



# Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Fall 2019 Vol. 9, No. 1 General Editor Lynne Liberato Executive Editor David Furlow

## Columns

### Message from the President

**By Dylan O. Drummond**

September was a very exciting and busy month for the Society, with many causes for celebration.

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Dylan O. Drummond

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All history is a collection of the histories of individuals and families, the people whose lives knit together to form communities.

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Sharon Sandle

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The third Taming Texas book, *The Chief Justices of Texas*, will be released in Spring 2020.

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David J. Beck

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Thomas Jefferson was capable of rhyming, reasoning, and, based on his presidential election victory over John Adams, scene-stealing. [Read more...](#)



David A. Furlow

## Leads

### Justice James Hall Bell, Poet

**By Diana G. Paulsen and James W. Paulsen**

The fact that Justice Bell, an Associate Justice of the Supreme Court of Texas from 1858 to 1864, dabbled in poetry is not particularly surprising. [Read more...](#)



Justice Bell

### The Olde Dominion's New Domain: Texas

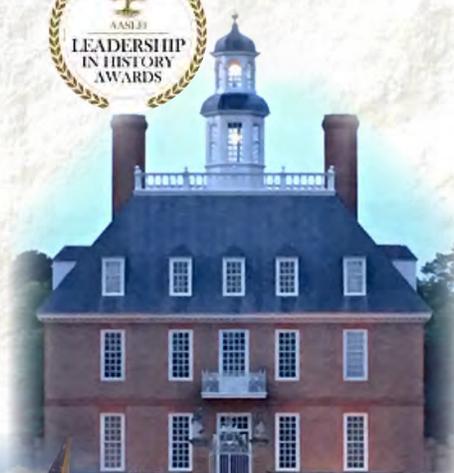
**By David A. Furlow**

How do the history of Virginia, Jamestown, and Jamestown's church tower relate to the Republic of Texas?"

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Jamestown Church



## Features

### Grapevine Revisited: Bonnie and Clyde and the Easter Sunday Murders

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Both Holloway Murphy and Edward Wheeler set about that Easter day thinking that their lives were yet in front of them. [Read more...](#)



H.D. Murphy & E. B. Wheeler

### East Texas Troubles: Governor Allred and His Rangers Defy Jim Crow

**By Jody Edward Ginn, Ph.D.**

Having built his legal and political career as a prosecutor in Wichita Falls and as the youngest Attorney General for the State of Texas, Allred took the rule of law to heart. [Read more...](#)



Gov. Allred

### 24th Annual John Hemphill Dinner: U.S. Supreme Court Justice Neil M. Gorsuch Was Guest Speaker

**By Marilyn P. Duncan Photos by Mark Matson**

Almost five hundred appellate attorneys, judges, their spouses, and others filled the Grand Ballroom of the Four Seasons Hotel in Austin on Friday, September 6. [Read more...](#)



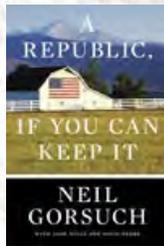
Justice Gorsuch



## Book Announcements

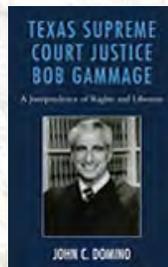
### [A Republic, If You Can Keep It](#) by the Hon. Neil M. Gorsuch

Justice Gorsuch reflects on his journey to the Supreme Court, the role of the judge under our Constitution, and the vital responsibility of each American to keep our republic strong. [Read more...](#)



### [Texas Supreme Court Justice Bob Gammage: A Jurisprudence of Rights and Liberties](#) by John C. Domino

Prof. Domino of Sam Houston State University examines Texas Supreme Court Justice Bob Gammage's progressive jurisprudence during the most tumultuous period in Texas judicial history. [Read more...](#)



## News & Announcements

### **Final Call for Research Proposals!**

2020 Larry McNeill Research Fellowship in Texas Legal History  
**Application deadline: Dec. 28, 2019**  
For details: <https://tshaonline.org/awards-and-fellowships/2562>

### [Justice Brett Busby Formally Sworn into Office by U.S. Supreme Court](#)

#### [Justice Neil M. Gorsuch](#)

**By Dylan O. Drummond**

Justice Busby is the first sitting Texas Supreme Court Justice to have clerked on the United States Supreme Court. [Read more...](#)



Justice Busby

### [Justice Jane Bland Joins the Court](#)

**By Dylan O. Drummond**

Prior to joining the Supreme Court, Justice Bland served on the First District Court of Appeals for fifteen years. [Read more...](#)



Justice Bland

### [Judge Jeff Brown Sworn-In to the Southern District of Texas](#)

**By Dylan O. Drummond**

Judge Brown was invested by Chief Justice Nathan Hecht to his new bench in Galveston on the Southern District of Texas. [Read more...](#)



Judge Brown

### [Court Clerk Blake Hawthorne to be Honored with Appellate Justice Award: Hawthorne Follows Justice Anthony Kennedy as Latest Recipient](#)

**By Osler McCarthy**

Blake Hawthorne, the Texas Supreme Court's Clerk of the Court, will receive the Kathleen McCree Lewis Award for Appellate Justice in April 2020. [Read more...](#)



Blake Hawthorne

### [The Journal Honored with Prestigious Award of Excellence](#)

**By the TSCHS Journal Staff**

The AASLH conferred its Award of Excellence in History on the Society during its 74th Annual Meeting. [Read more...](#)



### [“A Natural-Born Storyteller”: Dr. Jeff Kerr and the Fall Board Meeting](#)

**Story and photos by David A. Furlow**

Renowned Republic of Texas historian Dr. Kerr led the Society's trustees on an odyssey of Austin's origins during the Fall Board Meeting. [Read more...](#)



Dr. Kerr

### [Time Flew at the Tenth Annual Save Texas Symposium](#)

**By David A. Furlow**

Topics included Texas borderland exploration, Indian territorial claims, the influence of Stephen F. Austin on mapping Texas, and more. [Read more...](#)



### [Four Chief Justices Memorialized in Texas Appellate Hall of Fame](#)

Four chief justices were honored at a ceremony held in Austin on September 5, 2019, for their trailblazing marks on Texas legal history. [Read more...](#)

### [Texas Courts News Notes](#)

**By Dylan O. Drummond**

Judges and justices make news around the state. [Read more...](#)

## Membership & More

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Dylan O.  
Drummond

# Message from the *President*

**S**eptember was a very exciting and busy month for the Society.

*First*, the Texas Appellate Hall of Fame welcomed its ninth class of posthumous inductees on September 5th. Descendants of the honorees were in attendance, including the great-great granddaughter of one of Texas's first jurists. Among the 2019 class's ranks include the first Chief Justice to preside over a session of the Supreme Court, the first Justice to author a Supreme Court opinion, and the first Chief Justice to preside over an all-woman state supreme court in U.S. history. The Society owes a debt of thanks to both Jackie Stroh, who annually oversees the Hall of Fame ceremonies and selection process, as well as Society Trustee Justice Brett Busby, who partnered with the Society as the former chair of the Texas Bar Appellate Section. The enshrinees include Texas Supreme Court Chief Justices Thomas J. Rusk, Hortense Sparks Ward, and John L. Hill, as well as Eastland Court of Appeals Chief Justice Austin McCloud. See the story on page 121 of this issue for more about the ceremony and honorees.

*Second*, the Society was honored to welcome on September 6th the first sitting United States Supreme Court Justice to keynote its annual John Hemphill Dinner—Associate Justice Neil M. Gorsuch. He and Texas Supreme Court Chief Justice Nathan Hecht had a lively and fascinating conversation, discussing the current state of civics education in the United States, as well as the Justice's personal journey through confirmation and transition to the Court. Special thanks are owed to the Dinner co-chairs, Trustee Evan Young (as well as his wife, Tobi Young) and Trustee and Fellow Jennifer Hogan. It was my great honor to be sworn-in at the dinner by Justice Paul Green as the Society's eighteenth president.

*Third*, the Society also helped organize and host the Court's annual BA Breakfast on September 7th. For the better part of a half-century, the BA Breakfast has served as annual reunion of former Court Justices, clerks, attorneys, and staff. This year's breakfast was the best-attended in several years. Special thanks to Sarah Churchin, Heather Holmes, Lisa Hobbs, and Mary Sue Miller for making it a success.

*Finally*, the Society was excited to welcome to the Court its two newest members, Justices Brett Busby and Jane Bland, each of whom was sworn-in to the bench during the month of September.

And just before September began, the *Society's Journal* was honored on August 30th by the American Association for State and Local History with its 2019 Excellence in History Award for the *Journal's* Summer 2018 issue focusing on the remarkable contributions of African-American judges and justices in Texas. Former Court Justice and Society President Dale Wainwright originally conceived of the focus of the issue, and attended the award ceremony alongside Executive Editor David Furlow, Managing Editor Marilyn Duncan, and Society Executive Director Sharon Sandle.

As always thank you to each of our members, Trustees, Fellows, and staff who every day make the Society such an incredible organization to serve.

**DYLAN DRUMMOND** *is an appellate litigator resident in the Dallas office of Gray Reed & McGraw LLP.*

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Sharon Sandle

## Some Thoughts on Our *Individual and Collective Histories*

**E**very family has a history. In fact, all history is a collection of the histories of individuals and families, the people whose lives knit together to form communities. The story of every movement, every war, every migration, every conquest, and every revolution is the collective story of the individuals who acted or didn't act, who agreed or disagreed, who survived or died, and the families who weathered the storm.

In my own community, I know people who can trace their families back to the original settlers of Texas, and I know people who can trace their families back to the Native Americans who lived and worked alongside the missions in San Antonio. I know people who can trace their families back to arrivals on Ellis Island or to passengers on the Mayflower.

In my own family, some of us arrived pretty recently. My husband Mike arrived in Houston on a plane from England in 1970, the same time my parents and I arrived in Texas by car. Others of us came much earlier. My grandmother's family arrived in Boston in 1904 from Sweden. It was their second arrival in the United States. They had settled here once before, had two children, my grandmother and her sister, then went back to Sweden for several years. No one in the family remembers now why they moved back and forth. Once they returned to Boston, they joined a community that felt familiar to them. Their Baptist church held services in Swedish regularly. When my grandmother married, it was to a man whose family were also recent immigrants from Sweden.

I grew up in Texas, and I've never been to Sweden. By the time I was born, my grandmother was fluent in English and rarely spoke Swedish anymore. I thought that tacos and football were more familiar to me than any of my Swedish heritage. But this summer I had the opportunity to visit Philadelphia for the annual meeting of the American Association of State and Local History (more about that below). While I was there, I visited the American Swedish Historical Museum, and I was amazed at how familiar the images and the objects in the museum were to me. The museum was filled with artifacts that I recognized from my grandmother's house. Some of them, like the copper coffee set that was a ubiquitous part of nineteenth century Swedish homesteads, are still present in my house today, passed down from generation to generation.

Stories get passed down the same way. I remember my grandmother telling me about her first day of school as a six-year-old who only spoke Swedish and didn't know how to ask the teacher where the restroom was. My grandmother used to laugh when she told me that story, but I always remembered it. I've always had that perspective from my grandmother on how difficult it is to be a child in a strange place, even though it's not something that ever happened to me quite that way.

Many of these family stories I've just taken on faith. That's how they were told to me, and I just trusted that it was the truth. There's often no physical item, no written record, to verify the facts that have been relayed through the generations. It doesn't lessen the impact of the story. I remember hearing about my great aunt who was a suffragette in Boston. My mother used to tell me that story when I went with her to vote. I don't have any pictures or newspaper clippings to rely on for the story, but I think one reason I've voted in every election since I turned eighteen was the thought of my great aunt marching in the street to secure my right to vote.

But sometimes there is a record, often a legal record. This was brought home to me at the Society's Great War Commemoration last year. The stories of the soldiers who contributed to the war effort and then went on to become lawyers, judges, and governors in Texas were documented through photographs and letters but also through the legal documents of their service in the war and in the law. Those documents helped preserve what their families already had ingrained in their memories from the stories that had been passed down. I was fortunate to meet many of the family members who attended the Commemoration and who filled in the gaps between the written records with their own personal stories. I'm proud that the Society plays a role in preserving the legal history of Texas and in telling those stories to a broader audience, as we do in the Society's Journal.

This summer, the AASLH honored the Society's work with an Award of Excellence for our issue highlighting African American lawyers and judges in Texas. The issue focused on stories that are seldom heard and almost never collected in one place, and this groundbreaking effort was recognized by the AASLH. If you haven't had a chance to read this issue of the Journal, you can find it [here](#), and you can see a report on the AASLH Annual Meeting and Philadelphia experience in this current issue.

A family's personal history imprints on its descendants, and our personal histories connect to our collective history. History is at once public and personal. The museums, artifacts, statues, documents, and monuments belong to the public and remind us of where we as a collective nation came from. But those same events, that same history was made up of individuals and families, and that history is personal. That history is transmitted through stories that have been told over and over again and through objects that are so familiar we may not really look at them anymore. We all have a story to tell. All the stories are different, but they all form a piece of the larger picture. I'm proud to be a part of the Society's work in finding new stories to tell and bringing them to light.

**SHARON SANDLE**, *in addition to serving as the Society's Executive Director, is Director of the State Bar's Law Practice Resources Division and of TexasBarBooks.*

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# Fellows Column

By David J. Beck, Chair of the Fellows

Photo by Alexander's Fine Portrait Design-Houston



We had an excellent turnout for the Society's recent Twenty-fourth Annual John Hemphill Dinner on September 6, 2019. At the dinner, we presented a recap of the Fellows' activities, and want to report that information here and update you on activities since the dinner.

The generosity of the Fellows allows the Society to undertake projects to educate the bar and the public on the third branch of government and the history of our Supreme Court. As you now well know, the major educational project of the Fellows is "Taming Texas," a judicial civics program for seventh-grade Texas History classes that places judges and lawyers in classrooms to teach those students.

The Fellows' support has allowed us to produce a series of books for this project. The first book, *Taming Texas: How Law and Order Came to the Lone Star State*, was published in 2016 and became the centerpiece of the judicial civics and court history curriculum. This first Taming Texas book covered the evolution of our state's legal system from the colonial era through the present day. The second book, published last year and entitled *Law and the Texas Frontier*, focuses on how life on the open frontier was shaped by changing laws. You can access a free electronic copy of our first two books, *Taming Texas: How Law and Order Came to the Lone Star State* and *Law and the Texas Frontier*, as well as other materials at [www.tamingtexas.org](http://www.tamingtexas.org).

Our third book is entitled *The Chief Justices of Texas*, and contains interesting stories about the twenty-seven Chief Justices of the Supreme Court of Texas. *The Chief Justices of Texas* is intended to educate seventh-grade readers about the era in which each Chief Justice served and why their work was so important to the Court. The new book will be released in Spring 2020.

Jim Haley, the author of the Society's fabulous history book on the Court, has written these books along with Marilyn Duncan. Chief Justice Hecht has written the foreword for all three books. We would like to thank each of them as well as Justice Green, who serves as the Court's liaison to the Society, and the entire Court for their support of this important project.

We are pleased to report that our Taming Texas project is now expanding to additional cities. For the past four years, we have partnered with the Houston Bar Association to take the Taming Texas project into Houston-area schools, and we have now reached over 21,000 seventh graders. Justice Ken Wise leads the effort in Houston. Last year, the Dallas Bar Association had a pilot program introducing our Taming Texas program in the Dallas Independent School District.

Fellow Ben Mesches is currently working with Dallas Bar Association President Robert Tobey to further expand our program in the Dallas schools. If you would like to volunteer to teach in the Dallas-area schools, please contact Melissa Garcia at [mgarcia@dallasbar.org](mailto:mgarcia@dallasbar.org). In addition, Fellow Marcy Greer is working this year with Austin Bar Association President Todd Smith to implement the program in Austin schools. Fellow Warren Harris and Justice Brett Busby are coordinating our statewide efforts and this expansion to other Texas cities.

The Fellows are a critical part of the annual fundraising by the Society, and allow the Society to undertake projects—such as Taming Texas—to educate the bar and the public. If you are not currently a Fellow, please consider joining the Fellows and helping us with this important work.

Finally, we are working on plans for the annual Fellows Dinner. Further details will be sent directly to all Fellows.

**DAVID J. BECK** *is a founding partner of Beck Redden LLP.*

## FELLOWS OF THE SOCIETY

### Hemphill Fellows

(\$5,000 or more annually)

David J. Beck, Chair\*      Joseph D. Jamail, Jr.\* (deceased)      Richard Warren Mithoff\*

### Greenhill Fellows

(\$2,500 or more annually)

Stacy and Douglas W. Alexander	Mike McKool, Jr.*
Marianne M. Auld	Ben L. Mesches
S. Jack Balagia	Nick C. Nichols
Robert A. Black	Jeffrey L. Oldham
Hon. Jane Bland and Doug Bland	Hon. Harriet O'Neill and Kerry N. Cammack
E. Leon Carter	Hon. Thomas R. Phillips
Kimberly H. and Dylan O. Drummond	Hon. Jack Pope* (deceased)
Michael Easton	Shannon H. Ratliff*
David A. Furlow and Lisa Pennington	Harry M. Reasoner
Harry L. Gillam, Jr.	Robert M. Roach, Jr.*
Marcy and Sam Greer	Leslie Robnett
William Fred Hagans	Professor L. Wayne Scott*
Lauren and Warren W. Harris*	Reagan W. Simpson*
Thomas F.A. Hetherington	Allison M. Stewart
Jennifer and Richard Hogan, Jr.	Kristen Vander-Plas
Dee J. Kelly, Jr.*	Peter S. Wahby
Hon. David E. Keltner*	Hon. Dale Wainwright
Thomas S. Leatherbury	Charles R. Watson, Jr.
Lynne Liberato*	R. Paul Yetter*

\*Charter Fellow

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David A. Furlow

# Poetry, Prose, & Pose

***"If a nation expects to be ignorant and free...  
It expects what never was and never will be."***

— Thomas Jefferson, letter from Monticello  
to Charles Yancey, January 16, 1816

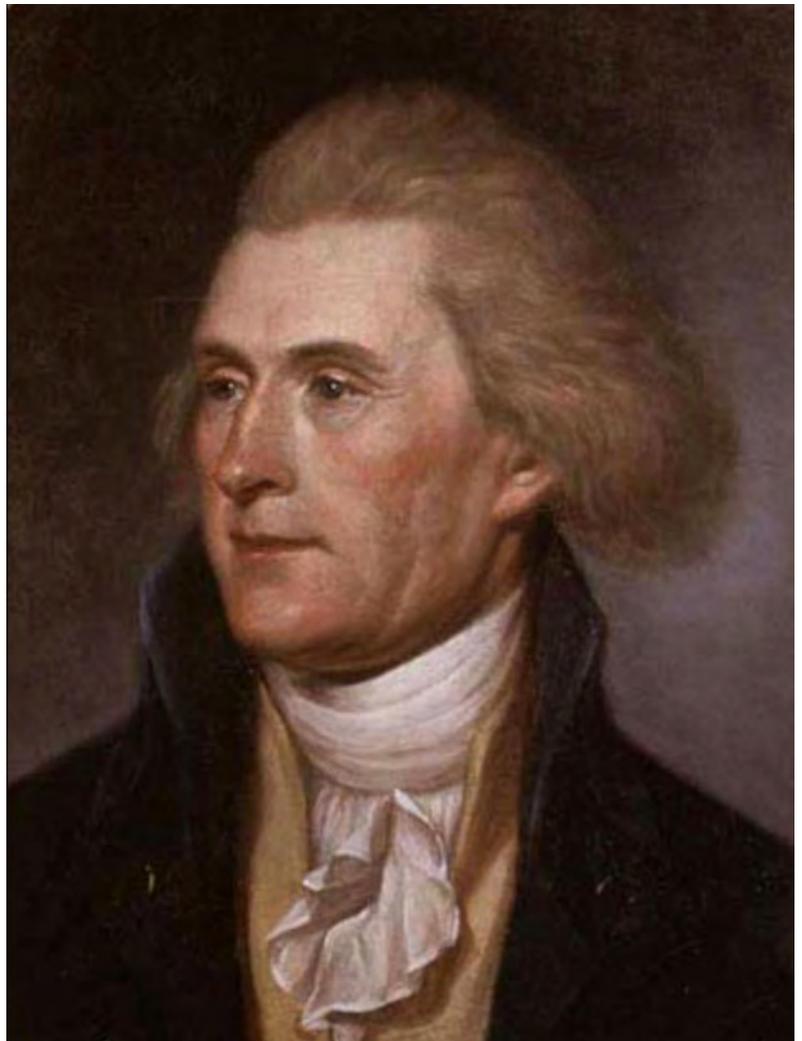
**T**he Sage of Monticello was a poet.

*You knew that.*

*Everyone knows that.*

The star graduate of William and Mary Law Professor George Wythe was America's Renaissance Man, capable of rhyming, reasoning, and, based on his presidential election victory over John Adams, scene-stealing.

Except that the truth about the lines above is, well, a bit more prosaic. Thanks to the most powerful volcanic eruption in human history—the April 10, 1815 explosion of Mount Tambora in Sumbawa, Indonesia, then part of the Dutch East Indies—and its massive release of sulphur and ash, the third President of the United States sat at his Monticello writing desk shivering through the frigid beginning of the "Year without a Summer," also known as "Eighteen Hundred and Freezing," the calamitous year 1816.<sup>1</sup>



Charles Willson Peale's painting of Thomas Jefferson at age forty-nine, in 1791. Public domain, Wikimedia.

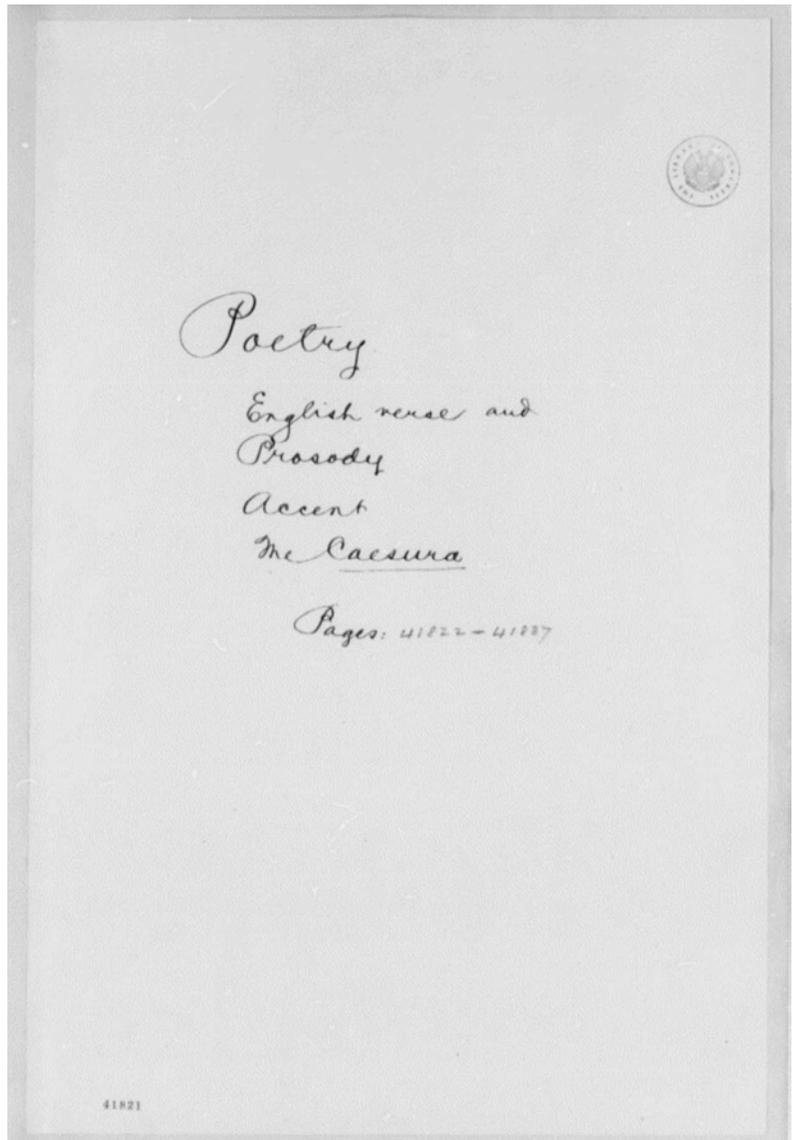
<sup>1</sup> Richard B. Stothers, "The Great Tambora Eruption in 1815 and Its Aftermath," *Science*, 224 (1984) (4654): 1191-98.

In a year marked by clinging, freezing mists and massive crop failures throughout the Northern Hemisphere, the former President's thoughts turned dark and cold as he quilled the following words to his old friend Charles Yancey, a magistrate who lived in Albemarle County:

*[I]f a nation expects to be ignorant & free, in a state of civilization, it expects what never was & never will be. the functionaries of every government have propensities to command at will the liberty & property of their constituents. there is no safe deposit for these but with the people themselves; nor can they be safe with them without information. where the press is free and every man able to read, all is safe.<sup>2</sup>*

In short, prose can shape-shift into poetry in the hands of a skilled editor. This time, the editor was time. Tradition transformed the third President's prose into poetry.

Thomas Jefferson was one of America's most skilled editors, even going so far as to edit his own version of the Bible. He appreciated poetry, prose, and pose—the literature of the theater, from its beginnings in ancient Greece with Homer through imperial Rome's Vergil to John Dryden and John Milton.<sup>3</sup> Within three years of the Revolutionary War's conclusion in the Treaty of Paris, he authored the essay, "Thoughts on English Prosody." The essay asked whether accent or quantity was more important in English poetry.<sup>4</sup> Accent won the day. In addition to writing,



Thomas Jefferson to François Jean, Chevalier de Chastellux, October 1786, with Essay "Thoughts on English Prosody." Library of Congress.

<sup>2</sup> "Jefferson Quotes and Family Letters," *Monticello* website, citing the original letter in the Library of Congress, <http://tjrs.monticello.org/letter/327#X3184736> (emphasis supplied to reveal the words posterity excerpted into poetry).

<sup>3</sup> "Thomas Jefferson: Presidents as Poets," Virtual Services Digital Reference Section, *Library of Congress Finding Guides*, <https://www.loc.gov/rr/program/bib/prespoetry/tj.html>.

<sup>4</sup> Thomas Jefferson, "Thoughts on English Prosody," *The Thomas Jefferson Papers Series 1. General Correspondence, 1651-1827*, Thomas Jefferson to François Jean, Chevalier de Chastellux (October 1786), with the essay "Thoughts on English Prosody," <https://memory.loc.gov/cgi-bin/ampage?collId=mtj1&fileName=mtj1page006.db&recNum=648>.

Jefferson pasted newspaper clippings of poetry, prose, and theater in his *Literary Commonplace Book* from age fifteen until thirty.<sup>5</sup>

We remember Thomas Jefferson not because of his versification but because of his prose, with the Declaration of Independence, the Virginia Statute of Religious Freedom, and the Louisiana Purchase at the top of T.J.'s Greatest Hits List. The sepulchral blackness of January 1816 inspired dark thoughts about the state of civilization, if you focus on the negative. Yet if you rejoice in a positive view, Jefferson offered a prescription for an open society, its freedoms in the hands of its people and its institutions safeguarded by a free press.

Jefferson remained positive to the end. In response to an invitation by the citizens of Washington to visit the capital one last time to celebrate the fiftieth anniversary of the signing of the Declaration of Independence, Thomas Jefferson sent regrets. The invitation inspired him to write his last publicly published letter, to Roger Weightman, Mayor of Washington, D.C. He sent it ten days before his death on July 4, 1826, at Monticello, to express his hope for America and the world (punctuation added):

...I should, indeed, with peculiar delight, have met and exchanged there congratulations personally with the small band, the remnant of that host of worthies, who joined with us on that day, in the bold and doubtful election we were to make for our country, between submission or the sword; and to have enjoyed with them the consolatory fact, that our fellow citizens, after half a century of experience and prosperity, continue to approve the choice we made.

May it be to the world, what I believe it will be, (to some parts sooner, to others later, but finally to all,) the Signal of arousing men to burst the chains, under which monkish ignorance and superstition had persuaded them to bind themselves, and to assume the blessings and security of self-government.

That form which we have substituted, restores the free right to the unbounded exercise of reason and freedom of opinion. All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God.

These are grounds of hope for others. For ourselves, let the annual return of this day forever refresh our recollections of these rights, and an undiminished devotion to them.<sup>6</sup>

I remembered those words when I visited Independence Hall and the American Philosophical Society next door that Jefferson founded, last August. Having seen those places where the

<sup>5</sup> *Ibid.*; see also Thomas Jefferson, *Literary Commonplace Book*, Library of Congress.

<sup>6</sup> Letter, Thomas Jefferson to Roger Weightman (June 24, 1826), Library of Congress, <https://www.loc.gov/exhibits/jefferson/214.html>; punctuated version in Merrill C. Peterson, ed., *Thomas Jefferson: Writings* (New York: Library of America, 1984), 1516–17.

American experiment began, I will read that prose aloud in the presence of friends, children, and grandchildren next Fourth of July and on every Fourth in the future.

Jefferson crafted magnificent prose for the ages. But he wrote poetry, too, for his daughter Martha Randolph, when he was old. Close to his life's end, he composed these lines:

**A death-bed Adieu  
Th:J to MR**

*Life's visions are vanished, it's dreams are no more.*

*Dear friends of my bosom, why bathed in tears?*

*I go to my fathers; I welcome the shore,*

*which crowns all my hopes, or which buries my cares.*

*Then farewell my dear, my lov'd daughter, Adieu!*

*The last pang in life is in parting from you.*

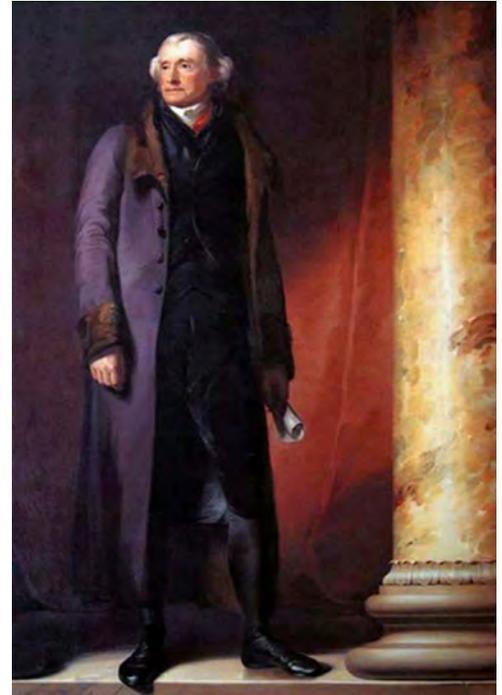
*Two Seraphs await me, long shrouded in death;*

*I will bear them your love on my last parting breath.<sup>7</sup>*

That's beautiful and sweet after the passage of nearly two centuries.

You don't have to go to Philadelphia, or to Monticello, to appreciate the poetry a devoted father wrote to his daughter in the nineteenth century. You can visit the Jourdan-Bachman Pioneer Farms in north Austin and see the 1859 plantation home of James Hall Bell, an Associate Justice of the Supreme Court of Texas from 1858 to 1864—and a man who, like Jefferson, wrote poetry for a beloved daughter.<sup>8</sup>

In their groundbreaking examination of a previously obscure aspect of Justice Bell's life, "Justice James Hall Bell, Poet," Wellesley College student Diana G. Paulsen and her father, South Texas College of Law Professor James W. Paulsen, reveal the album of poetry Justice Bell gave to his daughter Evelyn while describing their own story of buying that memorabilia on eBay. I first learned of the Paulsens' purchase of this album while having dinner with Jim and his wife Robin Russell at the *Raven* restaurant in Houston's museum district. It seemed a perfect way to



Portrait of Thomas Jefferson at age seventy-eight by Thomas Sully, commissioned by West Point's Faculty and Cadets in 1821. Library of Congress, Wikimedia.

<sup>7</sup> "Thomas Jefferson: Presidents as Poets," *Library of Congress Finding Guides*.

<sup>8</sup> "1886 Cotton Planter's Farm," *Jourdan-Bachman Pioneer Farms*, <https://www.pioneerfarms.org/1886-cotton-planters-farm>.

explore the life of a nineteenth-century justice for whom the Civil War was the most important part of the docket. If you visit the Jourdan-Bachman Pioneer Farms—which you should, if you value Texas history—this is the article you’ll want to take with you.

And if you have a daughter, as I do, this is that one article about a father, a daughter, and the history of the law she’ll thank you for sharing with her.

Speaking of Thomas Jefferson, I’ve written an article for this issue about the important ties between the Olde Dominion, Virginia, and the Republic of Texas, beginning at Jamestown. I wrote it to celebrate the 400th anniversary of a proud and noteworthy event—the opening of the Virginia General Assembly on July 30, 1619, the first assembly of popularly elected representatives and the birth of American democracy. The high-minded traditions Thomas Jefferson exemplified—the importance of self-governance, independence of spirit, and freedom of speech, the press, and conscience, all began when the first General Assembly convened at the Anglican church and meetinghouse on hot, humid Jamestown Island on that July day.

Yet I also wrote to commemorate the 400th anniversary of tragic events that occurred almost immediately afterwards, yet reverberate to this day: the introduction of race-based slavery at nearby Point Comfort, Virginia in August of 1619 and another, almost contemporaneous tragedy: the collapse of early attempts to create an inclusive Commonwealth of Virginia during a period of total war between English settlers and the Powhatan Indians of *Tsenacommacah*, Virginia. I quote poetry, prose, and the lyrics “Rule, Britannia” from a popular British play to examine the inspiration the Republic of Texas’s second elected president, Mirabeau Buonaparte Lamar, drew in 1839 from events that began 220 years earlier in a church on Jamestown Island.

Texas Rangers historian Jody Edward Ginn offers stirring prose about the “Allred Rangers,” the best of their breed, in excerpts from his recently published book *East Texas Troubles: The Allred Rangers’ Cleanup of San Augustine*. In addition, he reveals the truth behind the myths of Hollywood’s ballad about Bonnie and Clyde’s murderous spree through Depression-era Texas.

Speaking of prose that transforms into poetry, Skip Watson gave one of the best speeches anyone has heard at any Hemphill Dinner. You can read Skip’s inspiring words about Chief Justice Jack Pope in this issue.

In our reporting of events affecting our Society, we’ll end where we began: with Thomas Jefferson in Philadelphia. In a melting-pot of ethnicities and religions, home to Lenni-Lenape (Delaware) and Susquehanna Indians, then to the Dutch, Swedes, English, Germans, African Americans, and Irish, to Anglicans and Puritans, Quakers and Jews, William Penn founded a city of brotherly love—Philadelphia—in the forested land he served as Governor—Penn’s Sylvan Land, Pennsylvania.

Thomas Jefferson came to the city, then the largest in colonial America, to meet with George Washington, John Adams, Benjamin Franklin, and others to sign a clarion call for revolution: the Declaration of Independence. Jefferson and his fellow delegates to the Continental Congress pledged their lives, their property, and their sacred honor to begin the world anew—and to

grant their posterity the right to pursue happiness. In 1776, Philadelphia was at the center of the world—and would be there again, a few years later, at the convention that produced the U.S. Constitution and the Bill of Rights. The past is not really past in Philly—it lives on at Independence Hall, at City Tavern, and in the Museum of the American Revolution.

We'll end with this Society's version of *Philadelphia Story*. At the end of August, at the American Association for State and Local History's Annual Meeting in Philadelphia, AASLH's Excellence in History Committee presented its prestigious Excellence in History Award to this *Journal* and this Society—the only such award conferred on anyone in Texas in 2019. We offer a full account of that story in this issue.

As this momentous year comes to a close, we look back with fond recollections of the stirring prose, elegiac poetry, and historic drama Thomas Jefferson and the other Founding Fathers transformed into a phrase that honors a uniquely important and historic American city: *Philadelphia freedom*.

**DAVID A. FURLOW** *is an attorney, historian, and archeologist.*

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# Justice James Hall Bell, Poet

By Diana G. Paulsen and James W. Paulsen

***"Texas is the land of poetry."***

– William Carey Crane (1878)<sup>1</sup>

This article presents the text of, and some context for, eleven previously unknown poems<sup>2</sup> and associated material written by James Hall Bell, who was an Associate Justice of the Supreme Court of Texas from 1858 to 1864.<sup>3</sup> The poems came to light through the authors' eBay purchase of a bound album more than a decade ago. The seller provided no information as to how or when the album was acquired, but it certainly is authentic.<sup>4</sup>

As was common practice at the time,<sup>5</sup> Justice Bell

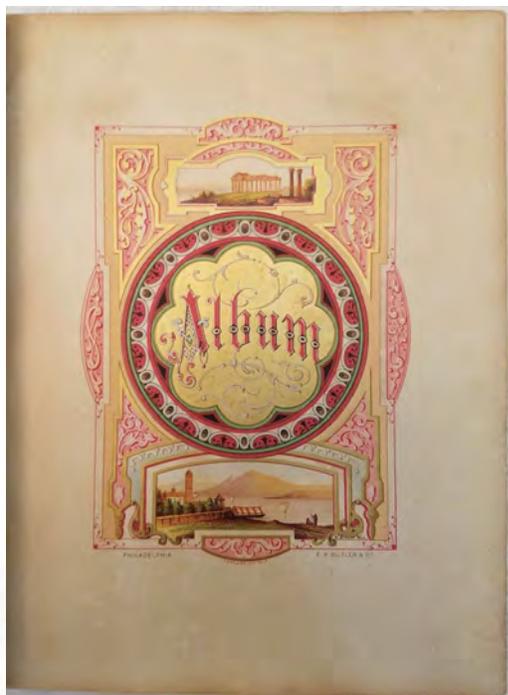
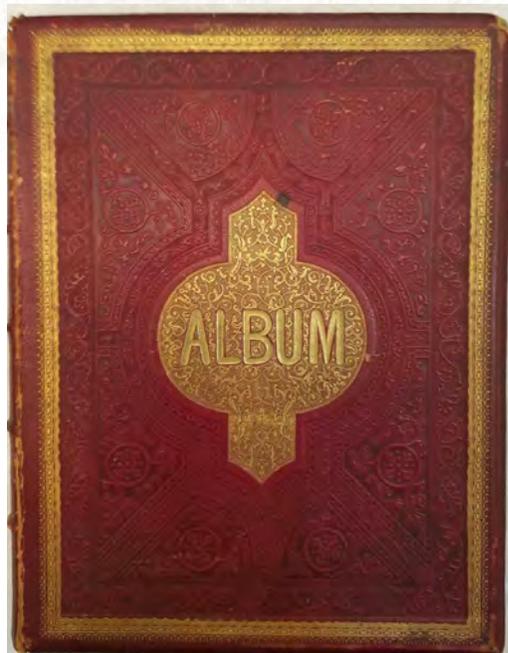
<sup>1</sup> William Carey Crane, Preface, in Sam Houston Dixon, *The Poets and Poetry of Texas: Biographical Sketches of the Poets of Texas* (Austin: Sam H. Dixon & Co., 1885).

<sup>2</sup> Technically speaking, one poem in the album, discussed later, actually was published, but only in an obscure and short-lived literary journal. See footnote 97 and accompanying text.

<sup>3</sup> "James Hall Bell," *Justices of Texas 1836-1986* (Tarlton Law Library, Jamail Center for Legal Research), <https://tarltonapps.law.utexas.edu/justices/profile/view/5>. Curiously, a 1916 letter from the Texas Secretary of State in response to an inquiry from Harvard University stated that Bell served only until August 2, 1862. Letter from John C. McKay to Henry N. Blake, in "James Hall Bell" file, Harvard University Archives.

<sup>4</sup> Not only do the poems in the album and an accompanying letter match known examples of James and Evelyn Bell's handwriting, it would not be worth anyone's while to engage in such extended forgery for such a small reward. Plus, if anyone actually wanted to conduct DNA testing, the album came with a small envelope containing a lock of James Bell's hair tucked into the inside rear cover—an item since entrusted to one of the judge's descendants.

<sup>5</sup> James Bell noted that one of the poems he contributed to Evelyn's album was a copy of a poem written "in a young lady's Album." The Austin Public Library also contains a near-identical album that Mirabeau B. Lamar presented to his daughter Rebecca, with her name embossed on the cover. Another similarity between Evelyn Bell and Rebecca Lamar's albums is that Lamar also included some of his own poems, which were incorporated into a book the better part of a century later. See Philip Graham, *The Life and Poems of Mirabeau B. Lamar* (Chapel Hill: University of North Carolina Press, 1938), 88.



Justice Bell presented this album to his young daughter Evelyn in 1860. Photos by James W. Paulsen. Subsequent photos of the album's interior are also by James Paulsen.

presented the album to his eldest daughter, Evelyn, once she was old enough to make good use of it—in Evelyn’s case, age eleven or thereabouts. He urged her to fill it with “valuable thoughts, pleasing recollections” and copies of writings by others that deserved to be read over and over through the years—items Bell described as “the rarest flowers of genius.” In this, he was disappointed.<sup>6</sup> Evelyn wrote virtually nothing in the album.<sup>7</sup> The result is a small collection of James Bell’s poetry toward the beginning of a mostly blank book.

The fact that Justice Bell dabbled in poetry is not particularly surprising. In the first part of the nineteenth century, a well-educated gentleman (or anyone who wished to appear well-educated) was expected to flyspeck a speech with classical allusions or dash off a few lines of poetry on demand.<sup>8</sup> Lawyers and judges often wrote poetry<sup>9</sup> and, frontier territory or not, Texas was no exception.

The best known early Texas poet was Mirabeau B. Lamar, second president of the Republic, whose efforts for the most part have not received stellar reviews.<sup>10</sup> Sam Houston, Lamar’s perennial political adversary, advised his son to become “any thing but a Poet, or a Fidler [sic], or a song singer.”<sup>11</sup> But even Sam was not above composing a poem now and then, most famously one sent to a Nacogdoches beauty he was courting at the time of the Battle of San Jacinto.<sup>12</sup> Houston, with his usual modesty, titled the self-referential poem “March, Chieftain.”<sup>13</sup>

Limiting the examples to the Texas Supreme Court, both Chief Justices Thomas J. Rusk and John Hemphill are known to have written a little poetry on the general subject of marriage. Rusk’s 1835 entry was an ode to his absent spouse, including the lines:

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<sup>6</sup> James Bell surely knew that Evelyn was making no use of the album. He added a poem in 1882, more than two decades after he gave Evelyn the album. See “On the Bank of the Hudson.”

<sup>7</sup> The sole apparent exception is a brief note that accompanies a memento of Tom Green’s funeral, discussed later.

<sup>8</sup> Cf. Michele Martinez, “Women Poets and the Sister Arts in Nineteenth-Century England,” *Victorian Poetry* 41 (2003): 621 (stating that “epic poetry and history painting” were “masculine genres for gentlemen with a classical education or professional training”).

<sup>9</sup> See generally, e.g., Michael H. Hoeflich, ed., *Anthology of Nineteenth Century American Legal Poetry* (Clark, N.J.: Talbot Publishing, 2017); Edward J. Eberle and Bernhard Grossfeld, “Law and Poetry,” 11 *Roger Williams University Law Review* (2006): 353; James R. Elkins, “An Anthology of Poetry by Lawyers,” *Legal Studies Forum* 28 (2004): 1.

<sup>10</sup> See, e.g., J. Frank Dobie, “Review of Philip Graham, *The Life and Poems of Mirabeau B. Lamar*,” *Southwestern Historical Quarterly* 42 (1938): 163 (opining that “the trouble with his poetry . . . [is that there] is nothing from the deep inside of the man, nothing of the actual land he was supposed to represent”); Graham, *Life and Poems of Lamar*, 95 (stating that his “lines are too often lacking in creative energy, and are sometimes blurred for the want of the bright, hard images dear to the hearts of certain more recent poets; but the music of his verse during his last twenty years compensates for the lack of pictures”); Mary Scheer, “Mirabeau B. Lamar: Poet, President, and Namesake for a University,” *East Texas Historical Journal* (2014): 52: 59 (reporting that early critics “charged that his poetry was . . . evidence of a dreamy idealism that, they believed, ‘rendered him unfit for public life’”); Bertram Wyatt-Brown, *Hearts of Darkness: Wellsprings of a Southern Literary Tradition* (Baton Rouge: Louisiana State University Press, 2003), 97 (describing Lamar’s poems as “decidedly not memorable”).

<sup>11</sup> Scheer, “Mirabeau B. Lamar,” 59.

<sup>12</sup> See generally, e.g., Elizabeth Crook, “Sam Houston and Eliza Allen: The Marriage and the Mystery,” *Southwestern Historical Quarterly* 94 (1990): 1.

<sup>13</sup> One stanza reads: “But still the heart must e’er admire / The deeds that flash from valor’s fire / To blast the base invader’s ire. / Such deeds shall be adorned.” Amelia W. Williams and Eugene C. Barker, eds., *The Writings of Sam Houston, 1813-1863* (Austin: University of Texas Press, 1939), vol. 2, 31.

I sing of thee whose faultless fame  
The lips of all command.<sup>14</sup>

Bachelor John Hemphill had a decidedly more skeptical view of the institution. He closed an 1851 letter to a young lady in South Carolina with the words:

May heaven's blessings on you rest.  
May peace and plenty with you dwell.  
And if you ever chance to wed,  
May you be happy, fare you well.<sup>15</sup>

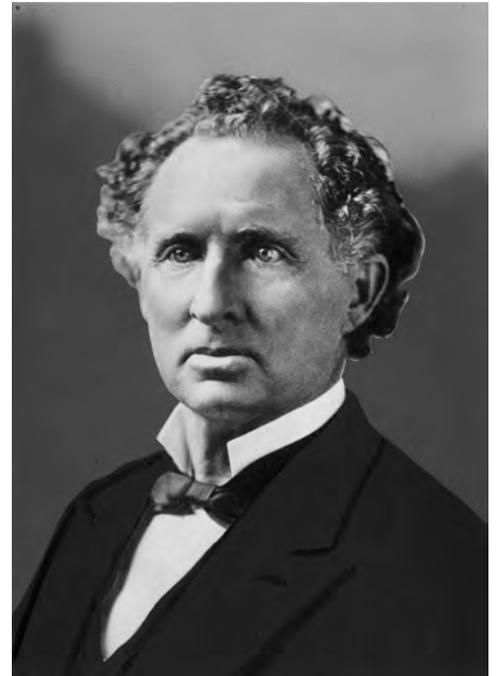
In two of the poems presented here, "On Christmas Day" and "To My Absent Wife," Justice Bell casts the deciding vote with Rusk, leaving Hemphill in dissent.

What follows is some brief background on Justice Bell and his daughter Evelyn, a few comments on the album itself (which contains a surprising bonus), and a little literary context and criticism. The poems themselves, however, are the stars.

### **The Poet: James Hall Bell**

James Hall Bell served as an Associate Justice of the Supreme Court of Texas from 1858 to 1864.<sup>16</sup> He was born in 1825 at Bell's Landing (now Columbia, Texas),<sup>17</sup> the son of Mary and Josiah Bell, one of the first "Old Three Hundred" families to settle in Austin's Colony.<sup>18</sup> James's older brother Thaddeus was the first male child born in Austin's Colony.<sup>19</sup>

James Bell got a good education for the time and place. His father built a schoolhouse shortly after James's



Justice James Hall Bell. Photo courtesy of Texas Jurists Collection, University of Texas Tarlton Law Library.

<sup>14</sup> Cleburne Huston, *Towering Texan: A Biography of Thomas J. Rusk* (Waco, Tex.: Texian Press, 1971), 76.

<sup>15</sup> John Hemphill to Mary [McCaw?] (Nov. 20, 1851), South Caroliniana Library, Columbia, South Carolina. The entire letter appears to be written tongue-in-cheek. This four-line composition would not get high points for creativity. The first two lines, at least, simply may be a combination of two (Irish?) blessings common at the time. See, e.g., *Dr. Price's Drawing and Recitation Book, for Young Folks* (Chicago: Price Baking Powder Co., 1887), 3 ("And be you sick or be you well; May peace and plenty with you dwell"); George K. Ward et al., comp., *Carmina Princetonia: A Collection of the Songs of Princeton College* (Princeton, N.J.: Stelle & Smith, 1869), 39 ("Kind friends, we now must speak the word; To one and all, farewell; May heaven's blessings on you rest; And music's magic spell"). Google can be a wonderful research tool.

<sup>16</sup> "James Hall Bell," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fbe36>; "James Hall Bell," *Justices of Texas*.

<sup>17</sup> James R. Norvell, "The Supreme Court of Texas Under the Confederacy-1861-1865," *Houston Law Review* 4: 46, 49; "James Hall Bell," *Justices of Texas*.

<sup>18</sup> "James Hall Bell," *Justices of Texas*.

<sup>19</sup> Bob Arnold, *First in Texas: Three Texans and Their Contributions to Texas History, 1821-1978* (Bob Arnold, 2011), 60.

birth, in which the Bell siblings and children from surrounding settlements received some basic instruction.<sup>20</sup> In 1837, when James was twelve years old, he was enrolled in St. Joseph's College in Bardstown, Kentucky. He stayed for about one year, returning to Texas after his father's untimely death.<sup>21</sup>

In September 1839, Bell resumed his education in Kentucky, but this time at Centre College in Danville, the first Presbyterian-funded college in the United States.<sup>22</sup> The school's principal emphasis was on classical literature, but the students also engaged in daily oratory exercises and weekly debates.<sup>23</sup> At some point, Bell also acquired some fluency in French, Spanish, and Latin.<sup>24</sup> Bell probably attended Centre College only through his junior year and almost certainly did not receive a degree, possibly because his interests had turned to law.<sup>25</sup>

<sup>20</sup> *Ibid.*, 41.

<sup>21</sup> "James Hall Bell," *Justices of Texas*; Arnold, *First in Texas*, 66. James's father did not leave the family in poverty. See Andrew Phelps McCormick, *Scotch-Irish in Ireland and in America* (New Orleans: privately published, 1897) (stating that Josiah Bell "left what was at the time of his death a large estate [valued] at the sum of \$140,000.00)." This book is available online, though without pagination, through the United States GenWeb Project at <http://sites.rootsweb.com/~usgenweb/special/family.htm>.

<sup>22</sup> George Goldthwaite, in "Memorial Proceedings Touching the Death of Hon. James H. Bell," 85 Tex. xii (1893), xiii; Arnold, *First in Texas*, 66.

<sup>23</sup> Arnold, *First in Texas*, 66-67; see also "History of the College," *Centre College*, <https://www.centre.edu/centre-facts/centre-history/>.

<sup>24</sup> Goldthwaite, "Memorial Proceedings," xiii.; J.H. Davenport, *The History of the Supreme Court of Texas, With Biographies of the Chief and Associate Justices* (Austin, Tex.: Southern Law Book Publishers, 1917), 56.

<sup>25</sup> There is some possible discrepancy in biographical materials as to whether James Bell ever graduated from Centre College. Compare, e.g., "James Hall Bell," *Justices of Texas* (stating that "[i]n 1839 he resumed his studies at Centre College in Danville, Kentucky, but his education was again interrupted when he enlisted in the Texas army during the Mexican invasions of 1842") with Arnold, *First in Texas* 67-68 (stating that Bell, "[h]aving just returned home from his final year in college," joined the Texas army).

James Bell is not mentioned in a Centre College 1890 compilation of graduates, which strongly suggests that he never completed his four-year degree program. Centre College's records do show that Bell was a sophomore during the 1840-1841 academic year and another presumably reliable source indicates that James Bell had completed his junior year by the fall of 1842. But that still would have left Bell one year short of a diploma. See email from Beth Morgan (Centre College archivist) to James W. Paulsen (Dec. 17, 2018) (available from the authors) (providing information regarding Bell's sophomore year and the 1890 catalog); McCormick, *Scotch-Irish in Ireland and in America*. Andrew Phelps McCormick was related to James Bell and studied law in Bell's office.

Some negative evidence also is worth noting. Andrew Phelps McCormick says that James Bell "returned from Centre College in 1842" and that he later "matriculated in the law department of Harvard University, where he remained until he received the graduate's degree." *Ibid.* McCormick's variant descriptions of James Bell's Centre College and Harvard studies suggest that Bell never graduated from Centre.

The question can be approached from another angle. James Bell began his studies at Harvard Law School in the Fall 1845 semester. See "James Hall Bell," Harvard University Archives. If one assumes that Bell completed his sophomore year at Centre College by September 30, 1841, and his junior year by September 30, 1842, that leaves a window of three full academic years during which Bell might have completed his final year of studies at Centre College. Other known events in James Bell's life, however, render it exceedingly unlikely that he could have squeezed in a senior year at Centre during that three-year window of opportunity.

Two episodes are particularly important. First, in response to the capture of San Antonio by the Mexican Army on September 11, 1842, James Bell enlisted in Captain John McNeill's company, one of the units that participated in the Somervell Expedition. Bell's service most likely was not completed until December 1842 at the earliest. McCormick, *Scotch-Irish in Ireland and in America*. That rules out enrollment at Centre College for the 1842-1843



James Bell attended Centre College in Danville, Kentucky, during the period represented in this etching. Image from Genealogy Village website, <https://kyahgp.genealogyvillage.com/boyle/>.

James was back in Texas in time to enlist for brief military service with the ill-fated 1842 Somervell expedition.<sup>26</sup> He then embarked on a legal career.<sup>27</sup> Together with Guy M. Bryan, academic year.

Second, James Bell studied in the law office of William H. Jack, who died on August 20, 1844. Thomas W. Cutrer, "William Houston Jack," *Handbook of Texas Online*, <https://tshaonline.org/handbook/online/articles/fja04>. That rules out enrollment at Centre College for the 1843-1844 school year. McCormick is very specific in this regard. He states that James Bell enlisted "[s]oon after his return" from Centre College in 1842 and started to study law with William Jack "[v]ery soon after returning from this campaign." McCormick, *Scotch-Irish in Ireland and in America*.

The timing of William Jack's death also makes it exceedingly unlikely that James Bell could have attended Centre College during the 1844-1845 academic year, even if he wanted to interrupt his legal training and return to undergraduate studies after a two-year hiatus. Even if James Bell had made an immediate decision to return to Centre College, the short time between Jack's August 20 death and the beginning of Centre's Fall 1844 semester would have been daunting. McCormick's short biography also suggests that Bell did not return to Centre College in the year or so between William Jack's death and Bell's enrollment at Harvard. *Ibid.* (Stating that "[a]fter the death of Mr. Jack, James Bell went to Cambridge, Massachusetts"). All in all, it seems safe to conclude that James Bell never graduated from Centre College.

<sup>26</sup> Goldthwaite, "Memorial Proceedings," xiii. After 1842 Mexican attacks on San Antonio and surrounding towns, Brigadier General Alexander Somervell and men under his command were dispatched to repel the invasion. The Mexican army, however, already had withdrawn. Some 300 soldiers and officers disobeyed orders and crossed the Rio Grande. Most were killed or captured by the Mexican army; some of the survivors were executed in what became known as the "black bean" episode. See, e.g., James L. Haley, *Passionate Nation: The Epic History of Texas* (New York: Free Press, 2006), 239-40. James Bell wisely chose to follow Somervell's orders and remain in Texas.

<sup>27</sup> *Ibid.*; Arnold, *First in Texas*, 67-68.

Stephen F. Austin's nephew, Bell studied law under Republic congressman William H. Jack.<sup>28</sup> Jack died during a 1844 yellow fever outbreak<sup>29</sup> and Bell completed his legal education at Harvard University in 1847.<sup>30</sup> One of his professors was U.S. Supreme Court Justice Joseph Story;<sup>31</sup> future president Rutherford B. Hayes was a classmate.<sup>32</sup> On his return to Texas, James Bell established a private practice, lost a bid for the state legislature to his former office-mate Guy Bryan,<sup>33</sup> married, and about nine months later<sup>34</sup> welcomed the first of eight children, Evelyn Hunter Bell.<sup>35</sup>

In 1858, after several years as both a lawyer and farmer,<sup>36</sup> as well as four years of service as judge of the First Judicial District,<sup>37</sup> Bell announced his independent candidacy for the Texas Supreme Court. He won by a margin of less than one percent in a bitterly contested race with the Democrat candidate, State Representative and former District Judge C.W. Buckley.<sup>38</sup> In consequence, Bell became the first native-born Texan and, at the age of thirty-three, the youngest-ever member of the Texas Supreme Court.<sup>39</sup>

Despite James Bell's relatively brief tenure on the state's high court, he played a leading role in some important decisions. In *Calvin v. State*,<sup>40</sup> a case in which one slave stood accused of murdering another, Bell insisted that adherence to procedural formalities must be "precisely the same as if the accused were a free white man, and we cannot strain the law even 'in the estimation of a hair,' because the defendant is a slave."<sup>41</sup> On the negative side, in *DeBlane v. Hugh Lynch & Co.*,<sup>42</sup> Justice Bell undid an earlier women's rights initiative, ruling that profit from a wife's separate property was community property subject to the husband's sole control.

For the most part, though, James Bell's service on the supreme bench was defined by his opposition to secession and the Confederacy's war powers. Though a Texas-born slaveholder,

<sup>28</sup> Goldthwaite, "Memorial Proceedings," xiii; Arnold, *First in Texas*, 68.

<sup>29</sup> Cutrer, "William Houston Jack."

<sup>30</sup> "James Hall Bell," Harvard University Archives.

<sup>31</sup> Goldthwaite, "Memorial Proceedings," xiii; Arnold, *First in Texas*, 68-69.

<sup>32</sup> Arnold, *First in Texas*, 69.

<sup>33</sup> *Ibid.*

<sup>34</sup> James Bell and Catherine Townsend married on December 1, 1847; Evelyn was born September 11, 1848. Catherine Elizabeth Townsend Bell, *Find a Grave* website, <https://www.findagrave.com/memorial/24351488/catherine-elizabeth-bell>; Evelyn Hunter Bell Wright, *Find a Grave* website, <https://www.findagrave.com/memorial/16360760/evelyn-hunter-wright>.

<sup>35</sup> Arnold, *First in Texas*, 69.

<sup>36</sup> Goldthwaite, "Memorial Proceedings," xiii.

<sup>37</sup> Norvell, "Supreme Court of Texas Under the Confederacy," 49.

<sup>38</sup> Dale Baum, *The Shattering of Texas Unionism* (Baton Rouge: Louisiana State University Press, 1998), 17. See also generally Oran M. Roberts, "The Political, Legislative, and Judicial History of Texas for Its Fifty Years of Statehood, 1845-1895," in Dudley G. Wooten, ed., *A Comprehensive History of Texas, 1685 to 1897* (Dallas: William G. Scarff, 1898) (Texas State Historical Association reprint, 1986), vol. 2, 42.

<sup>39</sup> Michael Ariens, *Lone Star Law* (Lubbock: Texas Tech University Press, 2011), 32; Arnold, *First in Texas*, 73; James L. Haley, *The Texas Supreme Court: A Narrative History, 1836-1986* (Austin: University of Texas Press, 2013), 68.

<sup>40</sup> 25 Tex. 789 (1860).

<sup>41</sup> *Ibid.*, 796.

<sup>42</sup> 23 Tex. 25 (1859).

Bell was a staunch Unionist. After Lincoln's election, Governor Sam Houston persuaded Bell to participate in a public debate on the constitutionality of secession with fellow Justice Oran M. Roberts.<sup>43</sup> The result was foreordained: Roberts went on to chair the Texas Secession Convention,<sup>44</sup> while James Bell and his brother reputedly cast the only two votes against secession in Brazoria County.<sup>45</sup>

Bell remained a Unionist in principle, but kept his seat on the Texas Supreme Court by pledging allegiance to the Confederate States of America.<sup>46</sup> During that time, he wrote a powerful dissenting opinion in *Ex parte Coupland*,<sup>47</sup> a decision that arguably contradicted states' rights theory by affirming the national government's power to impose universal military conscription on individual Confederate states.<sup>48</sup> In 1864, Bell chose to run for the open Chief Justice seat rather than seek re-election as Associate Justice. He lost handily to his old rival Oran Roberts, in part by making the practical but politically unpalatable argument that since the South obviously was losing the war he would be well positioned to help Texas re-enter the Union.<sup>49</sup>

After hostilities ended, Bell served for a year as Secretary of State in the administration of Governor Andrew Jackson "Colossal" Hamilton<sup>50</sup> and was active in politics. He helped organize black voters and has been called "the first Texas Republican," though he soon decided that enfranchisement had been taken "too far."<sup>51</sup> Nevertheless, James Bell's greatest service to the people of Texas, or at least to the ex-Confederate portion of the people of Texas, went almost totally unappreciated at the time.<sup>52</sup> When Texas Unionists asked the federal government to send

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<sup>43</sup> Norvell, "Supreme Court of Texas Under the Confederacy," 49; Roberts, "Political, Legislative, and Judicial History," 91-92. Some ten years after this debate, James Bell and Oran M. Roberts helped organize the Texas State Historical Association. W.C. Nunn, *Texas Under the Carpetbaggers* (Austin: University of Texas Press, 1962), 237 n.33.

<sup>44</sup> See, e.g., Haley, *Passionate Nation*, 292-93.

<sup>45</sup> Ariens, *Lone Star Law*, 67; see also Arnold, *First in Texas*, 80-81; Haley, *Narrative History*, 67; James L. Haley and Marilyn P. Duncan, *Taming Texas: How Law and Order Came to the Lone Star State* (Austin: Texas Supreme Court Historical Society, 2016), 41-42.

<sup>46</sup> Arnold, *First in Texas*, 82. John Salmon "Rip" Ford says that Bell also "bore arms in the service of the Confederacy," but we do not know of any support for this statement. See John Salmon Ford, *Rip Ford's Texas*, ed. Stephen B. Oates (Austin: University of Texas Press, 1963), 419.

<sup>47</sup> 26 Tex. 387 (1862).

<sup>48</sup> The decision has received a great deal of attention from historians. See generally, e.g., Ariens, *Lone Star Law*, 33-34; Norvell, "Supreme Court of Texas Under the Confederacy," 47; Dylan O. Drummond, "George W. Paschal: Justice, Court Reporter, and Iconoclast," *Journal of the Texas Supreme Court Historical Society* 2 (Summer 2013): 7, 8.

<sup>49</sup> Haley, *Narrative History*, 73, 104; see also Baum, *Shattering of Texas Unionism*, 119-20, 123 (describing Bell's lopsided loss as a "humiliating defeat" that "represented a final show of quixotic fervor for the Confederate cause"); see also generally Ford, Oates, ed., *Rip Ford's Texas*, 419-420.

<sup>50</sup> See, e.g., John L. Waller, *Colossal Hamilton of Texas* (Texas Western Press: University of Texas at El Paso, 1968), 67. Hamilton later became convinced that, during his tenure, James Bell was involved in bribing state legislators to approve railroad charters on very favorable terms. *Ibid.*, at 102-03. Oran M. Roberts, however, said Bell "evidently exercised a good influence so far as he was able." Roberts, "Political, Legislative, and Judicial History," 152. As governor, Oran Roberts appointed James Bell as one of the first regents of the University of Texas, though Bell evidently resigned before the board's first meeting. See "Former Regents," <https://www.utsystem.edu/board-of-regents/former-regents> (reporting Bell's appointment); <https://www.utsystem.edu/board-of-regents/history-ut-system-board-regents> (reporting first meeting).

<sup>51</sup> Eve Williams, *James H. Bell* [Jourdan-Bachman Pioneer Farm pamphlet], 3 (1996), 5-6, 8.

<sup>52</sup> Goldthwaite, "Memorial Proceedings," xiv, xviii. That said, James Bell's contribution to the birth of the Jim Crow era



"Brushy," the 1859 Round Rock home where Justice Bell lived while serving on the Texas Supreme Court and for many years afterward, is open to the public at the Jourdan-Bachman Pioneer Farms in Austin. Photo from the Jourdan-Bachman Pioneer Farms website.

in troops to undo the results of the 1873 election, Bell successfully interceded with President Ulysses S. Grant to ignore that request, ending the last vestiges of Reconstruction.<sup>53</sup>

James Bell retired from politics and invested in some highly profitable Mexican silver mines,<sup>54</sup> as well as a variety of other business ventures. He became relatively rich but suffered financial reverses and ill health late in life.<sup>55</sup> Bell died in Austin on March 13, 1892, following a prolonged illness.<sup>56</sup> His former home, nicknamed "Brushy" for nearby Brushy Creek in Round Rock, still stands at the Jourdan-Bachman Pioneer Farms in northern Austin. The "Bell House," as an example of an 1859 cotton plantation homestead, is open to the public.<sup>57</sup>

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in Texas did not go totally unremarked. A quarter-century after James Bell's death, an admiring writer asserted that "possibly but for him [Bell] the history of Texas might have been more fearful than that of France during the reign of terror." *Judge Bell in Davis Time*, *AUSTIN STATESMAN* (Dec. 13, 1906). The language is quoted from a typed transcription of a letter to the editor found in the Austin Public Library's James Hall Bell Papers.

<sup>53</sup> "James Hall Bell," *Handbook of Texas Online*.

<sup>54</sup> Williams, *Bell* pamphlet, 3; "James Hall Bell," *Handbook of Texas Online*. "During the last two or three years he has been engaged chiefly in mining operations in Mexico, and is at present in London for the purpose of promoting these enterprises." James D. Lynch, *The Bench and Bar of Texas* (St. Louis: Nixon-Jones Printing Co., 1885), 294. See also Williams, *Bell* pamphlet, 3 ("highly profitable").

<sup>55</sup> Goldthwaite, "Memorial Proceedings," xv.

<sup>56</sup> *Ibid*. A typewritten note in the Bell family papers at the Austin Public Library, apparently prepared by an archivist, asserts that "James Hall Bell died June 17, 1893 at the age of 68 according to newspaper clippings. Handbook of Texas gives the death date as 1892." This date supposedly was based on "[i]nformation acquired from arranging Wright Family papers." AF-BIOGRAPHY-BELL, JAMES HALL, *STATESMAN*, 1825-1892, in Bell Papers, Austin Public Library. The note is not correct. As just set forth, June 17, 1893 is not the date of Justice Bell's death, but of the Texas Supreme Court's memorial proceedings. Judge Goldthwaite's presentation supplies the 1892 death date concurred in by other sources. See Goldthwaite, "Memorial Proceedings," xv.

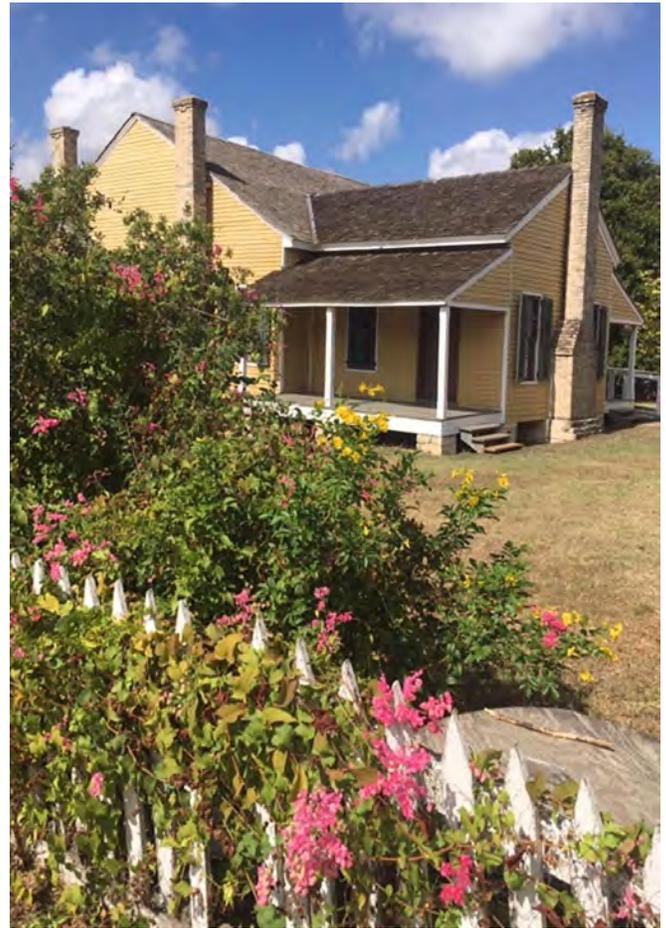
<sup>57</sup> *Pioneer Farms: Historic Sites*, <http://www.pioneerfarms.org/the-bell-house>.

## The Audience: Evelyn Hunter Bell

James Bell's eldest child, Evelyn Hunter Bell, was born in 1848,<sup>58</sup> an event celebrated by her father in an acrostic contained in the album.<sup>59</sup> She was very frail, both as a child<sup>60</sup> and throughout her adult life.<sup>61</sup> In fact, Evelyn's poor health caused her father to turn down the position of Secretary of State in Governor Elisha Pease's cabinet.<sup>62</sup>

Evelyn's education was interrupted by the Civil War, a fact lamented by her father in a very moving letter, also found in the album. After the war ended, Evelyn continued her studies at an exclusive East Coast finishing school, the Chestnut Street Female Seminary in Philadelphia. A younger brother attended the Chestnut Street School for Boys only a few blocks away.<sup>63</sup>

Evelyn Bell was devoutly religious, as was her father, the latter fact demonstrated in this album.<sup>64</sup> She married Dr. Edward Wright, post-war pastor of Austin's First Presbyterian Church, where the Bell family long had been members.<sup>65</sup> Dr. Wright was a popular local figure. Even his wartime service in a Michigan cavalry regiment did not diminish the high regard in which he was held by Confederate veterans.<sup>66</sup>



Flowers bloom along the backyard white picket fence of the historic Bell House at the Pioneer Farms. The trees and flowers around the restored homestead are of the varieties reported to have surrounded it in the years the Bell family lived there.

Photo by David A. Furlow.

<sup>58</sup> Arnold, *First in Texas*, 69.

<sup>59</sup> See "An Acrostic For Evelyn Hunter Bell," below.

<sup>60</sup> Arnold, *First in Texas*, 71.

<sup>61</sup> "Evelyn Hunter Bell Wright," newspaper obituary (no date or source indicated), Bell Papers, Austin Public Library. In a letter to Evelyn's intended husband in 1877, James Bell stated, "Evelyn has been an invalid. She may never enjoy the blessings of health." Williams, *Bell* pamphlet, 4.

<sup>62</sup> Arnold, *First in Texas*, 71.

<sup>63</sup> Arnold and Crisler, *Letters, Speeches, and Legal Opinions of Judge James Hall Bell*, 130.

<sup>64</sup> For example, the letter Justice Bell addressed to Evelyn during the Civil War is exceptionally heavy in religious content, and the last word in the acrostic written to commemorate Evelyn's birth is "God." See war letter, "Acrostic." In a short undated letter addressed to Evelyn when she was quite young, James Bell wrote, "You are large enough now to know what is right and what is wrong, and that I hope that you will never forget the instructions of your grand-mother that is in heaven. You know that she wanted you to be a good girl, to love the savior, and to never do wrong." He ended by saying, "May god bless you, my dear child, is the prayer of your father who loves you with all his heart." Bell Papers, Austin Public Library.

<sup>65</sup> Williams, *Bell* pamphlet, 3-4.

<sup>66</sup> Family papers contain a statement issued by the Texas Confederate Home in Austin that reads in part: "During our Civil War, Dr. Wright was a gallant Federal officer. He fought for his convictions and stayed with his Flag to



The "Ladies' Parlor" at Justice Bell's "Brushy" home contains this painting of the Brazoria County farm where his family lived before moving to Round Rock, as well as items memorializing the life of his daughter Evelyn Bell Wright. Photo by David A. Furlow.



Evelyn Bell Wright's certificate of marriage to Dr. Edward Wright hangs on the wall of Justice Bell's plantation home. Photo by David A. Furlow.

Evelyn moved in high social circles during her life,<sup>67</sup> although in her spare time she worked with the sick and poor of Austin.<sup>68</sup> She died in 1904.<sup>69</sup> The First Presbyterian Church's women's group is named in her honor,<sup>70</sup> and a stained-glass window commemorates her.<sup>71</sup>

the end. He honestly believed this to be his duty and obeyed the call, as was just and right...He came among a people who had once been his foes and bravely took up the battle of life in their behalf; — and when those saw the noble purpose which actuated him, their hearts went out to him with...love..." Statement of J.O. Bradford, Texas Confederate Home (Jan 4[?], 1914), Bell Papers, Austin Public Library.

<sup>67</sup> A newspaper write-up of Evelyn's wedding describes her a "a central figure in her city's social system from her early youth." *The Social Event of [the Year]*, (undated and unsourced newspaper article), Bell Papers, Austin Public Library. Her papers also contain a copy of a friendly and very personal letter she wrote to ex-president Benjamin Harrison. See letter from Evelyn Wright to Benjamin Harrison (Jan. 30, 1896), *ibid*.

<sup>68</sup> Williams, *Bell* pamphlet, 4.

<sup>69</sup> "Evelyn Hunter Bell Wright," <https://www.findagrave.com/memorial/16360760/evelyn-hunter-wright>.

<sup>70</sup> Williams, *Bell* pamphlet, 3.

<sup>71</sup> *Ibid.*, 4.



"Blessed are the Pure in Heart." A stained-glass window at the First Presbyterian Church of Austin celebrates the life of Evelyn Bell Wright. Photo by David A. Furlow.

## The Source: Evelyn's Album

The poems appear in a handsome 312-page volume, bound in embossed red leather and gilt, with occasional illustrations and elaborate color decorations.<sup>72</sup> James Bell certainly wrote additional poems,<sup>73</sup> though he probably considered those included in the album to represent his best work.

Only one substantive entry in the album is not written by Justice Bell. That item, inserted by a friend of Evelyn's, consists of a couple of thoroughly depressing stanzas from a poem by Edward Everett. Though the friend surely did not know of the coincidence, Everett was president of Harvard when Bell was a student.

Remember me, I pray — but not  
In Flora's gay and blooming hour,  
When every brake hath found its note,  
And sunshine smiles in every flower;

But when the falling leaf is sear,  
And withers sadly from the tree,  
And o'er the ruins of the year  
Cold autumn weeps, — remember me.<sup>74</sup>

These are not the platitudes or witty comments one would expect to find in yearbook inscriptions today. The times were different, though. When presenting the album to Evelyn, Justice Bell specifically suggested that she “preserve in its pages, mementos of friends, to which it will afford you a melancholy pleasure to recur, after those friends have passed away.”

When the album arrived in the mail at the present authors' home, it initially was a disappointment—at least to the older of us. The eBay seller represented it to be a lengthy book in Justice Bell's handwriting, dating to the Civil War, but failed to mention that the great majority of the pages were completely blank. Nor did the advertisement include the word “poems.”

Deceptive marketing aside, though, Evelyn Bell's album contains a substantial bonus. Typically, the history of an appellate court is told through printed opinions, with an occasional portrait, glowing eulogy or rote biography thrown in for good measure. There simply are not all that many tangible artifacts—a Bible here,<sup>75</sup> a disused file stamp or seal there,<sup>76</sup> and maybe a few desks or bookshelves scattered about.<sup>77</sup>

<sup>72</sup> The album was printed in Philadelphia by E.H. Butler & Co., with lithographs by T. Sinclair of the same city.

<sup>73</sup> One fragmentary poem published in an Austin newspaper, “San Jacinto,” was not found in the bound album. Another comes from a separate sheet inserted by Evelyn, presumably after her father's death.

<sup>74</sup> The poem from which the excerpt was drawn, *To A Sister*, was published and widely available at the time. See, e.g., Sarah Josepha Hale, *Flora's Interpreter or, The American Book of Flowers and Sentiments*, Rev. ed. (Boston: B. Mussey, 1850), 227; Rufus Wilmot Griswold, *The Poets and Poetry of America* (Philadelphia: Carey and Hart, 1850), 202.

<sup>75</sup> See, e.g., Lynne Cardwell, “Bibles behind a Texas Tradition,” *Austin American-Statesman* (Jan. 14, 1973).

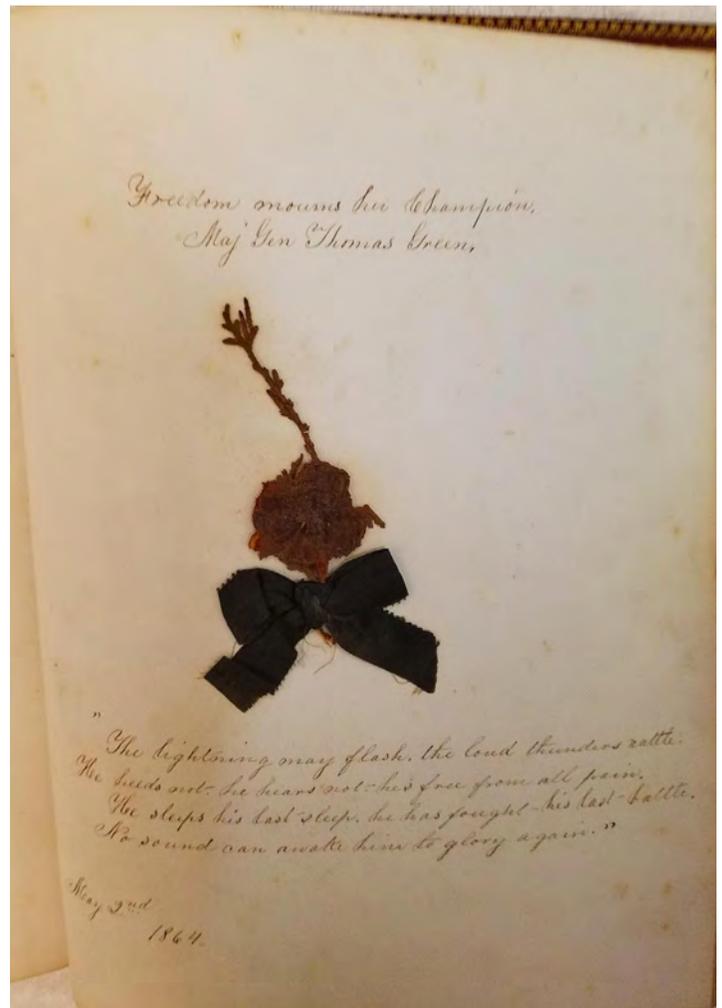
<sup>76</sup> Some are preserved in the Texas Supreme Court Clerk's Office.

<sup>77</sup> For example, some Texas attorneys have salvaged old glass-fronted modular lawyer's bookcases that were

One page near the end of Evelyn's mostly-blank album constitutes a notable exception to this norm. Two holes have been punched and a black ribbon threaded through to affix a mourning corsage. An accompanying inscription, probably in Evelyn's handwriting, indicates that the pressed flower and black bow was worn at the May 2, 1864 funeral of Confederate Major General Thomas Green. Tom Green, though best known today as a military leader, is remembered by legal historians as Clerk of the Texas Supreme Court from its first session in 1841 until he was elected colonel of a cavalry regiment in 1861. Green died in combat at Blair's Landing in April 1864.<sup>78</sup> He was described by more than one source as having been the most popular military commander in the Confederate Army.<sup>79</sup>

## The Poems

From a literary standpoint, the first half of the nineteenth century was a period of transition, mingling material drawn from the classics with increasing doses of Romanticism.<sup>80</sup> James Bell's writings from the bench were a bit dry and limited to standard legal sources, but his public speaking was



Evelyn Bell's memorial tribute to Major General Thomas Green includes a pressed mourning corsage.

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discarded when various courts switched to new-fangled adjustable metal shelving. Recipients include the writers' family, who have a few bookshelves from the Texas Supreme Court and Court of Criminal Appeals.

<sup>78</sup> See generally Alwyn Barr, "Thomas Green," in *Handbook of Texas Online* (modified Mar. 1, 2011), <https://tshaonline.org/handbook/online/articles/fgr38>; Kathleen Williams, "Thomas Green," in W.C. Nunn, ed., *Ten More Texans in Gray* (Hillsborough, Tex.: Hill County Junior College, 1980), 19-39.

<sup>79</sup> Williams, "Thomas Green," 37. One of several sources of Green's popularity with Texas troops may have been related to the report that the bodies of the soldiers who died by Green's side on April 12, 1864, averaged half a canteen of whiskey each. *Ibid.*

<sup>80</sup> Speaking of Lamar's poetry, Scheer writes:

At the end of the eighteenth and early nineteenth centuries, a basic change had occurred in the consciousness of western culture. Romanticism, as a new world view, rejected the ideas of the Enlightenment, with its emphasis on science, order, and reason, in favor of spirituality, sentiment, and emotion. To the Romantic mind, imagination, self determination, and ambition, in contrast to the classical view of authority, obedience, and hierarchy, were virtues which the individual should strive to fulfill. Poets and artists of the time recognized this radical change in traditional patterns of behavior and thought and reflected it in their creative works. It was into this environment that Lamar matured, fusing his southern cavalier tradition of honor and valor with the sentimentalism and emotionalism of the Romantic literary movement.

Scheer, "Mirabeau B. Lamar," 52.

another matter. For example, in the two opening paragraphs of his 1860 speech opposing secession, Bell quoted three of Shakespeare's plays, plus excerpts from Sir Walter Scott and Percy Bysshe Shelley's "Revolt of Islam."<sup>81</sup> In a post-war presentation to a Northern audience, of which only a partial transcript remains, Bell led off with quotations from Horace and Sir Walter Scott, referenced the Book of Revelation, and invoked the shades of William Wallace, William Tell, and Tadeusz Kosciuszko.<sup>82</sup>

Bell's poems are far less ostentatious than his speeches, which suggests they were not written with public display in mind. True, one poem of uncertain date refers to Golconda and Pactolus. Another references Petrarch's sonnets, but only because Petrarch was integral to the composition. The Italian poet's idealized love—Laura—bore the same name as the recipient of the poem.<sup>83</sup> Taken as a whole, the poems are romantic in tone, and some are romantic in content, but the language is relatively unadorned. The poems probably are the better for it.

Most of the poems presented here are topical, and to some extent biographical or autobiographical. The earliest may be a schoolboy composition on the Battle of San Jacinto;<sup>84</sup> the latest when Bell was in his fifties, probably composed during a business trip to New York state.<sup>85</sup> Between those bookends, one finds poems linked to Bell's homesickness during his Harvard days,<sup>86</sup> the birth of his first child,<sup>87</sup> a memorable Christmas,<sup>88</sup> his family's temporary absence,<sup>89</sup> and the death of a close relative's first-born child.<sup>90</sup>

The overall quality of Justice Bell's poetry is a judgment best left to the reader. Though Bell's "head and face strongly resembled Lord Byron's,"<sup>91</sup> his poems did not—though it also is safe to say that Bell's worst efforts are a notch or two above anything this article's secondary author has produced to date. Bell himself did not express a particularly high opinion of his work, intimating that he considered the poems "trifling or inelegant."<sup>92</sup> This probably should be read as self-deprecating modesty. Bell mentioned to Evelyn that one poem was written in response to a request, and that another poem was included "because one or two of my friends of other days used to say that they possessed some merit."<sup>93</sup>

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At least two of James Bell's poems actually were published, though Bell probably never

<sup>81</sup> Bob Arnold and Jesse S. Crisler, comps. and eds., *Letters, Speeches and Legal Opinions of Judge James Hall Bell* (private printing, no date), 36-37, 69.

<sup>82</sup> *Ibid.*, 165.

<sup>83</sup> *Ibid.*

<sup>84</sup> See "San Jacinto."

<sup>85</sup> See "On the Bank of the Hudson."

<sup>86</sup> See "A Poem on Receiving a Letter From My Mother."

<sup>87</sup> See "An Acrostic for Evelyn Bell."

<sup>88</sup> See "On Christmas Day."

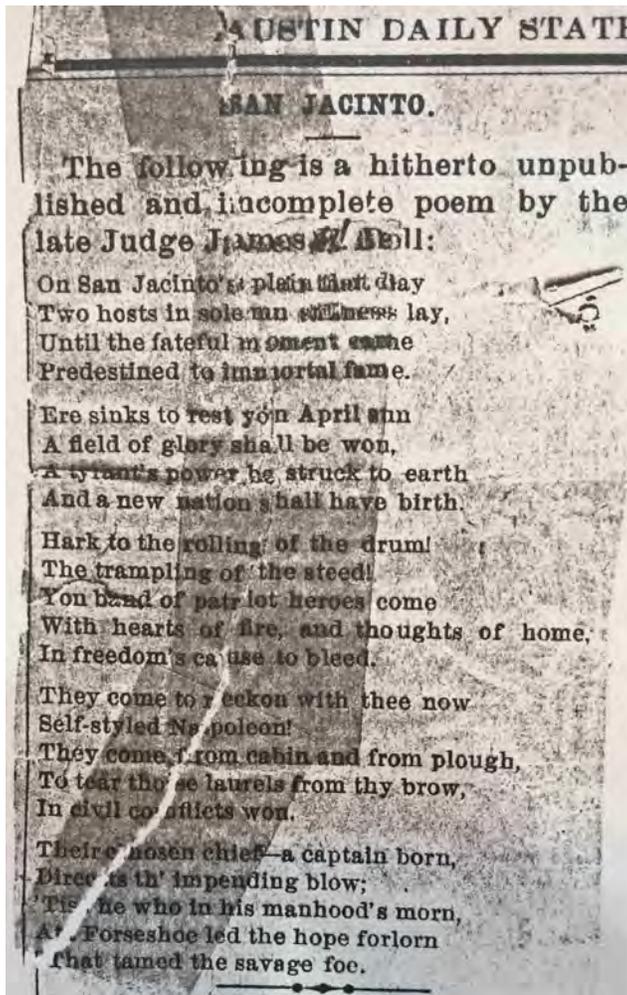
<sup>89</sup> See "To My Absent Wife."

<sup>90</sup> See "Bird of Paradise."

<sup>91</sup> McCormick, *Scotch-Irish in Ireland and in America*.

<sup>92</sup> See "Dedication."

<sup>93</sup> See "The Trysting Tree."



A portion of James Bell's poem "San Jacinto" appeared in the *Austin Daily Statesman* after his death. Bell Papers, Austin Public Library.

knew it. An Austin newspaper printed a fragment of a poem commemorating the Battle of San Jacinto at some time after the judge's death.<sup>94</sup> A San Francisco literary magazine published another one of Bell's poems during his lifetime, but it is doubtful Bell was aware of the fact.<sup>95</sup> James Bell wrote the poem in honor of his mother on Christmas Day, 1846, while studying law at Harvard.<sup>96</sup> Years later, one of Bell's Harvard contemporaries included this poem in *The Pioneer: Or, California Monthly Magazine*. However, the poem's author was identified only by his initials—J.H.B.<sup>97</sup>

None of Bell's poems relate to his six years' service on the Texas Supreme Court. Bell himself provided the reason. In an 1864 letter penned weeks after losing his election bid during the collapse of the Confederacy, he referred to "the gloom of the present time" and stated bluntly: "I am not in the humor for writing verses."<sup>98</sup> Bell also lost a newborn child that year, though the exact date is not known.<sup>99</sup>

As was the case with most Southern poets of the time,<sup>100</sup> James Bell's verse often is tinged with sadness. Bell was very conscious of this fact, telling Evelyn he hoped she would read his work with

<sup>94</sup> That fragment is not included in Evelyn's album, but is included here for the sake of completeness. See "San Jacinto."

<sup>95</sup> As regards one poem, Bell mentioned that "one or two of my friends of other days used to say that they possessed some merit." See "The Trysting Tree." If James Bell knew another poem from his Harvard student days actually had been published, especially one addressing a subject more suitable for his daughter's perusal than "The Trysting Tree," he surely would have mentioned the fact somewhere in the album.

<sup>96</sup> See "A Poem on Receiving a Letter from My Mother."

<sup>97</sup> J.H.B., "A Poem on Receiving a Letter from My Mother," in F.C. Ewer, ed., *The Pioneer: Or, California Monthly Magazine* (June 1854), 346. The magazine's editor, Reverend Ferdinand Cartwright Ewer, started his studies at Harvard in 1844 and graduated in 1848. Ferdinand Cartwright Ewer file, Harvard University Archives. Nevertheless, it might have been difficult to track Bell down at the time, as he was not a prominent public figure in 1854. The fact that James Bell is identified in the magazine by his initials is unusual only in that it provided more information on authorship than usual. Entirely anonymous poems were the norm. See Ryan Cordell and Abby Mullen, "Fugitive Verses: The Circulation of Poems in Nineteenth-Century American Newspapers," *American Periodicals: A Journal of History & Criticism* 27 (2017), 27, 29.

<sup>98</sup> Letter from James Bell to Evelyn Bell, Sep. 11, 1864.

<sup>99</sup> Manson McCormick Bell, *Find a Grave* website, <https://www.findagrave.com/memorial/68897939/manson-mccormick-bell>.

<sup>100</sup> Wyatt-Brown, *Hearts of Darkness*, 96 (stating that "[p]erhaps its most revealing characteristic is its frequently dolorous tone").

“melancholy pleasure.”<sup>101</sup> For the most part, Bell’s poems live up to this billing. In the acrostic written to commemorate Evelyn’s birth, James Bell warned of coming sorrows that “make us sigh e’en for the quiet tomb.”<sup>102</sup> Two poems speak of lost love.<sup>103</sup> One, written in a young lady’s album and given the deceptively cheerful title “Hope,” consists mostly of descriptions of the calamities in life that would require her to cling to hope until “death’s victory.”

The longest of Justice Bell’s poems, “Bird of Paradise,” is the most melancholy of the lot, and for good reason. It is addressed to Justice Bell’s sister-in-law, who had just experienced a heart-breaking but far too common event of the time—the death of a child. The infant mortality rate in Bell’s time was a horrific 18 percent,<sup>104</sup> about thirty times the current rate.<sup>105</sup> Only two of Justice Bell’s seven siblings survived to adulthood,<sup>106</sup> and Bell himself lost two of his eight children as infants.<sup>107</sup>

James Bell was a devoutly religious man,<sup>108</sup> and by all accounts a good husband and father. However, Bell also had a keen interest in the opposite sex. Harvard’s confidential administrative records contain correspondence between university president Edward Everett and law school dean Simon Greenleaf addressing Bell’s observed interaction with “apparently bad women.”<sup>109</sup> Two poems, one sweet and the other borderline bawdy, probably date to those student days.<sup>110</sup>

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<sup>101</sup> See “Dedication.”

<sup>102</sup> See “An Acrostic for Evelyn Hall Bell.”

<sup>103</sup> These are “The Trysting Tree” and “What Might Have Been.”

<sup>104</sup> Michael Haines, “Fertility and Mortality in the United States,” in Robert Whaples, ed., *EH.Net Encyclopedia* (Mar. 19, 2008), <http://eh.net/encyclopedia/fertility-and-mortality-in-the-united-states/> (reporting 1870 figures).

<sup>105</sup> “Infant Mortality,” *Centers for Disease Control* (2014) <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/infantmortality.htm> (reporting a 0.6 percent mortality rate).

<sup>106</sup> See William Stuart Red, Mrs. Rizpah C. Bowers Red, and Malcolm Lee Purcell, *A History of the Presbyterian Church in Texas* (Austin: Steck Co., 1936), 361.

<sup>107</sup> Manson McCormick Bell was between one and two years old at the time of death, and James Hall Bell, Jr. lived only three months. “Manson McCormick Bell,” *Find a Grave* website, <https://www.findagrave.com/memorial/68897939/manson-mccormick-bell> (1862-1864); “James Hall Bell (1872-1872),” *Find a Grave* website, <https://www.findagrave.com/memorial/157341805/james-hall-bell>.

<sup>108</sup> He apparently was the namesake of Rev. James Hall, an “eccentric but talented” Presbyterian minister who had a considerable influence on Justice Bell’s mother. See Red et al., *History of the Presbyterian Church*, 359-60.

<sup>109</sup> The exact text of the letter is as follows:

Professor Greenleaf  
Cambridge 13 Aug 1846

Dear Sir,

On Saturday last Mr. Bell of Texas was seen in the college yard watching the movements of two apparently bad women, whom he afterward followed, and finally joined.

If questioned on the subject he will probably admit it. Should he deny it, it will not be easy to prove it.

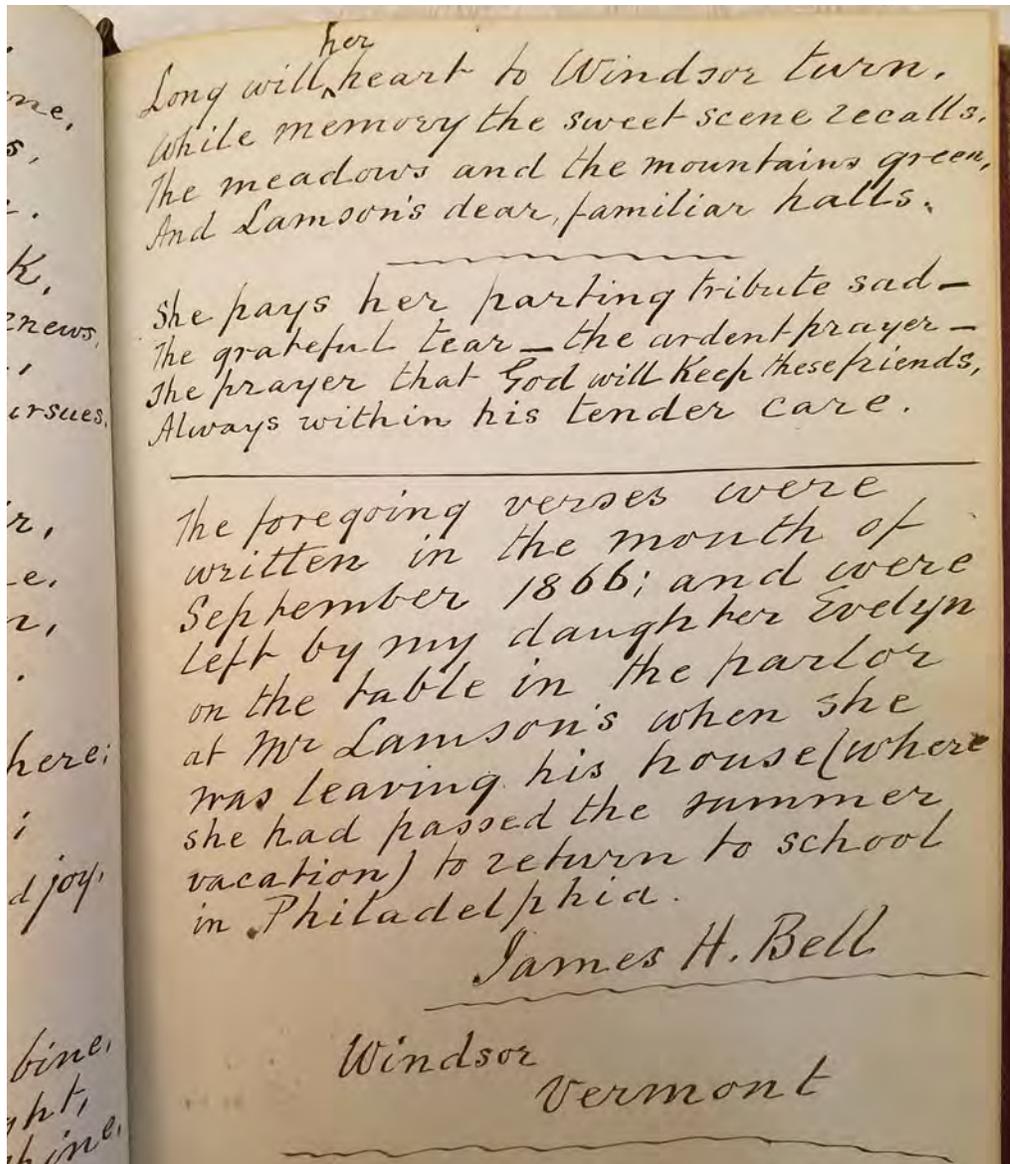
I should be glad to have you deal with him as you think expedient.

Very truly yours

-----  
Edward Everett to Simon Greenleaf (Aug. 13, 1846), in *President’s Papers*, vol. 1 (UA I), No. 889, Harvard University Archives.

<sup>110</sup> See “To My Mother” and “The Trysting Tree.”

From a purely historical standpoint, the most interesting poem in the group may be one James Bell presented to E.G. Lamson of Windsor, Vermont. Bell wrote the poem as a "thank you" gift to the Lamson family for hosting his daughter Evelyn at their Windsor home during the summer of 1866. In one stanza, James Bell explicitly linked Evelyn's summer visit to Vermont to his hopes for post-war reconciliation. Evelyn, "a daughter of the Southland," had learned during her visit that "all the virtues bloom, in North and South the same."<sup>111</sup>



James Bell wrote this poem as a thank you to the E.G. Lamson family for hosting Evelyn at their home in Vermont in the summer of 1866.

It is hard to argue with those sentiments today. In 1866, though, the low esteem in which many ex-Confederate Texans held James Bell might have sunk even lower had they learned of the particular family with whom Bell chose to start mending fences. Ebenezer G. Lamson was a fervent abolitionist and founding partner of Lamson, Goodnow, and Yale, a major contributor to the Union war effort.<sup>112</sup> LG&Y produced state-of-the-art precision machinery that enabled other manufacturers to turn out millions of weapons needed to arm Northern troops—Springfield

<sup>111</sup> See "Summer in Vermont."

<sup>112</sup> Carrie Brown, "Guns for Billy Yank: The Armory in Windsor Meets the Challenge of Civil War," 79 *Vermont History: Journal of the Vermont Historical Society* (2011): 141, 146-47.

rifles, Starr revolvers, Sharps carbines, Remington rifles, as well as rifle-muskets, carbines and bayonets for a variety of other companies.<sup>113</sup> In fact, a substantial majority of all Union firearms probably were manufactured with the aid of one or more pieces of LG&Y equipment.<sup>114</sup>

As with the Bells' home, the Lamson family home and factory still stand; the latter now houses the American Precision Museum. Unfortunately, despite extensive efforts, the exact nature of the relationship between the Lamsons and Bells has not been determined.<sup>115</sup>

## Appendix: Annotated Poems<sup>116</sup>

### Dedication (1860)

Presented to  
Evelyn Hunter Bell  
by her father,  
James H. Bell  
February 1860

My Daughter,

I present to you this volume, in the hope that it may become to you, in after years, a source of enjoyment. You may make it, if you will, the repository of valuable thoughts, and of pleasing recollections. You may preserve in its pages, mementoes of friends, to which it will afford you a melancholy pleasure to recur, after those friends have passed away. You may transplant into it, the rarest flowers of genius, and thus keep them ever by our side, to delight yourself with their perennial bloom and fragrance. With the exception of my own compositions, I trust that you will never permit anything trifling or inelegant to find a place in it. I shall claim the privilege of filling some of its pages with my own trifles, and with selections from the writings of others. I hope that you will preserve the volume with care, as the gift of a fond father.

James H. Bell

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<sup>113</sup> *Ibid.*, 149.

<sup>114</sup> *Cf. ibid.*, 152.

<sup>115</sup> Lamson's papers at the American Precision Museum in Windsor, Vermont contain a letter from Lamson to Bell thanking him for the poem, but no other correspondence. One possible link might be the Bell children's schools in Philadelphia, but Lamson's children were far older than either of the Bell siblings and there is no record of the Lamson children having attended school in Philadelphia. Another possible connection might be LG&Y's postwar shift to manufacturing industrial machinery. Some equipment was sold to Texas companies, but mainly for sawmills, an activity in which Bell does not appear to have been engaged. *See ibid.*, 155.

<sup>116</sup> Some editing choices bear mention. A couple of poems have been broken into stanzas to enhance readability. Occasional misspellings, odd capitalizations and abbreviations have been corrected for the same reason. For example, Justice Bell rendered the word "its" as "it's" consistently through the album. These editorial changes are not specifically indicated in text, but pdfs of the original handwritten poems are available from the author-editors on request.

Best guesses as to occasional missing or illegible words are indicated by brackets. Titles have been added for more than half the poems, also indicated. Tempting as it was to do otherwise, occasional lapses in meter that more likely are due to lack of a final edit by Justice Bell than to later transcription errors are retained.

Presented to  
Evelyn Hunter Bell  
by her father,  
James H. Bell.  
February 1860.

James Bell's handwritten  
dedication to his daughter  
Evelyn opens the album.

My Daughter,  
I present to you this vol-  
-ume, in the hope that it may become  
to you, in after years, a source of en-  
-joyment. You may make it, if you will,  
the repository of valuable thoughts, and  
of pleasing recollections. You may pre-  
-serve in its pages, mementoes of friends,  
to which it will afford you a melancholy  
pleasure to recur, after those friends  
have passed away. You may transplant  
into it, the rarest flowers of genius,  
and thus keep them ever by your side,  
to delight yourself with their perennial  
bloom and fragrance. With the excep-  
-tion of my own compositions, I trust  
that you will never permit anything  
trifling or inelegant, to find a place  
in it. I shall claim the privilege of  
filling some of its pages with my own  
trifles, and with selections from the  
writings of others. I hope that you will  
preserve the volume with care, as the  
gift of a fond father. James H. Bell

## Evelyn's Birthday Letter (1864)<sup>117</sup>

My dear Daughter,

This is your birthday. You have reached that period which is celebrated by the poets, as the golden one of maidenhood.<sup>118</sup> You are sixteen years old today. But instead of having before you the sunny prospect which I once fondly hoped would gladden this period of your life, you are surrounded by inauspicious circumstances. The calamities which have befallen our country, have come home to you. I have not been able to advance your education according to my wishes. I might have done more for you than I have, and I reproach myself for having done so little. I have had but scanty means to do anything, and I have acted upon the delusive hope that this horrible war would cease in time for you to obtain an education at some better school than has lately been within your reach.

This is my apology to you for apparent neglect. It has proceeded from no want of affection or solicitude for your welfare in life. I thought that before retiring to bed tonight, I would write a few words in your album, commemorative of your birthday: and as I am not in the humor for writing verses, it occurs to me to make a remembrance here of one or two of the events of today, to which you may hereafter recur, even with increased pleasure because of the gloom of the present time.

The Rev. Mr. Overstreet, of Georgetown, preached in the Presbyterian Church today, and in the absence of Mrs. Stiles, you played upon the melodeon.<sup>119</sup> You were confused by the discord of the singers, and made two or three mistakes. Miss Laurie Albinson was absent, on a visit to Mr William Smith's. Mr Overstreet's text was the 15th verse of the 3rd Chapter of the First Epistle of Peter: "But sanctify the Lord God in your hearts &c."<sup>120</sup>

Let me now say to you, my dear daughter, that my chief purpose in making allusion in this manner to the events of today is to take the occasion to say that the great antidote to all the cares and disappointments of this life, is to be found in this text of the holy Scriptures: and to express my earnest wish that you will now begin to give to the subject of religion that kind of study and consideration which it deserves. If you can obtain this pearl of great price, the Lord God sanctified in your heart, you will have no occasion to regret that these calamitous times have prevented you from acquiring those fashionable accomplishments, which are in themselves graceful and becoming to your sex, but which are not essential either to happiness or usefulness. You are now of a proper age to consider the great subject of religion, in all its

<sup>117</sup> This letter appears as a separate entry later in the album, after all the poems. Its position has been changed for convenience. James Bell wrote the letter shortly after his decisive defeat in the 1864 Texas Supreme Court election.

<sup>118</sup> This is a possible reference to Evariste de Parly's 1787 poem "The Pictures," which contains the lines: "'Tis the golden age of youth / Maidenhood with childhood greeting" in *Love Songs of France* (New York: J.J. Little & Co., 1896), 28. Opinions differ as to the exact timing of the "golden age of maidenhood." For example, one contemporary of James Bell pegged it at eighteen years of age, not sixteen. See Fannie Farley, "The Fright," 8 *Peterson's Magazine* (January, 1848) 8: 44, 45 ("Just eighteen; the golden age of maidenhood, the happiest time of life—while the flowers are in their fragrance, and the morning dew is as yet unexhaled upon them."). These writers, especially the first-named, take no position on the issue. Perhaps it is best determined on a case-by-case basis.

<sup>119</sup> A small organ, popular in the nineteenth century.

<sup>120</sup> "But sanctify the Lord God in your hearts: and be ready always to give an answer to every man that asketh you a reason of the hope that is in you with meekness and fear." 1 Peter 3:15 (King James ver.).

bearings, and at another time, to take your position as a follower of the Lord Jesus Christ. I wish you to think for yourself, and to consider the whole subject maturely, looking to proper sources of information. I have sometimes thought that I would occupy a few pages of this book with a brief account of the gifted gentleman whose name you bear, the Rev. John M.K. Hunter,<sup>121</sup> and with some extracts from his style of writing. As I have introduced the subject of religion here, I will devote a few of the following pages to some memorials of Mr. Hunter.<sup>122</sup>

You will no doubt be surprised at what I have written in our album tonight. I have not written so much for the present as for the future. If you should live to be as old as I now am, you will look to these pages, and back to this day, with deep interest.

September 11th 1864  
James H. Bell

*{JHB: The following Acrostic<sup>123</sup> was written one Sunday morning, in the year 1849 in the town of Brazoria.}*

### **Untitled No. 1: An Acrostic for Evelyn Hall Bell (1849)<sup>124</sup>**

Even now, my child, thy father's anxious eye,  
Views with concern thy yet undotted sky.  
Even as the practised seaman, with alarm,  
Looks through the sunshine for the coming storm.  
Yet for a while will life all bright appear,  
No pang to suffer and no ill to fear.

Hope then will come, her flatt'ring tale to tell  
Until the aching heart dissolve her syren spell.  
Nor matters it, my child, if sorrows come,  
To make us sigh e'en for the quiet tomb;  
Each wound we suffer, and each pang we know  
Repays with wisdom, what it claims of woe.

Brings with it strength to serve another day,  
Exalts the mind above the sense's sway.  
Lights up the path, before in darkness trod,  
Lays low our pride, and lifts the soul to God.

*{JHB: The following lines were written one Summer evening, in the year 1854. My wife and children were absent from me, on a visit to La Grange,<sup>125</sup> at the time I composed them.}*

<sup>121</sup> The reference is to an early Presbyterian pastor of the Columbia Church who died in the Bell's home. See Red et al., *History of the Presbyterian Church*, 361.

<sup>122</sup> Bell did not follow up on this project.

<sup>123</sup> In this acrostic, reading the first letter of each line in order spells out the name "Evelyn Hall Bell."

<sup>124</sup> Evelyn, born September 11, 1848, would have been about one year old.

<sup>125</sup> James Bell's sister-in-law lived in La Grange. Arnold, *First in Texas*, 72.

## To My Absent Wife (1854)

The twilight hour is stealing on,  
And in the Eastern sky,  
The stars in beauty, one by one,  
Peep forth to meet mine eye.

I sit beside my door, and watch,  
The shadows creep along,  
And from yon Walnut's bough, I catch  
The mocking-birds' sweet song.

But I think not of the starry sky,  
Nor heed the silver note,  
That pours, with witching melody,  
From yonder singer's throat.<sup>126</sup>

Though absent, thou art with me now,  
I hold thy hand in mine.  
I press my lips upon thy brow  
I press my heart to thine.

I note not how the shadows die,  
How night usurps their place;  
I only see thy love-lit eye,  
And sweet, familiar face.

And this of bliss is but the half,  
I hear my Ev'lyn's voice,  
And little Lucy's merry laugh,  
Is mingling with my boy's.<sup>127</sup>

Yes, I have here my treasures all,  
My beautiful, my own.  
Then let the night's dark curtain fall,  
For I am not alone.

---

<sup>126</sup> These lines may have been inspired by a poem published in 1841 that contains the stanza:

Visioned magic dream of mine,  
Witching Melody must be thine –  
Spirits! From the choral swell,  
From the wood-bird's mellow throat . . .

C. Donald M'Leod, "The Adept," *The Iris, or Literary Messenger* (1841), vol. 1, 323.

<sup>127</sup> Barclay and Lucy Bell, Evelyn's younger siblings.

{JHB: The following lines were written in March 1859, in a young lady's Album.}

### Hope (1859)<sup>128</sup>

Hope waves her banner o'er our heads,  
And bids us follow where she leads.  
Her gaudy ensign lures us on,  
Through scenes of sorrow, many [a] one.  
And trackless wastes, in search of bowers,  
In some fair land of fruits and flowers:

And well her morning smiles repay,  
The wants and dangers of the way;  
But morning wears apace, and soon,  
A motionless and blazing noon,  
Pours down its horrid wrath on all.

Some reel and struggle, faint and fall,  
With frenzied brain and bursting eye.  
Some o'er the burning desert fly,  
And haply find some palm-tree's shade,  
Where each sinks down, pale and dismayed.

Here soon their leader comes, and high,  
Once more she bids her banner fly.  
With eye so bright and smile so arch,  
She bids them follow in her march,  
That straight the faint and weary crowd,  
Start up, and with hosannahs loud,  
Pledge them, with her to lose or win,  
Through desert's heat, or battle's din.

'Tis ever thus — she dries our tears.  
She soothes our sorrows, calms our fears,  
Lends courage to the coward heart,  
And bids us play the manly part.

And when the pale flag flutters nigh,  
In token of death's victory,<sup>129</sup>  
Beside our couch she takes her stand,

---

<sup>128</sup> James Bell did not break the poem into stanzas, which have been added here to enhance readability.

<sup>129</sup> This is a probable nod to Shakespeare, specifically, Romeo's dying speech:

Thou art not conquered. Beauty's ensign yet  
Is crimson in thy lips and in thy cheeks,  
And death's pale flag is not advanced there ---

William Shakespeare, *Romeo and Juliet*, Act 5, Scene 3.

And points us to the better land,  
Where wearied spirits find a home,  
And disappointments never come.

{JHB: The following lines were written in the Town of Cambridge,<sup>130</sup> in the State of Massachusetts, on the 25th day of December 1846, according to the best of my recollection. They were written on the reception of a letter from my mother.}

### A Poem on Receiving a Letter From My Mother (1846)<sup>131</sup>

Dear Mother,<sup>132</sup> in a stranger land,  
My heart leaps quick to see,  
The traces of that tender hand  
which once supported me.

When round thy neck my little arms  
were flung in childish glee,  
or when, a helpless babe, I clung  
To thy sustaining knee.

2

In my wild boyhood's thoughtless years,  
That hand was still my stay,  
And when my cheeks were wet with tears  
It brushed them all away.

It wiped the moisture from my brow,  
When I returned from play,  
It rested lightly on my head,  
Whene'er I kneeled to pray.

---

<sup>130</sup> James Bell was studying law at Harvard at this time.

<sup>131</sup> The version in Evelyn's album is untitled. This title is taken from the published version of the same poem. See J.H.B., "A Poem on Receiving a Letter From My Mother," *The Pioneer: Or, California Monthly Magazine* (June 1854), 346.

<sup>132</sup> Guy M. Bryan said of Mary McKenzie Bell that a "purer, nobler-minded woman never breathed the air. Not an old Texan lives who does not love and revere this estimable lady, this Good Samaritan of Austin's colony." John J. Linn, *Reminiscences of Fifty Years in Texas* (Austin: The Steck Co., 1883), quoted in Arnold, *First in Texas*, 69. A schoolteacher who once boarded with the Bells added:

Mrs. Bell was one of the noblest women I ever knew in any country; though living in the wilds of Texas, her intelligence, good taste, and polished manners would have graced the most refined circles of New York or Philadelphia. Her house was a welcome home to every stranger, where the hungry were fed, the naked clad, and the sick nursed with that tenderness and sympathy that removed many a dark cloud from the brow of sorrow and caused lonely wanderers to feel less acutely the absence of home and relatives. Texans now know very little how much the country owes to the early efforts of this pure woman, how much suffering she was instrumental in relieving, and when the dark clouds of war lowered, which confidence and courage she inspired in the bosoms of the timorous and desponding; nor was she a stranger to fear, and of our final success she never doubted.

Red et al., *History of the Presbyterian Church*, 362.

3

And what if on that boyish brow,  
Which then was smooth and fair,  
The hand of Time is writing now,  
The History of Care?

Shall I not love my Mother's hand,  
Which smoothed my curling hair,  
And held the parted locks away,  
That she might kiss me there?

4

Yes, Time may write his varied lore,  
Across this brow of mine —  
With gathered volumes heal it o'er,  
For every day, a line.

But yet 'twill bear two burthens more,  
Nor at their weight repine —  
The pressure of thy gentle kiss,  
That tender hand of thine.

*{JHB: The following lines were written in the Summer of the year 1855, on the occasion of the death of the first-born child (a daughter) of my sister-in-law, Mrs. Jane R. McGill. The lines were supposed to be expressive of the mother's feelings on the occasion.}*

### **Untitled No. 2: Bird of Paradise (1855)**

'Twas in the merry spring-time,  
Whilst musing in my bower,  
And drinking in the sweetness  
Of the witching twilight hour,  
That a bird of wondrous beauty,  
Alighted on my knee —  
A bird like those we read of  
In Eastern poetry.

2

I sat and gazed enraptured  
On its snowy throat and crest,  
On the glitter of its golden wings  
And on its purple breast:

Its eyes were like the diamond,  
Like ivory its beak —  
It seemed a heavenly messenger,  
Of Heaven come to speak.

3

And on my knee it sat and sang.  
Such notes were never heard,  
As gushed tumultuous from the throat  
Of that mysterious bird:

And when its song was ended  
'Would nestle on my breast,  
And hide its snowy head there,  
Proud of its place of rest.

4

And every moon and even  
It came into my bower,  
And poured its glorious music forth  
With still increasing power:

And I did learn to love it,  
With all my heart and soul,  
As if, of all things lovely,  
It were the peerless whole.

5

Its very presence thrilled me  
And its song had power to move.  
In my poor heart the throbs  
Of wild and rapturous love:

Yes, 'twas a holy passion  
I felt to hear it sing,  
And all my nature melted,  
Like ice before the spring.

6

One summer day its song was sad,  
And in its tender strain,  
Were mingled, suddenly, the cries  
Of suffering and pain.

Alas! How my poor heart ached,  
How all its depths were stirred;  
For I feared that death would rob me  
Of my darling, beauteous bird.

7

But soon its suffering was past;  
Its beauty grew more bright,  
And rising in the ambient air,  
It took its upward flight.

And as it flew, a thread of gold,  
Than gossamer more light,  
Still lengthened out, until the bird,  
Was lost to my sad sight.

8

It's now a Bird of Paradise;  
And still the golden thread,  
Hangs in my bower, from whence that day  
The bright appearance fled;

And still it reaches upward,  
Into the azure sky,  
To where my Bird inhabits,  
A brighter bower on high.

[There is no introduction by James Bell to the poem that follows.]

**Untitled No. 3: I Love Thee, Fair Maid (c. 1846)<sup>133</sup>**

1

The cruel angler loves to hook,  
The speckled tenant of the brook;<sup>134</sup>  
The wily courtier loves to please;  
The sluggard loves ignoble ease.  
The weary pilgrim loves the shade;  
I love — I love thee, fair maid.

---

<sup>133</sup> The conjecture that the poem was produced around 1846 is based largely on content. If this poem were written while James Bell was courting Evelyn's mother, he surely would have mentioned that fact in an introduction, as he did with other family-centered works. An 1846 date would put the poem in Bell's Harvard days, when we know he was producing other poetry and sharing that poetry with college friends.

<sup>134</sup> This particular phrase is similar to lines in a poem titled "Thorley Wood," specifically "Or cruel angler, with dissembled food / Entice to death the tenants of the flood." William Collier, *Poems on Various Occasions* (London: Cadell, 1800), vol. 1, 306, 307.

2

The wild Arab loves the steed  
Swift and strong in danger's need;  
The bold sailor loves the breeze,  
Blowing homeward o'er the seas;  
The Persian diver loves the pearl,  
I love — I love thee, fair girl.

3

All the wild-birds love the spring,  
When the woods are blossoming;  
All the flowerbeds of the plain  
Love the gently falling rain.  
Everything in love must be,  
Lady, I'm in love with thee.

*{The following verses were written on Christmas Day, in the year 1853.}*

#### **Untitled No. 4: On Christmas Day (1853)**

1

Dear Wife, while younger lovers bring,  
To blushing maids, their offering,  
This merry Christmas day,  
Why should not I, whose love for you,  
Is warm, and tender still, and true,  
A lover's tribute pay?

2

But token rare, or glittering gem,  
Though fit for monarch's diadem,  
Were powerless to say,  
How much it warms my heart to see,  
Thine eye so bright, thy step so free,  
This merry Christmas day.

3

Time that can dim the brightest eye,  
And tame the spirit proud and high,  
And stop the pulse's play,  
Has kindly dealt with you and me,

Then let us gay and happy be,  
This merry Christmas day.

4

And what if coming years shall bring,  
Trials and care and suffering,  
And youthful strength decay?  
Let us the more like lovers live,  
And still a cheerful welcome give,  
To every Christmas day.

{JHB: The following lines were addressed to Miss Laura Jack,<sup>135</sup> now the wife of Hon. Guy M. Bryan,<sup>136</sup> in answer to a request that I would write her some verses.}

**Untitled No. 5: To Laura (c. 1856)<sup>137</sup>**

Thy name, bright girl, has been to poets dear,  
Since Petrarch<sup>138</sup> sang his sweet, impassioned lays.  
And like th' Italian maid, thou too art fair,  
And all as worthy of the poet's praise.

And were I gifted with the grace and fire  
That to the poet's pen and heart belong,  
Thy beauty would my tenderest strains inspire,  
And Laura's name once more be known in song.

But I may not essay thy praise to sing,  
Nor bright poetic wreath aspire to twine,  
For naught but genius, love and youth can bring  
An offering worthy of a soul like thine.

To touch the buoyant heart of maidenhood,  
There is but one unmatched, undying theme,

---

<sup>135</sup> Daughter of William H. Jack, in whose office James Bell commenced the study of law.

<sup>136</sup> Guy M. Bryan married Laura Jack on October 20, 1858, while Bryan was serving in the U.S. House of Representatives. Guy M. Bryan was the grandson of Moses Austin, the nephew of Stephen F. Austin, and a leading voice for secession. He boarded with the Bell family in Columbia, Texas, and was a leading voice for secession at the 1860 Democratic Convention. See generally George P. Garrison, "Guy Morrison Bryan, *Texas State Historical Association Quarterly* 5 (1901): 121; "Guy Morrison Bryan," *Handbook of Texas Online*, <https://tshaonline.org/handbook/online/articles/fbram>.

<sup>137</sup> The date of composition is estimated on the basis of Bell's mention of the word "maidenhood," which, as noted earlier, he associated with a young woman's sixteenth birthday. Laura Jack turned sixteen on January 13, 1855. She married James Bell's friend Guy M. Bryan on October 20, 1858. Accordingly, 1856 seems a fair guess. See, e.g., "Laura Harrison Jack Bryan," *Texas State Cemetery*, [http://www.cemetery.state.tx.us/pub/user\\_form.asp?pers\\_id=93](http://www.cemetery.state.tx.us/pub/user_form.asp?pers_id=93) (providing dates of birth and marriage).

<sup>138</sup> Francesco Petrarch, or Petrarch, was a fourteenth-century Italian poet, best known for a series of more than 300 sonnets devoted to his Platonic love, Laura. See, e.g., *Petrarch*, <https://www.poets.org/poetsorg/poet/petrarch>.

And I am not permitted, if I would,  
To sing of love's tumultuous, tender dream."<sup>139</sup>

Then let me bend, at beauty's shrine, the knee,  
And silence keep, admiring not the less,  
Condemned like many a burning devotee  
To feel the homage I may not express.

{JHB: The [following] verses were written many years ago, and I insert them here as a specimen of my composition in earlier days; and because one or two of my friends of other days used to say that they possessed some merit. A.D. 1864.}

### The Trysting Tree (c. 1846)<sup>140 141</sup>

Hast forgotten, fair lady, how oft we have met,  
When the grass and the flowers by the night dews were wet?  
When the stars were all shining so bright in the sky,  
That they equaled in splendor the light of thine eye?

Hast forgot the embraces we then interchanged,  
And the vows that our deaths should be never estranged?  
Ah! How dear were those vows, those embraces to me  
When we met in the dark, by the old trysting tree.

#### 2

Hast forgot how at first, while our love was yet young,  
And conversed with the lip, without aid from the tongue.  
Hast forgot how, for hours, thy lover would linger,  
And tremblingly kiss but the tip of thy finger,

---

<sup>139</sup> The quotation is from Lord Byron's *Parisian*:

That happy madness would destroy  
The hearts which feel its fiery sway:  
Of guilt, of peril, do they deem  
In that tumultuous tender dream?  
Who that have felt that passion's power,  
Or paused, or feared, in such an hour?

George Gordon Byron (Lord Byron), "Parisian," in J.O. Lake, ed., *The Works of Byron* (Philadelphia: J.B. Lippincott, 1863), 203.

<sup>140</sup> A trysting tree is a tree of any species, of striking size or appearance, that has become a traditional or popular meeting place, especially for lovers.

<sup>141</sup> An approximate 1846 production date is based on both the poem's content and its context. Speaking in 1864, Bell said the poems were written "many years ago" and shared with "friends of other days." This particular poem is racy, to put it mildly — "One long night of love"? It certainly would not have been considered fit for a mixed audience, so this composition probably dates from his student days at all-male Harvard. That said, it's a little surprising that James Bell included this particular poem in his sixteen-year-old daughter's album. Perhaps Bell thought the poem's quality was high enough to excuse the subject matter.

And cling to thy hand, as a miser would hold,  
To the casket full laden with jewels and gold,  
And sigh when we parted, that life could not be,  
One long night of love, by that old trysting tree?

3

Hast forgotten that night, whilst a cloud veiled the moon,  
How I kissed your warm cheek, how I begged for love's boon,  
Hast forgot how your bosom heaved, burthened with bliss,  
And how your form shook when you paid back my kiss?

Were my forehead adorned by a diadem now,  
I'd toss the gay toy and its weight from my brow,  
To live over that hour, full of rapture, with thee,  
In the hush of the night, by the old trysting tree.

4

Think not of our parting, the fault was all mine,  
Let the grace to forgive, sweet lady, be thine:  
For why should my heart ache, and why should thy form,  
Be a prey to the thought which consumed like the worm?

Has thy cheek lost its sweetness in losing its bloom?  
Does my heart beat less warmly because of its gloom?  
Is mine eye grown less bright, Love, is my hand less free,  
Than it was when we met by the old trysting tree?

5

Come back then, come back to the place where we met,  
When the grass and the flowers by the night dew were wet.  
I'll love thee as fondly as I loved thee before,  
And the fire shall be quenched in thy bright eyes no more.

Let the world keep for others her pay and her praise,  
And bind round the brow of the bravest her bays.<sup>142</sup>  
I'll smile on the scene, and be happy with thee,  
Each night when we meet, by the old trysting tree.

*{JHB: The [following] verses were written in the month of September 1866; and were left by my daughter Evelyn on the table in the parlor at Mr. Lamson's when she was leaving his house (where she had passed the summer vacation to return to school in Philadelphia).}*

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<sup>142</sup> The reference is to a victor's wreath made from the branches of the bay laurel, more often called a laurel wreath, or simply laurels.

**Untitled No. 6: Summer in Vermont (1866)**

Beside the bright Connecticut,  
Where bold Ascutney towers serene,  
A sweet New England village lies,  
Embowered in maples green.

Here industry, the daily task,  
With stout and cheerful heart renews  
And piety, sustained by faith,  
The straight and narrow path pursues.

To this New England village fair,  
A daughter of the Southland came,  
To find that all the virtues bloom,  
In North and South the same.

Away from friends, she found them here:  
Found father, mother, sisters, all;  
Found peace; and truth and grace and joy,  
In Lamson's hospitable hall.

In this domestic scene she saw,  
The grace of youth and age combine.  
Saw filial Love, with golden Light,  
Through all the glowing picture shine.

Long will her heart to Windsor turn,  
While memory the sweet scene recalls,  
The meadows and the mountains green,  
And Lamson's dear, familiar halls.  
She pays her parting tribute sad —  
The grateful tear — the ardent prayer —  
The prayer that God will keep these friends,  
Always within his tender care.

*{JHB: The foregoing verses were written at Cranston's Hotel, near West Point, New York, in the month of September 1882.}*

## Untitled No. 7: On the Bank of the Hudson (1882)<sup>143</sup>

Childe Harold<sup>144</sup> sang, in worthy strains,  
The beauties of the classic Rhine:  
From Cranston's porch, on Hudson's stream,  
We look on scenes no less divine:

Another Rhine flows at our feet,  
And midst a score of summits high,  
Storm King and Crow Nest lift their crowns,  
In rival grandeur to the sky.

By banks of Rhine, the gloomy Childe,  
Sighed for one absent maiden's hand:  
On Cranston's porch; by Hudson's steam,  
A score of blooming maidens stand.

And lovely dames, whose charms mature,  
And stately graces, would outshine  
The proudest of the titled fair,  
Who tread thine ancient castles, Rhine.

Thou holdest, Rhine, thy place of pride,  
On hist'ry's page, in poet's song:  
The names of "noble," "beautiful,"  
To thee, by titles clear, belong.

But we envy not thy beauties, Rhine,  
Thy legends old, thy feudal towers,  
While Hudson's stream, and Irving's fame,  
And Rip and Ichabod are ours.<sup>145</sup>

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<sup>143</sup> Three years before James Bell penned these lines, a Philadelphia publication observed:

"It has been fashionable lately to affect disappointment with the Rhine scenery, and Americans especially are prone to make unfavorable comparisons with their own beautiful Hudson. 'Were it not,' says a writer of some note, 'for the historical association of the ruins and castles and for the poetical fancies of Byron and Southey, we think that the Rhine would never have obtained the fame it has enjoyed.'"

Edwin A. Gernant, "Over Land and Sea," *The Guardian* 30 (Sep. 1879): 270 (quoting Charles Carroll Fulton, *Europe Viewed Through American Spectacles* (Philadelphia: J.B. Lippincott, 1874), 143).

<sup>144</sup> Lord Byron's epic poem, *Childe Harold's Pilgrimage*, was written during a trip down the Rhine.

<sup>145</sup> The references are to New York native Washington Irving, and to his literary characters Rip Van Winkle and Ichabod Crane.

## Untitled No. 8: What Might Have Been (n.d.)<sup>146</sup>

There's a magic in thy every glance  
As it falls upon me now,  
And beauty never sat [a?] throne,  
Fairer than thy fair brow.

There's a wondrous charm about thee  
A charm for goddess meet;  
As if nature, over fond, had flung  
All graces at thy feet.

I've read that ancient Pactolus,<sup>147</sup>  
Flows over golden sand,  
That countless gems lie scattered  
"On India's coral strand."<sup>148</sup>  
I've read of the untold riches  
Hid in Golconda's mines,<sup>149</sup>

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<sup>146</sup> This poem was found on a separate sheet Evelyn inserted inside the back cover of the album sometime after her father's death. Her undated introductory note reads: "The foregoing are all of my father's poems which I have succeeded in collecting. But if I should find other of his poetry, I shall insert it in this book. E." Though Evelyn used the plural "poems," the insert contains only one original poem.

This particular poem offers fertile ground for speculation. The poem's theme is long-lost love. Specifically, James Bell speaks of "life's 'morning march' so long since past with me" and speculates that the object of his affection is "no longer 'fancy free.'" Bell graduated from Harvard Law School in 1847 and married Catherine Townsend in December of the same year. Arnold, *First in Texas*, 69. James predeceased Catherine by about three years. Catherine Elizabeth Townsend Bell, *Find a Grave* website, <https://www.findagrave.com/memorial/24351488/catherine-elizabeth-bell>.

If this poem actually is biographical or autobiographical in nature, like some others in this collection, it would suggest that James Bell had a serious romantic relationship with someone other than Catherine, and probably outside Texas. After all, Texas was a relatively small place in those days. So Bell probably could have ascertained the unknown woman's marital status if she were a Texas resident. That narrows the probable window of opportunity down to James Bell's Harvard days. This hypothesis also would tend to confirm the approximate date when "The Trysting Tree" was composed, and vice versa. In any event, the text's suggestion that Catherine Townsend may not have been James's first choice for a spouse could go a long way toward explaining why Justice Bell did not include this poem in Evelyn's album.

<sup>147</sup> The Pactolus is a river in Asia Minor associated in Greek mythology with King Midas, who washed in its waters to rid himself of his "golden touch." The river was the source of the historical King Croesus's gold. "Pactolus," *Encyclopedia of Greek Mythology*, <http://www.mythweb.com/encyc/entries/pactolus.html>.

<sup>148</sup> This probably is a reference to the following stanza from the hymn "From Greenland's Icy Mountains," composed by Reginald Heber in 1819:

From Greenland's icy mountains, from India's coral strand;  
Where Afric's sunny fountains roll down their golden sand:  
From many an ancient river, from many a palmy plain,  
They call us to deliver their land from error's chain.

"From Greenland's Icy Mountains," *Hymnary.org*, [https://hymnary.org/text/from\\_greenlands\\_icy\\_mountains](https://hymnary.org/text/from_greenlands_icy_mountains).

<sup>149</sup> Golconda is a region in India famed for its diamonds, including the Hope and the Koh-i-Noor. Victoria Comelsky, "The Market for Golconda Diamonds Has Mushroomed," *New York Times*, March 20, 2011. <https://www.nytimes.com/2011/03/18/fashion/18iht-acaj-diamonds-18.html>.

I've read of treasures lavished  
On superstitious shrines.

I've read of ships, gold-freighted,  
Sunk beneath ocean's brine,  
If all were mine, I'd give them,  
For one sweet smile of thine.

But I forget – life's "morning march"<sup>150</sup>  
So long since past with me,  
And doubtless you, fair lady,  
Are no longer "fancy free."

Go then – in beauty's circle.  
Reign thou the rightful queen,  
And in life's battle I will drown  
Thoughts of what might have been.<sup>151</sup>

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<sup>150</sup> This is a probable reference to Romantic poet Thomas Campbell's 1804 work, *The Soldier's Dream*:

I flew to the pleasant fields travell'd so oft,  
In life's morning's march when my bosom was young,

Bliss Carman, et al., editors, *The World's Best Poetry* (1904), <https://www.bartleby.com/360/1/187.html>.

<sup>151</sup> This is a possible homage to *What might have been!*—an 1871 song with words by Arthur Clyde:

Only when twilight creeps,  
My sad heart weeps and weeps,  
In anguish that ne'er sleeps –  
"What might have been!"

...

Strive we by duties done,  
So our life's battle's won,  
Crushing, each morning sun –  
"Hopes that have been!"

## San Jacinto (n.d.) [Incomplete]<sup>152</sup>

On San Jacinto's plain that day  
Two hosts in solemn stillness lay,  
Until the fateful moment came  
Predestined to immortal fame.

Ere sinks to rest yon April sun  
A field of glory shall be won,  
A tyrant's power be struck to earth  
And a new nation shall have birth.

Hark to the rolling of the drum!  
The trampling of the steed!  
Yon band of patriot heroes come  
With hearts of fire, and thoughts of home,  
In freedom's cause to bleed.<sup>153</sup>

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<sup>152</sup> This poem is not included in Evelyn's album. It appeared in the *Austin Daily Statesman* at some point in time after James Bell's death. The date cannot be determined from the clipping found in the Bell Papers at the Austin Public Library. The newspaper's introduction reads: "The following is a hitherto unpublished and incomplete poem by the late Judge James H. Bell." See clipping image on p. 28 of this issue.

Though *San Jacinto* was published after James Bell's death, biographer Bob Arnold dates the poem to his "teenage years." Arnold, *First in Texas*, 65. Arnold offers no direct support for his conclusion, but it is not facially implausible. James Bell's mature productions either address very generic topics (love, death, and so on) or are tied to specific events in his family life. *San Jacinto* is an outlier. If the poem follows Bell's general pattern of writing about then-contemporary events, this would suggest a date not much later than 1836. This poem's composition also is not as sophisticated as Bell's other material, and plausibly could be the result of a classroom assignment. During the 1838-1839 academic year, fifteen-year-old James Bell was enrolled at Centre College. *Ibid.*, 66. Texas was a subject of some interest at Centre College. In fact, we know that one debate topic assigned during James Bell's student days was "Would the annexation of Texas to the United States Be Plausible?" *Ibid.*, 67. All of this would point to an approximate 1840 date.

Some evidence points to a later date of composition. One stanza of *San Jacinto* bears unmistakable similarities to a stanza in a poem titled *The Battle of Monterrey*, published toward the end of 1846. However, the composer of the poem has not been determined. *Ibid.* That leaves at least two possibilities. First, Bell could have lifted most of one stanza from *The Battle of Monterrey*, which would point to a composition date of 1847 or later. Second, since the writer of *The Battle of Monterrey* is not known, it is possible that Bell himself wrote it, recycling one stanza from the earlier composition, *San Jacinto*. Because *The Battle of Monterrey* was published in *Galveston News*, probably considered a local newspaper for Brazoria residents at the time, neither possibility can be ruled out.

It bears mention that drawing conclusions from textual similarity can be taken too far. For example, the phrase "The hosts in solemn stillness lay" is uncannily similar to "The world in solemn stillness lay" from the Christmas hymn, *It Came Upon the Midnight Clear*. However, the hymn was published about three years *after* the Texas poem. *Ibid.* It would be passing strange if a Unitarian minister from Boston had read a Galveston newspaper and incorporated a phrase from a poem about the Mexican-American War into a Christmas hymn. C. Michael Hawn, "History of Hymns: 'It Came Upon a [sic] Midnight Clear,'" <https://www.umcdiscipleship.org/resources/history-of-hymns-it-came-upon-a-midnight-clear>. The most likely explanation is that *The Battle of Monterrey* and *It Came Upon the Midnight Clear* both drew the phrase in question from an unidentified earlier source.

Origins aside, Bell's description of the lead-in to the Battle of San Jacinto bears little resemblance to the truth. The "hosts" did not "in solemn stillness lay." Rather, the Texians marched into battle with an impromptu band playing a bawdy ballad, and the Mexican forces somewhat inexplicably were caught by surprise. See, e.g., T.R. Fehrenbach, *Lone Star* (New York: Tess Press, 1968, 2000), 230-31.

<sup>153</sup> This stanza almost certainly is drawn from, or otherwise related to, an 1846 poem commemorating a pivotal

They come to reckon with thee now  
Self-styled Napoleon!<sup>154</sup>  
They come from cabin and from plough,  
To tear those laurels from thy brow,  
In civil conflicts won.

Their chosen chief – a captain born,  
Directs th' impending blow;  
'Tis he who in his manhood's morn,  
At Horseshoe<sup>155</sup> [led] the hope forlorn<sup>156</sup>  
That tamed the savage foe.

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engagement in the Mexican-American War:

And now the rolling of the drum,  
The trampling of the steed,  
Proclaim in many a startled dome,  
Columbia's free-born heroes come,  
To triumph or to bleed!

"The Battle of Monterrey: A poem respectfully dedicated to the memory of those who perished within its walls," *Texas Democrat* [Austin], Dec. 16, 1846. While no author is shown in the Austin printing of the poem, the original apparently was published in the *Galveston News*—in an issue these writers have not located.

<sup>154</sup> Santa Anna cultivated an image as "the Napoleon of the West." See, e.g., Walter Lord, *A Time to Stand* (Lincoln: University of Nebraska Press, 1961), 196.

<sup>155</sup> The reference is to Sam Houston's bravery at the Battle of Horseshoe Bend, the event that first called him to Andrew Jackson's attention. See, e.g., Llerena B. Friend, *Sam Houston: The Great Designer* (Austin: University of Texas Press, 1969), 7.

<sup>156</sup> In military parlance, a "forlorn hope," from the Dutch *verlooren hoope*, is "a group of soldiers detached from the main group for a very dangerous mission." *Collins Dictionary*, <https://www.collinsdictionary.com/us/dictionary/english/forlorn-hope>.



**DIANA G. PAULSEN** is in her junior year at Wellesley College, pursuing a double major in French and Political Science. She is a graduate of Duchesne Academy in Houston, where one of her poems appeared in the school's literary magazine. When Diana was ten years old, her first published poem appeared in the *Grafton* (Vermont) News. Her interest in history stems from excessive, and largely involuntary, exposure to her father. Diana did much of the archival work that appears in this article.



**JAMES W. PAULSEN** teaches at the South Texas College of Law Houston. He has written extensively on early Texas legal history. Professor Paulsen also organized the Texas Supreme Court's sesquicentennial celebration in 1990 and served as founding secretary of the Texas Supreme Court Historical Society.

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# The Olde Dominion's New Domain: Texas

By David A. Furlow

**M**irabeau Buonaparte Lamar, second elected President of the Republic of Texas, dreamed of extending the Republic to the Pacific. Yet he faced daunting challenges and enemies both domestic and foreign in 1839, his inaugural year. Sam Houston, the hero of San Jacinto whose name the Republic's capital bore, mocked him as a poet whose rhymes lacked reason. In Mexico City, Santa Anna aspired to reconquer the rebellious province north of the Rio Grande del Norte—or, as he saw it, the upstart slaveocracy north of the Nueces. To fend off Mexico, put Houston in his place, and finance his empire, Lamar fired up the presses. Because it was cheap and as a strategem to defeat counterfeiters, Lamar's treasurers Richard G. Dunlap, James Webb, and James H. Starr poured a river of red ink into paper, printed two million "redback" dollars initially worth 37 cents to the U.S. dollar, and unleashed a flood of deficit spending that soon rendered this paper worthless.<sup>1</sup>

The five-dollar redback, the smallest denomination, won the largest circulation because it represented hope and change—Lamar's hope of empire and the change Texans needed for every cash transaction. The most common currency carried on its face a curious image of a Native Indian contemplating a tumble-down tower's ruined appearance. What secret did *that* arcane imagery convey? To discover the secret the currency concealed, *let's play history detective*.



The 1839 "redback" bill. "Republic of Texas Currency," Texas State Library and Archives Commission website.

<sup>1</sup> Jeff Kerr, *Seat of Empire: The Embattled Birth of Austin, Texas* (Lubbock: Texas Tech University Press, 2016); Jim Bevill, *The Paper Republic: The Struggle for Money, Credit and Independence in the Republic of Texas* (Houston: Bright Sky Press, 2009), 204-21; "How the Republic of Texas began its Paper Money Career..." *Currency of the Republic of Texas*, <http://www.houstoncoins.com/blog/currency-of-the-republic-of-texas/>. The Treasury issued \$5, \$10, \$20, \$50, \$100, and \$500 redbacks.



Left: Close-up of the \$5 redback's scene.  
Below: Benjamin West, *The Death of General Wolfe* (1770),  
Museum of Canada, Wikimedia.

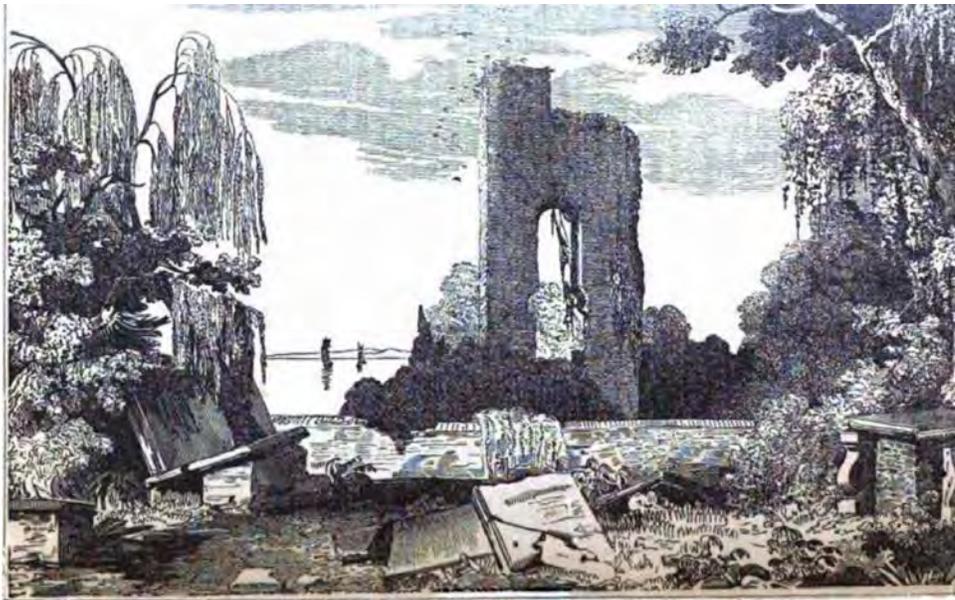


Let's begin with that contemplative Native Indian. The engraver of the five-dollar redback ripped off this stock, stereotypical image of an Indian from Benjamin West's painting *The Death of General Wolfe*. That tableaux used traditional religious imagery to reveal the passion, pageantry, and pomp of England's annexation of Canada, when West decided to remind Americans who had protested the Stamp Act that England had sacrificed much blood and treasure to drive France out of North America. Having sacrificed his life to wrest Quebec from General Louis-Joseph de Montcalm's French forces on the Plains of Abraham, General James Wolfe reclines in the arms of his soldiers, like Christ cradled in Mary's arms after being taken down from the cross.

In a painting redolent with color-coding, red-coated English officers mourn Wolfe's death while a "red-skin" (the contemporary term) Indian's detached, chin-in-hand demeanor, bare chest and legs, and feathered headdress represent a noble savage reflecting on a tragic event. The Indian, the quintessential "other," witnesses a critical event in history: the end of La Nouvelle France and the creation of Britain's newest and most glorious province, one just gained *pro vince*, "through victory." This 1770 painting, widely circulated in England and the colonies on the eve of the American Revolution, echoed in the heart of the New Orleans engraver who re-used it on a Texas five-dollar bill nearly seventy years later, in 1839.

What magnificent memorial commands the calm contemplation of the redback's savage noble? A crumbling tower of brick arises atop a tall, narrow oval arch while flocks of birds fly in the background. What important edifice reminds us, *memento mori*, that time flies and all glory is fleeting? The Indian looked on a particular building: the unrepaired brick ruins of the third church on Jamestown Island. Erected one hundred feet from the James River in Virginia, in 1639, this remnant of Jamestown stood at the center of England's first settlement in America.<sup>2</sup>

But what did *that* have to do with the Republic of Texas in 1839, when the Treasury's printing presses were issuing a massive number of this image on Texas's rapidly depreciating paper currency? What historical lessons did that crumbling old church tower have to teach?



Left: The "Ruins of Jamestown," a woodcut image on page 315 of Robert Sears's 1854 book, *A pictorial description of the United States*. Right: Jamestown Church underwent substantial repairs before I took this photograph there in May 2019.

## Olde Dominion Institutions Shaped Texas Life and Law

How do the history of Virginia, Jamestown, and Jamestown's church tower relate to the Republic of Texas? The men who created the Lone Star Republic recognized the ruins of Jamestown's seventeenth-century church on President Lamar's 1839 redback bills because each man bore the deep and abiding imprint of Virginia culture, constitutional concepts, courts, and common law institutions. They replicated the Olde Dominion's cavalier culture of courtly honor and deference, its protection of the life, liberty, property, and Anglican faith of its oligarchical elite, and its hierarchical culture that included planters' long-recognized "right" to exterminate Indians, enslave Africans, and exploit poor, largely landless whites.<sup>3</sup> The Olde Dominion represented by Jamestown's church tower was the mold that shaped the Republic of Texas.

<sup>2</sup> "Jamestown Churches," *Jamestown Rediscovery* website, <https://historicjamestowne.org/archaeology/map-of-discoveries/jamestown-churches/> (the "Third Church," erected 1639).

<sup>3</sup> David A. Furlow, "The Lone Star Republic's Supreme Court Wove the Fabric of Texas Law from the Threads of Three Competing Legal Traditions, Part I," *Journal of the Texas Supreme Court Historical Society* 3, no. 1 (Fall 2013): 9-21.

In his 1989 book *Albion's Seed: Four British Folkways in America*, Brandeis University Professor David Hackett Fischer presented an intellectual framework that can help us understand the Republic of Texas.<sup>4</sup> Fischer traced America's modern culture to four distinctly different waves of English-speaking immigrants who came to America between 1629 and 1775:

1. a Puritan exodus from eastern England (Essex, Suffolk, Norfolk, Lincolnshire, and Cambridgeshire) to New England between 1629 and 1640;
2. the migration to North America of a small Royalist cavalier elite and large numbers of indentured servants from southern and western England to Virginia from 1642 to 1675, the subject of this article;
3. the arrival of a Quaker-dominated influx from England's northern Midlands and Wales (as well as the Netherlands and Germany) to the Delaware River Valley and the Middle Colonies from 1675 to 1725; and
4. successive waves of Scots-Irish immigrants from the border country of northern England, Scotland, and Northern Ireland between 1723 and 1773.

All four groups spoke English, worshipped in Protestant churches, and defended their heritage of law, liberty, and expansion, yet exemplified distinctly different ways of understanding the world.

Texas offered lawyers, legislators, justices of the peace, judges, and appellate justices an opportunity to quill the Olde Dominion's familiar phrases on the blank slate of a southwestern slave republic. No long-standing tradition or powerful precedent constrained Texas courts to abide by the persistent pressure of *stare decisis* when Virginians stamped the Olde Dominion's mold on Texas life between 1821 and 1841.

More than anyone else, one Virginian, Sam Houston, created the Republic of Texas and its successor the Lone Star State. He played an important role in the drafting of the 1836 Constitution, courts, and executive branch. He led the fifty-nine delegates who issued the Texas Declaration of Independence and promulgated its constitution at the March 1–2, 1836 Convention at Washington-on-the-Brazos.<sup>5</sup> As the Sword of San Jacinto, he transformed the dream of Texas independence into reality,<sup>6</sup> won election as the Republic's first and third President in 1836 and 1842, then won election as the Lone Star State's U.S. Senator and Governor.<sup>7</sup>

<sup>4</sup> (Oxford: Oxford Univ. Press, 1989).

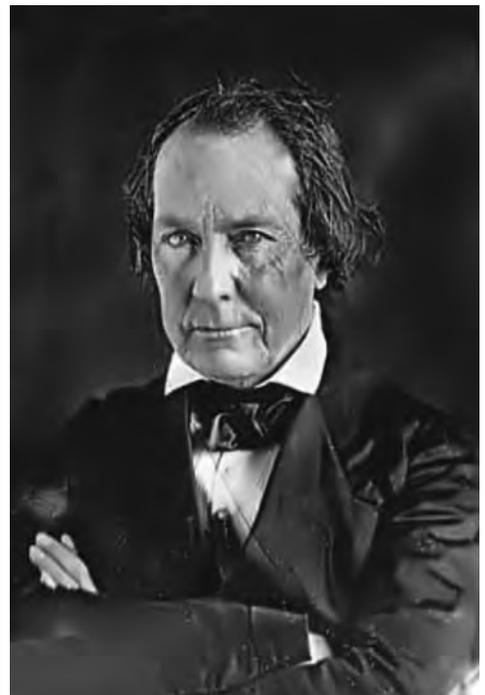
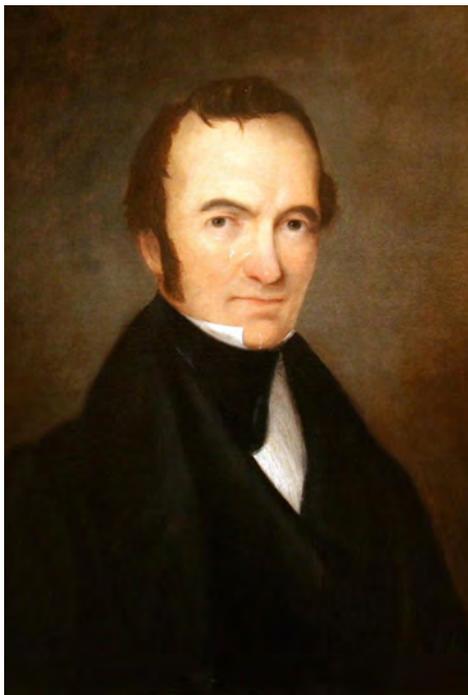
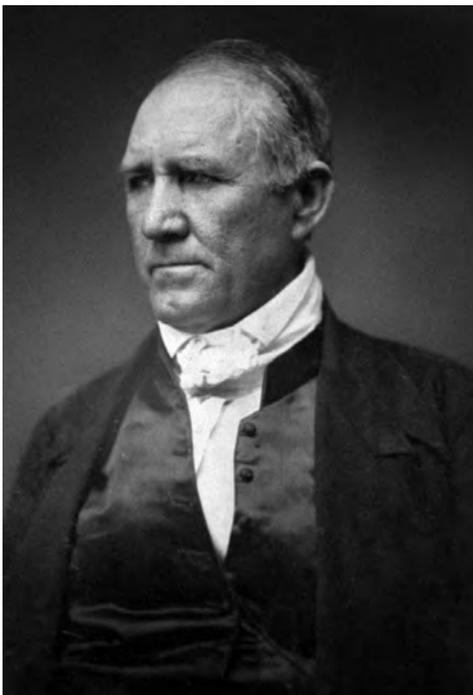
<sup>5</sup> *Journals of the Convention of the Free, Sovereign, and Independent People of Texas, in General Convention Assembled* (Austin: March 1, 1836), reprinted in 1 H.P.N. Gammel, *The Laws of Texas 1822–1897* (Austin: Gammel Book Co. 1898), 1063; Randolph B. Campbell, *Gone to Texas: A History of the Lone Star State* (New York: Oxford Univ. Press, 2003), 141 and 147–48; Michael Ariens, *Lone Star Law: A Legal History of Texas* (Lubbock: Tex. Tech. Univ. Press, 2011), 13–15; James L. Haley, *Passionate Nation: The Epic History of Texas* (New York: Free Press, 2006), 148–52.

<sup>6</sup> Stephen L. Moore, *Eighteen Minutes: The Battle of San Jacinto and the Texas Independence Campaign* (Dallas: Republic of Tex. Press, 2004), 309–428; Campbell, *Gone to Texas*, 148–58; Ariens, *Lone Star Law*, 15–21; James L. Haley, *The Texas Supreme Court: A Narrative History, 1836–1986* (Austin: Univ. of Texas Press, 2013), 17–52.

<sup>7</sup> Thomas H. Kreneck, "Houston, Samuel," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fho73>; Campbell, *Gone to Texas*, 159–61; Ariens, *Lone Star Law*, 246–54; Haley, *Texas Supreme Court*, 17; Haley, *Passionate Nation*, 206–16.

Born in the Valley of Virginia in 1793, Sam Houston belonged to a wealthy, prominent family proud of its Scots-Irish ancestry and Virginia birth.<sup>8</sup> His ancestor John Houston was a baronet, a Border County chieftain<sup>9</sup> who left the British Isles in 1730 with his family to sail to America carrying a chest of gold sovereigns.<sup>10</sup> When the ship's captain tried to steal that gold, John organized a mutiny, seized the ship, and took its passengers to build a new life in America. John Houston rose to prominence in the Olde Dominion, while Virginia was still an English colony. Virginia's Anglo-American legal traditions formed the framework of his life as a lawyer and judge; he rose quickly in society and soon purchased vast tracts of fertile farming land in the Valley of Virginia, and won a prominent place for his descendants in North America.<sup>11</sup>

Sam Houston's Scots-Irish family moved him across the border from Virginia's hilly back country to Tennessee's lushly forested mountains in 1807, when he was fourteen. After gaining Andrew Jackson's life-long respect for his willingness to risk his life in battle during the Creek War, Houston began reading law in Nashville, opened a law firm and, with the support of Jackson, and won appointment as Attorney General and election as Tennessee's Governor.<sup>12</sup> He spent his early political career in an Appalachian state that initially began as a western extension of Virginia. Yet Sam Houston was only one of many prominent Virginians who imbued the Lone Star Republic with the Olde Dominion's ways of life and law.



Left: Daguerreotype of Sam Houston, 1856, from Mathew Brady's studio, Library of Congress.  
Center: Stephen F. Austin, Texas State Library and Archives Commission.  
Right: Mirabeau B. Lamar, Texas State Library and Archives Commission.

<sup>8</sup> James C. Leyburn, *The Scotch-Irish: A Social History* (Chapel Hill: University of North Carolina Press 1962), 200–10, 306.  
<sup>9</sup> Sam Houston's ancestor referred to himself as "John Houston, Gent." to reflect his status as an aristocrat of the land, essential to a man's standing in colonial Virginia. See also Fischer, *Albion's Seed*, 648–49.  
<sup>10</sup> Fischer, *Albion's Seed*, 648–49.  
<sup>11</sup> Marquis James, *The Raven: A Biography of Sam Houston* (New York: Bobbs Merrill Co., 1929); Fischer, *Albion's Seed*, 648.  
<sup>12</sup> Kreneck, "Houston, Samuel," *Handbook of Texas Online*; Amelia W. Williams and Eugene C. Barker, eds., *The Writings of Sam Houston, 1813–1863*, 8 vols. (Austin: University of Texas Press, 1938–43; rpt., Austin and New York: Pemberton Press, 1970).

In the 1820s, Moses and Stephen F. Austin asked permission, first from Spain and then from Mexico, to recruit American settlers from the Southern United States. They offered to fill the largely vacant lands along Mexico's bloody northern frontier, also known as *Comancheria*, the realm of the Comanches, with Anglo-American plantation owners. The Austins received that permission and took steps to attract a new and fundamentally different population of Anglo-American settlers to Texas. Although Moses Austin was born in Connecticut in 1761, he moved to Virginia and made his fortune by gaining control of the Virginia lead market in 1789.<sup>13</sup>

Born in Virginia in 1793, Moses's son Stephen F. Austin realized his father's dream by securing first Spanish, and then Mexican, permission to establish Austin's Colony.<sup>14</sup> Stephen, often called the Father of Texas, modeled his colony's slave-based planter economy on the Olde Dominion's model while incorporating important aspects of Virginia's legal system into his own code of law. Austin recruited Virginians such as Jared Ellison Groce, who became the wealthiest settler in Austin's colony, Haden Edwards, and Branch T. Archer.<sup>15</sup> In 1824, Groce chaired a committee to petition the Mexican congress for the protection of slave property, then participated in the conventions of 1832 and 1833 at San Felipe de Austin. When Mexican authorities threatened the freedoms enjoyed by Austin, Groce, Edwards, Archer, and other colonists and acted to end slavery in the twin-state of Coahuila y Texas, Austin joined with fellow Virginians Sam Houston, William H. Wharton, Jared Groce, and others to launch the revolution that led to an independent Texas.<sup>16</sup>

Born in Caroline County, Virginia in 1810, William Jefferson Jones, a newspaperman and lawyer who managed Lamar's 1838 presidential campaign, urged Lamar to annex New Mexico. He served on the Republic of Texas Supreme Court from 1840 to 1846, and named his Galveston County plantation estate Virginia Point.<sup>17</sup>

Another Virginian, William Fairfax Gray, made a number of important contributions to the Republic of Texas. Born in Fairfax County, Virginia in 1787, Gray served in the Virginia Militia during the War of 1812; by 1821, he had risen to the rank of Lieutenant Colonel. When he left Virginia to serve as a land agent in Texas, he began keeping a diary later published as *The Diary of William Fairfax Gray, from Virginia to Texas 1835–1837*.<sup>18</sup> Gray preserved a first-hand account of the 1836 Constitutional Convention at Washington-on-the-Brazos.

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<sup>13</sup> David B. Gracy II, "Austin, Moses," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fau12>.

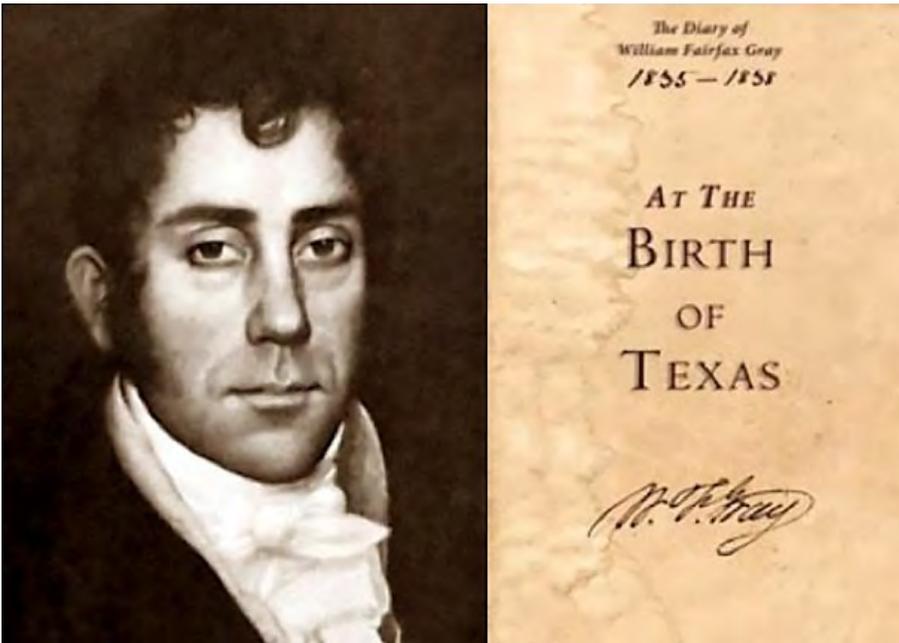
<sup>14</sup> Eugene C. Barker, "Austin, Stephen Fuller," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fau14>.

<sup>15</sup> Charles Christopher Jackson, "Groce, Jared Elison," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fgr70>; Bevill, *Paper Republic*, 72, 84-85.

<sup>16</sup> Merle Weir, "Wharton, William Harris," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fwh08>.

<sup>17</sup> Amelia W. Williams, "Jones, William Jefferson," *Handbook of Texas Online*.

<sup>18</sup> Tiffany S. Gilman and Blake Hawthorne, "A Brief History of the Texas Supreme Court Clerk's Office," *Journal of the Texas Supreme Court Historical Society* 5, No. 4 (Summer 2016): 34-41. "William Fairfax Gray—Eyewitness to History," Texas General Land Office website, <https://medium.com/save-texas-history/william-fairfax-gray-eye-witness-to-history-db4ae5faa10c>; William Fairfax Gray, *From Virginia to Texas, 1835* (Houston: Fletcher Young, 1909, 1965).



Portrait of William Fairfax Gray alongside a title page of his published diary. Images from Texas State Historical Association, *Handbook of Texas Online*.

Gray returned to Virginia during the Runaway Scape of 1836 and reunited with his family. In 1837, he brought his family to Texas and hung out a shingle. Gray obtained numerous land grants, and received land in Robertson and Leon counties. He established a successful law practice, then served as Clerk of the Texas House of Representatives, as Secretary of the Senate, and as the first Clerk of the Texas Supreme Court. He died in Houston on April 16, 1841.<sup>19</sup> Gray's successor as Clerk of the Texas Supreme Court, Tom Green, was born in Virginia, too.<sup>20</sup>

Born on December 12, 1819, in Fredericksburg, Virginia, William Fairfax Gray's son Peter Gray served in the Texas Army and the Milam Guards that repulsed an 1842 Mexican raid on San Antonio. After winning election to Texas's first Legislature in 1846, he authored the Practice Act, which created a procedural system based on Virginia's.<sup>21</sup> He founded the Houston Lyceum, later the Houston Public Library, and funded Henderson Yoakum's 1855 *History of Texas*, which Yoakum dedicated to Gray.<sup>22</sup> Gray won election to the Lone Star State's fourth Senate in 1854 and served as judge of the Houston district, a jurisdiction stretching from the Sabine to the Brazos. After the Civil War, Gray returned to practicing law with his partner Walter Browne Botts, born and raised in Fredericksburg, Virginia, at the firm that subsequently came to be known as Baker Botts.<sup>23</sup> Gray won election as first President of the Houston Bar Association, founded the Harris County Law Library, and served briefly on the Texas Supreme Court in 1874.<sup>24</sup>

Mirabeau B. Lamar, whose Treasurer issued the five-dollar redback bill bearing the image of Jamestown's church, grew up amidst privilege on a Tidewater Georgia plantation, yet nevertheless exemplified Virginia's Tidewater plantation culture.<sup>25</sup> Lamar's "extinction or

<sup>19</sup> Andrew Forest Muir, "Gray, William Fairfax," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fgr27>.

<sup>20</sup> Alwyn Barr, "Green, Thomas," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fgr38>.

<sup>21</sup> Laura Gibson, "Peter Gray: The Difference One Person Can Make," *Journal of the Texas Supreme Court Historical Society* 4, No. 4 (Summer 2015): 25-34; Kate Sayen Kirkland, *Captain James A. Baker of Houston, 1857-1941* (College Station: Texas A&M Univ. Press, 2012), 46-47.

<sup>22</sup> Gibson, "Peter Gray," 28-29.

<sup>23</sup> Stephanie Piefer Niemeyer, "Botts, Walter Browne," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fbobb>.

<sup>24</sup> Thomas W. Cutrer, "Gray, Peter W.," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fgr25>.

expulsion” Indian policy reflected his continuation of the elite Virginia Tidewater legal tradition. Lamar strove to create a southwestern version of Virginia, an imperial slavocracy destined to expand to the Pacific Ocean. Both versions exemplified the cavalier, aristocratic culture of the Tidewater Chesapeake. After the Great Massacre of 1622, Virginia Company officials condemned the Powhatan Indians to death by ordering Governor Sir Francis Wyatt to begin “surprisinge them in their habitations, demolishing theire Temples, destroyinge their Canoes, plucking upp their [fish-]weares, carrying away their Corne, and depriving them of whatsoever may yeeld them succor or relief.” Virginia Company officer Edward Waterhouse suggested that settlers use “horses, and Bloodhounds to draw after them, and Mastives to seize” Indians.<sup>26</sup>

Lamar revived Virginia’s mid-seventeenth century Indian extermination-or-expulsion policy in mid-nineteenth-century Texas. By treating Comanche chiefs as pirates or mob-bosses rather than as ambassadors of a warring nation in conflict with the Republic of Texas, President Lamar made diplomacy between Texans and Comanches very difficult. Lamar’s Indian policy made the Council House Fight of 1840 and decades of Indian warfare almost inevitable.

### **England’s Rule of Law Landed First at Jamestown’s Church**

The quest to create a government bound by the rule of law began early in the seventeenth century.<sup>27</sup> King James I’s Chief Justice of England, Sir Edward Coke, first raised the issue of whether Magna Carta’s rule of law governed kings and not just commoners. In the *Case of Prohibitions*, also known as *Prohibitions del Roy*, Sir Edward Coke wrote

that the law was the golden met-wand and measure to try the causes of the subjects; and which protected His Majesty in safety and peace: with which the King was greatly offended, and said, that then he should be under the law, which was treason to affirm, as he said; to which I said, that Bracton saith, *quod Rex non debet esse sub homine, sed sub Deo et lege* (That the King ought not to be under any man but only under God and the Law.).<sup>28</sup>

When he drafted the Virginia Company’s Charter of 1606, Sir Edward Coke tipped the scales. Lest anyone have any doubt about the inherent rights of the Englishman, he made sure that King James granted colonists all “liberties, franchises and immunities” to which settlers would be entitled if their rights were protected by Magna Carta.

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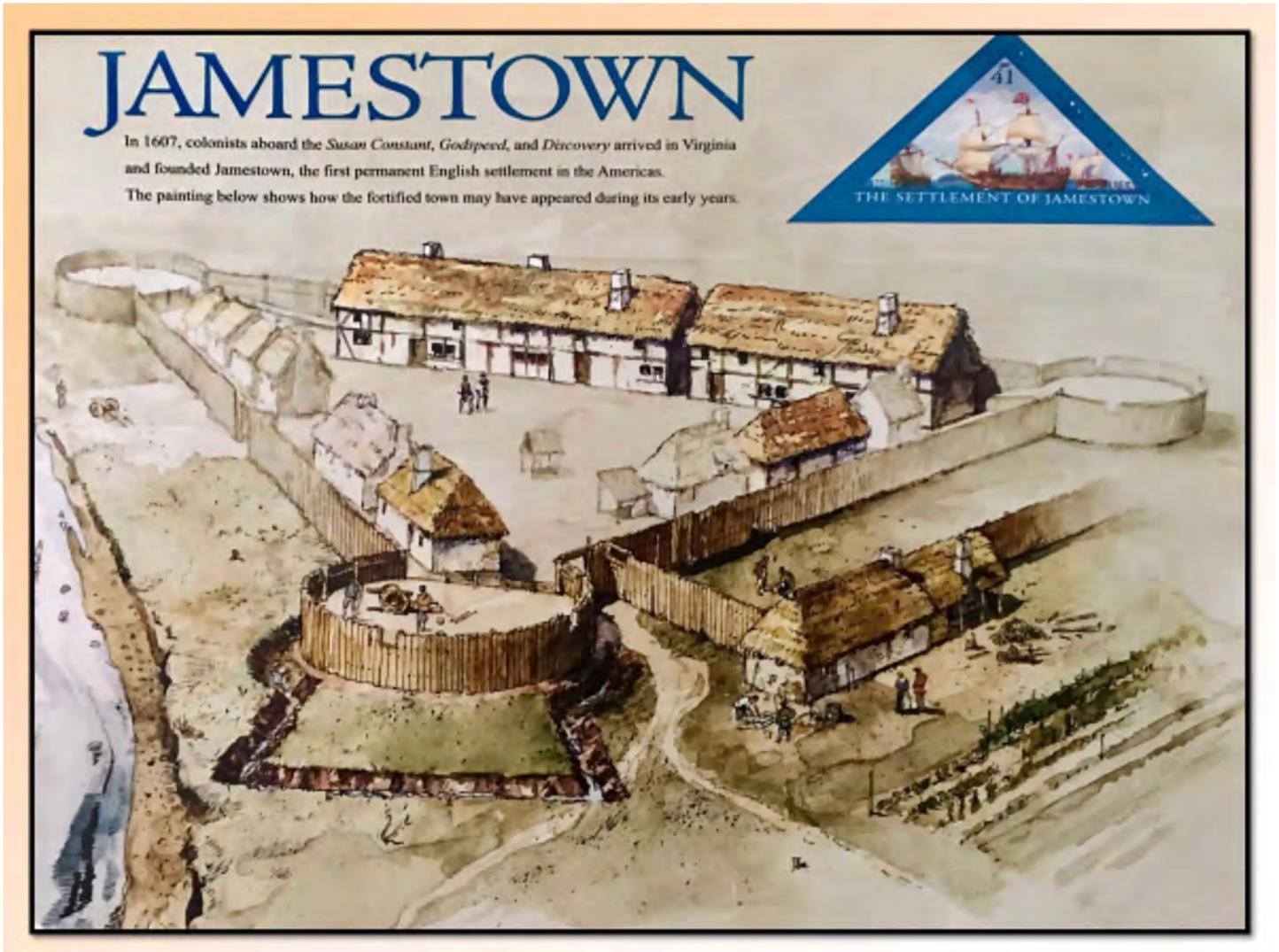
<sup>25</sup> Herbert Gambrell, “Lamar, Mirabeau Buonaparte,” *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fla15>; Charles Adams Gulick, Jr., Harriet Smither, et al., eds., *The Papers of Mirabeau Buonaparte Lamar*, 6 vols. (Austin: Texas State Library, 1920–27; rpt., Austin: Pemberton Press, 1968).

<sup>26</sup> See James Horn, *A Land as God Made It: Jamestown and the Birth of America*, 263–78 (New York: Basic Books, 2005) (citing 3 Records of the Virginia Company 544–45, 669–70, 683 (Susan Myra Kingsbury, ed., 1906–1935)); Helen C. Rountree, *Pocahontas, Powhatan, Opechancanough: Three Indian Lives Changed at Jamestown* (Charlottesville: Univ. of Va. Press, 2005), 219–35; T.R. Fehrenbach, *Lone Star: A History of Texas and the Texans* (Austin: DeCapo Press, updated ed., 2000), 254–55.

<sup>27</sup> David A. Furlow, “The Lone Star Republic’s Supreme Court Wove the Fabric of Texas Law from the Threads of Three Competing Legal Traditions, Part II,” *Journal of the Texas Supreme Court Historical Society* 3, No. 4 (Summer 2014): 27–34.

<sup>28</sup> Sir Edward Coke, *Case of Prohibitions, a/k/a Prohibitions del Roy*, in Steve Sheppard, ed., *The Selected Writings and Speeches of Sir Edward Coke*, vol. II (Indianapolis: Liberty Fund, 2003), 478–81 (“In Conference Before the King, Michaelmas Term, 5 James I, 1607), 481.

Later that year, in 1606, Bartholomew Gosnold, Christopher Newport, and Captain John Smith led three ships—the *Susan Constant*, *Godspeed*, and *Discovery*—across the Atlantic Ocean to settle in Virginia. They landed in Virginia on May 13, 1607, then sailed up the James River to a defensible island where they erected a settlement they named after their king—Jamestown. Jamestown began as a fort rather than a civilian settlement. Early leader Edward Maria Wingfield ordered his men to begin “pallozadoing our fort” and mounting cannons after an attack by Powhatan Indians.<sup>29</sup> After Gosnold’s death in September 1607, Captain John Smith kept the colony going in 1607 and 1608 while putting down rebellions and surviving assassination plots.



The U.S. Postal Service issued a stamp that accurately depicted Jamestown Fort. Public domain.

When Smith returned to England, widespread starvation among settlers, epidemic disease, and a series of bloody Indian wars ensued. King James sent military governors such as Thomas West, Lord De La Warr, to impose martial law on the troubled colony and to rule, rather than govern, Virginia. King James sought to improve the colony's prospects by renewing the Virginia Company's charter in 1612 and granted its settlers more self-governance.

<sup>29</sup> William M. Kelso, *Jamestown: The Buried Truth* (Charlottesville & London: Univ. of Va. Press, 2006), 16, quoting Gabriel Archer, "A Relatyon...written...by a gent. Of ye Colony," in Philip L. Barbour, *The Jamestown Voyages under the First Charter, 1606-1609* (London: Cambridge Univ. Press for the Hakluyt Soc., 1969), vol. 1, 95.

**The Virginia Company granted deeds and self-government to settlers (images from Nick Bunker's *Mayflower Compact* Powerpoint).**

There have been Patent<sup>ts</sup> granted this yeare for Particular Plan-  
tacons.

1 To m <sup>r</sup> Wincopp .....	
2 To m <sup>r</sup> Heath Recorder of London.....	
3 To Doctor Bohunn .....	
4 To m <sup>r</sup> Delbridge.....	Who have vnderaken
5 To m <sup>r</sup> Tracie.....	to Transporte to Vir-
6 To m <sup>r</sup> Peirce.....	ginia great multitudes
7 To m <sup>r</sup> Poynte.....	of People w <sup>th</sup> store of
8 To m <sup>r</sup> Barkley .....	Cattle.
9 To Southampton Hundred .....	
10 To Captaine Bargraue .....	
11 To Captaine Warde .....	[112]

And the said Treasoro<sup>r</sup> and Companie doe further graunte and agree, to and with the said Aduenturo<sup>rs</sup> their heires and Assignes, that the said Treasuror and Companie and their successors shall at all times hereafter vpon reasonable demānd, graunte letters Deed or Deed<sup>e</sup> of Incorporacon, by some vsuall or fitt name and title, to the said Aduenturo<sup>rs</sup> their heires and Assignes, and the people there inhabiting vnder them, with libertie to them and their successors from time to time to frame and make orders ordinances and constitucons for the rule gouern<sup>t</sup> orderinge and directing, aswell of all psons to be transported as also of the lands and proffit<sup>e</sup> thereby arising: So that the said orders ordinances and constitucons be not repugnant to the lawes of England, or to the frame of gouernment by the said Treasuror Counsell and Companie and their successo<sup>rs</sup> hereafter to be established (ordinarie appeales to the supream Court<sup>e</sup> onely excepted).

PowerPoint image from David A. Furlow's May 4, 2019 presentation to the First Company of the Jamestowne Society in Houston.

Yet five years later, in 1617, Virginia law remained a chaotic mess that slowed the colony's economic development and failed to protect basic property rights from arbitrary seizure. A hodge-podge of inconsistent rules, regulations, and royal decrees, it consisted of English statutes, Virginia Company rules, common law cases, ecclesiastical rules, manorial inquiries, governmental council law, and martial law—the last of which was almost always arbitrary, excessive, and enforced by draconian punishments.<sup>30</sup>

The Virginia Company's Treasurer, Sir Edwin Sandys, sought to save the colony by reforming it in ways that empowered its settlers to govern themselves. Born in 1561, Sandys' father was the Archbishop of York, a man who believed that the future of Protestantism required the education of ministers, lawyers, and ordinary people. Sandys graduated from Corpus Christi College, Oxford and became a Puritan Parliamentarian. Deemed a "Solon and Lycurgus" by his contemporaries, Sandys dreamed of creating a Christian commonwealth in Virginia.

<sup>30</sup> James Horn, *1619: Jamestown and the Forging of American Democracy* (New York: Basic Books, 2018), 52-54.

Sandys believed that governmental stability required that the govern believe in the legitimacy of that government. And legitimacy depended on two things: first, just and reasonable laws; and second, the consent of the governed, *i.e.*, the creation of those just and reasonable laws by the people who must live under them.<sup>31</sup> Sandys' promotion of democratic self-government makes him one of the unsung heroes of Anglo-American democracy.

To rectify these problems, George Yeardley took the Virginia Company's Charter of Grants and Liberties from London to Virginia to form a new government so white plantation owners could elect representatives to make laws for themselves in an assembly meeting at Jamestown's church. Twelve years after the erection of the Jamestown fort, Virginia's planters elected the first legislative assembly in the Western Hemisphere at Jamestown's church.<sup>32</sup> They assembled on July 30, 1619 at Jamestown's Anglican church.



*First Virginia General Assembly*, by Sidney King (1955).  
Image courtesy of Preservation Virginia, public domain.

Virginia's planters, essentially the colony's aristocracy, chose twenty-two burgesses to represent them, two from each of eleven plantations. This first Virginia Assembly served August 9-14, 1619. But the Assembly's power was limited, for it had to work with a colonial governor the

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<sup>31</sup> *Ibid.*, 187-89.

<sup>32</sup> Donald S. Lutz, ed., *Colonial Origins of the American Constitution: A Documentary History* (Indianapolis: Liberty Fund, 1998), 327-35.

planters did not elect who was chosen by the Virginia Company in London.<sup>33</sup>

Sir George Yeardley presided over the first Assembly. Born to a merchant family in Southwark, London, the seamy side of the capital, a home to brothels, bear-baiting, and theater companies, in 1588, Yeardley rounded out his resume by rendering military service as a mercenary in the Netherlands. He first came to Virginia on the *Sea Venture* voyage with Lord De La Warr after the ship crashed on a Bermuda reef. He served as an officer in Virginia's Powhatan wars 1609-1614. The King appointed Yeardley Governor of Virginia in 1618, while Yeardley was still in London. Concerned that colonists would not respect the authority of anyone other than an aristocrat, King James knighted him to improve his social standing.<sup>34</sup>

The General Assembly met at "the most convenient place we could finde to sit in was the Quire [Choir] of the church."<sup>35</sup> The Church of England was central to the lives of the Company leadership, the institution where all colonists swore an oath acknowledging the supremacy of the King and the absence of any papal authority over England. As Jamestown excavator Bill Kelso observed,

Tradition places that first Statehouse/church immediately adjacent to and east of the seventeenth-century brick church tower, still standing. The church in 1619 was not built of brick, nor is the existing tower an original part of that early church. The first reference to the construction of a brick church appears in 1639... . The original [1607] church was more of a sailcloth awning, which evolved into a more permanent timber structure in 1608, which appears to have seen a number of years of neglect, until it was rebuilt in 1617. This rebuilt 1617 church was the site of the first Assembly two years later.<sup>36</sup>

The rebuilt Jamestown church, erected during Samuel Argall's governorship in 1617-1618, was "50 foot long[,] twenty foot broad," and erected above a one-foot-wide foundation of cobblestones capped by a wall one brick thick.<sup>37</sup>

Before the Assembly began, the planters, Virginia's voters, elected twenty-two burgesses, two from each of eleven plantations. The Assembly commenced with Governor Yeardley's announcement of his four councilors: Samuel Maycock, Capt. Nathaniel Powell, John Rolfe (Pocahontas's husband), and Secretary John Pory. Governor Yeardley appointed Pory to serve as the Assembly's "Speaker," based on the English Parliament's office of Speaker.

Jamestown's minister Reverend Richard Bucke presented a prayer to invoke the assembly. This political body met with Governor Yeardley and his council and functioned in a judicial as

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<sup>33</sup> Arthur Schlesinger, Jr., ed., *The Almanac of American History* (New York: Putnam Pub., 1983), 37.

<sup>34</sup> Horn, *1619*, 130-32.

<sup>35</sup> Kelso, *Jamestown*, 194-213.

<sup>36</sup> *Ibid.*, 195.

<sup>37</sup> "Jamestown Churches," *Jamestown Rediscovery* website, <https://historicjamestowne.org/archaeology/map-of-discoveries/jamestown-churches/>.

well as a legislative role.<sup>38</sup> The first issue was procedural, but set important precedent about the Assembly's right and power to determine the qualifications of its members. The Assembly addressed the purported right of two members, Captain John Ward and Lieutenant John Gibbs, to participate in the legislative session. The second issue addressed whether Burgess John Martin and the Martin Brandon Plantation had asserted rights in conflict with those of the Virginia colony.<sup>39</sup>

Having resolved all preliminary procedural issues, the General Assembly's members addressed substantive issues. Assembly members reviewed the Jamestown Company's Charter, laws, and privileges, then revised them for the general good of the colony and colonists. Members made recommendations about which decrees of the three previous governors—Lord De La Warr, Captain Argall, and George Yeardley—should be enacted into laws. The members then discharged their judicial responsibilities by resolving private disputes in a judicial setting. They also decided which petitions for relief they should send to the Virginia Company in London.<sup>40</sup>

The heat and humidity of Jamestown made life miserable for all of the burgesses, Governor Yeardley, and his Council. After Burgess Walter Shelley died of heat exhaustion, Governor Yeardley closed the Assembly on August 4, 1619, then prorogued the session until March 1, 1620.<sup>41</sup> The Virginia Company's Governor's Council evolved over time into Virginia's General Court, a panel of lawmakers in which the Governor and his Council served as judges who decided cases on a monthly basis. The General Court handled a wide variety of cases, exercising executive, judicial, and legislative powers at the same time. Over the next century, it evolved into Virginia's judicial system.<sup>42</sup>

The Constitution for the Council and Assembly in Virginia enacted a law on July 24, 1621 that established a bicameral legislature for the Commonwealth of Virginia.<sup>43</sup> A series of continuing reforms, commencing on March 5, 1624 and continuing in the years thereafter, transformed the Virginia Assembly into a "little Parliament" that served as a model for American colonies, states, and the U.S. Congress.<sup>44</sup>

Jamestown was the place where Virginia's first General Assembly convened. But it was also the place where English common law first became the law of America. A plaque the State Bar of Virginia erected on the inner wall of Jamestown's church marked the place where common law became the law of the land.

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<sup>38</sup> Schlesinger, *Almanac*, 37.

<sup>39</sup> Horn, *1619*, 69-74.

<sup>40</sup> *Ibid.*, 75-78.

<sup>41</sup> *Ibid.*, 81.

<sup>42</sup> *Ibid.*, 65-66 and 81-83.

<sup>43</sup> Lutz, *Colonial Origins*, 336-38.

<sup>44</sup> *Ibid.*, 339-44. See also Warren M. Billings, *A Little Parliament: The Virginia General Assembly in the Seventeenth Century* (Richmond: Library of Virginia, 2004).

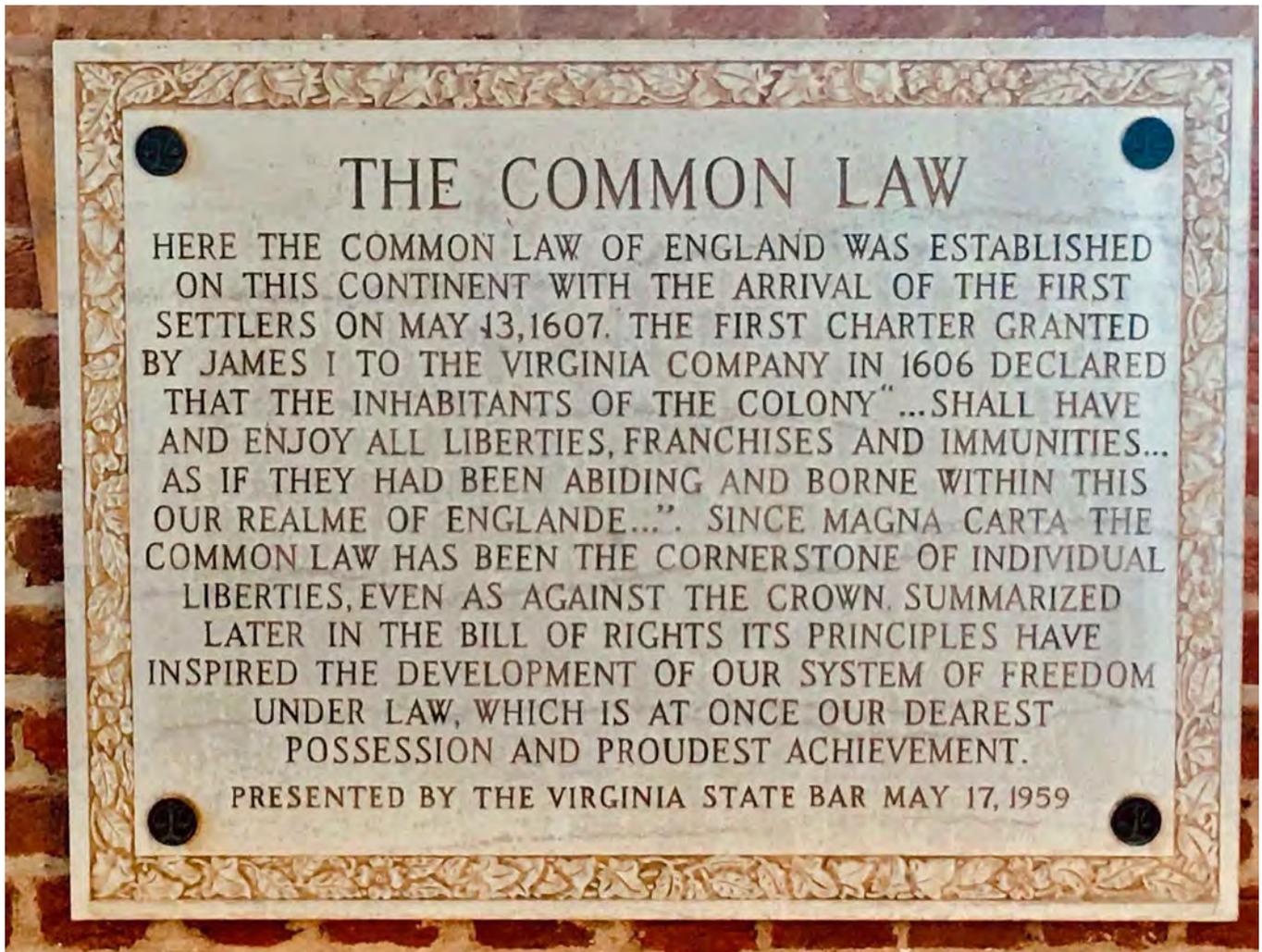


Photo of the Virginia State Bar plaque in Jamestown. Photo by David A. Furlow.

### **Slavery Begins Close to Jamestown in 1619**

During the same month, August 1619, that Virginia's first Assembly met and closed, another momentous event occurred—one that shaped the future of America in countless ways: the first sale of African slaves in Virginia, conducted by the captain of an English sailing ship operating under a Dutch privateering license.<sup>45</sup>

The beginning of African slavery in America has a Texas connection, too, or at least a link with the Gulf of Mexico and Iberian (Spanish and Portuguese) imperialism. In July or August of the year Virginia's Assembly first convened, the captains of two English privateers—Puritan leader Sir Robert Rich's *Treasurer*, captained by Daniel Elfrith, and Cornishman John Jope's *White Lion*—joined forces in the Gulf of Mexico to defeat the Portuguese slave ship *St. John the Baptist* on her way to Veracruz, Mexico to sell a cargo of enslaved Africans who had been abducted in Angola. The two English ship captains battered the Portuguese vessel into submission and then took, as booty, some fifty-five to sixty Africans before sailing east toward Virginia.<sup>46</sup>

<sup>45</sup> *Ibid.*

<sup>46</sup> Horn, 1619, 2 and 86.

When compared with Spanish and Portuguese systems of enslavement, slavery in North America began late and remained relatively small. Five years before the first Virginia General Assembly, the Spanish Viceroy's 1614 census of Peru revealed that the city of Lima's population was at least 25,454 persons, including some 10,386 Africans (5,857 women and 4,529 men), 744 Mulattoes (418 women and 326 men), and 192 Mestizos (97 men and 95 women).<sup>47</sup> The first slaves in Texas came in Spanish ships.<sup>48</sup> Spanish slavery in Texas had dwindled down to a small number of individuals living in and near San Antonio by 1821, when Stephen F. Austin's Old Three Hundred planters began bringing a rapidly swelling tide of enslaved laborers to cultivate the black earth cotton fields of Mexican Texas.



A Virginia state historic sign identifies Point Comfort, where the first sale of African slaves occurred in English-speaking North America.

Virginia planter John Rolfe, already famous for his marriage to Powhatan's daughter Pocahontas at the altar of that same Jamestown church where the General Assembly occurred, recorded the arrival of the *White Lion* in Virginia waters:

About the latter end of August, a Dutch man of War of the burden of 160 tons arrived at Point Comfort, the Commander's name Capt. Jope, his Pilot for the West Indies one Mr. Marmaduke, an Englishman. They met with the *Treasurer* in the West Indies, and determined to hold consort ship hitherward, but in their passage lost one the other. He brought nothing but 20. and odd Negroes, which the Governor and Cape Merchant bought for victuals (whereof he was in great need as he pretended) at the best and easiest rates they could.<sup>49</sup>

<sup>47</sup> "Pedro de León Portocarrero's Description of Lima, Peru," in Kenneth Mills and William B. Taylor, eds., *Colonial Spanish America: A Documentary History* Lanham, Boulder (New York, Toronto, and Oxford: SR Books, 2006), 166.

<sup>48</sup> Randolph B. Campbell, "Slavery," in *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/yys0>.

<sup>49</sup> Horn, 1619, 87.

Three or four days later the *Treasurer* arrived at Point Comfort, Virginia, where it sold the first documented Africans to be sold in English-speaking North America.<sup>50</sup>

The emerging forensic science of osteo-archaeology enables us to understand something about the lives of these first slaves in the Chesapeake. The skeleton of a young woman in early seventeenth-century Maryland—the Harleigh Knoll Woman—offers insights about the hard life of an early slave. A Smithsonian Museum of Natural History team led by Dr. Doug Owsley carefully excavated, examined, and tested her bones, then used forensic skills to reconstruct her face and hard life.<sup>51</sup> Partially exposed in the remains of a hexagonal wooden coffin, sandy soil resulted in an exceptionally well-preserved skeleton that told as much about the woman's life as about her death.<sup>52</sup>



The Smithsonian Museum reconstructed the face of the enslaved Harleigh Knoll, Maryland woman by applying forensic science to her skeletal remains. Forensic facial reconstruction by Joanna Hughes; sculpted bust by Studio EIS. Smithsonian photos.

The Harleigh Knoll woman was seventeen to nineteen years old when she died. She was clearly African based on the shape of her facial bones. Her vertebrae revealed that she had suffered trauma to her back while alive. The deeply pitted bones of her upper body revealed that she made heavy use of her muscles. Based on her bones and the location of her burial, Smithsonian archaeologists confirmed that she had worked and died on an early Maryland tobacco plantation.

### **A Massacre Leads to James I's Dissolution of the Virginia Company**

Then, shortly after dawn on March 22, 1622, everything went horribly wrong. A tragedy unfolded with the speed of a long-planned massacre. James Horn, the O'Neill Director of the John D. Rockefeller, Jr. Library at the Colonial Williamsburg Foundation, described Powhatan Confederation leader Opechancanough's surprise attack as follows:

Shortly after dawn on a crisp March morning, groups of Indians gathered in woods adjacent to English settlements before setting off to colonists' houses, carrying deer, turkeys, fish, furs, and other trade goods. There was nothing unusual

<sup>50</sup> *Ibid.*, 88.

<sup>51</sup> "The Young Woman from Harleigh Knoll," *Smithsonian American Museum of Natural History* website, <https://naturalhistory.si.edu/education/teaching-resources/written-bone/forensic-case-files/young-woman-harleigh-knoll>.

<sup>52</sup> "Written in Bone: Young Woman from Harleigh Knoll," Smithsonian Institution Archives, [https://siarchives.si.edu/collections/siris\\_arc\\_380111](https://siarchives.si.edu/collections/siris_arc_380111).

about such visits; for the last couple of years they had been encouraged to frequent (and sometimes to live in) English plantations, borrow tools and provisions, and even use settlers' boats. They would have been familiar to the settlers, who knew many of them individually by name. But on this morning, the Indians had come neither to trade nor to borrow.

Taking up the settlers' own tools and weapons, a slaughter of unimaginable proportion began at first light and carried on throughout the day. Finding "our people at their [breakfast] tables," Edward Waterhouse, a [Virginia] Company shareholder wrote, the Indians "basely and barbarously murdered" them, "not sparing eyther age or sexe, man, woman, or childe." Many settlers were taken so completely by surprise that they did not even witness the "blow that brought them to destruction." They were killed in their houses, in their yards and gardens, in the fields as they planted corn and tobacco, or as they were running errands around their plantations....

By this means, Waterhouse continued, on "that fatall Friday morning," March 22, 1622, "contrary to all lawes o God and men, of Nature & Nations," 347 settlers were bludgeoned, stabbed, or hacked to death.<sup>53</sup>

Governor Francis Wyatt reported the disaster to the Virginia Company as the Almighty's divine chastisement of Virginia's settlers. "It has pleased God for our manifold sins to lay a most lamentable Affliction upon this Plantation, by the treachery of the Indians, who on the 22th of March last, attempted in most places, under the Color of unsuspected amity, in some by Surprise, to have cut us off all and to have Swept us away at once throughout the whole land."<sup>54</sup>

The Indians' attack on the Virginia settlements did not destroy the colony, but it hardened the hearts of the settlers who lived in it and the English investors who had poured their fortunes into it. Edward Waterhouse published a pamphlet on behalf of the Virginia Company entitled *A Relation of the Barbarous Massacre in the time of peace and League treacherously executed by the Native Infidels upon the English*.<sup>55</sup> Waterhouse urged genocide in response: "Our hands, which before were tied with gentleness and fair usage, are now set at liberty by the treacherous violence of the Savages, not untying the Knot, but cutting it: So that we, who hitherto have had the possession of no more ground than their waste, and our purchase at a valuable consideration...may now by right of War, and law of Nations, invade the Country, and destroy them."<sup>56</sup>

"Commencing the bloody work of conquest," Jamestown historian James Horn observed, "the [Virginia] Company ordered Governor Wyatt to launch a 'perpetual' war against the Powhatans without peace or truce."<sup>57</sup> Again, Edward Waterhouse suggested how settlers might

<sup>53</sup> Horn, *A Land as God Made It*, 255; "The Natives in Virginia murdered about 340 english...," in Paul J. Lindholdt, ed., *A Critical Edition of Two Voyages to New-England* (Hanover and London: University Press of New England, 1988), 172, citing John Josselyn, *Chronological Observations of America, From the year of the World to the year of Christ 1673* (London, 1674), 249, under the entry, "1621."

<sup>54</sup> Horn, *1619*, 155-56.

<sup>55</sup> *Ibid.*, 158-62.

<sup>56</sup> *Ibid.*, 161.

<sup>57</sup> *Ibid.*, 165.

destroy their Indian opponents through total war. “[V]ictory of them may be gained by many ways, by force, by surprise, by famine...in pursuing and chasing them with our horses, and blood-Hounds to draw after them, and Mastiffs to seize them, which mistake this naked, tanned, deformed Savages, for no other than wild beasts...”<sup>58</sup>

King James seized on the massacre not only a pretext for genocidal war but also as an opportunity to replace the Virginia Company with a royal colony he could command and control. His counselors instituted a Quo Warranto (“by what authority?”) legal proceeding, a petition for a royal or judicial writ challenging the right, title, or authority of a person or corporation to continue in existence. King James dissolved the Virginia Company in 1625, destroying a long-lasting, powerful company whose investors had invested tens of thousands of pounds in a distant colony. The Virginia Company was the only mercantile trading company of the era to be dissolved through quo warranto.

King James could and did destroy the Virginia Company, but he could neither turn back the hands of time nor stymie reformers’ hopes for a more humane world to come. The first two Stuart kings—James I and his son Charles I—grew increasingly intolerant of Puritans, parliamentarians, and early colonists in America who maintained that no man, not even the King, was above the law and beyond the scope of Magna Carta. When Charles I raised his royal standard to preserve his royal prerogatives in 1642, Puritans responded with even greater force. In 1644, as the English Civil War raged, Reverend Samuel Rutherford, a Scottish divine, published *Lex, Rex*, a book that announced that the *Law* was the only proper king of England, reversing Charles I’s traditional belief that the office of King embodied the Law under the doctrine of Divine Right.<sup>59</sup>

Virginia’s Tidewater slavocracy elevated their liberties and property rights far above their concern for the lives of the many slaves who toiled to make their tobacco, indigo, and, later, cotton plantations profitable. Virginia’s plantation elite equated freedom with the power to enslave and exploit others for their personal benefit. “Virginia ideas of hegemonic liberty conceived of freedom mainly as the power to rule, and not to be overruled by others.”<sup>60</sup>

The eighteenth-century English poet James Thomson summarized the Virginia Tidewater elite’s idea of hegemonic freedom in his poem *Rule Britannia*:

When Britain first, at Heaven’s command,  
Arose from out of the Azure main,  
This was the charter of the land,  
And guardian angels sang this strain:

Rule, Britannia, Britannia, rule the waves;  
Britons never, never, never, will be slaves.<sup>61</sup>

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<sup>58</sup> *Ibid.*, 162.

<sup>59</sup> Samuel Rutherford, *Lex, Rex, or The Law and the Prince; A dispute for the Just Prerogative of King and People, etc.* (London: Printed for John Field, Oct. 7, 1644), <http://www.constitution.org/sr/lexrex.htm>.

<sup>60</sup> *Ibid.*

<sup>61</sup> James Thomson, *Alfred*, act 2, scene 5 (1740).

No Virginia cavalier would ever submit to the “slavery” that must result from any governmental interference with his right to enslave and exploit others for his benefit.<sup>62</sup> William Fitzhugh, a late-seventeenth-century “Lord of the Potomac” and a legally-trained lawyer living in the Northern Neck’s Westmoreland County, acknowledged that Virginians were “natural subjects to the king” whose commands they obeyed.<sup>63</sup>

Yet William Fitzhugh and other members of Virginia’s Tidewater elite insisted upon their entitlement to the “due course of law” under the “laws of England.” If Virginians ever surrendered their rights as freeborn Englishmen, they would no longer be freemen, but slaves. The planters’ concept of “hegemonic liberty” envisioned an aristocracy of the mind, where refined taste, governmental service, and the Anglican faith defined a well-ordered, hierarchical society.

One English visitor concluded that Virginia’s plantation-owning elite was “haughty and jealous of their liberties, impatient of restraint, and scarcely [able to] bear the thought of being controlled by any superior power.”<sup>64</sup> They felt entitled to exercise a free-born Englishman’s power to rule a segregated, stratified society. The elite enjoyed a right of *laissez asservir*, to enslave and exploit others.

“How is it,” Dr. Samuel Johnson asked in 1775, “that we hear the loudest yelps for liberty among the drivers of negroes?”<sup>65</sup> In the seventeenth, eighteenth, and nineteenth centuries, Virginia’s plantation-owner aristocrats served in Virginia’s General Assembly, resisted King George III’s efforts to centralize power in London, rallied to Thomas Jefferson’s Declaration of Independence, fought for freedom as officers in George Washington’s Continental Army, and supported James Madison’s creation of a federal constitution that enshrined checks and balances to create a government of limited powers. Virginia-born Founding Fathers changed the world, but their plantation-owning colleagues also wrote and enforced Virginia’s slave codes.<sup>66</sup>

During the 1820s and 1830s, some planters left their family estates in Virginia, the Carolinas, and Georgia to buy cheap land in Coahuila y Texas, a strange twin-state in northern Mexico. When their slaves and overseers joined them, they became the lords of Stephen F. Austin’s colony in Texas.<sup>67</sup> Southern planters came to Texas in the 1820s and 1830s, protected the Tidewater Chesapeake’s rule of law, and vigorously defended their constitutional rights, yet preserved and protected a hegemonic freedom to enslave others that culminated first in the Republic of Texas, then in the State of Texas, and, finally, in the American Civil War.<sup>68</sup>

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<sup>62</sup> Fischer, *Albion’s Seed*, 411-12.

<sup>63</sup> Richard Beale Davis, ed., *William Fitzhugh and His Chesapeake World 1676–1701: The Fitzhugh Letters and Other Documents* 72 (Chapel Hill, N.C.: University of North Carolina Press, for the Virginia Historical Society, 1963) (reprinting an April 7, 1679 letter from William Fitzhugh to Thomas Clayton).

<sup>64</sup> T.H. Breen, *Tobacco Culture: The Mentality of the Great Tidewater Planters on the Eve of Revolution* (Princeton, N.J.: Princeton University Press; revised ed. (September 1, 2001), 244.

<sup>65</sup> Samuel Johnson, *Taxation No Tyranny: An Answer to the Resolutions and Address of the American Congress* (1775), excerpts available at <http://www.samueljohnson.com/tnt.html>, quoted in Fischer, *Albion’s Seed*, 410.

<sup>66</sup> See Fischer, *Albion’s Seed*, 412–14.

<sup>67</sup> Campbell, “Slavery,” *Handbook of Texas Online*.

<sup>68</sup> Ralph A. Wooster, “Civil War,” *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/ar>.



The legislative, judicial, and legal traditions that began in 1619 continued in Virginia's House of Burgesses at Williamsburg throughout the eighteenth century and in Austin, Texas in the nineteenth century. Photo by David A. Furlow.

In 2019, the Commonwealth of Virginia and Jamestown Rediscovery remember two events of enormous significance to American and Texas history. They are the same events memorialized by President Mirabeau Buonaparte Lamar's redback five-dollar bill in 1839: the birth of democratic government and rebirth of Anglo-American law that occurred through the opening of Virginia's General Assembly between July 30 and August 4, 1619, an event worthy of celebration; and, on the other hand, the beginning of race-based slavery that occurred near Jamestown at Point Comfort in August 1619, and the onset of genocidal warfare against North America's Native peoples, two tragedies worthy not only of the redback Indian's contemplation but of our own as well.

The promise of self-government under the rule of law and the perils of racism still shape America, and Texas, 180 years after Lamar's treasury flooded the world with five-dollar Texas redbacks. As we address the legacy of both events, we should recall the

words of John Donne, an Anglican minister at St. John's Cathedral who became one of the most famous poets of the seventeenth century. He recalled the promise of the 1619 Virginia Assembly in a speech to the leaders of the Virginia Company: "Those amongst you that are old now, shall pass out of this world with this great comfort, that you contributed to the beginning of that [Virginia] Common Wealth."<sup>69</sup>

<sup>69</sup> Fischer, *Albion's Seed*, 217.

In those words, John Donne lamented the loss of his dream for an inclusive commonwealth in America where rich and poor, Indians and English alike, might strive together in harmony. Yet he also continued to publish poetry recognizing that interest and affection bond humans together as they overcome the divisions among them:

No man is an Iland, intire of itselfe; every man  
is a peece of the Continent, a part of the maine;  
if a Clod bee washed away by the Sea, Europe  
is the lesse, as well as if a Promontorie were, as  
well as if a Manor of thy friends or of thine  
owne were; any mans death diminishes me,  
because I am involved in Mankinde;  
And therefore never send to know for whom  
the bell tolls; It tolls for thee.<sup>70</sup>

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<sup>70</sup> John Donne, *Meditation XVII: Devotions upon Emergent Occasions*.



**DAVID A. FURLOW** is a member of the Jamestown Society and the Nansemond Indian Tribal Association in Virginia. He has made presentations about the early history, archaeology, and architecture of Virginia at two Jamestown Archeological Conferences.

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# Grapevine Revisited: Bonnie and Clyde and the Easter Sunday Murders<sup>1</sup>

By Jody Edward Ginn, Ph.D., and John Fusco



Top: Patrolman Holloway "H.D." Murphy. Bottom: Patrolman Edward "E.B." Wheeler. Images courtesy of Find-a-Grave website.

**A**pril 1, 1934, was idyllic Easter Sunday weather in Texas. Twenty-six-year-old Edward Wheeler, a Texas Highway Patrol officer, and his young wife, Doris, shared a biscuit-and-gravy breakfast and made plans to celebrate after Edwards, whom most called E.B., completed his shift on motorcycle patrol that day. Just across town, twenty-two-year-old Holloway Murphy was also up early, excited to begin his first day on the job as a THP motorcycle cop. This would be, he thought, his next to last Sunday living at the local YMCA, before moving into an apartment with his fiancé, twenty-year-old Marie Tullis. Marie might or might not have noticed that Holloway placed a handful of 12 gauge shells in his pocket rather than in the chamber of his shotgun; he wanted to be careful about riding his motorcycle with a loaded gun, in case he took a spill and the gun went off, hurting someone. H.D. and Marie were to be married twelve days later on April 13. Both Wheeler and Murphy set about that Easter day thinking that their lives were yet in front of them, not knowing that the plans they were making would soon be waylaid.

By mid-afternoon, the two young motorcycle patrolmen, following senior patrolman Polk Ivy, were casually cruising along State Highway 114 just north of Grapevine, northwest of Dallas. About 3:30 p.m., they noticed a lone vehicle, black with yellow wire wheels, parked 100 yards up a dirt road. The patrolmen U-turned their bikes and rolled up toward the vehicle; it appeared that the occupants were stranded and in need of assistance. Polk Ivy continued down Hwy 114 for some distance, until he realized his two junior officers were no longer behind him.

<sup>1</sup> This article was originally written in conjunction with the release of the Netflix film *The Highwaymen* to commemorate the eighty-fifth anniversary of the Grapevine murders on April 1, 2019.

Farmer William Schieffer heard the motor bikes coming from a distance. He had been doing Easter morning chores on his hardscrabble lot that bordered the dirt road, and around 10:30 a.m. he observed a young couple “necking” in the roadside grass. He was only thirty feet away, hauling rocks from his orchard. The girl was “petite with bushy hair,” and holding a white rabbit in her lap. Easter picnic, he figured. As he pushed his wheelbarrow across his orchard that morning, he watched the couple walk down to the highway—and back—as if looking for someone.

Now, the day was getting on and Farmer Schieffer’s two daughters came out of the house to call their dad in for Easter supper. That’s when he spotted the two motorcycle patrolmen stopping their bikes just a few paces from the mystery car. From approximately 100 yards away, the farmer and his daughters—Miss Isabella Scheiffer and Mrs. Elaine Adams—saw the officers dismount and stroll toward the parked Ford. Before they could even reach the vehicle,



“X” marks the spot where Bonnie and Clyde killed officers Wheeler and Murphy. Photo courtesy of University of North Texas Libraries, Portal to Texas History, crediting Tarrant County College NE, Heritage Room.

they were abruptly felled by shotgun blasts. E.B. was killed instantly, but Murphy survived the initial volley, falling on his side. Stunned, Schieffer and his daughters watched both shooters—including the young woman wearing brown riding pants and boots—walk up to the dying man and fire upon him again, at point-blank range. In seconds, two families were destroyed so that Clyde Barrow and Bonnie Parker, two of the most notorious criminals in U.S. history, could evade justice a little longer.

Schieffer and his daughters were not the only witnesses that Easter day. A Mr. and Mrs. Fred Giggals had been on a Sunday drive along Hwy 114, some distance behind Ivy,

Wheeler, and Murphy. Speaking on behalf of his wife and himself, Mr. Giggals reported that they heard the initial shots after they drove past Dove Road and turned around to see what had happened. According to Giggals, he and his wife exited their car briefly and saw what they thought were two men, with the taller shooting into one of the prostrate bodies. The Giggals were only within sight of the shooters for a matter of seconds, approximately 120 yards away and with their view obscured by a grove of trees. Mr. Giggals said the shooters looked over and saw them, at which point the couple beat a hasty retreat to their car and sped away.

# Clyde Barrow Flees After Killing Two

## Shots Discharged Into Prone Body, Witnesses Relate

Dallas Couple, Driving, Hear Report, Return to Road and See Tall Man Firing Shotgun

Miss Being Chased

Get Away and Assailants Turn Car Into Highway, Speed to Dallas

*N 4-2-34*  
The experience of being eyewitness to the fatal shooting Sunday of State Highway Patrolmen E. B. Wheeler and H. D. Murphy near Grapevine, Tarrant County, and of being threatened with pursuit by the slayers was related by Mrs. Fred A. Giggall of Dallas upon her return from the scene of the double killing.

Mrs. Giggall and her husband, of 4225 Prescott, were making a Sunday afternoon drive on the Northwest highway to Rhome. The couple, with Mr. Giggall at the wheel, had noticed two highway patrolmen turn up a dirt side road, and as they passed the road, saw a black sedan parked there. Mr. and Mrs. Giggall had hardly driven by the road when they heard a volley of shots.

See Men on Ground.  
Mr. Giggall immediately slowed down and turned back, trying to see through a screen of trees. As he got to the entrance of the dirt road, he and his wife saw the two patrolmen stretched out on the ground with the

See EYEWITNESS on Page 1.

## Eyewitnesses

CONTINUED FROM FIRST PAGE.

taller of the two men shooting with a gun into the body of one of the officers. With the killer was a shorter fellow.

Seeing themselves watched the pair hastily jumped into their car and started it. Mr. Giggall debated whether to drive up and try to stop them, but Mrs. Giggall urged him to speed away as they had no pistol or gun. As he complied, the black sedan jumped into motion apparently to chase them. Mr. Giggall stopped on the accelerator and the bandits' car suddenly whirled around in the road and headed toward Dallas, gathering speed rapidly.

Mr. Giggall saw a third patrolman coming toward them, and flagged him down to tell him of the shooting. The patrolman hurried back to the aid of his comrades, being joined by the Giggalls and some farmers living near by who had heard the shots. Other cars arrived soon, too, occupants reporting a black sedan traveling at a furious rate of speed had passed them going toward Dallas.

One of the patrolmen was found dead and the other grievously wounded, dying later in an ambulance en route to Grapevine. The pistols of both were still in their holsters, the off-

## Slain by Barrow



E. B. WHEELER

E. B. Wheeler of Fort Worth was one of the two State highway patrolmen killed Sunday by Clyde Barrow.

cers not having been given a chance to draw them.

Farmers living near by reported the car had been parked on the side road for some time.

The car tore through the town of Grapevine at an estimated speed of seventy-five miles an hour, traveling toward Dallas. A hitchhiker who narrowly missed being run down said the car contained two men who seemed to be laughing and having an enjoyable time in general. There was no woman in the car as far as he could see. The hitchhiker, William Pike, reported officers who saw the car said one of the pair was a woman dressed in riding breeches.

## Murder Blasts Romance Of Alto Girl, to Wed Slain Officer April 13

*N 4-2-34*  
FORT WORTH, Texas, April 1

(AP)—Bullets fired from an automobile of desperadoes near Grapevine Sunday afternoon blighted the romance of 29-year-old Marie Tullis of Alto, who was to have become the bride of Highway Patrolman H. D. Murphy, 23, on April 12.

Miss Tullis and Murphy became engaged a short while before the latter was assigned to duty in Fort Worth, about a month ago. He had completed a training course at headquarters in Austin.

A furnished apartment here already had been rented to the couple. Murphy had selected it a cozy home, where he planned to bring his bride in eleven days.

Survivors of the youth are his father, G. W. Murphy; four brothers, Malcolm, Weldon, Kirby and James Carlton Murphy; and three sisters, Misses Oleta, Beas and Lorraine Murphy, all of Alto.

An Alto undertaker came to Grapevine for the body Sunday night. The funeral for the bride-groom-to-be will be held Monday afternoon in Alto.

## Bandit Shoots Officers Down On Side Road

Parked Near Grapevine, Robber and Woman Companion Fire as Auto Approached

## Go Toward Dallas

Believed to Be Waiting for Hamilton When Slayings Occurred

*N 4-2-34*  
Shot before they could reach for their guns, State Highway Patrolmen E. B. Wheeler and H. D. Murphy of Fort Worth were slain by a pair of killers believed by officers to have been Clyde Barrow, Texas public enemy No. 1, and a woman companion, possibly Bonnie Parker, Sunday afternoon near Grapevine, Tarrant County, about twenty-five miles northwest of Dallas.

The woman was reported by witnesses to have shot Murphy, turning him over to pour additional bullets into him. He died in an ambulance without regaining consciousness sufficiently to identify his assailant, while Wheeler, shot by the larger of the killers, died almost instantly.

Police and county officers of both Dallas and Fort Worth expressed their conviction that the two were Clyde Barrow and Bonnie Parker. The description of the man fitted that of Barrow, while discovered near where the car had stood was a cigar stump bearing the imprint of small teeth. Bonnie Parker is known for her fondness for cigars.

Death Car Parked in Advance.  
The theory was strengthened by a report to officers and to highway patrolmen Saturday night that Barrow and his woman companion were going to spend the night at a farmhouse near Grapevine. Search was made of several suspected places, but the couple was not located.

The car in which the two killers  
See CLYDE BARROW on Page 1.

## Clyde Barrow

CONTINUED FROM FIRST PAGE.

were traveling had been parked in a dirt road about five and one-half miles northwest of Grapevine at least since 10:30 Sunday morning, a nearby farmer reported later. The car was there, with two persons, both dressed in riding breeches, when he went to get a load of rocks. He had not then notified officers, however.

Believed Waiting for Hamilton.  
The most tenable theory of officers was that Barrow and his woman companion had waited at what they believed to be a secluded spot to wait for Raymond Hamilton, former pal in crime of Barrow, who Saturday robbed a bank at West, abducted a woman as hostage, and fled to Houston, where the woman was released. Hamilton got away with more than \$1,800 from the bank, was said to have stolen another car in Houston, and to have headed back for his old haunts in East Texas.

Unexpected approach of the high-

way patrolmen, probably was believed by the fugitives to have resulted from a chase by officers, and brought quick and deadly resistance to imminent capture.

At 2:30 p. m. the man and woman were in their halted car, which aroused the suspicion of Patrolman Wheeler, one of the best shots in the highway service, and he and Murphy, a recent recruit, turned off the side road from Highway 114 with Wheeler in the lead. These with Patrolman Polk Ivy had previously stopped near Polk Ivy had previously stopped near and drained their crankcases and indulged in some target practice. Ivy, with a pair of highway test scales in his side car, had started ahead, and Wheeler and Murphy had both passed the side road when Wheeler decided to investigate the car parked there, and turned around.

Leaves Auto Shooting.

Followed by Murphy, he approached, the sun glinting from the windshield of the parked automobile preventing him from seeing anyone within. As they got close two persons, apparently a man and a woman in riding breeches, got out and a few seconds later opened fire. Wheeler fell instantly with his motorcycle on him. Murphy, who was behind, apparently stopped his motor and had reached into his pocket for two shotgun shells, fitting a sawed-off weapon on which he no longer carried loaded due to fear of its going off accidentally from contact with the motorcycle.

The man at the car ran over, shooting as he came, apparently with a .30.06 automatic rifle, officers said. Wheeler died almost at once. Murphy, however, pitched over at the first shot and lay still. The smaller of the two persons at the car, supposedly a woman rubbed over with her gun, and, turning him over, poured further shots into his breast. The two then made a dash for their machine and started away, heading toward Dallas. It was thought, however, that they turned northeast on a gravelled road after leaving Grapevine.

Third Officer Turns Back.

Ivy, seeing he was not being followed by his companions, turned back and was met by Mr. and Mrs. Fred A. Giggall of Dallas. He arrived at the scene of the shooting to find Wheeler dead and Murphy dying.

As soon as notified, Dallas and Tarrant County and city officers went to work on the case, sending a host of cars filled with men to the scene Sunday night and Monday morning. The search for the slayers was being waged relentlessly over the north part of Dallas County and into Denton and Tarrant Counties. Twenty-five men from Dallas police department armed with machine guns spent the night searching each by-road and main highway near by, while ten deputies from Sheriff R. A. (Spoot) Schmidt's office also were covering the county.

Co-operating were State highway patrolmen under Capt. S. C. Horn of Dallas, head of this district. Joining the Dallas force were patrolmen from Tyler and other points, who came to devote the night in search for the slayers of their fellow-officers.

Escaped in Ford Sedan.

The killers escaped in a black Ford sedan with yellow wheels. Vigilant city officers who spotted such a sedan at a local golf course gave the owner a bad fright Sunday afternoon when they went toward the car with machine guns. The owner stuck his head free behind a tree trunk to identify the machine as his. The place where the halted car was parked near Grapevine is a favorite hangout of Barrow and is near the place Malcolm Davis, Tarrant Deputy Sheriff, was killed more than a year ago, supposedly by Barrow or his confederates.

Wheeler, 23, had been with the State highway patrol nearly four years. He was married, Murphy, 24, had been assigned to duty here last fall upon completing the training course at headquarters in Austin.

It was Murphy's first day of patrol duty since he joined the highway or ganization. Previously he had been assigned to weight duty, checking up on weights of trucks, and had been doing race track work at Arlington Downs.

These murders if committed by Barrow, being the third of killings charged to him and his brother, Buck, recently killed, to nine, with one directly attributed to Bonnie Parker, Clyde Barrow's woman companion.

Sixteen Fort Worth detectives, Tarrant and Dallas County Sheriffs and deputies as well as Rangers Ham and Weems took up the hunt for the occupants of the machine and the description of the machine and the occupants was sent out over the Fort Worth police radio and given officers in a parts of the State.

Authorities at first thought that the man in the automobile was Raymond Hamilton, but the news said that the car had been parked there since 10:30 a. m. destroyed this theory, as Hamilton had stolen a car in Houston at 9:30 a. m. Sunday.

Highway Patrolman Ivy said he did not hear the shots that killed his two companions, the noise of his motorcycle apparently drowning out the roar of the shotgun.

Near the spot where the car had been parked, were three sixteen-gauge shotgun shells, five forty-five calibre automatic shells, three twelve-gauge shells and one rifle shell, all empty.

Detective A. C. Howerton of the homicide squad of the Fort Worth police department said Sunday night there was no doubt that the killer of the two patrolmen was Clyde Barrow. He said from the description given of the man who occupied the parked car, he was convinced it was Barrow.

Think Hideout Found.

At an early hour this Monday morning officers returning from their patroling reported that they had found what appeared to be the hideout of Barrow and Bonnie Parker in Denton County. It was an old garage with its walls resting upon a concrete base back of which men could hide and shoot if they were attacked. For 15 to 200 yards around this garage the brush, weeds and trees had been cleared away to offer attackers no cover if they attempted to storm the place. It also had been reported to officers that a woman fitting Bonnie's description had been seen in the neighborhood frequently.

In speaking with comrades of Murphy's Dallas officials learned that Murphy had owned a pair of custom-made boots to complete his uniform. The boots were to be paid for with his first salary check which was due to come April 1, the day he was killed.

## FINGERPRINTS NAME

**Duganey AS KILLER**

Fort Worth, April 2

Fingerprints on a bottle discarded by bandits who yesterday killed two patrolmen near Grapevine were identified today as those of Clyde

Barrow.

Barney Fine, Bertillon

expert, said the fingerprints

on the bottle identical with

those on record here of Bar-

row. With this information,

detectives said two charges

of murder would be filed

here today against Barrow.

The day after the murders, newspapers were filled with detailed accounts. Image courtesy of University of North Texas Libraries, Portal to Texas History.



The Texas Highway Patrol (THP) was a nascent organization in 1934. After the brutal execution of Wheeler and Murphy, Chief Louis G. Phares took quick and decisive action, issuing a \$1000 reward for the killers and assigning his entire force of more than 120 officers to search for them. Phares also sought out the services of legendary former Texas Ranger Captain Frank Hamer—who, unbeknownst to Phares, was already on the killers' trail—and assigned another former Texas Ranger, THP trooper B.M. "Maney" Gault, to work with him, at Hamer's request.

By the time Murphy's young fiancée wore her wedding dress to his funeral, efforts to deflect responsibility away from the killers were already underway. Clyde Barrow himself wrote a letter to the prosecutor in which he placed the blame for the Grapevine murders on his former partner-turned-nemesis, Raymond Hamilton. This ruse was briefly successful, likely because Hamilton was traveling in an identical Ford V8 with Bonnie's younger sister and doppelganger, Billie Mace. However, they were soon exonerated due to validation of their whereabouts at the time, physical evidence at the scene, and forensic evidence directly linking the true killers to the crime.

The Barrow and Parker families also attempted later to recast the blame for the Grapevine murders, albeit in a manner that, ironically, contradicted Clyde's own story. Clyde's family claimed that he told them his associate Henry Methvin was the *lone* shooter in Grapevine and killed both officers with a Browning Automatic Rifle (BAR). Bonnie's mother also claimed that Methvin had "confessed" to her.

But these claims, which are unsubstantiated hearsay at best, are contradicted by the available evidence. First, Methvin reported to the FBI that he had been asleep in the car all day while Clyde and Bonnie played with the pet rabbit in the grass and that he was awakened by gunfire. Methvin's statement jibes exactly with the sworn witness accounts of Schieffer and his two daughters, all of whom consistently stated that there were two shooters and that one of them was female and matched Bonnie's general description. Second, the theory that there was a lone shooter using a BAR cannot be reconciled with the ballistics evidence from the scene (six large buckshot shotgun shells, five .45 auto pistol cartridges, and only one 30.06 shell casing).

Still, there are those today—a good many—who passionately defend Bonnie Parker and claim that she never fired a gun at any point during the Barrow Gang reign of murder.

Protestations of Bonnie's alleged innocence are, for the most part, strictly teleological in nature, rather than accurate assessments of contemporary perspectives and evidence. They are also, more often than not, heavily influenced by romanticized popular culture and media depictions of the pair. It is true that Clyde Barrow introduced Bonnie to robbery and murder, activities which she took to with enthusiasm according to numerous eyewitnesses from across the country. In fact, on two occasions Clyde was known to have chastised her for shooting too quickly, thereby placing them in greater danger of getting caught. Bonnie had long been attracted to and reveled in the criminal lifestyle, and she showed no regard for the gang's many victims. She wrote numerous letters and poems demonstrating as much, repeatedly asserting her intention to continue their crime spree until death and insisting that she and Clyde would "go down together."

The truth is that they were not anti-establishment social anti-heroes standing up against banks and oppressive authorities and sharing their booty with the poor and oppressed like some sort of twentieth-century Robin Hoods. Their criminal careers predated the Great Depression by almost half a decade, and Clyde only robbed three banks during his eight-year criminal career. Under Clyde's hair-trigger leadership, the gang scraped by primarily by stealing cars and robbing individuals, families, and small independent businesses struggling to stay afloat, often murdering their prey or officers to avoid arrest. The simple fact was that they preferred to steal rather than work and to kill rather than risk being caught, as even Clyde's own sister and mother attested to after his death. At Eastham Prison Farm, Clyde once had a fellow inmate chop off his toe with an ax so he could get transferred out of work detail. Bonnie had dreamed of being a Broadway or movie star (she adored Myrna Loy); front page photos, stories, and her own published poetry provided her the fan base she had dreamed of as an impoverished West Dallas girl. She called the American people "her public."

But did Bonnie Parker actually pull the trigger at Grapevine? The physical, forensic, and eyewitness evidence from the time indicates that she did. The only sources for claims to the contrary were Barrow and Parker's families who were obviously not present at the scene and obviously not unbiased; a number of their family members—including both their mothers—were soon after convicted and sentenced to federal prison for aiding and abetting their fugitive relatives.



The contemporary evidence of Bonnie's culpability includes the clear and consistent testimony of eyewitnesses to those murders and the ballistics analysis that matched Bonnie's custom altered shotgun—a weapon she was frequently photographed with that was found in the death car after the ambush. Various published claims that William Schieffer's testimony was later "refuted" or "recanted" have failed to produce any contemporary evidence to support such contentions. Furthermore, Bonnie Parker was, in fact—and again, contrary to published claims—under indictment for the Grapevine murders before she died; original documentation of this fact recently resurfaced as part of an archival digitization project.

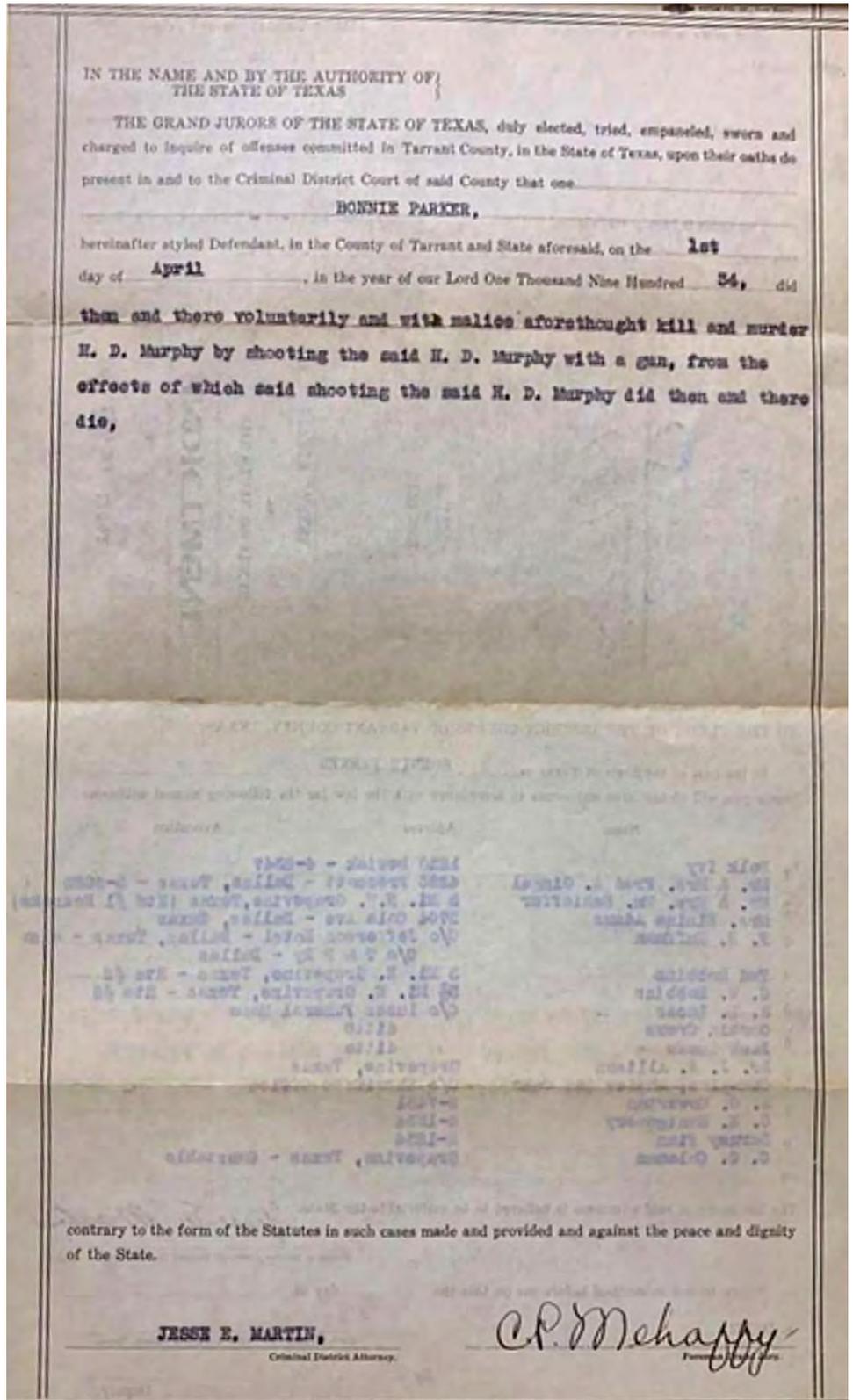
Flawed analysis and facts regarding the Grapevine murders also undermine the claims of Bonnie-apologists, such as assertions that the key eyewitness was "several hundred yards away" from the scene, leading them to erroneously conclude that he could not possibly have made a reliable identification. In fact, he had been as close as 10 yards to the killers at least at one point earlier in the day, and was—along with his two daughters—only 100 yards distant at the time of the murders. The three Schieffers provided investigating officers, the press, and later in court, consistent and detailed descriptions of the shooters and their activities leading up to and during the crime. As the people who were present the longest, were closest to and had the clearest view of the scene, their key eye-witness accounts should not be discarded in favor of claims by those with dubious objectives who were not present.

Finally, the focus on disputing Bonnie's role in Grapevine ignores her lengthy and violent criminal career: at least ten other shootings, two jail/prison breaks, eight to ten kidnappings, and more than a dozen armed robberies. Her crimes left six more men dead and eight wounded, and left widows and children to survive without their husbands and fathers in the midst of the Great Depression.

Arthur Penn's celebrated 1967 film, a well-deserved cinema landmark, used some real-life names but was never intended to document the real-life crimes and the very real human costs of the choices made by members of the Barrow Gang. Nevertheless, most modern Americans have received what little they *think* they know about the homicidal duo—on which the film was *very loosely* based—from that work of fiction. Still others have been misled by those seeking to exonerate Bonnie out of some misplaced sympathy, often influenced by an anti-establishment narrative.

Whatever the motivation, the effect is to erase the experiences, perspectives, and memory of the many victims and their families, thereby compounding the injustice inflicted upon them. In the words of E.B. Wheeler's widow, Doris, "[P]opular culture...made heroes of the gang who killed my husband . . . nobody ever thinks about those of us who were left behind." Doris lived on, to the age of 96, but "the anguish never ended."

On Easter Sunday 1934, E.B. Wheeler, Holloway Murphy, and their families



Among recently discovered court records in the Tarrant County Courthouse is this indictment of Bonnie Parker for the April 1, 1934 murders in Grapevine.<sup>2</sup>

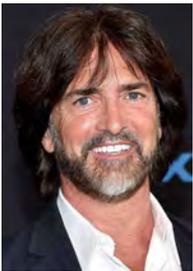
<sup>2</sup> A full article about the Tarrant County records is available at <https://www.houstonchronicle.com/news/houston-texas/houston/article/Original-Bonnie-and-Clyde-indictments-uncovered-13607661.php#photo-16911220>.

became the latest in a long line of victims left in the wake of the notorious Barrow Gang, more popularly known by the given names of their core members, Bonnie and Clyde. The infamous duo chose their own path to destruction, which would end in a hail of bullets less than two months later. It was a premeditated choice they often bragged about to family and friends, and even in metrical composition.

Wheeler, Murphy, and the eleven other murder victims and their families made no such choice. As a Wheeler family member recently expressed on social media: "They murdered [Wheeler] and his partner in cold blood. I don't care how they died, as long as they are dead. They deserved every bullet hole in their bodies." Eighty-five years after the murders of Edward Wheeler and Holloway Murphy, their families continue to feel their loss, as do the many other victims, and their pain should never be forgotten.



**JODY EDWARD GINN** *is the Executive Director of the Texas Rangers Heritage Center in Fredericksburg. Dr. Ginn, who holds a Ph.D. in American History from the University of North Texas, worked as the historical consultant for publicity on Netflix's recent blockbuster film, The Highwaymen (starring Kevin Costner and Woody Harrelson, about the men who tracked down and killed Bonnie and Clyde), and has numerous refereed publications on a variety of Texas history topics to his credit.*



**JOHN FUSCO** *is an American screenwriter, producer, and television series creator born in Prospect, Connecticut. His screenplays include Crossroads, Young Guns, Young Guns II, Thunderheart, Hidalgo, Spirit: Stallion of the Cimarron and The Highwaymen. He is also the creator of the Netflix series Marco Polo.*

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# East Texas Troubles: Governor Allred and His Rangers Defy Jim Crow<sup>1</sup>

By Jody Edward Ginn, Ph.D.



Governor Jimmy Allred. Photo courtesy of Montague County Historical Commission.

James V Allred—no period after V, because that was his full middle name—succeeded the notorious Miriam A. “MA” Ferguson as Governor of Texas in January 1935. Having built his legal and political career as a prosecutor in Wichita Falls and as the youngest Attorney General for the State of Texas, Allred took the rule of law to heart. As an FDR New Deal progressive in a conservative state, he also believed that ALL Texans were entitled to due process and protection by the state from criminal victimization, regardless of race. Therefore, when the newly elected Governor learned from his longtime Assistant Attorney General, Edward Aubrey Clark of San Augustine, that Clark’s hometown had been

overtaken by a criminal gang who built their power exploiting Jim Crow limitations on African American Texans’ access to the courts, he immediately dispatched his own newly minted Rangers to restore order and bring the culprits to justice.

Depoliticizing, modernizing, and professionalizing state law enforcement were key components of Allred’s gubernatorial campaign, and once in office he began overhauling the Texas Rangers. He started by expelling all but three of the Ferguson-era Rangers and revoking the commissions of every single Special Ranger in the state, estimated to have been as many as five thousand during Ma Ferguson’s final term. Allred then appointed only experienced and trusted lawmen to fill the Ranger ranks. The Allred Rangers’ effort to bring about a reckoning for the gang on behalf of their victims, both black and white, became known as the “clean-up” of San Augustine.

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<sup>1</sup> This article is excerpted and revised with permission from the author’s book, *East Texas Troubles: The Allred Rangers’ Cleanup of San Augustine* (Norman: University of Oklahoma Press, 2019).

In short order, the Allred Rangers' clean-up became an expansive, eighteen-month long investigation involving hundreds of crimes committed by dozens of criminals and resulting in several hundred years of combined prison sentences adjudicated.

Prior to the arrival of the Allred Rangers, the gang became so brazen as to carry out assaults and assassinations in broad daylight and in full view of the public—including severely beating a U.S. Secret Service agent at the local fairgrounds, in front of hundreds of onlookers. During one of the crowded weekend shopping days before Christmas in 1934, a shootout in front of the Thomas hardware store, right on the town square, claimed four lives and finally motivated local white community leaders to seek state intervention. Shortly thereafter, journalists became aware of the “troubles,” which they dubbed the “San Augustine Crime Wave.”



Texas Rangers badge. Image courtesy of the Texas Ranger Hall of Fame and Museum.

Founded on thousands of pages of primary source documents, *East Texas Troubles* chronicles the events leading up to and taking place throughout the Allred Rangers' cleanup of San Augustine. The backbone of that historical record is six trial transcripts preserved in the Texas Court of Criminal Appeals Records at the Texas State Library and Archives. Three of those case files record events that fly in the face of widely accepted notions regarding Texas Rangers' interactions with minority citizens during that era.

In 1935 and 1936, “behind the pine curtain” in the heart of East Texas, three all-white juries found white defendants guilty of felony crimes against African American victims. Those convictions are all the more notable for the time and place because they were based exclusively on the word of black victims and witnesses, who testified that the unprecedented prosecutions were the product of investigations by Texas Rangers sent by the newly elected Governor Allred.

The Allred Rangers found the circumstances to be every bit as dire as they had been warned. Captain James W. McCormick, a veteran peace officer with decades of experience in some of the most violent boomtowns of early twentieth-century Texas, described the state of affairs in San Augustine as “the worst situation . . . that I have ever been in,” adding that “a gang of criminals, backed by officers and others . . . were in complete control.” He further noted that at first the Rangers “were unable to get witnesses to inform against members of the gang . . . as the good people were afraid.” Allred Ranger Dan J. Hines, who had also served as an undercover Special Ranger in oil boomtowns, reported that the information locals provided about the “depredations of the gang that has operated here for the past several years” was “almost unbelievable.”

One of the most commonly repeated anecdotes of the Allred Rangers' arrival in San Augustine is about Ranger Hines verbally excoriating Wade McClanahan Jr., after he approached Hines on the courthouse square wearing a pistol and carrying his Special Ranger commission from Ferguson. Hines confiscated the commission and warned Wade Jr. to leave his pistol at home, and he possibly intimated that McClanahan and his associates should just get out of town



San Augustine Courthouse in the 1930s. Photo by Russell Lee, courtesy of the Library of Congress Prints and Photographs Division.

completely. In keeping with their show of force, the Allred Rangers frequently practiced their marksmanship in public, shooting bottle caps thrown into the air or mounted on tree trunks and empty cans on the side of the road from moving cars. They were also careful to watch each other's back, and often kept their own backs covered by leaning against a wall with their rifles propped alongside them, so that the local gangsters would have no opportunity to sneak up on them from behind when they were alone.

Another of the Allred Rangers' attempts to intimidate members of the McClanahan-Burleson gang occurred in William M. Wade's City Café. Wade had been one of the people who met in Jasper and requested state assistance after the December 1934 shoot-out on the square, as well as a witness for the Secret Service operative who was assaulted at the local fairgrounds. McCormick, Hines, and Leo Bishop were sitting and visiting with Wade, when Wade McClanahan Sr. walked through the door. McClanahan approached the Rangers and stated that he had come to "give [him]self up." McCormick replied, "Well, it's about time, seeing as how you've been mistreating these people for so long." McCormick then instructed that either Hines or Bishop take McClanahan to the jail, in response to which the two Rangers began arguing playfully between themselves. Each admonished the other, "You better take him, 'cause I'll probably just shoot him on the way." While the details of such anecdotes vary depending on the source, there is no

debate that the Allred Rangers intended to take control of the town by brute force if necessary to wrest the town from the control of the McClanahan-Burleson gang.

McCormick further regaled the press with an anecdote explaining why he preferred to carry a single-action pistol, so that he could use it as a club, by “slap[ping a man] below [his cheekbone]” because, “that’ll smash his cheekbone, but it won’t kill him.” In regard to his methods in initiating the San Augustine clean-up, McCormick stated, “The first thing we did . . . was to get a line on one of the killers [and] . . . we kicked him across the street to the jail” (a potential reference to the Wade McClanahan Sr. surrender). He went on to boast, “then we went roughshod after the rest of them.” The Allred Rangers’ intimidation tactics quickly achieved the desired effect, and the Burlesons, McClanahans, and many of their associates left town. Some of them complained to the press and the courts, acknowledging that fear of the Allred Rangers had driven them out of the community.

Shortly afterward, victims and witnesses began cooperating and coming forward in droves to file complaints for virtually every sort of crime, including theft, assault, “moonshining,” “highway robbery,” “white slavery,” counterfeiting, election fraud, and murder. Allred’s Rangers also actively pursued interviews with victims whose names they learned from witnesses and informants, particularly African American tenant farmers who were uniquely vulnerable to the schemes and violence of the murderous gang.

Allred’s Rangers investigated each lead and sought out victims and witnesses to learn as much as they could about what had transpired in the years preceding their arrival. They sought justice on behalf of black victims, poor white victims, and those with checkered pasts. Although it remains unconfirmed, the Allred Rangers likely had the aid of a member of the African American community. Many members of that community who recall those events insist that their friends and relatives would have been reticent to speak openly with unknown white lawmen and thus that the Allred Rangers would have needed a liaison from their community to persuade victims and witnesses to cooperate.

The most concrete evidence that Allred’s Rangers had an active working relationship with a member of the black community in San Augustine is a set of photographs of Dan Hines and Leo Bishop that can be found in both Rangers’ personal papers. The photos depict the two Rangers with a young black man and give the appearance of a relationship that was friendly but also professional. In the photos, the Rangers are smiling when they are facing the camera or looking at the young man, who is wearing and carrying firearms alongside the Rangers, sometimes posed in a firing position. Bishop’s copy of one of the images, which shows the young man with Hines, has a handwritten label at the bottom that reads “Two Rangers.”

It was likely that such a unique relationship for that time and place enabled the community of San Augustine to buck an otherwise intractable Jim Crow culture and bring the McClanahan-Burleson gang to justice. Local blacks and whites joined with the Allred Rangers to defeat the local mobsters who had terrorized them for years. The conviction of white gang members and associates by white juries based on the testimony of black victims and witnesses at the height of the Jim Crow era was the product of trust established first between black San Augustinians and

the Rangers. That trust was reciprocated by white jurors who refused to tolerate the gang's depredations any longer and chose to defy Jim Crow norms in order to restore law and order, and affirmed by the (then, all white male) judges of the Texas Court of Criminal Appeals.

The Allred Rangers had so quickly and effectively reversed the tide in San Augustine that locals soon held the first of several heavily attended public events to show their appreciation. Numerous publications around the state reported extensively on those events. The *Dallas Morning News* noted: "In striking contrast to other cities whose peace officers have resented the intrusion of Texas Rangers on their illicit home-town industries, San Augustine will show the State officers true East Texas hospitality Friday night." Considering that just two months earlier most area residents were avoiding the town center altogether, widespread participation in such an event demonstrates the community's dramatic turnaround.

Within months of the Allred Rangers' arrival, San Augustine's "reign of terror" was over, the effort to "clean up" the town was well underway, and its success would prove to be a key element in the Rangers' renaissance under the auspices of the new Texas Department of Public Safety.



Texas Ranger Dan Hines (right) poses with a young African American man during his time in San Augustine. Photo courtesy of the Cherry Hines Harrison family.



**JODY EDWARD GINN** is the Executive Director of the Texas Rangers Heritage Center in Fredericksburg. Dr. Ginn, who holds a Ph.D. in American History from the University of North Texas, has numerous refereed publications on a variety of Texas history topics to his credit, including the above-cited *East Texas Troubles: The Allred Rangers' Cleanup of San Augustine* and *Palmito Ranch: From Civil War Battlefield to National Historic Landmark* (coauthor).

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# 24th Annual John Hemphill Dinner

U.S. Supreme Court Justice Neil M. Gorsuch Was Guest Speaker

By Marilyn P. Duncan  
Photos by Mark Matson



**A**n interview with the Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States, was the highlight of the Society's 2019 John Hemphill Dinner. Almost five hundred appellate attorneys, judges, their spouses, and other members of the community filled the Grand Ballroom of the Four Seasons Hotel in Austin on Friday, September 6, to enjoy dinner and the evening's program, which also included a memorial and two award presentations.

The dinner program began with a welcome by outgoing Society President Marcy Greer, followed by the Pledge of Allegiance led by the Bedichek Junior Marine Corps. This is the eighth year that an honor guard from Austin’s Bedichek Middle School has led the flag ceremony at the Hemphill Dinner.



Left: 2018-19 Society President Marcy Greer greets dinner guests and thanks the table sponsors.  
Right: Members of the Bedichek Middle School Color Guard lead the Pledge of Allegiance.

The Texas Center for Legal Ethics then presented the 2019 Chief Justice Jack Pope Professionalism Award to attorney Charles “Skip” Watson. TCLE Executive Director Jonathan Smaby announced the award, which recognizes outstanding service and integrity in the field of law. Chief Justice Nathan Hecht presented the award on behalf of TCLE. (See below on p. 88 for a transcript of Skip Watson’s moving tribute to Chief Justice Pope.)

Next on the program was a memorial tribute to the late Texas Supreme Court Justice C.L. Ray by the Hon. Raul A. Gonzalez. Justice Ray, who died on



Chief Justice Nathan Hecht (left) stands with Pope Award recipient Charles “Skip” Watson and Judge Irma Ramirez.

December 8, 2018, was lauded as a man of great warmth and humor “who cared deeply about the law, about justice, and about people.”

Warren Harris, representing the TSCHS Fellows, reported on the Fellows’ accomplishments over the past year. He noted that the third book in the Fellows-sponsored Taming Texas series, *The Chief Justices of Texas*, will be released early in 2020, and that the Taming Texas Judicial Civics and Court History Project continues to expand to other Texas cities.

Marcy Greer presented this year’s President’s Award for Outstanding Service to David Furlow, Society Trustee, Fellow, and Executive Editor of the *TSCHS Journal*. In announcing the award, President Greer listed David’s innumerable contributions to the Society, including, in addition to his *Journal* leadership, his spearheading of the World War I Commemoration in November 2018, his continuing role in organizing the Society’s session at the Texas State Historical Association Annual Meetings, his role in producing a collaborative legal history issue of *Texas Heritage Magazine*, and his successful initiative to nominate the *Journal* for the prestigious Excellence Award from the American Association for State and Local History.

The keynote program for the event was an informal conversation between Texas Supreme Court Chief Justice Nathan Hecht and Associate Justice Gorsuch. The discussion focused on many of the themes developed in Justice Gorsuch’s new book, *A Republic, If You Can Keep It*— the importance of affordable access to the courts, the role of civics education, and the need for civility in public life. Each attendee at the Hemphill Dinner received a complimentary autographed copy of the book, which was just being released by Penguin Random House (see p. 91 of this issue for the book announcement).

To conclude the evening’s program, Justice Paul Green, the Society’s liaison with the Texas Supreme Court, administered the oath of office to 2019–20 Society President Dylan Drummond.



Top: The Hon. Raul Gonzalez pays tribute to his late friend and Supreme Court colleague, Justice C.L. Ray. Bottom: Society Fellow Warren Harris gives the audience an overview of the Taming Texas civics education project sponsored by the Fellows.



Top left: President Marcy Greer congratulates David Furlow, recipient of the 2019 President's Award. Top right: David Furlow poses with the award. Bottom two photos: Justice Neil Gorsuch touches on a range of topics during his on-stage conversation with Chief Justice Nathan Hecht.



Justice Paul Green (right) gives the oath of office to 2019-20 TSCHS President Dylan Drummond.



## **Acceptance Speech, 2019 Jack Pope Professionalism Award**

by Charles "Skip" Watson

We all know that no one person deserves this type of award. They've given me a couple of minutes to explain that I wouldn't be here if it wasn't for Jack Pope.

When I was thirteen, my speech teacher in the eighth grade gave our first assignment to interview a business person or professional about the importance of being able to speak persuasively in their profession. My father knew, and was friends with, an elder in another congregation, and he suggested I call that gentleman and see if he would speak to me. So, on the first Sunday afternoon of the school year, I was in Jack Pope's screened-in porch, with him saying, "I've given a great deal of thought to your question, and this is what I want to say to you."

He said, "The public sees two kinds of lawyers, the kind that speak in courtrooms that they see on TV, and the kind that think, that are in offices and do their wills. But to be a good lawyer, you have to do both. You have to have something worth

listening to, and it doesn't do any good to be the brightest mind in the room if you can't communicate it."

Then he said, "The public doesn't know that there's a third kind of lawyer. Fewer, but some, and those are lawyers with such wisdom and integrity that other lawyers seek their counsel. They are called lawyers' lawyers."

Then he paused, and I thought, oh my goodness it's time for me to interview, and I flipped open my steno pad looked at my first question, and had my first deer in the headlights moment in front of an appellate judge. My first question was... I was thirteen..., "how do you judge a pellet?" My second question was "why do you judge pellets?"

He saved me by beginning to talk, and he said the words that I will never forget. He said, "Occasionally, very rarely, a lawyer appears before me that understands the law so well and how his facts fit the principles that shape the law, that he actually makes me a better judge."

I only had one question after that and it was the only intelligent thing I said the whole day. I said, "Are there judges' judges?" He got that little grin on the one side of his face that he would get, and looked over those glasses with I swear a twinkle in his eye, then said, "Why don't you come back and tell me someday."

Judge Pope, I'm here to tell you, there are lawyers' lawyers. I'm looking at a room full of them. And you have helped me be the best lawyer I can be by making me do my best work, and you have befriended me while being adversaries, and I thank you for that. Second, there are judges' judges. We are in a golden era when this great Court is full of them. They really want to get the law right.

Now we, none of us, will ever know if we ascend to that ultimate compliment from Judge Pope of somebody putting down an opinion and saying he or she made me better. But the point is, we try. I don't know, I'll never know, if that's going to happen, but I also don't know why I'm getting an award just for doing what seems the right thing to do.

But I do appreciate you giving me these few moments to try to express what it means to me, just to hear my name uttered in the same breath with Jack Pope.

Thank you.

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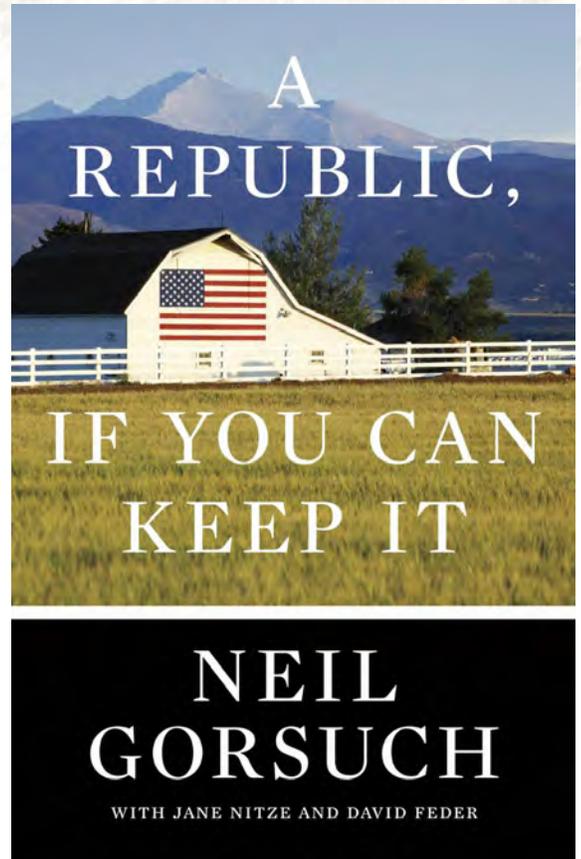
# *A Republic, If You Can Keep It* by the Hon. Neil M. Gorsuch

**NEW YORK TIMES BESTSELLER** • U.S. Supreme Court Associate Justice Neil M. Gorsuch reflects on his journey to the Supreme Court, the role of the judge under our Constitution, and the vital responsibility of each American to keep our republic strong.

As Benjamin Franklin left the Constitutional Convention, he was reportedly asked what kind of government the founders would propose. He replied, “A republic, *if you can keep it.*” In this book, Justice Neil Gorsuch shares personal reflections, speeches, and essays that focus on the remarkable gift the framers left us in the Constitution.

Justice Gorsuch draws on his thirty-year career as a lawyer, teacher, judge, and justice to explore essential aspects our Constitution, its separation of powers, and the liberties it is designed to protect. He discusses the role of the judge in our constitutional order, and why he believes that originalism and textualism are the surest guides to interpreting our nation’s founding documents and protecting our freedoms. He explains, too, the importance of affordable access to the courts in realizing the promise of equal justice under law—while highlighting some of the challenges we face on this front today.

Along the way, Justice Gorsuch reveals some of the events that have shaped his life and outlook, from his upbringing in Colorado to his Supreme Court confirmation process. And he emphasizes the pivotal roles of civic education, civil discourse, and mutual respect in maintaining a healthy republic.



**A Republic, If You Can Keep It**

by Neil Gorsuch

Penguin Random House

September 2019

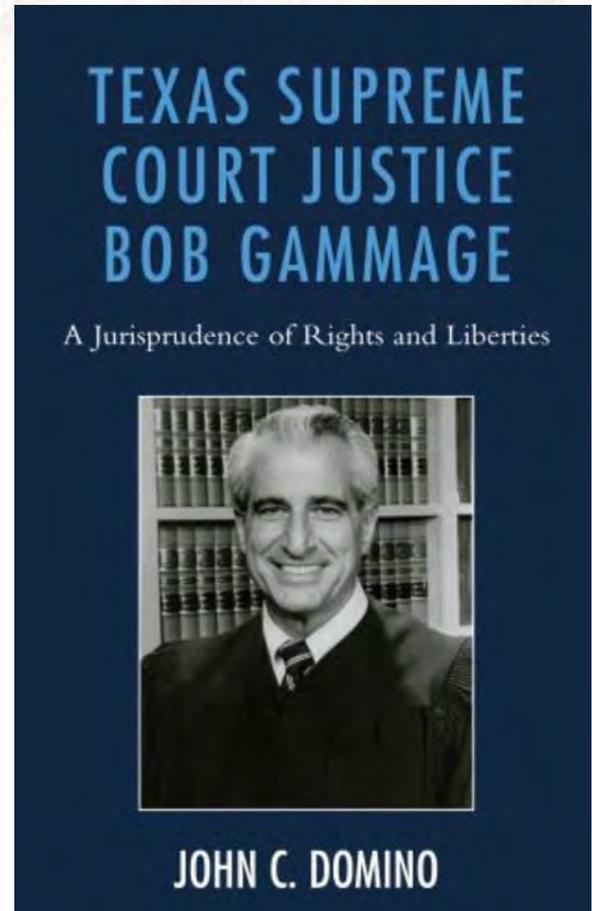
<https://www.penguinrandomhouse.com/books/586597/a-republic-if-you-can-keep-it-by-neil-gorsuch-with-jane-nitze-and-david-feder/>

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*Texas Supreme Court Justice Bob Gammage:  
A Jurisprudence of Rights and Liberties*  
by John C. Domino

**P**rofessor John C. Domino of Sam Houston State University examines Texas Supreme Court Justice Bob Gammage's progressive jurisprudence during the most tumultuous period in Texas judicial history. This era witnessed numerous seismic shifts, including the manner in which judicial campaigns were conducted, the rise of million-dollar judicial races, a dramatic change in the partisan and ideological composition of the Texas Supreme Court, the Court of Criminal Appeals, and most of the fourteen intermediate appellate courts, as well as the birth of the judicial reform movement in Texas.

Justice Gammage, who also served as a court of appeals judge, forged a solid liberal record arguing for robust individual rights, including the right to privacy, freedom of expression, due process, and equal protection, whether those rights were implied in the Texas constitution, rooted in an evolving common law, or set out in state and federal judicial precedent.



**Texas Supreme Court Justice  
Bob Gammage: A Jurisprudence of  
Rights and Liberties**

by John C. Domino

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# Justice Brett Busby Formally Sworn into Office by U.S. Supreme Court Justice Neil M. Gorsuch

By Dylan O. Drummond



With his family at his side, Justice Brett Busby (center) is administered the oath of office by U.S. Supreme Court Associate Justice Neil M. Gorsuch. Photo by Mark Matson.

**T**his past September 6th, Justice J. Brett Busby's ceremonial investiture was held in the Texas House of Representatives Chamber. Continuing the tradition of United States Supreme Court Justices swearing-in new Texas Supreme Court Justices at their formal investitures, Associate Justice Neil M. Gorsuch administered the oath.

A longtime justice on the Fourteenth Court of Appeals, Justice Busby was appointed to the Court earlier this year in March. Justice Busby is the first sitting Texas Supreme Court Justice to have clerked on the United States Supreme Court. His clerkship was spent in the chambers

of the late Associate Justices Byron White and John Paul Stevens. Justice Busby also clerked for Judge Gerald Bard Tjoflat of the Eleventh Circuit U.S. Court of Appeals. Judge Tjoflat, who spoke at the investiture, holds the federal record for service as an active federal judge after having been on the bench for a half-century. Justice Busby is a former Chair of both the Texas Bar Appellate Section and the Pattern Jury Charge Committee for the Business volume. He also currently serves as a Society Trustee.

Justice Busby's two children opened the ceremony by leading the U.S. and Texas pledges of allegiance. Fifth Circuit Judge and Society Trustee Jennifer Walker Elrod expertly sang the national anthem. Justices Gorsuch and Busby both delivered remarks at the ceremony. The event also served as the "swearing out" of former Court Justice Phil Johnson, to whose seat Justice Busby was appointed.

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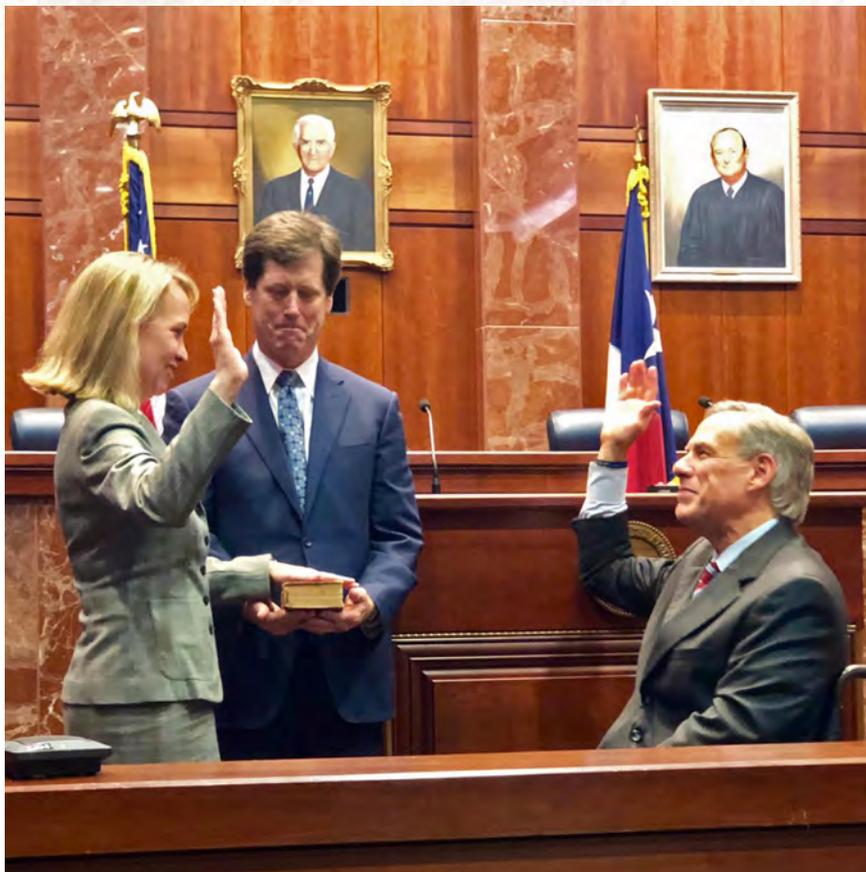
# Justice Jane Bland Joins the Court

By Dylan O. Drummond

**A**t 3:00 p.m. on September 11th, longtime First District Court of Appeals Justice Jane Bland was sworn-in by Governor Greg Abbott as the newest Justice on the Texas Supreme Court. Justice Bland succeeds former Justice Jeff Brown, who was appointed and confirmed to the Southern District of Texas, and was sworn-in to the federal district court at the same ceremony.

Prior to joining the Supreme Court, Justice Bland served on the First District Court of Appeals for fifteen years, and served for over six years on the Harris County trial bench. She is board certified in both civil appellate and civil trial law by the Texas Board of Legal Specialization. A member of the American Law Institute, Justice Bland also chairs the Oversight Committee for the Texas Pattern Jury Charges, and is a member of the Texas Supreme Court's Rules Advisory Committee.

Justice Bland has been a member of the Texas Supreme Court Historical Society's Board of Trustees since 2017, and, along with her husband Doug Bland, is a Society Greenhill Fellow.



Justice Jane Bland takes the oath of office from Governor Greg Abbott as her husband, Doug Bland, assists.

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# Judge Jeff Brown Sworn-In to the Southern District of Texas

By Dylan O. Drummond

On September 11th at a ceremony where Justice Jane Bland was sworn-in to Justice Jeff Brown's former seat on the Texas Supreme Court, Judge Brown was invested by Chief Justice Nathan Hecht to his new bench in Galveston, Texas on the Southern District of Texas. President Donald Trump nominated Brown to the post last spring, and the Senate approved the appointment in July.

Justice Brown had served on the Texas Supreme Court since 2013. Before joining the Supreme Court, he served as a justice on the Fourteenth District Court of Appeals in Houston and, before that, as a judge on the Fifty-fifth District Court in Harris County. Judge Brown also clerked for Justices Jack Hightower and Greg Abbott on the Texas Supreme Court. He was first elected to the Texas Supreme Court Historical Society's Board of Trustees in 2007, and continues to be an active member of the Board.



Judge Jeff Brown, accompanied by his wife Susannah, takes the oath of office from Chief Justice Nathan Hecht.

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# Court Clerk Blake Hawthorne to be Honored with Appellate Justice Award

## *Hawthorne Follows Justice Anthony Kennedy as Latest Recipient*

By Osler McCarthy

**A** leading national legal organization will present Blake A. Hawthorne, the Texas Supreme Court's Clerk of the Court, with the Kathleen McCree Lewis Award for Appellate Justice at its annual conference in April 2020.

Houston lawyer Kevin Dubose, treasurer of the American Academy of Appellate Lawyers, informed Hawthorne of the honor in August, telling him the invitation-only professional group was recognizing Hawthorne's "trail-blazing" work in transforming court records to electronic format.

"We have known for years that Blake's significant contributions to streamlining the Texas Supreme Court's records have significantly benefited not only lawyers but the public," Chief Justice Nathan L. Hecht said, "but this award confirms the national reach of what he has done."



Photo courtesy of the Texas Supreme Court.

Dubose said the American Academy of Appellate Lawyers provides its members opportunities to compare court practices. "Those comparisons have made it clear that Texas appellate courts have been years ahead of other jurisdictions in terms of electronic filings, digitalized records, and other advanced technological features," he said. "The Academy recognized that much of the credit for those advancements goes to ... Blake Hawthorne."

Hawthorne served in 2015-16 as president of the National Conference of Appellate Court Clerks.

The Kathleen McCree Lewis Award, named for a late president of the appellate-lawyers organization, honors people or groups for exceptional recent contributions to appellate practice, according to the group's website. Recipients may be individual judges, entire courts, court administrators, law professors, or active or retired lawyers.

The last recipient of the periodic award, given in 2016, is retired U.S. Supreme Court Justice Anthony M. Kennedy.

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# The *Journal* Honored with Prestigious Award of Excellence

By the TSCHS Journal Staff

The American Association for State and Local History's Leadership in History Awards Committee conferred its Award of Excellence in History on the Texas Supreme Court Historical Society during its 74th Annual Meeting in Philadelphia on August 30. The award honored the Summer 2018 issue of the *Journal*, which examined the history of African American judges, justices, and magistrates from 1642 to the present, and nationwide, from colonial Maryland to modern-day Texas.



Left to right: AASLH Leadership in History Award Committee Chair John Fleming, former Texas Supreme Court Justice Dale Wainwright, Society Executive Director Sharon Sandle, *Journal* Managing Editor Marilyn Duncan, *Journal* Executive Editor David A. Furlow, and AASLH President and C.E.O. John R. Dichtl. Photo by AASLH.

During AASLH's Annual Meeting, we participated panel presentations that addressed new ways to preserve and present history through the publication of books, magazine articles, and journals. Books about the history of sports, podcasts, and publications for young adults can awaken interests in history and bring new members to historical societies. Metrics can enable an organization's leaders to ascertain the success or failure of these techniques and strategies.

Right: The AASLH Annual Meeting occurred in the heart of historic Philadelphia. Photo from AASLH website.

Below left: The Museum of the American Revolution featured exhibits about the birth of American constitutional government that offer insights about Texas law.

Below right: Marilyn Duncan, left, and Sharon Sandle, right, stand before the John Morton Memorial Building at the American Swedish Historical Museum in Philadelphia.



# CREATING REPUBLICS

How do you create a government from scratch? In 1776, Americans answered this question by adopting the first written constitutions in the history of the world.

In May 1776, the Continental Congress urged all the colonies to suppress royal authority. It further advised the creation of new republican forms of government, ones that placed “all the powers of government...under authority of the people of the colonies.”

Even before the July 4th Declaration of Independence, several colonies had adopted new written “state” constitutions. By 1780, 11 states had adopted written constitutions, while Connecticut and Rhode Island adapted their existing colonial charters.

Thomas Jefferson thought that creating republican state constitutions was “the whole object of the present controversy.”

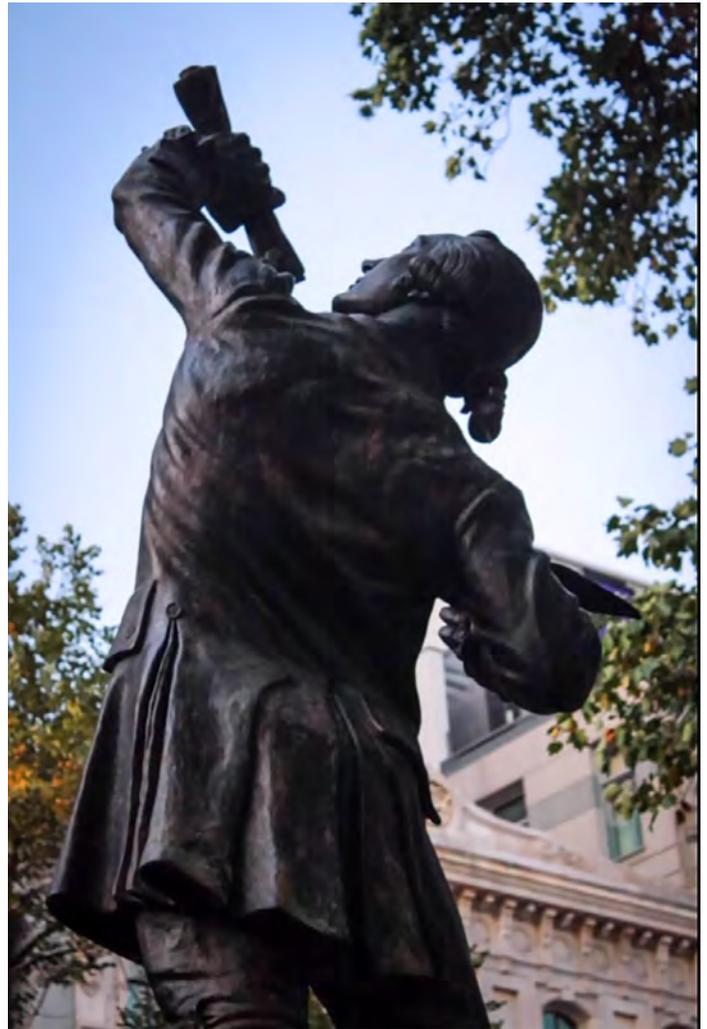
In 1787, the experience of writing and living under these state constitutions helped Americans write an equally innovative Federal Constitution.





Top left: A sign told the story of the governor of America's least-known colony, New Sweden. Top right: A Pennsylvania historical sign summarized the history of the New Sweden colony. Bottom: The American Swedish Museum preserved artifacts from New Sweden, the Swedish colony that later developed into the states of Delaware, Pennsylvania, and New Jersey, including this immigrant's traveling chest of 1655.



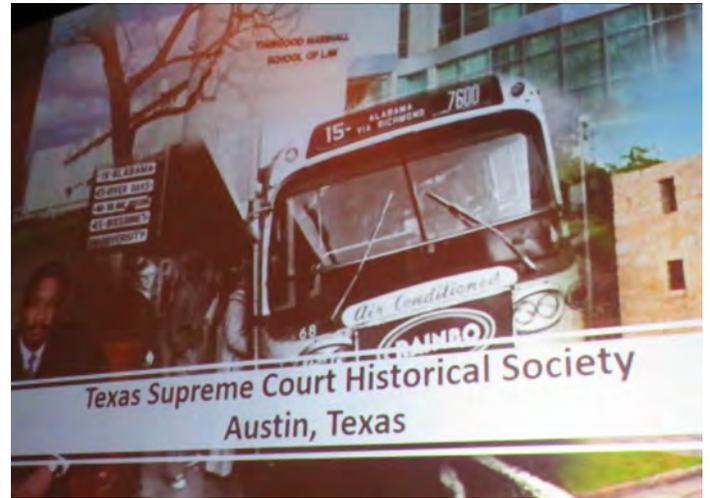
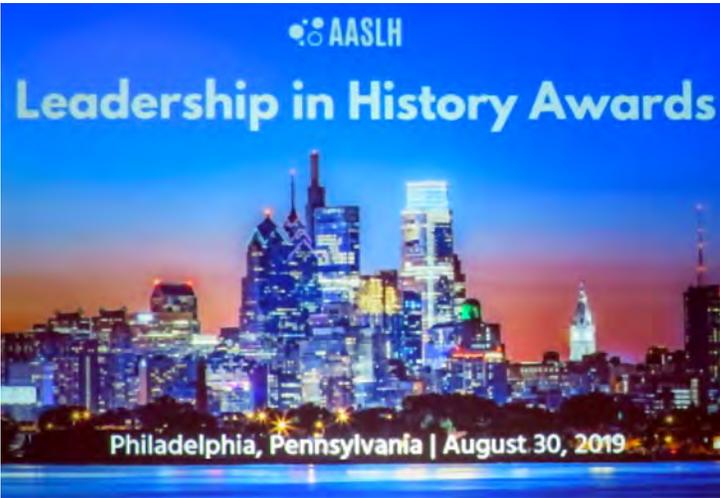


The Liberty Bell and Philadelphia's "Signer" statue (honoring those who signed the Declaration of Independence) commemorated the early history of American self-government.  
Photos by Sharon Sandle. "Signer" sculpture by Evangelos Frudakis.

While visiting Philadelphia historic sites and museums, we discovered that Sharon was a serious photographer as well as the head of Texas Bar Books. She shared several compositions with us, two of which we present here for the first time.

We attended the Historic House Museum Affinity Luncheon to learn about the innovative ways the curators of house museums can offer new insights into and understanding of traditional history and biography. One month later, we put some of those insights to good use when we visited and photographed the Jourdan-Bachman Pioneer Farms in Austin to illustrate Professor Jim Paulsen and his daughter Diana's coverage of Texas Supreme Court Justice James Hall Bell's poetry.

"Each year the awards program bestows this honor to organizations and individuals who model best practices and innovative work in our field," said Nicholas Hoffman, AASLH National Awards Chair and Managing Director of Education and Visitor Experience at the Missouri Historical Society. "These fifty award winners show the importance of using history to address contemporary issues and working with communities to share history relevant to them."



Top left: AASLH panel presentation offered innovative ideas for publishing books and journals about American history. Top right: The Historic House Museum Affinity Luncheon presented valuable information about the ways house museums can supplement traditional sources of history and biography. Middle left: AASLH presented its Excellence in History Award to the Society during its Leadership in History Awards Banquet at its Annual Meeting in Philadelphia. Middle right: AASLH notices elevated the Society's status as a nationally-recognized historical organization. Bottom: Attendees enjoyed the awards dinner. Photos by David A. Furlow.

# Congratulations

## to the 2019 Leadership in History Award Winners

### ARKANSAS

**Arkansas Declaration of Learning** for the project *Arkansas Declaration of Learning – Year Three and Four*.

### COLORADO

**Sheila Goff** for a distinguished career nurturing intercultural partnerships and championing the rights of Native Americans in museums.

**History Colorado** for the project *History Colorado collections on view in Silverton, Colorado*.

### CONNECTICUT

**Connecticut State Library** for the project *Remembering World War One: Sharing History/Preserving Memories*.

**Fairfield Museum and History Center and Connecticut Institute for Refugees and Immigrants** for the project *An American Story: Finding Home in Fairfield County*.

**Westport Historical Society** for the exhibit *Remembered: The History of African Americans in Westport*.

### DISTRICT OF COLUMBIA

**Chris Myers Asch and George Derek Musgrove** for the publication *Chocolate City: A History of Race and Democracy in the Nation's Capital*.

### FLORIDA

**Heather Schoenfeld** for the publication *Building the Prison State: Race and the Politics of Mass Incarceration*.

### GEORGIA

**Georgia Historical Society** for the publication *Georgia Historical Quarterly 2017 Centennial Volume*.

### IDAHO

**Idaho State Historical Society** for the exhibit *Idaho: The Land and Its People*.

### INDIANA

**Benjamin Harrison Presidential Site** for the multimedia project *New Century eCollection Initiative*.

**Conner Prairie and Asante Children's Theatre** for the project *Giving Voice: African-Americans' Presence in Indiana's History*.

**Porter County Museum** for the exhibit *Do Your Part! A County Responds to the First World War*.

### KANSAS

**Johnson County Museum** for the exhibit *The Turbulent Twenties*.

### KENTUCKY

**Marjorie Guyon, Patrick Mitchell, and Nikky Finney** for the project *I Was Here*.

### LOUISIANA

**Louisiana State Museum and Goat in the Road Productions** for *The Stranger Disease*.\*

### MAINE

**Mount Desert Island Historical Society** for the publication *Chebacco, volume XIX (2018)*.

### MASSACHUSETTS

**Freedom's Way Heritage Association** for the public program *Declaring Independence: Then & Now*.

### MICHIGAN

**Michigan History Center** for the exhibit *States of Incarceration*.

**Pigeon River Discovery Center** for the Pigeon River Country Discovery Center exhibits.

### MINNESOTA

**Aurora St. Anthony Neighborhood Development Corporation, 106 Group, Historic Saint Paul, CultureBrokers, and City of Saint Paul** for the publication *Saint Paul African American Historic and Cultural Context*.

**Kacie Lucchini Butcher and Denise Pike** for the exhibit *Owning Up: Racism and Housing in Minneapolis*.

**Seward Neighborhood Group** for the publication *A People's History of the Seward Neighborhood*.

### MISSOURI

**Christopher Alan Gordon and the Missouri Historical Society** for the publication *Fire, Pestilence, and Death: St. Louis, 1849*.

**Kansas City Public Library** for the multimedia project *The Pendergast Years: Kansas City in the Jazz Age and Great Depression*.

### MONTANA

**Montana Historical Society** for the project *Montana and the Great War*.

### NEVADA

**LVCVA's Las Vegas News Bureau and Nevada State Museum, Las Vegas** for the project *Las Vegas Lineup*.

### NEW HAMPSHIRE

**Valerie Cunningham** for a distinguished career preserving the African American history of New Hampshire.

### NEW MEXICO

**Museum of the American Military Family & Learning Center** for the multimedia project *Love Song for the Dead*.

**Museum of Indian Arts and Culture** for the exhibit *Lifeways of the Southern Athabaskans*.

### NEW YORK

**Brooklyn Historical Society** for the *Young Scholars* program.

**New-York Historical Society** for *The Citizenship Project*.\*

**Niagara Falls Underground Railroad Heritage Commission Inc.** for the exhibit *One More River to Cross: the Niagara Falls Underground Railroad Heritage Center*.

**Susan Goodier and Karen Pastorello** for the publication *Women Will Vote: Winning Suffrage in New York State*.

**Three Village Historical Society** for the *Founders Day* project.

### NORTH CAROLINA

**University of North Carolina Greensboro Public History Program** for the exhibit *Etched in Stone?: Governor Charles Aycock and the Power of Commemoration*.\*

### OHIO

**Stan Hywet Hall and Gardens and Archival Services at the University of Akron** for the project *Lost Voices of the Great War: Summit County in the First World War*.

### OKLAHOMA

**Tulsa Historical Society & Museum** for the exhibit *Transmitting Tulsa: On-Screen & Over the Airwaves*.

### OREGON

**Oregon Historical Society** for the publication *Oregon Historical Quarterly*, "Oregon's Manila Galleon" special issue (summer 2018).

### PENNSYLVANIA

**Cumberland County Historical Society** for the *Community Heart & Soul Project*.

**Museum of the American Revolution** for the exhibit *Revolution Place*.

**Senator John Heinz History Center** for the project *We Can Do It: WWII Traveling Exhibit Outreach Project*.

### RHODE ISLAND

**Lippitt House Museum** for the program *Back to the Work: Encounters with Historical and Contemporary Voices*.

**Little Compton Historical Society** for the project *Remember Me: Little Compton's 46 Historic Cemeteries*.

### TEXAS

**Texas Supreme Court Historical Society** for the publication *Journal of the Texas Supreme Court Historical Society*.

### WASHINGTON

**Jacqueline E.A. Lawson** for her tireless dedication to preserving the African American history of Washington.

### WEST VIRGINIA

**Wiles Hill Alumni Association Foundation and the West Virginia University Public History Program** for the exhibit *Up on the Hill: A Century of Memories at a Neighborhood School*.

### WISCONSIN

**Monroe County Local History Room and Museum** for the exhibit *Monroe County A to Z*.

**Neville Public Museum** for the exhibit *Delay of Game: Experiences of African American Football Players in Tittletown*.

\*Recipient of a HIP (History in Progress)

PHILADELPHIA 2019

The Society won the only AASLH Excellence in History Award conferred upon a Texas organization. Photo by David A. Furlow.

Several hundred people, including professional historians and award recipients from fifty state and local historical societies and organizations from thirty-two states and the District of Columbia, participated in AASLH's Excellence in History Awards Banquet.

AASLH Leadership in History Award Committee Chair John Fleming and AASLH President and C.E.O. John R. Dichtl jointly presented the Excellence in History Award to our Society's representatives. The Society's award was the only one honoring a Texas organization.



AASLH Annual Meeting Director Aja Bain advised the Society of the award's significance last May, writing that, "The AASLH Leadership in History Awards is the nation's most prestigious competition for recognition of achievement in state and local history. We congratulate you for the work that has brought this honor."

AASLH leaders organized the Leadership in History Awards Program in 1945 to build standards of excellence in the collection, preservation, and interpretation of state and local history throughout

America. Each nomination is peer-reviewed by AASLH's state captains. Final awards are decided by the Awards Committee, comprised of AASLH's fourteen regional representatives and the National Awards Chair. AASLH's Award of Excellence recognizes outstanding history programs, projects, and people when compared with similar activities nationwide.

"I was amazed to see such a fascinating group of people making important aspects of American history available to the public," Justice Wainwright said. "And I was proud to see AASLH recognize the hard work and creativity the Journal represents on behalf of the Society."

AASLH Excellence in History Awards Committee members emphasized that the Journal's professional standards and its free availability to the public through the internet were important reasons for the award.

During his term as President, Justice Wainwright made this AASLH award possible by inspiring our *Journal* team to dedicate a special issue to the history of African American judges. His final President's Message appears in that issue, which was published in Summer 2018. Sharon Sandle and 2018-19 President Marcy Greer supported the Society's nomination at every step



of the process. In addition, Sharon's column titled "Recognizing the Paths and Accomplishments of Texas's African American Judges" set the tone for every article and feature that followed in the special *Journal* issue.

The Hon. Wallace B. Jefferson, former Texas Supreme Court Chief Justice, shared important life lessons gleaned from the example his father set for him, in "The Constitution Imparts Responsibilities as Well as Rights."



Top, left to right: Marilyn Duncan, Justice Dale Wainwright, and Sharon Sandle enjoy dinner prior to the awards presentation. Bottom: Justice Dale Wainwright celebrated the Society's award with his colleagues afterwards. Photos by David A. Furlow.

Prairie View A&M author/scholar Michael Hurd provided a professional Texas historian's story of one judge's unprecedented accomplishments in "Texas Court of Criminal Appeals Judge Morris Overstreet," spotlighting the first African American elected to a statewide Texas office.

Attorney/historian John Browning contributed the most recent of his series of excellent historical articles with his biography-in-progress, "Chief Justice Carolyn Wright: A Profile in Excellence."

The Hon. Murry Cohen, First Court of Appeals Justice, and Virgie Mouton, Assistant Dean of the Thurgood Marshall School of Law in Houston, prepared complementary judicial biographies

of the same lion of the law—Justice Henry E. Doyle, the first African American Justice of a Texas Court of Appeals. Their personal recollections of Justice Doyle, along with the photos and other images they provided, offered new perspectives on one of Texas’s most important appellate judges.

The Hon. Andrew Edison, U.S. Magistrate Judge for the Southern District of Texas in Galveston, authored a discerning portrait of Senior U.S. District Court Judge Kenneth M. Hoyt, the first African American man to serve as a federal judge in Texas.

Attorney, author, and American Bar Association leader Melanie Bragg shed new light on the Hon. Gabrielle Kirk McDonald, the first African American appointed to serve on a federal Texas court and the third African American appointed in the United States. We’re also grateful to Judge McDonald for participating in Melanie’s in-depth interview regarding her early years and her international service presiding over the first International Criminal Tribunal for the Former Yugoslavia.

The Hon. Evelyn McKee, retired Austin Municipal Court Presiding Judge and acclaimed author, penned an essay, “The Lady on the Bus Stop,” that told the inspiring story of a single incident that led her to attend law school and become a judge.

The life story of the Hon. Harriet M. Murphy, the first permanently appointed African American woman judge in Texas, was an important addition to the award-winning *Journal* issue. We thank the University of Texas at Austin’s Division of Diversity and Community Engagement for allowing us to reprint the story from their book, *As We Saw It: The Story of Integration at the University of Texas at Austin*. Marilyn Duncan compiled and illustrated the article and added a piece about Judge Murphy’s memoir, *There All the Honor Lies*.

Stephen Pate, an attorney and historian who has contributed many fine articles to this *Journal*, provided an in-depth analysis of Reconstruction’s impact on the Texas federal judiciary when African Americans first began thinking of becoming judges and justices in Texas.

Maryland historian Dr. Henry Miller and his colleagues the archaeologists and historians of Historic St. Mary’s City, Maryland, first made David Furlow aware of Mathias de Sousa’s story as America’s first African American magistrate, a man elected in 1642. David’s Executive Editor Column placed de Sousa’s story in the wider context of African American contributions to judicial history.

Baker Botts partner Bill Kroger wrote a call to action for the Summer issue: “The Time to Preserve Texas’s Slave Case Records is Now.” It has led to fruitful discussions about judicial records preservation by the members of the Texas State Historical Association’s Archives Committee.

*Journal* Deputy Executive Editor Dylan Drummond, then President-elect and now President of the Society, contributed a scholarly article documenting how Sam Houston’s victory at the April 21, 1836 Battle of San Jacinto filled the ranks of the Republic of Texas’s judiciary with men of courage, competence, and character.

**Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY**  
 Summer 2018 Vol. 7, No. 4 General Editor Lynne Liberalo Executive Editor David Furlow

**Columns**

**Immediate Past President's Message**  
 By Dale Walwright  
 Before I look back at some of the highlights of the past year, I want to feature two upcoming events on the Society's calendar. [Read more...](#)

**Executive Director's Page**  
 By Sharon Sandie  
 It has been sixty-eight years since the landmark case *Swann v. Board of Education* challenged the "separate but equal" doctrine of segregation in education. [Read more...](#)

**Executive Editor's Page**  
 By David A. Furlow  
 Soon after becoming the Society's President, Justice Dale Walwright (ret.) suggested that the *Journal* dedicate an issue to the contributions of African-American judges. This special issue is the culmination of that project. [Read more...](#)

**Message from the 2018-19 President**  
 By Marcy Hogan Greer  
 Our outgoing President has done so much to advance the Society, and I have big shoes to fill. I want to thank him for his many contributions to and support for the Society. [Read more...](#)

**Editor's Column**  
 By David J. Beck  
 Thanks to coauthors Jim Haley and Marilyn Duncan, we are pleased to report that the third book in our judicial, civic and court history project, *Taming Texas*, is nearing completion. [Read more...](#)

*Emeline a free woman of her own mind & her own will  
 being for herself & children  
 by Gary & Brooke Att.*

**Leads**

**The Constitution Imparts Responsibilities as Well as Rights**  
 By Chief Justice Wallace B. Jefferson (ret.)  
 Whatever was accomplished during my tenure on the Court, my contributions derived from the basic humanity translated into a judicial setting, that my father epitomized. [Read more...](#)

**Chief Justice Carolyn Wright: A Profile in Excellence**  
 By John G. Browning  
 Chief Justice Wright is the first African-American woman in Dallas to win a countywide election, the first in Texas to win a multi-county election, and the first African-American to lead a Texas intermediate appellate court. [Read more...](#)

**THE FIRST, THE LAST, THE ONLY: The Legend of Justice Frank Doyle, the First African-American Associate Justice of a Texas Court of Appeals**  
 By Virgie Leonard Houston  
 I met Frank Doyle in 1982 while interviewing for a position as Briefing Attorney at the first Court of Appeals in Houston. I realized I was in the presence of my hero, the first graduate of my law school at Texas Southern University. [Read more...](#)

**Texas Court of Criminal Appeals**  
**Judge Morris Overstreet**  
 By Michael Hurd  
 The tall, dapper, bow-tie-adorned country court judge from Amarillo became the first black Texan to win a statewide election. [Read more...](#)

**A Personal Remembrance of the Unforgettable Justice Henry Doyle**  
 By Hon. Murry B. Cohen  
 In 1978 Henry Doyle became the first African-American appellate court justice in Texas when appointed by Governor Dolph Briscoe to Houston's First Court of Appeals. [Read more...](#)

**An Interview with Justice Kenneth M. Hoyt**  
 By Hon. Andrew M. Edison  
 Senior U.S. District Court Judge Kenneth M. Hoyt reflects on his journey to becoming the first African-American man to serve as a federal judge in Texas. [Read more...](#)

**An Interview with the Honorable Gabrielle Kirk McDonald**  
 By Melanie Bragg  
 Retired Federal Judge Gabrielle Kirk McDonald discusses the road she traveled to become the third U.S. African-American federal judge. [Read more...](#)

**There All the Honor Lies: A Memoir**  
 By Judge Harriet M. Murphy  
 This autobiography of the first permanently appointed female African-American judge in Texas is the story not only of an African-American woman who grew up in a highly segregated society, but of the civil rights movement in its most turbulent years. [Read more...](#)

**San Antonio Justice: The Future Supreme Court Judges Who Won Texas Her Freedom at San Antonio, Part 2**  
 By Dylan O. Drummond  
 In this second part, we will meet the five San Antonio veterans who served simultaneously as District Judges and Associate Judges of the Republic Supreme Court. [Read more...](#)

**Reconstruction Politics and the Galveston Seven: The Struggle to Appoint a Judge in the Eastern District of Texas, 1849-77, Part 3**  
 By Stephen Pace  
 In 1871, President Grant nominated John Bruce of Alabama for the Eastern District of Texas's judgeship. Once again, Texans erupted with incredulity. [Read more...](#)

**The Lady on the Bus Stop**  
 By Hon. Evelyn P. McKee  
 Texas is a hot and humid afternoon in Houston in the fall of 1967. I was seventeen years old, and one of a handful of Black students who attended a formerly all-white college. [Read more...](#)

**San Antonio Justice: The Future Supreme Court Judges Who Won Texas Her Freedom at San Antonio, Part 1**  
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 In this first part, we will meet the five San Antonio veterans who served simultaneously as District Judges and Associate Judges of the Republic Supreme Court. [Read more...](#)

**News & Events**

**The Time to Preserve Texas's Slave Case Records is Now**  
 By Bill Kroger  
 Texas slavery records locked away in the district and county courts for Texas counties, especially those in East Texas, need to be preserved as soon as possible. [Read more...](#)

**September 7 Hampshire Dinner Will Feature Address by U.S. Fifth Circuit Chief Judge Carl E. Stewart**  
 By Marilyn P. Duncan  
 The Society's main fundraising event is scheduled for Friday, September 7, 2018, at the Four Seasons Hotel in Austin. [Read more...](#)

**GREAT WAR COMMEMORATION ON NOVEMBER 14, 2018: The Society and Supreme Court Will Honor Judges and Lawyers Who Served**  
 By David A. Furlow  
 The Texas Supreme Court and the Society will honor the seven Supreme Court Justices, two Court of Criminal Appeals Judges, and three Governors who served in the Great War. [Read more...](#)

**Membership & More**

**Calendar of Events**  
**Officers, Trustees & Court Liaison**  
**2018-19 Member Hydrants**  
**2018-19 New Member List**  
**Join the Society**

Visit the Society on Twitter and Facebook!  
 @SCOTHHistory  
 FB: Texas Supreme Court Historical Society  
 © 2018 Texas Supreme Court Historical Society

The Summer 2018 issue's cover mosaic identified the authors and articles that won AASLH's Excellence in History Award—as well as *Journal* Graphics Editor David Kroll's photo-montage design skills.

The Hon. Carl E. Stewart, Chief Judge of the U.S. Court of Appeals for the Fifth Circuit, wrote that the "*Journal's* thoughtful, detailed work shed light on the narratives of those African-American stalwarts in the Texas judiciary whose lives may have not been widely chronicled in other historical writings." As he observed, "Historical contributions such as the Society's Summer 2018 *Journal* issue are important avenues for telling these previously untold or rarely told stories. States across the nation should endeavor to research the 'hidden stories' in their



AASLH's Excellence in History award sat atop the table between Texas Supreme Court Chief Justice Nathan Hecht and U.S. Supreme Court Justice Neil M. Gorsuch during the Hemphill Dinner. Photo by Fourteenth Court of Appeals Justice Ken Wise.

own communities, using the Texas Supreme Court Historical Society *Journal's* Summer issue as an exemplary model of how to accomplish that. It is important to bring awareness to the stories of those hidden figures in communities around the nation. Their stories are a part of the fabric of our society."

In her letter of recommendation to AASLH's Leadership in History Committee, Harris County Law Library Director Mariann Sears noted that "The Summer 2018 issue of the *Journal* has profoundly influenced the Law Library by weaving together the inspiring stories of Texas African American jurists and attorneys, both past and present."

Randolph B. "Mike" Campbell, Regents Professor of History at the University of North Texas and author of *Gone to Texas: A History of the Lone Star State*, recommended the Summer 2018 issue of the *Journal* for AASLH's award "because it tells a story that heretofore largely has not appeared in print. A great deal of the history of what judges have handed down in applying the law to African Americans has been described at great length, but the stories of African Americans themselves as jurists are largely unknown....[T]hat makes the stories of pioneer African American judges at all levels all the more significant."

Historian Gary M. Lavergne, author of *Before Brown: Heman Marion Sweatt, Thurgood Marshall, and the Long Road to Justice* and other books, wrote that "The summer 2018 issue is a splendid blend of uncompromising scholarship providing innovative approaches to the interpretation, contextualization, corroboration, and sourcing of evidence, and the consideration of a deeply personal need we all have to actually enjoy what it is we are reading."

Lynne Liberato, the Society's 2011-12 President, asked David Furlow to join her and the Society's Executive Director, Bill Pugsley, to organize the *Journal*. The first issue was published in Fall 2011. AASLH's Excellence in History Award celebrated the fruition of an eight-year dream. A PDF of the Summer 2018 issue as well as links to earlier issues are available in the Society's web archives at <https://www.texascourthistory.org/journal>.

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# “A Natural-Born Storyteller”: Dr. Jeff Kerr and the Fall Board Meeting

Story and photos by David A. Furlow



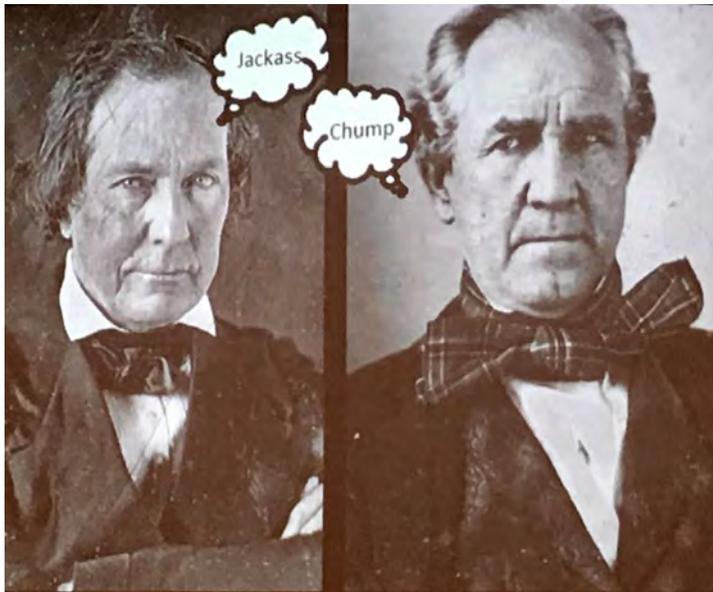
“He’s a natural-born storyteller,” *Journal Graphics* Editor David Kroll whispered to me as Dr. Jeffrey S. Kerr, a renowned Republic of Texas historian, captained the Society’s trustees on an odyssey of Austin’s origins during the Society’s Fall 2019 Board Meeting. In a brilliant whirlwind of composition and imagery, Dr. Kerr answered that age-old question, “What do you get when you give a forty-one-year-old poet an army, a navy, and a bankrupt treasury?” The answer, of course, was Lamar’s Folly, otherwise known as the City of Austin.

Left: Dr. Jeff Kerr used a PowerPoint, but most of his presentation consisted of telling dramatic but true tales of Austin during the Republic of Texas. Below: The board meeting provided the trustees with opportunities to consider reports about recent accomplishments, current opportunities, staffing, and future plans.



Dr. Kerr's presentation followed the Fall 2019 Board of Trustees Meeting—a busy and productive one that followed close on the heels of the Hemphill Dinner. After everyone enjoyed the superb lunch Mary Sue Miller orchestrated, Dr. Kerr stepped up to the podium and began telling about the chaotic period between the fall of the Alamo and the founding of Houston while the Texas government went on the road from one stopgap, quick-fix capital to the next.

Dr. Kerr sketched the abrasive rivalry between the Republic's first elected President, Sam Houston, and its second, Mirabeau B. Lamar. Harkening back to 1837 and 1838, when the capital sweltered in early Houston's heat and humidity, Dr. Kerr described the work of the commission empowered to erect a new capital in a place President Lamar would describe as a "Seat of Empire."



Dr. Kerr's slides noted the animosity between the Republic's first and second Presidents.

The novel begins when San Jacinto battlefield veteran Mirabeau Lamar seeks nothing less than a Texas empire that will dominate the North American continent. Brave exploits at the Battle of San Jacinto bring him rank, power, and prestige, which by 1838 propel him to the presidency of the young Republic of Texas and put him in position to achieve his dream. The novel's protagonist, Edward Fontaine, goes to work for Lamar, whom he idolizes. Fontaine accompanies Lamar to the banks of the Colorado, to the tiny village of Waterloo, after first witnessing Lamar slay with pistol shots the mightiest buffalo anyone could remember seeing near a rising later known as Mount Bonnell.

A side-splitting description of the hours-long ex-auguration (swearing-out) speech Sam Houston gave as he turned over the Republic to Lamar, his successor, brought to dramatic life the first two Presidents' vitriol for one another.

Next came a discussion of the perils and pleasures of historical fiction. Dr. Kerr described how he opted to follow his in-depth, heavily footnoted nonfiction narrative *Seat of Empire: The Embattled Birth of Austin, Texas* to examine important turning points that evade preservation in archival records and deed registries. Texas Tech University Press published Dr. Kerr's first novel, *Lamar's Folly*, in 2017.



*A scamper among the buffalo*, by John Gadsby Chapman, the frontispiece to *A Narrative of the Texan Santa Fé Expedition* (1884) by George Wilkins Kendall, depicts Lamar's buffalo hunt. Public domain, Wikimedia.

Dr. Kerr's story moved swiftly from Mount Bonnell and Brushy Creek to the new capital of Texas, where President Lamar dreams of seizing New Mexico during a period of chaos, coups, and counter-coups in the huge nation south of the Rio Grande. When Sam Houston seeks to thwart Lamar's efforts to transform Texas into an empire expanding from the Gulf of Mexico to the Pacific, Fontaine swears to do whatever becomes necessary to realize Lamar's dream.

And then...

*Well, that would be telling.* Rather than read more about Dr. Kerr's novel *Lamar's Folly* here, an interested reader should buy the book and enjoy a grand old yarn that just happens to be true.



Dr. Kerr's PowerPoint revealed Austin's genesis.



Dr. Kerr's presentation ended on a cinematic note, granting the audience a preview of his upcoming film release, *Writers' Block*.

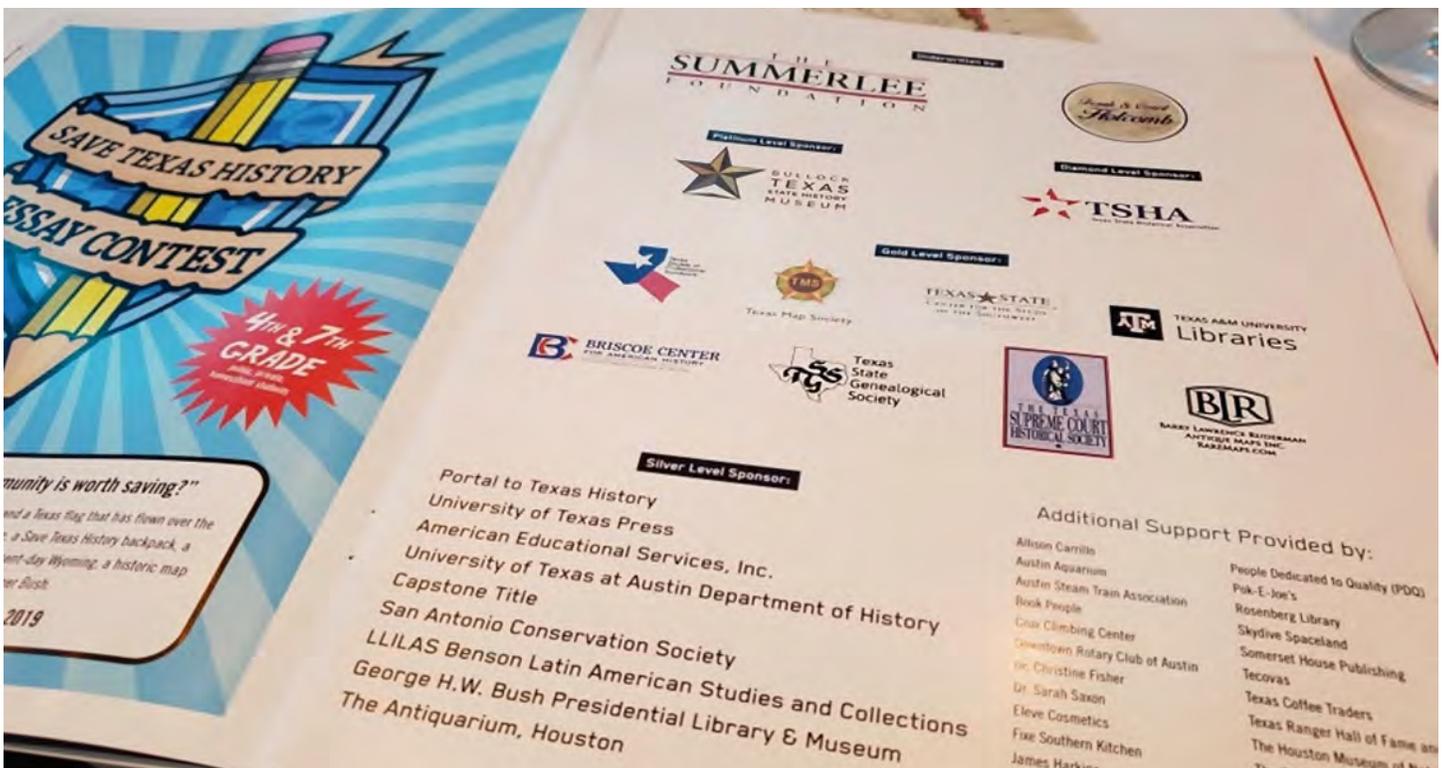
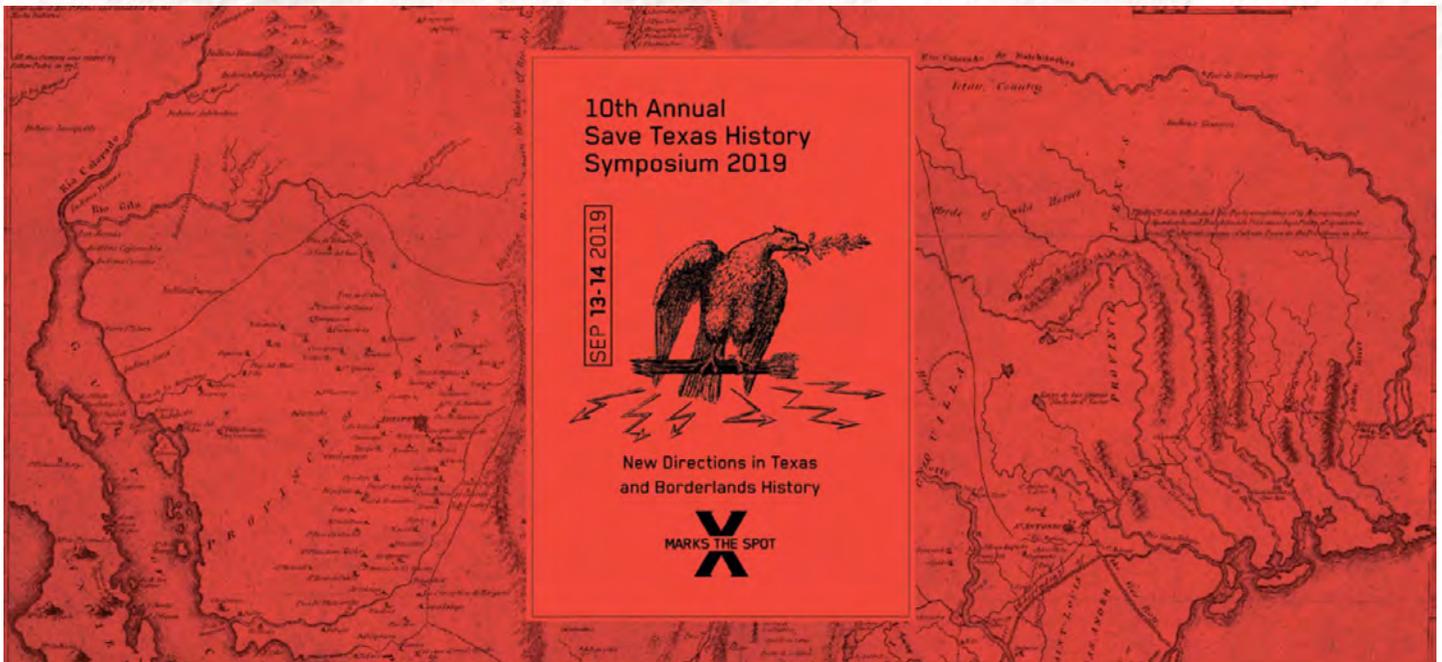


Reversing the usual order of things, Dr. Kerr closed his presentation with a movie trailer. The film, *Writers' Block*, resulted from Dr. Kerr's joint venture with Austin filmmaker Ken Spivey. The movie, which addresses the murderous consequences of artistic creativity, will come to Austin later this year. Austin's cinematic community will soon have an opportunity to watch a natural-born storyteller at work—but this time, in film.

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# Time Flew at the Tenth Annual Save Texas Symposium

By David A. Furlow



The General Land Office promoted the symposium with a distinctive program booklet.  
Top: GLO website. Bottom: Symposium brochure, photo by Charlotte Caldwell.



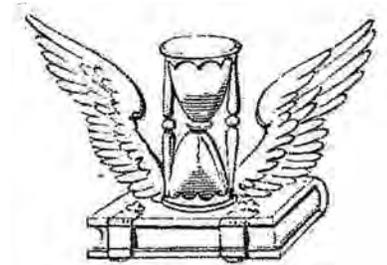
The audience heard new insights on Texas history from Dr. Juliana Barr. Photo by Charlotte Caldwell.

**T**empus fugit," the Romans warned when Latin coursed through an empire that bestrode three continents. Vergil, or more formally the Latin author Publius Vergilius Maro, coined the phrase in line 284 of Book 3 of the *Georgics*, an epic poem. In that poem lauding a life of rustic simplicity, Vergil declared,

Sed fugit interea; fugit inreparabile tempus,  
singula dum capti circumvectamur amore.

John Dryden, the seventeenth century Poet Laureate of the English Nation, translated those Latin lines into sterling as follows:

But time is lost, which never will renew,  
While we too far the pleasing Path pursue;  
Surveying Nature, with too nice a view.



"Tempus Fugit" exemplified.  
Public domain, Wikimedia.

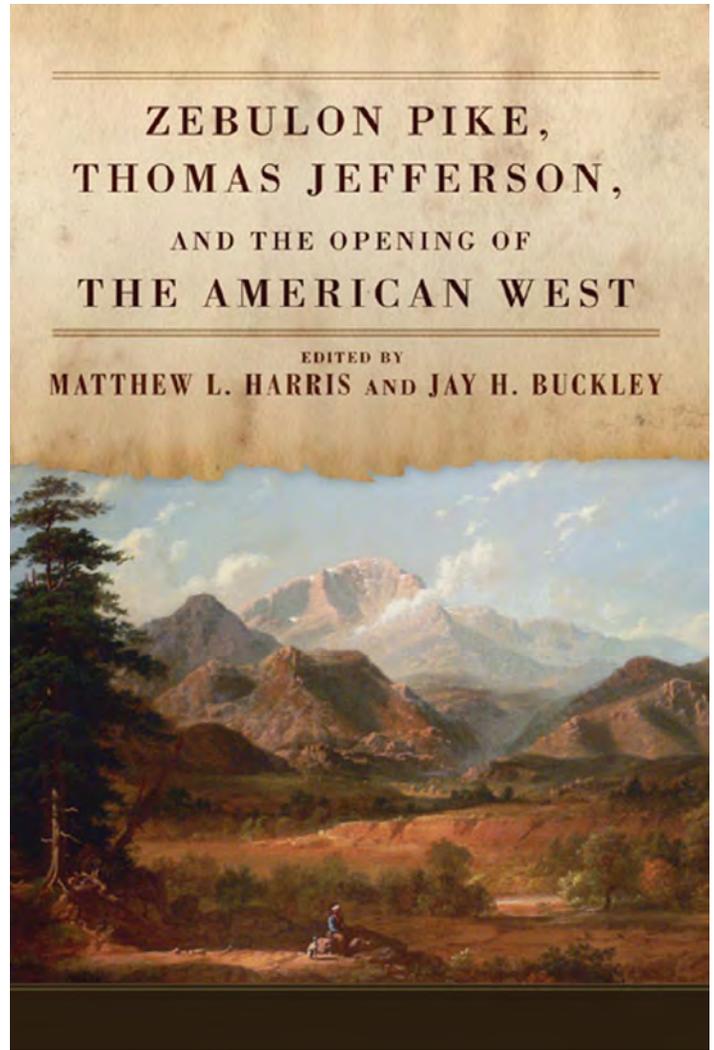
"Time flies," we say in the shallow twenty-first century, "especially when we're having fun."

Time flew for history lovers who attended a conference this Society cosponsored in mid-September: the Texas General Land Office's Tenth Annual *Save Texas History Symposium, X Marks the Spot: New Directions in Texas and Borderlands History*.

Symposium panelists and individual speakers focused on Texas borderland exploration, including the earliest maps of the Gulf Coast, sovereign Indian territorial claims, the influence of Stephen F. Austin on mapping Texas, and more. The symposium occurred at a trifecta of great venues, first at the historic InterContinental Stephen F. Austin Hotel in downtown Austin, then at the General Land Office, and also at the Bob Bullock Texas State Museum. The GLO's symposium materials identified this Society as a sponsor.<sup>1</sup> A few highlights of this history symposium, one of the best in Texas, appear over the next few pages.

Dr. Juliana Barr, an Associate Professor of History at Duke University, author of *Peace Came in the Form of a Woman: Indians and Spaniards in the Texas Borderlands* (Chapel Hill: University of

<sup>1</sup> "10th Annual Save Texas History Symposium," Texas General Land Office, <http://www.glo.texas.gov/save-texas-history/symposium/overview/index.html>.



Top: Dr. Juliana Barr offered maps and images of Stephen F. Austin to enable her audience to see Texas history through her eyes. Photo by Charlotte Caldwell. Bottom left: Dr. Jay H. Buckley of Brigham Young University examined Zebulon Pike’s explorations of the Southwestern frontier during the nineteenth century. Photo by Charlotte Caldwell. Bottom right: Cover of Dr. Buckley’s book.



Dr. Buckley presents his program. Photo by Charlotte Caldwell.

North Carolina Press, 2007) and *Why You Can't Teach U.S. History without American Indians* (Chapel Hill: University of North Carolina Press, 2015), began the Saturday morning speaking schedule with "Mapping Indian Sovereignty in Spanish Archives."

An Associate Professor of History at Brigham Young University and Director of the Charles Redd Center for Western Studies, Dr. Buckley focused on how the secret 1800 Treaty of San Ildefonso and the Louisiana Purchase of 1803 awakened Americans of the early Republic to the lucrative trade and appealing lands of Spanish Louisiana and Tejas. He unveiled state secrets by showing how America's third President, Thomas Jefferson, dispatched the Lewis and Clark Expedition and other lesser known captains of discovery to scout out these new lands on the U.S. frontier—and showed how Spanish governors and military captains responded to the threat of American adventurers and filibusters.

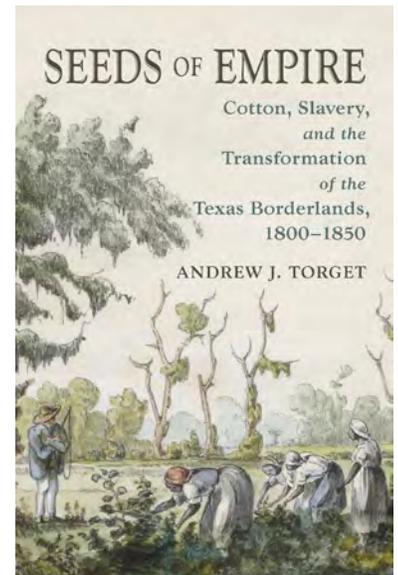
Then Dr. Buckley reexamined the contentious history of "Zebulon Pike and His Contemporaries: Intrigues Surrounding the Exploration and Mapping of Texas, the Southwest, and the Southern Plains." Author of the award-winning book *William Clark: Indian Diplomat* (Norman: University of Oklahoma Press, 2008), Dr. Buckley coauthored, with Dr. John D.W. Guice, *By His Own Hand?: The Mysterious Death of Meriwether Lewis* (Norman: University of Oklahoma Press, 2006) and authored *Zebulon Pike, Thomas Jefferson, and the Opening of the American West* (Norman: University of Oklahoma Press, 2012).

Later that day, Dr. Andrew Torget came to the stage to discuss Stephen F. Austin's maps of Texas to explain how Tejano and Anglo elites learned to work together to create a "Mississippi in Mexico" by introducing large-scale cotton slavery into what became the Mexican state of Coahuila y Texas during the 1820s and 1830s. Dr. Torget received his Ph.D. from the



University of Virginia and is a historian of nineteenth-century North America at the University of North Texas, where he holds the University Distinguished Teaching Professorship.

Dr. Torget's most recent book, *Seeds of Empire: Cotton, Slavery, and the Transformation of the Texas Borderlands* (Chapel Hill: University of North Carolina Press, 2015), won the Texas State Historical Association's Outstanding Work of History Award in 2016 and eleven other awards during the year after it was published.



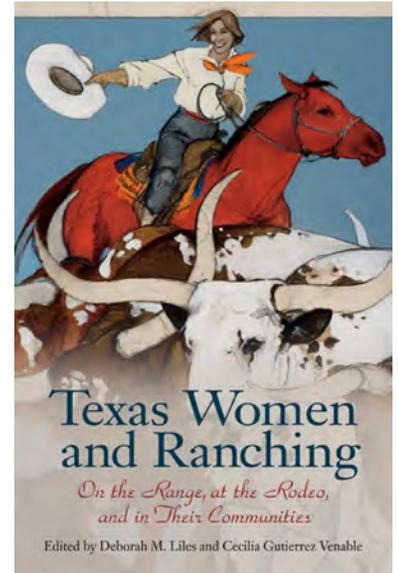
Dr. Deborah Liles, the W. K. Gordon Chair of Texas History at Tarleton State University, is the coeditor, with Cecilia Gutierrez Venable, of *Texas Women and Ranching: On the Range, at the Rodeo, and in Their Communities* (College Station: Texas A&M University Press, 2019) and the coauthor, with Angela Boswell, of *Women in Civil War Texas: Diversity and Dissidence in the Trans-Mississippi* (Denton: University of North Texas Press, 2016), which earned the Texas State Historical Association's Liz Carpenter Award for best women's history book of the year.



Dr. Deborah Liles spoke about Texas women, cattle, and railroads. Photo by Charlotte Caldwell.



Dr. Liles described how the California gold rush encouraged a few risk-taking Texans to begin cattle drives from central Texas to southern California. Some grew wealthy as a result; others rode fast to outpace both creditors and bankruptcy. Women as well as men rose to positions of prominence on cattle ranches. Cattle drives boomed after the Civil War, and alongside them, railroads crisscrossed the Lone Star State.



Throughout the symposium, Society Administrative Coordinator

Mary Sue Miller answered questions, worked with GLO staffers, and displayed the poster-boards and books that have raised the Society's profile at these symposia during the past four years. Mary Sue is the Society's Alpha and Omega—the first to erect poster-boards and display books, and the last to leave. This time, she added the framed American Association for State and Local History's Excellence in History Award conferred on the Society just three weeks before the symposium.

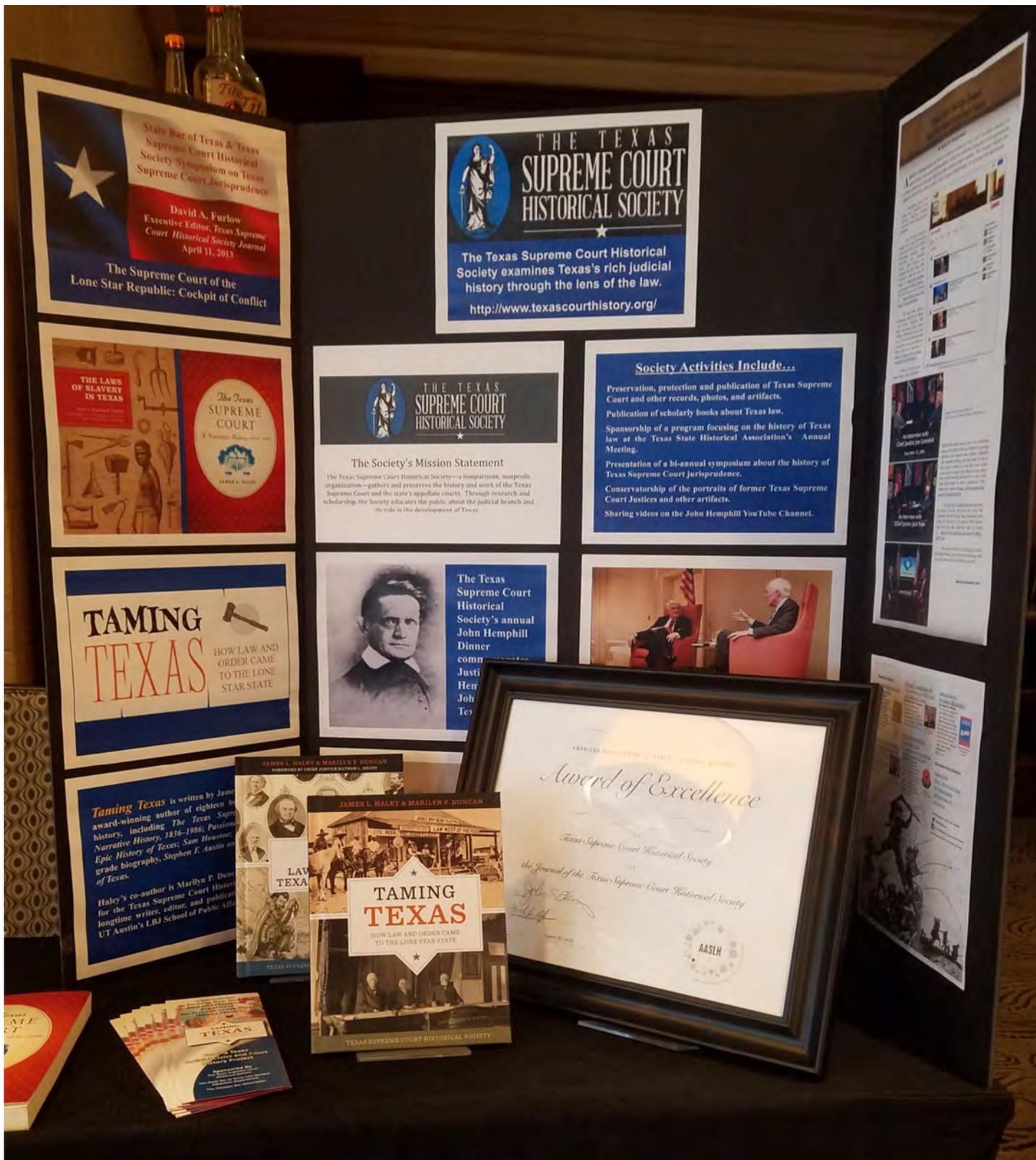
The *Save Texas History* symposia really do save Texas history. The GLO uses proceeds raised in the symposium to preserve and protect historic records, plats, deeds, and patents. James Harkins, the GLO's Director of Public Services for Archives and Records, explained the importance of the funds raised during this year's conference. "The GLO raised over \$15,000 at the Tenth Annual *Save Texas History* Symposium," he said. "The money is earmarked to conserve records, documents, and maps within the General Land Office Archives and Records, as well as help acquire new historic maps that augment its collection."

After the symposium ended, Charlotte Caldwell, the Hill Country blogger, sent an email to James Harkins. She also cc'd me to thank this Society for supporting these programs. She wrote:

"Mr. Harkins, I am a friend of David Furlow's who introduced my husband and me to the GLO's historical symposiums last year. I wanted to take a brief moment and tell you how much we both appreciated and enjoyed this year's symposium. Some of the speakers were absolutely phenomenal. Entertaining. Engaging. Energetic. Informative. Educational. Piquing my interest in many areas I have never thought much about to this point in my life.

"I bumped into Dr. Jay Buckley in the elevator on the way to my room, and he asked me what was the one thing new I learned during all of the lectures on Saturday. My response was, 'What didn't I learn?' I told him I had a page full of notes on things I hadn't thought of before and I wanted to know more about.

"And, I have a new respect for maps!



During the symposium, Mary Sue Miller displayed the poster-boards and books that tell the Society's story to everyone attending the program. Photo by Mary Sue Miller.

“Thank you so much for the opportunity to learn so much in a very short time and being exposed to individuals who have such a great passion for what they love and what they teach. It was wonderful. I look forward to next year!”

— Charlotte Caldwell

<http://www.charlottetexashillcountry.com>  
<http://www.charlottecaldwellartist.com>

Spurring curiosity about Texas’s history and interest in its relationship with Texas law and courts across the centuries is the best of the many reasons this Society sponsors the GLO’s *Save Texas History* symposia year after year. These symposia make history fun.

So, fellow lovers of Texas history, when the GLO organizes its next *Save Texas History* symposium, do what that Latin poet Vergil would tell you to do.

*Carpe Diem!*

Seize the day.

Time flies when you’re having fun.



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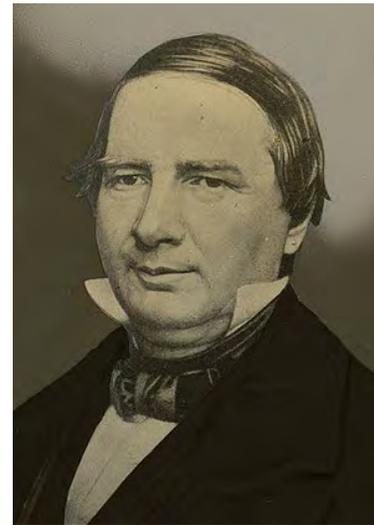
# Four Chief Justices Memorialized in Texas Appellate Hall of Fame

**F**our chief justices were honored at a ceremony held in Austin on September 5, 2019, for their trailblazing marks on Texas legal history as the most recent inductees in the Texas Appellate Hall of Fame.

Among them are the first chief justice to preside over the Republic of Texas Supreme Court and the special chief justice who presided over the first all-woman state supreme court in U.S. history.

The 2019 inductees are:

**Thomas J. Rusk**—Although technically the third chief justice of the Republic, Thomas Rusk was the first to preside over a Supreme Court session. He also authored the Court's first opinion in 1840. Earlier a signatory to both the Texas Declaration of Independence and the Republic's first constitution, Rusk later served as the Republic's secretary of war. After overseeing the burial of Colonel James Fannin and his garrison massacred at Goliad under orders from Mexican President Santa Anna, Rusk ensured Santa Anna's defeat at San Jacinto a few weeks later by leading the final charge after Sam Houston was wounded.



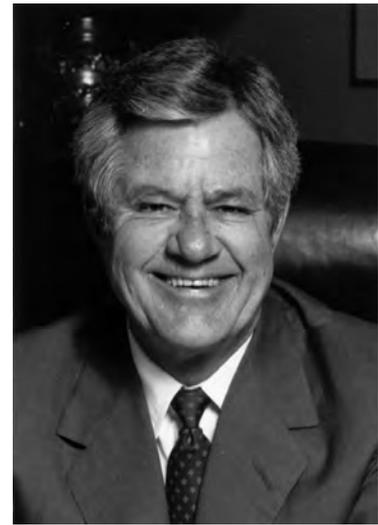
UT Austin Tarlton Law Library



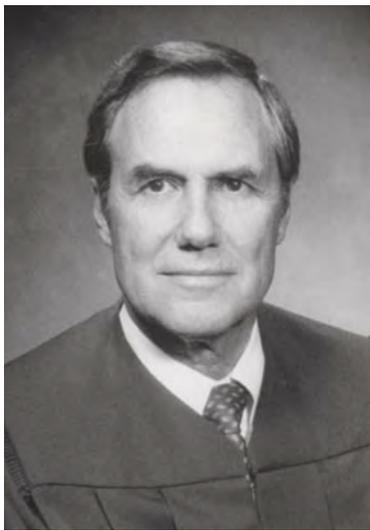
Texas State Library and Archives Commission

**Hortense Sparks Ward**—In 1910, Hortense Ward became one of the first women to pass the Texas bar exam. She later became the first female Texan to be licensed to practice before the U.S. Supreme Court. After the all-male Texas Supreme Court was forced to recuse from hearing a cause involving a trustee of a fraternal order in which each Justice was a member, Governor Pat Neff appointed Ward as Special Chief Justice—along with two other women—to preside over the case. Appointed on January 7, 1925, this all-woman Supreme Court was the first state high court in the nation composed entirely of women, and Ward was the country's first woman chief justice. The Court heard oral argument in the case on January 30, and issued its opinion later that year in May. The decision has been cited numerous times by the federal Fifth Circuit Court of Appeals and several Texas appellate courts.

**John L. Hill, Jr.**—Before being elected chief justice of the Supreme Court in 1984, John Hill served as both Texas secretary of state and attorney general. While attorney general, Hill argued before the U.S. Supreme Court five times. He resigned from the Court in 1988 to lead an effort to abolish the popular election of judges in Texas. In 1997, Chief Justice Hill was awarded a lifetime achievement award by his alma mater, the University of Texas School of Law. In 2004, the law school established the John L. Hill Trial Advocacy Center in his honor.



State Bar Archives



Legacy.com

**Austin McCloud**—Austin McCloud first took the bench after being appointed to the 32d District Court in Sweetwater, Texas. In 1970, he was elected chief justice of the Eleventh Court of Appeals at Eastland, Texas. There he served for the next twenty-four years until his retirement in 1994. That same year, Chief Justice McCloud was named Outstanding Jurist of Texas. During his tenure on the appellate bench, Chief Justice McCloud served as President of the Council of Chief Judges of Courts of Appeals of the United States, as well as President of the Council of Chief Justices of Texas Courts of Appeals.

The Texas Appellate Hall of Fame is cosponsored by the Texas Supreme Court Historical Society and the State Bar of Texas Appellate Section.

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# Texas Courts News Notes

By Dylan O. Drummond

## ***Retired Dallas Court of Appeals Chief Justice Receives Kidney from Former Court of Appeals Colleague***

Longtime Dallas Court of Appeals Chief Justice Carolyn Wright retired last year after first being appointed to the appellate bench in 1995 and later being elevated to Chief Justice in 2009. She is the first African American Chief Justice in Texas. Prior to her retirement, she had successfully battled pneumonia in 2013, which left her with a damaged kidney. By February of this year, her condition had worsened to the point where she needed a transplant. But none of her friends or family was a match.



Hon. David Evans.

The match, it turns out, was much closer than she ever imagined. For the six years prior to her retirement, Chief Justice Wright served with her colleague on the court, Justice David Evans. Now Presiding Judge of the 95th District Court, Judge Evans discovered his kidney was a match for his former Chief. The two successfully underwent transplant surgery on September 10, 2019 and are now recovering.



Hon. Carolyn Wright.

## ***Former Court of Appeals Justice Becomes First African American Woman to Serve on the Northern District of Texas Bench***



Judge Ada Brown.

In August, former longtime Dallas Court of Appeals Justice Ada Brown was confirmed by eighty votes in the U.S. Senate to the Northern District of Texas bench. Her confirmation makes her the first African American woman to serve on that court. Prior to taking the federal bench, Judge Brown served on the Fifth District Court of Appeals since 2013.

Before her appointment to the Dallas Court of Appeals, Judge Brown presided over the Dallas County Criminal Court No. 1, and served as a prosecutor in the Dallas County District Attorney's Office as well. She is a proud graduate of an HBCU—Spelman College—and is trilingual, speaking French and Spanish in addition to English.

## ***Former Willett Clerk Confirmed to the Northern District of Texas Bench***

One of former Texas Supreme Court Justice Don Willett's first clerks has taken the Northern District of Texas bench. Judge Brantley Starr was confirmed by the Senate this past July, after being nominated in March to replace longtime Judge Sidney Fitzwater, after he took senior status in September 2018.

Following his clerkship at the Court, Judge Starr excelled in private practice and later served as Assistant Solicitor General under now-Senator Ted Cruz and as staff attorney to Justice Eva Guzman. Most recently, Judge Starr served as Deputy First Assistant Attorney General under General Ken Paxton.



Judge Brantley Starr (right) stands with former Texas Supreme Court Justice Don Willett, now a U.S. Fifth Circuit Judge.

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# Calendar of Events

## **Society-related events and other events of historical interest**

Fall/Winter 2019

**The Bob Bullock Texas History Museum's "La Belle: The Ship That Changed History" exhibition continues in the Museum's first floor Texas History Gallery.** The hull of the sunken *La Belle* is open for viewing. <http://www.thestoryoftexas.com/la-belle/the-exhibit>. The museum is located at 1800 Congress Ave., Austin, Texas 78701.

Throughout 2019

**The Witte Museum in San Antonio presents "The Art of Texas: 250 Years."** Artists range from 19th century Theodore Gentilz to 20th century Georgia O'Keeffe. The more than 100 art pieces include a mural by John Biggers, a sculpture by Jesús Moroles, and a painting by Julian Onderdonk, "Chili Queens at the Alamo," that once graced the Oval Office during President George W. Bush's time in the White House. Art traveled from museums and collectors from throughout the United States and in Texas, from El Paso to Houston and from Dallas to Corpus Christi. <https://www.wittemuseum.org/art-texas-250-years>.

Throughout 2019

**The Bryan Museum's galleries offer artifacts and records from all periods of Texas and Southwestern history.** J.P. Bryan, Jr., a descendant of Moses Austin and a former Texas State Historical Association President, founded this museum at 1315 21st Street, Galveston, Texas 77050, phone (409) 632-7685. Its 70,000 items span 12,000 years. <https://www.thebryanmuseum.org/>.

Throughout 2019

**The Texas Historical Commission's Museum and Visitor Center at San Felipe de Austin State Park's galleries present the story of the capital of Stephen Fuller Austin's colony in Texas.** The San Felipe de Austin site is located at 15945 FM 1458, in San Felipe, Texas, about a mile north of I-10. For more information go to [www.visitsanfelipedeaustin.com](http://www.visitsanfelipedeaustin.com) or call 979-885-2181.

December 28, 2019

**Deadline for submission of applications to the Texas State Historical Association for the Texas Supreme Court Historical Society's first Larry McNeill Research Fellowship in Texas Legal History, to be presented at noon on Friday, February 28, 2020 at the AT&T Center in Austin.** Applicants should submit their application to the Larry McNeill Research Fellowship Committee, in care of the Texas State Historical Association, 3001 Lake Austin Blvd., Suite 3.116, Austin, TX 78703. For more information, please see <https://tshaonline.org/awards-and-fellowships/2562>.

January 13, 2020

The Society's members can celebrate in their hearts and minds the **30th Anniversary of the Society's beginning** on January 13, 1990, as well as the **180th Anniversary of the opening of the first session of the Texas Supreme Court** on January 13, 1840.

February 15-16, 2020

**The Texas Archaeological Society will conduct its annual Geoarchaeology Academy at Victoria College in conjunction with the Museum of the Coastal Bend.** *Recognizing and Evaluating the Archeological Potential of the Landscape: An Introduction to Geoarchaeology* is a two-day Texas Archeology Academy that explores how geological and soil formation processes affect archeological sites, and how investigators use this information to reconstruct both the human and natural histories of an area. Museum of the Coastal Bend, 2200 E Red River St., Victoria, Texas 77901. Registration information is available at <https://www.txarch.org/academy01>.

February 27-29, 2020

**The Texas State Historical Association's Annual Meeting takes place at the AT&T Center**, 1900 University Avenue, Austin, Texas 78705. Registration is now open and available by phone, 512-404-3600, or a at <https://book.passkey.com/go/TSHA022620>.

February 28, 2020

**The Texas State Historical Association (TSHA) presents the first Society-sponsored Larry McNeill Research Fellowship in Texas Legal History at noon at the AT&T Center in Austin.**

February 28, 2020

**The Society presents its panel in Session 29 at the Annual Meeting of the Texas State Historical Association (TSHA) at the AT&T Center in Austin from 2:00 to 3:30 PM.** The panel consists of Society President Dylan Drummond, Special Court Judge Mark Davidson, Fourteenth Court of Appeals Justice Ken Wise, and Harris County Clerk's Office Historic Documents Room Custodian Francisco Heredia. The session will take place at the AT&T Conference Center, 1900 University Avenue, Austin, Texas 78705. <https://www.tshasecurepay.com/annual-meeting/2020-events-sessions/>.

Spring 2020

**The Fellows of the Texas Supreme Court Historical Society will hold their annual Supreme Court of Texas Dinner.** Further details will be announced soon.

March 26, 2020

**The Society's Board of Trustees gathers for the Spring 2020 Board and Members Meetings at the Alamo,** 300 Alamo Plaza San Antonio, Texas 78205.

June 25-26, 2020

**The State Bar of Texas conducts its annual meeting** at the Hilton Anatole Hotel in Dallas, Texas. [https://www.texasbar.com/Content/NavigationMenu/Events/AnnualMeeting/Future\\_Dates/default.htm](https://www.texasbar.com/Content/NavigationMenu/Events/AnnualMeeting/Future_Dates/default.htm).

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## JOURNAL STAFF

General Editor  
Lynne Liberato  
[lynne.liberato@haynesboone.com](mailto:lynne.liberato@haynesboone.com)

Executive Editor  
David A. Furlow  
[dafurlow@gmail.com](mailto:dafurlow@gmail.com)

Deputy Executive Editor  
Dylan O. Drummond  
[ddrummond@grayreed.com](mailto:ddrummond@grayreed.com)

Managing Editor  
Marilyn P. Duncan  
[mpduncan1201@gmail.com](mailto:mpduncan1201@gmail.com)

Production Manager & Graphic Designer  
David C. Kroll  
[dckroll@gmail.com](mailto:dckroll@gmail.com)

## 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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# 2019-20 Membership Upgrades

The following Society member has moved to a higher dues category since June 1, 2019, the beginning of the membership year.

## **GREENHILL FELLOW**

Kristen Vander-Plas

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# 2019-20 New Member List

The Society has added 39 new members since June 1, 2019, the beginning of the new membership year. Among them are 17 Law Clerks for the Court (\*) who receive a complimentary one-year membership during their clerkship.

## **GREENHILL FELLOW**

Michael Easton  
Kristen Vander-Plas

## **TRUSTEE**

Alia Adkins-Derrick  
Jasmine Wynton

## **CONTRIBUTING**

Jerry Bullard  
Thomas F. Loose

## **REGULAR**

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Elizabeth Herrera	Jason Sharp	Kirstie Wallace*
Stephen Jones	Kelsey Smith*	Ethan Womble*

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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

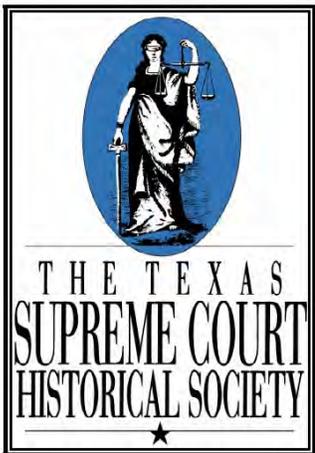
## **Contributing Membership** \$100

- 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

eJnl appl 11/19



## 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/>.

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