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Method of trying misdemeanors in the Indian Territory. Letter from the Attorney-General, transmitting sundry letters from the U. S. Attorney for the Indian Territory relative to the method of trying misdemeanors now in force in the territory.

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Recommended Citation

H.R. Exec. Doc. No. 67, 53rd Cong., 2nd Sess. (1894)

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METHOD OF TRYING MISDEMEANORS IN THE INDIAN
TERRITORY.

LETTER

FROM

THE ATTORNEY-GENERAL,

TRANSMITTING

Sundry letters from the U. S. attorney for the Indian Territory relative to the method of trying misdemeanors now in force in the Territory.

JANUARY 10, 1894.—Referred to the Committee on the Judiciary and ordered to be printed.

DEPARTMENT OF JUSTICE,
Washington, D. C., January 9, 1894.

SIR: Inclosed are copies of letters of September 29, 1893, from C. L. Jackson, United States attorney for the Indian Territory, and of December 15, 1893, from the same officer. They relate to the method of trying misdemeanors now in force in the Indian Territory; suggesting the propriety of having the Government represented before the commissioner if he was given final jurisdiction in the misdemeanor cases; that it would be necessary to arrange for jury trials and to pay the jurors; that it would be a great saving in witness fees if the commissioners had the power to finally try defendants at such time as they were first brought before these officers, thus saving increased expenses incident to a trial by jury, the expense of jurors and additional assistant attorneys to appear before them on final trials; suggesting that the amount of fees retained by them should be limited, as some of them receive amounts, under the present system, approximating the pay of a district judge.

The greatest expense, the attorney suggests, are the fees of deputy marshals, which are nearly all rendered in cases before the commissioners.

In his letter of September 29, 1893, the district attorney, after describing the difficulties in the way and expense attendant upon the execution of the present law, says that he is "not sure that the expense to the Government could be much lessened by any change over the present system," but that he is satisfied "investing commissioners with power to finally hear misdemeanor cases would be a great satisfaction to the people of the Territory."

The result set forth in the letters, it appears, was reached by consultation with U. S. District Judge Stuart.

The matter is referred to Congress for suitable action.

Very respectfully,

RICHARD OLNEY,
Attorney-General.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

[United States court in the Indian Territory, office of U. S. attorney.]

MUSKOGEE, IND. T., *September 29, 1898.*

DEAR SIR: Shortly after coming into office I received yours of March 25 and also yours of March 28—both initialed H. H. and numbered 11762—1892, on the subject of trials in misdemeanor cases before U. S. commissioners in this Territory.

In yours of March 25 you directed me to "Take sufficient time to thoroughly understand the points made by Assistant Attorney Jenkins, and from your present knowledge and future observation you may be able to make a statement relative to the matter in hand that shall be of use to this Department in presenting to Congress at its next session the question of a change of law in that particular." In yours of March 28 you directed me as follows: "When you reply to Department letter of March 25 you can also reply to this."

I am free to confess that the question of the prosecution of misdemeanors under the general statutes of Arkansas of 1884, which are in force throughout this Territory by virtue of the act of Congress of May 2, 1890, enlarging the jurisdiction of the U. S. court in the Indian Territory, is a most perplexing one.

After a very careful consideration of the laws in force in the Indian Territory, Judge Stuart decided that the commissioners of this court had no power to finally try any criminal case, but only had the same powers that regular commissioners of the U. S. circuit courts have to examine in a preliminary way into the commission of crime alleged to have been committed within the country over which such commissioner had jurisdiction. I am well satisfied that Judge Stuart's decision is correct in this regard.

The administration of criminal law in this Territory under the present system is very expensive to the Government, but it is hard to suggest a change that would provide for a proper administration of law and prosecution of criminals that would not be complicated and necessitate an increase of officers.

When Judge Stuart came into office last April he appointed nine new commissioners to take the places of the nine who had held positions under his predecessor, Judge Shackelford. These commissioners, of course, were all new to the business and have made some mistakes and committed some errors and, unquestionably, have permitted some prosecutions before them that should not have been permitted.

I have exercised as vigilant supervision over proceedings before these different commissioners in criminal cases as it was possible for me to have done with the commissioners scattered over a vast extent of territory as they are here.

I adopted a system of daily reports and Judge Stuart made proper orders requiring commissioners to make such reports; but both Judge Stuart and myself have found that commissioners would permit prosecutions in cases in some instances which were frivolous and which were based upon mere technical violations of the law. In all such instances I have announced that I would object to the allowance of the commissioners' fees, and Judge Stuart has announced that he would make orders disallowing commissioners' fees.

Of course the commissioners were all inexperienced, but I believe they are improving, and are endeavoring to curtail the number of prosecutions as much as possible. So far as I am concerned, I will continue to watch these prosecutions and prevent the commissioners, as far as possible, from entertaining the prosecution of any crime where the public welfare does not absolutely demand that such prosecution should be had.

I believe that some limit should be placed upon the amount of fees that any given commissioner can earn in any given year, for as it is now, any commissioner appointed by Judge Stuart can earn far more money than he himself can earn, and of course the same judicial ability and legal attainments are not required in a commissioner that are required in a judge. If such limit was placed upon the amount a commissioner could earn there would be no selfish reason for them permitting an unnecessary number of prosecutions. Under the present system of commissioners holding only preliminary examinations, of course the Government witnesses and the

witness for the defendant at the Government's expense are required to come to the place of holding court in their respective divisions, and receive their pay for per diem and mileage, that would not have to be paid out if commissioners in misdemeanor cases had power to finally try defendants. Great hardship is frequently imposed upon persons who are required to go long distances to the terms of U. S. courts in these misdemeanor cases.

If, on the other hand, the commissioners should be given jurisdiction to finally hear and determine misdemeanor cases, they would have to be given power to summon juries and provisions would have to be made for the payment of these juries. This is an expense that under the present system is not necessary. Again, with only one assistant in this office the time of both myself and my assistant is taken up with the prosecution of cases in the U. S. court and in attending the terms of that court, and the Government would have no counsel in the prosecution of these cases before commissioners and some arrangements would have to be made for the appointment of additional assistant attorneys. Unless the commissioners were required to hold special terms of court at particular times and places with an arrangement that the term of one commissioner would not conflict with that of another, there would have to be an assistant attorney for each commissioner.

If provision were made for commissioners holding regular terms of court at stated times, then one additional attorney for each of the three judicial divisions would be sufficient, but the expense would thereby be greatly increased in these commissioners' courts, because some arrangement would have to be made to give defendants in these misdemeanor cases prompt hearings, and the commissioners would have to be given power to hold preliminary examinations and bind defendants and witnesses over in proper cases to reappear before such commissioner when he would hold his regular term of court and have a jury and Government counsel.

Outside the question of expense to the Government, of course the rights of the people in this Territory to prompt hearings in these small cases, and to have them tried without the great hardship that is now imposed upon witnesses and in some instances upon defendants in going long distances to court, should be considered.

I am not sure that the expense to the Government could be much lessened by any change over the present system.

I am satisfied that investing commissioners with power to finally hear misdemeanor cases would be a great satisfaction to the people of the Territory, and I feel satisfied that if any change is to be made in the present system of trying criminal cases in this Territory that the commissioners should be given jurisdiction to finally hear and determine the misdemeanor cases, provided for by Mansfield's Digest, now in force in this Territory, with power to commit the defendants to jail in cases where imprisonment is proper, and given power to summon juries when demanded by defendants, and provision made for an additional assistant attorney for each commissioner in this Territory.

I have written thus at great length to try to explain the peculiar condition of affairs here. I do not know whether I have made this matter as explicit as you desire, but I have tried to make it as clear as I can.

I have talked this matter over very carefully at different times with Judge Stuart and he realizes as well as I do the perplexing condition of affairs here, and I believe he coincides with the views expressed in this letter.

Very respectfully,

CLIFFORD L. JACKSON,
U. S. Attorney.

The ATTORNEY-GENERAL,
Washington, D. C.

[U. S. court in the Indian Territory. Office of the U. S. attorney.]

MUSKOGEE, IND. T., December 15, 1893.

SIR: On the 29th of last September I addressed a letter to you, a copy of which I delivered to Judge Stuart of our court, on the subject of changing the laws of this Territory and providing for a different system of trying misdemeanor cases, the original of which letter I inclose herewith to you.

Since writing the above-mentioned letter, both Judge Stuart and myself have been constantly in court. We were at that time engaged in court at South McAlester, in the second judicial division. On the 17th of October we commenced court at Ardmore, in the third judicial division, and on the 28th of November we returned to court at Muskogee, in the first judicial division, and there was no time that court was not in session except the time necessary to permit Judge Stuart and myself to get from one place of holding court to another.

I have just talked with Judge Stuart to-day, and we feel that we can add but little to my letter of September 29. I believe it would be necessary to have the Gov-

ernment represented before the commissioner, were they given final jurisdiction in misdemeanor cases. I believe it would further be necessary to arrange for jury trials before them in these misdemeanor cases, and to make some arrangement to pay the jurors. Of course it would be a great saving in witness fees if commissioners were given power to finally try defendants at such time as they were first brought before these officers, but this saving might be overcome by the increased expenses incident to the trial by jury, pay of jurors, and of additional assistant attorneys to appear before commissioners in such final trials.

Unless commissioners are limited in the amount of fees to be retained by them, the temptation would be as great then as it is now for them to permit an unnecessary number of prosecutions, and the opportunity to check them in this matter would not be as favorable, were they given jurisdiction to finally try any given cases, as it is now with every one of these cases being finally tried before Judge Stuart.

By far the greatest expense incident to the prosecution of misdemeanors in the U. S. court in this Territory are the fees of the deputy marshals, and these fees are in nearly every instance earned while the case is pending before the commissioner. Some reduction of these fees must be made before any great saving in the expenses of our prosecutions can be had.

From my present understanding of the situation in this Territory, I would respectfully suggest that the commissioners and deputy marshals should be paid by fixed salaries. The commissioners should then be given jurisdiction to finally try all misdemeanor cases, with power to summon juries. The U. S. attorney should be paid by salary instead of by fees, and should be provided with a number of assistants equal to the number of commissioners, in addition to the one assistant now allowed, whose time will be occupied in attending upon grand juries in U. S. court, and in assisting in court and office work. With these changes over the present system, I am satisfied that the expense of prosecutions in this Territory would be materially reduced, and the people better satisfied with the manner of trying cases.

However, unless the commissioners and deputy marshals are paid by fixed salaries, I think—if commissioners were given final jurisdiction to try misdemeanor cases—that the number of prosecutions would be greatly increased, and the expenses to the Government correspondingly increased.

The expense of our court is much greater than it need be if commissioners and deputy marshals would limit the prosecutions to those that absolutely demand prosecution. It is very difficult to keep them in proper bounds. Of course there is a vast and steady increase of our population, and the amount of crime increases with the number of our population, and the necessary expense of prosecution of crime in our court is increasing all the while.

It must be borne in mind, of course, that in this Territory the U. S. court is charged with the trial of all criminal cases which are triable in the State of Arkansas by justices of the peace, and most of the criminal cases triable in the State district court, and part of the crimes triable by the Federal court. There are no tribunals in this Territory except those provided by the United States in which citizens of the United States can be tried for an offense, no matter how trivial.

Judge Stuart and myself both intended to give earlier attention to this matter, but we have been so closely confined in court that we have not been able to do so. I also inclose you papers submitted to me in your letters of March 25 and 28 last.

Very respectfully,

CLIFFORD L. JACKSON,
U. S. Attorney.

The ATTORNEY-GENERAL,
Washington, D. C.