



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Summer 2015 Vol. 4, No. 4 General Editor Lynne Liberato Executive Editor David A. Furlow

Columns

Letter from the Outgoing President

By Marie R. Yeates

I leave the presidency with a new appreciation for the scope and impact of our programs and the people who make them successful. [Read more...](#)



Marie R. Yeates

Fellows Column

By David J. Beck

Seven Justices from the Texas Supreme Court joined the Fellows at the third annual Fellows Dinner for a wonderful evening of art, dinner, and conversation. [Read more...](#)



David J. Beck

Executive Editor's Page

By David A. Furlow

This issue of the *Journal* chronicles the evolution of women's rights in Texas over five centuries. [Read more...](#)



David A. Furlow

Message from the 2015-16 President

By Ben L. Mesches

The Society will remain keenly focused on projects that preserve the Court's history, educate the public, and encourage lawyers to connect with our collective history. [Read more...](#)



Ben L. Mesches

Photo Highlights from the Third Annual Fellows Dinner

Photos by Mark Matson
The Blanton Museum of Art in Austin proved a delightful setting for this year's Fellows Dinner. [Read more...](#)



Fellows Dinner attendees

Reflections on the Texas Equal Rights Amendment

An Essay

by Lynne Liberato

The first time I voted in a national election, I voted for the Texas Equal Rights Amendment. [Read more...](#)



Lynne Liberato

Executive Director's Page

By Pat Nester

Under the leadership of David Furlow, the Society again presented compelling talks and materials at the Texas State Historical Association annual conference. [Read more...](#)



Pat Nester



Legend:
 □ Full Suffrage
 ■ Primary Suffrage
 ▨ Presidential Suffrage

Year	County	Type
1869	Anderson	Full
1893	Brewster	Full
1912	Comal	Full
1912	DeWitt	Full
1912	Duval	Full
1912	Franklin	Full
1912	Harris	Full
1912	Hidalgo	Full
1912	Jefferson	Full
1912	Johnson	Full
1912	Madison	Full
1912	Maricopa	Full
1912	McMullen	Full
1912	Newton	Full
1912	Orange	Full
1912	Rockwall	Full
1912	Tarrant	Full
1912	Wade	Full
1912	Wheeler	Full
1912	Wichita	Full
1912	Wood	Full
1912	Yamhill	Full
1912	Zavala	Full
1917	Brewster	Primary
1917	Comal	Primary
1917	Duval	Primary
1917	Franklin	Primary
1917	Harris	Primary
1917	Hidalgo	Primary
1917	Jefferson	Primary
1917	Johnson	Primary
1917	Madison	Primary
1917	Maricopa	Primary
1917	McMullen	Primary
1917	Newton	Primary
1917	Orange	Primary
1917	Rockwall	Primary
1917	Tarrant	Primary
1917	Wade	Primary
1917	Wheeler	Primary
1917	Wichita	Primary
1917	Wood	Primary
1917	Yamhill	Primary
1917	Zavala	Primary
1918	Anderson	Primary
1918	Brewster	Primary
1918	Comal	Primary
1918	Duval	Primary
1918	Franklin	Primary
1918	Harris	Primary
1918	Hidalgo	Primary
1918	Jefferson	Primary
1918	Johnson	Primary
1918	Madison	Primary
1918	Maricopa	Primary
1918	McMullen	Primary
1918	Newton	Primary
1918	Orange	Primary
1918	Rockwall	Primary
1918	Tarrant	Primary
1918	Wade	Primary
1918	Wheeler	Primary
1918	Wichita	Primary
1918	Wood	Primary
1918	Yamhill	Primary
1918	Zavala	Primary
1918	Anderson	Presidential
1918	Brewster	Presidential
1918	Comal	Presidential
1918	Duval	Presidential
1918	Franklin	Presidential
1918	Harris	Presidential
1918	Hidalgo	Presidential
1918	Jefferson	Presidential
1918	Johnson	Presidential
1918	Madison	Presidential
1918	Maricopa	Presidential
1918	McMullen	Presidential
1918	Newton	Presidential
1918	Orange	Presidential
1918	Rockwall	Presidential
1918	Tarrant	Presidential
1918	Wade	Presidential
1918	Wheeler	Presidential
1918	Wichita	Presidential
1918	Wood	Presidential
1918	Yamhill	Presidential
1918	Zavala	Presidential

Features

No Pawn in a Game of Thrones: Queen Isabella of Castile Set a Lasting Precedent for Texas Women

By David A. Furlow

The legal concepts brought to the Southwest during the sixteenth, seventeenth, and eighteenth centuries continue to shape the rights of Texas women. [Read more...](#)



Queen Isabella of Spain

Peter Gray: The Difference One Person Can Make

By Laura Gibson

Peter Gray's father's decision to go to Texas would have a significant impact on Texas's Rules of Civil Procedure, the Houston Bar Association, and the life of Emeline, a freed slave. [Read more...](#)



Peter Gray

Winning the Archive War: Angelina Eberly Takes Her Shot

By DeJean Miller Melton

The actions of Angelina Eberly exemplify not only the tenacity and pluck of a pioneering businesswoman, but also a constitutional struggle that shaped the Republic of Texas and its laws. [Read more...](#)



Mrs. Eberly fires!

Family Remembrances and the Legacy of Chief Justice Hortense Sparks Ward

By Linda C. Hunsaker

My late father called this trailblazing Texas woman and first female Chief Justice of the Texas Supreme Court "Grandma Ward" with great affection. [Read more...](#)



Chief Justice Ward

They Would Not Be Denied: The Texas State Archives Preserves the History of the Struggle for Women's Suffrage

By Anna M. Reznik

Texas was the first state in the South to ratify the Nineteenth Amendment. How was it that Texas moved to the forefront of the Suffrage Movement? [Read more...](#)



Newly-registered voters in 1918

Remembering the Remarkable Judge Sarah T. Hughes

By Judge Elizabeth Ray

She was the first female Texas state district court judge, the first female federal district judge in Texas, and the first female to administer the oath of office to a president. [Read more...](#)

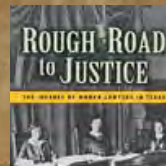


Judge Hughes

Excerpts from Rough Road to Justice: The Journey of Women Lawyers in Texas

By Betty Trapp Chapman

Historian Betty Trapp Chapman chronicles a twentieth century story of how women came to join the Texas judiciary. [Read more...](#)



Rough Road cover

Ad Astra per Aspera ("A Rough Road Leads to the Stars")

Book review: *Rough Road to Justice: The Journey of Women Lawyers in Texas*

By Judge Sylvia A. Matthews

Although the book is detailed and evidences scholarly research, it is an easy read. [Read more...](#)

Jury Service: A Milestone for Women's Rights in Texas

By Sarah A. Duckers

When did Texas have its first woman juror? Your answer probably ranges somewhere from the 1890s to the 1930s. You'd be wrong. [Read more...](#)



Louise Summers' name on juror list

Sandra Day O'Connor Set a Precedent

By Sharon E. Beck

Although Justice O'Connor is usually thought of as hailing from Arizona, she is actually a native Texan. [Read more...](#)



Justice O'Connor

Preserving the Oral History of State Bar Leadership

By JoAnn Storey

Since 2004, the State Bar Appellate Section has been on a mission to preserve the oral histories of retired Court of Appeals justices and former chairs of the section. [Read more...](#)

Hortense Sparks Ward's Spirit Shines on Through the University of Texas Center for Women in Law

By Linda Bray Chanow

The Center is the premier legal education institution dedicated to the success of women in law from first-year law students to the most accomplished attorneys. [Read more...](#)



Attendees of the Center's 2015 Summit

Archaeologists, Archivists, Assistant District Clerks, and Historians: An Executive Editor's Gratitude

By David A. Furlow

I'd like to express special gratitude to several people who went out of their way to help our contributing authors make this a special issue of the *Journal*. [Read more...](#)

News & Announcements

U.S. Senator John Cornyn Will Keynote Society's Twentieth Annual John Hemphill Dinner on September 11

By Marilyn P. Duncan

The Society's main fundraising event will feature principal speaker Sen. Cornyn, a public servant for the last three decades. [Read more...](#)



Sen. Cornyn

Society Hosts Second Biennial Symposium on the History of Texas Jurisprudence

By Dylan O. Drummond
Photos by David C. Kroll

The seminar featured captivating panel discussions, as well as presentations ranging from the rise of contract law in Texas to accounts of the six lawyers who perished at the Alamo. [Read more...](#)



Course director
Lynne Liberato

SCOTX Justices Eva Guzman and Debra Lehrmann Join Chief Justice Nathan Hecht in Celebrating Texas Female Judges' Day at the Capitol

By Dylan O. Drummond
Senators Royce West and Joan Huffman authored Senate Resolution No. 535, which established the occasion and traced its roots back to the 1925 all-woman Texas Supreme Court.



A gathering of
Texas women
judges

[Read more...](#)

The Society's Program "Magna Carta's Eight Hundred Year Legacy" Filled the Conference Hall at the State Bar Annual Meeting

By David A. Furlow

Eight hundred years ago, King John I of England reluctantly agreed to make peace with a group of rebellious barons.



Course attendees

[Read more...](#)

Society Debuts YouTube Channel, Posts Never-Before-Seen Court Content

By Dylan O. Drummond

This past April the Texas Supreme Court generously granted permission to post certain videos never before publicly available. [Read more...](#)



The Society's
YouTube page

Texas Legislature Funds the Texas Digital Archive

By David A. Furlow

The Eighty-Fourth Legislature just made life better for people who believe that judicial history matters. [Read more...](#)



Texas State Library
and Archives
Commission logo

The Journal Grants Reprints and Provides Speakers

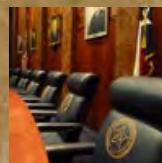
By David A. Furlow

We believe in sharing the records, research, and photos the Society has published, and we can often provide speakers familiar with Texas's rich legal history. [Read more...](#)

Perhaps for the First Time Ever, Court Clears Its Docket

By Dylan O. Drummond

This past June, the Court accomplished a feat it may have never achieved before in its history, one that many thought it never could. [Read more...](#)



Texas Supreme
Court

2015 BA Breakfast

By Dylan O. Drummond

This year and going forward, the Court's annual BA Breakfast has moved to coincide with the new date of the John Hemphill Dinner.

[Read more...](#)



Chief Justice Pope
& clerks at a prior
year's breakfast

Membership & More

Calendar of Events

Officers, Trustees, & Court Liaison

2014-2015 Membership Upgrades

2014-2015 New Member List

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@SCOTXHISTOCY



FB: Texas Supreme Court
Historical Society

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Marie R. Yeates

Letter from the *Outgoing President*

Dear Members,

The past year at the Society has been an extremely productive and memorable one. I leave the presidency with a new appreciation for the scope and impact of our programs and for the people who make them successful. In my final message to the membership, I would like to offer a brief summary of these initiatives and thank some of those who have devoted time and energy to moving them forward over the past year.

- **Journal**

In its fourth year of publication, the Society's e-journal continued to flourish under the leadership of Lynne Liberato and the executive team, David Furlow, Dylan Drummond, Marilyn Duncan, and David Kroll. Not only does each issue offer a treasure trove of scholarly articles, but the special features on Society events, including great photos, add even more color and interest. Each issue seems better than the previous one, and yet looking back, all four issues published in this volume year are equally remarkable. My hat goes off to the entire team.

- **Symposium**

The second biannual Society-sponsored symposium on the history of Texas jurisprudence was held in May, and all of us who attended were treated to a fascinating and varied day of panel discussions and paper presentations (see the story on p. 108). As was the case two years ago, the symposium was the brainchild of Lynne Liberato and Richard Orsinger, with essential support from Warren Harris and Pat Nester. This is exactly the kind of program the Society was established to sponsor, and I know I am not the only board member who appreciates both the quality of the program and the efforts of those who made it happen.

- **Texas State Historical Association Joint Session**

This year's joint session at the annual meeting of the Texas State Historical Association was another event that is directly tied to the Society's educational mission. I have to admit that I might not have attended if I hadn't been on the program, but I was tremendously grateful to have been a part of it. Special thanks go to David Furlow, who not only took the lead in organizing the session, but who put together a highly informative PowerPoint presentation on school prayer cases (see Pat Nester's column, pp. 5-6).

- **Texas Judicial Civics and Education Center**

The judicial civics center and museum project undertaken during Doug Alexander's tenure is well underway. Our partners in this initiative are the Texas Supreme Court, Court of Criminal Appeals, Office of Court Administration, and all fourteen Courts of Appeals. Doug reported at our last board meeting that a prominent Washington, D.C. architectural firm has been hired to produce the design for the center, which will be located in the Tom Clark Building.

- **Fellows**

Much of the Society's forward momentum over the past several years has been directly due to the development of the Fellows program, and this year was no exception. Under the leadership of David Beck and Warren Harris, both the number of Fellows and the range of Fellows-sponsored activities continued to expand (see Fellows Column on p. 7). I am deeply appreciative of their hard work as well as the support of each of the Fellows.

- **Hemphill Dinner**

This year's John Hemphill Dinner will be different from its predecessors in one important way while retaining all the elements that have made the event such a resounding success. The important change is its timing: this year, for the first time, the dinner will be held in September rather than June. As you will see in other parts of this issue of the *Journal*, our speaker will be the Honorable John Cornyn, who not only is the current Senate Majority Whip but is a former Justice on the Texas Supreme Court. Moving the Hemphill Dinner to the fall made it possible for Senator Cornyn to speak at the dinner.

I am thankful to Jim Ho and the other members of the Dinner Committee for their work in reaching out to law firms to buy tables for this year's event. I also extend a special note of appreciation to Mary Sue Miller, whose administrative skills and institutional knowledge are absolutely essential. I look forward to presiding over the dinner program, which will also include the presentation of the first President's Award for Outstanding Service to the Society. I hope to see many of you there on the evening of Friday, September 11.

Many thanks to all of you for giving me the opportunity to serve as your board president. The Society has a twenty-five-year tradition of preserving the court's history and educating the public about our judicial system, and I am proud to be part of that tradition.

Very truly yours,
Marie R. Yeates

MARIE R. YEATES *is a partner with Vinson & Elkins LLP in Houston.*

[Return to Journal Index](#)



Ben L. Mesches

Message from the *2015-16 President*

The 2015–16 year at the Texas Supreme Court Historical Society is off to an exciting start in no small part due to the tremendous leadership of our Immediate Past President Marie R. Yeates and our outstanding Board of Trustees. As we embark on this new year, the Society will remain keenly focused on projects that preserve the Court’s history, educate the public, and encourage lawyers to connect with our collective history.

Our work will begin this summer with a renewed emphasis on long-term strategic planning. Warren Harris has agreed to continue his work on behalf of the Society as Chair of the Long-Range Planning Committee. Through Warren’s dedicated efforts, we have already completed several important projects, including a revamped website, and identified other opportunities to further the Society’s essential mission. One of these projects, which you will see highlighted in this space and in the Society’s events this year, is collecting and preserving important historical artifacts from former Texas Supreme Court Justices. Archiving these materials will further our mission and ensure that we don’t lose crucial pieces of the historical record.

As we turn the page to the fall, we will be focused on the Society’s flagship event—the annual Hemphill Dinner. The dinner will take place on Friday, September 11 at the Four Seasons Hotel in Austin. We are honored that Senator John Cornyn will be the keynote speaker on what will be an exciting evening to celebrate the work of the Society. A special thanks to our law-firm sponsors, who are critical to the success of this event.

Throughout the year, our efforts will be led by energetic board members and committee chairs. Bill Chriss is keeping us focused on the Society’s Oral History Project, in which the history of the Texas judiciary and Texas law is preserved through recorded interviews with former justices of our Supreme Court. Justice Craig Enoch leads the charge on our many book projects, including a fascinating book by Chief Justice Thomas R. Phillips about Texas judicial elections. David Furlow provides historical context, editorial guidance, and unparalleled passion for Texas judicial history in his role as the Executive Editor of the prestigious *Journal of the Texas Supreme Court Historical Society*. Dylan Drummond is critical to the success of the *Journal* as Deputy Executive Editor and is responsible for the Society’s dynamic new website. It is thus no surprise that our Board voted this year to honor David and Dylan for their special contributions to the Society with the first-ever President’s Award.

I must also acknowledge the superlative work of the Society’s Fellows led by David Beck. Under David’s superb leadership, the Fellows program has grown from 8 members to over 37 members in just four years. This distinguished group has spearheaded one of the most exciting civics projects anywhere in the state of Texas—a book for seventh-grade Texas history classes that captures the critical role the courts play in our system of government. Thanks to Warren Harris, this book will be distributed in classrooms across the state.

I can't conclude my remarks without mentioning the special relationship the Society shares with the Court. We are particularly thankful for the role that Justice Paul Green plays as our Supreme Court liaison.

The Society is at the center of some of the most important and interesting work in our legal community. But we simply couldn't do it all without the support our Board, Fellows, members, and our second-to-none staff provide. Please let me know if you would like to get involved in our collective work in preserving the history of the Court.

Very truly yours,
Ben L. Mesches

BEN L. MESCHES *is a partner with Haynes and Boone, LLP in Dallas.*

[Return to Journal Index](#)



Pat Nester

Why You Should Go to a *Texas State Historical Association Conference*

I'M PROUD TO SAY that the Society, under the leadership of the executive editor of this newsletter, David Furlow, again presented compelling talks and materials at the Texas State Historical Association annual conference, held this year in Corpus Christi on March 6.

Laura Saegert, assistant director for archives at the Texas State Library, gave a detailed analysis of the latest techniques of finding and preserving original records of the Texas Supreme Court, some of which, amazingly, had been stolen and sold on eBay.

David gave a fascinating account of the legal and social issues involved with the King James Bible and school prayer in Texas. Who knew that versions of the Bible were once so controversial that riots broke out, troops were marshalled, and citizens killed? Parochial schools, it turns out, are largely the result of deep-seated concerns about which Christian Bible students would be exposed to.

And then our old friend, and new Ph.D., Bill Chriss talked about the cultural and intellectual history of different Christian traditions in Texas, where the early leadership were, in reaction to the recent religious mandates of Mexico, so opposed to any whiff of state religion that ministers were prohibited from serving in public office.

As your wandering reporter at this event, I want again to encourage you to consider attending next year's installment on March 2–4 in Irving. If you are a member of TSCHS, you have an obvious interest in the legal history of our state, and a high percentage of the presentations at TSHA have legal implications. It turns out that common law court decisions and legislation, beyond their legal dimensions, are one of the most common and reliable sources for historical analysis.

The range of topics presented at TSHA is literally overwhelming. You can only be physically present in one of the four or five sessions going on at any one time. And I assure you that you will not be bored, at least not for long. Here's a sample of what I listened in on—and what the lawyers and judges of our state's history had to deal with.

- **Border violence in early twentieth-century Texas**, sometimes involving participation by state officials, against Texas citizens of Mexican heritage. See www.refusingtoforget.org for details. An exhibit on the topic is being prepared for 2016 at the Bob Bullock Texas State History Museum in Austin.
- **The “Home Management House Program” at Texas Tech University, 1909–1970**, in which young Texas women were trained in the domestic arts—food, babies, etiquette, budgets, and four others that I couldn't write fast enough to capture—including the raising of a real live “practice baby,” one by fifty-six

students. An NPR story critical of the practice baby phenomenon at schools around the country helped lead to the demise of such programs.

- **Houston “Gorilla Girls” artists in the 1980s and ’90s** used demonstrations, sarcasm, irony, and occasional vulgarity to make the now well-documented point that the artistic establishment of the time openly discriminated against women artists. The last show of the Gorilla Girls was in Verona, Italy, in 1997. According to Germaine Greer, discrimination against women artists may be worse now—for you plaintiff’s attorneys reading this.
- **The astonishing effect of the coming of barbed wire to nineteenth-century Texas.** Within one generation after the development of barbed wire in 1873, the U.S. went from the least developed major country to the most developed, traceable in part to what the Indians called “the devil’s rope.” Fundamental values came into sharp conflict in Texas—the natural rights theories of the “open range” (which gave a theoretical justification for fence cutting) vs. the property rights theories of the farmers, which eventually, with the help of gunfights, prosecutions, the Texas Rangers, and an incredibly persistent rancher in Coleman County named Mabel Doss Day Lea, prevailed—although arguments over land grants and the running of cattle on federal land remain as modern versions of the sometimes bloody disputes of those tumultuous days.
- **The failure of Wichita Falls developers to improve water quality in the Big Wichita River of the 1860s.** Imagine a thriving community whose efforts to find, preserve, and exploit the most precious commodity on the Western frontier were so stymied as to require it to be shipped in by railroad. Things stayed so dry that by 1918 town leaders were exploding dynamite to help bring rain. Finally, political forces came together to dam the Big Wichita, creating the biggest man-made reservoir in Texas. But until the historic rains of May this year, the lakes supporting Wichita Falls had reached catastrophically low levels—a story that many fear is a portent of things to come in many parts of Texas.
- **The anarchists of Waco?** Born a slave in 1851, Waco resident Lucy Parsons became a labor organizer, a writer, and one of the early radicals of Texas. In 1873, she and her husband Albert Richard Parsons, a former Confederate soldier whom she met at a freedmen school in Waco, migrated to Chicago, became socialists, and agitated against business trusts. They allied themselves with the radical German community of their day, and were heavily involved in campaigning for the eight-hour work day. Later, Albert was executed for his alleged role in the Haymarket Square bombing in Chicago. Ever the activist, Lucy spent time in Europe attempting to vindicate the Haymarket martyrs, succeeding to the extent that the city of Chicago named a park for Lucy Parsons.
- **“Texas Fever” and the German migration to nineteenth-century Texas.** It has been thought a mystery why so many Germans decided to come to Texas in the 1830s and ’40s, in light of the fact that many of them were stoutly anti-slavery in an era when Texas had just broken with Mexico partly because it wanted to be stoutly pro-slavery. The answers revolve around free land, unemployment among former German soldiers, German travelers touting Texas in letters back home, impresarios like Henri de Castro organizing expeditions of settlers in response to the new nation’s perceived need for citizens who were not Comanches, and areas around Brenham where excellent undulating farmland bears a superficial resemblance to northern Germany, except in the winter. *Danke schoen* to Martin Nester, 1849 settler of D’Hanis, formerly of Wurttemberg, Germany, who got me here.

Dozens of scholars made dozens of other interesting presentations, all relevant to Texas lawyers of some sort. Next year you should go. See www.TSHAonline.org for the latest information.

[Return to Journal Index](#)

Fellows Column

By David J. Beck, Chair of the Fellows



Photo by Alexander's Fine Portrait Design-Houston

I AM PLEASED TO REPORT that the Third Annual Fellows Dinner was a tremendous success. Seven Justices from the Texas Supreme Court joined the Fellows at the Blanton Museum of Art in Austin on May 7 for a wonderful evening of art, dinner, and conversation. We appreciate Justice Green, the Court's liaison to the Society, coordinating the scheduling of the dinner so that the Justices would be able to attend. Unique events such as this one are included as a benefit of being a Fellow. The attached photos will give you some sense of the elegance, uniqueness, and camaraderie of the evening. We are beginning plans now for the Fourth Annual Fellows Dinner, to be held in April 2016.

We are also pleased that many of the Fellows were able to attend the *History of Texas and Supreme Court Jurisprudence* symposium in Austin on May 7. All Fellows were invited to attend free of charge. We encourage all of you to attend the Hemphill Dinner on September 11 where the Society will recognize and express its appreciation to all Fellows.

We continue to make substantial progress on our judicial civics book project for seventh-grade Texas history classes. The book and program is tentatively named *Taming Texas: How Law and Order Came to the Lone Star State*. The book has been written and is currently being illustrated. We are very pleased that Chief Justice Hecht has written the foreword. As Chief Justice Hecht describes the book:

[O]ver the years, judges and lawmakers have fought against power and prejudice to produce the society we enjoy today. This book is about how that happened in Texas. Settlers from Spain and Mexico brought with them a civil law tradition that had its origins in Roman law two thousand years ago. At the same time, other pioneers from the United States believed in a common law system borrowed from England. Coming together in this wild frontier, people from very different cultures and backgrounds had to find new ways to settle their disputes and establish order. They recognized women's rights, protected homesteads, tamed the railroads, and fostered the independent spirit that had brought them here in the first place.

We greatly appreciate the Chief's support of this project.

We are in the process of nominating the Fellows Class of 2015. I am excited to welcome the following as new Fellows: Stacy Alexander, Douglas W. Alexander, Jeffrey L. Oldham, Thomas F.A. Hetherington, Hon. Harriet O'Neill, Kerry N. Cammack, and Elaine Block.

Finally, I want to again express our appreciation to the Fellows for their support of programs like our judicial civics book project. If you are not currently a Fellow, please consider joining the Fellows and helping us with this important work. If you would like more information or want to join the Fellows, please contact the Society office or me.

FELLOWS OF THE SOCIETY

HEMPHILL FELLOWS

(\$5,000 or more annually)

David J. Beck*

Joseph D. Jamail, Jr.*

Richard Warren Mithoff*

GREENHILL FELLOWS

(\$2,500 or more annually)

Stacy and Douglas W. Alexander

Marianne M. Auld

S. Jack Balagia

Robert A. Black

Elaine Block

E. Leon Carter

Tom A. Cunningham*

David A. Furlow and Lisa Pennington

Harry L. Gillam, Jr.

William Fred Hagans

Lauren and Warren W. Harris*

Thomas F.A. Hetherington

Allyson and James C. Ho*

Jennifer and Richard Hogan, Jr.

Dee J. Kelly, Jr.*

David E. Keltner*

Thomas S. Leatherbury

Lynne Liberato*

Mike McKool, Jr.*

Ben L. Mesches

Nick C. Nichols

Jeffrey L. Oldham

Hon. Harriett O'Neill and Kerry N. Cammack

Hon. Thomas R. Phillips

Hon. Jack Pope*

Shannon H. Ratliff*

Robert M. Roach, Jr.*

Leslie Robnett

Professor L. Wayne Scott*

Reagan W. Simpson*

S. Shawn Stephens*

Hon. Dale Wainwright

Charles R. Watson, Jr.

R. Paul Yetter*

*Charter Fellow

[Return to Journal Index](#)

Photo Highlights from the Third Annual Fellows Dinner

May 7, 2015 Blanton Museum of Art, Austin, Texas

Photos by Mark Matson



ABOVE: Susannah Brown, Debbie Wainwright, former Justice Dale Wainwright, and Justice Jeff Brown
BELOW: Warren Harris, Janita Watson, Skip Watson, and Chief Justice Nathan Hecht





ABOVE: Former Justice Dale Wainwright and Chief Justice Hecht
BELOW: Skip Watson and David Keltner



AT RIGHT:
top group, from left:
Tom Cunningham,
Jennifer Hogan,
Justice Phil Johnson,
Richard Hogan,
and Jeff Oldham;
bottom group:
Justice John Devine,
Nubia Devine,
Justice Eva Guzman,
David Keltner,
and Larisa Keltner



BELOW:
Carla Johnson,
Justice Phil Johnson,
Skip Watson,
and Janita Watson





ABOVE: Kerry Cammack, former Justice Harriet O'Neill, and Randy Roach
BELOW: Ben Mesches, Lynne Liberato, and Richard Orsinger





Jim Haley and Doug Alexander



Jennifer Hogan and Chief Justice Nathan Hecht

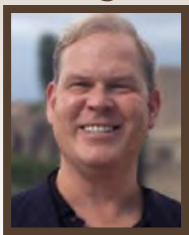
Randy Roach and Justice Paul Green





Patty Hagans, Lauren Harris, Chief Justice Hecht, and Fred Hagans

[Return to Journal Index](#)



David A. Furlow

Five Centuries of *Evolving Women's Rights* in Texas

THIS ISSUE OF THE *JOURNAL* chronicles the evolution of women's rights in Texas over five centuries, from the expansion of the sixteenth century Spanish Empire into Texas to cutting-edge conferences in twenty-first century America. We begin *in media res*, as the *Journal's* General Editor, Lynne Liberato, describes the vote she cast on November 7, 1972 in favor of the Texas Equal Rights Amendment. Lynne's vote would have appalled Queen Victoria, who placed her faith in religion, tradition, and monarchy rather than in women's rights. As Victoria wrote to Sir Theodore Martin in March 1870, suffragettes such as Katharine Russell, Viscountess Amberley, Lynne's nineteenth century counterpart, threatened imperial social order:

The Queen is most anxious to enlist everyone who can speak or write or join in checking this mad, wicked folly of "Women's Rights" with all its attendant horrors, on which her poor feeble sex is bent, forgetting every sense of womanly feeling and propriety. Lady Amberley ought to get a *good whipping*.¹

Luckily for Lynne, Queen Victoria did not order her whipped for casting an impertinent vote.

Departing President Marie Yeates then reviews the accomplishments of her 2014–15 year of leading the Society. Excerpts from Society historian James Haley's book *The Texas Supreme Court: A Narrative History, 1836–1986* (edited by *Journal* Managing Editor Marilyn Duncan) show that Society President Yeates carried on a tradition of female leadership that dates back to Queen Isabella of Spain. In both Spain and New Spain, women lived under a Castilian system of law, arising out of Visigothic custom, in which a married couple shared post-marital community property while each spouse separately retained property acquired before the marriage. Republic of Texas Supreme Court Chief Justice John Hemphill strengthened Castilian, Spanish, and Mexican traditions of spousally-shared community property in response to a violent, war-torn frontier society. In one opinion, he asked:

Do not the women sustain the frontier with their toils, if not with their arms? Are they not subjected to the same, and to infinitely worse horrors from the hostilities of the savage foe? Do they not prepare the warrior for battle, rouse all the fires of his soul, and stimulate him to the most daring achievements? Do they not nerve his heart with the courage which prefers death to disgraceful flight, and inspire him with the resolution to return victorious or return no more ...?

¹ Letter, Queen Victoria to Sir Theodore Martin, circa 1870, in Roger Fulford, ed., *Votes for Women: The Story of a Struggle* (London: Faber & Faber, 1958), 65.

And while the warriors are absent on distant expeditions, are not their families sustained by the toils and struggles of their wives, mothers and sisters?²

On an embattled frontier, men and women had to stand strong, together, to survive.

In marked contrast, rulers such as Britain's Queen Victoria subordinated the rights of nineteenth century women to men in the imperial capitals of Europe. Charles Darwin agreed, but taught that the evolutionary processes created hierarchies of power between men and women and among races that subordinated women and all people of color to Europe's ruling class:

While it is generally admitted that with woman the powers of intuition, of rapid perception, and perhaps of imitation, are more strongly marked than in man...some, at least, of these faculties are characteristic of the lower races, and therefore of a past and lower state of civilization.³

From a substantially more enlightened standpoint, Houston Bar Association President Laura Gibson analyzes Harris County District Court Judge, and later Texas Supreme Court Justice, Peter Gray's defense of a wrongfully-enslaved woman's rights in the *Emeline* enslavement case.

Independent scholar DeJean Melton, a researcher focusing on the material culture of the Republic, examines how Angelina Peyton Eberly's firing of a shrapnel-loaded cannon on Congress Avenue kept Texas's archives and capitol in Austin. During the Archive War, President Sam Houston sought to move the Republic's archives back east. Angelina Eberly led activist Austinites, determined to keep the center of Texas government in the center of Texas. On a related theme, Assistant State Archivist Anna Reznick reveals the Archives' records of the Suffrage Movement and places these splendid documents in their historic context.

The *Journal* then follows Sam Houston and his archive-gatherers back to Houston City, now simply Houston. Philanthropist Linda Hunsaker, a descendant of Hortense Sparks Ward, shares family reminiscences of Hortense's campaign to enact the Married Woman's Property Act in 1913, her struggle to secure voting rights for Texas women between 1914 and 1919, and her service as Chief Justice of the nation's first all-female state supreme court in 1925.

Texas women ascend to the bench in the twentieth century, as reflected in excerpts from Chapter 7 of Houston historian Betty T. Chapman's book *Rough Road to Justice: The Journey of Women Lawyers in Texas* (Austin: Texas State Bar Association, 2008). Harris County District Court Judge Sylvia Matthews reviews Betty's Chapman's excellent history of women in the law.

Probate specialist Sarah Duckers memorializes the story of the constitutional amendment that finally enabled woman to serve as jurors in Texas cases, beginning in 1954. Sarah uses original court records provided by Harris County Historical Documents Clerk Francisco Heredia to reconstruct a trial. That trial concerned the first woman to receive jury instructions beginning, "Lady and Gentlemen of the Jury."

Harris County District Court Judge Elizabeth Ray then writes about her earliest recollections and family connections with that groundbreaking jurist, Judge Sarah Hughes, who is the first woman to be elected as a district court judge in Texas, the first woman to serve as a federal district court judge in Texas, and the judge who

² *Edward v. James*, 7 Tex. 372, 382–83 (1851) (citing the *Sietes Partidas*, vol. 7, tit. 33, l. 6; 2 Sala. 352).

³ Charles Darwin, *The Descent of Man, and Selection in Relation to Sex* (London: John Murray, 2 vols., 1874), 858.

administered Lyndon Baines Johnson’s oath of office as President on Air Force One on November 22, 1963 after the assassination of President John F. Kennedy.

Houston trial lawyer Sharon Beck reexamines U.S. Supreme Court Justice Sandra Day O’Connor’s birth and education, not in Arizona as is widely believed, but in El Paso, Texas, before analyzing how Justice O’Connor’s experience and opinions shaped anti-discrimination law in the federal system and in Texas. Deputy Executive Editor Dylan Drummond, who presented an inspiring “Alamo Bar Association” paper, summarizes some of the highlights of General Editor Lynne Liberato’s May symposium on Texas and Supreme Court jurisprudence.

Linda Chanow, Executive Director of the University of Texas Center for Women in the Law, concludes this issue by describing how the Center has memorialized Chief Justice Hortense Sparks Ward’s example of feminine leadership in the law while taking practical steps to improve the lives and career opportunities of women law students and lawyers.

The *Journal* is publishing the photographs, archival documents, and judicial records that chronicle the evolution of women’s rights as part of its mission to collect and preserve information, papers, photographs, and significant artifacts relating to the Supreme Court and the appellate courts of Texas. I hope you agree that this theme of evolving women’s rights in Texas is an important and inspiring one. The theme has many tangents—so many, in fact, that we will continue to explore other aspects of the topic in future issues of the *Journal*, including the fall issue. Stay tuned...

DAVID A. FURLOW is a native Houstonian and part-time Hill Country resident of Wimberley, as well as an attorney, archaeologist, and historian.



David A. Furlow with wife Lisa Pennington, older son John D. Furlow, daughter Liz Furlow, and younger son Ryan Furlow.

[Return to Journal Index](#)

Reflections on the Texas Equal Rights Amendment

An Essay by Lynne Liberato

THE FIRST TIME I VOTED IN A NATIONAL ELECTION, I voted for the Texas Equal Rights Amendment. My college boyfriend and I could not miss class on Election Day, so we drove from our hometown of Arlington to the county seat to vote early. We arrived in Fort Worth a few days before Election Day in 1972, excited to vote in the presidential election. A committed Republican, I cast my first presidential vote for Richard Nixon.

I did not realize that I would be voting on laws as well as candidates until I read the ballot in the voting booth. I remember seeing the Texas Equal Rights Amendment on the ballot because it struck me as odd that the proposed amendment contained a laundry list of protected groups based on sex, race, color, creed, or national origin. I was confused about why the amendment was necessary, because I thought that all of those groups already had equal rights under the U.S. Constitution. I might have missed the inclusion of sex on the list, which it turns out was the point, or maybe I thought that the Constitution already prohibited discrimination based on gender.

In hindsight, my vote for Richard Nixon came to look different to me as the Watergate scandal unfolded. My vote for the Texas Equal Rights Amendment came to look different too, as the national amendment ran into significant opposition during the ratification process in 1973. My youthful idealism faded as opponents stirred fears that women would be drafted and the Equal Rights Amendment would require men and women to share bathrooms.

The entire text of Section 3a, Texas's Equal Rights Amendment, reads as follows: "EQUALITY UNDER THE LAW. Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative."

Like so many simple laws, the Equal Rights Amendment became complicated in its application and its failed adoption nationally. But, the issues raised are *deja vu* all over again. The issue of drafting women has morphed into questions of whether women should serve in combat units as they fight in wars with no front lines, effectively making every unit a combat unit. The issue of women in the military became personal to me when my son became a Marine. Through him, I met women described by my son as Marines he would be glad to share a foxhole with. That vote of confidence seemed a more significant affirmation than anyone in a voting booth could provide.

I am reminded of the bathroom issues as I currently represent the City of Houston in a challenge to its Equal Rights Ordinance, which similarly protects a laundry list of groups. This time, the point of the law is protection based on sexual orientation and gender identity. Opponents argue that bathrooms—again—block the path to individual rights. According to briefing in the appellate court, the coalition that seeks to repeal the ordinance opposes it because: "The Coalition's chief concern about (the Houston Equal Rights Ordinance) is that it would potentially endow a biological male with the legal right to forcibly enter a women's public restroom without the knowledge or consent of the adult or minor females using that Houston facility."

So some things remain the same and some things change. Between voter approval of the Texas Equal Rights Amendment and today, there have been so many remarkable changes in women’s rights. When I became the first woman president of the Houston Bar Association in 1992, my election was literally front page news in the *Houston Post*. Now, women bar presidents merit hardly a note because of their gender. That fact was in evidence recently when I moderated a panel of female national bar presidents for the 2015 Women’s Power Summit on Law & Leadership sponsored by the UT Center for Women in the Law. The all-female panel consisted of the president-elect of the American Bar Association and the presidents of the National Bar Association, National Asia Pacific American Bar Association, National Native American Bar Association, and Hispanic National Bar Association.

The composition of the panel is only one of almost daily reminders I have of the *de facto* equal rights I enjoy, even though the national Equal Rights Amendment was never ratified. But there are also reminders that the bathroom issue is not the only one blocking the road to equality. More often than not, I find that the only other woman in the courtroom in a big case is the judge. The number of women litigators is dismal. The reasons for this disparity, unlike the Equal Rights Amendment, are complex.

But, with the benefit of many years since the Equal Rights Amendment breached my consciousness, my reaction to it is not so much legal as it is one that resides in my heart. The national Equal Rights Amendment reads: “Equality of rights under the law should not be denied or abridged by the United States or any state on account of sex.” In my heart, I cannot believe that our great country — like our great state — should settle for anything less.



LYNNE LIBERATO is a partner in the Appellate Section of the Houston office of Haynes and Boone, LLP.

[Return to Journal Index](#)

No Pawn in a Game of Thrones: Queen Isabella of Castile Set a Lasting Precedent for Texas Women

By David A. Furlow

IN SOME OF THE BEST LYRICS PENNED ABOUT THE LONE STAR STATE, Robert Earl Keen sang, “the road goes on forever, and the party never ends.” The same goes for the Castilian legal traditions that still shape community property law, divorce proceedings, and marital property rights in Texas: *El Camino Real de los Tejas* goes on forever, and the party never ends. The legal concepts conquistadors, missionaries, and cattle ranchers first brought to the Southwest during the sixteenth, seventeenth, and eighteenth centuries continue to shape the rights of Texas women.



The King's Road, El Camino Real, built during the period of Spanish rule, continues to cross Texas today, just as Castilian concepts of community property law and homestead protection continue to shape women's rights in Texas.
Photo of El Camino Real west of San Marcos by David A. Furlow.

Photo of
El Camino Real,
west of
San Marcos,
by David A.
Furlow.



The history of women’s rights in Texas begins in Europe with a fifteenth century Iberian-royalty team: Queen Isabella I of Castile, who, with her husband King Ferdinand of Aragon, jointly exercised power as the *Most Catholic Majesties* of the Empire of Spain. In the Texas Supreme Court Historical Society’s book *The Texas Supreme Court: A Narrative History, 1836–1986*, historian James L. Haley argued that Isabella must be counted as the first of the many tough-minded, independent women who profoundly shaped the rights of Texas women.

In the life she lived, the example she set, and the body of Castilian law she bequeathed to Texas, Isabella set a precedent and bequeathed a legal legacy of feminine empowerment to future generations. As Jim Haley observed in *The Texas Supreme Court's Prologue*,

In England, a woman's identity became subsumed in that of her husband when she married; property that was hers before marriage became his; she could not enter into contracts—her station was roughly equivalent to that of a child or a mental incompetent. Under civil law, things were vastly different, as indeed was embodied by Isabella herself, who as a young princess had been so used as a pawn in the games of powerful men that when she married, she refused a crown matrimonial. It was she herself who chose Ferdinand of Aragon as her husband, insisted on taking her throne as Ferdinand's equal in power, and squeezed a prenuptial agreement from him.

All these areas of Spanish jurisprudence would come to have enormous implications for the land we would know as Texas. It was Isabella who took the lead in outfitting Columbus's expedition, and her gamble paid off: his discovery of the New World, and then the successes of the conquistadores, Pizarro in Peru and Cortés in Mexico, made Spain the dominant power in Europe and opened the floodgates of looted native wealth. Within two generations, Spanish cities in the New World had become cultural centers in their own right, with writers and composers, cathedrals and universities, and the complex, arcane system of laws whose enforcement descended from viceroy down to governor and further down to commandants civil and military.¹



Queen Isabella of Spain, from the painting *Isabel la Católica*, attributed to Gerard David, ca. 1520, public domain, Wikipedia, http://en.wikipedia.org/wiki/Isabella_I_of_Castile#/media/File:Isabel_la_Cat%C3%B3lica-2.jpg

¹ James L. Haley, *The Texas Supreme Court: A Narrative History, 1836-1986* (Austin: Univ. of Tex. Press, 2013), 2–3.



Mission Nuestra Señora de la Purísima Concepción de Acuña in San Antonio. Photo by David A. Furlow.

In Chapter 3 of *The Texas Supreme Court* (“A Functioning Judiciary”), Haley described how John Hemphill preserved and expanded women’s rights to community property and homestead protection while Hemphill served as Chief Justice of the Supreme Court of Texas during the Republic:

A second realm of law that presented Hemphill with an opportunity to preserve the Spanish influence in Texas law was in the rights of married women. Under the common law in effect in most of the United States, wives were virtually the property of their husbands, with very little room to maneuver into meaningful independent lives of their own. In Texas under Spain, wives had enjoyed the benefits of community property: they entered a marriage with property of their own, and if the marriage dissolved they retained their original property, and moreover had a right to part of the wealth that they had created as a couple. Even as it adopted the common law as its default value, the Texas Congress, as it did with pleadings, carved out an exception in embracing the concept of community property.²

As Haley explains, Chief Justice Hemphill exercised his influence as a jurist and as a drafter of Texas’s 1845 state constitution to protect the elevated status women enjoyed under some aspects of Castilian Spanish law:

It was inevitable that the two philosophies on the status of women would collide in Texas’s Supreme Court, and in *Scott and Solomon v. Maynard, et ux.*,³ Hemphill made clear his determination that counsel practicing before the Supreme Court had better acquire a working familiarity with Spanish law, because relationships entered into before Texas independence, whether contracts or

² Ibid., 177-80.

³ Dallam 548, 553 (Tex. 1843), cited in Haley, *Texas Supreme Court*, 39 and 261 nn. 31-32.

marriages, would be governed by the law in force at the time they were entered into.

Hemphill also led the Court in a Latin-influenced approach to the law of creditor and debtor. Whereas in the common law, imprisonment for debt was still common practice, Spanish civil law had taken a milder view toward debt since the days of Ferdinand and Isabella. Countless early settlers came to Texas to escape creditors in their home country...⁴

The Castilian civil law that Chief Justice Hemphill respected and revered enough to write into the 1845 Constitution gave married women in Texas greater property rights than their sisters then enjoyed in England and the rest of the American Republic.⁵

The progressive nature of Texas marital property law nevertheless went unrecognized at the women's rights convention at Seneca Falls, New York on July 19–20, 1848. The convention's leaders declared that New York was the first state in the nation to secure marital property rights for women, ignoring the fact that Texas had entered the United States three years earlier with those rights and more inscribed in its laws.⁶ The shadow of slavery cast a pall over everything Texan at that time, while the smoke of the Mexican War obscured any effort to recognize the unique rights Texas women then enjoyed.

⁴ Excerpts from Haley's *Texas Supreme Court* are used by permission of the University of Texas Press and author Jim Haley.

⁵ See generally Mary Wollstonecraft, *Vindication of the Rights of Woman* (London: 1792; reprint, New York: Penguin, 1975); Linda K. Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill: Univ. of N. Carolina Press, 1980), 9-10, 120-34, 141-42, and 144-48 (women's property rights).

⁶ Haley, *Texas Supreme Court*, 1, citing James W. Paulsen, "Community Property and the Early American Women's Rights Movement: The Texas Connection," *Idaho Law Review* 32 (1996).

DAVID A. FURLOW is a native Houstonian and part-time Hill Country resident of Wimberley, as well as an attorney, archaeologist, and historian.

Jim Haley and
David A. Furlow at the
Society's April 2015
Fellows Dinner



[Return to Journal Index](#)

Peter Gray: The Difference One Person Can Make

By Laura Gibson

PETER W. GRAY GOT TO TEXAS AS SOON AS HE COULD. He arrived in Galveston on December 24, 1838, a few weeks after he turned nineteen. Gray was born in Fredericksburg, Virginia on December 12, 1819.¹ His father, Colonel William Fairfax Gray, was an acquaintance of two land speculators, Albert T. Burnley and Thomas Green, both of Washington, D.C., who wanted to invest money in Mississippi, Louisiana, or Texas through a reliable land agent. They hired Col. Gray to travel to Texas. That decision would have a significant impact on Texas's Rules of Civil Procedure, the Houston Bar Association, and the life of Emeline, a freed slave.

Col. Gray traveled to Texas in 1835, shortly after he was admitted to the Virginia bar at the age of forty-eight. He kept a detailed record of his observations in his diary, which he called "From Virginia to Texas." Col. Gray was so impressed by Texas, and with the city of Houston in particular, that he decided to return with his family. He wrote the Republic's appointed President, David G. Burnet, from New Orleans, stating that, "I shall return to Texas with as much speed as my affairs in the United States will admit to make my future home among you."²

In November 1838, Col. Gray, his wife, Millie,³ and family left Virginia on the steamship *Rappahannock*, traveling between Fredericksburg and Baltimore. In Baltimore they embarked on the brig *Delia* and traveled south until they arrived in Galveston on Christmas Eve.⁴ After the organization of the Texas Supreme Court in 1837, Col. Gray served as its Clerk.⁵

Peter Gray must have admired his father greatly, for he developed a love of the law and books, both of which were his father's passions.⁶ After young Gray's arrival in Texas in December 1838, he began his study of law in his father's office in his two-room red house.⁷ By at least January 9, 1840, Gray had entered into a

¹ See Thomas W. Cutrer, "Gray, Peter W.," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fgr25>, accessed July 16, 2015.

² See William Fairfax Gray, *From Virginia to Texas, 1835: Diary of Col. Wm. F. Gray, giving details of his journey to Texas and return in 1835-1836 and second journey to Texas in 1837*, preface by A. C. Gray (Houston: Gray, Dillaye & Co., 1909, reprint, Houston: Fletcher Young Pub. Co., 1965); letter to David G. Burnet, quoted by Marguerite Johnston, *Houston: The Unknown City, 1836-1946* (College Station: Texas A&M Univ. Press, 1991), 7. See generally Andrew Forest Muir, "Gray, William Fairfax," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fgr27>, accessed July 16, 2015; Cutrer, "Peter Gray," *Handbook of Texas Online*.

³ Peter Gray's mother's name is sometimes spelled as "Milly." However, this article uses the spelling "Millie" as that is the spelling used in J. H. Freeman, *The People of Baker Botts* (Houston: Baker & Botts, 1992), which makes reference to her diary, presumably the source for that publication. See Millie Gray, *Diary of Millie Gray, 1832-1840, Recording Her Family Life Before, During and After Col. Wm. F. Gray's Journey to Texas in 1835, and The Small Journal, Giving Particulars of All That Occurred During the Family's Voyage to Texas in 1838* (Houston: Fletcher Young Pub. Co., 1967). Other historians follow the diary's spelling as "Millie," too. See Johnston, *Houston*, 25.

⁴ See Gray: *From Virginia to Texas 1835-36*, preface; Johnston, *Houston*, 25-27 at 25.

⁵ See Hugh Rice Kelly, "Peter Gray," *The Houston Lawyer*, January 1976, 29-35 at 29.

⁶ Col. Gray brought a library of some 250 books with him when he moved to Texas. See Millie Gray's *Diary* and Dr. Andrew Forest Muir's biographical sketch of Col. Gray cited in Johnston, *Houston*, 6.

⁷ See Kate Sayen Kirkland, *Captain James A. Baker of Houston, 1857-1941* (College Station: Texas A&M Univ. Press, 2012), 46



Judge Peter Gray's portrait in the Eleventh Judicial District Court of Harris County.
Photo by David A. Furlow.

law firm partnership with his father and Judge John Scott,⁸ as reflected in the advertisement they placed in the first, January 9, 1840 issue of *The Morning Star*, a newspaper in Houston.⁹

In 1841, at the age of twenty-two, after his father's passing, Peter Gray was appointed by Sam Houston to succeed Col. Gray as district attorney, a position in which he served until Texas was admitted to the Union in 1846.¹⁰ Coinciding with his service as district attorney, he won election in 1841 as a city alderman.¹¹ Gray also won election to the Seventh District Court (now the Eleventh District Court), where he served until the outbreak of the Civil War.¹² Chief Justice Oran Roberts referred to Gray as "the very best district judge upon the Texas bench."¹³

At a Houston Bar Association banquet in 1910, Judge W. Key Hamblen described Judge Gray as "one of the chiefs among the intelligencers of that day. He was accomplished, educated in all the refinements as well as in all the substantial of the profession; so discriminating, so penetrating, that no proposition of law was presented to him that he did not see; so absolutely honest that his

and 374 n.6. Col. Gray's son, Allen C. Gray, described their office as "a little red house, one story with two rooms.... [Col. Gray's] office was in front and in the rear my brother and I and several other boys were taught by the First Episcopal clergyman who came to Houston, Reverend Mr. Chapman. Afterwards my father moved his office around on Courthouse Square...." See Kelly, "Peter Gray," *Houston Lawyer*, 29-30.

⁸ John Scott was from North Carolina, where he had served as a state representative and solicitor general of the state. See James L. Haley, *The Texas Supreme Court: A Narrative History, 1836-1986* (Austin: Univ. of Tex. Press, 2013) 24.

⁹ The earliest reference to Gray's practice of law appears in the diary his mother, Millie Gray, kept of her family's move from Virginia to Houston. In her Sunday, January 5, 1840 entry, she noted that Judge Scott was at her home and that he, Col. Gray, and Gray had entered into a partnership of law. The Thursday, January 9, 1840 ad in the *The Morning Star* (not January 7, 1840, as mentioned in some sources) reads as follows:

LAW NOTICE—The subscribers have associated in the practice of law under the firm of Scott & Gray. One of them may always be found at the office of W. F. Gray, City of Houston. Their united attention, when necessary, will be given to business entrusted to them.

W. Fairfax Gray.
John Scott.
Peter Gray.

See *The Morning Star* (Houston, Tex.), Vol. 1, No. 224, Ed. 1, Thurs., Jan. 9, 1840, <http://texashistory.unt.edu/ark:/67531/metapath79998/m1/3/?q=Gray/>; accessed July 16, 2015, Univ. of N. Tex. Libs., *The Portal to Texas History*, <http://texashistory.unt.edu>, crediting Dolph Briscoe Ctr. for Am. Hist., Austin, Tex.; cf. Freeman, *Baker Botts*, 10. Col. Gray passed away from pneumonia on April 16, 1841. Judge Scott passed away on June 4, 1842. After Scott's passing, Peter Gray continued the practice.

¹⁰ See Cutrer, "Peter Gray," *Handbook of Texas Online*; Haley, *Narrative History*, 90.

¹¹ See Freeman, *Baker Botts*, 11; Kirkland, *Captain Baker*, 46.

¹² Gray's portrait now hangs in the Eleventh District Court of Harris County, the successor court to the courts in which Gray, Judge John Scott, and Judge James A. Baker were all judges. All three worked at the firm now known as Baker Botts, LLP. See Freeman, *Baker Botts*, 9.

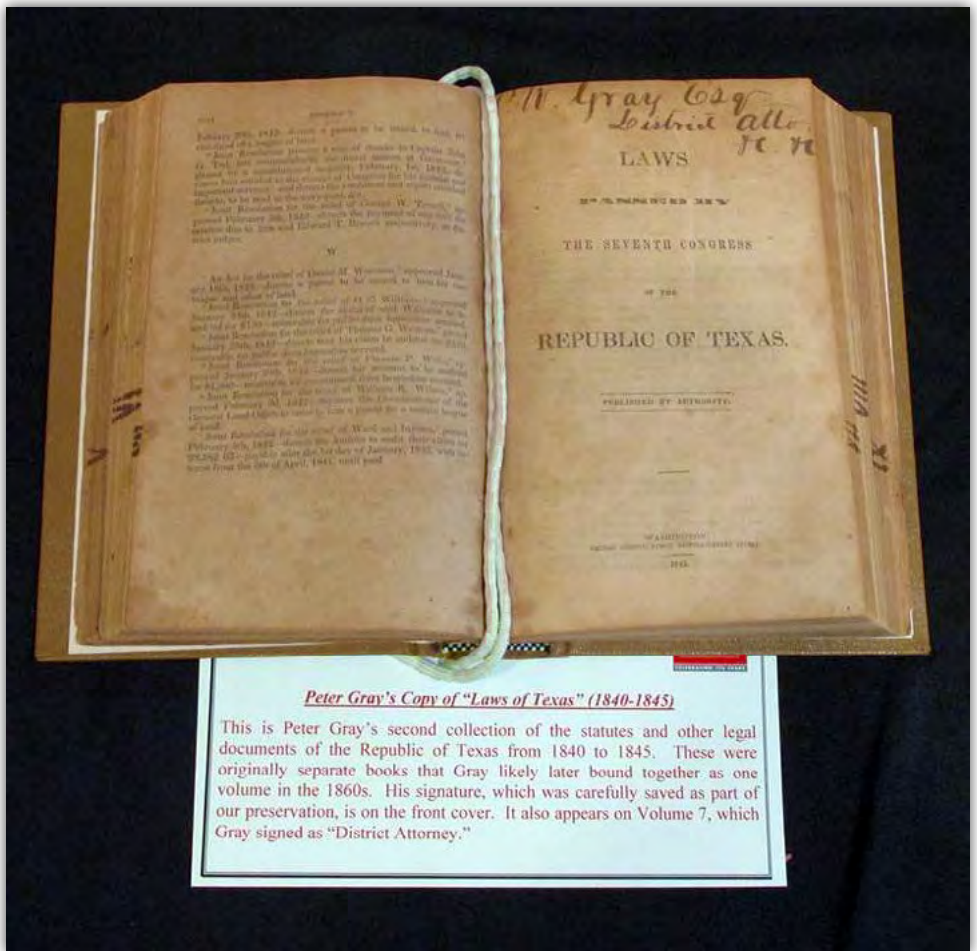
¹³ See Kelly, "Peter Gray," *Houston Lawyer*, 31; Johnston, *Houston*, 57. See also Tarlton L. Lib., "Peter W. Gray (1819-1874)," *Justices of Texas 1836-1986*, <http://tarlton.law.utexas.edu/justices/profile/view/40>, accessed July 16, 2015.

reputation could stand among a million without a scar.”¹⁴

In 1846, Gray founded the Law Offices of Peter W. Gray.¹⁵ In 1865, he formed a partnership with his cousin, Walter Browne Botts. They advertised their new firm on October 20, 1865, announcing the formation of “Gray & Botts, Attorneys and Counsellors at Law, Houston, Texas. Office on Courthouse Square.”¹⁶

Gray & Botts was largely a commercial litigation practice representing clients with interests in land, railways, and banks, including William Marsh Rice in collection suits.¹⁷ The firm also represented the defendant, James Wilson, in a suit by Rice and others to quiet title on tracts of land owned by John and Augustus Allen. Since both Allen brothers were dead at the time of the suit, the lawyers took depositions on written questions of their surviving brothers, Henry and Samuel Allen, and Augustus Allen’s wife, Charlotte Allen, the first woman to arrive in Houston (she was twenty-nine when she arrived in 1834).¹⁸

In 1846, after Texas became a state, Gray represented Harris County in the House of the First Legislature, where he co-authored the precursor to the Texas Rules of Civil Procedure, known as the Practice Act, in conjunction with Texas Supreme Court Justice Royall T. Wheeler.¹⁹ Those rules would prove important to Gray in his practice of law.



Peter Gray’s personal copy of *The Laws of Texas* (1840-1845). Gray’s carefully-preserved signature appears on the front cover and on this page of Volume 7, which Gray signed in his capacity as “District Attorney” of Harris County. Photo by David A. Furlow.

¹⁴ See Kelly, “Peter Gray,” *Houston Lawyer*, 31.

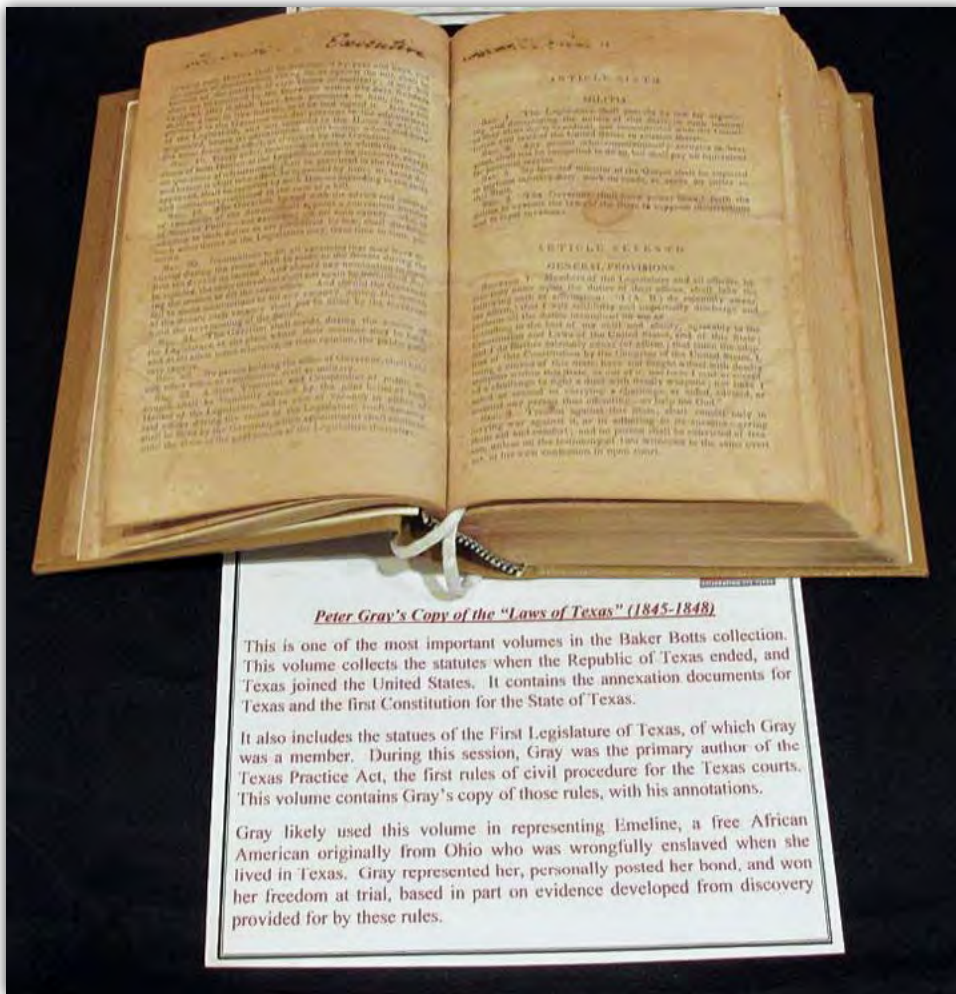
¹⁵ *Ibid.*, 31-32.

¹⁶ See Kirkland, *Captain Baker*, 48; Freeman, *Baker Botts*, 16.

¹⁷ See Kirkland, *Captain Baker*, 48-49.

¹⁸ Bill Kroger, “Reconstructing Reconstruction: Stories from the Harris County Court Archives on How the Rule of Law Was Restored after the Civil War,” *The Houston Lawyer*, January/February 2008, http://www.thehoustonlawyer.com/aa_jan08/page26.htm; Kirkland, *Captain Baker*; *Rice et al. vs. Wilson*, Case File 7022; Johnston, *Houston*, 4 (stating that Charlotte Allen was twenty-seven when she arrived in San Augustine, Texas in 1832), 9, 11-12. For Charlotte Allen’s arrival in Harrisburg in 1834, see Nancy Baker Jones, “Allen, Charlotte Marie Baldwin,” *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fal84>, accessed July 16, 2015.

¹⁹ See Haley, *Narrative History*, 90; Kirkland, *Captain Baker*, 46.



Peter Gray's Copy of the "Laws of Texas" (1845-1848)

This is one of the most important volumes in the Baker Botts collection. This volume collects the statutes when the Republic of Texas ended, and Texas joined the United States. It contains the annexation documents for Texas and the first Constitution for the State of Texas.

It also includes the statutes of the First Legislature of Texas, of which Gray was a member. During this session, Gray was the primary author of the Texas Practice Act, the first rules of civil procedure for the Texas courts. This volume contains Gray's copy of those rules, with his annotations.

Gray likely used this volume in representing Emeline, a free African American originally from Ohio who was wrongfully enslaved when she lived in Texas. Gray represented her, personally posted her bond, and won her freedom at trial, based in part on evidence developed from discovery provided for by these rules.

When Gray began practicing law, it was common for individual lawyers to own the books they used in their practice. Gray took good care of his books and annotated them heavily to assist in his practice of law. Fortunately for Texas historians, those books have been restored by Baker Botts to celebrate its 175th year anniversary.

I had the personal privilege of reviewing Peter Gray's volumes of Texas's first statutes and other legal documents. His collection begins with the Texas Declaration of Independence, which was passed on March 2, 1836. Gray noted with check marks certain of the delegates, including José Francisco Ruiz, José Antonio Navarro, James Power, Edward Conrad, M. B. Menard, Charles Taylor, Lorenzo de Zavala, and John W. Bower. While it is unknown what the check marks signified, they may note men Peter and his father William Fairfax Gray met while

Peter Gray's personal copy of *The Laws of Texas* (1845–1848) provided by Robert Downie of Baker Botts LLP. Peter Gray probably used this volume, which contained the statutes in effect when the Republic of Texas ended and Texas became a state, to defend Emeline. Photo by David A. Furlow.

William was chronicling the Convention of 1836 that produced the Texas Declaration of Independence and the 1836 Constitution (Lorenzo de Zavala, for example, died of illness before the end of 1836).²⁰

Gray's copy of the Texas Constitution is also heavily annotated, as is the act which established and organized the Texas Supreme Court. Of particular interest is Section 9 of the Constitution.²¹ Gray underlined the words that showed that cases appealed to the Supreme Court must be decided on the basis of the facts *found by the jury*, and that if the Court found the evidence insufficient to support the judgment, the case must be remanded for a new trial.

Gray's love of books is evidenced by the fact that he was a founder of the Houston Lyceum in 1848 as a free public reading room and library before it evolved into the Houston Public Library.²² He also gave financial support to Henderson Yoakum, enabling him to complete his *History of Texas From Its First Settlement in 1685 to*

²⁰ See Haley, *Narrative History*, 90; Kirkland, *Captain Baker*, 46; Muir, "William Fairfax Gray," *Handbook of Texas Online*.

²¹ TEX. CONST. art. IV § 9 (1836).

²² See Kirkland, *Captain Baker*, 46. Peter Gray's love of books is also attested by Baker Botts's ledger from 1872 to 1874. Pages 60 and 61 of the ledger contain a listing of the library books purchased beginning in December 1872. In just shy of two years, the law firm spent a total of \$13,017.17 on books. Baker Botts dates the origin of its firm's engagement in the practice of law back to 1840. From 1840 to 1865, the firm operated as Peter W. Gray. The firm operated as Gray and Botts from 1865 to 1872, and as Gray, Botts & Baker from 1872 to 1875.

Its Annexation to the United States in 1846, which was published in 1856.²³ Peter Gray was one of the founders of the Houston Bar Association, which was formed on April 23, 1870 by Gray, Walter Botts, George Goldthwaite, and several other Houston lawyers. Gray was elected the first president of the HBA.²⁴

After its formation, the HBA lobbied Texas Governor Edmond J. Davis to appoint Judge James R. Masterson, a man with a reputation as a conservative Democrat, to the bench.²⁵ Governor Davis granted the HBA's request and appointed Masterson. In the summer of 1870, Galveston had a yellow fever outbreak. The citizens of Houston worried that it would spread to Houston soon. The minutes of the district court, where HBA members met, note that the HBA first appeared before Judge Masterson on October 3, 1870 by filing a motion to adjourn court due to the epidemic. The motion, signed by Walter Botts, George Goldthwaite, and other lawyers, read as follows:

Now comes the undersigned members of the Houston Bar and suggests to the Court that owing to the appearance of yellow fever at Galveston and the Quarantine at Houston that a number of lawyers have left the City. There is great excitement among the people and we believe it will be impossible to obtain the attendance of witnesses in many cases and therefore move the Court to adjourn until the first Monday in November.



Texas Historical Commission sign stating that Peter W. Gray was elected President of the first Houston Bar Association in 1870. Photo by David A. Furlow.

Judge Masterson granted the motion. The minutes reflect that court did not resume until November 7, 1870.²⁶

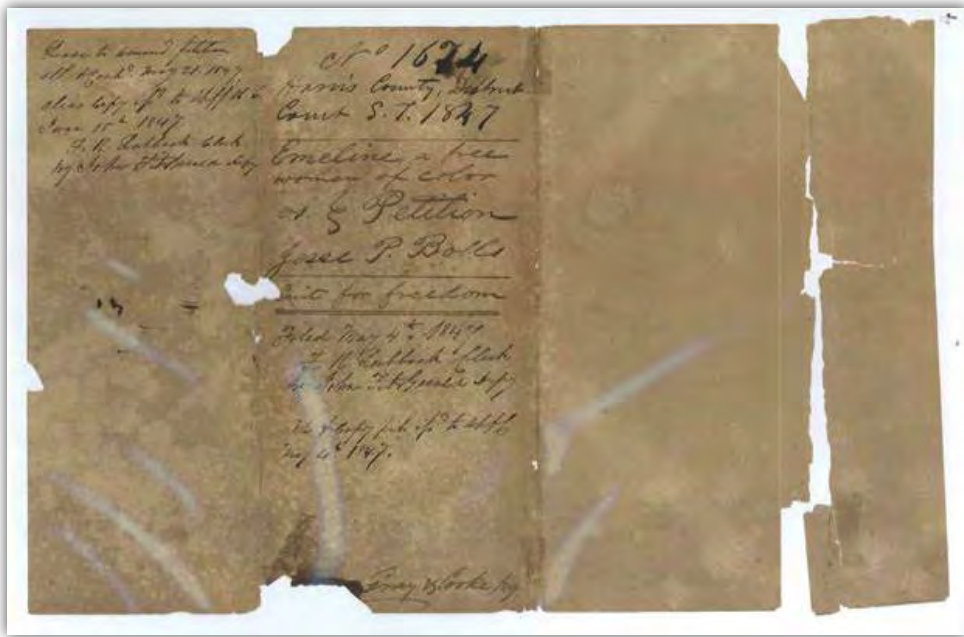
In addition to these professional accolades, Gray was well known as a lawyer of conviction and integrity. One case from early in his career is telling. In 1994, when Harris County District Judge Mark Davidson was researching district court records from the nineteenth century, he came across a lawsuit

²³ Yoakum dedicated the first volume of his *History of Texas* to Gray and noted that he was indebted to Gray for his papers and suggestions as well.

²⁴ *The Houston Telegraph* reported on April 24, 1870, that Peter Gray was elected the first President of the Houston Bar Association. See Eric L. Frederickson, *A Commitment to Public Service, the History of the Houston Bar Association* (Houston: Gulf Pub. Co., 1992), 10, n.1 and 14; Kirkland, *Captain Baker*, 49.

²⁵ See Frederickson, *History of HBA*, 12-14.

²⁶ District Court Minutes (7th Dist., later renumbered 11th Dist.), Vol. O (1870-1872), 1-2; 11.



Original Case File Cover, “Emeline, a free woman of color v. Jesse P. Bolls: Suit for Freedom.” Photo provided by Francisco Heredia, Historical Documents Record Center, and Harris County District Clerk Chris Daniel.

styled “*Emeline, a Free Woman of Color v. Jesse P. Bolls.*”²⁷ The suit was filed on May 24, 1847—just one year after Gray had opened his own law office. Gray and his associate, Abner Cooke Jr., represented Emeline. In the petition, Gray alleged that Emeline was a free woman of color and a citizen of Tennessee, wrongfully enslaved after Defendant Bolls had purchased her at auction.

It is believed that Gray represented Emeline on a *pro bono* basis. Gray sought a temporary restraining order to prevent Bolls from selling Emeline or her children, or from

removing them from Harris County during the pendency of the lawsuit.²⁸ The application for injunctive relief, required to be based on personal knowledge, contained Emeline’s mark in lieu of a signature. Emeline’s mark indicates that she, like most African-Americans and women of her day, was probably illiterate.²⁹ A copy of the temporary restraining order appears on the next page.

The case was assigned to Judge C. W. Buckley of the Seventh District Court (the court’s district number changed twice thereafter, first in 1861 to the First District Court, and then in 1884 to the Eleventh District Court).³⁰ The outcome of the case was never certain. There was little precedent to enable Gray to predict how Judge Buckley, who had only resided in Texas for nine years, would handle the case.³¹ Judge Buckley was a slave-owner, too, for the 1850 census reflects that he owned at least two slaves.³²

Nevertheless, Peter Gray successfully persuaded Judge Buckley to grant an *ex parte* temporary restraining order enjoining Bolls from selling Emeline during the pendency of the case in an “in chambers” hearing. Gray is believed to have posted the \$200 bond to secure the temporary restraining order with his own funds.³³ According to the 1850 census, Gray’s net worth at the time was \$5,000, reflecting that he risked a personally significant sum in posting bond for his client.³⁴

²⁷ Judge Mark Davidson, “Emeline’s Story,” *The Houston Lawyer*, January/February 2005, <http://www.thehoustonlawyer.com/aa-jan05/page28.htm>, accessed July 16, 2015, n.7.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ District Court Minutes (11th District), Vol. O (1870-1872), 1-2; 11.

³² See Davidson, “Emeline’s Story,” *Houston Lawyer*.

³³ Ibid.

³⁴ Ibid.

To the Clerk of the District Courts of Harris County, State of Texas

You are hereby enjoined to issue an injunction or writ for or in the name of justice restraining the defendant J. P. Bolls and all others acting by or under his direction, consent or authority, from removing the plaintiff and her two children or either of them from the land aforesaid during the pendency of this action and the said plaintiff and her said two children to have at court upon the trial of this cause, on pain of being punished for a contempt upon petition being set into bond in the sum of two hundred dollars, payable to the defendant, & conditioned as the Law directs.

Given under my hand and seal this 14th day of June 1847

J. C. Chambers.

J. C. Chambers
 Judge of the District Court

Judge Buckley's Temporary Restraining Order in Peter Gray's "Suit for Freedom" in the Emeline case. Photo provided by Francisco Heredia.

Sub 1. Had Emeline any children when she left Nashville with Mr. Seiff's please state anything further about Emeline and her claim to freedom as a way to material & other party.

Gray & Cook atts. p. 9.

Interrogatories to be propounded to J. P. Bolls late of Harris County Davidson County Tennessee the answers to be read in evidence on the trial of a cause wherein Emeline a woman of Colo is Plaintiff & J. P. Bolls Defendant.

Sub 1. When have you been residing for the last ten or three years for what town or place and company when did you leave them?

Sub 2. Before you left did you know the parties to this suit? In whose possession was the Plaintiff Emeline in the Spring of 1847 how long had she been in his possession?

Sub 3. Had you ever known the Plaintiff before you saw her in possession of the said? If you please state when you had known her before? In whose possession was she when you first knew her?

Sub 4. Are you acquainted with Mr. Peter Martin of Davidson Co. Tennessee what relation are you to him? Did you ever know Emeline in your possession?

Sub 5. Was ever Emeline with her mother and father when and where Mrs. Emeline was so near as you recollect?

Sub 6. When did Emeline leave Mrs. Martin's possession when was she taken from her father? Who took her away? Who was Mr. Seiff before marriage?

Sub 7. Is Mr. Seiff to Emeline when you saw in the State in possession of Defendant the same year when you formerly knew in possession of Mr. Martin in Tennessee & afterwards Mr. Seiff? Did Mr. Seiff know her when you saw her? Gray & Cook atts. p. 9.

State of Texas } I Francis A. Seiff Clerk of the District Court
 Harris County } for Harris County do hereby certify that the foregoing
 interrogatories are in page 1 & 2
 in the copy from the originals filed in this office by the Plaintiff in
 said No. 1174 wherein Emeline a free woman of Colo is Plaintiff and
 J. P. Bolls is the Defendant.

Witness my hand Clerk of said Court, Town and
 County aforesaid this 25th day of
 July A. D. 1847.

F. A. Seiff Clerk of the Court

Peter Gray's interrogatories to be used in Davidson County, Tennessee. Photo provided by Francisco Heredia.

Judge Buckley continued the trial of the case three times. After Peter Gray unsuccessfully opposed the last continuance, he took advantage of rules he had coauthored in the Practice Act to serve interrogatories to witnesses in Tennessee and Louisiana. At the time, the interrogatories of third party witnesses were similar to today's deposition on written questions.

Peter Gray had to hand-write, using a quill pen, at least two copies of each question he was asking. He filed the original with the Clerk of the Court, and served a copy on opposing counsel. Cross-questions were allowed to be propounded of the witnesses by the other side. The Court Clerk then wrote out at least two copies of the questions and sent them along with a commission to the judge in the area of the witnesses' location, who would summon the witnesses and ask the questions. Gray served interrogatories to witnesses in Davidson County, Tennessee; in Rapides Parrish, Louisiana; and in New Orleans, Louisiana.³⁵

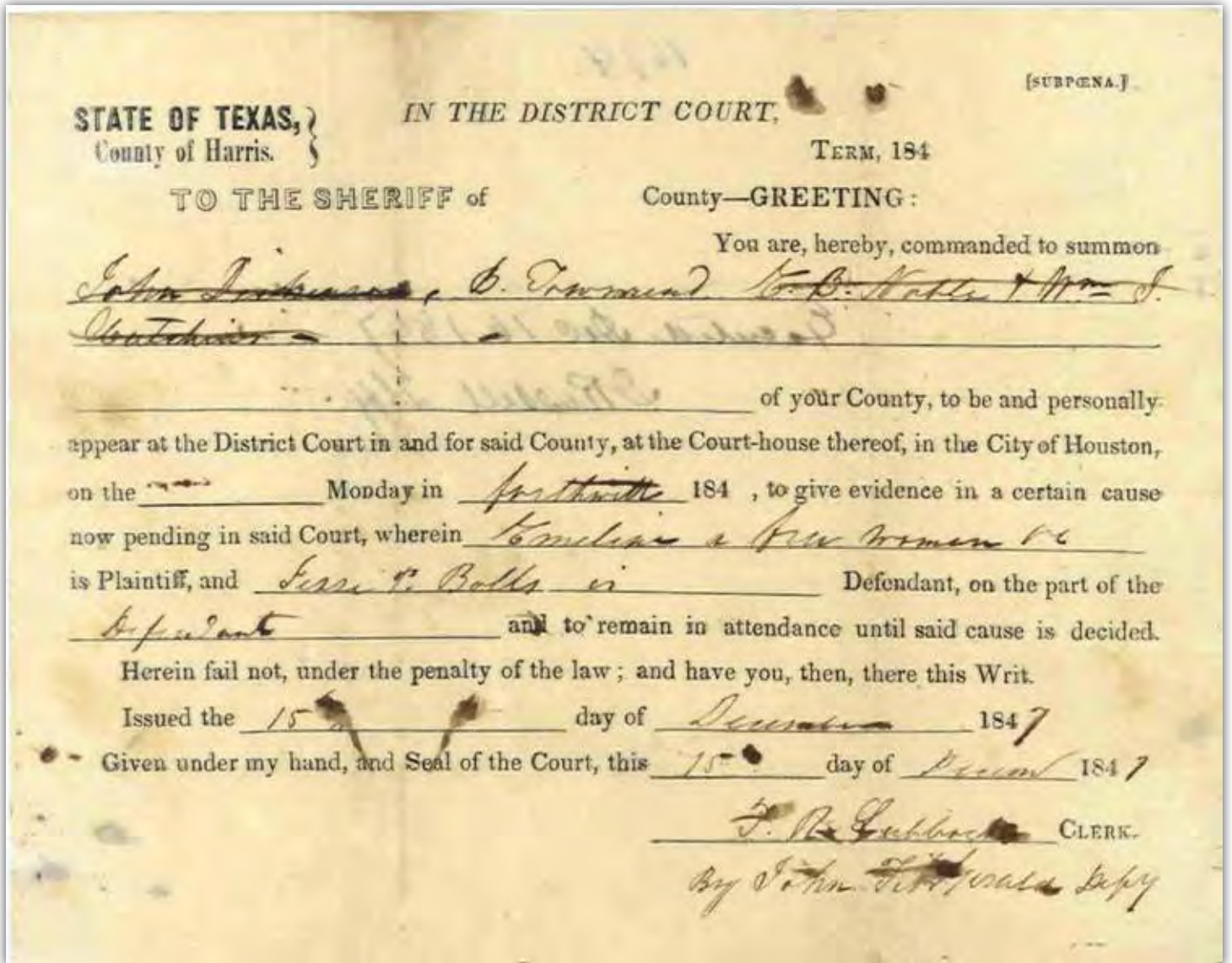
Jesse Bolls's attorneys also served written interrogatories. Bolls was represented by Portis & Waller.³⁶

³⁵ Ibid.

³⁶ Bolls later hired the firm of Tankersley & Harrison, which represented Bolls during the trial. See Davidson, "Emeline's Story," *Houston Lawyer*.

Bolls's attorney sent questions to Robert Chappell in Washington County, Texas. All of the witnesses other than Chappell supported Emeline's version of the facts, namely, that she had secured her freedom by residing in Philadelphia, Pennsylvania for more than six months, which was sufficient under the law.³⁷

The case finally proceeded to trial in November 1848, a year and a half after it was filed. During the pendency of the suit, Emeline remained a slave to Bolls. The docket sheet merely reflects that the parties presented their evidence. The records reflect that the defendant's counsel subpoenaed Robert Chappell as well as John Dickinson, one of Stephen F. Austin's original colonists; William J. Hutchins, the owner of Houston Navigation Company and an organizer of the Star Telegraph Company; E. B. Noble; J. J. Cain; and James F. Crawford. Peter Gray subpoenaed William Reeves and James F. Crawford, who had also been subpoenaed by the defendant.³⁸



Trial subpoena, *Emeline* case. Photo provided by Francisco Heredia.

³⁷ Ibid.

³⁸ Ibid.

The court files contain a proposed charge in Gray's handwriting that is substantially the same as that submitted by Judge Buckley to the jury. The docket sheet reflects that the defendant objected to the charge. The written verdict of the jury, through its foreman, Andrew Briscoe, stated, "We, the Jury, find that the plaintiff and her children are and are to remain free, and we find damages in the amount of \$1.00."³⁹

Little is known about Emeline following the trial. It is believed that she took the last name of Thompson and moved from Houston. She is not listed in the 1850 Harris County census.⁴⁰

Given the vigor with which Bolls defended the lawsuit, it is clear that Emeline would have had little chance of prevailing without the assistance of counsel. Procedurally, even if she could have afforded it, there is no way she could have compelled the attendance of witnesses from other states. Being illiterate, there is no doubt that she would have been unable to propound discovery and secure the testimony which was necessary to persuade a jury that she was free.

Emeline's ability to retain her freedom was obviously of great consequence to her and to her children. Without Peter Gray and his *pro bono* representation, she would most likely have remained an enslaved servant until 1865. The magnitude of living those seventeen years as a free woman rather than as a slave demonstrates how one person can make a meaningful difference in the lives of others.

This year, the Houston Bar Association, in collaboration with Baker Botts and its celebration of its 175th year anniversary, and in partnership with the Houston Grand Opera and Communities in Schools, will work together to tell the story of Emeline and Peter Gray through Baker Botts's commission of an opera. In May 2016, we will feature the initial performance of the opera at the Harris County 1910 Courthouse as part of a service raiser for the Houston Volunteer Lawyers. We will also have the opera performed in Houston-area high schools to introduce students to the story of Emeline and the role of Peter Gray and his *pro bono* service. In all, there will be ten performances of the opera.

Through the story about Peter Gray's role in securing justice for Emeline, we hope to continue to motivate our lawyers to engage in *pro bono* activities on behalf of those who cannot afford access to justice. At the same time, we will be teaching Houston high school students a compelling story from the history of their own city, and an important lesson about the rule of law in a free society.

Much later in his career, at the age of fifty-three, Gray contracted pulmonary tuberculosis. His condition was so severe that he traveled to Europe for his health and returned to Houston in 1874.⁴¹ That same year, upon the resignation of William P. Ballinger from the Texas Supreme Court, Governor Richard Coke appointed Gray as an associate justice of the Court.⁴² As a result of his poor health, however, he had to resign within two months. Peter Gray died on October 3, 1874, at the age of fifty-four.⁴³ Three weeks after his death, the Harris County District Court paid tribute to him and his service to the bar.⁴⁴

After his passing, proceedings recorded in Volume 40 of the *Texas Reports* noted that the Texas Supreme Court received resolutions from members of the bar and heard remarks of Justice T. J. Jennings and Chief Justice

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ See Kelly, "Peter Gray," *Houston Lawyer*, 34.

⁴² See Cutrer, "Peter Gray," *Handbook of Texas Online*.

⁴³ Ibid.

⁴⁴ District Court Minutes (11th District, Vol. Q at 1-2).

Oran Roberts honoring his life. Additionally, the City of Houston honored him by naming Gray Avenue in his memory, and at the next session of the Texas Legislature, Gray County was named in his honor.⁴⁵

Peter Gray was a legal legend who made his mark in many ways. As the fourth woman to serve as president in the 145-year history of the Houston Bar Association, I can attest he has made a difference to me, to the 11,300 members of the Houston Bar Association, and to the countless people in Harris County who have been served by the many good works of the HBA.

⁴⁵ Ibid.



LAURA GIBSON is a founding partner in *Ogden, Gibson, Broocks, Longoria & Hall, LLP*. Gibson is serving as the 2015-16 President of the Houston Bar Association. Two of Gibson's HBA Presidential Initiatives include the organization of the Teach Texas Committee, in partnership with the Texas Supreme Court Historical Society, to place judges and lawyers in classrooms to teach the history of our judicial system to seventh grade students; and creation of a partnership with the Houston Grand Opera, Baker Botts, and Communities in Schools to commission an opera telling the story of Peter Gray and his pro bono representation of Emeline.

[Return to Journal Index](#)

Winning the Archive War: Angelina Eberly Takes Her Shot

By DeJean Miller Melton



“Mrs. Eberly fires off cannon.”¹

THE 1842–43 ARCHIVE WAR was a protracted series of political skirmishes between President Sam Houston and citizens of the Austin area. Since that time, the decisive actions of Angelina Peyton Eberly have come to exemplify not only the tenacity and pluck of a pioneering businesswoman, but also a constitutional struggle that shaped the Republic of Texas and its laws.

The Markers

In addition to the woodcut print from Baker’s *Texas Scrap-Book* (above) that shaped Angelina Eberly’s legend, four markers commemorate her life. A bronze statue at 600 Congress Avenue, near the site of the cannon blast, is around the corner from the “Bullock Hotel” wall plaque next to the Starbucks at Sixth Street and Congress Avenue. The Texas Historical Commission has also placed two historical markers: the “Archive War” marker in front of the Lorenzo de Zavala State Library and Archives in Austin, and a marker entitled “Angelina Bell Peyton Eberly” at Indianola in Calhoun County.

¹ Public domain image from George H. Gray, “The Archive War: A Leaf from the History of Austin,” 141-43 in DeWitt Clinton Baker, ed., *A Texas Scrap-Book: Made Up of the History, Biography, and Miscellany of Texas and Its Peoples* (New York: A.S. Barnes and Co., 1875, reprint, Tex. St. Hist. Assoc., 1991) https://books.google.com/books?id=B-cxAQAAMAAJ&dq=General+Thomas+Woldridge+Austin&source=gbs_navlinks_s, accessed June 30, 2015. The unknown artist uses dramatic foreshortening to portray both Eberly and her targets in a limited space, although she was likely over a block away when she fired.

Although no known photograph or description of Angelina Eberly survives, her sturdy spirit has come to life in the bronze statue emplaced at 600 Congress Avenue in 2004. This statue, which depicts Angelina lighting a cannon, reflects political cartoonist/sculptor Pat Oliphant's focus on Angelina as the heroine of the Archive War. The plaque beside the statue reads:

In 1842 Texas was an independent nation, and Austin was its capital. Sam Houston, the president



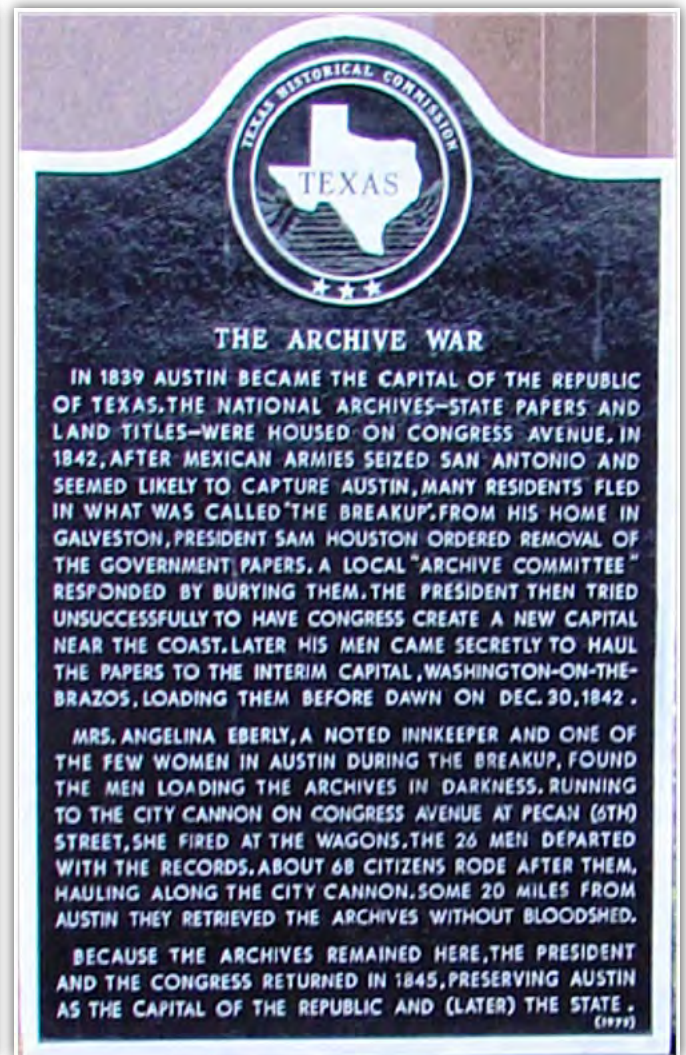
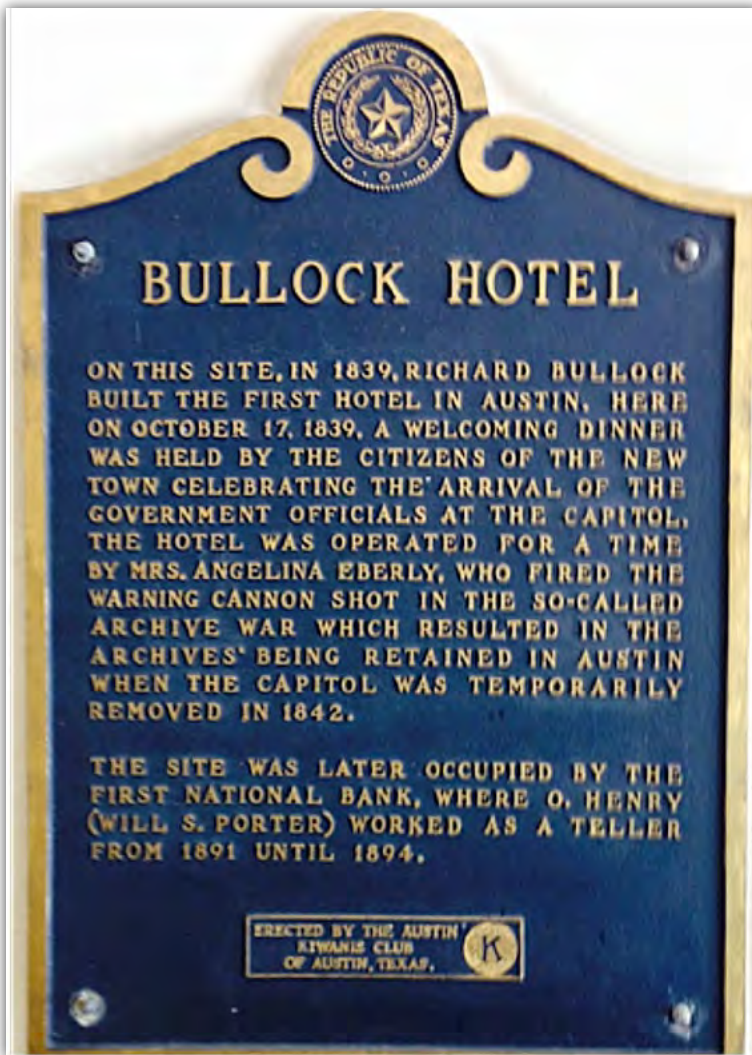
In 1842 Texas was an independent nation, and Austin was its capital. Sam Houston, the president of the Republic of Texas, regarded Austin as a vulnerable and unsuitable location for the seat of government and waged an unsuccessful campaign to have it moved to his namesake city. As a last resort, the President sent a military detachment to Austin to remove the government archives. When an innkeeper named Angelina Eberly discovered the men loading their wagons, she rushed to the corner of what is now Sixth and Congress and fired the town cannon, blowing a hole in the Land Office building and rousing the populace. The citizens chased down Houston's men, recovered the archives, and gave them to Mrs. Eberly for safekeeping. This statue honors a bold woman whose vigilance and short temper preserved Austin as the capital of Texas. It was presented to the citizens of Austin on September 26, 2004, by Capital Area Statues, Inc.

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ANGELINA EBERLY was made possible through the generous support of many individual donors, including major gifts from: AT&T - Suzanne Kawator
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 Equity Office · The Nowlin Family Fund and the Kodosky Family Fund of the Austin Community Foundation · Dennis and Jill Mc
 Graves Dougherty Hearn & Moody, PC · Vincent Salas · Troublemaker Studios; Spy Kids 3 Cast and Crew · Lee Walker and Jennie

The bronze statue of Angelina Eberly and a close-up of the sidewalk plaque at 600 Congress Avenue, Austin. Photos by David A. Furlow.

of the Republic of Texas, regarded Austin as a vulnerable and unsuitable location for the seat of government and waged an unsuccessful campaign to have it moved to his namesake city. As a last resort, the President sent a military detachment to Austin to remove the government archives. When an innkeeper named Angelina Eberly discovered the men loading their wagons, she rushed to the corner of what is now Sixth Street and Congress and fired the town cannon, blowing a hole in the Land Office building and rousing the populace. The citizens chased down Houston's men, recovered the archives, and gave them to Mrs. Eberly for safekeeping. This statue honors a bold woman whose vigilance and short temper preserved Austin as the capital of Texas. It was presented to the citizens of Austin on September 26, 2004, by Capital Area Statues, Inc...²



Left: The “Bullock Hotel” wall sign at Sixth Street and Congress placed by the Kiwanis Club.
 Right: Texas Historical Commission marker at the Lorenzo de Zavala State Library and Archives Building.
 Photos by David A. Furlow.

Richard Bullock's hotel was the largest in Austin, and could accommodate sixty to seventy guests. Strongly built, it was also referred to as “Bullock's Fort” during the Republic. The marker repeats a claim in some accounts that Angelina Eberly managed it for a time, but this information does not appear in other primary

² A list of distinguished donors appears on the plaque to thank, *inter alia*, “CAST Board of Directors: Lawrence Wright, Marcia Ball, Stephen Harrigan, Elizabeth Avellán, Bill Wittliff, Amon Burton...”

sources, including interviews with Eberly conducted in 1843.³

The term “fort” was accurate. Austinite William Walsh, writing from memory in 1924, described it as a stoutly defensible place of refuge:

In our dark days it was arranged that, whenever Indians came, a kettle drum was beaten and all the women and children fled to the shelter of the fort. At the west end of the hall was placed our only piece of artillery, an eighteen-pounder, which was kept loaded with grape-shot and so situated that one man could give it a start and it would roll through the hall and out into the street.⁴

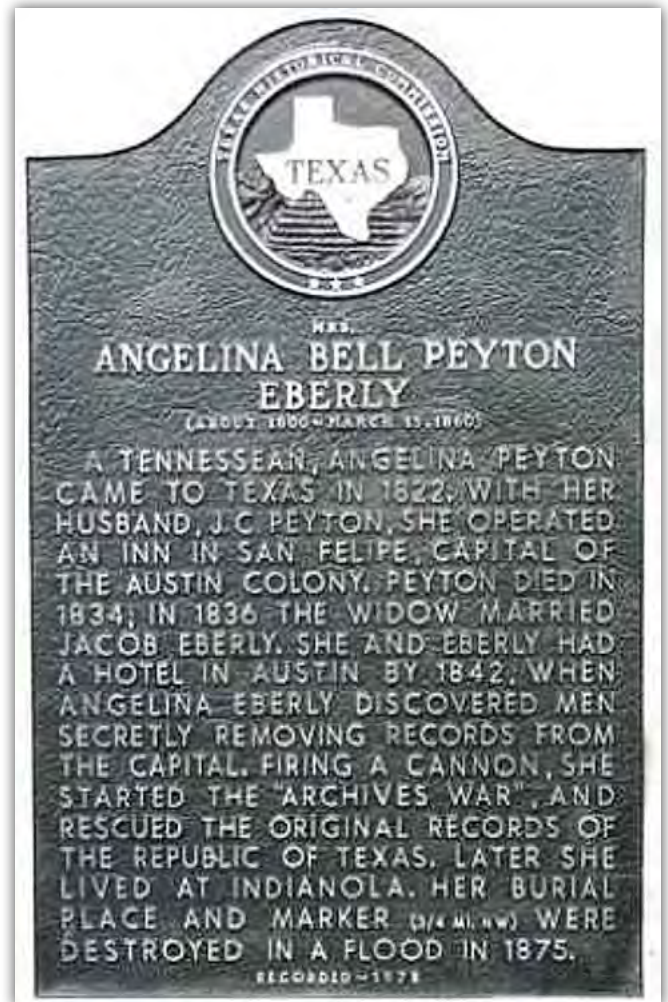
Whether Eberly was managing her own hotel or Bullock’s, she would have had full access to the Bullock Hotel early on the morning of December 30, 1842.

Both of the Texas Historical Commission markers tell a story similar to the one on the plaque beside the statue, but they differ in key details. The “Archive War” marker states:

Mrs. Angelina Eberly, a noted innkeeper and one of the few women in Austin during the breakup, found the men loading the archives in darkness. Running to the city cannon on Congress Avenue at Pecan (6th Street), she fired at the wagons. The 26 men departed with the records. About 68 citizens rode after them, hauling along the city cannon. Some 20 miles from Austin they retrieved the archives without bloodshed. Because the archives remained here, the President and Congress returned in 1845, preserving Austin as the capital of the Republic and (later), the state.

In contrast, the Indianola marker is more concerned with Eberly’s biography:

A Tennessean, Angelina Peyton came to Texas in 1822. With her husband, J.C. Peyton, she operated an inn in San Felipe, capital of the Austin colony. Peyton died in 1834; in 1836 the widow married Jacob Eberly. She and Eberly had a hotel in Austin by 1842, when Angelina Eberly discovered men secretly removing records from the capital. Firing a cannon, she started the “Archives War”, and rescued the original records of the Republic of Texas. Later she lived at Indianola. Her burial place and marker (3/4 mi. NW) were destroyed in a flood in 1875.



The “Angelina Bell Peyton Eberly”
Texas Historical Commission marker.
Photo from Indianola website, public domain.

³ Jeffrey Stuart Kerr, *Seat of Empire: The Embattled Birth of Austin, Texas* (Lubbock: Tex. Tech Univ. Press, 2013), 113; Randolph B. Campbell, *Gone to Texas: A History of the Lone Star State* (New York: Oxford Univ. Press, 2003), 181; Mary Austin Holley, “Notes and Items of Importance and Interest About Figures Who Figured in the Early History of Texas,” a/k/a “Notes Made by Mrs. Holley In Interviews With Prominent Texans of Early Days” (re-copied by George W. Hill, Dolph Briscoe Ctr. for Am. Hist., Univ. of Tex. at Austin).

⁴ Kerr, *Seat of Empire*, 246-47 n. 28, quoting William Walsh in *The Austin Statesman* (April 6, 1924).

The two versions differ in details. Which facts can be confirmed about the story of the doughty woman they describe?

The Lady

Angelina Belle Peyton was born on July 2, 1798 in Sumner County, Tennessee to John Peyton and Margaret Hamilton Peyton. In 1818 Angelina married her first cousin Jonathan C. Peyton, the son of her father's twin brother Ephraim.⁵ Jonathan was charming, foul-mouthed, and impulsive. When he fatally stabbed a man in the back during a dispute, he avoided prosecution by fleeing immediately to Kentucky and on to New Orleans with his young bride—an event she later ascribed to business reverses.⁶

On June 2, 1822 the Peytons embarked from New Orleans on the “Good Intent” towards Matagorda Bay, Texas. After brief and rather hungry stays in two spots near Matagorda,⁷ Angelina returned overland in 1824 to Tennessee to retrieve possessions and slaves left behind in their hurried exit—no mean task in that era for a young woman in her early twenties.⁸ Following a short stay in Nacogdoches, the Peytons moved in October 1825 to San Felipe de Austin in current-day Austin County.

San Felipe de Austin served as the community center for the “First Three Hundred” pioneers of impresario Stephen F. Austin's new colony. There, on Lots 533–534 and 567–568, the Peytons built an inn that provided legendary meals and beds to many who were to figure prominently in the Texas Revolution.⁹

James Bowie, when asking the Texas constitutional convention to authorize him and his men for active (paid) military service, complained that “I am a guest on the bounty of that grandest of American women in this country, Mrs. Angelina B. Peyton.”¹⁰

Jane McManus Cazneau, Eberly's friend and frequent lodger, later related that Eberly “once had banned William B. Travis from her boarding house in San Felipe because he had switched the better food of the women's table for the coarser food served to the men.”¹¹ While staying at the Peyton Inn, both Jim Bowie and William Travis made a pet of the Peytons' daughter Margaret and Stephen F. Austin became the godfather of their son, Alexander. The Peytons' second daughter, Sophronia, died before the age of six.¹² In 1836 Jonathan Eberly also died, leaving Angelina a thirty-eight-year-old widow with two children, several pieces of property, and a busy inn and tavern to manage with the help of her eleven slaves.¹³

⁵ C. Richard King, *The Lady Cannoneer: A Biography of Angelina Belle Peyton Eberly, Heroine of the Texas Archive War* (Burnet: Eakin Press, 1981), 4.

⁶ Holley, “Interviews”; King, *Lady Cannoneer*, 7.

⁷ James T. DeShields, *Border Wars of Texas* (Waco: Texian Press, 1976), 21.

⁸ Holley, “Interviews.”

⁹ Lorraine Barnes, “Hotel Mistress Fired Archives Shot,” *Austin American-Statesman*, July 11, 1937; Bryan McAuley, Site Manager of Texas Historical Commission's San Felipe de Austin State Historic Site, “Angelina (Peyton) Eberly—A Pioneering Spirit,” *Real Places, Real Stories* (Texas Historical Commission blog), March 29, 2013, <http://www.thc.state.tx.us/blog/angelina-peyton-eberly-pioneering-spirit>, accessed May 23, 2015.

¹⁰ King, *Lady Cannoneer*, 72.

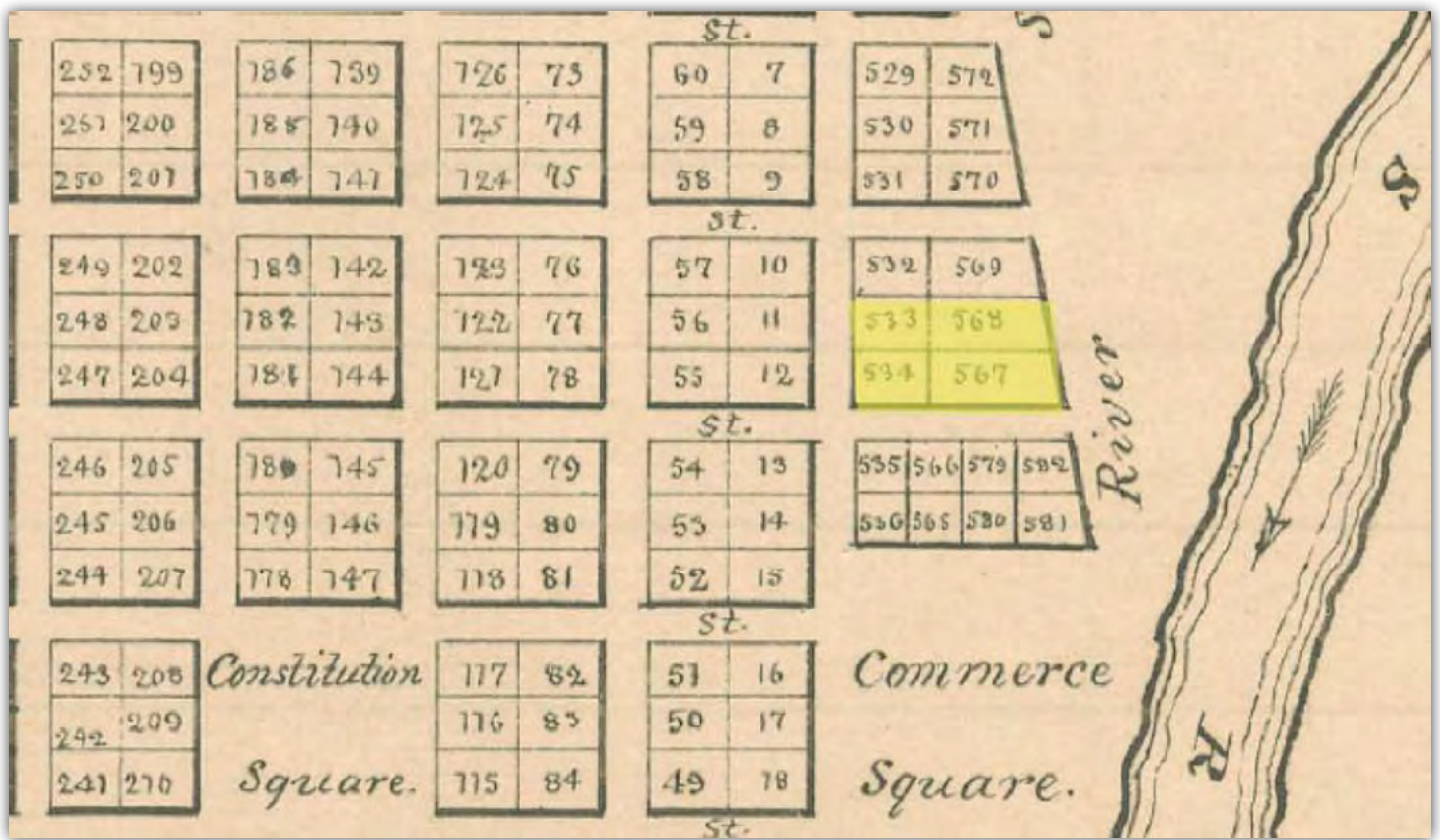
¹¹ Linda Sybert Hudson, *Jane McManus Storm Cazneau (1807-1878): A Biography* (Ph.D. Diss., Univ. of N. Tex., May 1999), 198, citing J. M. Cazneau's letters to M. S. Beach (Sept. 24, 1862 and Oct. 7, 1862) in the *Jane McManus Storms Cazneau Papers*, New York Hist. Soc., http://digital.library.unt.edu/ark:/67531/metadc278486/m2/1/high_res_d/1002658825-hudson.pdf, accessed June 16, 2015.

¹² King, *Lady Cannoneer*, 5, citing a deposition by Angelina's niece when trying to clear her estate.

¹³ King, *Lady Cannoneer*, App. A, 159.

Below: Plat of San Felipe de Austin. Courtesy of Bryan McAuley, Texas Historical Commission.

Lots 533-534 and 567-568 Peyton's Tavern



Excavation of the Peyton Tavern and Inn site at San Felipe de Austin.
Photo by Bryan McAuley, Texas Historical Commission.



Crockery excavated at the Peyton Tavern and Inn site at San Felipe de Austin.
Photo by Bryan McAuley, Texas Historical Commission.

The Revolution

During the Texas Revolution of 1836, Gen. Sam Houston repeatedly dismayed Texans to despair and rebellion by his series of strategic retreats from Santa Anna's Mexican forces. Discouraged Texans deserted and returned home in increasing numbers as the army retreated to San Felipe itself. On March 30, 1836, based on an erroneous scouting report of Mexican forces approaching the town, occupants of the settlement were urged to evacuate immediately in what was later called the Runaway Scrape.¹⁴ The young widow, responsible for many lives, could grab few necessities to provide for her large household. She pleaded with Captain Moseley Baker, saying, "Don't burn the town—all I have is there."¹⁵ However, Captain Baker's men did burn San Felipe to prevent it from being taken over by the Mexican forces. Baker later claimed that Houston had ordered him to do so, which Houston denied.¹⁶

The New Capital

Angelina's feelings upon seeing her San Felipe inn and all her possessions destroyed may have furthered a distaste for Houston well-established among her circle back in Tennessee. Angelina maintained a lifelong correspondence with her politician brother Balie Peyton. As a result, she was aware of the flamboyant Tennessee governor's increasingly controversial reputation long before his six-foot-five frame had darkened the door of her inn, which occurred no later than the Constitutional Convention of 1833. Back in Tennessee, her friend, Eliza Allen, had married Houston only to return home soon after the wedding. Allen told only her family and Angelina's brother Balie¹⁷ why she had left Governor Houston. Vicious public speculation about the reason for her desertion soon compelled Houston to resign his office. He retreated from Tennessee society to live with a Cherokee wife, who also soon left him.¹⁸

Texas offered Houston a fresh start. He served as commander of the Texan Army in the revolution, finally defeating Santa Anna at the battle of San Jacinto.

During the battle, a Captain Jacob Eberly had commanded the forces on Galveston Island.¹⁹ Angelina married Eberly in 1836 in his hometown of Columbia. They afterwards lived briefly on Wilbarger Creek near Bastrop before moving to Austin in 1839.²⁰

¹⁴ King, *Lady Cannoneer*, 77-78.

¹⁵ Holley, "Interviews."

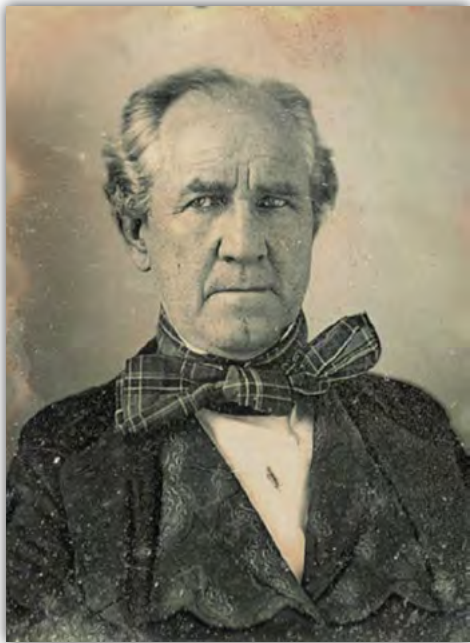
¹⁶ Stephen L. Hardin, *A Texian Iliad: A Military History of the Texas Revolution, 1835–1836* (Austin: Univ. of Tex. Press, 1996), 188, citing David G. Burnet in Frank Tolbert, *The Day of San Jacinto* (Austin: Jenkins Pub. Co., 1969), 81; Thomas W. Cutrer, "Baker, Mosely," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fba37>, accessed July 2, 2015.

¹⁷ Despite other variations in spelling, Balie Peyton's first name is listed as Balie in governmental records and in a biography by Walter P. Durham, *Balie Peyton of Tennessee: Nineteenth Century Politics and Thoroughbreds* (Franklin, Tenn.: Hillsboro Press, 2004).

¹⁸ Haley, *Houston*, 70.

¹⁹ Stephen Moore, *Eighteen Minutes: The Battle of San Jacinto and the Texas Independence Campaign* (Lanham, Md.: Republic of Tex. Press, 2004), referencing John H. Jenkins, *Papers of the Texas Revolution, 1835–1836* (Austin: Dolph Briscoe Ctr. for Am. Hist., Univ. of Tex. at Austin, 2004), V, 253.

²⁰ Dana DeBeauvoir, "Inside the Archives: The Tylee and Eberly Families—A Peek at Some of Our Most Interesting Families," website of the Travis County Clerk, citing Alexander Somervell's May 31, 1841 affidavit about the late Jacob Eberly's 1834 sale of Austin County land to the late James Tylee, <http://www.traviscountyclerk.org/eclerk/Content.do?code=news.somervell.affidavit>, accessed June 26, 2015.



Top: Sam Houston circa 1850, President of the Republic in 1842-43.
Bottom: Ed Burleson, Vice President of the Republic in 1842-43. Wikipedia Commons, public domain.

Sam Houston had meanwhile become the first elected president of the Republic of Texas. Houston advocated for the capital of Texas to be Houston City, at the site of burnt-out Harrisburg.²¹ He touted advantages such as its seaport, its access to the Brazos River, its relative safety from attacks by Indians and Mexicans, and its low costs. After considering Houston and several other locations, a commission selected the tiny blockade settlement of Waterloo on the Colorado River, which changed its name to Austin soon afterwards. One enthusiastic advocate for Austin was Texas Ranger (and former senator and general) Edward Burleson. He both surveyed land for the new capital and later served as vice president of Texas during Sam Houston's second term, despite many vehement disagreements.²²

Hoping to serve travelers on government business, as Angelina had done in San Felipe, the Eberlys moved to fast-growing Austin in 1839. Angelina managed the inn they built on the north side of Pecan Street between Lavaca and Colorado while her husband served as a Texas Ranger.²³

When Captain Eberly passed away in 1841, Angelina was again left a widow with a business and a large household at a time when, no matter how circumspect and morally upright her behavior, a single female innkeeper might be suspected of improprieties. Whereas earlier in San Felipe she had earned respect through her generosity to poverty-stricken militiamen, in Austin Eberly was also accorded due respect as a leading lady of the community. She was later described as "not only a hostess, but an invulnerable bulwark against the Indians, and all enemies of the city of Austin."²⁴ Another account characterized her as "a worthy and respected lady, and at the time proprietress of the Eberly House."²⁵ In her role as proprietress, she supplied meals and rooms for sundry Texas dignitaries including both Sam Houston (serving in the first and third presidential terms of the Republic) and the second president, Mirabeau B. Lamar. President Houston actually resided in Eberly's Pecan Street inn in his second term in preference to the palatial new Governor's Mansion, which had been hastily erected from green lumber during Mirabeau B. Lamar's two-year presidency with predictably disastrous results.²⁶

²¹ Jeffrey Kerr, "The Embattled Birth of Austin," *Austin Remembers* (Austin Hist. Ctr., Fall 2014); Kerr, *Seat of Empire*, 53-66, 67-75.

²² Dorman H. Winfrey, "The Texas Archive War of 1842," *Sw. Hist. Quart.* 62, no. 4 (Oct. 1960), 172-74, <http://texashistory.unt.edu/ark:/67531/metaph101190/m1/197/>, accessed June 11, 2015; Kerr, *Seat of Empire*, 112-116, 165-173, 177-179, 190-191.

²³ King, *Lady Cannoneer*, 100, citing John Henry Brown, *History of Texas from 1685 to 1892* (St. Louis, Mo.: L.E. Daniell, 1892), I, 165.

²⁴ *Austin Record*, Jan. 14, 1870, No. 32.

²⁵ Gray, *Scrap-Book*, 143.

²⁶ Madge Thornall Roberts, ed., *The Personal Correspondence of Sam Houston* (Denton: Univ. of N. Tex. Press, 1996), I, 123; Haley, *Houston*, 231, 461 n. 65; Kerr, *Republic of Austin*, 93-95.

A Constitutional Crisis

Threats to the new Republic were both numerous and serious. In 1842, Mexico's dictator Santa Anna sent two groups of soldiers into Texas to retaliate for President Lamar's efforts to conquer Santa Fe. One group successfully invaded San Antonio on March 5, 1842. Texas Secretary of War and the Navy George Hockley wrote President Houston in Galveston to warn that, "if not checked, the next move of the enemy...will be against this place [Austin], to destroy the archives."²⁷ Hockley further asserted, "I will defend the archives to the *Knife*." In his next letter to Houston dated March 7, 1842, Hockley explained that he had buried the archives under government buildings in Austin under declaration of martial law.²⁸

The crisis soon ended when General Vasquez and his army withdrew from San Antonio and re-crossed the Rio Grande. However, on March 10th, President Houston issued an order to move the government back to Houston.²⁹ The citizens of Austin sought to mitigate the crushing loss of almost all the town's governmental business by keeping at least the archive of government documents. Colonel Henry Jones and the Fourth Regiment accordingly organized a committee to inspect out-going wagons to prevent government employees from removing the archives.³⁰

President Houston responded by warning Col. Jones, "You are specially enjoined and COMMANDED in no wise to interfere with, or obstruct the fulfillment of the executive order...directing the removal of the government archives from the City of Austin. Any such interferences...will be promptly met with that disgrace and punishment due to the crimes of TREASON AND 'INSURRECTION.'"³¹ Jones replied in turn that he would evacuate the archives "whenever the republic of Texas is invaded by a *foreign foe*."³² Houston subsequently renewed his order in a March 24, 1842 letter to residents of Austin,³³ but to no avail. Yet another group of anti-removal activists organized southeast of Austin in Bastrop to ensure that the archives did not pass that way.³⁴ A constitutional crisis had grown from a smoldering ember into a lively flame.

In September 1842, Mexican General Adrian captured San Antonio.³⁵ Sam Houston had by then convened the Seventh Congress at Washington-on-the-Brazos. Houston reasserted his demand that Congress support the removal of the archives despite the protests of the "seditious" citizens of Austin, asserting that "as to the propriety and necessity of the act no reasonable doubt could exist."³⁶

His proposal, however, met with continued resistance and suspicion by Austin's merchants. Austinites

²⁷ Jack W. Gunn, "Mexican Invasions of 1842," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/qem02>, accessed June 12, 2015; Kerr, *Seat of Empire*, 176, 259, citing Sam Houston's unpublished correspondence.

²⁸ Kerr, *Seat of Empire*, 176-77 and 259, citing Houston's personal correspondence (emphasis in original).

²⁹ Kerr, *Seat of Empire*, 178.

³⁰ *Id.*

³¹ Kerr, *Seat of Empire*, 178 and 259-60 n. 14.

³² Kerr, *Seat of Empire*, 178 (emphasis supplied) and 259, citing Sam Houston's April 4, 1842 letter to Colonel Jones in Houston's unpublished correspondence.

³³ Kerr, *Seat of Empire*, 180, 260, citing Sam Houston's correspondence.

³⁴ Hubert Howe Bancroft, *The Works of Hubert Howe Bancroft, Vol. XVI: History of the North American States and Texas, Vol. II: 1801-1889* (San Francisco: History Co., 1889), 353, <https://archive.org/details/northmexicanst02bancrich>, accessed June 17, 2015.

³⁵ Joseph Milton Nance, "Woll, Adrian," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fwo03>, accessed June 12, 2015; Gunn, "Mexican Invasions of 1842," *Handbook*.

³⁶ Claudia Hazlewood, "Archive War," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/mqa02>, accessed July 03, 2015.

feared that the government might never return, leaving their businesses bereft on a depopulated frontier vulnerable to attack by Lipan Apaches, Comanches, and other tribes. Like Eberly, many Austin citizens had lost property in the burning of San Felipe. They feared that they faced ruin a second time by order of Sam Houston. With the support of Vice President Ed Burleson, the citizens of Austin continued to assert that Houston had no constitutional authority to move the records without Congressional approval.

President Houston's orders sought to overrule, by executive fiat, Congress's statute making Austin the Republic's capital. The President did not dare seek mandamus relief from any court because the law, as written, required that Austin remain the capital. And, even if President Houston had sought mandamus relief, Chief Justice Hemphill and others were engaging Mexican forces in south Texas as part of the Somervell Expedition from November 26 to December 19, 1842.³⁷ Austin's citizens sought to defend the statutory status quo that kept their hometown at the center of Texas politics. A constitutional crisis was at hand. The first delegation Houston sent to forcibly move the archives met trouble. Its leader, William "Uncle Buck" Pettus, not only failed in his attempt to remove the archive, but also found on the morning of his departure that "Old Ball," his famous and treasured horse, had had its mane, ears, and tail cruelly shaved.³⁸ A group of determined Austinites took up arms to prevent the delegation from removing the records, including one unnamed lady

with a match in her hand who threatened to blow them to kindling wood at the first sign of movement. [John W.] Hall found Pettus in the hotel, who advised him: "See here, Hall, I know that lady, and she will shoot. She is as brave as Julius Caesar."³⁹

There is no evidence that identifies the gun-happy woman as Angelina Eberly, but the recalcitrant attitude of her fellow townfolk in Austin was made clear.

The Archives

By December 10, 1842, Houston had narrowly but repeatedly failed to convince the Congress and Vice President Edward Burleson of the need to retrieve the papers.⁴⁰ Frustrated by lack of access to records necessary for governance, Houston privately ordered Texas Ranger Captains Thomas Smith and Eli Chandler to remove the contents of the archive in the dead of night. "Do not be thwarted in the undertaking. You are acquainted with the condition of things in Austin, and the exasperation of feeling pervading those who are directly interested in that place. You will govern your movements so as to suffer no detriment, either to yourselves, or to the property you may have in charge."⁴¹ In addition to avoiding bloodshed, they were to bring some archivists to help ensure the safe transfer of the documents. They were also charged with retrieving an iron chest of particularly important documents buried under the Quartermaster's Office.⁴²

³⁷ Joseph Milton Nance, "Somervell Expedition," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/qys03>, accessed June 30, 2015; David A. Furlow, "The Legendary Life and Tumultuous Times of Chief Justice John Hemphill," *J. Tex. Sup. Ct. Hist. Soc.*, 1 no. 1 (Fall 2011), accessed June 21, 2015. The Somervell Expedition degenerated into the Mier Expedition (an attack across the Rio Grande into Mexico that lasted from December 19 to December 27, 1842), and the Black-Bean decimation of the Republic's prisoners of war on March 25, 1843. Joseph Milton Nance, "Mier Expedition," *Handbook of Texas Online* <http://www.tshaonline.org/handbook/online/articles/qym02>, accessed June 30, 2015.

³⁸ Kerr, *Seat of Empire*, 184.

³⁹ Haley, *Houston*, 260-61.

⁴⁰ King, *Lady Cannoneer*, 122.

⁴¹ Haley, *Houston*, 260-61, citing Sam Houston's orders and separate letters to Smith and Chandler, "Proclamation Ordering the Removal of the Archives from Austin" (Dec. 10, 1842), in Eugene C. Barker and Amelia Williams, eds., *Writings of Sam Houston, 1813-1863* (Austin: Univ. of Tex. Press, 1938-43), III, 230-31.

⁴² Kerr, *Seat of Empire*, 184.

After considerable trouble recruiting armed men from Milam County to help support them in a fight against fellow Texans, Smith and Chandler's delegation rode quietly into town on December 29, 1842.⁴³ They initially approached William "Peg Leg" Ward, the Commissioner of the Land Office, to whom they delivered the order from President Houston.⁴⁴ Ward had lost a leg on the first day of the Texas Revolution and also an arm in the fireworks of Austin's first Texas Independence Day celebration on March 2, 1840. He assigned two able-bodied clerks, Nathan Mitchell and Walter Winn, to go with the archives to protect them from the bitterly cold rain.⁴⁵

Foul weather from that norther found the citizens of a sadly depopulated Austin huddled around their hearths early on the morning of December 30th. Many of the town's armed men had responded to a signal of impending Indian attack which had occurred earlier that day, and were out scouting for the war party. The remaining citizens, concerned about a dearth of armed men left to defend the town, had already gathered in the large Bullock's Hotel at the northwest corner of Congress and Pecan (now Sixth Street), about a block east of Eberly House.



PICA 18895 Austin History Center, Austin Public Library

Bullock's Hotel. Photo made available through the Portal to Texas History and the Austin History Center.⁴⁶

⁴³ Haley, *Houston*, 251; Gray, *Scrap-Book*, 143; A.E. Skinner, "Mrs. Eberly and That Cannon: Myth-Making in Texas History," *Austin Hist. Ctr.*, Angelina Eberly Vertical File, 2-3. *See also* A.E. Skinner, "Mrs. Eberly and the Cannon: Myth-Making in Texas History," *Texas Libraries* 3, no. 4 (Winter 1981), 155-63. Some sources give December 29, 1842, as the date of the wagoners' entry into Austin, *cf.* Kerr, *Seat of Empire*, 184; Winfrey, *Archive War*, 435. However, it seems unlikely that the men would have planned to secretly travel into town, give a written order to Land Commissioner Ward, select two archivists to come with them, remove the records, and speed off to the north with exhausted oxen all in one early morning. Skinner quotes Captain Mark Lewis as stating in his January 1, 1843 report that the removal of the archives took place early on the morning of Friday, December 30, 1842, so it is reasonable to believe that Houston's men arrived late on Thursday the 29th.

⁴⁴ David C. Humphrey, *Peg Leg: The Improbable Life of a Texas Hero: Thomas William Ward, 1807-1872* (Denton: TSHA, 2009), 87.

⁴⁵ Skinner, "Mrs. Eberly," 4; Kerr, "Embattled."

⁴⁶ <http://texashistory.unt.edu/ark:/67531/metaph124480/>; accessed June 21, 2015, Univ. of N. Tex. Libs., *Portal to Texas History*, <http://texashistory.unt.edu>, crediting Austin Hist. Ctr., Austin Pub. Lib.

Contemporary chronicles of what happened next do not specifically mention Eberly's role in the affair. Many of the accounts written forty years or more later, such as George H. Gray's, include facts that are not corroborated by other sources.⁴⁷ As a result, sorting through the different accounts is somewhat like sorting out tangled paperclips.

The text under Eberly's Congress Avenue statue, which is most likely based on Louis Wirtz Kemp's account, states that on that morning, Eberly heard men lifting heavy loads and wooden boxes scraping against the sides of three oxcarts.⁴⁸ Over two blocks away, she saw two Texas Rangers and eighteen other men (in other accounts, up to thirty men) carrying out President Sam Houston's order to seize and transfer the records to Washington on the Brazos.⁴⁹

In the oft-told legend, Eberly hastened towards an arsenal near Bullock's Hotel where a howitzer, or small cannon that propels a charge upward at a steep trajectory, was kept for possible defense of the city in case of invasion. It is implied that she herself acted unilaterally in bringing out and firing the cannon which roused the rest of the citizens of Austin.



An 1841, 6-pounder smoothbore howitzer. With a weight of 1,784 pounds, it was the workhorse of the Mexican War. National Park Service, Wikipedia, public domain.

Unfortunately, that version ignores eyewitness accounts that attest that three men, including Dr. John Robertson, unsuccessfully challenged Smith and Chandler's group. Eberly then urged the Austin men to action, saying, "What is that cannon for?" The men, including Eberly's son Alexander, helped bring out the howitzer onto Congress Avenue, positioned it, and loaded it with a six-pound canister of grapeshot. Mrs. Eberly ran back into Bullock's Hotel and brought out a firebrand.⁵⁰

A.E. Skinner's article in the Austin History Center compares data on Eberly from primary and secondary sources, clearly demonstrating that there was no solid contemporaneous proof that Angelina fired the cannon. One account written many years after the fact actually credited Captain Mark Lewis with that honor.⁵¹ Additionally, Peg Leg Ward's biographer, David C. Humphrey, offers an alternative narrative in which "Angelina Eberly was definitely a participant in the drama, but she was not its featured player." A man, often identified as Dr. Robertson, noticed the wagons being loaded and went to the Bullock Hotel, where he roused other people to action, possibly including Angelina Eberly.⁵²

What exists in greater number are several late nineteenth and early twentieth century accounts, purportedly

⁴⁷ Skinner, "Mrs. Eberly," 2.

⁴⁸ Hazlewood, "Archive War"; Frank Brown, *Annals of Travis County and the City of Austin* (Austin: MS. multi-volume, 1892–1913); File Chronological, 1842, Sections 7 and 9, Austin Hist. Ctr.; Louis Wirtz Kemp, "Mrs. Angelina B. Eberly," *Sw. Hist. Quart.* XXXVI, no. 3 (Jan. 1933), 198, citing Dudley G. Wooten, *A complete history of Texas for schools, colleges, and general use* (Dallas: Tex. Hist. Co., 1899), <https://books.google.com/books?id=eS9bRAACA AJ&dq=a+complete+history+of+texas+for+schools&hl=en&sa=X&ved=0CDEQ6AEwAWoVChMI0Mr-xf6XxwIVRVc-Ch2PCwE7>.

⁴⁹ Kerr, *Seat of Empire*, 174–98, 184.

⁵⁰ Humphrey, *Peg Leg*, 86–88; Kerr, *Seat of Empire*, 184, 261–62, n. 31, citing William Walsh, *Austin Statesman*, April 13, 1924; Brown, *Annals*, Ch. 9.

⁵¹ Skinner, "Mrs. Eberly," referencing Bancroft, *History*, 353.

⁵² Humphrey, *Peg Leg*, 87.

based on oral tradition, of Mrs. Eberly firing the cannon.⁵³ Gray suggested in his account in the *Texas Scrap-Book* that a woman fired the cannon. If so, there were few other women left in town who would have had an opportunity to set the charge. No woman's name other than Angelina Eberly appears in the primary records.

According to one account, Angelina first shifted the cannon's aim a bit to the left, and then set off a charge of a canister of grapeshot to a chorus of shouts of "Blow the old house to pieces!"⁵⁴ Eberly's charge resulted in three to eight small holes in the wooden Land Office structure, but no injuries to the wagoners or their stock.⁵⁵

The few remaining citizens of Austin, alerted by the sulfurous blast of the cannon and the clatter of grapeshot or canister, began to pour into the streets to come to her defense, only to see the backs of Houston's delegation as they hurried out of range on the muddy road north.



Journal map by David Kroll, reflecting the path that Angelina Eberly's howitzer shot took toward the wagoners loading boxed land records at the General Land Office, based on Dorman H. Winfrey's article analyzing the Archive War.

⁵³ Skinner, "Mrs. Eberly," 4, citing Gray, *Scrap-Book*; Frank Brown, *Annals of Travis County and Austin*, X, 3, and Judge Joseph Lee, the latter of which only mentioned that "a lady brought a brand from a dwelling and gave it to the men to fire the gun."

⁵⁴ Kerr, "Embattled."

⁵⁵ Skinner, "Mrs. Eberly," 4; Gray, *Scrap-Book*, 143. Gray reports the number of holes as three.

Captain Lewis reported later that there were only ten armed men in the city of Austin at that time, many having been called out the day before by a false alarm of Indian attack.⁵⁶ The remaining able-bodied men of Austin were not dressed, mounted, or armed well enough to give immediate chase, and instead quickly formed an ad hoc group to organize a course of action. Leaving the women and children in Bullock's Hotel, guarded by only two men, Lewis took charge.⁵⁷ He sent messengers to other outlying homes in order to gather a large enough group to have a realistic chance of overpowering Houston's delegation. Angelina Eberly sent her son, Alexander, and one slave. Meanwhile, a smaller swift-mounted group under the command of John Noland, a young attorney, gave chase; they overtook the archive snatchers twenty miles away at tiny Fort Kenney, since the ox carts of Houston's men halted at Brushy Creek by nightfall.⁵⁸

Noland's party warned Captains Smith and Chandler that there were many more Austin area men in reserve, and agreed to negotiate the fate of the archives the following morning. All the while, Captain Lewis and a party of about fifty men from the area followed the trail with a small cannon, many of them miserably under-dressed or even barefoot in the bitterly cold damp weather. Slipping quietly into the camp of the archive interceptors early the following morning, the posse from Austin was able to conduct negotiations with the decided advantage of their loaded cannon, which they threatened to shoot first at the hapless Land Office clerks. Houston had commanded that there be no bloodshed, so his men yielded. Captain Lewis's party took possession of the records with minimal conflict, returning them immediately to Austin.

The Austinites no longer trusted the increasingly unpopular Land Commissioner, "Peg Leg" Ward, to keep the archive in Austin. They entrusted the records to Mrs. Eberly's care, storing them upstairs in her dwelling house.⁵⁹ Afterwards came a joyous celebration of the New Year and the homecoming in which even Houston's delegation partook.⁶⁰

Due to the staunch opposition in Austin, later attempts to regain the archives were minimal. As A.E. Skinner declared, "[o]n January 20, 1843, W.W. Holman writing from San Augustine to Isaac Van Zandt, the Texas *charge d'affaires* in Washington, D.C., made this revealing comment about the situation in Texas: 'Congress is yet in session. I know not what they have done, only they have passed a law to sell all the Cherokee lands again and to remove the archives from Austin, but Mrs. Eberly wont let them go [sic]. She has them in a house garded by a feebl piece [sic]. I don't know how they will get them from her unless they can compromise with her...'"⁶¹

Aftermath

Fortunately for the Republic, Mexican forces never reached Austin; nor did any Native American tribes mount an overwhelming attack upon the vulnerable little town on the frontier.

Angelina continued to run her inn in Austin, but lost her son Alexander in a gunfight that indirectly resulted from the Archive War. Captain Mark Lewis, the leader of the Austin archives-recovery faction, quarreled with two men. According to Eberly, when one of the men fired at Lewis from the street, his bullet missed and hit

⁵⁶ Kerr, "Embattled."

⁵⁷ King, *Lady Cannoneer*, 123, citing Hope Yager, "The Archive War in Texas" (Master's thesis, Univ. of Tex. at Austin, 1939).

⁵⁸ Winfrey, "Archive War," *Sw. Hist. Quart.* 62, no. 4 (1959), 171, 180-81, citing Nathan Mitchell and Walter Winn, Jan. 25, 1843, MS., in "Early Letters Sent, 1840-1845" (Austin: G.L.O.), III, 313-315.

⁵⁹ Alexander W. Terrell, "The City of Austin of 1839-1865," *Quart. of Tex. St. Hist. Ass'n.* XIV, Oct. 1910, 125.

⁶⁰ Kerr, *Seat of Empire*, 187.

⁶¹ Skinner, "Mrs. Eberly," 5 (original spelling preserved). A "feeble piece" was a catch-phrase which was used to refer to variously poorly constructed items, from theatrical plays to guns.

Alexander, who was passing nearby.⁶² This differs from a newspaper account that alleged that Alexander had shot at one of the men who had drawn his gun when Lewis resisted arrest.⁶³

The capital city continued to suffer economic reverses due to the government's removal to Washington-on-the-Brazos. In 1844, the government returned to an almost deserted Austin just months before it became part of the United States of America. By 1845, however, Angelina sold her inn and relocated to the small town of Port Lavaca. There she rented an inn for a short trial period in 1847 while the owner, Edward Clegg, continued running the tavern. Angelina soon moved to the small but growing town of Indian Point (Indianola) where she also ran an inn.⁶⁴ Her remaining child, Margaret, married a promising young attorney, James Lytle. Both died young, leaving Angelina to raise her namesake grandchild, Peyton Bell Lytle.⁶⁵ When she passed away in 1860 at sixty-two, Angelina left an extensive estate worth \$50,000 to her young grandson, who in turn died on January 20, 1873.⁶⁶

Angelina Peyton Eberly lived a life marked by tragic loss. Without direct descendants to memorialize her, and with little contemporary documentation, her story remained largely unwritten in her own time. Fortunately, Stephen F. Austin's cousin Mary Austin Holley spoke with Angelina in 1843 about her life in early Texas in her interviews with pioneers. Unfortunately, Holley's notes about Angelina's account of the Archive War itself consist of a series of disjunct phrases that lack the detail and clarity of other events of Eberly's telling, perhaps because Holley felt it unnecessary to describe details of a story she already knew.⁶⁷

Later accounts of the cannon-firing incident reached a romantic zenith in the graceful prose of a 1937 article in which Angelina's various feminine graces, such as cooking, were extolled.⁶⁸ These stand in interesting contrast to the minimization of her role in the Archive War in several contemporaneous accounts referenced by Skinner.⁶⁹ Those accounts may reflect a nineteenth century orientation which viewed the actions of men as more important than those of women. In contrast, the historical markers and articles of the late twentieth and early twenty-first centuries summarized the actions of the Archive War within a constricted space, and may not have included more mention of her because of their brevity.⁷⁰



Portrait of Mary Austin Holley.
Frontispiece illustration from
Letters of an Early American Traveller,
Mary Austin Holley, 1784-1846,
public domain.

Angelina Belle Peyton Eberly successfully ran businesses in rough ports and frontier inns and taverns at a time women enjoyed few property rights or legal privileges. Somehow she prospered through tragic personal and business losses. In her lifetime, she endured emotional impacts of the early loss of her mother, the loss of her immediate family, her friends, and her childhood home through her husband's impulsive actions, and the loss of two husbands and all three of her children.

⁶² Holley, "Interviews."

⁶³ King, *Lady Cannoneer*, 127, referencing *The Northern Standard*, Sept. 21, 1843.

⁶⁴ Haley, *Sam Houston*, 461 n.65.

⁶⁵ Hazlewood, "Archive War," *Handbook*.

⁶⁶ Kemp, "Eberly," 198.

⁶⁷ Holley, "Interviews."

⁶⁸ Lorraine Barnes, "Archives Shot."

⁶⁹ Skinner, "Mrs. Eberly," 2-5.

⁷⁰ Mike Clark-Madison, "Look Out! She's Got a Gun! Angelina Eberly Returns to the Scene of the Crime," *Austin Chronicle*, Sept. 24, 2004.

No delicate flower prone to wilt under adversity, Angelina was revealed in surviving quotations as a woman who succeeded by force of her personality and by proactive management. Eberly's writer friend Jane McManus Cazneau wrote descriptively of her: "Eberly House and its lady proprietor are the epitome of Texas History. She was among the first settlers; had faced with resolute cheerfulness all the dangers and privations of its colonial infancy, and rejoiced...when Texas set up an independent existence..."⁷¹

If not for Angelina Eberly's cannon shot and her role as a leader in the community, the archives' removal to Washington-on-the-Brazos could easily have resulted in the permanent removal of Texas's seat of government to the coastal plains. When Texas voters selected its capital in 1850 and confirmed their choice once again in 1872,⁷² Austin would not have enjoyed the psychological advantage of having retained the records. The journey from the more distant counties to the capital would have been made far more difficult and expensive, and regional resentments and rivalries (particularly from the west) could easily have replaced the Lone Star with a constellation of several lesser ones. State government or archives in Houston would have been more vulnerable to Union attack by sea during the Civil War, and would have required more Texas troops to defend it instead of going to Arkansas and Mississippi to fight, which would likely have had some impact upon the length, if not the outcome, of that conflict.

Instead of establishing its tradition as a unique bastion of independent thought, "weird" Austin itself might only have become a resort community for affluent Houstonians. Texas Supreme Court Chief Justice John Hemphill and his successors might never have returned to hold court in the small town on the Colorado. Texas jurisprudence, as famous as Austin is famous for its spirit of independence, would likely have suffered considerably from less continuity had it conducted its business near the malaria-ridden and yellow fever infested swamps of Houston before effective medical treatments were available.

Most importantly, a precedent would have been set for unilateral executive action independent of legislative approval. A successful transfer of the archives would have vested far more power in the office of President of the Republic, and, perhaps, in the subsequent office of Governor of the State. The Archive War has had an important and lasting effect upon Texas. Unruly Austin citizens such as fiercely protective, resourceful pioneer Angelina Eberly played an active role in shaping that outcome.

⁷¹ King, *Lady Cannoneer*, 4, referencing Mrs. William L. Cazneau writing under the pseudonym Cora Montgomery.

⁷² Kerr, *Seat of Empire*, 217.



DEJEAN MILLER MELTON, a veteran teacher, graduated with a B.S. in Education from the University of Texas at Austin in 1980 that encouraged a lifelong love of the history, folklore, and music of nineteenth century Texas.

[Return to Journal Index](#)

Family Remembrances and the Legacy of Chief Justice Hortense Sparks Ward

By Linda C. Hunsaker

IT HAS BEEN SAID THAT WE DESERVE neither credit nor blame for our ancestors. With that thought in mind, I have been asked to submit personal family recollections to this esteemed *Journal* about my father's maternal grandmother, Hortense Sparks Ward (1872–1944), a trailblazing Texas woman who served as the first female Chief Justice of the Supreme Court of Texas. Her story is an inspiring one for our family, as well as for the state she served. In a multi-generational family with many grandparent names, I refer to her as Hortense, and my late father and his younger brother called her “Grandma Ward” with great affection.



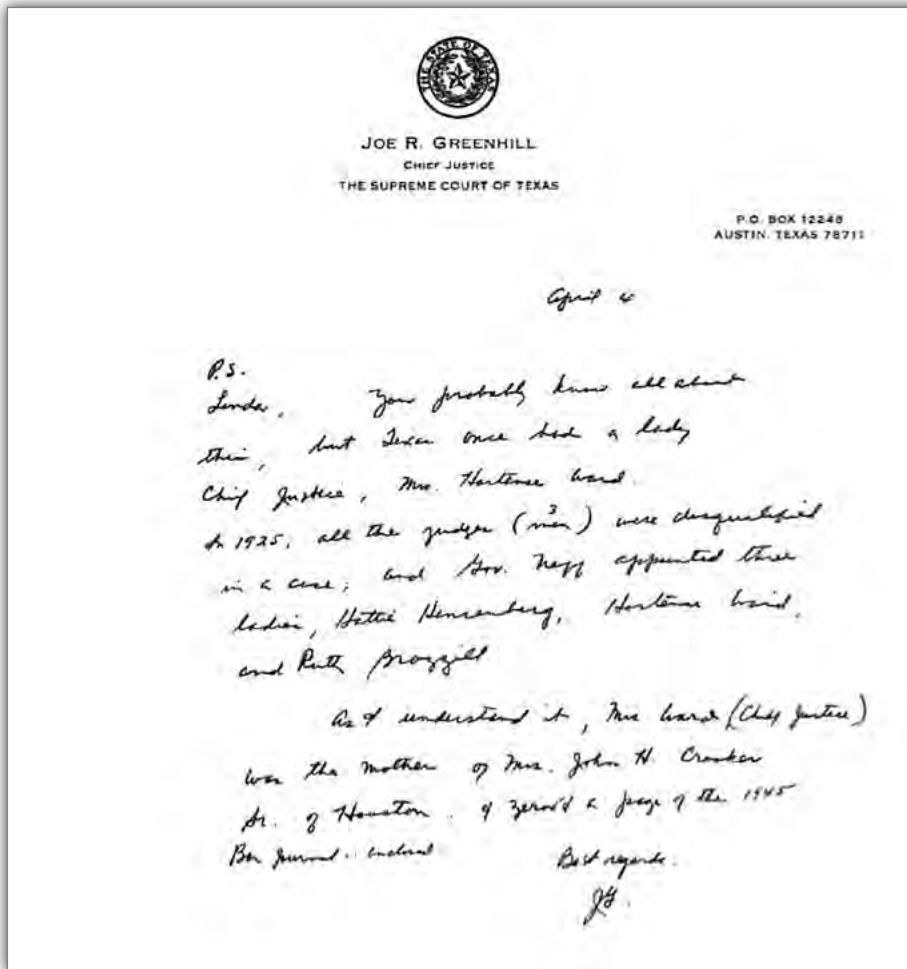
Hortense Sparks Ward.
Photo from the Texas Supreme Court Archives.

The Early Life of a Courageous Woman

When I was in my mid-twenties, I received a telephone call from future Governor Ann Richards, something I never anticipated. She said that the Texas Foundation for Women's Resources was preparing an exhibition documenting the outstanding achievements of women in Texas history, including my father's grandmother, Chief Justice Hortense Ward of the Texas Supreme Court. My father assured her that I would help. I agreed. As I learned more, I became fascinated by a story I had never known.

The oldest of fourteen children, Hortense Sparks was born on July 21, 1872 in Matagorda County, Texas.¹ She was fortunate to have a self-reliant and spirited mother, as well as a father who insisted on providing each of his children with a superior education. Despite his anti-Catholic leanings, her father ensured that his eleven daughters

¹ See Jack Pope, *Chief Justice Hortense Sparks Ward*, CHAIR PRESENTATION CEREMONY, FRIENDS OF THE STATE LAW LIBRARY (Nov. 16, 2000) (hereinafter, Pope, *Chief Justice Ward*), 1; David A. Furlow, *Taking the Law into Their Own Hands: Hortense Sparks Ward, Alice S. Tiernan, and the Struggle for Women's Rights in the 1910 Harris County Courthouse*, HOU. B. ASS'N APP. LAW (Sept. 2013), <http://www.hbaappellatelawyer.org/2013/09/taking-law-into-their-own-hands.html>; see also Janelle D. Scott, *Ward, Hortense Sparks*, HANDBOOK OF TEXAS ONLINE (<http://www.tshaonline.org/handbook/online/articles/fwa83>) (accessed June 14, 2015) (correcting statements that Hortense was born in 1875 when her obituary referred to her birth date as 1872 and when the year of her high school graduation accorded with an 1872 birth); Janelle D. Scott, *Hortense Ward: A Biographical Sketch for The Handbook of Texas History*, TEX. ST. HIST. ASS'N (1990), n. 1 (same, birth in 1872, as well as later life accomplishments); Janelle Scott, "They Made a Difference," *TAM Newsletter* (Fall 1980), 8-9.



Letter from Chief Justice Joe Greenhill to Linda Hunsaker, April 4, 1986.

would be well-educated by sending them to the Academy of Nazareth, a local convent boarding school and the best educational facility in Victoria.²

My late father, John H. Crooker, Jr., reminisced that his maternal Grandma Ward, Hortense, had an unusually keen mind for a woman of her day.³ In a recent oral history about his Grandma Ward, my uncle, Fr. Robert Crooker, noted that he had never seen a woman with her spirit. Tough, extremely generous toward others and their accomplishments, she gave her all to everything she did.⁴ I surmise that she did not believe in half measures.

A Unique Woman in Her Day

At first, Hortense followed a traditional path for women of her era, marrying and teaching school. Her home life then forced significant change.⁵ On May 11, 1906, Hortense

divorced Albert Malsch in a Harris County court. It was a bold move in the early twentieth century. As her divorce petition explained, her husband, Albert, was “lazy and of no account, and ... works only about half of the time”⁶

A well-educated woman, she had taken steps even before her divorce to advance in her own career so she could better take care of herself and her children. In 1903, she and her family had moved from Edna—a small town near Victoria where opportunities were limited—to Houston, taking her three daughters to what was already a vibrant city. She learned stenography so she could increase her earnings by working as a court reporter.⁷

While Hortense was a court reporter, she grew avidly interested in the practice of law. In a time-honored tradition since the Founding Fathers, she devoted herself to “reading the law,” that is, devoting her nonworking

² School officials renamed it Nazareth Academy in 1921. See Lynna Kay Shuffield, *The Hon. Hortense Sparks Malsch Ward (1872-1944)*, HIST’L NARRATIVE FOR TEX. HIST. SUBJECT MARKER APPLIC’N (Harris Cty. Hist. Comm., Aug. 2009), 1.

³ See Barbara Karkabi, “Judge O’Connor’s nomination reminds us: Once Texas had an all-woman Supreme Court!,” *Houston Chronicle*, Sec. 4, 6 (July 13, 1981) (hereinafter, Karkabi, “O’Connor’s nomination,” *Houston Chronicle*).

⁴ See Transcribed interview with Fr. Robert Crooker for the National Cowgirl Museum and Hall of Fame (hereinafter, “NCMHOF”), interview conducted by Jennifer Ross-Nazzal (Aug. 29, 2011).

⁵ See Shuffield, *Hon. Hortense Sparks Malsch Ward*, HIST’L NARRATIVE, at 1.

⁶ See *Malsch v. Malsch*, No. 39906 (61st Dist. Ct., Harris Cnty., Tex.)

⁷ See Betty T. Chapman, *Houston Women: Invisible Threads in the Tapestry* (Virginia Beach, Va.: Donning Co. Pubs., 2000), 93-94.

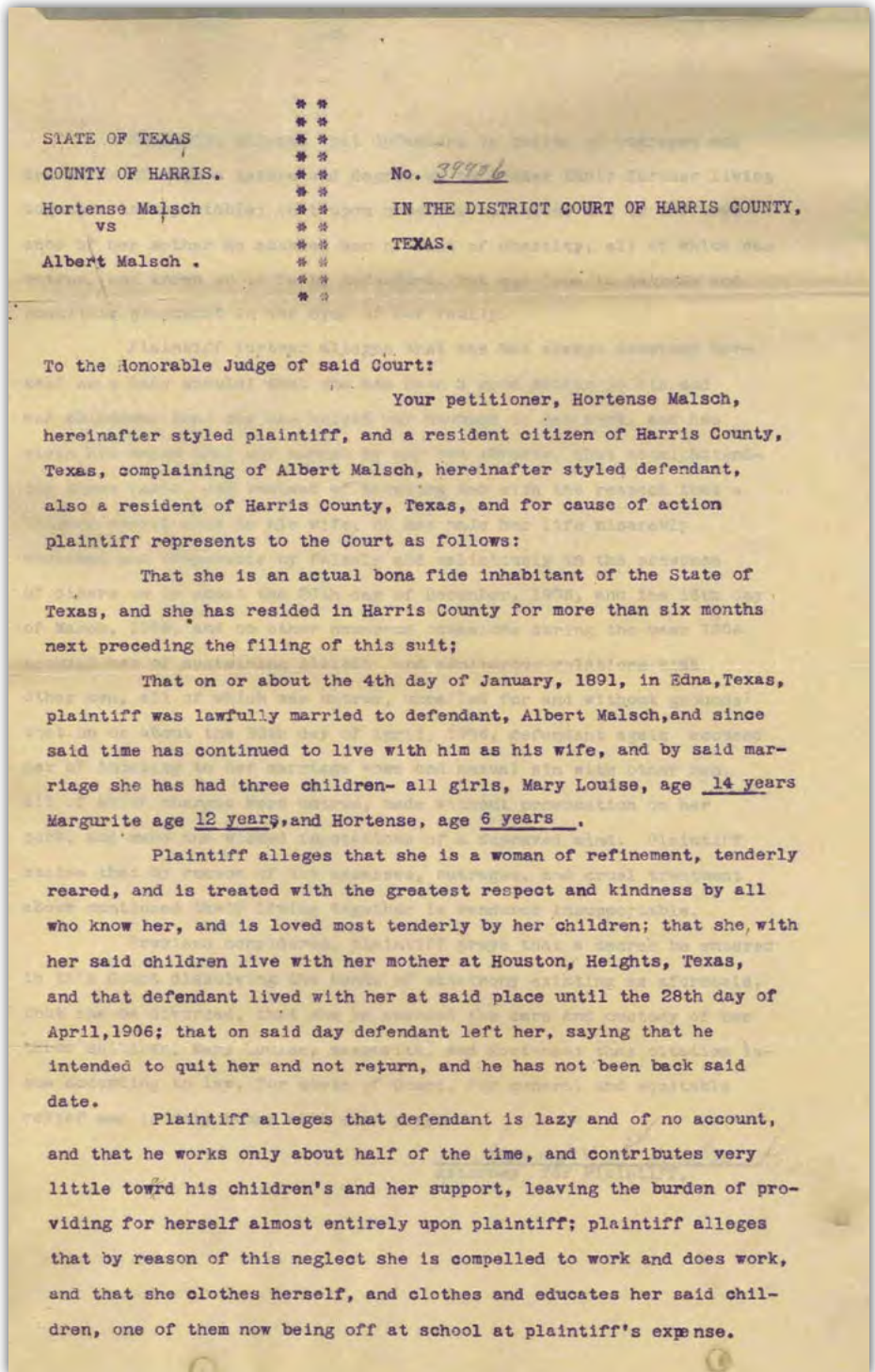
hours to the systematic study of law while raising her family. Educational and aspirational values ran high in the family. Hortense's future son-in-law, my grandfather John H. Crooker, Sr., received his law license in the same fashion in 1911.

Hortense's courage and intense ambition set her apart from others. In 1910, she became the first woman to pass the Texas bar exam, opening the door to practicing law throughout the state.⁸ As Supreme Court of Texas Chief Justice Jack Pope observed during a Friends of the State Library ceremony in Austin,

The first of her great achievements was to study and become the first woman in Texas to pass the bar exam. A second accomplishment was her enrollment as the first lady member of the State Bar of Texas, back when it was a voluntary bar.⁹

Hortense's success in passing the state bar exam, as well as other accomplishments, "exemplified her tenacity, courage, and ability" even more than "the brief time she filled the [Chief Justice] position as the highest judicial officer in Texas."¹⁰

Hortense's middle daughter, my paternal grandmother Marguerite "Rita" Crooker (Mrs. John H. Crooker, Sr.), responded to a *Houston Chronicle* interviewer by saying that her Mother passed the bar exam with



Hortense Malsch's original petition for divorce. Photo provided by Francisco Heredia, Historical Documents Record Center, Harris County District Clerk.

⁸ See James L. Haley, *The Texas Supreme Court: A Narrative History, 1836-1986* (Austin: Univ. Tex. Press, 2013), 146; Chapman, *Houston Women*, 93-94.

⁹ See Pope, *Chief Justice Ward*, 1.

¹⁰ See *id.*



Hortense S. Ward's face on the Harris County Bench and Bar "Facebook" (1912) in the 1910 Historic Harris County Courthouse Museum. Photo by David A. Furlow, 2013.

a score of 98, the second highest score recorded by 1910.¹¹

Purposeful determination and courage characterized Hortense Ward's approach to life. Five years after being admitted to the Texas bar, Hortense became the first woman south of the Mason-Dixon Line to be admitted to practice law before the Supreme Court of the United States. In the meantime, she married County Judge William H. Ward. They subsequently founded the firm of Ward & Ward, creating a peer marriage decades ahead of its time.¹²

Hortense's "firsts" in the practice of law did not end with her admission to the Texas bar and the bar of the United States Supreme Court. As this *Journal* has recounted, Hortense became the first woman to serve as Chief Justice of the Supreme Court of Texas (or any other U.S. jurisdiction) in 1925.¹³ Hortense served because of a unique situation whereby all three justices of the three-man Texas Supreme Court were members of a prominent statewide organization called Woodmen of the World, and were forced to recuse themselves from deciding a case addressing whether the Woodmen were entitled to own certain tracts of land in El Paso.¹⁴

When the three-woman panel took their oaths of office, I imagine they paused when reading the part of the oath that required state officials to swear that they had never fought a duel.¹⁵ The opinion Hortense and her

¹¹ See Karkabi, "O'Connor's nomination," *Houston Chronicle*. See also Haley, *Narrative History*, 146; Judith Nichols McArthur, *Motherhood and Reform in the New South: Texas Women's Political Culture in the Progressive Era* (Ph.D. dissertation, Univ. of Tex. at Austin, 1992); Jeffrey S. Dunn, "The Legacy of *Johnson v. Darr*: The 1925 Decision of the All-Woman Texas Supreme Court" (paper presented to the Tex. Hist. Ass'n, March 6, 2004, Austin) (hereinafter, "Dunn, 'Legacy'"), 6; Barbara Bader Aldave, *Women in the Law in Texas: The Stories of Three Pioneers*, 25 ST. MARY'S L.J. 289, 291 (1993).

¹² See Pope, *Chief Justice Ward*, 1; Furlow, *Taking the Law into their Own Hands*.

¹³ See Liz Furlow, *Reenactment of Johnson v. Darr Marks the Ninetieth Anniversary of the Historic All-Woman Texas Supreme Court*, J. TEX. S. CT. HIST. SOC'Y (Spring 2015), 73–76, available at http://texascourthistory.org/Content/Newsletters/TSCHS_Journal_Spring2015.pdf.

¹⁴ *Johnson v. Darr*, 114 Tex. 516, 272 S.W. 1098 (1925).

¹⁵ See Pope, *Chief Justice Ward*, 3; Haley, *Narrative History*, 168.

colleagues Associate Justices Ruth V. Brazzil (later Roome) of Galveston and Hattie L. Henenberg of Dallas authored several months after the hearing continues to be cited even today.

A *Houston Chronicle* article about the anniversary of women winning the right to vote quoted my grandmother as saying, “My Mother wasn’t the type to make a big to-do about such things and never let honors go to her head. She just did the work she felt she had to do and went about her business quietly.”¹⁶

On May 23, 1925, Chief Justice Hortense Sparks Ward issued the opinion affirming the El Paso Court of Civil Appeals decision. “We...affirm the judgment of the Court of Civil Appeals reversing and rendering the decision of the trial court.”¹⁷ Her colleagues Associate Justices Brazzil and Hennenberg wrote concurring opinions.¹⁸ The panel thus vindicated the property rights and full title to both tracts that Woodmen of the World sought to defend. Since 1925, *Darr* has been cited three times by the Fifth Circuit and more than thirty times by Texas courts, most recently in 2009 by now Chief Justice Nathan Hecht.¹⁹

The Associated Press asked Hortense on the day after the investiture how she felt about her appointment. Her words were insightful:

Woman lawyers raised to the highest court in the state respond to the same emotion as men raised to the same position....This emotion is one of pride in being honored with what lawyers consider the highest honor of the profession....The novelty is entirely lost in the great responsibility. A real lawyer always dreams of some time sitting on the Supreme Bench [sic]. That is the highest honor of the profession.²⁰

Judicature quoted an eyewitness to the swearing-in ceremony as saying that, “Chief Justice Cureton administered the oath to the women.... None of the women raised her right hand, as is customary among men taking an oath of office. They did not seem to be flurried by the experience.”²¹ The journal also noted that Chief Justice Ward’s later opinion for the Court was “clear, well-reasoned, and well-researched.”

Another news report mentioned that the Texas Supreme Court pressed its Deputy Clerk into service after the Court’s Chief Clerk refused to participate in the ceremony.

A Woman of Keen Political Acumen

Hortense’s drafting of the “Hortense Ward Act,” also known as the Married Woman’s Property Rights Law when passed by the Texas Legislature in 1913, offers additional insight about this remarkable woman’s values

¹⁶ See Karkabi, “O’Connor’s nomination,” *Houston Chronicle*.

¹⁷ *Johnson*, 114 Tex. at 527, 272 S.W. at 1102; Dunn, *Legacy*, 12; Haley, *Narrative History*, 167-68.

¹⁸ *Johnson*, 114 Tex. at 527-28, 272 S.W. at 1102-03 (*Judge Brazzil’s Concurrence*); 114 Tex. at 528, 272 S.W. at 1103 (*Judge Henenberg’s Concurrence*). See also Dunn, *Legacy*, 13.

¹⁹ See, e.g., *Entergy Gulf Sts., Inc. v. Summers*, 282 S.W.3d 433, 447 n.11 (Tex. 2009) (“The most famous exercise of the designation power was surely Governor Pat Neff’s appointment of a Special Supreme Court consisting of three women, Mrs. Hortense Ward, Special Chief Justice, and Miss Ruth Virginia Brazzil and Miss Hattie L. Henenberg, Special Associate Justices”); *Second Inj. Fund v. Keaton*, 162 Tex. 250, 254, 345 S.W.2d 711, 714 (1961). See also Dunn, *Legacy of Johnson v. Darr*, at 26 (more than thirty Texas state court cases and three Fifth Circuit decisions that relied on *Darr*); Haley, *Narrative History*, 168.

²⁰ See Karkabi, “Justice O’Connor,” *Houston Chronicle*.

²¹ See Larry Berkson, “Women on the Bench: A Brief History,” 65(6) *Judicature* 286 (Dec. 1982); Barbara Culver, “Women on the Bench,” *Tex. B. J.* 523 (June 1979).

and motivation.²² The Legislature enacted that law just three years after Hortense became an attorney, and in good part because of her actions in pushing it to the forefront of the legislative agenda. My grandmother, Rita Crooker, observed her mother's commitment and political acumen:

You know that before the passage of that act, a married woman had no control over her own property and its disposal. It was all in the hands of her husband. My Mother was pretty horrified at this. There was a lot of resistance to it in the legislature, especially in the Senate ... [and] on the day that the bill came up ... she and her friends delivered red carnations to every member of the Senate and some of them changed their votes because of it.²³

I read this with respect, thinking of how many committed female volunteers she had to recruit, and appreciating the quintessential brilliance of the idea.

Enactment of the Hortense Ward Act was a significant achievement that ensured that Texas women would not suffer the loss of inherited property as a result of divorce. The new law also enabled mothers to provide for the basic needs of their children when husbands failed to provide. And it meant that fathers could make gifts to their daughters without having to fear spendthrift sons-in-law would waste family funds at the horse track or in a dram hall. My grandmother was especially proud of her mother's (Hortense's) accomplishments the day my grandmother took my uncle Bob to a notary public to witness a woman's name on the papers selling a family home.

In a tribute to Chief Justice Ward, Chief Justice Jack Pope praised Chief Justice Ward's devotion to enacting the Married Woman's Property Rights Law of 1913. He noted that the "years of planning, campaigning, organizing, and writing to correct the unfairness that surrounded women's rights with respect to her own property."²⁴

Hortense was most well known for her work in the suffrage movement. Her extensive correspondence with renowned suffragist Minnie Fisher Cunningham can be found, *inter alia*, at the University of Houston Library.²⁵ "Her strong leadership and name recognition helped propel the suffrage issue to the forefront in Houston."²⁶ Indeed, "[l]ike many suffragists, Ward viewed the vote as a tool to achieve a more moral, enlightened American Society In August 1917, Hortense Ward leaped at the chance to publicize the suffrage issue during a local option prohibition campaign."²⁷ At a time when Governor Jim "Pa" Ferguson vetoed a bill allowing women the full right to vote, Hortense is credited with the brilliant creativity of drafting the bill passed in the Texas Legislature in 1917 that allowed women to vote only in the primaries, thereby gaining a crucial toehold.²⁸ Until recent decades, primary elections effectively determined the general election's final outcome.

Documentation reveals that, to Hortense, voting represented democracy and equality, and she was determined to secure this basic right for Texas women. She used the kind of arguments that appealed to influential men and convinced them of their validity. Hortense was known in the business establishment as informed,

²² See Michael Ariens, "The Legal Status of Women in Texas, 1900-25," paper presented at Tex. St. Hist. Ass'n Ann. Mtg. (Austin 2004) (with a copy in Texas Supreme Court Historical Society office in Austin); Haley, *Narrative History*, 146 and 278.

²³ See Karkabi, "Justice O'Connor," *Houston Chronicle*.

²⁴ See Pope, *Chief Justice Ward*, 2.

²⁵ See "25,000 Women March for the Right to Vote," *Univ. of Houston Digital Lib'y*, <http://uhdigitallibrary.blogspot.com/2012/10/25000-women-march-for-right-to-vote.html> (accessed June 24, 2015).

²⁶ See Janelle D. Scott, *Local Leadership in the Woman Suffrage Movement: Houston's Campaign for the Vote 1917-1918*, 12 *Hou. Rev.* 1, 10-13 (1990) [hereinafter *Local Leadership*].

²⁷ See *id.*

²⁸ See Haley, *Narrative History*, 167.



Hortense Sparks Ward, at the time of her suffrage campaign (1917). Photo in the Texas Women's Hall of Fame from the author's personal collection.

safe, and business-like and a woman of keen political perception. When advocating her positions, Hortense was diligent, assertive, and impressively effective, but not aggressive. She worked within the system, taking care to bring the business leaders of the community on board. What enormous time, patience, and insightful cultivation of contacts that must have taken! Hortense's daughter Rita Crooker told a *Houston Chronicle* interviewer that her mother "wasn't the militant type at all, although she was very strong. She was a woman who thought you could get more from molasses than vinegar, if you get my meaning."²⁹

In 1920, just ten years after becoming an attorney, Hortense ran for the office of County Judge, but lost. I admire the bold effort nonetheless. She was unafraid to face the voters. The all-male juries that decided cases in Texas until 1954 were a different matter, however. Regardless of her acumen and success, she feared that her client's cause might be prejudiced by a woman's presence in front of all-male juries.³⁰

A Mastery of Mass Communication

Hortense was keenly aware of the power of the written word to inspire action. She was well known for her stirring newspaper articles and pamphlets, the e-mail of that day. For instance, while lobbying for

the Married Woman's Property Rights Bill, she authored an influential flyer that reminded women of the need for a new law:

When a woman in Texas marries, her husband has the sole management of all her separate property and of all her interest in the community property. He may even mortgage or sell every piece of furniture in the home, and she is helpless to prevent it, even if her earnings have paid for every piece. He has a right to sell her dresses if he sees fit, and she cannot prevent³¹

²⁹ See Karkabi, *Houston Chronicle*.

³⁰ See Furlow, *Taking the Law into Their Own Hands*.

³¹ See Pope, *Chief Justice Hortense Sparks Ward*, 2 (for the quotation above); Hortense S. Ward, *Property Rights of Women in Texas* (Houston, self-published, 1911), as quoted in Ramos, *All-Woman Court, TSHA TEXAS ALMANAC*.

As Chief Justice Pope observed, Hortense's words were persuasive because they showed "a touch of Tom Paine."³²

But Hortense's efforts did not stop there. She brought all her legal talents and powers of persuasion to bear in the campaign for the vote. Her strong leadership and name recognition helped propel the suffrage issue to the forefront in Houston. She published an influential newspaper article that helped convince the Texas Legislature to pass a law giving women the right to enter into commercial contracts, and she also lobbied for the right of married women to keep their own earnings. During the 1918 primary elections, Hortense urged the registration of female voters by writing newspaper articles and a pamphlet that was distributed statewide to inform women that they had only seventeen days to register to vote for the primary elections, the only voting right women were then accorded under Texas law.³³

Hortense's writings are said to have persuaded nearly 386,000 women to register to vote in those seventeen days, including 14,750 women in Harris County alone (pop. 138,276 in 1919).³⁴ She led by example when, in



Texas suffragettes presented Hortense S. Ward a silver "loving cup" award for her leadership of the campaign to win women the right to vote, while the Texas Supreme Court granted her the gavel she used as Chief Justice of the Texas Supreme Court in *Darr v. Johnson*. Both the silver cup and gavel are part of the author's personal collection.
Photo by David A. Furlow, 2013.

³² See Pope, *Chief Justice Hortense Sparks Ward*, 2.

³³ See *Local Leadership*, 12 HOU. REV at 20.

³⁴ See "Hortense Sparks Ward, Attorney and Suffragist," *Celebrating Texas: Honoring the Past - Building the Future*, TEACHERS EDITION, LONE STAR LEGENDS: Unit 8, Chapter 27, Section 3, under, *The Rights of Texas Citizens 27.3* (Houston: Lone Star Pub. Co., 2009) (<http://www.celebratingtexas.com/tr/lsl/96.pdf>) (accessed June 27, 2009).

June 1918, she received the privilege of being the first woman to register to vote in Harris County.³⁵ The Houston Equal Suffrage Association memorialized Hortense's accomplishments in the inscription its members etched on the silver loving cup it awarded her:

**Hortense Ward
A Remembrance
For Faithful Service
To Texas Women
From Houston
Equal Suffrage
Association**

But she was not ready to rest on her laurels after winning Texas women the right to vote. Hortense continued to champion reformist politics long after her panel of the Texas Supreme Court rendered its decision in *Johnson v. Darr*. Confronted by undeniable evidence of devastated lives and family impoverishment, she supported the prohibition movement to curtail excessive drinking.³⁶

In her later years, Hortense took on the Ku Klux Klan at the height of its power and influence in Texas.³⁷ In 1926, Governor Miriam Ferguson sent her to Maine to campaign against Ku Klux Klan-supported candidates.³⁸ She worked hard to support reform legislation to limit working hours, argued in favor of a woman's right to participate in corporate governance as an officer or director, and advocated the organization of specialized family and divorce courts.³⁹

My uncle reiterated that his grandmother had a warm, generous heart. My grandfather, John H. Crooker, Sr.—who called her Mother, preserved a letter she wrote on Ward & Ward stationery and sent to him on Saint Patrick's Day in 1932 to remind him of the importance of love, family traditions, and wealth not measured in material terms.

John, dear:
So often in the struggle for material things we have little time left for the intangibles—the eternal verities. So on this St. Patrick's Day I am writing to a very beloved Irishman to say to him that as the people of that South County, Ireland, and to the world, so we to them, know and love him. So today is the day when all who love the shamrock should listen to the great bells that mark ring through eternity the history of the Emerald Isle.
The Irish are the leaven in the stony bread of humanity. In every clod in every clime they have brought, light, laughter, wit, wisdom and spiritual knowledge. There is not a government that has not been benefited by their accomplishments, not a people who have not risen to a higher understand-

ing of the love of God by reason of their presence among them.
There is not "a child-like faith" it is a spiritual knowledge. John's angels are very close to them and whisper to their messengers that our duller ears do not catch. When we consider how in every land they and their descendants help to build enduring monuments to civilization we can forget the personal sorrow each individual must have felt when compelled to leave his beloved Ireland. Viewed from the other side with the wider vision his personal grief must change to joy abundant.
When we consider each separate piece in the

Mosaic of Eternity we may wonder at its apparent lack of unity and beauty but the completed design of the Master Builder is Perfect Beauty. The spirituality of the Irish people is a gleaming jewel in that design—a jewel that radiates the love and understanding of the Most High God.
So to a very beloved Irishman this day I write this Ode to his people and to him I send my love and wishes for all the joys—beauty and love that the Father permits us—sojourners in this foreign country.
May St. Patrick smile on you and yours & his benign influence enfolds you—
Mother

Hortense Sparks Ward's March 17, 1932 St. Patrick's Day letter to John Crooker, Sr., from the author's personal collection.

³⁵ See "Mrs. Hortense Ward is shown as she signed the first registration receipt issued to a woman in Harris county Thursday morning" (photograph caption), HOUSTON POST (June 28, 1918), in Hortense Sparks Ward Biographical Vertical File, Texas Room, Houston Metro. Res. Ctr., Houston Pub. Lib.

³⁶ See Haley, A NARRATIVE HISTORY, at 155-56.

³⁷ See Dunn, *Legacy*, at 6.

³⁸ See generally Helen Hunter, Denise Nosal, and Mary Gillette (eds.), *Houston Women from Suffrage to City Hall: A Project of the League of Women Voters of Houston Education Fund* (Houston: League of Women Voters Educ. Fund, 1987).

³⁹ See Dunn, *Legacy*, at 6.

Hortense remained active in the Houston Heights Woman’s Club and the practice of law until her husband died in 1939.⁴⁰ Hortense passed away on December 5, 1944, as World War II was nearing an end, leaving behind one daughter and eight grandchildren.⁴¹ She lies buried in Houston’s Hollywood Cemetery.⁴²

Hortense’s story continues to inspire to this day. In 2010, the National Cowgirl Museum and Hall of Fame inducted Hortense as a “Cowgirl Honoree” who advanced women’s rights in Texas and America.⁴³



Linda Hunsaker accepts the Cowgirl Honoree 2010 award on behalf of Chief Justice Hortense Sparks Ward at the National Cowgirl Museum and Hall of Fame (“NCMHOF”) in Fort Worth, Texas.
Photo by Rhonda Hole (Oct. 28, 2010), provided courtesy of NCMHOF.

⁴⁰ See Shuffield, *The Hon. Hortense Malsch Sparks Ward*, at 6.

⁴¹ See Pope, *Chief Justice Ward*, 4; Shuffield, *The Hon. Hortense Malsch Sparks Ward*, at 6.

⁴² See Hortense Sparks Ward’s gravestone on the FIND-A-GRAVE website, public domain photo, <http://www.findagrave.com/cgi-bin/fg.cgi?page=pv&GRid=38838535&Pipi=41828459> (accessed June 16, 2015).

⁴³ See “Hortense Sparks Ward, Cowgirl Honoree,” NATIONAL COWGIRL MUSEUM AND HALL OF FAME (<http://www.cowgirl.net/portfolios/hortense-sparks-ward>) (accessed June 15, 2015).



From left to right: Adelaide Royer (a 2010 Mitzi Lucas Riley Cowgirl Honoree recipient), Delise Ward (great-grand-niece of Hortense Sparks Ward), Linda Hunsaker (the author), and Mary Margaret Richter (another 2010 Mitzi Lucas Riley Cowgirl Honoree recipient), during the induction ceremony in Fort Worth in 2010.

Photo by Rhonda Hole (Oct. 28, 2010), provided courtesy of NCMHOF.

It is important to share the stories of female trailblazers such as Hortense so that those both young and old are inspired to remember that the actions of one person can make a difference. I have been honored to illuminate the personality of this trailblazing woman for the *Journal*.



LINDA HUNSAKER is the oldest daughter of Kay and John H. Crooker, Jr. His mother, Rita Crooker (Mrs. John H., Sr.), was Hortense Ward's middle daughter. Ms. Hunsaker's father instilled in her a love of political history and entrusted her with a special responsibility for preserving her own family's history. Ms. Hunsaker earned her B.A. and M.S. from The University of Texas at Austin. She served as an active member of the Texas Bar Foundation from 2008 to 2011. The Crooker family made it possible for Hortense Ward to become a Founding Member in memoriam of the Center for Women in Law at The University of Texas School of Law. Ms. Hunsaker greatly appreciates the exceptional effort of the *Journal's* Executive Editor David A. Furlow, who helped her set and cite the footnotes in this article, and encouraged the inclusion of family recollections of Hortense Sparks Ward.

Executive Editor David A. Furlow's Comment: *I'd like to personally thank Linda Chanow, Executive Director of the Center for Women in the Law at the University of Texas School of Law in Austin, and Bethany Dodson, Research and Education Manager of the National Cowgirl Museum and Hall of Fame in Fort Worth, for sharing their time, records, photographs, and insights, all of which made this article possible. Most of all, I'd like to thank Linda Hunsaker for taking the time and offering the boundless energy necessary to share her family's memories of the Honorable Hortense Sparks Ward, the first female Chief Justice of the Supreme Court of Texas. I am confident that Chief Justice Ward will not be the last woman to bear the respected title of Chief Justice.*

[Return to Journal Index](#)

They Would Not Be Denied: The Texas State Archives Preserves the History of the Struggle for Women's Suffrage

By Anna Reznik

WHEN THE THIRTY-SIXTH TEXAS LEGISLATURE convened to its Second Called Session in 1919, few lawmakers were surprised by the agenda. The legislators needed to decide if Texas would ratify the Nineteenth Amendment to the United States Constitution. This amendment stated that no one would be denied the opportunity to vote based on gender.¹ In other words, women gained the ability to vote. The quick ratification of the amendment positioned Texas as the first state in the South to ratify this measure.

How was it that Texas moved to the forefront of the Suffrage Movement? The Texas State Library and Archives Commission (TSLAC)'s records, including original letters, manuscripts, photographs and election materials, enable future generations to understand the issues that surrounded the women's suffrage movement, the struggles its supporters had to overcome, and the key voices in that movement.

Until mid-September 2015, suffrage-related selections from TSLAC's holdings will be on display as part of a larger exhibition: *Texans' Struggle for Freedom and Equality*. Along with the campaign for women's suffrage, this exhibition reveals the efforts of pre-Republic colonists, Texas Revolution fighters and civilians, Native Americans, Tejanos, and African-Americans to expand their rights and freedoms in early Texas. Together these materials memorialize the obstacles Texans have overcome to achieve equality for all. This article highlights materials reflecting the women's suffrage movement in Texas, as well as other resources researchers may find interesting in understanding this topic.

Currently exhibited suffrage materials, as well as other TSLAC holdings, reflect a variety of collected types. Many TSLAC holdings provide clues about how women navigated around or surmounted social barriers, but specific collections are particularly rich in material. Two manuscript collections—the Erminia Thompson Folsom papers² and the Jessie Daniel Ames papers³—illustrate the evolution of the movement and the persuasive techniques employed by suffrage supporters. Selected images from the prints and photographs collection show suffragettes originated from varied backgrounds but came together to achieve their goals. Government records, especially those created by the judicial and legislative branches, revealed the legal barriers women overcame to gain equal rights. Using these primary sources together, later generations gained a better understanding of the social and political transformations that eventually gave women parity with men in the voting booth.

As the state archive of Texas government, TSLAC received much of its holdings through state agencies. Often the creating agency directly transferred records for permanent retention to TSLAC. In other cases, TSLAC eventually acquired these materials through other state agencies. Though not a primary collecting focus at

¹ Sen. Jt. Res. 1, 36th Tex. Leg., 2nd Called Session.

² See <http://www.lib.utexas.edu/taro/tslac/40035/tsl-40035.html#bioghista2>, accessed June 30, 2015.

³ See, e.g., Jon D. Swartz, "Ames, Jessie, Harriet Daniel," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fam06>, accessed June 30, 2015.

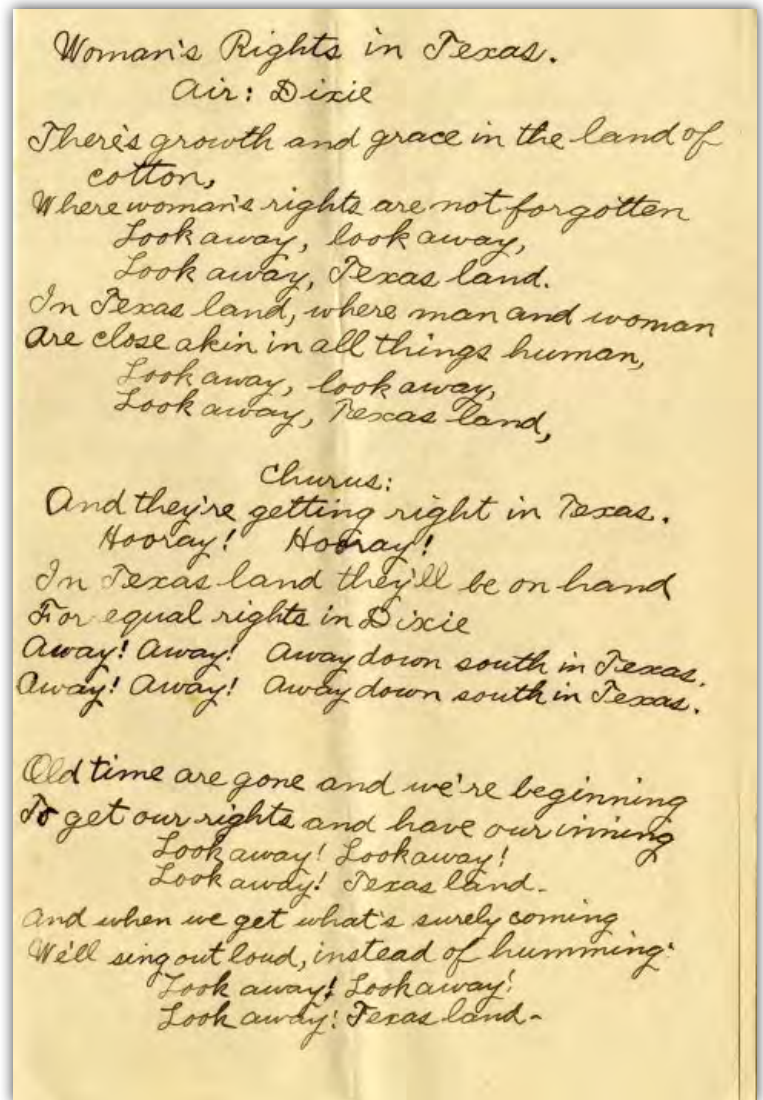
TSLAC, manuscript collections donated by private entities complemented existing private or public records or filled information gaps in TSLAC's holdings. The prints and photographs collection came from private donors as well as from state agencies. Primary sources held at TSLAC allowed the story of women's suffrage to be told by those on the ground while revealing the historical context of the movement.

The Erminia Thompson Folsom Papers

The Erminia Thompson Folsom papers contributed greatly to subsequent generations' understanding of the women's suffrage movement. This collection illustrates the approaches used by a mother and daughter to enfranchise women. The mother, Mariana Thompson Folsom, worked as a state lecturer for the Iowa Woman Suffrage Association from 1879 to 1881.⁴ Her husband, Allan Perez Folsom, served as a Unitarian minister, teacher, and lecturer. The family moved to Texas in 1881 after a successful lecture tour in the state. The Folsoms lived in San Antonio, Hallettsville, and Refugio County before finally moving to Austin in 1898.

While in Texas, Mariana became a state lecturer for the Texas Equal Rights Association.⁵ Within TSLAC's holdings are some of Mariana's lecture scripts/essays and advertisements for these events.⁶ She often spoke about women's inequalities by providing audiences with background information on the issue that highlighted the effects of these factors on women's lives.

In one example of her approach to social change, Mariana explained that Texas's laws were a combination of Spanish law and English common law traditions.⁷ According to Mariana, this legal tradition put "Texas women under guardianship with more binding disabilities than infants, idiots, lunatics, and habitual drunkards."⁸ In the eyes of



TSLAC # 1985_119_2_10_1, "Woman's Rights in Texas" song lyrics (ca. 1917), Erminia Thompson Folsom papers, TSLAC Arch. & Info. Servs. Div. Suffrage supporters brought attention to the issue through music and plays, including popular tunes such as "Dixie Land."

⁴ Tony Black, "Folsom, Mariana Thompson," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/ffo43>, accessed June 30, 2015. See also A. Elizabeth Taylor, *Citizens at Last: The Woman Suffrage Movement in Texas* (Austin: Temple, 1987).

⁵ Judith N. McArthur, "Texas Equal Rights Association," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/vit02>, accessed June 30, 2015.

⁶ <http://www.lib.utexas.edu/taro/tslac/40035/tsl-40035.html>, accessed June 30, 2015.

⁷ "Texas Laws," undated, 1, Mariana Thompson Folsom correspondence, Erminia Thompson Folsom papers, Archives and Info. Servs. Div., TSLAC.

⁸ "Texas Laws," 2.

the law and society, unmarried women (and to a lesser extent, widows) had more rights than married women.

As illustrated in Mariana's correspondence with women's suffrage leaders and law makers, she wanted bold action and not incremental changes. In a 1907 letter to H.B. Blackwell, Mariana suggested that starting small would not help women get absolute political equality because of the lack of attention the movement would receive.⁹ In her estimation, a modest approach ensured that any political equality women received would be limited and inconsistent. Unfortunately Mariana died sometime around 1910—before she saw the results of her efforts.

From an early age, Mariana's daughter, Erminia, followed in her mother's footsteps. Erminia joined the Texas Equal Rights Association in 1895, at the age of seventeen. TSLAC holds this membership certificate as well as meeting programs and ribbons collected by Erminia from various suffrage, temperance, and prison reform organizations. Her papers illustrate how the women's suffrage movement connected with other social reforms.

Like her mother, Erminia corresponded with women's suffrage leaders and lawmakers. With this correspondence came advice. In a 1910 letter, suffragette leader Anna Howard Shaw suggested that local and state pro-suffrage leaders take advantage of aroused sentiments in the issue and organize.¹⁰ As an experienced organizer, Shaw referenced her past experiences with community activism and emphasized the necessity to recruit good officers to spearhead the work. Along with other National American Woman Suffrage Association members, Erminia wrote to lawmakers and candidates to identify who was in favor of introducing a state constitutional amendment granting women the right to vote. She did so because she felt that enfranchisement encouraged good government.¹¹

By corresponding with legislators, Erminia determined which lawmakers opposed female suffrage because they believed that granting women rights would distract them from their domestic duties. She knew that some legislators believed that the vote would unsex women so that they could no longer be the "flower of humanity."¹²

One item currently displayed as part of the *Texans' Struggle for Freedom and Equality* exhibit demonstrate that women's suffrage opponents linked female suffrage to race. A 1910 letter from U.S. Representative Choice Boswell Randell, for example, declares that the time was not right for women's suffrage, especially in Texas.¹³ Throughout the letter, Randell asked Erminia rhetorical questions such as "would the presence of negro women as voters very much complicate conditions about the polls during the election" to illustrate that all women would be able to vote and not just educated white women.¹⁴ In other words, opponents of women's suffrage voiced the opinion that allowing all women to vote would create more problems than it would solve.

⁹ Mariana Thompson Folsom to H.B. Blackwell letter, April 2, 1907, Mariana Thompson Folsom correspondence, Erminia Thompson Folsom papers, TSLAC.

¹⁰ Letter from Anna Howard Shaw to Erminia Thompson Folsom, March 15, 1910, Erminia Thompson Folsom, incoming correspondence, Erminia Thompson Folsom papers, TSLAC.

¹¹ Letter from Erminia Thompson Folsom to E.L. Dohoney, December 18, 1914, Erminia Thompson Folsom, outgoing correspondence, Erminia Thompson Folsom papers. Archives and Info. Servs. Div., TSLAC.

¹² Copy of Rufus Hardy's response to National American Woman Suffrage Association questionnaire, Erminia Thompson Folsom papers. Archives and Info. Servs., TSLAC.

¹³ Brian Hart, "Randell, Choice Boswell," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fra32>, accessed June 30, 2015.

¹⁴ Letter from C.B. Randell to Erminia Thompson Folsom, November 25, 1910.

NATIONAL AMERICAN WOMAN SUFFRAGE ASSOCIATION

MEMBER OF INTERNATIONAL WOMAN SUFFRAGE ALLIANCE AND OF NATIONAL COUNCIL OF WOMEN

PRESIDENT, ANNA HOWARD SHAW, MOYLAN, PA.

1ST VICE-PRESIDENT, RACHEL FOSTER AVERY,
SWARTHMORE, PA.

2ND VICE-PRESIDENT, FLORENCE KELLEY,
105 EAST 22ND STREET, NEW YORK

CORRESPONDING SECRETARY, FRANCES SQUIRE POTTER,
505 FIFTH AVENUE, NEW YORK

RECORDING SECRETARY, ELLA S. STEWART,
5464 JEFFERSON AVENUE, CHICAGO, ILL.

TELEPHONE 4990 MURRAY HILL



TREASURER, HARRIET TAYLOR UPTON,
WATREN, OHIO

AUDITORS } LAURA CLAY, 189 NORTH MILL STREET,
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6 BEACON STREET, BOSTON, MASS

CHAIRMAN PRESS COMMITTEE, IDA HUSTED HARPER,
505 FIFTH AVENUE, NEW YORK CITY

HEADQUARTERS SECRETARY, MARY GRAY PECK

AUXILIARIES

COLLEGE EQUAL SUFFRAGE LEAGUE,
PRESIDENT, MISS M. CAREY THOMAS, BRYN MAWR, PA.

FRIENDS EQUAL RIGHTS ASSOCIATION,
PRESIDENT, MARY BENTLEY THOMAS, EDNOR, MARYLAND

THE EQUAL FRANCHISE SOCIETY
PRESIDENT, MRS. MACKAY, 1 MADISON AVENUE, NEW YORK

NATIONAL HEADQUARTERS 505 FIFTH AVE. NEW YORK

March 15, 1910.

Miss Erminia T. Folsom,
University Station,
Austin, Texas.

My dear Miss Folsom:

Your letter written last month was full of hopeful news in regard to Texas. The fact that the University of Texas is to debate with the University of Louisiana upon the subject of woman suffrage shows how it has permeated the whole country from north to south, and we certainly should take advantage of this aroused sentiment and gather it up in to organized form. I suppose you received the literature which I sent you to help in the debate as a package was sent immediately to you. I intended to write you at once to let you know that the literature had been sent, because we have heard from some places that literature has not been received; I think it is not due to the fault of this office, because they are very punctual in sending literature, but the mails have been rather mixed and some of it has been destroyed and lost in wash-outs and various other ways, but I hope yours reached there all right.

I have not heard from Miss Gordon yet in regard to the time of the meetings in the South or whether it has been planned that I shall come to Texas this spring. If I do go I expect to start South immediately after the National convention, but I do not think I can get as far south as Texas so late in the season, but I would like to start out in the fall down that way and begin the work of the year; it is a little too late to begin it now anyway, and it certainly would be too late in April. If everything could be planned so as to have a good state convention in November, and start the year off with some active organization work, I am sure a great deal of good could be done and good organization could be formed. I will ask the people at headquarters to send you a package of literature so that you can have it on hand to put in your letters or give it to any person whom you may meet.

I am very glad that you are writing for the papers. You will certainly meet larger audiences through that than you could any other way, and the laws of Texas are so bad that you could do nothing better than write articles on different laws and just show the people exactly where the women stand in that state.

Texas must be organized, but before we begin our organization in any state we have made up our minds through many years of experience

that it is necessary to have good officers to take charge of the work. It is no use to organize and let things drop right back again; we have done so much of that kind of work and we are getting tired of it. Unless we can have a good State President who will build it up and work it out I am sure we can do nothing with Texas or any other state; but with a good president, even with a small organization, we can have good state work. The National Association is going to turn over a new leaf in regard to assisting states in their organization, unless that state can have officers who will take charge of the work and keep it going after it has once been started. I shall never again vote to spend a dollar in any state which cannot at least take care of what the National Association pays to gather up. I wanted a lady who lives in Dallas; her name has escaped me now, but it begins with C; she was at the head of the Dallas Federation of Clubs at one time, and is a splendid woman. I wanted her to take the presidency of the Suffrage Association for Texas and, if she would do so, I am very sure we could have a splendid society there.

I wonder if you are coming to the National convention? If so, I would like very much to see and talk with you.

With sincere regards, I am

Faithfully yours,

Anna H. Shaw

Erminia T. Folsom corresponded with many national suffrage leaders for support and advice. Letter from Anna Howard Shaw to Erminia Thompson Folsom (March 15, 1910), Erminia Thompson Folsom, incoming correspondence, TSLAC.

C. B. Randell
Fourth Texas District
Wagon Wheel Texas Committee
U. S. House of Representatives

Sherman, Texas, Nov. 25, 1910.

Erminia T. Folsom,
University Station,
Austin, Texas,

Dear Madam:

Business of a pressing nature, and sickness in my family have prevented an earlier reply to your letter of the 2nd inst.

I do not favor the agitation of woman suffrage at this time. There are to be considered many complications, one of which is the race question. What effect do you think the right of women to vote would have in sections of the country where there is a large negro population? Do you think we can afford to have woman suffrage so long as the negro is a citizen and a voter?

Would not the presence of negro women as voters very much complicate conditions about the polls during an election?

Are those in favor of woman suffrage in favor of negro women being allowed th vote?

I ask these questions not in any spirit of criticism, but as suggestions and a desire to know what is your position and that of your associates.

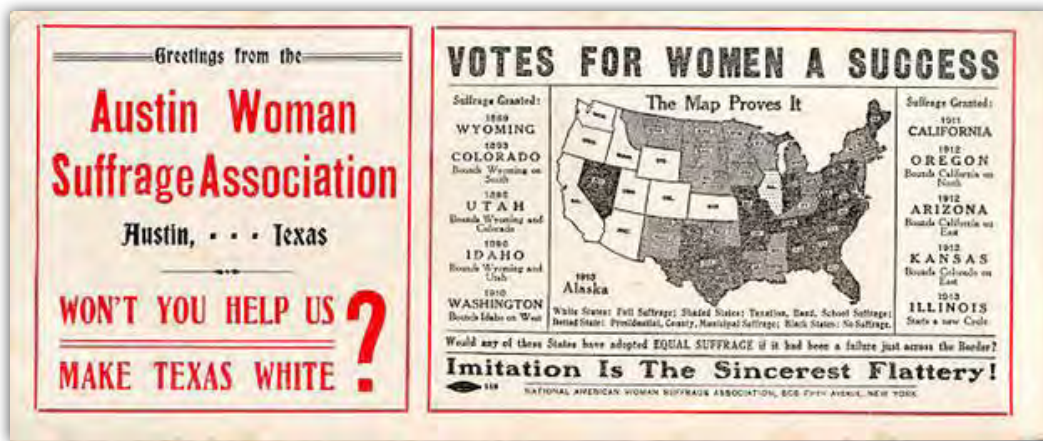
Very respectfully,

C. B. Randell

Letter, C.B. Randell to Erminia T. Folsom, Nov. 25, 1910, TSLAC Arch. & Info. Servs. Div., https://www.tsl.texas.gov/sites/default/files/public/tslac/exec/documents/struggles6_1985_119_1_FolsomRandell.pdf

The Austin Woman Suffrage Association attempted to answer rhetorical questions such as Randell's with mass-produced cards.¹⁵ One example on exhibit demonstrates that the same argument could answer different questions. On one hand, the card's statement "wouldn't you help us make Texas white" showed progressive governments encouraged women's suffrage. By using colors symbolically, the card's creators also suggested women's suffrage would double the number of white voters and maintain white supremacy in the South. This dual meaning meant one card could be used to address concerns raised by different audiences.

¹⁵ Suffrage map, Austin Woman Suffrage Ass'n, ca. 1913, Erminia Thompson Folsom papers, TSLAC.



Suffrage map, Austin Woman Suffrage Association (ca. 1913), Erminia Thompson Folsom papers, TSLAC # 1985_119_2_7. Cards such as these used colors and text symbolically to counter multiple arguments against the enfranchisement of women.

Materials within the Folsom papers show that suffrage leaders linked themselves to another social movement—prohibition—to improve the chances of success. In a 1914 letter from E.L. Dohoney to Erminia, he argued that prohibitionists who did not support women’s suffrage would fail in the long run. The Texas liquor market was strong and alcohol-related businesses would not go down without a fight.

Though not all suffragists supported prohibition and some prohibitionists did not state whether they were for suffrage, it was “evident that both these reforms must stand together” or neither would succeed.¹⁶ Supporting the prohibition of alcohol allowed suffragettes to argue that they sought to protect the home from husbands who beat their wives and children and men who partook in vices such as gambling or prostitution. The Folsom papers showed that many social movements, including enfranchisement of women, were connected.

In addition to correspondence and ephemera, the Folsom papers include entertainment materials that encouraged others to join the movement. Within the Folsom papers, song lyrics and play pamphlets illustrate how suffragettes tried to sway popular opinion. Song writers borrowed familiar tunes such as “Dixie Land” and changed the lyrics to support their cause.¹⁷ The resulting songs and plays articulated the movement’s goals in an easy-to-understand form.

The Folsom papers shed light on strategies pro-suffrage leaders employed as well as the methods they used to convince others to join the movement. This movement involved people in the group as well as identifying allies in government. The papers also demonstrate that the movement was meager during Mariana’s era, but was organized during Erminia’s life.

The Jessie Daniel Ames Papers

Along with the rest of her family, Jessie Daniel Ames moved to Texas in 1893. After graduating from Southwestern University, Jessie moved to Laredo, where she met army surgeon Roger Post Ames, whom she married in 1905. The couple had three children but spent most of their married life apart, he in Central America while she continued to live with her parents and older sister. To support her family after Roger’s death in 1914, Jessie helped her mother run a Georgetown telephone company. In 1919, she founded the Texas League of Women Voters.¹⁸ Until her death in early 1972, Jessie belonged to many social reform associations, including

¹⁶ Letter to Erminia Thompson Folsom from E.L. Dohoney, December 20, 1914, Erminia Thompson Folsom incoming correspondence, Erminia Thompson Folsom papers. Archives and Info. Servs. Div., TSLAC.

¹⁷ “Women’s Rights in Texas,” song lyrics, ca. 1917, Erminia Thompson Folsom papers, Archives and Info. Servs. Div., TSLAC.

¹⁸ Dorothy D. DeMoss, “League of Women Voters of Texas,” *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/wel05>, accessed June 30, 2015.

those regarding women's suffrage, prison reform, and prevention of lynching.¹⁹ In her later years, Ames compiled impressions of suffrage supporters and the events she experienced.²⁰

The Jessie Daniel Ames papers add more contextual knowledge about the legacy of the women's suffrage movement in Texas. Most of her papers appear to have been collected or compiled by her in 1965, possibly for donation to an archival repository. This small yet rich collection provides information about how suffrage groups transitioned from seeking only the enfranchisement of women to campaigning for equal rights in many arenas.

Materials within the Ames papers illustrate the immediate aftermath of the women's suffrage movement. In an undated speech-script, Jessie stated that female enfranchisement aided in the destruction of machine politics, encouraged better treatment of wards of the state, supported education reform, and maintained prohibition.²¹

Correspondence and recollections suggested that this optimistic outlook faded during the 1924 gubernatorial election. Ames spoke on behalf of Miriam Ferguson, wife of impeached governor James Ferguson, in spite of the Fergusons' earlier opposition to the women's suffrage movement.²² As Ames stated in a 1924 letter to her friend P.O. Ray, Ma Ferguson²³ would resist her husband's influence if she wanted to be a good governor. Ames considered Ferguson a better option than her opponent Felix D. Robertson, a known Klansman of questionable moral values.²⁴ Less-than-perfect candidates continued to run for office despite the enfranchisement of women.

As an active suffragette, Ames worked with many of the movement's key figures and also collected such ephemera as a campaign flyer for Minnie Fisher Cunningham.²⁵ Though unsuccessful, Cunningham became the first woman to run to represent Texas at the national level. In the decades that followed the enfranchisement of women, Ames continued to push for equal rights at the local level. According to Ames's notes from Texas League of Women Voters meetings, more work was needed so that women could serve on juries and close the disparity between the property rights of unmarried and married women.²⁶

The Ames papers demonstrate that the enfranchisement of women was a promising move forward, but that more needed to be done if females wanted full equality. Ames also realized that the movement needed to be memorialized through documentary materials produced by suffragettes as well as recollections of the movement. This approach ensured that future generations would understand what struggles existed and how women leaders fought for equal rights.

¹⁹ Nancy Baker Jones, "Association of Southern Women for the Prevention of Lynching," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/via01>, accessed June 30, 2015.

²⁰ "Notes on Texas Governor Dan Moody, covering the time period from 1918 to 1928," undated, Ames (Jessie Daniel) papers. Archives and Info. Servs. Div., TSLAC.

²¹ Untitled speech, about 1920, Ames (Jessie Daniel) papers, TSLAC.

²² Letter to P.O. Ray from Jessie Daniel Ames, August 30, 1924, Ames (Jessie Daniel) papers. Archives and Info. Servs. Div., TSLAC.

²³ John D. Huddleston, "Ferguson, Miriam Amanda Wallace [Ma]," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/ffe06>, accessed June 30, 2015.

²⁴ Ames mentions that Robertson protected saloon men despite his stance on prohibition. Ames lamented that Robertson's actions showed his character to be lacking good morals.

²⁵ "Texas Women Cannot Forget Minnie Fisher Cunningham" flyer, about 1928, Ames (Jessie Daniel) papers. Archives and Information Services Division, Texas State Library and Archives Commission.

²⁶ "Texas League of Women Voters" notes, October 1919-December 1923, Ames (Jessie Daniel) papers, Archives and Information Services Division, Texas State Library and Archives Commission. After ratification of the Nineteenth Amendment, some women suffrage groups dissolved and regrouped to reflect a new mission. The Texas League of Women Voters was formed from the recently dissolved Texas Equal Suffrage Association.

History Preserved in the Archives' Prints and Photographs Collection

TSLAC's prints and photograph collection combines visual materials donated by private individuals and images transferred from state agencies. This unique approach enables us to know what Jessie Ames Daniels wore and how many women gathered at a pro-suffrage event. In one example, a photograph of thirty-four recently registered Travis County women illustrates the organizing power of suffragettes.²⁷



“Travis County Women Register to Vote” (1918), William Deming Hornaday collection, Prints and Photographs, 1975/070-5449, TSLAC Arch. & Info. Servs. Div. https://www.tsl.texas.gov/sites/default/files/public/tslac/exec/documents/struggles6_1975%20070%205449%20Women%20Voters.pdf.

Texas women only had seventeen days to register to vote in the July 1918 primaries, which was the first opportunity for females to vote in Texas. This photograph shows not only that women took their new responsibilities seriously, but that female voters varied in age and wealth.

The prints and photographs collection also shows that women were still surrounded by men in the political

²⁷ “Travis County Women Register to Vote,” 1918, William Deming Hornaday Collection, Prints and Photographs, 1975/070-5449.

arena. Jane Y. McCallum, a successful woman leader, campaigned for Dan Moody against Miriam Ferguson during the 1926 election. When the position of secretary of state became vacant in 1927, Governor Moody appointed McCallum to the position. Early in her tenure, she discovered an original copy of the 1836 Texas Declaration of Independence in the State Capitol's vault. A copy of the Declaration of Independence is in the custody of TSLAC.²⁸ McCallum considered her role in preserving and displaying this Texas treasure as one of her most important achievements as secretary of state. A photograph of McCallum and her office showing off the Declaration demonstrates her pride.

The prints and photographs collection also includes other portraits of women who became involved in government. Some of these women are only represented in TSLAC's holdings through this collection

Government Records

Government records document the variety of actions citizens take from birth to death. This includes incoming correspondence to the governor's office, election registers, and requests for legislative action. Many types of government records document the history of the women's suffrage movement, but legislative bill files and memorials and petitions to the legislature are particularly effective in highlighting the barriers women faced as well as ways they moved around those obstacles.

Though the contents of individual legislative bill files vary, these records may include the introduced version and committee report from each chamber. These materials also list the bill's sponsors and the committee's recommendation. Bills introduced in the 1910s reveal victories for the women's suffrage movement. For example, the passage of House Bill 105 during the Fourth Called Session of the Thirty-Fifth Texas Legislature foreshadowed full suffrage. This legislation stated that "women may vote in all primary elections and nominating conventions in Texas."²⁹ As Texas was largely a one-party state at the time, voting in the Democratic Party's primaries allowed women to at least partially influence who ran in the general elections. As the 1910s progressed, more and more bills attempted to redefine what role women had in Texas.

Bill files also show how issues revolving around a woman's right to vote divided legislators. During the Second Called Session of the Thirty-Sixth Texas Legislature, lawmakers introduced two Senate Joint Resolutions in response to what became the Nineteenth Amendment to the U.S. Constitution. Senate Joint Resolution 1 stated that one's gender shall not be the basis for denying someone the right to vote.³⁰ Senate Joint Resolution 2 pointed out that a similar measure to amend the state's constitution failed at the polls a few months prior. According to this latter resolution, the issue should be voted upon in a general election instead of being decided upon by legislators.³¹

The bill files for each stated that both resolutions were referred to the Amendments Committee, but only the first resolution passed out of committee. The bill files also showed that more legislators supported Senate Joint Resolution 1 than Senate Joint Resolution 2, which likely demonstrated that the suffrage movement had gained mass appeal.

Since only legislators can introduce a bill, members of the public petitioned lawmakers to author a

²⁸ See "A Dozen Documents that Made a Difference," TSLAC, <https://www.tsl.texas.gov/exhibits/texas175/declaration.html>, accessed June 30, 2015.

²⁹ HB 105, 35th Tex. Leg., 4th Called Sess., 1918; SB 53, 35th Tex. Leg., 4th Called Sess., 1918.

³⁰ Sen. Jt. Res. 1, 36th Leg., 2nd Called Sess.

³¹ Ibid.

measure on their behalf. TSLAC preserved these records as the memorial and petitions to the legislature series. In one example, the American Women Suffrage Association sent a memorial to both Texas legislative chambers following its annual meeting on November 22, 1871 in Philadelphia. Meeting organizers sent a memorial to all states, including Texas, petitioning legislators to create and pass a law that would “abolish all political distinctions on account [of] gender.”³²

Additionally, the memorials and petitions series illustrates how women attempted to break social barriers on an individual level. Examples in this series showed that women attempted to gain individual rights to own land, control businesses, or divorce husbands. The memorials and petitions series illustrates ways individual women could navigate the political landscape to acquire some of the freedoms they sought.

The Archives’ Judicial Records Reflect the Struggle for Female Enfranchisement in the Courts.

The extension of voting rights to women under the Nineteenth Amendment to the U.S. Constitution and under the Texas Constitution did not bring full equality to women under the law.³³ The records of cases and administrative actions by Texas’s intermediate courts of appeals, the Texas Court of Criminal Appeals, and the Texas Supreme Court illustrate the judicial branch’s role in the creation, interpretation, and enforcement of women’s rights. These courts heard cases determining what rights women had under the law as well as the legality of legislation granting women more rights. Records of these courts also illustrate different interpretations of the rights of women.

In the years immediately after women gained the right to vote in Texas, the Texas Court of Criminal Appeals and Texas Supreme Court heard cases clarifying the rights of women. As shown in TSLAC’s judicial records, these two courts came to differing conclusions. In *Harper v. State*, the Texas Court of Criminal Appeals was asked to decide if having women on a jury would make a previous indictment void. The Court held that the enfranchisement of women did not extend to the ability to serve on grand or petit juries and the lower court’s decision was reversed.³⁴ Only men served on juries until November 2, 1954, when voters approved a Texas constitutional amendment permitting women jurors.

In the 1924 case *Dickson v. Strickland*, the Texas Supreme Court reached the opposite conclusion by holding that women could serve as governor.³⁵ The Court ruled that the legislature used the male pronoun as the default term. The Court also noted that “the truths of current history” included the eligibility of women to run for and hold office as a result of a woman’s new right to cast a ballot.³⁶ These two decisions show that the enfranchisement of women extended to some rights but not to others.

More can be discovered about these cases, as well as other court actions, through TSLAC’s holdings. Judicial records vary from case to case, but may include case files, applications, dockets, minutes, proceedings from the lower courts, and opinions. These records are typically arranged by case number. If a researcher does not know the case number, then the indexes or dockets for the appropriate court can be used to discover this identification. For example, the Texas Court of Criminal Appeals (<http://www.lib.utexas.edu/taro/tslac/50022/>

³² Memorial to the Senate and House of Representatives of the State of Texas, February 14, 1872, Texas Memorials and Petitions. Archives and Info. Servs. Div., TSLAC.

³³ A. Elizabeth Taylor, “Woman Suffrage,” *Handbook of Texas Online*, <https://www.tshaonline.org/handbook/online/articles/viw01>, accessed June 30, 2015.

³⁴ 234 S.W. 909 (Tex. Crim. App. 1921).

³⁵ 114 Tex. 176 (1924).

³⁶ See also James L. Haley, *A Narrative History, 1836-1986*, 167 and 282 n.20.

[tsl-50022.html#series5](#)) and the Texas Supreme Court (<http://www.lib.utexas.edu/taro/tslac/20169/tsl-20169.html#series2>) provide information about indexes that can be used to locate the appropriate case number.

Once a researcher knows the case number, then one can find correct box number. Because case files are stored off site and there is a potential for information to be excepted from public disclosure in these records, researchers should contact TSLAC in advance to ensure access to materials.

Discover More

Understanding the past depends upon our ability to preserve and reexamine these records of the past. TSLAC holdings provide insights into the women’s suffrage movement as told by the people who supported it. They also offer historical context on the barriers the movement overcame. The historical records TSLAC maintains show how women’s suffrage in Texas was part of a larger national movement. As noted earlier, some of the materials described in this article are currently displayed as part of the larger *Texans’ Struggle for Freedom and Equality* exhibition.

The online companion can be found at <https://www.tsl.texas.gov/struggles-exhibit.html>. Another online exhibit, “Votes for Women,” available at <https://www.tsl.texas.gov/exhibits/suffrage/index.html>, provides a summary of movement from beginnings with biographical information on early women leaders. Other TSLAC holdings on the women’s suffrage movement can be found through other tools. Researchers interested in primary sources can discover series of interest by searching TARO, the Texas Archival Resources Online (https://www.lib.utexas.edu/taro/browse/browse_tslac1.html). Other TSLAC holdings on women’s suffrage can be discovered by searching the online catalog (www.tsl.texas.gov/catalog). In addition to the resources previously discussed, searching the online catalog can lead researchers to state agency publications as well as secondary sources.

TSLAC is located next to the State Capitol at 1201 Brazos Street and is open Monday through Friday from 8 a.m. to 4:45 p.m. TSLAC is also open the second Saturday of each month from 9 a.m. to 4 p.m. For more information, contact the TSLAC reference staff at 512-463-5455 or visit our website at www.tsl.texas.gov



ANNA M. REZNIK is an Archivist I at the Texas State Library and Archives Commission. She is a member of the institution’s exhibits committee and assists in selecting and researching items for exhibition.

[Return to Journal Index](#)

Remembering the Remarkable Judge Sarah T. Hughes

By Judge Elizabeth Ray

I WAS TEN YEARS OLD THE FIRST TIME I met Judge Sarah T. Hughes, when my father introduced me to her. I can still recall her voice and her presence. She had given up on “nice” by that time. I remember thinking that she was absolutely tiny; she stood only five feet tall. One can safely assume she had her judicial robes altered to fit.

I encountered her a second time in 1979, after I graduated from law school and was clerking for a federal magistrate in Fort Worth. She was eighty-three years old at the time. I was having trouble finding a job as a litigator; her advice to me was along the lines of, “Don’t be a wuss. Get it done one way or the other.” I declined offers to work in probate and family law and opened my own “firm” much as she had done some fifty-eight years earlier.

That was thirty-six years ago. Things seem to have worked out OK. Like Judge Hughes, I have won some and lost some (I lost an election for the Texas Supreme Court in 2002 by 22,380 votes and a district court race in 2008 by fewer than 500 votes). But Judge Sarah Hughes’s grit and determination to move forward in spite of setbacks set a fine example to those who might be tempted to quit after a bitter defeat, whether in politics or in life.

Judge Sarah T. Hughes experienced a life of “firsts.” She was the first female Texas state district court judge, the first female federal district judge in Texas, and the first female to administer the oath of office to a president. She shaped history, and her life of “firsts” continues to inspire us today, thirty years after her death. Few among us can claim a legacy as broad or as grand as hers. Her influence continues. It certainly affected me. I share this article as a tribute to Judge Hughes and intertwine it with my recollections of her and her impact on my life.

Sarah Tilghman Hughes was born on August 2, 1896 in Baltimore. She came from an illustrious background. Her great-great-great grandfather James Tilghman was the first Attorney General of the State of Maryland, and her great-great-great uncle Tench Tilghman was aide-de-camp to General George Washington. The family plantation, Hermitage, was still in use when she was born.

Hughes graduated from Goucher College, an all-women’s college in central Baltimore, and then taught high school for two years at Salem Academy, a private girls’ school in North Carolina (her mother, Bessie, was from North Carolina). She completed her education in 1922 by graduating from the George Washington University Law School. Hughes attended law classes at night while working as a police officer during the day. Disciplined in all areas of her life, she maintained a set bedtime of 8 p.m. and arose promptly at 4 a.m. As a woman police officer not allowed to carry a gun, she patrolled areas where prostitutes and runaways were normally found. This experience instilled in her a lifelong passion for women’s issues. At the time, she lived in a tent and commuted to her law classes via canoe.

Hughes married her classmate, George Hughes, who was from Palestine, Texas, and they moved to Dallas in 1922. She was admitted to the Texas Bar that same year. Unable to obtain employment with a law firm (much

like her contemporary, Sandra Day O'Connor), she opened her own practice and exchanged rent-for-receptionist duties with a small firm. She practiced law in Dallas for thirteen years, during which time was elected to the Texas House of Representatives in 1930, 1932, and 1934.

In 1935, Governor James V. Allred appointed Hughes to the district court bench in Dallas, which caused quite a stir in the Legislature, with one legislator saying she should “stay home and wash dishes.” To put her appointment in context, Judge Hughes took the bench a full two decades before women were allowed to sit on juries in Texas, which did not happen until 1954—a cause she personally championed. She was the first female district court judge in Texas. She held that position for twenty-five years through six elections. It was during Judge Hughes’s first few years on this bench that she met my father, George E. Ray, an attorney in Dallas. Years later, when I was ten, my father introduced me to her.

She and President Lyndon Johnson were longtime friends, and it was he who originally pushed for her nomination to the federal bench, an appointment initially blocked by the Kennedy White House because of her age (she was sixty-five). Interestingly, Leon Jaworski was the Texas member of the American Bar Association committee which declined to support her nomination because of her age. When Sam Rayburn, then House Speaker, held up a bill important to Robert Kennedy, Judge Hughes’s nomination moved forward at an accelerated pace, and she was then nominated and confirmed in 1961.



Sarah T. Hughes with President Lyndon B. Johnson, 1966, White House Photo. Wikimedia Commons, public domain.

Judge Hughes was the first woman to serve on a federal bench in Texas and only the third woman to serve as a federal judge nationwide. In 1952, Judge Hughes was nominated for vice-president at the Democratic National Convention (she withdrew her name).

Judge Hughes withstood defeat as well. In 1946, she ran for the United States Congress and lost in the primary. She ran against Joe Greenhill in 1958 for the Texas Supreme Court and lost by 15,000 votes. It was the first campaign in which candidates used campaign cash to buy television time. On a related note, Chief Justice Greenhill personally swore me in to the Texas bar in 1979. His law clerk, Andrew Hanen, who is now a federal judge in the Southern District of Texas, was a classmate of mine at Baylor. His future wife and my future law partner, Diane Dillard, was one of the approximately fifteen women in our 1979 Baylor Law School graduating class.

In 1963, Judge Hughes had been on the federal bench only two years when she had the unnerving task of swearing in Lyndon B. Johnson on board Air Force One after President John F. Kennedy's assassination. Can anyone forget the photo of Jacqueline Kennedy, head bowed, bloodied Chanel pink coat,



Portrait of Federal Judge Sarah T. Hughes, dated February 1972. Public domain image from the Archives Department of the State Bar of Texas.

watching as Judge Hughes administered the oath? When she was contacted to swear in President Johnson, no one had the oath of office handy. Judge Hughes brushed this off with the comment, "I'll make one up." The words "I can't" were not in her vocabulary.

Judge Hughes is the first and still the only woman to have sworn in an American president. She sat in significant cases—*Roe v. Wade* (regarding a woman's abortion rights) and *Schultz v. Brookhaven General Hospital* (concerning equal pay for women) are examples—and she was instrumental in organizing the first juvenile detention center in Dallas. She took senior status in 1975 but continued to hear cases until 1982.

Judge Hughes's influence extended laterally to other aspiring women and has continued to inspire generations to this day. I was born and raised in Dallas by my Harvard-educated lawyer dad and my beauty-queen mom. In large part due to the high esteem



Cecil W. Stoughton's photo of U.S. District Court Judge Sarah T. Hughes administering President Lyndon B. Johnson's oath of office aboard Air Force One on November 22, 1963, in the presence of Jacqueline Kennedy. Wikimedia Commons, public domain.

in which she held Judge Hughes, my mother was determined that her daughters would not be minimized. This force of nature produced my sister, a Vassar/Cornell (PhD) /U. Colorado (*summa cum laude*) lawyer; my other sister, a Vassar/Baylor College of Medicine (highest grade on the psychiatric boards and youngest admitted to Baylor at age twenty); and me, as well as two great brothers (another story). Although their political views were vastly different, my parents greatly admired Judge Hughes who had faced the traditional, all-male, heavy-handed bureaucracy—and *won*.

In Dallas, Judge Hughes moved in odd social circles. A childless working woman, dedicated to human rights and women's rights, she did not fit the country club mold. She was friends with other nontraditional (read "professional") women, many of whom were friends with my mother. When we last spoke, Judge Hughes still remembered my mom from Nacogdoches, Texas, right down the road from Palestine.

Judge Sarah Hughes died on April 23, 1985, at the age of eighty-eight. She and her husband are buried in Dallas at the same cemetery as my parents. She not only lived a life of "firsts," her impact on the Texas bench and bar are second to none.

Author's Note: *The author expresses her thanks to her sister, Mary Ray White, for her help researching this paper.*

Executive Editor's Note: *The Texas Supreme Court Historical Society Journal is proud to publish Judge Elizabeth Ray's personal remembrances of an American icon, the incredible Judge Sarah T. Hughes. Readers interested in learning more about Judge Hughes can turn to Southern Methodist University Emeritus Professor of Communications Darwin Payne's 467-page biography, Indomitable Sarah: The Life of Judge Sarah T. Hughes (Dallas: Southern Methodist University Press, 2003). See also Robert S. La Forte, "Hughes, Sarah Tilghman" Handbook of Texas Online, accessed June 5, 2015, <http://www.tshaonline.org/handbook/online/articles/fhu68>.*



*Born, raised, and educated in Texas, **JUDGE ELIZABETH RAY** has spent her entire thirty-six-year legal career in civil litigation, first as a trial lawyer for fourteen years and then as a state district court judge. She recently married Paul Choules, and they have six children between them. She retired from the bench with senior status in March 2015. She is now a mediator/arbitrator and trial strategist in Houston.*

[Return to Journal Index](#)

Excerpts from *Rough Road to Justice: The Journey of Women Lawyers in Texas*

By Betty Trapp Chapman

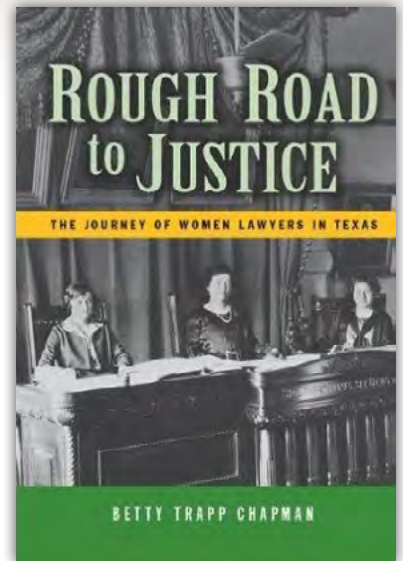
Ed. Note: *In Rough Road to Justice: The Journey of Women Lawyers in Texas* (Austin: TexasBarBooks, 2008), historian Betty Trapp Chapman chronicles a twentieth century story of how women came to join the Texas judiciary. In the excerpts below, reprinted verbatim with original source citations, Ms. Chapman tells how Texas women ascended to the bench. The excerpts are used with permission of the State Bar of Texas.

Chapter Seven: Ascending to the Bench

IN FEBRUARY 1935, SARAH T. HUGHES was appointed Judge of the fourteenth district court in Dallas County by Governor William Allred, who described Hughes as “capable, conscientious and courageous.”¹ Since no woman had ever served in a permanent position in the state judiciary, the appointment generated a great deal of attention and no small amount of controversy. Hughes’ own state senator complained, “Mrs. Hughes is a married woman and should be at home washing dishes.”² Women throughout the state were insulted by the senator’s remark and responded by mobilizing with great enthusiasm on Hughes’ behalf. Her appointment was confirmed after fiery debate in the Senate chambers.³ Judge Hughes would be reelected to the post for the next twenty-six years. During that time, however, she would have few female colleagues join her on the bench.

Women judges actually had a very auspicious beginning in Texas. In 1925 a potential conflict of interest arose that not only disqualified the three sitting justices on the court, but possibly eliminated every male member of the bar from serving as replacements. At issue was a trust and title dispute involving two tracts of land in El Paso County and the Woodmen of the World, a fraternal organization that sold insurance to men who then automatically became members of a Woodmen lodge.⁴ Nearly every male lawyer in the state in 1925 was a member.⁵

At the trial-court level, plaintiff J. M. Darr and those who joined him, acting as trustees for the Woodmen of the World, were partially successful, having been given title to only one tract of land. On immediate appeal, however, judgment was reversed, granting the plaintiffs title to both tracts of land. When the case came to the



¹ Darwin Payne, *Indomitable Sarah: The Life of Sarah T. Hughes* (Dallas: Southern Methodist Univ. Press, 2004), 78.

² *Ibid.*

³ *Ibid.*, 84.

⁴ James R. Evans Jr., “An Exceptional Legacy,” *Heritage* (Spring 1998), 13-14.

⁵ Scholarship conducted in recent years has presented evidence that may indicate this was not the primary reason for choosing an all-woman court. Some of the findings suggest that Governor Neff may have been trying to place women in prominent roles to downplay the attention that Miriam “Ma” Ferguson was receiving. Ferguson, who would succeed Neff in just a few months, and her husband, Jim “Pa” Ferguson, were no allies of Neff.

state's highest court, Governor Pat Neff appointed three women—Hortense Ward of Houston, Edith Wilmans of Dallas, and Nellie Gray Robertson of Granbury to replace the disqualified justices. Then Neff discovered that Robertson, who was to have been chief justice, and Wilmans did not have the seven years of experience required for the post. Neff sought to place Emma Webb of Elgin on the court, but she, too, was unqualified. The governor finally found qualified lawyers in Hattie Henenberg of Dallas and Ruth Brazzil of Galveston. Hortense Ward was then named chief justice.⁶ Of the thirty licensed female lawyers in Texas at that time, it appears that only ten had more than seven years of service at the bar.⁷

A week before the case was to be heard, *The Dallas Morning News* reported, “All records were shattered and at least three precedents established . . . when Gov. Neff appointed a special Supreme Court composed entirely of women. It was a healthy New Year gift of recognition to the woman barrister of today. This is the first instance a woman has been appointed to sit on the supreme bench; it is the first time a higher court is to be composed entirely of women; and it is the initial case where a majority of the judges will be women.”⁸ Both the legal profession and the public were waiting in anticipation to see if women could, indeed, carry forth such an important task.

The court session opened on January 8, 1925. The clerk of the court was absent. According to papers in the Texas State Library, he “arrived with a cane fishing pole and a jug . . . saying . . . I’ll be d---ed if I am going to nursemaid a bunch of women. I’m going fishing.”⁹ And he departed. The three women were administered the oath of office, which at that time required each justice to swear that she had never fought a duel. It was duly noted that none of them raised their right hands as they took the oath. The case, *Johnson v. Darr*, was heard on January 30, 1925. Four months later the all-female court affirmed the decision of the appeals court with Chief Justice Ward writing the opinion.¹⁰ The proceedings were widely publicized as being a novelty. Ward, however, remarked, “The novelty . . . is entirely lost in the great responsibility.”¹¹

In an appearance before the Texas House of Representatives, Ward added, “It is the ambition of the women today to break down the prejudices which men have against them in business and the professions, so that the way may be smoother for those who follow.”¹² Although the female justices’ capable efforts were widely considered a step in that direction, it would be almost sixty years before another woman sat on the Texas Supreme Court.¹³

That landmark event occurred in 1982 when Ruby Kless Sondock was appointed to the high court. She later recalled that she thought the letter from the governor’s office was a joke and called the Capitol to verify that it was real.¹⁴ Sondock had never dreamed of becoming a judge, but in 1973 she was the first female lawyer in Harris County appointed to a judicial position, initially in a family court and four years later in the 234th District Court. Although Sondock served on the Supreme Court of Texas for only six months, she opened the doors to the

⁶ Hollace Weiner, “A Case When Women Reigned Supreme,” 59(9) *Tex. B. J.* 890-891.

⁷ Evans, “An Exceptional Legacy,” 13.

⁸ *Dallas Morning News*.

⁹ Weiner, “A Case,” 891.

¹⁰ *Ibid.* As of 1998, the holdings set forth in *Johnson v. Darr* had been mentioned in cases and law review articles more than thirty-five times since the court’s opinion was published, according to Shepherd’s Citations. As precedent, the case has been used to support later arguments in appellate courts.

¹¹ Evans, “An Exceptional Legacy,” 15.

¹² “Legislators Hear Mrs. Hortense Ward,” *Houston Chronicle* (Jan. 31, 1925). While in Austin, Ward, true to her persevering personality, presented a bill to the legislature which would provide a court of domestic relations in Harris County. *Houston Chronicle* (Jan. 30, 1925).

¹³ A portrait of the 1925 court was hung in the Supreme Court Building in 1997. Judge Ruby Sondock, who participated with the dedication ceremony for the portrait, said, “If they could see us now!”

¹⁴ *Texas Bar Journal*, 55, 1:98.

presence of women on the high court.¹⁵

Barbara Culver, a Southern Methodist University law graduate, was appointed to a position on the supreme court in 1988 after serving as a state district judge for ten years. Her tenure was also brief—only ten months—but it confirmed that women were certainly competent to sit on the state’s highest court.¹⁶

Not until 1992, however, was a woman elected to a six-year term on the Texas Supreme Court. Rose Spector, a St. Mary’s graduate from San Antonio, took her seat after serving as both a judge of a county court at law and of a state district court in Bexar County.¹⁷

In 1995 Priscilla Owen joined Justice Spector on the high court. A graduate of Baylor’s law school, Owen had practiced commercial litigation for seventeen years in the Houston firm of Andrews Kurth, where she was a partner. She was reelected to the supreme court in 2000, but left in 2005 when her appointment by President George W. Bush to the U.S. Fifth Circuit Court of Appeals was confirmed.¹⁸

In 1997 Deborah Hankinson was appointed by Bush, then governor of Texas, to the high court. Hankinson’s first career was as a teacher in the public schools, where she initiated curriculum and established resources to make special education more accessible to those students who needed it. Realizing that the law could impact education in a positive way, Hankinson entered SMU law school. After graduating she joined the firm of Thompson and Knight in Dallas. In 1995 Hankinson was appointed to the Texas Fifth Court of Appeals and two years later to the Texas Supreme Court, where she became the third woman justice.¹⁹

Harriet O’Neill was elected to the court in 1998 and reelected to a second term in 2004. O’Neill’s judicial career began when she was elected to a district court in Harris County. She then served on the Fourteenth Court of Appeals. A graduate of the University of South Carolina School of Law, O’Neill practiced law in Houston, concentrating primarily in complex business and commercial litigation before opening her own office to focus on mediating legal disputes. Justice O’Neill’s term extend[ed] through 2010.²⁰

This remains an interesting question—will she be joined by other women justices while she is on the court? Only nine women have served on the Texas Supreme Court in its 171-year history. It appears that the same glass ceiling that a woman faces in becoming managing partner of a firm or dean of a law school exists on Texas’ highest court as well.

On a more positive note, women fill many judicial positions in the state today although their access to the judiciary was slow in the beginning. The first woman to run for a judicial seat in Texas was Hortense Ward. In 1920 she presented herself as a candidate for a Harris County court position. Her campaign slogan was, “Don’t vote for me because I am a woman but don’t vote against me because I am a woman.”²¹ Ward, obviously, felt qualified for a judicial position, but she realized that gender was an issue in the race, which she lost. Even though

¹⁵ *Texas Bar Journal*, 61, 1:87.

¹⁶ *Texas Bar Journal*, 37, 5:423.

¹⁷ Jay Brandon, *Law and Liberty: A History of the Legal Profession in San Antonio* (Dallas: Taylor Pub. Co. with the San Antonio Bar Ass’n, 1996), 86-87.

¹⁸ Justice Priscilla Owen, *Texas Judiciary Online* (accessed March 29, 2005).

¹⁹ Kelley Jones King, “A Judicial Profile: Texas State Supreme Court Justice Deborah Hankinson,” <http://www.texasbar.com> (accessed March 28, 2005).

²⁰ Justice Harriet O’Neill, *Texas Judiciary Online* (accessed March 29, 2005).

²¹ *Houston Press* (July 1, 1920), 2.

women could cast ballots in this election, it was clear that most voters, including many women, did not yet feel that women belonged in the courtroom, especially in a seat of authority.²²

Texas was not alone in moving very slowly in accepting women into the judiciary. A woman was named to a judicial position for the first time in the United States in 1870 when Esther McQuigg Morris became a justice of the peace in South Pass City, Wyoming.²³ By 1900 only five women in the country had served in any judicial or quasijudicial capacity. Two decades later that number had risen by only ten. Even when women won the vote in 1920, the percentage of women on the bench did not substantially improve. In 1930 only twelve states had at least one woman judge. Not until 1979 did every state in the union have at least one woman serving in some judicial capacity.²⁴

The assimilation of women into the judiciary proved to be a long, difficult climb in Texas, just as it was in the rest of the country. Judge Sarah Hughes remained the lone state district judge in Texas until 1957 when Beth Wright was appointed to preside over the Domestic Relations Court (later the 301st Family District Court) in Dallas County. Wright was admitted to the Texas Bar in 1941 after graduating from Southern Methodist University School of Law.²⁵

In the same year of Judge Wright's appointment, Pat Moore was elected judge of Lubbock County Court at Law No. 2. Judge Moore would go on to be elected the first woman judge of the Seventy-second District Court, which included Crosby and Lubbock counties, and would be reelected numerous times.²⁶

As 1960 approached, there were only a handful of women occupying judicial positions in the entire state. That year an Amarillo lawyer, Mary Lou Robinson, became judge of the 108th District Court in Potter County, having previously served three years as a judge in the county courts.²⁷ Robinson, a 1950 graduate of the University of Texas law school, revealed that she decided in the seventh grade to become a lawyer because she had "a sense that life wasn't always fair, and while that couldn't be remedied altogether, there were things that the law and lawyers could do that make things better for people who didn't have the full advantages that society offered."²⁸

In 1973 Judge Robinson moved from the state district court to the Seventh Court of Appeals, where she became the first woman on an appellate bench in the state. In 1977 Justice Robinson scored another first when she advanced to chief justice of the Seventh Court of Appeals. She remained in that position until 1979 when President Jimmy Carter appointed her to the U.S. District Court for the Northern District of Texas, making her the second woman in Texas to become a federal judge.²⁹

²² Although women could vote in this election—their first in which to participate after the passage of the Nineteenth Amendment—many of them did not do so. In fact, suffrage leaders were very disappointed in the small number of women across the country who exercised this hard-earned right. During the 1920s, many women continued to be apathetic toward voting rights.

²³ Karen Berger Morello, *The Invisible Bar: The Woman Lawyer in America, 1638 to the Present* (New York: Random House, 1986), 219. Although Morris had no legal training, she rendered seventy legal opinions in less than nine months. A milliner by trade, she had been instrumental in drafting and gaining passage of the 1869 Women's Suffrage Bill, which made Wyoming women the first in the world to win equal suffrage. See Morello, *Invisible Bar*, Chapter 9, "Women on the Bench," for an interesting review of the first women in the judiciary.

²⁴ Ibid.

²⁵ Darwin Payne, *As Old as Dallas Itself: A History of the Lawyers of Dallas, the Dallas Bar Association, and the City They Helped Build* (Dallas: Three Forks Press, 1999), 278.

²⁶ McArthur, *Handbook of Texas*, 4:823.

²⁷ U.S. District Court, Northern District, <http://www.txnd.uscourts.gov/judges/robinson.html> (accessed March 10, 2005).

²⁸ *Women and the Law Newsletter*, April 2005, 3.

²⁹ U.S. District Court, Northern District.

The first, and only the second in the country, was Judge Sarah Hughes, who became a household name when she swore in Vice President Lyndon Baines Johnson as president on that fateful day in Dallas.³⁰ Hughes' federal judiciary career, which began in 1961, was due to her own initiative. She later commented, "President Kennedy never would have appointed me if I hadn't let him know I was down here."³¹ "I think you've got to ask for things. You can't wait to have things given to you."³²

Yet her appointment met with opposition from a powerful source, the American Bar Association, which claimed that Hughes was unqualified because of her age. (She was sixty-five at the time.) In spite of this opposition, Hughes' fellow Texans—Speaker of the House Sam Rayburn and Vice President Lyndon B. Johnson—were able to push the appointment through.³³ This political support, which was lacking for most women, was the key in Judge Sarah Hughes' successful ascent to the federal bench where she remained for fourteen years. She then took senior status and continued to hear cases until a stroke brought an end to her judicial career at the age of eighty-eight.³⁴

In 1962 Eva Bloore Barnes was the first woman elected to the bench in Tarrant County. By the time this occurred, Barnes had been practicing law for thirty years. The newspaper article reporting on her swearing-in ceremony cited her qualifications for the office but seemed more interested in describing her outfit—a royal blue Chanel-style suit with matching pillbox hat. It seems that a woman's appearance still received more attention from the press than her professional qualifications.³⁵

Yet Judge Barnes was most serious about her judicial duties. Her domestic relations court was usually filled with cases in which children had been emotionally damaged by combative divorcing parents or absent parents. Judge Barnes worked tirelessly to improve the conditions in which children lived. As an assistant district attorney some years before, Barnes had spearheaded a move to reword portions of the Texas adoption laws. She frequently appeared on the bench without her robe, feeling that troubled families—especially the children—would be less fearful of the courtroom experience. Judge Barnes was reelected four times and retired in 1979.³⁶

As late as the mid-1960s, women lawyers usually dismissed the idea of aspiring to the judiciary. Prejudice against women in the legal profession had kept judicial positions almost entirely in the male domain. Ruth Kern of El Paso commented after losing a race for judge in the early 1970s, "I was swamped in a local bar poll for candidates for judge, receiving only 22% of the vote, largely because of my sex. I believe the results would have been the same had my male opponent and I been running for Mother of the Year."³⁷ Women were not the "wheelers and dealers" in the political arena, so they did not have the support of the grassroots politicians. In partisan elections, the endorsement of a political party's leadership could be a plus for candidates, and women usually found that unavailable to them. Women also found it difficult to raise funds for election campaigns.

Nancy Westerfield faced all of these problems when she decided to run for a civil court bench in Harris County in 1972. She later recalled that as a result, she ran a "novice campaign": Westerfield had three male

³⁰ Payne, *Sarah T. Hughes*, 242-56. Payne gives a riveting story of this event, as experienced by Judge Hughes.

³¹ *Texas Bar Journal*, 37, 4:326.

³² Nancy Baker Jones and Ruthe Winegarten, *Capitol Women: Female Legislators 1923-1999* (Austin: Univ. of Tex. Press, 2000), 99.

³³ Payne, *Sarah T. Hughes*, 209, 224.

³⁴ *Ibid.*, 394.

³⁵ Ann Arnold, *History of Fort Worth Legal Community* (Austin: Eakin Press, 2000), 50.

³⁶ *Ibid.*, 51. Years earlier, some women lawyers in Texas had suggested that every legal professional in the courtroom should wear a robe. In that way, attire would not become an issue, and men and women would appear equal. That suggestion, however, was never even considered by the courts.

³⁷ *Texas Bar Journal*, 37, 5:423.

opponents in the race. Her slogan was “Harris County is ready for a WOMAN JUDGE. There are 60 judges in this county—all are men.” Westerfield made the runoff and faced a longtime political figure. Her opponent campaigned against her by handing out emery boards with his name prominently displayed on both sides. As he gave them to voters, he commented, “I hope women do think of my opponent when they get a hangnail.” Westerfield, who was in the first class to enroll at the University of Houston Law Center in 1948, lost a close race, receiving 49.7 percent of the vote. She inspired other women, however, to consider running for a judicial post.³⁸

The year after Westerfield’s trailblazing run for a judicial office, Mary Pearl Hall Williams was appointed to a county court at law bench in Travis County, making her the first female judge in that jurisdiction. Williams, a 1949 graduate of the University of Texas law school, began her career as an assistant attorney general. After working on the Civil Rights Compliance Staff in the Office of Emergency Preparedness in Washington, D.C., Williams returned to Austin where in 1980 she was elected to the 53rd District Court, a position she held until her retirement in 2000.³⁹

In 1974 three women were on the ballot in Bexar County for judicial seats. Some felt that this was a coordinated effort to put together a women’s ticket, but it seemed to be a coincidence. Carol Haberman, a St. Mary’s law graduate, had served on the San Antonio City Council after practicing law for fifteen years. Rose Spector had been appointed a municipal judge in Olmos Park. Carolyn Spears had been admitted to the bar only five years earlier, acquiring a law license without graduating from law school. After time spent in the district attorney’s office and in private practice, Spears ran in her first judicial race.⁴⁰

All three women won election. Suddenly, half the county court benches in San Antonio were held by women. Spector recalled, “Voters were very accepting of the idea of women judges. Lawyers were more skeptical.”⁴¹ By the end of the decade the three women had been elevated to district court benches. Judge Haberman was appointed to the 45th District Court in 1977, becoming Bexar County’s first female district judge, while Judge Spears and Judge Spector were elected in 1980 to other civil district courts.⁴²

In a rigidly segregated society like Texas, an African-American woman had little hope of becoming a judge. Yet in 1973 Charlye O. Farris was appointed to serve as a special judge in Wichita County in the absence of the regular judge. Farris, after serving her brief time on the bench, returned to her law practice in Wichita Falls.⁴³ Six years later Gabrielle Kirk McDonald became the first African-American, male or female, to be seated in the Southern District of Texas. After graduating at the top of her class at Howard University School of Law, McDonald worked for the Legal Defense Fund in the South where she did civil rights work in the area of employment law. Moving to Houston in 1969, she practiced law with her husband. Although her appointment to the federal bench was a landmark one, McDonald insisted that she had never aspired to be a judge. She remained in the position for nine years before stepping down.

Judge McDonald then had the extraordinary experience of being elected by the U. N. General Assembly as one of eleven judges for a United Nations Tribunal Court scheduled to conduct the first war trial since Nuremberg. She was the only American and one of two women chosen for the court, receiving more votes than any other

³⁸ *The Houston Lawyer*, July-August 1999, 48.

³⁹ Julia A. Woods, Ashley Craddock and Regan Marie Brown, *Austin Lawyers: A Legacy of Leadership and Service* (Birmingham, Ala.: Association Pub. Co., 2005), 122.

⁴⁰ Brandon, *Law and Liberty*, 85.

⁴¹ *Ibid.*, 86.

⁴² *Ibid.*

⁴³ Minority Attorneys File, Bill and Vara Daniel Center for Legal History, State Bar of Texas

potential panel member. In all of these roles, Judge McDonald has shown a passion for justice and has used the rule of law to combat injustice. As she explained, “I believe in the rule of law not just intellectually. It’s visceral for me. It’s in my heart and soul . . . it’s what protects people from anarchy.”⁴⁴

Joe Kegans, the first woman to sit as judge in a state district criminal court, had established a career as a tough, able lawyer but she never let people forget she was a woman. She hung a sign in her chambers that read, “Sure, God created man before woman. But then you always make a rough draft before the final masterpiece.” For nineteen years Judge Kegans remained on the bench handling cases ranging from probation violations to ice-pick killers. At the same time, she was encouraging and protective to women lawyers who appeared in her court, becoming a mentor to many of them.⁴⁵

The same year that President Carter appointed Mary Lou Robinson to a federal judgeship, he appointed another Texas woman, Carolyn Dineen King, to the United States Fifth Circuit Court of Appeals. King’s journey to this lofty position exemplifies what many women of her time experienced. She graduated from Yale Law School in 1962 and after moving to Houston applied for a job in the U.S. Attorney’s Office. Regardless of her exemplary credentials, she was rejected for the position, and the U.S. attorney admitted that he was not ready to hire a woman. Later that year King joined one of the city’s largest law firms, but it took negotiating on her part to receive the same starting salary as the men.

She spent ten years there as a corporate securities lawyer but moved to another firm when she was not offered a partnership, apparently due to her gender. When President Carter appointed her in 1979, King became the second woman named to the Fifth Circuit Court.⁴⁶ She made further history in 1999 when she became the first woman ever to become the court’s chief justice.⁴⁷ Justice King held that position until 2006 when she was succeeded by another Texas woman, Edith Hollan Jones, who was appointed to the Fifth Circuit Court in 1985 at the young age of thirty-six. Jones, a University of Texas graduate, had already posted an impressive achievement when she became the first female partner in the Houston firm of Andrews, Kurth, Campbell, and Jones where she specialized in bankruptcy law.⁴⁸

In October 2007, Jennifer Walker Elrod was confirmed by the U.S. Senate to the Fifth Circuit Court. Elrod, a graduate of Harvard Law School, previously served as a state district court judge in Harris County.⁴⁹

The fact that only six women have served on the Fifth Circuit Court of Appeals since its inception in 1891 indicates that women are still a small minority on these higher courts. Jimmy Carter was the first president to make a conscious effort to appoint more women to the federal judiciary.⁵⁰ When he contacted Carolyn Dineen King, she reminded him that she was a Republican and therefore not a member of his party. Carter replied that party affiliation did not matter to him. He added that he was looking for a good lawyer and a woman and that she met both of those

⁴⁴ Gabrielle Kirk McDonald, “Raising the Bar: Pioneers in the Legal Profession,” American Bar Association, http://www.abanet.org/publiced/bh_mcdonald.html (accessed November 8, 2004). In 1963 when Gabrielle McDonald entered law school, there were only 142 African-American attorneys in the entire country.

⁴⁵ *Houston Chronicle*, January 7, 1997.

⁴⁶ Carolyn Dineen King, *Commission on Women in the Profession*, American Bar Association, <http://www.abanet.org/women/bios/king.html> (accessed February 16, 2007).

⁴⁷ “Local woman named first to head 5th U.S. Circuit,” *Houston Chronicle*, n.d.

⁴⁸ Eric L. Fredrickson, *Andrews & Kurth, L.L.P.: The First 100 Years of Excellence* (Houston: Andrews & Kurth, L.L.P., 2002), 131-32.

⁴⁹ Dale Lezon, “Elrod appointed U.S. appeals judge,” *Houston Chronicle*, October 5, 2007, B2.

⁵⁰ Morello, *Invisible Bar*, 239. President Carter appointed forty-one women to the federal bench—more than all previous administrations together. He insisted that merit standards be used as mandated by the 1978 Omnibus Judgeship Act and that political affiliations be deemphasized.

qualifications. In 2002 at the request of U.S. Supreme Court Chief Justice William Rehnquist, Justice King became the first woman to chair the Executive Committee of the Judicial Conference of the United States.⁵¹

If women in general were sparsely represented on the bench, minority women were totally absent until the 1965 Voting Rights Act was enacted. Some of these women, however, were trailblazers. When Harriet Murphy became a judge in Austin's municipal court, she was the first African-American woman appointed to a regular judgeship in the state. Judge Murphy would eventually serve as the presiding judge of the court.⁵² Joan Tarpley was appointed to the state district bench in Dallas County, after serving as the first African-American woman on the county court at law.⁵³

Alice Bonner was the first to occupy a district judgeship in Harris County.⁵⁴ Perhaps the most unheralded occurrence took place in 1974 when Rosemary Saucillo Moreno was appointed to Houston's municipal court as its first Hispanic female. Moreno put herself through the University of Houston law school, graduating in 1965. After nine years on the bench, she returned to her law practice as a single mother after the death of her husband. When Judge Moreno died, Judge Berta Mejia, presiding judge of the Houston court, called her a mentor by explaining, "She opened the doors for me and other Latinas to pursue this career as a judge."⁵⁵



By the early 1990s there were 209 full-time female judges in Texas.⁵⁶ The growing presence of women on the bench did not mean, however, that gender bias had disappeared....

⁵¹ King, *Commission on Women in the Profession*.

⁵² Woods, Craddock and Brown, *Austin Lawyers*, 122.

⁵³ Payne, *Dallas*, 278.

⁵⁴ Houston Metropolitan Research Center, *Harris County Judicial Directory* (Houston: Houston Pub. Lib., 1978).

⁵⁵ Moreno, pioneering municipal court jurist," *Houston Chronicle*, undated.

⁵⁶ *Women Attorney Statistical Profile*, Dept. of Research and Analysis (2003-04), State Bar of Tex., 2.



BETTY TRAPP CHAPMAN is a noted author and historian from Houston, Texas. She has served on the Board of Trustees of the Heritage Society since 1993. From 1993 until 2013, she wrote the weekly "Houston Heritage" column for the Houston Business Journal. In addition to *Rough Road to Justice*, she has written numerous books about the history of Houston, including *Houston Women: Invisible Threads in the Tapestry* (2000).

Ed. Note: *Rough Road to Justice* is available for purchase from TexasBarBooks at <http://texasbarbooks.net/books/rough-road-to-justice/>.

[Return to Journal Index](#)

Ad Astra per Aspera (“A Rough Road Leads to the Stars”)

Book Review: *Rough Road to Justice: The Journey of Women Lawyers in Texas*

By Judge Sylvia A. Matthews

WHEN WOMEN STARTED PRACTICING LAW IN TEXAS, they had to forge their own paths. There were no “how to” books to teach them how to handle the challenges of working in a profession dominated by men. There were no professional life coaches to help them develop their potential. And, in the beginning, there were no women role models.

Recognizing the lack of documentation about the women who paved the way for the women lawyers practicing today, the Women in the Profession Committee of the State Bar of Texas commissioned Betty Trapp Chapman to capture the history of Texas women in the legal profession. Her book, *Rough Road to Justice: The Journey of Women Lawyers in Texas*, was published by the State Bar of Texas in 2008.

Chapman, a distinguished author, historian, and lecturer, begins the history of Texas’s women lawyers in 1902, when the following headline appeared in the *El Paso Herald*: “A Woman Lawyer Qualifies for Practice in This City.” Although the El Paso resident never practiced law, a barrier had been broken. In a time when women did not have the right to vote or participate in government and married women had severely circumscribed property rights, one woman had *earned* the right to practice law in Texas.

Although the book is detailed and evidences scholarly research, it is an easy read. The book discusses women in private practice, government, education, and the judiciary. Through personal accounts and documented history, it follows the progress that women have made in the legal profession from the turn of the century through the time the book was completed.

Chapman includes stories that illustrate adversities women lawyers faced. Initially, women were discouraged from the law because they were thought to be too delicate and genteel for the practice’s rigors. When Pearl Harbor was bombed in 1941, men enlisted in the military leaving their jobs open. Women were urged to contribute to the war effort by going to work. When World War II ended and the men returned, the progress women had made in the workplace was eroded. Women, including those with an interest in law, were once again discouraged from working outside the home.

For women who pressed on, some were discouraged in law school. For example, Lois Prestage Woods graduated from Texas Southern University in 1951 as its first female law graduate. Chapman explains that when classes met, at least one of Woods’s professors repeatedly asked her, “Are you still here?” Those women who graduated often struggled to find a job as a lawyer. In 1949, Geraldine Tennant graduated from the University of Texas School of Law. She was one of nine females in a class of 185 students. Although she eventually enjoyed a distinguished career in the judiciary, she was unable to find a full time legal job upon graduation. Instead, she received a “semi-legal” job offer with a “semi-legal” salary.

Those who did practice law experienced discrimination in some local bar associations that did not welcome them. Those groups held meetings in private clubs that did not allow women, announced meetings that were “stag,” meaning that only men were welcome, or sent a direct message that a woman attending an event would be “bodily evicted.”

The struggles and progress of African-American women practicing law appear in the chapter, “Jumping Hurdles.” A black woman did not graduate from a Texas law school until 1954. Barbara Jordan joined the bar in 1959, making her the fourth African-American woman licensed in Texas. Jordan studied law even though her father told her that “lawyering is no profession for a girl to be in.” Jordan went on to achieve much, including her election in 1966 as the state’s first black senator since the 1800s.

Chapman describes the landmark 1925 Texas Supreme Court case in which an all-female panel presided. Sixty years passed before the next woman, Ruby Sondock, sat on the Texas Supreme Court. Barbara Culver, Rose Spector, Priscilla Owen, Deborah Hankinson, and Harriet O’Neill followed. Since the State Bar published this book in 2008, Justices Eva Guzman and Debra Lehrmann have also joined the court.

The challenges faced by women practicing in established firms are also addressed. Chapman includes personal accounts from lawyers such as Andrea Bryant, Carol Dinkins, Doris Rodriguez, Kay Grimes, Carleen Rhodes Lewis, Barbara Quackenbush, and Beverly Tarpley. It describes women’s advancement in firm leadership through examples such as Harriet Miers, Lisa H. Pennington, Jerry Clements, and Demetris Sampson.

Rough Road to Justice: The Journey of Women Lawyers in Texas offers stories of perseverance, determination, self-confidence, and women daring to be great that will inspire Texas women lawyers and give their male colleagues an appreciation of their legacy.



JUDGE SYLVIA MATTHEWS *presides over the 281st District Court in Harris County. When she came to the bench in 2008, she had twenty years of trial experience and was a partner in the litigation section of Andrews Kurth, LLP.*

[Return to Journal Index](#)

Jury Service: A Milestone for Women's Rights in Texas¹

By Sarah A. Duckers

WHEN DID TEXAS HAVE ITS FIRST WOMAN JUROR?

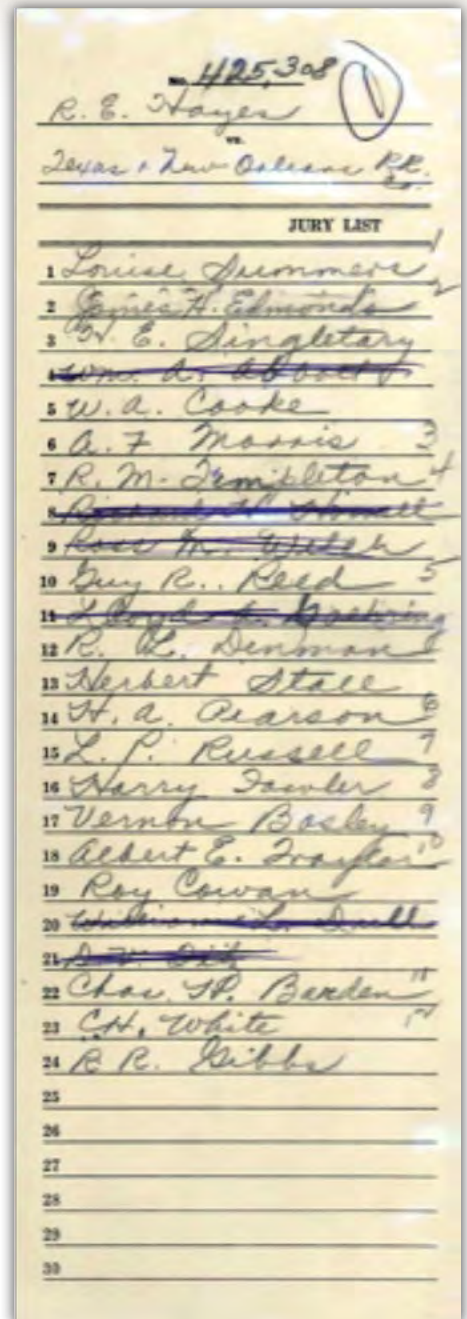
If you are like most people I have asked, your answer ranges somewhere from the 1890s to the 1930s. Perhaps this reflects the fact that Texas was the first state to allow women property rights, had one of the first woman governors, had its first woman judge in 1934, and was the first state in the nation to have its supreme court comprised entirely of women in 1925. Very few people come close to guessing the date Texas had its first woman juror—1954. We've come a long way, baby, indeed.

On May 18, 1953, the Texas Legislature passed House Joint Resolution 16, which proposed an amendment to the Texas Constitution providing that qualification for service on a jury should “not be denied or abridged by reason of sex.” The enactment of the resolution was not unanimous—it passed the Texas House by a vote of 123 to 16 and the Texas Senate by a vote of 23 to 7.

The proposed constitutional amendment was presented to the voters of Texas on November 2, 1954, when it passed by a vote of 302,850 to 224,730, with 57 percent of the voters in favor. Not exactly an overwhelming majority.

Less than a month later, on November 22, 1954, the case of *R.E. Hayes v. Texas & New Orleans Railroad Co.* was called to trial in the 152nd District Court of Harris County, Texas. A jury had been requested, and when the panel was seated for voir dire, there sat, as jury panel member number 1, Miss Louise Summers. Miss Summers was “over 21,” an employee at Cameron Iron Works, and lived in the Spring Branch area of Houston.

Miss Summers was a descendant of a soldier who fought at the Battle of Yorktown in the American Revolution. Her nephew, James Summers (a partner in the San Antonio office of Norton Rose Fulbright), described her as a “true pioneering spirit.” “She got on a train in Newman, Georgia in



Miss Louise Summers appears as the first juror in the jury list for *R.E. Hayes v. Texas & New Orleans R.R. Co.* Photo courtesy of Francisco Heredia, Harris County Assistant District Clerk for Historical Records.

¹ This is a revised version of an article that originally appeared in *The Houston Lawyer* in January-February 2008 under the title “The First Woman Juror in Texas” (available online at http://www.thehoustonlawyer.com/aa_jan08/page38.htm). Used by permission of *The Houston Lawyer*.

7.14.53- depts in orig case filed

(133)

No 425308 Filed 8/26 1943 11-22 1943
 General Order of Court 133RD Judicial District
 Transferred to 152nd SEP 1 1943
 Transferred to 152nd NOV 22 1954

demanded by R. E. Hayes
 PLAINTIFFS
Hellen + Jones
 NATURE OF ACTION
Compensation
 vs.
Dallas + New Orleans
Railroad Co.
 DEFENDANTS
 SURETIES ON COST BOND 16

Jury For Paid by [handwritten]
 SETTINGS
 1-2-54
 3-2-54
 5-18-54
 7-14-54
 11-22-54
 1-17-55

[Handwritten notes in right margin:]
 Jury selected -
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No 425308 General Order of Court Judicial District

APR 1 1955 Motion for reversal by defendant - one ruled - exception to [handwritten] and
 notice of appeal to Court of Civil Appeals, first before a district of Texas at Houston.

1336

R. E. HAYES

IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS.

TEXAS & NEW ORLEANS RR CO.

152nd JUDICIAL DISTRICT

ANSWER SHEET FOR THE JURY

We, the Jury, find in answer to the Special Issues submitted to us by the Court, as follows:

- | | | |
|-----------------|----------------------|---|
| 1. <u>we do</u> | 8. <u>we do</u> | 14. <u>-</u> |
| 2. <u>we do</u> | 9. <u>we do</u> | 15. <u>-</u> |
| 3. <u>we do</u> | 10. <u>we do</u> | 16. <u>-</u> |
| 4. <u>we do</u> | 11. <u>we do</u> | 17. <u>It was not the result of an unavoidable accident</u> |
| 5. <u>we do</u> | 12. <u>we do</u> | 18. <u>\$ 35,000.00</u> |
| 6. <u>we do</u> | 13. <u>we do not</u> | 19. <u>\$ 500.00</u> |
| 7. <u>we do</u> | | |

FILED
 HARRIS COUNTY, TEXAS
 NOV 30 1914
 CLERK

Lewis Sumner
 FOREMAN

“Lady and Gentlemen of the Jury” charge in R.E. Hayes v. Texas & New Orleans R.R. Co. Photo courtesy of Francisco Heredia, Harris County Assistant District Clerk for Historical Records.

31

25

R. E. HAYES

IN THE DISTRICT COURT OF

v.

HARRIS COUNTY, TEXAS.

TEXAS & NEW ORLEANS RR CO.

152nd JUDICIAL DISTRICT

LADY AND GENTLEMEN OF THE JURY:

The Court submits this case to you on Special Issues and your answers to these issues, which you will make on a separate sheet of paper, by unanimous vote, will be your verdict. You will answer such issues without reference to the effect your answers may have upon the judgment to be rendered in this case. In your deliberations you must not discuss any fact or matter which is not based upon the evidence admitted before you under the rulings of the Court.

Let your verdict be signed by your Foreman, whom you will select from your number.

1919 and moved to Houston as a single woman with no contacts and no friends here. A year later, she wrote the family and said that ‘Houston is the place to be.’ Her parents and five siblings all moved here shortly thereafter.”

The lawyers on the case were Shirley Helm, then with the law firm of Helm & Jones, for the plaintiff, and John F. Heard, with the law firm then known as Baker, Botts, Andrews & Shepherd, for the defendant. For reasons now unknown, neither side chose to strike Mrs. Summers, and thus she became the first woman on a jury in Texas history. Her fellow jurors even selected her as their foreperson.

A newspaper article commemorating the historic event had interesting commentary from her fellow jurors: “It was decidedly different having a woman in there,” said R.M. Templeton. “We couldn’t do any cussin.” “I don’t argue with women,” added Charlie Burton. “It was mighty nice,” said Vernon Bosley, “but my wife doesn’t like the idea.”²

Miss Summers commented, “I enjoyed the case. Women won’t have any trouble on juries unless they cause it.”³ James Summers indicated that Miss Summers was very proud of being the first woman juror in Texas, although at the time she just thought she was doing her civic duty.

The jury rendered a verdict in favor of the plaintiff in this personal injury case involving an employee of the railroad defendant. The case was appealed to the Court of Appeals for the Third District (Austin), where the judgment was affirmed on November 30, 1955.⁴ The Texas Supreme Court affirmed it on July 11, 1954,⁵ less than two years from the date of the verdict.

The court’s case file was recently discovered and restored as part of the Historic Document Preservation project started by then-District Clerk Charles Bacarrisse and continued by his successor, Theresa Chang. It is available for viewing, along with hundreds of other historic Harris County court records, in the Harris County Historical Documents reading room in the Civil Courthouse located in downtown Houston. Thousands of other records await funding to be restored. For more information about sponsoring the preservation of historic court records, please contact:

Mr. Francisco Heredia
Harris County Assistant District Clerk for Historical Records
Historical Documents Records Center
c/o Chris Daniel, District Clerk, Harris County, Texas
201 Caroline, Ste. 200
Houston, Texas 77002
(713) 755-1034
Francisco.Heredia@hcdistrictclerk.com

² *Houston Press*, December 1, 1954

³ *Id.*

⁴ *Tex. & New Orleans R.R. Co. v. Hayes*, 284 S.W.2d 776 (Tex. Civ. App.—Austin 1955), *aff’d* 156 Tex. 148 (1956).

⁵ *Tex. & New Orleans R.R. Co. v. Hayes*, 156 Tex. 148 (1956).



SARAH A. DUCKERS is a partner with *Sechrist Duckers LLP* in Houston. Her practice focuses on general civil litigation, with particular emphasis on federal income tax litigation, state property tax litigation, probate litigation, tort litigation, and mediations.

[Return to Journal Index](#)

Sandra Day O'Connor Set a Precedent

By Sharon E. Beck

ALTHOUGH U.S. SUPREME COURT ASSOCIATE JUSTICE SANDRA DAY O'CONNOR is usually thought of as hailing from Arizona, she was actually born in El Paso and grew up there, making her a native Texan.¹ When she was very young, her parents moved to their ranch in a remote part of Arizona, which her grandfather had acquired from land originally included in the Gadsden Purchase.² There apparently were few, if any schools, close to the ranch, so O'Connor stayed with her grandmother near El Paso where she attended elementary and high school. After high school, she attended Stanford University and majored in economics. After obtaining her undergraduate degree, O'Connor went to Stanford Law School and graduated magna cum laude.



Justice Sandra Day O'Connor and Chief Justice Wallace Jefferson enjoy a laugh during an on-stage interview at the Texas Supreme Court Historical Society's John Hemphill Dinner, June 14, 2013. Photo by Mark Matson.

¹ United States Supreme Court Associate Justice (retired) Sandra Day O'Connor, interviewed by Texas Supreme Court Chief Justice Wallace Jefferson, oral interview, Texas Supreme Court Historical Society John Hemphill Dinner (June 14, 2013).

² See Sandra Day O'Connor and H. Alan Day, *Lazy B: Growing Up on a Cattle Ranch in the American Southwest* (New York: Random House, 2002). Cf. Andrea Norman, *The Mud of the Salt*, ARIZONA ATTORNEY 35-38 (Sept. 2008), <https://www.oconnorhouse.org/about/pdf/0908-az-attorney-oconnor.pdf> (accessed June 15, 2015). See also Marilyn P. Duncan, *18th Annual Hemphill Dinner Draws Record Attendance: Justice Sandra Day O'Connor Was Keynote Speaker*, J. TEX. SUP. CT. HIST. SOC'Y, Dinner Issue 2013, at 2; and @dodrummond, *Ranch fmr #SCOTUS J SDOC grew up on outside of El Paso was bought by her grandfather from #Gadsden Purchase ! #Hemphill*, TWITTER (June 15, 2013). Subsequent biographical information is drawn from those sources.

In 1950, most law firms would not hire women to work as attorneys; firms relegated women to secretarial positions if they hired them at all. After being turned down by more than forty law firms, O'Connor applied to the County Attorney's office in San Mateo, California. She persuaded the County Attorney to hire her as Deputy County Attorney after she offered to work for no salary and without a separate office. She ended up *sharing* work space with a secretary.

Early Life and Career

After O'Connor's husband graduated from Stanford Law School (he was a year behind her), he was drafted and was then assigned to the Judge Advocate General's office of the U.S. Army in Germany. While there, O'Connor served as a civilian lawyer in the Quartermaster's Corps. When the O'Connors returned to the United States, they settled in Phoenix, Arizona. Again, O'Connor found that law firms were not willing to hire a woman attorney, so she, with a partner, opened her own practice and handled a wide range of small cases. She left the practice of law for five years to care for her three sons. During this time, she became involved in volunteer activities for various organizations, including the State Bar of Arizona, local schools, and the Arizona Republican Party.

When she resumed her legal career, she obtained a position as an assistant state attorney general in Arizona. Later, Arizona's governor appointed her to fill a state senate vacancy in the legislature. She successfully ran for the position in two subsequent elections and ultimately became the majority leader. In 1974, she ran for a judgeship on the Maricopa County Superior Court and a year later was nominated for the Arizona Court of Appeals, a position she held for two years until being nominated by President Reagan to be the first woman Justice on the Supreme Court.

In light of the discrimination she faced early in her career, it is not surprising that Justice O'Connor supported the Equal Rights Amendment (ERA) as it was moving through the states for ratification.³ At the time, there was great support across the country for ratification of the ERA. In response, President Reagan had promised that, if elected, he would appoint a woman to the Supreme Court.⁴



President Ronald Reagan and Supreme Court nominee Sandra Day O'Connor, photographed at the White House on July 15, 1981, two months before the U.S. Senate unanimously confirmed her appointment. National Archives, public domain.

³ See, e.g., Stephen E. Weisman, "Reagan Nominating Woman, an Arizona Appeals Judge, to Serve on Supreme Court," *New York Times* (July 7, 1981), <http://www.nytimes.com/learning/general/onthisday/big/0707.html>.

⁴ *Id.*

Sandra D. O'Connor: A woman on the bench?

A rejection

By RACHEL O'NEAN
News Editor

The Senate Judicial Committee last week reviewed one of President Reagan's most important, if not his most important, appointments: Sandra Day O'Connor as potential Supreme Court Justice.

Yet even before the hearing began, tentative plans had been laid to swear O'Connor in later this month. GOP leaders have been termed "enthusiastic" to see her take office before the court reconvenes Oct. 5.

In their haste many Senate members are overlooking their all-important task of seriously examining the stuff of which O'Connor is made. Their investigation takes on even greater significance with the consideration that the new justice will replace Potter Stewart, who was considered one of five "swing" justices who often were crucial in deciding key issues because of the balance of five conservatives and two liberals on the court.

One of the nominee's drawbacks is her lack of federal experience at which the Judicial Committee can judge how she would vote on the diverse issues which come up before the court. So the committee and the rest of the Senate should more carefully scrutinize her answers to the hearings. Though she looks anti-busing and pro-death penalty stands, before the committee, she refused to discuss how she would vote on abortion and other sensitive issues, claiming that it was "improper" for her to "endorse or criticize that decision which seems likely to come back before the court."

O'Connor testified, though, that she personally holds abortion "abhorrent." But she said her "personal views and philosophies" would not affect her decision-making.

So what the hearings have done is reveal that O'Connor has taken issues from her own court in playing witness and established that what Sandra O'Connor says and what Sandra O'Connor does often are two different things.

O'Connor's record as a state senator in the Arizona Legislature bears this out. She voted twice for an abortion-on-demand bill in 1976, and voted against a bill asking the U.S. Congress to give unborn children constitutional rights by prohibiting abortion, except in the cases of rape or incest. The senator also took the pro-abortion stand on two bills marginally related to the issue.

Another look at her record shows that O'Connor urged the Arizona Senate to approve the Equal Rights Amendment.

So O'Connor's confirmation would directly violate the platform on which Reagan was elected, which was anti-ERDA and anti-abortion.

U.S. News and World Report pointed out that pessimists often are surprised by judicial appointees who turn out to be more conservative or more liberal than they had expected. O'Connor seems to be leaning that way already.

Also, her lack of federal experience could cause her first few years on the court to be "very rocky," a Phoenix lawyer was quoted as saying. He added, "But in five years or so, she should have it mastered." But does the country play a game of "wait and see and hope for the best" in the meantime?

O'Connor's lack of federal experience and her uncertain stand on many vital issues should make senators take a second, third and fourth look at this nominee. Reagan's open-minded appointment of a woman to the highest court in the land certainly is commendable, but her sex should not overshadow the more important issues.



An endorsement

By LINDE THOMPSON
Features Editor

On the eve of perhaps one of the most historic appointments in the Supreme Court, endorsement or criticism of Sandra Day O'Connor as the first woman Supreme Court justice may seem a moot point.

However, as the events of the past months and particularly the last few days of confirmation hearings have indicated, reservations will remain in the minds of some die-hard conservatives as to O'Connor's suitability.

This is unfortunate, not because of the quite proper scrutiny that O'Connor has undergone but because those who protest her appointment do so on the basis of one issue alone: abortion.

Immediately following President Reagan's nomination of O'Connor for the Supreme Court position, Moral Majority, Right To Life and other anti-abortion groups launched a vigorous campaign for the rejection of the 39-year-old appeals court judge from Arizona. Their chief complaint is four votes Mrs. O'Connor cast which they claim favored abortion during a four year period while she was a member of the Arizona state Senate.

While O'Connor's voting record should be examined carefully, the motive for doing so should be for determination of sound judicial logic, not for "vote-the-letter" agreement with President Reagan's platform.

This "platform problem" is obviously not enough of a problem to hinder her appointment. He and other influential Republicans are pleased enough with the proceedings to expect her full confirmation by the Senate on Wednesday, following last week's questioning by the Senate.

During the hearings Mrs. O'Connor has politely but emphatically refused to comment on how she would decide on the abortion issue should it come to the Court. Not only so this was on the part of the nominee in order to keep confirmation hearings from bogging down but in O'Connor's words, it would be "improper" for her to predict her decision on an issue that may reach the court.

Rather than becoming embroiled in the abortion question, those concerned about the appointment of O'Connor should consider some of the bigger issues, namely the fact that, as the first woman to be nominated, O'Connor's appointment will hopefully pave the way for more women in high governmental positions. This nomination speaks well for President Reagan who as an opponent of ERDA insists that he is nevertheless free of sexist attitudes.

Further, O'Connor as an appointee will serve on the Court as much more than a token. With Thurgood Marshall, the impact of the black man to the Supreme Court is minimal not only as visual proclamation of our country's professed equality but as a vote in the civil rights issue that came before the court. Similarly, O'Connor's unique perspective as a woman will be crucial if the Court decides on the ERA and abortion questions—important issues for the women of this country.

Sandra Day O'Connor is an individual who has been determined to be qualified for her nominated position by at least 11 members of the 86-member Senate Judiciary Committee. She has passed examination by Republican and Democratic legal experts alike and carries with her an admirable record of judicial experience. That she should be rejected because of one volatile issue about which she refuses to speculate is shortsighted and narrow minded.

Ohio Senator Howard M. Cookman sums up the situation in the correct perspective when he says, "I find something un-American about saying anyone should be rejected on one issue alone."



O'Connor completes confirmation hearings

WASHINGTON (UPI)—Senate Court members finished Sandra Day O'Connor's grueling three days of confirmation hearings, and will vote on whether to name her to the Supreme Court.

Her testimony Friday also includes testimony about her personal views on abortion, and her personal views on the Equal Rights Amendment.

Mrs. O'Connor's refusal to talk for more than 10 minutes on abortion or ERDA had challenged her her personal testimony in the committee, Sen. Kenneth Denning, R-Ill.

In one issue, the Supreme Court has ruled that states may not require doctors to advise the parents of a fetus before performing a requested abortion.

Mrs. O'Connor said, "It is my personal view that I would vote the other way to amend the parents."

Observations at the committee hearing said O'Connor is the only woman who has served on the Supreme Court since the 19th century.

The Senate will vote on whether to name her to the Supreme Court.

The 10-year-old Arizona approach must be kept in mind for not being more scientific on abortion and a variety of other issues has put her reputation in jeopardy.

Her record as a state senator in the Arizona Legislature bears this out. She voted twice for an abortion-on-demand bill in 1976, and voted against a bill asking the U.S. Congress to give unborn children constitutional rights by prohibiting abortion, except in the cases of rape or incest.

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The Optimist (Abilene, Tex.), 69(4), Ed. I, Tues., Sept. 15, 1981 (newspaper), <http://texashistory.unt.edu/ark:/67531/metaph99589/>.

Notable U.S. Supreme Court Decisions

The first opinion she wrote as a Justice was *Mississippi University for Women v. Hogan*, a gender-discrimination case.⁵ Her opinion allows us to examine how Justice O'Connor viewed college admission rules. Mississippi University for Women ("MUW") was a women's university that included a nursing school that, like the university of which it was a part, admitted only women under the auspices of "educational affirmative action."⁶

In 1979, Joe Hogan applied to enter the nursing school in order to obtain a B.A. to go with the R.N. degree he already had, but although he was otherwise qualified he was denied admission solely because he was a man. Hogan brought suit claiming that he was denied admission solely on the basis of his gender and that MUW's single-sex admission policy violated the Equal Protection Clause of the Fourteenth Amendment.

The main focus of Justice O'Connor's opinion was that, since women already dominated the field of nursing (she supplied statistics, a favorite tool of hers, to prove her point), there was no need for "educational affirmative action" for women in the field of nursing. "In limited circumstances a gender-based classification favoring one sex can be justified if it intentionally and directly assists members of the sex that is disproportionately burdened."⁷ In fact, she

⁵ 458 U.S. 718 (1982).
⁶ *Id.* at 727. Mississippi University for Women is now a coeducational institution.
⁷ *Id.* at 728 (citing *Schlesinger v. Ballard*, 419 U.S. 498 [1975]).

argued, “MUW’s policy of excluding males from admission to the School of Nursing tends to perpetuate the stereotyped view of nursing as an exclusively woman’s job.”⁸ It was her position that the addition of men to the student body would help remove the female stereotype attached to the profession and the accompanying lower wages paid women.

In *Hogan*, she was not examining how many men were to be admitted; that determination had been made by the Mississippi state legislature when it passed the statute establishing MUW as a women-only university. Hence, there was no need to dissect the state’s policy as it was stated and applied. Rather, the “scrutiny” was on the university’s very reason for existence, i.e. education reserved exclusively for women. O’Connor found the school’s discrimination against men unconstitutional: “we conclude that the State has fallen far short of establishing the ‘exceedingly persuasive justification’ needed to sustain the gender-based classification.”⁹

In *Grutter v. Bollinger*,¹⁰ Justice O’Connor considered the case brought by an applicant to the University of Michigan Law School who was denied admission, while other, arguably less academically qualified, but more diverse, applicants were admitted. The law school evaluated applicants under a policy that considered factors beyond GPA and LSAT scores in an attempt to obtain a diverse student body who could provide the educational benefits of diversity. The “plus” factors that the law school considered were not limited to race and ethnicity, but included applicants who had lived or traveled widely abroad, were fluent in several languages, had overcome personal adversity and family hardship, had exceptional records of community service, or had successful careers.¹¹ The goal of the diversity admissions program was to admit students who would make a notable contribution to the class through a particular strength, attainment, or characteristic.¹²

After considering the operation of the law school’s program in depth, Justice O’Connor found that the school’s narrowly tailored use of race in admissions furthered the compelling interest of obtaining the educational benefits that flow from a diverse student body.¹³

Justice O’Connor’s Nomination Itself Would Meet the *Grutter* Test

Like the “diverse” student applicants, Sandra Day O’Connor was an affirmative action nominee. President Reagan nominated her because he had promised to nominate a woman to the Supreme Court and she was a woman. But how would she have fared under the criteria set out in *Grutter*? What did she bring to the Court? What were the “plus” factors?

First, she is a woman, a member of a class historically discriminated against (by virtue of their total absence) on the Supreme Court.

Second, she is a Republican and had been active in the party for a number of years before her nomination.

Third, she graduated third in her law school class, was on the Stanford law review, and was a member of the Order of the Coif.

Fourth, she had been a classmate and friend of U.S. Supreme Court Chief Justice William Rehnquist while in law school.

⁸ *Id.* at 730.

⁹ *Id.* at 718.

¹⁰ 539 U.S. 306 (2003).

¹¹ *Id.* at 338.

¹² *Id.*

¹³ *Id.* at 343.

Fifth, she had served in all three branches of state government, administrative, legislative, and judicial.

Sixth, she had been a successful small business owner, running a small law practice for a number of years.

Seventh, she would be the only Justice who had been a stay-at-home mom.

After considering all of her “plus” factors, it is clear that Justice Sandra Day O’Connor had a broad range of characteristics, qualities, and experience to provide a valuable contribution to the diversity of the formerly all-male bastion of the United States Supreme Court. Nothing obligated the United States Senate to apply the *Grutter* test in deciding whether to confirm President Ronald Reagan’s choice of Sandra Day O’Connor as the first female Justice of the United States Supreme Court, however. After initial opposition by conservative Republicans fearful that she might not be sufficiently anti-abortion, the Senate confirmed her nomination by a vote of 99-0 (because Senator Max Baucus was absent) on September 21, 1981. She would go on to serve on the High Court for twenty-five years, retiring in 2006. The precedent she set for all women continues to inspire and be celebrated to this day.



Justice Sandra Day O’Connor meets with past and present female Justices of the Texas Supreme Court during the Texas Supreme Court Historical Society’s Annual John Hemphill Dinner in June 2013. Pictured are (back row, left to right) Justice Eva Guzman, Hon. Deborah Hankinson, Hon. Harriet O’Neill, and Justice Debra Lehrmann; (front row) Hon. Rose Spector, Hon. Ruby Sondock, Justice O’Connor, Hon. Barbara Culver Clack, and Hon. Priscilla Owen. Photo by Mark Matson.



SHARON BECK became an attorney after working for oil companies for a number of years as Manager of Regulatory Affairs. After graduating from the University of Houston School of Law, she worked for the Houston office of New York law firm Haight, Gardner, Poor & Havens and subsequently had her own practice representing small construction contractors. Currently, she is working as a contract attorney at Fleming, Nolen & Jez.

[Return to Journal Index](#)

Preserving the Oral History of State Bar Leadership

By JoAnn Storey

FOR THE LAST DECADE, the State Bar Appellate Section has been on a mission to preserve the oral histories of retired Court of Appeals justices and former chairs of the section. The project began in 2004 under the leadership of Pam Baron, then the chair of the section. I initially led the effort and, through the years, the project continued in the hands of a number of dedicated section members. In 2013, then Chair Jeff Levinger reappointed me to co-chair the Judiciary and Section History Committee with Perry Cockerell. To date, the oral histories of nearly fifty retired justices and twelve former section chairs have been preserved.

The videotaping of most of the oral histories has been provided to the section by Paul Burks, the State Bar's Director of Video Production; South Texas College of Law; Texas A&M University School of Law (formerly Texas Wesleyan School of Law); Thompson & Knight; and Winstead P.C.

Many of the oral histories have been edited and published in *The Appellate Advocate* and are available at this link: <http://www.tex-app.org/DrawOnePage.aspx?PageID=97>. Ultimately, all videos will be published on the section website, together with excerpted nuggets of each interview.

These oral histories are rich in content, humor, opinions, and anecdotes about a justice's service on the bench, the history of appellate law in Texas, and the contributions of leaders of the appellate bar to appellate practice in Texas. Future jurists and practitioners will no doubt delight in learning about this history.



JOANN STOREY has practiced law in Texas for thirty-five years. She is board certified in Civil Appellate Law. She is a former chair of the State Bar Appellate Section and of the Appellate Practice Section of the Houston Bar Association.

[Return to Journal Index](#)

Hortense Sparks Ward's Spirit Shines on Through the University of Texas Center for Women in Law

By Linda Bray Chanow

THE CENTER FOR WOMEN IN LAW at the University of Texas School of Law is the premier legal education institution dedicated to the success of women in law from first-year law students to the most accomplished attorneys. CWIL was founded by women who wanted to make a meaningful difference in the lives of the women lawyers who followed them—both by providing tools to navigate individual careers and by achieving permanent and significant change in the profession itself. Initially the idea of seven women, CWIL now has fifty Founding Members and a growing Circle of Leaders.¹



Center for Women in Law Founders and Leaders with keynote speaker Cokie Roberts at the 2015 Women's Power Summit on Law and Leadership.

The Hortense Ward Courageous Leader Award honors an outstanding lawyer.

Chief Justice Hortense Sparks Ward is a Founder *in memoriam* of the Center for Women in Law, where she continues to serve as a beacon for the advancement of women in law. In 2014, CWIL presented its first Hortense Ward Courageous Leader Award. The award recognizes, on a biennial basis, one outstanding woman lawyer who exemplifies Hortense's tenacity, courage, and commitment in her efforts to advance women in the legal profession. CWIL honored the first recipient, Mary Cranston, at its Fifth Anniversary and Award Luncheon on April 11, 2014, where Arianna Huffington gave the keynote address.

¹ See "Founding Members," University of Texas Center for Women for Women in Law, <http://www.utexas.edu/law/centers/cwil/founders/>

Linda Hunsaker (left), great granddaughter of Chief Justice Hortense Ward, with keynote speaker Arianna Huffington and Hortense Ward Courageous Leader Award recipient Mary Cranston at CWIL's Fifth Anniversary and Award Luncheon.



The Hortense Ward Courageous Leader Award helps to ensure that women's contributions to the profession are acknowledged and rewarded. The award is just one aspect of CWIL's work to advance women in the profession. CWIL serves as a national resource to convene leaders, generate ideas, and lead change. In the six years since it was launched, CWIL has received national recognition for innovative and comprehensive programs that combat the persistent obstacles facing women lawyers.

The 2009 Women's Power Summit resulted in the *Austin Manifesto* – and real change.

CWIL has convened four national summits that have brought together approximately five hundred leaders for a serious dialogue on issues of vital importance to women. Held every two years, the invitation-only Women's Power Summit on Law and Leadership is one of the most significant gatherings of women lawyers in the country. Audience members include law firm managing partners, general counsel, judges, law school deans, state bar presidents, other prominent women lawyers, and leaders from across the United States. The purpose of the Summit is to provide an opportunity for women leaders to engage in high-level programming and network with their female peers while infusing in the leaders a sense of personal responsibility for creating change for women lawyers.

At the 2009 Women's Power Summit, attendees adopted by acclamation the *Austin Manifesto*.² The manifesto seeks to "eliminate the barriers that have thwarted the advancement of women in the legal profession for the past several decades, and thereby enhance the legal profession and its ability to serve an increasingly diverse and globally connected society." By signing the manifesto, participants personally undertook a commitment to take specific, concrete steps to achieve six goals. CWIL's founders have witnessed significant progress in achieving three of these goals:

² See "The Austin Manifesto," University of Texas Center for Women for Women in Law, <http://www.utexas.edu/law/centers/cwil/the-austin-manifesto/>.

- ✓ **GOAL 1: For women to be 30 percent of tenured law professors by 2015**
Women now constitute 33 percent of tenured and 48 percent of tenure track law professors.
- ✓ **GOAL 2: For the President to nominate and the Senate to confirm women to vacancies on the federal bench**
Women now comprise 33 percent of U.S. Supreme Court justices, 35 percent of judges on the federal courts of appeal, and 33 percent of U.S. district court judges.
- ✓ **GOAL 3: To have women of color elected as President of the American Bar Association and Chair of the Association of Corporate Counsel by 2015**
This fall Paulette Brown will become president of the ABA and Sabine Chalmers will be elected chair of ACC.

Nevertheless, much work remains to be done. Three goals remain to be achieved:

- ▶ **GOAL 4: For women to be 30 percent of general counsel by 2015**
Only 23 percent of Fortune 500 general counsel are women.
- ▶ **GOAL 5: For women to be 30 percent of equity partners by 2015**
Only 17 percent of equity partnership positions at the nation’s top firms are held by women.
- ▶ **GOAL 6: For women of color to be 10 percent of equity partners by 2020**
Women of color constitute only 2 percent of *all* law firm partners.

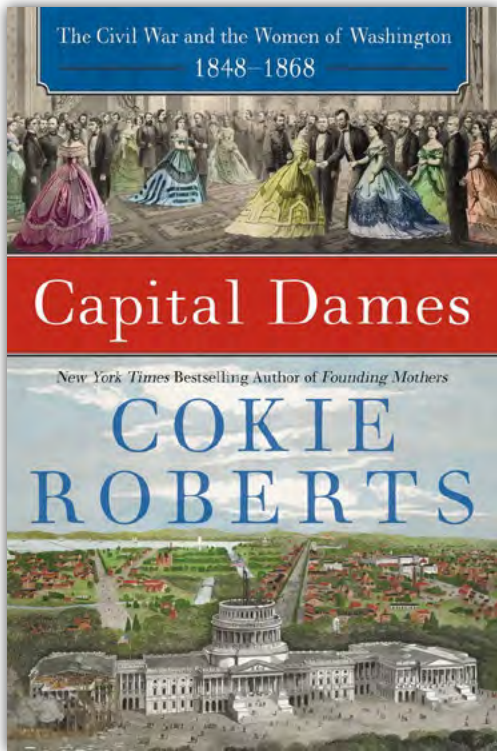
The 2015 Women’s Power Summit explored how leaders can be effective agents for change within their organizations.

From April 15 through April 17 of this year, CWIL convened the 2015 Women’s Power Summit, which brought together more than 260 leaders from 4 countries and 29 states. One law firm practice group leader described the Women’s Power Summit as “a veritable Who’s Who of influential women in the legal profession.” The theme of the summit was *Using Power for Change*, and the speakers provided a ground-breaking guide for how to be effective agents for change within their organizations.

Cokie Roberts, pioneering journalist and political commentator for ABC News and National Public Radio, gave the concluding keynote on April 17. In her remarks, Ms. Roberts emphasized the importance of uncovering the stories of women who have played key roles throughout history. She identified a number of female historic figures and recounted their stories in the context of the Women’s Power Summit’s leadership theme, noting women who have led change through their sacrifices, their courage, and their willingness to take risks.



The Hon. Sandra Day O’Connor addressed the audience at the 2009 Women’s Power Summit on Law and Leadership.



Participants in the 2015 Women's Power Summit met with journalist and author Cokie Roberts to discuss her most recent book, *Capital Dames*. Standing with Cokie Roberts is Lisa Pennington.



Susan Blount, Summit Chair and Executive Vice President and General Counsel, Prudential Financial, Inc. gave opening remarks at the 2015 Women's Power Summit.



Sheila C. Bair, Chairman of the Federal Deposit Insurance Corporation (2006–11), spoke at the Legacy Dinner set in the historic LBJ Presidential Library.

(At right and below) Law firm managing partners shared their approaches to important changes at their firms and lessons they learned that can be applied to leading change for women at the 2015 Women's Power Summit.



(Below) CWIL's Power Lunch Series exposes students to prominent women lawyers.

Preparing law students and lawyers to lead through training and coaching.

CWIL also provides cutting-edge, focused, educational programs that serve women at all stages of their careers. The Women in Law Institute is a prominent example of CWIL's unique training programs. The Institute is an all-day training session for students and law clerks that combines lecture and small-group applied learning to teach effective communication, self-promotion, and internal and external network building.

Since 2009, CWIL has trained more than five hundred students and engaged two hundred practitioners as coaches. The Institute is held annually at the University of Texas School of Law, but also is held at other schools and venues through partnerships with those institutions. To date, the Institute has reached students in Austin, Chicago, Houston, Los Angeles, and New York. CWIL is currently developing similar

Presented by

October Power Lunch* Series 2014

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<div style="text-align: center; border: 1px solid #ccc; border-radius: 50%; width: 40px; height: 40px; margin: 0 auto; display: flex; align-items: center; justify-content: center; font-weight: bold; font-size: 24px; margin-bottom: 5px;">OCT 21</div> <p>GUEST SPEAKER: Susan L. Blount <i>Executive Vice President & General Counsel, Prudential Financial, Inc.</i></p> <p><small>Susan L. Blount is the Executive Vice President and General Counsel of Prudential Financial, Inc. She has been recognized as one of the most powerful women in America by <i>Forbes</i> magazine. She is also a frequent speaker at conferences and events, and has been named one of the most powerful women in America by <i>Forbes</i> magazine.</small></p> <p style="font-size: 10px; margin-top: 5px;">11:45AM - 1:15PM Sheffield Room (TH 210)</p>	<div style="text-align: center; border: 1px solid #ccc; border-radius: 50%; width: 40px; height: 40px; margin: 0 auto; display: flex; align-items: center; justify-content: center; font-weight: bold; font-size: 24px; margin-bottom: 5px;">OCT 28</div> <p>GUEST SPEAKER: Arlees Upton Kea <i>Director, Division of Administration, Federal Deposit Insurance Corporation</i></p> <p><small>Arlees Upton Kea is the Director of the Division of Administration at the Federal Deposit Insurance Corporation. She has been recognized as one of the most powerful women in America by <i>Forbes</i> magazine. She is also a frequent speaker at conferences and events, and has been named one of the most powerful women in America by <i>Forbes</i> magazine.</small></p> <p style="font-size: 10px; margin-top: 5px;">11:45AM - 1:15PM JCH 5207</p>

RSVP to maalushy@law.utexas.edu or (512) 232-1911

➤ LUNCH WILL BE SERVED.

training programs for law firm associates that will be available beginning in spring 2016.

In addition to the Women in Law Institute, CWIL has offered at least twenty-four student programs. These programs have taught students skills, provided access to role models, and fostered important relationships. As CWIL's Executive Director, I also teach a class at Texas Law that uses the lens of leadership theory to explore the gap between the number of women law school graduates and the number of women who occupy leadership positions.

Moreover, with the goal of increasing the number of women in the pipeline to general counsel, CWIL offers coaching for in-house counsel. The program is led by CWIL founder Catherine Lamboley, retired Senior Vice President and General Counsel of Shell Oil Company, and provides participants with the opportunity to learn from their shared experiences and advance their skills in a collaborative, confidential environment.

From Chief Justice Ward to CWIL's founders, Texas women lawyers have shown time and time again their ability to bring about important changes in the legal profession and society as a whole. By encouraging women to play active roles in the legal profession in Texas and elsewhere, CWIL founders seek to ensure that women lawyers have a bright future and continue to advance meaningful change in the profession. To learn more about how you can get involved in this effort, visit www.centerforwomeninlaw.org.



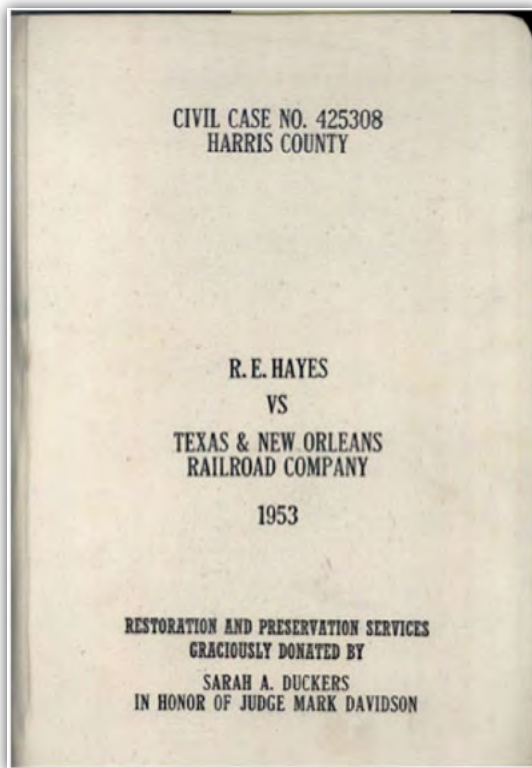
LINDA BRAY CHANOW *has served as the Executive Director of the Center for Women in Law since 2009. A leader in the national and local conversation on gender equity in the legal profession, Ms. Chanow has authored or coauthored numerous reports on women in the legal profession.*

[Return to Journal Index](#)

Archaeologists, Archivists, Assistant District Clerks, and Historians: An Executive Editor's Gratitude

By David A. Furlow

I'D LIKE TO EXPRESS SOME SPECIAL GRATITUDE to the archivists, preservationists, historians, and archaeologists who have gone out of their way to help our contributing authors make this a special issue of the *Journal*.



Left: Cover of the historic-records preservation file *Journal* contributing author Sarah H. Duckers presented to her husband the Hon. Judge Mark Davidson. Right: Francisco Heredia in the Harris County District Clerk's Historical Document Room. Photos by David A. Furlow.

Francisco Heredia, the Assistant District Clerk responsible for preserving judicial records in the Historical Document Room in Harris County District Clerk Chris Daniel's Office, is a "fine civil servant," to quote records-preservationist and Baker Botts partner Bill Kroger. Francisco proves his commitment to preserving, protecting, and publicizing Harris County's rich legal history every day he goes to work. He made available high-resolution images of the complete jury charge, docket sheet, and newspaper articles from the first woman-juror case, *R.E. Hayes, Plaintiff v. Texas & New Orleans Railroad Co., Defendant, #425308* in the 152nd District Court of Harris County for writer/attorney Sarah Duckers and the *Journal*.

Then, to enable family-history preservationist Linda Hunsaker and *Journal* readers to understand why Texas Supreme Court Chief Justice Hortense Sparks Ward urged the Legislature to enact the Married Woman's

Property Act, Francisco sent the previously unpublished petition for divorce and other judicial records in *Hortense Malsch, Plaintiff v. Albert Malsch, Defendant*, #39906 in the 61st Judicial District of Harris County.

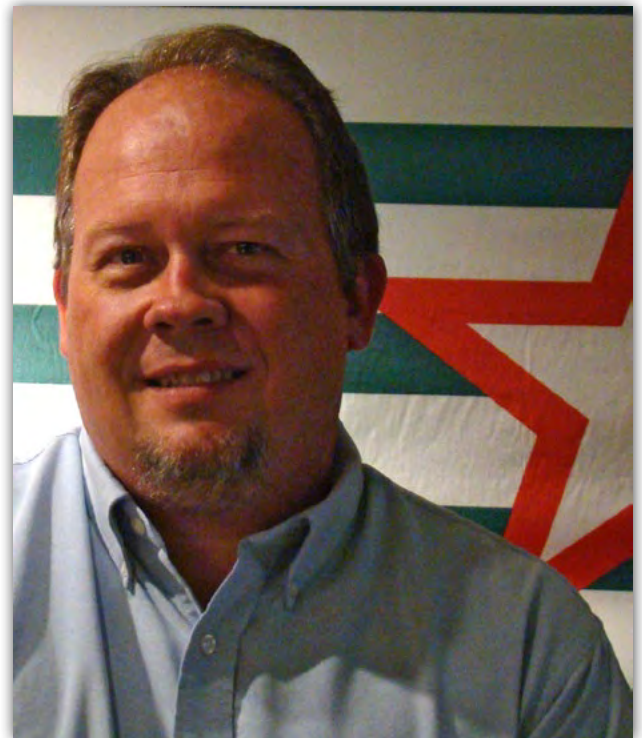
Finally, Francisco provided the *Journal* with a CD filled with high-resolution images of Harris County's court records in Judge Peter Gray's successful lawsuit to vindicate the liberty of an illegally-enslaved African-American woman and her two children in *Emeline, a Free Person of Color v. Jesse P. Bolls*, #1674 in the District of Harris County.

Robert K. Downie, the Houston Manager of Library Services for Baker Botts LLP demonstrated the archival professionalism and love of legal lore that has characterized his thirty-eight years of service to Baker Botts. He provided the *Journal* with immediate access to Judge Peter Gray's personal, hand-annotated copies of *The Laws of Texas* in their 1838-1840, 1840-45, 1845-48, 1860-64, and 1866 editions; his personal copy of the *Dallas Reports* of U.S. Supreme Court opinions (1798); a transcribed copy of Baker Botts partner Bill Kroger's 1835 *Diary of William Fairfax Gray*, as well as a host of other useful materials; and Judge Gray's personal copy of his father William Fairfax Gray's 1839 Republic of Texas land deed in "Harrisburg, Texas" (early Houston) witnessed by Peter Gray.



Baker Botts LLP Houston
Manager of Library Services
Robert K. Downie.

Bryan McAuley, the Texas Historical Commission's on-site manager for the San Felipe de Austin State Historic Site, represents the best that the profession of historical archaeology has to offer. He assisted contributing writer DeJean Melton and the *Journal* shed new light on the story of the cannoneering Angelina Bell Peyton Eberly,

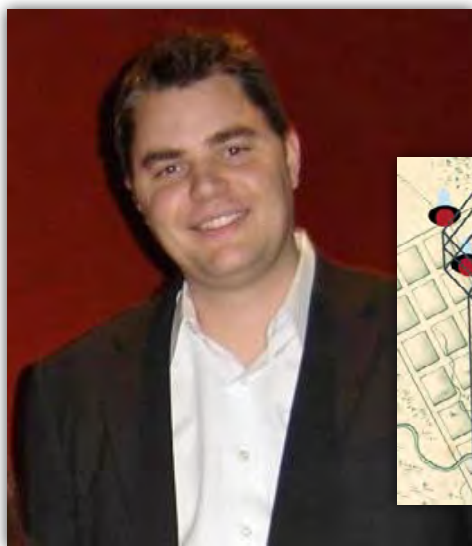


Left: Reconstructed Constitution Square at San Felipe de Austin historic site. Photo by David A. Furlow.
Right: Bryan McAuley, Site Manager for the Texas Historical Commission's San Felipe de Austin and Fannin Battleground State Historic Sites.

the City of Austin's heroine of the 1842-43 Archive War, by providing archaeological reports, a reconstructed town plat, and close-up photographs of objects excavated from the Peyton Tavern site in San Felipe.

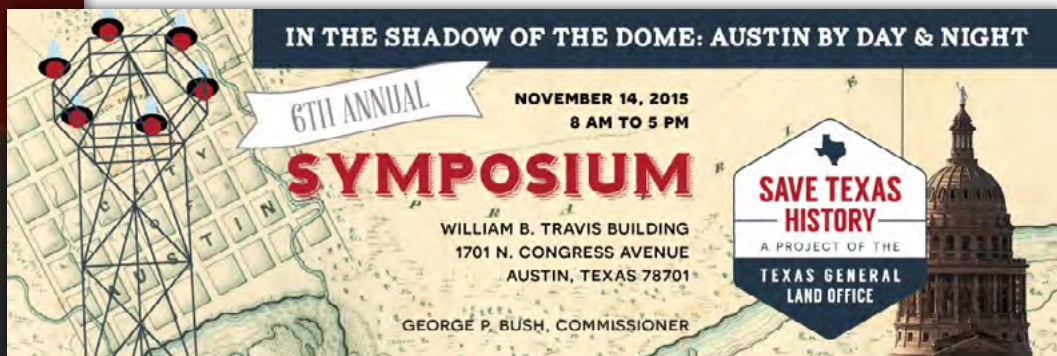
In addition, Bryan provided valuable background research about the San Felipe settlers who fought at the Alamo for *Journal* Deputy Executive Editor Dylan Drummond's "Alamo Bar Association" paper and PowerPoint at the Society's May 7, 2015 Symposium on the Jurisprudence of the Texas Supreme Court. Bryan happily and authoritatively answered every question I asked about the history and archaeology of San Felipe when I met with him in March and July. And finally, while we were discussing the most recent archaeological discoveries at San Felipe, Bryan offered to review Ron J. Jackson, Jr. and Lee Spencer White's new book, *Joe, the Slave Who Became an Alamo Legend* (Norman: Univ. of Okla. Press, 2015). Bryan is a scholar and a gentleman.

Special thanks go to James Harkins, the Manager of Public Services in the Archives & Records Program Management Division of the Texas General Land Office, for his swift responses to questions about the Archive War. In response to a call, James generously shared the excellent PowerPoint about the Archive War and the General Land Office he presented at the Texas State Historical Association's March 2015 Annual Meeting. James has organized the Texas General Land Office's November 14, 2015 Save Texas History Symposium to provide history-lovers with an opportunity to learn and share insights.



Left: photo of James Harkins, Texas Library Association website.

Below: Logo of the Texas General Land Office Save Texas History Symposium.



I'd also like to express the *Journal*'s gratitude to one of Texas's finest historians, Randolph "Mike" Campbell, for sharing helpful information about Angelina Eberly's background and the history of the Archive War.

Last but not least, the *Journal* wishes to express its gratitude to Mike Miller and the other knowledgeable and tireless employees of the Austin History Center for answering an endless number of questions with speed and courtesy and for sharing vertical files that bring the past to life.

[Return to Journal Index](#)

U.S. Senator John Cornyn Will Keynote Society's Twentieth Annual John Hemphill Dinner on September 11

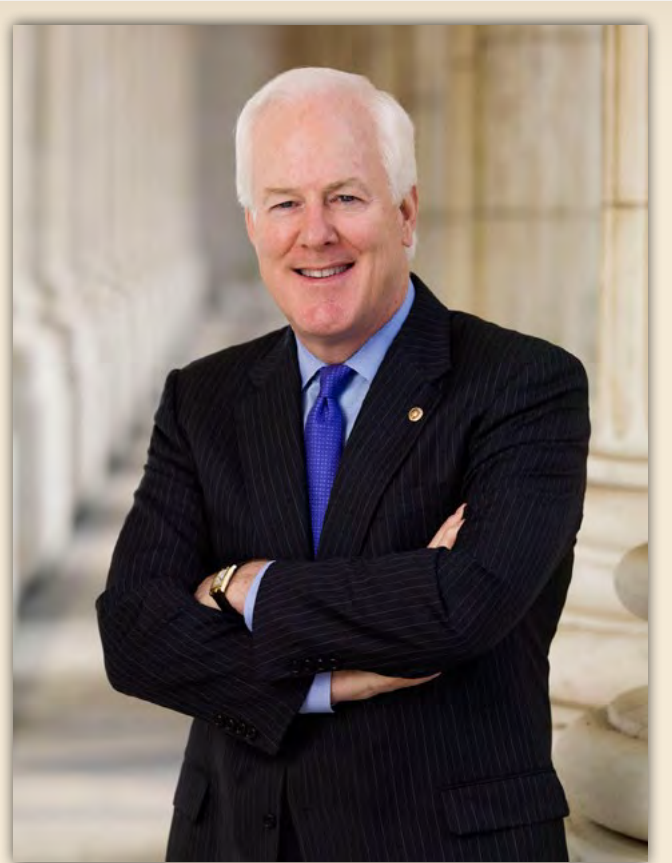
By Marilyn P. Duncan

THE HONORABLE JOHN CORNYN, United States Senator for Texas, will be the principal speaker at the Texas Supreme Court Historical Society's Twentieth Annual John Hemphill Dinner. The dinner, which is the Society's main fundraising event, is scheduled for Friday, September 11, at the Four Seasons Hotel in Austin.

Senator Cornyn has been in public service for the last three decades, first as a district judge and later as a Justice of the Texas Supreme Court and as Texas Attorney General. He was first elected to the U.S. Senate in 2002, and currently serves as Senate Majority Whip. He also serves on the Senate Finance Committee and Senate Judiciary Committee.

Among Senator Cornyn's many honors and awards are the 2005 Border Texan of the Year Award, the National Child Support Enforcement Association's Children's Champion Award, the American Farm Bureau Federation's Friend of Farm Bureau Award, the Texas Association of Business's Fighter for Free Enterprise Award, the National Coalition of Latino Clergy and Christian Leaders' Latino Leadership Award, and the Texas Association of Mexican American Chambers of Commerce's International Leadership Legislative Award.

2014-15 TSCHS President Marie Yeates will preside over the evening program at the Hemphill Dinner, which will include the presentation of the first President's Award for outstanding contributions to the Texas Supreme Court Historical Society. The Texas Center for Legal Ethics will also present its Seventh



THE HEMPHILL DINNER

begins at 7:00 p.m. in the Main Ballroom of the Four Seasons Hotel in Austin.

A COCKTAIL RECEPTION WITH HOST BAR begins at 6:30 p.m. in the ballroom atrium.

AN INVITATION-ONLY RECEPTION FOR SENATOR CORNYN

begins at 6:00 p.m. in the San Jacinto Room adjacent to the ballroom.

Premium dinner tables at the \$10,000 Hemphill Sponsorship level receive six tickets to the reception, and tables at the \$5,000 Pope Sponsorship level receive two tickets.

Members of the court and their spouses are special guests. The Society's Fellows and their spouses are also invited to attend.

Annual Chief Justice Jack Pope Professionalism Awards, which recognize a Texas appellate lawyer and an appellate judge who demonstrate the highest level of professionalism and integrity.

Proceeds from the Hemphill Dinner support the Texas Supreme Court Historical Society's ongoing efforts to collect and preserve the historic papers, photographs, and artifacts of the Supreme Court of Texas. The funds also support the Society's legal history book series and other projects aimed at honoring the Court's history and educating the public about the state's court system.

On Saturday morning, September 12, current and former justices, briefing attorneys, and staff attorneys for the Supreme Court will gather for their annual reunion breakfast at the Texas Law Center in Austin.

For more information about the dinner or to purchase tickets, visit the Society's website at www.texascourthistory.org. To register for the BA Breakfast, contact the TSCHS Office at tschs@sbcglobal.net or 512-481-1840.

[Return to Journal Index](#)

Society Hosts Second Biennial Symposium on the History of Texas Jurisprudence

By Dylan O. Drummond Photos by David C. Kroll

ON MAY 7, 2015, the Society held its second biennial course on the history of Texas and Supreme Court jurisprudence. Once again, Society Trustee and *Journal* General Editor Lynne Liberato served as the course director.

This year's seminar featured several unique and captivating panel discussions, in addition to individual presentations ranging from the rise of modern contract law in Texas to accounts of the six lawyers who perished at the Alamo.

The first panel was comprised of current Texas Supreme Court Chief Justice Nathan Hecht and his two immediate predecessors, Wallace Jefferson and Tom Phillips, who examined the challenges and successes of the tenure of each Chief Justice. Chief Justice Hecht reflected on his efforts to increase the availability of legal services to veterans and the indigent, while former Chief Justice Jefferson recounted the strides made during his term to bring the Court's



Symposium organizer Lynne Liberato



(Left to right) Chief Justice (ret.) Tom Phillips, Chief Justice Nathan Hecht, Chief Justice (ret.) Wallace Jefferson.



(Left to right) Moderator Ben Mesches and panelists Luis Saenz of the Governor's Appointment Office; Hon. Ken Anderson of the Texas Public Utility Commission; and Dealey Herdon of the A. H. Belo Corporation, formerly with the State Preservation Board.

technology and processes into the twenty-first century. Commenting on former Chief Justice Phillips's tenure, Jefferson remarked that "Tom Phillips saved the Court." When Phillips took the bench in 1988 the Supreme Court was mired in national controversy but was once again nationally prominent when he retired in 2004.

Incoming Society president Ben Mesches moderated an intriguing panel of current former heads of the Governor's Appointment Office that examined the issues and process involved in gubernatorial judicial appointments with particular emphasis on those made to the Supreme Court.

Former Supreme Court Justice Scott Brister moderated a riveting panel of attorneys who led the pitched appellate battles in the 1987 landmark case of *Pennzoil v. Texaco*, which still stands as the largest verdict ever upheld on appeal (roughly \$8.5 billion). The panel discussed the fact that, even though the damages at issue were unprecedented and an ancillary issue in the case had by that time already been argued and disposed of by the U.S. Supreme Court, the Texas Supreme Court nevertheless declined review.

The program, which was cosponsored by TexasBarCLE, was held in conjunction with the bi-annual Texas Supreme Court Practice course. Richard Orsinger is the course director of that course and, along with Warren Harris, was a co-course director of the Society's history course.

[Return to Journal Index](#)

SCOTX Justices Eva Guzman and Debra Lehrmann Join Chief Justice Nathan Hecht in Celebrating Texas Female Judges' Day at the Capitol

By Dylan O. Drummond



Senators Royce West (far left) and Joan Huffman (far right) are pictured with justices and judges of the Texas Supreme Court and Court of Criminal Appeals.

ON APRIL 13, 2015, the Texas Capitol hosted some 150 women judges for Texas Female Judges' Day. Texas Supreme Court Justice Eva Guzman and Justice Debra Lehrmann joined Chief Justice Nathan Hecht in commemorating the event. Pictures of the judges in attendance were taken in the old Texas Supreme Court courtroom in the Capitol.

Senators Royce West and Joan Huffman authored Senate Resolution No. 535, which established the occasion and traced its roots back to the 1925 all-woman Texas Supreme Court comprised of Chief Justice Hortense Sparks Ward, Associate Justice Hattie Leah Henenberg, and Associate Justice Ruth Virginia Brazzil.

Out of 3,151 judges currently serving in Texas, fully a third (1,064) are women.



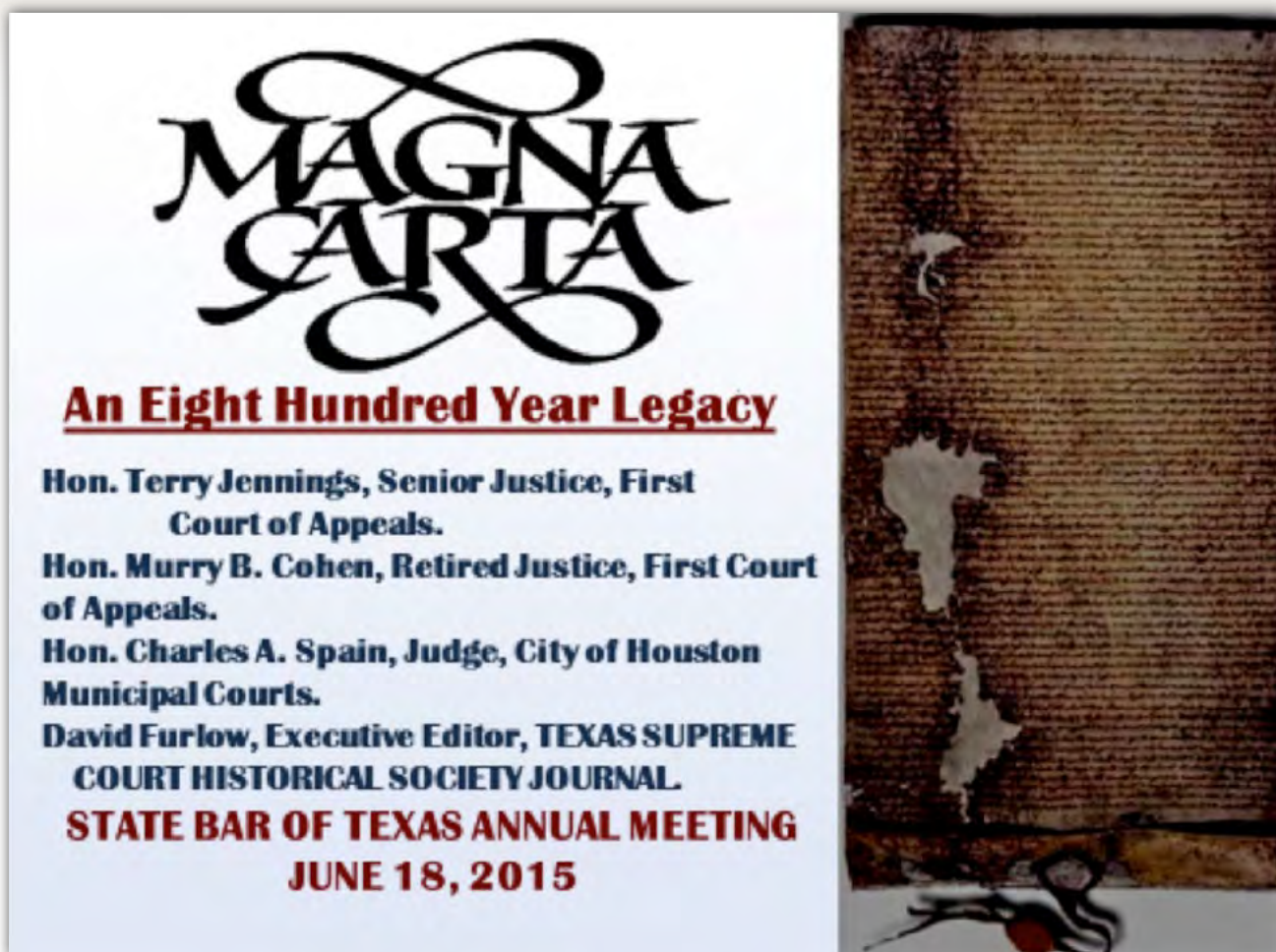
(Above, from left:) Judge Elsa Alcalá, Judge Barbara Hervey, Presiding Judge Sharon Keller, Justice Debra Lehrmann, Justice Eva Guzman, Chief Justice Nathan Hecht; standing in background, Lieutenant Governor Dan Patrick.
(Below:) The celebration of Texas Female Judges' Day included a group picture in the historic courtroom in the State Capitol.



[Return to Journal Index](#)

The Society's Program "Magna Carta's Eight Hundred Year Legacy" Filled the Conference Hall at the State Bar Annual Meeting

By David A. Furlow



Poster featuring King Henry III's 1225 version of Magna Carta in the National Archives in London.

ON JUNE 15, 1215, KING JOHN I OF ENGLAND reluctantly agreed to make peace with a group of rebellious barons. He did so by sealing (not signing) the Great Charter, Magna Carta. Magna Carta promised to protect the prerogatives of the church, end arbitrary imprisonment of barons, guarantee swift and sure justice, and limit taxes payable to the king. "Here is a law which is above the King and which even he must not break," Sir Winston Churchill wrote in 1956. "This reaffirmation of a supreme law and its expression in a general charter is the great work of Magna Carta; and this alone justifies the respect in which men have held it."

Eight hundred years later, on June 18, 2015, an audience of lawyers, judges, and State Bar employees braved a tropical storm's torrential rains to see the Texas Supreme Court Historical Society's program, *Magna Carta: The Eight Hundred Year Legacy*. After Memorial Day flooding in Houston inundated the home of our colleague former First Court of Appeals Justice Murry Cohen, First Court of Appeals Senior Justice Terry Jennings, City of Houston Judge Charles "Kin" Spain, and I met in San Antonio to present a one-hour C.L.E. program.



(above:) The program's audience. (below, left to right): First Court of Appeals Senior Justice Terry Jennings; David A. Furlow; City of Houston Judge Charles "Kin" Spain.



Justice Jennings, former Justice Cohen, and Judge Spain first organized this program in 2014 in response to a request from the Thomas More Society to explore the origins of the Rule of Law at the 1910 Historic Harris County Courthouse. The judges asked me to join them to discuss how Magna Carta responded to the lawlessness of medieval English kings, of whom King John was the worst. In June of 2014, we explored how Lord Edward Coke reinterpreted Magna Carta as a limit on royal power while leading Puritan Parliamentary opposition to the arbitrary rule of King Charles I; how Magna Carta led to the American Revolution; and how the drafters of the Texas Constitution preserved Magna Carta's words in the Constitution of 1836. Justice Jennings made sure that the program focused on stewardship: the duty of lawyers, judges, and citizens to preserve, protect, and improve the jury system, the independence of the judiciary, and the rule of law. Members of the panel presented the program to the Magna Carta Society of Houston and the American Board of Trial Advocates' teachers college in June before making the presentation at the State Bar Annual Meeting in San Antonio.

In response to the suggestion of Texas Supreme Court Historical Society Executive Director Pat Nester, State Bar Video Production Director Paul Burks recorded the program for later rebroadcast on the Society's Hemphill YouTube channel.

[Return to Journal Index](#)

Society Debuts YouTube Channel, Posts Never-Before-Seen Court Content

By Dylan O. Drummond

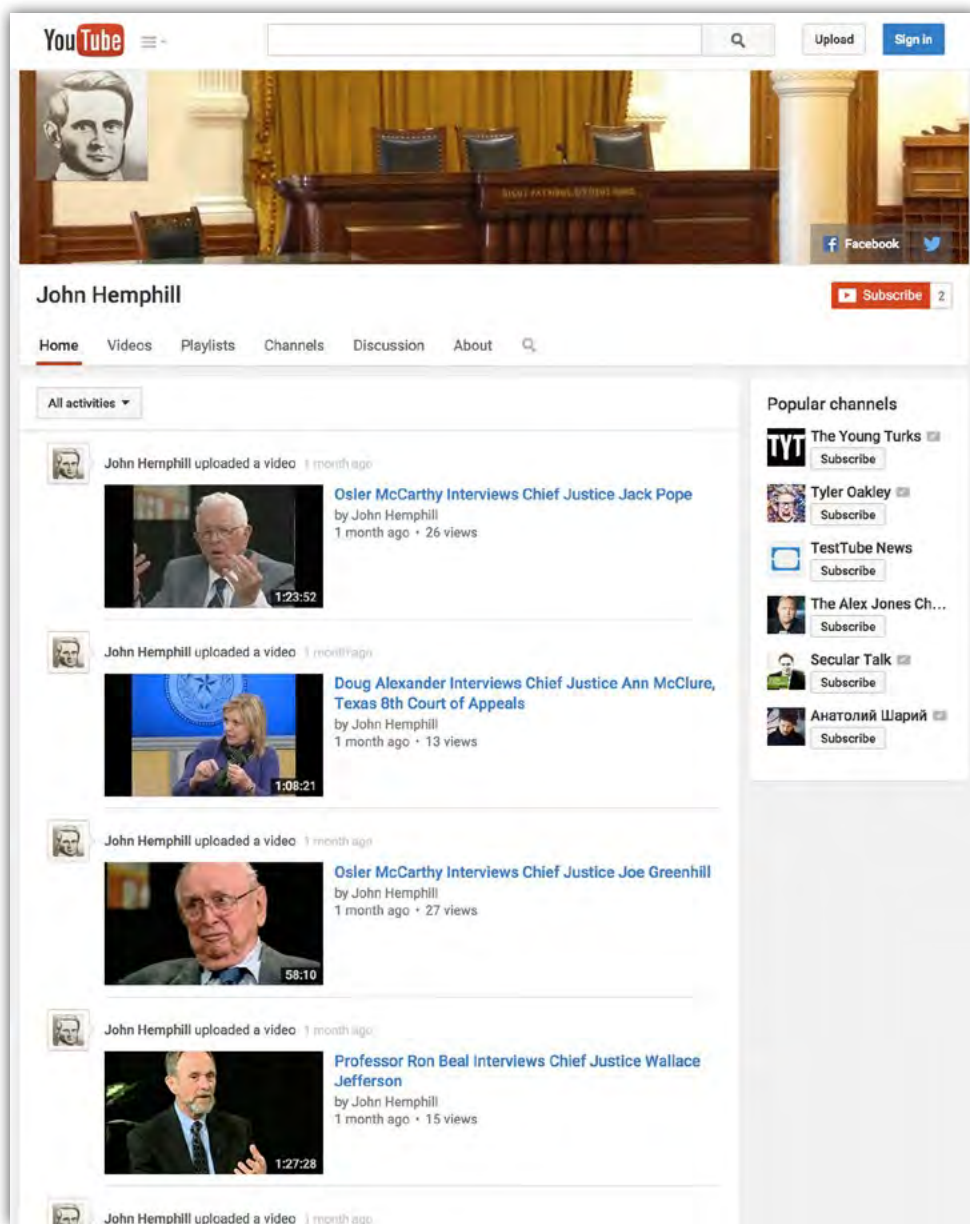
ABOUT A YEAR AGO, the Society quietly created its very own YouTube channel. Its digital library was somewhat threadbare, however, until the Supreme Court generously granted permission this past April to post certain Court content. The Society thanks the diligent efforts of its liaison to the Court, Justice Paul Green, in securing this agreement.

Incredibly, some of the videos now available on the Society's YouTube channel have never before been publicly available.

First, we are excited to present two previously-unseen interviews by the Court's Public Information Attorney, Osler McCarthy, with legendary former Chief Justices Joe Greenhill and Jack Pope. Chief Greenhill's interview may be found at <https://www.youtube.com/watch?v=8Ap03csBzLg>, and Chief Pope's can be viewed at <https://www.youtube.com/watch?v=K8VjtZF0CkQ>.

We have also added a fascinating interview by Baylor Law School Professor Ron Beal with former Chief Justice Wallace Jefferson for the State Bar of Texas Environmental and Natural Resources Law Section. Chief Jefferson's interview is posted at <https://www.youtube.com/watch?v=w4AlafpP1b0>.

A video by current Chief Justice Nathan Hecht provides a



The Society's John Hemphill YouTube channel.



Images from YouTube videos of Chief Justices Greenhill, Pope, and Jefferson

behind-the-scenes look at the Court conference process by which votes are debated on pending petitions and causes, and opinion majorities and separate writings are discussed. As far as the Court is aware, it is the only court of last resort in the country that allows its law clerks (also called briefing attorneys) to sit in on and even participate in these conferences. This video may viewed at <https://www.youtube.com/watch?v=0ebkfHT9mS4>.



Finally, we've added a fantastic interview by former Society President and Texas Bar Appellate Section Chair Doug Alexander with sitting El Paso Court of Appeals Chief Justice Ann McClure. Her interview may be found at <https://www.youtube.com/watch?v=B4gjMPjUAQ>.



We look forward to continuing to build our digital library going forward, and hope that you enjoy these videos as much as we do!

[Return to Journal Index](#)

Texas Legislature Funds the Texas Digital Archive

By David A. Furlow



THE EIGHTY-FOURTH LEGISLATURE just made life better for people who believe that judicial history matters. The Legislature allocated \$706,593 to the Texas State Library and Archives Commission (TSLAC) for the 2016-2017 biennium to launch the *Texas Digital Archive*. This new funding will allow TSLAC to collect, preserve, and make publicly accessible electronic archives of state government.

State Archivist Jelain Chubb stated that the Texas Digital Archive “will serve as the centralized repository for state agency records in digital formats that have enduring or historical value.” Among the first accessions are the records of former Governor Rick Perry’s administration and of Lt. Governor David Dewhurst, as well as audio recordings of the Texas Senate that date from 1972 to 2006. “Over the next two years our archivists will focus on transferring electronic records from several state agencies and uploading digital copies of select paper-based records in the state archives’ collections, including early cases from the Texas Supreme Court,” said Chubb.

TSLAC expects to provide initial public access to the Texas Digital Archive early in 2016, with new records being added regularly.

[Return to Journal Index](#)

The *Journal* Grants Reprints and Provides Speakers

By David A. Furlow

PATNESTER, EXECUTIVE DIRECTOR of the Texas Supreme Court Historical Society, along with the co-editors of the *Journal*, believe in sharing the records, research, and photos the Society has published in the *Texas Supreme Court Historical Society Journal*.

When Colbert Coldwell, one of this *Journal*'s contributing authors, and former *El Paso Bar Journal* Editor Clinton Cross requested that the *Journal* permit republication of a three-part article that discussed Hispanic/Castilian, Virginian, and Scots-Irish influences on the Republic's jurisprudence, Pat and the *Journal*'s co-editors granted that permission. As a result, the *El Paso Bar Journal* has republished our *Journal*'s three-part article, "The Lone Star Republic's Supreme Court Wove the Fabric of Texas Law from Three Competing Legal Traditions" in its February/March, April/May, and June/July 2015 issues.

Pat Nester and this *Journal*'s co-editors will grant permission to other bar journals, historical societies, and museums to reprint *Journal* articles if the reprint bears the imprint of the Texas Supreme Court Historical Society and states that the articles have been published with the permission of this *Journal*. An example, from page 6 of the June/July 2015 issue of the *El Paso Bar Journal*, appears below:



In addition, the Texas Supreme Court Historical Society can often provide speakers familiar with Texas's rich legal history to city and county bar organizations, historical societies, and museums. A *Journal* editor will speak about Magna Carta's impact on America and Texas during the Harris County Judicial Education Institute on August 5, 2015; about Chief Justice John Hemphill's contributions to Texas jurisprudence at the Chapel Hill Historical Society in Washington County on October 27, 2015; and about Hispanic and Anglo-American contributions to Texas law at the El Paso Bar Association Meeting on April 12, 2016.

Any person or organization interested in requesting *Journal* reprint rights should contact the Journal's Executive Editor David A. Furlow at (713) 202-3931 or at dafurlow@gmail.com, or else contact the Society's Executive Director Pat Nester at his State Bar of Texas phone number, (512) 427-6822, pat.nester@texasbar.com.

[Return to Journal Index](#)

Perhaps for the First Time Ever, Court Clears Its Docket

By Dylan O. Drummond

THIS PAST JUNE, THE COURT ACCOMPLISHED A FEAT it may have never achieved before in its history and one that many thought it never could—the Court cleared its docket and disposed of all argued cases during the 2014–15 term.

An overcrowded docket has plagued the Court since at least the 1870s, and even led to the creation of the Court of Criminal Appeals, the intermediate appellate courts, and the Commission of Appeals (twice). Indeed, when the Commission of Appeals was first established in 1881, the Court was some 900 cases behind in its docket. In the modern era since at least 1989, the Court's 2007 term concluded with the most cases carried over and awaiting opinion—57.

So into this context, the Court's achievement in clearing its entire docket is all the more impressive and historic. To do so, the Justices and their staffs committed to each other at the beginning of the Court's term in September that they would issue decisions in all argued cases by the end of June if at all possible, and set the Court's oral argument and conference schedule with this specific goal in mind. In addition, the Justices adhered to a tighter schedule for writing majority opinions (2 months instead of 4) with separate writings due a month after the majority opinion was circulated.

The result of this increased focus on timeliness and efficiency was that the Court's June 26, 2015 orders issued authored opinions in seven cases (six of which also contained dissent and/or concurrence), and cleared its docket nearly a month before the official end of the term on August 31, 2015. In doing so, the Court has followed the practice of the United States Supreme Court, which traditionally issues opinions in all its pending cases by the end of June.



[Return to Journal Index](#)

2015 BA Breakfast

By Dylan O. Drummond

THIS YEAR AND GOING FORWARD, the Court's annual BA Breakfast has moved from June to September to coincide with the new date of the John Hemphill Dinner. Please find details regarding this year's breakfast for former Justices, staff, and law clerks below:

When: Saturday, September 12, 2015
8:30 a.m. - Coffee
9:00 a.m. - Meal

Where: Texas Law Center
1414 Colorado St.
Austin, TX 78701

Cost: \$25

Parking: Parking will be available first-come, first-served in the garage beneath the Texas Law Center. Street meters also available.

RSVP: Before Monday, August 24, 2015
<http://www.texascourthistory.org/babreakfast>
– or –
Remit credit card or check payment to:
Mary Sue Miller
Administrative Coordinator
Texas Supreme Court Historical Society
P.O. Box 12673
Austin, TX 78711
(512) 481-1840
tschs@sbcglobal.net



Chief Justice Jack Pope and a former year's complement of clerks.

For more information: Carlos Romo
Baker Botts, LLP
98 San Jacinto Blvd, Suite 1500
Austin, TX 78701-4078
(512) 322-2579
carlos.romo@bakerbotts.com

[Return to Journal Index](#)

Calendar of Events

Society-sponsored events () and other events of historical interest*

Summer 2015

**Tues., July 28,
through Fri.,
weekly**

The Sam Houston Memorial Museum at 1402 19th Street in Huntsville conducts summer tours focusing on the life of Sam Houston Tuesday through Friday at 10 a.m. and 2 p.m. through the end of August, 2015. The museum and visitors' center's tour guides aim to educate visitors about the life and times of Samuel Houston, the first and third elected president of the Republic of Texas and the only man in U.S. history elected as the governor of two states (Tennessee and Texas). See <http://samhoustonmemorialmuseum.com>.

Tues., Aug. 4

The University of Texas Harry Ransom Center hosts the exhibition *Frank Reaugh: Landscapes of Texas and the American West* from Tuesday, August 5 through Sunday, November 29, 2015. Frank Reaugh (1860–1945) (pronounced “Ray”), one of the Southwest's most distinguished artists, devoted his life to sketching and painting Western vistas while riding horseback with cattlemen during some of Texas's most historic roundups. See <http://www.hrc.utexas.edu/exhibitions/2015/reaugh>.

***Wed., Aug. 5**

First Court of Appeals Senior Justice Terry Jennings and *Journal* Executive Editor David A. Furlow will reprise their Society-Sponsored State Bar of Texas 2015 Annual Meeting C.L.E. program, *Magna Carta's 800-Year Legacy*, for the Harris County Judicial Education Institute in San Antonio. A 40-minute program, followed by a 5-minute question and answer session, will begin at 10 a.m. and end at 10:45 a.m.

Sat., Aug. 8

The exhibition *La Belle: The Ship That Changed History*, re-opens in the Bob Bullock Museum of Texas History's first floor Texas History Gallery. The reassembled hull of the French ship *La Belle* that sank in 1686 in Matagorda Bay will remain open for viewing during the museum's renovation of the first floor Texas History Gallery. See <http://www.thestoryoftexas.com/la-belle/the-exhibit>.

Through Sept. 5

The Houston Museum of Natural Science continues its *Texas! The Exhibition*. The presentation focuses on the unique roles that Texas has played as a Spanish colony, as part of the Mexican *Frontera*, as an independent Republic, and as the

twenty-eighth state to join the Union. Artifacts include (1) the cannon believed to be the “Come and Take It” artillery from the Battle of Gonzales; (2) Stephen F. Austin’s 1830 “Tanner map” of Texas and adjoining states; (3) the decree granting Mexican citizenship to James Bowie, Sept. 30, 1830; (4) Jim Bowie’s famous Bowie knife, found at the Alamo; (5) Col. William Barret Travis’s “Victory or Death” letter; (6) a rare original printed broadside of Travis’s desperate plea from the Alamo; (7) Battle Standard #4, the flag that flew at the Battle of San Jacinto; and (8) Sam Houston’s report on the battle dated April 25, 1836 (including the phrase “Remember the Alamo”). See http://www.hmns.org/?option=com_content&id=408&Itemid=447.

Through Sept. 13 **The Houston Museum of Fine Arts will continue its exhibition, *Habsburg Splendor: Masterpieces from Vienna’s Imperial Collections*.** The exhibition showcases masterworks and rare objects from the collection of the Habsburg Dynasty that ruled Texas from the time of Cabeza de Vaca until 1702. See <http://www.amazon.com/Habsburg-Splendor-Masterpieces-Collections-Kunsthistorisches/dp/0300210868>.

Until mid-Sept. **The Texas State Library and Archives will continue displaying its in-lobby exhibition *Texans’ Struggle for Freedom and Equality* through mid-September.** Along with the campaign for women’s suffrage, this exhibition reveals the efforts of pre-Republic colonists, Texas Revolution fighters and civilians, Native Americans, Tejanos, and African-Americans to expand their rights and freedoms in early Texas. TSLAC’s lobby is at 1201 Brazos Street in Austin and is open Mon.-Fri 8 a.m. to 5 p.m. See <https://www.tsl.texas.gov/struggles-exhibit.html>.

F a l l 2 0 1 5

*** Fri., Sept. 11** **TSCHS Twentieth Annual John Hemphill Dinner**
Keynote speaker: U.S. Senator John Cornyn
6:00 p.m., Invitation-only reception with speaker
6:30 p.m., Open reception with host bar
7:00 p.m., Dinner
Four Seasons Hotel
Grand Ballroom, 98 San Jacinto Blvd.
Austin, Texas 78701; 512-478-4500
See full announcement on p. 106.

*** Sat., Sept. 12** **Annual BA Breakfast and Reunion**
8:30 a.m.
Texas Law Center, Hatton Sumners Conference Room,
1414 Colorado St., Austin, Texas 78701. For information, contact the Society office at 512-481-1840 or tschs@sbcglobal.net.

Thurs., Oct. 1

The Harris County Law Library's Centennial Celebration celebrates its 100th anniversary on October 1, 2015. Chief Justice Nathan Hecht of the Supreme Court of Texas will present the keynote address at an event that will last from 3:30 to 5:30 p.m. Law Library Director Mariann Sears has launched a digital exhibit where attorneys, judges, justices and the public can learn about the Law Library's 100-year history and upcoming centennial events. More information can be found at <http://www.harriscountylawlibrary.org/100>.

Sat., Oct. 3

Annual Texas Archeology Month programming at San Felipe de Austin. Guest speakers and staff will provide programs and updates on archeology at the capital of Stephen F. Austin's "Old Three Hundred" colony, including a session on "How We Know What We Know" sharing how the historical records related to the town and its citizens inform archeological investigations. See <http://www.visitsanfelipedeAustin.com/index.aspx?page=17>, updates at <https://www.facebook.com/SanFelipedeAustin>.

Sat., Oct. 24

The 86th Annual Meeting of the Texas Archaeological Society offers cutting-edge programs about Texas history. The Archeological Society's members explore, excavate, and publish about every phase of Texas history and prehistory. The annual meeting and conference at the Omni Houston Hotel will be held at Westside, 13210 Katy Freeway in Houston, Texas. See <http://www.txarch.org/Activities/AnnualMeeting/am2015>.

* Tues., Oct. 27

Texas Supreme Court Historical Society Journal Executive Editor David A. Furlow speaks about Texas Supreme Court Chief Justice John Hemphill's life at the Chappell Hill Historical Society Museum. A 50-minute program, followed by a 10-minute question and answer session, will begin at 6 p.m. and end at 7 p.m. at the Museum, located at 9220 Poplar St., Chappell Hill, in Washington Cty., Texas 77426, phone number, 979-836-6033. See <http://www.chapelhillhistoricalsociety.org/en/2011/programs.html>.

* Wed., Oct. 28

Fall Meeting, TSCHS Board of Trustees

10:00 a.m.–1:00 p.m.
Hatton Sumners Meeting Room
Texas Law Center
1414 Colorado St.
Austin, Texas 78701

Luncheon Speaker: Jesús F. de la Teja, Supple Professor of Southwestern Studies and Regents' Professor of History, and Director, Center for the Study of the Southwest, Texas State University; former State Historian of Texas.

Tour of the Texas State Cemetery: Will Erwin, the Senior Historian and Cemetery Photographer at the Texas State Cemetery, will lead Trustees on a tour of the

cemetery that will include visits to the graves of Chief Justice John Hemphill and other famous Texas jurists and leaders of the nineteenth and twentieth centuries.

Sat., Nov. 7

The town of San Felipe celebrates the Annual Father of Texas Celebration. Staged since the 1920s, it features hands-on activities and lectures/programs about life in Austin's Colony. See <http://www.visitsanfelipedeatx.com/index.aspx?page=694> and <http://www.txhas.org/PDF/Father%20of%20Texas%203rd%20November%202012.pdf> (covering the November 2014 celebration).

Sat., Nov. 14

The Texas General Land Office will conduct its 6th Annual Save Texas History Symposium, "In the Shadow of the Dome: Austin by Day & Night." The symposium, which will focus on the history of nineteenth century Austin, will occur at the William B. Travis State Office Building at 1701 N. Congress Ave., Austin, from 8 a.m. until 4:30 p.m., to be followed by a reception at Capitol Visitors Center from 7 to 9 p.m. See <http://www.glo.texas.gov/save-texas-history/symposium.html>.

Author/historian James L. Haley will speak about the Texas Supreme Court from 11 to 11:45 a.m. Austin historian Jeff Kerr will talk about the Pig War between Richard Bullock and the French consul at the French Legation from 9 to 9:45 a.m. Curator of the Capitol Ali James will discuss "From Calamity to Celebration: Over 160 Years at Texas Capitol Square" from 9:50 to 10:30 a.m.

**Sat./Sun.,
Nov. 21-22**

Civil War Weekend at Liendo Plantation in Hempstead, Texas. During the War between the States, Liendo hosted cavalry and infantry training camps, an internment camp, and a hospital. After the War, it served as headquarters for General George Armstrong Custer. The Civil War Weekend at Historic Liendo Plantation is a unique way to experience Texas's Victorian era. Battles will be performed Saturday and Sunday at 2 p.m. See <http://www.liendo.org/civilwarweekend/civilwar.html>.

**Fri./Sat.,
Dec. 4-5**

The Fort Bend Museum Docent Society presents its 2015 Candlelight tours at the 1883 Moore Home next door to the Fort Bend Museum at 406 South 5th Street in Richmond. Docents lead visitors through time and life on the Brazos River and teach Fort Bend's story through exhibit galleries, historic home museums, and walking tours of historic Richmond. See <http://www.fortbendmuseum.org>.

**Through Sat.,
Jan. 2, 2016**

American Indian Art from the Susan J. Allen Collection is on display at the Panhandle-Plains Historical Museum in Canyon. Susan Janney Allen of Haverford, Pennsylvania, gave her American Indian collection to the museum in 1934 in memory of her parents, Samuel L. and Sarah H. Allen of Philadelphia. Selections from this collection are featured in the museum's Mary E. Bivins Gallery. See http://panhandleplains.org/pages/exhibitions_7.asp.

Through Tues.,
Feb. 16, 2016

The Star of the Republic Museum at Washington on the Brazos State Park will continue its current exhibit, *Enduring Spirit: African Americans in Nineteenth Century Texas*. The first African Americans in Texas were free men, seeking opportunity and advancement, along with many others. But the laws of the newly formed Republic of Texas forced them out and opened the door to thousands of enslaved people who served as the backbone of the labor force for almost thirty years. Finally gaining their freedom after the Civil War, they discovered that their struggle was far from over. Artifacts include typical documents of the period such as slave records, freedmen contracts, and an oath of allegiance. Stoneware pottery made at the Wilson Pottery near Seguin is included, as well as an example of the intricate Pine Burr pattern quilt. See <http://www.starmuseum.org>.

[Return to Journal Index](#)

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To profit from the past, we must first preserve it.

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TEXAS SUPREME COURT HISTORICAL SOCIETY

P.O. Box 12673

Austin, Texas 78711-2673

Phone: 512-481-1840

Email: tschs@sbcglobal.net

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Hon. Paul W. Green, Justice
Supreme Court of Texas

JOURNAL STAFF

General Editor

Lynne Liberato

lynne.liberato@haynesboone.com

Executive Editor

David A. Furlow

dafurlow@gmail.com

Deputy Executive Editor

Dylan O. Drummond

dodrummond@gmail.com

Managing Editor

Marilyn P. Duncan

mpduncan@austin.rr.com

Production Manager

David C. Kroll

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.

[Return to Journal Index](#)

2015–2016 Membership Upgrades

The following Society members moved to a higher dues category since the Spring 2015 issue of the *Journal*.

GREENHILL FELLOW

Jeffrey L. Oldham

Harriet O'Neill and Kerry Cammack

[Return to Journal Index](#)

New Members

The Society has added fourteen new members since the Spring 2015 issue of the *Journal*. Among them is one Law Clerk for the Court (*) who received a complimentary membership.

GREENHILL FELLOWS

Elaine Block

Thomas Hetherington

CONTRIBUTING

Paul Dodson

Amy Saberian

Robert A. Shivers

REGULAR

Timothy "Tim" Brown

Hon. Reynolds Cate (Ret.)

Clay Coalson

Riley Daniels

Cynthia D. Ericson

Sylinda Harper

David Kroll

Lawrence R. Lassiter

Natalie Thompson*

[Return to Journal Index](#)

Membership Benefits & Application

Hemphill Fellow - \$5,000

- Autographed Complimentary Hardback Copy of Society Publications
- Complimentary Preferred Individual Seating and 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 Supreme Court Historical Society*
- All Benefits of Trustee Membership

Trustee Membership - \$1,000

- Historic Court-related Photograph
- Discount on Society Books and Publications
- Complimentary Copy of *The Laws of Slavery in Texas* (paperback)
- Personalized Certificate of Society Membership
- Complimentary Admission to Society's Symposium
- All Benefits of Regular Membership

Patron Membership - \$500

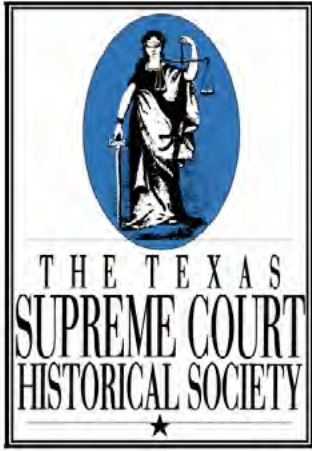
- Historic Court-related Photograph
- Discount on Society Books and Publications
- Complimentary Copy of *The Laws of Slavery in Texas* (paperback)
- Personalized Certificate of Society Membership
- All Benefits of Regular Membership

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 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



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, educational 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/Registration/Default.aspx?PageID=100&EventID=1>

Name: _____

Firm/Court: _____

Building: _____

Address: _____ Suite: _____

City: _____ State: _____ ZIP: _____

Telephone: _____

Email (required for eJournal delivery): _____

Please select an annual membership level:

- | | | | |
|---------------------------------------|---------|---|---------|
| <input type="checkbox"/> Trustee | \$1,000 | <input type="checkbox"/> Hemphill Fellow | \$5,000 |
| <input type="checkbox"/> Patron | \$500 | <input type="checkbox"/> Greenhill Fellow | \$2,500 |
| <input type="checkbox"/> Contributing | \$100 | | |
| <input type="checkbox"/> Regular | \$50 | | |

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- Check enclosed -- payable to the Texas Supreme Court Historical Society
- Credit card
- Bill me

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Cardholder Signature: _____

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Austin, TX 78711-2673

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