

L E T T E R
FROM
THE ATTORNEY-GENERAL,

IN RESPONSE

To a resolution of the 2d instant, with reference to the practice of the United States Courts at Fort Smith, Ark., and Paris, Tex., in the appointment of commissioners for the investigation of offenses committed in the Indian Territory.

JUNE 23, 1890.—Referred to the Committee on the Judiciary and ordered to be printed.

DEPARTMENT OF JUSTICE,
Washington, D. C., June 21, 1890.

SIR: I have the honor to acknowledge the receipt of Senate resolution of June 2, wherein—

The Attorney-General is directed to give to the Senate any information in his possession with reference to the practice of the United States courts at Fort Smith, Ark., and at Paris, Tex., in the appointment of commissioners for the investigation of offenses committed in the Indian Territory, and especially as to whether any such commissioners are resident in the Indian Territory, or whether all persons arrested on process of said courts are required to be taken to Fort Smith, Ark., or Paris, Tex., for preliminary examination, and what, if any, reason exists why commissioners local to the Territory might not be appointed to hear such examinations.

Second. What, if any, reason exists why the court for the Indian Territory should not have jurisdiction of petit larcenies and other minor offenses, including felonies of minor grades.

Answering this resolution, I beg to say that at the time it was received I had no definite information with reference to the practices of the two courts named in reference to the appointment of commissioners. I immediately sent letters to the district attorneys which have brought communications of which the inclosed are copies:

First, a letter of the district attorney for the eastern district of Texas, from which it appears that the circuit court sitting at that point has appointed commissioners located at various points in the Indian Territory.

Second, a letter from Judge Parker, of the western district of Arkansas, from which it appears that the circuit court sitting at that point has no commissioners resident in the Indian Territory, and the letter gives at length the reasons why there are no such commissioners.

Third, a letter from the district attorney for the western district of Arkansas upon the same line as the letter of Judge Parker.

There is much to be said on each side of this question. Undoubtedly the appointment of numerous commissioners usually results in a large number of frivolous and baseless prosecutions, and thereby a great expense is incurred and great wrongs perpetrated upon the people. On

the other hand, it is a great hardship that a man suspected of a crime shall be taken from his home to a point three or four hundred miles distant before he can have a preliminary examination or be admitted to bail. The only remedy, in my judgment, is to bring the courts having jurisdiction of all kinds of offenses in the Indian Territory closer to the people.

Answering the second inquiry on this line, I have no doubt that it would be greatly to the public advantage, as well as for the convenience of the people, that the court in the Indian Territory should have jurisdiction not only of misdemeanors, but all minor felonies.

Very respectfully yours,

W. H. H. MILLER,
Attorney-General.

The PRESIDENT OF THE SENATE.

PARIS, TEX., June 9, 1890.

The ATTORNEY-GENERAL,
Washington, D. C. :

I am in receipt of your letter (A. G. 6551), with copy of Senate resolutions of June 2, and, in answer thereto, beg leave to submit the following:

Just as soon as practicable after the organization of the court at this place the court appointed commissioners resident at every point in the Territory, returnable here, that was of any size. They were and still are located at Purcell and Ardmore, in the Chickasaw Nation; Atoka, in the Choctaw Nation; Anadarko, in the Kiowa, Apache, and Comanche Reservation, and Beaver City, in the neutral strip. The map, together with a knowledge of the inhabited portions of the Territory, will show these to be the only points where the convenience of the public and economy of the Government could consistently be subserved by resident commissioners.

The records show the dates of the original appointment of the commissioners as follows:

J. W. Hooker, at Purcell, appointed May 28, 1889.

A. H. Law, at Ardmore, appointed May 28, 1889.

J. W. Hadden, at Anadarko, appointed June 12, 1889.

D. N. Robb, at Atoka, appointed June 18, 1889.

Merritt Magann, at Beaver City, July 30, 1889.

Mr. Magann subsequently resigned, and James Breckenridge was appointed to succeed him, and continued to act until the passage of the Oklahoma bill.

In addition to those named, W. B. Johnson is now a resident commissioner at Ardmore, and G. F. Gates at Purcell.

I will add, that while the bill establishing this court was passed March 1, 1889, the Indian country was wholly unknown to the judges, and it took some months for them to become advised of its needs. Comparatively few cases are brought to Paris for examination except from adjacent territory; or for some special reason rendering it advisable.

Your obedient servant,

JOSEPH H. WILSON,
United States Attorney, Eastern District of Texas.

FORT SMITH, ARK., June 13, 1890.

SIR: Hon. Wm. H. H. Clayton, United States district attorney, has handed me a letter of the 6th instant, in which you ask this question: "Is it true that the circuit court for the western district of Arkansas does not appoint commissioners resident in the Indian Territory, but does require that all persons shall be brought into Arkansas, and especially to Fort Smith, for examination?"

I have been judge of the United States district court of the western district of Arkansas for fifteen years last March, and in that time I have never had at any one time but four active United States commissioners with full powers in criminal cases in the whole district. There have been some more than this, but they have done no business.

I have none at this time in the Indian country with jurisdiction to hear cases at a preliminary examination over which the court at Fort Smith has jurisdiction.

In the whole fifteen years I have never appointed but two United States commissioners located in the Indian country to hear examinations in cases triable at Fort Smith. These two were appointed as an experiment. I regret to say, from the standpoint of a fair and proper enforcement of the law, the experiment was a failure.

I think I can say that I have had some experience in enforcing the criminal laws of the United States, and I can also assert that my observations for the time I have been judge of United States court for the western district of Arkansas have not failed to bring to my mind well-grounded conclusions upon the subject of United States commissioners, as well as on all other matters pertaining to the enforcement of the criminal laws of the United States.

From this experience, in my judgment, the great error of the age connected with the administration of justice in the trial courts of the United States is the appointment of too many commissioners. I know, as applied to my district, the error would be a radical one, and especially if the commissioners were located in the Indian country.

Each commissioner appointed is ambitious and desirous of doing some business. Prompted by this desire he lends a willing ear to frivolous complaints of violations of law, as well as complaints of frivolous violations of law, which might with entire safety to the rights of the people be passed by. All United States commissioners should act as far as possible under the eyes of the judge of the court and the district attorney. While within the purview of their jurisdiction commissioners are independent officers, yet they should be so situated as that the court can be able to exercise a general supervision over them and that the court and district attorney can be able to give them such advice pertaining to their duties as may be necessary to enable them to perform such duties in a fair, impartial, and economical way, as well as in a way that will not work injustice to any one, and so that no one will be unjustly harassed or annoyed by an arrest that should not be made. This condition can not be secured if commissioners are appointed who have their offices a long distance from where the court holds its sessions.

The condition of the Indian country is such that to secure an enforcement of the law United States officers, such as deputy marshals, must, in a vast majority of cases, be permitted to be complainants. If this is not permitted there can be no enforcement of the law in cases where the worst crimes have been committed, as the people in very many of such cases are so situated that they do not like to inform on those who may have committed crime, as it is not safe for them to do so. When United States deputy marshals are complainants it is necessary that there should be a close supervision over their complaints of crime before warrants are issued, as the natural tendency would be to make complaints that they may make business.

To properly guard and control their actions we for fifteen years have had a rule here requiring the district attorney to investigate all cases where complaints of crime are made, and to indorse his approval on the complaint before the warrant issues.

Then the chief marshal is required to hold up the warrant, not permitting his deputies to serve it, if he discovers any good reason why the same should not be served until the case can be further investigated. This action of the district attorney and marshal, in the interest of economy and justice, can not be had if commissioners are at a long distance from where the attorney and marshal reside, with full and unrestricted power to issue writs when they please, on the complaint of all kinds of persons and in regard to all kinds of cases. We have a rule here that requires one commissioner to issue all writs and to keep an accurate record of the same. He makes a portion of such writs returnable to the other commissioners. The object of this practice is to keep the issuance of writs well under control, so that they will not be improperly issued or issued in improper cases. The commissioner who issues the writs is the clerk of the court. He is a responsible officer of the court and is under the eye of the court, and is so situated that he can advise and consult with the court and district attorney at all times.

This system, which has worked so well in the interest of a fair, economical, and effective administration of justice for fifteen years, can not be applied if commissioners are scattered all over the district. When witnesses appear before commissioners they are entitled to their pay when they are discharged after having testified.

If the commissioner is at a long distance from where the marshal has his office and is to be found, there is no one to pay the witnesses, and consequently they go without their pay or have to travel to the office of the chief marshal to get it, or to be satisfied with holding their vouchers and getting what they can on them.

Every case should have as full an investigation as possible before a writ is issued. It has in my district, and has had it in all cases except when there were commissioners in the Indian country.

When they issued writs they were issued without due investigation of the case, and in a great majority of cases they were issued when they ought not to have been.

The result of the care exercised before writs are issued here is a larger per cent. of convictions in this court than almost any court in the country.

This results from the care exercised to prevent improper arrests, which could not be exercised if the commissioners were not within reach of the district attorney.

I am aware that it involves some expense for witnesses to come a considerable distance, but it does not involve as much expense to the Government as it would if commissioners were scattered over the Indian country, and there could be no direct supervision over them.

I am also aware that it is somewhat inconvenient for persons to come to Fort Smith as witnesses. But it is always a matter of annoyance to witnesses to have to attend a court anywhere.

Witnesses generally live in the vicinity of where the crime is committed, and it is always a matter of some inconvenience for them to leave their homes and go to court. The only way to prevent this inconvenience to witnesses is to have the examining court or trial court go to the homes of the witnesses and have the trial there. Of course this would be an absurd impossibility.

If commissioners are scattered over the Indian country the annoyance to the people will be much greater than it is by their having to come to Fort Smith, as they will suffer increased annoyance because of frivolous, unnecessary, and improper prosecutions.

I have at different times had two United States commissioners in the Indian country for a comparatively short time. I have no hesitation in saying that very many frivolous cases found their way to the grand-jury room from these commissioners. Indictments were found in not exceeding 25 per cent. of them.

To scatter United States commissioners over the Indian country without its being possible from their situation to exercise a supervisory control over them, you have a condition of things which will breed scandals connected with the administration of justice, as was the case years ago, before I came to the district, when there were commissioners in the Indian country. At that time all kinds of improper and unnecessary prosecutions were inaugurated and a huge scandal was brought into existence that attracted the attention of Congress. I was warned against such a policy by the then Attorney-General, and my observation has fully satisfied me of the justice and wisdom of his advice.

There has been a constant demand for the fifteen years I have been judge for the appointment of commissioners in the Indian country. But these requests always come from parties who have been prompted by some personal interest. It has not come from the people generally but wholly from parties who were looking to their own personal interests, and who were careless or reckless of the public welfare. It will be understood there is a rivalry in business between lawyers who may reside at Fort Smith and Paris and lawyers who live in the Indian country.

This feeling of rivalry prompts the lawyers in the Indian country to have a desire for commissioners' courts, that they may have a chance at the cases before they reach their brethren in Fort Smith, or Paris, Tex. This feeling has much to do with the clamor for commissioners in the Indian country.

Then other parties want to be commissioners. Then localities want a commissioner, as it gives these localities some prestige and some importance. All these parties have the same end in view. It is one that is purely selfish and not in the interest of the public, or favorable to the full, fair, economical, and impartial administration of justice.

These persons in the Indian country who desire local commissioners have no desire for the enforcement of the law, except as they may be benefited directly by its enforcement.

There are now a sufficient number of commissioners in the district to do all the business that ought to be done. I must entertain the opinion that these commissioners should be located at such places as the court, in the exercise of its sound discretion, believes the most conducive to economy, and at the same time will secure a full, fair, and impartial administration of justice, as connected with the enforcement of the law. I believe the system prevailing in the western district of Arkansas, with the guards thrown around it, secures this result as fully and completely as it is secured in any district in the Union.

I am, truly, your most obedient servant,

I. C. PARKER.

Hon. WM. H. H. MILLER,
Attorney-General.

FORT SMITH, ARK., June 14, 1890.

SIR: Replying to your letter of the 6th instant, inclosing inquiry from the United States relative to commissioners of the district, and directing me to report on same to you, I have the honor to state:

That at present there are three United States Commissioners who do all the business coming from that part of this district lying in the Indian country. Two of them are located at Fort Smith, Ark., and the other one at Fayetteville, Ark. The bulk of the business is done by the commissioner there.

Fifteen years ago, when Judge Parker was appointed the judge and I the district attorney of this district, we found the district in a deplorable condition. At that time there were commissioners not only here but also in the Indian country. Hundreds of frivolous cases were sent here, to be ignored by the grand jury, witness certificates were being hawked around to be sold for what speculators might see fit to pay for them, and the expense of the court had run up to an enormous amount.

We undertook to correct these evils, and soon found that, under the condition that surrounded us, that it was an absolute necessity that all the business should be transacted as nearly as possible under our personal supervision. For this reason a rule was made that no warrants should be issued upon any complaint until I, as district attorney, had investigated the case and directed the issuance of the writ. This had the effect to cut off many arrests of innocent persons and for persons guilty of technical violations of the law, but even then it was found that the commissioners in the Indian country would send many cases here that ought to have been dismissed before them, and would dismiss cases in which the parties ought to have been bound over. These courts would become the center of a host of pettifogging lawyers, and no matter how good the men might be who were sent there as commissioners they would soon become a scandal to the administration of justice.

You understand it was impossible for either the district attorney or his assistant to attend these courts because our time was constantly occupied here, and because there was not, until within the past year, any railroad communication between Fort Smith and that country. When cases were brought before other commissioners after the case would be closed, the witnesses would receive witness certificates, which they would have to bring or send here to be cashed; hence a system of speculation in these certificates sprang up, which had the effect of taking from the witnesses about one-half of the money which the law allowed them. These commissioners were not lawyers.

It would be impossible to get a lawyer of any respectability to take a position of that kind and go to that country, because of this fact, and because of the fact above stated, that these courts were surrounded by the worst characters of pettifoggers, and also the worst class of people, surrounding it with an influence and a sentiment of the worst kind. A long distance from, and without any personal supervision or advice of, any of the officers of the courts, they in every instance, in spite of all we could do, proved a failure and created scandal.

The good people of the country were dissatisfied and complained of them. The court finding that the appointment of commissioners in the Indian country was a failure, adopted the present system of requiring all cases to be brought here for preliminary trial, then there have been no scandals.

The expense is infinitely less, justice is administered, the guilty are punished, the innocent are protected, and the people are satisfied.

After this system went into effect the officers of the court received many expressions of satisfaction and commendation from the best people of that country. We have here the very best men for our commissioners, and they are constantly under our eyes to be advised by us and directed by the court.

One of your special agents, Mr. Hazen, was here not long since and remained some time with us. His observations of the workings of the court and of the commissioners here, I think, led him to favorable conclusions in relation to this matter. I respectfully refer you to him for his views.

I inclose a letter from Judge Parker relating to this matter. He is strongly of the opinion that the present system of appointing commissioners is the best, and, as you know, his experience is great and his judgment correct.

Very respectfully,

WM. H. H. CLAYTON,
United States Attorney, Western District of Arkansas.

The ATTORNEY-GENERAL,
Washington, D. C.