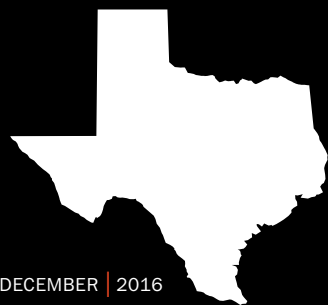




Also

- ▶ ¡VIVA EL CHUPACABRA!
- ▶ COMBATING MORAL INJURY
- ▶ CASHING IN ON CRIME IN BROWNWOOD



DECEMBER | 2016

OBSERVER



MR. SUPREME



@JusticeWillett

Social media's most famous judge is on...



@JusticeWillett

Trump's Supreme Court short list. 🐒

BY ERIC BENSON

\$3.95



IN THIS ISSUE



ON THE COVER:
PHOTO BY WYATT MCSPADEN
(BOTTOM), WIKI COMMONS (TOP)

LEFT: David Lewis, president of the Gulf States Mycological Society, takes a photo of a *Phaeomarasmius curcuma* mushroom found on his property in East Texas.
PHOTO BY JEN REEL

40 FUNGI TOWN

Hunting mushrooms
in the Big Thicket
by Leah Caldwell

12 HOW TO FIX A SOUL
A new framework for understanding the guilt and shame some veterans suffer years after combat.
by **Jake Whitney**

16 MAKING CRIME PAY AND PAY AND PAY...
In Brown County, defendants' fees fill a prosecutor's coffers.
by **Patrick Michels**

22 WHAT DOES DON WILLETT WANT?
Reading the tweets and tea leaves of social media's most famous judge.
by **Eric Benson**

REGULARS

01 DIALOGUE
02 POLITICAL INTELLIGENCE
06 STATE OF TEXAS
08 STRANGEST STATE
09 EDITORIAL
09 LOON STAR STATE

07 LEFT HOOKS
Child warfare
by **Christopher Hooks**

10 THE INTERVIEW
Environmental champion Tom "Smitty" Smith hangs up his hat
Interviewed by **Naveena Sadasivam**

29 THE GRIMES SCENE
Trumping hate (eventually)
by **Andrea Grimes**

30 CULTURE
New lessons from ancient rock art on the Pecos River
by **Brad Tyer**

36 THE BOOK REPORT
The myth of Guy Clark
by **Michael Sandlin**

38 ESSAY
Chasing the chupacabra
by **Asher Elbein**

44 POEM
Screenplay for a Homemade Movie
by **Kathleen Winter**

45 EYE ON TEXAS
by **Michael Cirlos**

OBSERVER ONLINE

To keep up with everything the *Texas Observer* is up to, please sign up for our weekly newsletter at texasobserver.org. We know y'all don't want to miss a thing!

THE TEXAS OBSERVER (ISSN 0040-4519/USPS 541300), entire contents copyrighted © 2016, is published bimonthly (6 issues per year) by the Texas Democracy Foundation, a 501(c)(3) nonprofit foundation, 54 Chicon St., Austin TX, 78702. Telephone (512)477-0746, toll free (800)939-6620. Email observer@texasobserver.org. Periodicals Postage paid in Austin, TX, and at additional mailing offices. **POSTMASTER** Send address changes to: The Texas Observer, 54 Chicon St., Austin TX 78702. Subscriptions: 1 yr \$35, 2 yr \$60, 3 yr \$85. Students \$20. Foreign, add \$13 to domestic price. Back issues \$5. Airmail, foreign, group, and bulk rates on request. Microfilm available from University Microfilms Intl., 300 N Zeeb Rd, Ann Arbor MI 48106. **INDEXES** The Texas Observer is indexed in Access: The Supplementary Index to Periodicals; Texas Index; and, for the years 1954 through 1981, The Texas Observer Index. **INVESTIGATIVE REPORTING** is supported in part by a grant from the Open Society Institute. **BOOKS & THE CULTURE** is funded in part by the City of Austin through the Cultural Arts Division and by a grant from the Texas Commission on the Arts.

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VOLUME 108, NO. 10

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OUR MISSION

We will serve no group or party but will hew hard to the truth as we find it and the right as we see it. We are dedicated to the whole truth, to human values above all interests, to the rights of humankind as the foundation of democracy. We will take orders from none but our own conscience, and never will we overlook or misrepresent the truth to serve the interests of the powerful or cater to the ignoble in the human spirit.

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DIALOGUE

Texans in Need

Thank you for this article ("Who Guards the Guardians?" July issue). It was disturbing to learn that our most vulnerable Texans are being preyed upon. On the other hand, the article was inspiring to me. I think I have the qualities to make for an excellent guardian. I have begun the process of looking into what it takes to become a guardian and deciding if I can make the commitment to serve these wards in a responsible, ethical and respectful manner.

Mara Cohn
EL PASO

Dept. of Frivolity

I LIKE THIS FOR THE FACT THAT THE FEDS ARE STANDING up for people like me ("Feds to Appeal Injunction in Texas Transgender Lawsuit," October 17, texasobserver.org). At the same time it's stupid that the Texas state government is willing to waste tax money on frivolous lawsuits instead of fixing the real issues Texas is facing, like the nonexistent child welfare system.

Emma Latta

POSTED ON FACEBOOK

Fighting Back

SEXUAL HARASSMENT HAPPENS IN EPIC AMOUNTS FOR women in the retail and service business ("Austinites Join Nationwide Protest of Sexual Harassment in Fast Food," October 6, texasobserver.org), from not getting a management position because she has children, to men suggesting that their female coworker's affection for their pets is because they never had children, to crude jokes. ... Women need better protection from this, especially in the workplace. If you think you've been sexually harassed (you might blow it off at first), document it, report it, don't let bosses ignore it or send you home. Document any retaliatory or intimidating behavior [and] report it to the police.

Patty DeVinney

POSTED ON FACEBOOK

Lutherans Aren't a Monolith

THE EVANGELICAL LUTHERAN CHURCH IN AMERICA'S formal teaching on abortion is not quite as you describe ("Religious Freedom is Only for Christians in Texas," November 1, texasobserver.org). Our Social Statement on Abortion, adopted in

1991, says, "The position of this church is that government has a legitimate role in regulating abortion." That sentence is immediately followed by, "A major challenge is to formulate policy regarding abortion that will have sufficient consensus to be enforceable. Furthermore, any proposed regulation should contribute toward the intended goals without generating problems worse than those it seeks to address."

I will grant you that there are [Lutheran] folk, including some of our leaders, who wish that sentence weren't there. But it is. And over the years when abortion legislation has been proposed in Congress or various state legislatures, I have been assured by those who address legislators on behalf of the [church] that they address the matter in just this way, and do not simply "oppose any government policy that would ... limit access to abortion."

Pastor Steven P. Tibbetts

PEORIA, ILLINOIS

Pay Up or Lockup

I LIVE IN A SMALL SOUTH TEXAS TOWN OF LESS THAN 5,000 people that has six bail bond companies doing business within five blocks of the county jail ("ACLU Alleges Santa Fe, Texas, is Running a Debtors Prison," November 3, texasobserver.org). So yes, incarceration by any means possible, even if they have to invent one, is a big means of revenue for a lot of police departments in Texas towns like this one.

Jesse Flores

POSTED ON FACEBOOK

Sound Off

editors@texasobserver.org
or comment on [Facebook.com/texasobserver](https://www.facebook.com/texasobserver) and [texasobserver.org](https://www.texasobserver.org)



Border Patrol agent Marlene Castro apprehends a group of women and children from Central America near the Rio Grande. Norla, far right, says she traveled from Honduras to the U.S. with her young daughter after her ex-husband, a gang member, threatened to kill her.

PHOTO BY JEN REEL

THE BORDER

New Arrivals

IN EARLY OCTOBER, MARLENE CASTRO, A SUPERVISORY patrol agent with the U.S. Border Patrol, took me with her as she worked along the Rio Grande near Mission. “I’ll take you to the place where we pick up most of the families,” she said, steering down a dirt road through the thick brush toward the river.

In 2014, more than 137,000 families and unaccompanied children from Central America arrived at the U.S.-Mexico border, most of them through the Rio Grande Valley and the stretch of river Castro patrols. In 2015, the number of arrivals dipped by half, but this fiscal year the number has increased to nearly the levels of summer 2014, when the crisis first began. For Castro, apprehending women and children along the river has just become part of the job.

After a few minutes of driving, we see a woman

walking on the side of the road with a young child. Two younger women and their children are trailing behind. Though they’ve already seen the green-and-white SUV, they walk faster with their heads down. Castro drives alongside and rolls down her window. “Sit in the shade and wait,” she says in Spanish, pointing to a nearby tree. They look scared until she gets out of her SUV, rummages through the back, then passes out bottles of water. The tension in the women’s and children’s faces softens with the unexpected gesture. It’s a sweltering afternoon, but they’re wearing long-sleeved shirts and jackets — everything they own.

“We look at this more as a rescue than an apprehension,” says Castro. She radios for a transport van to come and pick them up. Norla, 38, is from Honduras, and she’s traveling with her 11-year-old daughter,

Belen. Norla tells me her ex-husband was in a gang and threatened to kill her. Honduras has the highest homicide rate in the world. Women are murdered for the smallest of reasons, and the killers usually go unpunished. So Norla sold her house and paid a smuggler to bring her and her daughter to safety. As she tells her story, tears roll down her cheeks.

Castro doesn't explain what will happen next. They will be taken to a Border Patrol processing center, where an agent from Immigration and Customs Enforcement will decide their fate. In 2014, as the number of families arriving at the border surged, the U.S. government implemented "an aggressive deterrence strategy," placing women and children in detention and deportation proceedings to dissuade others from making the journey. But families from Honduras, El Salvador and Guatemala still keep coming.

If Norla is among the lucky, and the detention centers are full, she and her daughter will be released with an ankle monitor and a notice to appear in immigration court. But her luck may stop there, unless she can find an attorney to represent her, which is a rarity. Without one, she has a less than 4 percent chance of winning her asylum claim, based on previous Central American asylum rulings. I try to explain the ankle monitor to her, but there's no time as she wipes away the tears and gets into the van with her daughter. All I manage to say is "Suerte" as they drive off. Then I get back into the SUV with Castro, and we drive back down to the river. —MELISSA DEL BOSQUE

worship, taking advantage of a U.S. Immigration and Customs Enforcement (ICE) policy of avoiding "sensitive locations."

"Ever since I came to America, I've been incarcerated," Ramirez said at the press conference. "Now I'm very happy to finally breathe fresh air and feel liberation."

In 2014, Ramirez fled domestic- and gang-related violence in Guatemala with Ivan, who was then 9



Border Patrol agent Marlene Castro carries cases of water while on patrol. "We look at this more as a rescue than an apprehension," says Castro. PHOTO BY JEN REEL

years old. After an arduous journey to the United States, Ramirez and Ivan were apprehended at the Texas-Mexico border and then locked up for 11 months in a for-profit immigrant detention center in Karnes County. While in detention, Ramirez and Ivan lost their joint asylum case, as most Central Americans do. In late 2015, however, ICE released them so Ivan could pursue a special green card for children in dangerous situations. As a condition of release, Ramirez was required to wear an ankle monitor that she refers to as a "shackle."

In January, the two were living at an Austin-area shelter when the Obama administration announced a new set of removal priorities that targeted adults who entered the United States with children after May 2014. Despite Ivan's ongoing application, an order of deportation remained active for both of them, placing them in ICE's crosshairs.

That's when Ramirez connected with organizers at Grassroots Leadership, an Austin nonprofit that opposes immigrant detention, and St. Andrew's Presbyterian Church. The church invited Ramirez and Ivan to take sanctuary in a classroom that had been converted to a living space. Eight months later, ICE informed the family's lawyer that they wouldn't be deported for at least one year.

"This is an important step," said Alejandro Caceres,

Amid the record growth of the Dallas exurbs, some unique communities have sprung up. There's "Providence Village," built to mimic a New England town, or Bartonville's equestrian-themed cluster of mansions on Noble Champions Way, complete with a helipad named for the famed racehorse Barbaro.

The rural North Texas town of Ector (population: 695) will soon sport an unusual new development called Trident Lakes, with what unlikely theme?

- a. Clowning
- b. Doomsday preparation
- c. Drag racing
- d. Corgis
- e. Donald Trump

REFUGEES

From Detention to Freedom

HILDA RAMIREZ AND HER SON, IVAN, APPROACHED THE podium at an October press conference with the sort of broad, giddy smiles they hadn't worn in months. The two Guatemalan immigrants had spent eight months hiding from deportation in an Austin church before authorities unexpectedly granted them a form of immigration relief that shields them from deportation for one year and allows Ramirez to apply for a work permit. The news came as a surprise victory for the so-called New Sanctuary Movement — a revived effort to provide protection for migrants in houses of

ANSWER: b. Trident Lakes residents will have 400 underground bunkers with tunnels, guns, a DNA vault and a year's worth of supplies waiting for residents in case of an apocalyptic disaster. "While you're at it, you live in a five-star resort waiting for that doomsday," spokesman Richie Whitt told Dallas station KXAS.

SUFFER THE CHILDREN

“We have children regularly sleeping in state offices, and thousands of vulnerable kids, victims of alleged child abuse, who aren’t seen by investigators within 24 and 72 hours of a report of abuse. It’s an intolerable and shameful situation stemming from hundreds of vacancies at CPS.”

—San Antonio Express-News editorial board on October 31.

“I’m telling you right now, we need the help, and it comes in a monetary way. It sickens me to know that there are children out there that are not being seen.”

—Department of Family and Protective Services Commissioner Hank Whitman in a Senate Finance Committee hearing on October 26.

“Despite the best intentions of a well-meaning agency and its hardworking staff, no bureaucracy can meet the very human needs of children. Those needs are met in families, not in agency offices.”

—Brandon J. Logan, director of the Center for Families and Children at the Texas Public Policy Foundation, in an October 31 column for the *Austin American-Statesman*.

“While CPS and foster care may be a responsibility of the state, the safety and welfare of these innocent children is a responsibility of us all. These children are your children, they live in your community and desperately need the love and support of the faith community.”

—State Senator Charles Schwertner at the Texas Faith Leader Summit on November 2.

an organizer with Grassroots Leadership. “But we need to see more faith communities like St. Andrew’s standing up and saying to ICE, ‘You’ll have to get through us first.’”

The Austin Sanctuary Network, founded in 2014, is a coalition of 14 congregations that Caceres said is ready to take in more immigrants and continue resisting deportations.

The New Sanctuary Movement draws its inspiration from 1980s-era activists who developed what they called a “new Underground Railroad” — a network of churches and shelters that provided safe passage to Central Americans fleeing that decade’s civil wars. At the movement’s height, over 150 congregations were openly harboring Central American refugees in direct defiance of the government.

The Rev. Noel Andersen, a national organizer with the Church World Service, told the *Observer* that the movement has won 15 sanctuary cases since 2014. “Our ultimate goal is to dismantle the deportation machine step by step,” Andersen said. —Gus BOVA

FRACKING

Into the Deep End

FOR DARRELL AND NETA RHYNE, THE SHIMMERING waters of the Balmorhea pool are both a natural treasure and the source of their livelihood. Since 1989, the couple have operated a dive-and-souvenir shop near Balmorhea State Park, outfitting scuba enthusiasts and snorkelers, many of whom stop at the park on their way to Big Bend National Park. In the summer,

Darrell, who is also a scuba instructor, takes about 100 Boy Scouts on dives in the pool.

Balmorhea is a sleepy, predominantly Hispanic town about 60 miles north of Marfa with a population of about 500. The majority of businesses in Balmorhea are dependent on tourists visiting the pool, which was constructed in the 1930s as part of a New Deal program and is fed by San Solomon Springs, an underground gusher that pumps more than 20 million gallons of water a day into the pool. Teeming with fish and turtles, the pool is made for summer magazine covers.

“It’s like diving in a huge aquarium,” said Darrell. “It’s a unique Texas treasure and there’s nothing else like it in the world.”

But an energy company’s discovery of billions of dollars’ worth of oil and gas in the region has the Rhynes worried their business might dry up. In September, Apache Corp. shocked the industry when it announced the discovery of the equivalent of 15 billion barrels of oil in the Alpine High, a corner of the Permian Basin that had received little attention. The company has said it plans to drill oil and gas wells on 350,000 acres in the region, but that it won’t drill in the state park or near San Solomon Springs.

Environmental groups see Apache’s plans for the Alpine High as the next big fight in a rolling conflict between the fossil fuel industry and local

“We’re scared for our future and for our children and grandchildren. We’ve put all our life savings into this itty-bitty shop and we’re going to lose it.”

communities. Several environmental groups, including Defend Big Bend, Big Bend Conservation Alliance, Sierra Club and Earthworks, are beginning to organize, arranging demonstrations, conducting studies that explore the risks to the springs and educating the region's residents about the downsides to fracking.

"We're certainly connecting this to the larger issue of protecting water ... with the Dakota Access Pipeline, as well as with the Eagle Pass coal mine and the Trans-Pecos and Comanche Trail pipelines in West Texas," said Tane Ward, an organizing manager with the Sierra Club.

Ward and other activists also foresee Apache doing damage beyond its well pads. Fracking operations require auxiliary infrastructure, such as pipelines and compressor stations. The more oil and gas that Apache fracks, the more infrastructure it will need. The more infrastructure is built, the more it enables fracking. Though the development is expected to bring jobs and tax dollars, the Rhynes fear it will permanently alter the Trans-Pecos region, changing Balmorhea from a quiet Chihuahuan Desert town into an industrial hub.

"We're scared for our future and for our children and grandchildren," said Darrell. "We've put all our life savings into this itty-bitty shop and we're going to lose it."

—NAVEENA SADASIVAM

SUPER LAWYERS

The Royal Treatment

IF YOU NEEDED AN IMMIGRATION LAWYER IN HOUSTON IN the last few years, there were plenty of reasons that hiring Prince Uchechi Nwakanma might have seemed like a good idea: the half-hour infomercials on Spanish-language radio, his selection as one of Houston's "Top 50 Black Attorneys," and even the photos in the Prince and Associates lobby of Nwakanma alongside George W. Bush and Barack Obama.

It would have been easy to miss the string of lawsuits from former clients who claimed Nwakanma took their money to help them get a work visa or fight a removal case, then did nothing while they lost their jobs or got deported. And if you suffered a similar fate, you would've found nobody in Texas who could help.

A Houston woman named Cristina Ceja told the *Observer* that her two sisters paid Nwakanma thousands to handle their husbands' cases, then learned from immigration officials that he hadn't submitted paperwork they'd paid for. "Had he filed the paperwork when he was supposed to," she said, "maybe they would not have been deported." Ceja said Nwakanma promised to sue her family for defamation if they went to the press.

In July, Univision aired an investigation that found a dozen victims who had lost a total of \$80,000 to Nwakanma's firm. In an email to Univision, which began with a threat to sue the network, Nwakanma dismissed the complaints as the "collaborated efforts of one or more Hispanic attorneys who have incited my clients to revolt against me due to jealousy." The legal system, he wrote, offers plenty of recourse for clients who feel they've been wronged.

But when his clients go to the State Bar of Texas,

they learn that Nwakanma is out of the group's reach because he isn't even licensed in Texas. A quirk of the U.S. immigration system allows attorneys to practice in an immigration court if they have a license from any state. Since 2003, Nwakanma has practiced law in Houston with a license from Kansas. As it turns out, working hundreds of miles from regulators can have its advantages.

"He doesn't have a Texas license," said Stan Hazlett, disciplinary administrator for the Kansas Supreme Court. "[The State Bar of Texas] has no jurisdiction over him."

It's not clear how common this problem is, but Kansas investigators faced a similar situation in 2015, when the state disbarred an immigration lawyer named Mary Yehlen Brooks after years of complaints from her clients in California. Kansas court investigators have urged reforms to keep immigration attorneys' oversight closer to where they practice.

Hazlett said the distance to Houston, and the fact that many of Nwakanma's clients don't speak English, prolonged the state's investigation, which began in 2013. The disciplinary board submitted its final report in October, with a recommendation that Nwakanma be disbarred. The Kansas Supreme Court could finalize that decision in the coming months.

Hazlett's office is probably just getting started with Nwakanma, however, because it also oversees a client protection fund to reimburse people who've been cheated by lawyers licensed in Kansas. Hazlett wouldn't say how many claims his office has received from Nwakanma clients, but each one will require its own investigation.

—PATRICK MICHELS

Since 2003, Nwakanma has practiced law in Houston with a license from Kansas. As it turns out, working hundreds of miles from regulators can have its advantages.

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COAST
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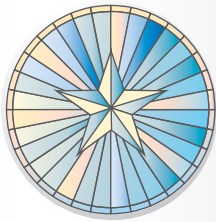
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STATE OF TEXAS: The Bigger the Roof, the Closer to God

IN MANY WAYS, recent trends in American faith seem to be leaving megachurches behind. Surveys show Americans are less likely than they once were to affiliate with an organized religion, and many church consultants suggest that millennials seeking a new worship space are drawn to casual, intimate settings. But Texans, at least, still like their churches big — megachurches here are bigger and more powerful than ever. —PATRICK MICHELS



EVEN THE CHURCHES ARE BIGGER IN TEXAS!

More than 200 churches in Texas report an average weekly attendance of more than 1,800; only California has more. Joel Osteen's Lakewood Church, in the former home of the Houston Rockets, is the country's biggest church.

**LAKEWOOD CHURCH,
HOUSTON**

43,500

Average weekly attendance

**GATEWAY CHURCH,
SOUTHLAKE**

28,000

Average weekly attendance

**FELLOWSHIP CHURCH,
GRAPEVINE**

24,162

Average weekly attendance



SPREADING THE GOOD WORD

The influence of some of Texas' largest churches is even greater than their gaudy attendance figures.



PRESTONWOOD BAPTIST CHURCH, PLANO

4

Number of elected state officials among the congregation



CORNERSTONE CHURCH, SAN ANTONIO

\$7 MILLION

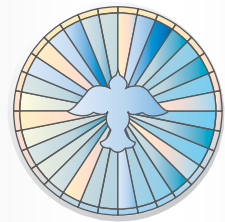
Annual budget of Pastor John Hagee's Citizens United for Israel, the nation's largest Zionist advocacy group



FIRST BAPTIST DALLAS

2,000

Number of appearances on TV and radio made by senior pastor, Donald Trump defender and frequent Fox News pundit Robert Jeffress



MEGACHURCH ATTENDANCE IS STILL CLIMBING

From 2011 to 2015, 73 percent of megachurches in the United States reported rising attendance.

The fastest-growing churches in Texas are:

**GATEWAY FELLOWSHIP
CHURCH, SAN ANTONIO**

↑187%

from 812 to 2,332



**BELTWAY PARK CHURCH,
ABILENE**

↑25%

from 3,870 to 4,836



**VALLEY CREEK CHURCH,
FLOWER MOUND**

↑21%

from 4,197 to 5,069



SOURCES: Hartford Institute for Religion Research; Outreach Magazine; First Baptist Dallas; Leadership Network 2016 Large Church Salary Study; 2014 Pew Research Center Religious Landscape Study; Forward; The T.D. Jakes Show; CNN

ILLUSTRATION BY JOANNA WOJTKOWIAK



CHRIS HOOKS

LEFT HOOKS

Child Warfare

When it came time for top elected officials to discuss fixes in the child welfare system, Lieutenant Governor Dan Patrick and his chief budget writer, state Senator Jane Nelson, sought to make one thing crystal clear: It's not their fault.

THE TEXAS LEGISLATURE OVERSEES A LOT OF IMPORTANT AND meaningful programs — poorly, more often than not — but when dead children come into the picture, the situation feels different. Texas' terrible school finance system and mismanagement of Medicaid affect millions of people, but those are complicated issues. Few things symbolize a broken state government like the image of a sexually abused child left to linger in a dangerous home because a tip got lost among overworked caseworkers. ¶ The cascading scandals surrounding the Texas Department of

Family Protective Services (DFPS) speak for themselves: More than 2,800 children at high risk of being abused or neglected have gone for weeks without being seen by state employees, and 171 kids have died just in the last two years while under state care, sometimes from stomach-churning circumstances. So when it came time for top elected officials to discuss fixes in the child welfare system, Lieutenant Governor Dan Patrick and his chief budget writer, state Senator Jane Nelson, sought to make one thing crystal clear: It's not their fault.

For years, Child Protective Services (CPS), overseen by DFPS, has been starved of funding and barely functional at best. Caseworkers are paid peanuts for emotionally exhausting work, turnover is extremely high, and employees lack support and direction. And ever since 2004, when legislators forced CPS through a big, messy restructuring and cut the agency's budget significantly, the legislative hand has been unsteady.

But if the child welfare system is screwed up, Patrick said in a statement, that's the agency's fault. "I share Senator Nelson's frustration with [DFPS]," he said, "and I support her demand that DFPS provide us with immediate answers regarding these children." He was *shocked* to learn that the agency "is unable to move through their backlog and protect these at-risk children despite a 85 percent increase in funding since 2006-2007."

Why use 2006 as a benchmark? Well, that's right before the agency got its most meaningful budget bump in the last decade. Since then, adjusting for inflation and population growth, the amount of money spent per Texas kid has been about flat. Patrick's stat is carefully chosen to make DFPS sound wasteful, bloated and out of control. But Texas' spending on child protection has always been extremely low compared to other states, and it remains so — in the last 20 years, when calculated per minor resident, Texas consistently spent from 40 to 50 percent of the

national average on foster care and child welfare.

Patrick's defensive calculations appear to be an attempt to pre-empt the allocation, next session, of the kind of money DFPS desperately needs. He has his own priorities, including a \$1 billion border security package and piddling property tax cuts. His proffered solution is to farm out more of the state's responsibilities to churches. Hey, charity is cheap.

A bag of cash won't fix the agency, but adequate funding is the first step. Nelson acknowledged as much when she shamed DFPS head Hank Whitman, who's only been on the job for about a year, for not coming to her budget committee with an emergency request for higher CPS salaries. It was an effective bit of Lege theater, an impression of seriousness, and editorial boards around the state praised her for "cracking down" on behalf of children.

But Nelson has been in the Senate for almost as long as I've been alive: An infant placed in foster care during her swearing-in could have graduated from college last year. It says something about our meager expectations that her mild anger after all this time is seen as evidence of progress.

It's as if state lawmakers owned an amusement park with a roller coaster that chucks a few riders to their deaths every month: We should fix that, they say periodically. A decade later, a local TV station starts airing stories on their murder park, and so they leap into action, pledging to fix the ride soon. Then they blame the deaths on their own staff.

But that's how everything is in Texas. State government these days is mostly about papering over cracks and finding an acceptable level of pain. That's true with schools, health care, roads and, apparently, child abuse victims. As one budget watcher told me, DFPS "has usually gotten what it needed to keep caseloads from getting much worse, but not enough to make significant improvements in anything." We should hope that's not the case this time, but there's no great reason to expect otherwise. ▣

STRANGEST STATE

NOTES FROM FAR-FLUNG TEXAS by Patrick Michels

AMARILLO // Texas was not spared from the great American clown terror of 2016. Students at East Texas Baptist University were warned of a student “mimicking a clown from his dorm room.” A Denton police officer suggested on Facebook that you “pop a cap in the first clown you see.” And an Amarillo man was arrested at Wal-Mart after dressing as a clown and pushing shopping carts at customers. Two men, identified by the KFDA news team only as Vahid and Elrad, decided to begin patrolling the streets as vigilantes, calling themselves “Clown Busters.” “If we could approach one without getting hit by a crowbar or something, then we would,” Vahid explained.



KILGORE // Andy Taylor is the proud winner of this year’s “Perfect Pair” contest, for which he took home a year of free ice cream from Braum’s. Per the terms of the contest, Taylor devised names for various two-flavor combinations of Braum’s ice cream. “You could just put two flavors together and just name it whatever, but I wanted it to be relevant to what the ice cream was,” Taylor told KLTV in Tyler. Taylor said he submitted a dozen entries, but his winner featured chocolate chunk cappuccino frozen yogurt and light toffee ice cream, which he christened “Wake me up before you Fro-Yo.” The cherry on top of his ice cream bounty: His flavor combo will be featured at the Braum’s in Tyler.

CANYON // “JESUS never drank booze,” according to an advertisement placed in the *Canyon News* by the Anchor of Hope Baptist Church, which also noted that “Nabal drank booze — and died from a coma.” The teetotaling message was inspired by the newly opened Imperial Taproom, which recently became the city’s first purveyor of alcohol since sales were legalized in 2015. “Craft Beer Is the Devil’s Craft,” warns the church ad, but the taproom management has taken the criticism in stride. Amarillo station KFDA reports that customers get a dollar off their beer if they present the ad as a coupon.

AUSTIN // The Austin Police Department bomb squad turned out in force in response to reports of a “suspicious package,” the *Austin American-Statesman* reported. Police shut down traffic near the I-35 access road, two blocks from police headquarters, to keep the public safe while investigators made their delicate inquiry. Two hours later, after employing a remote-controlled robot to probe the suspicious bag from a safe distance, police determined that “a jar of pickled okra was the culprit.”

CUERO // “Inches from the finish line with hundreds of cheering fans urging her on and her feathered adversary close behind, Ruby Begonia took a break.” So begins the tale, recounted in the *Victoria Advocate*, of the thrilling finish to this year’s Great Gobbler Gallop, in which Ruby Begonia, “Cuero’s most beloved poultry,” narrowly bested Paycheck, her archival from Minnesota. It was the 44th contest between the birds, who compete in a series of races each year, as onlookers encourage them by yelling and banging rattles on the pavement behind them. After her late-race hesitation kept local fans in suspense, Ruby Begonia finally trotted across the finish line first. “I think she was showboating,” declared the Rev. David Berger, who emceed the event. “The turkeys seemed to know what they were doing.”

GONZALES // “Birds of a feather [took] the plunge together” during the annual chicken flying contest at the Gonzales Come and Take It festival, the *Gonzales Inquirer* reported. The “aerial onslaught” of “pullet pilots” had “soared back into the spotlight” after “a few years on the roost,” the paper reported. Per local tradition, contestants pay \$10 for the thrill of “launching” their chicken from a second-story mailbox and onto the street below. Prizes are awarded for the longest lateral flight and the “most uniquely named” bird.

HOUSTON // When Buster Pendley’s wife collapsed and lost consciousness early one morning, he acted fast and called 911 for help. He was surprised when, midway through explaining the emergency, the operator hung up on him. According to police, that operator was Crenshanda Williams, who made a habit of hanging up on callers “because she did not want to talk to anyone at that time.” Williams has been charged with two misdemeanors for hanging up on callers, but KPRC in Houston reported that investigators found that Williams had thousands of suspiciously short calls in six months on the job.

Visit texasobserver.org/strange for more “Strangest State” and links to original stories. Got a local oddity or some small-town news to share? Tips are welcome at michels@texasobserver.org.

EDITORIAL

The Fight of Our Lives

AS I WRITE THIS, THE ELECTION IS A mere three days in the past. Time has a way of making fools out of prognosticators, but this moment feels like a great unraveling, an inflection point that could hurtle us into a dangerous new era. Rarely has so much been on the line — free speech, human rights, global peace, even the stability of the planet's climate — with so little sense of what to do.

The awesome might of the American presidency is now in the hands of a hateful and unstable demagogue who has surrounded himself with an inner circle of apparatchiks and vengeful con men. The only thing worse than Trump keeping his own counsel is him listening to the likes of Rudy Giuliani, Steve Bannon and Peter Thiel. In making Trump commander in chief, We the People have weaponized racism, misogyny, Islamophobia, homophobia and anti-Semitism. God help us.

Scariest still is that Trump enjoys (so far) the support of roughly half the country. There's no getting around the fact that he was democratically elected. Though some of his most fervent supporters hail from the fever swamps of the alt-right (a euphemism for bigots handy with memes), it's also true that millions of ordinary Americans truly believe he will make America great again. I know some of them. I'm sure you do, too.

Just as sobering: The countervailing forces that could keep Trump in check are also weakened.

The Democratic Party is in a shambles. Republicans now control the House and the Senate, the White House, 68 out of 99 state legislative chambers and 33 of the 50 governorships. President Trump will also get to make at least one appointment to the U.S. Supreme Court. Rather than wreck the Republican Party, as many believed he would, Trump has saved it.

What about the media? The credibility of the mainstream press could not be any lower. Most journalists utterly failed to appreciate the depth of the rage and dispossession felt by a large swath of the country. Trump's attacks on the media are unprecedented — and they've whipped his base into a frenzy. When Trump comes after basic press freedoms, how many of his supporters will cheer him on? There's a desperate need for a fact-based adversarial press (howdy!), but it won't be enough.

That leaves us — the unruly mob, the deciders. The choice we face is to either succumb to the grim and uncertain future the Age of Trump invites or join together and fight back. The way forward lies in solidarity, civil disobedience, protest, community-building and love.

Capitulation or resistance? I know which side I want to be on.
—FORREST WILDER

The choice we face is to either succumb to the grim and uncertain future the Age of Trump invites or join together and fight back.

LOON STAR STATE Ben Sargent



THE INTERVIEW

PUBLIC CITIZEN

Tom “Smitty” Smith

After more than three decades championing environmental causes in the Legislature, Tom “Smitty” Smith is hanging up his trademark straw hat.

Interviewed by **Naveena Sadasivam**

Q:

What drew you to lobbying?

One of the things that hooked me on lobbying was we had a woman walk in [at Texas RioGrande Legal Aid, where Smith was working]. Her husband had lost

his job because he was an epileptic bricklayer. She had no source of income, so she went in begging to get her food stamps adjusted so her family could eat. The food stamp program refused to do that because the statute was unclear and you could only adjust your allocation every six months. So the lawyers filed suit and we won an injunction in federal court in Brownsville. I thought, “This is easy, we’ll just go to court.” And then the state filed an appeal and the appeal languished in court for many years.

Meanwhile, our client and many others were unable to get food stamps changed and were living off charity. We ended up asking then-Congressman Kika de la Garza, who was chairman of the House Agriculture Committee, to hold a hearing. There were close to 500 people who showed up and all of them had horrific stories. Their circumstances had changed and they were broke. They had no way of changing their food stamps and no way of getting food assistance. As a result of that hearing, Congressman de la Garza was able to change the appropriations language, and I thought, “Boy, look at this, lobbying is easy. You can change long-term problems if you work together and create enough noise.”

Fast-forward 25 years, and we’re looking at a very different political climate. How do you continue to be motivated even in the face of defeat?

One thing is that when citizens are well-organized, they do win sometimes. Almost every session we win a number of things. We have certain goals that we know are going to be stretches and are hard to pass. And we have bills that are well-thought-of and have support not only from the liberal members, but conservative members and members of the business community. We always maintain that balance, so no matter how bad the session is, we have some gains.

There’s also a general rule of thumb that most controversial bills take three sessions to pass. So you introduce it and it barely gets heard. The second session there’s good debate and the third session they say, “Hell, didn’t we already pass this? Let’s get it out.” So you often have the long play.

Have you worked with folks you felt you didn’t have common ground with but you later found you did?

One of my biggest victories is the creation of the renewable-energy programs. There was a guy by the name of Bob Turner, a conservative from Van, Texas. He was the chairman of the conservative caucus, and one of the first wind turbines was built in his county. When that facility was dedicated, he came over to shake my hand and he said, “Smitty, I never thought I’d say thank you to somebody like you for creating the largest economic driver in my district in a generation.” Bob and I have become good friends. Realizing the projects I’d been considering environmental were job creation for a conservative taught both of us a lot. It helped me reframe and understand my message in a different way.

Passing the Renewable Portfolio Standard in 1999 set the stage for wind energy development. How did that come about?

Small voices have a remarkable impact on policy. There was a young woman who was talking to her father about air pollution over dinner. She said, “You know, Dad, that brown cloud that hangs over Dallas is probably coming from those coal plants in the south and east. We really ought to do something about that.” That guy was Sam Wyly, who owned a big computing company. So he ended up lobbying for the Renewable Portfolio Standard. He went and bought Green Mountain Power, a company out of Vermont that bought and sold renewable energy. He wanted something to go back to tell his daughter next Thanksgiving: “I did what you wanted me to.” But in addition, the pollution really bothered him. He and I started talking, cellphone calls late at night. And so as part of our ask, we wanted 75 percent reduction in air pollution coming from those coal plants. So I’d get these calls from Sam saying, “Oh, the utilities can’t do this, they can only do 25 percent.” I’d say, “Not good enough, Sam, we need 75 percent.”

The key thing was, he was George Bush’s third-largest contributor and he had never asked for anything. This was his ask. So Bush got interested in this stuff. We settled on 50 percent. The moral of the story is, ask for more than what you can, because you’ll probably only get a portion of it.

The other piece of this organizing puzzle is a number of folks who helped us get the public pressure on the members of the Legislature. We sent teams

“The second session there’s good debate and the third session they say, ‘Hell, didn’t we already pass this? Let’s get it out.’ So you often have the long play.”



outside of organic stores and sent teams to churches and we sent teams to the soccer fields where their kids played soccer, and we really focused on two committee members, Steve Wolens and David Cain out of Dallas, to sponsor the legislation that became the Renewable Portfolio Standard.

We did multiple organizing strategies. But most important was person-to-person contact with key voters in their districts that pushed them to say, “I don’t have renewables in my district, and renewables are a key issue in my district, and I need to pay some attention to that, otherwise I won’t get re-elected.” It’s often seen as a three-legged stool. You’ve got the insider lobbying, the citizens’ lobbying and the coalition that enables you to have enough power to move the needle.

Public Citizen played a major role in organizing against new coal plants around 2006 and succeeded in preventing many of them from being built.

On Earth Day of 2006, Energy Future Holdings [EFH] announced that they were going to build 11 new coal plants. The phones started ringing all over the place. Karen [Hadden, Smith’s wife, and executive director of the SEED Coalition] and I hit the road, and at one point we had created nonprofit citizen groups to oppose them in 16 communities. Virtually every place where there was a coal plant being built, we had created citizen groups to fight them. That was one of the most awesome and exhilarating times of my life.

One of the people in Bonham, Texas, we were helping organize with was half Indian-American.

He was Choctaw. Many of his relatives lived across the Oklahoma border and worked in the gambling centers there. They were very concerned about air pollution affecting their vistas and views. So the day we opened up the big hearing, one of the attorneys stood up and said, “I represent Choctaw Nation and all these tribes, and you forgot to give us notice, and you have to go back and start all over again.” [EFH attorney] John Riley turned to me and said, “Damn, I never intended to start another Indian war.” The Indian tribes, the gambling interests, they have a lot of money. So we were getting rescued by the Indians. At that point EFH came in and negotiated a sale of the utility and shut down all but three of their proposed coal plants.

What’s next for you?

Part of what I’m retiring from is not doing so many things and not being in the Legislature. We typically run 13 projects at any given time. We move 15 bills through the Legislature and do double that in terms of [opposing bad bills]. I’m just done with all that. I’ve been offered — soft offers — three special projects.

Karen and I have talked a little bit about going around the world. We’ve found some cheap tickets that would enable us to be gone for a couple years. We’re at an age and stage in our lives that we can just go. We’ve talked about doing some service, going to Guatemala and feeding hungry kids, which is dear to my heart. That’s where I started, and I’d like to continue to do that. 📍

This interview has been edited for length and clarity.

“Virtually every place where there was a coal plant being built, we had created citizen groups to fight them. That was one of the most awesome and exhilarating times of my life.”

**Tom “Smitty” Smith
at the Capitol.**
PHOTO BY JEN REEL



How to Fix a Soul

For some veterans, guilt and shame can linger years after combat — and it's not PTSD.

A

ARON THROCKMORTON DECIDED TO join the military the day the Twin Towers fell. A standout high school linebacker at Midland Lee (of *Friday Night Lights* fame), Throckmorton quit his team that very

afternoon. He doubled up on his schoolwork so he could finish early and become a Marine. There were military men in his family. His grandfather served during the Korean War, and an uncle was a “river rat” in Vietnam. But Throckmorton didn’t know much about their experiences.

“I never really asked,” he told me. No, it wasn’t because of his family’s pedigree that he was enlisting. He had watched the second plane hit the towers and felt “it was my duty to go and take care of those who had done it.”

After boot camp and infantry school, Throckmorton was sent to Afghanistan, where, as far as he’s concerned, he did the world some good by killing “bad men.” But just before he left the service, he suffered a nervous breakdown. When he returned to civilian life in 2006, he started drinking heavily and getting into fights. Hoping to be left alone and stay out of trouble, he chose jobs with limited responsibilities. For a stretch, he worked at a Wal-Mart in Roanoke, north of Fort Worth, rounding up carts from the parking lot. One day he was pushing a line of carts when a man in a car told him to hurry up. The two exchanged threats, and Throckmorton ended up chasing the car around the lot until the man got out and Throckmorton “started beating on him.” He was promptly fired.

Throckmorton’s story might sound familiar. Many veterans suffer significant difficulties readjusting to civilian life. According to a study released in July by the Veterans Administration, 20 veterans commit suicide daily. And though veterans make up just 9 percent of the population, they account for almost 20 percent of all suicides. Rates of alcoholism, anger and some forms of violence are higher among veterans. But what makes Throckmorton’s struggles stand

By Jake Whitney

PHOTOS BY SEBRON SNYDER

out is that his symptoms do not neatly fit the criteria for post-traumatic stress disorder. PTSD is a fear-based mental disorder characterized by nightmares, flashbacks and hypervigilance. But these weren’t troubling Throckmorton. Instead, he suffered from something experts now call moral injury.

Tall and muscular with close-cropped dark hair, Throckmorton met me one June morning at the offices of Brite Divinity School, which is affiliated with Texas Christian University, in Fort Worth. We talked in a conference room reserved for us by theologian Rita Nakashima Brock, the director of the Soul Repair Center at Brite, which is the only program in the United States dedicated to educating the public about moral injury. For the better part of a morning, Throckmorton recounted his war stories. He was amicable if occasionally intense, and spoke with energy and thoughtfulness. Our interview was interrupted twice — once when Brock stopped in to say hi, and once when Throckmorton’s emotions overwhelmed him.

It wasn’t combat that had sparked his troubles, he told me. He had taken part in several firefights and so had naturally worried about his safety, and he described the “gruesome” deaths of several Afghan policemen killed during these fights. What haunted Throckmorton about his time in the military was not what he did, but what he didn’t do. “I should have been there for them,” he said of Marines he trained who later died in Iraq. “I could have trained them better.”

“Most soldiers fight for the person next to them,” Brock told me later. “Witnessing fellow soldiers die is one cause of moral injury.” In 2012, prior to launching the center, Brock co-authored *Soul Repair: Recovering from Moral Injury after War*, and in the years since, she has become one of the most prolific speakers on the topic. While it was first identified in

Aaron Throckmorton struggled with moral injury after returning from Afghanistan, even to the point of attempting suicide.



LEFT: Rita Nakashima Brock, director of the Soul Repair Center at Brite, the only program in the United States dedicated to educating the public about moral injury.

BELOW: Vietnam veteran Michael Killam, who also struggled with addiction, PTSD and traumatic brain injury after returning from war. COURTESY MICHAEL KILLAM

PTSD is about **fear and personal safety**; moral injury consists of the **shame and guilt** engendered by witnessing or displaying behavior antithetical to what the soldier considers moral.

2009 by psychiatrist Jonathan Shay, most experts agree that it's as old as war itself. Moral injury has only recently been considered separate from PTSD, though the two often coexist. PTSD is about fear and personal safety; moral injury consists of the shame and guilt engendered by witnessing or displaying behavior antithetical to what the soldier considers moral. Treatments for PTSD typically do not work on moral injury because moral injury is not fear-based. While PTSD is a clinical diagnosis treated according to criteria prescribed by the American Psychiatric Association, no diagnosis yet exists for moral injury.

The causes of moral injury are many. For example, it can stem from a soldier's belief, as with Throckmorton, that he failed at what he viewed as his primary duty: protecting his troops. It has also been identified in soldiers who have killed civilians and tortured prisoners, but also in more blameless cases, such as handling remains and guarding prisoners.

Another veteran I spoke to in Fort Worth, Michael Killam, was profoundly scarred by the combat he saw as a helicopter gunner in Vietnam. Sixty-five and lean, with long gray hair held back by an American flag bandana, Killam was anxious during our talk: He insisted the door to the conference room remain open, and his narrative was peppered with nervous laughter. A recovering alcoholic and heroin addict, Killam recounted an almost stereotypically horrible stint in Vietnam. His most heartrending tale occurred in 1969, when his helicopter was called to the site of a mortared orphanage. He and his crew were asked to find survivors. Killam says he stumbled upon a baby with a piece of shrapnel stuck in its chest. When he



pulled it out, the baby bled to death, he remembers.

The memory still pains him. "Sometimes I feel like I left my soul over there," he told me several times. His return from combat only aggravated his guilt. "When I got off the plane and was walking across the tarmac, a woman in the crowd called me a baby killer," he said. "How did she know? I couldn't understand how she knew."

What many civilians don't realize, Throckmorton emphasized, is that the stress of combat can be exacerbated by problems back home. Throckmorton's personal life fell apart while he was in Afghanistan: His wife cheated on him and stopped paying the bills, ruining his credit. His grandfather, who had raised him and was his strongest male role model (Throckmorton never knew his father), died. These tragedies fostered a sense that his soldiers were his true family, compounding the heartache whenever any of them died.

"One night I was like, screw it, I'm suffering every day," he said. "All this stuff is running through my head. So I went behind the barracks and tried to slit my wrists." Luckily he was spotted before he could finish.

Though the Soul Repair Center doesn't offer therapy services directly, Throckmorton and Killam have formed valuable relationships through the center's network. Throckmorton met Col. J. Craig Combs, a retired Army chaplain who served in Iraq. Now the faith-based community liaison for the Texas Veterans Commission, Combs was recruited by Brock to incorporate moral injury education into

his veteran peer-support work. Brock said the center's mission is to educate the public about moral injury, with a special emphasis on reaching clergy, VA professionals, veterans and their families. She made it clear that the center doesn't provide treatment in part because she doesn't regard moral injury as an illness or disorder.

"We are working to disrupt the idea that moral injury is a disorder," Brock said. "We regard it as a normal response to extremity." She added that treatment can indeed help, but it is not "a complete recovery process, rather an intervention that can begin a process. We try to teach people how to support the long process of recovery."

It's important, she said, for veterans to have an ongoing dialog with a "benevolent moral authority." The sufferer often needs to feel forgiven, so a spiritual connection, as well as supportive friends and family, can be crucial. No standard therapy or recovery program yet exists, but clinical trials of a technique called Adaptive Disclosure, which incorporates blame dispersion and role-play scenarios with imagined authority figures, are underway. (Clinical psychologist Brett Litz, who pioneered Adaptive Disclosure, told me that results from one of the trials will be released next year.)

The Soul Repair Center has its roots in peace activism. In 2008, Brock and Gabriella Lettini organized the Truth Commission on Conscience and War to examine the consequences to soldiers fighting the wars in Iraq and Afghanistan. As they wrote in *Soul Repair*, a key goal was to help the public “understand society’s responsibility for them and how soldiers struggle with conscience in war.” Out of the commission emerged two resolutions: The United States should recognize “selective” Conscientious Objector status for those who espouse just-war principles, not pacifism; and moral injury needed to be understood as a key driver of veteran suffering. Brock stressed that she does not promote a political agenda in her education about moral injury.

Both Killam and Throckmorton struggled for years with the standard treatment options for vets. After his breakdown, Throckmorton said, he was put in a room with doctors “who were, like, colonels,” and they demanded to know what his problem was. “It was the most uncomfortable thing in the world,” he said. “I felt like a new college student being thrown in front of the dean. I couldn’t talk to them.”

Once out, Throckmorton went to the Fort Worth VA, which he said was “hell.” Treated rudely and shuffled frequently between the Dallas and Fort Worth centers, he quit in frustration. Afterward, he fell into a pattern of “doing good for a while, doing bad, doing good, doing bad,” all while “drowning myself in guilt and alcohol.”

It wasn’t until each man identified his moral injury (Killam also suffers from PTSD and traumatic brain injury), found the proper mentor and began helping other veterans that the recovery process began in earnest. A breakthrough for Killam occurred when one of Brock’s colleagues suggested he view his key moral wound differently: Maybe the baby was going to die anyway, and Killam was able to offer a loving embrace in its last moments of life. “That was such an amazing, loving way to think of it,” Killam said. “I’d never thought of that. Maybe that’s what the whole thing was about.”

In 2008, Killam obtained his certificate in drug and alcohol counseling and has become a program manager of veteran services at Mental Health and Mental Retardation (MHMR) of Tarrant County. In addition to working with Brock and the Soul Repair Center, Killam is a peer coordinator with Texas’ Military Veteran Peer Network.

In 2013, Throckmorton founded a nonprofit CrossFit competition for veterans called the Agoge Challenge. During annual competitions, Throckmorton’s crew sets up veteran resource booths and holds job fairs. “All the things I didn’t have when I got out, I made sure to put it in one competition,” he said. “As much bad as there is in this world, I’m going to do everything I can to bring good to it.”

Before we shook hands goodbye, Throckmorton handed me a promotional DVD of the challenge. His dark eyes were sharp and determined. “As a Marine you’re not supposed to offer a bunch of complaints without a solution,” he said. “That’s the number-one thing I was taught. So that’s what I did.”

Jake Whitney is a New York-based writer whose work has appeared in The Daily Beast, The New Republic and The San Francisco Chronicle.



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In Texas, paying for cops, courts and prosecutors with fees from defendants has become more and more popular. **But what happens when the drive to do justice on the cheap collides with a rogue prosecutor?**

Making Crime Pay and Pay and Pay...

BY PATRICK MICHELS // ILLUSTRATION BY DOUG CHAYKA

ALITTLE AFTER 1 A.M. ON A SUNDAY IN March 2012, Charley Salas was driving some friends home after a night out in Brownwood, a rural town midway between Austin and Abilene. Five months pregnant, Salas was the designated driver. Earlier that night, a friend had spilled beer in the backseat, so when a cop pulled her over for making a wide right turn, the smell made him immediately suspicious. He checked her ID and discovered Salas was driving with an invalid license. Though Salas pleaded that she didn't know, she was handcuffed and taken to jail, where she spent the night.

At her court date in June, she faced either more jail time or a \$2,000 penalty. As a 26-year-old single mother, Salas couldn't afford either. But Brown County Attorney Shane Britton made her an offer: Salas could avoid the charge and go home that day if she took a "pretrial diversion," a deal similar to probation except that the terms are dictated by a prosecutor, not a judge. Salas would have to avoid alcohol, drugs and "persons or places of disreputable or harmful character" for the next year, and pay monthly fees to the Brown County Court at Law, the Texas Department of Public Safety and to Britton's office. Those fees added up to nearly \$1,400, or about \$116 a month. Salas had no idea how she'd pay, but she took the deal rather than risk a conviction, which would come with more state surcharges.

"It seemed a lot cheaper to do so," she said recently. "I didn't have the money. I had to hurry up and go to

work. I was like, 'OK, probation period. Sign me up, let's do it.'"

Salas says she made her first payment, then began asking for extensions. She paid when she could, but then she lost her job and missed a lot more payments. She'd get letters reminding her to pay, and when she could, she'd drive to the courthouse with separate money orders for each of her fees. When she missed more than three months in a row, Salas says a woman in Britton's office added late fees that weren't mentioned in her agreement. At one point, Salas says, she took out a payday loan so she could afford her payments to the court. Around Christmas 2014, Britton's office sent a letter demanding \$1,000, and Salas asked for one last extension. In February 2015 — almost three years after her fateful right turn — she stood at the counter at his office and handed over two money orders, one for \$600 and one for \$400.

About a year later, Salas got a call from a man named Joe Cooksey, who explained that he was investigating suspicious payments to Britton's office. Her case had caught his eye. Salas didn't know how much she'd paid over the years, but Cooksey found records showing at least her last \$1,000 were deposited in two accounts designated for donations to Britton's office. What's more, Salas had made the payment nine months after her case had been dismissed. And there were others who had apparently been pressured into "donating" money to Britton's office. Salas was stunned.

Most prosecutors in Texas are barred by state law from taking gifts from people in their jurisdiction.



Despite the cautionary rulings from the attorney general's office, lawmakers have actually been giving *more* prosecutors the right to collect donations.

Since 2007, County Attorney Shane Britton has made costly "donations" to his office a regular feature of deals with defendants to avoid charges.

Among the ethical questions such arrangements could raise, the most basic is that a defendant could simply buy his way out of punishment for a crime. Yet for nearly a decade, the Brown County Attorney's Office has arguably done something similar. Britton has made "donations" from defendants the foundation of a pretrial diversion program that lets people avoid prosecution for drunk driving, driving without a license, shoplifting and other misdemeanors. In this way, hundreds of defendants have paid a combined \$250,000 since 2008 to cover travel to conferences, cellphones for Britton and his staff, and advertisements in the Brownwood High School cheer calendar, according to county records. By covering other office costs with donations, Britton was even able to convince county leaders to boost salaries for himself and his staff.

In Texas, paying for cops, courts and prosecutors with fees from defendants has gotten more and more popular over the years. But what happens when the drive to do justice on the cheap collides with a rogue prosecutor?

Only in the last year has Britton's office started to get critical attention from the county's legal community. And in the tight-knit courthouse, it's hard to miss the Texas Rangers collecting records regarding his office, or the rumors of an FBI investigation into whether donations were accepted off the books. When county leaders commissioned a forensic audit of the fund, they found huge gaps in record-keeping that suggested, at best, a casual approach to taking money from defendants. At worst, his critics allege, he ran an illegal collection scheme for over a decade that blurred the lines between fees, donations and bribes.

IN MARCH 2007, A YOUNG ATTORNEY named Ryan Locker went to Austin and asked lawmakers to help the Brown County Attorney's Office raise some money. He'd spent the last year as an assistant to Britton, who had been county attorney since 2001. Lately, they'd been grappling with a budget shortfall. Locker told lawmakers he'd like to "generate some income by grant writing," but that his office was prohibited by state law from accepting gifts. At Britton's request, state Representative Jim Keffer, whose district includes Brown County, was carrying a bill that would exempt the Brown County attorney from the ban.

"The question that comes up, obviously," Locker told a committee of lawmakers, "is how do we know this is not going to result in a quid pro quo? You offer a donation to our office in exchange for a favorable disposition in your case. Well, first and foremost, that would constitute the second-degree felony of bribery."

The donation fund would be completely transparent, Locker promised. And he had one argument he knew tightfisted Texas legislators would love: Donations would keep the office running without raising taxes. "This is a tool that will hopefully keep the expenses of our office off of the back of Texas taxpayers," he said, "and continue to keep them on criminal justice-minded nonprofit institutions, and also on Brown County offenders."

Such a willingness to treat defendants as ATMs has become the norm since the 1990s, when lawmakers discovered their tough-on-crime policies cost more than they were willing to pay. In response, Texas and other states hiked the fees that local courts could charge defendants and encouraged counties to get creative in balancing their budgets with less help from the state.

Soon Britton's donation fund was taking in tens of thousands a year. But the fund benefited little from "grant writing" or "criminal justice-minded nonprofit institutions," and almost entirely from misdemeanor defendants. Here's how it worked: A woman might come to court with a first-time DWI charge, facing six months in jail, a \$2,000 fine paid to the county, plus \$3,000 more in state surcharges to keep her driver's license. Britton would offer her a deal: \$2,000 up front and he'd drop the charge. The county clerk's office would get a \$250 processing fee, and the rest would be "donated" to Britton's office. It was an unconventional arrangement, but for years it met few complaints — until Joe Cooksey made Britton's program the target of his latest crusade against the county leadership.

Cooksey holds no official position in Brown County, but he is a common sight haunting the hallways of the courthouse. He's often spotted delivering public records requests, or spelunking in the county clerk's underground file room. Perched on the courthouse's second-floor balcony on an October morning, leaning against a white column and lighting another cigarette, Cooksey tells me that his compulsion for digging in the county's affairs is simple. Brown County is a business, he says, and "I own this business, along with everybody else."

Wearing rimless glasses and a cellphone holster, the 60-year-old former high school science teacher seems well-suited to the role of vigilante accountant. His interest in local politics began in 2006 with an effort to recall some city officials, and has grown to a multifront war against mismanagement and misappropriated funds, which he details on his Facebook page, "Brown County WatchDawg." When he ran, unsuccessfully, for county office in 2010, he introduced himself by saying, "My name is Joe Cooksey. It's also troublemaker, loose cannon, and 'blank-blank-blank,' and a number of other things."

All of which is to say that in 2009, when Cooksey first railed against the donation fund, the county commissioners were not predisposed to join him in shouting from the rooftops. But Cooksey was relentless, and in 2011 a Brown County district judge asked for advice from the state Office of Court Administration, which suggested the judge stop signing agreements that included donations to Britton's office. Britton responded by printing agreement forms that didn't have room for a judge's signature. Instead, defendants delivered their donations to Britton directly, sliding their payments across the counter at his third-floor office window. At this point, according to Brown County Clerk Sharon Ferguson, Britton's office stopped



sending the donations to her office for processing, instead depositing them with the county treasurer. As he relates the timeline to me, Cooksey offers a reminder that the donation fund began with the promise of complete transparency, but that it wasn't long before almost no one in the courthouse was watching.

On the balcony, Cooksey finishes his cigarette, and we walk inside just in time to pass Britton in the hallway. On Facebook, Cooksey had recently described Britton as a “certified pathological liar.” As the two of them cross paths, I’m not sure what to expect. But Cooksey gives a friendly nod, and Britton returns it as he walks on by.

I meet with Britton later that day in his conference room, which is lined with green-bound books of case law. He explains that using the word “donation” was a mistake; the whole mess could have been avoided by simply calling it a fee. “I have no earthly idea where the word ‘donation’ came from,” he tells me, guessing it was either the Legislature or Locker’s idea. (Locker, now an assistant U.S. Attorney in Texarkana, declined an interview request.) “People that get their feathers ruffled about that program and those statutes — if it was any word in the dictionary other than the word ‘donation,’ I don’t think that they’d get upset about it.”

Britton tells me his program was meant to *reduce* costs for poor Texans, given all the fees that come with a conviction. He points out that the Department of Public Safety’s Driver Responsibility Program demands that drivers with a DWI conviction pay \$3,000 or more just to keep their license.

“Prosecutors are kind of stuck in this quandary,” Britton says, “where poor people, college students, working-class folks, get these offenses and there’s really no creative way to punish them while, at the same time, not doing something to them that’s going to hurt them.”

Nearly 1.4 million Texans have suspended licenses because they can’t pay the state’s surcharges — and in fact, Salas was one of them when she got pulled over in 2012. Far from alleviating her burden, Britton’s donation program became just another debt she owed.

The program’s future is uncertain now, Britton says, and so is his own time in the office. “There’s been a lot of days lately that I’ve questioned whether it’s worth it or not,” he tells me. “Maybe this is kind of a young man getting old. ... I’m probably not long for this job.”

In May 2015, county officials commissioned a forensic auditing firm to examine the donation funds. To save money, the county asked auditors to investigate payments only from January 2013 to May 2015. When the report came back in June, auditors wrote that they were “unable to locate a Microsoft Excel spreadsheet containing any receipt information,” and found only “a generic off-the-shelf receipt book used by the County Attorney’s office” for some defendants. Britton is required by state law to file annual reports on the fund with the county auditor, but the report says Britton never answered a request to produce them. Over the summer, Brown County Auditor Jennifer Robison asked Attorney General Ken Paxton for an opinion on whether Britton’s donation program was legal. But she also hinted



that the issue could be moot. “I am aware,” she wrote, “that various law enforcement agencies are investigating some of these matters.”

FOR DECADES, PRETRIAL DIVERSION HAS BEEN A POPULAR tool to reduce the burden on courts and prisons while helping people manage problems that led to their crime. (Specialty courts for veterans, sex workers and drug users are variations on the theme.) Prosecutors have occasionally looked for creative ways to raise money from these programs, but the Texas attorney general’s office has repeatedly put the kibosh on those schemes. In 1999, then-Attorney General John Cornyn issued a pair of opinions saying prosecutors can’t force defendants to donate to an outside nonprofit as a condition of pretrial diversion. And while state law allows prosecutors to collect a pretrial diversion fee of up to \$500, then-Attorney General Greg Abbott ruled in 2014 that the fees can only be spent to “reimburse a county for expenses related to a defendant’s participation.”

But lawmakers’ enthusiasm for offender-funded criminal justice keeps forcing local systems to lean on defendants. A 1990 U.S. Justice Department report lauds Texas as a trailblazer in offender-funded

In practice, the difference between a fee and a bribe can depend a lot on context.

TOP: After years of hands-off management, officials in the Brown County Courthouse have recently become suspicious of County Attorney Shane Britton’s “donation” fund.

ABOVE: In his quest to keep Brown County government transparent, Joe Cooksey believes he unearthed evidence of questionable payments to the county attorney’s office.



Charley Salas was told to pay a \$1,000 “donation” to the Brown County Attorney’s Office nine months after charges against her were dropped.

Hundreds of defendants have paid a combined \$250,000 since 2008 to cover travel to conferences, cellphones for Britton and his staff, and advertisements in the Brownwood High School cheer calendar.

probation for covering half of its adult probation budget with fees paid by offenders. In 2015, Texas was one of a few states to receive a grant from the Justice Department to help reduce the \$1 billion in fines and fees its courts collected from defendants.

“Too much of our criminal justice system is funded by fees and costs assessed to the defendant,” says Mary Schmid Mergler, who directs criminal justice reform efforts at the advocacy group Texas Appleseed. “Many people just do not have the money to pay the fines and fees, and do not have a way to come up with that money. And it’s not because they’ve done anything wrong, it’s just because of where they are at that moment.”

Despite the cautionary rulings from the attorney general’s office, lawmakers have actually been giving *more* prosecutors the right to collect donations. In January, prosecutors in eight counties will have the same gift-collecting authority that Britton does. None of these prosecutors were certain why; they told me it wasn’t something they’d asked for, nor did they plan to start taking gifts. “I could see situations where it would be helpful,” Guadalupe County Attorney Dave Willborn said, “but taking money from defendants is a different story. That’s just walking where I’d fear to tread.”

In practice, the difference between a fee and a bribe can depend a lot on context. “Sometimes there can be an appearance of unethical behavior any time funds are exchanged contingent on the outcome of a criminal case,” explains Texas District and County Attorneys Association spokesperson Shannon Edmonds. Good judgment over who goes to trial and who gets a deal is part of a prosecutor’s job description. And sometimes it’s a power they abuse: In 2014, prosecutors in both El Paso County and Cameron County were sentenced to federal prison for taking bribes in exchange for pretrial diversion agreements. That same year, some Brown County law enforcement officials began questioning Britton’s motives as well.

Bobby Duvall was the chief deputy in the Brown County Sheriff’s Office when he began looking into Britton’s donation fund in 2014. A judge had complained to him that a defendant tried to buy his

way out of a court fine with a “donation,” as he’d done with Britton. Duvall, who retired in February, says the donation program was news to him. “Even though the fund was so-called public,” he says, “it was managed in a very quiet kind of way.”

Duvall reached out to Cooksey for help. As he was gathering records for Duvall, Cooksey had a moment of serendipity. Reviewing the list of payments to the donation fund, he noticed a name missing: Neri Herrera-Jimenez. Cooksey had once seen Herrera-Jimenez agree in court to a pretrial diversion for DWI that included the customary “donation,” but there was no official record of it. Herrera-Jimenez still had the receipt, signed by an assistant in Britton’s office, for a \$1,500 donation.

“It snowballed,” Cooksey says, “and we began to look into other people.”

Based on court records and financial accounts, Cooksey believes Britton started taking some donations in cash, completely off the books. Auditors counted thousands of misdemeanor cases that were closed without a clear reason; Cooksey thinks under-the-table deals could account for many of those. By reviewing shoplifting cases, he found a woman named Christine Quigley whose charges had been dropped in August 2014, without a record of a donation. When Cooksey called her, Quigley said she’d been told in Britton’s office to choose between being arrested on the spot or paying \$500 cash.

Britton says he has never taken cash from defendants under the table; he did not reply to a follow-up message asking specifically about the Quigley, Herrera-Jimenez and Salas cases. In a July letter to the attorney general, he wrote that the county auditor’s request for an opinion “is just the latest in a string of well-orchestrated attempts to undermine” his office, rooted in “a local political squabble.”

But Duvall told me his investigation revealed a pattern of defendants cutting deals in Britton’s office before they reached court. “A payment would be made as a donation, and the defendant walked out of the office thinking it was all legit,” Duvall said. “But the donation would never end up on the books, never end up in the county government.” He said he passed what he learned on to state and federal investigators. An FBI spokesperson declined to comment, as did Texas Ranger Jason Shea. “The Texas Rangers are not a lead investigator in that deal,” he said, and suggested contacting the FBI.

None of which does much good for Charley Salas, who’s still trying to get her money back. When she asked for her payment records, the only documentation was the receipt for her final payment, made months after her case was closed.

Looking back, she said her deal with Britton’s office was “kind of like a payday loan. It all seems too good to be true and you’re eager to hurry up and get it. And before you know it, you’re never paying nothing off and they’re just taking your money.” Salas said she was always told her payments to Britton’s office were for court fees or probation fees — so looking at her receipt from the county showing she paid \$1,000 into a couple of “donation” funds makes her especially mad. “I don’t have money just to be giving away,” she said. “That’s money they’re taking away from my kids.” 📌



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PHOTO BY WYATT MCSPADDEN

IF YOU'D EVER HEARD OF TEXAS SUPREME Court Justice Don R. Willett before Donald Trump put him on his Supreme Court short list, it was probably because you followed him on Twitter. Firing off 140-character missives on such subjects as the ups and downs of the Dallas Cowboys, the glory of the Greatest Generation, the splendor of Austin barbecue and, above all, the exploits of his three young children, "the wee Willetts," the 50-year-old judge has attracted more than 60,000 followers, earned frequent mentions in the legal blogosphere and been named — by the Texas House of Representatives — the state's "Tweeter Laureate."

"I am real-time fact-checking my 7YO daughter's bedtime," @JusticeWillett wrote the night of the first presidential debate, in September. "I'm thirsty — FALSE; I'm hot — FALSE; I'm cold — FALSE; I need a band-aid — FALSE."

"Wife says if this gets 5,727 [retweets]—1 for each day of our marriage—I can wear this (or Batman!) when we renew our vows!" the 11-year veteran of the state's highest court wrote next to a picture of him dressed in a tricorn hat and Colonial garb.

"I'm often asked, 'Justice Willett, what's your judicial philosophy?'" the judge mused above a familiar Bill Watterson cartoon of a boy and his pet tiger. The answer? "I'm a devout Calvinist. And Hobbesian."

Such Dad humor served with a side of corn makes Willett sound like a 2016 update of Ward Cleaver — a generous sitcom patriarch who happens to decide legal cases in his spare time — and when you talk to those who know him, that's more or less the picture you get of the offline man.

"He loves Texas, he loves Americana, he loves bacon," said Willett's friend Josh Blackman, a professor at Houston College of Law.

"His car is a hilarious mess. He has kids' books everywhere and three booster seats in the back," said Willett's former clerk Marcella Burke, an associate in the Houston office of the firm Akin Gump. "He's caring and loving and gentle — a very, very understanding boss."

When Willett's law school alma mater, Duke, plays

DON WILLETT'S REVOLUTION

QUIET

Social media's most famous judge is at the forefront of a movement to make economic liberty a fundamental right. Just don't call it judicial activism.

BY ERIC BENSON

basketball against its archrival, the University of North Carolina, Willett has been known to throw parties for his friends and former clerks. When the justice wants to achieve "what Oliver Wendell Holmes called 'the secret joy of isolated thought,'" he spends all

day contemplating legal decisions at his local Chick-fil-A. The late Antonin Scalia, whom Willett knew and admired, might have thrilled to Puccini operas, but Donny Willett is the kind of guy who would rather watch the game.

That, at least, was the side of Willett most people outside the loftier reaches of the legal world knew until recently. Then Scalia died in February, and the Republican majority of the U.S. Senate refused to consider the matter of his successor until after the presidential election. On May 18, under pressure from the right, Donald Trump released a list of 11 potential U.S. Supreme Court picks. The name that attracted the most attention was Don Willett.

The scrutiny wasn't due to any doubts about Willett's right-wing bona fides — those were as red-meat as you can get. When Willett last ran for re-election in 2012, he was endorsed by the likes of Focus on the Family founder James Dobson, Christian revisionist historian David Barton and Empower Texans CEO Michael Quinn Sullivan. No, the reason Willett attracted the spotlight was Twitter.

Social media sleuths had combed through @JusticeWillett's feed and found such Trump-mocking gems as "We'll rebuild the Death Star. It'll be amazing, believe me. And the rebels will pay for it. —Darth Trump." Within the day, the websites of outlets from the *Dallas Morning News* to *People* exploded with variations of the headline "9 times Texas Supreme Court Justice Don Willett dissed Donald Trump." While some political commentators thought Willett's tweets would make his ultimate selection by the thin-skinned

BIG ON TWITTER

A sampling of Don Willett's tweets

Trump unlikely, the president-elect might well favor a judge prone to the occasional insult. But the attention garnered by Willett's Twitter jabs obscured a more relevant fact: While the justice portrays himself on social media as little more than a flag-waving, pun-inclined good old boy, he is also a heavyweight of constitutional jurisprudence, one of the leading lights of a polarizing legal movement that has upended the long-sacrosanct conservative doctrine of "judicial restraint," the mantra of Scalia and Robert Bork.

In a series of high-profile opinions over the past half-decade, Willett has mapped out the contours of this position, championing what libertarian attorney Chip Mellor termed "judicial engagement," a more aggressive approach to reviewing (and sometimes declaring unconstitutional) government regulations, particularly those that relate to economic and property rights.

Mellor is the co-founder of the Institute for Justice, an influential libertarian law firm started with seed money from Charles Koch. But Willett, whom Mellor endorsed for reelection in 2012, is a sitting judge, and his opinions have a real-world power that policy writing does not. Offering up phrases such as "police power cannot go unpoliced" and "liberty is not provided by government; liberty preexists government," Willett has taken the language of judicial engagement and deployed it to explain why he and his colleagues have decided to strike down actual laws.

Willett's most famous opinions have come in cases that are deceptively narrow, but which in fact offer a map to reshaping the role of the judiciary. His widely read concurrence in 2015's *Patel v. Texas Department of Licensing and Regulation* sided with a majority that struck down a licensing regime for Texas eyebrow threaders that required 750 hours of training. But

as Willett made clear, the case concerned deeper issues than the cosmetology education of Ashish Patel. The case, Willett wrote, was "fundamentally about the American Dream and the unalienable human right to pursue happiness without curtsying to government on bended knee."

What Willett left ambiguous was exactly how far this unalienable human right extended and what exactly qualified as "curtsying." Does his vision of judicial engagement involve nullifying only those laws and regulations that nearly everyone agrees are unreasonable and unfair? Or would a U.S. Supreme Court that followed Willett's logic declare that everything from minimum-wage laws to labor-union organizing to environmental regulations is a constitutional infringement?

"What you don't know with Willett is whether a decision like *Patel* is kind of the camel's nose under the tent," said Sandy Levinson, a left-leaning

professor at the University of Texas Law School who admires Willett's legal thinking, if not always his legal conclusions. "Is he going to keep going on and on with this opinion and become far more interventionist? If it is the camel's nose, then maybe the safest thing to do is not give him the first inch."

THE FIRST TIME I MET WILLETT, HE WAS IN THE MIDST OF receiving a hero's welcome. Sitting onstage at an Austin conference of the Federalist Society, a leading conservative legal group, he smiled as Diane Kozub, one of the organization's Texas leaders, told the audience that Willett's *Patel* concurrence had "warmed" her heart. "I felt myself pumping my fist a lot of times during the reading of it," Kozub said, "and I suspect it would be the same with you all."

Willett sported a polka dot bow tie, a shimmering gray blazer and a purple pocket square, and as his session on "Texas and regulation" commenced, he eagerly engaged the audience.

"This topic really lays bare a pretty spirited, pretty feisty debate, kind of roiling the legal community," Willett said, in his characteristic blend of scholarly analysis and down-home speech. "It's a debate that really does conjure legal buzzwords and legal pejoratives galore. You've got activism versus restraint. You've got deference versus dereliction. You've got adjudication versus abdication. And the rhetoric at times can get a little overheated."

At one point, when a panelist reminded the audience that "judges in Texas are elected officials," Willett mimed a boxer's weigh-in pose, flexing his biceps like a happy and confident champ. In his last election, Willett had won nearly 80 percent of the vote.

Willett's legal views are why he's invited to speak at Federalist Society conferences, but it's his personal warmth and up-from-the-bootstraps biography that make him a successful politician. He started tweeting as a means of voter outreach. He proudly touts not only his conservative résumé, but his bipartisan friendships. (Willett's law school classmate Raphael Winick, now an assistant general counsel at Disney, told me that he's donated to only two campaigns in his life: Willett's for Texas Supreme Court and Bernie Sanders' for president.)

When Willett gives interviews to the press, he does so almost entirely over email, allowing him to stick to talking points and recycle tried-and-true sentences word for word. Read about Willett, and you're almost certain to hear about the unshakable work ethic of his truck-stop waitress mother, Doris ("In [her] 55 years of waitressing, she had walked roughly from the earth to the moon"), and his boyhood in the town of Talty ("so small our zip code began with a decimal!"), and his years with Greg Abbott's "high-octane" (sometimes "high-voltage") Attorney General's office.

Willett's policy of careful, canny disclosure might be prudent for a sitting judge seeking to project impartiality, but it also seems to be part of his DNA. No one gets onto a Supreme Court short list unless he's hugely ambitious, but, according to his old friends, Willett never came across as a striver. Everyone liked Donny, as he was called, and while his friends saw him as a natural and gregarious leader, many were surprised that his career as a



political adviser, prosecutor and judge took off on such a heady trajectory. If he harbored lofty goals, he kept them to himself.

Willett is the adopted son of parents who didn't graduate from high school, and he lost his father when he was 6. The Willetts lived out in the country, and with his father gone and his mother working long hours, the young Donny got used to spending time alone. He read everything he could, and spent a lot of time in the woods, hitting baseballs to his dog Tinker on meandering walks. Still, Willett hardly lived an isolated existence. He was a top student, a rodeo bull rider as a young teen and, later, an enthusiastic drummer who played at bars and clubs around Dallas.

"I was fairly well-rounded and participated in most everything," Willett told me in an email. "Football, Little League, basketball, tennis, track (pole vault and discus), FFA and band throughout high school, student government and other extracurriculars, and was also very active in my church (choir, youth group, etc.). I didn't carouse or have a curfew."

Willett graduated from Forney High School in 1984 and began his undergraduate education at Baylor that year. It proved a good fit for a devout Baptist from North Texas. There, Willett triple-majored in economics, public administration and finance, regularly attended services at Columbus Avenue Baptist Church, and spent much of his free time volunteering for the university's chamber of commerce, a men's school-spirit organization that coordinated major campus events.

"We worked on [the chamber] so much we joked that if we'd gotten paid, we wouldn't need retirement accounts," Willett's former roommate Cody Knowlton told me.

But while Willett dedicated himself to the group, Knowlton didn't give much thought to his friend's leadership capabilities.

"He never wore his smarts on his sleeve," Knowlton said. "I had no inclination that Donny would go to law school until he walked into our apartment one day and said, 'I'm going to Duke.' That was the way he operated."

At Duke, Willett cut a similar profile. Everyone knew he was a conservative Christian from small-town Texas, but he wore it lightly. He proudly cultivated friendships with people from backgrounds very different from his — among them future Obama appointee Todd Hughes, the nation's first openly gay federal circuit court judge — and while he wasn't a partier, he injected himself into the social scene. As the regular starting pitcher for his intramural softball team, *Causa Mortis*, Willett helped guide the club to back-to-back Duke Law School championships. (His nickname on the team: The Truth.)

Willett's mentor at Duke, professor Thomas Metzloff, told me that the future Texas justice always struck him as public-service minded: "For Donny, this was never about 'How can I make a lot of money at a big New York or D.C. firm.'" But neither Metzloff nor Willett's peers imagined him as harboring specific ambitions for elected office or even being passionately political. "I was really surprised when he ended up working for Governor Bush and then President Bush," Winick said. "I thought he might become a

small-town lawyer — and be great at it."

Willett's entrance into politics, nonetheless, came swiftly. After Duke, he moved to Austin to clerk for 5th Circuit Court of Appeals Judge Jerre S. Williams, a Jimmy Carter appointee, and afterward took a position at the firm of Haynes and Boone while moonlighting as a fellow at the conservative think tank Texas Public Policy Foundation. In 1996, he became an adviser to Governor George W. Bush, working on a wide range of issues, among them how to forge a closer relationship between religious institutions and the government. Willett followed Bush to Washington, D.C., to do similar work, but he had judicial aspirations and didn't plan to stay in the capital long. In November 2002, a former Texas Supreme Court justice named Greg Abbott won the race for Texas attorney general and began assembling a team of young and talented right-wing lawyers who were tasked, Willett remembers, with "scouring the national legal landscape and positioning Texas at the vanguard of conservative legal dynamism." Among Abbott's first hires were two longtime Bush hands: Ted Cruz and Donny Willett.

Willett's time in the Texas Attorney General's office was short. In December 2004, Governor Rick Perry nominated Willett to the Supreme Court. Willett had never served as a judge, and some legal insiders groused that he was merely a political appointee. Willett's state senator, Austin Democrat Gonzalo Barrientos, vetoed his selection. But a few months later — after Willett had moved to the district of Republican Senator Jeff Wentworth for what he said were family considerations — Perry nominated Willett again. This time he sailed through confirmation and took his place on the court.

WHEN WILLETT GETS A NEW CLASS OF LAW clerks, he assigns them two books co-written by Scalia, *Reading Law: The Interpretation of Legal Texts* and *Making Your Case: The Art of Persuading Judges*. Willett told me he assigns the books because of the way they "methodically examine the bread and butter of modern-day appellate judging — statutory interpretation," but he also admitted to enjoying Scalia's writerly "gusto and occasional pyrotechnics." As a Texas Supreme Court justice, Willett seems to have taken both sides of Scalia to heart.

In his opinions, Willett rarely misses an opportunity to reference pop culture or history, hopscotching between references to *Ferrie Bueller's Day Off*, Rube Goldberg machines and Alexis de Tocqueville — all the better if he can mix in a little home-state trivia.

As Willett wrote in 2011: "Intrepidity at the Alamo;

At one point, when a panelist reminded the audience that "judges in Texas are elected officials," Willett mimed a boxer's weigh-in pose, flexing his biceps like a happy and confident champ.



entering the United States as the Republic of Texas; 58 Texas-born recipients of the Medal of Honor; Bob Wills and George Strait; Nolan Ryan and Babe Didrikson Zaharias; five Super Bowl titles (sadly none this millennium); Dr Pepper and the 'little creamery' in Brenham; deep-fried anything at the State Fair; a spirit of daring and rugged independence — the sources of Lone Star pride are innumerable.”

Such flourishes, though, are merely frosting, Willett's idea of fun. During his time on the court, Willett has shown a wide-ranging curiosity, wrestling with whether bloggers should be considered members of the media, whether pet owners can sue for sentimental damages, and, most controversially, whether Texas' school funding system is constitutional. (He marshalled all eight other justices to back his opinion that, for the first time in decades, it was.) But he has become best known for articulating a skeptical vision of state power, a robust view of individual rights, and a central role for the judiciary in striking a balance between the two.

Willett's first opinion to attract major national attention came in 2010's *Robinson v. Crown Cork & Seal*. The case involved a byzantine legal question: whether a 2003 tort-reform law could be applied retroactively to a widow's lawsuit. But Willett, in siding with the majority view that said it couldn't, drafted a concurrence that went beyond the statutory issues at hand and delved deep into the proper roles of the branches of government.

“Judges are properly deferential to legislative judgments in most matters,” Willett writes in his *Robinson* concurrence, “but at some epochal point, when police power becomes a convenient talisman waved to short-circuit our constitutional design, deference devolves into dereliction.” In other words, the Legislature had deployed its broad regulatory powers to trample a widow's rights, and it was imperative for judges to intervene on such occasions.

In 2014, Willett argued a similar position in *El-Ali v. Texas*, a case that placed the state's civil forfeiture practices before the court. Could police seize as contraband a vehicle that was involved in a crime even if its owner had nothing to do with the infraction? Willett thought such a policy placed government

Greg Abbott agreed. As he put it, Willett's skeptical approach to government economic regulation was “the judicial remedy to Obamacare.”

But the case that made Willett into a judicial rock star was 2015's *Patel v. Texas Department of Licensing and Regulation*, the lawsuit involving eyebrow threaders and their 750-hour training requirements. The Institute for Justice, which also represented Zaher El-Ali, had brought the suit on behalf of the threaders and was looking to raise broad constitutional issues.

“Economic liberty cases are few and far between, and virtually all of them are litigated in federal court under the Fourteenth Amendment,” Willett wrote to me. “I recognized instantly what a landmark case it was.”

He made this plain in the case's oral arguments. Less than a minute into the statements of Texas Assistant Solicitor General Dustin Howell, Willett interrupted him with a question that cut to the core of the issue:

“As a fundamental matter, does the state agree that its people have a constitutional right to earn an honest living free of arbitrary government interference?”

WHEN WILLETT RAN FOR HIS FIRST FULL TERM ON THE Texas Supreme Court in 2006, he cast himself in familiar conservative language. “Every Texan I've met along the campaign trail expects one thing: for me to honor my commitment to judicial restraint,” he said at the time. It's unlikely he will characterize himself like that again.

Over the past decade, the conservative judicial movement has split into two wings: One that remains committed to old-fashioned judicial restraint — frequently deferring to legislatures — and one that has found a use for judicial engagement, a more aggressive approach to reviewing legislative action. Nowhere has this split been more pronounced than in the two groups' views of the U.S. Supreme Court's infamous 1905 decision in *Lochner v. New York*, in which the justices struck down a state regulation limiting the working hours of bakery employees on the grounds that it violated an individual's right of contract.

You won't find the words “right of contract” in the Constitution, nor will you find “economic liberty” or, for that matter, a “right to privacy.” That's because these are so-called unenumerated rights — individual liberties that may be implied in various portions of the Constitution, but which are never explicitly laid down. But which unenumerated rights exist? And to what extent? Because of this uncertainty, the unenumerated rights tend to produce the noisiest constitutional controversies, and, when they are defended, they lead to howls of “judicial activism.” *Lochner* laid bare just such a controversy.

In his *Lochner* dissent, Justice Holmes wrote that his colleagues had invented a “liberty of contract” in the Constitution in order to implement laissez faire capitalism and Social Darwinism. And for three decades after *Lochner*, courts routinely struck down laws on the basis that they interfered with individual economic liberty. In 1936, after the Supreme Court invalidated a New York minimum-wage law, Franklin D. Roosevelt griped that the judiciary, operating with *Lochnerian* logic, had

EXCERPTS FROM WILLETT'S ROBINSON CONCURRENCE

“If judicial review means anything, it is that judicial restraint does not allow everything.”

“Judges are properly deferential to legislative judgments in most matters, but at some epochal point, when police power becomes a convenient talisman waved to short-circuit our constitutional design, deference devolves into dereliction.”

interest unfairly above individual property rights, ensnaring “those least capable of protecting themselves, poor Texans who usually capitulate without a fight because mounting a defense is too costly.”

After reading Willett's *Robinson* concurrence, *Washington Post* columnist George F. Will, one of the first national figures to follow Willett's legal opinions closely, had declared that its logic could be used to strike down the Obamacare's individual mandate as an overreaching use of the Commerce Clause.

established a “no man’s land’ where no government — state or federal — can function.”

But *Lochner* fell out of favor not long after, and over the past half century, conservatives led the way in casting the 1905 decision as the antithesis of responsible jurisprudence. When the liberal Supreme Courts under Chief Justices Earl Warren and Warren Burger handed down decisions such as *Griswold v. Connecticut* and *Roe v. Wade*, conservatives charged them with doing what the *Lochner* court had done: locating a made-up right in some vague passage in the Constitution and using it to justify their ideological biases. It was safer to have judges exercise “judicial restraint,” conservative legal scholars such as Bork felt, which meant giving a wide berth to legislators when they passed laws that affected the unenumerated rights — whether abortion restrictions or occupational regulations.

But starting in the 1980s, and especially during the presidency of Barack Obama, conservatives have been warming to the idea that judges can apply far more probing scrutiny to legislative actions relating to unenumerated rights. If liberals could strike down laws on the basis of a “right to privacy,” why, the thinking went, should conservatives be wary to challenge laws that encroached on economic and property rights? Willett’s concurrence in *Patel* was a full-throated endorsement of this new view.

“Must courts rubber-stamp even the most nonsensical encroachments on occupational freedom?” Willett asked about the state’s 750-hour training requirement for eyebrow threaders. “Are the most patently farcical and protectionist restrictions nigh unchallengeable, or are there, in fact, judicially enforceable limits?... Laws that impinge your constitutionally protected right to earn an honest living must not be preposterous.”

Some conservatives rejoiced at Willett’s gutsy opinion. “Is this the most libertarian legal opinion ever written?” asked *Reason Magazine*. “If *Patel* were applied in other states, the nationwide trend of fewer economic liberty victories in state court could be reversed,” read a story on the Federalist Society’s website. Once again, George Will found himself in lockstep with Willett, comparing the Texas judge favorably to Chief Justice John Roberts and suggesting, a year before Trump, that Willett would make a good pick for the U.S. Supreme Court.

But the opinion was far from universally embraced. Progressives wondered if Willett in calling for “economic liberty” to be treated as a central constitutional right had his sights set on returning America to the *Lochner* era. *New York* magazine’s Ed Kilgore opined that Willett might well consider a “revival of early-20th-century jurisprudence invalidating social programs and business regulations on a broad scale.” Austin attorney and activist Fred Lewis told me he felt *Patel* was “one of the rankest attempts at judicial activism that [he’d] seen in many years,” an attempt to impose libertarian market ideas by finding nonexistent economic rights in the Texas Constitution.

“Right-wing legal think tanks look for a case like *Patel* — where there’s a weak public purpose for the economic license — and use it to try to resurrect

Lochner,” Lewis said. “Courts used *Lochner* to knock down wage and hour laws, union laws, safety at the workplace laws. This isn’t theoretical. This happened.”

A few members of Willett’s own court of nine conservative Republican judges were perhaps equally dismayed. In his dissent, Chief Justice Nathan Hecht pilloried the court’s majority — and Willett, in par-

EXCERPTS FROM WILLETT’S *EL-ALI* DISSSENT

“Police power cannot go unpoliced.”

“Funding government is important. Safeguarding the constitutional rights of Texans is more important. Fundamental rights should never be sacrificed with nonchalance. The Texas Constitution places limits on capricious government abridgements, and does so on purpose.”

ticular — for opening a Pandora’s box of unchecked power from the bench. “Judicial usurpation of authority over the State’s policies may provide protection for the economic liberties on which the concurrence waxes eloquent,” Hecht wrote. “But it also gives rise to such decisions as *Roe v. Wade*.” Hecht viewed his court like Holmes had viewed his: They’d made an economic policy decision, then figured out a judicial approach to justify it.

When considering Willett’s *Patel* concurrence, the question for libertarians, old-line judicial conservatives and progressives was the same: How far would Willett and other judicial engagement advocates take such a decision? Would a court with a majority of engagement-inclined jurists realize Lewis’ worst fears about a *Lochner* revival? Or was Willett’s opinion merely an invitation to invalidate economic regulations like the eyebrow-threading requirements, which many liberals and conservatives agreed were indeed “preposterous”?

Levinson, the UT law professor, told me that after reading Willett’s *Patel* concurrence, he felt that “a lot of that particular opinion makes you feel that you’re at a rally for libertarians — he quotes Jefferson and Milton Friedman in certain ways and makes you think the state is a menace.” But Levinson also saw a more curious, probing strain. The “more sober pages,” Levinson felt, were an effort to find an “intermediate position” between Borkian judicial restraint, which would leave nearly all economic laws unchallenged, and the kind of unfettered libertarian judicial intervention that would slash and burn regulation until all that was left was a “minimalist night-watchman state.”

When I spoke with Wallace Jefferson, chief justice for most of Willett’s tenure on the Texas Supreme Court (he retired in 2013) and a widely respected Republican moderate, I asked him whether he felt that Willett’s *Patel* concurrence was indeed “the camel’s nose under the tent.” Did he think, based on years serving with him, that Willett would return Texas, and maybe the entire country, to the *Lochner* era if given the chance?

“The only way I can answer your question is that that case was about eyebrow threading,” Jefferson said. “I don’t know whether Justice Willett would come to the same result with different facts and different issues — environmental regulation, oversight

On May 18, under pressure from his party’s right flank, Donald Trump released a list of 11 potential U.S. Supreme Court picks. The name that attracted the most attention was Don Willett.

of the medical profession, the energy industry, etc. And I think that's a good thing that I don't know. I think Justice Willett is open to persuasion."

Willett, for his part, declined to get into the details. "It'd be imprudent to prejudge specific economic regulations," he wrote to me, but, he added, "without question, many licensure rules are justified by legitimate public health and safety concerns." Future cases would be needed to better define the line between what was "legitimate" and what was not.

EXCERPTS FROM WILLETT'S PATEL CONCURRENCE

"Liberty is not provided by government; liberty preexists government. It is not a gift from the sovereign; it is our natural birthright. Fixed. Innate. Unalienable.

...Some observers liken judges to baseball umpires, calling legal balls and strikes, but when it comes to restrictive licensing laws, just how generous is the constitutional strike zone?

Should judges blindly accept government's health-and-safety rationale, or instead probe more deeply to ensure the aim is not suppressing competition to benefit entrenched interests?

I prefer authentic judicial scrutiny to a rubber-stamp exercise that stacks the legal deck in government's favor.

And while government has undeniable authority to regulate economic activities to protect the public against fraud and danger, freedom should be the general rule, and restraint the exception.

...Our federal and state charters are not, contrary to popular belief, about 'democracy'—a word that appears in neither document, nor in the Declaration of Independence."

"Must courts rubber-stamp even the most nonsensical encroachments on occupational freedom?" Willett asked about the state's 750-hour training requirement for eyebrow threaders.

FEW JUDGES GROW OLD ON THE TEXAS SUPREME COURT. Of the nine current members, all but Hecht joined after 2004. "With the continued politicization of judicial races, it's more of a young person's game now," former Chief Justice Tom Phillips told me. "There aren't a whole lot of 70-year-olds who want to dial for dollars and ride in parades across the state." Phillips and Jefferson retired to private appellate practice at 54 and 50, respectively. Many other justices have made similar moves at similar ages.

But the court has also been a launching pad for political careers. Abbott, U.S. Senator John Cornyn, Austin-area Congressman Lloyd Doggett and former U.S. Attorney General Alberto Gonzales all spent time as Texas Supreme Court justices in the 1990s.

Before the last statewide election, Willett was considered a potential candidate for Texas attorney general, and he might well seek that office one day. But with Trump in the White House, Willett's more likely future appears to be in the federal judiciary, a perch that would give him far more power to spread the gospel of judicial engagement than his current office. It's hard for a Texas Supreme Court justice to establish economic liberty as a fundamental right. An influential federal judge, on the other hand, really could move the country in that direction, particularly if he's on the Supreme Court and has the political skill to convince four of his colleagues to follow his thinking.

Federal judicial appointments are for life, and, as justices such as John Paul Stevens, David Souter and even John Roberts have shown, judges can move in surprising directions. Willett has a more extensive trail of opinions and partisan activities than Stevens,

Souter or Roberts, and if Trump nominated him to the federal bench, he would be in for a crushing confirmation hearing in which Lochner, Patel and economic liberty would be scrutinized. Democratic senators would no doubt cast him as a revanchist radical eager to re-examine long-settled pillars of the welfare state, and Willett might well turn out to be just that. George Will told me that he thinks Willett's closest analog on the current Supreme Court is Clarence Thomas, because Thomas is "least likely to genuflect before the altar of stare decisis" — the honoring of judicial precedent. "Clarence's view is if the court made a mistake in the past, you should undo it," Will said. In addition to rulings that give legislatures wide-ranging powers over economic regulation, one imagines Willett might regard *Roe v. Wade* as one of those mistakes.

But Willett could also prove to be an unexpected thorn in the side of a president eager to enact his agenda by fiat, particularly if he reaches for new and sweeping "police powers." "If Donald Trump recognized that Willett would invalidate regulations that his government passed, he wouldn't be so keen on him anymore," Blackman, the Houston College of Law professor, told me. "I think there could be buyer's remorse." If Willett or another like-minded judge ascends to the court, the Trump presidency may very well put to the test whether judicial engagement is a coherent constitutional philosophy that defends individual liberties, or is, as its opponents allege, merely a conservative policy prescription with a hazy legal justification.

In late September, Willett appeared on a panel at the Texas Tribune Festival titled "Supreme Court Confidential." No secrets were spilled over the course of the hourlong discussion, but Willett played the crowd expertly. He trotted out Rube Goldberg and *Godfather* references, and talked exuberantly about his Twitter feed and how it would be "political malpractice" not to use it. Then Willett got the question he'd certainly been anticipating, but still felt uncomfortable answering.

"You mentioned malpractice — it would be journalistic malpractice if I didn't ask you this," began the moderator, George Haj, who oversees legal trade publications, including *The American Lawyer* and *Law.com*. "Donald Trump put you on one of his short lists of people he would consider for the U.S. Supreme Court. President-elect Trump calls you and says, 'Justice Willett, I'd like to nominate you for Supreme Court.' What do you say?"

A grimace spread across Willett's face, and he tipped forward uneasily in his chair. There was no doubt about what his answer in such a scenario would be — what judge could refuse? — but Willett had long ago decided that being coy about his ambitions was the most prudent course, and if he could do it with a joke and a smile, all the better.

"Couldn't I be the U.S. Tweeter Laureate instead?" Willett asked. ■

Eric Benson is a writer-at-large for Texas Monthly.



ANDREA GRIMES

THE GRIMES SCENE

It will be a worse version of the hell so many Americans of color, women, gay and lesbian and bisexual people, immigrants and transgender people are already living through in a country that has, since its founding, been hostile to all but the most privileged among us.

Love Will Trump Hate (Eventually)

IT IS SURREAL TO WATCH PEOPLE ACROSS THE COUNTRY DESPAIR AT THE PROSPECT of a single-party government, led by pandering bigots, that will have no need or inclination to check itself or its basest instincts. It is what we Texans have been dealing with for years. ¶ For folks who don't know what this particular political nightmare is like, this winter will be very grim. Things will seem especially bleak for those who are accustomed to expecting at least the semblance of a balance of power among their elected representatives and the hope, however thin, that the worst ideas of those who take office won't always prevail. ¶ Do I sound smug?

I am not smug. I am angry and sad and I would rather be talking about change instead of resistance. But let's talk about resistance. I have a wonderful Texas story about resisting the echo chamber of right-wing tyranny. It starts in June 2013. Y'all

already know where I'm going with this, I bet.

It started with a dozen or so of us, sitting up in the gallery of the Texas Senate, decked out in retro *Mad Men*-style gear in quiet protest against a proposed anti-abortion law that we had every expectation would sail through the Republican-controlled Legislature. It continued over the next few weeks with a few thousand of us, decked out in orange, stomping and shaking the walls of that Capitol as the clock ran out on that same law.

That victory — made possible by the dumb pride of a dominant party as convinced of its own power as we, its opponents, had been — was temporary. Texas Republicans realized they'd made a mistake in underestimating their opposition, and they ensured they'd win round two. They did. But then that law went to the courts, bouncing in and out of injunction after injunction. There were casualties in the meantime, as abortion providers shut their doors and thousands of Texans lost the means to end unwanted pregnancies. But there were victories, too, as Texans organized to get each other to far-flung clinics, to create close-knit networks of people prepared to fight for reproductive justice.

It took three years for House Bill 2 to make it to the U.S. Supreme Court, where the shameless hubris of its architects was exposed and rejected. The day that ruling came, I kept revisiting one thought that made it all the sweeter: The people behind that law thought they were above *the* law, until they weren't.

I do not know what the first fresh hell of the Trump administration and a friendly Republican Congress will look like, exactly. It will be a worse version of

the hell so many Americans of color, women, gay and lesbian and bisexual people, immigrants and transgender people are already living through in a country that has, since its founding, been hostile to all but the most privileged among us.

It will be a carefully crafted hell, at first. They'll want to get this whole oppression thing right, to start. Maybe it'll be the repeal of Obamacare, or the end of meaningful refugee services, or a strengthened surveillance state. The harm will be real and devastating as millions lose access to their doctors, to their families, to their bodily autonomy and privacy. But it won't be long before it turns into a carelessly crafted hell. The bullies will become lazy and negligent.

We saw it happen in Texas. Our GOP-dominated, government-hating government has disenfranchised and marginalized millions, many of those the most vulnerable among us. Our leaders have wrested Medicaid services from low-income special needs children; they've refused to allocate funds to care for thousands of children suffering or dying in foster care and state custody. We cling to the infrequent victories of the kind we saw with House Bill 2, because we must. Because it's the only way out and up.

It won't happen immediately. It may not even happen soon. But a government of self-satisfied yes-men will, eventually, overestimate itself and underestimate the people. That is why the work cannot stop; the demands for racial and gender and economic equality cannot cease. There will come a moment when a bloated, bigoted system will fail itself, and love will trump hate.

We must be ready to seize it. ☒

If These Walls Could Talk

Archaeologist Carolyn Boyd cracks the code of Pecos River pictographs.

by **Brad Tyer**

SEPTEMBER 12, 2012, WAS A LONG DAY, but a good one. For Carolyn Boyd it started with a 30-minute drive from her home in Comstock to a 265-acre preserve, where she convened with fellow archaeologists Mark Willis and Amanda Castaneda and left the road behind. From there it was a half-hour walk on a well-worn trail traversing cactus-strewn stone. The ladder they carried made for awkward hiking, but the cool fall morning helped compensate. By 8:30 a.m. they had climbed down from the scrubby plateau and arrived at a shallow, mouth-shaped indentation near the top of a rough cliff overlooking the Pecos River. Just downstream, occasional cars and semis hummed across the 1,310-foot bridge that carries U.S. Highway 90 over the river, almost 300 feet below. A little more than a mile downstream, the Pecos slipped quietly into the Rio Grande.

The mouth-shaped indentation was well known, the site of an elaborate expanse of prehistoric painted rock art known as the White Shaman mural, after its spectral central figure. Boyd had been to the shelter maybe a hundred times, but this was the first time she had come equipped with a \$500 Dino-Lite digital microscope.

The White Shaman mural is painted in four colors — red, black, yellow and white, often overlapping or interwoven — and Boyd wanted to know in which



order the paints had been applied. The Dino-Lite, more commonly deployed in medical and industrial applications, was Willis' idea. Using the handheld microphone-size capsule, Boyd could examine the margins between pigments at the microscopic level, and simultaneously take high-resolution photographs to examine back in the lab.

As Boyd moved methodically across the wall, Willis, — watching the images on a laptop connected to the Dino-Lite via USB cable — called out what the screen was showing him: “red over black; red over black; yellow over red; yellow over black; white over yellow.”

Boyd realized she was hearing a pattern.

“It was clear as a bell,” she remembers. “The red was over the black. ... Everywhere in the entire mural, we found that black was the bottom layer.”

Boyd trained the Dino-Lite on the figure of a deer whose red antlers were decorated with black dots. Sure enough, the black dots had been applied to the wall

“In native America, those images, as soon as they are applied to the wall, they are living. They are incarnated. We can't even imagine what that would be like — to paint an image of something and give it life.”



first. The red antlers had been painted *around* the dots. “That made just no sense to me at all as an artist,” Boyd says. “I would paint the red body of the deer and then I would paint the black dots. So what in the world would they do it the other way for? ... That says that everything carried meaning. Not just the symbols that go on the wall, or the relationship of one symbol to another, not just the color of the symbol — even the order of the paint carries meaning.”

The archaeologists logged 656 microscopic images of 42 locations on the White Shaman mural that day, and another 1,635 macro photos. The images would be examined later, in the lab, subject to double- and sometimes triple-blind confirmation on big, bright screens, far from the dust and glare of the rock shelter. But Boyd already had a sense of what she’d found.

“I can remember going home at the end of the day,” she says. “And I was standing at my kitchen island and it hit me, just overwhelmed me. Everything that had happened that day sank in, and I realized at that moment that this was a discovery that changed everything.”

THE FIRST TIME BOYD SAW THE WHITE SHAMAN, SHE SAW it with an artist’s eyes. Boyd was 30 at the time, a successful fine-art muralist with a gallery in north Houston and a project of painting artists — musicians, weavers, potters — at work. “I felt that there was something really powerful that an artist was able to communicate through this act of creation,” she says.

That project led to an interest in North America’s earliest art. A friend told her she had to see the rock art of the Pecos, and they drove west, lucked into a park ranger who helped them access the White Shaman site, and found themselves face to face with a voice from the past.

“As soon as I saw it I recognized how complex these murals were,” Boyd says. “I was working as a muralist, so I understood what it would require to paint something of that magnitude. It’s pretty stunning. Especially given the circumstances. The floors of these shelters are not level. Imagine the challenge of producing scaffolding in that kind of environment, and the planning it would have required. I was just in awe of the people who produced them, and just wanted to know more.”

Boyd wasn’t aware at the time of the archaeological consensus that the White Shaman mural, and Pecos River rock art generally, is essentially incomprehensible — random collections of images accreted over the course of hundreds or thousands of years, perhaps shamanistic in nature, a record of hallucinatory visions, or maybe just the leisure-time doodles of a people lost to history. An intriguing source for speculation, certainly, but not artistic compositions in any contemporary sense.

“I think it really helped me to come at it as an artist, as opposed to an archaeologist,” Boyd says, “because I hadn’t been taught yet that you will never know what it means, that there is no order to this.”

Boyd’s insight was revelatory, but she lacked the tools to prove or communicate it. So in 1991 she enrolled at Texas A&M and spent the next seven years acquiring degrees in anthropology and archaeology. In 1998, with her doctorate freshly minted, Boyd founded the nonprofit Shumla School — now the Shumla Archaeological Research and Education Center — which has grown to five buildings in Comstock and a field office on 70 donated acres a few miles west of the White Shaman site.

In 2003, Texas A&M University Press published her

LEFT: The White Shaman mural’s namesake, one of several central figures, is this 3-foot-tall anthropomorphic figure. According to Carolyn Boyd’s new analysis, the figure represents not a shaman but a moon goddess. PHOTO BY JEAN CLOTTES/SHUMLA CENTER

ABOVE: The White Shaman mural is painted on the east wall of a southwest-facing shelter, and faces due west. The positioning of figures within the mural suggests alignment with sun and shadow as observed on the solstices. PHOTO BY CHESTER LEEDS

A graphic reproduction of the White Shaman mural. Three layers of black paint were applied to the shelter wall first, followed by five layers of red paint.

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first book, *Rock Art of the Lower Pecos*, which began to build the case for Pecos rock art as a coherent and interpretable cultural expression — a story, in essence, that might be read, if only anyone knew its language.

THE PECOS RIVER OF 4,500 TO 1,500 YEARS AGO, WHEN the White Shaman mural is thought to have been painted, looked much like the Pecos River of today. Its course marks a transitional zone between the Ed-

wards Plateau, which defines the Texas Hill Country, and the Chihuahuan Desert, which extends southwesterly through Big Bend into northern Mexico. Plateaus are sparsely vegetated with cactus, mesquite, lechuguilla and ocotillo. (Though there were significantly richer grasses in the uplands before ranchers began grazing cattle in the late 1800s.) Three rivers water the region archaeologists call the Lower Pecos Canyonlands: the Rio Grande, the Pecos and the Devils, the latter two largely contained by limestone canyons pocked with ledges and shallow caves. Springs percolate through the porous limestone, feeding the rivers during drought. Then, as now, flash floods

scour the channels with unpredictable regularity.

Today, the Lower Pecos Canyonlands are seen by few people other than intrepid canoeists, laborers working the large ranches abutting the river, or a very few trophy-home owners with penchants for solitude.

But thousands of years ago, the landscape was home to small bands of hunter-gatherers of indeterminate origin. Not much is known about them, but quite a bit is inferred.

There were bison in the Trans-Pecos back then, and a site called the Bonfire Shelter holds the

mounded skeletal remains of hundreds of them. These bones are evidence of a bison jump, a hunting technique characteristic of northern Plains people, whereby bison were herded over a cliff en masse and crashed to their deaths in a pile.

The people of the Pecos also hunted deer and rabbits and rodents, using atlatls to throw stone arrow points. They almost certainly caught and ate fish. They went to a good deal of trouble — lots of pounding and steaming and roasting — to make a digestible meal out of almost indigestible lechuguilla hearts.

They left behind tools fashioned from bone, carrying pouches made from prickly pear pads, flutes carved from cane, sandals and mats woven from plant fiber, and carved wooden digging sticks and darts. They decorated small pebbles that they apparently carried from place to place.

They don't have a name. Their culture is considered prehistoric because there is no contemporaneous written account of it — even though the global historic era, marked by the invention of writing 5,200 years ago in Sumer, predates them. The earliest recognized dates of their tenure in the Trans-Pecos coincide roughly with the construction of Stonehenge, 5,000 years ago, though there's evidence of human habitation in the area stretching another 6,000 years beyond that.

Because it's difficult to fathom five millennia in terms of a human lifespan, and because the Pecos then, as now, offers such notoriously slim pickings in terms of sustenance, a lot of people have a hard time imagining what sort of people, evolutionarily speaking, they might have been. Boyd has been asked if they communicated in grunts.

They didn't. Language was already thousand sof years old.

"[People] think of them as somehow being less than we are, intellectually," Boyd says. "And it's just not true. This rock art is clear evidence that it's just not true. ... They had a language far richer than our own when it comes to describing the stars and the

"They had a language far richer than our own when it comes to describing the stars and the landscape around them. ... Same brain that put a man on the moon. They were just as cognitively capable as you and I."

landscape around them. ... Same brain that put a man on the moon. They were just as cognitively capable as you and I. ... At the end of the day, they are us.”

Boyd has thought about it, and she thinks she could reproduce the White Shaman mural, in situ, in about a week. But the time spent actually putting paint on rock is probably almost negligible compared to preparations.

First, you’d have to be intimately familiar with your rock shelter. The White Shaman mural shows evidence of alignment with solstice light and shadow. Minerals tinted black, white, red and yellow had to be collected and pulverized. Yucca juice, or something like it, had to be extracted for use as an emulsifier. The people had to build sturdy scaffolding from desert plants. Animal fat, one of their most important commodities, was diverted from their diets for use as a paint binder.

“You’re talking about a hunting and gathering group living in a desert environment where very little food that they have has the amount of fat that they need,” Boyd says. “So to take and use that animal fat was taking a very precious, life-giving source of nutrients away from the people, the entire group, to produce these paintings. It was a communal sacrifice to produce these.”

Unlike us, the mural’s creators did not view paintings as two-dimensional objects, Boyd says. “In native America, those images, as soon as they are applied to the wall, they are living,” she says. “They are incarnated. We can’t even imagine what that would be like — to paint an image of something and give it life.”

Once the prep was done, Boyd thinks, no more than a couple of artists probably completed the work in a few days. Not much evidence remains of how they applied paint to rock, just a few lechuguilla-fiber brushes, but Boyd, who has re-created the mural in mediums from pastel and colored pencil to Photo-shop, has no trouble imagining the process.

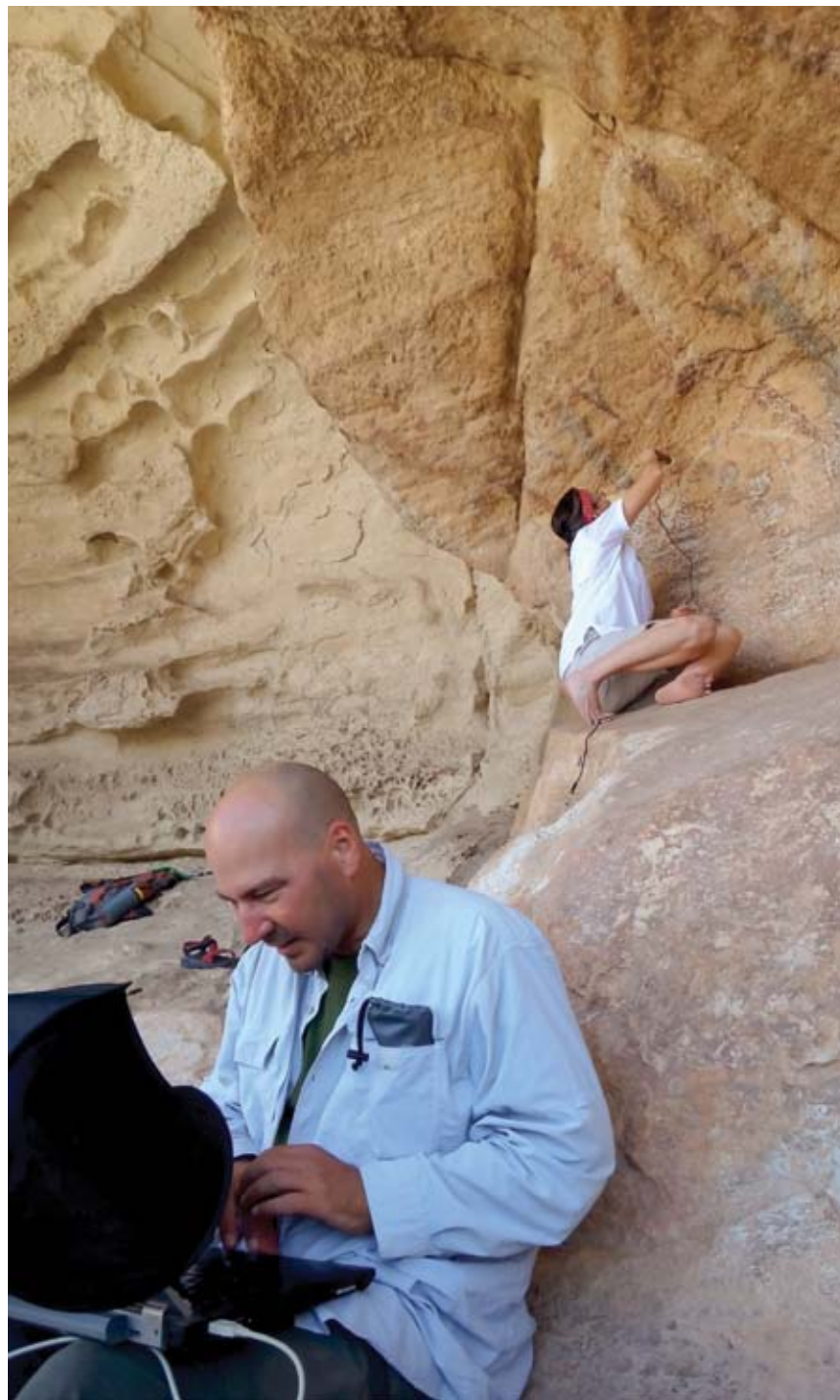
“I’ve made the paint many times, and painted on a lot of rocks. You can use animal-hair brushes, feathers. They applied with their hands, and you can even see fingerprints in some,” she says. “You’ve got things where they sprayed it maybe through a tube, so you can do that negative-space kind of thing where you put a hand and then you spray around it.”

At the White Shaman rock shelter, which measures some 65 feet across and 26 feet deep, these tools and techniques were used to create a mural approximately 26 feet long and 13 feet high, filled with figures both obvious (decorated humans; antlered deer) and utterly enigmatic (the “white shaman” itself). And everywhere in its expanse, wherever you might point a microscopic camera, the story is the same:

“Red over black. Red over black. Yellow over red. Red over black. Yellow over black.”

COSMOLOGIES HAVE COLOR SCHEMES, AND IN MESOAMERICA the colors red, black, white and yellow are freighted with densely layered associations. The cardinal directions are coded red/east, black/west, white/north, yellow/south. Red represents warmth: daytime, the sun, fire. Black represents cold: night, the moon, stars, water, the underworld.

These associations helped early ethnographers



decipher the elaborate pre-Colombian graphic codes of the Mixtec, Zapotec, Maya and Nahua cultures of Mexico and Central America, and it was to these cultures, their artifacts, folklore and language, that Boyd turned for help in understanding the graphic language of the White Shaman mural. If the mural told a story, as she was convinced it did, then perhaps its vocabulary — or at least echoes — could be discerned in the drawings, myths and writings of those cultures that succeeded the nameless artists of the Trans-Pecos.

Boyd’s second book, *The White Shaman Mural*, published by the University of Texas Press in November, explores that hypothesis by analyzing the graphic vocabulary of the White Shaman mural through the lens of Mesoamerican mythology generally, and especially that of Mexico’s indigenous

Archaeologist Carolyn Boyd surveys the White Shaman mural with a digital microscope while colleague Mark Willis triggers photographs from a laptop.
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of the Trans-Pecos.

— and surviving — Huichol and Nahua peoples. Both speak varieties of Uto-Aztecan, a family of languages endemic to Mexico and the American Southwest.

In fact, Boyd found dozens of striking parallels between the graphic and schematic language of the White Shaman mural and the belief systems of the Huichol and Nahua, including a sacred eastern mountain where the sun was born, self-sacrifice as the engine of creation, and the duality of opposites as the organizing principle of the universe.

Viewed this way, the White Shaman mural offers a deeply complex tableau populated by five “stellar ancestors” who hold up the world; portals between earthly and celestial realms; star demons; centipede-like figures denoting the arrival of rain; and the Earth Mother, mother of all the gods, in avatar form as a catfish. The mural’s ostensible white shaman, in Boyd’s reading, is actually a headless moon goddess who saves humanity from a great flood through the provision of a dugout canoe.

“Although the names of the actors are different,” Boyd writes, “the basic story line is virtually identical. Thus, whether informed by Nahua or Huichol mythologies, the reading of the White Shaman mural is the same. It is a visual text

documenting the birth of the sun and the establishment of time.”

In other words, a culture’s creation narrative. If in fact that’s what it is, it may be the oldest such yet discovered in North America.

LAST MARCH, FRIENDS AND I PADDED THE LOWER PECOS, some 67 miles from Pandale Crossing, north of Langtry, to a takeout just downstream of the Pecos River High Bridge, which carries Union Pacific freight trains and Amtrak’s Sunset Limited, and about 4 miles upstream of the White Shaman site.

Our first three nights on the river featured some of the heaviest weather I’ve ever experienced. Wind battered and broke our tents. Rain threatened to wash us out of the side canyons where we camped. Distant electrical storms provided panoramic pyrotechnics, and air-crackling strikes had us crouched and huddled in the lightning position, backs hunched to the sky. We slept in our clothes, shoes on, bug-out bags at the ready. We didn’t sleep well.

There are few things that conjure human vulnerability like exposure to extreme weather. And there are few things like exposure to conjure a sense of wonder. We saw jaggedly anthropomorphic figures inscribed in white sparks on dark and depthless skies. The mornings after, wet tracings spilled over the cliffsides. Over the course of millennia, the cliffs have become stained with parades of these vaguely humanoid shapes. Exposed on the Pecos, it’s easy to imagine where inspiration for cosmological drama might come from.

But the weather wasn’t all bad, and we had time for a side hike to a rock art shelter known as Piggy

Panther, for the comically pudgy black-and-white feline that is its most distinctive figure. We also climbed to the flats above Lewis Canyon, where bedrock is inscribed with hundreds of petroglyphs describing abstract shapes, human figures and, according to some interpretations, star maps. It’s thought that these figures were created between 600 A.D. and 1600 — the last leg of a long march of Pecos peoples communicating across time.

The Lewis Canyon petroglyphs weren’t discovered until 1990, when a landowner, excavating to build a house, exposed the engraved bedrock. And the White Shaman mural wasn’t documented by modern people until 1957 (though an 1849 army expedition had recorded “rude Indian paintings on the rocks,” and a team from San Antonio’s Witte Museum had surveyed Lower Pecos rock art in 1931).

Since then, Pecos River-style rock art has been re-created by artists, documented by photographers and analyzed by archaeologists. It’s been gawked at by passing canoeists, graffitied by clueless teenagers and vandalized by antiquities collectors. Dozens, perhaps hundreds, of sites were drowned and lost when Amistad Reservoir filled after the construction of Amistad Dam in 1969. And Amistad continues to threaten the rock shelters, both by pushing sediment deposition upstream, which fills canyons with silt, and by increasing ambient humidity, which may encourage the buildup of a whitish mineral scale that obscures some of the paint. The rising riverbed, combined with overgrazing on the rootless plateaus above, contributes to an increased risk of flash floods. When the reservoir is full, the Rio Grande backs up in its channels and floods a site called Rattlesnake Canyon, where a 100-foot span of pictographs is sometimes submerged for weeks at a time.

The pictographs of the lower Pecos have lasted millennia in a tempestuous desert, surviving mostly in silence. Now that a code has been cracked, and they can begin to speak again, Boyd worries there may not be enough time to hear everything they have to say. So much has been lost already, and much remains at risk. But pessimism isn’t her strong suit, and time hasn’t run out yet. At Rattlesnake Canyon, for instance, she and the Shumla team are already finding that the paint follows the same order of application as at the White Shaman site: red over black; yellow over red; white over yellow.

And a distinctive figure — a red humanoid sporting antlers with black dots on the tines — appears over and over again. “We’ve got that same little guy, the guy with the antlers with the dots, he appears all over the place in the lower Pecos,” Boyd says. “So we started going to other sites to see if they did the same thing there, and it’s the same thing.”

At each site, the black dots are painted first. Later, the red antlers are painted around them.

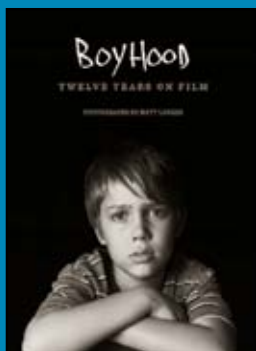
“That starts telling you that there is a rule that governed the production of Pecos River-style rock art,” Boyd says. “This is an ongoing discovery. We are still making this discovery. It’s cool stuff. It just blows my mind.”

Longtime Observer contributor Brad Tyer has marveled at prehistoric rock on the Rio Grande, the Devils, the Pecos and the Middle Fork of Idaho’s Salmon River.

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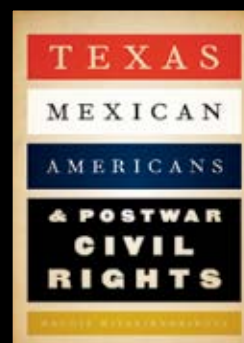


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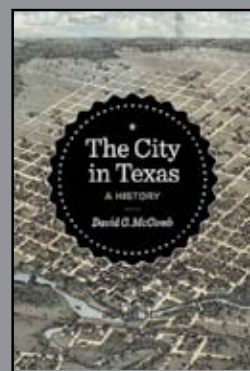
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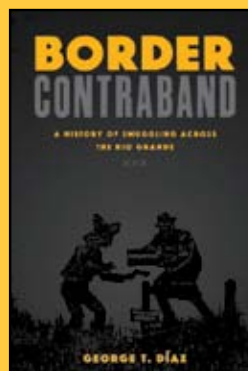
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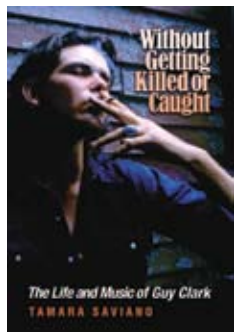


THE BOOK REPORT

The Troubadour

Honky-tonk musician Guy Clark defies categorization, argues a compelling new biography.

by **Michael Sandlin**



**WITHOUT GETTING KILLED
OR CAUGHT: THE LIFE AND
MUSIC OF GUY CLARK**

by *Tamara Saviano*
406 PAGES; TEXAS A&M
UNIVERSITY PRESS

FEW COUNTRY MUSIC CAREERS ARE ROOTED IN NIGHTLY POETRY RECIT-als at the childhood dinner table, but Guy Clark was not your average born-in-a-barn country singer. As producer/author Tamara Saviano reveals in her biography *Without Getting Killed or Caught: The Life and Music of Guy Clark*, verse was not only appreciated in the Clark household, but was also in the family's genetic makeup: The Clarks were descendants of 15th century English court poet John Skelton. And Guy Clark venerated Dylan Thomas, holding the Welsh poet's use of language in the highest esteem. ¶ Clark's songs, especially such modern Western-folk classics as "Desperados Waiting for the Train," "Texas 1947," "L.A. Freeway"

and "Let Him Roll," exude a sort of protean poetic sensibility using a decidedly Texan vernacular — or as Saviano describes his particular brand of songcraft, "vivid four-minute short stories about exotic people and locations." He's been compared to everybody from Larry McMurtry to Kris Kristofferson to Joe Cocker, but few of these really stick. Clark's acoustic, finger-picked Southwestern-flavored songs were too countrified for folk and too folky for country — and the Nashville hit factory never knew what the hell to do with him.

Clark, who passed away in May at 74, was one of a select few country singer-songwriters who could get away with including "troubadour" in his job description. Ernest Tubb of Crisp was the first to earn the "Texas troubadour" moniker after hitting it big with

the truest troubadour Texas has ever produced.

Saviano's book begins before the beginning, in a sense, as we're introduced early on to the small-town West Texas characters who populated the hardscrabble Dust Bowl world of Clark's parents and grandparents: the bootleggers, drunks, domino players, guitar pickers and oil field wildcatters who would serve as inspiration for Clark's earliest and best-known songs. Saviano also traces Clark's clean-cut formative years and fairly comfortable middle-class upbringing in sleepy coastal Rockport. Though after high school Clark flirted with the hippie drifter life in places such as Los Angeles and San Francisco, it's his time in Houston that proved to be truly transformational.

After unceremoniously dropping out of the University of Houston, Clark cut his teeth in the then-thriving Montrose coffeehouse and beatnik folk scene. His Fannin Street bachelor pad was where the offbeat triumvirate of Clark; his eventual wife, Oklahoma debutante Susanna Talley; and talented but troubled singer-songwriter Townes Van Zandt would form their abiding bond. Clark eventually finds himself at the center of an eclectic H-town psychedelic-folk scene in the mid-1960s, and Saviano does a bang-up job of rescuing this lost bohemian enclave from the black hole of Houston history. She gathers an impressive oral micro-history of Houston's '60s music scene, using colorful quotes from local luminaries (including Clark himself) who witnessed the goings-on at long-vanished venues like the Jester, Purple Onion and Old Quarter. At the Jester, Clark opened for not only the likes of Texas blues legends Lightnin' Hopkins and Mance Lipscomb, but also

Clark's acoustic, finger-picked Southwestern-flavored songs were too countrified for folk and too folky for country — and the Nashville hit factory never knew what the hell to do with him.

"Walkin' the Floor Over You" in 1941. Today, old-school road warrior Dale Watson is doing the lonely work of preserving the legacy of Tubb's rough-hewn, electrified brand of attitudinal honky-tonk. But if you apply a more traditional dictionary definition of the word — as in, a poet who puts his or her verse to music — then Clark just might have been

future pop-folk superstars such as John Denver and Judy Collins.

Yet, then as now, Space City was not exactly an ideal launching pad for serious music careers. So the tight-knit songwriting threesome of Guy, Susanna and Townes hit the road in the early 1970s to ply their trade in Nashville, where Clark had scored a \$75-a-week job writing songs for a small publishing company. And it's in the rendering of these lean years that Saviano's writing excels, offering lively anecdotes highlighting the threesome's whiskey-and-weed picking parties and romantic starving-artist lifestyle.

Even though Clark's early songs would prove commercially viable when sung and recorded by more established, chart-conscious singers such as Johnny Cash or Jerry Jeff Walker, his own albums — lost classics *Old No. 1* and *Texas Cookin'*, among others — made no concessions to Nashville's fickle standards. In *Without Getting Killed or Caught*, Susanna gets hung with the reputation as the commercial hit-maker (she scored a No. 1 with "I'll Be Your San Antone Rose"), whereas Clark is portrayed as the uncompromisingly difficult artist with no affinity for popular sounds. Yet this ongoing spin somehow rings false. Ricky Skaggs, for example, would take Clark's previously dead-on-arrival single "Heartbroke," change the lyric "pride is a bitch" to "pride when you're rich," and presto — it shoots to No. 1 on the country charts.

But where most music biographies attempt to construct a comfortable *Behind the Music*-style rise-and-fall career arc, Clark's trajectory doesn't lend itself to standard music-bio sensationalism. If anything, Saviano portrays Clark as a figure of rock-like constancy in his artistry, as well as in his drinking and drugging. Clark frustrated one meddlesome Nashville producer after another, always keeping to his acoustic-folk roots even if it meant sabotaging his relationship with major labels. He never quite fit any format until the Americana subgenre arrived in the early 1990s to claim Clark as its own. Clark eventually found his footing with smaller country-folk-friendly labels including Sugar Hill and wrenched back control of the recording process. Finally, in his cocaine-and-whiskey-ravaged mid-50s, he was set free to be the autonomous fingerpicking acoustic-folk singer he always wanted to be.

The book's coda, while somewhat scattershot thematically, ably navigates some emotionally unwieldy territory. It's gratifying to read about Clark finally reaping the benefits of an ever-growing musical legacy, finding contentment in mentoring and collaborating with younger songwriters, not to mention building his own guitars. This was also a time when advancing age and years of alcohol and drug abuse began to disband the once-inseparable trio of Guy, Susanna and Townes.

It was Van Zandt's premature passing in 1997 that sent Susanna on a slow spiral of her own, assisted by

pain pills and terminal depression. But Saviano keeps a steady bead on Clark to the end. To Saviano's credit, her tone, while reverent, is never overly sentimental. In fact, her epilogue features a morbidly humorous but note-perfect observation made at his funeral, one that the poetry lover in Clark would've appreciated for its metaphorical value. Saviano notes that Clark's body was crammed into a coffin that was too small for his 6-foot-3-inch frame: "The top of his head was pressed against one end of the box and his feet pressed against the other. Guy Clark does not fit in a box." ❧

Michael Sandlin, a native Houstonian, is an academic editor who moonlights as a film and book critic.

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Cuero rancher Phylis Canion insists this stuffed specimen, which experts say is a coyote, is an authentic Texas chupacabra. PHOTO COURTESY OF PHYLIS CANION



ESSAY

Chasing the Chupacabra

Texas chupacabras have a way of leaving behind bodies — or perhaps, bodies in Texas have a way of becoming chupacabras. by **Asher Elbein**

THE FIRST TIME PHYLIS CANION SAW THE chupacabra, it was slipping through the pastures on her South Texas ranch in broad daylight. It was June 2007, and Canion, a naturopathic doctor and hunter, had just returned to Cuero from Africa. She'd seen some odd things over there, but nothing like this: a hairless canine figure with blue-gray flesh and bony limbs. Soon after, she and her husband found one of their chickens with its throat torn open, apparently drained of blood.

Over the next few days, the mystery predator struck again, leaving what appeared to be exsanguinated chickens across the ranch. Canion set up cameras, hoping to catch it in the act. When that failed, she asked her neighbors to let her know if they saw, captured or killed it. In mid-July, a neighboring rancher called to say that one of the creatures had been hit by a car near his property. As Canion stood puzzling over the scrawny body, she got a call about another strange carcass. She sped back in her car, and there it was: thin, hairless, bizarre.

Canion loaded it into her tractor and took it back to the ranch to photograph it. That brush with celebrity changed her life.

"We've done documentaries on National Geographic, History Channel, Discovery, Animal Planet," Canion said. "Everybody wants to know more about the chupacabra."

The chupacabra is among the most popular of the mystery beasts, an integral part of Texas folklore and a semi-regular guest star in sensational documentaries and credulous local news reports alike. For 10 years, its legend has been a staple of rural life in parts of the state, fueled by a succession of alleged carcasses, sightings and tall tales. According to Ben Radford, a researcher with the Center for Inquiry's Committee for Skeptical Inquiry and author of *Tracking the Chupacabra*, Texas is a "chupacabra factory."

But the chupacabra wasn't always a resident of the Lone Star State, and it didn't always look like a dog. In the 21 years since the first supposed sightings of the creature, it has been a spine-backed alien, a winged kangaroo or a goblin, a predatory monkey or an unusually ambitious mongoose. Only one facet of the tale has remained constant: The chupacabra is out there in dark thickets and empty deserts, and it wants your livestock.

IN THE SUMMER OF 1995, A WAVE OF LIVESTOCK KILLINGS rocked rural Puerto Rico. The victims were found with wounds at their throats, seemingly empty of blood. Without a culprit, dark rumors spread throughout the island. Somebody, somewhere, gave the culprit a name: chupacabra, the goat sucker.

That August, as the panic was building to a fever pitch, a woman named Madelyne Tolentino reported a bizarre sighting outside her mother's house in

Canovanas. A long-limbed, earless creature with a spiny back appeared in the yard, she said, huge eyes staring through the window. Spooked by her scream, the thing bounded off into the jungle.

In the wake of Tolentino's account, aided by a sketch she later produced with local UFO researcher Jorge Martin, reports of bipedal, spiny and red-eyed creatures proliferated — over 200 in Puerto Rico alone. Some asserted that it was a genetics experiment escaped from the United States, or an alien collecting blood to spread AIDS. Its form fluctuated wildly — the number of spines on its back, whether it crept or leaped, or flew on bat wings, or floated through the air using psychokinesis. The first sighting in the continental United States took place a year later in Miami, with others appearing in Mexico, Brazil, Chile, Spain and Portugal. Within a few years, the chupacabra had transformed into a full-blown global phenomenon.

But the most radical change was yet to come. In 2000, Radford said, a Nicaraguan rancher shot and wounded something attacking his goats. A few days later a ranch hand found the carcass — a hairless, rangy-looking canid. It was the first time an actual body had been associated with the legend, and despite claims by the rancher and an overzealous media that it was a genetics experiment or a cross between a wolf and a crocodile, a cursory examination by anatomy specialists at the National Autonomous University of Nicaragua revealed that it was a common dog, likely stricken with mange. The rancher protested, accusing the university of a conspiracy. But a new model for the goat sucker had emerged — a skulking, monstrous canine, much like the ones Canion would collect in Cuero.

MOST CRYPTIDS — MYSTERY ANIMALS OF FOLKLORE — DO not leave much in the way of physical evidence, surfacing instead in blurred photographs or ambiguous tracks. But Texas chupacabras have a way of leaving behind bodies — or perhaps, bodies in Texas have a way of becoming chupacabras. In 2004, 2007 and 2009, several chupacabra carcasses popped up in the central part of the state, many with warty skin and protruding teeth. All of them, including Canion's, have been subjected to DNA testing, and the results have been the same: mangy, sickly coyotes or dogs.

This diagnosis doesn't satisfy Canion. "I have now done DNA at five different universities," she said. "All of them came back identical. They do not match any animal in the archive."

This isn't true: As reported in Radford's book, Texas State University researchers found that the DNA was a complete match for a coyote. Other labs concurred. But Canion is undeterred. She's kept the carcass and skull in her freezer and has a taxidermy mount of the gnarled, ugly creature on display.

When pressed, Canion said she doesn't know what her chupacabra is. She speculated that perhaps it's a hybrid with a Mexican wolf, or an escapee from some dog breeder in the area. But she's adamant that it isn't a normal, mangy coyote. Perhaps, she said, the chupacabras are a type of coyote, but of a rare sort — naturally hairless, probably living underground, and very fond of blood.

Still, believers fixate on the chupacabra's alleged

thirst for blood, pointing to drained livestock as evidence of its existence. But most people aren't clear on how to interpret forensic evidence. In dead animals, the drop in blood pressure leads to the blood pooling in the lowest portions of the body, Radford said. "If you stick it with a knife, it's not gonna bleed unless you've flipped it over where the blood has seeped to," he said. "And people don't do all of that."

Even assuming the blood had been drained, the bodies Canion describes don't seem physically capable of it. There are real vampiric animals — mosquitos, lamprey eels, vampire bats — and blood is not an easy thing to make a living off of. It's high in iron, and can cause a dangerous buildup in the bloodstream. Actual vampires, said Radford, have "structures in their mouths and digestive systems that would allow them to suck blood and digest it without injuring them." The creatures that have been offered up as chupacabras may look bizarre, but they just don't have the anatomy for vampirism.

What, then, is killing the livestock? The answer is a disappointingly common one: coyotes and feral dogs. It's commonly, and mistakenly, believed that feral dogs eagerly devour their prey. But domestic dogs often kill with a bite to the neck and then leave the carcass. By the time the kill is found, its blood has settled to the bottom — with a rip or puncture at the neck the only sign of attack.

THE CHUPACABRA IS TOO THOROUGHLY ENMESHED IN MASS culture to be dismissed by mere physical evidence. And for believers, any attempt to explain away the creature is simply more proof that it exists.

"The history of the chupacabra and its origins are intertwined with conspiracy theory in a way that is unique in cryptozoology," Radford said. Some speculate about genetics testing, escaped aliens or black helicopters collecting chupacabra eggs in the Atacama Desert. Others are simply convinced a species of ugly vampiric dog haunts rural Texas.

But these theories thrive on the conviction that experts are unable to see the truth. Similar convictions are common with cryptids such as Bigfoot or Nessie. Unlike those creatures, though, the chupacabra did not exist prior to 1995. The figure bears a whiff of the uncanny — seldom seen, constantly shifting, known only by its victims. The chupacabra is a tautology: It exists because we know that it must. Why else would we be talking about it?

All of which lends a final absurd twist to the creature's beginnings. For the likely origins of the chupacabra lie not in the folk traditions of Puerto Rico or in sightings of mangy coyotes, but in Hollywood. On July 7, 1995 — a month before the Tolentino sighting that sent the chupacabra rocketing to stardom — the sci-fi thriller *Species* was released across the United States and Puerto Rico. The film featured a seductive, organ-draining, human-alien hybrid designed by *Alien* concept artist H.R. Giger. The leaping creature had a spined back, lanky proportions and huge eyes. According to an interview with Tolentino included in Radford's *Tracking the Chupacabra*, she had seen — and enjoyed — the film. ■

Asher Elbein is a freelance journalist and fiction writer based in Austin.

The figure bears a whiff of the uncanny — seldom seen, constantly shifting, known only by its victims.



POSTCARDS

Fungi Town

Taking a mushroom census in southeast Texas. by **Leah Caldwell**

So far, the Big Thicket's All Taxa Biodiversity Inventory has newly documented at least 190 species of mushrooms in the preserve, including 99 never before found in the state and 25 that are potentially new to science altogether.

DAVID LEWIS MAKES THE OCCASIONAL pilgrimage to Sand Ridge Cemetery to pay his respects, but not to a dearly departed relative. The cemetery is just a few miles from his home in Newton County, near the Louisiana border. It sits on a giant sandhill, along an unpaved road lined with quaking bogs and freshly planted pine trees. The sandy soil and the bogs are just a few of the natural anomalies to be found in Texas' easternmost county, but Lewis is on the hunt for something even rarer.

A decade ago he found a group of unusual mushrooms growing in this cemetery at the base of a tree draped in Spanish moss. Five cream-colored *Amanitas*, the most toxic genus of mushroom, had sprouted. The *Amanita westii*, with its wart-covered cap, is not particularly beautiful, but Lewis was overjoyed at the find: He'd come across this particular species only once in nearly four decades of cataloging mushrooms. Such uncommon finds are why he calls East Texas "the last frontier" for mushroom hunters. On his 60 acres alone, outside the town of Newton, he has logged 550 species of mushrooms since 1995, and that's just a fraction of what's out there in the neighboring Big Thicket.

Lewis, a 69-year-old retired paper mill chemist, is the longtime president of the Gulf States Mycological Society. *Texas Mushrooms: A Field Guide* calls him "probably the most knowledgeable person on Texas mushrooms." Such a reputation has attracted a lot of attention from strangers. People often call his home phone to ask where they can find hallucinogenic mushrooms (*Psilocybin cubensis*). Lewis says he can't help with that — he's never ingested them himself ("I'm too neurotic," he says) — but he will identify any mushroom that comes his way, illegal or otherwise. "I don't want them to eat an *Amanita* and get killed," he says. Lewis approaches mushrooms from a purely scientific perspective. He laughs when asked if he talks to mushrooms or believes in their healing properties. Instead, he offers the story of a man with cancer who called to ask if Lewis could get him some turkey tail, a mushroom reputed to strengthen the immune system. "I sent him a pound of this stuff," Lewis says, "but I never heard back from him, so I don't know if he lived or not."

The forests of East Texas are full of mushrooms,

thanks to the heaviest rainfall in the state and the abundance of pine, oak and beech trees, on which mushrooms rely, and vice versa. After a heavy rainfall, edible mushrooms such as chanterelles appear, as Lewis says, "like gold nuggets as far as the eye can see." Born in Beaumont and raised in Vidor, Lewis has collected so many mushrooms over the years that he has yet to catalog them all. Dried, shrunken specimens are stored in old Kodak film boxes, and handwritten notecards have yellowed with time. What he has documented, he has passed along to Mona Halvorsen, director of the Thicket of Diversity project, for inclusion in the Big Thicket Association's All Taxa Biodiversity Inventory.





Over time, the inventory — part of a nationwide project — will attempt to catalog all of the living species of the Thicket, right down to the microscopic tardigrade, or water bear. So far, the inventory has newly documented at least 190 species of mushrooms in the preserve, including 99 never before found in the state and 25 that are potentially new to science altogether. Lewis anticipates that the count will be much higher once all the data are in. His personal tally is 660 species in the Big Thicket from 1976 to 2015. This rivals, if not surpasses, the counts at other national preserves, but what's especially fascinating about the Big Thicket is that it is an “ecological transition zone — the westernmost point where we find a lot of

eastern species, and the easternmost point where we find a lot of western species,” says Jason Ginder, chief of interpretation and education in the Big Thicket for the National Park Service. It’s “at the very edge of the ecosystems that these species can live in,” he says.

Even though the Thicket is one of the most fruitful places in Texas — even the world — to find such a diversity of wild mushrooms, the current state of mycology in Texas is “lacking,” according to Lewis. “One of my friends said that we know so little about mycology in the South because those Yankee mycologists won’t come down and stay in the summer,” he says.

Lewis’ work on Texas mushrooms is changing that, as is the Biodiversity Inventory, which is attracting

David Lewis hunts for mushrooms on his land in East Texas. Since 1995, he has found 550 species of mushrooms on his 60-acre property.

PHOTO BY JEN REEL

A man with cancer called to ask if Lewis could get him some turkey tail, a mushroom reputed to strengthen the immune system. "I sent him a pound of this stuff," Lewis says, "but I never heard back from him, so I don't know if he lived or not."

researchers from all over the world to study life in the preserve and nearby forests. Their findings are proving what people have been saying about the Big Thicket for the past century: that it really is the biological crossroads of North America, and among the most biodiverse habitats on the planet. "The leaves have fallen on these hammocks for thousands and thousands of years," observed Hardin County Judge Leak Bevil in a 1970s oral history of the Big Thicket, "and that ground is a natural loam that will grow anything on earth. ... It's a botanical paradise."

The mushroom is no small part of that ecosystem, and a key to the health of the forests that define the Thicket. When a timber company clears a patch of land and plants new trees, underground networks of the mushrooms' root-like mycelium attach to the roots of the new trees almost immediately. Mushrooms are the fruiting bodies of the mycelium, and can help the tree grow and decompose after it dies. "The mushroom gets sugars from the tree, because they can't make their own sugars, and the tree gets water and nutrients from the mushroom," Lewis says. The fungus' mycelia are even more deeply entrenched in the soil than tree roots.

The first biological survey of the Big Thicket, conducted by Texas A&M scientists in 1936, predicted that if the forest was not preserved "somewhat near its original condition," then fungi and other "lower plant life" would face destruction. This would be a disaster, H.B. Parks and V.L. Cory wrote, since "within the greater Big Thicket area there are a large number of unknown and undescribed species of fungi, some of them being of great beauty and of good size."

But by the time President Gerald Ford granted the Thicket national preserve status in 1974, the nature of the forest had substantially changed. More than a century of clear-cutting by timber companies had decimated the landscape. "Whole Texas Town Sold For Salvage; Price \$100,000," read a 1943 newspaper headline trumpeting Wier Longleaf Lumber Company's sale of the company town Wiergate once local supplies of prized longleaf pine had been depleted. An original 3.3 million acres of thicket — much of it old-growth trees up to 6 feet in diameter — had been reduced by logging and development to just over 100,000 protected acres. What was lost in terms of biodiversity will never be known.

THERE ARE NO OFFICIALLY MARKED TRAILS IN THE LANCE ROSIER UNIT of the Big Thicket, just a few waypoints on the map, such as the Bridge to Nowhere and the newly discovered Pitcher Plant Field. This particular unit is one of the wildest of the Thicket's 15 units, accessed off the main road of Saratoga, an oil and timber town. Pumpjacks can be seen bobbing alongside dirt roads, and blue sky peeks out behind thin rows of towering pines that conceal clear-cuts. More than a few pipeline rights-of-way crisscross the forest, but overall the Rosier Unit's 25,000 acres bring to mind folklorist Francis Abernethy's description of the Thicket as a "cool green womb."

Instead of letting out-of-towners wander into the

forest on their own, Halvorsen guides researchers to the best places to find crayfish, snails, or whatever small facet of life they're studying. "If it looks like Shrek took a bath in it," she says, "it's the best place to find stuff." Halvorsen has gotten lost only twice. Once, she forgot the pack with her compass and water and had to rest on her back in a spring to wait out the heat of the day. She found her way out, but by then, emergency responders had arrived. They thought she had trekked into the woods without her pack for a "last time out in the field," she says, but she had been thrown off-course because "the hogs had torn [the land] up so much that I got turned around."

Halvorsen calls Montana home, but after living in Saratoga for eight years, she thinks the locals are finally beginning to accept her. "They had a really horrible opinion of the Park Service," she says. Partly that had to do with the metal gate that separates the Big Thicket Field Research Station from the adjacent homes of Saratoga residents. "This woman that was involved with the Park Service was adamant about putting a gate up so they couldn't use this road — because this is an actual road," Halvorsen says. "It's called Big Thicket Drive. It's not our driveway." People did not like the gate, and pulled it down or rammed it with their trucks, but Halvorsen now leaves it open.



She has done a lot of work to "try to relieve people's tension about what we're doing out here."

Saratoga residents had also been wary of Lance Rosier, the namesake of the nearby forest. *Big Thicket Legacy*, a collection of oral histories, describes the self-taught naturalist, who died in 1970, as "a hunter who never killed anything. He hunted plants — orchids, ferns, mushrooms, mosses..." Rosier is a kind of folk hero to those who come to the Thicket to study plants or fungi. He never married and spent most of his time collecting specimens from the forest. He learned along the way to identify the Thicket's plants by their Latin names. Rosier's archives at Lamar University contain his specimen logbooks, as well as an unemployment compensation card from 1938–39 and a clipping of "The House by the Side of the Road," a poem by Sam Walter Foss that includes the verses: "There are hermit souls that live withdrawn / In the peace of their self-content ... / But let me live by the side of the road / And be a friend to man."

Halvorsen admires the self-taught naturalists who still populate East Texas, not least because she is one

The *Amanitas* found by David Lewis at Sand Ridge Cemetery in Newton County, August 19, 2007. PHOTO COURTESY BART BUYCK



herself. The first time she saw a slime mold under a microscope, she was enamored. “The spore, the fruiting body of a slime mold, is absolutely gorgeous under the microscope,” she says, “and that’s what got me going.”

Mycology is a field that attracts all types of people, including those inclined to find beauty in a slime mold. But the study of fungi was once considered unseemly. British mycologist William Delisle Hay wrote in 1887 that the individual who studies mushrooms must face “a good deal of scorn,” since “no fad or hobby is esteemed so contemptible as that of the ‘fungus-hunter,’ or ‘toadstool-eater.’” Researchers writing in the scientific journal *PLOS ONE* state that societies tend to be either mycophilic or mycophobic, meaning they either happily eat and forage for mushrooms in the wild or are cautious about doing so. “Southerners are kind of backward when it comes to mycology,” Lewis says. Mushroom foraging has never been a pastime in Texas, unlike in the Pacific Northwest. To the contrary, Texans have long considered wild mushrooms strange and dangerous, when they have considered them at all.

An 1879 edition of the *Jasper News-Boy* includes the following joke: “Ignorant young man to Professor Tyndall — ‘Professor, how is a man to tell a mushroom from a toadstool?’ — Professor: ‘By eating it. If you live, it is a mushroom, if you die, it is a toadstool.’” Fungi conjure “visions of rotting vegetation,” Parks and Cory wrote. Mushrooms were seen as crop destroyers and covert killers, not anything one would risk eating.

People ate nearly everything from the forest: acorns, wild honeysuckle, grapes. But though “there was lots of mushrooms” in the Big Thicket, in Rosier’s observation, “people didn’t know how to use them.”

States with abundant wild mushrooms, including Oregon and Washington, typically regulate their commercial harvest. Texas exercises much less vigorous oversight of foraging. A Department of Agriculture study noted that Texas’ only laws regarding commercial foraging are: Don’t forage on private property, and don’t harvest any mushrooms taller than 6 feet. Otherwise, wild mushroom foraging is wide open in Texas, though Ginder does encourage mushroom hunters to avoid “collecting anything too much, whether berries or mushrooms. It is a preserve and a place that we strive to protect.”

The one aspect of mushrooms that is highly regulated in Texas, and in the rest of the United States, centers on the legality of the mind-altering chemical psilocybin. Ever since *LIFE* magazine published its 1957 cover story “Seeking the Magic Mushroom: The Discovery of Mushrooms That Cause Strange Visions,” curious Americans have attempted to replicate the psychedelic trip taken by mycologist Robert Gordon Wasson during a shamanic ritual in Mexico. Just over a decade after the article, Congress amended federal drug laws to reflect the United Nations Convention on Psychotropic Substances. In Texas, the possession of psilocybin can be a first-degree felony, carrying a prison sentence of five years

Mona Halvorsen, director of the Thicket of Diversity project, at the Big Thicket Field Research Station in Saratoga.

PHOTO BY JEN REEL



Mona Halvorsen logs information on the mushrooms she foraged earlier that day in the Lance Rosier Unit of the Big Thicket.
PHOTO BY JEN REEL

to life. The illegality of psilocybin compounded old stigmas and gave birth to new ones.

In certain areas of the Big Thicket, hallucinogenic mushrooms can be found “growing like weeds,” Halvorsen says. But most mycologists are not on the hunt for mushrooms that cause strange visions. Every year Lewis leads mushroom-seeking forays in Texas and Louisiana, meeting up with old friends and members of the Gulf States Mycological Society, and also seeing new faces. Mycology is a novice-friendly field that welcomes amateurs. Even newcomers have a decent chance of discovering a new mushroom; Lewis and several of his friends have mushrooms named after them. Anyone wishing to “make a desirable contribution to science” should study the fungi of the Thicket, wrote Parks and Cory in their 1936 survey.

Since mycologists have overlooked the South for so long, Lewis’ findings — housed at the Chicago Field Museum and Lamar University — provide one of the most complete pictures of the richness of mushroom life along Texas’ coastal plain. Yet Lewis still sees

many unknowns. “North America is so underexplored, it’s pitiful,” he says, in part because “there are so many species that no one person can know them all.” For example, a colleague of Lewis’ studies the “little black crust things on wood,” while Lewis studies fleshy fungi. “I look at these black things and go, ‘Well, that’s nice,’” Lewis says.

The Biodiversity Inventory is at a stage where it’s no longer just documenting. “Now we’re moving further on into seeing how [species] are interacting with what’s living out there,” Halvorsen says. “What’s living together and what’s causing things not to live together anymore.” The wild hogs that stampede through the Rosier Unit, eating and tearing up everything in sight, play a large part in determining what life survives in the Thicket. Halvorsen recently discovered a small branch with slender green pods that she knew wasn’t native to the unit. She could only speculate that the hogs had carried it in.

Lewis has been doing this long enough to see a few new mushrooms appear in Texas, while others seem to have faded away. He calls the 2011 drought the worst year for mushrooms in his lifetime. Many times, he will see a mushroom only once. Asked for a nomination to a threatened species list, he picked his cemetery mushroom, the *Amanita westii*. But on our afternoon visit to the cemetery, the *Amanitas* have yet to resurface.

“You don’t know unless you look,” he says. 🍄

Houston native Leah Caldwell is a writer and editor living in Austin.

SCREENPLAY FOR A HOMEMADE MOVIE by Kathleen Winter

My cousin & his wife married
their next-door neighbors.
This is as romantic as Pleasanton gets.
First each other,
then after eight years, a couple of divorces.
Like bowling alley mechanics:
after the smashes, everything set up again—
same houses, different spouses.
For a while it was awkward
at the grocery, at the hardware store
but my cousin’s wife is happier now
—she’s a whole different person.
Pleasanton’s best had hives
about the hanky-panky
but after the neighbors remarried
the town forgot the starting lineup,
gave its blessing to two sets of newlyweds.
My cousin’s next-door neighbor’s wife
is happier now. She hears my cousin
only if two windows are open
& the ravens pause in bringing on
the triumph of their small, shrill song.

Kathleen Winter is the author of Nostalgia for the Criminal Past. She wrote this poem during her fall 2015 fellowship residency at Austin’s Dobie Paisano Ranch, supported by the Texas Institute of Letters.



Give like
Molly

*Molly Ivins
remembered us in her
will and we hope you
will too.*

THE TEXAS OBSERVER
LEGACY SOCIETY

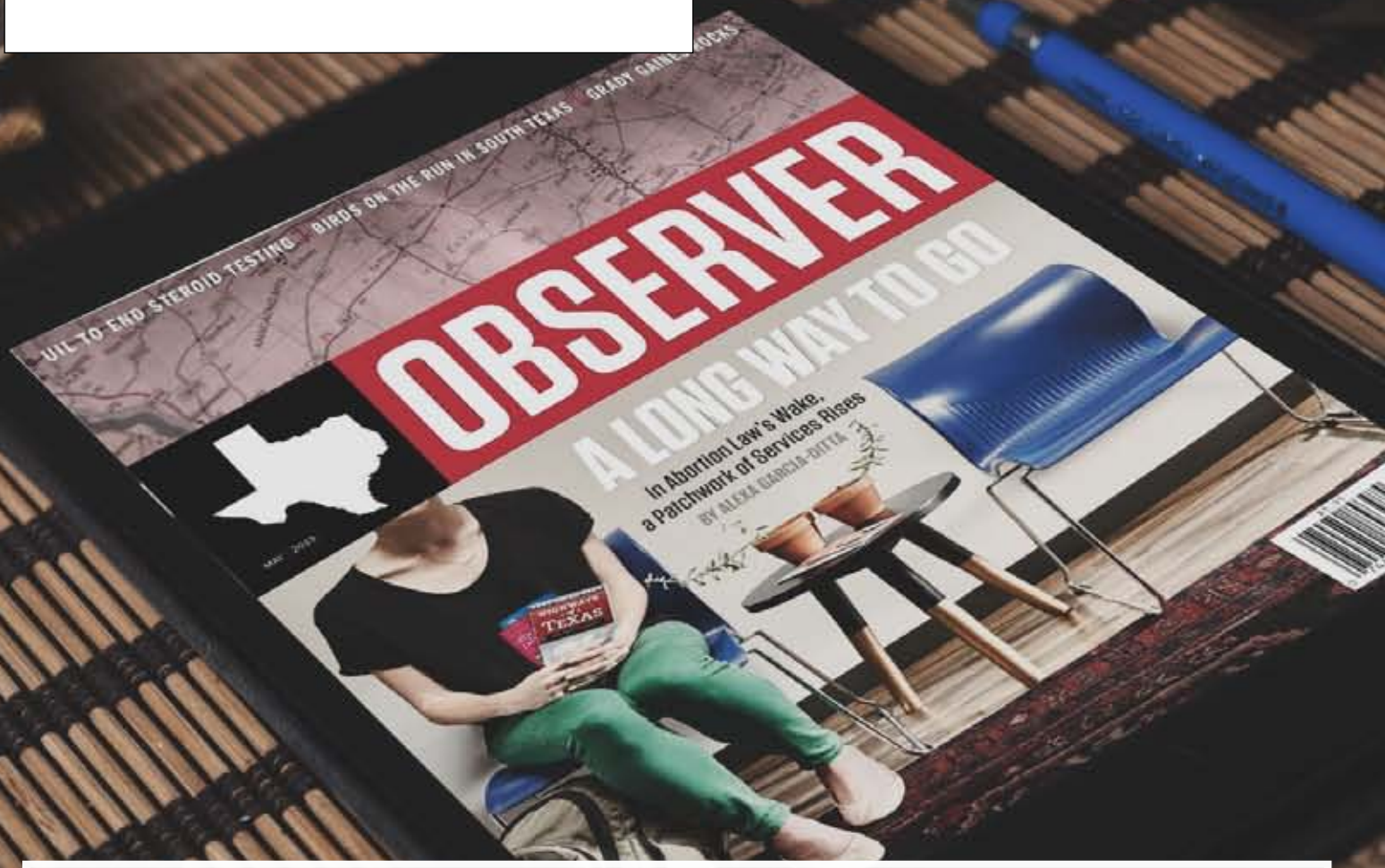
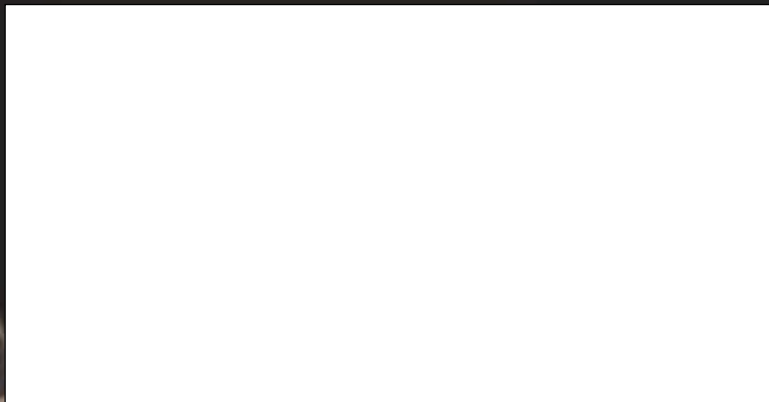
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EYE ON TEXAS Michael Cirlos



Victor Guzman, 6, feeds his pet pig at home in Pueblo Nuevo, a small *colonia* 15 miles east of Laredo. He and his mother, Iris, are among about 400,000 Texans who live in *colonias* — unincorporated border communities that often lack basic services such as water, electricity and sewage. In 2002, Iris made the journey to the United States by cargo train after fleeing gang violence in Honduras. “It got to the point where I couldn’t walk to buy food without the fear of losing my life,” she says. “I made it here because I wanted my son to get an education and have the opportunity of a normal life.”

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