

University of Oklahoma College of Law

University of Oklahoma College of Law Digital Commons

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

1-29-1894

Accounts of J. J. Hitt et al. Letter from the Acting Secretary of the Treasury, transmitting a communication from the Attorney-General, inclosing accounts of J. J. Hitt et al., for legal services rendered the United States.

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indigenous, Indian, and Aboriginal Law Commons](#)

Recommended Citation

H.R. Exec. Doc. No. 92, 53rd Cong., 2nd Sess. (1894)

This House Executive Document is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact Law-LibraryDigitalCommons@ou.edu.

ACCOUNTS OF J. J. HITT ET AL.

L E T T E R

FROM

THE ACTING SECRETARY OF THE TREASURY,

TRANSMITTING

A communication from the Attorney-General, inclosing accounts of J. J. Hitt et al., for legal services rendered the United States.

JANUARY 30, 1894.—Referred to the Committee on Claims and ordered to be printed.

TREASURY DEPARTMENT,
January 29, 1894.

SIR: I have the honor to transmit herewith, for the consideration of Congress, a communication from the Attorney-General of the 26th instant, inclosing the accounts of James J. Hitt and others, for legal services rendered the United States, amounting in all to \$2,069.45.

The Attorney-General reports that there is no appropriation under his control available for the payment of said accounts, and that they can not be audited and certified for payment by the accounting officers of the Treasury.

Respectfully, yours,

S. WIKE,
Acting Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF JUSTICE,
Washington, D. C., January 26, 1894.

SIR: You are requested to state to the Speaker of the House of Representatives that the following bills, amounting to \$2,069.45, on file in the Department of Justice, do not fall under any appropriation under its control.

They can not be audited and certified for payment by the accounting officers of the Treasury.

Similar services have formerly been recommended to Congress for payment, and appropriations have been made under the head of "legal services rendered for the United States." Deficiency act, March 3, 1893.

EXHIBIT A.—Account of J. J. Hitt, Topeka, Kans., for services rendered at the request of Judge Riner in the defense of certain poor persons; authorized by act approved July 20, 1892 (27 Stats., 252); of

which section 4 authorizes the court to assign counsel for a poor person if it deems the cause worthy of trial, \$110.

EXHIBIT B.—P. H. Winston, late United States attorney for Washington, for services rendered by him after the expiration of his term of office in 1893, in the case of Frank C. Ross *v.* Indian Agent Eels and Capt. Carpenter, for resisting an encroachment made upon the reservation for the Puyallup Indians by a railroad company, in violation of the rights of the Indians and in apparent defiance of United States authorities; said services being a sequel to services while United States attorney, were rendered in the State court of Washington between May 23, 1893, and June 26, 1893, while he was no longer United States attorney, \$600.

EXHIBIT C.—Charles R. Evans, Chattanooga, Tenn., for services rendered as attorney at law, to Capt. C. Hewitt, U. S. Army, on a writ of habeas corpus in the case of James B. Gordon, a general service recruit, who was enlisted at the headquarters recruiting service, Chattanooga, Tenn., April 20, 1893, by Capt. W. L. Finley, Ninth Cavalry; who deserted from Columbus Barracks, Ohio, May 12, 1893; who was apprehended at Summerville, Ga., September 6, by Policeman T. H. Murphey, and was delivered to Capt. C. C. Hewitt, U. S. Army, at Chattanooga, September 7, 1893, \$250.

EXHIBIT D.—M. L. Mott, late assistant United States attorney for the Western district of North Carolina, for professional services in the case of the State of North Carolina against John Lewellen and Frank Lewellen, parties tried in the criminal court, county of Buncombe, at May term, 1893, for the murder of United States Deputy Marshal Charles Brockers; the district attorney not being able to attend and defend the deputy marshals, for which services he could have rendered account under section 299, Revised Statutes, the discharge of the duties fell upon the assistant United States attorney, \$500.

EXHIBIT E.—W. E. Craig, United States attorney, Western district of Virginia, for services rendered in the case of J. G. Wood, said Wood having been a witness in a case in which the United States was prosecuting a violation of the internal revenue laws; that after giving his testimony and being discharged by the court he was assaulted by parties defendant in the case in which he was a witness; that the assault was vindictive, for the purpose of intimidating the witness and injuring his future usefulness, and that of other witnesses in the district, in internal revenue cases. The Department, not seeing that the United States had any direct interest in this matter that was payable from any appropriation under its control, Mr. Craig was authorized to take charge of the case of Wood in the State court where he was arraigned for violating the laws of the State for defending himself against the assault made by the implicated parties, said Attorney Craig being notified that the Department had no appropriation out of which such services could be paid, and that his account would be approved by the Department and forwarded to Congress for an appropriation, \$259.45.

EXHIBIT F.—Marshall, Francis, and Corbett, attorneys at Missoula, Mont., for services rendered in efforts to uphold the authority of the Indian police. A habeas corpus case; the fee being recommended in this case by the Interior Department: in support of this claim reference being made to the Act of March 3, 1893, paragraph 7, last sentence, in the following words:

In all States and Territories where there are reservations or allotted Indians, the United States district attorney shall represent them at all suits at law and equity.

The said services were rendered in February, 1892, prior to the act just mentioned, \$50.

EXHIBIT G.—John Lowell, special assistant U. S. attorney for Massachusetts, for services in connection with the Maverick Bank cases. This account arose from an oversight of the district attorney in securing authority from the Attorney-General, under the section 366, previous to his appointment. The services of Mr. Lowell were valuable in the case and were accepted by the Government; as perhaps without such services the position of the Government would not have been made so forcible and satisfactory to the court. Mr. Lowell ought not to suffer because of an oversight on the part of the District Attorney, \$300.

Very respectfully,

LAWRENCE MAXWELL, JR.,
Acting Attorney-General.

The SECRETARY OF THE TREASURY.

James J. Hitt (see Exhibit A).....	\$110.00
Patrick H. Winston (see Exhibit B).....	600.00
Charles R. Evans (see Exhibit C).....	250.00
M. L. Mott (see Exhibit D).....	500.00
W. E. Craig (see Exhibit E).....	259.45
Marshall, Francis, and Corbett (see Exhibit F).....	50.00
John Lowell (see Exhibit G).....	300.00

EXHIBIT A.

1893. *The United States of America to James J. Hitt, Dr.*

To fee for defending Richard Friley, charged with perjury, tried by jury April 19, 1892. Verdict, not guilty. Appointed by Judge Riner to defend.....	\$20.00
To fee for defending Rebecca Friley, charged with perjury, tried at Leavenworth, October 11, 1892, by jury. Verdict, not guilty. Appointed by Judge Riner to defend.....	20.00
(These two cases separate indictment and separate trials.)	
To fee for defending John W. Totten, charged counterfeiting. Tried at Topeka, April 21, 1892. Verdict, guilty. Sentenced eighteen months in Lansing, Kans., penitentiary and \$5 fine. Appointed by Judge Riner.....	20.00
	60.00
Received payment of R. L. Walker, U. S. marshal for the district of Kansas, the amount in full. (Signed in duplicate.)	
To fee for defending Mitchell Wilmot, charged introducing and selling liquor to Indians. Tried April 27, 1892. Jury disagreed. Second trial October 12, 1892, at Leavenworth. Verdict, guilty. Sentenced three months county jail and fine \$50. Appointed by Judge Riner to defend.....	\$10 00
To fee for defending Nellie A. Murch, alias Nellie A. Hatcher, for perjury. Trial by jury October 13, 1892. Verdict, guilty. Motion for new trial pending. Appointed by Judge Riner.....	20 00
To fee for defending O. C. Miller, alias O. C. Rood, charged with breaking into post-office and robbing same at Junction City, Kans. Tried by jury December 1, 1892. Verdict, "Jury can not agree." Cause still pending. Appointed by Judge Riner to defend.....	20.00
	110.00

Received payment of R. L. Walker, U. S. marshal for the district of Kansas, the amount in full.
(Signed in duplicate.)

STATE OF KANSAS, *County of Shawnee, ss :*

James J. Hitt makes oath and says that the annexed and foregoing account is correct. That the parties, to wit: Richard Friley, Rebecca Friley, John W. Tooten, Mitchell Wilmot, Nellie A. Murch alias Nellie A. Hatch, and O. C. Miller alias O. C. Rood, etc., were indicted, and when arraigned in court said they were not able to employ counsel to defend them. That thereupon in each case I was duly appointed by Judge Riner to defend said parties; that the services as set forth in said claim were duly rendered; that in my opinion said services were reasonably worth the sums charged therein; that said services were actually rendered, and in each case a trial was had by a jury, and in the case of Mitchell Wilmot two trials by jury were had; that no part of said fees has been paid affiant; that there were no special features of the defense more than is attached to every criminal case.

JAMES J. HITT.

Subscribed and sworn to before me this 21st day of February, A. D. 1893. My term expires February 22d, 1894.

[SEAL.]

H. B. TRACEY,
Notary Public.

CHEYENNE, WYO., *February 23, 1893.*

James J. Hitt, a practicing attorney at Topeka, was assigned by the court to defend in the following cases tried in the district of Kansas: The United States v. Richard Friley, The United States v. Rebecca Friley, The United States v. John W. Tooten, The United States v. Mitchell Wilmott, The United States v. Nelly A. Murch, alias Nelly A. Hatcher, The United States v. O. C. Miller, alias O. C. Rood.

The defendants in each of the above cases, upon being arraigned and upon being interrogated in relation thereto, stated that they had no counsel and no means to employ one and that they desired to make defense, thereupon Mr. Hitt was appointed by the court to conduct the defense in each of the above cases.

I have examined the bill made out by him against the United States for services in these cases, in which he charges \$20 in each case for the first, second, third, fifth, and sixth cases, and \$10 for the fourth in the order above mentioned, making a total of \$110.

In my opinion the amount charged in each case is a reasonable charge for the services performed.

JOHN A. RINER,
Judge.

I indorse the above.

J. W. ADY,
United States Attorney.

TOPEKA, KANS., *February 27, 1893.*

SIR: Inclosed I return to you my claim for services in defending some pauper criminals. I have obtained the certificate of Judge Riner and the United States attorney as to the services and their reasonableness. I had to send the claim to Wyoming for the judge's certificate, hence the delay. I have also sworn to the claim. Trusting the same may meet your approval and recommendation for payment, I am, most respectfully yours, etc.,

JAMES J. HITT.

Hon. W. H. H. MILLER,
Attorney-General United States, Washington, D. C.

EXHIBIT B.

SPOKANE, WASH., *November 16, 1893.*

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

SIR: In reply to your letter of November 11, 1893, I have the honor to say that the fee of \$1,000, approved in my favor by the Department of Justice, was for services in a case brought in the superior court of King County, in the State of Washington, by Frank C. Ross against Indian Agent Eels and Capt. Carpenter of the Army, to restrain them from building a railroad over the Puyallup Indian Reservation. I was at that time United States attorney. I was requested by telegram from the Attorney-General to appear in the suit in the superior court of King County. I went to Seattle, and, after an examination of the papers, prepared the necessary affidavits and made and argued the motion for the removal of the case to

the United States court. After this motion was granted and the case removed, I prepared an answer in the case and filed it. All this occurred while I was United States attorney. I also argued a motion to dissolve the injunction. Pending these proceedings I was removed from office. I considered it my duty to continue to represent the defendants in this case, and afterwards tried the case, making two trips to Seattle, a distance of over 400 miles. It is for all of these services from first to last that my bill was rendered. My bill was never rendered for one day's services. It was for all the services rendered in the case, and my letter to you stating that the services were rendered after I ceased to be United States attorney was intended as a suggestion that if the Treasury Department will not pay me for work done while I was United States attorney in this case, it should at least pay me for work done after I ceased to be United States attorney. In either view of the case, the amount allowed me is not too large, considering the magnitude of the business, the distance traveled, the time employed, and the services performed.

The United States Dr. to Patrick H. Winston, late United States attorney for Washington.

For services to the Government between May 31, 1893, the date of the expiration of his services as United States attorney, to June 26, 1893, rendered in the matter of a railroad company that sought to lay a track across the Puyallup Indian Reservation, against the wishes and protests of the Indians and in defiance of the efforts of the United States officers of the Department of Justice in withstanding such attempted inroad upon the reservation..... \$600

Part of the services were rendered in the State court while Mr. Winston was United States attorney; the services for which this charge is made were rendered in the United States court after the matter had been removed from the State court.

There being at one or more times prospect of collision between the State authorities and the United States authority, in the matter of jurisdiction, it needed skillful management in avoiding a show of disrespect to the State authority while firmly asserting the rights of the Government. The gravity of the case and the importance of the services justly deserve a compensation of \$600.

EXHIBIT C.

Hon. D. M. KEY,

United States District Judge for the Eastern and Middle Districts of Tennessee:

Your petitioner, C. C. Hewitt, would most respectfully show unto your honor that he is a duly commissioned officer in the Army of the United States of America, holding at the present time the rank of captain in the Nineteenth regiment of infantry in said Army. That at the present time he is on duty as recruiting officer, located at Chattanooga, Tenn., where the Government of the United States has established a recruiting station. That on the 19th day of April, 1893, at the recruiting station in Chattanooga, Tenn., James B. Gordon was regularly enlisted in the Army of the United States for five years by Capt. W. L. Findley, recruiting officer of said Army at that time stationed at Chattanooga, and that said James B. Gordon was duly examined and accepted into said Army by said Capt. W. L. Findley, on said date. That under said contract of enlistment with the United States the services of said James B. Gordon are due to the United States for five years from said 19th day of April, 1893. That shortly afterward said James B. Gordon was sent to Columbus barracks, in the city of Columbus, in the State of Ohio. That on the 12th day of May, 1893, said James B. Gordon deserted from said Army and from the service of the United States. That on the 6th day of September, 1893, said Gordon was arrested by T. H. Murphey, a police officer of the town of Summerville, in the State of Georgia, at Summerville, Ga., as a deserter from the Army of the United States.

On the 7th day of September, 1893, said Murphey delivered said Gordon into the custody of your petitioner, who by the laws of the United States is authorized to receive him as a prisoner. That on the 7th day of September said John B. Gordon petitioned John A. Moon, judge of the fourth judicial circuit of the State of Tennessee, a State judge, for a writ of habeas corpus. A copy of said petition is hereto attached and marked Exhibit A. The petition was granted, a copy of which is attached to said copy of said petition. The undersigned was served with said writ by the sheriff of Hamilton County, Tenn., and, without giving petitioner any time to make a proper return, petitioner himself was arrested by the sheriff and brought up before Judge Moon. Petitioner then prepared a return to the writ, of which Exhibit B hereto attached is a copy. The judge would not read said return, nor would he permit the return prepared to be filed, nor would he hear the counsel for petitioner,

but made an order to the sheriff to take petitioner and confine him in the dungeon of the county jail, and permit no one, not even his counsel, to see him, unless petitioner would produce the body of said Gordon in the court before his honor. Petitioner then did produce the body of said Gordon in court and announced that he was ready to have the case heard, at the same time filing the return, a copy of which is hereto attached, marked Exhibit C. The judge then set the hearing for 1:30 p. m., September 8, and instead of permitting respondent to retain possession of the body of said Gordon, forcibly took said Gordon from the possession of said petitioner and ordered that the sheriff of Hamilton County take possession of him and hold him in custody. All this without any investigation of the case and without any jurisdiction of the subject-matter.

Your petitioner therefore represents that as a recruiting officer of the Army of the United States he was lawfully in charge of and had the right to the custody of said James B. Gordon, deserter from the Army of the United States, and that the body of said James B. Gordon is unlawfully withheld from his custody by John Skillern, sheriff of the County of Hamilton, Tenn.

Your petitioner prays your honor to grant him a writ of habeas corpus that he may have the body of James B. Gordon, unlawfully withheld from his custody by said John Skillern, released from the custody of said Skillern and restored to the custody of petitioner.

This is the first application for writ of habeas corpus by petitioner in this case.

C. C. HEWITT.

H. M. WILTSE,
Assistant United States Attorney,
C. R. EVANS.

Sworn to and subscribed before me this 9th day of September, 1893.

HENRY O. EWING,
Deputy Clerk.

To the Clerk of the District Court of the United States at Chattanooga, Tenn.:

Issue a writ of habeas corpus as prayed for, requiring John Skillern the Sheriff of Hamilton County, Tenn., to have James B. Gordon before the district court of the United States, at Chattanooga, Tenn., on Friday, September 15, 1893, at 10 o'clock a. m., and show cause if any he has, why the said James B. Gordon should not be discharged from the custody of said sheriff.

This 9th day of September, 1893.

D. M. KEY,
Judge.

[Exhibit A.]

Hon. JOHN A. MOON,
Judge, etc.:

The petition of James B. Gordon shows that he is unlawfully held in custody by C. C. Hewitt upon the charge of being a deserter from the United States Army. Petitioner can show upon a hearing before your honor that he is guiltless of the crime charged, and that if any enlistment is charged against petitioner in said Army the same is denied, as at the time it is claimed petitioner enlisted he was both drunk and had a wife and child dependent upon him for a support; and as petitioner is informed no drunk man or man who has a wife and child dependent upon him for a support can legally be permitted to enlist in the U. S. Army; and if any such enlistment has ever happened petitioner can show the same was not done with his knowledge and consent, and that he is irresponsible for the same.

Said H. W. Taylor refuses to release petitioner but illegally restrains him of his liberty under the charge.

Whereupon he prays the issuance of the writ of habeas corpus that he may be brought before your honor, the facts heard, and he be restored to his liberty. This is the first application for writ of habeas corpus.

JAMES B. GORDON.

James B. Gordon on oath says that the facts herein stated are true to the best of his knowledge, information, and belief.

JAMES B. GORDON.

Sworn to and subscribed before me, September 6, 1893.

[SEAL.]

J. A. HOLTZCLAW,
Notary Public.

C. C. HEWITT:

Have the body of James B. Gordon, who is alleged to be held in custody by you, before me at the court-house in Chattanooga, Tenn., at 4 p. m. on Monday, September 7, 1893, to be dealt with as the law directs, and have you then and there this writ, with your actions and doings therein.

This September 7, 1893. The sheriff will take the petitioner into his custody and hold him until the hearing of this writ.

JOHN A. MOON,
Judge.

[Exhibit B.]

STATE OF TENNESSEE, *County of Hamilton, City of Chattanooga:*

In the matter of the petition of James B. Gordon for a writ of habeas corpus. Recruit U. S. Army.

Hon. JOHN A. MOON,

Judge of the Fourth Judicial Circuit of Tennessee:

The undersigned, respondent to the annexed writ of habeas corpus, has the honor respectfully to make return that he is a commissioned officer of the U. S. Army, and at present on duty as recruiting officer at Chattanooga, State of Tennessee, and that James B. Gordon, named in the annexed writ, is in my custody as a deserter from the U. S. Army, and is a duly enlisted soldier in the Army of the United States of America.

That the said James B. Gordon has been regularly enlisted in the Army of the United States at Chattanooga, Tenn., on the 19th day of April, 1893, for five years, and duly sworn into said service on said date by Capt. W. L. Findley, an officer in the Ninth Cavalry of the U. S. Army, on said date as recruiting officer at Chattanooga.

That, under the decision of the U. S. Supreme Court, it is not the duty of this respondent to produce the said James B. Gordon in court.

That this declaration and denial of the jurisdiction of your court is not from any want of respect to the court but from a sense of official duty.

Wherefore this respondent respectfully begs leave to invite your attention to the decision of the Supreme Court of the United States in the case of *Albeman v. Booth* (21 Howard, 506) and the case of *Abigail Tarbel* (December Term, 1871) as the basis of this return.

Dated this 7th day of September, 1893, at Chattanooga, Hamilton County, Tenn.

C. C. HEWITT,
Respondent.

STATE OF TENNESSEE, *County of Hamilton.*

C. C. Hewitt, being first duly sworn, on his oath says that the statements contained in the foregoing writ are true.

C. C. HEWITT.

Subscribed and sworn to before me this 7th day of September, 1893.

R. B. HENDERSON,
Clerk Circuit Court.

[Exhibit C.]

STATE OF TENNESSEE, COUNTY OF HAMILTON, *City of Chattanooga:*

In the matter of the petition of James B. Gordon for a writ of habeas corpus. Recruit U. S. Army.

Hon. JOHN A. MOON,

Judge of the Fourth Judicial Circuit of Tennessee:

The undersigned respondent to the annexed writ of habeas corpus, has the honor respectfully to make return that he is a commissioned officer of the United States Army, and at present on duty as recruiting officer at Chattanooga, State of Tennessee, and that James B. Gordon, named in the annexed writ, is in my custody as a deserter from the U. S. Army and is a duly enlisted soldier in the Army of the United States of America, and that I have him here in my custody before this court as commanded by your honor.

That the said James B. Gordon has been regularly enlisted in the Army of the United States at Chattanooga, Tennessee, on or about the 19th day of April, 1893,

for five years, and duly sworn into said service on said date by Capt. W. L. Findley, an officer of the 9th Cavalry of the U. S. Army, on said date on recruiting service as recruiting officer at Chattanooga.

Dated this 7th day of September, 1893, at Chattanooga, Hamilton, County, Tenn
C. C. HEWITT,
Respondent.

STATE OF TENNESSEE, *County of Hamilton:*

C. C. Hewitt, being first duly sworn, on his oath says that the statements contained in the foregoing writ are true.

C. C. HEWITT.

Subscribed and sworn to before me this 7th day of September, 1893.

R. B. HENDERSON,
Clerk Circuit Court.

(Indorsed): Petition of C. C. Hewitt for writ of habeas corpus for James B. Gordon directed to John Skillern, sheriff. Filed September 9, 1893. Henry O. Ewing, deputy clerk.

Hon. D. M. KEY,

*Judge of the United States Court for the Southern Division
of the Eastern District of Tennessee:*

The petition of James B. Gordon shows that he is being unlawfully held as a prisoner by one C. Hewitt (an alleged captain in the U. S. Army), under the charge, as petitioner is informed, of being a deserter from the U. S. Army.

Petitioner can show that he is not guilty of the offense charged against him and can satisfactorily show the same upon a hearing of all the facts before your honor. Petitioner has never legally enlisted as a soldier of said U. S. Army and denies that he is a soldier of said Army, or that he ever enlisted as such; and that petitioner is entirely innocent of any crime or offense against the United States, or its authorities. That said Hewitt is holding petitioner without any warrant or authority; and that illegal and unlawful detention is being exercised by said Hewitt over petitioner in the city of Chattanooga, Hamilton County, Tenn., and within the southern division of the eastern district of Tennessee.

Wherefore your petitioner prays that your honor grant him the writ of habeas corpus that he may be released from imprisonment or the custody of said Hewitt.

No habeas corpus has heretofore been granted or applied for in any court having jurisdiction of same.

JAMES B. GORDON.

James B. Gordon on oath says that the facts stated in the foregoing petition are true to the best of his knowledge, information, and belief.

Sworn to and subscribed before me September 8, 1893.

JAMES B. GORDON.

EXHIBIT D.

The United States of America to M. L. Mott, late assistant district attorney for the western district of North Carolina, Dr.

To special professional services in the case of the State of North Carolina against John Lewellen and Frank Lewellen, indicted and tried in the criminal court of the county of Buncombe, at May term, 1893, for the murder of United States Deputy Marshal Charles Brockus.....	\$500
Submitted for the approval of the Attorney-General.	

[State of North Carolina, county of Buncombe. State v. John Lewellen and Frank Lewellen. In the criminal court, May term, 1893.]

Hon. RICHARD OLNEY,

Attorney-General United States, Washington, D. C.:

SIR: I herewith hand you statement of account for special services rendered the Government in the prosecution of the case of the State of North Carolina against John Lewellen and Frank Lewellen for the murder of Charles Brockus, tried at the May term of the criminal court of Buncombe.

The defendant, John Lewellen, was charged with the illicit retailing of spirits, under the internal-revenue law of the United States. A warrant for his arrest was put in the hands of Charles Brockus, a U. S. deputy marshal. In the attempt

to execute the same the defendants, John Lewellen and Frank Lewellen, aided and abetted by one Potillo and one George Whitt, resisted the deputy marshal. A fight ensued, in which Patillo and the deputy marshal, Brockus, were killed. Whitt made his escape, and the Lewellens were arrested by the State authorities, indicted in the criminal court of the county of Buncombe, and tried for the murder of the deputy marshal.

You directed the U. S. district attorney, the Hon. Charles Price, to assist the State solicitor, in behalf of the Government of the United States, in the prosecution of the case. The district attorney, on account of other engagements, could not take part in the preparation and trial of the case, but directed me as the assistant district attorney to represent the Government, which I did.

More than a week's time was consumed in the preparation and trial of the case, and much labor was done by the prosecution. It was a case in which there should have been no question of a prompt conviction, but for some unaccountable reason, and much to the chagrin and surprise of the public, the defendants were acquitted; and so unexpected was such a verdict that the presiding judge publicly reprimanded the jury, and declared from the bench that the acquittal of the defendants was "a disgrace to every man on the jury and to the people of the county of Buncombe."

I think that my services were reasonably worth the sum of \$500, which I respectfully submit for your approval.

I have the honor to be your obedient servant,

M. L. MOTT,

Late Assistant District Attorney for the Western District of North Carolina.

Submitted August 10, 1893.

EXHIBIT E.

DEPARTMENT OF JUSTICE,
Washington, D. C., April 29, 1893.

W. E. CRAIG, Esq.,
U. S. Attorney, Staunton, Va.:

SIR: Before the Attorney-General, Mr. Richard Olney, left the Department during this week, he instructed the clerk to prepare the following reply to your letter of April 24, 1893.

The Attorney-General adheres to his previous letter to you that he does not interpret the language of the law as giving authority to appoint a U. S. attorney or an assistant of a U. S. attorney to defend a man who has been indicted in a State court for offenses by him under the State laws when acting in an individual capacity; however much it may be desired to infer that the fact of said defendant, once having been a witness in a U. S. court, was driven into overt acts against the State laws, said acts being those of alleged self-defense against assault made upon him because of such testimony. He further directed to be said to you that if you volunteered to defend said witness, Mr. Wood, he will ask Congress to make an appropriation adequate for your compensation.

It is suggested that if you assume the defense your account should be approved by the judge of the U. S. court, if he shall be so disposed, as a service that might be deemed as quasi-official on your part and involving a sufficient matter of interest to the Government to allow of compensation.

Very respectfully,

CHARLES H. ALDRICH,
Acting Attorney-General.

On August 25, 1890, at midnight, the house of one Walter Thomas, in Floyd County, Virginia, the said Thomas being a United States witness, was broken into by a mob; the door was smashed in and a portion of the crowd entering, took Thomas from his bed, from the side of his wife, dragged him out of doors, and very seriously beat him with stocks and withes; several of the mob remained inside holding the wife of Thomas in bed and with their hands over her mouth, smothering her screams as her husband was being so cruelly beaten on the outside. About six months thereafter Walter Thomas died, it is said from the effect of wounds received in this beating. After the death of Thomas these conspirators, or some of them, thinking that inasmuch as the principal was dead they were in no danger of prosecution began talking of the matter.

In the meantime, about August, 1891, the revenue officers seized and destroyed an illicit distillery claimed to have belonged to and been operated by one Peter Woods. It was claimed by Woods and his friends that John G. Wood gave the information which led to the destruction of this distillery; they compelled him to go with them before a U. S. commissioner, warrants having been issued for them, in order that he might clear himself of the charge. At that time, however, although John G. Wood denied having given the information, his proof of his innocence was not satisfactory, and that evening on their return home these men threatened the life of John G. Wood unless he further exonerated himself from this charge of having been the informer.

Between that time, August, 1891, and January 1, 1892, it seems that the conspirators who whipped Walter Thomas had talked to the wife of John G. Wood, and they got information that she in all probability would report them; this but added to their fury, and John G. Wood, himself, fearing his life, left his home, taking his wife and two small children with him to his father's house, where he left his wife and children and left the county, seeking employment elsewhere. He returned a short while before Christmas, and on Christmas eve met Peter Wood and his gang in the public highway, where they threatened to carry into execution the threats they had theretofore made against him; a fight ensued between Peter Woods and John G. Wood, during which John G. Wood struck Peter on the head with a rock; a warrant was at once obtained from the justice of the peace and the constable, with Peter Woods and another of his gang as assistants, undertook to arrest John G. Wood; they found him at his father's house and John G. not knowing the officer and recognizing Peter Woods and his associate, thought it was a mob coming to take his life; he thereupon fled and was shot at twelve times by the constable and his assistants, the constable, however, claiming that five shots from his revolver were not aimed at John G. Wood; two of the shots took effect, one in the left arm and the other in the shoulder; these shots, however, did not disable John G. Wood, and he made good his escape and left the State, settling in West Virginia, where he soon afterwards brought his own family and his old father and mother, whose lives and property were also threatened by reason of their having harbored John G. Wood and his wife and children.

John G. Wood, having escaped arrest under the magistrate's warrant, the witness went before the grand jury of Floyd County court and succeeded in indicting him for a felony, an attempt to maim, disfigure, disable, and kill Peter Wood.

John G. Wood and his wife were summoned to attend the district court for the western district of Virginia at Lynchburg, from West Virginia, and upon their testimony mainly indictments were found against a number of these conspirators, and upon their trial at the March term, 1893, of the Lynchburg court four of them were convicted and each sentenced to serve a term of years in the Albany penitentiary, where they are now serving out their sentence. At this Lynchburg court, March term, 1893, after John G. Wood was discharged as a Government witness, he was arrested under the indictment aforesaid, in Floyd County, against him.

While four of the said conspirators have been convicted and sentenced, there is still another indictment pending against three others of the same gang, for whose conviction the testimony of John G. Wood is very material; also evidence developed at the trial of the four who were convicted, which will include from five to ten others of the same gang who have not up to this time been indicted, but who in all probability will be indicted upon the testimony mainly of John G. Wood and his wife.

Such being the facts, and this indictment against John G. Wood, of Floyd County, having arisen entirely by reason of his connection with these conspiracy cases as a witness for the Government, and his testimony being so material in prosecuting the men already indicted and in bringing to indictment others who have so far escaped, the facts in the case were represented to the Attorney-General of the United States and he authorized the assistance in his defense charged in the foregoing account.

The section of the code of Virginia under which John G. Wood was indicted is as follows:

"SEC. 3671. Shooting, stabbing, etc., with intent to maim, kill, etc., how punished. If any person maliciously shoot, stab, cut, or wound any person, or by any means cause him bodily injury, with intent to maim, disfigure, disable, or kill, he shall, except where it is otherwise provided, be punished by confinement in the penitentiary not less than one nor more than ten years."

Upon his trial, the jury on June 14, 1893, found a verdict of "guilty" and fixed the term of his imprisonment in the penitentiary of Virginia at one year, and the prisoner was sentenced accordingly.

W. E. CRAIG.

EXHIBIT F.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, September 8, 1893.

The SECRETARY OF THE INTERIOR:

SIR: Referring to office report of March 25, 1892, recommending that authority be granted for the settlement of an indebtedness incurred by the agent of the Flathead Agency, in Montana, during February, 1892, amounting to \$23.40 for the traveling expenses of himself and interpreter on official business, transportation and subsistence of eight Indian prisoners, and for heating stove for Indian police, as evidenced by the voucher and letter from the agent, which was transmitted, and to Department letter of March 28, 1892, granting the authority recommended, I have the honor to say that in the same letter the agent recommended the payment to Marshall, Francis & Corbett, attorneys, of Missoula, a fee of \$50 for professional services rendered in connection with the trial of an habeas corpus action brought in a court of Montana, with a view of releasing from the Indian police certain Indians of the Flathead Reservation who had left the reservation and were encamped near Missoula and engaged in practices of a degrading character, and who were arrested by the Indian police of the reservation under direction of the court of Indian offenses for said reservation.

It seems from the agent's report that on the 11th of February, 1892, the captain of the Indian police, with 14 of his men, proceeded to Missoula and arrested a number of women and men who were encamped near that place and engaged in immoral practices, whereupon application was made to the court for their release on habeas corpus, and the district attorney being over 150 miles away, Mr. Ronan, who was then the agent, employed the attorneys named to represent the police.

On the hearing of the case the court disallowed the writ and the police were permitted to return to the reservation with their prisoners.

I have received a letter of July 25, 1893, from the late Peter Ronan, who was agent at the Flathead Agency, transmitting a communication from Mr. Marshall in behalf of his firm, calling attention to the fact that services were rendered as stated, and to the fact that no provision had been made for the payment of their fee of \$50, which the agent says was earned by the attorneys.

In view of the peculiar circumstances of the case and the impracticability of having the district attorney render services that were necessary at the time, and of the fact that it was very important to the administration of Indian affairs at the Flathead Agency that the jurisdiction and authority of the Indian police, under instructions from the court of Indian offenses of the reservation, should be maintained; and also the fact that under section 189 of the Revised Statutes this Department would not be authorized to pay for the services of the attorneys in the case, I have the honor to transmit copies of the letters from the agent referred to, and to recommend that the matter be submitted to the Attorney-General with request that steps be taken by his Department looking to the payment of the fee of these attorneys if they can be lawfully paid.

Very respectfully, your obedient servant,

D. M. BROWNING,
Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, September 9, 1893.

The ATTORNEY-GENERAL:

SIR: I have the honor to transmit herewith copy of a communication of the 8th instant from the Commissioner of Indian Affairs in regard to the payment to Marshall, Francis, and Corbett, attorneys of Missoula, Mont., a fee of \$50 for professional services rendered in connection with the trial of an habeas corpus action brought in a court in Montana, with a view of releasing from the Indian police certain Indians of the Flathead Reservation who had left the reservation and were encamped near Missoula, and engaged in practices of a degrading character, and who were arrested by the Indian police of the reservation under direction of the court of Indian offenses.

Application was made to the court for the release of said Indians on habeas corpus, and the district attorney being over 150 miles away, the agent of the Flathead Agency employed the attorneys named to represent the police.

In view of the peculiar circumstances of the case and the impracticability of having the district attorney render services that were necessary at the time, and of the fact that it was very important to the administration of Indian affairs at the Flathead Agency that the jurisdiction and authority of the Indian police, under instruc-

tions from the court of Indian offenses of the reservation, should be maintained; and also the fact that under section 189 of the Revised Statutes, this Department would not be authorized to pay for the services of the attorneys in the case, I have the honor to submit the matter with the request that steps be taken by your Department looking to the payment of the fee of these attorneys, if the same can be lawfully paid.

Very respectfully,

JNO. M. REYNOLDS,
Acting Secretary.

MISSOULA, MONT., *July 19, 1893.*

Maj. PETER RONAN,
Arlee, Mont.:

MY DEAR MAJOR: Sometime ago, at your request, I defended a writ of habeas corpus of certain Indians who were then detained under authority of the Indian police, and it was agreed that you would report the charge to the Indian Department and have it allowed, since which time we have not heard what disposition was made of it. Kindly advise us at your early convenience the status of the same, and, if in condition, would be greatly obliged to receive the amount.

Faithfully, yours,

THOS. C. MARSHALL.

EXHIBIT G.

[In duplicate.]

The United States to J. Lowck, Dr.

Boston, March 3, 1893:

To services in connection with indictments in the Maverick Bank cases, viz: Consultations with Mr. Allen, district attorney, on six several days in 1892, to wit: July 18, 19, 22, 25, 26, August 1, examination of the statutes, advice thereon, and as to indictments under the statutes..... \$300

Approved.

F. D. ALLEN,
U. S. Attorney.