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# Better Late than Never: Publication of the Decisions from the 1845 Term of the Republic of Texas Supreme Court

James Hambleton

David A. Greenblatt

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# Better Late Than Never: Publication Of the Decisions From the 1845 Term Of the Republic of Texas Supreme Court

By James Hambleton  
And David A. Greenblatt

Two years ago, this column featured the rediscovery of a full year's worth of decisions issued by the Supreme Court of the Republic of Texas that had never been printed. Paulsen & Hambleton, *Whatever Happened to 1845? The Missing Decisions of the Texas Supreme Court*, 48 Tex. B.J. 830 (1985). Those decisions now have been collected and will appear in the December 1986 issue of the *Texas Law Review* (*The Missing Cases of the Republic*, 65 Texas L. Rev. 377 (1986)). Although none of the missing cases are likely to have any direct bearing on the outcome of the Texaco-Pennzoil appeal or any other great legal issue of our day, the opinions nevertheless should be of considerable interest to attorneys, law librarians, and historians.

To recapitulate briefly, the Supreme Court of Texas has met annually since a quorum was first assembled on Jan. 13, 1840. From 1840 through 1845 the highest court of the Republic of Texas, the

supreme court, consisted of a temporary committee of district judges presided over by a permanent chief justice. From 1846 to the present, the supreme court has been composed of a permanent panel, increasing from three to nine members in 1945.


From statehood until its unofficial demise in 1962, the *Texas Reports* contain decisions of the Texas Supreme Court; from 1886 to the present, the court's opinions are also available in West Publishing Company's *Southwestern Reporter*. During the period of the Republic of Texas, however, no official reporter printed the opinions of the Republic Supreme Court. Consequently, for pronouncements from the court, attorneys could rely only on word of mouth, sporadic newspaper reports, or private publications.

For modern lawyers, the sole source for Republic of Texas decisions is *Dallam's Digest*, sometimes bound as "Volume O" of the *Texas Reports*. James Wilmer Dallam was not commissioned by the Republic Supreme Court or by the Congress of the Republic to compile the decisions. He was just an attorney and newspaper editor from Matagorda who,

apparently having nothing better to do in the winter of 1844-45, compiled and edited the court's opinions for publication.

Dallam probably chose to publish his compilation in the spring of 1845 because he shared the common belief that annexation of Texas to the United States was imminent. Negotiations dragged on, however, and the Supreme Court of the Republic of Texas proceeded to hold a final session that began on Dec. 15, 1845, and concluded on Jan. 6, 1846. Because the statutes of the State of Texas made no provision for printing decisions of the Republic, and because publication of the single batch of 30 decisions issued during the December 1845 term would not have been a profitable commercial venture, the decisions were never printed. Eventually, they were simply forgotten.

In the 1970s Marian Boner, director of the State Law Library, "rediscovered" the missing decisions and began to transcribe them. Her death, however, prevented completion of the project. Early in 1985, James Hambleton, Boner's successor as director of the State Law Library, mentioned in a chance conversation with Jim Paulsen, then a briefing



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attorney at the Texas Supreme Court, that some Texas Supreme Court opinions had never been published. Paulsen did some quick detective work at the Texas State Archives and found copies of about half of the missing opinions.

The Texas Sesquicentennial provided the appropriate event for locating and publishing the missing decisions. The Supreme Court of Texas kicked off the project, authorizing Jim Paulsen to publish the opinions and naming him the official "Reporter" for the "hitherto unpublished decisions of the Supreme Court of the Republic of Texas." The State Bar's Committee on History and Traditions of the Bar and Historical Preservation boosted the project by endorsing publication as an official sesquicentennial project of the Bar. The

sion on a prize of war taken by the Texas Navy. A dissenting opinion in *H.H. Williams & Co. v. Borden*, Dallam 577 (Tex. 1844), omitted for some reason by Dallam from his published work, reveals a major challenge to the legitimacy of the entire monetary system of the Republic of Texas.

In addition to the missing cases, this special issue includes three other major sections. The first is an essay entitled "A Short History of the Supreme Court of the Republic of Texas," and the second is a section containing extensive biographical sketches of all Republic of Texas judges (complete with portraits).

The last section in this special issue reprints a full set of court rules in effect for the Republic of Texas as well as for the first years of statehood. Newer ver-

tutoring to advanced university studies; and in experience from freshly issued law licenses to circuit judgeships in populous states.

The extensive historical essay in the first section of this special issue provides a thorough treatment of the Supreme Court of the Republic of Texas. This essay examines the historical context within which the supreme court operated and explores some of the problems that plagued its short existence.

Paulsen's essay presents a historical survey of the establishment and operation of the court and analyzes several defects in the structure of the court. These defects included a constitutional mandate for an unlimited caseload, a part-time committee of judges to deal with those cases, the requirement of only a single session per year, no constitutional provision for filling vacancies on the bench, and a lack of independence from the Congress.

In addition to setting out these structural defects, the essay discusses the difficult conditions under which the court operated. Readers unaware of conditions prevailing at the time may be surprised by documented incidents such as the capture of a judge by the Mexican army, the theft of the chief justice's law books by Comanche raiders, and the murder of a retired judge by friends of a former litigant. Likewise, the decision by one judge to resign amid accusations of corruption and drunkenness on the bench, as well as the decision of another judge to step down because of a pending murder investigation, cannot help but make interesting reading.

All in all, this issue of the *Texas Law Review* should be of great interest to anyone with a taste for legal research or Texas history. Law librarians might wish to purchase an extra copy to bind as "Dallam's Supplement" or "1/2 Texas," which would place this volume between *Dallam's Digest* and "1 Texas" on the shelf. This book would serve then as a reminder that something really did happen in 1845.

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*James Hambleton, manager of legal information resources at Haynes and Boone in Dallas, writes and lectures on Texas legal research. David Greenblatt is research editor for the Texas Law Review and will be an associate this fall with the Dallas law firm of Hughes & Luce.*

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***The Sesquicentennial issue of the Texas Law Review contains the full text of 17 previously unpublished decisions of the Supreme Court of the Republic of Texas. Fourteen missing opinions have been partially reconstructed. The Review serves as a reminder that something really did happen in 1845.***

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*Texas Law Review* not only responded affirmatively to a publication inquiry, but the *Review's* editorial board offered to devote an entire issue to the judiciary of the Republic of Texas as the *Review's* contribution to the Texas Sesquicentennial.

The result of two years of painstaking historical research by Jim Paulsen is this remarkable Sesquicentennial Issue of the *Texas Law Review*. The centerpiece of the issue is, of course, the "Missing Cases." The issue contains the full text of 17 previously unpublished decisions of the Supreme Court of the Republic of Texas. In addition, by combining court judgments, newspaper accounts, district court records, and digest notes from the 1850s, 14 missing opinions have been partly reconstructed. All in all, the *Review* presents a remarkably complete picture of the business of the Supreme Court of the Republic of Texas during its 1845 term.

Several of the cases are of considerable interest, in and of themselves. *Houston v. Lamar*, a suit between two presidents of the Republic of Texas, involved a claim by Houston for damage to furniture at the presidential mansion. The case not only sheds new light on the relationship between Houston and Lamar but also is possibly the first pronouncement of a Texas court on the question of prejudgment interest. *Schooner Anna Maria v. Moore* contains the final deci-

sions of some of the court rules for the Republic of Texas still govern practice in Texas courts. Republication in the *Texas Law Review* makes legal and historical research possible without resort to rare book collections. Additionally, this issue of the *Review* includes some rules that have never before been printed.

Historians will find that the biographical sketches of the judges in the second section contain a wealth of information. Altogether, 28 men served in the judiciary of the Republic, four as chief justices and 24 as associate judges. Many contributed to the political development of the Republic in its early years. The list includes legal luminaries such as John Hemphill, Royall T. Wheeler, and R.E.B. Baylor, heroes of the Texas Revolution like Thomas J. Rusk and James Collinsworth, and colorful characters such as "Three-Legged Willie" and "Buffalo Head" Ochiltree.

The stories of the chief justices and associate judges of the Supreme Court of the Republic present studies in wild contrasts: from a Baptist minister who held court by day and preached church by night to a scoundrel who deserted his wife and children, from an accomplished jurist widely known for his courtly manners and amiable disposition to a judge who resigned his office one step ahead of an impeachment commission. The judges ranged in age from their early 20s to their late 40s; in education from informal

# UT Advocacy Programs Endowment Receives New Funding

The Advocacy Programs Endowment for The University of Texas at Austin Law School was advanced by more than \$301,000 when funds for that purpose were accepted by the UT System Board of Regents at its April 9 meeting in Smithville.

Trial advocacy programs help law students acquire courtroom skills through competitions such as mock trials (simulated jury trials) and moot courts (simulated appellate court arguments).

The law school has a campaign underway to endow its advocacy programs with a minimum of \$1 million. The pledges and gifts accepted in April move the endowment past the \$600,000 mark. Previous contributions to the effort have included the Tiny Gooch Centennial Professorship in Trial Practice, the Susman, Godfrey & McGowan Endowed Moot

Court Competition, and numerous gifts from individual attorneys, law firms, and corporations. Accepted at the regents' meeting were:

— \$170,331 from eight law firms — Baker & Botts, Houston; Vinson & Elkins, Houston; Jones, Jones, Curry & Roth, Marshall; Kidd, Whitehurst, Harkness & Watson, Austin; Fulbright & Jaworski Partners, Houston; Atlas & Hall, McAllen; Liddell, Sapp & Zivley, Houston; Fisher, Gallagher, Perrin & Lewis, Houston — plus the M.D. Anderson Foundation, Houston.

— \$105,940 from the redesignation of the existing Thad T. Hutcheson Professorship in Law to the Thad T. Hutcheson Endowed Moot Court Competition. The late Mr. Hutcheson of Houston, was a 1940 UT Austin law graduate and partner with the firm of

Hutcheson & Grundy, which established the initial professorship in his memory. Winners of the annual UT moot court competition will be awarded the Hutcheson & Grundy Trophy.

— \$25,000 from Browning-Ferris Industries Inc. of Houston. In recognition of that gift the Regents approved naming a seminar room (3.114) in Townes Hall the Browning-Ferris Industries Room.

Dean Mark Yudof of the law school said advocacy programs give law students "good training and coaching, inculcating the techniques, organization and discipline that are essential for good lawyering." But he notes that such programs are jeopardized because state funding of student competitions is no longer available.

Creating a permanent endowment, Dean Yudof said, "will put advocacy on the firm and stable financial footing that it deserves."

In other action involving the law school, a scholarship of more than \$10,000 has been established in memory of Heman Marion Sweatt, who upon his admission to the law school in 1950 became the first black to enter the university.

The principal donors are John S. Watson and Charles T. Newton, Jr., who are partners in the Vinson & Elkins law firm in Houston and also adjunct professors in the law school. They both are alumni of the law school.

Each donated \$3,000 to the Sweatt Scholarship, augmenting the more than \$4,000 contributed previously by friends of the law school and by fund-raising efforts of the Thurgood Marshall Law Society.

The gifts of Watson and Newton and those of various donors will be used to create the Heman Sweatt Memorial Scholarship, income from which will be awarded to a deserving minority student in the law school.

The Board of Regents also accepted a gift of \$10,000 from Jane H. Macon of San Antonio, a UT law alumnus, to establish the Jane H. Macon Scholarship in the school of law. Income from that endowment will be awarded to a deserving law student from San Antonio.

Macon practices law with Fulbright & Jaworski in San Antonio.

## South Texas Wins Bailey Competition

The South Texas College of Law won the F. Lee Bailey Moot Court Competition held in San Diego, CA the first week of April.

The team competed against law schools from around the nation during the three-day tournament. In the quarter-finals, South Texas defeated St. John's Law School; in the semi-finals they defeated George Washington University. In the final round, before members of the California Supreme Court, South Texas took a unanimous decision over Louisiana State University. This

marks the fourth consecutive year in which South Texas has won the National Moot Court Competition.

The team consisted of Gus Pappas, Pat Taylor-Nork, Kathy Martinez, and was coached by Prof. T. Gerald Treece.

This year's problem dealt with the mandatory drug testing of federal government employees. Attorneys desiring a copy of the school's winning written brief should write to Assistant Dean T. Gerald Treece, South Texas College of Law, 1303 San Jacinto, Houston 77002, 713/659-8695.



The South Texas College of Law moot court team recently won the F. Lee Bailey Moot Court Competition. Pictured are (l-r): Gus Pappas, Pat Taylor-Nork, F. Lee Bailey, and Kathy Martinez.

## South Texas Student Is National Writing Champion

Susan Stekin Septimus, a third-year student at South Texas College of Law, recently won the annual national writing competition of the Medicine and Law Committee of the Tort and Insurance Practice Section of the American Bar Association.

Her article, which discussed "The Concept of Continuous Tort as Applied to Medical Malpractice: Sleeping Beauty for Plaintiff, Slumbering Beast for Defendant," was published in the ABA's *Tort & Insurance Law Journal* Volume 22, No. 1, Fall 1986.

In addition to having her article published, Septimus received a prize of \$1,000. The winning article in this competition is not guaranteed publication. Septimus' article, however, was judged to be of publishable quality.



*Susan Stekin Septimus*

## Dallas Attorneys Offer Trips

John A. Pace and Jonathan A. Pace, Dallas attorneys, have established a fund which will enable nine law students to visit the Constitutional exhibition "Miracle at Philadelphia." The exhibition is on view at the Second Bank of the United States, Philadelphia.

The exhibition presents the story of the creation and continuation of the United States Constitution, in celebration of the 200th anniversary of the document's signing.

Each of the nine Texas law schools will have the opportunity to select a student to make the trip.

The central observation emerging from her article, Septimus said, is that where medical malpractice statutes of limitations do not provide time for the discovery of a latent injury, a court is prone to carve exceptions. Due to the growth of medical malpractice litigation during the 1970s, the Texas Legislature enacted a special statute of limitations stating that malpractice claims against

health care providers be brought within two years of termination of treatment or of occurrence. No provision is made for discovery of "slumbering" injuries.

Septimus has a B.S. in education and is a candidate for the doctor of jurisprudence degree for December 1987. Upon her graduation, she will work in the health-law section at Fulbright & Jaworski.

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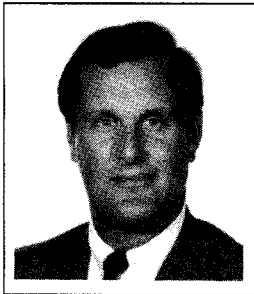
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## E.C. Carrington, Jr.

Edward Codrington Carrington, Jr., 41, of Houston died Aug. 22, 1986.

Carrington was a graduate of the University of Virginia at Charlottesville, where he was president of the senior class, co-captain of

the football team, and was All Atlantic Coast Conference his senior year. He was a 1970 graduate of the University of Houston Bates College of Law, and was admitted to the Texas Bar that same year.

Carrington was managing partner in the Houston law firm of Bonham, Carrington & Fox.

Carrington was president of the Houston chapter of the University of Virginia Alumni Association and a member of the university's board of managers. He was a trustee of the Pete Gray Memorial Foundation, Charlottesville, VA, and local chairman of the Jefferson Scholars Program for the University of Virginia. Carrington served as a director of West Loop Savings & Loan and MC Management & Development Co. He played for the Houston Oilers football team from 1967 to 1969.

Carrington is survived by his wife, Rosa Batte McLaughlin Carrington of Houston; four daughters, Virginia, Martha Lee, Angie, and Margaret Carrington; a son, Edward C. Carrington, VII; a sister, Ellen Carrington King; an aunt and uncle, Dr. and Mrs. John F. Woodward; and three nephews.



## J.W. Burrell

Joseph Weldon Burrell, 79, of Midland died Aug. 28, 1986.

Burrell, a native of Greenville, attended Texas Christian University and North Texas School of Law, and was admitted to the Texas Bar in 1941. Burrell was also a certified public accountant.

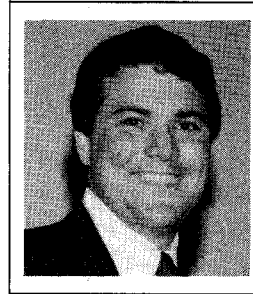
Burrell was associated with Cosden Petroleum Corporation for many years, serving the company in various capacities including accountant, attorney, manager of the tax and insurance departments, credit manager, and controller. In 1952 Burrell purchased Pecos Oil Company, and in 1963 he began a law practice in Midland.

Burrell was a Naval Reserve officer on active duty in the South Pacific during World War II.

Burrell was a charter member of Acacia Masonic Lodge #1414, a member and president of Fort Worth Masonic Lodge #148, a charter member of Suez Shrine Temple and a potentate, a director of the Midland Shrine Club, chairman of Suez Temple's Crippled Children's and Burn Institute Committee, and a member of the Fort Worth Scottish Rite and York Rite Bodies.

Burrell was also a member of the Midland County Bar Association, the Permian Basin Estate Council, the Permian Basin Certified Public Accountants, and the Temple and Weldon Harris American Legion Post of Midland. Burrell belonged to the First United Methodist Church in Midland.

Burrell is survived by his wife, Tressye Ellis Burrell, 2204 Princeton St., Midland 79701; a niece; and two nephews.



## J.T. Phillips

Jon Ty Phillips, 25, of Colleyville died Aug. 20, 1986.

A native of Carlsbad, NM, Phillips received a BBA in Finance with honors from the University of Texas in 1983, and in 1986 graduated cum laude from the University of Houston Law Center.

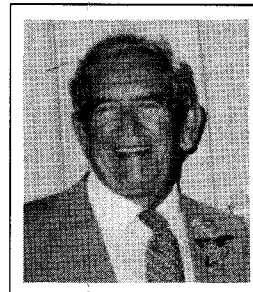
Phillips was to begin work as an associate with Strasburger & Price in Dallas on Sept. 1, 1986.

Phillips was associate editor of the *Houston Law Review*, and was a member of the Order of the Barons, Order of the Coif, and Pi Kappa Alpha.

Phillips' wife, Holly Phillips, is a third-year law student at Southern Methodist University.

A memorial fund has been established in Phillip's memory through the University of Houston Law Foundation.

Phillips is survived by his wife, Holly Bell Phillips, 4146 Emerson, Dallas 75205; his parents, Travis Phillips of San Antonio and Carol Parker of Lakeview, OR; and a sister, Tege Phillips of Austin.



## D.G. Fetzer

Donald G. Fetzer, 71, of Dallas died Aug. 10, 1986.

A native of Mansfield, OH, Fetzer attended Purdue University from 1933 to 1935, received an A.B. degree from Ashland College in 1936, and an LL.B. from Harvard Law School in 1941. He was admitted to the Texas Bar in 1962,

and was also a member of the Ohio Bar.

Fetzer practiced law in Ashland, OH from 1941 to 1951, and worked for the Corps of Engineers legal department from 1951 to 1959. He served as assistant prosecutor for Ashland County, OH from 1945 to 1951. Fetzer was vice president and general counsel of J.W. Bateson Construction Co. in Dallas from 1959 to 1982, and was a consultant to the Dallas law firm of Canterbury, Stuber, Elder & Gooch from 1982 to 1986.

Fetzer was a member of the Federal Bar Association, American Bar Association, B.P.O.E., Brookhaven Country Club, and the Lutheran Church. His hobbies were golf and gardening.

Fetzer is survived by his wife, Phyllis Fetzer, 12018 Drujon Lane, Dallas 75244; a son, Alan Fetzer of San Antonio; three daughters, Lory Fetzer of Dallas, Eileen Hutchinson of Friendswood, and Julie Thomas of Dallas; a brother, Howard Fetzer of Ashland, OH; and five grandchildren.

## B.J. Wright

Bethava James Wright, 78, of Dallas died Sept. 4, 1986.

Wright, a native of Madison, WI, received a B.A. from Wellesley University, a master of economics from Radcliffe College, and a law degree from Southern Methodist University School of Law. She was admitted to the Texas Bar in 1941.

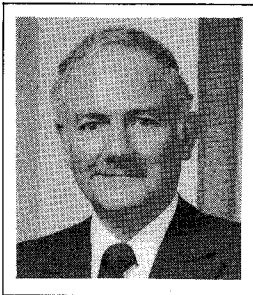
Wright practiced law in Dallas from 1946 to 1956, and served as assistant district attorney from 1956 to 1958. Wright was

appointed judge of Dallas County's first domestic relations court in 1957, and she served in that position until her retirement in 1974.

Wright was a member of the American Bar Association, the Dallas Bar Association, and was president of the Texas Council of Family Court Judges. She was a member of the State Bar Family Law Council, and the Domestic Relations and Juvenile Judges subsection of the Judicial Section.

Wright was also a member of the Business and Professional Women of Dallas, the Zonta Club of Dallas, and St. Thomas the Apostle Episcopal Church.

Wright is survived by a son, Dallas attorney Arthur Wright; two daughters, Ellen Mitchell of Toronto, Canada and Judith Mason of New York, NY; two sisters, Mrs. Gene Philbrick of Lansing, MI and Mrs. Muriel Wahl of Maitland, FL; nine grandchildren; and one great-grandchild. Wright's late husband and father were also attorneys.



## R.S. Garrett, Jr.

Rufus S. Garrett, Jr., 62, of Fort Worth died Aug. 26, 1986.

Garrett, a Fort Worth native, attended Texas Christian University, the University of Texas, and George Washington University. He graduated from the United States Military Academy at West Point in 1946 with a B.S. Garrett

attended the University of Arkansas Law School and graduated from Southern Methodist University Law School in 1951. Garrett was admitted to the Arkansas Bar in 1949 and the Texas Bar in 1950.

Garrett practiced law with the Fort Worth firm of Garrett & Garrett from 1950 to 1986.

Garrett served as post judge advocate and legal assistant officer at the Army Medical Center in Washington, DC until 1949.

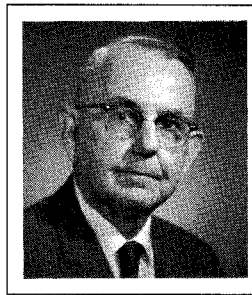
Garrett was a member of the Tarrant County Bar Association (president - 1973), the Arkansas Bar Association, the American Bar Association, the International Bar Association, the Bar Association of the Fifth Circuit, the Southwestern Legal Foundation, the Texas Association of Defense Counsel, the American Judicature Society, the Defense Research Institute, Delta Theta Phi law fraternity, Delta Kappa Epsilon, the Exchange Club, and Broadway Baptist Church.

Garrett was a State Bar of Texas director from 1980 to 1983, and a sustaining life fellow of the Texas Bar Foundation. He was a founder and board member of Fort Worth Country Day School, West Point Society of North Texas, the Sportsmen's Club of Fort Worth, and Future Fort Worth.

Garrett was a board member of Moncrief Radiation Center, Board of Graduates of the United States Military Academy at West Point, Fort Worth Children's Hospital, Fort Worth YMCA, Tarrant County Chapter of the American Cancer Society, St. Joseph Hospital Development Foundation, Fort Worth Club, River Crest Country Club, and Century II Club.

Garrett's hobbies were golf, hunting, fishing, travel, and books. While in the Army, Garrett spent a year in the Canadian Arctic at Fort Churchill, Canada on Hudson Bay as a member of an Arctic test team.

Garrett is survived by his wife, Mary Josephine Halsell Garrett, 901 Hillcrest, Fort Worth 76107; two daughters, attorney Josephine Garrett Altaras and Melissa Garrett Thompson; one granddaughter; and one grandson. Garrett's late father, Rufus S. Garrett, Sr., was also an attorney.



## E.O. Northcutt

Ernest O. Northcutt, 95, of Amarillo died Aug. 6, 1986.

Northcutt, a native of Springtown, received an LL.B. from the University of Oklahoma in 1919. He was admitted to the Texas Bar in 1920, and was also a member of the Oklahoma Bar.

Northcutt taught school for three years in Wynnewood, OK prior to entering the University of Oklahoma. After graduation, he practiced law in Oklahoma from 1917 to 1919 and served one term in the Oklahoma house of representatives. Northcutt practiced law in Amarillo from 1919 to 1971.

Northcutt served as Potter County judge from 1940 to 1948. In 1951 he was elected associate justice of the Texas seventh court of civil appeals, and served in that position until 1971.

Northcutt was president of the West Texas County Judges and Commissioners Association and the Amarillo Bar Association. He was a member of the American Business Club and was president of the Amarillo chapter and a national officer of the club. Northcutt was a Master Mason for more than 50 years, and a member of the Kiva Shrine Temple and B.P.O.E. He was a member of First Baptist Church in Amarillo.

Northcutt's hobbies included quail hunting, gardening, reading, and activity in local civic clubs. Upon his retirement, Northcutt donated his law library of more than 1,000 volumes to West Texas State University.

Northcutt is survived by his wife, Corinne Peters Northcutt, 5014 Brinkman, Amarillo 79106; two sons, Ernest O. Northcutt, Jr. of Louisville, KY and Terry C. Northcutt of Rockwall; a daughter, Mrs. William G. Potts of Dallas; nine grandchildren; and six great-grandchildren. Northcutt's first wife, Gladys Collins Northcutt, died in 1943.

## In Memoriam

These notices are published immediately after reports of death are received. Memorials will be published later.

To report a death of a member of the Texas Bar, contact the State Bar of Texas Membership Department at P.O. Box 12487, Capitol Station, Austin 78711, or call 512/463-1383.

AARON, J. DONALD, Crowley, LA, July 18, 1986  
ALVAREZ, GILBERT V., Houston, March 2, 1987  
DONNELL, GEORGE R., San Antonio, March 20, 1987  
EDWARDS, WARREN, Orlando, FL, March 14, 1987  
KNOPP, HERMAN A., San Antonio, Dec. 24, 1986  
MANN, J.T., JR., Dalhart, Jan. 2, 1987  
MARSHALL, R.C., Sanger, March 8, 1987  
MCWHORTER, ANDREW A., Port Arthur, May 21, 1986  
MILLER, JOHN H., Sinton, March 19, 1987  
NEWMAN, TERRY A., Austin, March 19, 1987  
PRITSKER, THEODORE P., Dallas, March 11, 1987  
PUCKETT, MONROE F., JR., Houston, Dec. 16, 1986  
RUTLAND, RIX, San Antonio, Oct. 21, 1986  
SALLEAN, DONALD R., Houston, Oct. 6, 1986  
WOLENS, JOSEPH B., Dallas, March 29, 1987



## R.M. Huey

Robert Miller Huey, 56, of Austin died Aug. 8, 1986.

Huey, a native of Belton, received a business degree from Texas A&M University and a law degree from the University of Texas School of Law. He was admitted to the Texas Bar in 1957.

Huey was a partner in the firm of McCreary, Huey & Veselka for 22 years. He was of counsel to the firm of McCreary, Veselka, Beck & Allen for two years.

Huey served in the U.S. armed forces during the Korean War.

Huey was assistant city attorney of Orange, and later served as assistant city attorney of Austin. He was president of the Woods and Waters Club, and on the board of directors of the Texas Youth Ranch. Huey was a member of St. Luke's Episcopal Church. He enjoyed hunting, fishing, and flying.

Huey is survived by his wife, Ruth Elizabeth Huey, 9900 Sausalito, Austin 78759; three sons, Robert Huey, William Huey, and John Huey; a daughter, Karen Huey; a stepdaughter, Laura Pollard; a stepson, David Pollard; and five grandchildren.

## W.B. Ferguson, III

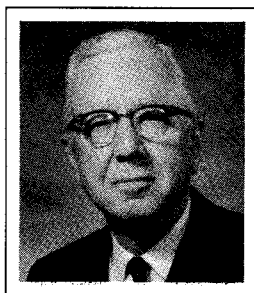
William Brownlee Ferguson III, 60, of Houston died Aug. 25, 1986.

Ferguson received a B.A. and LL.B. from the University of Texas. He was admitted to the Texas Bar in 1950.

Ferguson's law practice was oriented toward oil and gas, and he had oil and ranching interests in Bay City.

Ferguson was a member of the Houston Bar Association, the American Bar Association, the Houston Country Club, Allegro, and Kappa Sigma. He was an avid tennis player, bibliophile, and music lover.

Ferguson is survived by three sons, William Brownlee Ferguson, IV, Clay Ferguson, and John Ferguson; two daughters, Anne Ferguson and Katharine Ferguson; and a brother, Rugely Ferguson.



## R. McCown

Rane McCown, 80, of Palestine died Sept. 5, 1986.

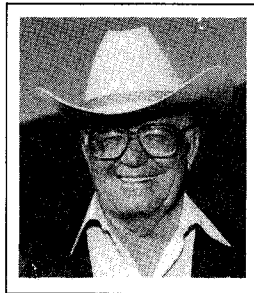
A native of Gonzales, McCown received his law degree from South Texas School of Law in 1937. He was admitted to the Texas Bar in 1938.

McCown served as a station agent for Missouri Pacific Railroad

for 48 years.

He was a past master of Sugar Land Masonic Lodge #1141 A.F. & A.M., a member of the Palestine Kiwanis Club, and a member of the Sugar Land Board of Education. McCown was a deacon at First Presbyterian Church in Sugar Land, and he enjoyed reading, current events, and traveling.

McCown is survived by his wife, Thelma Loper McCown, 108 Crescent Dr., Palestine 75801; two daughters, Mrs. L.B. Hains of El Campo and Mrs. J.T. Holt of Trinity; a sister, Janie Newton of Houston; seven grandchildren; and one great-grandchild. McCown's son, Rane McCown, Jr., predeceased him in 1984. McCown's nephew, D. Craig Landin, is an attorney in Sealy.



## A.D. Solsbery

Alex D. Solsbery, 64, of Roswell, NM died July 6, 1986.

A native of San Saba, Solsbery received a combination degree from Texas Christian University, and in 1949 he received an LL.B. and SJD from Baylor University. He was admitted to the Texas Bar in 1949. Solsbery was also a mem-

ber of the New Mexico Bar.

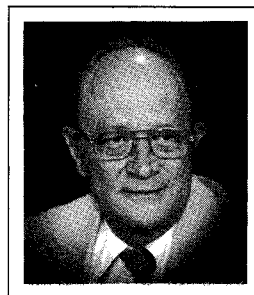
Solsbery practiced law in Houston for seven years with Vinson, Elkins & Connelly, and for 27 years had a private oil and gas law practice in New Mexico.

Solsbery served in the U.S. Navy from 1942 until 1946 on the USS Bennington. He was an aviation metalsmith.

Solsbery was a member of the Chaves County Bar Association, YMCA Board of Directors, Independent Petroleum Association of New Mexico, and Benevolent Protective Order of Elks Lodge 969.

Solsbery's hobbies included horseback riding, mountain trail riding, and serving as master of ceremonies at many events. He also conducted a seminar, "Curing Land Titles," for Eastern New Mexico University.

Solsbery is survived by his wife, Ruby Opal Solsbery, 1207 Camino Real, Roswell, NM 88201; one daughter, Roxy Ann Solsbery Burkfield of Los Angeles, CA; three sons, Alex Dean Solsbery, Jr. of Vienna, Austria; Bryan David Solsbery of New Delhi, India; and Wesley Bogdan of Roswell, NM; his mother, Naomi Dowda Solsbery Taylor; and three brothers.



## C.H. Gillespie, Jr.

Campbell H. Gillespie, Jr., 73, of Sherman died Sept. 3, 1986.

Born in Lawrence County, AL, Gillespie received bachelors and masters degrees from Austin College. He received his law degree from the University of Virginia

and was admitted to the Texas Bar in 1936.

Gillespie joined the law firm of Head, Dillard, Maxey-Freeman & McReynolds and became a partner in that firm. During World War II Gillespie served as supply and legal officer in the U.S. Army Air Corps at Randolph Field, Perrin Field, and Altus Air Force Base, completing Judge Advocate Generals School at Ann Arbor, MI. He was commissioned a major in the Air Corps Reserve in 1947. After the war, Gillespie returned to Sherman, where he opened a private practice. At his death he was a member of the firm of Gillespie & Gillespie, a partnership founded with his son, C.H. Gillespie, III.

Gillespie was a charter life fellow of the Texas Bar Foundation, a fellow of the American College of Probate Counsel, and a member of the American Bar Association and Phi Alpha Delta. Gillespie was a member of and served as a deacon of First Presbyterian Church, a member and vice president of the Sherman Independent School District board of trustees, an attorney for the city of Sherman, and a member of the Sherman Rotary Club.

Gillespie was a member of the Monticello Association and was a direct descendant of Thomas Jefferson.

Gillespie is survived by his wife, Mary "Polly" Gillespie, 1313 East Richards St., Sherman 75090; two sons, attorneys C.H. Gillespie, III and Robert M. Gillespie; and a brother, attorney S.E. Gillespie.



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# The Witnesses: A Gallimaufry Beer Cans, Policemen & Dogs

Jerry Buchmeyer

## By Judge Jerry Buchmeyer

Still more examples of what probably awaits you if *that* case has to be tried, and if you have no choice but to do battle with ... The Witnesses.

### Did I Really Ask That?

From a trial court conducted by Judge Craig Enoch of Dallas:

Q: Did anyone ever show you what has been marked as Plaintiff's Exhibit 2?

A: Ah, yes.

Q: Did you ever make any comments about that?

A: Yes.

Q: What were those comments?

A: Well, it was showed to me yesterday — *I said, "I have never seen this before."*

Q: Okay; that answers the question; thank you.

.....

*Court Jesters* records this question asked by a Vancouver lawyer: "What colour were the blue jeans?" As well as the Canadian lawyer who single-handedly (or mouthily) asked these immortal questions:

Q: How long have you known your brother?<sup>1</sup>

Q: Were you alone or by yourself?

Q: How long have you been a French Canadian?

So much talent in one guy! It's awesome.

.....

J.Q. Warnick, Jr., the United States Magistrate in Lubbock, contributes these penetrating questions:

Testimony by the defendant's 16-year-old daughter in a criminal detention hearing established her age and the fact she lived in the defendant's house. Then...

Q: Have you ever lived any other place?

A: No, Sir.

Q: So you were living at this house when you were born?

and

Examination of the plaintiff in a personal injury case:

Q: Did you have any — were you having any problem at the time you had your right knee replaced with your left knee?

A: No.

Q: Have you had any problem with it since?

A: No.

Q: Have you had any further surgery on your left knee since?

A: It's my right knee.

Q: I'm sorry, have you had any further surgery?

### Did I Really Hear That?

Q: And did you bear arms, Constable?

A: Yes, it was a short-sleeved shirt.

Q: I'm sorry. Were you carrying a weapon?

A: No, I was not. I had no side arms on, no, but I had bare arms.

.....

Q: And what kind of doctor was he?

A: Oh ... not bad.

.....

In response to a question by the judge, the defendant admitted that he had driven over the complaining witness with a loaded truck.

JUDGE: What have you got to say in your own defense?

DEFENDANT: *I didn't know it was loaded.*

.....

*Court Jesters* records these malapropisms from Canada: The woman who asked her attorney to prepare a "power of eternity"; the drunk who was thrown out of a pub and who was so furious that he told his attorney to sue for "definition of character"; the police report which stated that, at the time of the accident, the defendant was driving "erotically"; and the formal charges in Juvenile Court that a young girl had committed the offense of "sexual immortality."<sup>2</sup>

.....

JUDGE (scolding prosecutor): You cannot ask that witness what he was told by someone else. If you want that evidence in, you will have to get it some other way.

PROSECUTOR: Very well then, Mr. Davies. Without telling me what he said to you, what did he tell you to say?<sup>3</sup>

## Huh, Indeed!

Q: Is your reason for saying that you didn't see your brother do such a thing because it was your belief that there was no beer in the car? Or are you saying you know he actually didn't throw it? If he somehow miraculously had some passed to him through the window from another passing car, or had it concealed in his jacket and you didn't know about it, would you still say that it didn't happen that he threw beer, or did you simply know that when you got into the car half an hour before that, or whenever it was you got in, that there was no beer in the car? Whether you saw it or you didn't see it, he didn't throw any beer because you know there was no beer. The only reason for you saying that he didn't throw beer was because you believed there was no beer in the car to throw. Or can you actually say you had your brother under observation enough at the time to be able to say, even if there was a whole caseful of beer in the car at the back, he didn't throw one out? Which is it?

Q: Huh?

## You Coulda Been A Contender

*Court Jesters* collects these Major-League Stupid Questions — "the standard against which all others are measured: — as well as some Truly Great Contenders:

Q: Now isn't it true that when a person dies in his sleep, in most cases he just passes quietly away and doesn't know anything about it until the next morning?

.....

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Q: The 24th of December — was that the day before Christmas?

.....

Q: Were you acquainted with the deceased?

A: Yes.

Q: Before or after he died?

.....

Q: Who else was with you in your van?

A: There was no one else.

Q: Were you alone, then?

A: Yeah.

Q: And you were the driver? Is that right?

A: Yeah.

.....

Q: In your opinion, how far apart were the vehicles at the time of the collision?

.....

Q: You remember that no one was touching her.

A: That's right.

Q: Who is that no one that wasn't touching her?

A: I don't know.

.....

Q: Who were these trucks that you had discussions with?

.....

Q: And how did you know the policeman wasn't a dog?<sup>4</sup>

[... to be continued ...]

1. I was shocked to see this question in *Court Jesters*. For years, I have relished telling about a trial before me when the plaintiff's attorney, a past president of the Dallas Bar Association (circa 1980) asked the critical witness in a tax case: "How long did you know your brother?" ("Since birth," was the gentle response by the witness.) I laughed. The jury laughed. And so did the attorney, Robert Edwin Davis of Dallas (Davis, Meadows).
2. According to *Court Jesters*, this testimony was given by police officers in response to questions by the Crown Attorney: (1) "When I arrived at the building, there were approximately two women in the hallway"; and (2) "Constable Gamble, the breathalyzer technician, noted a very strong smell of liquor with a Ukrainian-type accent."
3. Franklin Jones, Sr. of Marshall sent me the story of a Carthage lawyer who, becoming frustrated with almost constant objections that were being sustained, finally squinted his eyes and responded with these immortal questions: "You was there, wasn't you? Well, tell this jury what you seen, done, and heard."
4. Again, credits for some of these stories go to *Court Jesters*, by Peter V. McDonald, Q.C. (Methuen 1985), and *It's Legal to Laugh*, by Milton D. Green (Vantage Press 1987), and to those who have contributed to my Ever-Growing, But-There's-Still-Room-For-More legal humor files.

*Jerry Buchmeyer is a federal district judge, Northern District of Texas, in Dallas.*

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