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Jack Johnson

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Marguerite Rawalt

Three years after joining the National Association of Women Lawyers (NAWL) in 1939, Marguerite Rawalt became its president.

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Book Review– *Thursday Night Lights: The Story of Black High School Football in Texas*

By Hon. John G. Browning

Author Michael Hurd does a masterful job of chronicling the forgotten decades of Black high school football in Texas between 1920 and 1970. Read more...

News & Announcements

Charting Constitutions and Taming Texas at the 2024 TSHA Annual Meeting

By David A. Furlow

Texas A&M Conference Center, site of the meeting

The Society will present a program, *Charting Constitutions and Taming Texas*, at the Texas State Historical Association's 128th Annual Meeting in College Station February 28 through March 2, 2024. Read more...

The 28th Annual Chief Justice John Hemphill Dinner: Celebrating Texas History and the Texas Rangers Bicentennial

By Rachel Stinson
Photos by Mark Matson & Rachel Stinson

Keynote Speaker Jason Taylor, Chief of the Texas Rangers

The dinner was held at the Four Seasons Hotel in Austin, Texas on September 8, 2023, and was well attended by both the bench and bar. Read more...

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Richard B. Phillips, Jr.

Message from the *President*

Hello, sports fans, and welcome to the Fall 2023 Journal. In 1983, I was nine years old, and my family and I moved to Dallas from Salt Lake City, Utah. I quickly became a fan of the Texas Rangers. I have fond memories of listening with my dad and brothers to Mark Holtz and Eric Nadel call the games. Oddibe McDowell once hit for the cycle. I listened on the radio late one evening as Ruben Sierra hit a walk-off home run against the Yankees. I also went to games at the old Arlington Stadium. (Although one of my clearest memories is the time we tried to go to a game where they were giving out plastic replica batting helmets. The game got rained out and we didn't even get out of the car. But my dad walked up to the stadium to see about rain checks and came back with a big stack of the replica batting helmets.) The Rangers didn't win a lot in those years, but I loved the team anyway. We moved to Chicago for three years, and I never picked between the Cubs and the White Sox because I still loved the Rangers. My friends in Chicago (even the Cubs fans) could never understand how or why I was a Rangers fan.

As my kids got old enough to sit through games, I started taking them. It was a great way to spend time one-on-one. The times I got to spend with each child driving to and from the games and talking during the games are precious to me. When my kids were teenagers and kids and parents don't agree on much, we agreed about the Rangers. In 2011, my son and I were at game six of the American League Championship Series when the Rangers beat the Tigers to go to the World Series for the second year in a row. That is one of my favorite baseball memories.

Of course, as a Rangers fan, I've had more than my share of disappointments. The team finally made the playoffs in the late 1990s but couldn't seem to get past the Yankees. In 2011, I watched game six of the World Series against the Cardinals in a hotel room in Brownsville (I was there preparing a witness for deposition). Twice, the Rangers were within one strike of winning the World Series, but they ultimately lost that game (thanks to David Freese of the Cardinals). I was on the plane ride home while they lost game seven the next night.

But as I write this column, the Rangers—finally—are World Series champions. My older kids are in college, but technology helped us watch together and we were on FaceTime together for the last called strike and we celebrated together. One of my favorite parts of this championship has been reading and hearing stories of generations of Rangers fans celebrating together.

I know this column looks like an excuse to write a love letter to the Rangers, but it really is related to this issue of the Journal, which focuses on the intersection of sports history and legal history in Texas. Sports and history are natural allies. I love the speech by fictional writer Terrence Mann (played by James Earl Jones) in *Field of Dreams*: "The one constant through all the years, Ray, has been baseball. America has rolled by like an army of steamrollers. It has been erased like a blackboard, rebuilt and erased again. But baseball has marked the time. This field, this game; it's a part of our past, Ray. It reminds us of all that once was good, and that could be again."

So much of sports fandom revolves around history. A baseball fan can look at a good scorecard and learn the complete story of the game. And detailed statistics and records have provided fodder for so many sports debates. How would Michael Jordan fare in today's NBA? What would the Purple People Eaters would do to Tom Brady? Would you take Roger Staubach or Patrick Mahomes? The Babe or Big Papi? In many families, sports rooting interests are passed down like heirlooms.

In this issue you'll find the story of Jackie Robinson's court martial at Fort Hood (from Alia Adkins-Derrick) and how Kenesaw Mountain Landis's time as the first commissioner of baseball is connected to the rise of judicial canons of ethics (from Jan Jacobowitz). And our editor-in-chief John Browning gives us another look at the history of the "sweet science" in Texas with his article about efforts to integrate boxing in Texas. Texas politics is often a full-contact sport, so we also have a timely look at the history of impeachment in Texas from Bruce Tomaso.

Please enjoy this issue. And, as always, if you have thoughts about how the Society can perform its mission or if you'd like to be more involved, please feel free to reach out to me at: rich.phillips@hklaw.com. (And, of course, Go Rangers!)

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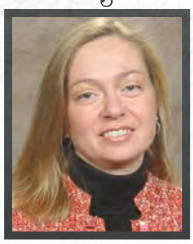

Sharon Sandle

• Playing by the Rules •

Some Reflections about the Interplay between Sports and the Law

I was never particularly athletic as a kid. I was that cliché—the last kid picked for any team. I even remember being picked, reluctantly, as the last available choice by my very best friend in grade school. I couldn't blame her; we both knew I was likely to be a liability to her kickball team. But even though I never displayed an iota of athletic ability, I am a sports fan. I enthusiastically watch football, basketball, soccer, golf, tennis, track, swimming . . . anything, really. I cheer on the teams of the colleges I and my family members attended, and I regularly use any excuse to collect new teams to support. This time of year, as summer slowly fades into fall, I'm confronted with a sports bonanza—there are more sporting events than I have time to watch or attend. It's great.

What I love about sports is that it's just a game. You can lose yourself in the excitement of a close game, cheering a spectacular catch in the end zone, moaning when a fumbled ball ends any hope of victory. And win or lose, at the end of the game you can move on, whether to the next game or to something else while the outcome of the game has no lasting impact one way or the other.

And what I love about sports is that it's more than just a game. I'm fascinated by how within the rules and boundaries of sports you can see larger stories played out. The very public figures who play games week after week illustrate in a very visible and literal way what it means to strive, what it means to overcome adversity and come from behind, how to excel, and how to win. And those same figures also illustrate the ways even the best can stumble and occasionally flat out fail. Sports is so much about statistics, and here's one that I think perfectly illustrates my point: the two NFL quarterbacks to rack up the most playoff *losses* are Tom Brady and Peyton Manning. Part and parcel of their excellence in regularly reaching the postseason was also to frequently fail to reach the ultimate goal. Win or lose, those who play sports on a public stage are scrutinized; they are sometimes heroes, and sometimes villains. And that public scrutiny extends beyond the field of play.

In this issue, we consider the intersection between the competitive microcosm of sports and the legal arena. We explore the stories of Jackie Robinson, Sporty Harvey, and Muhammad Ali and the public scrutiny that followed them outside of the sports arena in cases that illustrate their influence in sparking change. In all three cases, we see strong, competitive individuals who believed

in fair play and who were willing to withstand criticism to stand up for that belief. Conversely, we also take a look at how the law influenced the sporting world in an article about Judge Kenesaw Mountain Landis's influence as baseball commissioner.

To say that we have barely scratched the surface of the stories where the law and sports intersect is more than an understatement. A glaring omission in this issue is any examination of the challenges faced by women athletes. I hope a future issue of the Journal covers topics such as the legacy of Title IX in opening the playing fields to women athletes and the efforts of figures like Billie Jean King and Rosie Casals to raise the profile of women athletes and ensure that women are compensated fairly for their play as professionals.

And looking forward, we can see emerging legal and ethical challenges at the intersection of sports and law. The story of how Judge Kenesaw Mountain Landis's time as baseball commissioner was reflected in the later formation of the judicial canons of ethics prefigures some of the ethical issues that face the sports world today. The burgeoning emphasis on sports gambling presents a complex array of regulatory dilemmas, reminiscent of the challenges faced by Judge Kenesaw Mountain Landis in his time. And the evolving landscape where student athletes can now monetize their name, image, and likeness brings to the forefront a new set of ethical considerations. This shift not only transforms the traditional amateur ethos of collegiate sports, but also intersects with legal concerns surrounding labor, compensation, and the equitable treatment of young athletes. Beyond that it raises profound questions about the commercialization of personal identity and the protection of rights within the arena of academic sports.

The articles in this issue of the Journal gave me a lot to think about, and I hope they are the start of a continuing discussion of the interplay between sports and the law.

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Fellows Column

By David J. Beck, Chair of the Fellows

Photo by Alexander's Fine Portrait Design-Houston

The Fellows Program is celebrating its twelfth anniversary during the Society's 2023-24 fiscal year. It is a significant milestone, representing more than a decade of support for projects that have served the Society's educational mission in a variety of important ways. I have described these projects in previous columns over the years, but I would like to highlight them again here.

Taming Texas Judicial Civics and Court History Classroom Project: In Spring 2016, the Fellows launched an innovative judicial civics program that sent attorneys and judges to seventh-grade classrooms to teach an innovative curriculum on the history and workings of the Texas court system. Since then, the program has reached over 23,000 students, primarily through our partnership with the Houston Bar Association. The Austin bar will be joining us in implementing Taming Texas in Austin-area schools in the 2023-24 school year, and we are working on an expansion in Dallas schools.

Taming Texas Book Series: The Fellows have sponsored an illustrated legal history book series as part of the judicial civics course materials. Coauthored by Jim Haley and Marilyn Duncan, the series includes *Taming Texas: How Law and Order Came to the Lone Star State* (2016); *Law on the Texas Frontier* (2018); *The Chief Justices of Texas* (2020); and *Women in Texas Law* (2023). Copies of the hardback books are donated to the classrooms that participate in the judicial civics program. You can download a free copy of the books at www.tamingtexas.org.

Landmark Court Case Reenactments: An early project of the Fellows was our reenactments of landmark cases. To make our state's legal history come alive, the Fellows sponsored courtroom reenactments of *Texas v. White*, *Johnson v. Darr*, and *Sweatt v. Painter* with noted advocates including Fellows Hon. David Keltner, Lynne Liberato, and Hon. Dale Wainwright. The reenactments were well attended by the bar and videotaped for viewing on the Society's Hemphill YouTube Channel.

Archive Support: To supplement the Society's archival holdings, the Fellows purchased an original copy of the seminal *History of the Supreme Court of the State of Texas* (1917) by Harbert Davenport. The historic book was presented to the Court in 2013 at the inaugural Fellows Dinner.

Fellows Dinners: One of the benefits of being a Fellow is our exclusive event, the annual Fellows Dinner. Each year since 2013, the Fellows gather with the Justices of the Texas Supreme Court for a collegial dinner. We always try to choose a unique Austin venue, and the locations for past dinners have included the Blanton Museum of Art, the Texas Lieutenant Governor's private dining room in the State Capitol, the Bullock Texas State History Museum, the Frank Denius Family University of Texas Athletics Hall of Fame, and most recently the Bauer House, the official home of the Chancellor of the University of Texas System. The attendees always comment on the dinner's elegance, uniqueness, and fellowship.

As you see from these projects, the Fellows undertake new projects to educate the bar and the public on the third branch of government, and the history of our Supreme Court. The Fellows are also a critical part of the annual fundraising by the Society. If you are not currently a Fellow, please consider joining the Fellows and helping us with this important work.

If you would like more information or want to join the Fellows, please contact the Society office or me.

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*Charter Fellow

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Editor-in-Chief's Column

Hon. John G. Browning

The *Sporting* Life

It is a commonly-accepted aphorism that sports builds character and teaches life lessons. I learned one such life lesson in my teens. I was (and am) a boxing enthusiast, and as perhaps the shortest (and maybe the palest) light-heavyweight in the New Jersey Golden Gloves, I learned that pursuing my other love, tennis, would hurt a lot less and be a better outlet for my very limited physical skills. Forty-plus years later, and despite more injuries and operations than I care to remember, I still think it was the right choice.

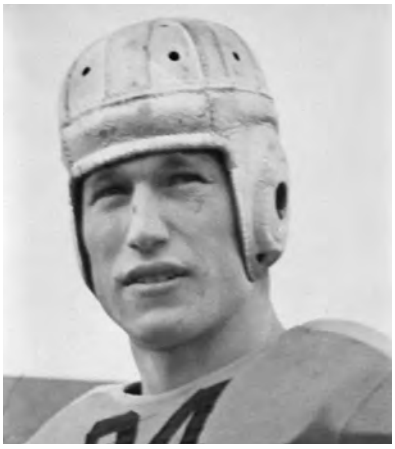
Our themed issue examines sports-related legal history with a Texas connection; ranging from a look at how Jackie Robinson's racially-tinged court martial while at Fort Hood set the stage for his integration of major league baseball years later, to how concerns about Judge Kenesaw Mountain's dual service as both federal judge and the first baseball commissioner presaged the judicial canons of ethics. My thanks to Alia Adkins-Derrick and Jan Jacobowitz, respectively, for their wonderful contributions. And being a boxing fan, I'm happy to share my analysis of the Texas appellate case that integrated boxing in Texas; a look at the Mann Act prosecution against Galveston's own Jack Johnson, the first Black heavyweight champion of the world; and the story behind Muhammed Ali's Houston draft evasion trial, which resulted in a landmark U.S. Supreme Court decision.

Baseball and boxing are fine, but you may be thinking: "this is Texas; what about football?" We would have been thrilled to showcase an article or two about football's deserved place in Texas legal history, but couldn't persuade anyone to write about it. I wish we had, because I've been inspired by pioneers who blazed new trails on the football field, and later in the courtroom. One such trailblazer was Julius Whittier, who in 1970 became the first Black football letterman at the University of Texas. Although SMU's Jerry LeVias had integrated the Southwest Conference in 1966, some schools were still resistant to Black and white football players playing together. One of these was the University of Texas, which had fielded the last all-white national championship team in 1969.

Texas Longhorn Julius Whittier in the early 1970s

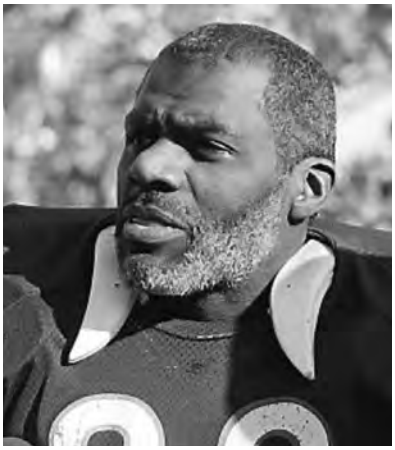
Julius Whittier came from a family of achievers who did not back down. His uncle was head of the NAACP's Beaumont chapter, his father Oncy was a doctor in San Antonio, and his mother Loraine

was a school teacher and community activist. Whittier encountered all kinds of adversity at Texas, including simply finding a roommate. But he persevered, and his prowess in the classroom and on the field became apparent. Whittier not only earned his bachelor's and master's degrees at UT, he went on to receive his J.D. there as well. His gift for oratory served him well as a trial attorney and senior prosecutor with the Dallas County D.A.'s office from 1980 to 2012. After his death in 2018, the University of Texas honored his memory with a statue outside the football stadium.



Colorado Buffalo Byron White in the 1930s

There are other football players-turned-lawyers I find inspiring. I never met former Heisman runner-up Byron "Whizzer" White, but his tenure on the U.S. Supreme Court speaks for itself. I have met former Minnesota Vikings defensive tackle and NFL Defensive Player of the Year Alan Page. But even though I met him after he'd become the first Black justice to serve on the Minnesota Supreme Court, his gnarled hands and hulking frame were reminders of his days as one of the NFL's most feared defensive linemen. But the player-turned-lawyer I find even more inspiring is William Henry Lewis.



Chicago Bear Alan Page in 1981

Lewis, the son of former slaves, became the first Black player in major college football when he played for Amherst from 1889–1891. He continued to play at Harvard from 1892–1893—while studying at Harvard Law School. In 1903, Lewis became the first Black man to serve as an assistant U.S. Attorney in Boston. By 1911, he had risen to become the first Black United States Assistant Attorney General (a post he would hold until 1913). It was a sub-Cabinet appointment that made Lewis the highest ranking Black American in the federal government. Also in 1917, he became the first Black man admitted to the American Bar Association—which was not integrated at the time. The ABA's Executive Committee asked Lewis to resign, and he refused. In 1912, the Committee voted to oust him. Also in 1912, the election of President Woodrow Wilson, an avowed racist, meant that his meteoric rise in the U.S. government had come to an abrupt halt.

Harvard's William Henry Lewis in 1892

Lewis returned to private practice in 1913, and became one of the first Black lawyers to join the NAACP's fledgling legal team. He died in Boston in 1949. The determination and indomitable spirit that William Henry Lewis displayed on the football field was the same that he displayed in the courtroom, and in the face of racism.

We're proud to bring you all of these sports-themed chapters in legal history, along with Bruce Tomaso's look at a contact sport of another kind—Texas politics, and specifically the legal history of impeachments in the Lone Star State. With the recent impeachment trial of Attorney General Ken Paxton, this is a subject that clearly resonates today. Enjoy!

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Baseball, Kenesaw Mountain Landis, and the Judicial Strike Zone – Home Run or Foul on the Play?

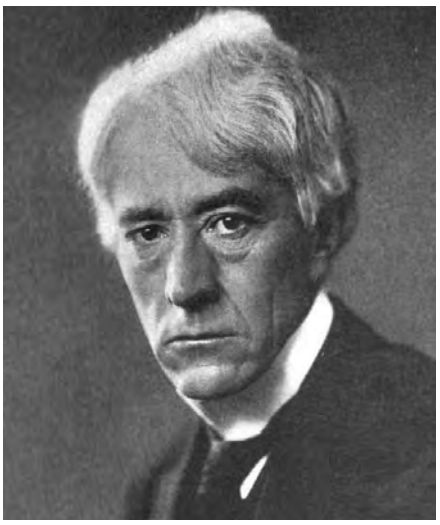
By Jan L. Jacobowitz

...[W]e love both the game and the flimflam because they are both so...American. Baseball has been blessed in equal measure by Lincoln and by Barnum.[1]

- Tom Thorn

Introduction

Babe Ruth, Lou Gehrig, Micky Mantle, and Shoeless Joe Jackson—There are many well-known baseball legends, but perhaps less well-known is the story of Kenesaw Mountain Landis, a judge turned baseball commissioner who inspired not only baseball fans, but also the American Bar Association's first Judicial Canon of Ethics. The parallel stories of baseball's greatest scandal, the judge appointed to be the first baseball commissioner, and the development of the judicial canons, provide context for the current controversial judicial prohibition--the appearance of impropriety.



Kenesaw Mountain Landis

So, let's first travel back to the 1919 World Series "Black Sox" scandal. Eight White Sox players were indicted and charged with fixing the 1919 World Series—a series played against the Cincinnati Reds. America's popular past time had been sullied; baseball team owners sought a solution to restore baseball's reputation integrity and honor.

What could be more honorable than hiring a baseball commissioner? Especially if the first Commissioner happened to be the Honorable Kenesaw Mountain Landis, a Chicago Federal District Court Judge who had proven to be a huge baseball fan, especially aligned with the Chicago Cubs.[2]

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1 John Thorn, *Baseball in the Garden of Eden*, Simon & Schuster (2011).

2 Shayna M. Sigman, "The Jurisprudence of Judge Kenesaw Mountain Landis," 15 *Marquette Sports Law Review,* 277, 283 (2005) (citing J.G. Taylor Spink, *Judge Landis and Twenty-Five Years of Baseball* 73-77 (1947)) Landis, a National League fan, "was especially a fan of the Chicago Cubs in an era when he could witness the triumph of his heroes (e.g., Mordecai Brown, Tinker-Evers-Chance) at West Side Park."

In fact, in 1915, Judge Landis had presided over a baseball antitrust case filed by an upstart Federal League against the National League and American League, known as Organized Baseball (which later became Major League Baseball). Landis apparently delayed ruling for "an entire baseball season and beyond" until after his encouragement, the parties reached a settlement.[3]

Baseball owners took notice of both Judge Landis's enthusiasm for the sport and his handling of the case.[4] Thus, in 1920, while simultaneously serving as a federal district court judge, Kenesaw Mountain Landis accepted the owners' invitation to become the first baseball commissioner—a position that he held until his death in 1944. And the rest, as they say, is history...Not only an interesting story about baseball's early woes, but also about baseball's impact on the judicial canons of ethics. Say, what? Let's explore the connection.

Baseball History & The Black Sox Scandal

Baseball scholars and historians disagree about where and when baseball began. Some historians reference the mention of the game in a 1744 English children's book. Others rely on Albert Goodwell Spalding's 1908 commission's conclusion that Abner Doubleday invented baseball in 1839 in Cooperstown, New York—the current location of the Baseball Hall of Fame. Critics of the 1908 proclamation immediately challenged the results and the controversy continued.

Abner Doubleday

While a fascinating slice of baseball history, a detailed exploration of baseball's origination is beyond the scope of this article. However, there is little doubt that American baseball evolved in American cities during the nineteenth century. Moreover, at least one baseball historian, Tom Thorn, credits the early success of baseball to its appeal to gamblers.

> "I don't think you could have had the rise of baseball without gambling," says Thorn. "It was not worthy of press coverage. What made baseball seem important was when gamblers figured out a way to spur interest in it. ... You would not have had a box score. You would not have had an assessment of individual skills. You would not have had one player of skill moving to another club if there were not gambling in it."[5]

Eventually gambling directly influenced the players and the game. The first gambling scandal occurred in 1865, resulting in three players being banned from the game.[6] Fast forward to 1919, when the Black Sox scandal links baseball to the judicial canons and results in the judicial strike zone otherwise known as the appearance of impropriety.

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[3] *Ibid*.

[4] *Ibid*.

[5] "The 'Secret History' Of Baseball's Earliest Days," March 16, 2011,11:07 AM ET Heard on Fresh Air.

[6] *Ibid*.

The fallout from the Black Sox scandal was reported in the *New York Times* in the September 1920 headline: "Eight White Sox Players are Indicted on Charge of Fixing 1919 World Series; Cicotte Got $10,000 and Jackson $5,000."[7] These eight players were charged with conspiracy to fix the outcome of the 1919 World Series played between the White Sox and the Cincinnati Reds. Despite initial confessions (that were later recanted) all the players were ultimately acquitted.[8]

Judge Kenesaw Mountain Landis enters the scene amid the Black Sox scandal, when the baseball owners, in their effort to "clean up" baseball, offer Judge Landis the opportunity to become the first baseball commissioner. He accepts and the owners are thrilled to have a judge begin to restore the game's reputation.

Mary Landis

As we shall see, the ripple effect of Judge Landis's two-year stint as both a federal district court judge and the baseball commissioner probably could not have been anticipated, especially as it relates to the creation of the judicial canons and the appearance of impropriety. But let's not get ahead of the story. A brief exploration of Kenesaw Mountain Landis's extraordinary life journey further sets the stage for the drama that results in the establishment of the judicial canons.

Kenesaw Mountain Landis

Early Life

When Mary Landis birthed her sixth child and fourth son on November 20, 1866, her husband Dr. Abraham Landis, a Civil War veteran, wanted to name the child Abraham.[9] Apparently, Mary detested the name, and their son was not named for several months during which their entire community joined the debate.[10] Ultimately, Dr. Landis suggested Kenesaw Mountain Landis and his wife agreed. Kennesaw Mountain was intertwined with Dr. Landis's identity as his leg was badly mangled by a (spent) cannonball bounding into his surgical headquarters at the Battle of Kennesaw Mountain.[11]

Dr. Abraham Landis

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[7] "Eight White Sox Players are Indicted on Charge of Fixing 1919 World Series; Cicotte Got $10,000 and Jackson $5,000," *New York Times* (Sept. 29, 1920), 1, https://www.nytimes.com/1920/09/29/archives/eight-white-sox-players-are-indicted-on-charge-of-fixing-1919-world.html.

[8] "Commissioner Kenesaw Landis Biography," *Baseball-Almanac* (date accessed Feb. 1, 2019), https://www.baseball-almanac.com/articles/kenesaw_landis_biography.shtml.

[9] David Pietrusza, *Judge and Jury: The Life and Times of Judge Kenesaw Mountain Landis*, 2, Diamond Communications, Inc, (South Bend, Indiana 1998).

[10] *Ibid*.

[11] *Ibid*. Note also that both spellings of Kenesaw were accepted in the nineteenth and early twentieth centuries although Kennesaw is the current standard spelling for the mountain but not the man.

Kenesaw Mountain Landis was born near Cincinnati, in Millville, Ohio into a highly engaged, dynamic family in which his four older brothers became journalists and politicians.[12] The family moved to Logansport, Indiana in 1875 where Kenesaw spent the remainder of his youth.[13] Young Kenesaw was described as having a certain "something"—an outgoing personality and perhaps a type of charisma and lordly aura that caused his family to nickname him "Squire."[14] The nickname stuck and proved to be apropos. Kenesaw later observed, "I do remember that when I was a youngster, I had an ambition to become the head of something. I mean the man who was responsible to nothing except his own conscience."[15]

School and Early Employment

Despite his youthful ambition, Kenesaw's journey to achieve his positions as judge and commissioner did not follow a traditional route, at least by contemporary standards. In fact, after struggling with algebra, a frustrated Kenesaw dropped out of high school—a decision of which his father did not become aware for another six months.[16] Kenesaw took a position as a clerk at the local grocery store and, despite his father's best efforts, Kenesaw remained unpersuaded to return to school.[17] He tried his hand at various menial jobs and eventually went to work for his brother at the Logansport Journal where he was exposed to the new process of shorthand court reporting while covering proceedings at the local court house.[18] Kenesaw learned the new technique and soon became the official circuit court reporter in Lake County, Indiana—a position that he held from 1883-1886.[19]

Described as both hyperkinetic and of small stature (at 5'6 and no more than 130 pounds), Kenesaw nonetheless was also known as a local athlete with terrific dexterity. He played first base for the local semi-pro team and competed in early bicycle racing.[20]

Politics and Becoming a Lawyer

In 1886, Kenesaw became involved in another type of race; he supported a friend who won the election for Indiana secretary of state and Kenesaw received a prominent position in the department. While working as the assistant to the secretary of state, Kenesaw secured admission to the Indiana State Bar on July 13, 1889. Indiana law did not require an examination and Kenesaw eventually left his position at the secretary of state's office to read law with a firm in Marion, Indiana.[21]

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12 *Ibid*., 4-7.

13 *Ibid*., 7.

14 *Ibid*., 8.

15 *Ibid*., 8-9. citing *Logansport Pharos-Journal*, October 17, 1883.

16 *Ibid*., 9.

17 *Ibid*.

18 *Ibid*., 10.

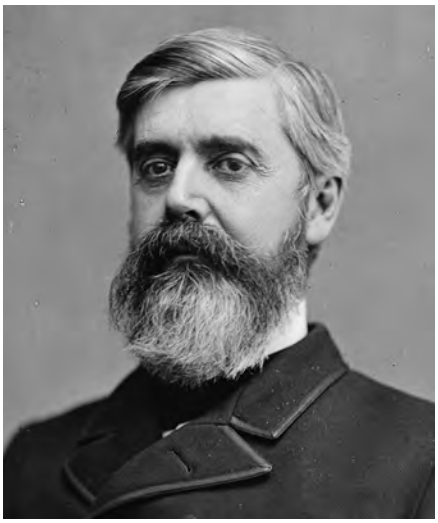
19 *Ibid*.

20 *Ibid*.

21 *Ibid*., 11.

Eventually, Kenesaw concluded that being a self-taught lawyer limited his path to success. He enrolled in Cincinnati's YMCA Law School—neither a high school nor a college degree was required. After being black balled from the school's fraternity-dominated life by the more polished, college graduate students, Kenesaw organized other outcasts and captured the school elections. Kenesaw completed law school at Union Law School in Chicago (now part of Northwestern).

Although not at the top of his class, he graduated in 1891, gained admission to the Illinois Bar, and became an assistant on the Union faculty.[22] He practiced law and developed a reputation as a reformer. In fact, he joined Clarence C. Darrow and William Bross Lloyd to form the nonpartisan Chicago Civic Centre Club with the goal of reforming local government.[23]



Judge Walter Gresham

Young Kenesaw Landis's political experience would not be limited to local Chicago politics as he was asked by old family friend and mentor, Judge Walter Gresham, to accompany Gresham to Washington, D.C. Gresham became the Secretary of State for President Grover Cleveland, and a twenty-six-year-old Landis became Gresham's personal secretary.[24] The two were inseparable and when Gresham became ill, Landis often attended cabinet meetings in his stead.[25]

Winifred Reed

Landis astutely handled both the press and the politicians while maintaining an impressive schedule.[26] He established a national reputation while obtaining a real time political education as he had entered the state department with no knowledge of foreign affairs.[27] He made his presence known, an acquired taste for some, because similar to his law school behavior, he overtly demonstrated his lack of patience for elitist attitudes.[28] When Gresham died in office, President Cleveland offered Landis an ambassador post, but Landis decided to return to Chicago to the practice of law.[29]

Returning to Chicago and Becoming a Judge

Landis returned to Chicago not only to build a successful law practice, but also to secure his relationship with Winifred Reed. They had been introduced when she was visiting her sister in

[22] *Ibid*., 12.

[23] *Ibid*.

[24] *Ibid*., 14-17.

[25] *Ibid*., 25.

[26] *Ibid*., 19-20, 24.

[27] *Ibid*., 17.

[28] *Ibid*., 20.

[29] *Ibid*., 27, 29.

D.C., and smitten, Landis began commuting back to Illinois to be with her until he finally returned to Chicago. Landis and Ms. Reed were married in 1895 and eventually had three children.[30]

Landis became a well-established corporate attorney but also remained involved in politics. He continued to hone his public speaking talent and to display his contempt for elitist titles and attitudes. He often referred to the Chicago federal judiciary by their common names without their judicial titles.[31]

In 1905, President Theodore Roosevelt appointed Landis to the Federal District Court in Illinois. Landis's political connections and reputation landed him the appointment and the assignment to a courtroom in the new federal building in Chicago.[32] The two-story mahogany, brass, and marble courtroom that contained murals of King John conceding the Magna Carta and Moses with the Ten Commandments, set the stage for Judge Landis's fifteen-year dynamic judicial career.

Reputation and Experience as a Judge

Judge Landis's appointment in the Northern District of Illinois placed him at the epicenter of the Midwest, which was a major railway center. The early 1900's, characterized as the Progressive Era, evidenced early attempts to enforce the Sherman Antitrust Act as railroad monopolies upset the executive and legislative branches of government as well as the public.[33] Thus, the first half of Judge's Landis' stint on the bench often involved antitrust cases dealing with railroad rebates and corruption. In fact, in a famous case involving John D. Rockefeller, the *New York Times* reported:

> Judge Kenesaw M. Landis of the United States District Court today fined the Standard Oil Company $29,240,000, the extreme limit of the penalty fixed for the acceptance of illegal rebates. In the announcement he closes, so far as his court is concerned, what is regarded as the most important case against a trust in the history of the United States.[34]

After the Standard Oil case, Judge Landis achieved "most talked of person in America" status.[35]

Later in his judgeship, Judge Landis presided over the high-profile Sedition Act cases, which involved World War I era government prosecutions of alleged socialists.[36] The Sedition Act cases also garnered national attention and provided a platform for Judge Landis's propensity to engage in courtroom theatrics.[37]

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30 *Ibid*., 31.

31 *Ibid*., 29.

32 Sigman, "Jurisprudence of Landis", 282 (citing Spink, *Twenty-Five Years of Baseball*, 28).

33 Sigman, "Jurisprudence of Landis," 282 (citations omitted).

34 "Oil Trust Fine Is $29,240,000; Judge Landis Imposes Maximum of $20,000 Each on 1,462 Counts," *New York Times* (Aug. 4, 1907), https://www.nytimes.com/1907/08/04/archives/oil-trust-fine-is-29240000-judge-landis-imposes-maximum-of-20000.html.

35 Sigman, "Jurisprudence of Landis," 283 (citing Henderson, "The Most Interesting Man," 245 (quoting the *Chicago Examiner*)).

36 Sigman, "Jurisprudence of Landis," 282 [sic] (citations omitted).

37 Sigman, "Jurisprudence of Landis," 282 (citing Spink, *Twenty-Five Years of Baseball*, 29).

Generally, the press, the bar, and the academic world popularized his opinions even if he was ultimately reversed.[38] Interestingly, Judge Landis armed himself not only with relevant jurisprudence, but also with knowledge of popular sentiment sometimes leading him to rule based on what he believed was the correct decision in the current societal context.[39]

The Federal League Case

Perhaps the foreshadowing of Judge Landis's ultimate career as the first baseball commissioner may be found in his handling of the 1915 antitrust lawsuit filed by baseball's fledgling Federal League against the National League and American League. (These two leagues agreed to merge into Organized Baseball, known today as Major League Baseball.)

Judge Landis, an enthusiastic Chicago Cubs fan, encouraged the parties to settle the case. As mentioned above, it appears that he intentionally delayed ruling on the case beyond an entire baseball season. Eventually, the parties agreed to a settlement, so he never had to render an opinion in the case.[40] Both his devotion to baseball and the handling of the Federal League case caught the attention of baseball owners who would soon be confronted with the Black Sox scandal and the need to "clean up" America's favorite pastime. [41]

First Baseball Commissioner (1920-1944)

On November 12, 1920, baseball's team owners asked Judge Landis to become baseball's first commissioner. Judge Landis was not only a baseball fan, but also the fact that he was a high-profile federal judge lent credibility to the position. Landis accepted the position and served initially as both a federal judge and the baseball commissioner.[42] His charge was "to restore public faith in the professional baseball league"[43] by employing any methods necessary "to bring to book anyone connected with baseball in any capacity, from 'magnate' to bat boy, who is suspected of conduct or associations detrimental to the best interests of the sport."[44]

It is important to note that Judge Landis, who was accustomed to having his decisions appealed, insisted on having the final word before he accepted the position as commissioner. He indicated that he "wouldn't take this job for all the gold in the world unless I knew my hands were free."[45] His decisions were not to be challenged in a court of law; the baseball team owners agreed

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[38] Sigman, "Jurisprudence of Landis," 278 (citations omitted).

[39] Sigman, "Jurisprudence of Landis," 279.

[40] Sigman, "Jurisprudence of Landis," 283 (citations omitted).

[41] Sigman, "Jurisprudence of Landis," 283 (citations omitted).

[42] "Code of Judicial Conduct: History of the Code," *J Rank* (accessed Feb. 2020), https://law.jrank.org/pages/5327/Code-Judicial-Conduct-History-Code.html.

[43] *Ibid*.

[44] Raymond J. McKoski, "Judicial Discipline and the Appearance of Impropriety: What the Public Sees is What the Judge Gets," 94 *Minnesota Law.Review*. 1914, 1922 (citing I.E. Sanborn, "Major Operation on B.B. Fabric to Restore Game," *Chicago Daily Tribune*., Dec. 8, 1920, 23.)

[45] Andrew Green, "The Judge Who Became Commissioner: Kenesaw Mountain Landis, the Judiciary & Baseball," *Judging in the American Legal System* (May 7, 2009), 22 (citing Baseball: A Film by Ken Burns: Inning 3 – The Faith of Fifty Million People (PBS television broadcast Sept. 20, 1994) (referring to Landis as a "Federal judge with a

to assign the commissioner broad powers and abide by his decisions.[46]

Of course, Commissioner Landis's most famous act remains his decision to impose a lifetime ban on eight members of the Chicago White Sox for their alleged role in the 1919 World Series scandal.[47] The lifetime ban was imposed despite their acquittal by a jury.

Thus, Commissioner Landis imposed an appearance of impropriety standard in baseball before that standard applied to judges and prior to the existence of the judicial canons. He explained, "Regardless of the verdict of juries, no player that throws a ball game, no player that entertains proposals or promises to throw a game, no player that sits in a conference with a bunch of crooked players and gamblers where the ways and means of throwing games are discussed, and does not promptly tell his club about it, will ever again play professional baseball."[48]

Commissioner Landis's ruling earned him credit for having saved baseball.[49] In fact, the inscription under his name in the National Baseball Hall of Fame reads: "Baseball's first Commissioner; Elected, 1920 – died in office, 1944; His integrity and leadership established Baseball in the respect, esteem and affection of the American people."[50]

The Ironic "First" Judicial Appearance of Impropriety


A. Mitchell Palmer

Although the baseball owners embraced Judge Landis's willingness to serve simultaneously as Commissioner Landis, Congress and the judiciary were not similarly inclined. The belief was that Commissioner Landis's high-profile baseball position damaged judicial integrity.[51] Moreover, the Commissioner position came with a substantial salary thereby flaming the fuel of displeasure and the belief that Commissioner Landis would neglect his judicial duties.[52] (Judicial salaries at that time were $7500.00 per year and the Commissioner's annual salary began at $50,000.00.[53])

The United States Attorney General, A. Mitchell Palmer, investigated Judge Landis's dual roles and concluded, "There

reputation for willful independence equaled only by his flair for self-promotion . . .")).

46 Sigman, "Jurisprudence of Landis," 283 (citations omitted).

47 Sigman, "Jurisprudence of Landis," 284 (citations omitted).

48 "Commissioner Kenesaw Landis Biography," *Baseball-Almanac* (date accessed Feb. 1, 2019), https://www.baseball-almanac.com/articles/kenesaw_landis_biography.shtml.

49 Sigman, "Jurisprudence of Landis," 278 (citations omitted).

50 "Kenesaw Landis," *National Baseball Hall of Fame* (date accessed Feb. 1, 2019), https://baseballhall.org/hall-of-famers/landis-kenesaw.

51 "Code of Judicial Conduct: History of the Code," *J Rank* (accessed Feb. 2020), https://law.jrank.org/pages/5327/Code-Judicial-Conduct-History-Code.html.

52 Green, "Judiciary & Baseball," 22.

53 Green, "Judiciary & Baseball," 21-2 (citing John P. Mackenzie, *The Appearance of Justice*, 180 (1974), 181 (Landis' actual salary was $42,500, as he deducted his judicial salary from that which the baseball owners were willing to pay); Spink, *Twenty-Five Years of Baseball*, 72).

seems to be nothing as a matter of general law which would prohibit a district judge from receiving additional compensation for other than strictly judicial service, such as acting as arbitrator or commissioner."[54] Nonetheless, Congressman Benjamin F. Welty, a lame-duck representative from Ohio, sought to impeach the Judge.[55] "This was a rare and extreme measure, as only six federal judges had been impeached at that point in American history, four of whom were convicted and removed from the bench."[56]

The Impeachment Investigation, ABA Censure, and The Canons

Congressman Welty's Accusations

Congressman Welty based his motion to impeach Judge Landis on an alleged conflict of interest.[57] Judge Landis was charged with "neglecting his official duties for another gainful occupation not connected therewith."[58] Welty asserted that Judge Landis must be neglecting his duties since the obligations of his full-time judicial position would not allow for a second job.[59]


Congressman Benjamin F. Welty

Welty further complained that Judge Landis had become the "chief arbiter of a trust [which had been declared] illegal [yet at the baseball owners'] request remained on the Federal bench"[60] thereby further evidencing a conflict of interest. (Both the Court of Appeals and the US Supreme Court would eventually rule against the trust allegations.)

The House Judiciary Committee held a hearing after which it declined to further investigate. However, the Committee did leave the issue pending for the next Congress. The Committee recognized that if Welty's accusations could be proven then Judge Landis's conduct would be "inconsistent with the full and adequate performance of the duty of . . . Landis as a United States District Judge, and that said act would constitute a serious impropriety on the part of said judge."[61] Ultimately, Judge Landis was never impeached.

ABA Censure

The ABA also disapproved of Judge Landis's dual roles. However, a federal judge could only

[54] McKoski, "Judicial Discipline," 1923 (citations omitted).

[55] Green, "Judiciary & Baseball," (citing *Conduct of Judge Kenesaw Mountain Landis: Hearings Before the H. Comm. on the Judiciary*, 66th Cong. 17 (1921), 15 (statement of Benjamin F. Welty. Welty also accused Organized Baseball of bribery in connection with both the Federal League antitrust suit and the Black Sox scandal.

[56] Green, "Judiciary & Baseball," 22 (citing *Conduct of Landis Hearings*, 19 (statement of Benjamin F. Welty)).

[57] Sigman, "Jurisprudence of Landis," 284 note 47 (citations omitted).

[58] Green, "Judiciary & Baseball," 23 (citing *Conduct of Landis Hearings*, 4-5 (statement of Benjamin F. Welty)).

[59] Green, "Judiciary & Baseball," 23 (citing *Conduct of Landis Hearings*, 18 (statement of Benjamin F. Welty)).

[60] Green, "Judiciary & Baseball," 23 (citing *Conduct of Landis Hearings*, 18 (statement of Benjamin F. Welty)).

[61] Green, "Judiciary & Baseball," 23 (citing "Condemns Landis Holding Two Posts," *New York Times* (Mar. 3, 1921), 9, http://query.nytimes.com/gst/abstract.html?res=940CE6DD133CE533A25750C0A9659C946095D6CF.

be removed through impeachment proceedings and the US Attorney General had opined that no law prevented a judge from supplementing their salary with a baseball commissioner position. Thus, the ABA had little meaningful recourse in 1921.

Therefore, the ABA employed its only power, which was to censure Judge Landis.[62] The ABA issued a censure that stated that Judge Landis's conduct "meets with our unqualified condemnation, as conduct unworthy of the office of Judge, derogatory to the dignity of the bench, and undermining public confidence in the independence of the judiciary."[63] Because the censure of Judge Landis could not be based on the violation of any law, it was based on an appearance of impropriety.[64]

Judge Landis asserted that he had not committed any impropriety and explained, "The public supports baseball, and the public is entitled in return to the best efforts of the players. If . . . I . . . leave the game as clean as it is today, I shall feel proud of my record and will feel that it offers ample refutation of the charge that it is undignified for a member of the judiciary actively to be associated with professional baseball."[65]

Interestingly, although the roles of judge and commissioner are distinct, it has been said that Kenesaw Mountain Landis approached the judiciary and professional baseball in like manner.

> [T]he scholarly divorce of Landis in the district court and Landis on the diamond is an artificial one. In both contexts, Landis: (a) relied on a common set of principles in reaching his decisions; (b) used opinion writing or public pronouncement to rationalize and legitimize results by making them seem inevitable and morally right; and (c) carefully employed the press, guarding some material as private while sharing other information…A pragmatist on the bench and in baseball, Landis comfortably borrowed from the legal principles and procedures of the federal court when it suited his purposes in governing in the non-legal setting of Organized Baseball, while shedding formalistic constraints dictated by either the law itself or the presence of higher authority.[66]

Nevertheless, after confronting the critics for a little more than a year, Judge Landis resigned from the bench in early 1922.[67] Judge Landis's dual roles and his resignation served as a catalyst for the ABA's creation of the first official judicial canons of ethics.[68]

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[62] Green, "Judiciary & Baseball," 23-4 (citing Andrew J. Lievense & Avern Cohn, "The Federal Judiciary and the ABA Model Code: The Parting of the Ways," 28 *Justice System Journal* 271, 273 (2007).

[63] Green, "Judiciary & Baseball," 24 (citing "Bar Meeting Votes Censure of Landis," *New York Times* (Sept. 2, 1921), 1, http://query.nytimes.com/gst/abstract.html?res=9504E5DA1439E133A25751C0A96F9C946095D6CF).

[64] McKoski, "Judicial Discipline," 1923 (citing *Report of the Forty-Fourth Annual Meeting of the A.B.A.* 61–68 (1921); "Bar Meeting Votes Censure of Landis," New York Times, Sept. 2, 1921, 1 (reproducing the ABA resolution censuring Judge Landis).

[65] Green, "Judiciary & Baseball," 24 (citing "Game Clean Today, Judge Landis Says," *New York Times* (June 22, 1921), 20, http://query.nytimes.com/mem/archive-free/pdf?res=9E0CEFDB163BE533A25751C2A9609C946095D6CF).

[66] Sigman, "Jurisprudence of Landis," 279.

[67] Sigman, "Jurisprudence of Landis," 284 (citations omitted).

[68] Green, "Judiciary & Baseball," 24 (citing John P. Mackenzie, *The Appearance of Justice,* 180 (1974), 180 ("[B]aseball's 'Black Sox' scandal . . . fathered the first Canons of Judicial Ethics.")).

The First Canons of Judicial Ethics

Chief Justice William Taft

As evidenced by Judge Landis's story, in 1922, there was not a cohesive code of conduct to provide ethical guidance to judges. Although judges could be removed via impeachment, address or recall, the removal process was both cumbersome and politically charged.[69] Thus, Judge Landis's conduct became a motivating factor in the ABA's 1922 establishment of its Commission on Judicial Ethics.[70] Chaired by recently confirmed Chief Justice William Taft,[71] the Commission drafted Thirty-four Canons of Judicial Ethics that were approved in 1924 as guidelines for the states.[72]

The 1924 Canons admonished judges to avoid the appearance of impropriety in all professional and personal activities. Some of the literature attributes the repeated references to avoiding even a suspicion of improper conduct, to the outrage over Judge Landis's conduct. Some criticized the Canons as lacking in specific guidance and pointed to the preamble as evidence that the Canons were essentially an ABA "wish list" of judicial conduct.[73]

> The Preamble stated that the ABA, mindful that the character and conduct of a judge should never be objects of indifference, and that declared ethical standards tend to become habits of life, deems it desirable to set forth its views respecting those principles which should govern the personal practice of members of the judiciary in the administration of their offices. . . the spirit of which it suggests as a proper guide and reminder for judges, and as indicating what the people have a right to expect from them.[74]

Between 1924 and 1972 the Canons were cited by thirty-nine courts in determining whether a judge's conduct had been unethical with one federal court deeming the Canons to be an "admonition" of how judges should act.[75] Perhaps Illinois Supreme Court Justice Robert Shaw's observation that the Canons did no more than caution judges to "abstain from all appearance of evil" best captured the general perspective on the original Judicial Canons.[76]

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[69] "Code of Judicial Conduct: History of the Code," *J Rank* (accessed Feb. 2020), https://law.jrank.org/pages/5327/Code-Judicial-Conduct-History-Code.html.

[70] Cohn & Lievense, *Judiciary and ABA Model Code*, 273.

[71] Cohn & Lievense, *Judiciary and ABA Model Code*, 273.

[72] A.B.A., *About the Commission* (accessed Apr. 2020), https://www.americanbar.org/groups/professional_responsibility/policy/judicial_code_revision_project/background/.

[73] "Code of Judicial Conduct: History of the Code," *J Rank* (accessed Feb. 2020), https://law.jrank.org/pages/5327/Code-Judicial-Conduct-History-Code.html.

[74] A.B.A. Reports, 1924:762.

[75] Cohn & Lievense, *Judiciary and ABA Model Code*, 274 (citing Kinnear, 1969; Brooks Bros, 1945, 17).

[76] McKoski, "Judicial Discipline," 1926 (citing In re Harriss, 4 N.E.2d 387, 388 (Ill. 1936)).

Interestingly, the application of the "appearance of evil" to the analysis of judicial conduct predates the 1924 Canons as early court cases cited Saint Paul's appeal to the Thessalonians to "[a]bstain from the appearance of evil." The courts, referencing Saint Paul's plea, held that '[t]o keep the fountain of justice pure and above reproach, the very appearance of evil should be avoided' by jurors, lawyers, litigants, witnesses, and judges.[77] Thus, the secularizing of evil by deeming it impropriety provides a logical explanation for the focus of the 1924 Canons.

The Judicial Canons and Impropriety Revisited: The 1972 Model Code

Justice Abe Fortas

Louis Wolfson

The 1924 Canons remained the normative standards until another federal judge's receipt of extrajudicial income created a controversy in 1969 that motivated a revision of the Canons. Supreme Court Justice Abe Fortas's conduct garnered 1969 headlines."[78]

Justice Fortas had an agreement with the Wolfson Family Foundation to assist in planning its charitable, educational, and civil rights activities. In exchange for his assistance Justice Fortas received a $20,000.00 fee.[79] When the fee was remitted, the Securities and Exchange Commission was investigating Louis Wolfson, the Foundation's Director.[80] When Wolfson was ultimately indicted for selling unregistered stock, Justice Fortas cancelled the agreement and returned the $20,000.00 consulting fee.[81]

Similar to Judge Landis, Justice Fortas had not violated any law; however, both the media and the ABA focused on the appearance of impropriety or wrongdoing.[82] In fact, Time magazine

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[77] McKoski, "Judicial Discipline," 1920-21 (citing In re Harriss, 4 N.E.2d 387, 388 (Ill. 1936) ("[The 1924 Canons] were all succinctly summed up by St. Paul centuries ago when he advised the Thessalonians to abstain from all appearance of evil.); Eastham v. Holt, 27 S.E. 883, 894 (W. Va. 1897); *see also* State ex rel. Attorney Gen. v. Lazarus, 1 So. 361, 376 (La. 1887) ("All those who minister in the temple of justice . . . should be above reproach and suspicion. None should serve at its altar whose conduct is at variance with his obligations.").

[78] McKoski, "Judicial Discipline," 1926 (citation omitted).

[79] McKoski, "Judicial Discipline," 1926-27 (citing Jake Garn & Lincoln C. Oliphant, "Disqualification of Federal Judges Under 28 U.S.C. § 455(a): Some Observations On and Objections to an Attempt by the United States Department of Justice to Disqualify a Judge on the Basis of His Religion and Church Position," 4 Harvard Journal of Law & Public Policy 1, 22 (1981)).

[80] McKoski, "Judicial Discipline," 1927 (citing Jake Garn & Lincoln C. Oliphant, "Disqualification of Federal Judges Under 28 U.S.C. § 455(a): Some Observations On and Objections to an Attempt by the United States Department of Justice to Disqualify a Judge on the Basis of His Religion and Church Position," 4 Harvard Journal of Law & Public Policy 1, 22 (1981)).

[81] McKoski, "Judicial Discipline," 1927 (citation omitted).

[82] McKoski, "Judicial Discipline," 1927 (citing John Anthony Maltese, "The Selling of Clement Haynsworth: Politics and

dismissed the question of whether Fortas violated the law, asserting that it "misse[d] the point" because Fortas's actions gave rise to "a question about the appearance of virtue on the court."[83]

Life magazine published a story in which it reproduced Canon 4, which contained the mandates that a judge be free from the appearance of impropriety and that a judge's everyday life be conducted in a manner "beyond reproach."[84] Life magazine also quoted Canon 24's admonishment that a judge shall not incur pecuniary obligations which "appear to interfere with his devotion to the expeditious and proper administration of his official functions."[85]

The ABA Committee on Professional Ethics issued an informal opinion that censured Justice Fortas finding his conduct to be "clearly contrary to the Canons of Judicial Ethics."[86] The opinion referenced eight of the 1924 Canons; however, the "one most forcefully cited was Canon Four's command that a judge's official conduct should be free from impropriety and the appearance of impropriety."[87]


Chief Justice Roger Traynor

Justice Fortas ultimately followed in Judge Landis's footsteps and resigned from the US Supreme Court on May 16,1969.[88] Also in similar vein, the Fortas scandal motivated the ABA to establish a committee to review and revise the 1924 Canons.

Retiring California Chief Justice Roger Traynor chaired the committee whose charge was to evaluate and strengthen the Canons.[89] The Traynor Committee replaced thirty-six Canons with seven Canons to maintain the substance and eliminate much of

the Confirmation of Supreme Court Justices," 72 *Judicature* 338, 340 (1989) ("Fortas had broken no law . . .."); "The Fortas Affair," *Time*, May 16, 1969, 20 ("Although Fortas had not broken any law, he had clearly been guilty of a gross indiscretion.")).

83 McKoski, "Judicial Discipline," 1927 (citing "Judgment on a Justice," *Time*, May 23, 1969, 23 (quoting Stanford law professor Gerald Gunther)).

84 McKoski, "Judicial Discipline," 1927 (citing William Lambert, "Fortas of the Supreme Court: A Question of Ethics: The Justice . . . and the Stock Manipulator," *Life*, May 9, 1969, 36; *see also* Editorial, "Fortas Should Resign," *Chicago Tribune*, May 6, 1969, 16 (quoting Canon 4 of the 1924 Canons and criticizing Fortas' "insensitivity to ethical considerations in a position where, like Caesar's wife, he must be beyond reproach")).

85 McKoski, "Judicial Discipline," 1927 (citing William Lambert, "Fortas of the Supreme Court: A Question of Ethics: The Justice . . . and the Stock Manipulator," *Life*, May 9, 1969, 36).

86 McKoski, "Judicial Discipline," 1927-28 (citing 4 *The Justices of the United States Supreme Court: Their Lives and Major Opinions* 1463 (Leon Friedman & Fred L. Israel eds., 1997); *see also* Glen Elsasser, "Fortas Violated Judicial Ethics, ABA Rules," *Chicago Tribune*, May 21, 1969, 28 (describing the informal opinion issued by the ABA Committee on Professional Ethics finding that Fortas violated the 1924 Canons)).

87 McKoski, "Judicial Discipline," 1928 (citing 4 *The Justices of the United States Supreme Court: Their Lives and Major Opinions* 1463-64 (Leon Friedman & Fred L. Israel eds., 1997)).

88 McKoski, "Judicial Discipline," 1928 (citing "Mr. Fortas Resigns," *New York Times*, May 16, 1969, 46).

89 McKoski, "Judicial Discipline," 1928 (citing Jake Garn & Lincoln C. Oliphant, "Disqualification of Federal Judges Under 28 U.S.C. § 455(a): Some Observations On and Objections to an Attempt by the United States Department of Justice to Disqualify a Judge on the Basis of His Religion and Church Position," 4 *Harvard Journal of Law & Public Policy* 1, 23 (1981) (noting that the ABA's appointment of a special committee to revise the Canons of Judicial Ethics was "[m] otivated in part by the Fortas scandal")).

the aspirational language in the 1924 Canons."[90]

In the aftermath of the Fortas scandal the Traynor Committee focused on the importance of judicial appearances, moving some of Canon 4's text to the title of Canon 2 in what would become the 1972 Model Code of Judicial Ethics.[91] The title of Canon 2 read: "A Judge Should Avoid Impropriety and the Appearance of Impropriety in all His Activities."[92] The appearance of impropriety, no longer simply aspirational, had become a mandatory standard of judicial conduct.[93] Moreover, as Judge Ralph McKoski explains:

> ...[T]he 1972 Code's major contribution to the developing world of judicial ethics was to graft the appearance of impropriety standard onto the rules governing judicial disqualification...Henceforth, disqualification would be required any time a judge's participation in a matter created an 'appearance' of partiality.[94]

From Seven Canons to Five: The 1990 Model Code

Although not driven by a judicial controversy, the ABA once again decided to revise the Judicial Canons in 1990. Based upon a study commenced in 1988, the 1990 Model Code combined all the rules relating to off-the-bench conduct while adding a preamble and terminology section.[95]

The appearance of impropriety standard remained intact "to caution judges to avoid certain prospective conduct even if the conduct only appears suspect, and to proscribe any act that is harmful even if it is not specifically prohibited in the Code."[96] The 1990 Code replaced "should" with "shall" in Canon 2 to emphasize the mandatory nature of the rule.[97] Expanded commentary added the reminder that avoiding the appearance of impropriety applied to both a judge's professional and personal conduct.[98]

The 1990 Code's commentary further explained: "[t]he test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to

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[90] A.B.A., "About the Commission," A.B.A., (accessed Apr. 2020), https://www.americanbar.org/groups/professional_responsibility/policy/judicial_code_revision_project/background/.

[91] McKoski, "Judicial Discipline," 1928 (citing Code of Judicial Conduct Canon 2 (1972) (The Code of Judicial Conduct was adopted by the ABA House of Delegates on August 16, 1972.)).

[92] McKoski, "Judicial Discipline," 1928 (citing Code of Judicial Conduct Canon 2 (1972)).

[93] McKoski, "Judicial Discipline," 1928 (citing Charles Gardner Geyh, "Roscoe Pound and the Future of the Good Government Movement," 48 *South Texas Law Review* 871, 879 (2007) ("The 1972 Code thus effectively strengthened the commitment to regulating appearances as a means to promote public confidence in the courts by making its rules enforceable.")).

[94] McKoski, "Judicial Discipline," 1928-29.

[95] A.B.A., *About the Commission* (accessed Apr. 2020), https://www.americanbar.org/groups/professional_responsibility/policy/judicial_code_revision_project/background/.

[96] McKoski, "Judicial Discipline," 1930-31 (citing Lisa L. Milord, *The Development of the ABA Judicial Code* 13 (1992)).

[97] McKoski, "Judicial Discipline," 1931 (citing Model Code of Judicial Conduct Canon 2 (1990) ("A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.")).

[98] McKoski, "Judicial Discipline," 1931 (citing Model Code of Judicial Conduct Canon 2, cmt. (1990)).

carry out judicial responsibilities with integrity, impartiality, and competence is impaired."[99] In other words, judges were informed that they must consider not only the impact of their conduct, but also the public's perception of their conduct.[100] Imposing a standard on judges which some considered to be vague or ill-defined was justified as necessary to both maintain the public's confidence in the judiciary[101] and the public's perception of the entire justice system.[102]

The 2007 Model Code & The Debate Over the Appearance of Impropriety

The ABA Commission on the Twenty-first Century recommended a review of the 1990 Model Code of Judicial Ethics and specifically targeted the role of judicial appearances and the evaluation of the fairness of the vague standard of the appearance of impropriety as a rule of discipline.[103] After three and one-half years of debate during which the appearance of impropriety was moved to Canon 1 and initially appeared to be relegated to an aspirational guideline, it was eventually reinstated as a rule of discipline.[104]

Thus, more than a century after Judge Landis flamed the fire of the appearance of impropriety, it continues to be the standard by which judges may be held accountable. Although the standard remains subject to constitutional debate based upon due process concerns,[105] it continues to be applied to judicial conduct. Some examples include discipline imposed on judges for personal or professional relationships with a party in a case,[106] stock ownership,[107]granting favors to those who appear before them,[108] accepting sport tickets from a lawyer who appears

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[99] McKoski, "Judicial Discipline," 1931 (citing Model Code of Judicial Conduct Canon 2, cmt. (1990)).

[100] Kathleen Maher, *Appearances*, 9 (citing Roberta K. Flowers, "What You See Is What You Get: Applying the Appearance of Impropriety Standard to Prosecutors," 63 *Missouri Law Review* 699, 725 (1998)).

[101] Maher, *Appearances*, 9 (citing Model Code of Judicial Conduct, Commentary to Canon 2 (1990); *see also* In re Interest of McFall, 617 A.2d 707 (Pa. 1992) ("'[T]he appearance of bias or prejudice can be as damaging to public confidence in the administration of justice as would be the actual presence of either of these elements."); In re Dean, 717 A.2d 176 (Conn. 1998) (the appearance of impropriety standard "is as important to developing public confidence in the judiciary as avoiding impropriety itself.")).

[102] Maher, *Appearances*, 9 (citing Roberta K. Flowers, "What You See Is What You Get: Applying the Appearance of Impropriety Standard to Prosecutors," 63 *Missouri Law Review* 699, 725 (1998)).

[103] McKoski, "Judicial Discipline," 1932 (citing Siobhan Morrissey, *Revising the Rules: Update of the Judicial Conduct Code Will Address the Changing Justice System*, 90 American Bar Association Journal, Feb. 2004, 62).

[104] See McKoski, "Judicial Discipline," 1934-1935 (citations omitted). ["The demotion of the appearance standard from an enforceable rule to a guiding principle created a small firestorm… In the face of united criticism the Joint Commission relented and supported an amendment introduced on the floor of the ABA House of Delegates reincorporating the appearance of impropriety prohibition into disciplinary Rule 1.2… Thus, disciplinary Rule 1.2 of the Model Code of Judicial Conduct adopted by the ABA in February 2007 provides: 'A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.'"]

[105] A deep dive into the constitutional debate over the allegations of vagueness and resulting due process concerns while intellectually compelling and ongoing is beyond the scope of this article.

[106] Maher, *Appearances*, 10 (citing *People for the Ethical Treatment of Animals v. Bobby Bersosini, Ltd*., 894 P.2d 337 (Nev. 1995) (judge served on the board of a local animal shelter that had connections to a party in litigation before the judge)).

[107] Maher, *Appearances*, 10 (citing *Huffman v. Arkansas Judicial Discipline and Disability Comm'n*, 42 S.W.3d 386 (Ark. 2001)).

[108] Maher, *Appearances*, 10 (citing Matter of Barrett, 593 A.2d 529 (Del. Jud. 1991) (judge conducted gratuitous title searches for police officers who appeared before her)).

before them,[109] and posting social media comments on cases or current events.[110]

Conclusion

The winding and interconnected tale of baseball and the judicial canons reveals that the connections, coincidences, and repercussions of various historical events and moments in time are often both unpredictable and long lasting. The upset over a judge becoming the first baseball commissioner and the ironies of the application of the appearance of impropriety to both baseball players and the judiciary remain significant.

Perhaps the poignant postscript to this story resides in the 2020 decision to remove Kenesaw Mountain Landis's name from baseball's MVP plaques due to his lack of support for the integration of baseball.[111] The appearance of impropriety or actual impropriety then, now, or always? No doubt, time will continue to judge both the federal district court judge and the first baseball commissioner known as Kenesaw Mountain Landis. The analysis may evolve but Kenesaw Mountain Landis's status as the first baseball commissioner and his impact on both the game and the judicial canons cannot be denied.

> ***Baseball has the largest library of law and love and custom and ritual, and therefore, in a nation that fundamentally believes it is a nation under law, baseball is America's most privileged version of the level field.***
>
> **- A. Bartlet Giamatti[112]**

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[109] Maher, *Appearances*, 10 (citing *Disciplinary Counsel v. Lisotto*, 761 N.E.2d 1037 (Ohio 2002)).

[110] Jan L. Jacobowitz Ms., Negative Commentary—"Negative Consequences: Legal Ethics, Social Media, and the Impact of Explosive Commentary," 11 *St. Mary's Journal on Legal Malpractice & Ethics* 312, 336-337 (2021).

[111] Matt Kelly, "Landis' Name to be Removed from MVP Trophies," *MLB.com* (October 2, 2020) https://www.mlb.com/news/kenesaw-mountain-landis-name-removed-mvp-trophies

[112] https://www.inspiringquotes.us/quotes/rd01_Oae97tQH

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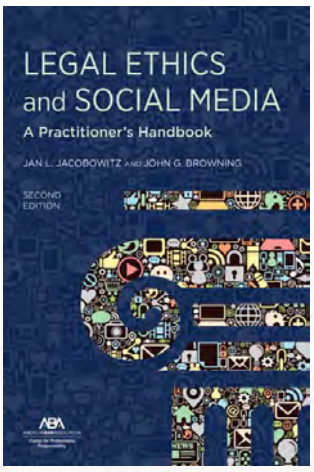

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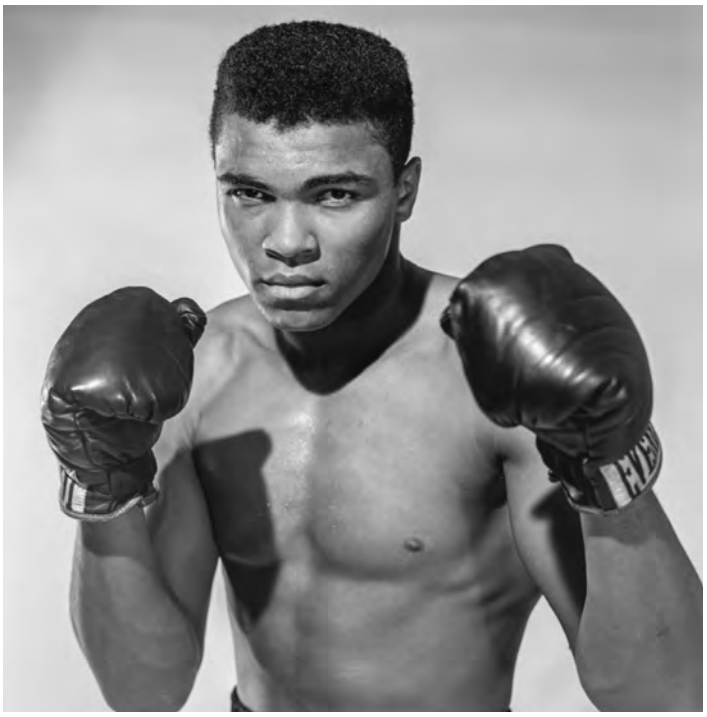
Float Like a Butterfly, and Sting Like a Supreme Court Opinion: Muhammad Ali's Draft Evasion Trial

By Hon. John G. Browning

In 1971, Muhammad Ali achieved one of his greatest victories. But the opponent wasn't Joe Frazier, George Foreman, or some other heavyweight boxing icon, and the forum wasn't a boxing ring but instead the marble halls of the United States Supreme Court. On June 28, 1971, the Court issued its opinion in *Clay v. United States*, reversing Ali's conviction for draft evasion four long years earlier.[1] Ali, who had applied for classification as a conscientious objector due to his status as a minister for the Nation of Islam in 1967, had lost at trial in Houston and in his appeal at the Fifth Circuit. Although undefeated in the ring, Ali's principled stance had cost him, in the prime of his career, his world championship title and his boxing license. Vindication by the Supreme Court paved the way for Ali's long climb back to the heavyweight title that he would regain in 1974, and it remains a pivotal episode in The Greatest's storied career.



Muhammad Ali (then Cassius Clay) in May 1962

Round One: "I Ain't Got No Quarrel with Them Viet Cong"

In 1967, Muhammad Ali seemed to be on top of the world. Born Cassius Marcellus Clay, Jr. on January 17, 1942 in Louisville, Kentucky, the boxer exploded onto the world stage when he won the gold medal in the light heavyweight division in the 1960 Summer Olympic Games in Rome, Italy. Turning pro in 1960, Ali defeated nineteen consecutive opponents. On February 25, 1964, the young heavyweight shocked the world by defeating champion Charles "Sonny" Liston, when Liston (an overwhelming favorite) could not answer the bell for round seven. Yet as surprising as the outcome may have been, Ali had an even bigger surprise in store at the press conference the next day. He announced that he was a follower of the teachings of Islam, and that he had changed his name to Cassius X (a couple of weeks later, he would adopt the name Muhammad Ali).

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[1] Clay v. United States, 403 U.S. 698 (1971).

Despite the fact that his religious conversion to the Nation of Islam struck a disconcerting note with mainstream white America, Ali's career continued unabated. He defeated Liston in a May 25, 1965 rematch, won against former heavyweight champion Floyd Patterson on November 22, 1965, beat Canadian champion George Chuvalo on March 29, 1966, and knocked out Great Britain's Henry Cooper and Brian London in two fights later that year. But a storm was gathering; Ali's very public affiliation with the Black Muslims purportedly caused FBI Director J. Edgar Hoover to inquire about the champion's draft status.[2]

On February 17, 1966, Ali was classified 1-A by the selective service board in Louisville, Kentucky.[3] When reporters asked him about his reaction to this classification, Ali uttered his "poem" about the controversial Vietnam War, ending in "I ain't got no quarrel with them Viet Cong . . ."[4] The remarks caused a national uproar. On February 28, 1966, Ali applied for draft exemption as a conscientious objector based on his religious convictions, and informed the local selective


Charles "Sonny" Liston


Floyd Patterson


George Chuvalo

Henry Cooper


Brian London

[2] Stephen Brunt, "Jordan Joins Ali, Pele as Men Who Rose Above Their Sports," *Globe and Mail* (Toronto) (Jan. 14, 1999).

[3] *Clay*, 403 U.S. at 698. A "1-A" classification signified the eligibility for unrestricted military service.

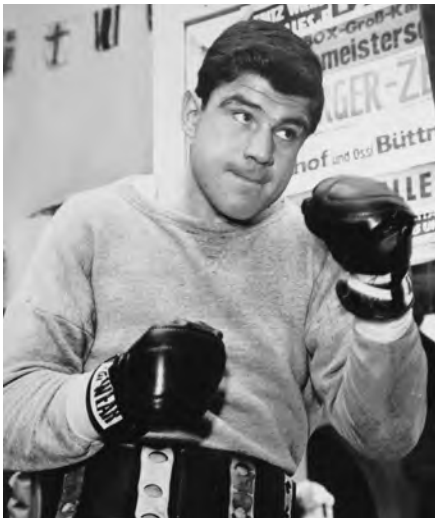
[4] Muhammad Ali (With Richard Durham), *The Greatest: My Own Story*, 123 (1975).

service board that as a minister in the Nation of Islam, "to bear arms or kill is against my religion."[5] The local selective service board denied Ali's conscientious objector claim, and he then appealed to the Kentucky Appeal Board.[6]

On May 6, 1966, the Kentucky Selective Service Board reviewed Ali's claim de novo, and concluded that the fighter was not entitled to conscientious objector status. On August 23, Ali petitioned the Kentucky Selective Service Appeals Board for a minister's exemption from conscription. That same day, a special hearing was held in Louisville before former Kentucky circuit judge Lawrence Grauman. On the basis of the record, the hearing officer concluded that Ali stated his views "in a convincing manner, " and was "sincere in his objection on religious grounds to participation in war in any form."[7] The hearing officer recommended that Ali's conscientious objector claim be sustained.

Judge Lawrence Grauman

Despite this, the Justice Department advised the Kentucky Appeal Board that Ali's request should be denied, claiming that the Nation of Islam's teachings were primarily political and racial, and that Ali's objections were to "only certain types of war in certain circumstances, rather than a general scruple against participation in war in any form."[8] On January 10, 1967—without a statement of reasons—the Kentucky Appeal Board denied Ali's conscientious objector claim. Against this backdrop, Ali continued his boxing career. He defeated German champion Karl Mildenberger and Cleveland Williams in back to back title defenses. He then fought Ernie Terrell, who had refused to acknowledge Ali's Muslim name, referring to him instead as "Cassius Clay" (which Ali regarded as his "slave name"). On February 6, 1967, Ali



Karl Mildenberger

Cleveland Williams

Ernie Terrell

[5] *Ibid.*, 160.

[6] *Clay v. United States*, 397 F.2d 901, 905 (5th Cir. 1968).

[7] *Ibid.*, 918.

[8] *Ibid.*, 919.

delivered a terrible vengeance, pummeling the overmatched Terrell for fifteen punishing rounds, while repeatedly taunting Terrell "What's my name?"


Zora Folley

On February 24, 1967, Ali's 1-A classification was appealed to the National Selective Service Appeal Board, but it was again denied.[9] Meanwhile, Ali made his ninth title defense, knocking out Zora Folley in Madison Square Garden on March 22, 1967, in the seventh round.

Two days after knocking out Folley, on March 24, 1967, Ali requested a transfer of induction location from Louisville, Kentucky to Houston, Texas. It was granted. Ali then asserted a challenge to induction on the ground that there was a pervasive under-representation of African Americans in the composition of local selective service draft boards, which constituted racial discrimination and thus local boards lacked lawful authority to induct Black registrants.[10] On March 29, 1967, the U.S. District Court for the Western District of Kentucky considered this challenge based on the systematic exclusion of Black Americans from Kentucky's local and appeal boards, but concluded that until Ali actually refused induction, there was no "substantial constitutional question" presented. Ali filed a similar complaint in the U.S. District Court for the Southern District of Texas. But on May 1, 1967, Judge Allen Hannay in the Southern District of Texas denied Ali's petition for injunctive relief, holding the champion could not show "irreparable injury" until after the final step toward induction.[11]


Judge Allen Hannay

Round Two: "I'm Giving Up My Title, My Wealth, Maybe My Future. Many Great Men Have Been Tested for Their Religious Beliefs"

On April 28, 1967, just before 8:00 a.m., Muhammad Ali arrived at the Armed Forces Induction Center in Houston. Inside, when the name "Cassius Clay" was called, Ali refused to step forward for induction. A senior officer pulled him out of line, escorted him to an office, and asked Ali if he understood the gravity of his act. Ali answered affirmatively, and he returned to the line. When the champion was called again, he refused to budge. Shortly after, he stepped outside the induction center and read the following statement to members of the press:

> It is in the light of my consciousness as a Muslim minister and my own personal convictions that I take my stand in rejecting the call to be inducted . . . I find I cannot be true to my beliefs in my religion by accepting such a call. I am dependent upon

[9] *Ibid.*, 906.

[10] *Ibid.*

[11] *Ali v. Connally*, 266 F. Supp. 345, 347 (S.D. Tex. 1967).

Allah as the final judge of those actions brought about by my own conscience.[12]

Despite the fact that Ali had not even been arrested, much less convicted of draft evasion, the same day he refused induction, the New York State Athletic Commission suspended his boxing license and withdrew its recognition of him as the world heavyweight champion. The World Boxing Association stripped Ali of his title. Soon afterward, all other jurisdiction in the United States—more than thirty state boxing commissions—followed suit. On May 8, Ali was indicted by a federal grand jury in Houston for draft evasion under 50 U.S.C. App. § 462.

Judge Joe Ingraham

Although his lawyers threw a haymaker of a petition at the Fifth Circuit on May 15, 1967 in an effort to keep the impending trial from going forward, it was denied. On June 19, 1967, the trial began in front of Judge Joe Ingraham and a jury of six men and six women—all white. The prosecution was conducted by U.S. Attorney Morton Susman and Assistant U.S. Attorney Carl Walker. They began by calling three military officers to testify that Ali had reported for his induction but refused to step forward. They also called a fourth military officer for the purpose of admitting Ali's voluminous Selective Service file.

Morton Susman

Hayden Covington

Carl Walker

Quinnan Hodges

Ali's defense was led by Hayden Covington and Quinnan Hodges (Ali's local counsel). They, too, called four witnesses, beginning with two clerks for the local and appellate boards of Kentucky. Covington attempted to establish through their testimony that the boards had been influenced by negative press clippings and

[12] DeNeen Brown, "'Shoot Them for What?' How Muhammad Ali Won His Greatest Fight," *Washington Post* (June 16, 2018).

correspondence that was included in Ali's draft record, and that the clerks had denied the boxer's claims without assessing their validity. Covington also called two members of the Houston-area board of appeals, before resting.

After closing arguments, Judge Ingraham ruled that the board had an adequate basis in fact for denying Ali's conscientious objector claims. With the basis-in-fact question resolved, the jury retired to determine whether Ali had intentionally evaded military service. Not surprisingly, the jury returned a guilty verdict in roughly twenty minutes. Judge Ingraham sentenced Ali to a term of five years imprisonment and a $10,000 fine—the maximum penalty. Compared to other convicted draft evaders, Ali's sentence was unusually harsh; the average sentence was eighteen months, and U.S. Attorney Susman had indicated he would not oppose a lighter sentence. However, Judge


Charles Morgan, Jr.


Chauncey Eskridge


Judge Robert Ainsworth

Ingraham permitted Ali to remain free on bail during his appeal. But when Ali filed a motion seeking permission to leave the country for a boxing match in Japan, Judge Ingraham denied the motion and ordered the fighter to turn over his passport. Unable to fight at home or abroad, Ali appeared to be at the end of his professional boxing career.

Ali appealed his conviction to the U.S. Court of Appeals for the Fifth Circuit. Having fallen out with his prior counsel (Covington later sued Ali for $250,000 in unpaid legal fees), Ali had new representation—civil rights lawyers Charles Morgan, Jr. and Chauncey Eskridge. Although their appeal focused more on the fairness of the trial and administrative procedures and less on whether Ali was entitled to conscientious objector status, nothing seemed to sway the appellate court. Writing for a unanimous three-judge panel in May 1968, Judge Robert Ainsworth held that there was an adequate basis in fact for the finding that Ali's beliefs were not "truly held." Rather than delve further, the Court simply stated that "the threshold question of sincerity" was one for the Selective Service bureaucracy and not the courts.

Other developments were taking place, however. By the time the Fifth Circuit issued its opinion affirming Ali's conviction in 1968, the tide of public opinion regarding the war in Vietnam had begun to turn. Facing the mounting casualty figures and news footage from the front, many Americans had soured on the war. With surprisingly stiff primary challenges looming, President

Lyndon B. Johnson had elected not to seek reelection. Protests on college campuses nationwide spread, and the chaos of the 1968 Democratic convention protests in Chicago added to questions about the war's purpose and the draft's legitimacy.


Solicitor General Erwin Griswold

While Ali's appeal to the U.S. Supreme Court was pending, Solicitor General Erwin Griswold informed the Court that the defendants in several pending cases—including Ali's—had been the subject of FBI wiretapping that might have been unconstitutional under the Court's then-recent Fourth Amendment decisions. So, the Court vacated the conviction on March 24, 1969, and remanded the case for a determination of whether Ali's conviction had been tainted by the information obtained as a result of the unlawful electronic surveillance.[13] After a July 14, 1969 in camera review of the FBI surveillance logs, Judge Ingraham held that the information obtained by the FBI agents had not tainted the government's evidence against Ali. He reimposed the champion's five-year prison sentence and fine. The Fifth Circuit also upheld Ali's conviction.[14] Ali's last hope was in the hands of the United States Supreme Court.

Round Three: "They Only Did What They Thought Was Right at the Time. I Did What I Thought Was Right. That Was All."

Ali won one legal battle on his journey to the U.S. Supreme Court. He sued the New York State Athletic Commission in federal court in New York for violating his Fourteenth Amendment right to equal protection of the state's laws in denying him a boxing license. After his lawyers demonstrated that the Commission had—on at least 244 occasions—granted, renewed, or reinstated boxing licenses to applicants who had been convicted of offenses ranging from burglary to rape, armed robbery, and even murder, Judge Walter Mansfield ruled that the boxing authorities in New York had unfairly singled out Ali for sanctions.[15] With his license reinstated, Ali could fight again. And fight he did—notching convincing victories over Jerry Quarry in October 1970 and against Oscar Bonavena in December 1970. On March 8, 1971, Ali fought "Smokin' Joe" Frazier in a bid to win back his title. Ali lost a hard-fought decision, marking the first loss of his professional career. But an arguably more important fight loomed in the hallowed halls of the U.S. Supreme Court.

Two months after the first Ali-Frazier fight, the Supreme Court granted certiorari to hear Ali's appeal. Reportedly, this decision was at the urging of Justice William Brennan, although few of the other Justices were sympathetic to the fighter's plight. The appeal boiled down to a single issue: was there any basis in fact for the appeal board to conclude that Ali's religious opposition to the war was a selective one (in other words, limited to the Vietnam War) rather than a categorical one. The Court heard oral argument on April 19, 1971.

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[13] *Giordano v. United States*, 394 U.S. 310 (1969) (per curiam), vacating and remanding *United States v. Clay*, 397 F.2d 901 (5th Cir. 1968).

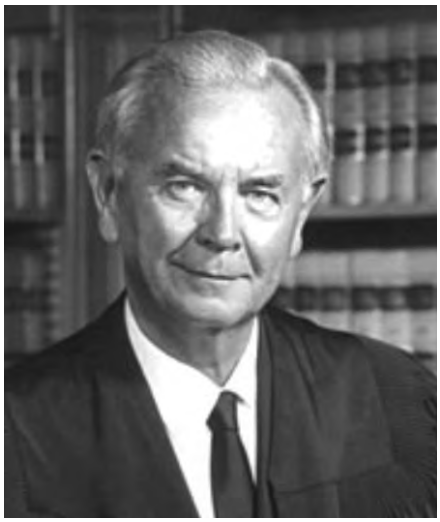
[14] *United States v. Clay*, 430 F.2d 165, 168–72 (5th Cir. 1970).

[15] Andres F. Quintana, "Muhammad Ali: The Greatest in Court," 18 *Marquette Sports Law Review* 171, 189 (2007); *see also Ali v. Div. of State Athletic Comm'n of N.Y.*, 316 F. Supp. 1246, 1250 (S.D.N.Y. 1970).

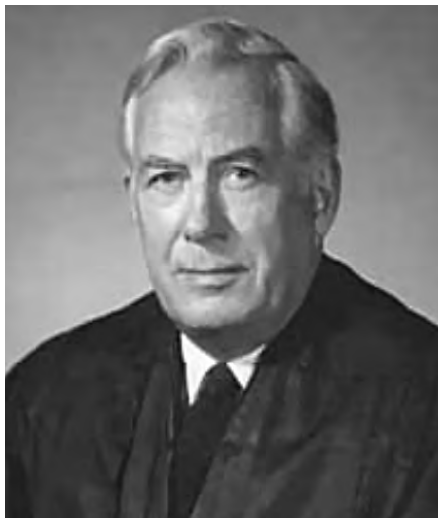
Jerry Quarry

Oscar Bonavena

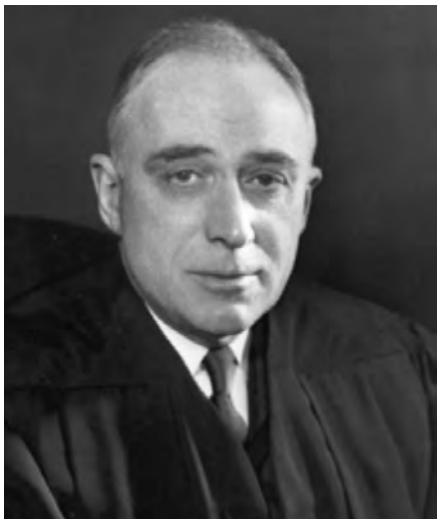
"Smokin' Joe" Frazier



Justice William Brennan



Chief Justice Warren Burger



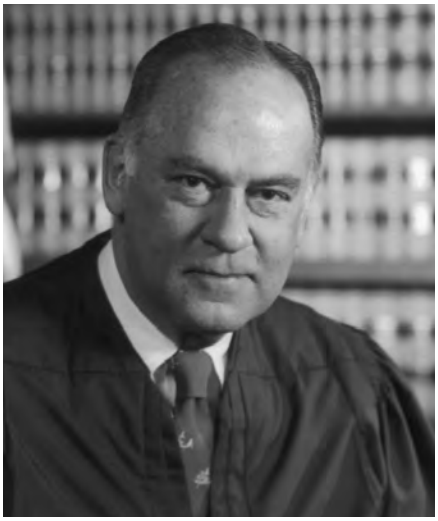
Justice John Marshall Harlan II

At the Court's post-argument conference, the eight Justices who had heard the case met to deliberate (Justice Thurgood Marshall, who had been Solicitor General when the Department of Justice wrote its opinion letter, recused himself). Tentatively, it appeared at first that there was a 5–3 majority in favor of voting to affirm Ali's conviction. Subsequent examination of notes made by Justices Blackman, Douglas, and White indicate, however, that they considered this a "very close" case.[16] Chief Justice Warren Burger assigned the task of writing the planned majority opinion to Justice John Marshall Harlan II.

Harlan's clerks, who clearly favored reversing the champion's conviction, urged him to read excerpts from a book by the Nation of Islam's leader Elijah Muhammad, *Message to the Black Man*.[17] Harlan did, and was persuaded that the government's position on the selectivity issue was

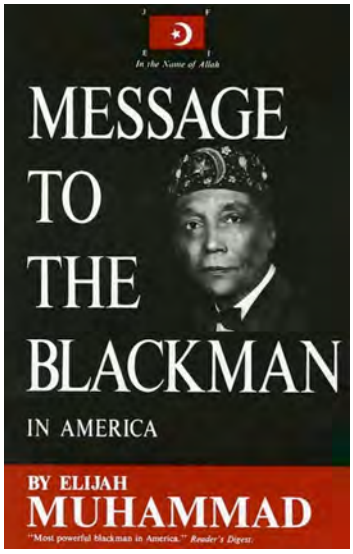
[16] Winston Bowman, "*United State v. Clay:* Muhammad Ali's Fight Against the Vietnam Draft," *Federal Judicial Center*. (2018) (proposed for inclusion in the project Federal Trials and Great Debates in United States History).

[17] Bill Littlefield, *The SCOTUS Clerk Who Helped Muhammad Ali Avoid Prison*, WBUR.ORG (Sept. 8, 2017), https://www.wbur.org/onlyagame/2017/09/08/muhammad-ali-supreme-court-vietnam-war.



Justice Potter Stewart

wrong. On June 9, 1971, Harlan wrote to the Chief Justice, informing him that he had changed his vote, leaving the Court deadlocked in a 4–4 tie. Seeking to persuade his fellow Justices, Harlan circulated a memorandum containing a draft opinion reversing the conviction.[18]



The book that persuaded Justice Harlan to change his vote

Justice Potter Stewart also circulated a draft opinion deciding the case on more narrow grounds. The retired judge in Kentucky, Lawrence Grauman, had previously concluded (after interviewing Ali) that he was sincere in his religious belief. However, in advising the draft board, the Justice Department had "conveniently" neglected to mention Judge Grauman's opinion. Justice Stewart reasoned that since the Justice Department had given the draft board erroneous advice, and since the board had denied Ali's conscientious objector status without explanation, it could be that the draft board had relied on bad advice. This minimalist approach to resolving the issue on technical grounds without addressing the merits of whether Ali had a sincere religious objection to war "in any form" was more palatable to the other Justices, breaking the 4–4 logjam.

On June 28, 1971, the Court announced its per curiam opinion (drafted by Stewart) in *Clay v. United States*.[19] It held that "[h]ere, where it is impossible to determine on exactly which grounds the Appeal Board decided, the integrity of the Selective Service System demands, at least, that the Government not recommend illegal grounds."[20] Justices Harlan and Douglas wrote concurring opinions to the unanimous judgment of reversal. By issuing a decision specific to the facts of Ali's administrative proceedings, the Court sidestepped the need to even decide the thornier question: whether the theoretical prospect of participating in a "holy war" against Islam meant that members of the Nation of Islam were or were not "conscientiously opposed to participation in war in any form."

The *Clay v. United States* decision articulated the standards that a draft registrant must satisfy in order to qualify for classification as a conscientious objector. According to the Court, registrants must establish that (a) they are conscientiously opposed to war in any form; (b) their objection is based on religious, moral, or ethical beliefs; and (c) their objection is sincere. The holding signified that draft boards must state, however briefly, the reason for an adverse decision in every case in which a conscientious objector claim is presented.

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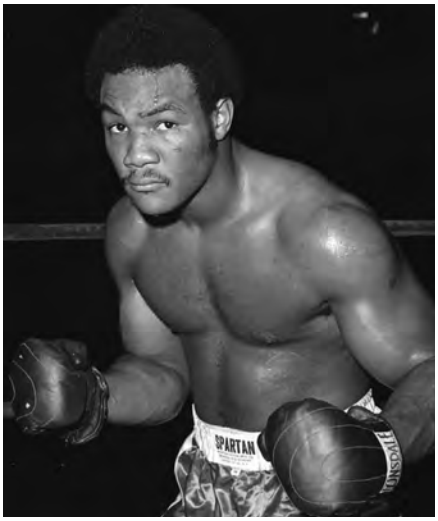
[18] Marty Lederman, *Muhammad Ali, Conscientious Objection, and the Supreme Court's Struggle to Understand "Jihad" and "Holy War": The Story of* Cassius Clay v. United States, SCOTUSblog (June 8, 2016), https://www.scotusblog.com/2016/06/muhammad-ali-conscientious-objection-and-the-supreme-courts-struggle-to-understand-jihad-and-holy-war-the-story-of-cassius-clay-v-united-states/.

[19] 403 U.S. 698 (1971).

[20] *Ibid.* (*citing Sicurella v. United States*, 348 U.S. 385, 392 (1955)).

When asked by reporters whether he planned any legal action to recover damages from those who had kept him out of boxing for three and a half years, Ali responded "No. They only did what they thought was right at the time. I did what I thought was right. That was all."[21] Two years after the Court's decision, on June 30, 1973, the United States formally ended the draft and began its reliance on an all-volunteer army. Ali achieved vindication in the boxing ring as well. On January 28, 1974, he defeated Joe Frazier in a rematch at Madison Square Garden. And on October 30, 1974, Ali regained the heavyweight crown with his stunning eighth round knockout of George Foreman in Kinshasa, Zaire in the classic "Rumble in the Jungle." He took back the title that had been wrongfully taken from him seven and a half years before.



George Foreman

The Final Bell

Watching Muhammad Ali light the Olympic flame during the opening ceremonies in Atlanta, Georgia in 1996—his arm wavering as he battled the ravages of Parkinson's disease—I could not help but think of how adhering to his beliefs had cost him the prime of his boxing career, the best years of a fighter's life. The brash, proud, younger Ali had once declared: "I am America. I am the part you won't recognize. But get used to me—Black, confident, cocky; my name, not yours; my religion, not yours; my goals, my own. Get used to me."[22] Muhammad Ali transcended sports, and personified the racial and political climate of his generation. His legendary accomplishments in the ring will always be remembered, but so should his struggle to protect his beliefs. His refusal to submit to the draft earned him enmity on the left and the right, and nearly sent him to prison, but it also resulted in a landmark U.S. Supreme Court decision that set forth the standards for qualifying as a conscientious objector.

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[21] Howard Bingham & Max Wallace, *Muhammad Ali's Greatest Fight: Cassius Clay v. The United States of America*, 248 (2000).

[22] Krishnadev Calamur, "Muhammad Ali and Vietnam," *Atlantic* (June 4, 2016), https://www.scribd.com/article/474340579/Muhammad-Ali-And-Vietnam.

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Trouble and Justice: How Trouble in Texas Led to the Court Martial Trial of America's Beloved Jackie Robinson.[1]

By Alia L. Adkins-Derrick

"I don't mind trouble but I do believe in fair play and justice. I feel I'm being taken in this case and I will tell people about it unless the trial is fair."

- Lieutenant Jack R. Robinson[2]

Decades before Fort Hood (now Fort Cavazos),[3] a Texas U.S. Army base, made national civilian news over the ever-present dangers and sexual misconduct-related injustices that too often await military service women—like Vanessa Guillen who was sexually harassed and murdered there in 2020—it was the site of another type of injustice: racial discrimination against its Black servicemembers. Too often in the 1940s, racial discrimination, both on and off U.S. military bases, was so heinous it ended in tragedy. In one notable instance, it would lead to the court martial trial of Major League Baseball's ("MLB") future pioneer and legend: Jackie Robinson.

Since during Jack "Jackie" R. Robinson's military service, U.S. Vice President Harry Truman had not yet been appointed U.S. President[4] and, thus, had not yet signed his 1948 Executive Order 9981 integrating the U.S. Military forces, young Robinson, a Californian, experienced first-hand the unjust impact of discrimination in a segregated U.S. Armed Forces. Given the principled, deeply religious man Robinson had become and the harsh (sometimes fatal) realities that awaited such Black men in the Jim Crow South, where Robinson would be stationed, Robinson's military service set him on a dangerous collision course with the South's social norms. The course would culminate with *The United States v. 2nd Lieutenant Jack R. Robinson*, 0-10315861, *Cavalry, Company C, 758th Tank Battalion* court martial trial. To better understand what led to the trial, we must briefly look back at Robinson's integrated past.

Robinson in 1943

Robinson's Pre-Military Integrated Past and Close Call.

Years before Robinson integrated the MLB, Robinson helped to integrate the University of California, Los Angeles ("UCLA"), where his athletic prowess handed him much notoriety and resulted in him becoming the first UCLA student to ever letter in four sports in the same season.[5] Robinson left college in pursuit of future athletic glory or, absent professional sport opportunities for Blacks, to at least become an athletic director who trained other athletes. Robinson got his

shot when he secured a National Youth Administration ("NYA") job as an assistant athletic director over White athletes age sixteen to eighteen.[6] His athletic director dream came to an abrupt halt, however, at the start of World War II when the U.S. shut down the NYA programs nationwide.[7] Resilient, Robinson pivoted and secured a spot on the Honolulu Bears, Hawaii's *integrated* semi-professional football team.[8] Just prior to the U.S. entering World War II, Robinson wrapped up his first season with the Honolulu Bears. Post season, Robinson headed home to California on a ship he boarded on December 5, 1941, a mere two days before Japan bombed Pearl Harbor.[9] The U.S. military draft soon followed and marked the first time Black Americans were inducted on a large scale.[10] On April 3, 1942, Robinson reported for military duty at the Los Angeles Induction Center.[11] He joined millions of other draftees from both north and south of the Mason-Dixon Line.[12]

WWII, Robinson, and the Segregated U.S. Military.

In May of 1942, the U.S. Army sent Robinson to Fort Riley, Kansas for basic training where he was assigned to the cavalry.[13] Though never a member of the confederacy, segregation was nevertheless present in Kansas in a way Robinson had not previously experienced. At Fort Riley, Robinson tried out for, but, due to his race, was barred from playing on the White-only baseball team.[14] Undeterred by this, Robinson aspired to become a combat military officer, though at the time, Black servicemen were typically assigned almost exclusively to the non-combat service and supply units of the Army. Robinson, nevertheless, took and passed all the requisite tests to gain admission to Officer Candidate School ("OCS"). Unlike his White counterparts, however, who were admitted to OCS soon after passing, Robinson and the handful of other Black soldiers who had passed admissions tests were not allowed to start OCS. For months they could get no real answers or reason for not being accepted into OCS despite being qualified and meeting the admission criteria. Shortly after being transferred to Fort Riley and learning of the situation, famed boxer Joe Louis, who regularly donated large sums of money to the military, contacted some powerful government officials.[15] Soon after, the Fort Riley command was subjected to enough heat from Washington DC that Robinson and several other Black servicemen suddenly found themselves being welcomed to OCS to begin their thirteen weeks of training. Their November 1st OCS admission marked the first time in U.S. Army history that OCS was integrated. Even so, it would still be some time before army rules would fully catch up to the OCS integration milestone. As they stood, army rules continued to forbid any Black officer from outranking a White officer in the same unit.

By January 28, 1943, Robinson was finally made a second lieutenant in the cavalry of the U.S. Army. Later that year, Robinson was appointed to serve as a morale officer of his company. As its name suggests, as morale officer, Robinson was in charge of taking steps to keep the Black soldiers morale up. Robinson strove to achieve this not just through organizing sports games but also by actively working to gain small victories against segregation for Black soldiers who were subjected to unfair treatment and conditions because of their race. For example, after a heated exchange with the base's provost marshal about how "White" seats often went unused at the post exchange while Black soldiers had to wait long periods of time for the few seats assigned to them, Robinson succeeded in securing additional seats for Black servicemembers.

After this, Robinson and his fellow Black officers and soldiers waited to see whether Blacks would finally be allowed to fight in combat or continue to be relegated to the service units. Finally,

the answer was made painfully clear: after two years of combat training, the Black 2nd Cavalry Division was converted into a service unit. This did not help morale. Understandably then, in August of 1943 when Robinson was asked to join the army's football team, Robinson was reluctant but eventually relented and accepted the invite. However, Robinson's 1943 military football career was short lived. The season starting game against the University of Missouri was intentionally played without Robinson, its only Black player, because Missouri refused to play against a team with a Black player. Rather than stand with Robinson or at least inform him of this, the military suddenly arranged for Robinson to be granted a two-week leave that strategically meant he would miss that first game. When Robinson learned of the true reason for his leave, he resigned from the football team. He was simply unwilling to commit to playing for a team that was not equally committed to insisting he play over the objections, threats, and ultimatums of blatant racists and staunch segregationists. Arguably, this same resolve is, no doubt, what would later help forge the strong bond between Robinson and the Dodgers that made the duo a formidable force in the MLB.

In response to his resignation, the Colonel in charge of the football team told Robinson that he could order Robinson to play anyway. Robinson strategically replied that the Colonel would not want Robinson playing knowing his heart was not in it. Robinson's reply likely did not earn him any friends among the superior officers there but it, nonetheless, was effective, because he was not ordered to play football.

In December of that same year, however, special orders were issued to transfer Robinson along with others south to Texas.[16] In a December 9, 1943, special order, Robinson was reassigned to the 2nd Cavalry Division of Fort Clark, Texas military base. Soon thereafter, however, the Fort Clark base would cease cavalry training and eventually be ordered closed.[17] Naturally then, subsequent successive transfer and reassignment orders for Robinson and others followed. By January 4, 1944, a Special Extract Order was issued for Robinson and one other officer to report to the Brooke General Hospital at Fort Sam Houston in San Antonio, Texas "for observation and treatment."[18] And "upon release from [the] hospital [they] w[ere to] p[resent for a] new assignment" based, no doubt, on the medical board's determination of each man's medical fitness to serve.[19] In its January 28, 1944 decision regarding Robinson, the Board wrote that, due to large bone chips in Robinson's ankle, that was first broken playing college football, it "is of the opinion that this officer is physically disqualified for general military service, but is qualified for limited service. He is not qualified for over-seas duty at this time. The Board recommends: That he be discharged from the hospital for temporary limited service. . .. and that on or about 28 July 1944 he be reexamined with a view to determining his physical fitness." The Board went on to outline Robinson's restricted duties.

Robinson in the Jim Crow South.

Eventually a more trying fate was thrust upon Robinson when special orders were issued around April 13, 1944 informing him and other Black officers that they would finally get their chance to engage in combat overseas as newly attached members of the 761st Tank Battalion.[20] However, to prepare they would be transferred to the 761st Tank Battalion's headquarters located down south at the present-day Fort Cavazos, Texas military base.[21] At the time called Camp Hood, the base was named after Confederate General John Bell Hood who commanded a brigade of Texans against the Union.[22] Camp Hood was the U.S.'s direct response to the German blitzkrieg.

It was built to train U.S. military service men on anti-tank technology.[23] Vast and new, Camp Hood was situated deep in the heart of Texas where Jim Crow laws reigned supreme.[24] That Texas was once a part of the Confederate South was evident in the visible vestiges of the Confederacy that were ever visible there. Black servicemen recalled that both Camp Hood and the central Texas small towns that surrounded it were so thoroughly segregated that separate outhouses existed for Whites, Blacks ("colored"), and Mexicans even on federal property.[25] A friend of the Secretary of War's civilian aide, Truman Gibson, opined a year prior that Camp Hood was "one of the worst situations in the whole AUS [Army of the United States]" as "[t]here is hostility between [military police and Black personnel] and segregation on interstate buses operating on the post, and segregation in the post facilities and theaters."[26]

It was into this thoroughly segregated way of life that Second Lieutenant Robinson, who had already garnered an impressive resume of integration milestones —that included: (1) helping to integrate UCLA and the army's OCS; (2) playing on the integrated Honolulu Bears' semi-pro football team; and (3) using his morale officer appointment to win small victories for Blacks at Fort Riley— suddenly found himself. Robinson quickly learned that, to most Whites at Camp Hood, his Second Lieutenant officer rank was not the least bit important and so was deliberately disregarded or ignored.[27]

In stark contrast to this new reality, stood Lieutenant Colonel Paul L. Bates, a fellow Californian and the White commander of the 761st Tank Battalion, Company B to which Robinson was attached. Bates helped the Black men under him channel their indignation against racism "into a desire to succeed as no black outfit had succeeded before."[28] Bates noticed how, at Camp Hood, Robinson not only succeeded in leading his assigned platoon but also organized and used sports to boost their morale. Thus, Bates asked Robinson to consider serving overseas with the battalion as its morale officer. Likely due to Bates shown commitment to fair treatment of Black servicemembers, Robinson was willing to serve overseas under Bates, even if it meant he would have to risk doing what he had previously been medically restricted from doing.[29] Consequently, to serve, Robinson would not only have to be medically cleared for physical duty overseas, but would also have to sign a waiver releasing the Army from any financial claim or benefit if, as a result of Robinson's overseas service, he reinjured his ankle. This meant Robinson would have to travel to the Army's McCloskey General Hospital ("McCloskey Hospital") to undergo another thorough examination to determine if he was physically qualified for overseas service and what type of duty, if any, he could perform. McClosky Hospital was located off base in the nearby small town of Temple, Texas. To get there, Robinson would have to travel by government issued transport or public bus. At many southern training camps, like Camp Hood, it was not uncommon for the federal contracts for transporting soldiers both on and off the military base to be held by local civilian bus lines.[30] Those bus lines often adhered to local, <u>not</u> federal, race laws, policies, and practices. They also employed civilian bus drivers determined to enforce southern race protocols and eager to teach blunt lessons to uppity Black soldiers who wrongly assumed their military status exempted them from the south's strict segregation of the races.[31]

On or about June 21, 1944, government motor transportation was arranged for Robinson's travel to McCloskey Hospital to start the re-examination.[32] Based on the initial results, the hospital's Disposition Board concluded that Robinson's condition remained "Unchanged." And though Robinson was "still unfit for general duty" due to the bone chips in his ankle, Robinson was "fit for

limited military service" and "overseas duty."[33] The board recommended that the Army Retiring Board reassign Robinson to permanent limited military service.[34]

The Bus Ride.

On July 6, 1944 around eleven p.m., Robinson boarded a Camp Hood bus that was run by civilian owned Southwestern Bus Company to begin his return trip back to McCloskey Hospital.[35] As he started walking towards the back of the bus, Robinson saw Virginia Jones, the wife of his friend First Lieutenant Gordon H. Jones Jr., sitting in the middle of the bus and sat down next to her. According to Mrs. Jones' statement she "sat in the fourth seat from the rear of the bus, which I have always considered the rear of the bus." Though there is no general consensus on exactly what happened after this, after driving about five to six blocks, Milton Renegar, the White civilian bus driver turned and either ordered or, as implied from Renegar's sworn statement, nicely asked, Robinson to move to the back of the bus.[36] Initially, Robinson did not respond to Renegar as he figured that, since Renegar never asked Mrs. Jones to move to the back of the bus, Renegar's order probably stemmed from him resenting Robinson for talking with Mrs. Jones whom Renegar likely mistakenly assumed to be White. Renegar, however, would later refer to Mrs. Jones in his statement as the "colored girl" who sat down "about middle ways of the bus."[37] When Renegar repeated his order, Robinson refused. Renegar threatened that if Robinson did not comply, he'd make trouble for Robinson when he made it to the station. Fully aware that the month prior, the Army had announced a new policy forbidding segregation on its military buses after a White bus driver in Durham, North Carolina had killed a Black soldier, Robinson still refused to move. Instead, Robinson told Renegar "that if he wanted to make trouble for me that was up to him."[38] Exchanges between Robinson and the driver became heated. When the bus reached Camp Hood's crowded central bus station, Robinson recalled a different passenger, Mrs. Elizabeth Poitevint telling him she is "going to prefer [*i.e.*, press] charges against me." To this, Robinson replied: "That's all right, too, I don't care if she prefers charges against me."[39] As Robinson prepared to get off the bus at the station, the bus driver asked Robinson for his military ID, but Robinson refused. Then Mrs. Poitevint, confronted Robinson. Nearly all the White witnesses said Robinson replied by threatening Mrs. Poitevint to "stop fucking with him." Only Mrs. Ruby Johnson, who notably was Mrs. Poitevint's friend who had been sitting with Mrs. Poitevint on the bus, did not. According to Mrs. Johnson, Poitevint walked over and shook her finger in Robinson's face telling him she intended to report him to the authorities. Mrs. Johnson recalls Robinson responding by telling Mrs. Poitevint to "go away and leave him alone."[40] Later, Mrs. Ruby Johnson's would be the sole White witness' court martial trial testimony that seemed to corroborate Robinson's account of what happened that day.

Robinson admitted using profanity but denied using profanity towards Mrs. Poitevint. Apparently, at some point after the driver told the civilian Southwestern Bus Company dispatcher, Bevlie "Pinky" Younger, to call the military police ("MP"),[41] the driver, according to Robinson's statement, then said "this nigger is making trouble."[42] The driver then proceeded to start trying to get the other men present up in arms, after Robinson replied to the driver's racial slur by telling the driver to "stop fuckin with me."[43] When the MPs arrived at the bus station, MP Corporal George A. Elwood asked the civilian bus dispatcher Younger "what the trouble was" to which Younger replied within earshot of Robinson "the trouble was with a nigger Lieutenant."[44] According to Younger, Robinson "resented being call so" and told Elwood in the presence of "100 to 200 ladies and other

passengers on the buses" that "No God-damned sorry son-of-a bitch could call him a nigger and get away with it."[45]

The MPs, who were all outranked by Lieutenant Robinson, asked if he would go with them to the MP station to straighten things out. Robinson agreed. At the MP station, inside the MP Guard room, the Assistant Provost Marshal Captain Gerald M. Bear commenced to taking statements from all the White civilians and servicemembers involved. Robinson was present and immediately observed how Bear did not recognize Robinson by his officer rank. Robinson recalled that instead Bear made him stand while asking the lower ranking White private Mucklerath to sit down. Bear made no mention of this in his statement. According to Bear and others, Robinson kept interrupting Bear as well as the witnesses while they were trying to give their statements. Bear recalled telling Robinson to leave the MP Guard Room and ordering him to remain "at ease" and in the receiving room. The only thing that separated the MP Guard Room from the receiving room was a swinging door. Robinson went out the swinging door into the receiving room but allegedly did not stay there. Instead, Robinson kept defying Bear's orders and returning to the swinging door to interrupt.

Bear finally permitted Robinson to rejoin them in the MP Guard Room to give his account of what happened. Robinson disputes the account of his statement that was taken by Bear's stenographer, a civilian White woman, because Robinson felt she was hostile towards him and noted how Bear allowed her to keep interrupting Robinson. According to Robinson she asked him questions like: "Don't you know you've got no right sitting up there in the White part of the bus?" and snapped that his "replies made no sense."[46] Robinson rightfully felt this civilian stenographer was not the proper person to question him. Nevertheless, Bear allowed this to continue until Robinson sharply replied to her that if she let him finish his sentence and quit interrupting, maybe his replies would make sense.[47] According to Robinson, Bear defended that Robinson was an "uppity nigger" who "had no right to speak to a lady in that manner."[48]

Robinson Framed, Charged, and Arrested.

After taking Robinson's statement, Bear had the MPs drive Robinson back to the hospital. Once there, a White doctor warned Robinson that the hospital had received a report that the MPs would be dropping off a drunk Black Lieutenant who had been trying to start a riot.[49] After Robinson replied "I had never had a drink in my life," that doctor advised Robinson to take a blood alcohol test to disprove this narrative.[50] The test results showed Robinson had not been drinking.[51] The same doctor informed Colonel Bates of the events.[52] When Colonel Bates looked into it, he soon learned of Bear's intent to frame Robinson in an effort to have him court martialed. Bates refused to endorse the charges against Robinson.[53] Soon thereafter, Robinson was transferred to the 758th Light Tank Battalion.[54] Though recollections differ on the timing of when Robinson's transfer was initiated (*i.e.*, whether before or after the bus incident and Colonel Bates subsequent refusal to sign the charges), one thing is clear Bear was undeterred by Bates refusal to sign and simply waited for Robinson's transfer to the 758th Light Tank Battalion where a more compliant commander would, and did, quickly sign orders to prosecute Robinson on or about July 24, 1944. That same day, the MPs arrested Robinson. With these signed orders, Robinson would be made to appear before the military's highest level trial court reserved for trying service members for the most serious of crimes.

(WRITE NOTHING ABOVE THIS LINE)

CHARGE SHEET

Camp Hood, Texas (Place), 17 July (Date), 1944

Name, etc., of accused: Robinson, Jack R. O-1031586 Second Lieutenant, Cavalry Company "C" 758th Tank Battalion.

(Give last name, first name, and middle initial in that order followed by serial number, grade, company, regiment, arm or service, or by other appropriate description of accused. Alias names, etc., to follow in same manner)

Age Present 25-5/12 Pay, $ 150.00 (Base pay plus pay for length of service) per month. Allotments to dependents, $ None per month.

Government Insurance deduction, $ 6.70 per month.

Data as to service: Commissioned Second Lieutenant Cavalry 28 January 1943.

(As to each terminated enlistment, give including dates of service and organization in which serving at termination. As to current enlistment, give the initial date and the term thereof. Give similar data as to service not under an enlistment)

Data as to witnesses, etc.:

FOR THE PROSECUTION:

(Give names, addresses, and note if for accused. List documentary evidence and note where each item thereof may be found)

Captain GERALD M. BEAR, CMP Asst Camp Provost Marshal, Camp Hood, Texas.

Captain PERLOR L. WIGGINTON, QMC Camp Laundry Officer, Camp Hood, Texas.

Captain EDWARD L. HAMILTON, FA, Camp Prison Officer, Camp Hood, Texas.

PFC BEN H. MUCKLERATH, Co D 149th Tng Bn., 90th Regt, IRTC, Camp Hood, Texas.

MR. MILTON N. RENEKAR, Apartment 121 B, Hood Village, Texas.

MRS. ELIZABETH POITEVINT, Post Exchange # 10, 172nd St. Camp Hood, Texas.

MRS RUBY JOHNSON, Post Exchange # 10, 172nd St Camp Hood, Texas.

SGT. WILLIAM L. PAINTE , MP Section, Enlisted Detachment 1848th Unit, Camp Hood, Tex.

CPL. GEORGE A. ELWOOD, MP Section, Enlisted Detachment 1848th Unit, Camp Hood, Texas.

ACTING CPL. EUGENE J. HENRIE, MP Section, Enlisted Detachment 1848th Unit, Camp Hood, Texas.

ACTING CPL. ELMER S. PARIS, MP Section Enlisted Detachment 1848th Unit, Camp Hood, Texas.

PVT. LESTER C. PHILLIPS, Student Regiment, T. D. School, Camp Hood, Texas.

PVT. WALTER H. PLOTKIN, MP Section, Enlisted Detachment 1848th Unit, Camp Hood, Tex.

FOR THE DEFENSE:

None.

Placed in arrest 17 July 1944, McCloskey General Hospital Temple, Texas.

Data as to restraint of accused:

(Give date, place, and initial date of any restraint of accused)

W. D., A. G. O. Form No. 115
8 July, 1943

c10—27765-2

(1)

The charge sheet reflecting the original charges against Robinson (this page and the next two)

CHARGE I : Violation of the 63rd Article of War.

Specification 1: In that Second Lieutenant Jack R. Robinson, Cavalry, Company "C", 758th Tank Battalion, did, at Camp Hood, Texas, on or about 6 July 1944, behave himself with disrespect toward Captain Peeler L. Higginton, Quartermaster Corps, 1848th Unit, Eighth Service Command, Army Service Forces, his superior officer, by saying to him " Captain, any Private, you or any General calls me a nigger and I'll break them in two, I don't know the definition of the word ", or words to that effect, and by speaking to the said Captain Peeler L. Higginton in an insolent, impertinent and rude manner.

Specification 2: In that Second Lieutenant Jack R. Robinson, Cavalry, Company "C", 758th Tank Battalion, did, at Camp Hood, Texas, on or about 6 July 1944, behave himself with disrespect toward Captain Gerald M. Bear, Corps Military Police, 1848th Unit, Eighth Service Command, Army Service Forces, his superior officer, by contemptously bowing to him and giving him several sloppy salutes repeating several times "OK Sir ", "OK Sir " or words to that effect, and by acting in an insolent, impertinent and rude manner toward the said Captain Gerald M. Bear.

CHARGE II : Violation of the 64th Article of War.
Specification: In that Second Lieutenant Jack R. Robinson, Cavalry, Company "C", 758th Tank Battalion, having received a lawful command from Captain Gerald M. Bear, Corps Military Police, 1848th Unit, Eighth Service Command, Army Service Forces, his superior officer to remain in a receiving room and be seated on a chair on the far side of the receiving room, did, at Camp Hood, Texas, on or about 6 July 1944, wilfully disobey the same.

CHARGE III: Violation of the 95th Article of War.
Specification 1 : In that Second Lieutenant Jack R. Robinson, Cavalry, Company "C, 758th Tank Battalion, did, at Camp Hood, Texas, on or about 6 July 1944, wrongfully use the following abusive and vulgar language toward Milton N. Renegar, a civilian, Hood village, Texas, "I'm not going to move a God damn bit" or words to that effect, and called the said Milton N. Renegar a "Son of a Bitch", in the presence of ladies.

Specification 2: In that Second Lieutenant Jack R. Robinson, Cavalry, Company "C", 758th Tank Battalion, did, at Camp Hood, Texas, on or about 6 July 1944, wrongfully use the following vile and obscene language toward Elizabeth Poitevint, a civilian, Killeen, Texas, " You better quit fuckin with me " or words to that effect.

Specification 3: In that Second Lieutenant Jack R. Robinson, Cavalry, Company "C", 758th Tank Battalion, did at Camp Hood, Texas on or about 6 July 1944, wrongfully use vile, obscene and abusive language in a public place in the presence of ladies, to wit: on a public bus and at the Central Bus Station, Camp Hood, Texas.

(Additional sheets, if necessary, for charges and specifications will be attached here. Ordinary 8 by 12½-inch paper will be used for additional sheets)

(2)

(WRITE NOTHING BELOW THIS LINE)

c16—27769-2

(WRITE NOTHING ABOVE THIS LINE)

(Signature of accuser) Laurence H Beard

Maj 158th FA Bn Inf (Ind)
(Grade, organization, arm, or service)

AFFIDAVIT

Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this 19th day of July, 1944, and made oath that he is a person subject to military law and that he personally signed the foregoing charges and specifications, and further that he* has personal knowledge of the matters set forth in specifications X X X X X X X X X X X X X X; and *has investigated the matters set forth in specifications Chg. I, Spc. 1, V; Chg. II Spc. 1; Chg. III Spc. 1, V, and that the same are true in fact, to the best of his knowledge and belief.

(Indicate by specification and charge numbers)

(Indicate by specification and charge numbers)

(Signature) Henry S. Bamford

(Grade and organization)

Major 5th Armd Gp Summary Court

(Official character, as summary court, notary public, etc.)

NOTES.—At (*) strike out words not applicable.

If the accuser has personal knowledge of the facts stated in one or more specifications or parts thereof, and his knowledge as to other specifications or parts thereof is derived from investigation of the facts, the form of the oath will be varied accordingly. In no case will he be permitted to state alternatively, as to any particular charge or specification, that he either has personal knowledge or has investigated.

If the oath is administered by a civil officer having a seal, his official seal should be affixed.

1st IND.

Headquarters _____, _____ (Place), _____ (Date), 19____

Referred for trial to _____
(Grade, name, and organization of summary court, or trial judge advocate)

_____ court-martial appointed by paragraph _____, Special Orders
(Summary) (Trial judge advocate of special or general)

No. _____, Headquarters _____ _____, 19____

By _____ of _____
(Command or order) (Grade and name of commanding officer)

c16—27769-2

_____, *Adjutant.*

(3)

Robinson was rightfully concerned about being wrongly convicted for allegedly violating unjust laws and social norms that he technically never broke. Afterall, Mrs. Jones, his friend's wife and fellow passenger, was, in fact, Black not White (a fact Renegar likely learned of ahead of giving his statement) and though Robinson had refused to go to the very back of the bus at Reneger's demand, he had done so while they were still on the federal military base subject to federal laws, orders, and policies that prohibited, at least in writing, segregation in transportation.

Robinson's Pre-Trial Quest for Help and Fairness.

Unwilling to sit idly by waiting to be framed, Robinson tried to get out ahead of the situation by appealing to Truman Gibson for guidance in a handwritten letter Robinson penned and dated July 16,1944 (just nine days after the bus incident) on McClosky Hospital letterhead. Eager to counter any inconsistencies recorded by the hostile stenographer with his own statement, Robinson opened his letter with an explanation of what transpired.[55] Robinson explained how after he sat next to and talked with Mrs. Jones who is "very fair and to many people looks to be White. It is evident the driver seemed to resent my talking to her and told me to move to the rear" because "he didn't ask the lady to move."[56] Robinson admitted to using profanity but not to the excess and extent the Whites eager to frame him had portrayed. Robinson made it clear that "I don't mind trouble but I do believe in fair play and justice. I feel I'm being taken in this case and I will tell people about it unless the trial is fair."[57] Robinson concluded the letter by inquiring whether he should seek media attention on the case or if doing so would be ill-advised. Gibson responded that his office could take no action on Robinson's behalf prior to the trial.[58] Perhaps unbeknownst to Robinson, however, Gibson did pass Robinson's letter on with Gibson's own handwritten annotation on the first page that read: "This man is the well-known athlete. He will write you. Follow the case carefully." Developments leading up to and through trial in Robinson's case would be closely watched by the military's higher ups in Washington DC.

Some of Robinson's fellow Black servicemen wrote letters to the Black press alerting them of Robinson's impending court martial trial.[59] In response, the Black newspapers wrote about it, as well as numerous other mistreatments of Black servicemen, to provoke serious discussions around whether Blacks should risk their lives to fight for freedoms abroad when racism and unfairness flourished at home in the U.S.[60]

Understandably concerned he would not be afforded solid defense counsel or a fair trial, Robinson also began taking steps to address the former. After his arrest, Robinson sent a letter to the NAACP in New York seeking legal representation.[61] Unfortunately for Robinson, the NAACP did not reply until the day ***after*** Robinson's court martial trial ***ended***.[62] Despite the hopelessness of the situation, Robinson was not without hope. A deeply religious man, Robinson relied heavily on his faith in God and rested in knowing that, though Robinson was not perfect and made mistakes, God still loved him and would come through for him.[63]

Unbeknownst to Robinson, as inside and outside pressures mounted over his fast-approaching trial, key personnel in Camp Hood's Inspector General's Office ("IG Office") —the military organizational authority in charge of investigating whether or not court-martial charges should be filed and prosecuted— began expressing grave concern over proceeding with the court martial trial as originally planned. One such IG Office personnel, Camp Hood's Colonel Kimball

McCLOSKEY GENERAL HOSPITAL
Temple, Texas

Evans: This man is the well known athlete. He will write you. Follow the case carefully

16 July 44

TRUMAN K. GIBSON
ASS'T. TO SEC of WAR
WASHINGTON D.C.

No letter received. 8-29-44

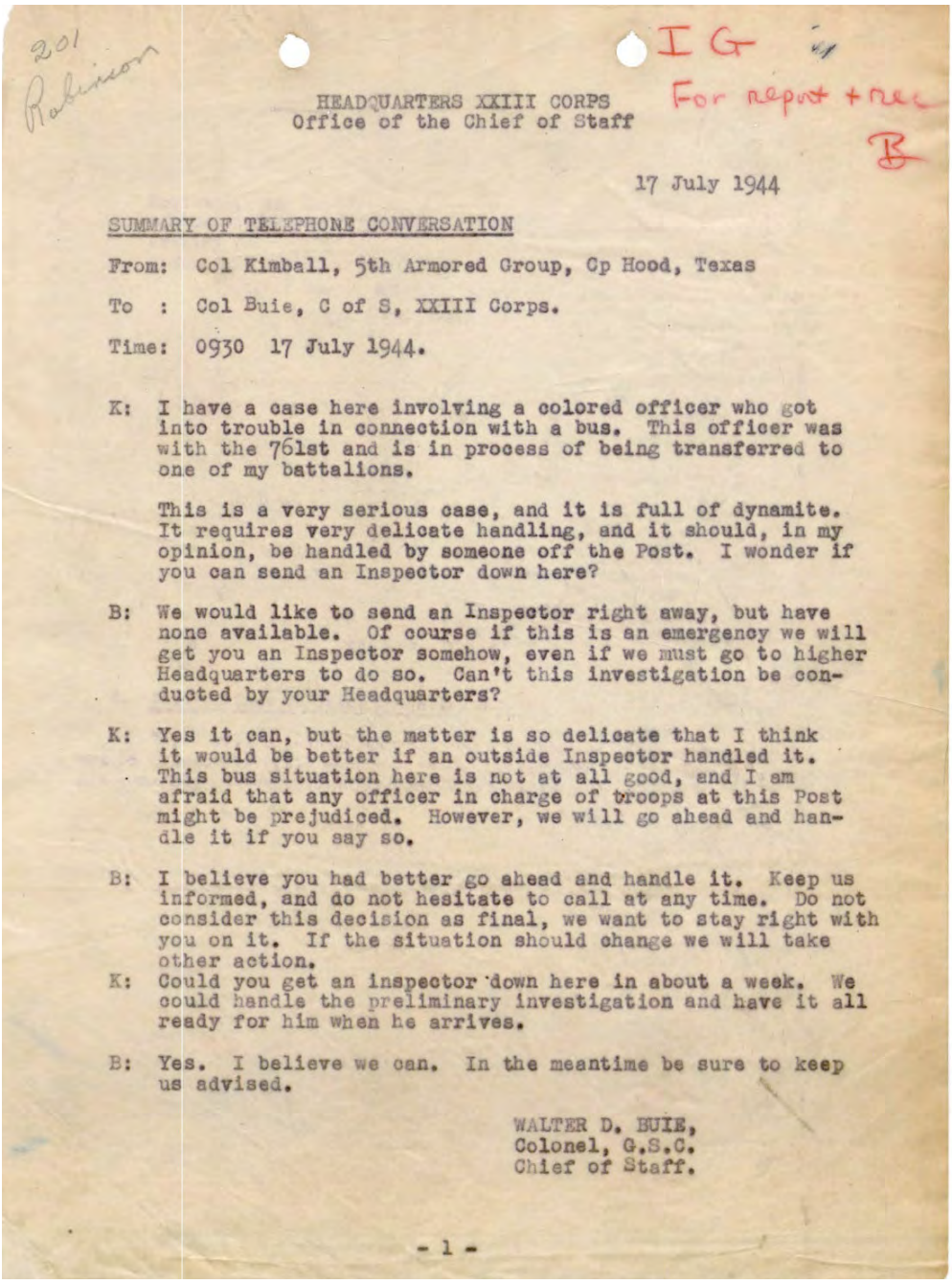
SIR:

I AM SORRY TO BOTHER YOU AGAIN but under the CIRCUMSTANCES there seems to be no ALTERNATIVE.

ON OR about the 7th of July I WAS AT Camp Hood, TEXAS visiting the colored officers club AND upon leaving I took A shuttle bus from the club to the central station. As I moved TO the REAR I noticed ONE of the officer's wife AND SAT down beside her. The lady is very FAIR AND to MANY people looks to be white. IT IS evident the DRIVER seemed to resent my TALKING to her AND told me to move to the REAR. He didn't ASK the lady to move so I refused. When I did he THREATened to make TROUBLE for me when we reached the bus station. Upon reaching the bus station A white lady tells me that she is going to prefer charges AGAINST me. She said she heard the driver tell me to move to the REAR. I told her I didn't care if she preferred charges AGAINST me and she went away angry. That is the last that was said to the lady AND the next thing I hear is I've cursed A white lady out. I feel Now that I should have but I have never cursed one out AND I certainly didn't start with her.

The first page of Robinson's letter to Truman Gibson, including Gibson's notation in the upper right.

sought assistance and direction from higher level command at XXIII Corps. In a transcription of a July 17, 1944 phone call between Colonel Kimball and XXIII Corps' Chief of Staff Colonel Buie, Kimball explained that Robinson's was "a very serious case, and it is full of dynamite."[64] And as such, the case needed "very delicate handling" "by someone off the post" since "[t]his bus situation here is not at all good, and I am afraid that any officer in charge of troops at this post might be prejudiced."[65] In response to Kimball's plea, Colonel Buie explained that though he "would like to send an inspector right away, . . . none was [currently] available."[66] Desperate for any outside help Buie could lend to this serious situation, even if only temporary, Kimball asked Buie if, alternatively, he could send an inspector down to Camp Hood in about a week which would give Kimball's inspectors time to conduct the preliminary investigation and have it ready for Buie's inspector when they arrived. Buie agreed to send an inspector, assured Kimball that his office "want[ed] to stay right with you on" this case, and repeatedly asked Kimball to "in the meantime, be sure to keep us informed" of any changes in the case and "to call at any time." Kimball's concerns and further investigations undoubtedly led to the reduced charges that would eventually be put forth against Robinson at trial.



201 Robinson

IG

For report + rec

B

HEADQUARTERS XXIII CORPS
Office of the Chief of Staff

17 July 1944

SUMMARY OF TELEPHONE CONVERSATION

From: Col Kimball, 5th Armored Group, Cp Hood, Texas

To : Col Buie, C of S, XXIII Corps.

Time: 0930 17 July 1944.

K: I have a case here involving a colored officer who got into trouble in connection with a bus. This officer was with the 761st and is in process of being transferred to one of my battalions.

This is a very serious case, and it is full of dynamite. It requires very delicate handling, and it should, in my opinion, be handled by someone off the Post. I wonder if you can send an Inspector down here?

B: We would like to send an Inspector right away, but have none available. Of course if this is an emergency we will get you an Inspector somehow, even if we must go to higher Headquarters to do so. Can't this investigation be conducted by your Headquarters?

K: Yes it can, but the matter is so delicate that I think it would be better if an outside Inspector handled it. This bus situation here is not at all good, and I am afraid that any officer in charge of troops at this Post might be prejudiced. However, we will go ahead and handle it if you say so.

B: I believe you had better go ahead and handle it. Keep us informed, and do not hesitate to call at any time. Do not consider this decision as final, we want to stay right with you on it. If the situation should change we will take other action.

K: Could you get an inspector down here in about a week. We could handle the preliminary investigation and have it all ready for him when he arrives.

B: Yes. I believe we can. In the meantime be sure to keep us advised.

WALTER D. BUIE,
Colonel, G.S.C.
Chief of Staff.

- 1 -

Transcript of a phone call between Col. Kimball and Col. Buie

Robinson's defense team eventually would consist of three attorneys. Initially, two attorneys were appointed as Robinson's defense counsel: Lieutenant William A. Cline, a native Texan from the small town of Wharton, and an assistant defense counsel, First Lieutenant Joseph C. Hutcheson of the 635th Field Artillery Battalion.[67] Although some incorrectly credited Cline with Robinson's defense, Robinson himself noted the exact opposite in his autobiography, *I Never Had It Made*.

Robinson clarified that his first lawyer, Cline, was a southerner who pleaded prejudice.[68] Indeed, prior to trial, Lieutenant Cline candidly told Robinson that he did not feel comfortable defending a Black in such a case.[69] Additionally, Cline's title business background meant he did not engage in much adversarial litigation matters and, therefore, had little courtroom experience. Wisely then, Robinson sought to add his own counsel. Thus, the third attorney, First Lieutenant Robert H. Johnson of the 679th Tank Destroyer Battalion, was added after Robinson stated he wanted Johnson to serve in his defense as his individual counsel.

The Court Martial Trial of 2nd Lieutenant Jack R. Robinson.

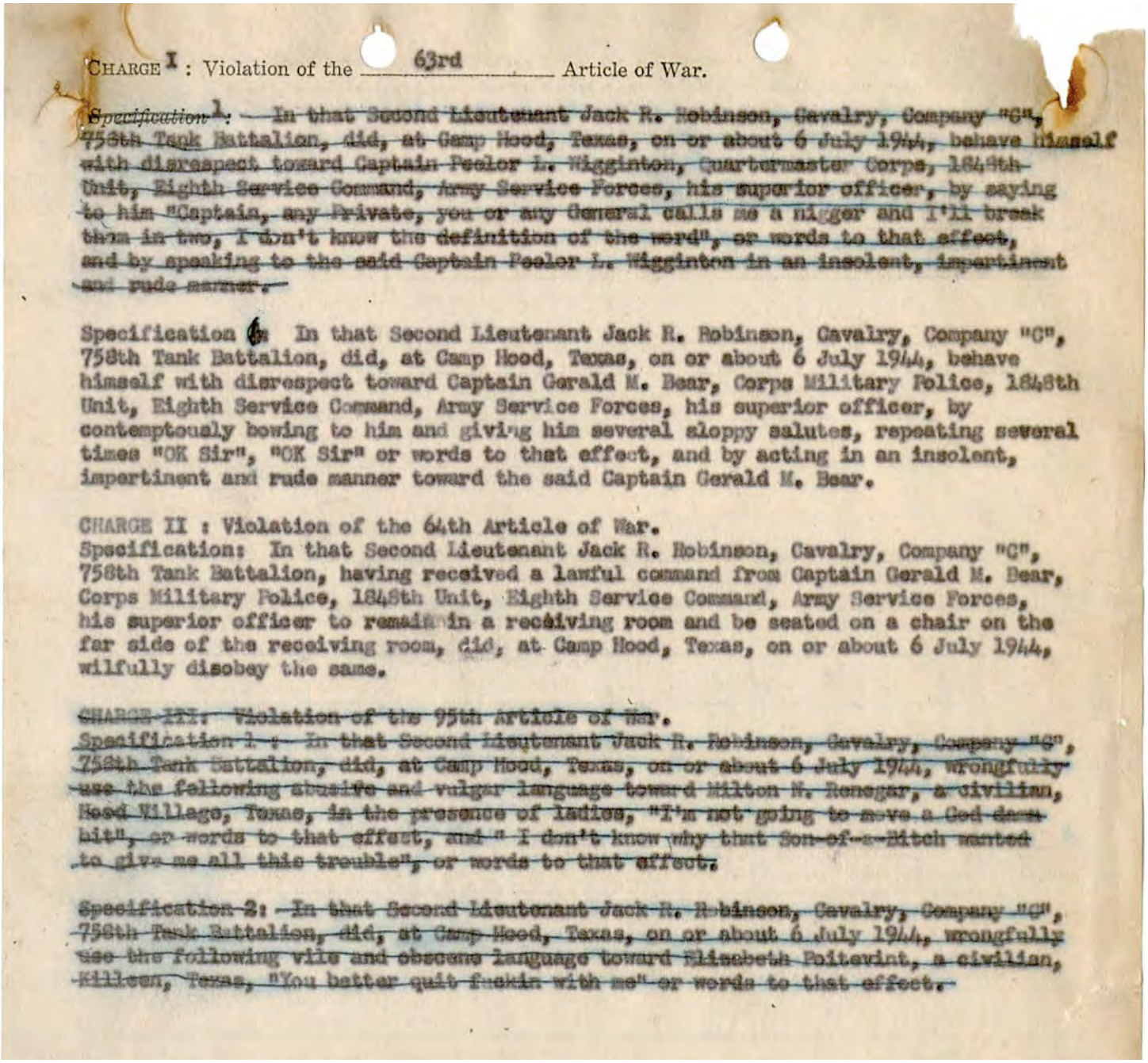
Depending on the historical document viewed, at 1:45 p.m. on either August 2 or 3, 1944 the court martial trial of *The United States v. 2nd Lieutenant Jack R. Robinson*, 0-10315861, *Cavalry, Company C, 758th Tank Battalion* began.[70]

Jack faced two charges. The first violation of Article of War No. 63, accused him of behaving with disrespect toward Captain Gerald M. Bear, CMP, his superior officer by allegedly acting insolent or in a rude manner towards the captain, sloppily bowing and saluting Bear and repeating the words "OK, sir." The second charge was a violation of Article of War No. 64 for the alleged willful disobedience of a lawful command of Gerald M. Bear, CMP, his superior for Robinson to remain in the receiving room and be seated on the chair on the far side of the receiver room.

The three other charges that were more closely tied to the bus events had been prepared against Robinson but were abandoned prior to trial. The first accused Robinson of disrespect towards the officer of the day, Captain Wiggington, because Robinson allegedly told the captain that if "any private, or you, or any general, calls me a nigger and I'll break them in two. I don't know the definition of that word," and by speaking to Wiggington in an insolent, impertinent, and rude manner. The other two charges involved the two civilians. One charge accused Robinson of abusive and vulgar language towards the civilian bus driver in the presence of ladies, and the third charge accused Robinson of allegedly telling civilian passenger Mrs. Poitevint "you better quit fucking with me." The prosecution's strategic decision to abandon the two civilian charges complicated Robinson's defense. Robinson's defense counsel would have to figure out a strategy that could minimize the potential negative impact to Robinson's overall defense brought on by the fact that now his lawyers would no longer be able to connect what happened on the bus with what subsequently occurred at the MP station.

Robinson's defense team decided it best not to dwell on Bear's racism. Racism was too subjective and, though they would address it where needed, given the prevailing tone of the day among White southerners, focusing solely on racism could backfire. Instead, defense would strategically focus on the objective facts and chain of events to highlight any missteps in Bear's execution of his authority. Their goal was to lay the groundwork and drive home the theme that Robinson had in fact not been insubordinate to Captain Bear as charged.[71] Upon a closer look, the defense argued, rather than insubordination, the facts would reveal the confusion and misunderstanding that resulted from Bear's unclear orders and mismanagement of the situation.[72]

Unfortunately, the trial record is unclear which of Robinson's three attorneys questioned who or the role each played in his courtroom defense during the trial.[73] Robinson recalled the great



CHARGE I : Violation of the 63rd Article of War.

~~Specification 1: In that Second Lieutenant Jack R. Robinson, Cavalry, Company "C", 758th Tank Battalion, did, at Camp Hood, Texas, on or about 6 July 1944, behave himself with disrespect toward Captain Peeler L. Wigginton, Quartermaster Corps, 1848th Unit, Eighth Service Command, Army Service Forces, his superior officer, by saying to him "Captain, any Private, you or any General calls me a nigger and I'll break them in two, I don't know the definition of the word", or words to that effect, and by speaking to the said Captain Peeler L. Wigginton in an insolent, impertinent and rude manner.~~

Specification 2: In that Second Lieutenant Jack R. Robinson, Cavalry, Company "C", 758th Tank Battalion, did, at Camp Hood, Texas, on or about 6 July 1944, behave himself with disrespect toward Captain Gerald M. Bear, Corps Military Police, 1848th Unit, Eighth Service Command, Army Service Forces, his superior officer, by contemptously bowing to him and giving him several sloppy salutes, repeating several times "OK Sir", "OK Sir" or words to that effect, and by acting in an insolent, impertinent and rude manner toward the said Captain Gerald M. Bear.

CHARGE II : Violation of the 64th Article of War.
Specification: In that Second Lieutenant Jack R. Robinson, Cavalry, Company "C", 758th Tank Battalion, having received a lawful command from Captain Gerald M. Bear, Corps Military Police, 1848th Unit, Eighth Service Command, Army Service Forces, his superior officer to remain in a receiving room and be seated on a chair on the far side of the receiving room, did, at Camp Hood, Texas, on or about 6 July 1944, wilfully disobey the same.

~~CHARGE III: Violation of the 95th Article of War.~~
~~Specification 1: In that Second Lieutenant Jack R. Robinson, Cavalry, Company "C", 758th Tank Battalion, did, at Camp Hood, Texas, on or about 6 July 1944, wrongfully use the following abusive and vulgar language toward Milton M. Renegar, a civilian, Hood Village, Texas, in the presence of ladies, "I'm not going to move a God damn bit", or words to that effect, and " I don't know why that Son-of-a-Bitch wanted to give me all this trouble", or words to that effect.~~

~~Specification 2: In that Second Lieutenant Jack R. Robinson, Cavalry, Company "C", 758th Tank Battalion, did, at Camp Hood, Texas, on or about 6 July 1944, wrongfully use the following vile and obscene language toward Elisabeth Poitevint, a civilian, Killeen, Texas, "You better quit fuckin with me" or words to that effect.~~

The reduced charges for which Robinson was tried

job the young Michigan defense attorney did and how he, not Cline, "had a way of rephrasing the same question in so many clever ways that anyone who was lying would have a hard time not betraying himself."[74] Ultimately, skillful questioning of Bear and the other prosecution witnesses by the defense brought out inconsistencies about how Bear had handled Robinson that night and especially about what Bear ordered Robinson to do. The defense's cross-examination of Bear sought to exploit the likelihood that Bear had not given Robinson specific instructions about where to wait. To this same end, during the cross-examination defense counsel drew out how Bear had declined to answer when Robinson repeatedly sought clarification by asking if he was under arrest and juxtaposed that with Bear's decision to send Robinson back to the hospital under guard in a MP vehicle. Testimony exposed how Bear and others had probably become incensed

and enraged when Robinson insisted on correcting Bear's civilian stenographer's seemingly deliberate mis-transcription of his statement.[75] Indeed, Cline testified that for Bear, it seemed to have developed into a kind of personal matter. With the exception of a general consensus that Bear had ordered Robinson to be "at ease," witness accounts differed on what Bear ordered Robinson to do when leaving the MP Guard Room.[76]

Almost all of the Whites involved were genuinely baffled that Robinson disliked being badly treated. Only one White witness, Mrs. Rubie Johnson, gave an account of events on the bus that were almost exactly as Robinson had relayed them. Mrs. Johnson testified about the exchange between Robinson and the driver but reported no obscenity spoken by Robinson to anyone, including her friend Mrs. Poitevint.

Finally, Robinson's turn to take the stand to testify in his own defense arrived.[77] Robinson's faith enabled him to remain composed under fire. Robinson admitted that he had used obscene language only once after being provoked, but not towards Mrs. Poitevint.[78] He denied having behaved or mocked contemptuously against his superior officers, or any officer. Robinson testified that he did object to being called a nigger by the private, or anybody else and admitted that he told the captain that "if you call me a nigger, I might have to say the same thing to you. I do not consider myself a nigger at all. I am a Negro, but not a nigger." Robinson explained, in response to the question "do you know what a nigger is?" that the dictionary's definition says the word pertains to the Negro, but it is also a machine used in a sawmill for pushing logs into the saws. However, as a youth his grandmother, who had been a slave, had given him a good definition. She said the word pertained to no one in particular but meant a low uncouth person.[79] Since Robinson did not consider himself to be low or uncouth, he testified, he was not a nigger.

The defense also called several character witnesses from the 761st Tank Battalion on Robinson's behalf including Captain James R. Lawson and Second Lieutenant Harold Kingsley and Colonel Paul Bates himself.[80] Bates was so eager to support Robinson, and more than once, when the prosecution tried to reign him in, Bates testified about how he held Robinson in high regard; that his general reputation and ability as a soldier were both excellent; that Colonel Bate's had tried to have Robinson assigned, rather than merely attached, to the battalion because of his excellent work; and that he would be satisfied to go into combat with Robinson.[81]

The defense concluded for the panel that Robinson had violated no articles of war as charged.[82] Rather, the charges before the court were the result of a few individuals exacting their racial bigotry on what they considered an "uppity" Negro who had the audacity to try to exercise rights that belong to him as an American and as a soldier.[83]

The Verdict.

The trial lasted over four hours. In a remarkable turn of events, Robinson secured the minimum of four "NG" (*i.e.*, Not Guilty) votes, secret and written, that were needed to acquit him. He was found not guilty on all specifications, and on all charges, and was later exonerated for the charges. In the end, the trouble Robinson experienced gave way to the justice he had prayed so earnestly for.

Jury verdict sheet of Not Guilty (this page and the next)

HEADQUARTERS XXIII CORPS

APO 103
Brownwood, Texas
23 August 1944

GENERAL COURT-MARTIAL)

ORDERS NUMBER 130)

Before a general court-martial which convened at Camp Hood, Texas, pursuant to paragraph 6, Special Orders Number 120, this headquarters, 10 June 1944, as amended by paragraph 1, Special Order Number 123, this headquarters, 14 June 1944, and paragraph 8, Special Order Number 164, this headquarters, 29 July 1944, was arraigned and tried:

Second Lieutenant Jack R. Robinson, O-1031586, Cavalry, Company "C", 758th Tank Battalion.

CHARGE I: Violation of the 63rd Article of War.

Specification: In that Second Lieutenant Jack R. Robinson, Cavalry, Company "C", 758th Tank Battalion, did, at Camp Hood, Texas, on or about 6 July 1944, behave himself with disrespect toward Captain Gerald M. Bear, Corps Military Police, 1848th Unit, Eighth Service Command, Army Service Forces, his superior officer, by contemptously bowing to him and giving him several sloppy salutes, repeating several times "OK Sir", "OK Sir" or words to that effect, and by acting in an insolent, impertinent and rude manner toward the said Captain Gerald M. Bear.

W.T.C.

CHARGE II: Violation of the 64th Article of War.

Specification: In that Second Lieutenant Jack R. Robinson, Cavalry, Company "C", 758th Tank Battalion, having received a lawful command from Captain Gerald M. Bear, Corps Military Police, 1848th Unit, Eighth Service Command, Army Service Forces, his superior officer to remain in a receiving room and be seated on a chair on the far side of the receiving room, did, at Camp Hood, Texas, on or about 6 July 1944, wilfully disobey the same.

PLEAS

To the Specification of Charge I: Not Guilty
To Charge I: Not Guilty

To the Specification of Charge II: Not Guilty
To Charge II: Not Guilty

MILITARY JUSTICE DIVISION, JAGO.

FINDINGS

Of all Specifications and Charges: Not Guilty

TO THE ADJUTANT GENERAL:

The record of trial in this case has been examined in this office and found legally sufficient to support the sentence.

For the Judge Advocate General:

L. A. Whitener
Major, J.A.G.D.
Chief Executive.

262476

SEP 5 1944

SEP 4 1944

- 1 -

The court thereupon acquitted the accused on 2 August 1944.

By command of Major General WOGAN:

WALTER D. BUIE,
Colonel, G.S.C.
Chief of Staff.

OFFICIAL:

L. K. OLSON
1st Lt. AGD
Asst AG

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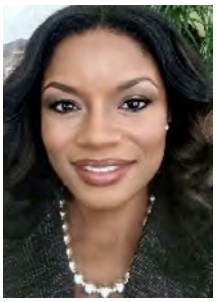
"I"

Acquitted, Robinson returned to the 758th Battalion at north Camp Hood. On August 24 of that same month, Robinson was formally reattached to the 761st Tank Battalion. However, by the time of his reattachment, the battalion had already left Camp Hood.[84] Rather than seek to rejoin them and serve overseas, Robinson began taking steps to request to retire and leave the army with an honorable discharge.[85] This decision was almost certainly reached after Robinson grappled with the harsh reality of what he had just endured at the collusion of so many. The obvious question was whether it was wise for Robinson to risk his life in an army that had allowed the racism of some to misuse the system, attempt to pervert justice, and unfairly subject him to an unwarranted court martial trial reserved for the most heinous of military crimes. Meanwhile, by November 7, 1944, the 761st Tank Battalion, led by Colonel Bates with thirty Black officers and five White officers, went into action, fighting for 183 consecutive days and helping to liberate the Buchenwald concentration camp.[86] Back in the U.S., Robinson's retirement efforts eventually paid off because, by November 28, 1944, he was "honorably relieved from active duty" in the army "by reason of physical disqualification."[87] Less than three years later, in April of 1947, Robinson would, while donning Dodgers' blue and the number 42, embark upon his biggest integration test to date: debut in MLB as its first Black professional player.



ALIA ADKINS-DERRICK *is the Managing Partner and a Certified Mediator at Adkins Lawyers, PLLC, a premier boutique law firm in Dallas and Houston, Texas. Known for her fierce written and oral advocacy, she helps clients protect their interests and their bottom lines by providing the smart legal defense, solutions, and representation clients need to tackle a myriad of complex employment, business, contract, personal injury, and civil litigation issues. As a mediator, she focuses on putting control back into the hands of the parties by identifying workable solutions to help parties reach settlement. Ms. Adkins-Derrick has also served as an Adjunct Law School Professor dedicated to helping the next generation of lawyers hone their advocacy skills.*

Endnotes

1 Special thanks to Robert J. Adkins for his diligence in locating digital copies of the original military personnel, medical, and court martial trial documents of 2nd Lieutenant Jack R. Robinson.

2 Lieutenant Jack R. Robinson, age twenty-five, wrote this in his letter to Truman K. Gibson ahead of being made to appear in Camp Hood, Texas before the military's highest level trial court reserved for trying service members for the most serious of crimes. *See* Letter from Jack R. Robinson to Truman K. Gibson (July 16, 1944).

3 In May 2023, Fort Hood Texas was renamed Fort Cavazos in honor of Texas born General Richard Cavazos, who was the first Latino four-star general and first Latino brigadier general in the U.S. Army.

4 Vice President Harry S. Truman was sworn in as president of the United States on April 12, 1945, after President Franklin D. Roosevelt died suddenly of a cerebral hemorrhage.

5 Arnold Rampersad, *Jackie Robinson: A Biography*, 75 (1997).

6 *Ibid*., 84.

7 *Ibid*., 84-85.

8 Jackie Robinson as told to Alfred Duckett, *I Never Had It Made: An Autobiography*, 12 (1995); Arnold Rampersad, *Jackie Robinson: A Biography*, 85-87 (1997).

9 Arnold Rampersad, *Jackie Robinson: A Biography*, 87 (1997).

10 *See* John Vernon, "Jim Crow: Meet Lieutenant Robinson," *Prologue Magazine of U.S. National Archive & Records Administration*, Spring 2008, Vol. 40, No. 1, 2, https://www.archives.gov/publications/prologue/2008/spring/robinson.html.

11 *Ibid*.

12 *Ibid*.

13 Jackie Robinson as told to Alfred Duckett, *I Never Had It Made: An Autobiography*, 13 (1995).

[14] Arnold Rampersad, *Jackie Robinson: A Biography*, 91 (1997).

[15] *Ibid*., 92-93.

[16] *See* Special "Extract" Orders No. 300, Dec. 9, 1943 (releasing Robinson from Fort Riley, Kansas and reassigning him to Fort Clark, Texas).

[17] WIKIPEDIA - Cavalry training at Fort Clark ceased in January, 1944. That year, the U.S. Army deactivated the cavalry branch and merged it with the armor branch. Finally, in June 1944, after full mechanization of the cavalry, the government ordered the closure of Fort Clark, one of the last horse-cavalry posts in the country. https://en.wikipedia.org/wiki/Fort_Clark,_Texas.

[18] Special "Extract" Orders No. 2, Jan. 4, 1944 (assigning Robinson to Brooke General Hosp. at Fort Sam Houston, Texas).

[19] *Ibid.*; Arnold Rampersad, *Jackie Robinson: A Biography*, 98 (1997).

[20] *See* Arnold Rampersad, *Jackie Robinson: A Biography*, 99 (1997).

[21] *See* Special Orders No. 47, Apr. 20, 1944 (Assigning Robinson to Company B of the 761st Tank Battalion); Arnold Rampersad, *Jackie Robinson: A Biography*, 99 (1997).

[22] Arnold Rampersad, *Jackie Robinson: A Biography*, 99 (1997).

[23] *Ibid*.

[24] *Ibid*.

[25] *Ibid*.

[26] John Vernon, "Jim Crow: Meet Lieutenant Robinson," *Prologue Magazine of U.S. National Archive & Records Administration*, Spring 2008, Vol. 40, No. 1, 4, https://www.archives.gov/publications/prologue/2008/spring/robinson.html; Arnold Rampersad, *Jackie Robinson: A Biography*, 99 (1997).

[27] Arnold Rampersad, *Jackie Robinson: A Biography*, 100 (1997).

[28] *Ibid*.

[29] *Ibid*.

[30] *See* John Vernon, "Jim Crow: Meet Lieutenant Robinson," *Prologue Magazine of U.S. National Archive & Records Administration*, Spring 2008, Vol. 40, No. 1, at 4, https://www.archives.gov/publications/prologue/2008/spring/robinson.html.

[31] *See* John Vernon, "Jim Crow: Meet Lieutenant Robinson," *Prologue Magazine of U.S. National Archive & Records Administration*, Spring 2008, Vol. 40, No. 1, at 4, https://www.archives.gov/publications/prologue/2008/spring/robinson.html.

[32] Request of Assist. Hosp. Registrar Robert Gilmore for issuance of special order confirming "Government motor transportation utilized" to "Transfer of Officer" 2nd Lieutenant Robinson to McCloskey Hospital "for further observation, treatment and recommendation."

[33] Proceedings of Disposition Board, June 26, 1944 (convening at McCloskey Hospital and issuing fitness for duty medical opinions and recommendations).

[34] Proceedings of Disposition Board, June 26, 1944.

[35] *See* John Vernon, "Jim Crow: Meet Lieutenant Robinson," *Prologue Magazine of U.S. National Archive & Records Administration*, Spring 2008, Vol. 40, No. 1, 10, https://www.archives.gov/publications/prologue/2008/spring/robinson.html; Sworn Statement of Milton Renegar ¶2, July 8, 1944.

[36] Sworn Statement of Milton Renegar ¶2, July 8, 1944 (Renegar claimed that he acknowledged Robinson's officer rank and politely asked Robinson: "Lieutenant, if you don't mind I . . . would like for you to move back to the rear of the bus if you don't mind" because he knew he'd soon reach the bus stop where quite a few White ladies who ride his bus around this time each night would board and knew they'd not want to ride all "mixed up with them [Coloreds].").

[37] *Compare* Letter from Jack R. Robinson to Truman K. Gibson (July 16, 1944) *with* Sworn Statement of Milton Renegar ¶2, July 8, 1944.

[38] *Disputed* Sworn Statement of Jack R. Robinson ¶3, July 7, 1944.

[39] *Ibid.*

[40] Sworn Statement of Ruby Johnson ¶2, July 8, 1944.

[41] Sworn Statement of Milton Renegar ¶2, July 8, 1944.

[42] *Disputed* Sworn Statement of Jack R. Robinson ¶3, July 7, 1944.

[43] *Ibid*.

[44] Sworn Statement of Bevlie B. Younger ¶2, July 7, 1944.

[45] *Ibid*.

[46] Jackie Robinson as told to Alfred Duckett, *I Never Had It Made: An Autobiography*, 20 (1995).

[47] *Ibid*.

[48] *Ibid*.

[49] Jackie Robinson as told to Alfred Duckett, *I Never Had It Made: An Autobiography*, 20 (1995); Arnold Rampersad, *Jackie Robinson: A Biography*, 104 (1997).

[50] *Ibid*.

[51] Arnold Rampersad, *Jackie Robinson: A Biography*, 104 (1997).

[52] *Ibid*.

[53] *Ibid*.

[54] Special "Extract" Orders #159, July 6, 1944 (releasing Robinson from the 761st Tank Battalion and assigning him to the 758th Light Tank Battalion.

[55] *See* Letter from Jack R. Robinson to Truman K. Gibson (July 16, 1944).

[56] *Ibid*.

[57] *Ibid*.

[58] John Vernon, "Jim Crow: Meet Lieutenant Robinson," *Prologue Magazine of U.S. National Archive & Records Administration*, Spring 2008, Vol. 40, No. 1, 7, https://www.archives.gov/publications/prologue/2008/spring/robinson.html.

[59] Jackie Robinson as told to Alfred Duckett, *I Never Had It Made: An Autobiography*, 22 (1995).

[60] Arnold Rampersad, *Jackie Robinson: A Biography*, 104-105 (1997).

[61] *Ibid*.

[62] *Ibid*.

[63] Arnold Rampersad, *Jackie Robinson: A Biography*, 105 (1997).

[64] *See* Military Transcript of Phone Conversation between Colonel Kimball & Colonel Buie (July 17, 1944, 9:30 a.m.); and John Vernon, "Jim Crow: Meet Lieutenant Robinson," *Prologue Magazine of U.S. National Archive & Records Administration*, Spring 2008, Vol. 40, No. 1, 12-13.

[65] *Ibid*.

[66] *See* Military Transcript of Phone Conversation between Colonel Kimball & Colonel Buie (July 17, 1944, 9:30 a.m.).

[67] Arnold Rampersad, *Jackie Robinson: A Biography*, 105-106 (1997).

[68] *See* Jackie Robinson as told to Alfred Duckett, *I Never Had It Made: An Autobiography*, 22 (1995).

[69] Arnold Rampersad, *Jackie Robinson: A Biography*, 105-106 (1997).

[70] *Ibid*., 105; War Department Summary Sheet (attaching letter for signature of the Secretary of War to inform Senator Downey of outcome of Robinson's court martial trial and acquittal on all charges) (Aug. 17, 1944).

[71] Arnold Rampersad, *Jackie Robinson: A Biography*, 107 (1997).

[72] *Ibid*.

[73] *Ibid*., 106.

[74] *See* Jackie Robinson as told to Alfred Duckett, *I Never Had It Made: An Autobiography*, 22 (1995).

[75] Arnold Rampersad, *Jackie Robinson: A Biography*, 107 (1997).

[76] *Ibid*.

[77] *Ibid*., 108.

[78] *Ibid*.

[79] *Ibid*.

[80] *Ibid*., 108-109.

[81] *Ibid*.

[82] *Ibid*., 109.

[83] *Ibid*.

[84] *Ibid*., 109-110.

[85] *Ibid*.

[86] *Ibid*., 110.

[87] *Ibid*., 111.

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Punching Above His Weight:
"Sporty" Harvey and the Fight to Integrate Boxing in Texas

By Hon. John G. Browning

On February 24, 1955, I.H. "Sporty" Harvey became the first Black boxer to legally fight a white opponent in Texas. And although he lost that bout in Dallas to twenty-year-old Buddy Turman[1] by a unanimous ten-round decision, by merely fighting, Harvey had already knocked out a far more formidable foe: Jim Crow. This article will discuss how this legal milestone came to be.

I.H. "Sporty" Harvey

I. Introduction

Sporty Harvey, unlike two other boxers discussed in this issue—Jack Johnson and Muhammed Ali—never held a championship. He was a journeyman fighter, what many would call a "ham-and-egger"; after he brought his legal challenge to Texas' integrated scheme, Harvey's professional record was only ten wins and eleven losses in twenty-one bouts. The oldest of six children, Harvey was born in Hallettsville, Texas (roughly 100 miles east of San Antonio) on July 21, 1925, to Charles and Rosella Harvey. Charles, who worked primarily as a farmer and carpenter in the Karnes and Lavaca County vicinities, eventually moved the family in 1937 to San Antonio.

Harvey's formal education did not extend beyond the sixth grade. While working for a local tire company in San Antonio, Harvey was drafted during World War II. Stationed at Fort Sam Houston, Harvey was introduced to boxing, getting his pugilistic education like many other boxers in the service. In fact, the earliest known fight documented for Harvey took place on the Fort Sam Houston base in 1950. Interestingly enough in light of Harvey's later suit to integrate boxing, the opponent—one Harvey Tedford—was apparently white and also stationed at Fort Sam Houston. Later, the fact that Sporty Harvey had already engaged in mixed race fights on base and had fought Latino fighters in Mexico was a key point asserted by his lawyer.

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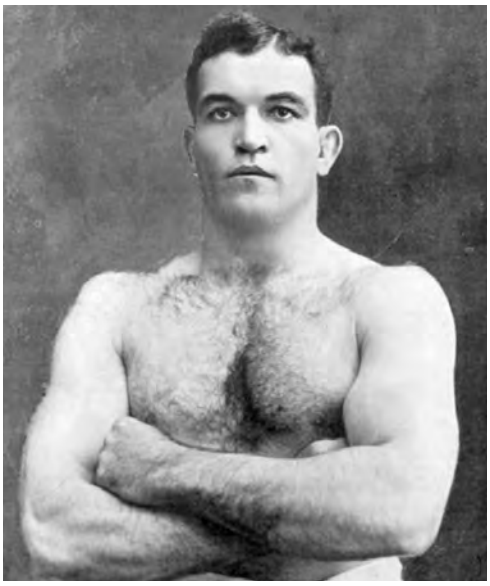
[1] Turman has been identified in various sources as "Truman," but the prevailing spelling in most has been "Turman."

At the time, boxing matches in Texas were segregated, in part due to the controversies surrounding Jack Johnson, the Galveston native who became the first Black heavyweight boxing champion when he defeated Tommy Burns in Sydney, Australia on December 26, 1908. Prizefighting of any kind had been illegal in Texas when Johnson faced Joe Choynski in Galveston in 1901—a fight that landed both boxers in jail. After Johnson claimed the heavyweight crown, the ugliness of racial animosity took over. Renowned author Jack London called for a "Great White Hope" to re-take the title. In 1910, former world champion James J. Jeffries came out of retirement to challenge Johnson, stating "I am going into this fight for the sole purpose of proving that a white man is better than a Negro."[2] In the runup to the bout, even *The New York Times* fanned the racist flames, writing "If the black man wins, thousands and thousands of his ignorant brothers will misinterpret his victory as justifying claims to much more than mere physical equality with their white neighbors."[3]

Joe Choynski and Jack Johnson in jail after their illegal fight



James J. Jeffries

The younger, fitter Johnson won the fight after fifteen rounds. And while Johnson's victory was rejoiced in by the Black community, it "sparked violent race riots" all over the United States, as well as "a crusade to ban the exhibition of fight films, arguably to restore law and order in America."[4] A number of scholars have pointed out how banning the exhibition of the Johnson-Jeffries bout signaled the birth of movie censorship, but among states that permitted prizefighting, another reaction was the adoption of Jim Crow provisions that segregated the fight game.

Texas simply prohibited boxing altogether. In 1925, the Texas Penal Code was amended to ban "pugilistic encounters." Article 610 stated that:

> Any person who shall voluntarily engage in a pugilistic encounter between man and man, or a fight between a man and a bull, or any other animal, for money or other things of value, or for any championship, or upon the result of which any money or

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2 David Remnicks, "Struggle for His Soul," *The Observer* (Nov. 2, 2003).

3 Jeff Nilsson, "A Black Champion's Biggest Fight," *Saturday Evening Post* (July 2, 2020).

4 Barak Orbach, "The Fight of the Century: On the Exploitation of Social Dividers," 14 *N.Y.U.J.L. & Liberty* 163, 164 (2020).

anything of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly, shall be imprisoned in the penitentiary for not less than two nor more than five years.

Another provision, Article 612, banned "moving pictures of prize fights or glove contests."

By 1933, the Legislature had reconsidered the "sweet science" of boxing. On June 13, 1933, the 43rd Texas Legislature approved House Bill 832, which legalized the "promoting, conducting, or maintaining of fistic combat or wrestling matches, boxing or sparring contests or exhibitions for money remuneration, purses, or prize equivalent to be received by the participants or contestants." The Commissioner of Labor was given the authority to enforce the Act and to adopt rules. Left intact, however, was Article 614-11(F), a provision of the Penal Code that banned any desegregated boxing in the state.

II. Taking the Fight to Court

Being a Black boxer in Jim Crow Texas meant sacrifice. After his military service, Harvey became a truck driver in order to have some steady income while he sought to further his fighting career. The few bouts he was able to get were usually against the same four or five local Black fighters in his weight class, which limited the fights' appeal. Harvey and other Black boxers also lacked the same resources and equipment that their white counterparts enjoyed. As Harvey would later recall in an interview with the *Los Angeles Herald Examiner*, Black fighters trained in fields and backyards, and often used cotton sacks filled with rags instead of conventional punching bags. "Speed bags, we didn't have that. It was terrible. The only ones who helped me were the Spanish [Mexican and Mexican American] people. They didn't have any more equipment than I did; the white man had everything."[5]


Maury Maverick, Jr.

Hoping to change the status quo, Harvey retained Maury Maverick, Jr., a San Antonio lawyer and state legislator. Maverick was "old San Antonio"—a descendant of Samuel Augustus Maverick, an original signer of the Texas Declaration of Independence. But that didn't mean he shied away from going after the establishment. Maverick later recalled being told by Harvey, "I want to talk to you about dignity for my people."[6]

At issue was Article 614-11(F) of the Penal Code. It stated: "No individual, firm, club, co-partnership, association, company, or corporation shall (F) knowingly permit any fistic combat match, boxing, sparring, or wrestling contest or exhibition between any persons of the Caucasian or 'white' race and one of the African or 'Negro' race." The first step was for Harvey to send a letter to the Commissioner of Labor, M.B. Morgan, formally requesting that he be permitted to engage in a professional prizefight with a white man. With Maverick's counsel, Harvey did so on

[5] "Sporty Harvey Only Has His Memories Left," *Los Angeles Herald Examiner* (Jan. 18, 1988).

[6] "Boxing Pioneer Honored," *San Antonio Express-News* (June 13, 1997).

July 20, 1953. On July 28, 1953, Commissioner Morgan denied Harvey's request; the sole reason was Harvey's race, and Morgan cited verbatim Article 614-11(F).[7]

On August 13, 1953, Maverick filed a petition on Sporty Harvey's behalf in Travis County's 126th Judicial District Court against Commissioner Morgan, who had sole authority regarding the regulation, promotion, and conduct of professional boxing in Texas.[8] In doing so, Maverick defied not only the thinking of his co-counsel (Carlos Cadena) but also the wishes of the NAACP—which felt that a Black plaintiff's discrimination case stood a better chance of success in federal, not state, court. In the suit itself, Harvey alleged that as a Black fighter, his right to equal protection under the Fourteenth Amendment was violated. He further maintained that Morgan's denial of a permit for Harvey constituted state action, and that the State of Texas had established this classification based solely on race, which had no reasonable relationship to the matter being regulated. Harvey's suit also sought declaratory relief.

The commissioner's answer to the lawsuit denied the allegations and maintained that the defendant was simply complying with Texas' law, which was constitutional as an exercise of the state's police power to regulate amusements and sports. In addition, the pleading insisted that the overall purpose of the law was to prevent events that could heighten racial tensions. Sporty Harvey's wife said later that she feared for her husband as a result of the suit because "Things were different for blacks back then." But her husband insisted on "doing what I think is right" and that "everybody had the right to be treated equally."

Judge Jack Roberts

In a trial before the court, Judge Jack Roberts ruled against Harvey. Maverick requested that the judge file findings of facts and conclusions of law, and Judge Roberts did so. Among them was "finding of Fact No. 9," which found that the defendant's refusal to issue a permit for Harvey was due "SOLELY to the fact that plaintiff is a Negro."[9]

Morgan insisted that "the law and the rule involved in this litigation applies equally and impartially to all professional boxers and wrestlers," and that the "habits, conditions and customs of Texas" were against holding mixed-race matches.[10] According to the commissioner, Article 614-11(F) prevented race riots and "kept the peace." While the trial court acknowledged in its findings of fact that "professional boxing matches have a tendency to and do provoke disorder, quarrels, and breaches of the peace," and that the legislative intent was to "keep down disorders and breaches of the peace," it made no finding that "mixed fights would result in race riots or other disturbances of an unusual nature."

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7 Maverick's legal files are a wealth of information on this case. *See Legal Files, I.H. "Sporty" Harvey, 1953–1954*, in Box 3N426, Maury Maverick, Jr. Papers, Briscoe Center for American History, University of Texas at Austin.

8 *Ibid.*

9 *Harvey v. Morgan*, 272 S.W.2d 621, 623 (Tex. Civ. App.—Austin 1954).

10 *Ibid.*

The court also heard testimony from George Harold Scherwitz (longtime sports editor of the *San Antonio Light*), attorney and legislator Edgar Berlin, Dick Peebles (sports editor of the *San Antonio Express*), and attorney, legislator, and Deputy Boxing Commissioner of Texas Stanley Caufield. All admitted that Black and white professional athletes had engaged in mixed baseball, basketball, and football games without any racial disturbances. They also testified that Black and white athletes had engaged in mixed amateur sporting events in Texas—including boxing—without any race-related incidents.

In the state's defense, Morgan testified that he didn't feel that "the people of Texas are quite ready for us to abandon our present segregation and restriction on boxing and wrestling."[11] Another witness was El Paso District Attorney William Clayton (and former legislator), who testified that the legislative intent for the segregation law "was to prevent riots and disturbances which might arise incident in contests of such a nature between members of the two races."[12] Alton Ericson, a supervisor for the State Boxing and Wrestling Commission, also shared his opinion that integrating boxing matches would only increase racial tensions, saying:

> I have been to the boxing matches in San Antonio, an[d] particularly where there was a white boy got a decision over a Latin American, and there was a near riot, and, in my opinion, if a colored boxer was boxing a white fighter, there would even be—or even a Latin American, there would be a greater tension. That is strictly my opinion.[13]

Under cross-examination, Commissioner Morgan was forced to admit that a Black boxer could not have a championship or title fight. He also acknowledged that there had never been a Black boxing champion in any weight division in Texas. Another witness, boxing promoter Jimmy Scaramozi, testified that if the racial ban were lifted, he could offer more frequent fights to Sporty Harvey, and that Harvey could make more money.

The case was appealed to Austin's Court of Civil Appeals. In an October 27, 1954, opinion, Justice Hughes reversed the trial court and held that Article 614-11(F) was unconstitutional because it violated the Fourteenth Amendment's guarantee of equal protection. Citing U.S. Supreme Court precedent like *Buchanan v. Worley*[14] and *Shelley v. Kraemer*,[15] the appellate court stated that it was no answer "to say that whites and negroes received the same treatment."[16] The court noted that "Professional boxing being a lawful calling in this State we believe that statutes which regulate it fall within the inhibitions of the Fourteenth Amendment," and that "the legislation is based upon unconstitutional discrimination."[17] The Supreme Court of Texas denied review.

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[11] *Ibid.*, 625.

[12] *Ibid.*

[13] *Ibid.*, 626.

[14] 245 U.S. 60 (1917).

[15] 334 U.S. 1, 68 S. Ct. 836 (1948).

[16] *Harvey*, 272 S.W.2d at 626.

[17] *Ibid.*, 627.

III. The Final Bell

With his legal battles over, Sporty Harvey turned his attention to the ring. No longer would he be limited to the same small pool of Black fighters in his weight class, or have to resort to traveling to Mexico for a bout. On February 24, 1955, Harvey fought Buddy Turman in Dallas in the first professional boxing match between a Black fighter and a white fighter sanctioned by the Texas state boxing officials. The 196 lb. Harvey had the weight advantage but was knocked down three times and lost the unanimous ten-round decision. He had more fights in Texas against white boxers but lost more than he won (consistent with his career record).[18]

Buddy Turman

Zora Folley

Harvey and his family moved to Los Angeles in 1957, and he had a few more fights in California locations like Santa Monica and Long Beach. On April 18, 1957, in Yuma, Arizona, Harvey fought Zora Folley, losing by knockout in the fourth round (ten years later, heavyweight contender Folley would be knocked out by world heavyweight champion Muhammed Ali). By 1988, the sixty-two-year-old Harvey had retired from his job at General Tire in Los Angeles. In 1997, he died at the age of seventy-one, after a lengthy battle with heart disease. At his funeral in San Antonio, Maury Maverick eulogized him, saying "I had two college degrees, but that black man, with his mother's wit and street smarts, taught me more than I taught him."

There is no monument honoring Sporty Harvey. In multiple years, he has been nominated for the San Antonio Sports Hall of Fame (including by former Mayor Ivy Taylor), but each time has been overlooked. A quote from Harvey after his 1954 court victory is telling, however. He said "I'll probably never get anything out of it—like money. But I do have the satisfaction of having helped my people a little, anyway."[19]

Sporty Harvey did help his community. He obtained justice for himself and other Black fighters, bringing equality to the Texas boxing world and paving the way for others. While he never won a championship belt or had a stellar win-loss record, Sporty Harvey fought his most daunting opponent, not in the ring, but in the courtroom. He took on Jim Crow and won.

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[18] "Black Boxer's Litigation Changed Face of the Sport in Texas," *San Antonio Express News* (June 10, 1997).

[19] Remnicks, "Struggle for His Soul."

Return to Journal Index

Undistinguished Distinction:
Texas's (Scant) History of Removal by Impeachment

By Bruce Tomaso

Editor's note: *This article was written prior to the impeachment trial of Attorney General Ken Paxton. A short version of the article first appeared in* The Texas Lawbook *on July 21, 2023. On Saturday, September 16, 2023, the GOP-dominated Texas Senate acquitted Paxton of sixteen articles of impeachment alleging corruption and bribery. No article received more than fourteen of the required twenty-one votes to convict. Conviction by the Texas Senate would have made Paxton just the third Texas official ousted through impeachment since Reconstruction.*

Since the current Texas Constitution was adopted on Feb. 15, 1876[1], the Texas House of Representatives has impeached four state officials besides Paxton. Two were convicted.[2] The Senate acquitted the other two.[3] (Article 15 of the Constitution vests the power of impeachment in the House.[4] During Reconstruction, which was formally ended in Texas by proclamation of President Ulysses S. Grant on March 30, 1870,[5] the U.S. military, in command of the states of the fallen Confederacy, had congressional authority "to remove any and all state and municipal officials from office and to designate their successors"[6] — in essence, to "impeach" any official military leaders wanted gone. It was an authority most Texans resented, and endured only under duress.)

In 1917, Gov. James E. Ferguson, once a beloved populist, was impeached and removed from office after vetoing appropriations for the University of Texas the year before — and after House investigators reported that he'd misapplied and embezzled public funds. (He resigned the day before the Texas Senate cast its final vote affirming its judgment against him.)[7] His career

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1 Joe E. Ericson and Ernest Wallace, "Constitution of 1876," *Handbook of Texas* (online). Published by the Texas State Historical Association.

2 S.J. of Tex., 35th Leg., 3d C..S. 882-906, 940 (1917) (impeachment trial of Gov. James E. Ferguson); Cortez A.M. Ewing, "The Impeachment of James E. Ferguson," *Political Science Quarterly* 48 (June 1933) 204; Record of Proceedings, High Court of Impeachment, Trial of Judge O. P. Carillo,Tex. S. 64th Leg. 3602, 3614-3615 (Jan. 23, 1976).

3 Cortez A.M. Ewing, "The Impeachment of J.B. Price," *The Southwestern Social Science Quarterly* 13, no. 1 (June 1932), 48-56; _____, "The Impeachment of Colonel W.L. McGaughey (1893)" *The Southwestern Social Science Quarterly* 15, no. 1 (June 1934) 52-63.

4 Tex. Const. art. XV, §1.

5 "The 1860s: Reconstruction," Tex. State Library and Archives Commission (online).

6 James R. Norvell, "The Reconstruction Courts of Texas 1867-1873," *The Southwestern Historical Quarterly* 62, no. 2 (Oct. 1958).

7 Ewing, "Ferguson"; "James E. Ferguson," The Texas Politics Project at the University of Texas at Austin (online).

in politics ruined — he ran unsuccessfully for governor in 1918,[8] president in 1920[9] and the U.S. Senate in 1922[10] — "Pa" Ferguson, as he was known, essentially installed his wife, Miriam "Ma" Ferguson, in the Governor's Mansion in 1924.

In August 1975, state District Judge O.P. Carrillo, once a political ally of George Parr, the infamous *patron* of Duval County,[11] was impeached by the House, which accused him of misusing public money and construction equipment, abusing his judicial authority and filing false financial statements.[12] He was removed from office by the Texas Senate the following January, but impeachment, it turned out, was the least of his troubles: Carrillo was convicted of tax evasion and sentenced to ten years in federal prison, of which he served twenty months.[13.]

Paxton, the Collin County Republican elected attorney general in 2014 and reelected twice since,[14] was impeached on May 27, 2023, for what a House investigative committee called a "long-standing pattern of abuse of office and public trust, disregard and dereliction of duty, and obstruction of justice and abuse of judicial process."[15] The charges, enumerated in twenty articles of impeachment,[16] stem from, but are not limited to, his request for $3.3 million in taxpayers' funds to settle a wrongful termination suit filed against him by four whistleblowers in his office who had accused the attorney general of abusing his position to benefit a wealthy donor, Austin real estate investor Natin "Nate" Paul, who was indicted on June 6, 2023, by a federal grand jury in Austin on charges of making false statements to obtain loans.[17]


Ken Paxton by Gage Skidmore

Upon his impeachment, Paxton was suspended from his official duties pending resolution of his Senate trial.[18] The attorney general has denied wrongdoing, calling his impeachment, by a House dominated by his own Republican Party, "a politically motivated sham" that is "illegal, unethical, and profoundly unjust."[19]

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8 "Election of Texas Governors, 1900-1948," Texas Almanac (online).

9 James T. Havel, *U.S. Presidential Candidates and the Elections: A Biographical and Historical Guide* (Macmillan Library Reference), 1995.

10 "Former Texas Governors," *National Governors Association* (online).

11 Evan Anders, "Parr, George Berham [1901–1975]," *Handbook of Texas* (online).

12 Tex. H. Res. 161, 64th Leg., (Aug. 5, 1975) (resolution impeaching O.P. Carrillo).

13 Carmina Danini, "Former Judge O.P. Carrillo Dies," *San Antonio Express-News*, Aug. 26, 2001.

14 Election Results Archive, Tex. Sec. of State (online).

15 Memorandum to Tex. H. from H. Committee on General Investigating (May 26, 2023) ("Impeachment Process").

16 Tex. H. Res. 2377, 88th Leg., (May 27, 2023) ("Articles of Impeachment").

17 *USA v. Natin Paul*, Case no. 1:23-CR-100-DAE, W. Dist. Tx., Austin (pending).

18 Tex. Const. art. XV, §5.

19 Ken Paxton (@KenPaxtonTx), "Attorney General Paxton Releases Statement on the Illegal, Unfounded, and Unethical Impeachment by the Texas House," Twitter, May 27, 2023.

He is represented before the Senate by Tony Buzbee and Dan Cogdell, two well-known Houston trial lawyers.[20] Rusty Hardin and Dick DeGuerin, also luminaries of the Houston bar, are prosecuting the case on behalf of the House.[21]

Ferguson and Carrillo are the only two Texans *convicted* through impeachment, but not the only ones to face impeachment *charges.* Efforts by House members to remove Land Commissioner W.L. McGaughey in 1893 and District Judge J.B. Price in 1931 fell short of the needed two-thirds vote of the Senate. McGaughey was accused by foes in the House of selling state lands illegally, and at bargain price.[22] Price, who presided over the 21st Judicial District east of Austin, was accused of "gross neglect" for approving excessive claims for reimbursement of expenses submitted by sheriffs in his jurisdiction.[23]

Here's a look back at the two impeachments sustained by the Senate, and the political careers they left in tatters.[24]

From 'Pa' to 'Ma'[25]

James Edward Ferguson, the son of a Bell County farmer and Methodist minister, toiled in the fields from an early age. His father died when he was four, leaving young James to help his mother cling to the family place, an experience that instilled in him a lifelong empathy with sharecroppers and other poor rural folks.

He left home at sixteen and drifted through the American West, working odd jobs before returning to Texas to study law. He was admitted to the bar in 1897 and opened a practice in Belton, south of Temple. A shrewd businessman, Ferguson invested profitably in Central Texas real estate, insurance, and banks. In 1914, he won the Democratic nomination for governor — tantamount in those days to election[26] — campaigning as a friend of the small farmer and a foe of Prohibition.

James E. "Pa" Ferguson

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[20] Bruce Tomaso, "Two Houston Heavyweights Representing Ken Paxton Call Impeachment 'Baloney' and 'Tomfoolery'," *The Texas Lawbook*, June 7, 2023.

[21] _____, "Houston Heavyweights Hardin and DeGuerin to Lead Paxton Impeachment Case," *The Texas Lawbook*, June 2, 2023.

[22] Ewing, "McGaughey," 52-56.

[23] Ewing, "Price," 48-50.

[24] The Legislative Reference Library of Texas maintains a webpage, "Impeachment by the Texas Legislature," that contains links to more than a dozen original House and Senate documents from the Ferguson and Carrillo impeachments and to pertinent statutes and provisions of the Texas Constitution.

[25] Biographical details in this section about James Ferguson's early life, his business successes, his rise in Texas politics and his fall, precipitated by his feud as governor with the University of Texas at Austin, come primarily from Ewing, "Ferguson"; The Texas Politics Project; and Jan Reid," Texas Primer: Ma Ferguson," *Texas Monthly*, Sept. 1986.

[26] Until the election of Republican Bill Clements in 1978, Texas Democrats had a stranglehold on the governor's office (and every other statewide elected office) for more than a century. The two parties' fortunes have flipped; no Democrat has won a statewide race in Texas since 1994, when John Sharp was re-elected as comptroller.

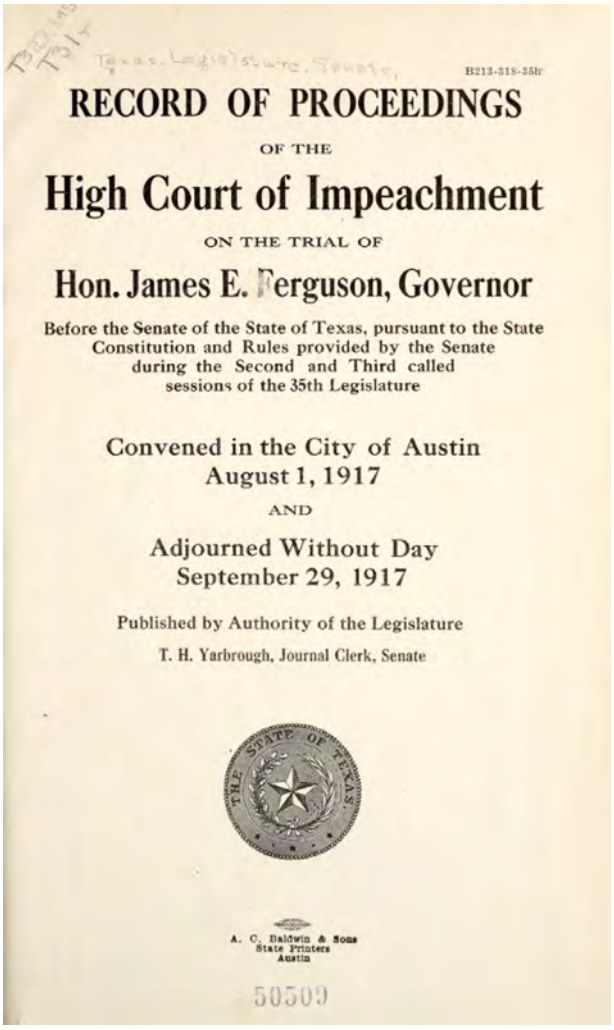
"The campaign proved him to be a man of considerable native ability and the possessor of a captivating personality," according to The Texas Politics Project at the University of Texas at Austin. "As a political speaker he had few equals."

He was reelected in 1916 but quickly and unwisely picked a fight he couldn't win with the University of Texas. When UT's Board of Regents refused to remove six faculty members whom the governor found objectionable, he vetoed practically the entire appropriation for the university, drawing the wrath of the many Texas legislators who venerated the school.

Ferguson's formal schooling had stopped at sixth grade. "Being a self-made man, who had not experienced the benefits or damages of higher education, he naturally entertained some doubts as to its ultimate importance," wrote Cortez A.M. Ewing, a University of Oklahoma professor.

Ferguson's petulant move to defund UT triggered an impeachment investigation that spread to charges of misappropriating funds, directing deposits of state money into banks in which he held a stake, lying about his financial ties to those banks and refusing to disclose the source of a $156,000 loan — more than $3.7 million in today's dollars — later believed to have come from the brewing industry.

He dismissed the legislative inquiry as a "kangaroo court," but on Sept. 22, 1917, the Texas Senate, by a 25-3 vote, dismissed him as governor, sustaining ten of twenty-one impeachment counts brought by the House.[27]


RECORD OF PROCEEDINGS
OF THE
High Court of Impeachment
ON THE TRIAL OF
Hon. James E. Ferguson, Governor
Before the Senate of the State of Texas, pursuant to the State Constitution and Rules provided by the Senate during the Second and Third called sessions of the 35th Legislature
Convened in the City of Austin
August 1, 1917
AND
Adjourned Without Day
September 29, 1917
Published by Authority of the Legislature
T. H. Yarbrough, Journal Clerk, Senate
A. C. Baldwin & Sons
State Printers
Austin
Cover of the Senate Record of Proceedings on Ferguson

Ferguson contended that his resignation one day before the Senate entered its final judgment rendered moot that body's finding that he was disqualified "from holding any office of honor, trust, or profit under this State." But the voters would have none of it. The nadir of his failed political comeback may have been his 1920 run for president as the candidate of the American Party, an entity largely of his creation. On the ballot only in Texas, he received just 0.2 percent of the popular vote nationwide, a poorer showing than Socialist Eugene V. Debs and the candidates of the Farmer-Labor Party and the Prohibition Party.[28]

From the ashes of Pa's career arose the phoenix of Ma's. Ferguson energetically promoted his wife's successful candidacy for governor in 1924. Ostensibly, he was merely "first gentleman,"

[27] Ewing, "Ferguson," includes a table at p. 204 showing each senator's vote on each article of impeachment.

[28] Havel, *Presidential Candidates.*

but during the campaign, Ma had pledged that if elected she would follow her husband's advice. Texas, she said, would get "two governors for the price of one." [29] One of her campaign slogans was, "Me for Ma. And I ain't got a dern thing against Pa."[30]


Miriam "Ma" Ferguson

Miriam Ferguson served for two years, then won a second, nonconsecutive two-year term in 1932.[31]

Ma Ferguson was the first female governor of Texas — and barely missed being the first in America. The same year she was elected, Wyoming voters chose Nellie Tayloe Ross to succeed her husband, William B. Ross, who'd died in office. Ross was sworn in on Jan. 5, 1925 — fifteen days before Ma Ferguson's inauguration in Austin.[32]

Miriam Ferguson was a fierce opponent of the Ku Klux Klan and of Prohibition. She supported public education, the merciful treatment of prisoners and, in her second term, FDR's New Deal. She might have carved out a notable place of her own as a pioneer in Texas politics and an early feminist icon if she hadn't been universally perceived as the puppet of her husband-in-exile.

As Jan Reid wrote in *Texas Monthly* in September 1986, "She is remembered as the ultimate figurehead, a woman who sought power only so that a man could exercise it."

From Political Boss to Petty Thief

Until his downfall, Judge O.P. Carrillo stood high in the ranks of the Democratic political machine that ruled South Texas for decades.

Olivero Peña Carrillo was born and raised on the ranchlands outside Benavides, a now-shrinking Duval County town. He was a son of D.C. Chapa, a right-hand man to George Parr, the "duke of Duval" who died of suicide in 1975 after his conviction on federal charges of income-tax evasion,[33] Carrillo served as the secretary of the Benavides school board and Duval County attorney before pushing for the creation of the 229th State District Court in Duval, Starr and Jim Hogg counties in the late 1960s, then serving as its first judge. One of his brothers, Oscar Carrillo, was a member of the Texas Legislature. Another, Ramiro Carrillo, was a Duval County commissioner as was his grandfather, Eusebio Carrillo, who helped establish what would become the Parr political machine.[34]

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29 Politics Project, "Miriam A. Ferguson."

30 Reid, "Primer."

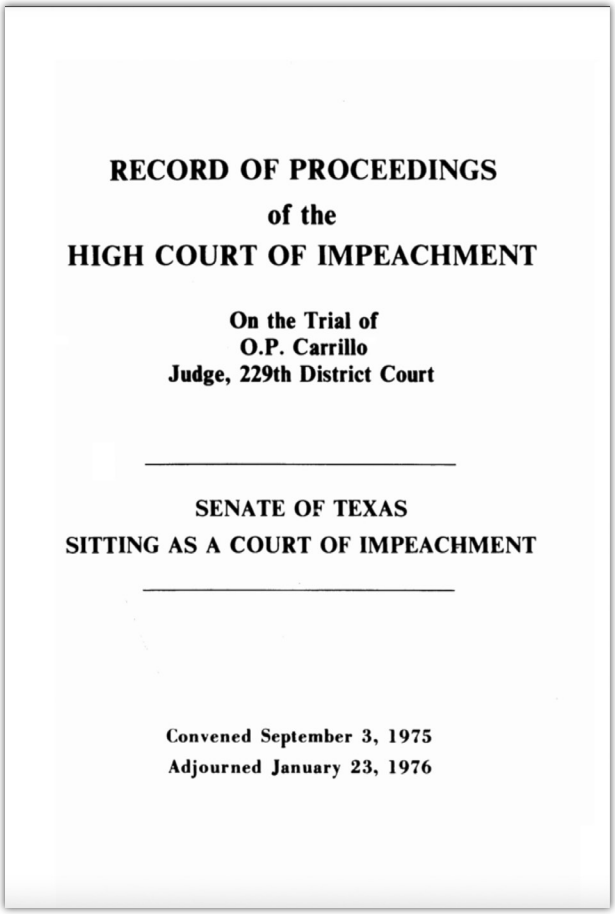
31 "Governors of Texas," Tex. State Library and Archives Commission (online).

32 National Governors Association.

33 Anders, "Parr."

34 Spencer Pearson and Joe Coudert, "Career of Carrillo goes on the line Wednesday in Austin: Politics was a family way of life for him," *Corpus Christi Caller-Times*, Aug. 31, 1975.

Former District Judge O.P. Carrillo is escorted to the Attorney General's Task Force office in Duval County by Texas Ranger Ray Martinez.



RECORD OF PROCEEDINGS
of the
HIGH COURT OF IMPEACHMENT

On the Trial of
O.P. Carrillo
Judge, 229th District Court

SENATE OF TEXAS
SITTING AS A COURT OF IMPEACHMENT

Convened September 3, 1975
Adjourned January 23, 1976

Cover of the Senate Record of Proceedings on Carillo

When he wasn't attending to (or, as the Legislature would eventually conclude, profiteering from) his judicial duties, Carrillo liked to spend time on the 16,000-acre ranch his family had amassed west of Benavides. "I like to get out on the ranch and work alongside the hands fixing fences, repairing windmills and working cattle," he told the *Corpus Christi Caller-Times* in 1975, "but my real job is ranch cook. I make the best cowboy stew in South Texas."

Like Parr, O.P. Carrillo came under fire for abuse of office and for using county resources for his personal benefit. After breaking with the Parrs in the mid-1970s — among other acts of defiance, he pushed for the removal of Archer Parr, George Parr's nephew, as county judge[35] — Carrillo was impeached in 1975. The Texas House accused him of, among other things, buying groceries for himself, his employees, his guests and his brother Ramiro with public funds earmarked to help feed the poor; using his judicial authority to protect political friends and punish political enemies; demanding that government employees, using government equipment and government materials, make improvements to his property; and filing fraudulent financial statements with the Texas secretary of state.[36]

Leon Jaworski, the storied Houston attorney best known (at least outside Texas) for his role as special prosecutor in the Watergate scandal, served as special advisor to the Senate for the Carrillo impeachment, at no cost to the state.[37]

[35] Danini, "Corrillo."

[36] Tex. H. Res. 161, "Carrillo."

[37] Tex. S. Proceedings, "Carrillo," 1566.

In January 1976, the Senate sustained by a two-thirds majority one of ten impeachment articles referred by the House. Carrillo was acquitted on one count; the other eight were dismissed with no decision as to merit, since a vote to remove him on one was sufficient. The Senate's final judgment was adopted on Jan. 23, 1976, by a 27-1 vote.[38]

Almost concurrently with his impeachment, Carrillo was indicted by a federal grand jury in the Southern District of Texas on charges of income tax evasion. He was convicted and sent to a federal correctional institute in Fort Worth, where he served twenty months.[39] Barred from holding public office again, he operated a trucking business after his release from prison. In the mid-1980s, he worked for a time for the San Antonio Gunslingers, the United States Football League team owned by his friend Clinton Manges, a flamboyant (and felonious) South Texas rancher, oil tycoon and Democratic Party kingmaker.[40]

After the Gunslingers collapsed in 1985 — Manges essentially walked away from the financially struggling franchise, stopped paying its bills and left players and staff holding the bag[41] — Carrillo largely disappeared from public view until what the *San Antonio Express-News* described as "a bizarre incident in July 1989, when he was accused of shoplifting a $6.99 bottle of vitamins from a North Side grocery store." The once-fearsome South Texas powerbroker was issued a misdemeanor citation and released. On Aug. 25, 2001, he died in an Alice hospital after a stroke. He was seventy-seven.

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[38] Tex. S. Proceedings, "Carrillo," 1571-72.

[39] Except where otherwise noted, details in this section about Carrillo's tax-evasion conviction, incarceration, life after prison, and death are from Danini,"Corrillo."

[40] Paul Burka, "The Man in the Black Hat: Part One," *Texas Monthly*, June 1984.

[41] Michael Marks, "So Long 'Slingers: An Oral History of the San Antonio Gunslingers," *San Antonio Current*, Sept. 29, 2015.

BRUCE TOMASO, *a longtime Dallas journalist, covers litigation for* The Texas Lawbook. *In 2018, he and* Lawbook *colleague Allen Pusey received the Dallas Bar Association's Stephen Philbin Award for Feature Writing for a retrospective on the 20th anniversary of a groundbreaking $119 million jury verdict against the Catholic Diocese of Dallas in one of the country's first major lawsuits by victims of sexual abuse by priests. In 2016, as a breaking news editor at* The Dallas Morning News, *he helped oversee coverage of the killing of five police officers during a downtown march – work for which* The News *was a Pulitzer Prize finalist. A 1975 graduate of Arizona State University's Walter Cronkite School of Journalism and Mass Communication, he was one of the first six inductees into the school's Alumni Hall of Fame. He and his wife, Dallas attorney Patricia A. Nolan, have one grown son, who is smarter than either of them.*

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Jack Johnson and the Mann Act

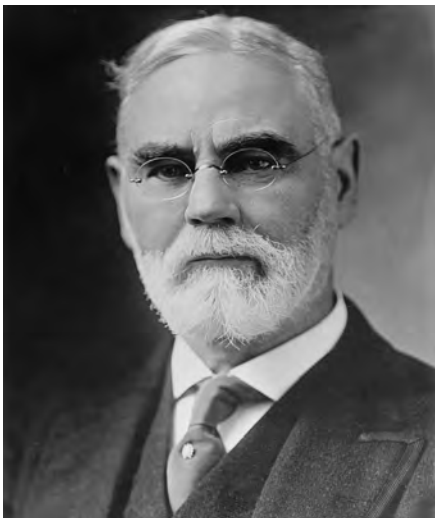
By Hon. John G. Browning

Jack Johnson in 1915

One of the most celebrated Texans in sports history was the first Black man to hold the world heavyweight boxing championship, Jack Johnson. Johnson had won the title by knocking out Tommy Burns in Sydney, Australia in December 1908 after years of being the leading contender yet being repeatedly denied a shot at the championship. A native of Galveston and the son of former slaves, Johnson defended his title multiple times. But the race-baiting white press chafed at a Black man wearing the title belt, and ran articles calling for a "Great White Hope." The former champion, Jim Jeffries, was ultimately lured out of retirement for the so-called "Fight of the Century" in Reno, Nevada in July 1910. Johnson easily defeated the past-his-prime Jeffries via a fifteenth round TKO, a result that ignited deadly race riots around the country.

The flamboyant, outspoken, and talented Johnson was apparently unstoppable in the ring, and he enjoyed both the lavish lifestyle that his wealth afforded him and the company of white women outside of it. This only enraged his critics more. But they found a weapon: the Mann Act.

The White Slave Traffic Act, better known as the Mann Act for its author, Illinois Congressman James Robert Mann, was passed on June 25, 1910. The Act made it a crime to transport women across state lines "for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such a woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice . . ." The name of the Act was something of a misnomer, because nothing in the language of the law states that only non-white women could be trafficked without penalty. But the Mann Act had been born out of the "moral panics" and "white slavery" hysteria preoccupying Progressive reformers during the early twentieth century. With such reformers pointing to what they saw as a widespread decline in morality, tabloid



James Robert Mann

journalists fueled the hysteria with sensationalized stories of innocent young women kidnapped off the streets by foreigners, drugged, smuggled across the country, and forced into prostitution.

The broad language of the Act allowed for it to be used to prosecute men for premarital, extramarital, and interracial relationships, even if consensual. Johnson was hardly the only celebrity prosecuted under the law. Famed architect Frank Lloyd Wright, Hollywood legend Charlie Chaplin, and rock-and-roll icon Chuck Berry all ran afoul of this misused statute. The U.S. Supreme Court did nothing to rein in the law, repeatedly holding prosecutions under it to be constitutional in cases like 1911's *United States v. Bitty*, 1913's *Hoke v. United States*, 1914's *Wilson v. United States*, and 1917's *Caminetti v. United States*. And although it has been substantially amended in more recent years, the Mann Act has never been repealed.


Lucille Cameron in 1913

Johnson's lifestyle and romantic relationships with white women (all three of his marriages were to white women) made him a target for prosecutors. In 1912, the thirty-four-year-old Johnson openly traveled with and was romantically involved with nineteen-year-old Lucille Cameron (whom he married later that year). Cameron's mother, who told the press she would rather see Lucille in jail than spend "one day in the company of that negro," accused Johnson of kidnapping her daughter. Agents of the U.S. Bureau of Investigation (forerunner to the FBI) arrested Johnson in Chicago, and the *Times* headline screamed "Negro Pugilist Charged with Abduction of 19-Year-Old White Girl." However, Lucille Cameron refused to cooperate, and the case folded.


Belle Schreiber in 1910

The Bureau of Investigation, however, was unrelenting. Prosecutors enlisted an ex-girlfriend of Johnson's, twenty-three-year-old Belle Schreiber, to testify against the champion over an alleged 1910 trip that the pair had taken from Pittsburgh. Johnson publicly scoffed at the notion that the relationship had been anything but consensual, and laughed off the notion that the twenty-three-year-old "burlesque girl" (as the media referred to Schreiber) was to be set up as a "sporting woman" (a contemporary term for a prostitute) who would pay him $25 a week—at a time when Johnson routinely made more than $2,500 a week as a boxer. However, the all-white jury wasted no time in convicting him on May 13, 1913, in federal court in Chicago. Johnson was sentenced to a year and a day in federal prison.

Johnson and his now-wife Lucille fled to Canada and then to Europe. In exile, Johnson struggled to get bouts and live in the style to which he'd grown accustomed. He fought another "white hope," the hulking Jess Willard, in Havana, Cuba in 1915, but lost his heavyweight crown. Eventually, a homesick Johnson returned to the United States in 1920, surrendered to authorities,

and served his time. Needing money, Johnson returned to prizefighting, but lost seven of his last nine professional bouts. He was reduced to engaging in exhibition bouts—which he did until the age of sixty-seven—and died in a car accident in 1946, at the age of sixty-eight.

Jess Willard

Nearly six decades after Johnson's death, a grassroots movement began to seek a presidential pardon for the champion's Mann Act conviction. A wide array of luminaries from the boxing world like Sugar Ray Leonard, Lennox Lewis, historian/publisher Bert Sugar, and Bernard Hopkins, supported the effort. So did late Senator John McCain. Yet until actor Sylvester Stallone lent his "Rocky" gravitas, the posthumous pardon request stalled. Finally, on May 24, 2018, President Donald Trump posthumously pardoned Jack Johnson.

With American sexual mores loosening after World War II, Mann Act prosecutions dwindled. Yet it remained on the books. It—and the ugly racism underlying his prosecution—proved to be the one opponent Jack Johnson couldn't knock out.

For Further Reading/Viewing

- PBS documentary, *Unforgivable Blackness: The Rise and Fall of Jack Johnson* (directed by Ken Burns)
- Rebecca Wanzo, "Black Slaver: Jack Johnson and the Mann Act," *Cambridge Companion to Boxing* (2019), 273–78.
- Geoffrey C. Ward, *Unforgivable Blackness: The Rise and Fall of Jack Johnson* (2004).
- Randy Roberts, "Galveston's Jack Johnson: Flourishing in the Dark," 87 *Southwestern Hist. Quarterly* 42 (1983).

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A Profile of Marguerite Rawalt

By Daniel R. Ernst


Marguerite Rawalt

Marguerite Luella Rawalt (1895-1989) was born in a small town in Illinois, where her family, of mixed northern European ancestry, had lived for generations. A distant ancestor had fought in the American Revolution. Her parents moved her and her family several times before finally settling in Corpus Christi, Texas. Tall and extroverted, "Mike" (as her family members called her) graduated at the top of her class in a small school that combined secondary education with what we would now call community college. She then went to the University of Texas, Austin, but only for one year, because her family's finances gave out. She taught high school in a small Texas town, where she befriended and admired the female superintendent of schools. When the superintendent left after a year to attend law school at the University of Texas, Austin, Rawalt could not afford to do the same, although she wanted to. Instead, she moved to San Antonio, found work as a secretary, and took shorthand and typing classes at night. She also met a handsome, piano-playing master sergeant named Jack Tindale, whom she found sweet, attentive, but also vulnerable. A biographer who interviewed her, Judith Hillman Paterson, claims that Marguerite "wanted to provide the strength he lacked, to propel him toward the future she would have wanted for herself if she had been a man." They married in 1918.

In 1921, Jack and Marguerite moved to Austin, so that Jack could attend the University of Texas. Through a politically connected friend, Marguerite got a job in the office of Governor Pat Neff. Although hired as stenographer, she quickly impressed Neff with her ability and political savvy. For example, on her own initiative, she organized Neff's vast correspondence by the senders' county and occupation, so that the governor would be ready with a personal remark when encountering correspondents on trips to their hometowns. Soon Marguerite was writing official resolutions and delivering the governor's messages to the state legislature, but when she told Neff her dream of becoming a lawyer, he tried to dissuade her. Who would hire a woman lawyer? Neff demanded. Besides, she wasn't tough enough. Letters from clemency-seeking prisoners moved her to tears; how could she try a rape case before a jury?

The issue became moot when Jack, who had neglected his classes and grown unhappy with Marguerite's long hours with male coworkers, decided to leave the university and move the couple to the West Texas town of El Paso, so that he could become the franchisee of a women's lingerie company. Because Marguerite did not trust him to handle the business, she kept the books, scheduled the salesmen's trips, filled orders, and then took on other employment when the whole enterprise faltered. Within six months, Jack had left in search of work in the North, and Marguerite returned to San Antonio. Employed as a secretary in a car dealership, she soon organized its finances so well that its owner all but turned over the business to her. Jack continued to fail. "I am just dragging you down," he said after she wired him his train fare back from another fruitless job hunt. They divorced, childless, in 1927, and Marguerite resumed her maiden name. "Jack never did anything mean to me," she explained. "Love just turned to pity. That is no way to be married."

Her big break came the following year in a telegram from Neff, who had been appointed to the U.S. Board of Mediation, a newly created independent agency charged with settling labor disputes. "Rawalt, here's your chance," it said. "Come to Washington as my secretary. Attend first-rate law school at night." Although the car dealer promised her a share of the company, and although the pay was less than her current salary, Marguerite accepted Neff's offer.

She planned to attend Georgetown Law until two coworkers in Neff's office told her that it did not admit women—news, she told her biographer, that struck her like "a sack of grain" to the stomach. But she got good grades at George Washington Law and graduated as a member of the Order of the Coif. She was also an editor of the initial volume of GW's law review. She did not, at first, realize that was an honor: her first reaction upon receiving the invitation to join the editorial board was to seek out the faculty advisor and ask why she had been singled out for extra work.

The District of Columbia permitted law students to take the bar exam before graduating. Rawalt took and passed hers in 1932, a year before she graduated in June 1933, so that she could start job hunting as soon as the Franklin Roosevelt administration commenced in March. She immediately joined the Women's Bar Association of the District of Columbia, founded by suffragettes who drafted and championed the Equal Rights Amendment (ERA): "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." Rawalt was still campaigning for the ERA in the 1970s.

While a law student, Rawalt started a career-long practice of being active in bar organizations by becoming the leader of GW's chapter of a national legal sorority, Kappa Beta Pi. "The rough and tumble of organization life came naturally to her," her biographer Paterson wrote. "She liked to be in charge." At a luncheon of the GW chapter in early March 1933, she turned up with Sarah King, an honorary colonel in the Texas National Guard and the head of the Texas's official delegation to FDR's inauguration. King stayed with Rawalt during the inauguration festivities and made her an official member of the delegation. Learning that Rawalt wanted a federal legal position, King got top Texas Democrats to endorse her for a position in the Office of the Chief Counsel of the Bureau of Internal Revenue (BIR), as the Internal Revenue Service (IRS) was known until 1953. "You would think I had gone after a Cabinet post," she laughed as she left the office of the chief counsel on the arm of one of Texas's two U.S. Senators, who had just personally asked the chief counsel to

give her a job. When the offer arrived, the pay was a third less than her salary as a secretary at the Board of Mediation. She took it anyway, joining the 500-person Chief Counsel's office in December 1933.

A member of the Women's Bar Association had warned her that her male superiors would try to get her to do administrative rather than strictly legal work, and so she was ready when she was offered the job of docket clerk. Flatly rejecting it, she insisted on the same caseload as the thirty male lawyers who started with her in the Compromise Division. For the next four years, she carried a docket of thirty cases, mastering their facts, learning tax law, and negotiating with delinquent taxpayers. "My work is heavy," she wrote to her ex-husband. "I feel it needs extra effort to make good, for women have to be not just as good, but almost better than the men, to hold the same kind of position." Newspaper reporters caught up with her when she traveled to settle cases. To one she said that "any field in which a woman can qualify is open to her. . .. [N]ever in my day have I met any opposition because I wore skirts at the bar." Yet she also said that she never attempted to go into private practice because "the public was not ready to receive women lawyers." The few female private practitioners she knew survived on divorce and probate cases, neither of which interested her.

"All the time I was doing this compromise work," Rawalt later recalled, "I wanted to get into trial work. Every lawyer wants to get into court." BIR cases got to court in two ways. First, taxpayers could refuse to pay their taxes and appeal to the juryless Board of Tax Appeals (renamed the U.S. Tax Court in 1942). BIR lawyers in the Appeals Division handled such cases. Alternately, taxpayers could pay their taxes and sue for a refund in a jury trial in Federal District Court. Lawyers in the Refund Litigation Division represented BIR in such cases.

At last, in 1938, a chief counsel called Rawalt into his office and told her he was assigning her to the Appeals Division, even though its lawyers—all men—did not want a woman in their midst. She shared an office with two male lawyers. One, told to give her some cases from his docket, gave her his most difficult ones. Working nights and weekends, with the help of her other, more sympathetic office mate, she survived. Indeed, she thrived and worked in the division happily until, as part of a general decentralization of the BIR's legal work, she was asked to relocate to Chicago. By that time, she had a personal reason to stay in Washington.

While a divorcee in Washington, Rawalt did date men, including a fellow who shared her love of horse raising and good food but happened to be married. Then, in 1935, through mutual friends, she met Harry Secord, a widower eleven years her senior, who had retired from the military but was serving as the civilian superintendent of Bolling Air Field in Washington, DC. Rawalt found she could relax with the quiet, self-assured, and orderly man. "She wanted someone, not to take care of her," her biographer wrote, "so much as to share with her the responsibility for both their lives." They married in 1937, but because the Economy Act of 1933 forbade two members of the same family from working for the federal government, she retained her name and the two hid their marriage until 1940. Reactivated in 1942, Harry served two years at an airbase in Mississippi while Rawalt remained in Washington. When Harry later retired for good, he urged her to keep working, knowing she would be unhappy without employment. Rawalt was still working for the IRS when he died in 1963.

Rawalt's new position in the Chief Counsel's Office suited her well. It was in the Brief and Review Section, which was tasked with ensuring that the positions taken by BIR lawyers in the field offices were consistent with the agency's policy. In time, she became its chief, although she did not receive the salary increase that went with the promotion until she got a competing offer from the Department of Justice. Thereafter she held positions of importance but never ones of command elsewhere in the Chief Counsel's office. Thus, she became assistant chief of the Appeals and Refund Litigation Divisions but never either division's chief. Further, despite mobilizing politically connected Texans, she never received the judicial appointment to the U.S. Tax Court she coveted greatly.

After being turned down for the Associate Chief Counsel job shortly before her retirement, Rawalt was so angry that she complained to her fellow Texan, President Lyndon B. Johnson. She claimed that the only reason for the "snail's pace" of her promotions was that men did not want women giving them orders, but some of her coworkers thought Rawalt was more interested in bar politics and women's professional groups than her day job. She ended her workday promptly at five o'clock and spent many evenings and weekends on those activities. Three years after joining the National Association of Women Lawyers (NAWL) in 1939, she became its president and launched a membership drive to qualify the NAWL for a seat in the American Bar Association's House of Delegates. When she succeeded and became the NAWL's first delegate to the ABA, detractors accused her of trying to build a political machine.

You can understand why: for three and a half months in 1943, while her husband Harry was stationed in Mississippi, Rawalt was simultaneously president of the NAWL and the Federal Bar Association (FBA), a national organization of government lawyers. (FBA would not elect another woman President for fifty years.) She was proud of the growth of the FBA's membership during her tenure and warmly recalled presiding over banquets attended by Supreme Court justices and Eleanor Roosevelt. But another honor, the invitation to address the annual meeting of the Texas State Bar Association, landed her in what she called "a sea of troubles." Before taking up the main topic of her address (tax legislation), Rawalt made a more general point to her audience of courtroom lawyers:

> Are the lawyers of this country, men and women, going to take full advantage of their opportunities in administrative law? It is the most rapidly expanding area of law practice today.... Administrative law, through the Federal Communications Commission, regulates the program you hear on your radio . . .. Administrative law, through the OPA and other Departments regulates what food you buy and what you may pay for it.

A fifth of the nation's lawyers were in military service, Rawalt continued, and most of those left behind had attended law school before administrative law had become part of the curriculum. Would the lawyers in her audience nonetheless "take over this great, expanding area of government law practice"? Would they "protect and defend this practice" for their returning fellow lawyers?

A reply arrived months later in a newspaper column by a virulent critic of the New Deal. "Though cynical," Westbrook Pegler wrote, at least Rawalt was "honest and practical." She frankly

urged lawyers to "grab off their share of the loot from a nation bedeviled by confusing and harassing rules, regulation and interpretations, many of them improvised by New Deal Bureaus operating as courts." Rawalt's only concern, Pegler claimed, was "that lawyers should get their share" of Everyman's possessions "as he is tossed up for grabs by his government."

Rawalt continued on the IRS's legal staff until 1965, when, at the age of seventy and after thirty-one years at the agency, she retired. Already active in second-wave feminist groups, she advised the legal arm of the National Organization of Women and picketed the White House with NOW in 1969. At last, she returned to Corpus Christi, where she died at the age of ninety-four.

***A Note on Integrating the FBA, further reading and resources*:**

This essay omits Rawalt's part in the failed attempt to integrate the Federal Bar Association during her presidency, which J. Clay Smith noted in *Emancipation: The Making of the Black Lawyer, 1844-1944* (1999). In her oral history, Rawalt simply said that the board of directors could not be persuaded to act, without describing whether or how she urged it to do so. The following year, another Texan, Tom C. Clark, succeeded. Both years, the integrationists proposed Louis Mehlinger, an exemplary lawyer in the Claims Division of the Department of Justice.

A recording, but not a transcript, of Marguerite Rawalt's extensive oral history with the Columbia Center for Oral History at Columbia University is available here. The biography quoted in the essay is Judith Paterson, *Be Somebody: A Biography of Marguerite Rawalt* (Eakin Press, 1986). Gwendolyn Lockman's entry on her appears in the *Handbook of Texas*, published on-line for the Texas State Historical Society. Rawalt's address to the Texas State Bar Association is "How Our Federal Tax Laws Grow," *Federal Bar Association Journal* 5 (1943): 86. Westbrook Pegler's column appeared in many newspapers, including, under the title, "Fair Enough," in *the Muncie Evening Press*, April 8, 1944, 12. Her papers are at the Schlesinger Library of the Radcliffe Institute for Advanced Study at Harvard University.

Daniel R. Ernst *is the Carmack Waterhouse Professor of Legal History at the Georgetown University Law Center, where he has taught since 1988. He is the author of* Lawyers against Labor *(1995) and* Tocqueville's Nightmare *(2014). Forthcoming is* Lost Ships: Elite Lawyers in the New Deal*.*

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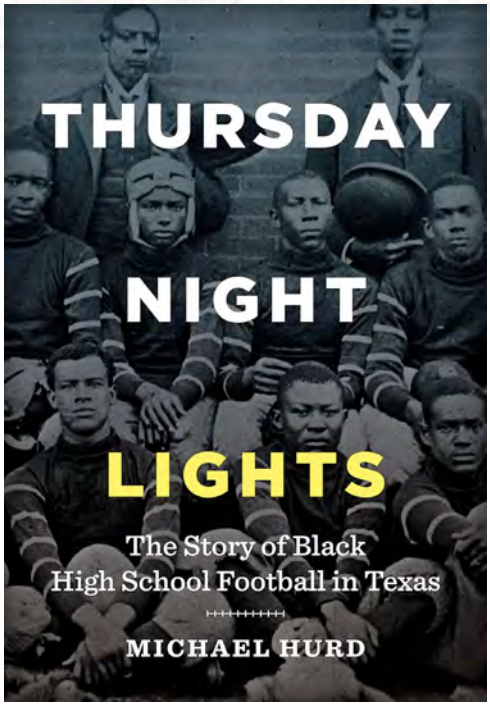
Book Review—*Thursday Night Lights: The Story of Black High School Football in Texas*

By Hon. John G. Browning

Friday Night Lights, Buzz Bissinger's 1990 book about the obsessive world of Texas high school football, achieved iconic status and launched a movie and award-winning television series. But left untold was the story of a time that predated the interscholastic gridiron battles we think of today, a time when, due to segregation, Texas' Black football stars shined on Thursday nights. Michael Hurd, the former director of Prairie View A&M's Texas Institute for the Preservation of History and Culture, does a masterful job of chronicling the forgotten decades of Black high school football in Texas between 1920 and 1970. Painstakingly researched from primary sources like newspaper archives, Hurd's book uses football as a lens into both the painful lived experience of segregation, as well as what was "lost in the assimilation," when integration dismantled Black institutions and cast aside much of their history.



Thursday Night Lights: The Story of Black High School Football in Texas, by Michael Hurd (University of Texas Press, 2017), 248 pages

Sports and sports history have always yielded important insight into other subjects, like racial justice and Black citizenship. As *Thursday Night Lights* adeptly demonstrates, these topics existed long before Tommie Smith's and John Carlos' 1968 Olympics Black power salute or, more recently, Colin Kaepernick's kneeling protests at NFL games. Using the voices of players and coaches, Hurd succeeds in bringing the world of Black high school football during the Jim Crow era to life. As one former player quoted in the book remarks, "Friday Night Lights? That's white folks."

Hurd, a longtime sports journalist who previously authored *Black College Football, 1892–1992: One Hundred Years of History, Education, and Pride*, begins with a look at the genesis of Black high school football. Unwelcome in the white-only University Interscholastic League (UIL), Black high school students turned to the Colored Teachers State Association of Texas, who created the Texas Interscholastic League of Colored Schools in 1920. Renamed the Prairie View Interscholastic League (PVIL) in 1963, the organization ensured that Black students got the same opportunities as their white counterparts.

Hurd's book acts as both introduction to and remembrance of PVIL; as he puts it, "what it was, why and how it came to be, why and how it came to an end." Indeed, the work's six chapters cover the league's creation, and some of its best players, who went on to collegiate and professional stardom (like "Bubba" White and Ernie "Big Cat" Ladd)—particularly those who came out of the economically impoverished but football-rich Golden Triangle of southeast Texas. Hurd also examines the coaches who built legendary programs and events like Houston's annual Wheatley-Yates Thanksgiving Day football game, which Hurd describes as "the largest high school sports event in the United States" between 1947 and 1966.

Yet Hurd is careful to contextualize the triumphs of these Black players and coaches within the larger framework of then-legal discrimination and racial bigotry. Among the poignant stories Hurd shares is that of quarterback Eldridge Dickey, who emerged from the "Thursday Night Lights" of Texas high school football to lead his Tennessee State team to an undefeated record and the Black college national championship while racking up more than 6,523 passing yards and sixty-seven touchdowns. Dickey was the first pick of the Oakland Raiders in the 1968 draft, but the standout quarterback never played a single down at his position in regular season football. Dickey found himself instead being used as a wide receiver and kick returner, much like other Black college quarterbacks of that era who played in the NFL but at other positions. Dickey died at the age of fifty-four of a stroke, exacerbated, says Hurd, "by a broken heart from a pro career that never was." Not until Doug Williams' MVP-winning performance in Super Bowl XXII would NFL myths about Black quarterbacks be shattered.

Michael Hurd's insightful book transcends both sports and sports history. It tells an overlooked chapter in Texas history in an accessible manner and uses the tapestry of Black experiences of high school football under Jim Crow as his platform. In a state where high school football reigns supreme, and at a point in our cultural history where our society is re-examining the question of whose history gets told, *Thursday Night Lights: The Story of Black High School Football in Texas* is both welcome and sadly overdue.

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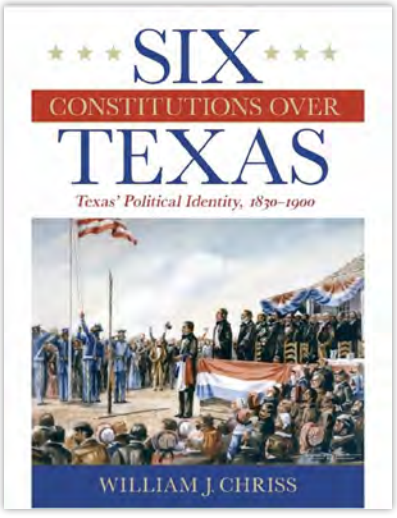
Charting Constitutions and Taming Texas
at the 2024 TSHA Annual Meeting

By David A. Furlow

The Society will present its next panel program—*Charting Constitutions and Taming Texas*—at the Texas State Historical Association's 128th Annual Meeting in College Station this February 28 through March 2, 2024. The conference will occur at the Texas A&M Conference Center. Please save the date and consider joining us there.

Our Society's President, Richard B. Phillips, Jr., an appellate partner in the Dallas office of Holland & Knight, will begin our session by presenting a PowerPoint that illustrates our Society's indispensable role in chronicling and publicizing the history of the Texas Supreme Court and the evolution of Texas law.

Our first presenter will be Corpus Christi attorney, historian, and scholar William J. "Bill" Chriss, J.D., Ph.D. Bill will present "Six Constitutions over Texas, 1836-2024," from his second book (he published *The Noble Lawyer* through Texas Bar Books in 2011). *Six Constitutions* offers an in-depth examination of the six constitutions that have provided the framework of Texas law and society from 1836 until today. In his presentation, as in his book, Dr. Chriss will discuss the drafting, ratification, and interpretation of those constitutions, and the ways they have shaped the lives of all Texans. Bill will introduce attendees to his forthcoming Texas A&M University Press book, *Six Constitutions over Texas: Texas's Political Identity, 1830-1900*.



Bill has long been known as a scholar's scholar. Early on he earned a prestigious nomination for a Rhodes Scholarship and, later, attended Harvard Law School where he became one of the youngest members of his graduating class at the age of twenty-three. He studied ancient Eastern Orthodox manuscripts at Saint Catherine's Monastery, officially known as the Sacred Autonomous Royal Monastery of Saint Katherine of the Holy and God-Trodden Mount Sinai. Fluent in ancient and modern Greek, he can discuss with equal ease the campaigns of Alexander the Great and the history of the Greek community in Texas. He holds post-graduate degrees in literary studies, theology, history and politics, including a Ph.D. in history from The University of Texas. While maintaining a busy law practice, Dr. Chriss *taught Judicial Politics, Political Philosophy, History, and Constitutional Law* within the Texas A&M University system.

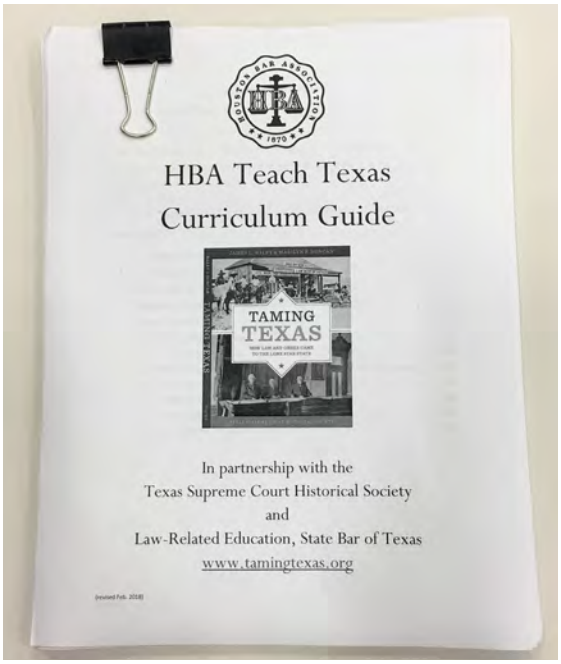
Bill has long served as one of this Society's trustees. He has published articles about Texas constitutionalism in the Journal of the Texas Supreme Court Historical Society and in many other scholarly publications. He is an elected member of the American Law Institute (ALI), the organization that has published Restatements of the Law for over a century. He also served as past Chair of the Texas Pattern Jury Charge Committee-Business, Consumer, Insurance & Employment. A past Editor-in-Chief of *The Journal of Texas Insurance Law*, he won accolades as Executive Director of the Texas Center for Legal Ethics, which promotes the highest levels of ethics and professionalism among Texas lawyers. In 2016, Bill received the Texas Center for Legal Ethics' statewide Chief Justice Jack Pope Professionalism Award, which honors an appellate lawyer or judge who epitomizes the highest level of professionalism and integrity.

Jonathan Smaby, left, Bill Chriss, center, and Texas Supreme Court Chief Justice Nathan Hecht during the Texas Center for Legal Ethics' presentation of its 2016 Chief Justice Jack Pope Professionalism Award. Photo courtesy of the Texas Center for Legal Ethics.

The author of *The Noble Lawyer*, Bill earned the Texas Bar Foundation's 2005 statewide Dan R. Price Award for service to the legal profession and excellence in teaching and scholarly writing. Over the years, he has provided legal ethics training to government agency and corporate attorneys, including lawyers employed by the State Bar of Texas, the U.S. Army, and American Airlines. He has shared insights with accountants, architects, attorneys, judges, insurance adjusters, real estate agents, and other professionals.

Bill is responsible for the first historical book published through Texas A&M University Press. Since its founding in 1974, TAMU Press has been the publishing arm of one of Texas' leading research universities and land grant institutions. The Press has won more than five hundred book awards in a wide variety of disciplines, every Texas publishing award, and national awards from the American Library Association Best of the Best, the National Book Foundation, PEN American Center, and many others. The Press publishes fifty to sixty new titles a year in print and e-books. Bill has granted all royalties from sales of *Six Constitutions* to the Society, another first.

The Society's second major speaker is Warren W. Harris, a former president of this society and of the Houston Bar Association. He will present "Taming Texas: Teaching the Rule of Law to 7th Grade Students." No one can offer more insights about how to organize and present a major educational program that teaches young men and women about Texas law, courts, and history.



Left: The Houston Bar Association developed a curriculum guide to the "Teach Texas" program when HBA partnered with the Society. Right: Warren led the training of HBA attorneys before sending attorneys and judges into schools to teach the Society's Taming Texas program. Photos by David A. Furlow.

In conjunction with David J. Beck, Warren has led the Society's Taming Texas educational project since its inception in 2015. Warren will offer those who attend the 2024 TSHA Annual Meeting a broad band of personal experience in appellate law and educational expertise. Warren is the President of the American Academy of Appellate Lawyers. Warren received the Gregory S. Coleman Outstanding Appellate Lawyer Award from the Texas Bar Foundation. A past president of the Houston Bar Association, the Texas Supreme Court Historical Society, and the Texas Bar Foundation Fellows, he pioneered the Texas Supreme Court Historical Society's Fellows program, organized its *Taming Texas* Project, and administered its commission and funding of four textbooks written by historians James Haley and Marilyn Duncan. The *Taming Texas* educational program has brought lawyers and judges into 7th Grade Texas history classrooms to teach over 21,000 students in Houston, Dallas, and Austin about courthouse history, the rule of law, and the Texas Supreme Court.

Kirsten M. Castaneda, one of our Society's trustees, a partner in the Alexander, Dubose, Jefferson, L.L.P. law firm, and the Chair of the State Bar of Texas Appellate Section, will serve as the Society's Commentator. The Commentator serves as the Master of Ceremonies responsible for directing questions from the audience to the speakers and sometimes offers her own observations about the presentations that preceded hers.

On behalf of the Society, I'd like to extend an invitation to join us at TSHA's 2024 annual meeting in College Station. It's the proper venue for Texas historians, lawyers, judges, and scholars. More than 700 people regularly attend the meeting—an event that shapes the work TSHA does on behalf of another 170,000 TSHA members

Texas A&M Conference Center and Hotel

and constituents. In addition to offering one hundred and fifty speakers and more than forty separate panels, the conference includes eight banquets and receptions, multiple offsite tours, and additional special events that enable attendees to engage with our host city's unique history and culture. Besides, our Society's former president Justice Ken Wise has been elected as TSHA's president.

Come join your friends and colleagues at College Station on Thursday, February 29, 2024 and stick around to watch a great set of speakers prove that lawyers are familiar with more history than case histories. Society members and anyone interested in Texas history, law, or courts can register for the 2024 TSHA Annual Meeting at its website at "2024 Annual Meeting, College Station, TX," *Texas State Historical Association*, https://am.tsha.events/, accessed October 21, 2023. The conference hotel is located at 177 Joe Routt Blvd, College Station, Texas 77840.

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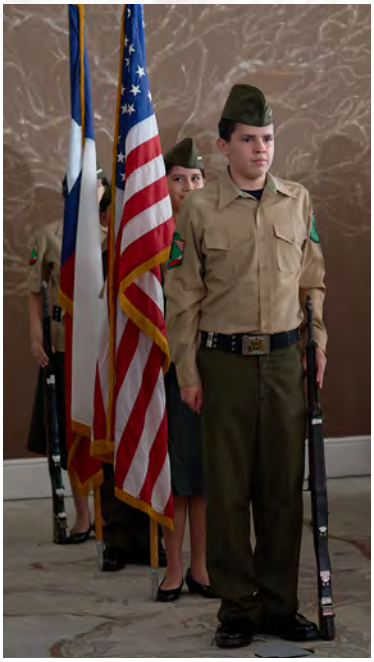
The 28th Annual Chief Justice John Hemphill Dinner:
Celebrating Texas History and the Texas Rangers Bicentennial

By Rachel Stinson
Photos by Mark Matson unless otherwise noted



The 28th Annual Chief Justice John Hemphill Dinner was a successful event again this year. Among the many highlights was a special focus on the year-long celebration of the Texas Rangers Bicentennial. The dinner was held at the Four Seasons Hotel in Austin, Texas on September 8, 2023, and was well attended by both the bench and bar. The evening opened with the Bedichek Middle School Junior Marine Corps Color Guard presenting both the United States and Texas flags. The Honorable Ken Wise, Immediate Past President of the Society and Justice of the Fourteenth Court of Appeals, led the assembled group in the Pledge of Allegiance.

Chief Justice Nathan Hecht was in attendance, along with current Texas Supreme Court Justices Jeff Boyd, John Devine, Jimmy Blacklock, Brett Busby, Rebeca Huddle and Evan Young. Former Chief Justices Wallace B. Jefferson and Thomas Phillips were in attendance along with former Justices Craig Enoch, Paul Green, Eva Guzman, Harriet O'Neill, Dale Wainwright, and Judge Jeff Brown. As in past years, hundreds of Texas's best appellate and trial attorneys, and their honored guests, joined the event. These honored guests included Colonel Steve McCraw, Director for the Texas Department of Public Safety; Lt. Colonel Freeman F. Martin, Deputy Director Homeland Security Operations for the Texas Department of Public Security; Phillips Adkins, General Counsel for the Texas Department for Public Safety; Antonio "Tony" Leal, former Chief of the Texas Rangers; Russell Molina, Chairman of the Texas Rangers Bicentennial Committee; and Jim and Jane Wise.

Presentation of Chief Justice Jack Pope Professionalism Award to Mr. Steven Hayes

Chief Justice Nathan Hecht, joined by Jonathan Smaby, Executive Director of the Texas Center for Legal Ethics, Marie Jamison, Chair of the Center's Board of Trustees, and Hon. Audrey Moorehead, Chair-Elect of the Center's Board of Trustees, presented the Chief Justice Jack Pope Professionalism Award to Mr. Steven Hayes. This Award honors one of the Center's three founders, former Chief Justice Jack Pope, who received the inaugural Award in 2009. The Award is now presented each

Chief Justice Nathan Hecht presents the Chief Justice Jack Pope Professionalism Award to Steve Hayes as Marie Jamison (far left), Hon. Audrey Moorehead, and Jonathan Smaby (both at far right) look on.

year to an appellate lawyer or judge who epitomizes the highest level of professionalism and integrity. In his remarks, Mr. Hayes acknowledged Chief Justice Pope's own practice of setting "a high example for those around him, and even higher expectations for himself."

Recognition of Fellows of the Society

On behalf of the Society, Lynne Liberato thanked the more than forty Society Fellows whose significant financial support of the Society's endeavors since 2012 enables several special projects. One such special project is the "Taming Texas Judicial Civics and History Project," a civics education program sponsored by the Society in cooperation with the State Bar's Law-Related Education Department. In 2023, the Taming Texas Book Series added a fourth volume, "Taming Texas: Women in Texas Law." This newest addition highlights the role women have played in shaping Texas law from the frontier days to modern times and includes a forward by Chief Justice Hecht. Through the Taming Texas Series and its accompanying "Teach Texas" curriculum, volunteers with the Houston Bar Association have presented this exciting look at Texas civics and history to over 25,000 7th-graders, and the Austin Bar Association is taking up the project as well. Ms. Liberato particularly thanked David Beck and Warren Harris, both Society Fellows, for their constant dedication to the Taming Texas Project.

President's Remarks

Justice Wise began his President's Remarks by acknowledging the outstanding efforts of the Texas Supreme Court Historical Society's Executive Director Sharon Sandle, Executive Assistant

Mary Sue Miller, and Journal Editor Karen Patton. He also thanked all of the Society's Officers and Trustees for their continued work with the Society. Justice Wise offered a brief report of some of the Society's activities during the past year, including activities aimed at further integrating the Society's efforts with those of the larger Texas history community. Justice Wise applauded the Society's sponsoring a session at the Texas State Historical Association annual meeting and hosting a Trustees' meeting at the Alamo (with a private tour from Ernesto Rodriguez III, Senior Curator and Historian at the Alamo).

Presentation of President's Award to Hon. Gina Benavides, Thirteenth Court of Appeals

Next, Justice Wise presented the President's Award to the Honorable Gina Benavides of the Thirteenth Court of Appeals, whom he thanked for her help in furthering the Society's goal of making judicial history and legal scholarship more accessible to the wider community of historians. In March 2023, Justice Benavides presented her paper, "Gustavo 'Gus' Garcia, a Life of Service, and *Hernandez v. State of Texas*: The Lawyer Who Desegregated Texas Juries," to the 127th Annual Meeting of the Texas State Historical Association in El Paso. She also represented the Society at the International Historians of Mexico Conference held in Austin, and she has served as a Society Trustee since 2020. Justice Benavides' own remarks emphasized the critical importance of preserving and sharing Texas legal history and her delight at being able to participate in this "labor of love" alongside her fellow Society members.

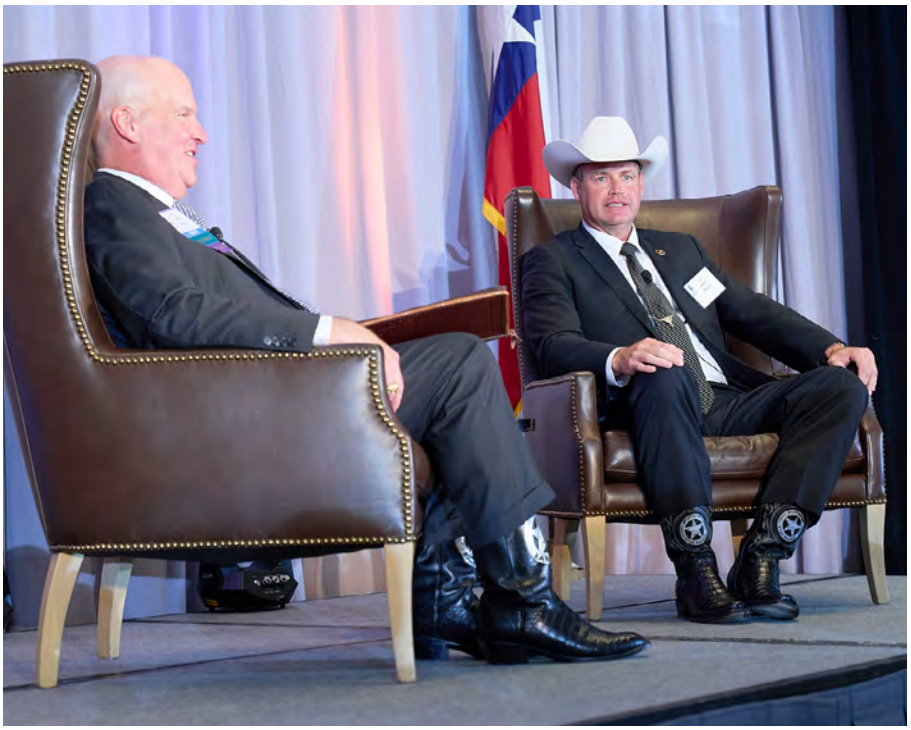
Hon. Gina Benavides accepts the President's Award

Keynote Program: Justice Wise Interviews Chief Jason Taylor, Chief of the Texas Rangers Division of Texas Department of Public Safety

Justice Wise introduced the Keynote Speaker, Chief Jason Taylor of the Texas Rangers Division of the Texas Department of Public Safety. During his conversation with Justice Wise, Chief Taylor spoke about his own career history and the overall history of the Texas Rangers, an "iconic organization" with a critical role in Texas's past and present.

Chief Taylor explained that he began his career with the Texas Department of Public Safety in 1998, working as a State Trooper before being promoted to the Criminal Investigations Division. Chief Taylor served as a Special Investigator in the Special Crimes Services in Garland and with the Criminal Intelligence Service in Houston. He was then accepted into the Texas Rangers Division in 2008, serving in both Houston and Waco. In 2011, he was promoted to Ranger Lieutenant, to Captain in 2014, and then he was assigned to oversee the Public Integrity Unit in Austin. In 2016, Chief Taylor was appointed the Regional Director of DPS operations in Southeast Texas. And, in October 2022, he was appointed as Chief of the Texas Ranger Division.

Justice Wise and Chief Taylor discussed the history of the Texas Rangers, how it grew from a single company formed by Stephen F. Austin in May 1823 to the Ranger Companies of



Justice Ken Wise converses with Keynote Speaker Chief Jason Taylor of the Texas Rangers

today, which operate as part of the Texas Department of Public Safety. Chief Taylor described some of the specialized activities of today's Rangers. He first described several "Specialized Programs," including the Public Corruption Unit, the Public Integrity Unit, and the Unsolved Crime Investigation Program (which has led to solving more than seventy cold case homicides). Chief Taylor then surveyed the role of the "Special Operations Group" (which includes SWAT, Bomb Squad, Reconnaissance Team, Special Response Team, Crisis Negotiation Team, and the Border Security Operations Center).

Throughout his remarks, Chief Taylor noted the Rangers' long-standing cooperation with local, State, and federal law enforcement, and the important role Rangers have played in Texas both past and present. Even the design of the Texas Ranger badge incorporates this rich history—the current badge is crafted from a Mexican five-peso silver coin for Rangers, and a fifty-peso gold coin for higher ranks. Each badge further testifies to the history of its individual owner, as the ridges on the coin wear down over the owner's years of service to the State. Chief Taylor displayed his own badge to the audience, with an eagle from Mexico on the back and the Texas Star on the front—describing it as "a testament to the Mexican heritage of the Texas Rangers in Texas."

Chief Taylor also touched on the importance of the Rangers' role as "the guys and gals in the white hats," explaining that one of their most important jobs is being "fact finders" whose unique, State-wide resources assist other law enforcement agencies and the State as a whole. An increasing demand for the Rangers' expertise and assistance across the State raises new challenges for the organization, but in closing, he confirmed his belief that the Rangers' history shows they will "keep moving forward" to serve the people of the State of Texas.

Swearing In of President Richard B. Phillips, Jr.

Chief Justice Nathan Hecht swore in Mr. Phillips as the incoming President of the Society. In his initial remarks, Mr. Phillips described the experience as "more than a little intimidating for a Mormon kid from Utah." Mr. Phillips thanked Justice Wise for his "great" work for the Society, and assured the room that he did not think that serving as the Society's President would require him to start a successful Texas history podcast of his own.

2023 Texas Appellate Hall of Fame Inductees

Chief Justice Nathan Hecht swears in Society President Richard B. Phillips, Jr.

Mr. Phillips announced the 2023 inductees to the Texas Appellate Hall of Fame, which recognizes distinguished judges, attorneys, and court personnel who have made unique contributions to the practice of appellate law in Texas. The award is given jointly by the State Bar of Texas Appellate Section and the Texas Supreme Court Historical Society. Inductees are selected based on their written and oral appellate advocacy, professionalism, faithful service to the citizens of the State of Texas, mentorship of newer appellate attorneys, pro bono service, and other indicia of excellence in the practice of appellate law in Texas**.**

- ***Hon. Fortunato "Pete" Benavides***
  Judge Fortunato "Pete" Benavides was born in Mission, Texas; earned a bachelor's degree in business administration from the University of Houston; and later graduated from the University of Houston Law Center. He began his judicial career a mere five years into his practice. But his service went beyond the judicial branch. He was a member of the Texas Juvenile Probation Commission and established a center for troubled teens: the Ramiro H. Guerra Youth Village in Weslaco, Texas. Judge Benavides served at all levels of Texas courts, starting at County Court of Law No. 2 in Hidalgo County, moving to the 92nd Judicial District Court, later serving on the Thirteenth Court of Appeals in Corpus Christi, was appointed to the Texas Court of Criminal Appeals in Austin, and worked as a visiting judge on the Supreme Court of Texas. Thereafter, President Clinton appointed him to the United States Court of Appeals for the Fifth Circuit, where he remained until his death. He also sat as a visiting judge for the Ninth and Eleventh Circuits. He was a member of the Judicial Council of the Fifth Circuit, the Committee on International Judicial Relations, and the Committee on the Administration of the Bankruptcy System. All told, Judge Benavides authored more than 2,500 opinions during his tenure as a state and then federal judge.

- ***Hon. Richard N. "Dick" Countiss***
  Judge Richard N. "Dick" Countiss was born in Midland, Texas; attended McMurray University in Abilene; and graduated from SMU Law School, where he was editor of the SMU Law Review. After serving in the military, he worked in the U.S. Justice Department's Honor Graduate Program, worked in private practice, and then served as District Attorney. Governor Briscoe appointed him to the 84th Judicial District Court in Spearman, and Governor Bill Clements later appointed him to the Seventh Court of Appeals in Amarillo – evidencing the bipartisan respect Justice Countiss commanded. He ultimately returned to private practice, specializing in appeals, and taught at both SMU Law School and the University of Houston Law Center.






Clockwise from upper left: Chief Justice Nathan Hecht, Hon. Priscilla Richmond, and Nubia Piedad Gomez; Hon. J. Brett Busby and his wife Erin; Hon. Emily Miskel and Hon. Rebeca Huddle; Hon. Wallace B. Jefferson and Samuel L. Jefferson; Hon. Evan Young, Skip Watson, and Hon. John Devine; Hon. Paul Green, Hon. Harriet Miers, and Courtney Green.

Clockwise from upper left: Hon. Dale Wainwright, Hon. Harriet Miers, Society Fellow Cynthia Timms, and Ed Timms; Chief Jason Taylor, Hon. Ken Wise, and Rachel Taylor; Hon. John Devine and Hon. Thomas R. Phillips; Hon. Audrey Moorehead, Rusty Hardin, and Marie Jamison; Laurie Ratliff, Society Secretary Mark Trachtenberg, and Society Journal Editor Emerita Lynne Liberato.

Top photo, left to right: Marie Jamison, Hon. Eva Guzman, Society Trustee Rachel Stinson, and Hon. Larry Doss, Bottom photo, left to right: Chris Ritter, Veronica Gutierrez, and Society Trustee Chad Baruch. Photos on this page by Rachel Stinson.

Top photo: Jane and Jim P. Wise. Bottom photo: Society Executive Director Sharon Sandle, Ed Timms, and Society Fellow Cynthia Timms. Photos on this page by Rachel Stinson.

- ***L. Wayne Scott***
  L. Wayne Scott was born in San Marcos, Texas; grew up in Lockhart; earned a BA and MA in American Studies at Southwest State Teachers College; and graduated from the University of Texas Law School. He served as a briefing attorney for both the Texas Court of Criminal Appeals and the Supreme Court of Texas. He worked in private practice for a short time before becoming a professor at St. Mary's Law School. There, he created the Alternative Dispute Resolution Institute and was instrumental in having civil appellate law recognized as a board-certified practice. He taught appellate practice and skills courses and worked as a moot court coach for St. Mary's summer teams. He was also one of the primary architects behind the St. Mary's External Advocacy Program. He was board certified in civil appellate law, published books, made CLE presentations on appellate procedure, and continued to represent clients in several Texas appellate courts. Professor Scott extended his expertise in appellate law to summarizing the decisions of Texas appellate courts and serving as Editor for the Texas Lawyer's Weekly Digest and its successor, the Texas Lawyer's Civil Digest. In 2021, he received the fifty-year pin from St. Mary's Law School.

Closing Remarks from Mr. Phillips and 2024 Dinner Date

Mr. Phillips closed the evening by again thanking the Society's members and Trustees who had worked on all of the Society's projects throughout the year, including organizing and hosting the Hemphill Dinner itself. He ended his remarks by quoting the historian David McCullough—"Knowing our history means knowing who we are." Next year's Hemphill Dinner will occur on Friday, September 6, 2024.

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THE TEXAS
SUPREME COURT
HISTORICAL SOCIETY

DISCLAIMER

The Texas Supreme Court Historical Society (the "Society") is a nonprofit, nonpartisan, charitable, and educational corporation. The Society chronicles the history of the Texas Supreme Court, the Texas judiciary, and Texas law, while preserving and protecting judicial records and significant artifacts that reflect that history.

The *Journal of the Texas Supreme Court Historical Society* welcomes submissions, but the Editorial Board reserves the right to determine what will be published in every issue. The Board does not discriminate based on viewpoint, but does require that an article be scholarly and interesting to the *Journal*'s readership. The *Journal* includes content concerning activities of public figures, including elected judges and justices, but that chronicling should never be construed as an endorsement of a candidate, a party to whom a candidate belongs, or an election initiative. Publication of an article or other item is neither the Society's nor the *Journal*'s endorsement of the views expressed therein.

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2022-23 Membership Upgrades

The following Society members have moved to a higher dues category since June 1, 2022.

HEMPHILL FELLOW

David E. Chamberlain

GREENHILL FELLOW

Connie Pfeiffer

TRUSTEE

Kirsten Castañeda

CONTRIBUTING

Kelley Clark Morris

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2023-24 New Member List

The Society has added 26 new members since June 1, 2023.
Among them are 20 Law Clerks for the Court (*) who will receive
a complimentary one-year membership during their clerkship.

TRUSTEE

Dr. Frank de la Teja

REGULAR

Reed Bartley*
Dasha Brotherton*
Courtney Cater*
Seth Cook*
Allison Ebanks
Emily Fitzgerald
Samantha Garza*
Josh Geesling*
Andrew Gould
John Heo*
Ben Hunt*
Taylor Luke*
Clifford D. MacKenzie
Connor Madden*
Jacob Mathew*
Jake McIntosh*
Jordan Redmon
Mikaela Schulz*
Weldon Sloan*
Lindsey Smith*
Cole Stenholm*
Andrew Swallows*
Jonah Ullendorf*
Sarah Winslow*
Seth Young*

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Membership Benefits & Application

Hemphill Fellow $5,000

- Autographed Complimentary Hardback Copy of Society Publications
- Complimentary Preferred Individual Seating & Recognition in Program at Annual Hemphill Dinner
- All Benefits of Greenhill Fellow

Greenhill Fellow $2,500

- Complimentary Admission to Annual Fellows Reception
- Complimentary Hardback Copy of All Society Publications
- Preferred Individual Seating and Recognition in Program at Annual Hemphill Dinner
- Recognition in All Issues of Quarterly *Journal of the Texas Supreme Court Historical Society*
- All Benefits of Trustee Membership

Trustee Membership $1,000

- Historic Court-related Photograph
- All Benefits of Patron Membership

Patron Membership $500

- Discount on Society Books and Publications
- All Benefits of Contributing Membership

Contributing Membership $100

- Complimentary Copy of *The Laws of Slavery in Texas* (paperback)
- Personalized Certificate of Society Membership
- All Benefits of Regular Membership

Regular Membership $50

- Receive Quarterly *Journal of the Texas Supreme Court Historical Society*
- Complimentary Commemorative Tasseled Bookmark
- Invitation to Annual Hemphill Dinner and Recognition as Society Member
- Invitation to Society Events and Notice of Society Programs

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Membership Application

The Texas Supreme Court Historical Society conserves the work and lives of the appellate courts of Texas through research, publication, preservation and education. Your membership dues support activities such as maintaining the judicial portrait collection, the ethics symposia, education outreach programs, the Judicial Oral History Project and the Texas Legal Studies Series.

Member benefits increase with each membership level. Annual dues are tax deductible to the fullest extent allowed by law.

Join online at http://www.texascourthistory.org/Membership/.

Name _____

Firm/Court _____

Building _____

Address _____ Suite_____

City _____ State_____Zip _____

Phone (_____)_____

Email (required for eJournal delivery) _____

Please select an annual membership level:

- ☐ Trustee $1,000
- ☐ Patron $500
- ☐ Contributing $100
- ☐ Regular $50
- ☐ Hemphill Fellow $5,000
- ☐ Greenhill Fellow $2,500

Payment options:

- ☐ Check enclosed, payable to **Texas Supreme Court Historical Society**
- ☐ Credit card (see below)
- ☐ Bill me

Amount: $_____

Credit Card Type: ☐ Visa ☐ MasterCard ☐ American Express ☐ Discover

Credit Card No._____Expiration Date _____CSV code_____

Cardholder Signature _____

Please return this form with your check or credit card information to:

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P. O. Box 12673
Austin, Tx 78711-2673

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