A History of Texas in 21 State Court Records

The Texas Supreme Court’s Texas Court Records Preservation Task Force recognized that it needed to find a compelling way to demonstrate the importance of preserving Texas court records. Task Force members embarked on a quest to find 21 historical state court records that tell a big part of the history of the state. The Task Force picked records from every era of Texas history, beginning with the Republic of Texas. The most recent records date from the 1950s. Some of the records concern famous Texans; others shed light on historical events such as the Civil War or the 1900 Galveston Hurricane, or tragic circumstances like slavery. Many of the volumes are minute books, which are like diaries of the court, but also serve as indices to case files.

The cost of preserving these 21 records was funded by the State Bar of Texas and Baker Botts, L.L.P., and the records will be on display at the State Bar Annual Meeting in June. Several Task Force members, as well as Texas Supreme Court Chief Justice Wallace B. Jefferson, Justice David Medina, and retired Chief Justice Thomas Phillips, have provided essays highlighting the rich and diverse history contained in these records. The essays are included on the following pages, along with images from the document files and other historical photos. We thank the Texas State Library and Archives Commission for its assistance in providing images of these documents.

— Bill Kroger, Chair, Texas Court Records Preservation Task Force

(Above) Old court records and case files offer a glimpse into every era of Texas history.
Essays on 21 Notable Preserved Texas Court Records

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A Glimpse at Texas’ Early Judicial System

Galveston, named after the Spanish Colonial Governor and General Bernardo de Galvez, was once known as the “Queen City of Texas” and the “Wall Street of the South.” The island was also the capital of the Republic of Texas and the center of trade for the state. Galveston’s prosperity changed forever on Sept. 8, 1900, when the Great Storm ravished the island city and took some 12,000 souls with it.

The first three minute books of the district court offer a unique and previously unexplored look into Galveston’s history during the Republic. The books were recorded from May 1839 through October 1841 when Texas’ judicial system was in its infancy. Minute books, by their nature, seldom provide the riveting details and suspense of a Carlos Cisneros’ thriller. Instead, they provide general information about the cases and the judge’s decisions.

Among the more curious entries in these minute books is the case of Derrick Coles v. Ford Clark. The facts are somewhat sparse. However, it is clear that this may be the first case submitted to arbitration, and it was ordered by Judge Ezekiel Cullen. The judge, a congressman and justice for the Supreme Court of the Republic of Texas, was the grandfather of prominent Houstonian Hugh Roy Cullen. He is best known today as the namesake of the Ezekiel Cullen Building located on the University of Houston campus.

Another interesting case order involves Judge A.J. Shelby, who rode into town in December 1839 to hold court. That generally would not be problematic, but in this instance the judge did not have the statutory authority to do so. Nevertheless, he called a “special term” because the number of pending criminal cases caused the jails to be filled beyond capacity. Twenty-three citizens challenged the judge’s authority and refused to attend jury duty. After a hearing, Judge Shelby ruled that he did indeed have the authority to hold a special term, and he dispensed justice by imposing a $50 fine on each of the 23.

The minute books also reveal that punishment could be extremely primitive and harsh, as in the case of The Republic v. Henry Howard. Howard was found guilty of larceny and sentenced to “thirty-nine lashes on his bare back.” Then there is the case involving the “Detinue of a Negro, a Horse, and a Mule.” The plaintiff claimed a superior right of possession of all three. The minutes indicate that the judge awarded the plaintiff “a Negro boy Gabriel,” but for unstated reasons declined to award him the rights to the horse or the mule. This sordid part of our history and how our judiciary dealt with antebellum laws regarding slaves and free blacks can be found in The Laws of Slavery in Texas, compiled by William S. Pugsley and Marilyn P. Duncan and edited by Randolph B. Campbell.

The last case I found to be of great interest involves a suit over title to the entirety of the western end of Galveston Island. The title dispute developed because there were apparently competing grants to the land signed by Republic Presidents Sam Houston and Mirabeau B. Lamar. The minutes display a detailed map of the island, which was drawn by the judge. It appears that the commissioners appointed by the court called upon the wisdom of King Solomon because they split the island, giving every other land tract to each of the parties.

The books describe Texas justice in its infancy during the beginning of Galveston’s great history. Some of those battles are still being fought today. By Justice David M. Medina

Notes
1. Carlos Cisneros is a Texas attorney and an author of legal thriller novels.

Some Galveston citizens refused to report for jury duty in protest of Judge A.J. Shelby’s authority. (Opposite) A detailed map of the western end of Galveston Island drawn by a judge for a land dispute case.
The San Antonio Bench and Bar Fight a Mexican Army and Lose

Even a casual glance reveals that page 43 of Bexar County Minute Book B is a little odd. The clerk’s elegant script summarizes courtroom activity for Sept. 9, 1842, the fourth day of San Antonio’s fall session. Page 43 records several grand jury indictments (cattle theft being the dominant theme) and states that a probate show-cause hearing would be held “tomorrow morning or as soon thereafter as counsel can be heard.”

The minutes stop there. The bottom half of page 43 is written in a different hand, with a different color of ink, and a March 1843 date. The first entry recites the passage of special legislation “that the records of the District Court of said County of Bexar … on the sixth to the ninth inclusive of September … are hereby legalized in the same manner and form as if the Judge of Said Court had signed the same.”

Court procedure at that time called for the minute book to be available for inspection on the last day of the session, after which the judge would sign and certify the record. What happened to the judge, and why did the court session last only four days? Therein lies one of the stranger tales in Texas legal history.

The Texas Revolution did not end at San Jacinto. San Antonio residents learned this the hard way in March 1842, when Mexican troops captured and briefly held the town. District Judge Anderson Hutchinson and his family escaped but lost their furniture and most of their clothing. During the summer, the Republic’s Congress met and debated, but ultimately did little. However, President Sam Houston exhorted judges to continue in their duties to demonstrate the new nation’s stability.

Judge Hutchinson obediently began the court’s fall term just as rumors of a new Mexican incursion reached San Antonio. Scouts were dispatched while court business went on. Unfortunately, the scouts failed to detect a force of about 1,400 Mexicans — infantry, cavalry, and artillery — until they appeared at the edge of town. Local lawyers, litigants, court personnel, and attorneys from surrounding counties rushed to reinforce the small local garrison, but the outcome was inevitable. Surprised and vastly outnumbered, the impromptu defense force surrendered after brief but spirited resistance. In his official report, Mexican General Adrian Woll marveled that “the enemies had abandoned themselves to confidence to such an extent that the Court Justices appointed by the so-called Government of Texas, had arrived to open the court sessions.”

Judge Hutchinson was not lucky this time. The judge, clerk, district attorney, and all attorneys attending the court session were marched to Mexico as prisoners of war. Most remained there for more than two years. After his release, Judge Hutchinson decided to return to Mississippi.

It is said that even the darkest cloud has a silver lining, and this episode is no exception. The attorneys who went to court but ended up at hard labor in a Mexican prison could take comfort in the fact that the Republic Congress enacted a special law exempting San Antonio’s defenders from all tax liability during the period of their imprisonment.

By James W. Paulsen
Justice in the New State Capital

Travis County District Court Minute Book C, which covers 1850 to 1853, offers a fascinating glimpse of law and life in mid-19th century Texas. With Austin having just been reconfirmed as the state capital, Travis County’s population and commerce were exploding. Yet Austin still had less than 1,000 souls, and the occasional Greek Revival mansion rising on the city’s edge was but a thin veneer of refinement over the rough and tumble of what was still a frontier town, barely a decade old and only recently relieved from the threat of Comanche attacks.

Travis County was one of eight counties in the Second Judicial District. Until 1851, the presiding judge was William E. “Fiery” Jones, a newspaper editor and former Republic of Texas congressman whose Unionist sympathies would, despite Confederate service, ultimately lead him into the Republican Party and a brief return to the bench under Gov. Edmund Davis. Jones’ successor, John Hancock, later served briefly in the Texas Legislature before his expulsion for refusing to take the Confederate oath of allegiance, then served four terms in Congress during and after Reconstruction, winning a three-way race over M.A. Dooley and William H. Gordon.

The court’s civil filings reflected the citizenry’s near obsession with land, as actions for trespass to try title, foreclosure, partition, specific performance, and to cancel conveyances crowded the docket. Most civil cases were for debt, but claims were also brought for slander, assumpsit, trover, damages, and divorce. Few if any suits were directly connected to state government, although several actions by former empresarios against Sam Houston in his capacity as president of the Republic serve to remind not only of Texas’ former sovereign status, but also of the sometimes slow pace of justice from time immemorial.

The more numerous criminal docket included prosecutions for murder, assault, battery, larceny, horse stealing, malicious mischief, and burning a building, as well as more exotic crimes such as “marking an unmarked hog without the consent of the owner.” Also present are chilling reminders that about one-fourth of Travis County’s 3,138 residents were held in bondage, with several actions for “selling ardent spirits to a slave” and one for “clandes-
tinely supporting a runaway slave.” Prosecutors valiantly attempted to preserve the citizenry’s morals, prosecuting such crimes as “living in fornication with a woman” or “keeping a disorderly house.” Far more numerous, and markedly more successful, were actions for operating or playing games of chance such as faro, roulette, mon- te bank, and rondeau or for playing or allowing poker or cards “in a house for the retail of spirituous liquors.”

By Chief Justice Thomas R. Phillips

Notes
1. On March 4, 1850, Texas voters selected Austin over four East Texas towns as the “temporary capital” of Texas. The totals: Austin, 7,679; Tehuacana, 3,142; Palestine, 1,884; Huntsville, 1,215; Washington, 1,143; scattering, 23. Executive Record Book, Gov. P.H. Bell, pp. 147–49, State Archives Reel 3474 (third volume on reel).
2. Hancock, an Austin attorney, received 925 votes, defeating M.A. Dooley of New Braunfels with 733 votes and William H. Gordon of Guadalupe County with 675. Executive Record Book, Gov. P.H. Bell, p. 116, State Archives Reel 3474 (fourth volume on reel); Texas State Gazette, July 26, 1851 p. 2 (candidates’ announcements).
Judge Oran Roberts and Riding the District Court Circuit

Judge Oran M. Roberts presided over the first district court session in October 1850 for the newly established Ellis County. To understand why Roberts, who resided in San Augustine about 150 miles away, was the first judge to preside in Ellis County gives us insight into the development of trial courts and the bar in early Texas. Additionally, through Roberts, we gain understanding of how the tradition of Texas judges using a district court bench as a launching pad for political advancement began and how early generations of Texas lawyers were trained.

Roberts, a 26-year-old Alabama lawyer, arrived in San Augustine in 1841. He began riding circuit as a lawyer practicing in the district court, traveling over an area stretching from the Sabine River to the Trinity River.

The district courts (corresponding to the circuit courts in other states) were then held during the spring and fall months of the year. It was not unusual when the times for holding them arrived, to see a dozen lawyers with the judge, mount their horses, with saddle-bags, blanket, and tie-rope, and, thus equipped, start on their journey around the district, which then embraced many counties spreading over a large scope of country. … This mode of practice was kept up until the late civil war, after which the members of the bar became more and more localized in their practice.¹

Roberts described other lawyers he practiced with as “men of great intellectual vigor.”² This would certainly describe Roberts himself. He had a wide-ranging knowledge of ancient history and philosophy. His courtroom style emulated sermons of ministers but with the clear, cogent argumentation of lawyers. After he was appointed to the bench in 1846, contemporaries described him as an objective judge so concerned with legalistic analysis that he decided a case to pieces.³ He would go on to serve twice as chief justice of the Texas Supreme Court, be elected as a U.S. senator, and serve two terms as governor.

An Ellis County Minute Book A entry from Oct. 28, 1850, described Roberts as “on exchange” for the county’s first district court session. His docket was light; it took only eight pages to detail the three days he was on the bench. Contrast this with the October term in 1855 conducted by Judge John H. Reagan, which went for 72 pages in the corresponding Ellis County minute book.⁴

Roberts’ circuit-riding days were valuable to him in teaching law students. While living in San Augustine in the 1840s and 1850s, he taught law at a local university. During Reconstruction, he operated a law school in Gilmer. Some of his students there went on to become judges and one was on the Texas Supreme Court.⁵ Following his service as governor, he was appointed the first professor of the newly formed University of Texas School of Law. He taught for 10 years, and his students affectionately referred to him as the “Old Alcalde.” In addition to teaching law, he sought to develop in his students the same expansive views of the state’s qualities, resources, and people that he had received while riding horseback to practice law and sit as a judge earlier in his career.⁶

By Chief Justice James Worthen

Notes
1. Oran M. Roberts, Preface to A Description of Texas, Its Advantages and Resources with Some Account of Their Development, Past, Present and Future (1881).
2. Id.
3. Id.
4. This was the same John H. Reagan who served in the cabinet of Confederate States of America President Jefferson Davis as Postmaster General from 1861 to 1865.
6. Roberts, supra.
Preserving Records of African-American Slaves

In 1860, more than 182,000 African Americans called Texas home. The majority of them toiled the rich farmlands of East Texas or cultivated the coastal plains. They planted and harvested cotton, corn, and sugar or worked in skilled trades as blacksmiths and mechanics.

They built homes, married, and raised families. And they were bought and sold like prized cattle. Nineteenth-century court records such as the Harrison County Estate Records provide a unique glimpse into the tragedy of human slavery. Here, human beings are cataloged like livestock, listed by a given name followed by a statement of their age, sex, and market value.

Just as a modern rancher’s estate might name a champion bull or quarter horse, the inventory of the Estate of Harrison County’s S.M. Hagerty lists men, women, and children with names like “Little Jim,” “Big Eliza,” “Big Lucy,” and “Amazon.” The same administrator who grouped “milk cows and calves” into a single lot inventoried mothers and babies as “Nancy and boy Calvin” or “Molly & her infant Fanny.” He made special note of slaves with skills that increased their value such as “Ben, blacksmith” and “Martin (mechanic)” and those with human frailties such as “Margaret (deaf).” But he gave none of them a last name.

The inventory of Hagerty’s estate also reflects the economic reality that slaves were by far the most valuable assets a family could own. At a time when prime East Texas farmland sold for as little as $1 per acre, cattle brought $10 per head, and a good horse might sell for $75, human beings sold for hundreds — even thousands — of dollars. The inventory of Hagerty’s estate reflects that his 19 slaves were worth a total of $10,400 and represented 73 percent of his entire estate. The administrator assessed the value of Hagerty’s unskilled male slaves at $600 to $800 depending on their age. Those who had been trained as a blacksmith or mechanic like “Ben” or “Martin,” he predicted could bring as much as $1,200. For the cost of one of these slaves, Hagerty could have easily purchased a house and lot in town plus 500 acres of farmland, a team of oxen, and a barn full of pigs, sheep, and cattle. Instead, he borrowed money against them, pledging people as collateral. At the time of his death, Hagerty had mortgaged “John” for $750.

Civil and criminal case files also provide unique insights into the slave system. Dissatisfied buyers frequently brought suits alleging misrepresentation of a slave’s health, skills, or character. Creditors sued to foreclose on notes for which slaves had been posted as security. Judges sentenced convicted slaves to be hanged, whipped, or even “branded with a hot iron.” At the same time, the indictments, pleadings, and charges reflect that slaves received a great deal of due process. Driven in equal parts by devotion to the law and a determination to protect the investment of slave owners, judges routinely appointed counsel to represent accused slaves, tried them before juries, and allowed them to appeal their convictions. In capital cases, the jury not only determined guilt but found the value of the slave and whether the owner had interfered with the prosecution. If the slave was hanged, owners could apply for a rebate of up to one-half of the slave’s value from the state treasury.

These stories are nowhere better preserved than in the records of our courts. By James Holmes

This pre-Civil War estate record includes a detailed inventory of slaves and their value among other property.
A Connecting Thread to the Past

The Supreme Court of Texas has embarked on an ambitious effort to preserve the history of Texas. Much of the evidence of our past lies in boxes and file cabinets, slowly dissolving into dust. Faced with this vanishing history, the Court established the Texas Court Records Preservation Task Force. Led by public officials and private citizens, the Task Force has found documents about Sam Houston, litigation surrounding the tumultuous relationship between Texans and American Indians, immigration records in Galveston County, and, of course, the plight of African Americans who the law defined as property before the Civil War.

In this latter category, the Task Force discovered records pertaining to Judge Nicholas W. Battle. Judge Battle owned a slave named Shedrick Willis. After the War, Willis served two terms on the Waco City Council. A slave, then a public servant, Willis is an example of perseverance. Judge Battle, who fought for the Confederacy, later became an advocate for the rights of former slaves. Battle and Willis occupy one page in a huge volume chronicling the rich lives and culture of our common past. Every page is important to history and perhaps to your own family. Shedrick Willis was my great-great-great-grandfather.

I hoped the Task Force could have found the case file for *Westbrook v. Mitchell*, 24 Tex. 560 (1859), a case where Judge Battle declared void a contract in which a free black man had agreed to sell himself into slavery, but the file was likely lost in a courthouse fire. The Task Force did, however, discover extraordinary records about Judge Battle and his work as the presiding judge of Comanche County.

Comanche County District Court Minute Book A, dating back to 1858, depicts the challenges of running a court in Indian territory prior to and during the Civil War. To hold court in Comanche County, Judge Battle would ride out from his home in Waco and conduct court business in a log cabin. The book shows that the court in Comanche County shut down for approximately one year and operated irregularly between 1862 and 1864. Perhaps it was due to Judge Battle’s participation in the war or maybe the dangers associated with increasing Comanche raids in the area. By the time the Civil War ended, the population of Comanche County dropped from more than 700 people to less than 60.

This record is but one thread in a tapestry of stories about this state, its people, and its history. Like many court records still undiscovered ... it chronicles the impact of significant, life-changing events that shaped Texas history.

By Chief Justice Wallace B. Jefferson

[Comanche County court record showing N.W. Battle as presiding judge in 1858.]
The Cortina Wars

Being a judge in Texas has never been easy. Being a judge on the Texas frontier was substantially more difficult. Being a judge in the Rio Grande Valley in the mid-19th century brought challenges greater than most in our state’s history. The land had just been captured in a war from a population that knew little of the English language and less of Texas law. Lawsuits against Mexicans who found their inheritance on the wrong side of the river were common. Those suits often ended with Texans with dubious claims prevailing. Land disputes often led to violence, which occasionally led to criminal convictions, unless the parties took matters into their own hands, which happened frequently.

Minute Book B of the Cameron County District Court tells the story of these times in a way no other historian ever has before. It details the cases that came before the district court sitting in Brownsville between April 26, 1858, and Aug. 21, 1866, including the following:

- An 1860 indictment of former Mexican President Antonio López de Santa Anna for murder;
- An 1859 lawsuit brought by Richard King (a founder of the King Ranch) and Mifflin Kenedy against Joseph Moses; and
- An 1865 suit brought by John McAllen against Francisco Saenz over title to Saenz’s Spanish Land Grant.

The most significant entries in the volume involve the cases that gave rise to the “Cortina Wars” of 1859. Juan Cortina was born in Mexico but inherited his mother’s ranch north of the Rio Grande. The Cameron County Clerk’s files reflect that he was twice indicted for cattle theft but never arrested. Notwithstanding his indictments, Cortina became a leader in the Mexican community in Brownsville.

On July 29, 1859, Cortina shot the Brownsville city marshal after the marshal brutalized one of Cortina’s Mexican-American ranch hands. Cortina and men would eventually actively fight the French army in their occupation of Mexico in the 1860s and on behalf of the United States against the Confederacy. Cortina was indicted for murder and treason. The treason case came to trial in 1861, and he was acquitted. He never came to trial on the cattle theft or murder charges.

Was Juan Cortina a civil rights leader or a bandit? How did the land barons of South Texas start their ranches? Were land titles inherited through Spanish Land Grants wrongfully taken? These questions, and many more, will be able to be comprehensively answered as more court records of South Texas are saved, restored, and preserved. Minute Books A and B from Cameron County are a good start.

Notes
1. The judge of the court during the 1850s, Edmund J. Davis, would go on to become governor of Texas. He left the bench after he was unwilling to take an oath of allegiance to the Confederacy.
2. Cameron County Minute Book A has also been preserved and restored through a donation by the Brownsville firm of Colvin, Chaney, Saenz, and Rodriguez.
Galveston County District Court Minute Book 5 (1850s–1860s)

Maintaining the Rule of Law During the Civil War

Historians and fans of Sherlock Holmes both know that often the absence of something is more important than something that is visible. Galveston County Minute Book 5, covering the period from Dec. 1, 1859, through July 5, 1866, is proof of this maxim. During a tumultuous time in our state’s history, and an even more traumatic time in the history of Galveston Island, the minutes of the court reflect that the four judges that presided carried on and heard cases, apparently oblivious to the tumult around them.

During the years covered by these minutes, no mention is made of the following:

- the secession of Texas from the United States,
- the capture of Galveston Island by Union soldiers in October 1862,
- the death of a judge of the court during a trial,
- the recapture of Galveston Island by Confederate soldiers in 1863,
- the blockade of the Port of Galveston during the war, a fact of some significance to a port city, and
- the conclusion of the war, overthrow of the government, and elimination of the “wealth” of citizens who owned little other than Confederate currency and slaves.

Four judges sat in Galveston during these years: Judge Peter Gray, Judge Edwin Palmer, Judge James A. Baker, and Judge Colbert Coldwell. The minutes show a docket run timely, although the fall term of 1862 was not held, presumably due to the occupation of the island by federal forces. Given that the judges had to ride a circuit through a six-county district and made an appearance in each county for only two months a year, it is understandable that they would try to hold as many trials as possible during that time.

Throughout the war, the beginning of each term was spent trying to find enough jurors to conduct trials. At a time in which only males could serve as jurors, but in which most young men were off fighting the war, this must have been a difficult task. In 1863 and 1864, trials were put off to the next term because of a shortage of jurors.

At the beginning of the Reconstruction period, a more serious shortage occurred — there were no licensed attorneys. The Federal Reconstruction Act had voided the law license of all attorneys who had taken a loyalty oath to the Confederacy. All persons seeking to practice were required to appear before the judge and take an oath that they had not taken part in activities hostile to the Union. Several attorneys were able to take that oath on the first day of the term of court. For others, such as former Judge Peter Gray, it was necessary to obtain a presidential pardon in order to restart his career.

Minute Book 5 from Galveston County shows that, in the most unsettled of times, the courts provided stability to society and continued to perform their tasks. As such, the books are a monument to the judges and the system they served.

By Judge Mark Davidson

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Jack County District Court Minute Book A (1870s)

The Trial of Satanta and Big Tree

On May 18, 1871, a wagon train led by Henry Warren was traveling down the Jacksboro-Belknap Road when it encountered a large group of Kiowa and Comanche warriors. The wagon train shifted into a ring formation, with all the mules put into the center of the ring. The warriors killed and mutilated seven of the waggoners. Five men managed to escape.

A few months later, three of the leaders involved in the massacre, Satanta, Satank, and Addo-Etta (Big Tree), were arrested at Fort Sill after Satanta foolishly bragged about his involvement in the incident. Gen. William Tecumseh Sherman, who was visiting at the base, ordered that the chiefs be delivered to Jacksboro in Jack County, where they had been indicted in the district court for these killings. During the journey, Satank tried to escape and was shot and killed.

District Court Judge Charles Soward appointed two lawyers, Thomas Ball and Joseph Woolfolk, to represent the two surviving Kiowa chiefs. Despite able representation by their counsel, the war chiefs were formally indicted on July 1, 1871; their trial began on July 5; and three days later they were convicted of seven counts of first-degree murder. The jury sentenced them to death.

The transcripts and other records of the trial were lost shortly after the trial, and it was thought that no records existed of the proceedings.1 However, with the help of the Jack County District Clerk Tracie Pippin, the Texas Court Records Preservation Task Force found the minute book that contains the records of the indictment, trial, jury verdict, and post-trial proceedings.

The minute book reflects that after the verdict, the court ordered that Satanta “be taken by the Sheriff of Jack County and hanged until he is dead, dead, dead and God have mercy

Kiowa Chief Satanta

Courtesy of the Library of Congress

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1 The transcripts and other records of the trial were lost shortly after the trial, and it was thought that no records existed of the proceedings. However, with the help of the Jack County District Clerk Tracie Pippin, the Texas Court Records Preservation Task Force found the minute book that contains the records of the indictment, trial, jury verdict, and post-trial proceedings.

The minute book reflects that after the verdict, the court ordered that Satanta “be taken by the Sheriff of Jack County and hanged until he is dead, dead, dead and God have mercy
on his soul.” A similar order was entered for Big Tree. The records also show that the chiefs’ lawyers made real efforts to defend them — both lawyers moved for new trials for their clients.1 Most important, despite the court’s pronouncements, Judge Soward showed concern about the trial’s outcome. To buy time, he set the hangings for Sept. 1, two months after the convictions, at “some convenient place near the courthouse at the town of Jacksboro.” Then, he wrote Gov. Edmund J. Davis, encouraging him to commute the sentence to life in prison.2

Gov. Davis agreed. The minute book contains the Aug. 2, 1871, commutation. The governor thought that a “commutation of said sentence to imprisonment for life will be more likely to operate as a restraint upon others of the tribe to which these [i]ndians belong” and that “the killing for which these Indians were sentenced can hardly be considered on a just consideration of the amicus, as coming within the technical crimes of murder under the statute of the State, but rather as an act of Savage Warfare.”3

The Jack County District Court honored the commutation, and the two chiefs were delivered to Huntsville. Somewhat surprisingly, Texas authorities released Satanta and Big Tree on parole in 1873, also on the assumption that this would help pacify the Kiowas. However, a year after their release, Satanta was arrested for parole violations due to his participation in the attack on Adobe Walls. One night, he crawled through a high window of the Huntsville facility and leaped to his death on the bricks of the prison yard. This scene later became fictionalized in the account of the death of Chief Blue Duck in the book Lonesome Dove. By Bill Kroger

Notes
1. Smythe, Historical Sketch of Parker County and Weatherford, Texas, p. 274 (1877). This remarkable volume contains what may be the closest thing to a transcript of the trial, although some newspaper accounts may be found. The author states that “every effort” was made to obtain copies of court records from the trial, but the district clerk wrote that “the papers in the Satanta case have been lost and cannot be found.”
2. Jack County Minute Book at 237–238.
3. This observation is consistent with Smythe’s account: “The prisoners were ably represented by Messrs. Ball and Woolfolk, both of whom were faithful to their clients. They took advantage of every legal technicality, and conducted their defense with excellent judgment and decided impressiveness.” Id. at 266.
4. The letter is reproduced in whole in Smythe’s book. Judge Soward explained that he agreed with the Indian Agent Lowrie Tatem that the verdict would hinder efforts to get the Indians to come to the reservations. Judge Soward explained that he would have petitioned the governor to commute the sentences himself, “were it not that I know a great majority of the people on the frontier demand their execution.” Id. at 276.
5. Jack County Minute Book at 243.
The Trial of John Wesley Hardin

John Wesley Hardin was a gunfighter, a cattle rustler, a man-killer — and a lawyer. Born to a Methodist minister and his wife near Bonham in 1853, Hardin gained an early reputation as a fast gun, killing his first man at the age of 15.

Hardin killed several more men, escaping from custody at least once. He waded into the infamous Sutton-Taylor feud in central Texas, siding with the Taylors. At one point, he rode into Albuquerque, Texas (Gonzales County) with James Taylor, who was wanted by the Gonzales County Sheriff Jack Helm.

Helm was formerly a captain in the infamous Texas State Police force under the Reconstruction Government. Violent and oppressive, Helm and his henchmen reportedly killed 21 men in two months during the summer of 1869. Confronting Sheriff Helm in the street, Hardin shot Helm once, then held the townspeople at gunpoint while Taylor shot Helm several times in the head.

Hardin and Taylor followed Hardin’s brother Joe (a lawyer) to Comanche County in 1874. Joe had some questionable land dealings and John Wesley sold cattle, not all his own. They were not the most popular folks in Comanche County. On May 26, 1874, Hardin and Taylor won a gunfight with Charles Webb, the deputy sheriff of Brown County. Hardin claimed self-defense but a warrant was issued for his arrest, prompting him to leave.

Texas Ranger Captain John Waller began the search for Hardin. In January 1875, the Texas Legislature put a price of $4,000 on Hardin’s head. Hardin had fled east, toward Alabama. The Rangers were watching Hardin’s friends and family closely and soon intercepted a letter addressed to J.H. Swain of Pollard, Ala. Believing Swain to be Hardin’s alias, Ranger Lieutenant John B. Armstrong and undercover detective Jack Duncan rode east to bring in Hardin. Tracking Hardin to a railroad car in Pensacola, Fla., Armstrong stationed local deputies at each end of the railcar and walked in to confront Hardin. Upon realizing who Armstrong was, Hardin shouted, “Texas, by God,” and attempted to draw a concealed pistol. The pistol caught on one of Hardin’s suspenders and Armstrong and his men were able to secure Hardin.

Spiriting him out of Florida before his friends could secure his release, Armstrong returned Hardin to Comanche County for trial. Hardin was convicted and sentenced to 25 years in the state penitentiary in Huntsville. Hardin wrote his autobiography and studied law while in prison and was pardoned in 1894.

A year later, Hardin went to El Paso to testify for the defense in a murder case. He decided to stay and practice law but let his practice slide. Hardin began an affair with the wife of one of his clients, and when the man found out, Hardin hired several law officials to kill the man. On Aug. 19, 1895, Constable John Selman, one of the hired hitmen, shot and killed Hardin instead.

The Comanche County minute book provides interesting insight into the capture of one of the most infamous outlaws of the Old West. By Judge Ken Wise
In the Name and by the Authority of the State of Texas,
The Grand Jurors, good and lawful men of the County of...and State of Texas,
duly elected, tried, impaneled, sworn and charged by the District Judge at the...October...
Term of the District Court of said county, Anno Domini one thousand eight hundred and seventy...
to enquire within and for the body of the county aforesaid of all offenses committed against the Penal laws of the
State of Texas in said county, on their oath in said court present, That...

John Wesley Hardin

Am. J. A. S. Taylor

in the county of...in said State of Texas, on the twenty-sixth day of

May...Anno Domini one thousand eight hundred and...

therein upon the body of Charles W. Webb, there and

there a reasonable cause to bring, and then and there

unlawfully, feloniously, and of their malice aforethought

make the assault and the body of John Wesley Hardin

and James Taylor, with intents then and there had

charged with gunshot, and leaden balls, which said

and to the body of the said John Wesley Hardin and James Taylor,
in there having then and there shot and fired their said

unlawfully, feloniously, and of their malice aforethought

discharge of, to assault, upon going

into the body of the said John Wesley Hardin and the body

of Charles W. Webb, and the body

of James Taylor, with the leaden balls

aforesaid out of the guns aforesaid, then and there by

firing, the said leaden balls aforesaid, and the body of

Hardin and James Taylor, shot off and shell and charged as

aforesaid, then and there with a gun, aforesaid, and with the malice

aforesaid, and to the body of the said Charles W. Webb, and the

body of the said James Taylor, and when the body of the said Charles

Webb, and the body of the said James Taylor, went out of the

guns aforesaid, then and there by

firing, the said leaden balls aforesaid, and the body of

them and the body of the said James Taylor, then and there by

firing, the said leaden balls aforesaid, and the body of

them and the body of the said James Taylor.

And so the present offense to their oaths aforesaid do say

that the said John Wesley Hardin and James Taylor, in the body of the said Charles W. Webb in the manner and by the

means aforesaid, feloniously, and of their malice aforethought

did, kill and murder contrary to law.

And against the peace and dignity of the

State...

A. P. Jones

Sergeant of the Grand Jury.
HAMILTON COUNTY MINUTE BOOK B (1870s)

The Old West in Hamilton County

A casual observer might conclude that not much has ever happened in Hamilton County, which is located in the central part of the state and has a population of only about 8,500 people. And so, if nothing of historical significance has happened in Hamilton County (or other Texas counties with small populations), why would it be important to preserve its old court records?

Such thinking would be wrong. One can find important historical events in every county in Texas. And Hamilton County is a good example. In 1870, an important branch of the Chisholm Trail ran through this part of Texas. The Chisholm Trail is the most famous cattle trail in Texas. It was the major route for livestock out of Texas. The trail began in the 1860s and originally referred to the part of the trail north of the Red River that ran to Abilene, Kan., where there was a hub of the Kansas Pacific Railroad that would take cattle to market. By the 1870s, the Chisholm Trail applied to a network of trails running from the Rio Grande. Thus, the history of Hamilton County during this time period was shaped by the lives of cowboys and the adventures of the great cattle drives.

As famous as the Texas cowboys and longhorn cattle were to become in literature and the movies, the days of the Texas cattle drives were relatively short. By 1884, the Chisholm Trail was closed due to the running of barbed wire in Texas, followed by a quarantine in Kansas in 1885.

The Hamilton County Minute Book B, covering the 1870s, is the oldest surviving court record of the county, and documents this era. The entries in Minute Book B reflect the lives of ordinary Texans during the Wild West era:

- State v. Collum: “unlawful playing at a game of cards”
- State v. Snow: “willfully driving stock from their accustomed range”
- State v. Kemp: “theft of a steer”
- State v. Haley: “shooting across a public street”
- State v. Mitcham: “rudely displaying a pistol”
- State v. Caradine: “taking and using an estray horse” and “theft of 14 head of cattle”
- State v. Faggan: “driving fifty head of cattle out of the county without recording the bill of sale, number, marks, and brands, and kind of animal driven.”

This minute book is a critical historical record for citizens of that county. It reflects the struggles and conflicts of the earliest farmers, ranchers, and settlers of the area, in the actual language used by these settlers from more than 140 years ago.

By Bill Kroger

Notes
Charles Goodnight and the JA Ranch

Charles Goodnight lived one of the most remarkable lives of any Texan. As a scout, he led the Texas Rangers to Peta Nocona’s Comanche encampment on the Pease River in December 1860 and participated in the attack that led to the recapture of Cynthia Ann Parker. He continued to serve as a Texas Ranger during the Civil War. He and his business partner, Oliver Loving, organized and led some of the first cattle drives in Texas, creating the Loving-Goodnight Trail. When Loving died, Goodnight brought his body back to Texas for burial, a scene fictionalized in Lonesome Dove. Goodnight created one of the largest and best-known ranches in Texas, the JA Ranch, in the Palo Duro Canyon. He and his wife, Molly, preserved the few remaining buffalo in Texas, which make up the Texas State Bison Herd today.

Given Goodnight’s historical image as scout, Texas Ranger, and rancher, one wonders at the thought of Goodnight sitting in the office of his lawyer, impatiently answering 48 interrogatories that the State propounded on him. In response to one question, Goodnight admitted he did not know how many acres he owned in the Palo Duro Canyon. In another pleading, however, he stated that he owned 340,000 acres of land and had another 40,000 acres under lease. When asked whether the JA Ranch was completely fenced, Goodnight responded, “In places it is and in places it is not.” And when asked whether cattle owned by the public grazes on that land, Goodnight similarly responded, “In places they do and in places do not.”

The file appears to be incomplete. Goodnight prevailed at trial on the suit, although many years of additional battles between the large Panhandle ranchers and the State of Texas remained over the fencing of the Texas ranges. By Bill Kroger

Notes
1. Goodnight’s life is recounted in one of the best biographies about a Texan, J. Evetts Haley’s Charles Goodnight, Cowman & Plainsman.
2. Cynthia Ann Parker was the daughter of a well-known Texas family. She was kidnapped by the Comanches, with whom she lived for many years. She was the mother of the Comanche chief Quanah Parker. Her recapture was a famous incident and later fictionalized in the movie, The Searchers.
3. These include the pleadings filed by the State of Texas and Goodnight, witness subpoenas for Goodnight and other ranchers, and an original copy of a decision by the Texas Supreme Court in this case.
The Making of Jack Johnson

A significant cultural event in American history happened when Jack Johnson was locked up in a jail cell with Joseph Choynski in Galveston in 1901. It was the genesis of not only Johnson’s career as one of the greatest fighters in America, but also an unlikely friendship.

On Feb. 25, 1901, only about six months after the 1900 hurricane that devastated Galveston Island, an untrained, unskilled Johnson stepped into the ring to fight Choynski, a skilled veteran and one of the best heavyweight fighters of his era. Johnson was an African American; Choynski was Jewish. It was one of Johnson’s first professional fights, with racial overtones that would both promote and plague Johnson’s career. However, professional prizefighting was illegal in Texas at that time. Choynski knocked out Johnson in the third round. Immediately after, Texas Rangers arrested both fighters, charged them with the felony offense of prizefighting, and threw them in the Galveston jail, where they were to await the grand jury indictment. Bail was set at $5,000, a sum neither fighter could pay.

Both fighters remained in jail while each filed writs of habeas corpus with the Galveston County District Court over the size of their bail. Henry Thomas, the sheriff, was sympathetic, and allowed the men to go home each night, so long as they returned to jail the next day. Reporting to jail each morning, Johnson and Choynski took advantage of the time together by sparring in the jail cell, attracting large crowds to watch. Over the next 24 days, the men became friends, and Choynski taught Johnson the skills and techniques needed to become a successful professional boxer. Years later, Johnson said that he learned how to become a great fighter during the month with Choynski in jail.

Most of the Johnson/Choynski court records have disappeared. However, with assistance of the Galveston County district clerk, the Texas Court Records Preservation Task Force was able to find the case file containing the habeas petition that Choynski filed in an attempt to reduce his bail. The Task Force preserved that record, along with the Galveston County Criminal District Court minute book that records the various rulings by the district court on the habeas proceedings involving Johnson and Choynski during March and April of 1901. The Galveston County District Clerk’s Office also has the pertinent grand jury minute book.

Choynski and Johnson appealed their habeas corpus writs to the Court of Criminal Appeals, which granted their writs and reduced their bail to $1,000 each.1 On March 22, 1901, the two boxers raised the amount needed for bail and were released from jail. Ultimately, the grand jury refused to indict both men, despite two requests by the district attorney, and the charges were dismissed.

The Johnson/Choynski records are not the only reason the Galveston Criminal Court minute book is important. The minute book covers the time period when the 1900 hurricane destroyed the island. It shows that Galveston’s court system was up and running after only a few weeks. Unfortunately, many of the criminal cases were dismissed because the evidence or witnesses were missing. In some cases, the defendants were also dead. It’s a compelling record of one of the worst natural disasters in U.S. history.

Johnson went on to become one the greatest athletes of the 20th century. He was the undisputed heavyweight champion of the world for many years and challenged American attitudes about race. He paved the way for athletes from Joe Louis and Jackie Robinson to Michael Jordan. But Johnson’s story began in that Galveston County jail cell with a friendship forged between two men from different backgrounds under difficult circumstances.

By Bill Kroger

Notes
1. Ex Parte Choynski, 61 S.W. 391 (1901). In connection with this article, a search was made for the Choynski/Johnson files with the Court of Criminal Appeals. Those files are missing.
CRIMINAL DISTRICT COURT, GALVESTON COUNTY.

21st day of March, 1890

No. 2228. The State of Texas vs. Frank Adams & Ben Smith

No. 1227. The State of Texas vs. Mrs. E. Smith

The State of Texas, Continued as an application of Defendant.

1227 vs.
Phel Davis

The State of Texas

1227 vs.
Phel Davis

This day came on to be heard the motion of the State and it was

that a fine be imposed on Phel Nelson a witness in said cause

for disobedience of a subpoena. And it being made to appear to

the satisfaction of the court that the said Phel Nelson has been

duly and legally summoned to appear and testify as a witness

in said cause and that the said Phel Nelson has disobeyed

said subpoena, and that the testimony of the said Phel Nelson

is probably material to the prosecution of this case, it is con-

sidered, ordered and adjudged by the court conditionally that

the State of Texas do have and recover of the said Phel Nelson

a fine of Ten Dollars because of his said failure to appear

and testify as a witness in this cause unless at the next term of

this court he shew cause why this judgment should not be

made final and the clerk of this court will issue citation to the

said Phel Nelson to shew cause why this judgment should not be

made final at the next term of this court and it is further

ordered by the Court that an attachment be issued for the

said Phel Nelson to appear and testify as a witness in this

cause and attachment to be returnable on Monday, May

6th, 1901.

Friday, March 22nd, 1901

By parties: Joseph B. Chepmski and
Jack Johnson. Appellants

The State of Texas, Appellee.

The mandate of the Court of Criminal Appeals

in this cause was this day received and filed by the Clerk of

this Court and is as follows:

The State of Texas
do the Court of Criminal Appeals. Galveston County.

Before our Court of Criminal Appeals, on the 10th day of March
1901, and the cause upon appeal to reverse or reverse and remand between
By parties: Joseph B. Chepmski and Jack Johnson, Appellants.

No. 2314.

The State of Texas, Appellee.
Lead Belly’s musical life is intertwined with the stories of his colorful and violent past. He was born in Louisiana but grew up on a small farm in Bowie County. He left home as a child to try to make his way as a musician. But Lead Belly regularly had run-ins with the law, and in 1917, he shot and killed a man named Will Stafford. He was arrested and convicted in Bowie County under the name “Walter Boyd.”

While in prison, he wrote and sang a song pleading for a pardon from Gov. Pat Neff who, in fact, pardoned him in one of his last acts as governor in 1924. Lead Belly was later convicted (again) for attempted homicide and sentenced to Angola Prison in Louisiana. While in Angola Prison, he was first recorded by John and Allan Lomax, who later promoted his career when he was released.

Lead Belly served time in several prisons in Texas as part of his sentence, including one of the prison units in Sugar Land, where it is believed he coined his famous lines to the folk song, “The Midnight Special”:

If you ever go to Houston, you better walk right
You better not stagger, you better not fight
Sheriff Benson will arrest you, he’ll carry you down
And if the jury finds you guilty, penitentiary bound.

Lead Belly’s Bowie County criminal file, if it ever existed, has long since disappeared. However, the Bowie District Court clerk found the judgments against “Walter Boyd,” on two different counts. In case file 4890, he was adjudged guilty of murder and sentenced to the Bowie County Penitentiary for “not less than five, nor more than 20 years.” In case file 4945, he was “adjudged guilty” of “assault to murder” and sentenced to “not less than two, nor more than ten” years in the Bowie County Penitentiary. The sentencing records confirm that Lead Belly had served most, if not all, of the minimum amount of his prison term at the time of Gov. Neff’s pardon. By Bill Kroger

A Bowie County judgment against “Walter Boyd,” an alias of blues musician Huddie Ledbetter, or “Lead Belly.”
Breaking the Back of the Texas Klan

The date was Sept. 25, 1923; the place, the Williamson County courthouse in Georgetown. An up-and-coming young lawyer named Dan Moody, recently appointed by Gov. Pat Neff as district attorney to fill a vacancy, was about to address the jury in a criminal trial. As criminal matters went, the case was not as serious as some — four men were accused of assaulting a fifth. These four men, however, were members of the Ku Klux Klan, and R.W. Burleson, the man they had beaten, tarred, and feathered, was African American.

In 1923, the Ku Klux Klan was at the height of its power in Texas. The Klan had as many as 150,000 members in the state, and a Dallas dentist had just been elected “imperial wizard” of the national organization. Klan leaders were trying to rehabilitate the organization’s public image and were emphasizing the need to secure political power. These efforts met with early success in Texas: Klansmen were elected mayors of Dallas, Fort Worth, and Wichita Falls, as well as a U.S. senator, and Klansmen probably constituted a majority of the Texas Legislature.

In retrospect, Sept. 25, 1923, marks the beginning of the end for the Klan as a serious political force in Texas. After extensive legal maneuvering over venue and related matters, the case against the first accused Klansmen finally was winding up. A post-trial defense motion describes the scene:

The argument ended about ten o’clock on the night of September 25, 1923. Three speeches were made for the State and three for the defense. The courthouse was crowded with people from the beginning of the trial to its close and on the night of the close of the trial there was no standing room in the courthouse. Dan Moody, District Attorney, closed for the State in a speech of two hours and fifteen minutes. Immediately after his speech was over, the jury was taken across the hall into a little room and returned with a verdict in fifteen minutes finding the defendant guilty and assessing the highest penalty for the crime for which he was tried.

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The Struggle of African Americans to Vote in Texas

On Aug. 27, 1932, former Gov. Miriam “Ma” Ferguson defeated the incumbent Gov. Ross Sterling in the Democratic Primary runoff for governor, 476,074 to 472,741. After the Democratic Party had declared Ferguson the winner, Sterling filed an election contest in Travis County District Court on Sept. 22, 1932, alleging illegal votes had allowed Ferguson to win. Among other alleged illegalities, Sterling’s petition stated that African Americans (referred to in his petition as “negroes”) had been allowed to vote for Ferguson.

Sterling was able to obtain an injunction from the 126th Judicial District Court in Travis County prohibiting the Texas Secretary of State from including Ferguson’s name on the Nov. 8 general election ballot. On Oct. 8, the Texas Supreme Court held that Sterling’s election contest was moot because it could not be adjudicated before the election and that Ferguson should be certified as the Democratic Party’s nominee for governor.

Although the case may not be significant for election law, it reflects the difficulties African Americans encountered in exercising their right to vote in Texas during the first half of the 20th century. Exhibit “E” of Sterling’s original petition is a 40-page document listing the names of more than 400 African Americans in six counties across Texas who were alleged to have illegally voted for Ferguson.

In 1923, Texas had become the only state in American history to enact a statute making it against the law for African Americans to vote in a Democratic Party primary election. In 1927, the U.S. Supreme Court held the statute violated the Fourteenth Amendment and could not stand.

The Texas Legislature then immediately revised the statute, which in relevant parts, stated that “[e]very political party in this State through its State Executive Committee shall have the power to prescribe the qualifications of its own members and shall in its own way determine who shall be qualified to vote or otherwise participate in such political party. …” The U.S. Supreme Court on May 2, 1932, again declared this statute a violation of the Fourteenth Amendment because the party committee acted as a representative of the State and followed the legislature’s directive. But in the same opinion, the Court left open the question of “whether a political party in Texas has the inherent power today without restraint by any law to determine its own membership.” Quickly responding to this opening, the Texas Democratic Party passed a resolution declaring that African Americans could not vote in its primary. A unanimous U.S. Supreme Court held that a state convention of a party was not an organ of the state and that to deny the opportunity to vote in a primary was a mere refusal of party membership with which “the state need have no concern.” The white primary as conducted by the Texas Democratic Party appeared to be entrenched with the Court’s consensus ruling.

World War II would intrude upon this arrangement. After fighting overseas, African-American veterans returned home trying to register to vote, apparently sharing the view of one soldier that "after having been overseas fighting for democracy, I thought that when we got back here we should enjoy a little of it."

The U.S. Supreme Court in 1944 heard its fourth case on the right of African Americans to vote in the Texas Democratic Party Primary. This time, the Court determined that the primary was, by law, part of the election machinery of the State of Texas. An 8-1 decision invalidated the white primary in Texas. With African Americans dying on the battlefield around the world, the justices must have been tempted to help move the nation, in the words of the New York Times, “a little nearer to a more perfect democracy in which there will be but one class of citizen.”

By Chief Justice James Worthen

Notes
8. Klarman, supra, at 133.
10. Klarman, supra, at 156.

Travis County District Court, Ross Sterling v. Miriam “Ma” Ferguson (1932)
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An exhibit page from Ross Sterling’s original petition listing African Americans who allegedly voted for Ma Ferguson.
State of Texas v. Frank Hardy and the Bonnie and Clyde Murders

The afternoon of May 21, 1934, 20-year-old Robert Kelly was manning a small service station in Minden, when a young couple pulled into the station in a late model sedan and asked for 10 gallons of gas. As Kelly recalls it, the man was friendly and courteous. He even offered him a tip. Kelly was not even alarmed by the shotgun and other firearms openly displayed in the backseat. Two days and 125 miles later, officers surprised Kelly’s young customers in Bienville Parish, La., and ended their lives of crime with a hail of bullets. Without knowing it, Robert Kelly had sold Bonnie and Clyde their last tank of gas.

Two years earlier, on Christmas Day, Bonnie Parker and Clyde Barrow had ended their first year of crime by stealing the car of Temple resident Doyle Johnson, and then killing him when he tried to stop them. The account of Johnson’s murder is told in the pleadings, minutes, and other filings found in the case of State of Texas v. Frank Hardy and preserved by the Bell County District Court Clerk.

According to those records, Johnson was napping after Christmas dinner with his family when Clyde Barrow, Bonnie Parker, and a young accomplice named William Daniel “W.D.” Jones came looking for a car to steal. While Parker waited in their own car, Barrow and Jones broke into Johnson’s 1932 Roadster parked on the street in front of his home. When Mrs. Johnson shouted for them to stop, her husband ran to the car, jumped on the running board, and struggled with Barrow, who shot Johnson and fled the scene in the stolen vehicle.

Six months later, Mrs. Johnson picked Barrow and Frank Hardy, another accomplice of Barrow’s, out of a photo lineup and identified them as her husband’s killers. A week later, a Bell County grand jury indicted Hardy for capital murder. District Attorney Henry Taylor, Sr. tried the case that ran from Nov. 15 to Nov. 18 in 1933, urging jurors to send Hardy to the electric chair. According to a pleading contained in the file, Taylor closed his argument by pointing at Hardy and shouting, “Remember this, Frank Hardy. You are a handsome man who the God of nature wrote those striking lines … into your features so unforgettably, that that face is impressed indelibly upon the eyes of those who stood before you when you shot down in cold blood a brother-in-law, a husband, and a father!”

For his part, Hardy called a parade of witnesses, all of whom swore that he was in Waco the entire day of the murder. After a full day of deliberation, the jury deadlocked. The minutes reflect that on Nov. 19, 1933, the judge declared a mistrial and sent Hardy back to jail.

That December, before the state could rouse itself for a retrial, fortune smiled on Hardy for one of the few times in his life when authorities in Dallas notified Bell County officials that they had arrested Jones, who claimed to have been present when Barrow shot Doyle Johnson. According to Jones, Hardy had nothing to do with the murder. When officials brought Jones to Temple, he took them to the scene of the crime and retraced the route of escape. Within days, the court released Hardy on a $1,000 bond. In one of the final pages of the records preserved, Taylor moves the court to dismiss the case against Hardy conceding that in light of Jones’ confession a second trial would be a “useless expenditure of county and state funds.” Undoubtedly, he also realized that all of the state’s witnesses had positively identified the wrong man.

Hardy died of a heart attack in Waco in 1967 at the age of 58. Robert Kelly is still living at age 97 in Henderson.

By James Holmes
"Formerly the Light Crust Doughboys"

In the depths of the Great Depression, an itinerant flour salesman met an up-and-coming musician and developed the idea of co-sponsoring a half-hour of radio time on a Fort Worth station. To everyone’s surprise, sales of his flour boomed. Two and a half years later, tired of making $15 a month, the musician went out on his own. A suit was brought seeking to enjoin the band from performing. What makes this case significant is that the flour salesman was future Texas Gov. W. Lee “Pass the Biscuits” Pappy O’Daniel. The musician was Jim Rob “Bob” Wills, later to be acclaimed as the King of Western Swing.

O’Daniel hired both the Fort Worth firm of Cantey, Hanger & McMahon and the Waco firm of Tirey & Tirey, who brought an action for injunctive relief against Wills and bandmates Thomas Duncan and Kermit Whalen. The petition alleged that the defendants were continuing to perform in violation of their oral contract and had put on their flyers the words “Formerly the Light Crust Doughboys.” This, the plaintiff claimed, was unauthorized use of a company trade name. The request to the court was that because the fame the musicians had obtained resulted from their time as employees of the company, that they be prohibited from performing in Texas. A temporary restraining order was apparently granted, prohibiting Wills and the band from playing their music under any name “similar” to Doughboys. Before the hearing on the injunction could be held, a motion for contempt was filed, claiming a violation of the terms of the ex parte order.

Wills’ answer was filed by McClennan County sole practitioner Norman Goodall and raised a number of defenses. Other than a general denial and general demurrer, the answer claimed that Wills’ group had been known as the “Dough-Boys” or “Do-Boys” before they ever started working for Burrus Mills, and that they had not assigned the name. Furthermore, the answer stated that the group had been operating as “Bob Wills and His Fiddle Band,” “Fort Worth Doughboys,” and “Bob Wills and His Playboys” and had placed “formerly the Light Crust Doughboys” in their advertisements “solely for purposes of identification.”

Matters came to a head on Nov. 1, 1933, when Judge Sam Scott heard the injunction application. At the end of the hearing, the application for injunctive relief was denied and the restraining order was dissolved notwithstanding the appeal. Wills was allowed to recommence his music career. The ruling was eventually affirmed and the case nonsuited.

The court file of Burrus Mill v. Wills, et al. is instructive to examine both the early history of the music business and to students of history interested in the life of Gov. O’Daniel. Sadly, while the restored file of the McLennan County District Court can be viewed and appreciated, the appellate file was destroyed by the Waco Court of Appeals in the early 1970s in a records retention program. The hearing transcript, exhibits, and briefs are no longer available to the public. Wills’ victory in court over a future Texas governor proves that “It Don’t Matter Who’s in Austin, Bob Wills Is Still the King.” And may he reign forever.

By Judge Mark Davidson

Notes
1. After resigning, the band might have sung “I Can’t Go on This Way.”
2. Mediation was unknown in 1933. Otherwise, O’Daniel and Wills might have been able to work things out if they had tried a Heart to Heart Talk.
3. During the pendency of the restraining order, Wills went Back to Tulsa to sing.
4. Wills and O’Daniel would eventually reconcile, partially restoring their Faded Love.
5. Wills would eventually promote “Playboy Flour” in competition with Burrus Mills Light Crust Flour, proving that Time Changes Everything.

Much has been written about the 1948 U.S. Senate election and runoff between former Texas Gov. Coke R. Stevenson and U.S. Rep. Lyndon B. Johnson. The election night results found Johnson behind by varying margins, all under 1,000 votes. On Friday, Sept. 3, six days after the polls had closed, the results from Precinct 13 in Jim Wells County came in with 202 votes. Of those votes, 201 were for Johnson and 1 was for Stevenson. The precinct gave Johnson an 87-vote margin of victory. Because those 202 votes appeared in alphabetical order and in a different ink color from the rest of the tally sheet, suspicions of voting irregularity arose.

In an attempt to correct what he perceived as an obviously stolen election, Stevenson enlisted the help of his old friend, former Texas Ranger Frank Hamer. Hamer was famously associated with the tracking and killing of Bonnie Parker and Clyde Barrow while serving as a special investigator for the Texas Prison System.

Stevenson and Hamer (and two of Stevenson’s lawyers) travelled to Alice, the county seat of Jim Wells County, to examine the vote tally sheets. The lawyers were allowed to see the tally sheet, which was yanked from them when the lawyers began to take notes. The lawyers noticed not only that the 202 voters had “voted” in alphabetical order, but also that the “7” in the original 765 total had been changed to a “9,” giving Johnson 200 more votes. The lawyers discovered that several of the voters listed were deceased and others had not actually voted. Stevenson petitioned the Jim Wells County Democratic party to certify a corrected tally.
Johnson filed a lawsuit in Travis County to stop the meeting in Jim Wells County. The suit appears to have been filed at 9:50 p.m. and presented to Judge Roy Archer, who signed a temporary restraining order (TRO) preventing a re-certification of the results. No notice was given to Stevenson.

The TRO sets the temporary injunction hearing to occur in Jim Wells County. The TRO and bond are file-marked 9:55 p.m., five minutes after filing. Only then was Stevenson notified of the action by telegram.

Another interesting aspect of this case is that the file was transferred to Jim Wells County at the request of the plaintiff, who had originally chosen and pleaded Travis County as a county of proper venue. No motion to transfer venue is in the file. Someone carried the file to Jim Wells County over the weekend because the temporary injunction hearing commenced on Monday morning following the Friday TRO. The file stamp from Jim Wells County reflects a Saturday afternoon filing. It is reported that no less than the “Duke of Duval” himself, George Parr, came to the temporary injunction hearing and sat at Johnson’s table.

Litigation continued in federal court, eventually resulting in Johnson’s election being certified. This file is an insight into a colorful time in Texas history. It also evidences the ingenuity of Lyndon Johnson, which he later so ably displayed in the Senate.

By Judge Ken Wise

On Friday, Sept. 3, six days after the polls had closed, the results from Precinct 13 in Jim Wells County came in with 202 votes. Of those votes, 201 were for Johnson and 1 was for Stevenson. The precinct gave Johnson an 87-vote margin of victory.
GALVESTON COUNTY DISTRICT COURT CASE FILES (1950s)

The Balinese Room

For many years, Galveston was one of the largest, most prosperous cities in the southern United States. As Galveston’s virtue grew, so did its vice. Many of life’s less wholesome diversions existed in the city. Not the least of these was gambling.

The acknowledged kings of Galveston gaming were brothers Rosario “Rose” and Salvatore “Sam” Maceo. The Maceos emigrated from Sicily to New Orleans in 1910. They both moved to Galveston shortly before World War I, where they were gainfully employed as barbers. During Prohibition, however, the brothers saw an opportunity to improve their fortunes.

The Maceos opened the Hollywood Dinner Club in 1926. One of the first establishments to utilize the new technology called “air conditioning,” the Hollywood quickly became one of the most elite establishments in the United States. The brothers also took over a restaurant called the Chop Suey Club, located at Seawall Boulevard and 21st Street. They changed the name to Maceo’s Grotto, and, in 1932, remodeled the Grotto into a Chinese restaurant and club named the Sui Jen, adding a 200-foot pier to the rear of the building. In 1942, the name was changed to the Balinese Room.

The Balinese became one of the premier gaming and entertainment clubs in the country. Some claim that in 1948 Balinese bartender Santos Cruz invented the Margarita, naming it after singer Peggy Lee. Entertainers such as Phil Harris, Frank Sinatra, George Burns, Mel Torme, and Duke Ellington appeared on the Balinese stage.

The casino was the highlight of the club. It was located in the rear of the establishment and required a long trip to reach. In the event of a raid, the alarm would sound in the casino and the band would strike up “The Eyes of Texas” (not solely in tribute to the Texas Rangers heading toward the casino). By the time law enforcement personnel made it to the casino, all they found were a few innocent (and perfectly legal) games of bridge or dominoes being played.

By 1954, both Sam and Rose Maceo had died, but gambling continued at the Balinese. The Rangers decided to use a little finesse. Company A Captain Johnny Klevenhagen made sure two Rangers entered the Balinese Room every night when it opened, found a good table, and made themselves at home until the establishment closed for the evening. By 1957, the customers had gone away and one of the most active and famous gambling halls in the country was forced to close.

The document file from the Galveston County District Court contains indictments and witness lists of some of the parties affiliated with the Balinese Room. By Judge Ken Wise

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A grand jury indictment of Rose Maceo, who with his brother, Sam, operated the popular Galveston gambling club, the Balinese Room.
**Gateway to Texas**

A little known fact to many is Galveston Island’s long history as an immigration center for thousands of people coming to the United States from Europe and other places around the world. In 1875, the United States ended a period of unrestricted immigration to this country and made Galveston Island one of the few places, along with Ellis Island in New York, where immigrants were processed and admitted. Galveston continued in this role until the 1940s.

Somewhat surprisingly, the Galveston County District Court became the repository for many federal immigration and naturalization records. These records include the following:

- Declarations of Intention from the 19th and 20th centuries, which contain declarations by immigrants of their intentions to become citizens of the United States;
- Certificates of Arrival, which show the dates that immigrants were admitted into the country; and
- Petitions for Citizenship, in which immigrants provide additional information about their circumstances, such as where they are from and their occupations.

The Galveston County District Court also has indices to the immigration records, which make it possible to look for particular persons. The Galveston immigrants came from a large number of countries, including England, Germany, Italy, Russia, and Greece. The records from the 1920s and 1930s include photos of the immigrants. Some of the most moving photographs are of Jewish immigrants from the 1930s, who were no doubt seeking a better life away from the horrors beginning to take place in Germany and other parts of Europe.

Relatively few people know that Galveston federal immigration records are housed in the Galveston County District Court. These records are not available online at present, but in the meantime, the Task Force has helped preserve these records.