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How Lubbock?s ?Prairie Dog Lawyers? Seminar Got Its Name

[1]Features
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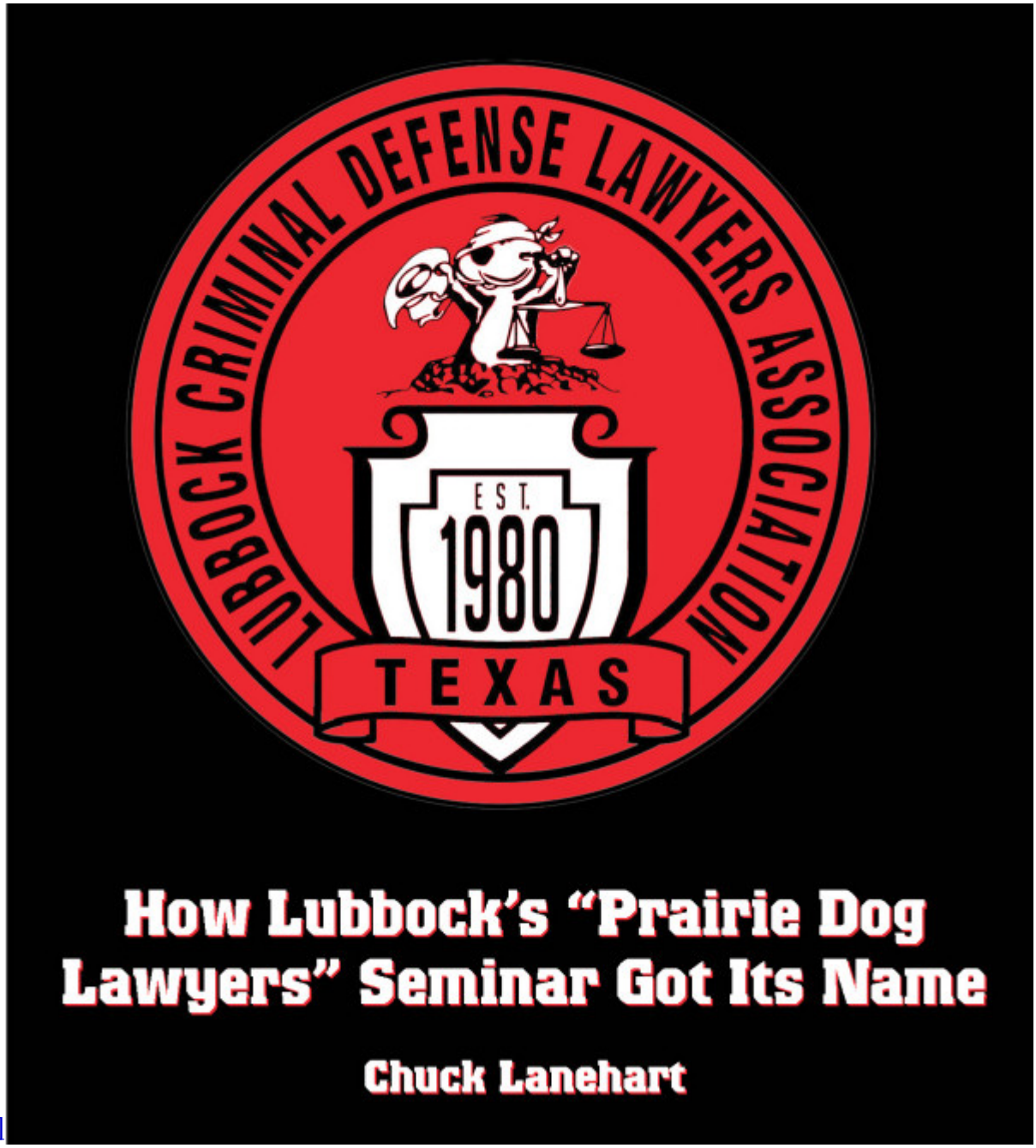
[3] 

Your Honors, this case was tried before the Honorable James N. Browning, Judge of the 47th Judicial District, but that is not the only reason it should be reversed.

?Prairie Dog Lawyer Tom Turner, circa 1900
Argument before the Amarillo Court of Appeals

The Lubbock Criminal Defense Lawyers Association?s upcoming 37th annual seminar?set January 5?6 at the Texas Tech University School of Law?has been an important and popular continuing legal education event for decades. About ten years ago, a new name was adopted for the course: ?The Prairie Dog Lawyers Advanced Criminal Defense Seminar.?

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Most folks naturally assume the name is an innocuous reference to Lubbock?s semi-famous Prairie Dog Town, a third-rate tourist attraction teeming with the semi-cute little furry creatures. Instead, the title carries quite a bit more weight. The Prairie Dog Lawyers were a celebrated generation of pioneer attorneys and judges who brought a measure of justice to 19th century West Texas, generating many inspiring and humorous narratives.

The most famous Prairie Dog Lawyer was Temple Lea Houston, youngest son of the iconic Texas hero Sam Houston. The younger Houston?s adventures as a Panhandle trial lawyer in the 1890s inspired several books and an NBC television series starring Jeffrey Hunter, ?Temple Houston? (1963?1964).

I?m not entirely sure how it was decided to name our annual seminar the ?Prairie Dog,? but I believe it evolved from a conversation I had in about 2006 with Austin lawyer Keith Hampton, a fellow legal historian. We were comparing notes on an old book, *The Prairie Dog Lawyer*, by Charles E. Coombes, published in 1945. The manuscript is a treasure-trove of stories about law practice on the Texas South Plains and the Panhandle from the 1880s through the turn of the last century.

The foreword, written by Amon Carter?founder of the *Fort Worth Star-Telegram*?includes a transcript of a delightful speech delivered by the noted humorist, 7th Court of Appeals Judge R. W. Hall, at the 1929 Texas Bar Association meeting at Amarillo. Though filled with archaic language and sometimes offensive humor (which has been deleted here), the text is essential Texas legal lore:

The Prairie Dog Lawyer
By Judge R. W. Hall

I have been requested to respond to the usual toast ?The Prairie Dog Lawyer,? one of whom I am and proud of it. As applied to those of our profession who came to the wide-open spaces of Northwest Texas when they were peopled with prairie dogs, coyotes, jackrabbits, bad men, and worse women, the phrase ?Prairie Dog Lawyer? was not intended in any sense to be laudatory or eulogistic. As then used and intended, it was a nickname, and worse, for it was often applied as an epithet. While it originated in a spirit of ridicule, many of those who were so classified made it famous and respected, just as others in the past who have been called in derision Quakers, Methodists, Crusaders, Rebels, Yanks, Cowpunchers, Clodhoppers, and Sky Pilots have made such names honorable and have baptized and christened them in martyrs? blood and glorified them by deeds of heroism and sacrifice. This is emphatically true of most of those original old pioneer Prairie Dog Lawyers who lived and died in the years that are gone and whose cases have been appealed to the bar of the Judge of all the Earth. Because I knew and loved them I approach my subject with bowed head and my hat in hand.

Prominent among such heroes were Judge Frank Willis, Governor Jim Browning, Senator Bill Plemmons, Judge Will Boyce, Senator John Veale, Sam Madden, Lorenzo Dow Miller, Dave Hill, Temple Houston, Gip Brown, B. M. Baker, S. P. Huff, H. H. Wallace, Woodman, and others whom I might mention and who have gone over the Great Divide. When measured and weighed by the Decalogue and the Sermon on the Mount they were not all perfect, but they were strong, rugged characters, true to their clients and their profession; their sterling qualities, their loyalty to each other and the eternal principles of justice, is a rich heritage, of which those of the tribe who are still here are justly proud. While they came here from other sections of Texas and from other States, they were always true to the best interests of the Panhandle. In the stormy days of the ?Land Jumpers,? and ?Fence Cutters,? and ?Cattle Rustlers,? they stood in solid phalanx battling for the law and its supremacy. They were like the Irishman who said, ?Every man should be loyal to his native country whether he was born there or not.?

Judge R. W. Hall

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To paraphrase what someone has said of Texas?it is impossible to tell a lie on the Prairie Dog Lawyer. Whatever you say, be it good or bad, it is true of some of them, sometime, somewhere, somehow, and to some extent.

With few exceptions, the typical Prairie Dog Lawyer never saw even the outside of a law school, and in his estimation a diploma would have been a woeful waste of good shoestring material. The State Examining Board is trying to change all that. The only sheepskins in his possession covered his ?Sayles? Justice?s Guide? and ?White & Wilson?s,? four omniscient, omnipresent, and omnipotent volumes, all which legal Pentateuch he could find good law on either side of any question. The ubiquitous law-book man with his decennial revisions and annual supplements is changing that.

The Prairie Dog Lawyer was a powerful advocate. He was sorter weak on the law occasionally, but strong and long and awfully loud on the facts, so he didn?t need much written law in his business, though he frequently had to appeal to the unwritten law in behalf of his client.

On one occasion Lorenzo Dow Miller and Hoover had a case in a remote county before an alleged justice of the peace. His Honor ran a saloon on the lower flood and had what was denominated a hotel in the second story. Court was held in the back end of the saloon. When the testimony was all in, Hoover vehemently insisted that the law was one way. Then Miller went into eruption and with more vehe-mence, insisted that the law was the other way. His Honor, who was both judge and jury, drummed on the poker table with his fingers while he listened to the flow of legal lava. Finally Miller pulled out his fee in the case, which happened to be a $10.00 gold piece, threw it on the table in front of the judge and said, ?Here?s $10.00 to back up what I say is the law. Now, Hoover, put up or shut up.?

There wasn?t a law book within 60 miles. Hoover only had $2.00 in his pocket. But, assuming all the dignity of the King of Clubs (which Hoover can do if necessary) he told the judge that such a proceeding was an insult to the intelligence of the court and that was no way to decide a question of law. His Honor drummed on the table for a few minutes and then said: ?Well, Mr. Hoover, money talks. You must ante or drop out of the game. If you ain?t willing to back your judgment on what the law is, she goes again? you.? And Hoover lost his cause.

. . .

Few Prairie Dog Lawyers could tell you the difference between an executory devise and a contingent remainder, but they all knew the difference between two pairs and a bobtail flush. Right here I pause long enough to beg you not to be too severe in your judgment. This was long ago when there was no radio, no yo-yo, automobile, country club, moving picture show, Sunday baseball, or cow-pasture pool, and the boys had to play something. The eternal triangle with its glaring headlines didn?t monopolize the front page, because there wasn?t any front page. Wives had not organized the Mutual Aid Societies for semiweekly pistol practice, because women had not commenced to wear children?s clothes in those good ole days. *Speer on Marital Rights* had not been written, and they didn?t know they had any rights. So, all things considered, while a friendly game of draw with a nickel ante and a two-bit limit was neither strictly legal nor ethical, it was far better than organizing oil-less oil companies, hot air gas trusts, and promoting blue sky corporations to fleece an unwary public.

In those days horse stealing and cattle rustlin? were the two unpardonable sins in this country. If a fellow stole a horse, and the evidence was sufficient to convict (to use modern judicial nomenclature), his case was not justiciable. Why waste time and money trying a thief? If the evidence was weak and there was danger of an acquittal, the culprit was hanged to the first cottonwood limb and there was no case to try. If a man was suspected of using his branding irons in the dark of the moon, and a calf with his brand on it was found sucking another man?s cow, the calf?s testimony against him was conclusive and indisputable. The case was not considered judiciable and the county was saved the expense of a trial. To state it in the judicial phraseology and nomenclature of today, the ?Basic Data? shown by the partiality of the cow for her mal-branded offspring and the *super-imposed inferences* to be drawn from the calf?s drawing upon his differently branded source of supply was a *postulate marked by unequivocation* and provided a *concept* which *negated the implication* of innocence or mistake in handling a branding iron. ?In other words? the ?collaboration? of the cow and calf ?intersee? left an ?evidentiary margin? for the presumption of innocence, but *ex vi necessitate* was proof, *ex Cathedra* as it were, ?justifying a decretal presently enforceable? and ?resultant??and they hung the thief forthwith.

As I have indicated, there was no such thing as a law library in all this broad expanse of country and what few we knew were not rigidly enforced. But, we could advise our clients what the law was today, with reasonable assurance that it would be the same next Wednesday.

As in the time Israel?s greatest apostasy, those were the days in which ?every man did that which was right in his own eyes,? and most men settled their legal and equitable difference by an appeal to the stern arbitrament of a Colt?s fourth-some-odd, which hung conveniently in its holster on his hip.

. . .

In his rounds, the district judge, as a matter of form, carried the revised statutes of ?79 with him. On one occasion, in going from one county seat to the other, it was necessary for Judge Willis and the lawyers to wade the Canadian River. The stream was badly swollen, but not navigable, at which time the quick sands were extremely treacherous. Woodman, who was more than six feet tall, was leading the procession, holding the statute above his head in both hands to keep it dry. In fact, the code was the only dry thing in the procession . . . Judge Willis, who was short and stumpy complected (he was

undressed in one-piece-bathing-revue-costume), was wading immediately behind Woodman. Willis stepped into the quick sands and commenced to sink. He called to Woodman for help. Woodman insisted that with the precious statute in his custody, he could not help the Court. The Court said: ?Woodman, drop the statutes. Let the law go to Hell and save the Court.?

This is still the slogan in many localities. When it becomes necessary to save the Court, the law is secondary consideration and must be thrown overboard, always.

They tried cases under high pressure. They fought like gladiators and contested every inch of the ground. They practiced law because they loved it and not for revenue only. The profession had not then been commercialized and a lawyer?s ability was not measured by the size of his fees and his balance in the bank.

To them the jury was the court of last resort, and its verdict was generally final. There were few appeals. They had no court stenographer and the district was 200 miles wide and 400 miles long. An appeal took lots of time and labor. A new lawyer drifted into the district who knew how to appeal. He was at once frowned upon and ostracized because, as Amos Fires expressed it, ?That fellow is going to work us all to death with his fool appeals.? Although they were fighters to a finish the verdict was usually the finish, and as soon as the smoke of battle had cleared away and the dust had settled in the arena, all parties (including the Court) repaired to that popular corner where the cowpuncher made his headquarters when in town; and together the one drowned his disappointment and the other celebrated his victory, with their feet on the same rail. The most genial spirit of fraternity prevailed and no one harbored malice or ill-will because of what happened during a trial.

Tom Turner appealed one case, and when he went to argue it in the Appellate Court, he said: ?May it please Your Honors, this case was tried before the Honorable James N. Browning, Judge of the 47th Judicial District, but that is not the only reason it should be reversed. There are twenty-seven others in the record.? Someone told old big-hearted, lovable Jim what Tom had said, and it took Jim nearly all day to get in a good humor again.

Many of them, like the saddle-bag lawyer of East Texas did years ago, went around the immense district with the Court, but they traveled in buckboards and in hacks. Their lodging place was wherever the shadows of night overtook them and with a Parker to sleep on and a Suggins for a cover, they dreamed under the star-spangled canopy of heaven to the music of the coyote?s chilling serenade.

But my time is limited. In conclusion let me say that when the Epic of the Panhandle has been written by some genius who has dipped his pen in inspiration and has faithfully portrayed in flowing words the thrilling scenes of those old days that are gone never to return, the Prairie Dog Lawyer will be the central figure in that grand picture.

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