

# Mitigating Circumstances

By Lon Williams

*Judge Wardlow Steele had to learn his profession as he went along . . .*



*"By thunder, Mr. Lawyer, I ought to have your head pulled off!"*



**H**OOKER MARTIN, known also as Spoonbill, considered himself a pretty smart man, especially in legal matters. Accordingly, when Flat Creek citizens decided to give up Vigilante methods, and proceed according to law, Spoonbill had been a candidate for judge. He wasn't elected, of course, not being one

of what was getting to be called the better element. Nevertheless, he was determined to make his influence felt, and when law-and-order forces put two of his old cronies on trial for murder, Spoonbill managed to get himself put on top list for jurors.

As Jerd Buckalew, newly-elected sheriff, banged for order with his .45, Hook Martin was right up front in Flat Creek's log court house.

"Court's now in session," Jerd shouted;

"anybody disturbin' this court will be locked up."

Here and there on split-log benches, and in standing spaces, whiskered men snickered in their beards. Law-abiding citizens maintained proper solemnity, but made sure they'd brought along their hoglegs, Colts, bowie-knives, and derringers.

Judge Wardlow Steele, a big, rawboned miner with straw-colored mustache and savage blue eyes, spat into a sandbox, "Clerk will call first case."

Jim Skiffington, a slim man in spectacles and black suit, stood up. "People versus Burke Lassell and Manker Lewis," he shouted. "Charge, first-degree murder."

Deputy-sheriffs ushered Lassell and Lewis to a split-log table up front and shoved them down on a bench.

"You skunks got a lawyer?" growled Judge Steele.

"Yes, your honor," said a long-legged, long-faced gent, who rose from a front corner, came over and stood by Lassell and Lewis. "I'm French Demeree. I was an attorney-at-law back in my native Tennessee; these prisoners spoke to me about defending them."

"All right," snapped Steele. He glanced about. "Whar's our man?"

At a second split-log table, a square-bodied hardcase with red hair stood up. "Here, your honor."

"Shore," said Judge Steele. "I beg your pardon, Mr. Claybrook, for not seein' you fust off. Well, now, Wade, you bein' prosecutor, what do we do next?"

"Prisoners are required to plead," Wade Claybrook answered, and resumed his seat.

"All right, you varmints," growled Steele. "Start pleadin'."

Lawyer Demeree got up. "Defendants plead not guilty, your honor."

"Thunderation!" Steele shouted; "of course they're guilty."

Prosecutor Claybrook got up. "It's a manner of pleading, your honor. In court trials, it's necessary to prove 'em guilty before a jury."

"Oh, so they're darin' us to prove it, eh? Well, by thunder, we can shore do it; whar's our witnesses?"

Claybrook got up again. "Next matter is selection of a jury, your honor. That's Sheriff Buckalew's job. Names are already drawn; clerk Skiffington will call them."

"All right, Skiffy," said Judge Steele; "start callin'."

Skiffy called, "Sam Proudfit."

"Here," Hook Martin said to himself, "is where I come in." He was sitting just behind defense lawyer French Demeree. Hook leaned forward and tapped Demeree's shoulder.

Demeree twisted around. "Who are you? What do you want?"

"I'm Hooker Martin, a friend of these gents; you don't want Sam Proudfit on no jury."

"Why not?"

"He's a Vigilante; don't believe in trials."

Demeree stood up as Proudfit took a jury seat. "Peremptory challenge, your honor."

**J**UDGE STEELE'S bushy eyebrows lifted. He looked around from one court official to another; nobody's face showed any light. He kept looking until he espied a face some distance back that inspired hope. "Bill Hacker, come up here."

A six-footer wearing a couple of sixguns stood up. He was a dark-haired hombre with glinting dark eyes and close-cut mustache. "Coming, Judge."

Bill Hacker came forward and stepped up beside Judge Steele.

"Look here, Bill," Steele whispered. "I warn't cut out for this job and you know it; set down here and tell me what to do."

Hacker eased down onto Steele's bench. "I'd sort of hoped I was through with hanging criminals, Judge. A year as Vigilante chief has fed me up with it."

"You ought to been judge," said Steele, "you got education. Now tell me what that axe-faced lawyer means by 'primptry challenge'."

"He means he objects to having Sam Proudfit as a juror."

"Can he do that?"

"He can object to as many as six, without telling why; from then on, he's got to have a good reason."

Judge Steele leaned forward. "All right, Demeree, Proudfit is off. Next name, Skiffy."

"Jinks Palmer, alias Palmleaf Palmer."

Hook Martin tapped Demeree's shoulder. "Jinks is on our side."

Palmer took his place as a juror and Skiffy called, "Noah Bigsby."

Hook tapped Demeree. "Bigsby won't do."

"Why?"

"He's a Vigie."

Demeree got up. "Challenge Bigsby, your honor."

"Ask him why," Bill Hacker whispered to Steele.

"What fer?" Judge Steele demanded of lawyer Demeree.

"He's a Vigilante."

"That," stormed Judge Steele, "is about as sorry a excuse as I ever heard; we ought to have a dozen Vigilantes on this jury."

Hacker nodded to that.

"Peremptory challenge, then," said Demeree.

"That takes Bigsby off," Hacker whispered.

"Off with him," said Steele; "call another, Skiffy."

"Cal Depew."

"He's all right," Hook Martin whispered to Demeree.

Depew sat beside Jinks Palmer.

"Hooker Martin, alias Spoonbill Martin," yelled Clerk Skiffington.

Nobody objected to Hook, who took his place and sat where he had a good view of lawyer Demeree.

"Art Holman," yelled Skiffy.

Hook got Demeree's eye and shook his head. He also drew his mouth corners down to signify his personal distaste for Holman; Demeree used a peremptory challenge.

"Lawson Fuzzell," yelled Skiffy.

Hook got Demeree's eye again and this time he nodded approval.

Bill Hacker pulled at Judge Steele's sleeve. "As *amicus curiae*, I wish to inform your honor that juror Hook Martin is guilty of improper conduct; he's giving signals to defense attorney Demeree."

"Huh! By thunderation, he ought to be hung."

"Suggest you have Sheriff Buckalew throw him out."

"Ahem," rumbled Judge Steele. "Spoonbill Martin, your conduct is unbecomin' a juror. You been a-settin' thar givin' signs to that lawyer over thar, when you're supposed to be on our side; Sheriff Buckalew heave this skunk out of hyar."

Bucky crooked his finger at a cluster of deputies, gave his jaw a twist, and nodded toward Hook Martin. In three shakes they had Martin by both arms, both legs and a bunch of hair.

"Hold steady a minute or two," Bill Hacker whispered to Judge Steele; "I'll be right back."

Hacker dropped down and hurried out. He arrived in time to see Hook Martin flung head-first into a horse-trough full of water. A dozen Vigies had followed Bill out. Hacker had a few words with them and came back.

"Proceed," he whispered to Judge Steele.

WHEN A JURY of twelve had been chosen, and sworn true facts to find, and a true verdict to render, Prosecutor Claybrook called for one Hosea Hankin as a witness. When Hosea had been sworn and seated on a nail keg, Claybrook said, "Were you acquainted with our late Sheriff Dubose?"

"I were."

"Did you see him on Tuesday of last week about four o'clock p.m.?"

"I did."

"Where?"

"A-layin' in Siler's Gulch, just out of town."

"What was his condition?"

"You mean was he alive or dead?"

"Yes."

"He was alive."

"What was he doing in Siler's Gulch?"

"He war there a-dyin'; putnigh dead, in fact."

Judge Steele looked to his left and met a disgraceful surprise. Not a juror was paying any attention to what was being said by either Prosecutor Claybrook or witness Hosea Hankin. Judge Steele drew his .45 and banged its big end down on his split-log table. "You jurors!" he shouted. "Pay 'tention to what's goin' on hyar. Let me ketch you daydreamin' again, and I'll—"

Bill Hacker tugged at Steele's sleeve. "It's all right, Ward; just let 'em go right ahead."

"Ahem! Proceed, gentlemen."

Prosecutor Claybrook asked, "Did Sheriff Dubose tell you anything?"

"He did."

"What did he tell you?"

French Demeree sprang up. "I object, your honor; object to any hearsay evidence."

Judge Steele's eyes blinked. "By thunder, I ought to have your head pulled off for that. Here we are, tryin' to do justice by a couple of murderin' polecats, and you

object. That's just what's wrong with courts of justice; you big-mouthed lawyers—"

Hacker got Steele's attention. "Let him object, Ward."

"All right, highpockets, go on and object."

"As I was saying, your honor, what *somebody else* said is hearsay; it's not admissible in evidence."

Steele whispered to Hacker, "Now, Bill, what do I do?"

"Overrule him; this was a dying declaration. Dying declarations are admissible."

"Overruled, you ignoramus," Steele said pointedly to Demeree. "Now set down and keep your blasted mouth shut."

PROSECUTOR Claybrook said to witness Hankin, "What did Sheriff Dubose say to you?"

"He said he went out to arrest those two punks. Said he laid a hand on Burke Lassell's shoulder and told him he was under arrest. Said about that time a knife struck him under his right shoulder blade. Said he turned around and there was this Lewis hombre comin' at him again. Said he went for his gun, and about that time polecat Lassell shot him. Said they drug him into Siler's Gulch. Said Manker Lewis then shot him again."

"Did Sheriff Dubose know he was dying when he talked to you?"

"I reckon he must've knowed he was cashin' in. He said, 'I'm done for, Hosey. If you'd just oblige me by tellin' Bill Hacker who done it.' I told him I'd sure tell Bill. It seemed to ease his misery a heap, when I told him that."

French Demeree started to get up, but a glare from Judge Steele discouraged him.

"How long did Sheriff Dubose live after telling you those things?" Claybrook asked.

"I reckon, no time; he was still tryin' to talk when he died."

"Cross-examine," said Claybrook, glancing at Demeree.

Demeree got up. "Hosey Hankin, were you drunk or sober when you found Dubose in Siler's Gulch?"

Judge Steele reared up with a growl. "Look here, you insinuat' stinker! You can't insult one of our witnesses like that. Sheriff—"

Bill Hacker pulled his coattail. "Sit down, Ward; he won't do no harm."

"All right, Demeree; if you want to make an ass of yourself, why, go right ahead."

Demeree nodded at Hankin. "Answer my question."

"I was betwixt and between," said Hosea.

"How far betwixt and how far between?"

"I reckon I was just middlin' sober."

"Were you middlin' sober, or middlin' drunk?"

"I was sober enough to know my way around."

"Do you remember everything that happened to you that day?"

"Not everything."

"You remember everything Dubose told you?"

"I reckon I do; I shore was listen' mighty close."

"For all you remember, he told you he got into a quarrel with these defendants; isn't that right?"

"That's a dang lie, if you want my honest opinion."

"You mean all you told Mr. Claybrook here was a dang lie?"

Judge Steele reared up again. "Look here, Demeree, that's about enough out of you. I'm beginnin' to think we better hang you, same as those two—"

Bill Hacker pulled his coattail again. "Sit down, Ward. He ain't doin' no harm; you'll see."

Judge Steele sat down reluctantly. "See here, Bill this law business ain't no good. Vigilante was a heap better."

"Take it, easy, Ward; got to get used to these aggravations."

"No more questions," French Demeree announced abruptly.

"No more witnesses," said Claybrook.

Steele cleared his throat as Claybrook stood up. "What're you gettin' up for, Wade Claybrook?"

"For my opening argument, your honor."

"Well, tarnation! Who's arguin'? Why argue anyhow?"

Hacker leaned over. "He's got a right to make a speech, Ward. Let him talk. When he's through, Demeree has his turn. Then Wade again. Let 'em go to it; 'twon't do a bit of harm." "All right, Mr. Claybrook, go ahead and flap your lip. You got a right to, but 'pears to me like a waste of time."

CLAYBROOK and Demeree made their Cimpassioned speeches. Meanwhile, Judge Steele was of a mind to give a jury lecture on his own. Not a man of them was paying any attention whatever to what was being said to them. It didn't make sense; it was bad manners, if nothing else. When you talked to a man, you expected him to listen. By thunder, he'd never seen such batbrains.

When Claybrook and Demeree were through, Judge Steele asked Hacker, "What do I do now, Bill?"

"You charge—talk to the jurors now. Tell 'em to go out and decide whether these defendants are guilty of murder, or not, and after they've agreed, to come back in."

Judge Steele made a rumble in his throat. "All right, gentlemen. You go out in this back room now and stay a while, but don't fiddle away too much time. Then come back in here. You'll find if these two varmints killed Sheriff Dubose—which they did. Then you'll find if they're guilty of

murder—which they are. Then you’ll hustle back—and don’t come back with no tommyrot. All right, gentlemen.”

They come off their high seats and filed out followed by a deputy sheriff. In about two minutes they were back.

“All right, gentlemen,” said Judge Steele. “What’s your answer?”

A long-jawed gold-digger stood up, glanced off distantly, then said as a man befuddled, “Guilty of first-degree murder, but under mitigatin’ circumstances.” He sat down.

Judge Steele leaned toward Hacker. “What did he mean by that, Bill?”

“He meant they’re guilty, but under circumstances that would permit you to give ‘em life, instead of hangin’ ‘em, if you saw fit. Mitigating means there was some excuse—but not enough to get them out of first degree murder.”

“You mean it’s up to me, whether they hang or spend their lives in a pokey?”

“That’s right, Ward.”

Judge Steele swung round and glared at first one juror, then another. “Mitigatin’ circumstances!” he said contemptuously. “Whar is the mitigatin’ circumstances? I been lookin’ fer ‘em, and they ain’t thar.”

He swung right. “Sheriff Buckalew, take them murderin’ varmints out and hang ‘em, and don’t let no grass grow under your boots. Court’s adjourned.”

Judge Steele and Bill Hacker remained where they were, while Buckalew and his prisoners and everybody else filed out.

Judge Steele glared at Hacker. “Mitigatin’ circumstances! There never was a more cowardly murder; them *jurors* ought to be strung up.”

Hacker shook his head. “They didn’t mean that, Wardlow. They said *mitigating* because they couldn’t think of a better word. What they had in mind was *intimidating*. Intimidating circumstances,

that it.” Hacker got up and strode over to a juror seat. “Come up here a minute, Ward, and I’ll show you something.”

Steele responded promptly.

**O**PPPOSITE them, where ten-foot sections had been sawed from two logs high in the sidewall and a flapdown plank window blind was lowered, they could see out. Fifty yards beyond was a pine tree, and swinging by a hangrope from a limb was a dead man.

“What in tarnation?” exclaimed Judge Steele.

“That,” said Bill, “is Hook Martin; he was obstructing justice, in a way. But that was before his conversion. After being converted, he was a good influence. I don’t reckon them jurors paid any attention to what went on here in this courtroom, but they sure had a proper idea of what would happen to them, if they failed to do their duty.”

“Well, blow me for a sucker,” spat Judge Steele. “It’s like I been tellin’ you right along; Vigie ways was best. All this hullabaloo we’ve been through here was plain nonsense.”

Hacker fished out a pipe and loaded it with tobacco crumbs. “Some ways, yes; other ways not. It takes time to change over, from what we’ve been having, to a system of law-and-order. You’re going to make a fine judge, Wardlow; of course for a while you’ll still need moral support—like today, for instance. But that’s something you can count on. Just take it easy, and be patient. It’s said even Rome wasn’t built in a day.”

“By thunder!” said Judge Steele. “You got something there, Bill. It took two weeks for Flat Creek to boom into a real town. In fact, it was three weeks before she shore enough begun to bust her seams.”

