district court of the United States in and for the western district of Arkansas, in which court my criminal practice has been very large, and I have been on very intimate terms with the officers of the court, and I here state that it was understood to be the practice of the court that deputy marshals should make arrests of parties without writs in the Indian country, where they saw the offenses committed, or where the evidence was strong of the guilt of the parties, and that the writs should be dated back to the time of the actual arrest of the parties, so that the deputy marshals should get paid for their actual time and actual service. This was based upon the fact that, if the parties were not arrested at the time, before a writ could be obtained they would escape justice, and no protection be afforded the people of the Indian country. This ruling was made by the Hon. Henry C. Caldwell, then judge of the western district, now judge of the eastern district of Arkansas. This ruling was adhered to by the present incumbent until complaint by the Department, since which time it has been changed. The arrests suspended in the "Statement of Differences" were made before the ruling was changed. I know that many of the cases referred were flagrant violations of the criminal law, as I defended the greater number of them.

JAMES S. ROBINSON.

WASHINGTON CITY, *District of Columbia* :

Subscribed and sworn to before me this the 10th day of February, 1874.

[SEAL.]

JOS. T. K. PLANT,  
Notary Public.*Affidavit of E. S. Mitchell and R. C. Kearns.*WASHINGTON CITY, *District of Columbia* :

Personally appeared before the undersigned authority, E. S. Mitchell and R. C. Kearns, who being first duly sworn, state that they reside in the city of Fort Smith, in the State of Arkansas, and resided there during the whole period that William A. Britton was marshal of the western district of Arkansas ; that E. S. Mitchell was cashier of the National Bank at Fort Smith, and R. C. Kearns connected with the bank ; that when Mr. Whitney was at Fort Smith, and advertised his business at that place, the persons who held Britton's due-bills came forward and turned them over to him, as they were anxious to have some Government recognition of them, and to put them in some shape by which they would get their pay. All the due-bills of the classes that Whitney would receive were turned over to him ; such as guards, jurors, and witnesses' due-bills. And we are well satisfied, from our personal knowledge and position in business in the county, that there are none of said class of due-bills outstanding, (or at least very few.) We have heard of none since Whitney left Fort Smith, and we are satisfied that had there been any there we would have heard of them.

E. S. MITCHELL.  
R. C. KEARNS.

## DISTRICT OF COLUMBIA :

Sworn to and subscribed before me this 3d day of March, 1874.

[SEAL.]

JAMES LAWRENSON, J. P.

EXHIBIT S.—Statement of clerk western district of Arkansas.

Term.	Number of days session.	Compensation allowed grand jurors.	Compensation allowed petit jurors.	Number of witnesses.	Compensation allowed witnesses.	Amount received by clerk from United States.	Civil cases continued from last term.	Civil cases commenced.	Total civil cases.	Disposed of.	Continued.	Criminal cases from last term. Number of persons.	Number of persons indicted.	Total number of persons.	Convicted.	Acquitted.	Recognition forfeited.	Nolle pros.	Continued.	Abated.	Not arrested.	Pardoned.	Contempt.	Contempts continued from last term.	Total.	Purged.	Fined or imprisoned.	Continued.
May term, 1870 .....	14	\$703 40	\$1,525 80	248	\$5,185 05	.....	15	45	60	48	12	19	66	85	24	22	5	9	22	3	3	.....	.....	.....	.....	.....	.....	.....
November term, 1870....	17	1,751 00	2,588 40	271	5,523 15	\$1,589 54	12	18	30	18	12	22	59	81	13	14	6	7	27	3	11	.....	1	.....	1	.....	1	
Total .....	31	2,454 40	4,114 20	519	10,708 20	1,589 54	.....	63	.....	66	.....	.....	125	.....	.....	36	11	16	.....	3	14	.....	1	.....	.....	.....	.....	
May term, 1871.....	35	1,976 15	3,973 00	359	9,160 80	.....	12	36	48	32	16	27	84	111	29	23	4	15	28	.....	12	.....	7	1	8	6	1	
November term, 1871....	46	2,321 80	8,004 20	774	32,862 15	2,300 00	16	31	47	30	17	28	238	266	51	45	9	17	77	1	38	.....	18	1	19	12	6	
Total .....	81	4,297 95	11,977 20	1,133	42,022 95	2,300 00	.....	67	.....	62	.....	.....	322	.....	.....	68	13	32	.....	1	50	.....	25	.....	.....	18	7	
May term, 1872.....	60	2,601 70	6,885 50	719	30,945 00	.....	17	41	58	29	29	77	174	251	45	31	48	*50	46	4	26	1	16	1	17	7	10	
November term, 1872....	77	2,982 50	5,310 15	792	25,255 50	2,911 48	29	60	89	51	38	46	206	252	61	21	64	46	40	1	19	.....	8	.....	8	3	5	
Total .....	137	5,584 20	12,195 65	1,511	56,200 50	2,911 48	.....	101	.....	80	.....	.....	380	.....	.....	52	112	96	.....	5	45	1	24	.....	.....	10	15	
May term, 1873.....	58	3,168 70	5,252 40	435	10,370 63	.....	38	42	80	36	44	40	84	124	35	7	16	30	32	1	3	.....	6	.....	6	.....	.....	
November term, 1873....	42	2,077 33	3,743 60	272	8,890 75	2,584 05	44	63	107	26	81	32	69	101	23	10	10	20	33	.....	4	1	15	.....	15	12	2	
Total .....	100	5,246 00	8,996 00	707	19,261 38	2,584 05	.....	105	.....	62	.....	.....	153	.....	.....	17	26	50	.....	1	7	1	21	.....	.....	18	2	
RECAPITULATION.																												
1870.....	31	2,454 40	4,114 20	519	10,708 20	1,589 54	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
1871.....	81	4,299 95	11,977 20	1,133	42,022 95	2,300 00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
1872.....	137	5,484 20	12,195 65	1,511	56,200 50	2,911 48	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
1873.....	100	5,246 00	8,996 00	707	19,261 38	*2,584 05	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Total .....	349	17,582 55	37,283 05	3,870	128,193 03	9,385 07	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
* Twenty-two of these <i>nolle pros.</i> were made, owing to want of jurisdiction. The persons indicted being Creek negroes, their "status" never having been previously determined, no motion was ever before presented as to the jurisdiction. The nollies entered in 1871-'72 and '73 were many of them entered on account of the absence of witnesses, who were, most of them, of the migratory class, connected with the Missouri, Kansas, and Texas Railroad, which was constructed during that time. Many of the cases presented to the grand jury—none of which appear in this statement—were ignored after being continued one term, for a similar reason.																												

\* Twenty-two of these *nolle pros.* were made, owing to want of jurisdiction. The persons indicted being Creek negroes, their "status" never having been previously determined, no motion was ever before presented as to the jurisdiction. The nollies entered in 1871-'72 and '73 were many of them entered on account of the absence of witnesses, who were, most of them, of the migratory class, connected with the Missouri, Kansas, and Texas Railroad, which was constructed during that time. Many of the cases presented to the grand jury—none of which appear in this statement—were ignored after being continued one term, for a similar reason.

\* The most of the November term, 1872, was holden in 1873; this is the cause of the clerks' fees being disproportionate to the business transacted.

1870—Grand jurors.....	\$2,454 40
Petit jurors.....	4,114 20
Witnesses.....	10,708 20
Total.....	17,276 80
1871—Grand jurors.....	4,299 95
Petit jurors.....	11,977 20
Witnesses.....	42,022 95
Total.....	58,300 10
1872—Grand jurors.....	5,584 20
Petit jurors.....	12,195 60
Witnesses.....	56,200 50
Total.....	73,980 30
1873—Grand jurors.....	5,246 00
Petit jurors.....	8,996 00
Witnesses.....	19,261 38
Total.....	33,503 38

## EXHIBIT U.

UNITED STATES  
vs.

W. A. BRITTON, J. W. DONNELLY, AND EDWARD J. BROOKS.

} No. 112.—Forgery.

R. FITZ HENRY, being duly sworn, says: I know defendants; was a deputy marshal under William A. Britton; employed posse named Charles Mitzner, who was paid by the marshal; had a posse named Frank Weir fifteen days in March, 1871; had a posse named John Mitzner fifteen days in April, 1871. I also had the following posses employed as deputy marshal the number of days, and at dates set opposite their names:

	Days.
John Ford, March, 1871.....	15
George Wait, March, 1871.....	15
William Evarts, January, 1871.....	10
William Mitzner, April, 1871.....	15
George Carter, March, 1871.....	15

The above-named individuals were all paid by the said defendant, W. A. Britton. The custom of deputies in securing posses is to secure transient men, and men who had good nerve. It was difficult to get other than transient men to go into the Indian country. It is best to get posses who are strangers and not known to the citizens of the Territories. It frequently occurred that the defendant, J. W. Donnelly, was authorized to sign the names of posses and guard. Do not know of any cases wherein any of defendants ever signed any posses' names without authority. Mr. Donnelly was at Washington, D. C., during the time the aforesaid posses were rendering service, and didn't sign any of the names of the posses aforesaid, unless it was the one who rendered the service in January.

J. H. WILLARD, a deputy marshal, being duly sworn, says: I was a deputy marshal under W. A. Britton, and employed the following-named posses the number of days set opposite their names, at the time hereinafter mentioned, to wit:

	Days.
John Holmes, December, 1870.....	15
Charles Emory, January, 1871.....	30
Charles Norton, January, 1871.....	30
Charles Lewis, January, 1871.....	15
Henry Hulse, January, 1871.....	15
H. L. Brown, December, 1870.....	16

	Days.
Wm. Hempstead, December, 1870.....	16
Frank Weir, April, 1871.....	15
James Miller, April, 1871.....	15
L. W. Beck, December, 1870.....	15
William Franklin, April, 1871.....	15
John Williamson, April, 1871.....	15

The above-named parties were by the said defendant paid for the services rendered as such posses. Some of the aforesaid posses are in the Indian country. Most of them are transient men. Generally we have such men as posses, who cannot sign their names, hence they authorize the clerk in marshal's office to do so. Never heard nor do not know of any of defendants ever having forged the signature of posses or any one else.

C. D. MESLER, being duly sworn, says: I was a deputy marshal under W. A. Britton and am a deputy now under Logan H. Roots. Know all of defendants. Never heard nor knew of defendants ever having forged any posse accounts or any other papers.

JAMES G. PEEVY, being duly sworn, says: I was a deputy marshal under defendant W. A. Britton in 1870 and 1871. Know all of defendants. I employed the following-named parties as posses the number of days set opposite their names, and at the time hereafter mentioned, to wit:

	Days.
Edward Flack, April, 1871.....	12
James Hawthorne, April, 1871.....	12
T. M. Lacy, January, 1871.....	14
James Hawkins, January, 1871.....	14

Said parties were by the said William A. Britton paid for the number of days therein stated. The above-named Edward Flack lives near Rocky Comfort, and James Hawthorne lives in Scott County, and James Hawkins lives at Baxter Springs, Kans. Many of the posses cannot write, and generally authorize deputy marshals or clerks to sign their names. Do not know of any posse accounts having been forged by defendants.

J. G. OWENS, being duly sworn, says: I know defendants; was a deputy marshal under defendant W. A. Britton in 1870 and 1871, and employed the following-named parties as posses at the time and for the number of days hereinafter stated, to wit:

	Days.
Leon Chambers, April.....	9
Samuel Carter, April.....	9
Fred. Day, April.....	15
Thomas Miller, April.....	15
Fred. Alwater, March.....	8
Perry Davis, March.....	8
Richard Boon, January, 1871.....	30

Said Boon lives at Fort Gibson. Some of the above-named parties make their mark or authorize the clerk to sign their names. Do not know of any cases wherein any of defendants ever signed the names of posses to accounts without being authorized to do so.

R. C. LAMSON, being duly sworn, says: I know defendants; was a deputy marshal under defendant W. A. Britton in 1870 and 1871, and, as such marshal, employed the following-named persons as posses for the number of days set opposite their names, and at the time hereafter stated:

	Days.
Samuel Edwards, February, 1871.....	26
Joseph Mulvey, February, 1871.....	26

Do not know now where said parties live. Do not know of any instances wherein any of defendants have ever signed the names of posses to accounts without authority. Frequently posses authorize clerks in marshal's office to sign their name or make their mark.

B. F. SHOEMAKER, being duly sworn, says: Was a deputy marshal under W. A. Britton in 1870 and 1871. Know all of said defendants. While deputy marshal I employed the following-named parties as posse at the time and for the number of days set opposite their names, to wit:

	Days.
George Royce, February, 1871.....	30
Elias Reed, February, 1871.....	30
E. A. Jackson, January, 1871.....	15

	Days.
Zachariah Brown, January, 1871.....	15
William Ward, June, 1870.....	30
Charles Frost, June, 1870.....	30
Frank Williams, September, 1870.....	22
A. C. Beckwith, September, 1870.....	22
Charles Beck, February, 1871.....	14
William Boles, February, 1871.....	14
Robert Anderson, April, 1871.....	30
Francis Mays, April, 1871.....	30
Ned Hawkins, March, 1871.....	30
Charles Harris, March, 1871.....	30
George Arrington, April, 1871.....	7
J. H. Dennis, April, 1871.....	7
Edward.....	

The above-named parties were paid by said defendant W. A. Britton, and are, as a general thing, transient men. One-half or more of the posses we employ are unable to write, and generally ask the clerk in the office to sign their names or make their mark. Do not know of any cases wherein any of defendants forged posse accounts.

CHARLES F. ROBINSON, being duly sworn, says: I was a deputy under William A. Britton in 1870 and 1871; know all of the defendants; have never heard nor do not know of any of defendants having forged posse accounts. The marshal's accounts were correct as far as I know; have done a large amount of business for Mr. Britton, and have never known anything wrong in his transacting business as marshal. I have usually employed strangers as posses; frequently find strangers who are anxious to make excursions in the Indian country so as to get a knowledge of the country. Those characters we frequently employ as posses.

LEE MCLEMORE, being duly sworn, says: I know defendants; was marshal under W. A. Britton in 1870 and 1871, and employed the following-named parties as posses, the number of days set opposite their names, to wit:

	Days.
Andrew Mathews, April, 1871.....	12
Asa Royce, April, 1871.....	12

Do not know of any of defendants having signed the names of posses to accounts. Frequently parties are employed as posses who cannot sign their names. The above-named parties are working on the railroad in Cherokee Nation.

HUGH MCGUIRE, being duly sworn, says: I know defendants; was a deputy marshal under Wm. A. Britton in 1870 and 1871, and employed as posse the following-named persons at the time and for the number of days set opposite their names, to wit:

	Days.
George Riddle, March, 1871.....	20
Solomon Baxter, March, 1871.....	20
Robert Hill, January.....	30
Albert Emily, January.....	30
R. L. Fau, April.....	15
Sam'l Hoyt, April.....	15

The above individuals are transient men, and such characters are usually employed by us as posses; do not know of any instance wherein defendants ever forged any posse-accounts. The business of the marshal's office, as far as I know, was transacted in a proper manner.

JOHN ENGLE, being duly sworn, says: I know defendants; was a deputy marshal under Wm. A. Britton in 1870 and 1871. I employed the following-named parties as posse, and for the number of days at the time set opposite their names, to wit:

	Days.
Dick Holland, January 1871.....	11
Samuel Bright, January, 1871.....	11
Orman Clark, February, 1871.....	14
Jacob Murray, February, 1871.....	14

Never heard nor do not know of any of defendants having forged any posse-accounts. We generally employ transient men as posses; cannot get substantial citizens to leave their homes, and therefore have to get such men as we can find; frequently we have to furnish horses for men to ride; don't know where the above names posses are. Murray lives in Kansas.



BENTON J. BROWN, being duly sworn, says: I know the defendants have had considerable business with the United States marshal's office of this district for thirteen years. I am a practicing attorney and reside at Van Buren. Have frequently bought the accounts against the marshal's office, of posesses, witnesses' certificates, &c., when the parties lived at a distance and the officer had no money, and as attorney collected for others. Never bought an account unless it had been made out properly at the office and sworn to, certified and signed as required by law, and I generally made it a rule to examine the writ-books to see that they were right. The men who are employed as posesses as a general thing are young and transient men without any settled business or habitation, who always need their money when due and can't wait for it. Many of them never make more than one trip. Never knew any of the defendants to make any accounts that were not correct and just to my knowledge. I had two posse-accounts presented to me for sale last January by a deputy marshal all filled out properly but not sworn to or certified by the marshal. I refused to buy until he should have them sworn to and certified by the marshal. He did not bring them back. I reported the fact to Mr. Donnelly, chief deputy, and afterward learned that the deputy presenting said accounts had been discharged. I do not remember the name at this time.

RICHARD BOONE, being duly sworn, says: That he was employed by J. G. Owens a deputy marshal to assist him in making the arrest of one Tibbets some time in January, 1871; traveled in Creek, Cherokee and Choctaw Nation, but was unable to capture said Tibbets, as he finally escaped into the State of Texas; was paid the amount of my fees by J. W. Donnelly; think it was \$30. Have no settled place of residence, as I am a cattle-drover. Was out of employment when employed by Mr. Owens; was summoned at Sebastian County, Arkansas, at which place I had just delivered some stock.

PERRY DAVIS, being duly sworn, says: That while at Van Buren, being summoned there as a witness, I was employed by Mr. Owens, a deputy marshal, to go with him to arrest John Rogers, charged with larceny. Mr. Owens at the same time employed Fred. Atwater as a posse for the same purpose; that we started ahead of Mr. Owens who overtook us at Scullyville, where we agreed to wait for him. When we arrived at the place in the Choctaw Nation, where we expected to arrest the said John Rogers, we ascertained that he had gone to Texas; reside in the Choctaw Nation; Fred. Atwater died in the nation in July last; was paid \$24 by Mr. Britton; do not know Mr. Donnelly; was not present when Atwater was paid, but think he was paid, as I never heard him say anything about it.

JAMES HAWTHORNE, being duly sworn, says: That he was employed by J. G. Puvy to arrest Alvin Daniels; that said Daniels could not be found; this was some time in April or May. Received \$36 from Mr. Britton. Edwin Fluck was with me; do not know where he lives.

EDWARD HAWKINS, being duly sworn, says: That he was at Neosho, Mo., in the latter part of April; that Mr. Shoemaker, a deputy United States marshal, was there, having been severely wounded, while endeavoring to arrest some person charged with crime. Mr. Shoemaker being unable to travel, employed myself and Charles Harris, my brother-in-law, to effect the arrest of one Sanford Mosby, who has since been killed, for whom Mr. Shoemaker had a writ, but was unable to serve it on account of his wounds. Our contract was that Mr. Shoemaker was to have the fees and we were to be paid as posesses. We could not capture him, and upon our return to Neosho Mr. Shoemaker gave us a note to Mr. Britton, stating what we had done, and for him to make the return to cover our fees. Mr. Britton paid us each \$90. Am now living in Benton County, Arkansas. Mr. Harris lives in Wyandott County, Kansas. Did not see Mr. Donnelly.

ORMAN CLARK, being duly sworn, says: That he was employed by John Engle, a deputy marshal, to assist in the arrest of William Hall, who is charged with larceny in the Choctaw Nation. Could not find him. Was employed from February 15 to 28, 1871. Received \$42 from Mr. Donnelly. I now live in the Choctaw Nation. When employed by Mr. Engle was at Fort Smith, out of employment, having just come from Missouri. Jacob Murray was with us and received his pay also.

The foregoing are the minutes of the testimony taken in the above entitled case before the grand jury, for November term, United States district court for western district, Arkansas.

HENRY E. MCKEE,  
*Foreman.*

JAMES A. LOCKHART,  
*Clerk Grand Jury.*

UNITED STATES OF AMERICA,  
*Western district of Arkansas:*

I, James O. Churchill, clerk of the United States district court for the western district of Arkansas, do hereby certify that Henry E. McKee and James A. Lockhart, whose names appear to the above document, were respectively foreman and clerk of the grand jury at the November, A. D. 1871, term of this court.

In testimony whereof I have hereto set my hand and official seal, at Fort Smith in said district, this 28th day of December, A. D. 1871.

JAMES O. CHURCHILL.

[SEAL.]

Be it remembered that at a district court of the United States in and for the western district of Arkansas, begun and holden at the court-house in the city of Fort Smith, in said district, on Monday the 13th day of November, A. D. 1871, the following among other proceedings were had, to wit:

\* \* \* \* \*  
 SATURDAY MORNING, 9 o'clock, December 2, 1871.

Court met pursuant to adjournment.

Present, the Hon. William Story, judge of the district court of the United States for the western district of Arkansas.

\* \* \* \* \*

UNITED STATES

*vs.*

WILLIAM A. BRITTON, }  
 JAMES W. DONNELLY, } Charge.—Forging Government vouchers.  
 EDWARD J. BROOKS. }

Now on this day come the grand jury in and for the western district of Arkansas, and make known to the court here that they have ignored the charge against the said William A. Britton, James W. Donnelly, and Edward J. Brooks.

Whereupon it is ordered that they be discharged of and from their recognizances and go hence without day.

I, James O. Churchill, clerk of the district court of the United States for the western district of Arkansas, hereby certify that the foregoing is a true and correct copy of the order in the above-entitled cause, as the same appears of record in this office.

In testimony whereof I have hereunto affixed my hand and official seal, at Fort Smith, in said district, this 28th day of December, A. D. 1871.

JAMES O. CHURCHILL, *Clerk.*

[SEAL.]

---

EXHIBIT V.

DISTRICT ATTORNEY'S OFFICE,  
*Fort Smith, Ark., December 27, 1871.*

SIR: Inclosed please find the testimony taken in the case of the United States *vs.* William A. Britton, late marshal of this district, James W. Donnelly, his clerk, and Edward J. Brooks, United States commissioner.

Newton J. Temple, esq., my assistant, was present all the time before the grand jury, and had the cause carefully investigated, and from the evidence in said cause and from my knowledge of the subject, fully indorse the action of the grand jury.

Very respectfully,

JAS. H. HUCKLEBERRY,  
*United States Attorney.*

Hon. GEO. H. WILLIAMS,  
*Attorney-General.*

---

CLERK'S OFFICE UNITED STATES COURTS,  
 EASTERN DISTRICT OF ARKANSAS,  
*Little Rock, May 2, 1874.*

SIR: Upon the receipt of your telegram of 1st instant, I handed the same to the clerk of the circuit and district courts for this district, with instructions to examine the records and furnish me the required statement.

I herewith inclose his report. The clerk, in making up this statement, assumed the term to embrace the whole time the court was open for any purpose. With a view to save expense to the Government and suitors in the courts, it is my practice to have all the jury causes set for trial and tried (to the exclusion of other business) with as much dispatch as possible, and during the time a jury is in attendance the court sits from six to eight hours per day.

Having no other courts to hold and the bar of the city being much engaged in other courts, it is the practice to dispose of the chancery and admiralty cases, and business in bankruptcy not requiring a jury, at such time as suits the convenience of counsel, and for that purpose the court is kept open and such business disposed of after the jury for the term is discharged.

The clerk's statement shows the whole number of days the court was open, and the number of days a jury was in attendance at each term.

After the jury is discharged for the term the daily sessions are usually brief.

I am, very respectfully, your obedient servant,

HENRY C. CALDWELL,

*United States District Judge, Eastern District, Arkansas.*

Hon. N. G. ORDWAY,

*Sergeant-at-Arms, &c., Washington City.*

---

CLERK'S OFFICE, UNITED STATES COURTS,  
EASTERN DISTRICT OF ARKANSAS,  
*Little Rock, May 2, 1874.*

SIR: In compliance with your request of this date to furnish you a "statement showing the number of days of sessions of regular terms of the United States courts, eastern district of Arkansas, and the number of cases disposed of from July 1, 1871, to July 1, 1873," I inclose herewith such statement, as the same appears of record in my office.

I am, very respectfully, your obedient servant,

RALPH L. GOODRICH,

*Clerk.*

Hon. HENRY C. CALDWELL,

*United States District Judge Eastern District, Arkansas.*

---

*Statement showing number of days of sessions of regular terms of the United States courts, eastern district Arkansas, and number of cases disposed of from July 1, 1871, to July 1, 1873.*

Number of days circuit court, October term, 1871.....	50
Number of days district court, October term, 1871.....	53
Number of days jury in attendance, October term, 1871.....	30
Number of days circuit court, April term, 1872.....	65
Number of days district court, April term, 1872.....	40
Number of days jury in attendance, April term, 1872.....	18
Number of days circuit court, October term, 1872.....	80
Number of days district court, October term, 1872.....	41
Number of days jury in attendance, October term, 1872.....	26
Number of days circuit court, April term, 1873.....	82
Number of days district court, April term, 1873.....	30
Number of days jury in attendance, April term, 1873.....	13
Number of cases disposed of, circuit court, October term, 1871.....	233
Number of cases disposed of, district court, October term, 1871.....	61
Number of cases disposed of, circuit court, April term, 1872.....	162
Number of cases disposed of, district court, April term, 1872.....	55
Number of cases disposed of, circuit court, October term, 1872.....	130
Number of cases disposed of, district court, October term, 1872.....	57
Number of cases disposed of, circuit court, April term, 1873.....	116
Number of cases disposed of, district court, April term, 1873.....	46

## EXHIBIT X.

*Statement of business, &c., of United States district court at Helena, Ark.*

Date.	Number of days' session.	Number of cases disposed of.	Am't paid grand jurors.	Am't paid petit jurors.	Am't paid witnesses.	Number of witnesses attending each term.	Fees and emoluments.		Total paid jurors and witnesses at each term.
							In cases in bankruptcy.	In all other cases.	
September term, 1871....	15	15	\$2,076 50	\$2,911 60	\$5,461 65	139	\$30 00	\$62 40	\$10,449 75
March term, 1872.....	17	35	1,775 50	2,217 40	10,798 30	231	30 45	103 50	14,791 20
September term, 1872....	9	46	2,005 60	2,492 90	2,755 90	77	2 00	482 45	7,184 40
March term, 1873.....	1	18	.....	.....	1,668 40	65	29 00	1,538 40	1,668 40
Number of cases now on docket .....	.....	16	.....	.....	.....	.....	.....	.....	.....
Total.....	.....	.....	5,857 60	7,551 90	20,684 25	.....	91 45	2,083 25	.....
Total paid jurors and witnesses .....	.....	.....	.....	.....	.....	.....	.....	.....	34,093 75
Total clerks' fees and emoluments .....	.....	.....	.....	.....	.....	.....	.....	.....	2,174 70
Grand total.....	.....	.....	.....	.....	.....	.....	.....	.....	36,268 45

I, W. A. E. Tisdale, clerk of the United States court for the western district of Arkansas, do certify that the above and foregoing statement of facts, which appear of record in this court, is true and correct, according to the best of my knowledge and belief.

In testimony whereof I hereunto set my hand and the seal of said court this 29th day of April, A. D. 1874.

[SEAL.]

W. A. E. TISDALE, 'Clerk.  
By J. H. PARR, Deputy Clerk.

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