



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Summer 2023 Vol. 12, No. 4 Editor Emerita Lynne Liberato Editor-in-Chief Hon. John G. Browning

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By Hon. Ken Wise

It is a true joy to be a part of this organization and it was an honor to serve as President.

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I can only hope to be able to continue in some small way the great work of Justice Wise and the other past presidents of the Society. [Read more...](#)



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Campgrounds to Courtrooms

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In both myth and fact the renowned Texas Rangers have steadily earned global admiration: Quite an impressive legacy for a state agency.

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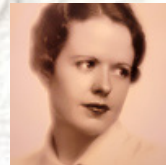
Texas Ranger Austin Ira Aten

Petticoats & Poker Chips

By Jan Devereaux

Director Phares' plan was smart: He would secretly recruit lady volunteers already employed by DPS to be Special Rangers.

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Special Ranger Doris Wheeler

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A "Lady Lawyer's" Impressions of 1874 Texas

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Pioneering female attorney Belva Lockwood authored the first-person account "From Washington to Texas." [Read more...](#)



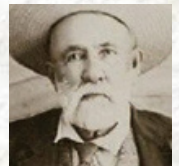
Belva Lockwood

Judge Roy Bean – "The Law West of the Pecos"

By Hon. John G. Browning

His approach to justice was so unpredictable that Six Flags Over Texas named the "Judge Roy Scream" roller coaster after him.

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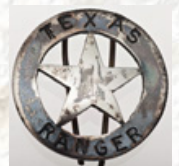
Judge Roy Bean

So, You Think Great Uncle Fred Was a Texas Ranger

By Christina Stopka

So, where can you go to try and verify Ranger service? The Armstrong Texas Ranger Research Center in Waco may be able to help.

[Read more...](#)



1880s Texas Ranger Badge



News & Announcements

Hemphill Dinner Announcement

On Friday, September 8, 2023, the Society will hold its 28th Annual Hemphill Dinner at Austin's Four Seasons Hotel, with Keynote Speaker Jason Taylor. [Read more...](#)



Jason Taylor,
Chief of the Texas
Rangers

And the 2024 Larry McNeill Research Fellowship in Texas Legal History goes to ...?

Article and photo by David A. Furlow

Applications are now being accepted for the Texas State Historical Association's 2024 Larry McNeill Research Fellowship in Texas Legal History. [Read more...](#)



Larry McNeill

The Society's Spring Board Meeting was the Genesis of New Alamo Memories

Story and photos by David A. Furlow

On May 10, the Society realized a dream too long deferred by the Covid pandemic: a Spring Board Meeting on the grounds of the Alamo. [Read more...](#)



Battle of the
Alamo diorama's
Alamo Chapel

John G. Browning Wins Outstanding Law Review Article Award

Society Trustee Hon. John G. Browning has been named the winner of the Texas Bar Foundation's 2023 Outstanding Law Review Article Award. [Read more...](#)



Hon. John G.
Browning

Get Your Tickets for the Briefing Attorney Breakfast!

The BA Breakfast will be held Saturday, September 9, at the Texas Law Center. Come join us! [Read more...](#)

Membership & More

Officers, Trustees & Court Liaison

2022-23 Member Upgrades

2022-23 New Member List

Join the Society



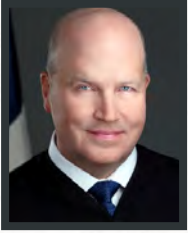
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FB: Texas Supreme Court Historical Society

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Hon. Ken Wise

Immediate *Past President's* Message

Thank you to all the Fellows and Members of the Society for a wonderful presidential year. It is a true joy to be a part of this organization and it was an honor to serve as President. I want to especially thank our Executive Director Sharon Sandle and our Administrative Coordinator Mary Sue Miller for keeping me on schedule and pointed in the right direction. I also thank the Journal's Managing Editor Karen Patton for her patient editing of my oft-rambling prose.

A very special welcome to Rich Phillips as our new President. Rich has done wonderful work for the Society and will continue to be an outstanding leader this year. We are lucky to have him.

The Trustees of this Society are incredible. They give freely of their valuable time and ideas to help the Society fulfill its mission. From the organization of portraits to the production of the Journal, the Trustees do yeoman's work. I am grateful to count them as colleagues and friends.

The highlight of each year is the Society's John Hemphill dinner. This year is special. All of Texas is celebrating the bicentennial year of the most storied and unique law enforcement organization in the world—the Texas Rangers. The Society will participate in this important happening by hosting Chief Jason Taylor as our Hemphill Dinner speaker. Chief Taylor has graciously agreed to participate in an interview and share his perspectives as Chief of the Texas Rangers. The Hemphill Dinner will be an important addition to the bicentennial celebrations occurring around the State. To join us on September 8, please follow this [link](#):

This issue of the Journal is entitled "Holding the Reins of Justice: 200 Years of the Texas Rangers" and celebrates the legendary lawmakers. Our leads include "Campgrounds to Courtrooms" by Bob Alexander, recounting how Sergeant Austin Ira Aten of the Texas Rangers solved the mysterious death of four people found in the Rio Grande River near Eagle Pass. Jan Devereaux offers a wonderful tale of the ensemble of female Special Rangers in the 1930's who paved the way for the women who currently serve as Rangers in "Petticoats and Poker Chips."

Additionally, in "So, you think Great Uncle Fred was a Texas Ranger" Christina Stopka, Head of the Armstrong Texas Ranger Research Center at the Texas Ranger Hall of Fame and Museum, introduces us to the wonderful resources available at their facility in Waco.

We hope you enjoy this issue!

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Rich Phillips

Message from the *President*

I am pleased to welcome you to the Summer 2023 Journal. It is my great honor to serve the Society as President for the 2023-2024 year. It is more than a little intimidating to follow Justice Ken Wise as the Society's President. His commitment to Texas history in general and Texas court history in particular is well-known and unmatched. Luckily, we will all be able to continue to benefit from his knowledge of and enthusiasm for Texas history through his *Wise About Texas* podcast. I can only hope to be able to continue in some small way the great work of Justice Wise and the other past presidents of the Society.

I look forward to working closely with the rest of our stellar officers: President-Elect Lisa Hobbs, Vice-President Jasmine Wynton, Treasurer Alia Adkins-Derrick, and our newest officer Secretary Mark Trachtenberg. I also warmly welcome the five newest trustees on our board: Chad Baruch, Frank de la Teja, Fermeen Fazal, Michael Heidler, and Tyler Talbert. I look forward to working with these new trustees and appreciate their willingness to serve. I must also thank the trustees who recently rolled off the board. We are sad to see Justice Jane Bland, Jason Boatright, Justice Larry Doss, Judge Jennifer Walker Elrod, and Todd Smith go, but we are grateful for their efforts on behalf of the Society during their terms.

It is fitting that as I write this first column, I am in the midst of a visit to England and Wales. I spent an afternoon exploring Caernarfon Castle in Wales. Caernarfon was the site of a Roman fort as early as 250 A.D. Construction on the current castle started in 1283 under Edward I, as he sought to consolidate his control of Wales. For a little perspective, Caernarfon Castle was over over 330 years old by the time the Pilgrims landed at Plymouth. It is impossible not to feel at least a little awed among these stones that have witnessed so much.

While standing on the triple-turreted Eagle Tower, I chatted with a tourist from the UK. When he learned that I'm from Texas, he pointed out that we don't have anything nearly as old in the United States. He's right, of course. History means something a little different in Europe than it does in our relatively young country.

But regardless of its age, the preservation and study of our history is essential to understanding ourselves. Author and historian David McCullough has said that "history is a guide to navigation in perilous times" and that it "is who we are and why we are the way we are."

During my time as President, I intend to continue the Society's mission of preserving records (through the work of our Archives Committee), analyzing our history (through the great work of the Journal), and helping to teach that history (through Taming Texas and other programs).

As usual, we will also continue to focus on expanding our membership, whose support makes the Society's work possible. If you are not a member yet (or if you need to renew), please click [here](#) to rectify that situation. I hope we'll be able to focus this year on increasing membership among former Texas Supreme Court briefing attorneys and law clerks, who have played an important role in the Court's work.

In addition, the Society's website is due for a refresh and redesign. I hope we will get that process started this year to ensure that our online presence continues to reflect the great work the Society is doing and to make that work accessible to as many people as possible.

Finally, our Fellows continue to do great work in our public schools through the Taming Texas program. I hope we'll be able to continue expanding the reach of Taming Texas into other school districts with the help of Society members and local bar associations.

In this issue of the Journal, we are pleased to present several articles highlighting the role of the Texas Rangers in Texas history, including the story of a murder mystery in Eagle Pass, the story of the female Special Rangers in the 1930s, who blazed a trail for women who currently serve as Rangers, and an introduction to the historical resources available at the Texas Rangers Hall of Fame and Museum in Waco. We also have a pair of articles from Hon. John Browning exploring the lives of two unique Texans: Judge Roy Bean and Belva Lockwood. I know you'll enjoy this issue.

I look forward to serving as the Society's President for the next year and to working with all of you in continuing the important work of documenting, preserving, analyzing, and telling the history of the Texas Supreme Court and other Texas courts. If you have thoughts about how the Society can perform its mission or if you'd like to be more involved, please feel free to reach out to me at: rich.phillips@hklaw.com.

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Sharon Sandle

The Texas Rangers

• and the •

Landscape of Texas Justice

The title for this issue of the Journal is “Holding the Reins of Justice: 200 Years of the Texas Rangers.” The title reminds me of my childhood in Texas, which was mostly spent holding the reins of a horse. When my family moved to Houston in the early seventies, horses and cattle still played a dominant role in the landscape. As a four-year-old, I rode double behind my older sister on her palomino gelding as she and her friends rode their horses down the main street in Friendswood. If you’ve visited Friendswood lately, you know that it has changed a lot in the intervening years! During those years, I rode many horses across the Texas landscape, even as the fields that once pastured cattle were gradually crisscrossed by caliche roads and then covered over by concrete.

Even Texans who have never held the reins of a horse or studied the horizon from the saddle can relate to the idea of Texas as a frontier. It’s harder now to find wide-open spaces to ride, but those wide-open spaces will always be a part of the Texas landscape, at least in the minds of Texans, no matter how big our cities get. Like the idea of the frontier, the idea of the Texas Rangers lives in the minds of Texans whether we have ever met a Ranger, or can claim an ancestor who served as a Ranger, or have only seen the Rangers portrayed on TV and in the movies. While the legend of the Texas Rangers occupies a Texas-sized place in our imaginations, the legend is often different from the history of the organization and the men and women who served within it.

This fall, members of the Texas Supreme Court Historical Society will have the opportunity to hear from Jason Taylor, Chief of the Texas Rangers, who will be the keynote speaker at the annual John Hemphill Dinner on Friday September 8 at the Four Seasons Hotel in Austin. The Rangers are America’s oldest state law enforcement agency, and this year marks their 200th anniversary. Like the landscape of Texas itself, the Rangers have changed over those 200 years. In this issue, you’ll find just a few of the stories that illustrate the history and complexity of the Texas Rangers and their role in the justice system of Texas. Some of those stories may surprise you, but I hope all of them will help you better understand an organization that’s as much a part of the landscape of Texas as horses, cattle, and the wide-open spaces of the Texas frontier.

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Fellows Column

By David J. Beck, Chair of the Fellows

Photo by Alexander's Fine Portrait Design-Houston



The Houston Bar Association (HBA) will again use our Taming Texas materials to teach students during the 2023-24 school year. We appreciate the HBA and its President, Diana Gomez, partnering with us on Taming Texas again this year. It takes over a hundred volunteers to reach the thousands of students we teach each year, and we could not implement this vast program without the HBA's support. In the past eight years, Taming Texas has reached over 23,000 Houston-area students. HBA President Gomez has appointed Richard Whiteley and Judge Dawn Rogers as the HBA program co-chairs to recruit volunteer attorneys and judges to teach the seventh-grade students in the upcoming school year. If you would like to participate in this important program, please contact the HBA or one of the HBA co-chairs of the program.

We are also pleased that the Austin bar will be joining us in implementing Taming Texas in Austin-area schools in the 2023-24 school year and we are working on an expansion in Dallas schools. We will provide updates on these programs as details are confirmed.

Our fourth and newest book, entitled *Women in the Law*, will be used in the classrooms for the first time during the 2023-24 school year. This new book by Jim Haley and Marilyn Duncan features stories about some of the important women in Texas legal history. Chief Justice Hecht has written the foreword for this book, and the book's back cover features comments on the book by three of our Society Fellows:

"This book adds new stories to the rich collection found throughout the Society's Taming Texas series. The stories illustrate the influence that the Spanish civil law and English common law had on women's rights in Texas, and highlight the Texas women who fought for changes in the law and achieved them. Readers of all ages will gain a new appreciation for the important role women have played in the legal history of our state."

— Jane Bland, Justice, Supreme Court of Texas

"This riveting read makes history come alive through colorful stories and pictures of Texas women who blazed their own trail against formidable odds. The true tales of grit on the frontier and gravity in the courtroom are guaranteed to delight and inspire, making *Women in Texas Law* an invaluable addition to the Taming Texas Judicial Civics and Court History Project."

— Harriet O'Neill, Justice (ret.), Supreme Court of Texas

“The lawyers, judges, and activists featured in this book paved the way for generations of women to earn law degrees and practice law without the barriers they faced. Their stories are surprising and inspiring, a great combination!”

— Lynne Liberato, First Woman President, Houston Bar Association

We appreciate the support for this important project given by Chief Justice Hecht and the Court.

Our exclusive event, the annual Fellows Dinner, is one of the benefits of being a Fellow. At the dinner each year, the Fellows gather with the Justices of the Texas Supreme Court for a wonderful evening of history, dinner, and conversation. We are already working on plans now for our next event at a unique Austin venue. Further details will be sent to all Fellows.

We are pleased to welcome two new Fellows. David E. Chamberlain of Chamberlain McHaney in Austin has joined as a Hemphill Fellow and Connie H. Pfeiffer of Yetter Coleman in Houston has joined as a Greenhill Fellow. We are excited to have them as Fellows and appreciate their generous support of our group. If you would like more information, want to nominate someone as a Fellow, or want to join the Fellows, please contact the Society office or me.

The Taming Texas project would not be possible without the generous support of the Fellows of the Texas Supreme Court Historical Society, who have provided the funding for these books. Their continuing interest and support are vital to the Society’s mission of sharing the state’s rich judicial history with Texans of all ages.

FELLOWS OF THE SOCIETY

Hemphill Fellows

(\$5,000 or more annually)

David J. Beck*
David E. Chamberlain

Joseph D. Jamail, Jr.*
(deceased)

Thomas S. Leatherbury
Richard Warren Mithoff*

Greenhill Fellows

(\$2,500 or more annually)

Stacy and Douglas W. Alexander
Marianne M. Auld
Robert A. Black
Hon. Jane Bland and Doug Bland
E. Leon Carter
Harry L. Gillam, Jr.
Marcy and Sam Greer
William Fred Hagans
Lauren and Warren Harris*
Thomas F.A. Hetherington
Jennifer and Richard Hogan, Jr.
Dee J. Kelly, Jr.*
Hon. David E. Keltner*
Lynne Liberato*
Mike McKool, Jr.*
Ben L. Mesches

Jeffrey L. Oldham
Hon. Harriet O’Neill and Kerry N. Cammack
Connie H. Pfeiffer
Hon. Jack Pope* (deceased)
Shannon H. Ratliff*
Harry M. Reasoner
Robert M. Roach, Jr.*
Leslie Robnett
Professor L. Wayne Scott* (deceased)
Reagan W. Simpson*
Allison Stewart
Cynthia K. Timms
Peter S. Wahby
Hon. Dale Wainwright
Charles R. Watson, Jr.
R. Paul Yetter*

*Charter Fellow

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Hon. John G.
Browning

The Importance of Legal History

It has been said that history is not merely about the remembrance of the past, but about the illumination of the present. That is certainly true of legal history, and one need look no further than the U.S. Supreme Court and the role that legal history has played in its recent decisions. Regardless of whether one feels that historical antecedents are used or misused by the justices, there is no denying that history occupies a pivotal place in the reasoning of the Court. After the majority's reliance on not just Second Amendment text but also the history and tradition surrounding firearms regulations in its opinion a year ago in *New York State Rifle & Pistol Ass'n v. Bruen*, the reverberations have echoed in the decisions of lower court judges. This June, in dismissing a case after finding no history or tradition to support upholding the federal ban on convicted felons having guns, U.S. District Judge Carlton Reeves of the Southern District of Mississippi wrote "Judges are not historians. We were not trained as historians. We practiced law, not history."



Judge Carlton Reeves

The Second Amendment is not the only hot button issue for which the Court has waded into historical waters. The Court's reliance on legal history in the *Dobbs* decision overruling *Roe v. Wade* has been the subject of considerable debate by legal scholars and historians on both sides of the aisle, with some questioning whether that reliance was misplaced while others applauded the historical conclusions. In its June decision upholding the constitutionality of the Indian Child Welfare Act in *Haaland v. Brackeen*, the Court again leaned heavily on historical sources. Again, some legal scholars decried what they described as the selective use of history. Others pointed out that even the so-called "neutral" history advocated by these critics is hardly neutral since historical analysis can be derived from incomplete archival materials or even reflect the authors' own biases.

And let's face it—the Supreme Court doesn't always get its legal history right. In 2019, the Court rejected an Alabama man's double jeopardy defense in *Gamble v. United States*. Writing for the 7-2 majority, Justice Alito featured a lengthy discussion of centuries-old English common law, particularly a seventeenth century British case known as *Hutchinson* in which the English court purportedly found that a murder defendant's acquittal in Portugal barred his later retrial in England. Making an "originalist" argument, *Gamble's* lawyer argued that the common law rule (that two sovereigns cannot prosecute someone for the same act) was incorporated into the original meaning of the Fifth Amendment's double jeopardy clause. Justice Alito rejected this interpretation, criticizing "the flimsy foundation in case law," and upholding the American "dual sovereignty doctrine."



Justice Samuel Alito



Prof. Ann Mumford

This rankled Ann Mumford and Peter Alldridge, two London law professors. They embarked upon a search for the primary source of the *Hutchinson* case, which proved elusive. Ultimately, after poring over multiple contemporary sources, they located their "smoking gun" document in an obscure law report in the British Library. Professors Mumford and Alldridge published their article in the highly regarded *Law Quarterly Review*, arguing convincingly that the Supreme Court should have embraced the accounts of the *Hutchinson* case and review *Gamble* if it "is true to its originalist claims."

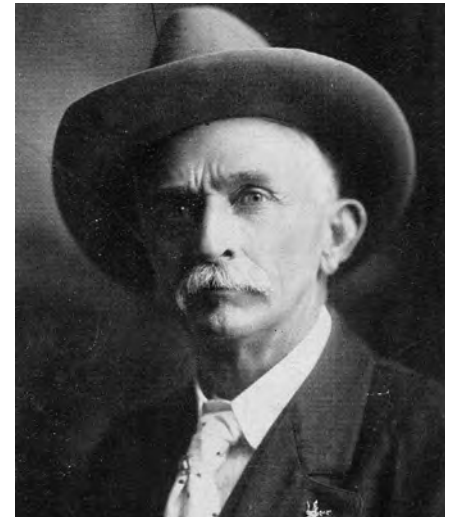


Prof. Peter Alldridge

Legal history indeed matters, and it took two British scholars to demonstrate that a case's historical evidence was neither "feeble" or "shaky" as Justice Alito characterized it. No doubt there will be other cases and other historical records uncovered for lawyers and historians to use in the future. And while we've shared articles in the past that viewed the Texas Rangers through a more critical lens based on their relations with the Mexican American community, our Summer issue celebrates the bicentennial of the Texas Rangers. We're proud to feature articles by one of the Rangers' foremost chroniclers, Bob Alexander, and his wife Jan Deveraux—writing about Texas Ranger Ira Aten's 1889 murder investigation that relied upon forensic dentistry, and about the Prohibition-era "Petticoat Rangers," respectively. We're equally proud to bring our readers a look at the Texas Rangers Hall of Fame and Museum written by Christina Stopka, the Museum's Assistant Director and head of the Armstrong Texas Ranger Research Center. Our Rangers theme continues with a look at the legendary "Law West of the Pecos," Judge Roy Bean—who was well known to the equally legendary lawmen. Finally, our issue

looks at the 1870s adventure of Belva Lockwood—one of the first female lawyers in America—when she visited the Lone Star State, and brings Prof. John Domino’s look at the history of privacy rights in Texas to a rousing conclusion.

The Texas Rangers, in many ways, personify what people in other states think of when they think of Texas. We’re proud to commemorate what they have meant to our State as their mission evolved over time from fighting frontier battles against hostile tribesmen and outlaws to embracing modern law enforcement techniques. For my part, few things sum up the Rangers’ commitment to upholding the rule of law as the saying of Captain Bill McDonald, one of the most famous Rangers of all: “No man in the wrong can stand up against a fellow that’s in the right and keeps on a-comin’.”



Capt. Bill McDonald

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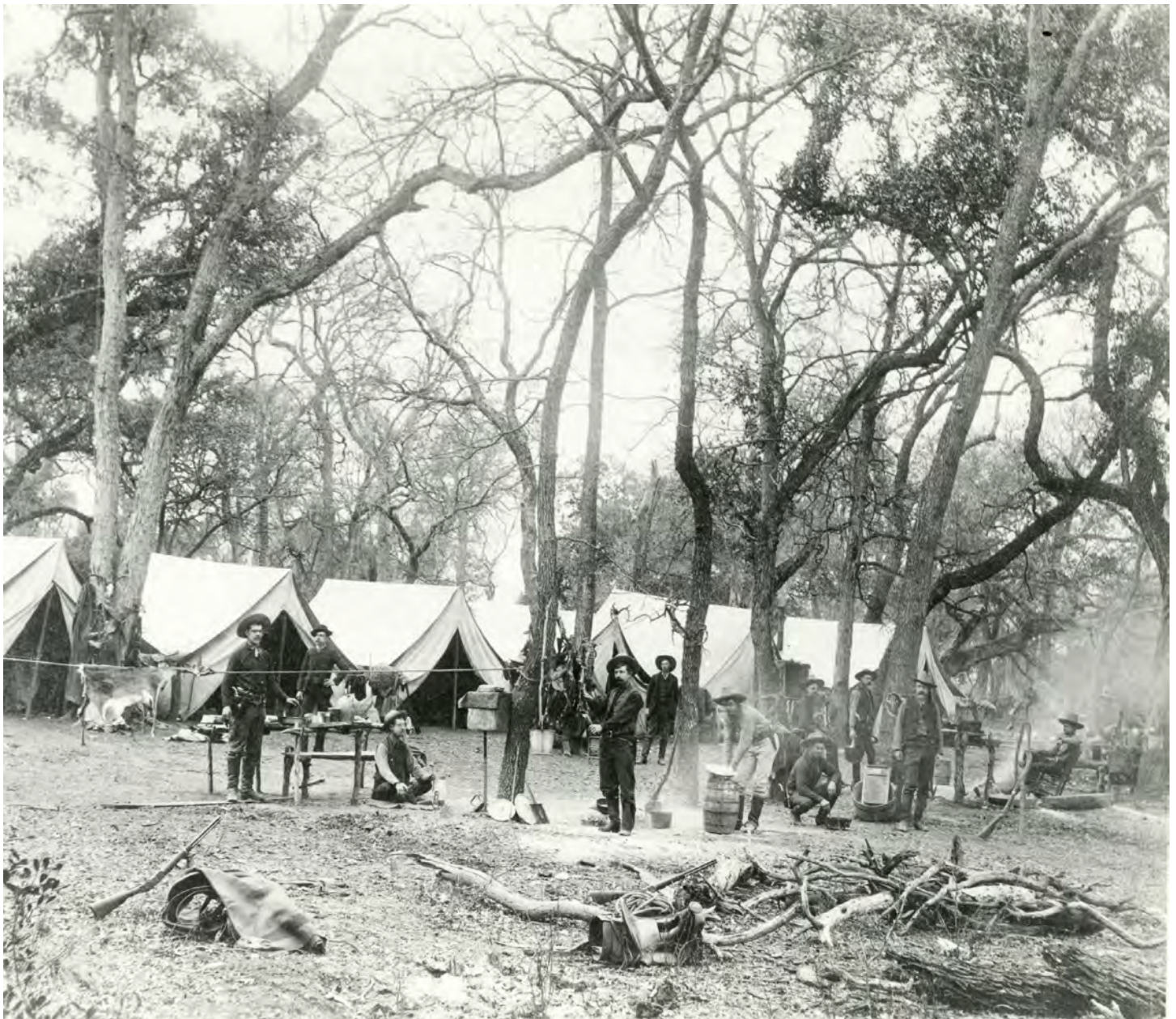
Campgrounds to Courtrooms

By Bob Alexander

Super sleuths of Scotland Yard, the “always get your man” Royal Canadian Mounted Police, and rank and file Special Agents of the Federal Bureau of Investigation have all earned worldwide recognition. Although to some it may measure as clichéd, it’s not unfair to note they are sanctioned law enforcement arms of National Governments. Likewise, now a division of the Texas Department of Public Safety, Texas Rangers, though jurisdictionally corralled within the confines of the vast Lone Star State—for most investigations—also have a cachet of equal worth. In both myth and fact the renowned Texas Rangers have steadily earned global admiration: Quite an impressive legacy for a state agency. Perhaps with Texas Rangers celebrating their Bicentennial year during 2023 it’s somewhat fitting to examine a headline making homicide case of days long past. Beyond doubt one that exemplifies ever evolving approaches to successful criminal investigation, sound prosecution, and the generational slog to professionalization.



Texas Ranger Austin Ira Aten poses for a studio photograph. One should not be falsely misled by Ranger Aten’s youthful appearance and apparent passive disposition. *Courtesy Dr. Tony Sapinza, prominent collector of Old West photographs and memorabilia.*



Company D's campgrounds near Uvalde, TX. Texas Ranger Ira Aten, second from left, hand on hip.
Courtesy the Haley Memorial Library and History Center, Midland, TX.

And therein lies the significance. Transitioning the Rangers from Indian fighters, to man hunters, then Wild West peace keeping town tamers and, at last, embryonic criminal investigators was not an overnight phenomenon. For the most part that shift had its nascent beginnings during the last quarter of the nineteenth century.¹ While lawyers and physicians and upper-level educators had hard-earned credentials certifying their knowledge, such was not required for the state's lawmen, including Texas Rangers. Graduation from a university was not compulsory.² There were no academies for fellows with aspirations bent toward enforcing the law. Nor were there any avenues for licensing would-be Texas peace officers. For those hopeful souls it was truly a seat-of-the-pants undertaking; a learning from each other, trial and error progression. The rookie Rangers either succeeded or failed. Around nighttime campfires—poking embers with charred sticks—early day Rangers must have mused about courtroom doings; the motions, testimonies,

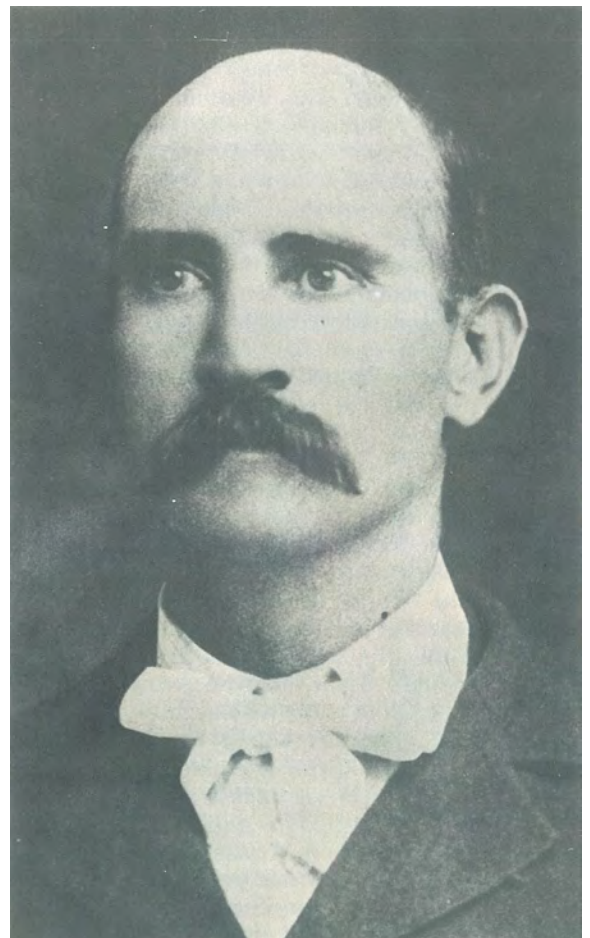
and rulings from the bench. Rangers were expected to incorporate the admissible and recognize the inadmissible. The learning curve was steep.

During this timeframe technological development was racing, seemingly at warp speed. Rangers were flexible. Application of rudimentary forensics to criminal investigations was in its early stages. From then until today an administrative hallmark of the Texas Rangers has been adaptability, which in turn equates to survivability and that guarantees institutional longevity: "The division relating to the Texas Rangers may not be abolished."³

Sergeant Austin Ira Aten was the epitome of what a nineteenth-century Texas Ranger should be. He was a gentleman most of the time and a tiger when necessary. By the time Sergeant Aten caught the case to be recounted here he had already survived gunplay and dangerous undercover assignments. Probably it's not hyperbole or outlandish to write, more often than not Sergeant Aten was the right man, at the right time, at the right place.⁴

In this instance that right place and time was scouting the rocky headwaters country of the East Nueces River searching for horse thieves during the late winter of 1889. Sergeant Aten and a five man detachment of the Frontier Battalion's [i.e., Rangers] Company D, complying with orders, had established a satellite campground near Barksdale, southeastern Edwards County, about forty miles north of Uvalde.⁵ On the first day of March, accompanied by two unidentified Rangers, Sergeant Aten encountered two brothers, Richard H. "Dick" and George Taplin "Tap" Duncan.⁶ At the time the brothers were riding with H. Walter Landers, aka "Picnic" Jones. The trio was not herding any stolen livestock. Did the Rangers run into the fellows too soon, before gathering someone else's horses? Had they secreted stolen horses in a box canyon or hastily fashioned a brush corral? *¿Quién sabe?* Absent even a hint of any plausible cover stories the guys would have been good to go: Except for the fact they were carrying Colt's six-shooters, at the time an infraction of the Penal Code. Had the Rangers only known? Admittedly it was one of those statutes selectively enforced, but that was of no value to the Duncan brothers and Landers. They were escorted to the lockup and shortly posted bail after an appearance before Judge Steiber, an area Justice of the Peace.⁷

Captain Frank Jones soon thereafter received a letter from Benjamin Dennis Lindsey a former Texas Ranger noncom but now co-owner with another ex-



Benjamin Dennis Lindsey, former Texas Ranger and future Bexar County Sheriff, was concerned that little progress was being made with regards to four bodies being recovered from the Rio Grande above Eagle Pass, Maverick County. He notified the Texas Rangers. *Courtesy the late Robert W. Stephens.*



Captain Frank Jones, seated third from left, with part of his Company D Texas Rangers. Several of these Rangers would be killed in the line of duty, including Captain Jones. Captain Jones assigned Sergeant Aten the quadruple murder investigation.
Courtesy the Texas Ranger Hall of Fame & Museum, Waco, TX.

Ranger, W.W. Collier, of the twin Tariff Saloons with imbibing emporiums at Eagle Pass and Uvalde. Lindsey's letter was easy to decipher—yet disturbing:

There has been within the last 4 days four dead bodies taken out of the Rio Grande river six miles above Eagle Pass. All white—three women and one man.⁸

B.D. Lindsey, a fire-breathing and absolutely fearless fellow and future Bexar County Sheriff, was bemoaning the fact that in his mind local authorities were performing with lackluster zeal. To his way of thinking the Texas Rangers should assign a man and "have the country in this neighborhood thoroughly examined for some clue to this horrible murder....and some effort should be made to ferret out this murderer."⁹

For certain the perceptibly murderous crime called for skillful and systematic investigation. At first blush it seems the Company D chieftain believed the perpetrator or perpetrators would be "Mexicans" due to the borderland location. In fact, there was a disturbing faux pas when two of the bodies were misidentified as a Mrs. Lopez from the south side of the river, and the young girl that lived with her. Mexican *policía* even had two suspected murderers in custody. The Spanish

speaking lawmen were disheartened to learn that they had made a grievous mistake once it was discovered those ladies “were alive and well.”¹⁰



Another Image of Ira Aten, subsequent to his promotion to Sergeant of Company D. At the time his revolver and carbine were tools of the law enforcing trade—not yet the advanced forensic apparatuses. *Courtesy Haley Memorial Library and History Center.*

Of course, jumping to conclusions is not what a proficient criminal investigator should do: Keeping an open mind is. Besides false leads or blind alleys, Captain Jones, too, was worried about the quality and leadership capabilities of the local Maverick County sheriff: “I do not consider the Sheriff of that Co. at all reliable and [he] is moreover an enemy to the Ranger force....”¹¹ Unfortunately if there was, indeed, a caustic rub between the Rangers and the local sheriff, Captain Jones did not elaborate. Captain Jones did, however, task his prime investigator, Sergeant Aten, the responsibility of investigating, gathering admissible evidence, and standing a suspect or suspects before the Blind Mistress of Justice. “With the tenacity of a ferret and the nose of a bloodhound Sergeant Aten was to bring a killer—or killers—to bay.”¹²

Sergeant Aten was well-aware he would need a helpmate. With the latitude of selecting his crime-solving partner, Sergeant Aten chose John R. Hughes, who would in years to come secure statewide fame as a well-known Ranger. Moreover, during twentieth-century interviews an aging and well-regarded Aten warmly remembered: “Hughes helped me in this case a great deal.... It was a very noted case.”¹³ And: “Whenever I had a bad case I always took Hughes with me.”¹⁴ With campgrounds on their back trail and borderlands before them the investigation began. Later, at Eagle Pass, Rangers Aten and Hughes were soon brought up to speed as to how bad this case really was.

Quickly they learned that on the river seven miles above Eagle Pass, Jacob Meyer had fished a snagged body from the current on February 27, 1889. It was a female, well past middle age, and she had been not too effectively weighted with a large stone tied to her waist. She was not a local lady, none were missing, and no one could identify her as anyone they knew in the area. The next day the body of another female had been found, a twisted apron around her neck, and a heavy rock dangling at the end of a rope around her waist. “Her head was fearfully gashed behind.” Four days later, and further upriver, two more bodies had been discovered—a young woman “badly decomposed” and a young man, “five feet seven inches, slimly built.” They too had been anchored with rocks, but natural buoyancy had overridden the sinister plot to feed them to the fishes. All of the

bodies were unidentified. The cause of death seemed to be severe head trauma due to a bludgeon of sorts. Yet absent proper names Peace Justice G.B. Dunn ruled the deaths homicides, committed "by party or parties unknown." Public display at the local mortuary [or courthouse lawn] had failed to produce any news. The victims were interred at taxpayers' expense. Who they were was a mystery? Who murdered them and why was a bona fide mystery? It was a genuine whodunit!¹⁵

Although in a general sense forensic technology was yet in its infancy Sergeant Aten observed some basic criminal investigative protocols, ordering the plow-line type ropes used to secure rocks to the bodies held as evidence, as well as the rock weights themselves. He made note of the physical descriptions of the deceased furnished by local officers. Particularly that the younger of the two grown women had an artificial dental plate, as well as unusually large protruding bunions. The young man, Texas Ranger Aten was told, had a noticeable gap between his front teeth, and "the canines were very pointed."¹⁶

At this point, Sergeant Aten did not have a crime-scene or identifiable victims. Deciding on his first avenue of clue hunting, Sergeant Aten sought to focus on finding the actual site of the murders. The now befuddled Rangers began working the Rio Grande's left bank, looking for signs of a struggle, a blood trail, or a signature outcropping of rocks that would match those affixed to the bodies. Too, as a matter of fundamental probing, they would inquire of merchants on chance one had recently sold a lengthy piece of plow-line. At this time the leads were skimpy. The outcome was iffy. But that's what they had.

Although there is an enormous measure of vagueness as to where the conversation took place, whether in Eagle Pass or warming by the campfire at a Rio Grande campground, it happened. The figurative light bulb sparked in Private Hughes' head. He offhandedly dredged up a tidbit of information and related it to Sergeant Aten. It was noteworthy. Somewhat earlier, prior to the bodies being found, and before Sergeant Aten had arrested the Duncan boys and Landers for unlawfully carrying arms, Hughes, had also bumped into them. Scouting along the West Fork



John R. Hughes, Company D Texas Ranger seated at right. Consequent to ably assisting Sergeant Ira Aten with the Maverick County homicide investigation, and after the tragic death of Captain Jones, Hughes would be promoted to Captain of the company. *Courtesy the Texas Ranger Hall of Fame & Museum.*



Joe S. Clark Hardware and Wagon Yard, San Saba, TX. Sergeant Ira Aten began his inquiries here.
Courtesy the San Saba County Historical Commission.

of the Nueces he had encountered Dick Duncan, and a fellow introduced to him as Picnic Jones, who was riding an especially fine-looking and gaited sorrel. These two were ahead of a wagon driven by a young man with widely spaced front teeth and an infectious grin, along with two grown women and a teenage girl. During an affable by the trail visit, Dick Duncan advised Ranger Hughes that the young man was his brother-in-law, husband of the young girl, and the other two ladies were his mother and sister, respectively. The procession was headed to Mexico, where Dick Duncan's kinfolk were to take up residence on a small-scale *rancho*. This small talk, at the time, registered no suspicion for Hughes. He did now remember, though, that the wagon was new, a Mitchell brand, painted green. For some reason, almost subconsciously, he recalled it had the seller's name burned into the tailgate: "Sold by J.S. Clark, San Saba, Texas."¹⁷

Hughes had, inadvertently it seemed, offered a workable clue—one crying for follow-up. Leaving Private Hughes to scout the Rio Grande, searching for a crime-scene, Ira Aten struck out for San Saba. The local sheriff, S.B. Howard, had relevant news. Dick and Tap Duncan were in custody.¹⁸ Aten was told that the Williamson family, the widow [Mary Ann] Williamson, her widowed daughter Lavonia Holmes, a teenage daughter, and her twenty-year-old son were no longer anywhere in San Saba County. They had departed to take up residence in Mexico. They hadn't been seen or heard from since. Barroom chitchat and backyard clothesline gossip was wafting throughout the county that it was the Williamsons' found floating in the Rio Grande. And it was no dark secret as to who had helped them pack their belongings: Mr. Dick Duncan and Mr. Picnic Jones.¹⁹

Sheriff Howard publicly announced he would follow through, making the custodial arrests. Dick Duncan, a twenty-two-year-old “red-headed, dancing, idling, singing cowboy” had voluntarily surrendered. He had been urged by Berry Ketchum, brother of one of the deadliest outlaws in the Southwest, Tom Ketchum, and now by a marriage loosely affiliated with the Duncan family, to flee. Dick had spurned such advice and the offer of cash to make the mad dash for sanctuary in Mexico or South America.²⁰ If true, after huddling with a local lawyer on the outskirts of San Saba in a secluded locale, Picnic Jones decided that he’d run, purportedly saying: “I will leave before sundown.” Mounting his horse he had “rode away to the west....He disappeared as if he had ridden into a solid wall which opened to receive him and closed behind him instantly.”²¹ During that same secret attorney/client confab Dick Duncan, on the other hand, chose a different path, probably at the urgings of his lawyer: “I’m going to San Saba in the morning and surrender.”²² Which he did, walking up to Sheriff Howard and brashly stating: “You know me; I’m Duncan. I have come in to surrender....”²³

Shortly thereafter Sheriff Howard delivered to Sergeant Aten at Goldthwaite, Mills County, his chief suspect, as well as his brother Tap who had followed Dick’s lead.²⁴ When questioned about the missing Williamson family Dick was all too happy to help, telling the Ranger that if it was, indeed, the poor Williamson clan that had been killed, perhaps it was some “Mexicans” who had slain them to get the money the old lady was flashing after selling him that little piece of San Saba County land. When he’d last seen them, they were alive. The story sounded fishy. Sergeant Aten cast his investigative net:

These folks [the Williamson family] were kind of shoddy people. The widow and daughters were permitting fellows to drop in, and this boy was a kind of simple boy and didn’t pay attention, and the people in the neighborhood wanted to get rid of them on account of their character. Dink [*sic* Dick] Duncan was laying up with this girl, who was about sixteen or seventeen....Dink was laying up with her and she was in a family way. That was proved by information we had.²⁵

By a San Saba lawyer’s account an irrepressible Dick Duncan was one who “had been known all his life as belonging to the class that would as soon go to a fight as a frolic, and a little rather.” Continuing: “The old lady was all right. Her boy Benjamin was all right. One of the daughters was Mrs. Lavonia Holmes, a grass widow. The other was named Beulah. They were not of the best character. This was common knowledge in San Saba County.... Duncan knew them well.”²⁶ Sergeant Aten may or may not have had thoughts and/or heartburn with regards to morality or churchy issues, but that would not and did not dissuade him from methodically and impartially doing his job. Defendant Dick Duncan had taunted something synonymous with: “Prove it!” Sergeant Ira Aten had picked up the gauntlet.²⁷

Now with his investigative antenna adjusted to a starting point, San Saba County, Sergeant Aten could begin piecing the puzzle together. It was not to be easy, but with typical confidence and characteristic doggedness Aten thought he would and could track movements of the supposed deceased and suspected wrongdoers from San Saba to the Rio Grande. Then he would trail the alleged guilty parties back to San Saba county. Sergeant Ira Aten set to sleuthing. He learned a book full.



Courthouse doings were always big doings and well attended. Courtroom drama was newsworthy.
Courtesy the San Saba County Historical Commission.

A blacksmith at San Saba, Tom Hawkins, posted Sergeant Aten about an earlier conversation with Dick Duncan: "Yes, I'm taking your neighbors away, taking them down to Mexico to locate them on some land down there." Hawkins retorted: "I hope you will never let them come back." Duncan replied: "By God, they will never come back."²⁸

For four hundred dollars and a new wagon, Dick Duncan had purchased the widow Williamson's farm. Sometime prior to the twentieth day of January 1889, at nine o'clock at night, neighbors noticed that Dick Duncan and Walter Landers (Picnic Jones) had driven up to the Williamson homestead in a wagon, saddlehorses tied behind. The commotion was noisy, attracting no little attention as "boxes, beds, furniture, etc. was being placed in the wagon." Before midnight the wagon had been packed full of household goods. Duncan and Jones mounted up, Dick was riding a good bay horse and Picnic was atop a "handsome sorrel pacing horse with a striking appearance."²⁹ Young Ben Williamson slapped reins across the hindmost quarters of the team pulling the wagon, urging them to keep up with the two horsemen, now heading toward Mexico.³⁰

One day, on February 8, or before February 10, 1889, near the Nueces River, about two miles north of Brackettville [Kinney County], Mr. Tom Salmon had met the travelers, all six, alive and

well. On Sunday the tenth and the following Monday, Dick Duncan and Picnic Jones had been seen in Brackettville by none other than the sheriff, J.W. Nolan. Later, on Monday afternoon, the whole party had been seen passing through Spofford Junction [Kinney County]. Riding into town, Dick Duncan had even conversed with fellows while making purchases at George Hobbs' general store. One of the items he purchased was a lengthy section of plow-line. Noticeably, but not unusual for the place and time, Dick Duncan had been carrying a Winchester carbine—and it appeared to be in perfect working order.³¹ As late evening closed in on the voyagers, they had made camp at a ranch twelve miles south of Spofford Junction. Camped nearby, too, had been the very observant Howard Lavinger, situated close enough to get a good and, memorable, look at everyone.³²

The next afternoon, about eighteen miles south of the previous night's campground, Theodore Wipff had observed the party still making tracks south, but now not too far from the Rio Grande. Mr. Wipff knew it not at the time, but he was the last living person—except for the killer or killers—to see the Williamsons alive.

During substantive follow-up investigation, Sergeant Aten had learned more. On the seventeenth of February Dick Duncan had ridden back to Spofford Junction, from the direction of Eagle Pass. He had been followed by Picnic Jones sitting in a Mitchell wagon's seat. Witnesses recalled that Duncan's carbine was out of whack; the barrel and tubular magazine were bent.

On the twenty-second Dick was back in Mr. Hobbs' general store at Spofford Junction. When asked how he had damaged his Winchester, Duncan replied that he had had big trouble crossing a stupid donkey to the other side of the river, and in a fit of anger beat the burro between its ears. Dick Duncan struck out. Thirty miles later he hauled in at the Brown Ranch, inquiring if the owner had seen a man and a wagon, a Mitchell wagon, as he was supposed to meet him in the vicinity. Answering in the negative Brown invited Duncan to camp for the night. Also traveling the border country was a Mr. Perry, who likewise camped overnight at Brown's Ranch. Though he didn't know who he was at the time, Mr. Perry had seen Picnic Jones, telling Dick Duncan where the man was then camped. An uptight Dick Duncan quipped: "He didn't camp where I told him, but next time I'll learn him to camp where I tell him."³³

Behind the suspects, circumstantial evidence of their complicity kept unfolding. Particularly, W.W. Collins, during his interview, declared he had personally observed the burro that Duncan claimed to have beaten with his Winchester. The animal bore no such marks or injury about the head or any other part of its anatomy.³⁴

On the 24th day of February, Duncan's brother Tap, and their father, made an appearance in Spofford Junction, looking for Dick and Picnic. They were driving a wagon, too, and had traded a weaned colt to store owner George Hobbs before they headed north, in search of Dick and Picnic. In the northern reaches of Kinney County, Dick Duncan and Picnic Jones met and traded with a "Mexican" an old quilt for six bushels of corn. Too, they tried to sell him a feather bed and an old gun for twenty dollars, but he balked at that deal.³⁵

By now a seasoned investigator, Sergeant Aten recognized any criminal case against Dick Duncan was, at least thus far, circumstantial. He, too, knew that if ample circumstances dovetail, that could be good enough. Still, he would give basic forensics a try:



Another image of the Company D campgrounds, Sergeant Ira Aten standing, coffee cup in hand. These Texas Rangers had made the transition to lawmen. Note handcuffs affixed to saddle on horse at right.
Courtesy Jeri and Gary Boyce Radder.

....and got the rope [read plow-line] and all the evidence we could. We come back with that rope, took our trail back.... We took this rope to Spofford and the other end of the rope fitted right into the end of the coil where it was cut off. It fit to a 'T' with that rope that they had bought there.³⁶

Sergeant Aten was sure the dead folks were Williamson family members, though nobody could testify to that with certainty. When Sergeant Aten brainstormed for disentangling his conundrum the methodology he employed was not widespread. This may be the first time the procedure was ever used in the United States, certainly it was the first time Texas Rangers availed themselves of this forensic application: Sergeant Aten would try to match dental work to the deceased.³⁷ Sergeant Aten had contacted a former San Saba dentist, Doctor A.E. Brown, a specialist familiar with the widow Holmes' dental layout. He had made a gold dental plate for Lavonia Holmes. The good tooth doctor was very well acquainted with young Ben Williamson's dental framework and that wide gap between his front teeth, conspicuously accented by those pointed canines.³⁸

Sergeant Aten had the bodies exhumed and examined by the dentist.³⁹ Not to anyone's astonishment Dr. Brown confirmed identities of the deceased, good enough to stand the test in a Texas courtroom. His findings were also now corroborated by several San Saba residents who had carefully scrutinized the remains. Too, Private Hughes had not been asleep. Steadfastly he had scoured during daylight hours along the Rio Grande, until "he came to an abandoned ranch and despite the rains which had fallen intermittently since February, he found what the frontiersman calls a 'drag'—the unmistakable rut made by passage of some heavy object. The drag led from the old ranch to the river. *And along the bank at its end were stones similar to those which had weighted the bodies.*"⁴⁰

Armed with an overabundance of circumstantial evidence, backed up by a multitude of perspective witnesses, and a sampling of physical evidence, rudimentary as it was, Sergeant Aten was bristling with supreme confidence that Dick Duncan and Walter Landers were the killers. In point of fact he notified Captain Sieker: "... circumstantial evidence pointed at these parties & when I came to investigate the matter it is one of the plainest circumstantial evidence cases I have known."⁴¹ Also, and its importance should not go unrecognized or unpublished, there was absolutely no evidence—circumstantial or otherwise—to implicate Tap Duncan in this felony.⁴²

Even at that Sergeant Aten was worried. Having long suffered the sometimes-asinine theatrics of courtroom melodrama, Ira feared one of the defense lawyers hired to represent Dick Duncan had the state District Judge "hoo-dood."⁴³ Aten was likewise of a mind that Walter Landers was just as guilty as Dick Duncan, but that manhunt was sticking Ira akin to a scratchy burr in his long-johns. Landers had fallen from the face of the earth as far as Rangers and perplexed county sheriffs were concerned. And there was seemingly a convincing explanation—other than his adopting an alias and striking out on the Owl-Hoot Trail. Aten had surmised that if he could capture Landers that the fellow would soon "tell the whole thing & I will bet my hat [on that.] I think I can make him squeal..."⁴⁴ Others were reading the tea leaves too! If cagey Picnic Jones was dead, he couldn't snitch his way out of the trouble, and he certainly couldn't point the finger of guilt at anyone else. And that possibility opened wide a defense attorney's doorway to plant the seed of *reasonable doubt*. After declaring Duncan innocent, the lawyer aroused a possibility: "As for Landers, the man who hauled them to the river under contract with Duncan—that's a different matter."⁴⁵

Sergeant Aten was not taken in: "The two Duncans are laying it all off on Landers & say he is the one that done the murder.... we never heard of Landers any more. The supposition is that Dink [*sic*] Duncan had Landers killed..."⁴⁶

While tracing the true fate of Walter Landers is lost in the dustbin of history, Dick Duncan's fateful story may be moved forward with clarity. Legal paperwork had been filed. He was now unwillingly ensconced in the jail—a *preliminary hearing* at Burnet, Burnet County, on tap. Sergeant Ira Aten was, indeed, hustling: "There will be a world of witnesses for the defense from San Saba Co. & two worlds of witnesses from Kimble, Edwards, Uvalde, Kinney & Maverick counties for the State. They can be trailed through all those counties with the women & man that were murdered & they can be trailed back without them.... Besides a world of evidence what they said to people as they went along about these women and man.... they [lawyers] expect to get them placed under a light bond & they will jump it. Their relatives have got money & are putting it up.... I have worked on the case until I am very near worn out..."⁴⁷

Sergeant Aten remembered: “When it did come up I had all the witnesses I could get and was there at Burnet, Judge [W.A.] Blackburn held Dink Duncan without bail....and the sheriff was ordered to take him to Eagle Pass.”⁴⁸ Tap Duncan had been released for a lack of *probable cause*, though the Court of Appeals of Texas later reversed Judge Blackburn’s findings and granted Dick Duncan freedom if he could but post a \$6,000 bail; which he couldn’t—or didn’t.⁴⁹

During the first week of June 1889 the Maverick County Grand Jury met. The most noteworthy business on their agenda was the Williamson murder case. After hearing testimony from a string of witnesses, Sergeant Aten included, the grand jury returned indictments against Dick Duncan for the murders. Though Duncan’s purchase of the plow-line did have forensic implication, in truth, at the time, there was no expert capable of swearing that the rope bought at the store and rope used to weight the bodies was an *exact* match. Nor could it be proved *absolutely* that the murder weapon was Dick Duncan’s dreadfully mangled Winchester carbine. Dentist Brown could positively identify the deceased, but once that had been ironed out, so could a host of folks from San Saba County—and they had. As long as defendant Dick Duncan stood pat, exercising his constitutional right, unless Landers could be found and flipped, there would be no eyewitness testimony to “the most horrible crime ever perpetrated in Texas.” And although there was an outstanding warrant for his apprehension, nobody legitimately anticipated finding Mr. Landers—or a Picnic Jones—alive!

Both prosecutors and defense counsel knew the case hinged almost wholly on circumstantial evidence.⁵⁰ Some frontier folks thought it matchless: “It is an axiom of the legal profession that circumstantial evidence is the best kind of evidence, for the reason that it cannot be confused by a ballying lawyer and cannot perjure itself.”⁵¹ Other scholars and laid-back observers demurred: “It is a very beautiful theory. Sometimes it does not work in practice.”⁵²

Subsequent to a series of expected and routine legal *motions* filed by astute defense lawyers, Dick Duncan was moved from Eagle Pass, and temporarily lodged in the Bexar County Jail at San Antonio for ultra safekeeping until trial.⁵³

On the first day of the last month 1889, Dick Duncan and his lawyers were in the courtroom of the Honorable Winchester Kelso at Eagle Pass. The request for a *continuance* and *change of venue* had been denied. District Attorney Walter Gillis and A.D.V. Old of Uvalde would represent the State of Texas. Duncan would be defended by lawyers Leigh Burelson of San Saba and R.H. Lombard of Eagle Pass. A twelve-man jury had been impaneled. Even that seemed knotty: “It was a tedious process. From a *venire* of 73 names but five jurors were obtained, but the remaining seven were found from less than thirteen talesmen.”⁵⁴ The actual trial would revolve around but a single homicide, that of Lavonia Holmes.⁵⁵ Should the defendant by an unexpected quirk be found *not guilty*, the companion cases could be reeled out singularly if need be? Duncan’s trial was for one offense, but everyone, the Texas general public, spectators, witnesses, newsmen—and the judge and trial lawyers, too—knew the wholesale story.⁵⁶

Forty witnesses under subpoena for the prosecution, including Ira Aten, who was by now Sheriff of Fort Bend County, testified. The defense called but five witnesses during the three-day trial and of them “the father and brother of the defendant gave the only important testimony.” The attempt to establish an alibi had failed. During closing arguments Duncan’s attorneys had tried,

but in trying to plant that seed of *reasonable doubt* “their efforts were very feeble.” The prosecution, too, waxed eloquently, spending several hours “detailing the damning chain of circumstances that connected Duncan with it [the homicide]. Having the last word District Attorney Gillis, “with clear statement, and connected narrative and relentless logic proved to a demonstration that Richard H. Duncan had butchered the Williamson family in cold blood, [and] it was felt that the verdict could only be one way.”⁵⁷ The newspaperman’s forecast was not misguided; the deliberations were short. Within ninety minutes there was a verdict:

We, the jury, find the defendant guilty of murder in the first degree, and assess his penalty at death.⁵⁸

Subsequently a series of expected and routine legal *motions* were filed by sharp defense lawyers. One lawful but out of the ordinary *motion* was filed by a San Antonio lawyer, J.T. McMinn. Most thought it a “Quixotic attempt.”⁵⁹ His contention, which he hoped the court would buy, was that the entire State Penal Code was invalid, and therefore Dick Duncan’s criminal charges were also null and void. Underpinning for this theory was that the criminal code as approved by an act of the 1877 Legislature failed to adhere to constitutionality under state law because there had not been a third reading of the bill as required by the amended 1870 Texas constitution. In plain talk, the attorney had charged that Dick Duncan’s case and all others should be purged. The state’s Penal Code was in everyday talk impotent; emasculated: “This writ was heard in a voluminous brief presented by McMinn before Federal Judge T.S. Maxey, who denied the petition for Duncan’s release.”⁶⁰ As the newspaper correspondent dryly noted, “An order from Judge Maxey releasing Duncan would have given liberty to every prisoner now confined in the penitentiaries of the state, convicted since the alleged passing of the act in question in 1877.”⁶¹

Lawyer McMinn was totally committed to his theory. He would and did appeal his case to the United States Supreme Court. And ultimately that tactic worked, in part: He was allowed to plead his case. Alas, one of the Justices finally interrupted: “You have not answered the question propounded.” McMinn bantered that he “would get to the point asked about in the course of his argument.” He didn’t—or not quick enough—and the Justices began talking to each other. Somewhat embarrassed and/or miffed Mr. McMinn chirped: “If the court did not wish to hear from him he had no disposition to talk to it.”⁶² Not smart! The Supreme Court remanded the case to the Texas State Court of Appeals, which reaffirmed the earlier decision of Judge Maxey. Lawyer McMinn’s “strong effort at overthrowing the whole penal code of Texas came to naught....”⁶³ The complex legal shenanigan fell flat, but it did buy time for Dick Duncan.

A snippet in the *Brenham Weekly Banner* mockingly chided attorney J.T. McMinn’s appellate strategy:

Judge Maxey sat down with a dull, sickening thud on the scheme of the addle-pated lawyer who sought to prove in the Dick Duncan habeas corpus case that Texas was without a criminal code.⁶⁴

Aside from attorneys battling with regards to Dick Duncan’s criminal case and its appeal, they too were locking horns over the equitable division of defense fees and the proportionate hours expended—or not expended—concerning the appellate case. The civil case’s financial sparring

had moved from barroom or barnyard to the courtroom.⁶⁵ In what seems fair-minded the Court of Civil Appeals of Texas, determined: "If the defendant did the larger part of the work, justice, it seems, would demand that he have a larger part of the fee. For the error indicated, the judgment of the lower court is reversed, and the cause remanded."⁶⁶

With appellate chances removed, Dick Duncan was transferred back to Eagle Pass where he would await imposition of the death sentence.⁶⁷ That action in itself created quite a stir. There was hot gossip afloat that Duncan "had a knife with which he declared he intended to kill [Sheriff] Cooke if an opportunity offered."⁶⁸ An unannounced search of the prisoner proved very disturbing: "When stripped it was found that he had a large knife whose blade had been notched in the form of a saw. It was suspended between his legs by a string around his waist. Duncan fought desperately, but was overpowered."⁶⁹ During another incident when a newspaperman for the *Eagle Pass Guide* tried to get a "Kodak" of Dick Duncan, he was met with a shower of "broken dishes mixed with profanity."⁷⁰ Purportedly—and that's where it must register—"Dick Duncan has written four letters with his blood and has offered fifty dollars to any one who will whip the Guide editor."⁷¹ Adding to the unease was another assertion. This one centered around the "rendezvous of the gang on a lonely ranch whose name is given. The plot includes the slaughter of the sheriff and his deputies. Duncan formerly consorted with desperadoes and horse thieves and the proposed rescuers are his ex-companions. It will be impossible to prevent their assembly and it is probable that the attempt will be made, especially as Eagle Pass is contiguous to a thinly settled portion of Mexico with whose wilds and fastnesses the desperadoes are thoroughly familiar."⁷² Undeterred Sheriff Cooke called upon the Eagle Pass Rifles to supplement his guard at the Maverick County Jail.⁷³ Captain Goggin, their commander, then had a threefold task: Prevent defendant Dick Duncan's suicide, thwart any try at escapee or rescue, and quash any mob's lynch-rope mentality.

Commenting on the continuing efforts for Governor James Stephen Hogg to commute the sentence of death, as well as the supposed impropriety of Sheriff Cooke's printed invitation for guests to witness the execution, a penman put forth his idea of frontier reality.

A few years ago a common lariat attached to a mesquite limb was considered good enough for the highest toned murderer in the land and all invitations were verbal and accepted on the spot. A simple trial then, consuming about two hours, was ample, and the total expenses involved would not have purchased a glass of beer. Under the new civilization it has become about as hard to hang a criminal as it is to convict a San Antonio man for selling beer on Sunday.⁷⁴

Although it now shrieks of insensitivity there was a *perceived* hard truth along the Southwest's borderlands at the time: "Shooting to the average Mexican or Texas cowboy, has but little terror, but to be hung like a dog strikes terror to their hearts."⁷⁵

Even then there was an anti-capital punishment sentiment in certain quarters of Texas. A petition in the U.S. Post Office at Eagle Pass to save Dick Duncan and imprison him for life was tacked to the wall. Unfortunately for the condemned fellow, "not one could be found who would give the paper the weight of his signature."⁷⁶ A newspaper headline that Dick Duncan was now doomed was not wrong.⁷⁷ Resigned to his fate, though never admitting guilt, Dick Duncan's demeanor transitioned from an outward bitterness to cordiality. He apologized to his keepers



Unlike 19th-Century horseback counterparts, armed with Colt's six-shooters and Winchesters, today's Texas Rangers must be prepared for an immediate response to emergencies; whether for tactical situations or crime-scene investigations. Here, Lieutenant Patrick Peña, Company F, Waco, exhibits part of the inventory necessary for accomplishing that mission. *Author's photo courtesy Major Jamie Downs.*

for previous nasty behavior. He was a new man. Subsequent to formal baptism by his principal spiritual advisor, Father A.H. Oliver, Duncan reckoned his place in the Hereafter was reserved and secure.⁷⁸

On the eighteenth day of September 1891 inside the Maverick County Jailhouse Dick Duncan climbed the scaffold's thirteen steps and listened as Sheriff Cooke read the Death Warrant. With his hands sufficiently bound and the black hood placed over his head, at precisely 11:26 in the morning Richard H. Duncan dropped the eight feet into eternity.⁷⁹ In his now empty cell deputies found a letter addressed to Reverend Elliott, an ordained Methodist Minister.⁸⁰

After claiming the body, Dick's father and his brother Tap, reverentially removed the remains back to San Saba County for burial at the Barnett/Davidson Cemetery although their judgment was etched forevermore into the tombstone: "Murdered at Eagle Pass."⁸¹

So, while the book may be closed on Dick Duncan's fascinating Old West story its relevance in the context of analyzing and preserving Ranger history is deepened. Two hundred years of legitimate history makes for a broad backdrop to draw from. Texas Rangers of today pay homage to their forerunners, the ones despite barriers of place and time showed them the way.

Endnotes:

- ¹ For a single volume treatment of the Texas Rangers and their transition to an elite law enforcement agency the reader may wish to peruse Bob Alexander's and Donaly E. Brice's, *Texas Rangers: Lives, Legend, And Legacy*.
- ² *Ibid.*, 191-194, 218-220, 243-245, and 275-277.
- ³ Texas Government Code, §411.015 (b).
- ⁴ For a biography, see, *Rawhide Ranger, Ira Aten: Enforcing Law on the Texas Frontier* by Bob Alexander; A collection of Aten's Ranger correspondence is archived at the Texas State Library and Archives Commission [TSA]; For a chapter-length profile of Aten, see, Darren L. Ivey, *The Ranger Ideal: Texas Rangers in the Hall of Fame*. Three vols. 2:281-313.
- ⁵ Monthly Return [MR], Co. D, Frontier Battalion [FB], February 1889. TSA; Captain Frank Jones to Adjutant General Wilburn Hill King, January 31, 1889. TSA.
- ⁶ U.S. Census for 1880 enumerates Richard Duncan and George T. Duncan, both living with their parents Abijah Elum "Big" Duncan and Martha Machoga [Blandchard] Duncan, on their farm in San Saba County; Interview with Rick Miller, Bell County Attorney, Ret., as well as a distinguished historian and award-winning author.
- ⁷ MR, Co. D, FB, March 1889; Sergeant Aten to Captain L.P. Sieker, March 24, 1889. TSA.
- ⁸ B.D. Lindsey to Capt. Frank Jones, March 5, 1889. TSA.
- ⁹ *Ibid.*
- ¹⁰ *San Antonio Daily Express*, September 19, 1889; *Austin Weekly Statesman*, September 24, 1891.
- ¹¹ Capt. Jones to AG King, March 6, 1889. TSA; As noted in *Rawhide Ranger*, a newspaper citation to the *Galveston Daily News*, September 23, 1891, seems not to comport with Captain Jones' metaphoric indictment of local officials: "Much credit is due to Sheriffs Cooke of Maverick and Nolan of Kinney county for their untiring efforts to bring the guilty parties to justice." 380, n.9; Sammy Tise, *Texas County Sheriffs*, identifies the Maverick County Sheriff at the time under review as William N. Cooke. 363; The Sheriff of Kinney County at the time would have been J.W. Nolan. Again see, Tise, *Texas County Sheriffs*, 312.
- ¹² Alexander, *Rawhide Ranger*, 172.
- ¹³ Interview with Ira Aten by prominent historian and writer J. Evetts Haley, 1928. Typescript archived at the Nita Stewart Haley Memorial Library and History Center [HML&HC], Midland, TX, hereafter cited as HML-Aten, 1928.
- ¹⁴ Interview with Ira Aten by J. Evetts Haley, Hervey Chesley, and Earl Vandale, 1941. Typescript archived at HML&HC, hereafter cited as HML-Aten, 1941. When conjoined these typescripts create a fascinating treasure of primary source information relating to criminality and law enforcing issues in Texas during the so-called Old West era: In the aggregate numbering 275 pages.
- ¹⁵ *Duncan v. State*, 16 S.W. 753, 30 Tex.App.1 (Tex. App. 1891). 755; Quite expectedly, later in the 20th-Century a popular press picked up on the fascinating story. See, Eugene Cunningham, "Frontier Justice: How Old-Time Rangers Solved a Baffling Texas Murder Mystery." *Startling Detective Adventures*, (September, 1935), 34-35, also see, J. Marvin Hunter, "The Famous Dick Duncan Murder Case," *Frontier Times*, February 1939, 197.
- ¹⁶ Paul Havens, "Border Boss: The Saga of Captain John R. Hughes, Texas Ranger," *True Detective*, July 1940, 35; Cunningham, "Frontier Justice," 39.
- ¹⁷ Chuck Parsons, *Captain John R. Hughes: Lone Star Ranger*, 48; Cunningham, "Frontier Justice," 37; Ira Aten identifies the wagon as of Bain manufacturing. HML-1941. 69.
- ¹⁸ *Duncan v. State*, 16 S.W. 753, 30 Tex. App. 1 (Tex. App. 1891). 755.
- ¹⁹ *Ibid.*, 754.
- ²⁰ *San Antonio Daily Express*, September 19, 1891; Jeffery Burton, *The Deadliest Outlaws: The Ketchum Gang And The Wild Bunch*, 18.
- ²¹ *Ibid.*
- ²² *Ibid.*
- ²³ *Ibid*; *Duncan v. State*, 16 S.W. 753, 30 Tex.App. 1 (Tex. App. 1891). 755.
- ²⁴ Frederick Wilkins, *The Law Comes to Texas*. 282; *San Saba News and Star*, March 29, 1889.
- ²⁵ HML-Aten, 1941. 74 and 69; HML-Aten, 1928: "...having had illegal relations with one of the daughters..." 100.
- ²⁶ *San Antonio Daily Express*, September 19, 1891.

- ²⁷ Sergeant Aten to Captain Sieker, March 24, 1889. TSA; Cunningham, "Frontier Justice," 37.
- ²⁸ HML-Aten, 1941. 74; *Duncan v. State*, 16 S.W. 753, 30 Tex. App. 1 (Tex. App. 1891) 754; *Austin American Statesman*, September 24, 1891.
- ²⁹ *Eagle Pass Guide*, December 7, 1889.
- ³⁰ *Ibid.*
- ³¹ *Austin Weekly Statesman*, September 24, 1891: "He had a Winchester with him in good order."
- ³² *Eagle Pass Guide*, December 7, 1889.
- ³³ *Ibid.*
- ³⁴ Cunningham, "Frontier Justice," 58.
- ³⁵ *Eagle Pass Guide*, December 7, 1889.
- ³⁶ HML-Aten, 1941. 71.
- ³⁷ Bob Alexander, *Winchester Warriors: Texas Rangers of Company D, 1874-1901*, 223.
- ³⁸ Jack Martin, *Border Boss: Captain John R. Hughes—Texas Ranger, 74-75*; Ex Parte Duncan, 11 S.W. 442, 27 Tex. App. 485 (Tex. App., 1889); Hunter, "The Famous Dick Duncan Murder Case," 197-198.
- ³⁹ *Duncan v. State*, 16 S.W. 753, 30 Tex. App. 1 (Tex.App. 1891), 755.
- ⁴⁰ Cunningham, "Frontier Justice," 58; Mike Whittington, "Hughes and Aten Solve the Williamson Family Murders," *Texas Ranger Dispatch*, (2003).
- ⁴¹ Sergeant Aten to Capt. Sieker, March 24, 1889. TSA.
- ⁴² HML-Aten, 1941: "We were satisfied that from the information we had that he [Tap] had nothing to do with it. Doubt whether he knew anything..." That said, Sergeant Aten explained that Tap Duncan was not "such a bad man," but that his older brother Dick was "a real bad man," 72.
- ⁴³ Sergeant Aten to Capt. Sieker, March 24, 1889. TSA.
- ⁴⁴ *Ibid.*
- ⁴⁵ *San Antonio Daily Express*, September 19, 1891.
- ⁴⁶ HML-Aten, 1941. 71-72; Chris Weatherby, "From No Account to Plain Mean." *Old West*, (Summer 1974), 27.
- ⁴⁷ Sergeant Aten to Capt. Sieker, March 24, 1889. TSA.
- ⁴⁸ HML-Aten, 1941. 72.
- ⁴⁹ Ex Parte Duncan, 11 S.W. 442, 27 Tex.App. 485 (Tex.App., 1889).
- ⁵⁰ For any lay persons unfamiliar with legal matters a down-to-earth explanation of circumstantial evidence seems fitting. David W. Neubauer, *America's Courts and the Criminal Justice System*, cuts to simplicity: "Testimony that a person was seen walking in the rain is direct evidence that a person walked in the rain. Indirect evidence is called circumstantial evidence. Circumstantial evidence can be used to prove the truth or falsity of a fact at issue. Testimony that the person was seen indoors with wet shoes is circumstantial evidence that the person had walked in the rain," 360.
- ⁵¹ *San Antonio Daily Express*, September 19, 1891.
- ⁵² *Ibid.*
- ⁵³ *Ibid.*
- ⁵⁴ *Eagle Pass Guide*, December 7, 1889; *Fort Worth Daily Gazette*, September 24, 1891.
- ⁵⁵ *Austin Weekly Statesman*, September 24, 1891.
- ⁵⁶ *Eagle Pass Guide*, December 7, 1889.
- ⁵⁷ *Fort Worth Daily Gazette*, September 24, 1891.
- ⁵⁸ *Ibid.*
- ⁵⁹ *Austin American-Statesman*. September 19, 1891.
- ⁶⁰ *Austin Weekly Statesman*, September 24, 1891.
- ⁶¹ *Ibid.*; Judge Thomas S. Maxey was a federal court District Judge. See, J. Morgan Broaddus, *The Legal Heritage of El Paso*, 244.

- ⁶² *Galveston Daily News*, December 19, 1890.
- ⁶³ *Austin Weekly Statesman*, September 24, 1891; Mike Cox, *Gunfights & Sites in Texas Ranger History*, 159.
- ⁶⁴ *Brenham Weekly Banner*, May 22, 1890.
- ⁶⁵ *Burleson v. Lindsey*, 23 S.W. 729 (Tex. App., 1893). 729-730.
- ⁶⁶ *Ibid.*, 730.
- ⁶⁷ *Galveston Daily News*, July 8, 1891.
- ⁶⁸ *Ibid.*, July 25, 1891.
- ⁶⁹ *Austin American-Statesman*, July 26, 1891; *Brenham Weekly Banner*, July 30, 1891.
- ⁷⁰ *Galveston Daily News*, September 14, 1891.
- ⁷¹ *Ibid.*, September 18, 1891.
- ⁷² *Austin American Statesman*, August 9, 1891.
- ⁷³ *Fort Worth Daily Gazette*, September 4, 1891; *Galveston Daily News*, September 4, 1891.
- ⁷⁴ *Ibid.*
- ⁷⁵ *Galveston Daily News*, September 21, 1891.
- ⁷⁶ *Ibid.*, September 19, 1891.
- ⁷⁷ *Ibid.*
- ⁷⁸ *Austin American-Statesman*, September 19, 1891.
- ⁷⁹ West Gilbreath, *death on the gallows* [lower case correct]: *The Encyclopedia Of Legal Hangings In Texas*, 245-246; Clifford R. Caldwell and Ron DeLord, *Eternity at The End Of A Rope: Executions, Lynchings and Vigilante Justice in Texas 1819-1923*, 345-346.
- ⁸⁰ *Ibid.*, 246.
- ⁸¹ Stonemason's carved caption on Richard H. Duncan's headstone.



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Petticoats & Poker Chips

By Jan Devereaux

Images Courtesy Texas Ranger Hall Of Fame & Museum, Waco, Texas

On the first day of April 1934, Easter Sunday, near Grapevine in northeastern Tarrant County, notorious Gangster Era outlaws Bonnie Parker, Clyde Barrow, and Henry Methvin murdered two unsuspecting Texas Highway Department [THD] motorcycle patrolmen, Holloway Daniel Murphy and Edward Bryan Wheeler. It was a shocking and newsworthy story. At the time of their untimely deaths Patrolman Murphy was single, about to be married. Patrolman Wheeler left behind a grieving twenty-three-year-old wife, Doris Elizabeth (Brown) Wheeler. Distraught and bewildered Doris afterward recalled: "I didn't have any benefits, and there was no insurance." Recognizing that Patrolman Wheeler's widow had but minimal available financial wherewithal, the Chairman of the Texas State Highway Commission, Harry Hines, had considerably arranged for Doris to relocate to Austin, rent a modest apartment, and accept a paid clerical/secretarial position for Louis Graham "L.G." Phares, Director of the THD's Highway Patrol.



Texas Highway Department Patrolmen, L to R: Edward Bryan Wheeler and Holloway Daniel Murphy, both murdered on Easter Sunday 1934 by Bonnie and Clyde near Grapevine, TX.

The following year James V. "Jimmie" Allred who had vigorously campaigned as a strong law and order candidate was inaugurated as the Governor of Texas, replacing Miriam Amanda "Ma" Ferguson. During August of 1935 the Texas Department of Public Safety [DPS] was created, institutionally absorbing the THD's Highway Patrol, the Texas Rangers, and adding a Crime Lab and Intelligence Service to be overseen by former Ranger Manuel T. "Lone Wolf" Gonzauillas. L.G. Phares was named interim Director of DPS until the three politically appointed DPS Commissioners named a permanent choice for the new agency's chief administrative position. Doris Wheeler



Above: Director of the Texas Highway Department's Patrol Division, Louis G. Phares. During 1935 he also served as the interim Director for the newly established Texas Department of Public Safety.

Left: The notorious criminals Bonnie and Clyde, though sometimes romanticized in popular culture movies and periodicals, were, in fact, vicious and coldblooded killers.

continued her headquarters duties with DPS and, purportedly, on occasion even acted as Governor Allred's personal chauffeur.

As 1935 was winding down Governor Allred was thoroughly incensed that throughout Texas traditional vice wasn't on its deathbed, it was thriving. There were not just a few hotspots—some quite ritzy—where casino gambling was or had been openly flaunted despite its statutory illegality. Such illustrious venues as Galveston Island's Hollywood Dinner Club [and later the legendary Balinese Room], the celebrated Loma Linda between Houston and Richmond, and the very swanky Top O'Hill Terrace at Arlington between Dallas and Fort Worth beckoned. Movie star showstoppers, rich oilmen, wealthy cowmen, racehorse owners, and a discreditable assemblage of East and West Coast mobsters came. Particularly it was so well known that the Top O'Hill Terrace would later be christened the "Vegas before Vegas." Such a soubriquet does not seem farfetched when registering the string of high-profile personalities headlining or stopping by the Top O'Hill Terrace for a night of freewheeling fun. National celebrities such as Will Rogers, Gene Autry, W.C. Fields, Buster Keaton, Howard Hughes, Marlene Dietrich, Hedy Lamarr, Ginger Rogers, Lana Turner, Mae West, Sally Rand, dance band leaders Tommy Dorsey and Benny Goodman, crooners Dean Martin and Frank Sinatra long before their "Rat Pack" days were marquee visitors.



Entrance Gate and guard towers at the Top O'Hill Terrace, the swanky nightspot that would be christened the "Vegas Before Vegas." Courtesy Vicki Bryant.

World champion boxers Max Baer, Lew Jenkins, the "Sweet Swatter from Sweetwater," and heavy weight gloved slugger Jack Dempsey were all there from time to time, as was an illustrious and flamboyant gambling kingpin, Benny Binion. Naturally that should not discount the high-priced hookers—though now nameless—circulating throughout the crowd or entertaining visitors in luxurious quarters in a separate building on the manicured grounds behind the delicately tended flower gardens.

Not just a few nightclubs and supper-clubs were merely fronts for widespread wagering spots. Were local lawmen slyly winking at the law? Were bribes buying ignorance and inactivity? Governor Allred turned to Director Phares to launch investigations, arrest violators, and shutdown supposed clandestine gaming sites—at once!

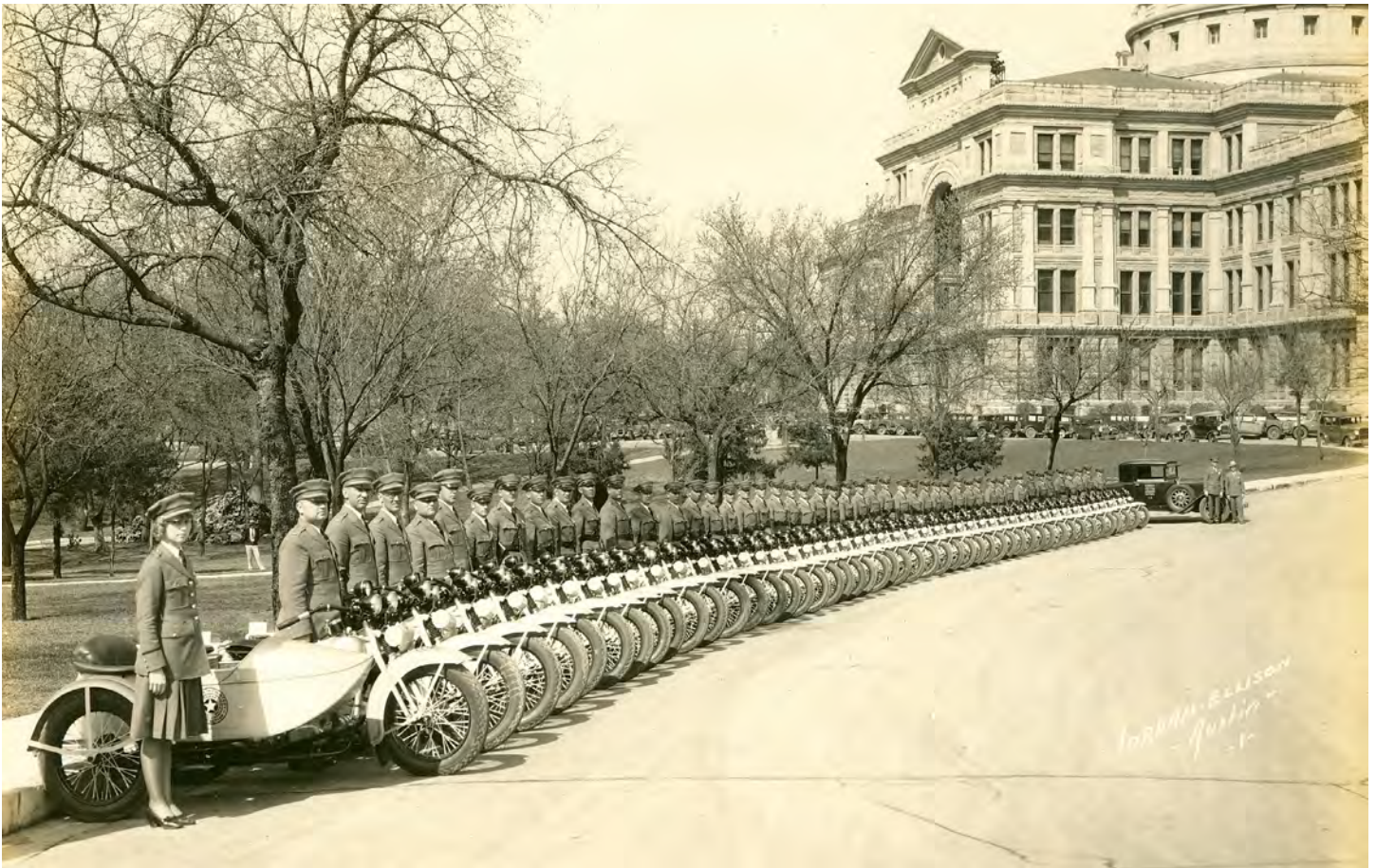
Courtroom convictions are solely dependent on the legal admissibility of evidence, which for the criminal investigations ordered by Governor Allred equated to eyewitness testimony and the collection of physical evidence; gambling paraphernalia such as slot-machines, roulette-wheels, denominationally colored Poker chips, decks of playing cards and boxes of dice, score-sheets, and unclaimed cash piled atop green-clothed gambling tables. An inappropriately timed raid when there was no gaming underway was a total and utterly worthless waste of time: Squandering precious man-hours and ineffectively depleting scant expense accounts. And, too, a premature raid alerted casino operators that they were under scrutiny of the law enforcing community and prosecutors. L.G. Phares was no apprentice: He would have to use undercover operatives to ensure that raids on illicit casinos were timed at the peak of patrons' participation. The pool to



Governor James V. "Jimmy" Allred had campaigned on a law and order platform. He was adamant about curtailing the activities of casino operators and bootleggers. Here, seated behind his desk, the Governor is surrounded by well-known Texas Rangers.

draw from of Texas Rangers and/or DPS Highway Patrolmen was relatively deep. In his mind, that solved but half of the dilemma. To make the right appearance for maintaining the pseudo story, male undercover officers really needed to be accompanied by a lady, a believable pretend wife or girlfriend. Lady law enforcers—nationwide—were maybe not entirely unheard of during this period, but the Texas DPS did not employ any; not a solitary one statewide. Ingeniously, it may be said, Director Phares had a workable solution.

He would appoint four ladies as Special Rangers. The legal provision for such appointments had been in place since the 1880s when Adjutant General Wilburn Hill King filled the gap between the number of authorized Texas Rangers and the inability for the state to fund a full roster of 450 men. Special Rangers would have all the authority of a Texas Peace officer but would be paid by private interest groups such as livestock associations and/or railroads, etc. Although the practice could sometimes lead to drawbacks of a partisan political nature, the overall contribution of Special Rangers was/is positive.



For the time-period Texas Highway Department's law enforcers were all motorcycle patrolmen. The female pictured at left is Grace Fowler, the Director's Secretary. At the far right is the Department's only automobile, the Director's vehicle.

Director Phares' plan was smart: He would secretly recruit lady volunteers already employed by DPS to be Special Rangers. There would not be any budgetary matters concerning these ladies, they were already on the DPS payroll. Their trustworthiness and pledged capacity to keep the stratagem under wraps had been evaluated. Commissioning the ladies as Special Rangers would automatically award them full policing power to carry firearms and make arrests. Preserving investigative integrity and forestalling newspaper correspondents from compromising ongoing probes or hounding the ladies for an exclusive headline story, Director Phares closely guarded the ladies' personal identities and/or identifiers. He, too, was attuned to the fact that when appropriate the undercover operation could be "leaked" for public consumption and that, in and of itself, would be a useful preventative tactic: Patrons at the posh gambling emporiums would then be free to guess just which couples were wagering with hopes of winning piles of cash and which were the couples scheming with other motives—such as enforcing the law and making custodial arrests?

Keeping his cards close to the vest, Director Phares successfully recruited and commissioned his lady ensemble of Special Rangers. Three of whom we now can identify as Gerri Holland, Bernice Ellis, and the aforementioned Doris Wheeler. Thankfully, due to a state of affairs beyond her control part of Doris Wheeler's remembrances of that need-to-know timeframe are now retrievable and reportable.



Doris Elizabeth (Brown) Wheeler, widow of Patrolman Ed Wheeler. Doris was one of the four DPS Petticoat Rangers recruited to assume undercover identities during Governor Allred's crackdown on traditional vice.

And although these female DPS undercover operatives more often than not were accompanying male officers, sometimes they teamed with each other and worked as two girls celebrating a night on the town. Doris recalled: "We'd go places dressed in evening clothes, looking nice, and if they were gambling, which they were, I'd call and clue the Rangers.... We're having such a nice time, I'd say. Why don't you join us?" And they would! With regards to the possibility of physical hazards associated with undercover assignments, Doris reflected: "I suppose I could have been in danger, but I didn't have enough sense to be afraid.... I enjoyed it!" And just to be sure she had a modicum of personal protection, when assuming her fictitious persona Doris was armed. If her handbag was large enough she carried her late husband's duty handgun, the one he was carrying when murdered. At other times when fashion demanded that a smaller jeweled clutch would be more fitting, she carried a small .25 caliber semi-automatic—at the time simply referred to as a "pocket or purse pistol."

Needless to say, the overall undercover operation met with success and when purposely made public during the holiday season, sensational pieces followed; herein amplified by a substantially abbreviated sampling of the newspaper coverage:

[Petticoat Rangers]each had full police powers and carried arms....The lady rangers are accompanied to places suspected by a highway patrolman or regular ranger dressed in civilian clothes. [*San Antonio Light*, December 31, 1935]

Special Women Rangers Have Full Powers and Carry Arms [*Corsicana Daily Sun* [December 31, 1935]

Petticoat Rangers Aid Gambling Drive.... Four Women, Given Full Authority, Make Rounds of Night Clubs, Get Evidence [*Fort Worth Star-Telegram*, January 1, 1936]

Petticoat Rangers to Aid In Enforcing Strict Laws [*The Valley Morning Star*, January 1, 1936]

Petticoat Rangers Help Halt Gambling in Texas [*Shreveport Times*, January 1, 1936]

L.G. Phares, acting director to the Department of Public Safety said four women employees had been commissioned as special rangers to aid in a drive against “big shot” gambling establishments. Phares declined to make public the names of the employees but said they were attached to the headquarters staff. Each, he said had full police powers and carried arms. [*The Lafayette Daily Adviser*, January 1, 1936]

All too soon Doris Wheeler’s name became public. A brief recap is intriguing. Though still living in Austin, she was to accompany a Highway Patrolman and his wife, along with another Patrolman who she would stand-in as his spouse, to Fort Worth. Joined by the Texas Ranger’s Senior Captain Tom Hickman, the supposed top-secret plan was to conduct a nighttime raid at the upscale Top O’Hill Terrace. Rather strangely—and unexplainable—license plates on their undercover vehicle were changed at the last minute, prior to pulling up to the gambling establishment’s closed double gates, the ones with guard towers on either side. Particularly, and it proved relevant, according to Doris Wheeler’s later testimony before waving her and her party through the armed sentinel suspiciously eyed their automobile, paying more than a little attention to the license plate number. Then after the passage of several minutes the undercover operatives were allowed to proceed up the winding driveway to the top of the hill. Once inside it was clearly observed that jovial patrons were heartily consuming the fine food and drink and enjoying the entertainment, but there was no sight of any illicit gambling or its related paraphernalia. Captain Hickman looked around a minute or two and then his party departed. He later explained he hadn’t seen any violations of the law and had no reason to stay any longer. Somewhat later, two of Governor Allred’s personal friends, lawyers, who had been dining there had curiously asked the “house man” why there was no gambling that evening? The answer was more than troubling: “A Ranger raid was scheduled to take place at 11:30 PM.” The talkative attorneys further advised the good Governor that after Captain Hickman left, the roulette wheels, dice, and tables were rolled out and the fun began. Governor Allred was livid.

Just four days later other Texas Rangers unbeknownst to Captain Hickman, after avoiding entrance through the front gates, stumbled and crawled up the backside of the hill for over a mile, and when their surprise dynamic entry was made their lucky numbers aligned—a jackpot! They seized three roulette wheels, four dice tables, two Blackjack tables, and in excess of twenty card tables. Ranger Captain J. W. McCormick oversaw the arrests of the Top O’Hill Terrace’s proprietor, Fred Browning, and several employees.



Texas Ranger Captain Tom Hickman. His lack of enthusiasm for conducting gambling raids cost him his job and compelled Petticoat Ranger Doris Wheeler to publically offer sworn testimony.

The aftermath and very public sparring among DPS Commissioners and other political leaders, including Doris Wheeler's sworn testimony, in the end cost Captain Hickman his job. Although in all fairness it must be reported that several years later Tom Hickman was reinstated as Chairman of the Texas Public Safety Commission.

Rightfully disclosing that the Petticoat Rangers, including Doris Wheeler, traveled throughout Texas dutifully enforcing the law is fitting. She did not live in the earlier era of frontier ladies making their contribution to our state's history, but within the generalized genre of modern-era criminal justice she and her coworkers were pioneers.

And what became of Doris Wheeler, a Petticoat Ranger? She would later remarry, have children, and in the big picture have a rich and satisfying life. There was, however, one sharp thorn in her side and it perpetually ached. Pop culture had made heroes out of the outlaws that had murdered her first husband. Particularly when the 1967 movie *Bonnie and Clyde*, starring Faye Dunaway and Warren Beatty, was released it was promoted with an advertising tease: "They're young. They're in love. And they kill people." Doris noted that she, too, had been young, in love, and the real-life Bonnie and Clyde had savagely killed her husband. Commemorate that? Never!



During 1973 Judith Ann Prince was one of the first two females to graduate the grueling DPS Academy.

And although the lifespan of the Petticoat Rangers was measured in months not years, their quantifiable contribution to history of Texas law enforcement merits meaningful underscoring. Collectively, by any standard, the Petticoat Rangers were trendsetters for future female peace officers treading in their prominent footsteps. During 1973 Judith Ann Prince and Linda Ruth Lane despite the obstacles—of which can only be imagined for the place and time—were the very first females to graduate the arduous and grueling heretofore all male DPS Academy. They, too, paved



Today, 2023, the Texas Department of Public Safety has four female Texas Rangers. Left to right: Staff Captain Melba Saenz, Captain Wende Wakeman, Laura Simmons, and Veronica Gideon.

the way for young ladies with aspirations of serving the state proudly wearing the DPS uniform. And that legacy of the Petticoat Rangers continues into this, the Bicentennial Year of the Texas Rangers. Today, 2023, there are four outstanding and proven female Texas Rangers. Captain Wende Wakeman is assigned to the Ranger headquarters staff at Austin, while Captain Melba Saenz commands the Joint Border Operations Task Force in South and West Texas. Closer in, Texas Ranger Laura Simmons oversees major criminal investigations from her office at Greenville, Hunt County, and Texas Ranger Veronica Gideon responds to felonies from her Company F field office in Travis County.

In their hands the tradition and legacy of the Texas Rangers is secure.



*After a thirty-year career with Baylor Scott & White Health Care at Waxahachie, **JAN DEVEREAUX**, now retired, devotes her time to researching and writing. She is a Texas Ranger Hall of Fame & Museum laureate and docent, as well as a sitting board member with the Friends of Fort McKavett. Two of her journal pieces received national recognition as Best Article of the Year, and she is also the author of a hardcover volume, the biography of a noted frontier era female personality.*

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The History of the Common Law Right to Privacy in Texas

• Part III •

By John C. Domino

In the Winter issue, Part I of this article contained a foundational discussion of the common law origins of the major privacy doctrines adopted by the courts of other states in the nation as early as 1900, over seventy years before Texas recognized privacy as an independent right. The second and third part of this series turned to the primary focus of the larger work: the adoption by Texas courts of a constellation of common law tort doctrines¹ and state constitutional provisions that constitute the right to privacy in its present form. In the Spring issue Part II began with a discussion of Invasion of Privacy Doctrine in Texas and Public Disclosure Privacy Doctrine. In Part III the discussion concludes with an exploration of Appropriation Doctrine and False Light Doctrine.

C. Appropriation Doctrine

Appropriation of name or likeness applies to the unauthorized use of a person's name, image, notoriety, or prestige for commercial gain. As discussed in Part I, the doctrine of appropriation was adopted as early as the late nineteenth century in cases involving the unauthorized use of names for the purpose of commercial gain. The doctrine of appropriation differs from the other three privacy doctrines in that it deals with the proprietary nature of the tortious action.² In other words, one has a privacy interest in one's name or likeness and invasion of that privacy occurs when that name or likeness is used without consent for commercial or pecuniary gain. Early cases involve an unauthorized use of the plaintiff's name and photograph for the purpose of selling a product or service,³ the publication of an image without consent in an advertisement,⁴ and use of a person's notoriety or prestige without permission. It is not merely the plaintiff's name that is at issue here, but a symbol of a person's identity.⁵

Texas recognizes the appropriation dimension of privacy through the adoption of the Restatement (Second) of Torts,⁶ which states that "One who appropriates to his own use or

¹ William L. Prosser's original four tort doctrines. See William Prosser's seminal "Privacy," *California Law Review* 48 (1960).

² William Prosser, "Privacy," *California Law Review* 48 (1960), 406.

³ *Pavesich v. New England Life Insurance Company*, 122 Ga. 190 (Ga. 1905).

⁴ *Ibid.*, 220.

⁵ See *Fairfield v. American Photocopy Equip. Co.*, 138 Cal. App. 2d 82 (1955).

⁶ See Restatement (second) of Tort, sections 652A-652I. Section 652C (1977) states "One who appropriates to his own use or benefit the name or likeness of another is subject to liability for invasion of privacy."

benefit the name or likeness of another is subject to liability for invasion of privacy.” To recovery for “misappropriation” a plaintiff must prove the existence of three elements: (1) unauthorized appropriation of the plaintiffs’ name or likeness occurred because of the value associated with it; (2) the plaintiff can be clearly identified from the publication; and (3) the defendant received some pecuniary advantage or benefit from the misappropriation. In many appropriation cases, a plaintiff’s identity is used for some form of commercial gain, whether to obtain credit, promote or publicize a product, or secure personal information. It is not merely one’s name that is at issue here, but also control of one’s name as a symbol of identity.⁷

Recall that in a prominent *pre- Billings* Texas court of appeals ruling -- *U.S. Life Insurance Co. v. Hamilton*⁸ -- the court refused to recognize the right to privacy as a cause of action in a case alleging that a plaintiff’s signature was appropriated by the defendant in the promotion of his business. Justice Hale writing for the majority in *Hamilton* clearly acknowledged that invasion of privacy for the commercial appropriation of Hamilton’s signature was a cause of action recognized in other states, but instead ruled that in Texas the unauthorized use of a signature of a well-respected person such as Hamilton was a violation of the property or ownership right in his signature and reputation, not an intrusion upon his privacy. Hale’s characterization of Hamilton’s signature and reputation as a property right is arguably an implicit recognition of a right of publicity—the right to one’s identity free from unauthorized commercial exploitation. Also, as we discussed in *Billings*, the court adopted a very broad definition of privacy, encompassing intrusion (the eavesdropping on Mr. Billings), public disclosure of personal information, and what Justice Denton called the “unwarranted appropriation or exploitation of one’s personality.”

The appropriation doctrine was adopted for the first time by a Texas court in *Kimbrough v. Coca-Cola/USA*,⁹ two years after the recognition of the right to privacy in *Billings*. A former Texas A&M university football legend named Kimbrough learned from his daughter who attended a football game that the Coca-Cola company had used his name and likeness in an advertisement that appeared in a college football program. Coca-Cola made requests of various colleges in the Southwest Conference to name outstanding former football players. Paintings or illustrations depicting each player would be sent to players, schools, and to a Texas Sports Hall of Fame. They would also be used in advertisements in football game programs. Kimbrough sought recovery from Coca-Cola for invasion of privacy, violation of proprietary right, fraud, and misrepresentation, among other theories. Coca-Cola denied Kimbrough’s charges, arguing that he had consented to the use of his image, that nothing in the publication was offensive or defamatory, and that the football star was a public figure. The question in the case was whether a public person in Texas can bring a legal action for the unauthorized use of his name or likeness for commercial gain. The Court of Civil Appeals (Eastland) found that while



John Kimbrough in
Abilene High School

⁷ See *Fairfield v. American Photocopy Equip. Co.*, 138 Cal. App. 2d 82 (1955).

⁸ 238 S.W. 2d 289 (Tex. Civ. App. – Waco 1951, writ ref’d n.r.e.).

⁹ 521 S.W. 2d 719 (Tex. Civ. App. – Eastland 1975, writ ref’d n.r.e.).

no Texas case directly provides relief in Kimbrough's case, the court, relying on what it believed to be a broad right to privacy found in *Billings*, argued that unauthorized use of his name or likeness for commercial gain is justiciable in Texas. Writing for the court, Justice Brown stated first that that courts in other states had adopted the appropriation doctrine as a privacy doctrine¹⁰ and second that although a public person like Mr. Kimbrough may be considered newsworthy there is no automatic right to commercialize his likeness or personality in a way that is distinct from regular news coverage or the dissemination of information to the public.¹¹ Further, the court cited the *Billings* precedent, pointing out that in recognizing the right to privacy for the first time the Texas high court had cited a New Jersey Supreme Court's decision in an action involving the appropriation doctrine as one part of a broad definition of privacy in a case involving famous professional golfers, including Arnold Palmer, Jack Nicklaus, and Gary Player.¹²

Although Kimbrough was a legendary public figure and was aware of Coca-Cola's paintings and advertisements, Coca-Cola did not meet the burden of proving that it had Kimbrough's explicit consent to publish the photographs for the purpose of an advertising campaign. In the end, although the court of appeals did not reach a conclusion as to whether the right articulated in *Billings* recognized the doctrine of appropriation specifically, it held that the definition of privacy in *Billings* was broad enough to support a cause of action for appropriation of name or likeness under Texas common law. Brown argued that "the invasion of that right [privacy] gives rise to a cause of action..."¹³ and that:

"We hold that Kimbrough has pleaded a cause of action for the unauthorized appropriation or exploitation of his name and likeness by the defendants and such cause is justiciable in Texas."¹⁴

It is important to note that in order to pursue a successful misappropriation claim a person need not be a celebrity or even known to the public at large or some segment of the public as long as it is proved that the wrongly appropriated likeness was of value or benefited the person who appropriated it. *Topheavy Studios, Inc. v. Doe*¹⁵ is an oft-cited 2005 case involving the unauthorized use of a photo of an anonymous woman (Doe) in a computer trivia game. The object of the "Guy Game" was to "win" glimpses of women in various stages of undress by answering a series of trivia questions. To that end, Doe was recruited by the video game company for the purpose of photographing her with her consent during spring break reveries at South Padre Island. After learning from her brother that she appeared topless in the game, several months after its release, Doe sued Topheavy for invasion of privacy based on the appropriation doctrine. Topheavy's defense was that because Doe completed a release form before photos were taken and that the photos were taken in a public place¹⁶ she could not recover for an invasion of privacy. The trial court

¹⁰ See *Birmingham Broadcasting v. Bell*, 259 Ala. 656 (1953), *Arnold Palmer, Gary Player, Doug Sanders, and Jack Nicklaus v. Schonhorn Enterprises, Inc*, 96 N.J. Super. 72 (1967).

¹¹ *Gautier v. Pro-Football, Inc.*, 304 N.Y. 354 (1952).

¹² *Arnold Palmer, Gary Player, Doug Sanders, and Jack Nicklaus v. Schonhorn Enterprises, Inc*, 96 N.J. Super. 72 (1967).

¹³ 521 S.W. 2d 719, 722 (Tex. Civ. App. – Eastland 1975, writ ref'd n.r.e).

¹⁴ *Ibid.*

¹⁵ *Topheavy Studios, Inc. v. Doe*, No. 03-05-00022-CV (Tex. App.—Austin Aug. 11, 2005, no pet.). (mem. op.)

¹⁶ Doe admitted that she misrepresented her age (she was a minor) and address. Much of the opinion dealt with whether the release form signed by Doe was valid because she was a minor.

issued an injunction against Topheavy and the Court of Appeals (Austin) ruled in her favor, stating that the defendant's actions constituted an invasion of privacy by misappropriation of her likeness to use in the game and the advertisement of the game. The court upheld the trial court's injunction against the video game company¹⁷ arguing that Doe provided sufficient evidence regarding the recognized elements of invasion of privacy by misappropriation in Texas precedent.¹⁸ The court wrote that "[l]iability for such an invasion of privacy will arise if the defendant appropriates, for their own benefit, the commercial standing, reputation, or other values associated with the plaintiff's likeness."¹⁹

The significance of the *Topheavy* ruling, beyond the fact that the court did not question or disturb existing privacy precedent, was that the appropriation doctrine was extended to an average person whose name and likeness, in another context, had no value to the person or persons misappropriating the name or likeness. Doe was not famous or well-known by any means, just a face in the crowd, if you will. Topheavy did not recruit her to pose for the photo because she was a well-known person or a sports figure or a prominent businessperson. Her name, likeness, or reputation had no known commercial value – she was merely an anonymous person whose image appeared in a video game marketed towards a male audience. Unlike most appropriation cases, the challenge was to ascertain why Doe's image had value other than the fact that she was deemed attractive and was topless. The case is atypical in this regard. Doe was able to prevail because her misappropriated image had value associated with it, although, oddly, the court did not explain what that value was.²⁰

Although this article focuses on cases decided by state courts in Texas, many appropriation opinions cite or rely on rulings from the federal Fifth Circuit Court of Appeals, particularly those rulings that speak to the question of what the guiding precedent is in Texas. For example, an oft-cited case is *Meadows v. Hartford Life Ins. Co.* (2007) which held that Texas courts rely on the Restatement of Torts as the "definitive source of guidance in cases involving invasion of the right of privacy."²¹ According to the Restatement "one who appropriates to his own use or benefit the name or likeness of another is subject to liability for invasion of his privacy."²² However, in *Meadows* the court ruled against the plaintiff's right of publicity claim because the use of Meadow's name was of "incidental" commercial benefit to the insurance company.²³ Meadows, a former employee of the Camelot Music company, learned that without his authorization Camelot had purchased a life insurance policy for him (as well as for over a thousand employees) naming Camelot as beneficiary. To purchase the policy Camelot used Meadow's personal information, such as name, date of birth, and social security number. Since Camelot would have benefited financially in the event of Meadows's death, he claimed that both his employer and the insurance company misappropriated his name and identity for commercial gain. The Fifth Circuit rejected

¹⁷ *Ibid.*, 1,8.

¹⁸ Citing *Express One Int'l, Inc. v. Steinbeck*, 53 S.W.3d 895, 900 (Tex. App.—Dallas 2001, no pet.).

¹⁹ *Topheavy Studios, Inc. v. Doe*, at 3.

²⁰ *Topheavy Studios, Inc. v. Doe*.

²¹ See *Meadows v. Hartford Life Ins. Co.*, 492 F.3d 634, 638 (quoting *Moore v. Big Picture Co.*, 828 F.2d 270 (5th Cir. 1987)), 5th Cir. 2007).

²² Restatement (Second) of Torts, Section 652C (1977).

²³ The Fifth Circuit came to similar conclusions in *Benavidez v. Anheuser-Busch, Inc.*, 873 F.2d. 102, 104 (5th Cir. 1989).

his claim, arguing that to recover under the tort of misappropriation Meadows would need to show “excessive exploitation” of this information that results in a diminution of the value of his identity.²⁴ Thus, in order to recover a plaintiff would need to show that the defendant appropriated the name or likeness for its commercial value and not for “incidental use.”²⁵

As appropriation caselaw evolved some Texas courts began to adopt the term misappropriation,²⁶ which is the act of wrongly appropriating, rather than appropriation. To establish liability under this tort, a plaintiff must show that (1) his or her name is clearly identifiable, (2) was appropriated to benefit the reputation, prestige, social or commercial standing of the defendant, and (3) was not in an incidental manner or for a newsworthy purpose.²⁷ Texas courts recognize name misappropriation as a “species of invasion of privacy” but interprets the tort narrowly.²⁸ Protection is not extended to a name by itself but “the value associated with it.”²⁹ To establish liability for misappropriation of name, a plaintiff bears the burden of showing that the defendant benefits from the reputation, prestige, social or commercial interest associated with the plaintiffs’ name.³⁰ The courts have consistently reaffirmed precedent holding that name misappropriation is a species of invasion of privacy in Texas.³¹

A decade would pass before a Texas appellate court handed down a full opinion in another major appropriation case. In *Watson v. Talia Heights*³² in 2018 the Court of Appeals (Houston) found that a real estate development company’s use of a well-known investor’s name without his knowledge or consent did not amount to an invasion of privacy under the appropriation doctrine. Watson, the investor, claimed that the developer used his name as a prominent buyer of the properties in order to secure a higher price in the transaction. Citing the elements for a misappropriation claim in *Express One Int’l, Inc. v. Steinbeck*³³ and reiterating the established fact that in that case Texas law applies a very restrictive interpretation of the appropriation tort and that, according to the court, Watson did not provide sufficient proof that his name was misappropriated for the value associated with it, or to exploit his reputation, prestige or other value associated with his name. The caselaw does not protect a name *per se* but the value associated with it. His name was merely placed on a list of investors; its inclusion on a list of buyers had nothing to do with his unique skills or reputation. Other investors placed on the list had almost identical qualifications. Watson asserted that Talia’s profits resulted from the misappropriation of his name.

²⁴ *Meadows v. Hartford Life Ins. CO.*, 492 F.3d 634, 638-39 (5th Cir. 2007).

²⁵ *Henley v. Dillard Dep’t Stores*, 46 F. Supp. 2d 587, 596 (N.D. Tex. 1999) (citing Restatement (second) of Torts section 652C cmt.d (1977)).

²⁶ *Watson v. Talia Heights*, 566 S.W. 3d 326, 329-330 (2018).

²⁷ Citing *Express One Int’l, Inc. v. Steinbeck*, 53 S.W.3d 895, 900 (Tex. App.—Dallas 2001, no pet.).

²⁸ See *Cardiovascular Provider Res. Inc. v. Gottlich*, No. 05-13-01763-CV (Tex. App. –Dallas 2015, pet. Denied (mem. op.)).

²⁹ *Express One Int’l, Inc. v. Steinbeck*, 53 S.W.3d 895, 900 (Tex. App.—Dallas 2001, no pet.).

³⁰ *Moore v. Big Picture Co.*, 828 F.2d 270, 275 (5th Cir. 1987).

³¹ See *Watson v. Talia Heights*, 566 S.W. 3d 326 (2018) citing *Cardiovascular Provider Res. Inc. v. Gottlich*, No 05-13-01763-CV (Tex. App. – Dallas Aug. 18, 2015, pet. Denied) (mem. op.).

³² *Watson v. Talia Heights*, 566 S.W. 3d 326, 329-330 (2018).

³³ *Ibid.*, *4. Citing *Express One Int’l, Inc. v. Steinbeck* 53 S.W.3d 895 (Tex. App.—Dallas 2001, no pet.).

Another 2018 appropriation case, *Doggett v. Travis Law Firm*,³⁴ originated when two lawyers, Travis and Hammond, agreed to form a working relationship and change the name of Travis's firm to Travis & Hammond, PC. The nature of the relationship was unclear and subject to dispute.



Jeffrey L. Doggett

Hammond claimed that he was a partner, but Travis maintained that Hammond was only a contract employee. A third lawyer, Doggett, claimed that he was hired in an “of counsel” capacity, although Travis denied Doggett’s status as of counsel. When a client that Doggett was representing while working for the firm sued Doggett and the Travis Law Firm for legal malpractice, the Travis Law Firm then sued Doggett, alleging invasion of privacy by appropriation of name or likeness because Doggett, in seeking and representing clients, used Travis Law Firm’s name or likeness for the value associated with it. The jury agreed that Travis Law Firm suffered an injury as a result of Doggett’s misappropriation and awarded the firm damages. The Court of Appeals (Houston) reversed, arguing that the Travis Law Firm could not recover damages for invasion of privacy by appropriation because corporations are not protected by the right to privacy.³⁵

The tort doctrine of appropriation provides the means by which an injured party recovers damages for invasion of privacy if their name or likeness is misappropriated. Arising from this body of law is the right to publicity, adopted in federal suits brought in Texas. How is this right related to appropriation? A discussion of the right to publicity goes beyond the scope of this paper –and enters the realm of federal case law and state statutory protections -- but it is useful to offer a few thoughts on the subject. A 1953 federal appeals court case, *Haelan Laboratories v. Topps Chewing Gum*, created the term “right to publicity” to define the right of persons to control the use of their name or likenesses from misappropriation for commercial gain or other value. Federal claims have from time to time used this term in appropriation/ misappropriation cases. How appropriation differs from the right of publicity is opaque. A review of the case law found that in some instances the right of publicity exists as an offshoot of the doctrine of appropriation; in other instances, the terms are used synonymously or interchangeably.³⁶ To appropriate a person’s name or likeness for commercial gain robs a person of their right to publicity, which is defined as a loss of control over one’s name or reputation. Right to publicity cases involve persons whose identity is of greater commercial value because of their fame or celebrity. The cause of action in right of publicity cases is similar to appropriation. For example, if a business decides to use the image or identity of a famous person, either living or deceased, said business must first obtain permission from the current owner of that person’s right of publicity. A defense against misappropriation or right to publicly claim might be that the reporting on a person or event involving that person that is considered to be newsworthy – protected by the First Amendment. Courts have been reluctant to find defendants liable in right of publicity lawsuits if the noteworthy person’s identity is appropriated for use in newspapers, magazines, books and online forums and blogs.

³⁴ *Doggett v. Travis Law Firm*, 555 S.W. 3d 127 (2018).

³⁵ *Ibid.*

³⁶ See *Henley v. Dillard Dep’t Stores*, 46 F. Supp.2d 587 (N.D. Tex. 1999).

In contrast to a common law right of publicity, the statutory right of publicity in Texas extends beyond the grave through a post-mortem state statutory right.³⁷ The post-mortem right of publicity protects a property right in a deceased person's name, voice, signature, photograph, or likeness for fifty years after that person has died.³⁸ The right is transferrable under the property code before or after death by a will, trust, testamentary document, or contract.³⁹ Known as the "Buddy Holly Bill," this statute protects a person's name, voice, signature, photograph or likeness. As with the common law right of publicity, the statute allows for a "newsworthiness" defense against misappropriation if the person is considered to be newsworthy or appears in an original work of art or music.⁴⁰

D. False Light Doctrine of Privacy

The "false light" invasion of privacy doctrine involves communicating information that portrays an individual to the public in a false and offensive manner. It unreasonably places another in a false light before the public. To be subject to liability for invasion of privacy under this doctrine the plaintiff must show that the false information is highly offensive to a reasonable person and that the defendant acted recklessly.⁴¹ False light doctrine is different from the tort of public disclosure because it requires some element of untruth; whereas the public disclosure doctrine is applicable regardless of whether the information is true or false. *Gill v. Snow* in 1982 was the first false light invasion of privacy case heard by a Texas appellate court.⁴² H.D. Snow and H.C. Gill owned adjoining ranch property along Fossil Creek in Haltom City, Texas. After Snow made modifications to his property, the creek flooded Gill's land. Snow attempted to address the flooding problem, but not to Gill's satisfaction. Gill then took out a full-page advertisement in the local newspaper that included a copy of a letter that was sent to Snow by the Texas Water Development Board and language in the advertisement that suggested Snow was complicit with the mayor, city council, and other "privileged" people in town. Snow then sued Gill and the owners of the newspaper for invasion of privacy based on the four invasion of privacy doctrines: intrusion, appropriation, public disclosure, and false light.⁴³ On appeal, addressing Snow's allegation that Gill placed Snow in a false light, the Court of Appeals (Fort Worth) considered Snow's false light claim as legitimate but reversed the trial court's finding for Snow on the grounds that in this instance no false statements were ever publicized; the information contained in the advertisement was obtained from the public record and there was no evidence of false statements proved at trial. The court of appeals considered Snow's claim to be legitimate, but at the same time recognized that there were no prior false light cases in Texas.

The Texas Supreme Court was presented with a false light claim for the first time in *Diamond Shamrock Refining v. Mendez* in 1992. A fired refinery employee brought an action against his

³⁷ Title 4, Chapter 26 of the Property Code.

³⁸ Tex. Prop. Code Ann. Section 26.003(2).

³⁹ Tex. Prop. Code Ann. Section 26.004.

⁴⁰ Tex. Prop. Code Ann. Section 26.012; see also *Whitehurst v. Showtime Networks, Inc.*

⁴¹ Restatement (Second) of Torts sec. 652A; and see generally Robin Baker Perkins, "The Truth Behind False Light – A Recommendation for Texas's Re-Adoption of False Light Invasion of Privacy," 34 *Tex. Tech L. Rev.* 1199 (2003).

⁴² *Gill v. Snow*, 644 S.W. 2d 222 (Tex. App. – Fort Worth 1982, no writ.).

⁴³ *Ibid.*, 223, citing the Restatement (Second) of Torts, sec. 652A (1977).

former employer alleging, among his numerous injuries, false light invasion of privacy caused by the circulation of information regarding his termination for theft of a five dollar box of nails from a refinery construction site.⁴⁴ Recall that the false light doctrine involves the communication of information that portrays individuals to the public in a false and offensive manner.⁴⁵ Information that distorts, exaggerates, or fictionalizes one or more facets of a person's life can be humiliating, disturbing, or harmful to one's reputation. Although Mendez was guilty of taking a box of nails off company property in his lunch box, exaggerated accounts of the nature of the theft and gossip about his termination spread like wildfire. Before long, his reputation was that of dishonest man. Even several potential employers learned about his termination from the refinery. Mendez argued that the refinery publicized a private matter which placed him in a false light before the public in a manner that would be highly offensive to a reasonable person. The trial court ruled in his favor based on both false light and intentional infliction of emotional distress and awarded damages. The court of appeals affirmed, holding that all one needed to prevail in a false light case was to show negligence rather than actual malice. However, a divided Texas Supreme Court reversed both the trial court and appeals court decisions, arguing that although false light *is* one of the four categories of tort action for invasion of privacy, the high court has never ruled that the tort exists in Texas. The aggrieved employee's case was then remanded for a new trial without the Supreme Court deciding whether or not the tort exists and whether it should be applied in the new trial.⁴⁶

Writing for the majority Chief Justice Thomas Phillips stated that while false light had been recognized by a number of courts of appeal in the state, the majority of justices in *Diamond Shamrock* were simply not inclined to do so. The court clearly affirmed its support for the right to privacy established in *Billings* (invasion) and in *Industrial Foundation* (public disclosure) but clearly stated that it had never adopted – *nor would it adopt* -- the false light doctrine.⁴⁷ Phillips wrote:



Chief Justice Thomas Phillips

"This court has never expressly held that a tort for false light invasion of privacy exists in Texas, although we recognized that it is one of the four usual categories of private actions for invasion of privacy.... Even assuming the availability of this cause of action, however, Mendez would not be entitled to recover on the record before us, as he did not submit all the essential elements of false light."⁴⁸

Hypothetically, *if* the false light privacy tort does exist in Texas, Phillips argued, it would require the plaintiff to show actual malice to recover damages. Mendez was not given an opportunity to show actual malice during his first trial.

⁴⁴ *Diamond Shamrock Refining and Marketing Company v. Roque Mendez*, 844 S. W.2d 198 (1992).

⁴⁵ Restatement (Second) of Torts sec. 652E.

⁴⁶ *Ibid.*

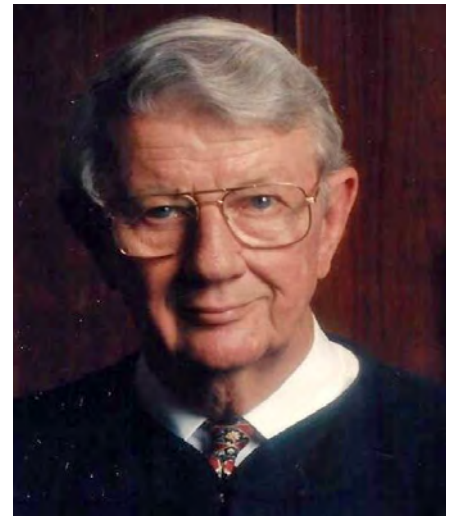
⁴⁷ *Diamond Shamrock Refining*, 844 S. W.2d 198, at 199, 200.

⁴⁸ *Ibid.*

Justice Hightower concurred but wrote separately to “express [his] continuing support for the right to privacy under the Texas Constitution.”⁴⁹ Justice Gonzalez wrote separately to reject the false light invasion of privacy outright because it duplicates the tort of defamation.⁵⁰ In an angry dissent, Justice Doggett believed that the court’s ruling was an assault not only on the false light doctrine – which he believed to be well-established law in the state and now subject to reversal by the majority – but on the right to privacy itself. He wrote that “[n]umerous Texas courts of appeals, following our decisions in *Billings* and *Industrial Foundation*, have applied or recognized the false light cause of action.”⁵¹

A question related to false light is whether recovery for damages requires the injured party to show actual malice, or merely negligence. In practical terms, the adoption of the doctrine suggests that the Court would allow for a range of lawsuits by injured persons by providing them with a new legal remedy. An amicus brief submitted jointly in this case by “Reporters Committee for Freedom of the Press,” the A.H. Belo Corporation, the National Association of Broadcasters, the Houston Chronicle Publishing Company, and others, categorically stated that the media—both print and electronic—oppose the adoption of the false light doctrine for fear of its impact on press freedom or profit or some combination of the two.⁵²

In 1994 the Texas Supreme Court sealed the fate of false light invasion in Texas by again expressly rejecting the doctrine as an independent privacy tort. In *Cain v. Hearst Corporation* the justices stressed that false light is unnecessary and dangerous because it “substantially duplicates the tort of defamation.”⁵³ In *Cain*, a prison inmate sued the Hearst Corporation, claiming that the *Houston Chronicle* invaded his privacy by placing him in a false light.⁵⁴ The newspaper article stated that he had killed as many as eight people, but Cain complained only about his depiction as a member of the “Dixie Mafia.”⁵⁵ In rejecting Cain’s claim, the 5-4 narrow majority produced an impressive exegesis of the right to privacy, detailing the four privacy torts. The majority explained that even in light of several federal court rulings that permitted causes of action for false light invasion to be brought in Texas law, the Texas Supreme Court was unwilling to adopt the “least-recognized and most controversial aspect of invasion of privacy.” Justice Raul Gonzalez wrote:



Justice Jack Hightower



Justice Raul A. Gonzalez, Jr.

⁴⁹ *Ibid.*, 203.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, 215, 216.

⁵² *Ibid.*

⁵³ *Cain v. Hearst Corporation*, 878 S.W.2d at 577 (Tex. 1994).

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

“We reject the false light invasion of privacy tort for two reasons: 1) it largely duplicates other rights of recovery, particularly defamation; and 2) it lacks many of the procedural limitation that accompany actions for defamation, thus unacceptably increasing the tension that already exists between free speech guarantees and tort law.”⁵⁶

When the news media obtains information about a crime or other event that is in the public’s interest, freedom of the press must be weighed against the privacy of the individual such as crime victims or anyone who might be harmed by the disclosure of private facts. Privacy actions are often brought against the media for invasion of privacy, but they rarely prevail. If a news organization is held liable and punished for publishing the name or other personal information of a victim, then a chill on speech would occur giving pause to other news outlets for fear of litigation. Self-censorship would occur, leaving the news media unable or unwilling to play its pivotal role in a democratic society.

In his dissenting opinion,⁵⁷ Justice Hightower disputed the majority’s argument that “false light unduly increases the tensions between tort law and free speech law.”⁵⁸ The two torts are intended to protect different interests, Hightower argued: “Defamation preserves individuals’ reputational interests, but false light invasion of privacy extends to what people know and believe about them.”⁵⁹

False light requires widespread publicity of false information. For example, a newspaper article that maliciously and falsely reports that a person suffers from a deadly contagious disease would not be defamatory but could depict that person in a false light so that her friends and co-workers would avoid her like the plague. She might lose her job or clients based on this false information. However, arguably, the fact that some overlap of false light and defamation occurs does not mean that the court should not recognize both torts.⁶⁰ The nature of the false light doctrine has the potential to address harms caused by irresponsible or reckless posts on social media platforms. On the matter of self-censorship on the part of the media because of the possibility of a successful false light claim, the requirement that the injured party show actual malice safeguards press freedoms. The United States Supreme Court addressed this problem in 1967 in *Time, Inc. v. Hill*.⁶¹

Conclusion: Privacy in Twenty-first Century Texas

This three-part series has examined a large corpus of privacy caselaw in Texas that spanned a period of more than six decades (1973-2020). The intent was to understand the origins and

⁵⁶ *Cain*, 878 S.W.2d at 580 (Tex. 1994).

⁵⁷ *Ibid.*, 584 (Hightower, J., dissenting).

⁵⁸ *Ibid.*, 586.

⁵⁹ *Ibid.* (citing *Godbehere v. Phoenix Newspapers, Inc.*, 783 P.2d 781, 787 (Ariz. 1989)).

⁶⁰ See Gary T. Schwartz, “Explaining and Justifying a Limited Tort of False Light Invasion of Privacy,” 41 *Case W. Res.* 885 (1991); and Robin Baker Perkins, “The Truth Behind False Light – A Recommendation for Texas’s Re-Adoption of False Light Invasion of Privacy,” 34 *Tex. Tech L. Rev.* 1199, 1210 (2003).

⁶¹ 385 U.S. 374, 387-90 (1967).



Samuel D. Warren



Louis D. Brandeis



William Lloyd Prosser

development of the right to privacy from at a time when the state's courts had not yet recognized the common law tort doctrines that allow recovery for intrusion into the private affairs of individuals and culminating with the adoption of a robust right to privacy in groundbreaking cases. The foundational discussion of the common law origins of the major doctrines in the first section of the article illustrated that many states adopted the right to privacy as early as 1900, over seventy years before Texas recognized privacy as an independent right. Texas did not create the right to privacy from whole cloth -- the judicial decisions in other states, as well as the writings of Warren and Brandeis and William Prosser, influenced the development of privacy law in Texas. In early cases, judicial opinions in Texas acknowledged the importance of privacy doctrines but were highly resistant to the idea of a right to privacy or any form of innovation in what was a traditionalist legal culture. It was the consensus of judges at the time that because common law in the state is a fixed body of law that can only be changed by the legislature, no recovery for invasion of privacy is possible.⁶² However, in 1973 in *Billings v. Atkinson*, the Texas Supreme Court recognized a right to privacy distinctive in itself and not merely incidental to some other right or doctrine. The Court recognized in *Billings* and subsequent privacy rulings that common law doctrines must change to meet the needs of each new generation affected by novel types of injuries and wrongs.

As was discussed in Parts II and III, privacy caselaw in Texas today recognizes a robust fundamental right based on three common law torts: intrusion or invasion into a person's private affairs, seclusion, or solitude; public disclosure of private information; and appropriation of name or likeness for value or commercial gain. A fourth doctrine, disclosure of false communication about a person, or what came to be known as the "false light" doctrine, is no longer recognized as a viable privacy cause. Together, the three tort doctrines in aggregate form an independent right to privacy – a right to be free from intrusion into our private affairs and to control our own identity and reputation. Privacy also receives protection by provisions of the Texas Bill of Rights that pertain to arbitrary deprivation of life and liberty, freedom of speech and press, the privilege against self-incrimination, freedom of conscience and religion, and the right to be free from intrusions into the sanctity of the home and person against intrusion. Distilling these torts and constitutional provisions into one inclusive definition of the right to privacy is

⁶² *Milner v. Red River Publishing*, 249 S.W.2d 227,229 (Tex. Civ. App. 1952).

challenging, but a concise definition can be understood as follows: privacy protects personhood – it allows for a cause of action for intentional or willful invasion of one’s person and home; it protects against intrusion into solitude, seclusion, and the most private and intimate matters. The broad concept of intrusion extends to entering a home without permission, surveillance and wiretapping, video recording of sexual acts and sharing the recording without consent to third parties, to conversations in private as well as public places when there is a reasonable expectation to keep conversations private. Further, privacy allows a person to recover damages resulting from the unwanted public disclosure of private information and from the misappropriation of a person’s name, likeness, or reputation for commercial gain or the value associated with self-identity. To recover for breach of privacy, the tortious action must always be intentional – the courts have resisted applying negligence doctrine to privacy law. Of course, while the right may be robust the success rate of plaintiffs in privacy actions is dependent on the facts of each case and the legal philosophy and politics of the judges hearing the cause of action.

The bedrock upon which the right to privacy rests are four precedent rulings: *Billings, Texas State Employees Union (TSEU)*, *Kimbrough*, and *Industrial Foundation*. *Billings*⁶³ is without doubt the most important privacy decision in the state, not merely by virtue of being the first ruling by a Texas court to elevate privacy to a legal right, but also because it offers the most capacious definition of privacy to date, recognizing a right to be free from the illegitimate appropriation or exploitation of one’s personality, the unwarranted publicizing of one’s private information and affairs, and the intrusion into one’s private life in such a manner as to cause outrage or mental suffering, and shame or humiliation.

Billings interpreted the intrusion doctrine to include (to borrow a phrase from *Griswold v. Connecticut*) penumbral privacy interests.⁶⁴ *Billings* was decided during a brief progressive period in the state’s history and no Texas appellate court would again define privacy as broadly. As the Texas courts grew more conservative in the 1980s and 1990s, many judges adopted a narrow interpretation of *Billings*’s definition of privacy out of concern for an expansion of liability in tort claims and a concomitant litigation explosion. For many jurists, *Billings* was anathema to their legal philosophy and perceived as liberal judicial activism.

Three years after the landmark *Billings* decision, *Industrial Foundation* recognized the right to disclosural privacy for the first time,⁶⁵ generating a large body of disclosural privacy caselaw. Using this doctrine, the courts have extended protection to personal and business records, medical records, and tax records from governmental intrusion unless that action is narrowly tailored. However, the courts have been less willing to protect disclosures regarding matters such as sexual orientation and the results of drug testing.

After *Billings* and *Industrial Foundation*, invasion of privacy doctrine stagnated until the late 1980s with no major decisions altering the nature and scope of invasion doctrine. The application of *Billings* in subsequent rulings allowed for existing privacy doctrines to become more securely

⁶³ *Billings v. Atkinson*, 489 S.W. 2d 858, 861 (Tex. 1973).

⁶⁴ *Billings* is cited in 198 Texas court cases since 1973. Westlaw search (under “citing references”), February 2022.

⁶⁵ *Industrial Foundation* is cited in 170 Texas court cases since 1976. Westlaw search (under “citing references”), February 2022.

rooted, but there is little evidence that courts attempted to expand their scope and application. Then, in 1987, in *Texas State Employees Union (TSEU)*⁶⁶ the Texas Supreme Court ruled that a right to privacy contained in the Texas constitution offered broader protections than the right to privacy under the U.S. Constitution and federal caselaw. The Court argued that the state constitutional right to privacy is an aggregate of provisions of the Texas Bill of Rights, which includes the prohibition of arbitrary deprivation of life and liberty,⁶⁷ the freedom to speak, write or publish,⁶⁸ the privilege against self-incrimination,⁶⁹ an individual's right to freedom of conscience and religion,⁷⁰ and, most fundamentally, the right to be free from intrusions into the sanctity of the home and person against intrusion.⁷¹ Protection against invasion of privacy now came to rest upon two pillars: common law and constitutional. *Billings* adopted the right to privacy as a distinct tort that constitutes a legal injury and *TSEU* recognized an implied state constitutional right. In many subsequent privacy cases the courts seem to rely on either or both.⁷²

The appropriation doctrine was adopted for the first time by a Texas court in *Kimbrough* in 1975.⁷³ The court of appeals held that unauthorized use of name or likeness for commercial gain is justiciable in Texas and the definition of privacy in *Billings* was broad enough to support a cause of action for appropriation of name or likeness under Texas common law.⁷⁴

Notwithstanding the *Billings* and *TSEU* invasion of privacy rulings, Texas courts have been reluctant to expand privacy beyond the "right to be let alone" and into the realm of privacy as autonomy as articulated in *Griswold v. Connecticut* and other federal cases regarding sexuality, reproduction, and abortion. In most instances state judges are content to rely on federal precedent when those types of issues come before them.⁷⁵ However, there are cases such as *City of Sherman* and *Bell v. Low Income Women*⁷⁶ that recognize that the Texas Constitution protects personal privacy from unreasonable governmental intrusions and interference with personal autonomy. These cases acknowledge the autonomy dimension of privacy but stop short of granting relief to plaintiffs who allege privacy violations. Lower court rulings and dissenting opinions arising from the *Morales* sodomy law litigation support privacy as autonomy, as well, but Texans would need to wait for the U.S. Supreme Court's ruling in *Lawrence v. Texas* to witness the state's sodomy law nullified and constitutional protection extended to sexual privacy. As for a right to privacy that encompasses a woman's right to terminate her pregnancy, even with the broad definition of privacy set out in *Billings* and *TSEU*, state courts have declined to rule on whether the Texas Constitution

⁶⁶ 746 S.W.2d 203 (1987).

⁶⁷ Texas Constitution, article 1, section 19.

⁶⁸ Texas Constitution, article 1, section 8.

⁶⁹ Texas Constitution, article 1, section 10.

⁷⁰ Texas Constitution, article 6.

⁷¹ Texas Constitution, article 1, sections 9 and 25.

⁷² *TSEU* is cited in 67 cases since 1987. Westlaw search (under "citing references") February 2022.

⁷³ 521 S.W. 2d 719 (Tex. Civ. App. – Eastland 1975, writ ref'd n.r.e.).

⁷⁴ *Kimbrough* is cited in 30 Texas court cases since 1975. Westlaw search (under "citing references"), February 2022.

⁷⁵ The application of federal privacy precedent in state claims goes beyond the scope of this article although such a study would be beneficial.

⁷⁶ 95 S.W.3d 253 (Tex. 2002). *Bell* has been cited 45 times in Texas court cases since 2002. Westlaw search (under "citing references"), February 2022.

creates a privacy right coextensive with that recognized under the United States Constitution. Ironically, however, if the U.S. Supreme Court continues its pattern of letting stand the state's highly restrictive abortion laws, including Senate Bill 8⁷⁷ which took effect in 2021, challengers might be forced to look to state privacy law rather than federal protections.

As the composition of the Texas courts grew more conservative in the 1980s and 1990s privacy jurisprudence evolved into a more cautious and restrained variant. In the instance of one privacy doctrine, false light, the state Supreme Court reversed itself and expressly abandoned the false light privacy doctrine. In two cases, *Diamond Shamrock* in 1992 and *Cain* in 1994, false light claims that had been recognized as actionable for over a decade in the state by appellate courts, were summarily rejected by the Texas Supreme Court because of the majority's position that false light invasion duplicated defamation doctrine and increased the tension that already exists between free speech guarantees and tort law. However, interest in the false light doctrine persists across the spectrum of litigants, scholars, and many practitioners. The two rulings continue to be cited by appellate courts for numerous reasons including the need to categorically reject an asserted false light claim in litigation or the need to differentiate defamation from false-light invasion of privacy. For a doctrine that was discredited and rejected by the Texas Supreme Court, *Diamond Shamrock* is cited in 132 court cases since 1992 and *Cain*—the controlling precedent—210 times since 1994.⁷⁸ This may be the case because false light protects two privacy interests neglected by the tort of defamation: control over self-image and self-determination.⁷⁹ A person has a right to shape how one sees oneself and to exert control over the image of self that is shared with the public: a private and public persona, if you will. Defamation does not extend protection to these two dimensions of personhood; it only protects against reputational harm -- a lowering of esteem in the eyes of the community. An action that does not necessarily harm reputation may harm self-identity and sense of self-worth. This is why many scholars believe that revisiting the false light doctrine may be warranted in the age of social media because of the concept's capacity to protect against highly offensive and harmful speech that falls short of defamation.⁸⁰ Like the "yellow journalism" of Warren and Brandeis's era, each day false and highly offensive information is posted or disseminated online without viable grounds for recovery unless it can be proved that the action was undertaken with malice and that reputational harm occurred.⁸¹ In addition, as more Texans are harmed by vicious postings or by the sharing of intimate or sexual photos or videos online there may be a need to reconsider *negligent* invasion of privacy. Texas courts have been reluctant to recognize negligent invasion of privacy for fear of expanding the number of privacy suits resulting from inadvertent or careless acts. Many scholars and practitioners might

⁷⁷ <https://capitol.texas.gov/tlodocs/87R/billtext/html/SB00008F.HTM>

⁷⁸ Westlaw search (citing references) February 2022.

⁷⁹ See generally Nathan E. Ray, "Let There Be False Light: Resisting the Growing Trend Against an Important Tort," 84 *Minn. L. Rev.* 713 (2000).

⁸⁰ See generally Robin Baker Perkins, "The Truth Behind False Light – A Recommendation for Texas's Re-Adoption of False Light Invasion of Privacy," 34 *Tex. Tech L. Rev.* 1199 (2003).

⁸¹ Related to this point, Texas does have a "revenge porn" statute, Senate Bill 1135 (2015) relating to civil and criminal liability for the unlawful disclosure or promotion of certain intimate visual material; creating an offense. This made posting someone's intimate photos to the internet without their permission a crime, punishable by up to a year in jail and a \$4,000 fine. In 2018, the 12th Court of Appeals in Tyler ruled that the law violated the First Amendment, but in 2021 the Court of Criminal Appeals held the law is not constitutionally overbroad because it is narrowly tailored to promote the government interest in protecting sexual privacy. See *Ex Parte Jordan Bartlett Jones*, NO. PD-0552-18 (2021).

argue that the refusal to recognize negligent invasion of privacy is a settled matter, but this may not necessarily be accurate. While the authoritative Texas precedent rejecting negligence as a cause of action for privacy torts remains, with *Billings* and its firm declaration that negligence does not apply to privacy, the issue of negligent invasion of disclosural privacy has surfaced repeatedly over the years.⁸² In a 2001 public disclosure case, *Doe v. Mobile Video Tapes*,⁸³ the question of whether a person can recover for negligent invasion of privacy for public disclosure resurfaced. The trial court argued that if libel actions can be based on negligent conduct by the tortfeasor so too should invasion of privacy tort actions.⁸⁴ However, the appeals court would not deviate from a previous decade of precedent rejecting negligent invasion of privacy. Appellate courts continue to maintain that tort doctrines require a workable standard of liability and culpability, otherwise claims would be brought for accidental or inadvertent actions.

The body of judicial decisions in the state dealing with privacy claims is substantial, going far beyond the scope of a single article. I have attempted to provide the reader with a glimpse at the doctrines that serve as the foundation for privacy rights *and* the state appellate court rulings that have had the most precedential impact. These milestone rulings were the first to adopt these doctrines and they continue to offer the most substantive discussion and explication of the right to privacy. As for future inquiry, it would be useful to focus on the application of federal privacy precedent in state claims, and on cases where privacy questions are addressed by Texas statutory privacy protections—which constitutes a robust and evolving body of law in itself—or by multiple remedies involving common law torts, federal caselaw and statutory protections.

⁸² See *Boyles v. Kerr*, 855 S.W. 2d 593 (Tex. 1993).

⁸³ *Doe v. Mobile Video Tapes, Inc.*: 43 S.W.3d 40 (2001).

⁸⁴ Such as *Boyles v. Kerr*, 806 S.W.2d 255 (1991), overturned by the Texas Supreme Court in 2001; and *C.T.W. v. B.C.G.*, 809 S.W.2d 788 (1991).



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A “Lady Lawyer’s” Impressions of 1874 Texas

By Hon. John G. Browning



Arabella Mansfield



Hortense Sparks Ward

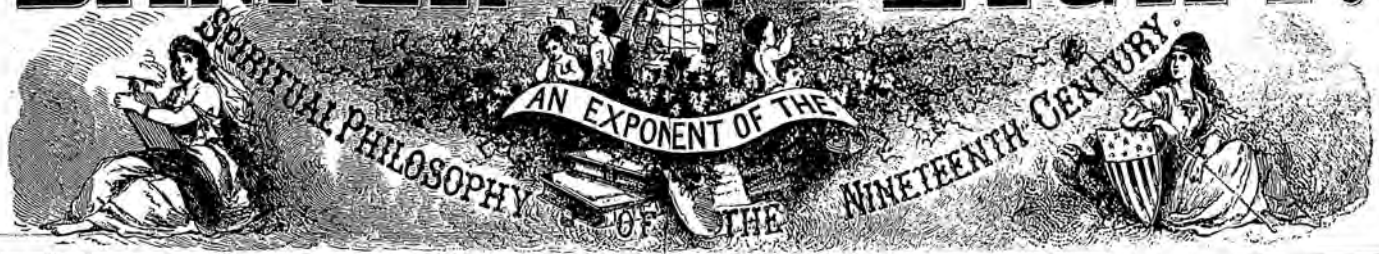
In our Journal's two-part salute last year to women in Texas legal history, we shared the stories of a number of trailblazing female lawyers. Of course, the first female lawyer in the United States was Arabella Mansfield of Iowa in 1864; Texas would not witness a woman admitted to the bar until Hortense Sparks Ward achieved that in 1910. Up until that date, there were no indications of any woman practicing law in Texas. So, you can imagine my surprise when my research assistant recently uncovered a newspaper article about “a lady lawyer” and her encounter with the Texas court system in 1874.

The article appeared in the December 5, 1874, edition of *Banner of Light*, a national newspaper based in Boston that called itself “An Exponent of the Spiritual Philosophy of the Nineteenth Century.” It catered to believers in spiritualism (communicating with the dead, usually through a medium), and included not only coverage of current events but also written “messages” from the dearly departed secured through seances sponsored by the paper. Spiritualism had many adherents in the mid- to late-1800s, and *Banner of Light* was



Belva A. Lockwood

BANNER OF LIGHT.



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BOSTON, SATURDAY, DECEMBER 5, 1874.

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NO. 10.

Masthead of *Banner of Light* on the day of the B.A.L. piece

only one of many spiritualist publications. Among the news in one issue was a female attorney authoring the first-person account “From Washington to Texas.” The author is identified only by her initials: B.A.L. Naturally, that can only be the pioneering female lawyer Belva A. Lockwood.

Born in 1830 in upstate New York, Lockwood had been widowed at twenty-two and left with a three-year-old daughter. She obtained a college degree and embarked upon a teaching career before moving to Washington, D.C. in 1866. There, she met and married Ezekiel Lockwood, an older dentist, notary, and Civil War veteran in failing health. Needing to assume the role of breadwinner for the family, Lockwood made the then-daring decision to pursue a legal career. Overcoming adversity at every corner, Lockwood graduated from National University Law School in 1873. She would go on to wage a years-long fight to earn admission to practice before the United States Supreme Court, a struggle in which she eventually prevailed. On March 3, 1879, Lockwood became the first woman admitted to the Supreme Court bar and, a year later, the first woman to argue a case before the high court. In 1884, Lockwood blazed yet another trail when she became the first woman to mount a full-fledged campaign for the presidency of the United States.

Long before national prominence, however, Belva A. Lockwood was simply yet another solo practitioner trying to eke out a living. She handled transactional, real estate, and probate matters, preparing untold numbers of bills of sale, wills, and deeds. She also handled pension claims, guardianship matters, and claims before various federal agencies—including representing Native American clients in land and treaty claims. But Lockwood also found herself in the courtroom, handling minor criminal matters before the “police courts” of the day. Between 1873 and 1885, Lockwood was also counsel of record in 100 equity court proceedings.¹ Half of these were divorce cases in which she usually represented wives as complainants. She also handled injunction proceedings, land partitions, and lunacy commitments.

With such a varied docket, what type of legal proceeding could have brought Lockwood to the Lone Star State? In her first-person account, Lockwood provides no specifics, and instead only alludes to a “distinguished attorney” in Galveston who had “filed a suit in equity against my

¹ Jill Norgren, “Belva Lockwood Blazing the Trail for Women in Law,” 37:1 *Nat'l Archives Prologue Mag.* (Spring 2005), <https://www.archives.gov/publications/prologue/2005/spring/belva-lockwood-1>.

client.” But further clues come from a brief mention in the *Washington Evening Star* in August 1874. It reported that Lockwood had legal business in Texas:

Mrs. Lockwood, the lawyeress, leaves for Texas tomorrow, to be absent some forty days for the purpose of settling up the estate of the late John C. Watrous, of that state, who died some two months ago in Baltimore. Judge Watrous was a large landed proprietor in southwestern Texas.²

What could have led to such an engagement? After all, as a woman in an overwhelmingly male profession, Lockwood would not have been able to generate work by making contacts with businessmen in clubs, business locations, and other spots where women were rarely seen. Because of this, much of her client base was working or middle class. Her husband Ezekiel's work



Lura McNall

as a notary also helped, as he moved in and out of local courts and federal agencies and helped make connections for his wife. Lockwood's own entrepreneurial spirit offers another clue. She not only took cases in the District of Columbia, but Maryland and Virginia as well. A letter placed in Lockwood's New York hometown newspaper by her daughter Lura McNall advertised her mother's apparent success (just months after hanging out her own shingle). It proclaimed that "The lady lawyer of Washington has quite an extensive practice, and a branch business and a lady partner in Baltimore."³

However the work came to Lockwood, handling the Watrous estate had to have been a coup. John C. Watrous was Texas' first federal district court judge and first judge for the U.S. District Court for the Eastern District of Texas. Watrous' tenure was a stormy one; two years after his 1846 appointment by President Polk, the Texas legislature passed a resolution asking him to resign. Multiple impeachment proceedings were brought against him in Congress beginning in 1851 over alleged involvement with forged land certificates and unsavory dealings with land speculators. Watrous managed to hang on in spite of these proceedings, and only resigned in 1870 for health reasons. He moved to Baltimore, where he died on June 17, 1874.

Belva Lockwood's trip to Texas was a long one, encompassing nearly two thousand miles by train. She wrote of how the Texas Central Railroad and the soon-to-be-completed Texas Pacific Railroad would open up for settlement "the vast unoccupied acres of the frontier counties, breaking up the haunts of outlaws and marauders that infest them." After stopping in Houston enroute to Galveston, Lockwood endured two train fires, mosquitoes ("little fiends [that] know a stranger intuitively, and will not molest an old resident"), and the patronizing attitude of a bellman who read her "Mrs. Lockwood, Attorney and Solicitor" business card and concluded that she had the wrong name because ladies were not lawyers. But her biggest trepidation concerned how she would be

² "Local News," *Wash. Evening Star*, Aug. 17, 1874, 4.

³ Lura McNall, "Our Washington Letter," *Lockport (N.Y.) Daily J.*, Sept. 3, 1873. The identity of the "lady partner in Baltimore" remains a mystery. She likely was either fictitious or not a lawyer. In 1873, Lockwood was one of only a few women lawyers in the country; Maryland did not have a woman admitted to the bar until Etta Haynie Maddox in 1902.

received in Texas courts as a woman. After all, in 1874, the very notion of a woman practicing law was viewed by most as preposterous if not scandalous. "Science" dictated that female brains were unfit for the strain of mental exercise. The hostility toward women with professional aspirations was typified by the case of Lavinia Goodell, who had passed the bar and became Wisconsin's first



Lavinia Goodell

female attorney in 1874. When she sought admission to practice before the Wisconsin Supreme Court in order to handle an appeal in 1875, however, the court rejected her application. Chief Justice Edward G. Ryan wrote that "Discussions are habitually necessary in courts of justice, which are unfit for female ears. The habitual presence of women at these would tend to relax the public sense of decency and propriety."⁴



Justice Edward G. Ryan

Contemplating her reception in Texas courtrooms, Lockwood was uncertain, acknowledging that in a "well-traveled road" one could "set out boldly," while "in an untried path you proceed cautiously, doubtfully." As she asked herself,

Would I be received in the Texas Courts, and allowed to transact my business? was the theme uppermost in my mind. No woman had ever yet appeared there in that role; . . . and indeed, no such thing as a women clerk or a woman physician is known to the whole State of Texas; and yet a woman is not a myth there, but veritable, tangible flesh and blood, and many of them with sterling good sense.

Fortunately for Lockwood, her concerns were unfounded. Accompanied by her landlord, she was introduced to court clerks and other officials in Galveston. Met by "so kind and cordial a welcome, and such assurances of any needed assistance in my business," Lockwood's fears were "at once dispelled," and she "set to work immediately to arrange and straighten a tangled web of business for my client that had been complicating itself for a half dozen years." Texan hospitality impressed the Washington, D.C. lawyer, and she found herself "soon at home, and on the best of terms with everybody." Lockwood reasoned that "men, after all, are not so much opposed to women in the learned profession as would at first glance appear . . . It is ability, courage, work, that the world wants: it does not, after all, care so much for sex as it does for capacity."

Lockwood also described how the local press reacted to her debut in the Texas courts. She noted that the *Galveston News* stated (after a half column of "facetious remarks" about the novelty of a lady lawyer) that Lockwood was "we believe, the first lady lawyer that has ever appeared in the courts of Texas. She is certainly the first we have seen since Counselor Portia appeared for the defence (sic) in the well-known case of Shylock vs. Antonio, reported in Shakspeare (sic)." The

⁴ *In re Lavinia Goodell*, 39 Wis. 232 (Wis. 1875).

News went on to observe that this novelty reflected changing times, saying “This feeling of novelty will disappear in time, for there is no good reason why a legal head should not wear a fashionable bonnet, nor any reason why a lady’s mantle should not include as much learning as an academic gown.”

Similarly, a local lawyer with whom Lockwood had a case was also courteous and civil, taking the time to invite other bar colleagues to meet “a distinguished attorney of Washington city”—but not telling them in advance of her gender. After noting the initial “amusing smiles” and surprise on the lawyers’ faces, Lockwood got down to business:

I received these brethren of the bar in the most matter-of-fact way, and after pleasant salutations immediately commenced conversation on our mutual business; because I have determined if any lawyer knows more than I do about the law, to find out as soon as practicable what he knows.

All in all, Lockwood was “well pleased with the straightforward, gentlemanly ways of these Texas lawyers; and would advise any woman attorney who may be young and handsome, and not settled in business, to hang out her shingle here.”

Lockwood was similarly enamored with substantive Texas law, and found it to be refreshingly progressive, especially in how women were treated under it:

I am delighted with the judicial code of this State differing as it does from that of the District of Columbia, and most of the States. They have abrogated entirely the old Common Law, and have adopted in its stead the Roman Civil Law, the latter having been the basis of the Spanish Law. Under it, marriage is considered as a civil partnership, in which the rights of the man and the woman are equal, with the exception that the man controls the woman’s property during coverture. But he cannot alienate it.

Similarly, Lockwood found the day-to-day practice of law in Texas easy to grasp. She observed that “[a]ll legal forms, as deeds, leases, wills, powers, are extremely simple.” She also found practice “very simple. Everything not cognizable before a Justice of the Peace is brought in the District Court. There is no separate Chancery or Probate jurisdiction. There are no rules of practice but time-honored customs, which every lawyer is supposed to know by intuition, or to guess at.”

Familiar as she was with the rough and tumble world of practicing in the District of Columbia’s small-time criminal docket in “police court,” a curious Belva Lockwood also explored the “moral sewer” of Galveston’s police court, something she pronounced a “necessity of every city.” There she encountered “the usual number of unwashed, uncombed, forsaken unfortunates which Saturday night and Sunday sweep in, to be disposed of regularly every Monday morning.” Along with the usual cases of drunkenness, disorderly conduct, assault and battery, petty larceny, and carrying concealed weapons, Lockwood witnessed an unusual addition—a man charged with “being a religious enthusiast”:

It was not a usual thing for a citizen of Galveston, and Judge Mills⁵ did not find that religious enthusiasm was a crime known to the statute. [The defendant] was accused of shouting, and . . . of kissing all the men (not the women) of his acquaintance. It was considered as undoubted evidence of insanity, but as two ministerial brethren vouched for the uniform good character of the supposed criminal, he was let go free, without even a warning from the Judge.

Lockwood's impressions of Texas criminal courts were primarily positive, even observing that "we should prefer to be a Texas criminal rather than a criminal in any other state." The one exception to this, according to Lockwood, was cattle rustling, for which frontier justice was often still meted out:

[I]f the arms of the law are slackened, those of Judge Lynch are long and expeditious, and a man's history and antecedents avail him nothing. He cannot challenge his jury, nor choose his own rope, and the prayers that he says must be short and to the point.

Overall, Belva Lockwood's glimpse into the Texas legal community, and Texas lawyers' generally positive and welcoming reactions to this rare sighting of a "lady lawyer," are quite illuminating. The Galveston bar was one of, if not the, largest consolidations of lawyers in the state. As of 1870, it numbered sixty-one lawyers.⁶ In April 1868, thirty-five attorneys there met to adopt a constitution and bylaws for the Galveston Bar Association, the first permanent bar association in Texas.⁷ And when the fledgling Texas Bar Association was founded in 1882, it was founded in Galveston.

Lockwood was in the early part of her legal career when she shared her impressions of Texas law and Texas lawyers. She never shared the outcome of her legal work on the Watrous estate, but that's understandable in light of the busy and varied career that she had. After fighting for the right to join the U.S. Supreme Court bar, she became the first female lawyer to argue before it in 1880, in *Kaiser v. Stickney*.⁸ In 1906, Lockwood had her greatest triumph before the high court, successfully arguing to uphold a judgment worth \$5 million for the Cherokee Nation over land ceded per treaty in 1835.⁹ But beyond presidential bids and Supreme Court triumphs, Belva Lockwood merits remembrance for the very sort of thing that her Texas sojourn reflects: the breaking down of barriers, demonstrating that women could do the mundane work of law practice at least as well as any man.

⁵ Recorder Albert N. Mills.

⁶ Maxwell Bloomfield, "The Texas Bar in the Nineteenth Century," 32 *Vanderbilt L. Rev.* 261, 267 (1979). By 1900, the figure rose to 128 practitioners.

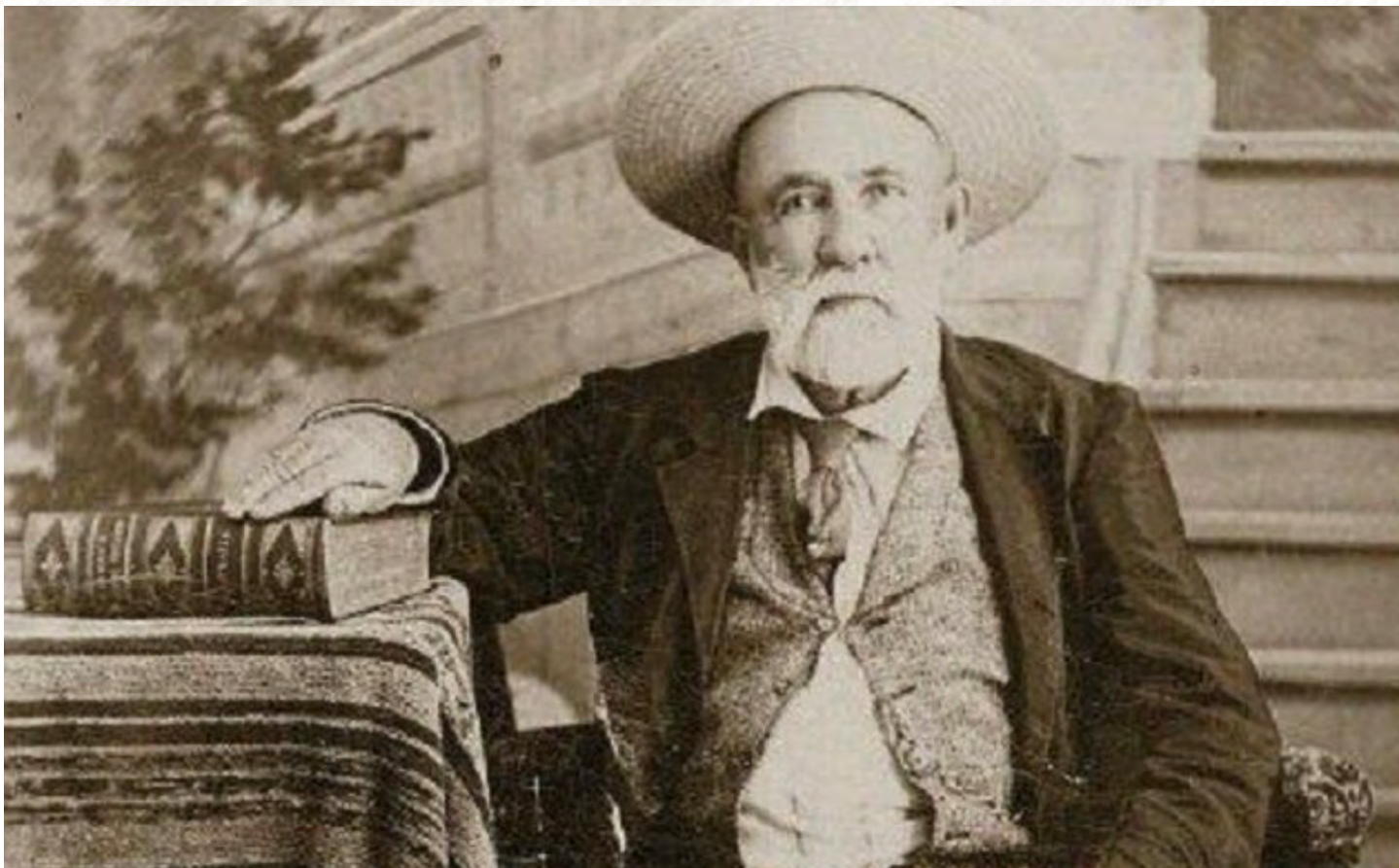
⁷ *Ibid.*, 268.

⁸ 102 U.S. 176 (1880).

⁹ *United States v. Cherokee Nation*, 202 U.S. 101 (1906).

Judge Roy Bean — “The Law West of the Pecos”

By Hon. John G. Browning



He's a larger-than-life figure in a Texas frontier history full of larger-than-life personas. He's been immortalized on the silver screen by Paul Newman in the 1972 movie *The Life and Times of Judge Roy Bean*, and his “Wild West” approach to justice was so unpredictable that Six Flags Over Texas named the “Judge Roy Scream” roller coaster after him. And to this day, more than 40,000 visitors a year from all over the world flock to the Judge Roy Bean Visitor Center in Langtry, Texas (population: 14) in Val Verde County.¹ In Langtry's Jersey Lillie saloon/courtroom, Judge Roy Bean—the self-proclaimed “Law West of the Pecos”—presided with the .41 caliber Smith & Wesson pistol he used as a gavel and with the one law book he owned (*Revised Statutes of Texas 1879*). But what do we know about Judge Roy Bean beyond the carefully curated myth?

¹ Gene Fowler, “140 Years Ago, Judge Roy Bean Became the ‘Law West of the Pecos’”, *Tex. Highways* (Aug. 2, 2022), <https://texashighways.com/travel-news/140-years-ago-judge-roy-bean-became-the-law-west-of-the-pecos/>.



Left: Paul Newman in *The Life and Times of Judge Roy Bean*. Right: Judge Roy Bean Visitor Center.

For starters, historians can't even agree on his date of birth. *The Handbook of Texas Online* and several other sources list it as 1825,² but census records in both his birthplace of Kentucky and in Texas put his birth year as either 1834 or 1836. An October 12, 1835 will of Bean's father, recorded in the Shelby County (Kentucky) courthouse identifies "Phantly Roy Bean" (Bean's little-used real name) as one of his five surviving children. The 1870 Bexar County census lists Roy Bean as thirty-four years of age, while the census taken June 14, 1880, lists him as forty-six years old (which would place his birth in 1834). And just to make matters even more confusing, the Val Verde County census of 1900 lists Judge Roy Bean as sixty-three years old and having been born in Kentucky in June, 1836. It is quite likely, therefore, that even Judge Roy Bean himself was unsure of his own birth date. However, based on his being named in his father's October 12, 1835 will, it had to have been before that.



Joshua Bean

We do know that Roy Bean's colorful ways began long before he became a judge. He left home when he was around fifteen years old, and after hiring out as a teamster on a wagon train to Chihuahua, Mexico in 1851, Bean made his way to San Diego, California—home of his very successful brother, Joshua. Joshua Bean was the last alcalde of San Diego and, after the city was incorporated, its first mayor. He was also a major general in the state militia, and owned a general store and saloon in San Gabriel, where he put his younger brother to work. A lover of gambling and horse racing, young Roy quickly found himself on the wrong side of the law. After a "duel on horseback" in February 1852 in which he shot and wounded a man named John Collins, Roy and Collins were both indicted in March on charges of assault

² C. L. Sonnichsen, "Roy Bean," *Handbook of Texas*, <https://www.tshaonline.org/handbook/entries/bean-roy>.

with intent to kill and for “sending and accepting a challenge.”³ By April 17, 1852, however, the local paper was reporting that “Bean having broke jail and escaped, Collins was arraigned.”⁴

Roy somehow resolved his legal troubles, and later that year took over the operation of his brother’s saloon after Joshua was murdered in November 1852. Within a few years, though, Roy’s unruly ways resurfaced, and he was once again in trouble with the law. Following a knife fight, Roy left California and found refuge in Mesilla, New Mexico with another brother, Sam. Samuel Bean had been elected sheriff of Doña Ana County, New Mexico in 1854, and he also ran a combination store/restaurant/saloon/hotel and gambling parlor. Sam took his wayward younger brother in, and by 1861, the two were touted as “dealers in merchandise and liquors [who] had a fine billiard table.”⁵

With the outbreak of the Civil War and the arrival of Union troops in New Mexico, Roy Bean—a Confederate sympathizer—moved to San Antonio. There he acquired some wagons and teams and started a freight business. He also married Virginia Chavez, the sixteen-year-old daughter of a local rancher, on October 28, 1866.⁶ Roy and Virginia had four children: Roy, Jr., Sam, Laura, and Zulema, and adopted a fifth child, John. But domestic harmony and economic prosperity were short-lived. By 1880, both Bean’s marriage and freighting business were crumbling. Roy and Virginia divorced. In 1882, the Galveston, Harrisburg, and San Antonio Railroad was expanding westward to meet the Southern Pacific. With three thousand railway workers building a railroad through the region, where the Pecos River emptied into the Rio Grande, the old saloon operator in Roy Bean sensed opportunity. He invested in a wagonload of alcohol and headed west.



Virginia Chavez

Bean opened a tent saloon three miles west of the Pecos, and soon was doing a brisk business. But the railroad camps were rough and tumble places, and rife with crime; as the saying went, “West of the Pecos there is no law; west of El Paso, there is no God.”⁷ It was so bad that, in June 1882, railroad contractors requested that Texas Rangers be dispatched to the area to maintain order. A detachment under the command of a Captain Oglesby soon arrived. On July 5, 1882, Oglesby sent a letter from Eagle Nest (soon to be renamed Langtry) to his commanding officer, General W.H. King, describing the lawless environment:

There is the worst lot of roughs, gamblers, robbers, and pick-pockets collected here I ever saw, and without the immediate presents (sic) of the state troops this class would prove a great detriment toward the completion of the road. There is nothing for Rangers to do but hold this rough element in subjection and control them. The

³ *San Diego Herald*, Mar 27, 1852.

⁴ *San Diego Herald*, Apr. 17, 1852.

⁵ Dorothy Watson, *The Pinos Altos Story*, 5 (1978).

⁶ Jack Skiles, *Judge Roy Bean Country*, 5 (1996).

⁷ Sonnichsen, “Roy Bean.”

majority of the railroad camps are in Pecos County. This immediate section being two hundred miles from Stockton, the nearest jurisdiction Court of Justice and the consequent minor offenses go unpunished but I hope to remedy that in a few days by having a Magistrate appointed for this Precinct.⁸

The Texas Rangers, needing a resident justice of the peace to avoid a 400-mile round trip to deliver prisoners to the county seat in Fort Stockton, were not the only ones bemoaning the situation. Law-abiding citizens were complaining as well, as the following letter to the editor of the *San Antonio Daily Express* reflects:

I wish through your column to air some abuses now existing in Pecos, Crockett, and Kinney Counties along the line of the Sunset Railway now being constructed through them, which the officers of the law in these counties either can not or will not see. At any rate, if they do know anything of these abuses, as they should know as officers, they certainly have not taken any steps to punish the offenders. I refer to the keeping of open gambling houses every day and Sundays too, and the selling of intoxicating liquors on Sundays . . . I firmly believe that if these men were vigorously prosecuted to the full extent of the law for selling intoxicating liquors on Sundays and for keeping gambling open or secret, that there would soon be very little cause for another such complaint as this . . .⁹

But by the time that letter would be published, action had already been taken. On August 2, 1882, the county commissioners had met in the courthouse at Fort Stockton and passed the following resolution:

. . . It was ordered that Roy Bean be and is hereby appointed as Justice of the Peace for Precinct No. 6, Pecos County, Texas and the Clerk of this court is instructed to notify him of his appointment, and to give the necessary Bond and qualify within the time prescribed by Law.¹⁰

From the outset, Judge Roy Bean had an unconventional and decidedly pragmatic approach to justice. As one contemporary account early in his tenure described, "He holds court anywhere and carries a pocketful of blank warrants, one of which he will fill out and sign at a minute's notice."¹¹ Turning his attention to two prisoners before court began, the account continued, Judge Bean barked out an order:

"Turn these two men loose," he said, pointing out a pair . . . charged with assault and battery. "They are charged with fighting, your honor," explained the ranger sergeant, who had them in charge. "I don't care if they're charged with murder. Turn them loose. They are dead broke, and we don't get anything if we try 'em."¹²

⁸ Letter from Captain Oglesby to General King, July 5, 1882 (Tex. St. Archives, Austin TX).

⁹ *San Antonio Express*, Aug. 8, 1882.

¹⁰ Pecos County Records, Fort Stockton Courthouse (Fort Stockton, TX).

¹¹ *San Antonio Weekly Express*, Dec. 28, 1882.

¹² *Ibid.*



Left: Bean's saloon, "The Jersey Lilly." Right: Lillie Langtry.

Within five months after Bean's appointment, the railroad was completed. Workers were laid off and Vinegaroon and other railroad camps were soon abandoned. But due to an abundance of water at Eagle Nest (fifteen miles from Vinegaroon), the railroad decided to establish a station there, renaming it Langtry.¹³ Where there had been tents, wooden houses soon sprung up. Judge Roy Bean—the "Law West of the Pecos"—moved there as well. He built a fancy saloon there on railroad property just behind the depot, complete with a long porch, a bar, pool table, a poker table, a small grocery area, living quarters, and even an office for the local Texas Ranger. Across the front of the saloon were two signs: one proclaimed the establishment "The Jersey Lilly" (in honor of the then-famous English actress Lillie Langtry, born on the Channel Island of Jersey). Another sign got right to the point, declaring "Ice Cold Beer and Law West of the Pecos."¹⁴

When Judge Bean's appointed term as justice of the peace was up, he ran for and was elected to a full term on November 4, 1884.¹⁵ He received fifty-six votes to J.S. Callahan's thirty-eight votes. Bean's tenure as a Pecos County official was short-lived; by March 24, 1885, by order of the Texas Legislature, Val Verde County was created from parts of Crockett, Kinney, and Pecos counties. In May 1885, Bean was elected as justice of the peace for that portion of the new county, continuing his claim to being "the Law West of the Pecos."¹⁶ Except for brief interruptions in service in 1886 and 1896 (when he was voted out briefly), Judge Roy Bean served continuously until his death on March 15, 1903—just months into the last term he'd been elected to on November 4, 1902.¹⁷

Judge Roy Bean's tenure was the stuff of legend. In one notorious incident, he tried an Irish railway worker charged with killing a Chinese laborer. Taking note of the crowd of the Irishman's

¹³ Judge Bean took credit for naming the town after his beloved English actress, Lillie Langtry. However, it was actually named by the railroad, presumably in honor of George Langtry, an engineer who helped build the railroad.

¹⁴ Jack Skiles, *Judge Roy Bean Country*, 14.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*, 38.

friends who had assembled in his courtroom/saloon, the judge thumbed through his one law book and declared “It don’t say nothing in here about it being against the law to kill a Chinaman. Case dismissed.”¹⁸ In another unorthodox ruling, after a man carrying a pistol and forty dollars fell from a bridge and died, Judge Bean fined the corpse forty dollars for carrying a concealed weapon—perhaps figuring he was as entitled to the money as anyone else. He would—for a fee—grant divorces to couples he had married, claiming that he only “aimed to rectify his errors.”¹⁹

In one of his greatest claims to fame, Judge Bean defied the Texas Rangers and helped stage the heavyweight championship boxing match between Robert Fitzsimmons and Peter Maher in 1896. In early 1895, prizefighting was outlawed in most states, but remained legal in Texas. A Dallas promoter, Dan Stuart, had arranged a bout between world heavyweight champion James J. “Gentleman Jim” Corbett and Australian contender Bob Fitzsimmons. But then, Texas Governor Charles Culberson yielded to the popular national sentiment against boxing; he called a special session of the legislature and it passed 1895’s law banning prizefights in the state.²⁰ Determined to stage the fight somewhere, promoter Stuart arranged for the championship bout to take place in Hot Springs, Arkansas on October 31, 1895. Unfortunately, Stuart was foiled again when Arkansas’ governor dispatched the state militia to Hot Springs to prevent the fight from happening. A frustrated Jim Corbett retired from the ring.



James J. “Gentleman Jim” Corbett and Bob Fitzsimmons

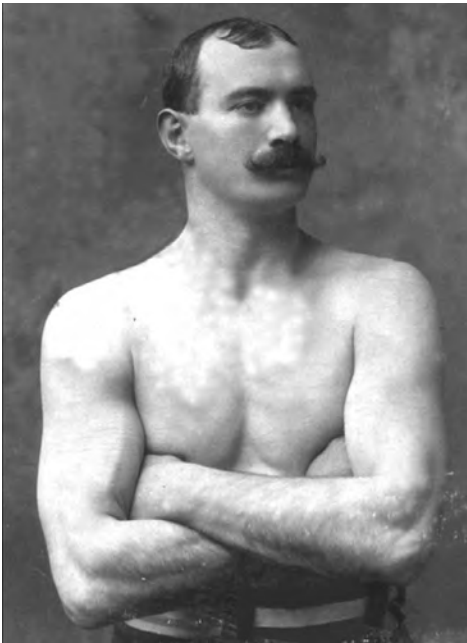
Undaunted, Stuart announced plans in January 1896 for the heavyweight title fight to happen “in the El Paso area” between the two leading contenders, Fitzsimmons and Peter Maher, the Irish champion.²¹ With speculation mounting that the fight would occur across the river from El Paso in Juarez, Mexico, the governor of Chihuahua quickly announced that no bout would be allowed to proceed in his state and he ordered Mexican federal police to keep the boxers out of the country. In the meantime, twenty-six Texas Rangers under the command of Captain Woodford Mabry were dispatched to El Paso to keep the fight from taking place on Texas soil. Determined to stage the

¹⁸ C. L. Sonnichsen, *Judge Roy Bean: Law West of the Pecos*, 3 (1943).

¹⁹ *Ibid.*

²⁰ Jack Skiles, *Judge Roy Bean Country*, 31.

²¹ *Ibid.*, 32.



Peter Maher

fight and avoid forfeiting the \$10,000 purse guaranteed to the fighters, Stuart announced on January 14, 1896, that the title fight would be held on February 14—at a location yet to be determined.

Maher suffered an injury during training, so the fight had to be delayed. On February 20, fight fans and ticket holders were told that a special train would leave El Paso that night for the fight's destination: Langtry, Texas.²² Texas Rangers determined to keep the fight from happening were aboard that train, along with the fighters, news correspondents, and fight fans. On the afternoon of February 22, the train arrived in Langtry. A crowd quickly headed toward the Rio Grande, where Stuart (and perhaps Judge Bean?) had arranged for a footbridge at the picturesque Eagle Nest Crossing. A work crew hastily erected a boxing ring on a sandbar in the river, just opposite the mouth of Eagle Nest Canyon.

With no clue that a championship prizefight was going to take place in that remote section of the state of Coahuila, there were no Mexican officials or law enforcement in attendance. With strict orders to stay on Texas soil, the Texas Rangers watched helplessly from the Texas side of the Rio Grande. At least they didn't have a long wait: Fitzsimmons knocked out Maher in the first round, earning the world championship belt and the \$10,000 purse. Most of the crowd beat a hasty retreat to Judge Bean's saloon in Langtry, and early that evening boarded the train for El Paso. And even though the fight had not lasted long, word spread internationally about Judge Roy Bean and his Jersey Lilly saloon.

The legend of Judge Roy Bean, "the Law West of the Pecos," continued to grow, and curious tourists came to see for themselves if the stories were true—how Bean kept a pet bear (visitors were encouraged to buy beers to "feed" the bear), and how he had built an "opera house" across the street for his unrequited love, Miss Lillie Langtry, to perform in should she ever visit. (In response to the letters she received from Judge Roy Bean inviting her, Ms. Langtry eventually visited her namesake on January 4, 1904—after the judge had passed away.²³) But Judge Roy Bean was more than just the stuff of tall tales. As colorful a character as he was, the judge represents a critical part of Texas' transition from frontier lawlessness to a more modern justice system.

Perhaps the best "summing up" of Judge Roy Bean comes from Judge T.A. Falvey, federal judge over the district stretching from Del Rio to El Paso during Bean's time as "the Law West of the Pecos." Writing in the *El Paso Herald* in 1914, Judge Falvey said of Bean:

That man did a world of good. He was the man for the place. The rough community where he had settled would have tolerated no enforcement of the law as it was printed on the statute books. But they tolerated Bean, because he was both law and

²² *Ibid.*

²³ C. L. Sonnichsen, *Judge Roy Bean*, 220–23.

equity, right and justice. He filled a place that could not have been filled by any other man. He was distinctly a creation of circumstances.

He was in control of the situation and his control was the only one possible. His decisions were not always according to the law and the fact, but they were accepted and that was the big point. Roy Bean's part in the pioneer history of west Texas cannot be written in a page. He was what he claimed to be: the Law West of the Pecos.²⁴

His is not a name associated with milestone appellate opinions, momentous trials, or ground-breaking statutes. But Judge Roy Bean is, nevertheless, a part of the rich tapestry that is Texas' legal history.

²⁴ Hon. T.A. Falvey, *Roy Bean*, "The Law West of the Pecos", *El Paso Herald* (1914).

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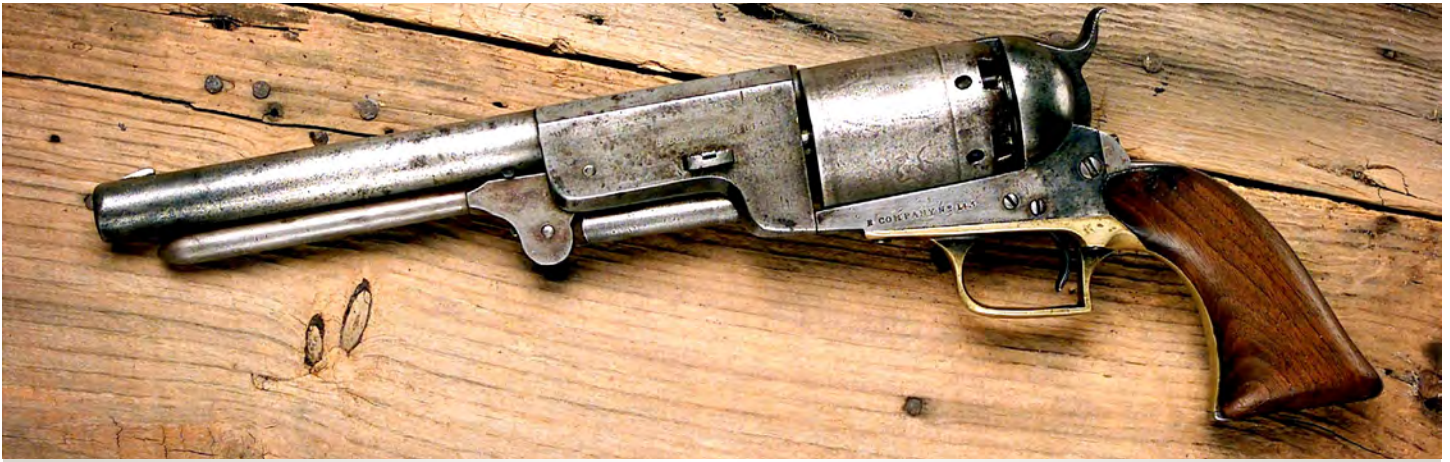
So, You Think Great Uncle Fred Was a Texas Ranger

By Christina Stopka

Head, Armstrong Texas Ranger Research Center
Assistant Director, Texas Ranger Hall of Fame and Museum



Many people from around the country are trying to track down relatives they believe may have served as Texas Rangers. The information they are working from is often sketchy—family stories passed down through the generations, obituaries, and death certificates. So, where can you go to try and verify Ranger service? You can start at your local library or historical society. If they cannot provide the information you need, you can turn to the Texas State Library, Archives Division in Austin, Texas, or the Armstrong Texas Ranger Research Center (ARC) at the Texas Ranger Hall of Fame and Museum in Waco, Texas.



Colt Walker Revolver, .44 caliber, 1847, Marking "B Company No. 143" Museum Collection/ 2088

In 1846, the U.S. Government appointed former Texas Ranger Samuel H. Walker as a Captain in the newly formed U.S. Mounted Rifle Regiment. During a trip to Washington, D.C., to receive his commission and recruit men for his unit, Walker met with Samuel Colt. They discussed improvements to the Paterson revolver and the possibility of a government contract for these redesigned weapons. The result was the creation of the most powerful handgun in the world for nearly the next century, the Colt Walker six-shot revolver. With Walker acting as an agent, the U.S. Government purchased 1,000 of this new Colt repeating revolver. A year later Samuel Walker was killed in action at Huamantla, Mexico, on October 9, 1847, shortly after receiving his Colt Walker revolvers.

The Armstrong Research Center began life as the Moody Texas Ranger Memorial Library, established almost 50 years ago, as a division within the Texas Ranger Hall of Fame and Museum. The Texas Ranger Museum began in 1963 as the idea of a group of local Waco businessmen, politicians, and historians—not only to honor the memory of the Texas Rangers, but also to lure travelers off the newly constructed I-35 and into the city. They presented their idea to Col. Homer Garrison, Jr., head of the Texas Department of Public Safety, and after gaining his approval, not only was a museum built but the headquarters for Texas Rangers Company "F" was moved from Austin to the grounds of the Museum. The Homer Garrison Museum and Texas Rangers Company "F" headquarters were dedicated in 1968. In 1971, the Texas State legislature formed the Texas Ranger Commemorative Commission to plan activities around the 150th Anniversary of the Texas Rangers in 1973. They came up with the idea of a Texas Ranger Hall of Fame. After many months of planning and fundraising the Hall of Fame was dedicated in 1976 and designated the official Hall of Fame for the Texas Rangers. Over the years the museum added the Brownfield and Morris galleries, Taub Hall, the Knox Banquet Hall and the Michener wing. In 2010 the Texas Ranger Education Center and new Texas Rangers Company "F" headquarters buildings were dedicated. The Armstrong Texas Ranger Research Center was dedicated in 2012.

A library was included in the planning for the Hall of Fame Building, opening in 1976. With a generous grant from the Moody Foundation of Galveston, the core book collection of the library was purchased. For the next twenty years the library slowly grew its collections, adding books, magazines, photographs, and archival materials. The staff helped to answer questions from visitors and the occasional researcher. Following a reorganization of the Museum's administration, the library was moved out of the back room of the Hall of Fame and into the little used Michener wing. With the hiring of a librarian/archivist trained in the handling of special collections, the

library was transformed into more than just a library but a research center. Soon the collections outgrew their new home, and the staff became creative in transforming the odd closet or two into additional storage space, but it was apparent that a new facility was needed. Following several years of planning and fundraising, the Anne and Tobin Armstrong Texas Ranger Research Center was dedicated in June of 2012 and opened to the public in September of that year.

The mission of the Armstrong Texas Ranger Research Center is to serve the public and advance knowledge about the Texas Rangers through acquiring, preserving, interpreting, and exhibiting primary and secondary materials in the fields of Texas, and the American Southwest, outlaws and law enforcement of the greater Southwest, Southern Plains Indian history and ethnography, and firearms history and technology. The ARC houses approximately 7000 volumes as well as several hundred photographs, original and copy documents, and subject vertical files.



Texas Ranger Badge, c. 1880s
Gift of Dan Ragsdale/ 2584

Made from a Mexican 8-Peso coin, this circle-star badge was made in the late 1880s. Considered the earliest authentic style of Ranger badge, it was known to be worn by members of Ira Aten's Texas Ranger Company D.

The Texas Rangers were organized into two groups following Civil War Reconstruction. The Frontier Battalion (1874-1901) operated state-wide, and the Special Forces (1874-1881) were stationed between the Rio Grande and Nueces Rivers. Under the command of the Texas Adjutant General, Rangers were charged with protecting Texas from Indian and bandit raids. Beginning in the 1880s, each Ranger carried a Warrant of Authority and Descriptive List. These documents provided proof of the Ranger's authority and a physical description.

Ranger badges first appear during the Frontier Battalion Era, when their focus shifted from frontier defense to keeping order in the new settlements. The State of Texas did not supply badges. The few Rangers who wore them before 1900 either commissioned a metalworker to make them or placed an order with a police supply company. The earliest Texas Ranger badges were simple circle-star, shield or star designs that could be made from five- and eight-peso Mexican silver coins.

By 1901, the Indian Wars had drawn to a close. The Texas legislature reorganized the Rangers into a new "State Ranger" force with full police powers, allowing them to adapt to emerging challenges, such as organized crime, gambling and bootlegging. Although not yet issued by the State, many Rangers wore badges to identify themselves. Rangers selected their badges based on personal taste and availability, resulting in a wide variety of designs.

In 1935, the Texas Rangers were reorganized as a division of the newly formed Texas Department of Public Safety. For the first time, the State issued badges to the Texas Rangers. Since the formation of DPS, there have been three official styles of Texas Ranger badges. The first style, introduced shortly following the formation of DPS, includes a shield overlaid with a circle-star. In 1957, it was replaced by a blue enameled circle-star design, based on the Lorenzo de Zavala flag of 1836.

In 1962, Colonel Homer Garrison, Jr. approved the design of the current badge, crafted from Mexican five peso silver coins for Rangers and Lieutenants and fifty peso gold coins for higher ranks. Inspired by early Ranger badges, the current badge is decorated with wreaths of olive and live oaks from the Great Seal of Texas. Personalized styles have also been approved and incorporate the name of the Ranger.

SAM. HOUSTON,
PRESIDENT, IN THE NAME AND BY THE AUTHORITY OF
THE REPUBLIC OF TEXAS.

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

Know ye, That reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of Joel Robison I do appoint him first Lieutenant of Rangers in the Army of the Republic of Texas, to bear date from the twentieth day of December of the present year.

He is therefore carefully and diligently to discharge the duties of first Lieutenant of Rangers, by doing and performing all manner of things thereunto belonging. And I do strictly charge and require all Officers, Soldiers, and others, under his command, to be obedient to his orders, as first Lieutenant of Rangers.

And he is to observe and follow such orders and directions from time to time, as he shall receive from me, or the future President of the Republic of Texas, or his superior officer set over him, according to the rules and discipline of the Army. This Commission to continue in force during the pleasure of the President of the Republic of Texas, for the time being.

Given under my hand at Columbia this twenty second day of December in the year of our Lord one thousand eight hundred and thirty-three and in the first year of the Independence of the
REPUBLIC OF TEXAS.

By the President,

William S. Fisher
Acty Secretary of War

Sam Houston

Joel Robison's Texas Ranger Commission, 1836 Gift of Margaret Hickman/ 2013.022.001

Ranger commission for Joel Robison as "First Lieutenant of Rangers" signed by Texas President Sam Houston, The Republic of Texas, December 22, 1836. The promotion recognizes Robison's role in the Texas Revolution and for participating in the capture of General Antonio Lopez de Santa Anna. Sam Houston had been in office two months when he signed the commission in the "first year of the Independence of the Republic of Texas".

Throughout the years we have also amassed a large collection of research materials on Texas outlaw and lawman history from various authors including Rick Miller, Charles Harris and Louis R. Sadler, Bob Alexander, Frederick Wilkins, David Johnson, and Robert W. Stephens. The Research Center continues to collect books, primary and secondary source documents, personal papers of retired Rangers, and photographs on the subject areas covered by our mission statement. Researchers can also access microfilm and digital scans of Ranger service records for regular and special rangers, as well as correspondence of the Texas Adjutant General from 1866 to 1884 from originals located at the Texas State Library and Archives. Official records of the Texas Department of Public Safety, such as case files and associated records, are located in Austin and not at the Armstrong Research Center.

One of our primary goals is to provide a resource for background research on the inductees, artifacts, and exhibits found within the Hall of Fame and Museum. The Research Center also contributes books and archival materials (documents and photographs) for various exhibits throughout the institution. We also research and try to document Ranger service. Every year we field hundreds of requests from people who want to confirm family stories that “great uncle Fred was a Texas Ranger.” In some cases that is as easy as looking at an index or in our vertical files, but at other times we can spend hours researching and still not find any information. Individuals doing research in the Ranger records need to be fully aware that the records are far from complete or may never have been created in the first place. Through the years many records have been lost to fire, flood, natural deterioration, and inadvertent disposal. If the possible service dates for your relative lie within the date ranges of the Mexican War, 1846 - 1848 or the American Civil War, 1861 - 1865, they were probably not Texas Rangers but members of the United States or Confederate States Army. The distinguishing characteristic is who was paying them—the Federal or Confederate governments or the state of Texas. The confusion lies in the fact that many of these groups were called Texas Rangers, i.e., Terry’s Texas Rangers which was a unit of the Confederate Army. Your best avenue to find these men may be the National Archives or the Texas Research Center located in the Texas Heritage Museum at Hill College in Hillsboro, Texas.

One of our ongoing projects is the extraction of names from official documents, books, magazines and photographs and the creation of biographical files on as many verifiable Texas Rangers as possible beginning with 1823. Eventually these files will also cover Special, Loyalty and Railroad Rangers. At present, the biographical files often only have a copy of the service record of the Ranger. In order to make these files more complete, we ask individuals with family ties to Texas Rangers to provide us with a copy of their research. Through our own research efforts and the cooperation of Ranger families we hope to create the most complete Ranger roster possible.

The Armstrong Texas Ranger Research Center offers two methods for individuals to research Rangers. The first is through an on-site visit to our facility in Waco, Texas. The staff will assist the researcher in every way to try and track down a particular name. The second, and most utilized, method is through a written request. Using the information you provide, staff will perform a thorough search of the resources available to us. Due to the time required for the search we do have a per name fee for this service, which also covers staff time, reasonable photocopying, and postage. This is a non-refundable fee. Searches with negative results often consume more time than those where we uncover information. There is no guarantee of a positive answer, but we will give it our best shot. If we do not find any information, we try to provide other possible sources of information for the researcher. Requests should include full name, any nicknames, variant spellings of surname, dates or a date range and any other pertinent information such as others he might have served with or company designation. The Research Center does not do genealogical research. We attempt to confirm individual Ranger service. Rarely do we have family information available on any of the Rangers.

As stated above, we are constantly adding to our Ranger roster. We welcome donations of materials from Texas Ranger families to help us flesh out our biographical files. Proof of service can include, but is not limited to, muster rolls, discharges, reports, warrants of authority, commissions, photographs showing other identified rangers, copies of orders and approved applications for an Indian Wars pension. We also accept gifts of original documents, photographs, and artifacts.

Jack Hays at Enchanted Rock, 1851
Oil on Canvas W.S. Jewett
Gift of Roblay McMullin /1998.024.001

The Legend of Jack Hays at Enchanted Rock: According to information from the Hays family, this painting was commissioned by the captain's wife, Susan, while they were living in San Francisco. Painted in 1851 by W.S. Jewett, the painting commemorates Hays' legendary fight with the Comanche at Enchanted Rock. Although the artist has taken many liberties with the landscape of the Texas Hill Country, the representation of Hays is accurate.

The legend of Jack Hays at Enchanted Rock is that in the fall of 1841, Hays is cut off from his company of Rangers by several Comanche. Hays seeks refuge at Enchanted Rock and singlehandedly holds off the Comanche until his men can find and rescue him.

* * *

In 1993, Bob and Vera Thornton of Dallas were vacationing in the Cascade Mountains of Oregon when they met Mrs. Roblay McMullin, the widow of Hays "Bud" McMullin, grandson of legendary 1840s Texas Ranger Captain Jack Hays. The painting has been passed down in the Hays family to Mrs. McMullin.

Mrs. McMullin invited the Thorntons to come see a portrait of Captain Hays. She believed that the painting that Hays sat for shortly after arriving in California during the Gold Rush, is an important piece of Texas history.

"...I have always felt strongly that Texas honors its heroes ..."
— Mrs. Roblay McMullin (1907-1998)

At the urging of the Thorntons, Mrs. McMullin left the painting to the People of Texas through the Texas Ranger Hall of Fame and Museum. McMullin passed in 1998 and the painting was presented to the museum during the 175th Anniversary of the founding of the Texas Rangers.

As with most non-profit educational institutions, we rely heavily on the donation or lending of artifacts for the collections, as well as monetary donations to help offset the costs of operations and necessary upkeep on the collections and exhibits. Please feel free to contact us for more information on the services we provide or if you have materials you think we might be interested in obtaining.

We invite everyone to come and visit our facility in Waco. The Texas Ranger Hall of Fame and Museum is open seven days a week from 9 a.m. to 5 p.m. The Research Center has open hours most weekdays but is closed on the weekends. Use of the rare book, photographic, and archival collections requires an appointment made in writing at least two weeks in advance of the proposed visit date. The general reference, book, and vertical files can be used without prior appointment, although to ensure staff are available, we encourage visitors to make appointments in advance. More information on the Research Center can be found on the Museum's website at www.texasranger.org.

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Hemphill Dinner Announcement

On Friday, September 8, 2023, the Society will hold its 28th Annual Hemphill Dinner live at the Four Seasons Hotel in Austin, Texas. The John Hemphill Dinner is an important event for the Texas Supreme Court Historical Society and one that members look forward to as the highlight of the year.

This year's John Hemphill Dinner will be presided over by the Honorable Ken Wise, 2022-23 President of the Texas Supreme Court Historical Society. The program will include the annual Chief Justice Jack Pope Professionalism Award presented by the Texas Center for Legal Ethics. This award recognizes a Texas appellate lawyer or judge who demonstrates the highest level of professionalism and integrity.

The keynote speaker this year is Jason Taylor, Chief of the Texas Rangers. The Texas Rangers, America's oldest state law enforcement agency, are celebrating their landmark 200th anniversary. At the event, Justice Ken Wise will join Chief Taylor in a conversation that will surely be engaging and informative.

Jason Taylor began his career with the Texas Department of Public Safety (DPS) in 1998. He was assigned to the Anahuac and New Caney offices as a State Trooper before promoting into the Criminal Investigations Division. He served as a Sergeant/ Investigator in the Special Crimes Service in Garland and with the Criminal Intelligence Service in Houston. Chief Taylor was then accepted into the Texas Ranger Division in 2008, where his first assignment was with Company "F" - Waco and later with Company "A" - Houston. In 2011, he promoted to Ranger Lieutenant, Captain in 2014, and was subsequently assigned to oversee the Public Integrity Unit (PIU) at Austin Headquarters before promoting to Ranger Major in 2016, in Houston. In 2018, he was appointed to Regional Director of DPS operations in Southeast Texas. Chief Taylor earned a Bachelor of Science degree in Criminal Justice from Sam Houston State University and is a graduate of the Northwestern University School of Police Staff and Command. He volunteers for the Houston Livestock Show and Rodeo, where he serves on the Emergency Response Team. He is a four-time recipient of the Houston 100 Club Officer of the Year Award and has received other awards and commendations, including a DPS Regional Commander's Award and a Ranger Company Commander's Award. On October 1, 2022, he was appointed to his current position as Chief of the Texas Ranger Division.



Jason Taylor

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As in year's past we expect this event to sell out soon so please act quickly. More information can be found [here](#).

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And the 2024 Larry McNeill Research Fellowship in Texas Legal History goes to . . . ?

Article and photo by David A. Furlow

Applications are now being accepted for the Texas State Historical Association's 2024 Larry McNeill Research Fellowship in Texas Legal History. See <https://www.tshaonline.org/awards/larry-mcneill-research-fellowship-in-texas-legal-history>.

Our Society worked together with TSHA to establish the Larry McNeill Research Fellowship in Texas Legal History in 2019 to honor Larry McNeill, a past president of the Society and TSHA. The \$2,500 award recognizes an applicant's commitment to fostering academic and grassroots research in Texas legal history. TSHA awards the annual fellowship to an applicant who submits the best research proposal on an aspect of Texas legal history. Judges may withhold the award at their discretion.



Larry McNeill

Competition is open to any applicant pursuing a legal history topic, including judges, lawyers, college students, and academic and grass-roots historians. The award will be made at the Texas Historical Association's Annual Meeting at Texas A&M University in College Station from February 28 through March 2, 2024. The deadline for submission is November 15, 2023. An application should be no longer than two pages, specify the purpose of the research and provide a description of the end product (article or book). An applicant should include a complete vita with the application. Judges may withhold the award at their discretion. TSHA will announce the award at the Friday Awards Luncheon during TSHA's Annual Meeting in College Station on March 1, 2024.

TSHA has set a November 15, 2023 deadline for submissions. Individuals wishing to apply should submit an application form and attach the proposal and a curriculum vita. Only electronic copies submitted through TSHA's link and received by the deadline will be considered. Anyone who has trouble submitting the form electronically should email TSHA at amawards@tshaonline.org or call TSHA Annual Meeting Coordinator Angel Baldree at 512-471-2600.

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The Society's Spring Meeting was the Genesis of New Alamo Memories

Story and photos by David A. Furlow



The Alamo's Senior Curator, Ernesto Rodriguez, III, right, led Society trustees Anthony Arguijo and Bill Chriss, Society Vice President Jasmine S. Wynton, and trustee Jennifer Freel on a tour of the new Ralston Family Collections Center at the Alamo.

On May 10, the Society realized a dream too long deferred by the Covid pandemic: a Spring Board Meeting on the grounds of the Alamo. Thanks to the special efforts and many phone calls of the Society's President, Fourteenth Court of Appeals Justice Ken Wise, the Board received an even more extraordinary honor—a special, comprehensive tour of the recently opened Ralston Family Collections Center, popularly known as the “Phil Collins Center.” The Alamo's Senior Curator Ernesto Rodriguez III and Justice Wise led that tour.

A San Antonio native who has devoted more than twenty years to researching the deep history of the Alamo, Ernesto Rodriguez III serves as the Alamo's Senior Curator and Historian. He knows his stuff, having earned a Bachelor's Degree and a Master's Degree in History at Saint Mary's University in San Antonio. Ernesto's decades of scholarly research and thorough knowledge of the Alamo's archives provided our trustees with a unique opportunity to gain new insights about the historic mission's centuries-long history. In the photo below, Ernest told the Society's trustees about the comparative advantages and disadvantages of reload rates of fire for rapidly reloading but inaccurate-at-distance Mexican muskets and slow-loading but deadly-accurate-at-distance Tennessee long rifles.



Ernesto Rodriguez, III, began the tour in the Stacey and Jason Gillman Families Grand Lobby.

The Ralston Family Collections Center honors a San Antonio family whose members donated \$11.4 million to the Alamo. It houses about 500 artifacts, most of which had been kept out of sight, in storage, because there had been no place to display them. Informative signs describe the science of collecting artifacts purchased in auctions and private sales. Bilingual signs educate visitors about *Acquisition (Adquisición)*, "the obtaining of an object or collection by institution through donation or purchase," *Authentication (Autenticación)*, "the process of ensuring that all claims about what an object is and who owned it in the past are true," etc. The two-story, \$20 million, 24,000 square foot center has been built on the Alamo grounds, behind the church, just east of the Gift Shop in the Alamo gardens. It opened on March 3, and is the first building erected there since the 1950s.



Above left: Justice Wise shared insights garnered from his Wise about Texas podcasts with Society trustees visiting the new Collections Center. Above right: The Alamo’s official map reflects the sheer size of the new Collections Center.

The most famous donor is the British musician Phil Collins, the former drummer and front-man for the rock band *Genesis*, as well as the award-winning solo singer who has sold more than 150 million albums. Phil Collins donated some fifty items he purchased for millions of dollars, including Davy Crockett’s long rifle and Generalissimo Antonio Lopez de Santa Anna’s personal sword. “Phil Collins fell in love with the story of the Alamo when he was as a young boy in 1955 watching Fess Parker in Davy Crockett on television,” Ernesto Rodriguez told us. And his interest grew even stronger when he saw John Wayne’s 1960 film *The Alamo*. The more he learned, the more he wanted to know. And then he began collecting. And that’s the genesis of the collection he gave to Texas. It’s a powerful story of how a young boy growing up in England came to identify with events that occurred on the other side of the world, but it goes a long way to show that all history is connected together over time and distance.”

In addition to Santa Ana’s 1833 battle-sword and scabbard and other Mexican Army equipment, a Cat’s Eye (Banded Agate) ring that Alamo commander William Barrett Travis owned brings home the reality of the battle. Travis gave it to Angelina Dickinson during the battle. Mrs. Dickinson, who lost her husband Almeron Dickinson in the final fighting, carried Travis’s ring when Santa Ana sent her and Travis’s slave Joe to spread word of the Mexican victory.

In addition to displaying artifacts that related to the 1835 Texian siege of the Alamo and Santa Ana’s 1836 reconquest of the old mission, artifacts told stories of life along the San Antonio River before and after the Texas Revolution. Examples included religious iconography, a rosary, a cattle-brand used by the Moya family on their rancho in Goliad County, a buckskin vest, and a U.S. Army Colt Revolver Model 1860 of the kind used in the American Civil War.

From Rock Star to Collector

De Estrella de Rock a Coleccionista

A Childhood Passion Flourishes

From an early age, the bold adventures of Davy Crockett captured the imagination of Phil Collins. Inspired by the story of the legendary frontiersman, Collins' interest grew into a lifelong passion. As he learned more about the Alamo, Collins amassed what is now considered one of the preeminent collections on the Texas Revolution. In 2014, Phil Collins generously gifted his collection to the people of Texas with the hope that the artifacts will inspire curiosity and offer new ways to learn about the history of the Alamo.

Florecimiento de una Pasión de la Infancia

Desde una edad temprana, las aventuras intrépidas de Davy Crockett capturaron la imaginación de Phil Collins. Inspirado por la historia del héroe popular y fronterizo, el interés de Collins se convirtió en una pasión de por vida. Conforme ampliaba sus conocimientos sobre El Álamo, Collins amasó una de las hoy consideradas colecciones preeminentes de la Revolución de Texas. En 2014, Phil Collins obsequió generosamente su colección al Estado de Texas con la esperanza de que los artefactos inspiraran curiosidad y ofrecieran nuevas maneras de aprender sobre la historia del Álamo.

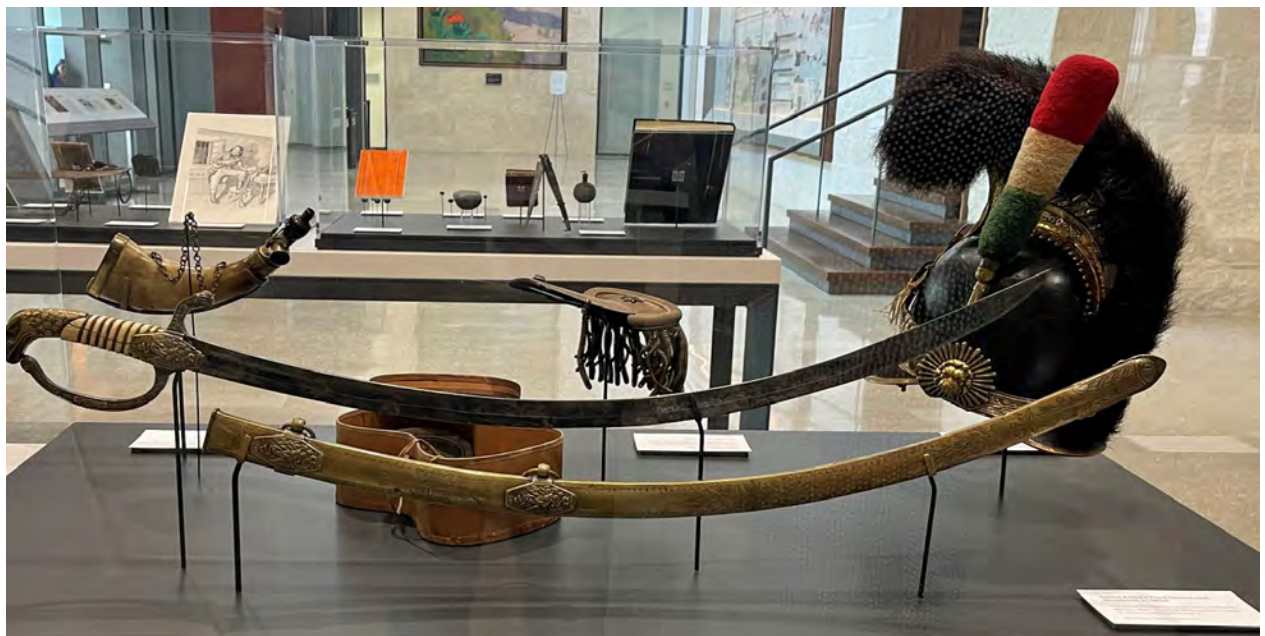


Phil Collins presents his Texana Collection to the Alamo.



Collins speaking at the Alamo on the day he donated his collection.

A signboard near the new museum's entrance tells the story of Phil Collins' collecting and his generous donation of Alamo artifacts to Texas.



Top: The Collections Center surrounds the Alamo's artifacts with paintings and signboards to place them in their proper context. Middle: Santa Ana's eagle-headed sword and scabbard, as well as a powder-horn and a Mexican helmet. Bottom left: Close-up of Santa Ana's sword. Bottom right: a Cat's Eye ring belonging to William Barrett Travis.



Top: The Collections Center's *Battle of the Alamo* diorama, above, features the most accurate depiction of the March 6, 1836 battle to date, using lights and Phil Collins' narration to chronicle each phase of the battle. Bottom: Donald Yena's 2019 painting *First Light, Gunsmoke, Bayonets and Texas History* depicts the compound as Mexican forces breached the walls.



Society Vice President Jasmine S. Wynton, left, and President Richard B. Phillips, Jr., right, examine the Battle of the Alamo diorama's Alamo Chapel.

records regarding the important roles the Alamo played in the Texas Revolution. Those records included four pages of paper that preserve Santa Ana's Battle Orders during the 1836 siege that resulted in the deaths of William Barrett Travis, Jim Bowie, and Davy Crockett. Movie posters and battle flags from Afghanistan show how the battle continues to shape American understandings of the world and the American military's place in it.

The March 3 opening of the Collections Center was the first step in a multi-year, \$400 million project to realistically depict the size and scope of the original mission complex while chronicling its transition into the most famous fortress in Texas history. The face of the Alamo Plaza will change even more when a new visitor center and museum across the street from the Chapel opens in the near future. In the meantime, the Alamo web-site offers 3-D reconstructions of the mission complex as it looked at the time of the 1836 battle.

Southwestern artist Donald Yena's 36-by-60-inch oil painting *First Light, Gunsmoke, Bayonets and Texas History* depicts the northwest corner of the compound as the sun rises on March 6, 1836. The artist, now ninety years old, offers the Mexican perspective of the battle as Santa Ana's forces fight their way into the mission through a storm of cannon fire and rifle lead. Outnumbered defenders fire down from the walls as their attackers fire up and slap scaling ladders against those walls to surmount them. The previous curator of the Alamo, historian Dr. Bruce Winders, opened their archives and collaborated with Don Yena to help him convey the battle's immensity and ferocity. It took Yena four months to paint *First Light*, but its composition reflects eight years of research and planning. It's a thought-provoking artwork that brings a new perspective to an iconic battle.

In addition to impressive collections of cannons and cannon balls, a scale model, and an accurate painting of the 1836 storming of the Alamo, trustees had an opportunity to see historic documents and



John G. Browning Wins Outstanding Law Review Article Award



Alistair Dawson and Audrey Vicknair stand with John Browning and the award during the Texas Bar Foundation's VIP reception on June 23.

Society Trustee Hon. John G. Browning has been named the winner of the Texas Bar Foundation's 2023 Outstanding Law Review Article Award. The Award, presented annually, honors the outstanding article published in any Texas law review during the preceding year, and which relates to the legal profession, the practice of law, or substantive law as applied to the practice of law; its regulation, discipline, availability; its improvement or advancement; its future or past. Browning's winning article, *Judged by the (Digital) Company You Keep: Maintaining Judicial Ethics in an Age of Likes, Shares, and Follows*, was published in Volume 12 of the *St. Mary's Journal of Legal Malpractice and Ethics*. The article examines how even what Justice Browning describes as benign conduct on social media by judges—retweeting or sharing an article, “liking” a post, following an individual or entity on Twitter, etc.—can violate canons of judicial conduct and create an appearance of impropriety or bias.

Justice Browning was presented with the award at the Texas Bar Foundation's black-tie gala on June 23, in conjunction with the State Bar of Texas Annual Meeting in Austin. In addition, the St. Mary's University School of Law received a \$1,000 donation in honor of Justice Browning for publishing the article.

Justice Browning is a partner in the Plano, Texas office of Spencer Fane, and is also Distinguished Jurist in Residence at Faulkner University's Thomas Goode Jones School of Law in Montgomery, Alabama. He also serves as Chair of the Institute for Law & Technology at The Center for American and International Law. The author of five books and more than fifty law review articles, Justice Browning is a graduate of Rutgers University and the University of Texas School of Law.



Founded in 1965 by attorneys determined to assist the public and improve the profession, the Texas Bar Foundation has become the largest charitably funded bar foundation in the country. The Texas Bar Foundation relies on the contributions of its fellows to improve the lives of Texans.

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Get Your Tickets for the Briefing Attorney Breakfast!



A past BA Breakfast gathering with Chief Justice Jack Pope (center).

A long-standing tradition, the BA Breakfast was likely started by either Texas Supreme Court Chief Justices John Hickman or Robert Calvert in the 1950s or 1960s. The breakfast has always been an occasion where current and former Justices, briefing attorneys, and staff could gather and reminisce about the little-known funny, touching, or otherwise memorable events that happened during their tenure at the Court. To this day, it continues to be a hallmark of the affinity former Court colleagues have for one another, regardless of partisan or legal persuasion.

Typically organized by a former briefing attorney, the breakfast was hosted for several decades in conjunction with the State Bar's annual meeting until the early 1990s. During the 1970s, Place 8 Justice Sam Johnson was the Briefing Attorney Liaison Justice for the Court, and ensured a former BA was always tapped to host and organize the event. Beginning in the 1990s, Court staff (beginning with Chief Justice Tom Phillips's Executive Assistant, Catherine Bartoli) began to assist in hosting and running the breakfast. This continued for many years (with Darla Sadler taking over the administrative duties after Catherine left the Court) until the early 2010s, when the Society offered to alleviate the administrative burden imposed on Court staff and assist with the logistics necessary to host the breakfast.

The next Briefing Attorney Breakfast will be held Saturday, September 9, at 9:00 a.m. in the Texas Law Center, Room 101, 1414 Colorado Street in Austin. Tickets are \$40 each and may be purchased [here](#).

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The *Journal of the Texas Supreme Court Historical Society* welcomes submissions, but the Editorial Board reserves the right to determine what will be published in every issue. The Board does not discriminate based on viewpoint, but does require that an article be scholarly and interesting to the *Journal's* readership. The *Journal* includes content concerning activities of public figures, including elected judges and justices, but that chronicling should never be construed as an endorsement of a candidate, a party to whom a candidate belongs, or an election initiative. Publication of an article or other item is neither the Society's nor the *Journal's* endorsement of the views expressed therein.

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2022-23 Membership Upgrades

The following Society members have moved to a higher dues category since June 1, 2022.

HEMPHILL FELLOW

David E. Chamberlain

GREENHILL FELLOW

Connie Pfeiffer

TRUSTEE

Kirsten Castañeda

CONTRIBUTING

Kelley Clark Morris

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2022-23 New Member List

The Society has added 33 new members since June 1, 2022. Among them are 19 Law Clerks for the Court (*) who will receive a complimentary one-year membership during their clerkship.

TRUSTEE

Jennie C. Knapp
Ryan Luna
Kirk Pittard

PATRON

Elizabeth Geary-Hill

CONTRIBUTING

C. B. Harrison
Jennifer Landrum
David Moshier
Frank Rynd
Hon. Staci Williams

REGULAR

Alexa Acquista*
Laura Bach*
Haley Bernal*
Hunter Bezner*
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Eric Hudson
Tatum Lowe*
Luke Maddox*
Erin Moore*

Alexandria Oberman*
Carter Plotkin*
Daniel Rankin*
Jordan Redmon
Laine Schmelzer*
Kelly Schlitz*
Seth Smitherman*
Mark Stahl*

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Membership Benefits & Application

Hemphill Fellow \$5,000

- Autographed Complimentary Hardback Copy of Society Publications
- Complimentary Preferred Individual Seating & Recognition in Program at Annual Hemphill Dinner
- All Benefits of Greenhill Fellow

Greenhill Fellow \$2,500

- Complimentary Admission to Annual Fellows Reception
- Complimentary Hardback Copy of All Society Publications
- Preferred Individual Seating and Recognition in Program at Annual Hemphill Dinner
- Recognition in All Issues of *Quarterly Journal of the Texas Supreme Court Historical Society*
- All Benefits of Trustee Membership

Trustee Membership \$1,000

- Historic Court-related Photograph
- All Benefits of Patron Membership

Patron Membership \$500

- Discount on Society Books and Publications
- All Benefits of Contributing Membership

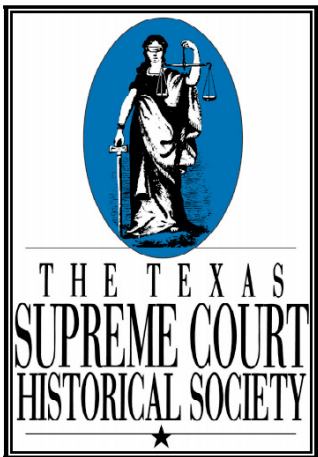
Contributing Membership \$100

- Complimentary Copy of *The Laws of Slavery in Texas* (paperback)
- Personalized Certificate of Society Membership
- All Benefits of Regular Membership

Regular Membership \$50

- Receive *Quarterly Journal of the Texas Supreme Court Historical Society*
- Complimentary Commemorative Tasseled Bookmark
- Invitation to Annual Hemphill Dinner and Recognition as Society Member
- Invitation to Society Events and Notice of Society Programs

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Membership Application

The Texas Supreme Court Historical Society conserves the work and lives of the appellate courts of Texas through research, publication, preservation and education. Your membership dues support activities such as maintaining the judicial portrait collection, the ethics symposia, education outreach programs, the Judicial Oral History Project and the Texas Legal Studies Series.

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