When Lawyers Were Serial Killers: Nineteenth Century Visions of Good Moral Character

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INTRODUCTION

The requirement that applicants to the bar possess "good moral character," although well-established in American law today, appears to be a relatively recent arrival to Anglo-Saxon jurisprudence. For much of American history attorneys distinguished themselves, not by good works and saintly disposition, but by acts of violence that would confine them to imprisonment if committed in modern America. This article provides a number of examples of attorneys who shot, stabbed, and assaulted their way into professional prominence in the 1800s. The illumination of this forgotten record of professional incivility and violence says much about how perceptions of professionalism have changed over the course of American legal history.

The phrase "good moral character" appears for the first time in nineteenth century American bar admission statutes but probably dates to English precedents.1 Similar standards of qualification may have originated in seventeenth century England with an act requiring that lawyers be "skilfull" and "honest."2 Although an official roll of English solicitors was introduced in 1728,3 anyone could call himself a solicitor

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1. See, e.g., THE NATIONAL CONFERENCE OF BAR EXAMINERS, THE BAR EXAMINERS' HANDBOOK 15 (Stuart Duhl ed., 2d ed. 1980) (reprinting Indiana's 1851 constitutional requirement that "every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice").
3. See id.
until 1874 when Parliament passed a statute penalizing the unauthorized practice of law.\textsuperscript{4}

The relationship between the English bar and the royal family played an important role in the adoption of "character" as a professional requirement of lawyers in England. By 1750 the basic structure of the English legal profession had developed to differentiate between barristers and solicitors.\textsuperscript{5} The first group enjoyed exclusive access to the highest courts and rarely dealt with members of the public directly.\textsuperscript{6} It was composed entirely of members of the upper classes and nobility, yet its members occasionally couched their exclusivity in terms of personal integrity and character.\textsuperscript{7} "Apart from these caste-bound restraints, the profession's upper branch made little systematic effort to probe the personal attributes of its members."\textsuperscript{8}

Admission to the lower (solicitor) branch was open to a wider segment of the population. In 1874, Parliament passed a statute requiring apprenticeship and examination of fitness by the courts.\textsuperscript{9} This screening process, although facially egalitarian, evolved by 1860 to differentiate lawyers from the lowest English rabble.\textsuperscript{10} Even these heightened

\textsuperscript{4} English law provided no penalty against unlicensed persons practicing law until 1874. See Brian Abel-Smith \& Robert Stevens, Lawyers and the Courts: A Sociological Study of the English Legal System 1750-1965 62 (1967). Each court maintained its own roll of attorneys. See id. at 24 n.2. The court could allow anyone to practice before it without legal penalty. Id. at 20 (recounting that no penalty was provided for persons who broke the solicitors' monopoly). Unlicensed individuals apparently drew up much litigation during the 1700s, prompting complaints from educated lawyers that "many illiterate and unqualified Men have intruded themselves [into the legal profession] to the great Prejudice of the Public by the Promoting of Litigation and the Disgrace of the profession of the Law." See id. at 23 n.1 (citing E.B.V. Christian, A Short History of Solicitors 155 (1896)).

\textsuperscript{5} See id. at 7.


\textsuperscript{7} Cf. id. at 48 (quoting seventeenth-century barrister who regarded the profession as an especially honest and sacred pursuit).

\textsuperscript{8} Deborah L. Rhode, Moral Character as a Professional Credential, 94 Yale L.J. 491, 495 (1985). Until the second half of the nineteenth century, the only qualification a barrister needed was to be admitted at one of the inns of court. See Christopher W. Brooks, Lawyers, Litigation and English Society Since 1450 145 (1998).

\textsuperscript{9} See Rhode, supra note 8, at 495; see also id. at 495 n.10.

\textsuperscript{10} In 1860, Parliament enacted the Solicitors Act, requiring a preliminary examination for all men seeking admission to the bar. The Solicitors' Journal remarked in August 1863 that the clear purpose of the examination was "to exclude from the profession all who are not gentlemen by birth and education." Brian Abel-Smith \& Robert Stevens, Lawyers and the Courts: A Sociological Study of the English Legal System 1750-
admission requirements, however, yielded few or no reported cases of
denial on character grounds.\(^\text{11}\)

I. THE EARLY AMERICAN LEGAL PROFESSION

In early America, the character requirement for attorneys came about
in large part as a compromise between the legal profession and those who
sought to ban the profession from American soil.\(^\text{12}\) However, an
exhaustive 1985 study financed by the Stanford Legal Research Fund
found “almost no instances of denial of admission on character-related
grounds” in the nineteenth century.\(^\text{13}\) Requirements for entry into the
profession were few, and almost anyone who desired to practice law could
advertise himself as capable of doing so.\(^\text{14}\) John Adams remarked in his
diary that he once came upon a tavern keeper who moonlighted as “a sort
of Lawyer among [tavern patrons] . . . plead[ing] some of their home Cases
before the Justices and Arbitrators” of the region.\(^\text{15}\) Tocqueville wrote in
the 1830s that he often came across “those who have been in turn lawyers,
farmers, merchants, ministers of the Gospel, and doctors.”\(^\text{16}\)

Although “good moral character” was required to practice law under
the laws of most states by the end of the nineteenth century, the character
mandate had little practical impact. “Affidavits from personal references
generally satisfied admission requirements, and such documents were

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11. The determination of fitness to practice as either a solicitor or a barrister was
made by the Inns of Court, precursors of modern bar associations, which functioned as
strange combinations of social clubs and professional associations. A person denied
admission by one Inn might apply and be granted admission by another. Only in 1837 did
admission to the Inns of Court come under the review of the courts. See id. at 64. In 1837,
the four Inns formally agreed to allow persons refused admission to an Inn the right to
appeal to the courts and to hold themselves bound by judges’ decisions. See id.

12. Cf. Rhode, supra note 8 at 496 (stating legislation imposing character
requirements for admission to the bar was passed against the backdrop of public animus
against lawyers).

13. Id. at 497. (“[T]he anecdotal evidence available suggests that few candidates
were foreclosed from practice for character deficiencies.”).

14. See Daniel R. Hansen, Note, Do We Need the Bar Examination? A Critical
Evaluation of the Justifications for the Bar Examination and Proposed Alternatives, 45
standards permitted virtually any man to practice law).

15. Bernard Schwartz, Main Currents in American Legal Thought 6 (1993)

16. Alexis DeToqueville, Democracy in America 403 (J.P. Mayer ed., George
The first federal rule governing bar admission apparently required only that an applicant’s private and professional character “shall appear to be fair.”

There was one major exception to open membership. Women were generally barred from the practice under a rationale that seems entirely contrary to the prevailing mores of the modern bar: they were seen as too timid, delicate, and polite to practice law. United States Supreme Court Justice Stephen J. Field (a man who was arrested and disbarred more than once during his own career) was willing to allow a lynch mob killer to practice law but concluded that women should be barred from the practice because the “natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.”

II. DUELING

The practice of law was a vocation that demanded both skill and courage and seemed to attract a fire-breathing and intemperate breed of man. These unwritten requirements of the profession manifested themselves with unique clarity in a cultural practice that distracted the profession for much of the early nineteenth century. Dueling cost the lives of hundreds of Americans in early America, including several of the country’s most prominent citizens, including U.S. Secretary of Treasury

17. Rhode, supra note 7, at 497-98.
18. Ex parte Garland, 71 U.S. (4 Wall.) 333, 336 (1866) (emphasis in original). After the Civil War, Congress amended the admission statute to require attorneys to swear an oath that they had given no aid or held no office under “any authority or pretended authority in hostility to the United States”—effectively disbarring every attorney who had practiced law under the Confederacy. Id. at 335 (citing Act of Jan. 24, 1865, ch. 20, 13 Stat. 424 (1865)). This oath requirement was struck down as unconstitutional by the Supreme Court. Id. at 381. Justice Miller dissented from the ruling, however, claiming that “fidelity to the government under which [an attorney] lives, a true and loyal attachment to it, and a sincere desire for its preservation, are among the most essential qualifications which should be required in a lawyer.” Id. at 385 (Miller, J., dissenting). Miller went on to say that “if all the members of the legal profession in the States lately in insurrection had possessed the qualification of a loyal and faithful allegiance to the government, we should have been spared the horrors of that Rebellion.” Id. at 386 (Miller, J., dissenting).
19. See Rhode, supra note 8, at 497.
20. See infra notes 60-84, and accompanying text.
21. See Ex parte Wall, 107 U.S. 265, 290 (1883) (Field, J., dissenting) (arguing that an attorney who evidently led a lynch mob attack on a courthouse and hanged a suspect in a Tampa street should retain his license on grounds of procedural improprieties).
Alexander Hamilton, at the hands of Vice President and fellow attorney Aaron Burr; U.S. Senator Armistead Mason of Virginia; U.S. Congressman and lawyer Jonathan Cilley of Maine, at the hands of U.S. Congressman and lawyer William Graves of Kentucky; Arkansas' first delegate to Congress Henry Conway, at the hands of Arkansas' first Territorial Secretary Robert Crittenden; U.S. Congressman and lawyer Spencer Pettis of Missouri; and U.S. Senator David Broderick of California, at the hands of California's Chief Justice David Terry.

In response to the scourge of dueling, the Tennessee legislature led the nation in 1801 by passing a law making dueling a crime and requiring lawyers, upon being admitted to the bar, to take an oath that they would not engage in dueling. This prohibition was prompted by a finding that about ninety percent of duels in Tennessee were fought between attorneys, and that special measures were needed to curb their combativeness. The aforementioned duel between Representatives Graves and Cilley (both lawyers) prompted a similar ban in the District of Columbia in 1839.

23. The infamous 1804 duel between Hamilton and Burr (both lawyers) is described in unique detail in DON C. SEITZ, FAMOUS AMERICAN DUELS: WITH SOME ACCOUNT OF THE CAUSES THAT LED UP TO THEM AND THE MEN ENGAGED 77-106 (1966).
27. HAMILTON COCHRAN, NOTED AMERICAN DUELS AND HOSTILE ENCOUNTERS 135 (1963). Pettis (an attorney) died along with his opponent, Major Thomas Biddle, in a duel on an island in the Mississippi River at the "astoundingly short distance of five feet" in 1831. Id.
28. See infra note 66 and accompanying text.
30. See id.
31. See BIOGRAPHICAL DIRECTORY, supra note 24, at 1086-87.
Attorneys were known to draw weapons over accusations that they misstated evidence in the record, or that they engaged in professional "pettifoggery." One young Tennessee lawyer fatally stabbed a sketch artist after the artist drew him in a humorous and satirical fashion. An Arkansas superior court judge killed another Arkansas superior court judge in a duel after the latter judge offended the former's wife during a card game. Abraham Lincoln, one of America's greatest trial lawyers, as well as our sixteenth President, was forced to the very brink of a saber duel with the Illinois state auditor (another lawyer) after Lincoln was identified as the author of embarrassing newspaper articles written under alias in 1842. Lincoln avoided violence only by apologizing in the moments before the duel.

The first duel recorded in Rhode Island took place in 1806 after a Massachusetts attorney took offense to a newspaper article drafted by another lawyer under another assumed name. Twenty-eight years later, a Harvard law student dueled with a Boston businessman near the same Providence ground—apparently over the honor of a woman.

32. In 1816, St. Louis attorney Thomas H. Benton was arguing a case in front of the Missouri Supreme Court when the opposing attorney, Charles Lucas, accused Benton of misstating the evidence in the record. See Seitz, supra note 23, at 169. Challenges to a duel soon followed. See id. at 169-70. Benton dispatched his rival attorney with a bullet to the heart on their second duel and was subsequently elected to the United States Senate. See id. at 173.


34. See Dick Steward, Duels and the Roots of Violence in Missouri 88 (2000). Although the lawyer was indicted for murder, his attorneys argued he was defending his honor against Yankee disrespect, and a jury acquitted him. See id. at 88-89.


36. See Cochran, supra note 27, at 126-27.

37. See id. at 128.

38. See Roger Tillinghast Clapp, Dueling in Rhode Island (and Elsewhere) 19 (1977). The duel took place in Providence at a point which is now Constance Witherby Park between Pitman and Waterman Streets. See id.

39. See id. at 24.
One Vicksburg, Mississippi attorney, Alexander McClung, killed as many as fourteen men in duels during his violent life.\textsuperscript{40} Marksmanship may have been McClung’s one true virtue, as he was otherwise despised for his ill manners, bad credit, gambling, and drunkenness.\textsuperscript{41} His mother was the sister of the great United States Chief Justice John Marshall.\textsuperscript{42}

Legislative prohibitions against dueling posed little obstacle to the most obstinate nineteenth century duelists. Lawyers in states with strong anti-dueling laws simply arranged their skirmishes to take place on ground without such laws. “Indian country” served this purpose in states such as Georgia, while the many islands of the Mississippi River, over which no state held clear jurisdiction, made ideal dueling grounds for Illinoisans and Missourians.\textsuperscript{43} Rhode Island was apparently seen as a dueling haven among surrounding states because of its relatively lax dueling laws in the early 1800s.\textsuperscript{44}

Dueling culture was particularly strong among the elite bar and bench of Georgia in the first decade of the nineteenth century. One Georgia Superior Court judge, Charles Tait, challenged an attorney named Peter Van Alen to a duel in 1806 after the attorney placed into the record of a civil case some foolish letters written by the judge to the attorney’s client.\textsuperscript{45} The attorney declined to duel on the ground that Judge Tait was not a gentleman (a requirement of the duelers’ code), angering the judge even further.\textsuperscript{46} In response, Judge Tait had his good friend William Crawford deliver a renewed challenge complete with public formalities.\textsuperscript{47} But Crawford, an attorney known for slightness of frame and disposition, was immediately challenged to a duel by Van Alen\textsuperscript{48} - an overture no doubt wagered upon the expectation that the bookish Crawford would decline to fight.\textsuperscript{49}

\textsuperscript{40.} See William O. Stevens, Pistols at Ten Paces: The Story of the Code of Honor in America 127 (1940). Among McClung’s victims were seven members of one family. See id. at 116.
\textsuperscript{41.} See id. at 111-28.
\textsuperscript{42.} See id. at 127.
\textsuperscript{43.} See Steward, supra note 34, at 14.
\textsuperscript{44.} See Clapp, supra note 38, at 18. Rhode Island laws of the period punished duelists only by publicly carrying them “in a cart to the gallows with a rope about his neck and set thereon for the space of one hour,” and possible imprisonment for a term not exceeding one year. Id. at 18. In comparison, Massachusetts punished dueling as murder. See id.
\textsuperscript{45.} See Seitz, supra note 23, at 114.
\textsuperscript{46.} See Id.
\textsuperscript{47.} See Id.
\textsuperscript{48.} See id. at 107-122.
\textsuperscript{49.} See id. at 113.
Surprising the local establishment, Crawford accepted the challenge and arrived at the duel with no preparation whatsoever. He owned no weapons and carried a pair of borrowed pistols that had both misfired when he tested them the morning of the duel. At the signal, both adversaries fired wildly. Van Alen’s first and second shots missed, but Crawford’s found its mark, killing Van Alen. Instead of disgrace, Crawford was met with renewed professional approval after killing his rival attorney. He rode to Washington as a United States Senator and ultimately became Minister to France and Secretary of the Treasury under Presidents Madison and Monroe.

50. See id. at 115.
51. See id.
52. Seitz, supra note 23, at 115.
53. See id. Crawford’s renewed standing in the Georgia bar after killing Van Alen was not to go unanswered. The fire-eating General John Clark, a famous fighter in the Revolution and the Indian Wars, soon challenged Crawford to a duel over remarks made during Judge Tait’s 1804 campaign for the Georgia Supreme Court. Id. Clark was an expert with arms, and Crawford took a great chance in accepting Clark’s challenge. See id. at 116. Moments before the Clark/Crawford duel began, Governor John Milledge appeared on the scene and urged both sides to desist. Id. A “Court of Honor” composed of five “eminent gentlemen” quickly found that the two men had been led to a dispute over trivial matters and acquitted both men of any imputations of cowardice for not dueling. See id. at 117. The two shook hands without firing a round. Id.

However, when Crawford’s friend Judge Charles Tait challenged another Georgia judge (and friend of Clark), John M. Dooly, to yet another duel, the heat was back on between the factions. See id. at 118. Both Clark and Crawford reappeared to face each other, this time as “seconds” for the duellers, whose duties consisted of watching for fair compliance with the code of dueling by the parties. Id. When Dooly admitted he did not want to fight, Crawford admonished that his cowardice would fill a column in the newspapers that followed. Id. Judge Dooly, responded that he would rather fill two newspapers than one coffin. Id. Laughter took the place of bloodshed, but the rivalry between Crawford and Clark soured further. Two years after the Court of Honor intervened between Crawford and Clark, their duel was in session anew. Id. The two met in Georgia’s Indian Country to settle their differences at high noon on December 16th, 1806. Id. at 120. While Crawford’s bullet missed its mark entirely, the noted marksman Clark struck Crawford in the wrist, shattering it. Id. The injury would trouble Crawford throughout his later career.
III. VIOLENCE BY JUDGES

Just as modern judges reflect the strongest attributes of the modern bar (generally, superior intellect, outstanding academic credentials, and commanding disposition), the judges of the nineteenth century were the embodiment of the most visible traits of the legal profession they oversaw. Violence and intemperance predominated among them. One judge elected to a Florida bench in the 1880s had led a lynch mob assault on a courthouse.54 The famous Texas jurist known as Judge Roy Bean began his adult life as a drifting brawler, a two-time killer and a prison escapee.55 A failed lynching so injured Bean’s neck that he was forever unable to turn his head while sitting on the bench.56 California’s fiery Chief Justice David S. Terry engaged in violent brawls while presiding over the State Supreme Court and was once imprisoned for stabbing a San Francisco man during an argument.57 Only the man’s recovery spared Justice Terry from trial and probable execution for murder.58

One judge on the Court of Common Pleas in Missouri, known by the unlikely name of John Smith T, was a killer of some fourteen men, “mainly in duels.”59 A former military officer, Smith T was a crack shot with both pistol and rifle and once killed the sheriff of Washington County, Missouri, in a duel with a single shot to the brain.60

The colorful life of Stephen J. Field, one of the longest-serving United States Supreme Court justices and the architect of much of American constitutional law in the late nineteenth century, is largely forgotten today. But Field’s past would have most likely barred him from entry to the bench, if not the bar, by modern standards.

54. See Rhode, supra note 8, at 498 n.23 (referring to a lawyer disbarred from federal practice in Ex parte Wall, 107 U.S. 265 (1883)).
56. See id.
58. See id.
59. STEWARD, supra note 34, at 27, 175.
60. See id. at 49-50.
Stephen J. Field was reared in Massachusetts but spent most of his early adulthood amongst the gold-rush era bustle of the California frontier, where he fought his way to the top of his profession with cutthroat determinism. In 1850, Field was jailed and disbarred by a local judge for showing disrespect in the courtroom. Afterward, Field wore a pistol wherever he went in anticipation of a chance confrontation with the judge. Field shadowed him in public streets and saloons, and sent a provocative message that he was prepared to kill the judge if he “came at [Field] in a threatening manner.” Shortly after readmission to the bar, Field was again disbarred for similar disrespect in the courtroom of the same judge.

Elected to the California Supreme Court in 1857, Field embarked on a forty year career as one of the nation’s premier jurists. After Chief Justice David Terry stepped down from his seat to kill United States Senator David Broderick in a duel, Field slid into the California Chief Judge’s position. In 1863, Field was nominated to the United States Supreme Court by Abraham Lincoln.

As the Supreme Court’s representative from the west, Field’s duties required him to journey to California once a year to perform supervisory duties over the region’s federal courts. By chance, Field happened to preside as a circuit justice over a diversity case in 1888 involving Justice David Terry and his wife. Field ruled against the Terrys in the celebrated case, costing them a small fortune and prompting former Chief Justice Terry to erupt in the courtroom with a knife. Terry was jailed and disbarred for contempt.

Due to the serious enmity between Terry and Field following the 1888 hearing, a contingent of United States Marshals flanked Field wherever he

61. Field’s own recollections of his early career were collected in a best-selling autobiography in 1893. See generally Stephen J. Field, Personal Reminiscences of Early Days in California (1893).
62. See Swisher & Field, supra note 57, at 38-39 (1963). Field’s offense consisted of insisting to stand and speak in court after a California district judge ordered him to be silent, and then calling the judge a “d---d old jackass.” Id.
63. See id. at 40-41.
64. Id. at 40.
65. See id. at 42-43.
66. See id. at 73-75.
68. See In re Neagle, 135 U.S. 1, 55-56 (1889).
69. Ex parte Terry, 128 U.S. 289, 297 (1888) (involving Terry’s prosecution for contempt of court).
70. See Swisher & Field, supra note 57, at 333-34.
71. See id. at 335-37.
presided during his California tour of 1889.\textsuperscript{72} One marshal named David Neagle acted as Field’s personal bodyguard.\textsuperscript{73} Whether by fate or by deliberation, Terry boarded a north-bound train carrying Field and Neagle on August 14, 1889.\textsuperscript{74} During a breakfast stop, the two aging adversaries met at a railroad station diner in Lathrop, California. Judge Terry walked up to Justice Field and punched him twice in the face, knocking Field off his seat in front of a crowd of railway passengers.\textsuperscript{75} Neagle, at Field’s side, drew a gun and killed an unarmed Judge Terry with two shots.\textsuperscript{76} 

Field and Neagle departed the scene before a lynch mob could gather.\textsuperscript{77} Arrest warrants, based on the complaint of Terry’s wife, were issued by a justice of the peace the next day.\textsuperscript{78} Stephen J. Field, a sitting member of the United States Supreme Court, was arrested the following afternoon inside the federal court building in San Francisco.\textsuperscript{79} It was his third arrest, and this time the charge was murder of a former chief justice of the California Supreme Court. An immediate writ of habeas corpus was issued by the federal circuit court.\textsuperscript{80} Neagle, the bodyguard, was in worse shoes. But a sizeable state/federal confrontation ensued, punctuated by the federal courts’ issuance of a writ in Neagle’s favor to protect him from a murder conviction (and probably an execution) in California state courts.\textsuperscript{81} This overreaching decision is immortalized in the case of \textit{In re Neagle},\textsuperscript{82} which still protects federal agents from paying for their crimes in state courts to this day.\textsuperscript{83}

\begin{itemize}
\item \textsuperscript{72} See \textit{Neagle}, 135 U.S. at 48-51 (reprinting correspondence regarding the extra security measures provided to Justice Field during 1889).
\item \textsuperscript{73} See \textit{id}. at 4-5.
\item \textsuperscript{74} See \textit{In re Neagle} at 44.
\item \textsuperscript{75} See \textit{Swisher & Field}, \textit{supra} note 57, at 348.
\item \textsuperscript{76} See \textit{id}.
\item \textsuperscript{77} See \textit{id}. at 349-350.
\item \textsuperscript{78} See \textit{id}. at 351.
\item \textsuperscript{79} See \textit{id}. at 352.
\item \textsuperscript{80} See \textit{id}.
\item \textsuperscript{81} See \textit{id}. at 355.
\item \textsuperscript{82} 135 U.S. 1 (1889).
\item \textsuperscript{83} See \textit{Idaho v. Horiuchi}, 215 F.3d 986 (9th Cir. 2000) (extending \textit{Neagle} immunity to federal sniper who killed Randy Weaver’s wife during 1992 Ruby Ridge standoff).
\end{itemize}
IV. ANDREW JACKSON

The adventurous life of Justice Stephen J. Field might seem unimaginable to modern lawyers, but it scarcely compares to an even more vivid nineteenth century example of the bar’s moral turbulence. Andrew Jackson, America’s seventh President, exemplified the traits of good lawyering most respected by the bar of the nineteenth century: bravery, brashness, and the ability to unleash violence upon the disrespectful.\(^8\) Jackson volunteered in the Revolution at age thirteen and became a trial lawyer in North Carolina by age twenty. He was also licensed in Tennessee and, at one time, sat as a justice on the Tennessee Superior Court.\(^8\)

While born and reared in poverty, Jackson was busy and prosperous as an attorney.\(^8\) His successes as a lawyer and judge, however, were equaled by his record of violence, which included (in addition to his military violence, which was considerable) at least 103 duels, fights, and altercations.\(^8\) His most celebrated (and perhaps most shameful) pistol duel was with another prominent Tennessee attorney, Charles Dickinson. The duel took place in 1806 on Kentucky soil to avoid the Tennessee anti-dueling statute.

Dickinson was a “snap-shooter,” meaning he took no aim but fired by instinct with great accuracy.\(^8\) Jackson was also a good shot, but he required aim.\(^8\) Knowing this, the battle-hardened Jackson stood firm at the signal and twisted his thin frame inside his large, loose garments.\(^8\) Dickinson’s lone shot pierced Jackson through the side, barely missing Jackson’s heart.\(^8\) Jackson then took slow and steady aim at the helpless Dickinson (who tried to retreat backwards but was ordered to the mark by

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84. Jackson’s lust for bloodshed and vengeance was of such legend that one survivor of a scrape with Jackson predicted his own death would surely follow. “My life is in danger,” wrote Thomas H. Benton, “[n]othing but a decisive duel can save me, or even give me a chance for my own existence . . . . I shall never be forgiven.” \textit{Seitz, supra} note 23, at 165 (quoting from Benton’s writings).
86. \textit{See} \textit{Seitz, supra} note 23, at 125.
87. \textit{See} \textit{Seitz, supra} note 23, at 123.
88. \textit{See} \textit{Seitz, supra} note 23, at 152.
89. \textit{Id.}
90. \textit{Id.} at 154.
91. \textit{Id.} at 155.
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Jackson's pistol first misfired, but he was allowed to recock. His second pull of the trigger sent a lead ball into the breast of Dickinson, who died several hours later. Jackson concealed his own injury from Dickinson's associates to spite Dickinson in his death.

Jackson's many dueling wounds tormented him throughout his entire life. A recent study in the Journal of the American Medical Association suggests President Jackson suffered long-term effects of lead poisoning from the balls embedded in his body.

V. JOHN WESLEY HARDIN

Transcending even the example set by Andrew Jackson was that of the infamous wild west gunslinger John Wesley Hardin. Hardin, known affectionately as the "Dark Angel of Texas," murdered some thirty to forty men in a criminal career that dated to his adolescence. A fugitive at age fifteen, Hardin roamed the cowtowns of east Texas engaging in murder, mayhem, horse theft and cattle rustling. In a two-week period in 1871, Hardin escaped from custody twice by killing four Texas officials. By the time of his capture at age twenty-four, Hardin had gunned down a dozen Texas lawmen and probably at least one judge.

In 1874 and 1875, Hardin was the subject of the greatest manhunt in Texas history. The State of Texas laid siege to Hardin's entire family, lynching his brother and cousins from the limb of a tree, and offering four thousand dollars for Hardin's death or capture. Hardin was finally arrested under the name John Swain on a Florida passenger train in 1877. Sentenced to twenty-five years in the Texas State Prison at Huntsville, Hardin unsuccessfully plotted or attempted escape three times, once

92. Id. at 154.
93. Id. at 155-56.
94. See id. at 155 (quoting Jackson as saying he did not want Dickinson to have the gratification even of knowing that he had touched him).
97. See id. at 32-33.
98. See id. at 21 (attributing the death of Judge Moore in 1869 to Hardin).
99. Id. at 142.
100. See id. at 146-61.
101. See id. at 168-69.
intending to “resist all opposition” by means of two smuggled six-shooters.102

While Hardin served his 1878 sentence, his attorneys scrambled to quell attempts to prosecute him for other crimes. Hardin had barely avoided the hangman’s noose because of a plausible self-defense argument in the murder case for which he was sentenced. In his thirteenth year of confinement, Hardin was formally charged with a murder committed eighteen years earlier.103 He pled guilty to manslaughter and was sentenced to an additional two years.104

Despite Hardin’s less-than-model conduct as a prisoner, his recent conviction, and the existence of other pending indictments against him, Hardin was pardoned by Texas governor James Hogg in 1894.105 He was released at the age of forty, after serving slightly more than fifteen years in prison.106 Barely five months later, a committee of attorneys examined and found Hardin qualified to practice law in the state of Texas.107 Several indictments remained pending against him, but none were ever prosecuted.108

Hardin’s practice as an attorney consisted of representing defendants in two murder cases and “the usual civil entanglements” known to the locality.109 One case led to extensive hearings in El Paso and required Hardin to pack up and move his practice to the dusty west Texas border city. The El Paso Times announced Hardin’s arrival by describing him as “John Wesley Hardin, Esq., a leading member of the Pecos City bar”110 and a firm man who “never yields except to reason and the law.”111

104. See id. at 10.
105. HARDIN, supra note 102, at 136 (reprinting text of original pardon).
106. METZ, supra note 97, at 208.
107. See id. at 211.
108. See id. at 204 (speaking of “indictments scattered around Texas”).
109. Id. at 211.
110. See id. at 232.
111. See id. at 233.
VI. PROFESSIONAL "CIVILITY" IN THE NINETEENTH CENTURY

While noted legal scholars of our day decry the lack of civility among members of the bar, and even reminisce about a bygone era when such civility allegedly reigned, a less wistful purview of the historical record suggests that "civility" was equally rare (if not more so) among the nineteenth century bar. The practice of law in the nineteenth century, especially in frontier jurisdictions, was dangerous work, and attorneys contributed to the danger. One distinguished Louisiana attorney left the Missouri bar, citing the practice of dueling and the need to be armed at all times as two of his principal reasons. Judges and lawyers in western regions at times even encouraged disappointed litigants to seek redress through violence outside the courtroom. Thus wild brawls and bloody feuds were played out in the countryside wherever and whenever frontier courts were in session, becoming part of the "unofficial court docket."

Even the halls of legislatures were no havens from the gunplay and violence of lawyers. United States Senator Henry Foote, an attorney from Mississippi, once drew a pistol on fellow attorney Senator Thomas Benton in the very chambers of the national Senate. The number of beatings, canings, and stabbings in and near the halls of Congress by members of that body far surpasses the record of pistol duels already mentioned.

The most famous pummeling of this sort took place in the chambers of the United States Senate in 1856 when South Carolina Senator Preston Brooks (an attorney) mercilessly beat Senator Charles Sumner (an attorney and former Harvard Law School lecturer) with a cane. The beating was so severe that Brooks' cane broke across Sumner's head after thirty strikes and Sumner was left an invalid for several years. Governor (and future United States Senator) James Jackson, a gifted attorney with a thriving practice in Georgia, engaged in a rough-and-tumble fight on the steps of the Georgia State Capitol in 1796, which began with pistols and ended with

113. See Steward, supra note 34, at 89.
114. Id. at 137.
115. See Stevens, supra note 40, at 184. Foote practiced law throughout the South and was appointed superintendent of the national mint at New Orleans by President Rutherford B. Hayes after the Civil War. See Biographical Directory, supra note 24, at 1013.
116. See Stevens, supra note 40, at 104-05.
biting, stabbing, and gouging.\textsuperscript{117} A month later, Jackson and his opponent, apparently also an attorney, engaged in another brawl outside the federal district court in Atlanta.\textsuperscript{118}

CONCLUSION

Although the lives of such men as Hardin, Jackson, and Bean generated an immense historical literature, the record seems bare of any attempts at barring or disbarring such individuals from the practice of law for their activities outside the courtroom. Denial of admission and disbarment were generally reserved for courtroom-related conduct or for serious crimes committed in the course of practicing law.\textsuperscript{119}

Although general rules of professional conduct have perhaps changed little in 150 years, the screening of litigators to discern their fundamental character is a product of the nativism of the twentieth century. "Much of the initial impetus for more stringent character scrutiny," according to Yale law professor Deborah Rhode, "arose in response to an influx of Eastern European immigrants, which threatened the profession's public standing."\textsuperscript{120} By the 1920s, states began to create "moral fitness

\begin{itemize}
  \item \textsuperscript{117} See \textit{William O. Foster Sr., James Jackson: Duelist and Militant Statesman} 127-28 (1960). Jackson was a hero of the Revolution and a leading Jeffersonian in Congress during the Adams and Jefferson administrations. During his rise to political prominence, he engaged in a number of duels and killed one man in an alleged duel of which he was the only surviving witness. \textit{See id.} at 6.
  \item \textsuperscript{118} See \textit{id.} at 128. The two eventually settled their differences in a duel in 1800, resulting in a near-fatal injury to Governor Jackson. \textit{See id.} at 129-30.
  \item \textsuperscript{119} Cf. \textit{Ex parte Wall}, 107 U.S. 265, 272-74 (1883). "[W]here an attorney has been fraudulently admitted, or convicted (after admission) of felony, or other offense which renders him unfit to be continued an attorney, . . . the court will order him to be struck off the roll." \textit{Id.} at 273 (quoting English authority). In order to disbar an attorney on account of non-felonious criminal conduct, the courts had to establish that the conduct related to court activities. Thus, the Supreme Court stressed the vicinity to the courthouse steps of a Florida lawyer's crime when upholding his disbarment in 1883. \textit{See id.} at 274 (saying the attorney's conduct was perpetrated at the courthouse door "in the virtual presence of the court!"). The same nineteenth century perception of disbarment can be seen in the case of \textit{Ex parte Bradley}, 74 U.S. (7 Wall.) 364 (1868), involving the disbarment of an attorney who defended John Suratt, an accused murderer of Abraham Lincoln. While the Suratt trial was pending, the defense attorney assaulted the presiding judge as the judge descended from the bench. The U.S. Supreme Court held that although the judge was justified in immediately disbaring the attorney from practice before his own court, the judge could not summarily disbar the attorney from practicing before other courts in the District of Columbia. \textit{Id.} at 374-375. The attorney later sued the judge (unsuccesfully) over the illegal disbarment. \textit{See Bradley v. Fisher}, 80 U.S. (13 Wall.) 335 (1871).
  \item \textsuperscript{120} Rhode, \textit{supra} note 8, at 499.
\end{itemize}
committees,” inevitably composed of persons with spotless backgrounds. By the middle of the twentieth century, moral character investigations grew to encompass such matters as divorce, cohabitation, and even violation of fishing license statutes. While empirical research establishes no correlation between “problem” applications and later disciplinary proceedings, the modern character and fitness process is viewed as an important component in the maintenance of the legal profession’s public standing.

121. *See id.* at 577. “Although current projections indicate that almost half of all marriages will end in divorce, some examiners nonetheless find the experience indicative of character difficulties.” *Id.* at 578.

122. *Id.* at 578-79 (stating that some committee members regard “living in sin” as an unacceptable lifestyle). Among the questions asked at some hearings are the number of bedrooms a couple has, the frequency with which they have sexual relations, and their sexual relationships with other individuals. *See id.* at 579.

123. *See id.* at 538 (citing interview with a member of Michigan’s Board of Bar Examiners).
