

Hangin' Times **in Fort Smith**



**A History of Executions
in Judge Parker's Court**

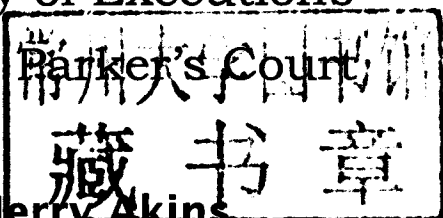
Jerry Akins

Hangin' Times

In Fort Smith

A History of Executions
in Judge Parker's Court

By Jerry Akins



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On the front cover: John Childers was the first man hanged in Fort Smith, Arkansas, by the U.S. District Court of the Western District of Arkansas. (Image courtesy of Linda Seamans McGahan)

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FOREWORD

The history of Fort Smith, Arkansas, runs as deep as the Arkansas River, but much like the river, it has taken a century for that depth to be realized. Fort Smith has always been a practical town, looking toward the future and until the last few decades, leaving the past largely unexplored. From the foundations of the first fort built along the river, frontier necessity was a reality. Fort Smith sat on what was the edge of the world for almost eighty years. Chosen specifically because of geographical location, the fort created a launching point for supplying western exploration, witnessed the forced relocation of thousands of Native Americans along the Trail of Tears, and celebrated the victory of the Mexican War as well as survived the social upheaval and destruction of the Civil War. Fort Smith became infamous in the later decades of the nineteenth century, not as an outpost for westward expansion, but for the long shadow of a gallows built to serve the judicial needs created by that expansion.

The U.S. District Court for the Western District of Arkansas relocated to Fort Smith in 1873, from across the river in Van Buren. The fort had been abandoned two years earlier as the military presence moved farther west, so the immediate needs of the expanding judicial system moved to the legal if not literal edge of the frontier. Chaos in the aftermath of the Civil War and the often-overt criminality of U.S. citizens in the Indian Territory resulted in the creation of the largest federal court district in history. The 74,000 square miles of rural and wild landscape in Indian Territory provides a backdrop for stories, many of which will be told for the first time in this book.

The Indian Territory was a complex creation of the United States Congress and numerous presidential policies, where legally sovereign but militarily subjected Native American nations from eastern state homelands were relocated to the area that eventually became modern Oklahoma. These nations held legislative and judicial power over their own citizens, but were forbidden by treaty from enforcing their laws against citizens of the United States or to punish anyone for crimes committed against citizens of the United States.

To further complicate this legal climate, these treaties also stipulated that the U.S. government would enforce laws against the importation of spirituous liquors into the Territory. The profitability of liquor prohibition, a vast rural landscape with little law-enforcement, and the criminality in war-torn areas of Arkansas and Missouri following the Civil War combined into a chaos never before or since seen in the United States. The people on both sides of the border demanded something be done. That something became the infamous gallows at Fort Smith, Arkansas.

The first two years of the court at Fort Smith were plagued with corruption until President Grant selected a Missouri congressman and former Missouri circuit judge, named Isaac Charles Parker, to re-establish the reputation of the U.S. District Court for the Western District of Arkansas. Judge Parker was chosen initially on a short-term basis to clean up the court and, it was hoped, to establish law and order in Indian Territory. Parker had shown a legislative interest in federal Indian policy, and serving on the bench in Fort Smith made him the spokesperson for much of that policy. He would serve on that bench for twenty-one years. Parker died on November 17, 1896, at his home a few blocks from the court.

Just as every rope on every gallows has a story in this volume, every story begins with a victim. That is the one lesson Judge Parker would want us to remember. It was the job of the U.S. District Court in Fort Smith, Arkansas, to determine this story and a jury to decide the fate of the accused. In an 1896 interview, near his death, Judge Parker answered his critics by saying, "They see the convict alone, perhaps chained in his cell. They forget the crime he perpetrated and the family he made husbandless and fatherless by his assassin work." Parker wanted the victims of crime to find justice in his federal court, and in the following book, the stories of the victims play a prominent role.

Jerry Akins presents for the first time in a single collection the numerous stories behind the infamous gallows at Fort Smith. The accounts of the victims and the accused bring to light an entire world of Wild West crime and those who paid the ultimate punishment. From senseless drunken acts, homicidal high drama, and Wild West law enforcement, these stories fulfill the old saying, "Truth is stranger than fiction." Much like the current depth of the Arkansas River, these stories have taken a century or more to come to light. Jerry Akins has pulled from the newspapers and the court documents of the era to tell the untold history of Fort Smith. For the first time in book form, this is the truth behind the long shadow of the gallows.

The U.S. District Court for the Western District of Arkansas between 1873 and 1896 executed eighty-six men. Under Judge Parker in twenty-one years, seventy-nine men met their fate on the gallows. One cannot overlook this large number, although this is of 160 originally sentenced to die. Capital crimes were a small part of the 13,000 total cases heard by Parker, but federal law specifically stated that a jury conviction for rape or murder would result in a sentence of death. The stories of Fort Smith in the following book show that Isaac Parker was not the "hangin' judge" that casual legend portrays. In most cases the guilt or innocence is really not in question once the story is told. These horrible crimes would almost scream out for justice from history had it not been for Parker's court.

I encourage the reader to sit back and relax with a book you may not put down for a while. These stories show the depth of human depravity, the senseless loss of life, and the difficult moral position given to those who presided over the trials. Once the reader knows the story behind the crimes, the shadow of the gallows might appear to be as practical as the men who worked to build justice on the frontier. While these are the stories of the criminals and their victims, they are also the stories of the Deputy U.S. Marshals, the Indian Lighthorse Police, the numerous posse members, jurors, and attorneys who helped to create a just court process for all. These stories also represent the tireless work left by the often-unnamed newspapermen who worked to inform the public of daily court proceedings. Jerry Akins has taken their stories and brought to life a new resource of true Wild West crime drama told in the words and deeds of the men and women in the United States Indian Territory under the U.S. District Court for the Western District of Arkansas.

Jon Derek Wright
May 15, 2010

ACKNOWLEDGEMENTS

Credit goes to Amelia Martin for starting me on this project and to Eric Leonard for getting me on the path to authenticity in researching and writing. Caryl Linton spent many hours proofreading the articles for *The Journal of the Fort Smith Historical Society*, and Clara Jane Rubarth spent a like number of hours proofing for this book. Carole Barger and Cathy Peterson spent many hours on the final proofing, editing, and formatting for submission to the publisher. Thanks to David Turk, U.S. Marshals Service historian; Aaron Holt and Laverne Owens, National Archives, Fort Worth, for their contributions. And to Devon Mihesuah, descendant of Charles Wilson, who was killed by Jackson Crow, and others who provided additional information on the Jackson Crow chapter. Thanks to all the staff at the Fort Smith National Historic Site, those who have come and gone, and those still there, for help in researching. And to everyone whom I have not mentioned who gave me moral support, thanks.

—Jerry Akins



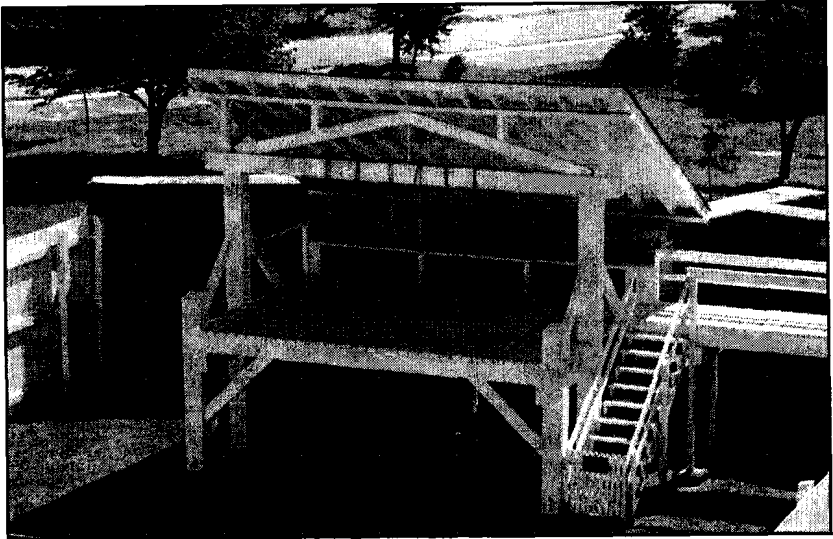
This photo shows a re-enactment of a condemned man being escorted to the gallows for an execution carried out by the U.S. District Court for the Western District of Arkansas. Condemned men were provided with a complete set of clothing from the skin out—underwear, shoes, socks, suit, shirt, and tie. Participating in the re-enactment are Al Drap, left, as spiritual adviser for the condemned man; author Jerry Akins, center, as the condemned man; Sam Trisler, foreground, and Roger Carter, background, as guards; Susan Trisler as the grieving widow; and Harold Trisler, rear, as chief deputy. The court building and the Hell on the Border Jail are shown in the background.

—Photo by Glen Gilley

INTRODUCTION

This book is the result of a phone call from Amelia Martin, editor of *The Journal of the Fort Smith Historical Society* for more than a quarter of a century. Amelia called in early 2001 to ask me to do a series of articles on the hangings by the U.S. District Court for the Western District of Arkansas in the late 1800s. I like to flatter myself and believe that Amelia had great faith in my abilities, but she probably just picked my name from a list of board members. So, in memory of Amelia Martin and all the great things that she did for the Fort Smith Historical Society, here is my offering.

I thought that writing articles on the hangings would be no problem; all I would have to do would be pull one of the books on that subject from my bookshelf and go to work, but I was soon to learn this was not so. At the same time, fortunately, I met Eric Leonard, park ranger at the Fort Smith Historic Site, where all of the trials and hangings took place. Eric was working on his master's thesis on a subject parallel to what I would be writing. So, to Eric goes credit for authenticity in this tome.



The gallows at the Fort Smith National Historic Site was built in the 1980s and is an exact replica of the gallows built in 1886.
(Image courtesy of the Fort Smith National Historic Site)

This book is only about the U.S. District Court for the Western District of Arkansas and the people who were tried there and executed. It is not about the U.S. Marshals Service, and any reference to marshals and deputy marshals is only incidental to the arrests of the criminals the stories are about. The stories of all of the eighty-six men who were executed are told as well as many of the stories of the seventy-six men and four women whose sentences were commuted and the one man who was shot. With few exceptions, the information came from local newspapers, court documents, and other primary sources. There are occasions where information is cited from other reliable sources. But no information came from any of the existing books that purport to chronicle the history of the Court, Judge Isaac C. Parker, or the Marshals Service. All of the information presented here is true and verifiable, but it by no means is all of the truth. Like most history, knowing all of the truth is not possible.

Local Fort Smith newspapers are a reliable source of information on the trials and hangings. Out-of-town newspapers are the source of much of the dime novel stuff. The local papers probably could not afford to fabricate stories often, as there were too many people nearby who knew the truth. Also there were several publications in Fort Smith at any given time, and they did not hesitate to point out each others' errors and untruths. Sometimes it took a newspaper a couple of issues or more to get a story right. In the case of Elizabeth Owen, three different stories of the event were printed, the last being the correct one. There were one or two publications that sometimes had more thrilling details of an event but their story, overall, was the same as reported by other papers. Sometimes it appears that the reporters were quoting from the trial transcript, and that is not surprising. The newspaper reporters were sitting in court taking down the same information that the court clerk was taking.

The local newspapers were very defensive of the town of Fort Smith. At times they went to great lengths to point out that all of the capital crimes for which people were tried were committed in the Indian Territory. Whenever newspapers of another town published false stories implicating Fort Smith citizens, a local paper published an "I told you so" rebuttal.

Of course, the National Archives records are the best primary source, but they are not available in all cases. Trial transcripts for cases that occurred before 1888 are almost nonexistent. However, in many of the early cases, depositions from the proceedings before the commissioner, what is today called pretrial hearings, are available. That is true of the case of John Childers, the first man executed in Fort Smith. Those depositions are nearly as good a source as trial transcripts because the

statements are expected to be the same as what the witnesses will utter in court.

With a very few exceptions, all of the information in these articles was taken from copies of actual court records and local newspapers. There are a few cases where other reliable sources were used and are cited, as are all the rest of the sources. No doubt, there are cases where there is more to be known. Unfortunately, as in all history, not all can be known. But I have done my best to assure that all that I have written is fact.

—Jerry Akins

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CHAPTER 1

THE BEGINNING: THE BLACK CAP

A falling trapdoor, violent winds, lightning, crashing thunder, and pouring rain. No, it's not a scene from a 1930s Vincent Price or Boris Karloff horror movie; it's the first execution in Fort Smith by the U.S. District Court for the Western District of Arkansas. The date is August 15, 1873, and John Childers has just gone to his death for the crime of murder.

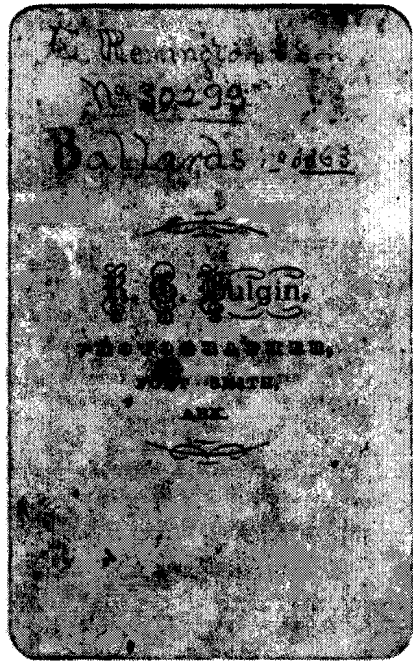
THE COURT

First, an explanation of the U.S. District Court: The court was established by the Intercourse Act of 1834, "An Act to Regulate Trade and Intercourse with the Indian Tribes and Preserve Peace on the Frontiers." In 1837, Congress created the Court of the United States for the District of Arkansas, and in 1851, it divided the court into two districts. The Western District included the northwestern counties of Arkansas and what was then Indian Territory. No court ever existed with jurisdiction over so great an expanse of territory. The seat in 1851 was at Van Buren, and in 1871, the seat was moved to a building at what is now Second and A streets in Fort Smith.

The court had jurisdiction over non-Indians committing crimes in Indian Territory and over Indians of one tribe committing crimes in another tribe's territory, with capital crimes being rape and murder. For those crimes, 167 people were convicted and eighty-six actually hanged, seven during Judge William Story's administration, and seventy-nine during Judge Isaac Parker's twenty-one years. There was no right of appeal until May 1, 1889, except directly to the president of the United States. The court had no jurisdiction over local matters unless the crimes fell under federal statutes. Then, as now, local crimes were administered by state and local law. In other words, Parker did not clean up Fort Smith.

THE MAN

John Childers was born in the Cherokee Nation on May 3, 1848, and like his father and many boys his age, he fought for the Confederacy. And like Frank and Jesse James and others, he turned to outlawry after the war.



The front and back of a photograph of John Childers, the first man hanged in Fort Smith, Arkansas, by the U.S. District Court of the Western District of Arkansas.

(Image courtesy of Linda Seamans McGahan)

The following is a condensation of Childers's statement as taken down by Captain C. E. Berry and published in *The New Era* on August 20, 1873:

Childers returned to the Indian Nation in August 1865, and from that time until the incident for which he was arrested, he roamed through Kansas, the Nation, Texas, and Missouri. His companions "were of the worst class and character." Their purpose was "to get our own back from those that took it away from us during the war." They took horses from the Osages, their enemy, as often as possible. They did not look upon it as a crime to take anything and everything from the Osages. But, he claimed to have never taken anything from white people. They would trade and sell their plunder wherever in the states that they felt safest. There were eight in the band, three whites and five Indians; two of the white men and one Indian (himself) were living at the time of the statement.

In their travels, John said, they always paid their way honorably; their war was upon the Osages. He then claimed that he looked on their acts as wrong but was urged on by his associates. He then cited