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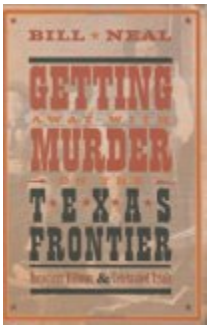
Bill Neal. *Getting Away with Murder on the Texas Frontier: Notorious Killings and Celebrated Trials.* Lubbock: Texas Tech University Press, 2006. xix + 308 pp. $27.95 (cloth), ISBN 978-0-89672-579-9.



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The Sorry S.O.B. Needed Killing Anyhow

Lying in the overlap zone of Southern and Western traditions of lynch law and vigilantism, Texas has produced many studies of its rough and ready "justice." Much has been written about lynch mobs carrying out summary "justice" against defendants who never had the chance to defend themselves in a real court. Even in the twenty-first century, the state is notorious for its hyperactive Death Row. In *Getting away with Murder on the Texas Frontier*, Bill Neal, a West Texas criminal attorney with forty years' experience at both the prosecution and defense tables, takes a look at the other side of the coin: cases in which murderers were hauled into court but escaped punishment despite the overwhelming weight of evidence against them. Neal attributes the failure of the criminal justice system to two factors peculiar to the area: the delay in building a functioning criminal justice system and the values of society.

The final defeat of the South Plains tribes in 1874 opened to settlement the vast area of Comancheria in West Texas and the Oklahoma Territory. The Texas legislature created a grid of counties in the area in 1876, but it took five decades to get them all organized, with sheriffs, courts, and jails in place. Yet ranchers and other settlers began flowing in as the buffalo and Comanches receded. The frontier area became a haven for cattle rustlers, bank and train robbers, feudists, contract killers, and–most despised–horse thieves. People had to defend themselves from violent outlaws by violent means. Frequently, they turned to vigilante action to bring some semblance of order to their locality. Even civil disputes over range issues and quarrels among ranchers, sheep men, and farmers were often settled with violence in the absence of a functioning or trusted court system.

While the frontier itself bred direct, violent action, the people migrating into the area brought with them a predisposition for violence. Most of these settlers originated in the Old South, a region with a cultural proclivity for violence and a Code of Honor that demanded personal retribution for slights to the family honor. The frontier and Southern strains of violence coalesced in West Texas. Yet, as Neal puts it, "by dent [sic] of the sacrifice and toil of the many–mostly unheralded champions of an ideal–the fragile plant justice under duly enacted law finally took root and matured. Judge *Blackstone* finally ousted Judges *Lynch* and *Winchester*" (p. 244).

For lawyers in the area, the real money lay in criminal defense, so the best and most experienced members of the profession specialized in that field. Often, they were pitted against young prosecutors whose law licenses were as new as the nascent counties where they practiced. The situation produced unique problems for those trying to establish the rule of law. The popular cultural concept of what was just and right did not square with what the law said. Local people commonly meted out justice at the end of a rope to horse thieves and other unpopular criminals as soon as they were apprehended. No grand jury would consider the participants in such a lynching as criminals, no matter what the law said. Indictments were not a possibility.

But even when murderers could be brought before a trial jury, there were some major barriers for the prosecution to overcome. First, the law itself had a very broad definition of self-defense. People had no legal obligation to try to flee an attacker, and even rumors of verbal threats provided a defense against a murder charge. This

made self-defense the most popular tactic of the defense attorney, and it was so effective that the law eventually had to be changed. It is worth noting that the 2007 session of the Texas legislature has reinstated some of the repealed provisions, despite the opposition of most district attorneys in the state.

Second, "jury nullification" stood as a major hurdle for the prosecutors. The jurors tended to be unsophisticated people who were easily swayed by the defense attorneys' skillful appeals to their respect for the Code of Honor that justified killing in defense of family honor, no matter what the evidence showed or the law said. While Texas law allowed a man to shoot another man caught in the act of adultery with his wife, juries routinely extended this exemption to cases in which the victim was not caught in the act, to women who shot their philandering husbands, and to relatives of the principals. "The sorry S.O.B. needed killing anyhow" was a powerfully effective defense.

Third, even if the prosecution could win a conviction, it frequently failed to stick. The Texas Court of Criminal Appeals, the court of last resort in criminal cases (the Texas Supreme Court is restricted to civil law), became notorious for its use of "hypertechnicality," using the slightest error in the wording of an indictment or in the trial procedure to overturn a conviction, even if the error had no effect on the outcome. Neal notes that of appeals coming before the Court in 1900, 68.5 percent of convictions were overturned. In 2000, the Court overturned fewer than 10 percent. As recently as 1947, the Court overturned the conviction of a car hijacker because the indictment did not specify that he used his feet to stomp his victim to death![1] Given the highly mobile population of the ranching frontier, it was sometimes impossible for prosecutors to round up the witnesses again, after a long delay for an appeal.

Even if the appeal failed, pardons were easy to come by. At the time, governors had the sole responsibility to issue pardons, and when the governor was out of the state, the lieutenant governor and even the president pro tem of the Senate issued pardons in their capacity of acting governor. Governors James and Ma Ferguson became particularly notorious for issuing pardons in exchange for contributions or other favors. The frequency with which convicted criminals escaped punishment eroded public confidence in the criminal justice system and made lynching more acceptable.

Despite their many handicaps, the "prairie-dog lawyers" of the frontier laid the foundations of a modern society based on law in a remarkably short time. Neal selects for closer examination a number of cases that illustrate the difficulties and triumphs of the lawyers and courts.

In 1889, a ranch hand named Thomas Fulcher was convicted of the murder of the Matador Ranch blacksmith. His conviction overturned on a hypertechnicality, Fulcher finally came up for retrial in 1893. The overbearing manner of the district attorney and judge so offended the jurors that they refused to convict Fulcher of murder, but instead found him guilty of assault with intent to murder. However, the statute of limitations had already run out on that offense. Thomas Fulcher walked away a free man, but not before making a full confession to his crime.

The most complex but most illustrative case Neal examines grew out of a botched attempt to defraud Wells, Fargo and Co. at Canadian in the Texas Panhandle in 1894. George Isaacs, the ne'er-do-well brother of a prominent local ranching family, conspired with members of the Oklahoma Territory's notorious Bill Doolin Gang. Isaacs would send to Canadian from Kansas City, via Wells Fargo Express, five packets supposedly containing $5,000 each, but actually only containing $500. The gang members would steal the packets, and Isaacs would collect $25,000 from Wells Fargo. The robbery attempt failed, but the robbers killed Hemphill County Sheriff Tom T. McGee in the process. Of the seven conspirators, only Isaacs would ever see the inside of prison. Even though he was not at the scene of the murder, he was sentenced to life in prison. The actual trigger man had his conviction overturned on a hypertechnicality and then was acquitted on retrial with the help of bribed witnesses. As for Isaacs, he got out of prison in 1899 on a pardon that turned out to be forged on paper stolen from the office of Gov. Joseph D. Sayers.

Neal selects other cases to illustrate how defense attorneys could play on jurors' cupidity, attachment to the Code of Honor, or sense that the law itself did not square with justice. In all too many cases, as Neal puts it, it happened that "sympathy trumped justice; that emotion completely routed reason" (p. 213).

This is a vastly entertaining read. Neal is a natural story teller, and the cases are intrinsically interesting, populated with such colorful and compelling characters as the brilliant, eloquent, dramatic defense attorney Temple Houston, youngest son of the hero of San Jacinto, and lawyer Amos J. Fires, the pit bull of the defense. Sometimes, as in the 1904 Jones murder case in

Benjamin, Neal throws in an account that does not particularly contribute to his point, but is too ripping good a story to pass up. Neal's research is both broad and deep, drawing heavily on trial court cases, appellate court decisions, government documents, and newspaper accounts, but also well grounded in the secondary literature. His conclusions are carefully documented.

Had Neal adhered more closely to chronology, he could have made an even better contribution in clarifying how change occurred over time. More statistics like those showing the percentage of overturned cases would have also been useful. For example, what percentage of murder trials ended in acquittals? How did this change over time? Still, *Getting away with Murder on the Texas Frontier* constitutes an important contribution to the growing body of work on the frontier criminal justice system. Neal's probing into the social psychology of frontier jurors makes an especially important contribution by explaining why they felt, despite overwhelming evidence, "the sorry S.O.B. needed killing anyhow."

Note

[1]. *Northern v. State*, 203 S.W.2d 206 (Tex.Ct.CrimApp. 1947).