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Gambling and the Law in the Nineteenth Century South: Evidence from Nacogdoches County, Texas, 1838-1839

BY JOSHUA C. TATE *

In 1837, the legislature of the newly formed Republic of Texas passed an act to criminalize various forms of gambling, including “faro, roulette, monte, rouge et noir, and all other games of chance.”¹ Judging by certain records surviving from Nacogdoches County, which have been preserved in the Beinecke Library of Yale University and are published below for the first time, local implementation of the act was swift.² Several grand jury indictments were returned against various individuals for unlawfully playing or dealing illegal banking games, especially faro and monte.³ One defendant, Baptiste Chirino, was acquitted of the charges brought against him,⁴ but many others were not. At least nine arrest warrants were issued and signed by Hayden Arnold, the provisional district clerk.⁵ The efforts of the deputy sheriff to locate the indicted gamblers, however, do not seem to have been very successful: only George Bondies and David M. Shropshire were found within the county and taken into custody for trial.⁶

The legal documents relating to George Bondies differ in several respects from the other Nacogdoches records. First, Bondies was not charged alone but in conjunction with another individual named William Dankworth.⁷ Second, Bondies and

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I would like to thank Robert Gordon, Lisa Hasday, Joseph McKnight, Wesley Oliver, Lawrence Solum, and James Whitman for their comments. The introduction to these documents is adapted from my article *Gambling, Commodity Speculation, and the “Victorian Compromise,”* 19 *YALE J.L. & HUMAN.* 97 (2007), and is reprinted here by permission.

Dankworth were indicted on two separate charges, one "for permitting Gambling and Faro at their house" and one "for keeping a Billiard Table without licence."⁸ Finally, and most importantly, Bondies had a lawyer, who filed a motion in arrest of judgment regarding the latter charge.⁹ Bondies's defense attorney, a certain Mayfield, argued that the keeping of a billiard table without a license was "no offence at law," and the indictment "does not charge the defendants with any offense."¹⁰ There is no record of how the judge ruled on Mayfield's motion.

In 1851, after Texas had joined the United States, the Texas Supreme Court was asked in *Crow v. State*¹¹ to rule on a question similar to that raised by George Bondies's attorney: whether the licensed games of ten pins and billiards fell within a general statutory prohibition of gambling devices.¹² The Court, speaking through Judge Lipscomb, decided in the negative:

It is not a reasonable presumption that games so well known for centuries, without having undergone a change of name, should [sic] have been intended to be included in the vague expression of "gambling device." This view is strengthened by [the fact] . . . that a license tax is imposed on billiard tables and tenpin alleys, thereby making them a source of revenue, when such tax is not imposed on any of the games enumerated and specially prohibited.

. . . According to Webster the word 'device,' in one sense, means artificial contrivance, stratagem.

"He disappointeth the devices of the crafty." Job, v.

"They imagined a mischievous device." Psalms, XXI.

We are brought to the conclusion, from what we conceive to be a fair construction of the language used, and taking in connection also with it the fact that billiard tables and tenpin alleys are licensed on the payment of tax, when no others are so taxed and licensed, that an indictment cannot be sustained for betting at a game either of those tables.¹³

On its face, the court's decision in *Crow* is based on a narrow reading of the statute supported by the fact that billiard tables and tenpin alleys, unlike faro and monte banks, were taxed by the state.¹⁴ The quotations from the Bible, however, suggest a more subtle reason for Lipscomb's decision.¹⁵ Billiards could be played for amusement, without any gambling involved. By contrast, faro and monte were nothing more than "devices of the crafty," through which fools were led to part with their money.¹⁶ Such notorious swindles appeared to Lipscomb as traps laid by

the devil for the weak.

Legislative attitudes toward gambling in the United States varied widely, and a comprehensive treatment of all jurisdictions would fill many pages.¹⁷ Many states authorized state-run lotteries in the eighteenth and early nineteenth centuries, which served to finance a number of public projects and universities.¹⁸ Such lotteries were often tainted by fraud, resulting in "sweeping anti-gambling legislation,"¹⁹ but lotteries continued in some Southern states until the 1850s and 1860s.²⁰ An examination of the nineteenth century case law regarding gambling, therefore, must be carefully focused in order to yield any useful conclusions. This Article focuses on three states: Texas, Alabama, and Virginia.

Judges in Southern states seem to have been more concerned than their Northern counterparts with striking a balance between punishing public gaming on the one hand and upholding private gaming on the other.²¹ Gambling was a favorite pastime of the plantation-holding elite of Southern society.²² Southern gambling statutes, therefore, tended to be aimed at "casino games enjoyed by the masses in taverns and public places," not the "civilized poker games of gentlemen planters."²³ Southern judges tended to respect this tradition of elite private gambling and applied legislative prohibitions primarily to the forms of gambling preferred by the masses. The Southern legal system presented a stern position against gambling on the surface but preserved the traditional privileges of the leisured elite.

From the mid-eighteenth century forward, Virginia's legislature took the lead among the Southern states by passing an act penalizing gambling and betting in public places.²⁴ This statute apparently sought to counter the threat that popular gambling posed to the social order, without violating the Southern tradition of elite gambling.²⁵ Several years later, however, the legislature found it necessary to pass an additional statute banning the use of gambling tables and faro banks, whether in public or in private.²⁶ The history of gambling legislation in Alabama and Texas followed a different path but eventually arrived at the same result. In both states, laws were initially passed to prohibit the playing of specific games such as faro.²⁷ Persons who knowingly permitted such games to be

played in their houses were fined.²⁸ These initial laws against particular games were supplemented, in both Texas and Alabama, by later prohibitions on gambling with cards or dice in public. The language of the Alabama statute is representative:

[I]f any person shall hereafter play at any tavern, inn, store-house for retailing spirituous liquors, or any other public house or in any street or highway, or in any other public place, or in any out-house where people resort, at any game or games with cards or dice, such person or persons so playing shall on conviction thereof by indictment, be fined a sum not less than twenty nor exceeding fifty dollars.²⁹

Although these statutes were amended several times over the course of the nineteenth century, the amendments usually preserved the distinction between particular types of gambling (prohibited everywhere) and all games with cards (prohibited only in public places).³⁰

Provided that defendants could afford a lawyer like Mayfield, the defender of George Bondies's civil rights in the Nacogdoches records, those prosecuted under such gambling statutes often challenged the indictments under which they were charged. Many such challenges were purely technical, as when an Alabama defendant successfully challenged an indictment for gambling in a "public *place*" when the evidence showed that he had in fact played at a "public *house*," even though both were illegal under the statute.³¹ More relevant for present purposes are cases where defendants claimed that the site of their gambling activities was not a "public place" or "out-house where people resort" as specified in the statute. Over a hundred such cases were reported by appellate courts in Southern states during the nineteenth century, and countless more must have been decided by lower courts whose records, unlike those of the Nacogdoches District Court, do not survive.

In deciding whether particular locations were "public" within the meaning of the gambling statutes, Southern courts tended to weigh two factors: (1) the extent to which the gambling took place outside of an ordinary dwelling house and (2) the extent to which the location involved was frequented by gamblers on multiple occasions. Both factors are illustrated in a series of three Texas Supreme Court cases, all captioned *Wheelock v. State*.³² William H. Wheelock, the defendant, seems to have

been an itinerant gambler,³³ and his arrests for gambling in various locations provided the court with an opportunity to define the precise circumstances under which it would consider gambling to be private and, therefore, exempt from the statute.

In *Wheelock I*, the court was careful to emphasize that the word "outhouse" in the statutory phrase "outhouse where people resort" meant "any house standing out and apart from houses occupied and used as dwellings or business houses."³⁴ The gambling in *Wheelock I* and *Wheelock II* had taken place in an "unoccupied dwelling house"³⁵ and a vacant house used for "a sleeping apartment only," respectively.³⁶ These locations were assumed to constitute "outhouses" under the gambling statute, and the issue therefore turned on whether they were resorted to frequently.³⁷ Evidence had been introduced in *Wheelock II* to suggest that this was the case,³⁸ and so many observers had been found in the abandoned house in *Wheelock I* that the court deemed it reasonable for the jury to have concluded that the house was frequently used for such purposes.³⁹

In *Wheelock III*, however, although the location was an abandoned house similar to that in *Wheelock I*, the court found that it failed the frequency-of-use test, because only those who were actually gambling were found there, and there was no evidence that the location had been used before.⁴⁰

In justifying its decision in *Wheelock III*, the Texas Supreme Court took the opportunity to express its views on the purpose of gambling legislation.⁴¹ "The legislature would, perhaps, more effectually have suppressed the evil they aimed to suppress, if they had prohibited all gaming, in whatever place But they appear to have intended the prevention of *the evil example* rather than the suppression of the evil itself."⁴² The idea that legislation is meant to suppress "the evil example," not gambling itself, is a major theme throughout the nineteenth century Southern cases on the subject of gambling. When gamblers went into the woods,⁴³ or to a secluded hollow,⁴⁴ for a single act of gambling, the law had no quarrel with their pursuit — provided, of course, that they did not make a habit of it or invite the attention of others.⁴⁵ "Public" gambling was defined in terms of the extent to which it set a bad example for others. Thus, gambling could take place with impunity in an undoubtedly public building such as a jail-house, so long as people did not

“resort there for ease or amusement.”⁴⁶

Some of the most interesting cases applying the public/private gambling distinction are those that involve gambling in places of work or rooms adjoining business offices. One can detect a certain class bias in these cases. After business hours, a physician’s office was deemed not to be a public place within the Alabama gambling statute,⁴⁷ even if it adjoined a merchant’s counting room.⁴⁸ Likewise, the offices of attorneys or court clerks could be used for gambling after hours, provided that appropriate measures were taken to prevent outsiders from entering.⁴⁹ Less elite places of business, however, such as those of barbers,⁵⁰ shoemakers,⁵¹ toll-bridge keepers,⁵² and dealers in liquor,⁵³ along with dry-goods “store-houses,”⁵⁴ were considered public and, therefore, fair targets for the gambling prohibition. Southern judges, it seems, were more likely to criminalize gambling venues that neither themselves nor their professional friends would ever frequent.

While drawing a line between public and private gaming, however, the judges were careful to make an exception for the public sport of horse racing, enjoyed by the Southern gentry.⁵⁵ Confronted, in the 1851 case of *Commonwealth v. Shelton*,⁵⁶ with the conviction of several defendants for betting on a horse race, the General Court of Virginia took note of the fact that, in the century since the statute banning gambling was enacted, it had never been enforced against horse racing.⁵⁷ The language of the court is almost sentimental:

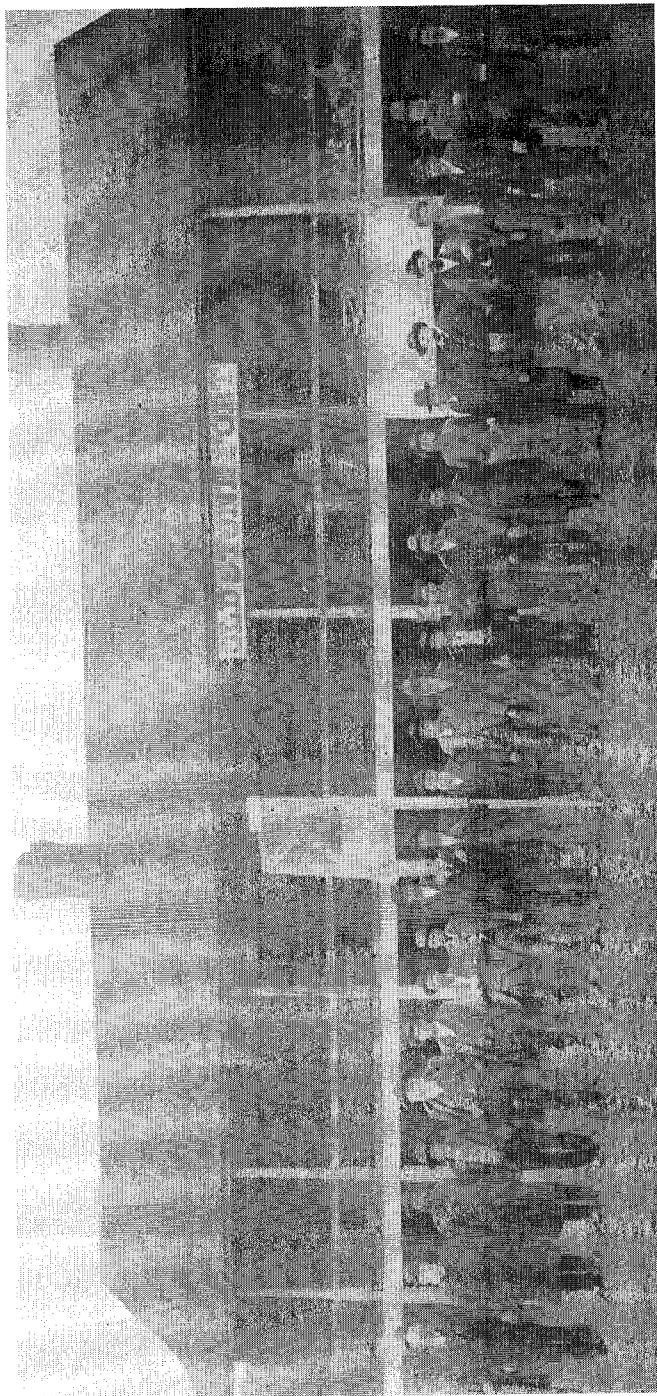
No sport or pastime has, during all that time, been more favourably and extensively indulged by all ranks and professions of society in Virginia than horse racing. It seems to have been universally regarded as a licensed amusement to all classes; which none in former times more encouraged than those holding official stations, the obligations of which would have constrained them to have enforced the denunciations of the law against the amusements which they were patronising and enjoying, if the same had been illegal.⁵⁸

Without more, the argument that betting on horse racing had never been punished under the century-old statute would have been enough to overturn the convictions. By explicitly referring to the participation of Virginia’s elite citizens in the sport of horse racing, however, the judges who decided the case of *Shelton* left no doubt that their personal biases influenced their holding

that horse racing was excluded from the gambling statutes. Barring an unmistakable legislative act to the contrary, horse racing was too firmly embedded in the social framework of the South to be outlawed by judicial fiat. Similar concerns presumably motivated a Texas court that came to the same conclusion.⁵⁹ Thus, even as the Southern courts sought to draw a careful line between illegal public gambling and legal private gambling, their love for an indelible Southern tradition led them to tolerate gambling on horse races, a quintessentially public activity.

One could argue that *Shelton* and similar cases might have been decided the same way even if Southern judges had been less enamored of the practice of horse racing — deference to the presumed intention of the legislature need not imply agreement with its values. To be sure, some Southern judges were hostile to gambling in all its forms, whether elite or otherwise. In *Wheelock III*, the Texas Supreme Court expressed a wish that the legislature had banned gambling altogether.⁶⁰ On balance, however, the Southern courts were concerned not so much with private morality as with the maintenance of public order, and they construed the gambling statutes accordingly.

The documents below give a snapshot of this process in action at the ground level. They also shed light on criminal procedure in the trial courts of the early Texas Republic, how legislation was enforced there, and give us a glimpse of how a Southern community dealt with its problems in the early-to-mid-nineteenth century. It is to be hoped that their publication will encourage further research on criminal justice and social mores on the Southern frontier.



The Old Stone Fort is the modern name of a historic building, called La Casa Piedra by the Spanish, that was the first mercantile house used as a frequent seat of civil government in early Nacogdoches. In 1779 Antonio Gil Y Barvo laid out the town near the intersection of the Old San Antonio Road and La Calle del Norte and built a stone house to use in the trading business. It was sold several times through the years, and by 1837 the Stone House became a courthouse for the community. In September 1837 the republic's first official court in East Texas met there with Judge Robert M. Williamson, presiding. Before the house was torn down in 1902, it was the oldest standing stone structure in the State, and its porch one of the earliest examples of the gallery style porch in Texas. The original stones were saved and used to create a reconstruction which resides on the campus of Stephen F. Austin State University. *Courtesy of East Texas Research Center, Steen Library, Stephen F. Austin State University.*

Legal documents Relating to Gambling in Nacogdoches
County, Texas: District Court, Nacogdoches County, 1838-
1839, Held in the Beinecke Library, Yale University

DOCUMENT NO. 1

(Verso)

No. 3 ("12" crossed out "3" written in its place)

*The Republic vs. Juan Ariola**Indictment**Monte**A True Bill**James H. Starr**Foreman**Filed March 7th**1838**H. Arnold**Pro tem CDC**recorded**J.W. Lowe**D.M. Shropshire**Miguel Cortinas**Nathan Wade**Issued Nov. 8th**H. Arnold**Pro Tem CDC*

(Recto)

*The Republic of Texas, County of Nacogdoches**District Court, March Term A.D. 1838*

The Grand Jurors, ("empaneled, sworn and charged, to enquire" added later) for the Republic and County aforesaid upon oath present that Juan Ariola late of the Town of Nacogdoches and County aforesaid on the second day of March ("A.D." crossed off- "in the year of our Lord" added) one thousand eight hundred and thirty eight and at sundry other times at and in the county aforesaid with force and arms did wickedly, maliciously and unlawfully deal keep and play a game called monte and did then and there keep a bank for the purpose of inviting and receiving betters at which divers persons

then and there did play and bet money, banknotes, checks and other articles representing money whereby large sums of money were won by the said bank kept and played by the said Juan Ariola as aforesaid contrary to the form of the statute in such cases made and provided and against the peace and dignity of the Republic of Texas.

*N.B. Thompson
Dist. Atty. Pro tem*

DOCUMENT NO. 2

(Verso)

No. 7

*Republic of Texas**vs.**John McDougal**Indictment**Faro**A True Bill**James H. Starr**Foreman**recorded**Filed in office**March 7th 1838**H. Arnold**Pro tem CDC**Witnesses**K.H. Muse**J.W. Leowe**Thos. T. McIves**Adolphus Sterne**Issued on (no date given)*

(Recto)

*The Republic of Texas**County of Nacogdoches**District Court**March Term A.D. 1838*

The Grand Jurors empaneled, sworn, and charged to enquire for the body of the County of Nacogdoches upon their oaths Present, that John McDougal late of the county of Nacogdoches on the Second day of March in the year of our Lord one thousand eight hundred and thirty-eight with force and arms did then and there and on divers other days and nights before and after that time, wickedly and maliciously deal and play at a certain banking game (added: "of Faro") with cards and with checks, lones, money, notes, and other representations where at, there were large soms of money won and lost, to the evil example of the good citizens and all others contrary to the Statute made and provided, and (crossed out: against) the Said John McDougal did then and there keep a banking game

(added: "called Faro") *to invite betters, and at which divers persons did bet and lose money lones checks and other representatives of money contrary to the peace and dignity of the Republic.* (crossed out: "of Texas")

*N.B. Thompson
Dist. Atty. Pro tem*

DOCUMENT NO. 3

(Verso)

No. 10 ("22" crossed out "10" written in its place)

*Republick of Texas**vs.**David M. Shropshire**Indictment**Faro**A True Bill**James H. Starr**Foreman**Filed March 7th**1838 H. Arnold**Pro tem CDC**recorded**Witnesses**J.W. Leowe**K.H. Muse**Nathan Wade**Thos. T. McIves**Issued March 8th 1838**H. Arnold**Pro tem CDC**Issued Sept.**25th 1838**H. Arnold**Pro tem**All the jury find the defendant guilty**E.J. Delband foreman*

(Recto)

*The Republick of Texas**County of Nacogdoches**District Court**March Term A.D. 1838*

The Grand Jurors for the Republick and County aforesaid upon their oaths present that David M. Shropshire late of the Town of Nacogdoches in the County of Nacogdoches on the second day of March in the year of our Lord one

thousand eight hundred and thirty eight with force and arms at and in the county aforesaid did wickedly maliciously and unlawfully deal and play a game of Faro and did then and there keep a Faro Bank at which divers persons then and there played and bet with money banknotes, checks, notes of hand and divers other articles purporting and representing to be money whereby large sums of money were won by the said Bank kept and played by the same David M. Shropshire as aforesaid contrary to the form of the statute in such cases made and provided and against the peace and dignity of the Republick.

*N.B. Thompson
Dist. Atty. Pro tem*

DOCUMENT NO. 4

(Verso)

*No. 4**Republick of Texas**vs.**Leonard H. Mabbit**Indictment**Faro**A True Bill**James H. Starr**Foreman**recorded**Filed March 7 1838**H. Arnold**Pro tem clerk**Issued Sept. 22nd 1838**H. Arnold Pro Tem CDC**Witnesses**K.H. Muse**J.W. Leowe**A. Sterne**D.M. Shropshire**H. Arnold**Issued March 8th 1838**H. Arnold**Pro tem. CDC*

(Recto)

*The Republic of Texas**County of Nacogdoches**Dist. Court**March Term**A.D. 1838*

The Grand Jurors empanneled sworn and charged to enquire in and for the body of the County of Nacogdoches upon their oaths so present, that one Leonard H. Mabbit late of the County of Nacogdoches at, to wit, in the County of Nacogdoches, on the second day of March in the year of our Lord eighteen hundred and thirty eight with force and armes did wickedly

maliciously and unlawfully keep and play at the banking game of Faro, ("kept" added) for the purpose of inviting persons to bet and at which game of Faro there and then so kept divers persons did gamble bet win and lose divers sums of money lones checks bank notes and other representatives of money to the evil example of all good citizens and against the statute made and provided and against the peace (crossed out: "of the Republic") and dignity of the Republic.

*N.B. Thompson
Dist. Atty. Pro tem*

DOCUMENT NO. 5

(Verso)

No. 11 ("23" crossed out)

*The Republick of Texas**vs.**Ephraim Tally**Indictment**Faro**A True Bill**James H. Starr**Foreman**Filed March 7th**1838**H. Arnold**Pro tem CDC**recorded**Witnesses**K. H. Muse**J. W. Leowe**Thos. T. McIves**Adolphus Sterne**Issued Mch 8th 1838**H. Arnold**Protem CDC**The Republick of Texas**County of Nacogdoches**District Court**March Term A.D. 1838*

The Grand Jurors for the Republick and County aforesaid upon their oaths present that Ephraim Tally late of the Town of Nacogdoches in the county aforesaid on the second day of March in the year of Our Lord one thousand eight hundred and thirty eight and at sundry other times with force and arms at and in the county aforesaid did wickedly maliciously and unlawfully deal and play a game of Faro and aid and assist in dealing and playing a game of Faro and did then and there keep a Faro Bank at which divers persons did then and there play and bet with money, bank notes, checks notes of hand and other articles purporting and representing to be money whereby large sums of money were won by the said Bank kept and played by the said Ephraim Tally as

aforesaid contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the Republick—

*N.B. Thompson
Dist. Atty Pro tem*

DOCUMENT NO. 6

(Verso)

No. 20 ("54" crossed out "20" written in its place)

The Republic

vs.

*Baptiste Chirino**Indictment**Permitting Banks*

(later annotations in pencil—"Monte" "Faro" probably by collector)

*A True Bill**James H. Starr**Foreman**Filed in office March 10th**A.D. 1838**H. Arnold**Pro tem CDC**recorded**Witnesses**Juan Ariola**J.W. Leowe**Juan Mansola**We the jury find the Defendant not Guilty*

(Recto)

*The Republic of Texas**County of Nacogdoches**District Court**March Term A.D. 1838*

The grand jurors for the Republic and County aforesaid upon their oath present that Baptiste Chirino of the County of Nacogdoches on the first day of February in the year (added: "of our Lord") eighteen hundred and thirty eight with force and arms at and in the county aforesaid did unlawfully, knowingly, and willfully permit a certain banking game called Monte to be kept dealt and played for the purpose of inviting and receiving betters and did then and there knowingly and unlawfully permit the betting of Bank notes notes of hard money checks and other articles representing and purporting to be of the value of money in the house of him the said Baptiste Chirino.

And the jurors aforesaid upon their oath aforesaid do further present that

the aforesaid Baptiste Chirino with force and arms on the day and year aforesaid did knowingly and unlawfully permit a certain banking game called Faro to be dealt and played in the house of him the said Chirino and did then and there wilfully knowingly and unlawfully permit said game to be dealt and played as aforesaid for the purpose of inviting and receiving betters thereto and did then and there wickedly knowingly and unlawfully permit the betting of money bank notes notes of hand checks and divers other articles purporting and representing the value of money contrary to the form of the Statute in such cases made and provided and against the peace and dignity of of [sic] the Republic.

*N.B. Thompson
Dist. Atty. Pro tem*

DOCUMENT NO. 7

*(Verso)**No. 10**Writ**Republic**vs.**David M. Shropshire**Issued Sept. 24th 1838**H. Arnold**Protem CDC**recorded 513**Received in office at Nacogdoches**September The 24th 1838**David Rush, Sheriff**Excecuted the within by arresting the body of David M. Shropshire this 27**Day of September 1838**John Hobbit Dept. Shff.**The Republic of Texas**County of Nacogdoches**To the Sheriff of said County or his deputy, Greeting:*

Whereas at the last term of the District Court for said County the Grand Jurors returned a true bill of Indictment against David M. Shropshire for Player at Faro and Keeper of a Faro Bank.

These are therefore to command you to arrest the Body of Said David M. Shropshire and bring him before some Judge or Justice of the peace in order that he may be dealt with according to law herein fail not under the penalties prescribed by law and make due service and return of this writ to our next term of the District Court to be held on the second Monday of October at the Stone house in the Town of Nacogdoches. Test Hayden Arnold Protem Clerk of said court at office September the 24th 1838.

*Hayden Arnold**Protem CDC*

DOCUMENT NO. 8

(Verso)

No. 9

Republic of Texas

vs.

*Francisco Cordoway**Issued Sept. 27th 1838**Hayden Arnold**Pro Tem CDC**recorded*

*Received in office at Nacogdoches 27 September 1838 D. Rush Sheriff
the defendant Francisco Cordoway not to be found in the County by me this first
October 1838 D. Rush shff*

(Recto)

Whereas at the last term of the District Court for said County the Grand Jurors returned a true bill of Indictment against Francisco Cordoway for keeping a Gambling House.

These are therefore to command you to arrest the Body of Said Francisco Cordoway and bring him before some Judge or Justice of the peace in order that he may be dealt with according to law herein fail not under the penalties prescribed by law and make due service and return of this writ to our next term of the District Court to be held on the second Monday of October at the Stone house in the Town of Nacogdoches. Test Hayden Arnold Protem Clerk of said court at office September the 27th 1838.

*Hayden Arnold
Protem CDC*

DOCUMENT NO. 9

(Verso)

No. 3

Republic of Texas

vs.

Juan Ariola

Issued Sept. 27th 1838

Hayden Arnold

Protem CDC

returned Oct. 8th

recorded

Received in office at Nacogdoches 27 September 1838 D. Rush sheriff the defendant Juan Ariola not to be found in this County by the Nacogdoches 5 October 1838

David Rush

shff.

(Recto)

Whereas at the last term of the District Court for said County the Grand Jurors returned a true bill of Indictment against Juan Ariola for dealing and gambling at monte.

These are therefore to command you to arrest the Body of Said Juan Ariola and bring him before some Judge or Justice of the peace in order that he may be dealt with according to law herein fail not under the penalties prescribed by law and make due service and return of this writ to our next term of the District Court to be held on the second Monday of October at the Stone house in the Town of Nacogdoches. Test Hayden Arnold Protem Clerk of said court at office September the 27th 1838.

Hayden Arnold

Protem CDC

DOCUMENT NO. 10

(Verso)

No. 7

*The Republic of Texas**vs.**John McDougal**Issued Sept. 27th 1838**H. Arnold**Protem CDC**recorded*

*Received in office at Nacogdoches 27th Sept. 1838 David Rush sheriff
the defendant John McDougal not to be found in the County by me this the first
day of October 1838 D. Rush Sheriff*

(Recto)

*Whereas at the last term of the District Court for said County the Grand
Jurors returned a true bill of Indictment against John McDougal for keeping &
betting at a Faro Bank.*

*These are therefore to command you to arrest the Body of Said John
McDougal and bring him before some Judge or Justice of the peace in order that
he may be dealt with according to law herein fail not under the penalties
prescribed by law and make due service and return of this writ to our next term
of the District Court to be held on the second Monday of October at the Stone
House in the Town of Nacogdoches. Test Hayden Arnold Protem Clerk of said
court at office September the 27th 1838.*

*Hayden Arnold
Protem CDC*

DOCUMENT NO. 11

(Verso)

No. 30

*Republic of Texas**vs.**William Dankworth**&**George Bondies**Issued Sept. 28th 1838**H. Arnold**Protem CDC**recorded*

*Received in Office Nacogdoches this 28 Day Sept 1838 John Hobbitt Dept. Shff.
Excecuted the within by arresting the Body of George Bondes this 6th October
1838*

*John Hobbitt Dept
Shff*

(Recto)

Whereas at the last term of the District Court for said County the Grand Jurors returned a true bill of Indictment against William Dankworth and George Bondies for permitting Gambling and Faro at their house.

These are therefore to command you to arrest the Body of Said William Dankworth and George Bondies and bring them before some Judge or Justice of the peace in order that they may be dealt with according to law herein fail not under the penalties prescribed by law and make due service and return of this writ to our next term of the District Court to be held on the second Monday of October at the Stone House in the Town of Nacogdoches. Test Hayden Arnold Protem Clerk of said court at office September the 28th 1838.

*Hayden Arnold
Protem CDC*

DOCUMENT NO. 12

(Verso)

*No. 29**Republic of Texas**vs.**William Dankworth**&**George Bondies**Issued Sept. 28th 1838**H. Arnold**Protem CDC**recorded**Received in office Nacogdoches this 28 Sept 1838**John Hobbitt**Dept Shff**Executed the within by arresting the Body of George Bondes this 6 day of October 1838**John Hobbitt Dept**Shff*

(Recto)

Whereas at the last term of the District Court for said County the Grand Jurors returned a true bill of Indictment against Wilhelm [sic] Dankworth and George Bondies for keeping a Billiard Table without licence.

These are therefore to command you to arrest the Body of Said William Dankworth and George Bondies and bring them before some Judge or Justice of the peace in order that they may be dealt with according to law herein fail not under the penalties prescribed by law and make due service and return of this writ to our next term of the District Court to be held on the second Monday of October at the Stone House in the Town of Nacogdoches. Test Hayden Arnold Protem Clerk of said court at office.

*Sept 28th 1838**Hayden Arnold**Protem CDC*

DOCUMENT NO. 13

(Verso)

*No. 11**Alias Capias**for**Ephraim Tally**Issued December 20th 1838**H. Arnold**Protem CDC**recorded**Received in office**Nacogdoches**December 22 the 1838**John Hobbitt Dept Shff**the defendant**Ephraim Tally**not to be found**in the County by**me this the 24th**day of ("March" crossed out)**April 1839**David Rush**Sheriff*

(Recto)

Whereas at the March term 1838 of the District Court for said County the Grand Jurors returned a true bill of Indictment against one Ephraim Tally for Gambling.

These are therefore to command you to arrest the Body of Said Ephraim Tally and bring him before some Judge or Justice of the peace in order that he may be dealt with according to law herein fail not under the penalties prescribed by law and make due service and return of this writ to our next term of the District Court to be held on the second Monday of October at the Stone House in the Town of Nacogdoches. Test Hayden Arnold Protem Clerk of said court at office this 20th December A.D. 1838.

*Hayden Arnold
Protem CDC*

DOCUMENT NO. 14

(Verso)

No. 4

*Alias Capias**for**John McDougal**Issued December 20th, 1838**H. Arnold**Protem CDC**recorded**Received in office**Nacogdoches**December 20th, 1838**John Hobbitt Dept. Shff.**the defendant**John McDougal**not to be found**in this County by**me 4th April 1839**David Rush**Sheriff*

(Recto)

Whereas at the March term 1838 of the District Court for said County the Grand Jurors returned a true bill of Indictment against one John McDougal for Gambling.

These are therefore to command you to arrest the Body of Said John McDougal and bring him before some Judge or Justice of the peace in order that he may be dealt with according to law herein fail not under the penalties prescribed by law and make due service and return of this writ to our next term of the District Court to be held on the second Monday of October at the Stone House in the Town of Nacogdoches. Test Hayden Arnold Protem Clerk of said court at office this 20th December A.D. 1838.

*Hayden Arnold
Protem CDC*

DOCUMENT NO. 15

(Verso)

No. 28

*Alias Capias**for**Jonathan Park**Issued Dec. 22nd 1838**H. Arnold**Protem CDC**recorded**Received in office at Nacogdoches this
the 22 December AD 1838**David Rush**Sheriff**Due search made and the defendant
Jonathan Park not to be found
in Nacogdoches County by me this
the 27 of March 1839**David Rush**Sheriff*

(Recto)

Whereas at the March term 1838 of the District Court for said County the Grand Jurors returned a true bill of Indictment against one Jonathan Park for Gambling.

These are therefore to command you to arrest the Body of Said Jonathan Park and bring him before some Judge or Justice of the peace in order that he may be dealt with according to law herein fail not under the penalties prescribed by law and make due service and return of this writ to our next term of the District Court to be held on the second Monday of October at the Stone House in the Town of Nacogdoches. Test Hayden Arnold Protem Clerk of said court at office this 22nd December A.D. 1838.

*Hayden Arnold
Protem CDC*

DOCUMENT NO. 16

(Verso)

*The Republic**vs.*

("W. Bondies &" crossed out)

*Dankworth and**Bondies**Motion in**arrest of**judgment**Mayfield**for defts**Filed 13 ("M" crossed out) April**A.D. 1839**H. Arnold CDC**recorded*

(Recto)

*The Republic**vs.*

("W. Bondies &" crossed out)

*Wm. Dankworth and**Geo. Bondies**Indict for**Keeping Billiard**Table & C*

The defendant by his counsel moves the Court to ("set aside" crossed out) arrest the judgement in the above entitled Cause for the following reasons to wit:

1st. Because the indictment is formal and insufficient in law.

2nd. Because the indictment charges defendants as owner's & keepers of a billiard table without having licence therefor, which is no offence at law.

3rd. Because the indictment does not charge the defendants with any offence, & for other causes apparent in the record.

*Mayfield
for defts*

ENDNOTES

1. Act of June 25, 1837 (An Act to Suppress Gambling), § 1 (repealed 1840), *reprinted in* OLIVER C. HARTLEY, *A DIGEST OF THE LAWS OF TEXAS* 457, art. 1458 (Thomas, Cowperthwart & Co., 1850).

2. Legal Documents Relating to Gambling in Nacogdoches County, Texas: District Court, Nacogdoches County, Texas, 1838-1839 (on file with Beinecke Library, Yale University) [hereinafter Nacogdoches Documents]. These documents are part of the Beinecke Library's Western Americana collection.

3. See the indictments dated 1838 against Juan Ariola (monte), Baptiste Chirino (faro and monte), Leonard H. Mabbit (faro), John McDougal (faro), David M. Shropshire (faro), and Ephraim Tally (faro), *in* Nacogdoches Documents, *supra* note 2. Faro, a card game played against a house bank, was probably the most popular gambling game in the United States during the nineteenth century, and also arguably the game in which there was the most cheating. CARL SIFAKIS, *ENCYCLOPEDIA OF GAMBLING* 113-14 (Facts on File, Inc., 1990). Monte, also called Spanish Monte, has Hispanic origins and is today played primarily in private clubs in the Southwest. *Id.* at 284-85.

4. The words, "We the jury find the Defendant not Guilty" are written on the obverse of Chirino's indictment (presumably by the clerk or the jury foreman). See Chirino Indictment, *in* Nacogdoches Documents, *supra* note 2. Interestingly, Chirino's is the only indictment to charge the defendant with permitting faro to be played in his home. It has been suggested that Hispanic residents of Texas had a tradition of private, social gambling that predated the Anglo conquest of the region. NATIONAL INST. OF LAW ENFORCEMENT & CRIMINAL JUSTICE, U.S. DEP'T OF JUSTICE, *THE DEVELOPMENT OF THE LAW OF GAMBLING: 1776-1976*, at 380 n.13 (1977) [hereinafter DEVELOPMENT]. One might conjecture that Chirino's acquittal had something to do with the jury's sympathy for this Hispanic tradition of private gambling at home, but not enough legal documents are preserved in the Beinecke collection to corroborate this hypothesis.

5. See the warrants for the arrest of Juan Ariola, Francisco Cordoway, William Dankworth, and George Bondies (two separate warrants, each naming both defendants), John McDougal (two separate warrants), Jonathan Park, David M. Shropshire, and Ephraim Tally, *in* Nacogdoches Documents, *supra* note 2.

6. See the notations made on the warrants for Shropshire and for Bondies and Dankworth, *in* Nacogdoches Documents, *supra* note 2. Shropshire was eventually convicted, as evidenced by a notation on his

bill of indictment signed by the jury foreman. The other warrants all state that a due search was made but the respective defendants were not found in the county. No mention is made of Dankworth's arrest. Perhaps the deputy thought that he had fulfilled his duty under the warrant by arresting Dankworth's partner Bondies.

7. See Bondies & Dankworth Warrants, in *Nacogdoches Documents*, *supra* note 2.

8. *Id.*

9. See Motion in Arrest of Judgment, in *Nacogdoches Documents*, *supra* note 2. The motion does not mention the other charge made against Bondies and Dankworth (permitting gambling and faro at their house).

10. *Id.*

11. 6 Tex. 334 (1851).

12. See *id.* at 335. The statute being construed in *Crow* is Act of March 20, 1848 (An Act Concerning Crimes and Punishment), § 70 (repealed 1856), reprinted in HARTLEY, *supra* note 1, at 457, art. 1477.

13. *Crow*, 6 Tex. at 336.

14. *Id.* at 335-36.

15. *Id.* at 336.

16. *Id.*

17. For a discussion of the history of gambling regulation across the United States, see DEVELOPMENT, *supra* note 4 *passim*. Even this 934-page report barely scratches the surface of the nineteenth-century case law.

18. See, e.g., Ronald J. Rychlack, *Lotteries, Revenues and Social Costs: A Historical Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11, 20-37 (1992). Harvard and Yale, among other universities, were either established or improved by funds raised from state lotteries. *Id.* at 25.

19. *Id.* at 37; see also DEVELOPMENT, *supra* note 4, at 74-88 (describing the rise and fall of state-run lotteries in Northern states).

20. See DEVELOPMENT, *supra* note 4, at 272. The infamous Louisiana State Lottery, called "the Serpent," is a different story altogether. *Id.* at 267-69. Founded at a time when most lotteries were being abolished, the Louisiana Lottery sold tickets throughout the nation by mail until congressional legislation brought about its demise. *Id.* at 282-86.

21. Of the 117 entries under the Century Digest title dealing with the definition of a "public place, house, or resort" in state gambling statutes, 53 are from Alabama and 42 are from Texas. Other states with

entries are Virginia (11), North Carolina (8), New York (1), South Carolina (1), and West Virginia (1). 23 CENTURY EDITION OF THE AMERICAN DIGEST §§ 168-186 (1901). The preponderance of cases from Southern states, particularly Alabama, Texas, and Virginia, is striking.

22. DEVELOPMENT, *supra* note 4, at 243.

23. *Id.* at 247-48.

24. DEVELOPMENT, *supra* note 4, at 239-40 (citing Act of May 6, 1744, c. 5, 5 VA. STAT. 229 (Hening 1819)). The relevant statute is reprinted in A DIGEST OF THE LAWS OF VIRGINIA 276, § 5 (Joseph Tate ed. 1823).

If any person or persons shall, at any time, play in an ordinary, race-field, or any other public place, at any game or games whatsoever, except bowls, backgammon, chess or draughts, or shall bet on the sides or hands of such as do game, every such person . . . shall forfeit and pay twenty dollars

Id. The games excluded from the ban appear to be those favored by Virginia gentlemen.

25. DEVELOPMENT, *supra* note 4, at 242-44.

26. Act of Feb. 17-May 1, 1816, *reprinted in* DIGEST OF THE LAWS OF VIRGINIA 279, § 17 (1823).

27. An Act to Prevent the Evil Practice of Gaming § 1 (Miss. Territorial Leg. 1807), *reprinted in* HARRY TOULMIN, A DIGEST OF THE LAWS OF THE STATE OF ALABAMA 375 (1823) (outlawing ABC, EO, billiards, rowley-powley, rouge et noir, and faro); An Act to Suppress Gambling, § 1, *reprinted in* HARTLEY, *supra* note 1, at 457, art. 1458 (outlawing faro, roulette, monte, rouge et noir, “and all other games of chance”). It is interesting to note the regional variations in the games prohibited: presumably Spanish Monte was not popular in the Mississippi Territory. The Mississippi Territory statute was amended by, inter alia, an 1811 act authorizing counties to license billiard tables, *see* Act of Dec. 17, 1811, § 1 (Miss. Territorial Leg. 1807), *reprinted in* TOULMIN, *supra* at 378, and the various amendments to the gambling statute were consolidated in 1812, *see id.* at 379.

28. Texas Act of 1837, § 3, *reprinted in* HARTLEY, *supra* note 1, at 457, art. 1460 and the Mississippi Territory Act of 1812, § 2, *reprinted in* TOULMIN, *supra* note 27, at 379.

29. Act of Jan. 15, 1828, § 1, 1828 Ala. Acts. 73. The language of the larger Texas statute is quite similar, apart from imposing a larger fine of \$50 to \$500 and a mandatory prison sentence of one day to twelve months. Act of Feb. 5, 1840, § 1, *reprinted in* HARTLEY, *supra* note 1, at 457, art. 1464.

30. Later statutes directed their general prohibitions at gambling tables more than particular games. The Alabama Code of 1852 deals separately with the keeping or exhibition of gaming tables, ALA. CODE §§ 3249-50 (1852), and gaming in public, *id.* §§ 3243-44. The Texas Penal Code of 1856 also prohibits gaming tables, while retaining a list of names of individual games prohibited everywhere, *see* WILLIAMSON S. OLDHAM & GEORGE W. WHITE, A DIGEST OF THE GENERAL STATUTE LAWS OF THE STATE OF TEXAS 507, arts. 412 & 414 (1859), and expands the definition of public places where card-playing is prohibited, *id.* at 506, arts. 409-10.

31. *Windham v. State*, 26 Ala. 69, 70-71 (1855) (emphasis added).

32. *Wheelock v. State*, 15 Tex. 253 (1855) [hereinafter *Wheelock I*]; *Wheelock v. State*, 15 Tex. 257 (1855) [hereinafter *Wheelock II*]; *Wheelock v. State*, 15 Tex. 260 (1855) [hereinafter *Wheelock III*].

33. *Wheelock* was convicted for gambling twice in the eponymous town of *Wheelock*, Robertson County, Texas, once in the summer of 1854, *Wheelock II*, 15 Tex. at 257, and again in September, *Wheelock I*, 15 Tex. at 254. *Wheelock III* is an appeal from Limestone County; the time and place of the incident are not reported. 15 Tex. at 260.

34. *Wheelock I*, 15 Tex. at 255.

35. *Id.* at 253.

36. *Wheelock II*, 15 Tex. at 258.

37. *Id.* at 259; *Wheelock I*, 15 Tex. at 255-56.

38. 15 Tex. at 257.

39. 15 Tex. at 255-56.

40. 15 Tex. at 264-65.

41. *Id.*

42. *Id.* at 264 (emphasis added); *see also* *Parker v. State*, 26 Tex. 204, 207 (1862) (“The object of the law is to prevent gaming at places which are within the observation of persons indiscriminately, because of the consequences resulting from the evil example.”).

43. *See, e.g.*, *Bythwood v. State*, 20 Ala. 47, 48 (1852); *Bledsoe v. State*, 21 Tex. 223, 224 (1858).

44. *See, e.g.*, *Smith v. State*, 23 Ala. 39, 40 (1853).

45. *Id.* at 42.

46. *State v. Alvey*, 26 Tex. 155, 156 (1861).

47. *Clarke v. State*, 12 Ala. 492, 493 (1847).

48. *Sherrod v. State*, 25 Ala. 78, 78 (1854); *but cf.* *Reditt v. State*, 17 Tex. 610, 611 (1856) (holding that a place where medicines were kept was a storehouse under the Texas gambling statute and therefore public).

49. *See, e.g.*, *Roquemore v. State*, 19 Ala. 528, 531 (1851) (office of Register in Chancery); *Burdine v. State*, 25 Ala. 60, 63 (1854) (lawyer's office); *McCauley v. State*, 26 Ala. 135, 137 (1855) (lawyer's office). *But see* *Burnett v. State*, 30 Ala. 19, 21 (1857) (holding the office of a justice of the peace to be a "public house"); *Smith v. State*, 37 Ala. 472, 472 (1861) (deeming a lawyer's office where business is transacted to be a "public house").

50. *Moore v. State*, 30 Ala. 550, 552 (1857). The court remarks in passing that the shop was owned by "one Shandy Jones, a free man of color," who used the second floor for experiments in daguerreotype photography. *Id.* at 550. One suspects here the possibility of racial bias against the defendant.

51. *Campbell v. State*, 17 Ala. 369, 370 (1850).

52. *Arnold v. State*, 29 Ala. 46, 49 (1856).

53. *Johnson v. State*, 19 Ala. 527, 527 (1851).

54. *Skinner v. State*, 30 Ala. 524, 526 (1857). In Virginia, however, storehouses were considered to be private places by night. *In re Windsor*, 31 Va. (4 Leigh) 680, 682 (1833); *Commonwealth v. Feazle*, 49 Va. (8 Gratt.) 585, 586-87 (1851).

55. *McElroy v. Carmichael*, 6 Tex. 454, 456 (1851).

56. 49 Va. (8 Gratt.) 592 (1851).

57. *Id.* at 598.

58. *Id.*

59. *McElroy*, 6 Tex. at 456.

60. *Wheelock III*, 15 Tex. at 264.

