

**THE DEFENSE AND TIMES OF MYRTLE HURST BARNES**  
*The Story of a Tennessee Woman*  
By Sam T. Barnes, M. D.

TABLE OF CONTENTS:

<u>Introduction</u>	3
The Times	5
Memories of Myrtle	8
J. C. Barnes	11
The Affair	14
Pretrial	15
The Trial	16
The Opening by the Defense	18
The Closing by the Defense	20
Aftermath	25
 <u>Appendices</u>	
Appendix I: the Lindsay letter	27
Appendix II: O. K. Holladay's opening statement	29
Appendix III: O. K. Holladay's closing statement	38
Appendix IV: jury list, witnesses, and depositions	
Appendix V: Biographical sketch of O. K. Holladay	45

INTRODUCTION:

(pg. 3): Fifty years ago, when I was a child, I heard stories about Grandma; dark stories that hinted that she had killed a woman. This deed was denied by some of my relatives, and the details were never clear. The subject was generally a shameful one, hush-hushed, and never openly talked about. This story lingered in the back of my mind, though, when I lived with my Grandma in the summers and on visits throughout my early life up until the time of her death. What I could not do was reconcile these innuendos with the woman that I knew. Throughout my life, I have attempted to understand both she and my Grandfather and tried to understand the times in which they lived.

This paper is an investigation into and an attempt to understand the woman and her husband and the affair that occurred in the context of the times, some ninety years ago here in the Upper Cumberland. If civilization in the Upper Cumberland now is thinner than in other parts of the country, it was certainly so at that time in the "progressive era" of our state's history.

The shooting of Della Judd by my Grandmother was a pivotal affair in the fortunes of my family....a sentinel event. It coincided with the decline of male (and my Grandfather's) patriarchal authority as it violently signaled the ascendancy of women to a position of equality in the Upper Cumberland.

The author of this paper is descendent of the parties involved and wished to make clear that the purpose of this presentation is historical clarity. The author is akin by blood and marriage to all four families significantly involved: the Barnes, the Judd's the Broshears, and the Pippins. There is no attempt to cast this history in a moral, (pg. 4) judgmental light...but the murder occurred; the facts are there; and the significance of the conclusions may be determined by the reader.

On the first Thursday of June, 1912, the following article appeared in the weekly edition of the *Putnam County Herald*, "Sensational Shooting".

Last Friday night, Mrs. J. C. Barnes boarded the shopping train at Buffalo Valley, walked through the coach to the rear platform, and without speaking a word, opened fire with a pistol on Mrs. W. W. Judd where she was standing. Every shot took effect and Mrs. Judd was instantly killed. Mrs. Barnes then quietly stepped off the train and started home. Sheriff A. L. Weeks was on the train in the smoking car and overtook Mrs. Barnes just after she left the train and told her he would have to arrest her. She gave him her pistol and quietly submitted to arrest, but did not want to come to Cookeville on the train on which the tragedy occurred. The sheriff accompanied Mrs. Barnes home and during the night she broke down from the nervous strain and was not about to come to Cookeville until Monday. On that afternoon, she was arraigned before Esq. J. R. Douglas, a warrant charging murder in the first degree having been sworn out by W. W. Judd. The prosecution asked for a continuance of the hearing until Thursday and for a bond of \$50,000. The bond was made out and leading business men from all over the county signed it without solicitation, it being the most remarkable bond ever made in Putnam County. On Thursday, Mrs. Barnes appeared before Esq. Douglass again, waived a hearing and was held to the grand jury on a \$25,000 bond. Mrs. Barnes is the wife of Jesse C. Barnes, and lives on a farm near Buffalo Valley. Mrs. Judd was (pg. 5) the wife of W. W. Judd, station agent for the T. C. Railroad at Double Springs. Mrs. Judd was brought home on the train on which the tragedy was enacted. She was buried on Saturday evening in the presence of about 1,000 people. The cause of the shooting was alleged intimacy between Mr. Barnes and Mrs. Judd. The tragic action is another case of the "unwritten law", unusual in that a wronged woman sought vengeance.<sup>1</sup>

### ***The Times***

In 1912 women could not vote. They could not hold property until 1913, and they could not sit on juries. Divorces were extremely difficult for a woman to obtain on her own initiation. The male of the species that trod on this country stepped high, wide, and handsome; whereas, females were expected to be deferent and servile. This was the female mold that Myrtle and many others of her temperament, free thinking, and activism broke.

A strong national temperance movement had been in effect in the United States since the Great Awakening. There was a lot of division on this subject, of course, even between the Northern and Southern Methodist Church, with the Northern Methodist Church being Prohibitionist. Myrtle Barnes was a Northern Methodist. In 1909 Tennessee became dry followed by the enactment of the 19<sup>th</sup> amendment in 1920 when the United States enacted Prohibition.

Woodrow Wilson, age fifty-six, was running for President of the United States. Myrtle was thirty-six; Della and Woody were thirty-eight, and J. C. was fifty years old.

<sup>1</sup>"Sensational Shooting." *Putnam County Herald*, 6 June 1912.

(pg. 5) In 1912, the Democratic Party in the Upper Cumberland was busy. In Putnam County, Governor Hooper was roundly disliked and was expected to leave office soon. R. L. Rash, running unopposed, was replacing Sheriff Alec Weeks. In the newspaper: "We are authorized to announce Cordell Hull as a candidate for the democratic nomination for Congress subject to the action of the Democratic Party and its

organized capacity.”<sup>2</sup> Delegates were selected to the Democratic State Convention and from the ninth district, Buffalo Valley; J. C. Barnes was one of five delegates<sup>3</sup>. Pershing Lumber Company was incorporated in Nashville. The capital was twenty-five thousand dollars, and one of the incorporators was R. L. Farley, who later owned the handle mill in Cookeville<sup>4</sup>. On June 24 it was announced there would be a carnival and street fair featuring Ms. May Hardin, the champion lady wrestler of the world, welter-weight champion wrestler, Stanley Karp, “Fourteen Funny Darkes”<sup>5</sup>, and a big confetti battle. Across from the Depot at the Savoy Theatre there was a big band show with vocal solos, marches, contortionists, waltzes on the program. The show began at 8:00 p.m. on the 16<sup>th</sup> of May with adult ticket prices at twenty-five cents and children ticket prices at fifteen cents<sup>6</sup>.

Land sale was active in Putnam County at that time: 170 acre farm, four miles from Cookeville with a tenant house, woodlands, 500 fruit trees, barn, spring and well water was \$5,500. In Cookeville, a three acre lot with a seven room house, well water, and a recently built barn cost two thousand dollars<sup>7</sup>. On the second of May, J. C. Barnes’s farm in Buffalo Valley was offered for sale with 150 acres, well-cleared and

<sup>2</sup> “Announcement.” *Putnam County Herald*. 16 May 1912.

<sup>3</sup> “Delegates Meet: Select Delegates to State Convention.” *Putnam County Herald*. 9 May 1912.

<sup>4</sup> “Pershing Lumber Co.” *Putnam County Herald*. 2 May 1912.

<sup>5</sup> Advertisement. *Putnam County Herald*. 12 June 1912.

<sup>6</sup> Savoy Theatre advertisement. *Putnam County Herald*. 16 May 1912.

<sup>7</sup> “Farm and City Property for Sale.” *Putnam County Herald*. 22 August 1912.

(pg. 7) well fenced, a large house with eight rooms, halls and two stories, 90 feet of broad porches, two other houses, two large barns, cisterns, tool house and blacksmith shop advertised as one of the finest farms in Tennessee for a price of twenty thousand dollars<sup>8</sup>.

Retail goods at the July sale at A. P. Barnes and Company Dry Goods Store reveal men’s straw hats for \$2.50 on sale for \$2.00; men’s oxford shoes, normally \$3.50 a pair, on sale for \$2.98. A man’s suit was on sale for between \$11 and \$16.50<sup>9</sup>. In the paper on the 6<sup>th</sup> of June, it was noted that the Cookeville Roller Mill had been closed down for several days while the machinery was being overhauled to put it into condition for the new wheat crop<sup>10</sup>. Several notices were in the *Putnam County Herald* about forth-coming events for Decoration Day on the 31<sup>st</sup> of May at different communities for both Confederate and Union soldiers’ graves. As usual, in the paper was posted the Tennessee Central Railroad schedule. There were three eastbound and three westbound trains. People referred to the round trips to Nashville as “the Shopper”, and the last arriving train was due in

<sup>8</sup> “Real Estate: Two Fine Farms for Sale.” *Putnam County Herald* 2 May 1912.

<sup>9</sup> Advertisement. *Putnam County Herald*. 13 June 1912.

<sup>10</sup> Notice. *Putnam County Herald* 6 June 1912.

(pg. 8) Cookeville at 7:10 p.m.<sup>11</sup> On that Friday night train, on the 1<sup>st</sup> of June, 1912, arrived the body of Mrs. W. W. Judd who had been shot on the train in Buffalo Valley.

### ***Memories of Myrtle***

One of my very earliest memories of my grandmother, Myrtle Hurst Barnes, occurred probably in the mid 1940’s when I was approaching ten years of age. I remember that she liked goat milk, and that behind her big white house on the corner of Broad and Willow in Cookeville, she had a smoke house, a goat house and down in a little depression close to the end of the four acre yard, was a barn which burned a few years after that. In any event, she taught me to shoot a pistol. She and I put tacks in the wall of the goat house, and we shot at those tacks. She had a small semi-automatic pistol and she could shoot well. It was a thrill for a ten year

<sup>11</sup> “Local and Personal.” *Putnam County Herald*. 9 May 1912.

(pg. 9) old boy to be taught to shoot by his grandmother. Little did I know at that time, the history behind that model Colt .25 caliber automatic pistol.

Myrtle was born on the Ohio River in Spencer County in southern Indian and family mythology says that she married a man named Broshear, born Alice in 1899, and moved to Comanche County, Oklahoma. In Oklahoma she bore two more children, Allen in 1903 and Mable in 1904. It was there about 1907, she married Jesse Crockett Barnes. He was venturing with the older children of his first marriage in land opening in the Big Pasture of western Oklahoma. They moved back to Buffalo Valley about 1907-1908, and there Jessie Barnes was born.

Myrtle, being a strong Methodist and Prohibitionist insisted that my grandfather sell his distillery which he operated in Double Springs, Tennessee. It is known that Grandma and Grandpa moved into their house on the corner of Broad and Willow in 1913 and lived there until their deaths. J. C. Barnes died in 1940 and Myrtle about twelve years later in 1952. In those hot, dusty early teenage summers that I spent with her, I have vivid memories of our playing cards in the sitting room; of our going on rides and her teaching me to drive her Pontiac business coupe. I remember her being visited by Mrs. Putty Overall, Mrs. Hubert Crawford and several of the obviously powerful, old women of the town. I remember the noise that the tiles made as they clacked on the mahjongg board in the parlor and their old ladies' musty laughter. There are pleasant, provocative memories, and they now fuel this perspective.

Myrtle and J. C. Barnes married in Oklahoma, and despite the differences (pg. 10) to be enumerated, their common characteristic were that they were both alert and active people. They were aggressive and inquisitive and both sought power and independence. Both had lost their first spouse; both were traveled and literate. Myrtle was Eastern Star, and J. C. a Mason.

But the differences between Myrtle and J. C. were certainly noteworthy and significant. Myrtle was born in the North in 1877, one year after Custer's Last Stand. Her father, Robert Hurst, was a veteran of the 15<sup>th</sup> Indian Infantry. Consequently, Myrtle was a Republican and active within her party, becoming a representative to the Republican Convention in 1920<sup>12</sup>. J. C., fifteen years older, was born in the south in 1862, the day that his father enlisted in the 8<sup>th</sup> Tennessee Calvary. His father's farm was near Double Springs, Tennessee, in the 7<sup>th</sup> Civil District. J. C. Barnes was a Democrat and a representative to the Democratic Convention<sup>13</sup>. J. C. Barnes's mother was a Pippin and a member of the Church of Christ, but J. C., himself, was inattendant; whereas, Myrtle was a strong, Northern Methodist, which undoubtedly influenced her stand on the liquor issue. As a "tee-totaler" and a Prohibitionist, she insisted that J. C. Barnes sell his distillery in Double Springs, Tennessee, which he did. J. C. owned a salon in Nashville

<sup>12</sup>"Republican Clans Gather." *Nashville Banner*. July 1921.

<sup>13</sup>"Democrats Meet." *Putnam County Herald*. 9 May 1912.

(pg. 11) which would explain frequent trips on the Shopper between Nashville and Buffalo Valley. This may also explain Della Judd's presence on the train that 31<sup>st</sup> of May.

### ***J. C. Barnes***

J. C. was born in October of 1862. He was Jess and Cinderilla Pippin Barnes's second son. On that day, "H" Company of Dibrell's 8<sup>th</sup> Tennessee Calvary was recruiting in White County. When his father, Jess, perceived that Cinderilla and the baby were sound, he and his younger brother, James Marion Barnes, rode off to Sparta to enlist for the Confederacy to fight the Invader. When J. C. was in his 20's and married to Dorcas Morgan Montgomery, he became involved in land dealing. This is evidenced by the numerous transactions that began to appear in the deed books of the time<sup>14</sup>. These early transactions were buying land around Double Springs. He also acquired some land in Cookeville by his marriage to Dorcas Montgomery<sup>15</sup>. Jess and Dorcas had six children living when she died in childbirth in 1900<sup>16</sup>. The land he acquired was bounded on the southeast corner by what is now Broad and Willow. At the time of Dorcas's death, he was thirty-eight years old. He was a wheeler dealer, moving around, involved in businesses and speculations.

<sup>14</sup>Deed books, Putnam County, 1854-1911: 33 transactions recorded for J. C. Barnes; 1912-1941: 21 transactions recorded for J. C. Barnes.

<sup>15</sup>Deed book, S534, Putnam County, 1854-1911, transaction: 13 January 1900.

<sup>16</sup>tombstone, Double Springs Cemetery, Tennessee

(pg. 12) With a mind like J. C.'s, it was easy to see the possibilities for land in Oklahoma, with the opening of the Oklahoma territory. He speculated in land in this area and homesteaded a section in what is now called the Big Pasture around Duvall and Grandview.<sup>17</sup>

A letter in family possession reveals that he traveled with a group from Buffalo Valley: his oldest son and his brother-in-law who later became known as "Uncle Jimmy Thompson", the fiddler and first featured performer on the WSM barn dance, the precursor of the Grand Ole Opry<sup>18</sup>. He was also accompanied by some Bartlett's and Wallace's to look at this land in 1908<sup>19</sup>.

The Big Pasture opened the bids for quarter sections of land in 1907 and the winners of the bids began to settle the land. In a history of Grandfield, by Robert Lee Wyatt, III, J. C. Barnes is illustrated, and the caption reads, "J. C. Barnes, great-grandfather of the author and owner of many Eschiti and Grandfield building." It confirms that J. C. Barnes had made several trips to this country to look at his

<sup>17</sup>Robert Lee Wyatt III. *Grandfield: Hub of the Big Pasture*, vol. I (Marceline, Missouri: Walsworth Publishers, 1974), 14.

<sup>18</sup>Jack Hearst. *Nashville's Grand Ole Opry: the First 50 Years*, (New York: Abradale Press, 1989), 80.

<sup>19</sup>J. Linard Lindsay, letter to wife, May 19, 1908. See Appendix I.

(pg. 13) investments<sup>20</sup>. "Mr. Barnes was a one time citizen of the Big Pasture and was here looking after his property interest in town, in the country and in the area. He expects to rebuild here the store building next to Grogan Grocery that was destroyed by fire a few months ago. He is the father of William Barnes and Mrs. R. L. Wyatt of the Centerpoint community."<sup>21</sup> In a letter written in 1908 from Chattanooga, Oklahoma, on the 19<sup>th</sup> of May, Leonard Lindsay, the nephew of Jesse Barnes writes in great detail of the trip from the railhead to the site of the quarter sections that they were to occupy<sup>22</sup>. "It was about 2 p.m. when the little town of Lawton began to fade from our view. In our crowd was the Honorable W. H. Hussey, probate judge of Comanche County of Oklahoma, J. C. Barnes of Buffalo Valley, J. D. Thompson, one of the most noted old time fiddlers of Texas and Tennessee, United States Surveyor, W. H. McComb of Lawton and Messrs, Maddux, Wallace, W. W. Barnes and the Lindsay brothers."<sup>23</sup>

"In February of 1908, J. C. Barnes, a prominent land holder from Buffalo Valley, Tennessee, was in the city to do some speculation on land and to visit his children living in the Big Pasture. Mrs. R. L. Wyatt, William Barnes and John Barnes all had homesteads near the town of Eschiti." He later bought up several blocks of land in the new town of Grandfield and owned many of the large brick buildings there until the 1930's<sup>24</sup>.

<sup>20</sup>Robert Lee Wyatt III. *Grandfield: The Hub of the Big Pasture*, vol. I (Marceline, Missouri: Walsworth Publishers, 1974), 104.

<sup>21</sup>*ibid*, 108.

<sup>22</sup>This letter is in possession of Mrs. Judy Duke, his great granddaughter.

<sup>23</sup>J. Linard Lindsay, letter to wife, May 19, 1908. See Appendix I.

<sup>24</sup> Robert Lee Wyatt III. *Grandfield: The Hub of the Big Pasture*, vol. I (Marceline, Missouri: Walsworth Publishers, 1974), 13.

(pg. 14) It was about 1908 that J. C. met Myrtle Hurst Broshear in Oklahoma. She was divorced and he was a widower. He brought Myrtle and her three young children back and settled them on the farm in Buffalo Valley where Jessie was born a year later in 1909.

*The Affair*

What is known about Della Pippin Judd can be divided into fact and mythology. She was the wife of Woody W. Judd, stationmaster of the train station at Double Springs with whom she had four children. Her maiden name was Pippin and she was related to Jess Barnes's mother, Cinderella Pippin Barnes. W. W. Judd's sister, Mollie Judd, was married to Jess Barnes' older brother James M. Barnes and all parties had a close relationship. Della may have been Jess's cousin, and she was certainly his brother's sister-in-law. Evidence at the trial revealed that Jess and Della had for more than a decade, "an intimate relationship"<sup>25</sup>. That she died instantly from gunshot wounds on the Shopper coming home from Nashville on Decoration Day of 1912 is factual. Della was thirty-eight at her death.<sup>26</sup>

The mythology concerning Della is that she was young, vivacious, attractive and outgoing. Also, that she was impulsive, and that she wrote Myrtle Barnes that she and Jess were in love and that she was going to take Jess away from Myrtle, fatally informing Myrtle that she would be on the Shopper returning from Nashville on Decoration Day<sup>27</sup>.

<sup>25</sup>O. K. Holladay, closing statement, *The State of Tennessee vs. Myrtle Barnes*. See Appendix II.

<sup>26</sup>"Tragedy Occurs on T. C. Train." *Nashville Banner*. 1 June 1912.

<sup>27</sup>O. K. Holladay, closing statement, *The State of Tennessee vs. Myrtle Barnes*. See Appendix II.

(pg. 15) ***Pretrial***

The shooting occurred on Friday, the 11<sup>th</sup> of May, 1912, and all that weekend Mr. J. C. Barnes was busy arranging a legal defense for Myrtle. Letters dated Sunday, the 2<sup>nd</sup> of June, 1912, and the 3<sup>rd</sup> of June from B. G. Adcock, attorney in Buffalo Valley, Tennessee, offer his services as an attorney<sup>28</sup>. Myrtle came to town on Monday, the 3<sup>rd</sup> of June and was arraigned by J. R. Douglas. A warrant charging murder in the first degree had been sworn out by W. W. Judd. Bond was initially set at fifty thousand dollars. "the bond was made out and leading business members from all over the country signed it without solicitation, it being the most remarkable bond ever made in Putnam County."<sup>29</sup> O. K. Holladay<sup>30</sup> was hired as attorney and he was assisted in her defense by H. S. Barnes, Sr., attorney, Cookeville, Tennessee. At the time Myrtle entered her plea of "not guilty," on the 24<sup>th</sup> of September, 1912, she was one month pregnant. On the 15<sup>th</sup> of May, 1913, she delivered a baby boy, and named him Frank Hurst Barnes<sup>31</sup>.

<sup>28</sup>B.G. Adcock, letter to J.C. Barnes, June 3, 1912.

<sup>29</sup>"Sensational Shooting." *Putnam County Herald*. 6 June 1912.

<sup>30</sup>See Appendix V; (O.K. Holladay was the state senator who introduced the "Four Mile Liquor Law" in 1909, which was passed over Gov. M. Patterson's veto. *Tennessee Encyclopedia of History and Culture*. (Nashville: Rutledge Hill Press, 1998), 914.)

<sup>31</sup>father of the author

(pg. 16) ***The Trial***

A criminal case has many formal legal parts. The first part is the indictment. This is when the accusation is made and recorded in front of a grand jury. The next step in the process is the plea of the defendant, followed by a statement of witnesses for the defense. Court dates are set and juries are selected. Trial begins. The prosecutor, Attorney General in this case, makes statements as to what the prosecution intends to prove, and the defense attorney makes opening statements to the court and the jury about the manner of the defense. The prosecution brings its witnesses who are cross-examined by the defense. The next step in the trial is that the defense brings its witnesses, sometimes in the form of written statements or depositions which are read and recorded to the court. These witnesses are then cross-examined by the prosecution. The prosecution makes its closing statements to the jury and the defense counsel, that is, the attorney, makes closing statements on the defendant's behalf. Next, the jury is sequestered for deliberation to determine a verdict of "guilty" or "not guilty". The jury's decision must be unanimous. The jury returns to the courtroom under the watchful eye of the bailiff and sheriff, and the foreman of the jury announces the verdict to the court. If found guilty, as prescribed by law, sometimes the jury pronounces the sentence, sometimes the judge, and sometimes the sentence is prescribed solely by law. If found guilty, the person may appeal if sufficient grounds are present<sup>32</sup>. Thus, the form of Myrtle's trial.

Unless a criminal court was at recess during the summer of 1912, the months of June, July, and August, why Myrtle was not indicted until the September term of 1912 is unknown. She was charged by W. W. Judd, the husband of the Deceased, with

<sup>32</sup>*The Guide to American Law*, vol. 3 (New York: West Publishing Company, 1983), 391-396.

(pg. 17) premeditated murder, this is, murder in the first degree, of Della Judd. This was presented to the grand jurors by the Attorney General, W. R. Officer. It was declared a “true bill,” meaning the accusation had merit and the prosecution would continue. A list of witnesses for the state was noted<sup>33</sup>. On the 24<sup>th</sup> of September, Myrtle Barnes plead “not guilty” to the charges, and the case was “continued” until the next term of court<sup>34</sup>. On the 30<sup>th</sup> of September, Myrtle’s attorney, O. K. Holladay, presented a list of witnesses to be brought in person or by deposition for the trial. There were ten physicians named from Knoxville and Nashville, fourteen witnesses from out in Oklahoma, six witnesses from Chickasha, Oklahoma, and thirteen witnesses from southern Indian<sup>35</sup>. “the defendant is permitted to take the depositions of the above named person by giving legal notice upon John Tucker or Woody Judd.”

John Tucker was attorney for Woody Judd<sup>36</sup>. Tucker had been an attorney in Baxter for some number of years. Although a clear conflict of interest was present between J. C. Barnes and Mr. Tucker<sup>37</sup>, it seemed to play no part in the outcome of the trial. By the beginning of the trial on the 13<sup>th</sup> of January, 1913, the state and Woody Judd had their case assembled. O. K. Holladay, Myrtle and Jess Barnes had their defense and the jury of twelve men had been selected<sup>38</sup>. Evidence was heard from the 13<sup>th</sup> of January until the 30<sup>th</sup> of January.

The only surviving records of the trial are the criminal court minutes and the opening and closing statements of Attorney O. K. Holladay. In Holladay’s opening

<sup>33</sup>See Appendix IV.

<sup>34</sup>Myrtle was indicted for carrying a pistol. She was found guilty of this offense after the murder trial continued, she was fined fifty dollars for this. She appealed the case, this was refused, and she was fined 250 dollars.

<sup>35</sup>See Appendix IV.

<sup>36</sup>*The State of Tennessee vs. Myrtle Barnes*. Putnam County Criminal Minutes, September 30, 1912.

<sup>37</sup>John Tucker, letter to J. C. Barnes, November 21, 1909.

<sup>38</sup>See Appendix IV.

(pg. 18) statements<sup>39</sup>, the clarity and wisdom that were to be his hallmark as a statewide respected senator and judge were evident. No reference was made in these opening statements to the defense of the “unwritten law” that was alluded to in the newspaper<sup>40</sup>. Frequently, the defense in a murder trial is to “try the deceased,” that is, to determine if the deceased “needed killing”. This is a part of the “unwritten law”<sup>41</sup>, and has a lower moral tone of defense. It was not used by Mr. Holladay in this case.

### ***The Opening by the Defense***<sup>42</sup>

The weight of Holladay’s opening statements to the jury rested on impressing them with the seriousness of their duty and the gravity of the crime of first degree murder. He stresses that “the distinctive characteristic of murder in the first degree is premeditation....” He further states, “If you find the defendant guilty of murder in the first degree, you will simply say so. You will have nothing to do with the penalty for the law provides that she shall suffer death by hanging....” This was stated while the jury looked on a demure thirty-six year old, an attractive, five month pregnant defendant. O. K. Holladay goes on to further impress the jury with the gravity of second degree murder, stating that malice is the principle ingredient. He then, in effect, changes her defense from that of self-defense to one of temporary insanity:

<sup>39</sup>See Appendix II.

<sup>40</sup>“Sensational Shooting.” *Putnam County Herald*, 6 June 1912.

<sup>41</sup>*The Guide to American Law*, vol. 10. (New York: West Publishing Company, 1983), 213.

<sup>42</sup>See Appendix II.

(pg. 19) In determining the question as to whether or not the offense is murder in the first degree, the question of vital importance is: Was the mind of the assailant at the moment of the killing so far free from excitement and passion as to be capable of deliberation and premeditation...?

In this statement Mr. Holladay continually stresses the fact that if there is a reasonable doubt as to Myrtle's premeditation or malice, she must be found "not guilty" of the charges in the indictment. He artfully proceeds, after bringing home to the jury the severity of first-degree murder and the severity of second-degree murder. He states:

If you fail to find the Defendant guilty of murder in the first degree, or should have a reasonable doubt thereof, you will acquit her of this offense and next proceed to inquire as to whether or not she is guilty of murder in the second degree and the sense of these instructions, bearing in mind that malice is the principle ingredient of this grade of homicide. If you are satisfied beyond a reasonable doubt, that the Defendant is guilty of murder in the second degree, you will convict for this offense and fix a punishment of confinement in the penitentiary at some period of time between ten and twenty years.

The future judge instructs the jury:

The Defendant is a competent witness and has the right to testify on her own behalf, but you will weight her testimony as you would any other witness in the

(pg. 20) case. If she is shown to have a good character, it is as a witness for her, and in doubtful cases should weigh much. You can have no sympathy or prejudice in any criminal case. You will try the case alone upon sworn testimony of the witnesses, the testimony admitted to your consideration, the presence of whom to the direction of the court you will agree upon your verdict mutually and not by any general average, casting of lots, or any other kind of gambling or speculative process. In other words the verdict must be mutual, the concurring judgment of each and every member of the jury. You will now take the case, Gentlemen of the Jury, and giving to all evidence a full, fair and impartial consideration, exercising your best judgment and common sense in the light of reason and truth that your verdict responds to the law and the evidence. Take the case.

### ***The Closing by the Defense***<sup>43</sup>

On the 29<sup>th</sup> of January 1913, the closing statements of the prosecution and defense were made. We can only infer what was testified in the trial from some of the statements of O. K. Holladay closing. Holladay summarizes the state's prosecution's case:

The state insists that the Defendant had a real or fanciful grievance against the Deceased, being jealous of her husband's attentions and adulterous relations with the Deceased, and for these reasons entertained a malignant hatred toward the Deceased; that this aroused the anger of the Defendant to such an extent that she planned and premeditated the taking of her life; that her act was prompted by

<sup>43</sup>See Appendix III.

(pg. 21) malice and hatred and proceeded from motives of revenge; that for some time prior to the killing the Defendant contemplated the deed and made threats signifying her intention to kill the Deceased; that on the day of the fatal meeting, the Defendant, having previously learned that the Deceased had gone to Nashville would likely return that evening on the train; that upon the arrival of the train she promptly boarded same and went through the coach in search of the Deceased going to rear end thereof where the Deceased was standing on the platform; that without a word of warning or legal provocation, she fired four or five shots into the body of the Deceased, thereby producing almost instantaneous death, from all of which the state insists the Defendant committed willful, malicious, deliberate, and premeditated murder upon the body of the said Mrs. W. W. Judd.

He continues, "If you believe from the evidence beyond a reasonable doubt...she would be guilty of murder, provided she was of sound memory and discretion at the time." He summarizes Myrtle's defense:

It is insisted on her behalf that she was a person of unsound mind at the time and therefore incapable of legal contemplation, of committing a crime, - that she was in such a state of mental disorder that she could not distinguish right from wrong or know the consequences of her act...and it follows that no person can be guilty of murder who has not sufficient mind and discretion to distinguish between good and evil and who has no consciousness of doing wrong in the act or she is

(pg. 22) committing.....The capacity to know right from wrong and to know that the particular act being committed is wrong is the rule by which criminal accountability is tested....I further instruct you that mere peculiarities of temperament or occasional eccentricities of conduct or mere mental distress or worry and depression or jealous resentment toward a person which proceeds from malice and revenge if it does not go to such an extent to dethrone the reason and render a person insane to the extent above explained would not excuse crime.

The jury is then skillfully reminded of the adulterous relationship of the Deceased and the Defendant's husband by Holladay's instruction to disregard it as sufficient motive for the killing:

Proof was admitted on the question of the adulterous relations existing between the husband of the Defendant and the Deceased, prior to the killing. This proof is competent and admitted only for the purpose of shedding light on the mental condition of the Defendant at the time the act was committed and for no other purpose. It could not excuse or justify the killing or even mitigate it and then only when the killing occurs in the first transport of passion and there is no instance to the fact in this case.

He continues:

(pg. 23) *The adultery of the Deceased* with the husband of the Defendant and no event could *legally* justify or excuse the killing and you will not consider proof along this line for that purpose, but you should look to it to determine the question of the Defendant's sanity or insanity at the time the act was committed and in doing this you will take into consideration the nature of the extent of the wrongs suffered by the defendant, the length of time it may have continued, and the effect it had on her mind.<sup>44</sup>

The following painful statement by counsel reflect the earnestness of the Defense,

It is insistent on behalf of the Defendant that at the time of and prior to her marriage to her present husband she was a woman of culture and refinement, a sensitive temperament, that she was a happy, normal, and contented person; that soon after her unfortunate marriage with her said husband, she suffered numerous outrages and wrongs at his hand; which she patiently endured on account of her love for him and her children which came as a result of the union. That a short time after her marriage she learned *through her husband* and others of his illicit relations with the Deceased; that this improper conduct dated back prior to the death of her husband's first wife and perhaps caused her death; that this adulterous conduct was continued and persisted in by her husband *as she was informed and believed up to and just prior to the day of the killing*. That on this account she was neglected and cruelly treated by her husband who frequently confessed his wrongs to the Defendant that this conduct on the part of her husband and the

<sup>44</sup>italics added by author

(pg. 24) Deceased disturbed and distressed her that it destroyed her health and happiness and finally impaired and dethroned her reason to such an extent that she was mentally incapable of committing the crime charged against her; that she became nervous, emaciated and restless, frequently going without food or sleep and that she contemplated suicide. In short, that her life was made miserable, a veritable hell on earth, that she was so sorely distressed on account of these things that she was gradually being killed inch by inch that being thus outraged, humiliated, and distressed, she lost possession of her mental faculties and upon learning that the Deceased had gone to Nashville and would probably return on the train, she armed herself and killed the Deceased after which she expressed satisfaction and relief. This, I say, Gentlemen of the Jury, is the contention of the Defendant in this case and it in effect amounts to a defense of insanity.<sup>45</sup>

Attorney Holladay concludes:

If, therefore, Gentleman of the Jury, you fail to find as insisted by the state or if you should have reasonable doubt thereof, that the Defendant, at the time of the alleged killing, was insane in the sense, and to the extent heretofore explained, that is, that she was at the time mentally incapable of distinguishing right from wrong and to know the consequences of her act, in that event she would not be guilty of any offense, for in legal contemplation she would be incapable of committing a crime.

<sup>45</sup>italics added by author

(pg. 25) On the 30<sup>th</sup> of January, 1913, after thirteen days of trial, the jury returned the verdict of “not guilty as charged in the indictment.” The state of Tennessee was then instructed to pay the charges for her defense<sup>46</sup>.

### ***Aftermath***

The reconciliation of Myrtle and Jess Barnes can be attested to by the fact that my father, Frank Hurst Barnes, was born the 15<sup>th</sup> of May 1913, three and one half months after Myrtles’ acquittal. The six years between 1913 and 1919, find her raising her young family of Frank and Jessie with her older Broshear children. Myrtle obviously makes gains in respect and political activism. The letterhead of the Republican Executive Committee of Putnam County in about 1918 reads, “Morgan Brown, Chairman; Mrs. J. C. Barnes, Vice-Chairman and A. R. Judd, Secretary”. As the campaign for the women’s vote heated up in the summer of 1920 in Nashville, the *Nashville Banner* reports, “Every train brings more women in from over Tennessee who are interested in the passage or rejection of the measure, and wish to be present when it is voted on. Among those reaching here recently was Mrs. J. C. Barnes of Cookeville who has been added to the Women’s Republican Committee...” The next mention of Myrtle comes in the Nashville paper and the column begins, “GOP Asks Aid of Women Vote. Names First Women’s State Committee for Coming Campaign. The women’s committee is named yesterday afternoon by Chairman Howell H. Clements and is composed of the following prominent women of Tennessee: Fourth district, Mrs. Myrtle Barnes, Cookeville, Mrs. H. M. Hankins, Livingston.” These must have been heady times for politically active women, having recently gained the vote. This women’s committee is “launching a strong effort to

<sup>46</sup>Putnam County criminal court minute book, 1913, 575.

(pg. 26) use the newly franchised women’s vote to bring Tennessee into the Republican column in 1920”. Of course, in the November elections of that year, 1920, Alf Taylor, a Republican, was elected Governor of Tennessee, and Warren G. Harding was elected President, Calvin Coolidge, Vice-President. In 1921 the *Nashville Banner* announces, “Republican Clans Gather” and mentions that Mrs. J. C. Barnes was on a planning committee and in attendance at the state executive committee meeting of the Republican Party.

After these “roaring” times in politics, the entire Republican scene receded in Tennessee and I am sure her political activity did also. With my grandfather’s financial decline following the crash of 1929, the loss of the roller mill by fire, the unwise rejection of mineral right offers in Oklahoma, she took on the leading role in what became an increasingly matriarchal family. Her will reveals the tone of her subsequent independent attitude-even to the end: “...make the following dispositions of all personal real and mixed. *Most of which I bought and paid for myself.*”<sup>47</sup>

<sup>47</sup>Myrtle Barnes, will dated July 30, 1947, registered 29 September 1952, Putnam County will book. Italics added by author.

### **Appendix I**

(pgs. 27 & 28) **SOUTHWEST LUMBER CO:** Chattanooga, Okla. 5/19, 19\_\_

In the opening of the pasture lands, of Okla. Dec. 3, 1906, B. H. Maddux, and J. B. Wallace, of Buffalo Valley, J. W. Lindsay, W. W. Barnes in Lawton, Okla. In route to our claims, which are located close together (*sic*), and about forty six miles from Lawton. On the evening of the same day, after having

loaded our wagons, with tents, cots, provisions & c, we sat out for the big pasture. It was about two p.m. when the little of Lawton, began to fade from our view, in our crowd was the Hon. W. H. Hussey, probate judge of Comanche County of Okla., J. C. Barnes (*my Dad*), of Buffalo Valley, J. D. Thompson one of the most noted old time fiddlers of Texas, and Tenn., United States Surveyor W. H. McComb of Lawton and Messrs. Maddux, Wallace, Barnes and Lindsay Bros.

We traveled on through a magnificence (*sic*) country, enjoying the splendid scenery until nine p.m. of that evening, pitching our tent went into camp. About ten miles of our journey having been covered, we were all tired and hungry, a camp fire was soon started, and every one was busy (*sic*) with his forked stick, on the end of which hung a piece (*sic*) of bacon, supper in this way was soon prepared and devoured.

Long before the sun had peeped over the Eastern hills, we were stirring, breakfast gotten, and eaten in a like way to that of supper and we were on our way again, and on until night, reaching Deep red a stream flowing southwardly (*sic*) we again went in to camp, tired and fatigued from our long journey, we were soon in our bunks, but not to sleep for ere we had quited the lonesome howl of the coyotes sat up, and coming very close to our tents, I remember very well I had made my bed on the ground in the tent near the side, but after hearing the wolves, I decided I could rest better over in the center, well I guess I changed by bed pretty fast. About 10 a.m. of the 19<sup>th</sup> we rallied in on Sec. 18 Township, (?)3, Range, 13, which claim was awarded me in the sale, and at that time scarcely a house to be seen around this quarter section. How lonely one would have felt but for the spirit there was in our crowd. Judge Hussey and Mr. Barnes splended (*sic*) entertainers (*sic*) which keep the fun going with Mr. Thompson and his fiddle, the crowd was anything but lonesome. Far away in the distant west, on the lonely prairie (*sic*). Mar. 20, a little tent might have seen and the howling winds whipped around, her corners singing, singing a lonesome song. Many miles away from a post office, railway, store, or neighbor, how tired we grew of the fat stretches (*sic*) of broad prairie, imagine for a minute (*sic*), if you will the fellings (*sic*), surroundings, of a like nature is calculated, to create remembering (*sic*) only, a few years back the ground on which we stood the pale face dared to tread. For years the red man faced the rippling (*sic*) streams, and dared the whites in inter (*sic*). But the country was too valueable (*sic*) to be given over to a tribe who refused to cultivate (*sic*) it, hence the opening of this great country where the soil is as black as a storm, and as so productive as any part of the world. By and by little houses began to spring up around us one by one, and the many settlers traveling to there claims, began to make trails, and at time streams of wagons could be seen onward to there new homes, one beautiful evening the sun sank and the shades of night be seen on the way to there new homes, one beautiful (*sic*) evening the sun sank and the shades of night gathered (*sic*) on a rise of broad prairie, but when we arose the next morning, she cast her golden rays on a little city, which sprung up like a mushroom only a few miles from us.

A few days later, one afternoon we saw a lofty smoke stack of a locomotive (*sic*) lift her ugly black head over the rise and come rushing by with in a few hundred yards of our front door. Now we have neighbors all around us and the houses on the level prairie (*sic*), reminds one, of a scene of wheat shocks in the harvest fields, in this a very short space of time, we have conveniences greater in respects, to a old settle country, it will be one of the most beautiful countrys in the west in a few, short years. The roads are as straight as a pine and as level (*sic*) as a floor. Farming is easy and water plentyful (*sic*), no timber to blind to scen (*sic*) but the eyes can feast on its beautys (*sic*) many miles square. We have no trees, with densley (*sic*) foliaged branches to shelter us from the burning rays of the summer sun, but a steady cool wind is allways (*sic*) blowing, like the breeze from the ocean.

Respt Yours, J. Linard Lindsay (*my 1<sup>st</sup> cousin, Aunt Frank's son*)

# SOUTHWESTERN LUMBER CO.

Chattanooga, Okla. 5/19, 1911

In the opening of the pasture lands, of Okla. Dec. 3, 1906, B.H. Maddux, and J.B. Wallace, of Buffalo, Valley, J.W. Lindsay, W.W. Barnes and myself drew claims. On Mar. the 16th of this year, we arrived in Lawton Okla. in route to our claims, which are located close together, and about forty six miles from Lawton. On the evening of the same day, after having loaded our wagons, with tents, cots, provisions &c, we sat out for the big pasture. It was about two p.m. when the little of Lawton, began to fade from our view, in our crowd was the Hon. W.H. Hussey, probate judge of Comanche County of Okla. J.C. Barnes, of Buffalo Valley, J.D. Thompson, one of the most noted old time fiddlers of Texas, and Tenn., United States Surveyor W.H. McComb of Lawton and Messrs, Maddux, Wallace, Barnes, and Lindsay Bros.

We traveled on through a magnificent country, enjoying the splendid scenery until nine p.m. of that evening, pitching our tent and went into camp. About ten miles of our journey having been covered, we were all tired and hungry, a camp fire was soon started, and every one was busy with his forked stick, on the end of which hung a piece of bacon, supper in this way was soon prepared and devoured.

Long before the sun had peeped over the Eastern hills, we were stirring, breakfast gotten, and eaten in a like way to that of supper and we were on our way again, and on until night, reaching Deep Red a stream flowing southwardly we again went in to camp, tired and fatigued from our long journey, we were soon in our bunks, but not to sleep for ere we had quitted the lonesome howl of the coyotes sat up, and coming very close to our tents, I remember very well I had made my bed on the ground in the tent near the side, but after hearing the wolves, I decided I could ~~not~~ rest better over in the center, well I guess I changed my bed pretty fast. About 10, a.m. of the 19th we rallied in on Sec. 18 Township, 23, Range, 13, which claim was awarded me in the sale, and at that time scarcely a house to be seen around this quarter section. How lonely one would have felt but for the spirit there was in our crowd. Judge Hussey and Mr. Barnes splended entertainers which keep the ~~crowd~~ fun going with Mr. Thompson and his fiddle, the crowd was anything but lonesome. Far away in the distant west, on the lonely prairie. Mar. 20, a little tent might have seen and the howling winds whipped around, her corners singing, singing a lonesome song, Many miles away from a post office, rail way, store, or neighbor, how tired we grew of the fat stretches of broad ~~prairie~~ prairie, imagine for a minute, if you will the fellings, surroundings, of a like nature is calculated, to create remembering only, a few years back the ground on which we stood the pale face dared to tread. For years the red man ~~had~~ faced the rippling streams, and dared the whites to enter. But the country was too valuable to be given over to a tribe who refused to cultivate it, hence the opening of this great country where the soil is as black as a storm cloud, and as so productive as any part of the world. By and by little houses began to spring up around us one by one, and the many settlers traveling to there claims, began to make trails, and at time streams of wagons could be seen on ward to there new homes, one beautiful evening the sun sank ~~had the shades of night~~



## SOUTHWESTERN LUMBER CO.

GENTLEMEN OF THE JURY:

190

be seen on the way to there new homes, one beautifue evening the sun sank and the shades of night geathered on a rise of broad prarie, but when we arose the next morning, she cast her golden rays on a little city, which sprung up like a mush room, only a few miles from us.

A few days later, one after noon we saw a lofty smoke stack of a locomotive lift her ugly black head over the rise and come rushing by with in a few hundred yards of our front door. Now we have neighbors all around us and the houses on the level pararie, reminds one, of a scene of wheat shocks in the harvest fields, in this a very short space of time, we have conveniences greater in respetts, to a old settle country, it will be one of the most beautiful countrys in the west ~~the~~ in a few, short years. The roads are as straight as a pine and as level as a floor. Farming is easy and water plentyful, no timber to blind to sceen but the eyes can feast on its beautys many miles square. We ~~we~~ have no trees, with densley foliaged branches to shelter us from the burning rays of the summer sun, but a steady f cool wind is allways blowing, like the breeze from the ocean

Resapt Yours.

J.Linard Lindsay

↑  
My Nephew  
Aunt Frank's Son

### Appendix II

(pg. 29) O. K. Holladays' opening statement

GENTLEMEN OF THE JURY:

The Indictment in this case charges the Defendant, Myrtle Barnes, with the crime of the murder in the first degree, alleged to have been committed upon the person of one Mrs. W. W. Judd, deceased.

The Defendant has interposed a plea of not guilty, and this makes the issue you are called upon to try and determine, under your oaths, in accordance with the law and the evidence, and the general plea of not guilty includes the defense of insanity, without special plea.

While the indictment on its face contains but one count, it, nevertheless, in legal contemplation, embraces four separate and distinct grades of felonious homicide, to-wit: murder in the first degree, murder in the second degree, voluntary manslaughter, and involuntary manslaughter; and, while there is no insistance that the offense in this case is manslaughter, the State contending that it is murder, it is made the duty of the Court to define and explain to you the law applicable to each and all of these offences in so far as it may be necessary, in order that you may the more fully understand what it takes, under the law, to constitute murder, and this I will now proceed to do without reference at present to the facts of this particular case.

The statutory definition of murder, as contained in Section 4597 of the Code of Tennessee, is as follows: "If any person of sound memory and discretion, unlawfully kills

(pg. 30) any reasonable creature in being, and under the peace of the state, with malice aforethought, either express or implied, such person shall be guilty of murder.”

By Section 4597 of said Code, it is provided, that “Every murder perpetrated by means of poison, lying in wait, or by any other kind of willful, deliberate, malicious and premeditated killing, or committed in the perpetration of or attempt to perpetrate any arson, rape, robbery, burglary or larceny, is murder in the first degree.

Under Section 4603 of said Code Manslaughter, both voluntary and involuntary, is thus defined: “Manslaughter is the unlawful killing of another without malice, either express or implied, which may be voluntary upon a sudden heat, or involuntary, but done in the commission of some unlawful act.”

When the act of killing is not done in the commission of, or attempt to commit, some one of the felonies named in Section 4598 of said Code, above quoted, nor by poison nor by lying in wait, in order for it to be murder in the first degree the killing must have been done willfully, - that is, of purpose, with the intent that the act by which the life of the party is taken should have that effect; deliberately, - that is, with cool purpose; maliciously, - that is, with malice aforethought, and with premeditation, that is, a design to kill must have been formed before the act is performed by which death is produced.

The distinctive characteristic of murder in the first degree is premeditation, and this involves a previously formed design or actual intention to kill. However, it is not necessary that this cool purpose and deliberate design to kill should have been conceived or pre-existed in the mind of the person doing the killing for any definite period of time anterior to its execution. It is sufficient in law if it precede the assault, how short-so-ever the interval of time may be, for the length of time is not the essence of this element of this

(pg. 31) offense. In determining the question as to whether or not the offense is murder in the first degree, the question of vital importance is: Was the mind of the assailant, at the moment of the killings, so far free from excitement and passion as to be capable of deliberation and premeditation, in the sense as heretofore explained, and was the act of killing the end determined upon? Was it the ultimate result which the concurring will, deliberation and premeditation of the party accused sought?

The principal ingredient of murder in the second degree is malice, which may be either express or implied. Express malice is where a person with a sedate and deliberate mind and formed design toward a particular person kills him or her, which formed design is evidence by external circumstances disclosing the inward intention, such as lying in wait, former threats and concerted schemes to do the deceased some bodily harm. Malice is implied in legal contemplation by such wanton and cruel conduct as shows a heart regardless of social duty and fatally bent on mischief; and malice a forethought as applied to cases of murder in the second degree includes all cases when the act is done under such cruel circumstances as are ordinary indications of a wicked, depraved and malignant spirit, as when the punishment inflicted by a party, even upon provocation, is outrageous in its nature and continuance and beyond all proportions to the offense so that it is to be attributed to malignity and brutality rather than to human infirmity.

To constitute murder in the second degree the proof must show that the killing was unlawful and malicious. The cool, deliberate purpose to kill, requisite to constitute the crime of murder in the first degree, is not essential in making out this crime; and if the design to kill was formed, even upon a sudden impulse of passion and without adequate provocation, and disconnected with any previously formed design, and if executed

(pg. 32) willfully and maliciously, in the sense heretofore explained, the crime would be murder in the second degree. If the killing is the result of passion, due to an old grudge or to some previously inflicted injury or wrong, and without any new or sufficient legal provocation at the time of the killing, and the killing is done through malice, suddenly produced at the time, but without premeditation, it would be murder in the second degree.

Where the use of a deadly weapon by the party doing the killing is shown, and the death is clearly shown in the proof to have resulted from its use, nothing else appearing, the law presumes that the killing was done

maliciously, that is with that malice required to support murder in the second degree. But where the death and its manner and all the surrounding and accompanying circumstances are shown in proof, the malice is not presumed, but the jury is left to determine from the whole proof whether or not it was present as an ingredient of the offense. Neither can malice be inferred from the deadly intent merely, as the intent under some circumstances may be justified under the law.

I have thus given you the general principles of the law relating to all the grades of felonious homicide in order to assist you in making the proper distinctions and to properly ascertain the grade of the offence in this case, if a crime has been committed.

In view of the Defendant's plea of self defense, it is proper and necessary for the Court to explain to you the law applicable to this defense, and this I will do, first giving the general principles relating to this subject. A man has the right to lawfully repel force by force, but only to the extent necessary to repel the force used against him, and to protect himself from the threatened or offered violence, unless the assault made on him be so sudden, fierce and deadly, as that he may not be in safety cease his repelling force, in which case he may follow his assailant, even to the extent of taking his life. To

(pg. 33) excuse a homicide under the plea of self defense, the danger of death or great bodily harm must either be real or honestly believed to be so at the time and upon sufficient grounds. It must be apparent and imminent. Previous threats and even acts of hostility, howsoever violent they may be, or antecedent wrongs and injuries, will not of themselves excuse the killing; but there must be some words or overt act at the time clearly indicative of a present purpose to do the injury; and whether there was at the time the killing occurred in this case such an overt act on the part of the deceased toward the defendant, and what would or what would not be such an overt act on his part, is a matter for you, Gentlemen of the Jury, to decide from all the facts and circumstances shown in the proof of previous friendship or hostility and all the antecedent and surrounding circumstances of the case. However, previous threats, hostile actions or antecedent circumstances, can only be looked to in connection with present demonstrations as grounds of apprehension on the part of the person doing the killing.

To constitute this defense, the belief or apprehension of danger must be founded on sufficient circumstances to authorize the opinion that the deadly purpose then exists, and the fear that it will at that time be executed, the animosity of the deceased toward the defendant, as indicated by words or actions then and before.

Before you convict the Defendant of any of the offenses embraced in the indictment, it is necessary for the State to establish by the proof to your satisfaction beyond and reasonable doubt, first what the law terms the *corpus de licit*, -- the body of the crime -- that is, that the deceased, Mrs. W. W. Judd, has been unlawfully killed; second, what is called the venue, that is, that the killing occurred in Putnam County,

(pg. 34) Tennessee, and before the finding of the indictment in the case; and third, that the Defendant is guilty of murder in the first degree. You will bear in mind that each and all of the ingredients which enter into and go to make up the crime of murder in the first degree, to wit, willfully, deliberately, maliciously and with premeditation, are each and all essential to constitute this grade of felonious homicide, and must be established by the proof to your satisfaction beyond a reasonable doubt before you can convict for this crime. If you find the Defendant guilty of murder in the first degree you will simply say so. You will have nothing to do with the penalty, for the law provides that she shall suffer death by hanging, unless you, in your verdict find and report mitigating circumstances, in which event the Court has the power to commute the punishment from death to life in imprisonment. If you fail to find the Defendant guilty of murder in the first degree, or should have a reasonable doubt thereof, you will acquit her of this offense, and next proceed to inquire as to whether or not she is guilty of murder in the second degree, you will convict for this offense, and fix the punishment at confinement in the penitentiary at some period of time between ten and twenty years.

If from a full consideration of the whole proof you have a reasonable doubt as to the Defendant's guilt of any offense, your verdict will be "Not Guilty".

You enter the investigation upon the presumption that the Defendant is not guilty of any offense, and this presumption of innocence operates as a witness for him until it is rebutted and overturned by competent and credible testimony to your satisfaction beyond

(pg. 35)

A reasonable doubt. By reasonable doubt, however, is not meant such a doubt as may of a possibility arise, but it is that doubt engendered by a full investigation of the proof and such as will not permit your minds to rest easily with a certainty of the Defendant's guilt. Absolute certainty is not demanded by the law to convict of any criminal offense, but moral certainty is required, and this too, as to every grade of crime or included in the indictment.

You, Gentlemen of the Jury, are the sole and exclusive judges of the facts; you are the judges of law under the direction of the Court, the Court being a sworn witness to you as to what the law is, and it is your duty to take the law as given you in charge by the Court. The Court is presumed to have no opinion concerning the facts, and I have endeavored to so prepare and deliver this charge as to indicate no opinion concerning the facts.

In determining the weight and credibility of the testimony, it is proper for you to look to the manner and demeanor of the witnesses on the stand, to the reasonableness or unreasonableness of what they say, to the consistency or inconsistency, probability or improbability of their statements. Look also to their interest or lack of interest as the result of the lawsuit; to their motives to speak the truth, or the contrary; to their bias, prejudice, or feeling, if any be shown; and to their general character, if proven.

If there are conflicts in the testimony, it is your duty, if you can do so consistently with reason and truth, to harmonize and reconcile them so as to let all the testimony stand as the truth.

(pg. 36) If, however, this cannot be done, if there are sharp and irreconcilable conflicts in the testimony, it then becomes your duty and prerogative to say who and what is to be believed.

There are a number of ways known to the law whereby to impeach testimony or discredit a witness, one of which is by a rigid and close cross examination of the witness and by this means to involve him in contradictions and discrepancies as to the material facts of the case. Immaterial variances, however, do not necessarily discredit, unless there is something to show that the discrepancy arises out of a willful desire to speak falsely.

And yet another method is to ask the witness questions, the answers to which tend to involve him in moral turpitude, and still another method is to show that the witness has at different times made inconsistent or contradictory statements about the material facts of the case, - statements made in court contradictory to those made out of court. Proof of such contradictory statements, however, should be received with caution, since the witness sought to be contradicted may not have fully or accurately expressed himself, or the contradicting witness may not have understood fully what was said or accurately remembered it.

Apparent conflicts may sometimes be reconciled by applying the rule of positive and negative testimony. Positive testimony is where the witness says a thing occurred, that he saw or heard it, as the case may be, while negative testimony is where the witness says if it occurred he did not see or hear it as the case may be.

In such case the apparent conflict may be reconciled by accepting the testimony of the positive witness, since there is not necessarily any conflict; but if the negative

(pg. 37) witness says he had his attention arrested and drawn to a particular thing in controversy, and was looking or listening and had an equal opportunity to see and to know and both are equally credible, then a conflict does arise which you must determine in some other way.

The Defendant is a competent witness, and has the right to testify on her own behalf, but you will weigh her testimony as you would any other witness in the case. If she is shown to have a good character, it is a witness for her, and in doubtful cases should weigh much.

You can have no sympathy or prejudice in any criminal case.

You will try the case alone upon his sworn testimony of the witnesses, - - the testimony admitted to you consideration in the presence and under the direction of the Court. You will agree upon your verdict mutually, and not by any general average, casting of lots, or any other kind of gambling or speculative process.

In other words, the verdict must be mutual, the concurring judgment of each and every member of the jury.

You will now take the case, Gentleman of the Jury, and giving to all evidence a full, fair, and impartial consideration, exercising your best judgment and common sense, in the light of reason and truth, that your verdict respond to the law and the evidence.

Take the case.

(pg. 38) **Appendix III**

#### **O. K. Holladay's closing statement**

In this case it is the contention and insistence of the State that the Deft., Myrtle Barnes, in this county and before finding of the indictment, to-wit: on the 31<sup>st</sup> day of May, 1912, unlawfully shot and killed the Deceased, Mrs. W. W. Judd, as alleged in the indictment read in your hearing. Stating the theory and contention of the State more at length, the State insists that the Deft. Had a real or fancied grievance against the Deceased, being jealous of her husband's attentions and adulterous relations with the Deceased; that this aroused the anger of the Deft. To such an extent that she planned and premeditated the taking of her life; that her act was prompted by malice and hatred and proceeded from motives of revenge; that for sometime prior to the killing the Deft. Contemplated the deed and made threats signifying her intention to kill the deceased; that on the day of the fatal meeting, the Deft., having previously learned that the Deceased had gone to Nashville and would likely return on the evening train, armed herself with a pistol, went to the station, and awaited the coming of the train; that upon the arrival of the train she promptly boarded same and went through the coach in search of the Deceased, going to the rear end thereof, where the Deceased was standing on the platform; that without a word of warning or legal provocation she fired four or five shots into the body of the Deceased, therefore producing almost instantaneous death, from all of which the State insists that the Deft. Committed willful, malicious, deliberate, and premeditated murder upon the body of the said Mrs. W. W. Judd.

(pg. 39) This, I say, Gentleman of the Jury, is the theory and contention of the State in this case; and, if you believe from the evidence to your satisfaction beyond a reasonable doubt, that this contention is true, the Defendant would be guilty of some of the grades of felonious, homicide embraced in the indictment, - the grade and penalty to be fixed and determined in accordance with these instructions, provided the Deft. At the time of the killing was of sound memory and discretion, in the sense, as will be hereinafter explained. This is to say, if you believe from the evidence beyond a reasonable doubt that the Deft. - in this county and before the finding of the indictment in this case - on account of a jealous hatred toward the Deceased was prompted to take her life from motives of malice and revenge, and deliberately designed to take the life of the Deceased, and in pursuance of this design armed herself with a pistol and went to the railroad station and waited for the train on which she expected to find the Deceased, and that on the arrival of the train she searched the train for the Deceased, and killed her in the way and manner, as the State insists, she would be guilty of murder, provided she was of sound memory and discretion at the time.

If the killing was willful, malicious, deliberate and premeditated in the sense of these instructions, the offense would be murder in the first degree.

I will now state the theory and contention of the Deft. as follows: While it is not denied that the Deceased came to her death at the hands of the Deft., it is insisted on her behalf that she was a person of unsound mind at the time, and, therefore, incapable, in legal contemplation, of committing a crime, - that is she was in such a state of mental disorder that she could not distinguish right from wrong or know the consequences of her

(pg. 40) act. It, therefore, becomes necessary for the Court to fully explain and declare to you the law upon the subject of insanity as affecting crime, which I will now do as follows:

You will observe, Gentleman of the Jury, that in the definition of the murder read to you in the first part of this charge, this language is used: "If any person of sound memory and discretion act." This necessarily implies that a crime could not be committed unless the person alleged to have committed it was at the time a person of sound memory and discretion in the sense of these instructions - and it follows that no person can be guilty of murder who has not sufficient mind and discretion to distinguish between good and evil, and who has no consciousness of doing wrong in the act he or she is committing. In other words, in order to excuse a person for crime on the grounds of insanity, it must be of such a kind and character as to deprive such person of his or her reason to such an extent as to render him or her incapable of distinguishing right from wrong, or of discerning good from evil. The capacity to know right from wrong and to know that the particular act being committed is wrong is the rule by which criminal accountability is tested.

Now, there are various types and degrees of insanity or mental derangement. It may be temporary or permanent, partial or complete, and it may manifest itself on one subject only, and this question of insanity is one of fact for the jury to determine from all the facts and circumstances shown in the proof.

The material question on this point is: Was the act of killing, as charged in this case, the deliberate act of a sane person? Did she have sufficient mental capacity at the time of the act to know right from wrong, and to know the consequences of her act, and that it was wrong? Is so, she would be a sane person, in legal contemplation; otherwise

(pg. 41) she would not. In determining this question you will look to all the proof in the case - the circumstances surrounding the killing, the acts & conduct of the Deft., her recollection of the details, the testimony of the expert and non-expert witnesses, and all the other facts shown in the case. Proof as to Defendant's mental condition before and after the act can be looked to determine what it was at the time.

I further instruct you that mere peculiarities of temperament or occasional eccentricities of conduct, or mere mental distress, or worry and depression, or jealous resentment toward a person, which proceeds from malice and revenge, if it does not go to such an extent as to so dethrone the reason, and render a person insane to the extent above explained, would not excuse crime.

You are further instructed that law presumes that every person is sane until the contrary is made to appear, and when insanity is set up as a defense to a criminal charge, the burden of proof is on the party alleging it. In other words, if nothing else appears, the law would supply the lack of proof on this question with the presumption that the person is sane. However, when this question is raised, and if from a full consideration of all the proof you have a reasonable doubt as to whether the Deft. was sane at the time she committed the act charged, she would be entitled to the benefit of such doubt and in that event she would not be guilty - for it devolves upon the State to establish by the proof beyond a reasonable doubt all of the necessary elements of the crime.

The Court has admitted for your considerations the testimony of experts and on-experts on the question of insanity.

Expert witnesses, by reason of their peculiar training and experience, are permitted to give their professional opinion, and to give their conclusions in answer to

(pg. 42) hypothetical questions. And the jury will determine from the whole proof as to whether the facts incorporated in the hypothetical questions are true or not. While expert testimony is sometimes the only means of, or the best way to, reach the truth, yet it is largely a field of speculation, best with pitfalls and uncertainties, and requires patient and intelligent investigations to reach the truth. You should, therefore, give such weight to this kind of testimony in the case, in an honest endeavor to arrive at the truth, and giving a fair and impartial estimate to all the testimony in the case, in an honest endeavor to arrive at the truth, and giving a fair and impartial estimate to all the testimony adduced in the case.

In reference to non-expert testimony I instruct you that such witnesses, after stating facts – that is personal acquaintance, knowledge of the person whose sanity is being inquired into, her acts, conduct, manner, and demeanor, may give their opinion; and the weight to be given such testimony depends in the facts stated by them and on which their opinion is based. Give this testimony such weight as you think it entitled to.

Proof was admitted in the question of the adulterous relations existing between the husband of the Deft. and the Deceased, prior to the killing. This proof is competent and admitted only for the purpose of shedding light on the mental condition of the Deft. at the time the act was committed, and for no other purpose. It could not excuse or justify the killing or even mitigate it, and then only when the killing occurs in the first transport of passion, and there is no instance of that effect in this case.

The adultery of the Deceased with the husband of the Deft. in no event could legally justify or excuse the killing, and you will not consider proof along this line for that purpose. But you should look to it to determine the question of the Deft.'s sanity or

(pg. 43) insanity at the time the act was committed; and in doing this you will take into consideration the nature and extent of the wrongs suffered by the Deft., the length of time it may have continued, and the effect it had on her mind.

And, now, having given you the law on the question of insanity, and instructed you with reference to expert and non-expert testimony, I will return to the theory of the Deft. and state it at more length. It is insisted on behalf of the Deft. that at the time and prior to her marriage to her present husband, she was a woman of culture and refinement, a sensitive temperament, that she was happy, normal, and contented person; that soon after her unfortunate marriage with her said husband, she suffered numerous outrages and wrongs at his hand; which she patiently endured on account of her love for him and her children which came as a result of the union; that a short time after her marriage she learned through her husband and others of his illicit relations with the Deceased; that this improper conduct dated back prior to the death of her husband's first wife, and perhaps caused her death; that this adulterous conduct was continued and persisted in by her husband, as she was informed and believed, up to or just prior to the day of the killing; that on this account she was neglected and cruelly treated by her husband and the Deceased so disturbed and distressed her that it destroyed her health and happiness, and finally impaired and dethroned her reason to such an extent that she was mentally incapable of committing the crime charged against her; that she became nervous, emaciated, and restless, frequently going without food or sleep; and that she contemplated suicide. In short, that her life was made miserable – a veritable hell on earth; that she was so sorely distressed on account of these things that she was gradually

(pg. 44) being killed, inch by inch; that being outraged, humiliated, and distressed, she lost possession of her mental faculties, and upon learning that the Deceased had gone to Nashville, and would probably return on the train, she armed herself and killed the Deceased, after which she expressed satisfaction and relief. This, I say, Gentleman of the Jury, is the contention of the Deft. in this case, and it in effect amounts to a defense of insanity,

If, therefore, Gentleman of the Jury, you fail to find as insisted by the State, or if you should have reasonable doubt thereof, or if you believe from the evidence that the Defendant's contention is true, she would not be guilty of any offense, and it would be your duty to acquit. In other words, if you believe from the evidence, or should have a reasonable doubt thereof, that the Defendant at the time of the alleged killing, was insane in the sense, and the extent heretofore explained, that is, that she was at the time mentally incapable of distinguishing right from wrong and to know the consequences of her act, in the

event she would not be guilty of any offense, for in legal contemplation she would be incapable of committing a crime.

(pg. 45) **Appendix IV**

January 12, 1913

**Attorney for W. W. Judd: John Tucker**

**Attorney for Myrtle Barnes: Oscar King Holladay**

**Jury:**

F. H. Hicks  
W. G. Sadler  
J. M. Ledbetter  
Cam Medley  
G. W. Allison  
A. L. Boyd  
J. L. Williamson  
R. S. Duncan  
Porter Smith  
G. W. Hammons  
W. C. Flemming  
G. A. Johnson

**State Witnesses:**

J. J. Prince  
A. G. Maxwell  
Walter Cherry  
Dr. J. I. Allison  
Clay Reeves

**Depositions requested on September 30, 1912**

Knoxville, Tennessee:

Dr. Michael Campbell  
Dr. Rogers

Nashville, Tennessee:

Dr. Rufus Fort

(pg. 46)  
Dr. Witherspoon  
Dr. Douglas  
Dr. Stearns  
Dr. Duncan Eve  
Dr. McGammon  
Dr. Haggard  
Dr. Gaines

Lawton, Oklahoma:

Mrs. George Pashal

L. McGussman  
Dr. Ed Meeker  
P. T. Benbow  
Prof. Blanchet  
M. S. Simpson  
Wash Hudson  
George Key  
W. H. Hussey  
Frank Rumble  
Dr. Brashear  
A. D. Boggs  
Tom Brashear  
Tom Rodgers

Rockport, Indiana:

L. H. Jennings  
C. C. Mason

Newtonville, Indiana:

Rev. R. A. Steven  
Rev. Bremmer  
U. B. Langley  
Prof. W. P. Meeks  
Albert Fletcher  
Dr. Harry Harter  
Chas. Wetherell  
James Fletcher  
Dr. Adye  
Taylor Williams

Grandview, Indiana:

(pg. 47) George Wandel

Chickasha, Oklahoma

Oatley Anderson  
Mary Frank  
Will Richards  
Richard Cavit  
John Wilmoth  
Dan Wilmoth

(pg. 48)

## **Appendix V**

Biographical Directory of Tennessee General Assembly, Volume 3

### **Holladay, Oscar King (1876 – 1941)**

SENATE, 55th – 57th General Assemblies, 1907 – 1913; representing Putnam, Clay, Fentress, Jackson, Morgan, Overton, and Pickett counties in the 55<sup>th</sup>, same counties without Morgan in the 56<sup>th</sup> and 57<sup>th</sup>; Democrat. Born November 6, 1876, in Pekin, Putnam County; son of William Alexander and Martha Jane

(Jared) Holladay. Attended Pekin elementary school; Washington Academy, Cookeville, Putnam County; Dickson Normal College, Dickson County; was graduated from Cumberland University, Lebanon, Wilson County. Married September 17, 1902, in Cookeville to **Margaret Black Denny, daughter of T.L. and Frances Denny; children: John Denny, Mabel Jane, and Nan Ford.** Taught school three years after college, then established legal practice in Cookeville. Served as legal representative for Tennessee Central Railroad; president, Citizens Bank, Cookeville; vice-president, People's Bank, Cookeville; reorganized in 1921 the newspaper, *Putnam County Herald*, in Cookeville and was instrumental in its publication. County attorney, 1903; city recorder and city attorney; assistant district attorney-general, 1907-1908; mayor of Cookeville, 1913 – 1917; chairman of both city and county schools boards; judge of 5<sup>th</sup> judicial circuit of Tennessee, 1930 – 1941. Chairman, board of trustees and board of stewards, Cookeville Methodist Church. Member of Free and Accepted Masons; Order of the Mystic Shrine; president, Lions Club. Died May 10, 1941, in Cookeville; buried in that city. Father of Senator John Denny Holladay, 71<sup>st</sup> and 72<sup>nd</sup> Assemblies, 1939 – 1943.

**Sources:** Information supplied by son, Judge John Denny Holladay, Cookeville; *Putnam County Herald*, August 12, 1903; May 15, 1941; Moore, *Tennessee, The Volunteer State, II*, 453-454; Hale and Merritt, *Tennessee and Tennesseans*, 1957; *Who's Who in Tennessee*, 95 Gillem, *Prominent Tennesseans*, 56.

### **Additional information about Big Pasture, Oklahoma, added by Audrey J. Lambert, 2009:**

The **Big Pasture** was 488,000 acres (1,975 km<sup>2</sup>) of prairie land, in what is now southwestern Oklahoma. The land had been reserved for grazing use by the Kiowa, Comanche, and Apache tribes after their reserve was opened for settlement by a lottery conducted during June through August 1901. The tribes, however, leased most of the land out to large ranchers and it became known as *Big Pasture*. The Big Pasture was maintained for grazing until June 5, 1906, when Congress passed an act (Chapter 2580, 34 Stat. 213) requiring that it be disposed of by allotting 160 acres (0.6 km<sup>2</sup>), in severalty, to each child born into the tribes after the act of 1900. The remaining land was sold by sealed bid in December 1906 and the proceeds placed in the U.S. Treasury for the tribes. This was the last large tract of land opened for settlement in Oklahoma Territory.

The Big Pasture covered a strip of land 29 miles (47 km) north and south and 36 miles (58 km) east and west in what is now parts of Comanche, Cotton and Tillman counties. The towns of Randlett, Devol, Grandfield, Loveland, and Hollister (from east to west) are located in what was the Big Pasture. Randlett is home to **Big Pasture Public Schools**, a consolidated school system serving [Devol](#), [Cookietown](#), and Randlett.

Before settlement, the Big Pasture was mostly plains cut by two timbered draws. Captain Randolph B. Marcy in his Red River expedition in 1852 noted that the timbered regions he found along Cache Creek were the last of any size until he reached the foothills of the Rockies.

- Cooper, Charles M. "The Big Pasture" *Chronicles of Oklahoma* 35:2 (April 1957) 138-146 (retrieved August 16, 2006).
- Kappler, Charles (Editor). "[ACTS OF FIFTY-SIXTH CONGRESS—FIRST SESSION, 1900](#)"; [Chapter 813, 31 Stat., 672. \(Section 6\)](#). *Indian Affairs: Laws and Treaties*. Washington: Government Printing Office, 1904. 1:708-713 (retrieved August 16, 2006).
- Kappler, Charles (Editor). "[ACTS OF FIFTY-SIXTH CONGRESS—FIRST SESSION, 1900](#)"; [Chapter 2580, 34 Stat., 213](#). *Indian Affairs: Laws and Treaties*. Washington: Government Printing Office, 1904. 1:184-185 (retrieved August 16, 2006).

\* **See Sensational Shooting at:** <http://www.ajlambert.com>