

## **A Brief History of Lubbock and the Law** by Chuck Lanehart

West Texas lawyers of the late 19<sup>th</sup> century were an itinerant lot, pursuing clients and lawsuits about the Plains like farm laborers chasing the harvest.

### **Prairie Dog Lawyers**

One can imagine how difficult it must have been to earn a living as a lawyer in a community in which perhaps only four or five lawsuits were filed yearly on the entire civil and criminal docket, including both county and district courts. The district judge would “ride the circuit,” holding court at appointed times in various county seats of the far-flung district, and trial lawyers were forced to follow the trial judge across the countryside. Thus, the Plains lawyer of the late 1800's often had no formal office, and simply practiced law astride a horse, or in the back room of a saloon, or out of a buggy, carrying the tools of his trade – statutes, pen and ink – in saddlebags.

These “Prairie Dog Lawyers,” as they were called by an early observer, were described as “strong men, rugged, forceful, powerful before the juries . . . In fact, they depended almost exclusively on the jury, and felt that the court was a useless appendage in the halls of justice.” Few lawyers wasted any time poring over musty volumes of law. Instead, the Prairie Dog Lawyer simply memorized passages of legal phraseology garnered from witnessing other lawyers in court, and he relied on his “genius, entrancing eloquence and personality” to influence juries.

One example of this type of practice occurred in a Justice Court on the South Plains sometime late in the 19<sup>th</sup> century. Cowboy lawyer L.D. Miller was indignant that his opponent, Lawyer Hawkins, dared to cite case law to the Judge. Confidently, he addressed the Court: “Your Honor, that is not the law.”

Hawkins refused to relent, however, so Miller used his imagination. “I’ll bet you ten dollars it’s not the law!” he blustered as he dramatically placed the cash on the counsel table. “Now cover it. Money talks. Put up or shut up,” Miller argued. Not having ten dollars, the bookish Lawyer Hawkins looked imploringly to the Court, but he got no sympathy.

“Yes, Mr. Hawkins,” the Court ruled. “Money talks. If you ain’t got the nerve to cover his ten, I guess you are wrong, and the Court rules against you.”

### **Early Lubbock County Law Practice**

Lubbock County was part of the 50<sup>th</sup> Judicial District, and later the 64<sup>th</sup> Judicial District, until the 72<sup>nd</sup> District Court was headquartered in Lubbock in 1911. The 50<sup>th</sup> District was headquartered in Seymour, and the district judge had jurisdiction in 13 counties stretching from Seymour to the New Mexico state line. Lubbock pioneer lawyer and judge George R. Bean remembered that the district judge “left home from Seymour and had with him a chuck wagon, hack, etc., going from town to town to hold court. He put in two or three

months during the summer this way. The district judgeship was not a very pleasant job in those days.”

W.C. “Connie” Henderson was among at least three men who practiced law in Lubbock County upon its creation in 1891. Will F. Hendrix was the first County Attorney, and also handled the first lawsuit filed in District Court. This was *Caldwell vs. O’Harrow*, a suit for debt and to foreclose a mechanic’s lien. It seems that the defendant had not paid the plaintiff for building a one and one-half story hotel. The price contracted for building the hotel was \$114.50. Robert E. Lee Rogers, the second County Attorney, published Lubbock’s first newspaper, *The Lubbock Leader*, which began a very short publishing history on July 31, 1891 before folding. The publication featured lawyer advertising for both Henderson and Hendrix. The attorneys, unfettered by professional rules of advertising, touted their further expertise in real estate and insurance matters.

Lubbock County supported only two attorneys by the end of 1892. The statistic ballooned to nine by 1893, and six lawyers were residents of Lubbock County in 1894. Thus, in a community of no more than 200 souls, Lubbock had an attorney-client ratio in the 1890's as high as one lawyer for every 22 county residents. (In order to put these numbers into proper context, consider the attorney-client ratio in the 1940's of one lawyer for every 625 county residents. In the 1980's, the ratio was one lawyer for every 666 county residents. Today, the ratio has diminished to one lawyer for every 368 county residents.)

### **Courthouses**

The original wood frame courthouse, with its distinctive cupola (a windowed tower atop the roof), was constructed roughly in the location the Lubbock County Courthouse now stands, for a cost of \$12,000 in 1892. In April of 1895, the courthouse was remodeled by Mother Nature. A terrible windstorm hit the wood frame structure so hard the cupola was blown off, and the building was so twisted that none of the doors or windows would operate. Repairs of the courthouse did not include a new cupola. The 1892 courthouse was replaced by a brick courthouse in 1916, and the present Lubbock County Courthouse was completed in 1950.

In 1928, the first federal court was established in Lubbock. The United States District Court for the Northern District of Texas, Lubbock Division, was headquarters to federal jurisdiction in 13 West Texas counties. In 1932, a magnificent federal courtroom was installed on the third floor of the brand-new U.S. Post Office Building, at 800 Broadway. With art-deco architecture, floor-to-ceiling windows, hand-carved oak paneling, hardwood floors and marble trim, it was a grand setting for local federal litigation until 1970, when the new Mahon Federal Building was completed. Former Lubbock County Judge Bill Davis remarked in 1987 that close inspection might reveal bloodstains from epic legal battles on the walls and floors of the courtroom. A.W. “Shorty” Salyars, a legendary Lubbock trial lawyer, always claimed that the courtroom was haunted. “Old Judge Dooley choked when he was obliged to utter the words ‘not guilty’ after a federal jury acquitted a defendant. So, he still haunts the courtroom, hoping for a guilty verdict.”

Lubbock County eventually acquired the old post office building, and the courtroom has since housed the Lubbock County Court Master/Associate Judge, and later the 237<sup>th</sup> District Court. Although the old post office building is now vacant and in disrepair, the original third-floor U.S. District Courtroom quietly survives as the oldest and most historically significant legal arena in Lubbock.

### **Early Trials and Lawsuits**

Although Lubbock County was organized in 1891, and the first county officials were elected in March of that year, the first lawsuit was not filed in the County Court until February 11<sup>th</sup>, 1892. *E.Y. Lee vs. J.F. O'Harrow*, Cause No. 1, was a contract dispute involving care and pasture of cattle. The attorney for the plaintiff was Connie Henderson, who obtained a waiver of citation from the defendant and a judgment for \$475.

Henderson filed four of the first ten lawsuits in Lubbock County Court. However, there was a span of almost ten years between the filing of Cause Number 1 in 1892 and Cause Number 10 in 1901. More lawsuits were filed in District Court than in County Court, but most of these suits were actions by the State in the nature of trespass actions against squatters.

In 1891, the first person formally accused of a felony crime was indicted by a Lubbock County grand jury. The defendant, F.E. Wheelock, was accused of fence cutting and cattle theft. The charges were soon dismissed, so Wheelock eventually got involved in politics. Wheelock was elected Lubbock's first mayor when the City of Lubbock was incorporated in 1909.

Connie Henderson defended the first person tried in Lubbock County for a felony crime. The defendant was Jim Vance, accused of horse theft in June of 1892. The defense was necessity and lack of criminal intent. Vance testified that he in fact took the mare, but left a note to the horse owner stating, "They are after me for killing two Mexicans. My horse broke down, and I think you would let me have yours if you was here. I will send her back or give you \$60." Vance apparently never paid for the horse or brought her back, but the defense worked, and he was acquitted by a twelve-man jury.

### **Notable Early Lubbock Lawyers**

George R. Bean came to Lubbock in 1893 as a teenager with his family, and resided at first in a dugout northeast of town. He was the non-lawyer Justice of the Peace in Cause No. 8, styled *Vaughn vs. Bremaud*, appealed to County Court in 1900. That court shuck yields the first evidence of formal attorney stationery in Lubbock. Until then, all pleadings and correspondence filed at the courthouse were written in longhand. John J. Dillard, the plaintiff's lawyer, noted on his printed letterhead that he was not only an attorney, but a notary public, collection agent, abstractor, and creator of surveys "promptly and accurately made on short notice. Prices reasonable." Bean was licenced to practice law in 1901, but found few clients and returned to the bench as County Judge. He later formed a partnership with E.L. Klett, which was the beginning of the oldest law firm in Lubbock, now

known as Jones, Flygare, Brown and Wharton.

John J. Dillard first came to town in 1896, and was licensed to practice law in 1898 after a committee of four 50<sup>th</sup> District attorneys administered Dillard a 15-minute bar exam. He was also the founder and editor of the *Lubbock Avalanche*, predecessor to the current *Lubbock Avalanche-Journal*. Dillard held the distinction of winning the first jury trial in Lubbock's County Court, in Cause No. 12, styled *Lake vs. Copeland*. The case was also the first to be appealed; thus, Dillard held the further distinction of having lost the first appeal from Lubbock County, *Lake vs. Copeland*, 72 S.W.99 (Tex. Civ. App. – Fort Worth 1903, no pet.). He practiced law in Lubbock more than 50 years.

What was considered the first permanent law office in Lubbock was established by W.D. Benson, who arrived in a covered wagon with his family on May 5, 1902. Benson obtained his license to practice law as did most lawyers of the era, by "reading law" in an attorney's office. After sufficient study, an aspirant would appear before a group of lawyers or judges and take a bar examination. Sometimes it was a literal bar exam, taking place in the local saloon, and consisting of a contest to establish whether the new fellow could hold his liquor well enough to enter the profession. In Benson's case, the young man appeared before the local district judge on the appointed day, ready to be tested.

The judge was less prepared than Benson, however. The old man explained that he had never given a bar examination, and didn't know what the proper questions were. After some delay, the Judge finally improvised an inquiry. "Mr. Benson, give me the proper definition of *habeas corpus*."

"Your Honor," Benson began apologetically, "I'm afraid I don't exactly understand just what *habeas corpus* means."

With that, the judge declared Benson a duly qualified attorney: "Mr. Benson, I can't honestly say that I understand what it means either. So, I guess you pass."

Benson differed significantly from the Prairie Dog Lawyers who had preceded him in Lubbock, the various pioneer counsel who never bothered to establish formal offices, and who packed up to move on, to ride the circuit, never to return. Benson was a homesteader and family man. He invested in property, and established a permanent law office and abstract plant on the south side of the Lubbock County Courthouse square, where the Mahon Federal Building now stands. Miss Callie Dean, Lubbock's first stenographer, was employed by Benson. A typewriter was used for Benson's office correspondence. He was reported to be the first lawyer in Lubbock to maintain a law library, and apparently was well-versed as a legal researcher.

### **The First "Lawyer's Banquet" and the First Bar Memorial**

What eventually became the Lubbock County Bar Association first met at the historic Nicolette Hotel on the south side of the Lubbock County Courthouse square, in 1891. Known as the "Lawyers Banquet," the gathering was attended by attorneys George E. Rosen, R.L. Rogers, J.I. Montgomery, L.G. Wilson and Connie Henderson. According to

legend, the first Lawyer's Banquet included a conversation between Henderson and a young cowboy in attendance who was considering a profession. Henderson encouraged the cowboy to take up the practice of law. Henderson offered to tutor the cowboy for a month, at which time he felt confident he could qualify for a license.

On April 2, 1902, the Lubbock County Bar Association met in memory of Lubbock lawyer J.W. Jarrot, who was the victim of a contract killer, according to contemporary accounts. Similar bar memorial services have regularly been held at the Lubbock County Courthouse since that time. It is believed that the Lubbock County Bar Association's tradition of holding a memorial service for each departed member is unique in the State of Texas.

### **Lubbock County Bar Associations**

According to "A History of Lubbock" by Lawrence L. Graves:

By early 1910 members of the bar in Lubbock and the surrounding area were organized into a loose grouping referred to as the South Plains Bar Association. There were no officers in it . . . meetings were held at irregular intervals and when the members had something of importance to discuss, usually two or three times a year. Meetings were held in the offices of various attorneys in Lubbock, or in the county courthouse, with delegates from surrounding towns attending whenever possible. About once a year the lawyers' association also sponsored a banquet, as happened in February 1910 when a banquet was held in the Tremont Hotel in honor of Washington's birthday. Before the banquet, members met at the home of County Judge McGee and heard a talk on divorce by J.E. Vickers and one on homicide by Judge W.F. Schenck. The Bar Association concerned itself with agitation for the creation of a new judicial district by the state, and for a federal district court. The association was an important force in helping bring about the creation in March 1911 of the 72<sup>nd</sup> District Court of Texas, centered in Lubbock and comprising a total of ten counties. The association also helped bring about the location of a federal district court in Lubbock in 1928.

One of LCBA's major functions through the 1960's was to publish "minimum fee schedules" for local attorneys, until the United States Supreme Court outlawed the practice. The 1937 "Schedule for Minimum Fees" recommended \$2 for a legal consultation and \$50 for a trial in District Court. The 1948 "Minimum Fee Guide" suggested \$3 for a legal consultation, \$100 for a civil trial in federal court, and \$75 for a divorce or annulment. The 1961 Minimum Fee Committee published its guide establishing minimum fees of \$200 for an uncontested divorce and \$100 per day for attendance in trial in County Court.

In 1961, J.Q. Warnick was secretary of the Lubbock County Bar Association, and director of the State Junior Bar. He made a motion at a summer meeting of LCBA to authorize the creation of the Lubbock County Junior Bar. There was some opposition, but the motion passed. The first officers of the Lubbock County Junior Bar were sworn in November of 1961: Charles Galey, President; Brad Crawford, Vice-President; Jan Fouts, Secretary; Ken Hobbs, Director; and Joe Nagy, Director.

The LCBA first presented the Outstanding Young Lawyer Award at its Law Day Banquet in 1965, and the Liberty Bell Award was first presented in 1966. In 1976, the State Junior Bar was renamed the Texas Young Lawyers Association, and the Lubbock County Junior Bar soon followed with a name change. Since 1988, the Lubbock County Young Lawyers Association president and president-elect have served on the Board of Directors for the LCBA.

In 1966, the LCBA established the Legal Aid Society of Lubbock, one of the first agencies dedicated to providing representation for indigents in civil cases. An editorial in the *Lubbock Avalanche-Journal* opined, "Lubbock County appears on its way to having one of the state's fairest and most workable systems of legal aid for indigents."

In 1970, after a huge tornado devastated Lubbock, the LCBA set up eight intake centers in the Guadalupe area to assist indigent victims of the storm. More than 104 members of the bar gave between sixteen hundred and eighteen hundred hours of free work to residents in the area, aiding them in reestablishing their lives.

The LCBA has produced three Presidents of the State Bar of Texas: Travis Shelton (1977-1978), Joe Nagy (1987-1988), and Frank Newton (1997-1998). The Lubbock bar's collective effort to elect Shelton, a sole practitioner who specialized in criminal defense, as State Bar President in the mid-1970's is considered one of the great achievements of the Lubbock County Bar. In 1987, LCBA President Robert Wilson established *The Lubbock Law Notes*, LCBA's monthly publication, recognized in 1993 by the State Bar of Texas with the Star of Achievement Award. In 1990, the State Bar of Texas honored LCBA with the Award of Merit for its overall excellence in programs.

In 1980, the Lubbock Criminal Defense Lawyers Association was formed. LCDLA is the oldest and largest of the specialty bars in Lubbock, and annually presents the well-attended Prairie Dog Lawyers Advanced Criminal Law Seminar. In 2005, the State Bar of Texas honored LCDLA with the Star of Achievement Award for excellence in legal education. Four LCDLA members have served as President of the Texas Criminal Defense Lawyers Association: George Gilkerson (1974), Clifford Brown (1982), Bill Wischkaemper (1995), and Danny Hurley (2004). LCDLA has tackled several worthy but unpopular causes over the years. The Association successfully sued Lubbock County in the early 1980's to provide adequate space for attorney-client conferences in the new Lubbock County Jail. In the late 1980's, LCDLA filed a mandamus action which established new law regarding the right to counsel in the landmark case of *Stearnes vs. Clinton*, 780 S.W.2d 216 (Tex. Crim. App. 1989). In the early 1990's, LCDLA volunteers participated in what is now known as "The Range Wars," exposing a corrupt system of pathology testimony in homicide cases on the South Plains. In 2005, LCDLA forced the removal of the divisive Victim's Monument from the Lubbock County Courthouse lawn.

### **A Few Other "Firsts"**

Pat Moore began her practice in Lubbock in 1949, shortly after graduating from SMU Law School, thus becoming the first female lawyer in Lubbock. In 1953, she became the first

woman president of the Lubbock County Bar Association, and four years later she was elected as the first woman judge, of Lubbock County Court at Law Number 2. In 1968, she was elected the first woman district judge, of the 72<sup>nd</sup> District Court.

The first woman elected to the Lubbock City Council was Carolyn Jordan (1974-1980), a Lubbock attorney.

The first person of African-American descent to establish a law practice in Lubbock is believed to be Gene Gaines, who came to town in the late 1960's or early 1970's. In 1976, Gaines filed the first federal lawsuit challenging the at-large system used to elect the city council of Lubbock. Though Gaines' effort was initially unsuccessful, by 1983 a federal court ruling was obtained outlawing the at-large system, and single-member districts were ordered to be implemented.

The first Hispanic lawyer in Lubbock was named Gregorio Coronado, who opened a downtown law office as early as 1957.

In 1994, Aurora Chaidez Hernandez became the first Hispanic attorney to serve in a Lubbock County judicial post, as Precinct 3 Justice of the Peace. Sam Medina was the first Hispanic lawyer to serve in a countywide judicial post, as Judge of County Court-at-Law No. 1, appointed in 1995. Judge Medina is also the first Hispanic to serve as district judge, winning election in 1998 as Presiding Judge of the 237<sup>th</sup> District Court.