



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

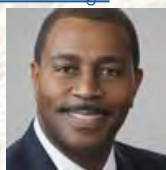
Summer 2018 Vol. 7, No. 4 General Editor Lynne Liberato Executive Editor David Furlow

Columns

Immediate Past President's Message

By Dale Wainwright

Before I look back at some of the highlights of the past year, I want to feature two upcoming events on the Society's calendar. [Read more...](#)



Hon. Dale Wainwright

Message from the 2018-19 President

By Marcy Hogan Greer

Our outgoing President has done so much to advance the Society, and I have big shoes to fill. I want to thank him for his many contributions to and support for the Society. [Read more...](#)



Marcy Hogan Greer

Executive Director's Page

By Sharon Sandle

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Sharon Sandle

Fellows Column

By David J. Beck

Thanks to coauthors Jim Haley and Marilyn Duncan, we are pleased to report that the third book in our judicial civics and court history project, *Taming Texas*, is nearing completion. [Read more...](#)



David J. Beck

Executive Editor's Page

By David A. Furlow

Soon after becoming the Society's President, Texas Supreme Court Justice Dale Wainwright (ret.) suggested that the *Journal* dedicate an issue to the contributions of African-American judges. This special issue is the culmination of that project. [Read more...](#)



David A. Furlow



Leads

The Constitution Imparts Responsibilities as Well as Rights

By Chief Justice Wallace B. Jefferson (ret.)

Whatever was accomplished during my tenure on the Court, my contributions derived from the basic humanity, translated into a judicial setting, that my father epitomized. [Read more...](#)



The author's father, William Douglas Jefferson

Texas Court of Criminal Appeals Judge Morris Overstreet

By Michael Hurd

The tall, dapper, bow-tie-adorned county court judge from Amarillo became the first black Texan to win a statewide election. [Read more...](#)



Judge Morris Overstreet

Chief Justice Carolyn Wright: A Profile in Excellence

By John G. Browning

Chief Justice Wright is the first African-American woman in Dallas to win a countywide election, the first in Texas to win a multi-county election, and the first African-American to lead a Texas intermediate appellate court. [Read more...](#)



Chief Justice Carolyn Wright

A Personal Remembrance of the Unforgettable Justice Henry Doyle

By Hon. Murry B. Cohen

In 1978 Henry Doyle became the first African-American appellate court justice in Texas when appointed by Governor Dolph Briscoe to Houston's First Court of Appeals. [Read more...](#)



Justice Henry Doyle

THE FIRST, THE LAST, THE ONLY:

The Legend of Justice Henry Eman Doyle, the First African-American Associate Justice of a Texas Court of Appeals

By Virgie Lemond Mouton

I met Henry Doyle in 1982 while interviewing for a position as Briefing Attorney at the First Court of Appeals in Houston. I realized I was in the presence of my hero, the first graduate of my law school at Texas Southern University. [Read more...](#)



Justice Doyle and Virgie Mouton in 1983

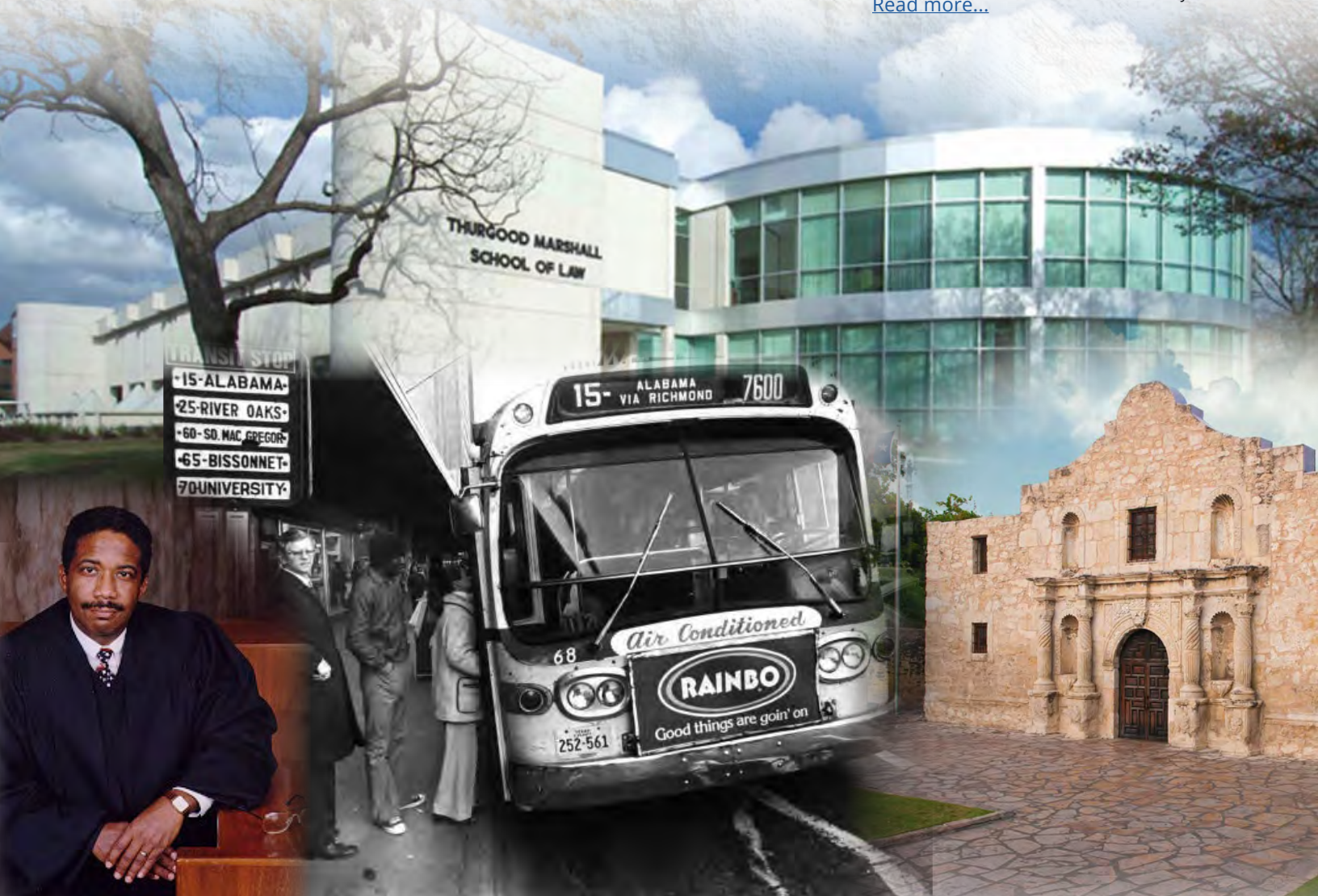
An Interview with Judge Kenneth M. Hoyt

By Hon. Andrew M. Edison

Senior U.S. District Court Judge Kenneth M. Hoyt reflects on his journey to becoming the first African-American man to serve as a federal judge in Texas. [Read more...](#)



Judge Kenneth M. Hoyt



An Interview with the Honorable Gabrielle Kirk McDonald

By Melanie Bragg

Retired Federal Judge Gabrielle Kirk McDonald discusses the road she traveled to become the third U.S. African-American federal judge. [Read more...](#)



Judge Gabrielle Kirk McDonald

The Lady on the Bus Stop

By Hon. Evelyn P. McKee

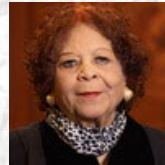
It was a hot and humid afternoon in Houston in the fall of 1967. I was seventeen years old, and one of a handful of Black students who attended a formerly all-White college. [Read more...](#)



Judge Evelyn P. McKee

Hon. Harriet M. Murphy: First Permanently Appointed African-American Woman Judge in Texas

At a civil rights protest in the late 1960s, Harriet Murphy, UT Law School class of 1969, remembered holding a sign stating "Put the Black man in the history books." [Read more...](#)



Judge Harriet M. Murphy

There All the Honor Lies: A Memoir

Book by Judge Harriet M. Murphy

This autobiography of the first permanently appointed female African-American judge in Texas is the story not only of an African-American woman who grew up in a highly segregated society, but of the civil rights movement in its most turbulent years. [Read more...](#)



Reconstruction Politics and the Galveston Seven: The Struggle to Appoint a Judge in the Eastern District of Texas, 1869-72, Part 3

By Stephen Pate

In 1871, President Grant nominated John Bruce of Alabama for the Eastern District of Texas's judgeship. Once again, Texans erupted with incredulity. [Read more...](#)



President Ulysses S. Grant

San Jacinto Justice: The Future Supreme Court Judges Who Won Texas Her Freedom at San Jacinto. Part 2

By Dylan O. Drummond

In this second part, we will meet the five San Jacinto veterans who served simultaneously as District Judges and Associate Judges of the Republic Supreme Court. [Read more...](#)



Depiction of the Battle of San Jacinto's "Twin Sisters" cannons



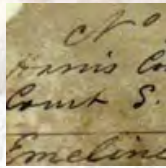
News & Events

The Time to Preserve Texas's Slave Case Records is Now

By Bill Kroger

Texas slavery records locked away in the district and county courts for Texas counties, especially those in East Texas, need to be preserved as soon as possible.

[Read more...](#)



The Original Petition in the 1847 Emeline lawsuit for freedom

Chief Justice Carolyn Wright and John Browning Receive Legal History Award

The J.L. Turner Legal Association Foundation held its annual Scholarship and Awards Gala in Dallas on October 21, 2017.

[Read more...](#)



Chief Justice Carolyn Wright & John Browning

September 7 Hemphill Dinner Will Feature Address by U.S. Fifth Circuit Chief Judge Carl E. Stewart

By Marilyn P. Duncan

The Society's main fundraising event is scheduled for Friday, September 7, 2018, at the Four Seasons Hotel in Austin. [Read more...](#)



Chief judge Carl E. Stewart

GREAT WAR COMMEMORATION ON NOVEMBER 14, 2018

The Society and Supreme Court Will Honor Judges and Governors Who Served

By David A. Furlow

The Texas Supreme Court and the Society will honor the seven Supreme Court Justices, two Court of Criminal Appeals Judges, and three Governors who served in the Great War. [Read more...](#)



Great War Commemorative Pin

Saving and Savoring San Antonio's 300-Year History

By David A. Furlow

The Society celebrates the 300th birthday of San Antonio and the Alamo, and the origins of Texas's Spanish and Mexican law, by serving as one of the sponsors of the Texas General Land Office's 9th Annual Save Texas History Symposium. [Read more...](#)



Save Texas History Symposium poster

Membership & More

Calendar of Events

Officers, Trustees & Court Liaison

2018-19 Member Upgrades

2018-19 New Member List

Join the Society

Visit the Society on Twitter and Facebook!



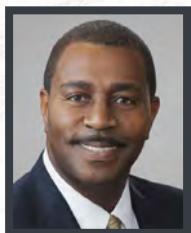
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Hon. Dale
Wainwright

Immediate Past President's *Message*

Before I look back at some of the highlights of the past year, I want to feature two upcoming events on the Society's calendar.

Our **23rd Annual Hemphill Dinner** will be held on Friday, September 7 at 6:30 p.m. at the Four Seasons Hotel in Austin. The Hon. Carl Stewart, Chief Judge of the United States Court of Appeals for the Fifth Circuit, will be our keynote speaker. I invite each of you to attend this special event. For ticket information, please contact Mary Sue Miller at (512) 481-1840 or tschs@sbcglobal.net.

The year 2018 marks the 100th anniversary of the end of World War I. The Society created the **Great War Commemoration Committee** to plan a meaningful celebration. Led by Judge Mark Davidson, the committee is organizing an event to celebrate and memorialize the service of the twelve Texas Supreme Court Justices, Court of Criminal Appeals Judges, and Governors who served in the war. A story about the event, scheduled for November 14 in the Historic Supreme Court Courtroom in the Capitol, appears on page 110 of this issue of the *Journal*.

Important programs from the past year include the **Texas General Land Office's Save Texas History Symposium**, in which the Society sponsored a presentation by Texas State University Professor Patricia Shields on the women's peace movement in Texas during World War 1, and a joint session at the **Texas State Historical Association's Annual Meeting**, where the Society sponsored a panel discussion on the beginnings of law and the courts in Texas. The Society's panelists were Justice Jason Boatright, Dylan Drummond, and David Furlow, moderated by Hon. Craig Enoch. David Furlow played a key role in both programs, as he does every year. The Society is pleased to continue to sponsor these important educational forums and participate with other historical organizations in finding, preserving, and sharing the history of our great state.

The Society Fellows' **Taming Texas Project** also flourished this past year. The second book in the Taming Texas book series, *Law and the Texas Frontier* by Jim Haley and Marilyn Duncan, was released in January and became part of the project's classroom program during the spring. Special thanks to Fellows Chair David Beck and Taming Texas Project Chair Warren Harris for their support of this worthwhile program.

An especially meaningful event that took place during my term was the **Portrait Dedication Ceremony** in honor of two Supreme Court justices from the Reconstruction era—Chief Justice Wesley Ogden and Justice Colbert Coldwell. The Society joined with the Court to sponsor the program, in which Board member Bill Ogden and Society member Colbert Coldwell presented portraits of their respective ancestors to the Court. Former Chief Justice Wallace Jefferson spoke on the occasion.

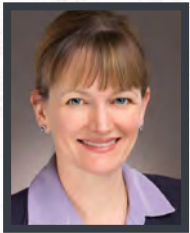
Our **March board meeting** in Dallas was another highlight, with special luncheon guest Harriet Miers sharing insights from her years as White House Counsel to President George W. Bush. She then led a tour of the Bush Presidential Center on SMU's campus. Cynthia Timms organized this memorable event.

The Society's **Journal** continues to shine, with each issue seemingly more interesting and colorful than the previous one. I think you will agree that the current issue on the contributions of African-American judges ends the 2017–18 year on a high note. I am grateful to the editorial team of Lynne Liberato, David Furlow, Dylan Drummond, Marilyn Duncan, and David Kroll for their contributions to this important publication.

Finally, I want to thank the Texas Supreme Court and liaison Justice Paul Green for the wonderfully productive relationship we enjoy with them. And I want to extend my appreciation to the committees and other volunteers for their hard work that brings this all to fruition. The Society's staff—Sharon Sandle, Executive Director, and Mary Sue Miller, Administrative Coordinator—are central to everything we do.

THE HON. DALE WAINWRIGHT *is a shareholder with Greenberg Traurig, LLP and chairs its Texas Appellate Practice Group. He is a former Justice on the Supreme Court of Texas.*

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Marcy Hogan
Greer

Message from the *2018-19 President*

It is my great privilege to serve the Society as its President for the 2018–19 year. Our outgoing President, the Hon. Dale Wainwright, has done so much to advance the Society, and I have big shoes to fill. I want to thank him for his many contributions to and support for the Society.

We sponsored an amazing presentation on “Laying Down the Law: From Austin’s Colony through the Lone Star Republic” at the Texas State Historical Association Conference in March this year. Our esteemed panel of Justice Jason Boatwright, David Furlow, and Dylan Drummond made that part of our history come alive to a large group of historians who uniformly praised the presentation. We have been invited to present again at their conference in Corpus Christi next February.

In addition, Justice Wainwright has commissioned a special ad hoc committee entitled the Great War Commemorative Committee, to research and honor the Supreme Court of Texas and Court of Criminal Appeals justices, as well as three Texas governors, who served our country in World War I. We are grateful that Jeffrey W. Hunt at the Texas Military Museum at Camp Mabry has offered research assistance to track down the Justices’ service records in the archives. The new committee is planning a commemorative event in the Historic Supreme Court Courtroom on the third floor of the Capitol on November 14, 2018—three days after the 100th anniversary of the November 11, 1918, Armistice that ended World War I on the Western Front. We will continue the celebration with a distribution of scholarly papers and the exhibition of books, records, and photos in a reception at the Texas Law Center’s Hatton W. Sumners Conference Room after the courtroom event. We owe a debt of gratitude to Judge Mark Davidson and David Furlow for seizing the occasion of the 100th anniversary of the Armistice to put together this exciting addition to our history.

Justice Wainwright has also led us in creating a more comprehensive and streamlined Portrait Policy to facilitate and expand the Society’s important collection of portraits of Supreme Court Justices exhibited and housed in the Tom C. Clark Supreme Court Building. We have analyzed and enhanced our procedures for receiving and safeguarding this invaluable and highly visible part of our history. And we have a great deal to look forward to in the coming year.

The Society's 23rd Annual John Hemphill Dinner will be held Friday, September 7, at 6:30 p.m. at the Four Seasons Hotel in Austin. Our keynote speaker this year is the Hon. Carl Stewart, Chief Judge of the U.S. Court of Appeals for the Fifth Circuit. Chief Judge Stewart is one of the most respected members of the federal bar, as well as an engaging speaker. Here is a wonderful article about his life and judicial experience that was published in the American Bar Association Journal when he became the Chief Judge: http://www.abajournal.com/magazine/article/meet_the_chief_judge_of_the_nations_most_divisive_controversial. If you would like to attend the Hemphill Dinner, please go to our website now for tickets because we regularly sell out. Many thanks go to Dylan Drummond, who is chairing the Dinner this year. The following morning, on Saturday, September 8, at 8:00 a.m., we will host the annual breakfast for former briefing attorneys and law clerks and Justices of the Court at the Texas Law Center in Austin.

Our Fellows, led by David Beck, continue to provide significant support to the Society. The Fellows are funding the *Taming Texas* book series, which is designed to teach seventh graders about the important role that the judiciary has played in our state history. Following the success of the first book in the series, *Taming Texas: How Law and Order Came to the Lone Star State*, by Jim Haley and Marilyn Duncan, published in January 2016, the Society published the second book, *Law and the Texas Frontier*, in January 2018. The third volume, *The Chief Justices of Texas*, is in production and will be published next year. We are always in need of volunteers for the presentations that we make to teach the books to seventh-grade classes around the state, so please let us know if you would like to participate in one of these one-hour presentations in your city or town. The Taming Texas program would not be possible without Warren Harris, whose vision and passion for the project have made it a wonderful reality.

We continue to be proud of Marilyn Duncan's book on our beloved former Chief Justice Jack Pope, entitled *Common Law Judge: Selected Writings of Chief Justice Jack Pope of Texas*, which was published in 2014—three years before he passed away at the age of 103. Discussions are underway to share the book with a wider audience, including law schools. Chief Justice Pope was truly a legal legend who shared his wisdom, wit, and marvelous ideas generously with the Society for many, many years. He is greatly missed, but his legacy lives on, and the Society is privileged to have preserved and published a representative selection of his writings.

We also look forward to our continued partnership with renowned author James Haley, who wrote the Society's groundbreaking book *The Texas Supreme Court: A Narrative History, 1836–1986*. This first book-length history of the Supreme Court since 1917 was distilled from voluminous materials, requiring hundreds of hours of research and review by many selfless volunteers. Haley's comprehensive knowledge and compelling storytelling has provided us with a fascinating view of the first and formative 150 years of the Court. This book has clearly succeeded in the Society's goal of broadening public interest in the Lone Star State's highest civil court, including shining a bright light on Texas's progressive stances on women's rights and the protection of debtors that stemmed from its colonial days.

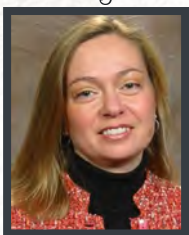
In addition to these amazing books, the Society also publishes a quarterly eJournal that covers the history of the Texas judiciary and its role in the development of this great state. And we continue to cosponsor the Texas Appellate Hall of Fame, which posthumously honors the greatest appellate justices and practitioners in our state. The 2018 inductees will be announced

in September 2018.

Finally, I am most grateful for the invaluable assistance of our excellent staff, Sharon Sandle, Executive Director, Mary Sue Miller, Administrative Coordinator, and Marilyn Duncan, Consulting Editor. Thank you for your support of the Society, and I look forward to serving you as President this year.

MARCY HOGAN GREER *is a partner in the appellate boutique of Alexander Dubose Jefferson & Townsend in Austin, Texas.*

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Sharon Sandle

Recognizing the Paths and Accomplishments of *Texas's African-American Judges*

It has been sixty-eight years since the landmark case *Sweatt v. Painter* challenged the “separate but equal” doctrine of segregation in education and opened the door for Heman Sweatt to attend the University of Texas Law School. This past February, Heman Sweatt’s importance to the Texas legal community was honored by the University of Texas Law School with the dedication of a portrait of him that now hangs in the law school’s atrium.

Although Sweatt created a pathway for other African-American students to follow, that pathway was first opened by African-American lawyers and judges who found a way to enter the legal community in Texas. The earliest African-American lawyers in Texas entered the practice of law when admission to the bar usually required that a candidate “read the law” under the tutelage of an experienced attorney.¹ Although records from that period are scant, Allen W. Wilder may have been the first African-American lawyer in Texas. Wilder was born a slave, but by 1880 Wilder appears to have been practicing law in Washington County, where he ran for election as county attorney in 1886 and for the office of “presiding justice” in 1876.

George W. Fremont became the first African-American member of the San Antonio bar in 1879. Newspaper accounts describe his admission to the bar as including “friendly encouragement” from the local legal community, including the use of private law libraries from several local attorneys. His admission to the bar came after examination by a committee of three local lawyers, after which he was described in the newspaper as no longer “a stranger” to the community but a “colored attorney” with “full authority to practice in the courts of that district.”² The accounts of the legal community welcoming Fremont contrast starkly with some of Allen Wilder’s experiences, which included an incident at a ballot-counting site in 1884 where Wilder was shot by a group of white men and which necessitated the amputation of Wilder’s arm. The path for African-American lawyers and judges in Texas has often been difficult and sometimes dangerous.

¹ John G. Browning and Chief Justice Carolyn Wright, “Unsung Heroes: The Earliest African-American Lawyers in Texas,” *Texas Bar Journal* (December 2014): 960–63. See also Browning and Wright’s article in an earlier issue of this Journal: “Unraveling a Mystery: Who Was Texas’s First African-American Attorney?,” *Journal of the Texas Supreme Court Historical Society* (Winter 2016): 72–81.

² Browning and Wright, “Unsung Heroes,” 962.

Chief Justice Fred Vinson's opinion in *Sweatt v. Painter* is only a few pages long, and there are few grand statements about equality to be found in the opinion. However, the description of the nature of practicing law that forms the basis for the decision is one that resonates today. In explaining why it was important for Heman Sweatt to study at the University of Texas rather than at a separate and segregated school, Vinson writes:

[A]lthough the law is a highly learned profession, we are well aware that it is an intensely practical one. The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned.³

This description of law as a community will be familiar to every lawyer. While lawyers undoubtedly spend countless hours learning and then keeping abreast of the details of the law as it affects their practice, most lawyers would enthusiastically agree that the relationships they have formed with their colleagues in the profession are much more valuable. It was the importance of participation in the legal community that the Court identified as the deciding factor in the *Sweatt* case and the reason why it was necessary for Heman Sweatt to gain admission to the University of Texas Law School.

The Society's annual Hemphill Dinner provides one opportunity for the legal community in Texas to come together and strengthen the relationships that are so important to the practice of law. At this year's Hemphill Dinner, our featured speaker will be the Hon. Carl E. Stewart, Chief Judge of the U.S. Court of Appeals for the Fifth Circuit. I was fortunate to hear Judge Stewart speak at the State Bar of Texas Annual Meeting in 2017, and his wit and humor in his description of his experiences as a lawyer and judge are inspirational.

Chief Judge Stewart has been quoted as saying that he decided to become a lawyer because lawyers "made a difference in the community, both in effecting social change and improving life in the community."⁴ Texas is fortunate that our legal community is rich with African-American lawyers and judges whose influence on the legal landscape of our state continues to be felt. The Texas Supreme Court Historical Society is proud to recognize the contribution of these lawyers and judges to the Texas legal community in this issue of our Journal.

³ *Sweatt v. Painter*, 339 U.S. 629, 634 (1950).

⁴ M. Curriden, "Meet the Chief Judge of the Nation's Most Divisive, Controversial and Conservative Appeals Court," *ABA Journal* (February 2014).

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

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Fellows Column

By David J. Beck, Chair of the Fellows



Photo by Alexander's Fine Portrait Design-Houston

Thanks to the work of coauthors Jim Haley and Marilyn Duncan, we are pleased to report that the manuscript for the third book in our judicial civics and court history project, *Taming Texas*, is nearing completion. The third book in the series is entitled *The Chief Justices of Texas*, and contains interesting stories about the twenty-seven Chief Justices of the Supreme Court of Texas. The book is intended to educate seventh-grade readers on the era in which each Chief Justice served and why their work was important to the Court. Chief Justice Hecht is currently writing the foreword for the book, and we appreciate his continuing support of our *Taming Texas* project.

The Houston Bar Association (HBA) will again use our *Taming Texas* materials to teach students during the 2018–19 school year. We appreciate the HBA and its President, Warren Harris, partnering with us on *Taming Texas* again this year. It takes over a hundred volunteers to reach the thousands of students we teach each year, and we could not implement this vast program without the HBA's unprecedented support. Warren has appointed Justice Ken Wise and Richard Whiteley as the HBA program co-chairs to recruit volunteer attorneys and judges to teach the seventh-grade students in the upcoming school year. If you would like to participate in this important program, please contact the HBA or one of the co-chairs.

We are also glad to report that our *Taming Texas* project is growing beyond Houston. For the first time, the Dallas Bar Association will be teaching *Taming Texas* this fall. Special thanks go to Dallas Bar Association President Michael Hurst for implementing our program in Dallas schools. If you would like to volunteer to teach in the Dallas area schools, please contact Melissa Garcia at mgarcia@dallasbar.org.

Being in the classroom and teaching students about the rule of law is one of the most important things we as lawyers can do to educate the next generation. This worthwhile project would not be possible without the Fellows. As a result of the generosity of the Fellows, we were able to produce the *Taming Texas* books and website, and to continue developing additional works in the series. You can access a free electronic copy of our first two books, *Taming Texas: How Law and Order Came to the Lone Star State* and *Law and the Texas Frontier*, as well as other materials at www.tamingtexas.org.

We are in the process of nominating the Fellows Class of 2018. If you are not currently a Fellow, please consider joining the Fellows and helping us with our important work. Also, we

are in the process of considering future projects. Please share with us any suggestions you may have.

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

DAVID J. BECK *is a partner with Beck Redden LLP in Houston.*

FELLOWS OF THE SOCIETY

Hemphill Fellows

(\$5,000 or more annually)

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

Greenhill Fellows

(\$2,500 or more annually)

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

*Charter Fellow

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David A. Furlow

Contributions of *African-American Judges:* From 1641 to Today, from Maryland to Texas

"Only in a free society could right triumph in difficult times, and could civilization record its magnificent advancement. In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute."

— Justice Thurgood Marshall, *Furman v. Georgia*, 408 U.S. 238, 371, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972) (Concurring Opinion).

"I had sworn to administer justice 'faithfully and impartially.' To do otherwise would be to violate my oath. That meant I had no business of imposing my personal views on the country. Nor did I have the slightest intention of doing so."

— U.S. Supreme Court Justice Clarence Thomas,
My Grandfather's Son (New York: HarperLuxe 2007), 238.

Last year, soon after becoming the Society's President, Texas Supreme Court Justice Dale Wainwright (ret.) suggested that the *Journal* dedicate an issue to the contributions of African-American judges. This special issue is the culmination of that project begun nine months ago. We'll examine African-American contributions to the judiciary from the extraordinary Mathias de Sousa, who rose from being an indentured servant with the status of a slave to become the master of a trading vessel and a member of the Maryland General Assembly in 1641. Then we'll turn our gaze to modern times to hail those African-American pioneers who have served the public in every level of Texas state and federal courts since 1964.



Mathias de Sousa, America's first African American magistrate, 1641. Historic St. Mary's City website.

Let's begin with the Texas Supreme Court. The Hon. Wallace Jefferson, former Chief Justice of the Texas Supreme Court, begins this issue with his personal essay "The Constitution Imparts Responsibilities as Well as Rights." Chief Justice Jefferson led the Supreme Court from 2004 until October 1, 2013. Appointed to the Supreme Court in 2001 and named Chief Justice three years later, Jefferson made Texas judicial history as the Court's first African-American Justice and Chief Justice. In his essay, Chief Justice Jefferson discusses how his father, U.S. Air Force Captain William Douglas Jefferson, offered an inspirational example for his son. Chief Justice Jefferson then shows how everything he accomplished while on the Court reflects the lessons his father's life epitomized.

From the Supreme Court we move to the Court of Criminal Appeals. Acclaimed Texas historian Michael Hurd, director of Prairie View A&M University's Texas Institute for the Preservation of History and Culture and author of *Thursday Night Lights: The Story of Black High School Football in Texas*, examines the life and legacy of Judge Morris Overstreet. Hurd shows us how Overstreet transcended the limitations of Amarillo's segregated school system through hard work as a prosecutor and his own self-confidence to become the first African American to win statewide office on the Texas Court of Criminal Appeals.

Next, legal scholar and trial lawyer John G. Browning applies his in-depth, award-winning expert knowledge of the Lone Star State's African-American and civil rights history as he presents "Chief Justice Carolyn Wright: A Profile in Excellence." In that article we learn how Chief Justice Wright, a proud fourth-generation Texan, drove herself to excel in a school that transcended racial boundaries, became the first African-American chosen to attend Girls' State in Delaware, attended Washington, D.C.'s Strayer College to obtain a business degree. She demonstrated the drive and discipline necessary to become the first African-American woman in Dallas to win a countywide election, the first in Texas history to win a multi-county election, and the first African-American to lead a Texas intermediate appellate court. It's an aspiring story the *Journal* is proud to present.

We then drive south on I-45 from Dallas to examine the life of one of Houston's most well-beloved judges, the late Henry Doyle, the first African-American to serve as a Justice of the First Court of Appeals. Wielding one of the most talented and creative pens in the history of the Texas judiciary, the Hon. Murry Cohen, First Court of Appeals Justice (ret.), reveals the many ways Justice Doyle, his colleague on the Friendly First, changed Texas law for the better, beginning with the lawsuit that desegregated the Harris County Courthouse's cafeteria.

Next, Virgie Lemond Mouton, Assistant Dean for Student Development and Academic Support at the Thurgood Marshall School of Law, offers yet another perspective of Justice Doyle, that of the Briefing Attorney and aspiring attorney he inspired and mentored. In addition, Ms. Mouton analyzes Justice Doyle's role in one of U.S. Supreme Court Justice Thurgood Marshall's most important cases, *Sweatt v. Painter*, 339 U.S. 629, 633 (1950). *Sweatt* was the epic lawsuit that Maryland civil rights attorney Marshall filed on behalf of Houston postman and aspiring law student Heman Sweatt to desegregate the University of Texas Law School.

We then segue from the appellate courts to the federal judiciary. In her notice of the

September 7, 2018 Hemphill Dinner, Marilyn Duncan shines a bright light on the fascinating life, experience and accomplishments of the Society's keynote speaker, Carl E. Stewart, Chief Judge of the U.S. Court of Appeals for the Fifth Circuit.

U.S. Magistrate Judge Andrew Edison then shares a colleague's appreciation for the quiet professionalism of Texas's African-American federal district court judges in his interview with U.S. District Court Judge Kenneth Hoyt, the Senior Judge of the U.S. District Court for the Southern District of Texas.

Houston trial attorney, American Bar Association leader, and author Melanie Bragg continues our history of prominent African-American federal district court judges in her moving "Interview with the Honorable Gabrielle Kirk McDonald." Ms. Bragg reconnected with her mentor and friend via Skype to help all of us learn about the unique path Judge McDonald traveled to become the third African-American federal judge in Texas and then to help create and preside over the first International Criminal Tribunal for the Former Yugoslavia.

We return from the federal trial court bench to Austin to share the inspiration the Hon. Evelyn P. McKee drew from a wise stranger in "The Lady on the Bus Stop." A skilled and successful story-teller, Judge McKee takes us back to that hot and humid Houston afternoon in 1967 that inspired her throughout her career.

Thanks to the University of Texas Press, we offer a reprint of Dr. Gregory J. Vincent, Virginia A. Cumberbatch, and Leslie A. Blair's article about Judge Harriet M. Murphy that appeared in *We Saw It: The Story of Integration at the University of Texas at Austin*. We also include an overview of Judge Murphy's *There All the Honor Lies: A Memoir*, another book published recently by UT Press. The story of Judge Murphy, the first permanently appointed female African-American judge in Texas, is an inspirational one.

One of the *Journal's* favorite legal scholars, Society Trustee Stephen Pate, brings his brilliant examination of federal judicial politics in Texas to a superb conclusion in "Reconstruction Politics and the Galveston Seven: The Struggle to Appoint a Judge in the Eastern District of Texas, 1869-72." The final installment in a three-part series analyzing the politics of federal judicial appointments, Pate focuses on the importance of finding the right federal judge to serve in Galveston, then known as the "Queen of the Gulf." The first two parts, published in the Winter and Spring 2018 issues of this *Journal*, described how the resignation of U.S. District Court Judge Charles Watrous led to a long and contentious battle to replace him in what was then the Eastern District of Texas. The final phase of this intensely political process began in April 1870, a year after the Judge Watrous stepped down, after the first two nominees among a string of potential candidates failed to win Senate approval.

The *Journal's* own Deputy Executive Editor, Society Trustee Dylan Drummond, completes his magisterial examination of how Sam Houston's victory at the April 21, 1836 Battle of San Jacinto filled the ranks of the Republic of Texas's judiciary with men of courage, competence, and character in "San Jacinto Justice, Part 2." Anecdotes and illustrations bring this eighteen-minute but abidingly important battle and its political and legal consequences to life.

Bill Kroger, the Chair of the Texas Supreme Court's Historical Records Preservation Task Force from 2009 through the present, begins our news coverage with a rousing call for action. Kroger makes a powerful case that this is the time to preserve Texas's slave-case court records. Public support, organizational efforts, and adequate funding can save these unique records if we begin *now*.

Our coverage of news and upcoming events includes my own status report on the Society's Great War Commemorative Committee project. Our Chair Judge Mark Davidson is now selecting scholar writers to provide the Society's members and Fellows with biographies of the seven Texas Supreme Court Justices, two Court of Criminal Appeals Judges, and three Texas Governors who answered their nation's call to serve during the First World War.

I offer a "Preview of the September 14, 2018 General Land Office Save Texas History Symposium" celebrating the 300th anniversary of the founding of San Antonio.

But what about Mathias de Sousa, America's first African-American magistrate, a man who mastered his own destiny long before many would expect? He served as an American magistrate, a local official who possesses the power specified under a statutory grant of authority, that is, a law-maker, nearly four centuries ago.¹ He was the first African-American elected by his peers to sit in a legislative assembly.² David S. Bogen, Professor of Law at the University of Maryland School of Law, offers us a fascinating portrait of a man whose life spanned the early seventeenth century Atlantic world.

According to Liber (Book) F of the Maryland Proprietary Records, Mathias began life as an indentured servant who came to Maryland in 1635.³ Mathias worked for Jesuit priests on a mission to establish churches in North America. Much about his life remains mysterious:

A few documents from the first days of the colony mention a person with that name or a variant thereof: headright claims, a reference in an estate inventory, a deposition, a mention in general assembly records, and several documents in debt litigation. The references are spare—a tantalizing glimpse that leaves most of his life to the imagination, such as when or where de Sousa was born or died, why he came to Maryland, what he thought of the land, what ideas he held, who his friends were, or how other colonists treated him. Nevertheless, these documents and the

¹ Bryan A. Garner, *Black's Law Dictionary* (St. Paul, Minn.: West Publishing, Abridged 9th edition, 2010), 814 (defining "magistrate").

² David S. Bogey, "Mathias de Sousa: Maryland's First Colonist of African Descent," Research Notes & Maryland Miscellany, *Maryland History Magazine*, 96(1) (Spring 2001), 68–85, https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1712&context=fac_pubs. During the seventeenth century, spelling was never uniform, so Maryland records refer to the same man both as "Matthias" and as "Mathias" with one *t*.

³ Garry Wheeler Stone, "Fur Traders and Field Hands: Blacks in Manorial Maryland, 1634–1644," unpublished manuscript, 1984, available at the Maryland State Archives, Annapolis, Maryland. See also "Mathias de Sousa file, MSA SC 3520-28," *Maryland State Archives, Special Collections (Biographical Series)*; David A. Furlow, "From Forts to Courts: From the Law of Force to the Force of Law in Early America," *Fifth Circuit C.L.E. Program* (Houston: Federal Building, April 13, 2012).

other records of the period provide a reasonable basis for a few inferences.⁴

Let's examine those colonial records and the inferences they raise.

A Jesuit priest identified this young man in a landholder's record as an "assignee of Mr. Andrew White brought into the province Anno 1633...Mathias Sousa, a Molato."⁵ Andrew White, a Jesuit priest who came on the *Ark*, brought de Sousa to Maryland. "Mulatto" referred to a person of mixed race, then described as a "mule," a half-breed, signifying someone with mixed African and European ancestry. "De Sousa's last name supports the suggestion that one of his ancestors was Portuguese, but the name is also found in Spain and among Spanish or Portuguese Jews."⁶ The name suggests that he was the son of a Portuguese settler, possibly of Sephardic Jewish ancestry, and a Congolese woman, who came to Maryland with the Jesuits.

Mathias de Sousa came to America before race-based slavery took its final form. As Maryland historian Robert J. Brugger observed,

Not all Africans were "heathens" [in seventeenth century Maryland]. Not all blacks were "slaves"—meaning that their service extended their entire lives and their children inherited lifetime bondage. Father White, who in 1634 had been accompanied by a mulatto servant named Matthias de Sousa, later imported another named Francisco. These unfree men, likely Christians, may have served for only a fixed term. In 1653 a black servant named John Baptiste successfully petitioned the provincial court for his freedom. He stated that he had agreed to work for his former master a limited time and later had been sold as a slave.⁷

It was not until later in the seventeenth century that the proprietors of Maryland and their colonial officials began treating Africans and African-Americans as commodities rather than as men and women.⁸

A bronze bas-relief of Mathias de Sousa, created by Mary de Packh in 1987, is at the center of a historical marker designed by Peter Copeland in Historic St. Mary's City, Maryland, the first capital of America's English Catholic colony. The copper plate attached to the monument's face reads as follows:

Mathias de Sousa was the first black Marylander. Of African and Portuguese descent, he was one of nine indentured servants brought to Maryland by Jesuit missionaries and was on the *Ark* when Lord Baltimore's expedition arrived in the St. Mary's River in 1634. His indenture finished by 1638 and he became a mariner and fur trader. In 1641 he commanded a trading voyage north to the Susquehannock Indians and, in 1642, sailed as master of a ketch belonging to the Provincial Secretary

⁴ Bogey, "Mathias de Sousa," 68.

⁵ *Land Office Records of Maryland (Patent Record, Original) 1646-1657*, Liber BAH, Folio 65, MSA S920-4, 1/29/2/45.

⁶ Bogey, "Mathias de Sousa," 72.

⁷ Robert J. Brugger, *Maryland: A Middle Temperament, 1634-1980* (Baltimore: John Hopkins University Press, 1988), 43.

⁸ *Ibid.*

John Lewger. De Sousa departed and returned to this river many times. He anchored near here and walked to Lewger's Manor House at St. John's. While living there he served in the 1642 legislative assembly of freemen. No record remains of de Sousa's activities after 1642 but his legacy of courage and success is regarded with great pride by all the citizens of St. Mary's County and Maryland.⁹

In short, a group of white, male property owners elected de Sousa to serve as a representative in the Maryland Assembly.

Although he entered Maryland as an indentured servant, Mathias became a ship owner and merchant by 1641. He commanded crews that consisted, in part at least, of white men.¹⁰ As a property owner, he testified about his actions as a merchant and ship captain through a November 3, 1642 deposition he swore before John Lewgar, Maryland's Provincial Secretary, during litigation that concerned debts claimed by John Prettiman, another Marylander. Mathias testified as follows:

Mathias de Sousa made oath that about March [1641] was twelvemonth he was appointed by mr Pulton to goe in his pinace as skipper & trader to the Sesquihanoughs [Susquehannock Indians] & by him appointed to hire men at Kent for the voyage, & that he would write to mr brent to assist him in it & that at his coming to Kent wth the knowledge & consent of mr brent he hired John Prettiman to goe vpon the voyage, & that he hired him for 200 + tob. p month, and that accordingly John Prettiman was out upon the voyage 2 months (within 3 daies) & that by his meanes & presence he verily beleeveth the pinace & men were saved at that time from destruction by the sesquihanowes.¹¹

Mathias de Sousa thus brought experience as a merchant sea captain and colonial trader to Maryland's General Assembly when it convened on March 23, 1641: "Assembled ... Matt das Sousa."¹² This is the only time de Sousa appears in records when the General Assembly was serving as both a legislature and a court.¹³

Maryland's General Assembly combined legislative and judicial functions in the same way that a County Court does in Texas today. A modern analogy is Harris County's County Court, a body that combines executive, legislative, and judicial power, now presided over by Harris County's County Judge Ed Emmett.

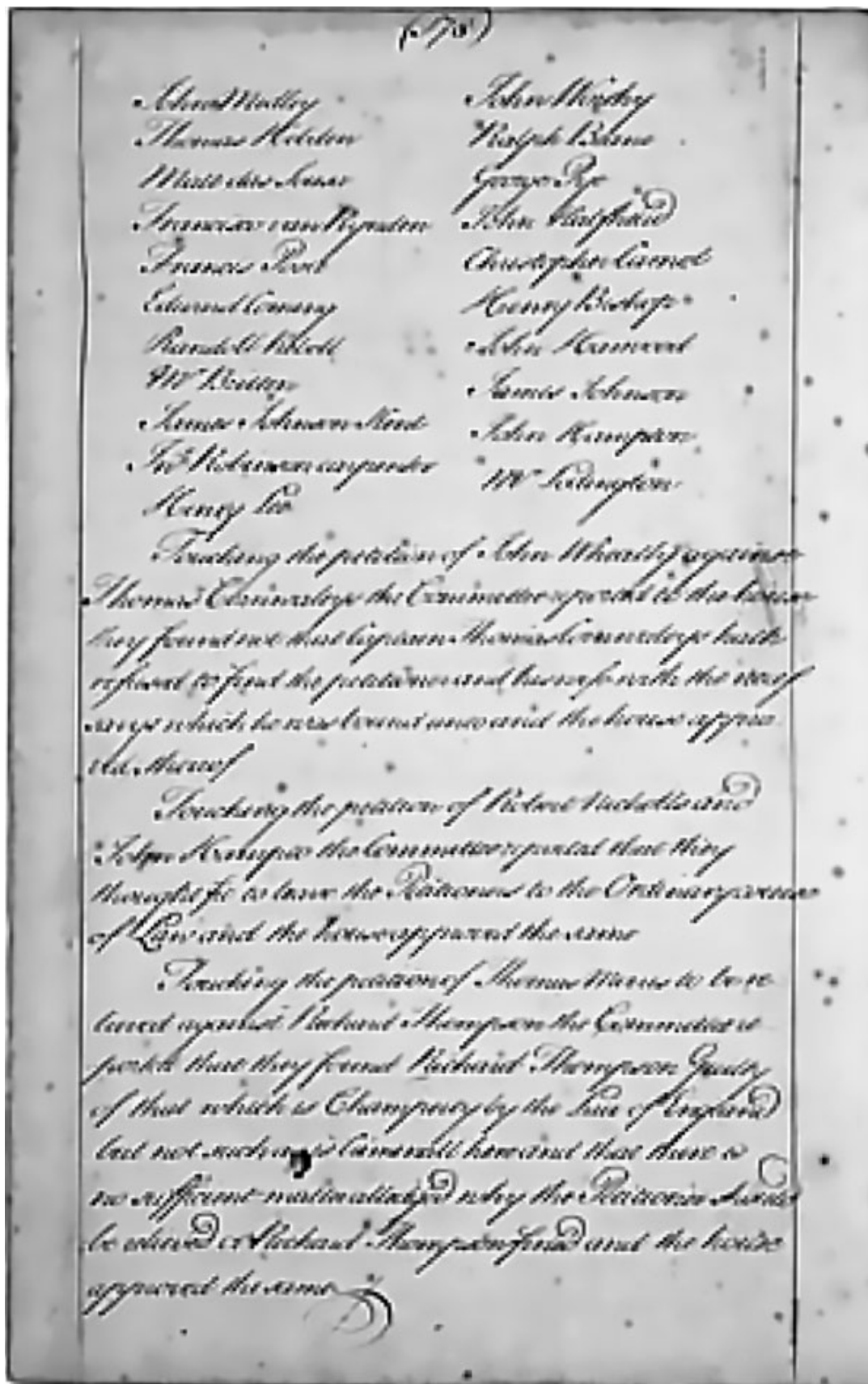
⁹ "Mathias de Sousa," State of Maryland Historical Marker dedicated October 12, 1987.

¹⁰ "Mathias de Sousa," *Exploring Maryland's Colonial Roots* website, Maryland Public Television, <http://mdroots.thinkport.org/library/mathiasdesousa.asp>.

¹¹ "*Claiborne v. Cloberry et al.* in the High Court of Admiralty," *Maryland Historical Magazine*, 27 (1932): 344. See also J. Frederick Fausz, "Present at the 'Creation': The Chesapeake World That Greeted the Maryland Colonists," *Maryland Historical Magazine*, 79 (1984): 17.

¹² See *General Assembly Upper House (Proceedings), 1637-1658*, Liber MC, Folio 178, MSA S-977-1, 2/20/4/42, in "Mathias de Sousa," *Exploring Maryland's Colonial Roots* website, Maryland Public Television, <http://mdroots.thinkport.org/library/mathiasdesousa.asp>. Bogey, "Mathias de Sousa," 78, citing *Archives of Maryland*, 1:119-120.

¹³ Bogey, "Mathias de Sousa," 78.



Assembly record from March 23 showing de Sousa's participation in the Maryland General Assembly as "Matt das Sousa," Maryland Public Television image. (Arrow added for emphasis.)

Maryland's colonial records do not reflect that de Sousa participated earlier in the session, nor do they show anyone voting for him or providing anyone else with a proxy. Yet on March 23, 1641 he participated in Maryland's colonial legislature as a freely-elected free man entitled to vote on issues of colonial law, legal procedure, and land litigation.¹⁴ We can envision the setting where de Sousa served as a magistrate because archaeologists at Historic St. Mary's City have excavated the site of that March 23, 1641 General Assembly.



Photo by Bob Friesel, St. John's Site, Historic St. Mary's City, Wikimedia Commons.

The General Assembly de Sousa attended met at the stately, two-story home of the colony's Provincial Secretary John Lewgar,¹⁵ an Oxford-educated friend of Maryland's Proprietary Governor Leonard Calvert.¹⁶ Any reader interested in seeing one of the places American self-government began can visit the Lewgar home. A team of Historic St. Mary's City archaeologists led by Henry M. Miller partially reconstructed this palatial home in 2008.¹⁷ I fell in love with the site when I visited Historic St. Mary's City after arguing a case in the U.S. Supreme Court. I commend it

¹⁴ *Ibid.*

¹⁵ Arthur Pierce Middleton and Henry M. Miller, "John Lewgar and the St. John's Site: The Story of Their Role in Creating the Colony of Maryland," *Maryland Historical Magazine* 103, 2 (2008), 132–65.

¹⁶ John D. Krugler, *English & Catholic: The Lords Baltimore in the Seventeenth Century* (Baltimore: John Hopkins University Press, 2004), 170; Brugger, *Maryland: A Middle Temperament*, 13–14; Bogey, "Mathias de Sousa," 78, citing *Archives of Maryland* (Baltimore: Maryland State Archives, 1979), 1:115–120.

¹⁷ Middleton and Miller, "John Lewgar and the St. John's Site," 133.

to everyone.

Lewgar built a mansion twice as large as the usual Chesapeake colonial home in the 1630s, which typically lacked wooden floors, glass windows, or plaster walls.¹⁸ But he used riven oak and chestnut clapboards to build his home, while his work crews must have combed miles of beach to find the fine, rounded cobblestones that serve as its foundation.¹⁹ His team plastered the hall and parlor walls with burnt oyster limestone and filled the windows with glass panes cut in the shapes of triangles and pentagons. It was a fine place to conduct a court or convene a legislature.

What did de Sousa do as a Maryland magistrate? He helped develop Maryland's law of creditors' rights as a private party, a legislator, and as a judge of disputes decided in the General Assembly. In its 1641–42 term, Maryland's General Assembly enacted a statute that declared that a debtor with goods insufficient to pay a debt could be brought before a judge and could be compelled to satisfy the debt through labor.²⁰

John Hollis, a creditor who claimed to own an interest in Prettiman's crops in October, obtained a writ of execution against de Sousa to compel him to satisfy a debt of five hundred



Photo by Bob Friesel of the archaeologically excavated and partially reconstructed interior of the St. John's Site, Historic St. Mary's City, where Mathias de Sousa participated in Maryland's General Assembly. Wikimedia Commons.

¹⁸ *Ibid.*, 139.

¹⁹ *Ibid.*, 140.

²⁰ Bogey, "Mathias de Sousa," 79, citing *Archives of Maryland*, 1:152–53.

pounds of tobacco, the standard measure of wealth on Maryland's Tobacco Coast.²¹ The court's writ of execution directed the Sheriff of St. Mary's to "seise the person of mathias de Sousa to sa[t]isfie vnto John hollis soo+ tob wth cask wch he hath recovered of him by iudgemt of Court: and what you shall doe her in certifie without delay after such yor seizure."²² In short, de Sousa presented the General Assembly, in its role as a colonial court, with a case or controversy that required a judicial resolution.

Maryland's colonial governor issued a warrant staying execution until further notice

whereas mr John Lewger alledgeth that the person of Mathias de sousa against whom you have an exequution in yor hands as yet vnserved is bound to him the said John Lewger by Indenture of service, & hath vndertaken to prove his said allegation at his perill These are therefore to will & require you to forbear to serve the said exequution vntill further order in that behalfe. And this shalbe yor warrant. To the Sheriff of St maries Signed Leonard Calvert...²³

The General Assembly then used John Lewgar's employment of de Sousa as a test case to determine the priority of competing claims to labor services, as a December 5, 1642 record of the Provincial Court explained:

The allegation of mr Lewger touching the pson of Mathias de Sousa agst the exequution of John Hollis was found for mr Lewger & adiudged by the Court that the covenant of the said Mathias for disposing of his pson to the satisfaction of Mrs [sic] Lewgers iust debts was valid, & that exequution was to issue upon his pson on behalfe of the said John hollis in the same order & to the same effect as other exequutions vpon goods.²⁴

Although 1642 ended with de Sousa's temporary, court-ordered indenture to work off a debt, he was still a free man, for John Prettiman, a white colonial settler, suffered the same fate: a court-ordered period of debt servitude.²⁵

Mathias de Sousa's life story demonstrates that the course of American history was never predetermined. Under different circumstances, early indentured servitude for Africans and African-Americans might, just might, have evolved not into race-based slavery but into something far less permanent and far less pernicious. The de Sousa magistracy, as limited by time and circumstances as it was, deserves to be remembered as the first time that an African-American won the support of American voters and won the right to shape American law. As Professor Bogey observes,

With the exception of the designation of de Sousa as mulatto in the headright

²¹ Brugger, *Maryland: A Middle Temperament*, 16–17, 41–42.

²² Bogey, "Mathias de Sousa," 78–79, citing *Archives of Maryland*, 1:152–53.

²³ Bogey, "Mathias de Sousa," 79, citing *Archives of Maryland*, 4:138.

²⁴ Bogey, "Mathias de Sousa," 79, citing *Archives of Maryland*, 4:156.

²⁵ Bogey, "Mathias de Sousa," 80.

[claim] of [Jesuit] Father White, no other recorded document of the period makes reference to his race. A free man who made contracts, led a trading expedition, gave a deposition for court proceedings, and voted, but whose debts led him into indentured servitude (possibly he and Prettiman borrowed from Lewger and Hollis to do some trading on their own), de Sousa was an equal member of society.²⁶

After 1642, Mathias de Sousa disappears from the historical record. We do not know whether he moved away or died. But we do know that he made a difference and left an example.

A later African-American jurist from Maryland, U.S. Supreme Court Associate Justice Thurgood Marshall, hailed Mathias de Sousa as America's first African-American magistrate.²⁷ Justice Marshall commemorated de Sousa's memory by convincing the State of Maryland to memorialize de Sousa with the monument that began this column. The judges and justices who have served in Texas courts have fulfilled the promise of freedom and equality that first beckoned Mathias de Sousa to serve and represent his fellow citizens in 1641.

²⁶ *Ibid.*

²⁷ The image at the beginning of this column can be found at "Mathias de Sousa: From Indentured Servant to Freeman," Historic St. Mary's City website, <https://hsmcdigshistory.org/research/history/mathias-de-sousa/>.

DAVID A. FURLOW is a First Amendment attorney, historian, photojournalist, and archaeologist.

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The Constitution Imparts Responsibilities as Well as Rights

By Hon. Wallace B. Jefferson

My father, William Douglas Jefferson, died during the summer of 2013. Members of the Supreme Court of Texas attended his funeral, as did Governor Perry and many friends and family. My brother Lamont and I gave eulogies. Mine tried to encapsulate themes that defined his legacy and inspired me:

I have spent the last few days reading my father's master's thesis. I wish I could have been there to hear him defend it. He believed that public policies built around race identification, especially those designed around the notion that race defines our roles in society, were misguided. We are more complex than that. We are citizens. The very last line in the thesis was: "Quality education, in the long run, is one of the most effective measures for social reform, and this is the task that should concern policy-makers." This is what George Washington and the other Jefferson, Thomas, emphasized.

The objective, said my father, "is a leveling of all barriers to preference. Variations in the ethnic composition of the classroom have no more to do with the quality of education than variations in hair color, eye color, height, or obesity." The focus for societal improvement should be not on race, but rather on strategies "to benefit the entire range of the lower-class strata." We should build our reforms to address the "disproportionately high number of citizens existing at the poverty level."

He lived his life, before he wrote those words, and after, on the fundamental proposition that our federal Constitution frees individuals to achieve their dreams according to their talents. He wanted a legal climate that rejects special favor for the privileged, and favors those who desire "full participation in American society."

This may explain why he resorted to fundamentals. Education. Defense of his country. Strong family ties. Faith. He lived in an era of racial oppression. His answer: Self-improvement. A life of service to his country. Basic honesty, each day he lived.

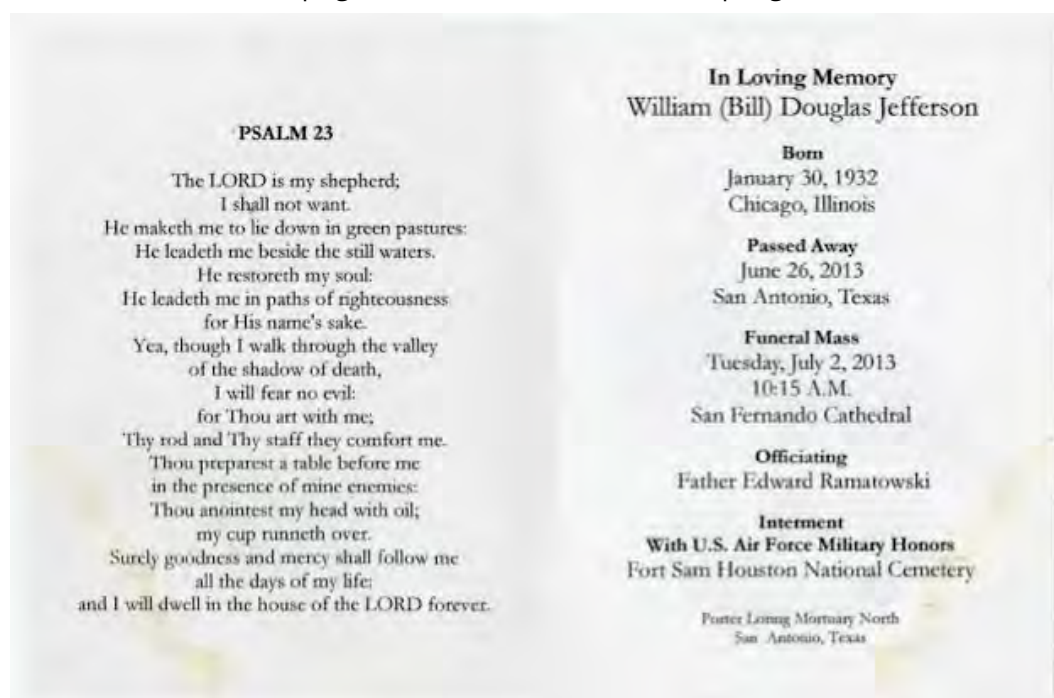
He did not preach these themes to his kids. He displayed these ideas to each of us by example.

He was larger than life: 230 pounds when he retired from the United States Air Force. A giant. Gentle, but disciplined. Intimidating, but kind.

On March 6 of this year, [2013], he attended my State of the Judiciary Address to the Legislature. No longer a giant. In a wheelchair. No longer intimidating. But still kind. Still disciplined. And glowing in the notion that his children had achieved full participation in American society. I looked down on Bill and Joyce Jefferson as I was giving the Judiciary address, and thought how fortunate I am to have been their son. He is looking down on us now. I can see his gentle smile and kind eyes.



Above left: Portrait of my father, William Douglas Jefferson. Above right: Front cover of my father's memorial service program. Below: The second and third pages of the memorial service program.



Whatever was accomplished during my tenure on the Court, my contributions derived from the basic humanity, translated into a judicial setting, that my father epitomized. Thus, the Court emphasized equal access to the courts, whether the litigant was a Fortune 500 company or an individual unable to afford a lawyer.

Below and on next page: House Concurrent Resolution 22, 82nd Texas Legislature,
First Called Session June 27, 2011, *Portal to Texas History*.

HOUSE CONCURRENT RESOLUTION

1 WHEREAS, Access to the courts is crucial for individuals
2 seeking justice, such as victims of domestic violence, veterans
3 wrongly denied their benefits, and families improperly evicted from
4 their homes, and the integrity of the civil justice system demands
5 that this access be available to every Texan, regardless of
6 individual financial circumstances; and

7 WHEREAS, Today, some 5.7 million residents of the Lone Star
8 State, including many who are elderly and disabled, qualify for
9 legal aid, yet funding serves less than a fourth of those in need;
10 and

11 WHEREAS, Members of the Texas Supreme Court have strongly
12 advocated for adequate funding to ensure that all citizens have
13 equal access to the civil justice system, and their efforts have
14 increased awareness of the importance of legal aid and the
15 necessity for coordination and support of pro bono work by members
16 of the State Bar of Texas; and

17 WHEREAS, These endeavors are greatly benefitting innumerable
18 Texans and advancing the cause of justice throughout the Lone Star
19 State; now, therefore, be it

20 RESOLVED, That the 82nd Legislature of the State of Texas,
21 1st Called Session, hereby commend the members of the Texas Supreme
22 Court for their actions in support of legal aid services and honor
23 them for their work in promoting access to justice for the state's
24 most vulnerable citizens; and, be it further

1 RESOLVED, That an official copy of this resolution be
2 prepared for the Texas Supreme Court as an expression of high regard
3 by the Texas House of Representatives and Senate.

Madden
Hartnett
Pitts

David Newhall
President of the Senate

Joe Straus
Speaker of the House

I certify that H.C.R. No. 22 was adopted by the House on June 27, 2011, by a non-record vote.

Robert Haney
Chief Clerk of the House

I certify that H.C.R. No. 22 was adopted by the Senate on June 27, 2011, by a viva-voce vote.

Patry Spaul
Secretary of the Senate

APPROVED: 19 Jul '11

Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:00 pm
JUL 27 2011
Colby Hunter III
Secretary of State

4

The Court worked to ensure a justice system in which kids are not penalized disproportionately, for the same offense, based on race or disability. The Court created a commission to improve the lives of children, youth, and families in the judicial system. It pursued technological innovation that expanded transparency in judicial proceedings, so that the public could view arguments on the web, and easily review pleadings and briefs on the web. The Court thus battled against a perception that the third branch is an oasis for only the privileged few.¹

¹ See, e.g., Wallace B. Jefferson, State of the Judiciary Presented to the 83rd Legislature, Austin, Texas, March 6,



Photo of my father while he served in the U.S. Air Force.

My father, then a Captain in the United States Air Force, wrote to *Time Magazine* three weeks after Martin Luther King's assassination. In that tempestuous time, my dad suggested that adherence to the Constitution is the precursor to justice:

The Constitution imparts responsibilities as well as rights. When we conscientiously strive to exercise the responsibilities of citizenship imparted or implied under the Constitution, we automatically serve to eliminate the causes of social injustice.²

Amen to that.

2013, <https://www.sll.texas.gov/assets/pdf/judiciary/state-of-the-judiciary-2013.pdf>; Wallace B. Jefferson, State of the Judiciary Presented to the 82nd Legislature, Austin, Texas, February 23, 2011, <https://www.sll.texas.gov/assets/pdf/judiciary/state-of-the-judiciary-2011.pdf>.

² Family members referred to my father's letter to *Time Magazine* in his obituaries: <http://porterloring.tributes.com/obituary/show/William-Douglas-Jefferson-102531773>; "William Douglas Jefferson," Remember—U.S. Air Force. Legacy.com website, <http://www.legacy.com/memorial-sites/air-force/obituary.aspx?n=William-Jefferson&pid=165575671&ua=TKUr%2bfNrdHpeQW4aCv%2bHsw%3d%3d>.



THE HON. WALLACE B. JEFFERSON served as Chief Justice of the Supreme Court of Texas from 2004 until October 1, 2013. Appointed to the Supreme Court in 2001 and named Chief Justice three years later, Jefferson made Texas judicial history as the Court's first African-American Justice and Chief Justice. After retiring from the Court in 2013, he joined the law firm of Alexander Dubose Jefferson Townsend LLP as a name partner and now practices appellate law. He also is Treasurer of the American Law Institute, Chair of the Texas Commission to Expand Civil Legal Services, and serves on the Board of Advisors of the Justice Sandra Day O'Connor Judicial Selection Initiative.

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Texas Court of Criminal Appeals Judge Morris Overstreet

By Michael Hurd

In the early 1960s, Texas began to experience a striking increase in the number of black elected officials. The numbers progressed from fewer than seven in 1964 to 472 in 1993.¹ Historic gains, to be sure. However, none stood out more than Morris Overstreet, the tall, dapper, bow-tie-adorned county court judge from Amarillo who captured a seat on the Texas Court of Criminal Appeals in 1990. He became the first black Texan to win a statewide election.

The Civil Rights Movement helped alter the faces of Texas's legislative and judicial systems as more black candidates mounted successful campaigns for local and state offices and more black voters cast ballots in large part because of the Voting Rights Act of 1965. Voters in predominantly black districts sent black representatives to Austin, but Overstreet's statewide victory, given its breadth, had to cross racial lines and in triumph the coalition delivered to the Court a jurist who took great pride in his dedication to fairness and selflessness. The achievement's magnitude was not lost on him, and neither was its cultural significance.

"It had crossed my mind a long time ago the possibility of serving on the highest criminal court in Texas," Overstreet recalled. "It expanded opportunities for me to share my story all over Texas, in small towns, school districts. My parents showed me, don't give up on your dreams and you can become what you want to become. All you have to do is make the commitment to work for it."²

"I had an opportunity to influence a lot of different folks," he said. "Every year when new lawyers were sworn in, they could see an African American on the dais. That's the only time the Court of Criminal Appeals and the Supreme Court of Texas had a joint session. Young African American lawyers and non-African Americans could look at that and say, 'Hey, it's not just



Judge Morris Overstreet.

¹ Chandler Davidson, "African Americans and Politics," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/wmafr>.

² "Life and Career of Morris Overstreet," C-SPAN interview, June 14, 1991, <https://www.c-span.org/video/?20649-1/life-career-morris-overstreet>.

eighteen white men up there, there is diversity.”³

Now-retired Harris County Municipal Court Judge Willie E.B. Blackmon was one such young black attorney. He was inspired by, and developed a great respect for, Judge Overstreet.

“I was Chief Juvenile Prosecutor in Lubbock and he was sitting on the County Criminal Court at Law bench in Amarillo,” Blackmon remembered. “He came to Lubbock to seek support for the position on the Texas Criminal Court of Appeals. I did my due diligence and discovered him to be a well-respected jurist and had a judicial temperament that told me he would be a great Justice. I supported him without reservation and often sought his advice, and I was quite proud that he attended Thurgood Marshall Law School (Texas Southern University), as did I.”

“His historic election gave members of the African American community the fortitude to believe that one could run for judicial office based on the content of their character and legal/judicial knowledge, and not be judged by the color of their skin.”⁴

Overstreet’s story is that of a standout football player and hurdler whose path to the prestigious legal seat included clearing the obstacles presented by segregation. He tackled that with a quiet resolve instilled by parents who expressed a creed echoed by generations of black families to their children— strive to achieve more than the previous generation.

“You have to be willing to sweat and work hard,” he said, “to reach a little bit higher than you can reach.”

During Overstreet’s formative years, that was a tough sell in Amarillo’s small, close-knit black community struggling through the last vestiges of a staunchly segregationist era on the verge of integration. Overstreet attended all-black Carver High School before moving over to Amarillo High School for his junior and senior years after the city’s schools integrated in 1967. Neither of his parents attended college: his mother worked as a domestic after graduating from high school, but his father, a janitor for Southwestern Bell, only attended through eighth grade. Yet both would find more meaningful employment later: his father retiring after 35 years at SW Bell as a warehouse manager, his mother pursuing an education and becoming a nurse.

From their examples, and other positive black role models in Amarillo, a young Morris Overstreet had no excuses to slack. He knew exactly what was expected of him.

“Our community was centered around the black churches, schools, and black businesses,” Judge Overstreet recalled. “You had a number of parents. Everybody in the neighborhood was your parent. There was no doubt in my mind that I was expected to graduate from high school with decent grades and go on to college.”⁵

Athletics paved the way for college. Overstreet was awarded a track scholarship to Angelo

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

State where he was a pre-med major in biology, team captain and letterman in 1969 and 1970, and football player for Grant Teaff—before the coach’s storied career at Baylor. In college, Overstreet first got a notion to pursue a law degree. The latter part of that meant dropping his desire to become a doctor.

“At that time, African Americans did not have a good shot at getting into medical schools in Texas,” he explained. “Looking back, I made the right choice. A law degree is one of the most versatile degrees that one can earn. You don’t have to practice law or be a judge; you can use it in government or business.”⁶

By chance, he found inspiration and guidance while working a part-time janitorial job. As he cleaned a law firm’s office, Overstreet was mesmerized staring at the collection of skins on the wall, with its numerous diplomas and certificates on display. It prompted him to ask one of the attorneys what it would take to get into law school. Overstreet had already changed his major to sociology and now the vision of a legal career was taking shape. Besides, the State of Texas had gone out of its way to create a law school for Negroes at Texas Southern University in an overt act of racism to deny a Houston mail carrier, Heman Sweatt, entrance to the University of Texas Law School as its first African American student.

Ironically, a track-meet at the Houston Astrodome helped Overstreet take his first real step towards TSU. On the morning of the meet, he borrowed the team’s station wagon, drove to the LSAT test site, completed the test, and returned in time to compete in the meet.

“Texas Southern was a very special university,” he said. “It was born out of injustice, but it had a diverse faculty, so there were a lot of different points of view. I liked it for that reason. It taught me a practical approach to law.”⁷

Judge Overstreet graduated from the Thurgood Marshall School of Law in 1975 (he returned several years later as a professor) and passed the bar that year. He went home to Amarillo and his career accelerated—first private practice, then five years as a prosecutor to become First Assistant District Attorney in the 47th Judicial District Attorney’s Office. In 1986 he won the seat as judge for Potter County’s Court at Law Number 1. That event is still talked about as “The Historic 1986 Election,” when the county elected four black Democrats, the first time in Texas politics that four African American officials were elected on the same ballot.⁸

Overstreet sat on the criminal appellate court for two terms, from 1990 to 1998, authoring over 500 opinions. He ascended to that role after his work as a prosecutor and as a trial judge in hundreds of jury trials and thousands of non-jury trials during which he never had a criminal conviction reversed on appeal because of an error he committed.

He reflected on his career as a prosecutor: “When it came to making sure the right result

⁶ *Ibid.*

⁷ *Ibid.*

⁸ “Local ‘86 election led way for black leadership in Texas,” *Amarillo Globe-News*, January 17, 2014, <http://www.amarillo.com/article/20140117/NEWS/301179695>.

was reached, it was far easier to do that as a prosecutor. With the stroke of a pen, I could ensure that justice was done. As a defense lawyer, it might take me three or four days in the trial courtroom and I still might not be successful; it might take years. So, as a practical matter, it made more sense to me to be on the prosecution side. There, you also had close contact with the law enforcement community, and you could certainly have some influence, effect, and sensitize them to some of the issues confronting black communities.”⁹

Overstreet’s critics have said he was too rigid, unyielding and unbending when it came to the law, descriptions he found “rather harsh,” yet, he did not totally disagree with them.

“Rules ought to be written so that everybody can read them and understand them. If the rules are enforced across the board without exception as to who you may be or what your position in life may be it seems to me that’s going to be the fairer approach. I’ve had occasions to witness situations where it didn’t matter what the law was, it really mattered who the lawyer was, and that’s not fair. I say, treat them all bad or treat them all good, but treat them all the same.”¹⁰

⁹ “Life and Career of Morris Overstreet.”

¹⁰ *Ibid.*



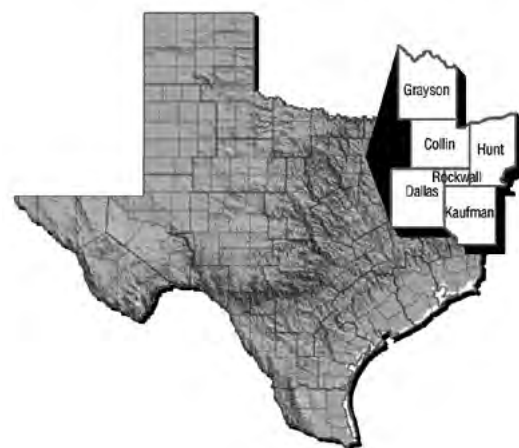
MICHAEL HURD is a writer, historian, and director of Prairie View A&M University's Texas Institute for the Preservation of History and Culture. An Air Force Vietnam veteran, Hurd is a graduate in Journalism from the University of Texas at Austin and has worked at the Houston Post, the Austin American-Statesman, and USA Today. He has authored three books, including his most recent, Thursday Night Lights: The Story of Black High School Football in Texas.

Chief Justice Carolyn Wright: A Profile in Excellence

By John G. Browning

On the north side of the Wichita County Courthouse in Wichita Falls is a historical marker dedicated to Charlye O. Farris (1929–2010), the first African American woman admitted to the Texas bar (1953) and the first black woman to serve as a judge in Texas (serving as county judge pro tem in 1954). Yet perhaps the most lasting legacy of Charlye Farris does not appear on any sign or in any memorial; it resides instead in the form of the many women (and men) of color she inspired and mentored over the course of her distinguished career. One such woman is Chief Justice Carolyn Wright of the Fifth District Court of Appeals in Dallas. Chief Justice Wright—the first African American woman in Dallas to win a countywide election, the first in Texas history to win a multi-county election, and the first African American to lead a Texas intermediate appellate court—has always been the first to acknowledge the debt owed to trailblazers like Charlye O. Farris. And, indeed, Chief Justice Wright has “paid it forward” throughout her illustrious career, inspiring and mentoring countless others.¹

Chief Justice Wright’s father, Adell Wright, grew up in a sharecropping family in the Mississippi Delta during the Jim Crow South. Seeing military service as a promising career path, he joined the Air Force and soon met Alvora Lightfoot, who would become his wife. As his Air Force career took Adell (and his growing family) all over the United States as well as Japan, Adell and Alvora made education a priority for their children, beginning with their firstborn, Carolyn.²



Top: Fifth Court of Appeals Chief Justice Carolyn Wright. Photo from State Bar of Texas website.

Bottom: Map showing counties served by the Fifth Court of Appeals. Image from 600commerce.com.

¹ This author included.

² The Wrights raised incredibly accomplished children. One of Chief Justice Wright’s sisters, Tania Wright, is an

Attending military schools on base (or the occasional private school when there was no military school), Wright excelled in both academics and sports. Yet when her father moved the family to Delaware upon being assigned to Dover Air Force Base, she experienced an America she had been largely insulated from due to life on base. During high school in the 1960s, Wright saw “a country in total turmoil” and encountered segregated bathrooms, hotels, restaurants, and pools.

But excelling at school transcended racial boundaries. After becoming the first African American chosen to attend Girls’ State in Delaware, Wright quickly proved popular and was elected Attorney General there by her peers. After high school, she attended Washington, D.C.’s Strayer College to obtain a business degree. Wright put herself through college working as a paralegal at the Equal Employment Opportunity Commission and at Washington’s Office of Youth Advocacy. At both places, she was mentored by Dr. James Jones (the “youth czar” under Washington’s first African American mayor, Walter Washington). Jones told Wright she was “too smart” to remain a paralegal. He urged her to attend law school at Howard University, which would enable her to keep her job and pay for her legal education.

After receiving her law degree from Howard Law School in 1978 and passing the Texas bar, Wright settled in Dallas to open up a law practice. At the time, few women and no African American women practiced in Dallas’s major law firms; in fact, Wright found herself to be one of only two black female lawyers in the city. But she quickly made a name for herself in family law circles with her zealous representation of women and children.

In 1983, when an associate judge position opened in the family courts, Dallas’s family law judges unanimously selected her for the bench. Two years later, she ran as a Republican for a family district bench. Wright overcame a crowded primary and triumphed in the general election, becoming the first African American woman in Dallas County to win a county-wide election. Her lopsided victory attracted the attention of then-Governor Bill Clements, who wanted to meet the woman who had won Dallas County by a larger percentage than he did.

During her ten years on the 256th Judicial District Court bench, then-Judge Wright put her experience in family and juvenile law to good use. She became a statewide leader in designing innovative programs and implementing creative solutions to reduce the impact of domestic violence and non-support on women and children. Judge Wright was such a leader in utilizing mediation in family law cases that she was appointed to a national commission that formulated mediation guidelines. And in 1995, then-Governor George W. Bush took notice and appointed Wright an Associate Justice on Dallas’s Fifth District Court of Appeals, the largest intermediate appellate court in Texas. She was later elected, adding yet another historic “first”: first African-American woman in Texas history to be elected in a multi-county election.

Wright’s star continued to rise. She was nominated by U.S. Senator Phil Gramm to President George Bush to fill a vacancy on the federal district court bench, but the nomination went nowhere due to partisan politics. Yet on November 17, 2007, she made history once again when then-Governor Rick Perry appointed her Chief Justice of the Fifth District Court of Appeals

administrative law judge in Philadelphia. Sister Patricia Wright earned her Ph.D. from Harvard and serves in the Civil Rights Division of the National Education Association in Washington, D.C. Brother Michael Wright, a Howard graduate, designed telephone systems for AT&T and Verizon.

following the retirement of Chief Justice Linda Thomas. This nomination was historic, as Chief Justice Wright became the first African American to lead a Texas intermediate appellate court.

As both an Associate Justice and later Chief Justice, Carolyn Wright has authored thousands of opinions on vital legal issues in areas that include commercial law, family law, personal injury law, criminal law, evidence, and procedure. Under Chief Justice Wright's leadership, the Fifth Court of Appeals led Texas courts in increasing efficiency and transparency through implementation of the Texas Appellate Management and E-filing System (TAMES) Attorney Portal. In September 2016, the Fifth Court of Appeals became the first appellate court in the state to provide this service, ensuring secure online access to documents and saving attorneys and their clients time and money.

Despite a demanding workload, Chief Justice Wright has always found time to give back to the legal profession and to the community during her 33 years of judicial service. She served as Chair of the Texas Bar Foundation, as a faculty member for the Texas Center for the Judiciary and the National Judicial College, and as an active member of her church, the Rotary Club, and Executive Women of Dallas.

Not surprisingly, the list of accolades she has received for her work and leadership is long and distinguished. Her honors include the National Association of Women Lawyers' Leadership Award; the American Bar Association's Business Section's Award for contributions to women and proficiency in law; Howard University Law School's Distinguished Alumna Award; the American Jewish Congress's "Woman of Spirit" Award; the NAACP's Juanita Craft Award in Law; the Dallas Bar Association's Martin Luther King, Jr. Justice Award; the Dallas Women Lawyers' Louise Raggio Award; the J.L. Turner Legal Association's Distinguished Jurist Award; the Dallas Association of Young Lawyers' Award of Excellence; the Texas Women Lawyers Pathfinder Award; and the Texas Center for Legal Ethics' Chief Justice Jack Pope Professionalism Award. Governor Bush presented her with the Yellow Rose of Texas Award for her many civic contributions, and in 2014 she was inducted into the Texas Women's Hall of Fame.



In 2017, Chief Justice Wright received the Texas Center for Legal Ethics' Chief Justice Jack Pope Professionalism Award. TCLE Executive Director Jonathan Smaby, Chief Justice Carolyn Wright, and Chief Justice Nathan Hecht. Photo by Mark Matson.

And when she is not making history, Chief Justice is writing about it. Her work with the author about the contributions of Texas's earliest African American attorneys has graced the pages of this publication, the *Howard Law Journal*, and the *Texas Bar Journal*, among others.³ In 2016, this scholarly work received the State Bar's highest honor, the President's Certificate of Merit. In 2017, Chief Justice Wright received the J. L. Turner Legal Foundation's Legal History Award for raising awareness about this long-neglected chapter in Texas history.

Chief Justice Wright has blazed trails and shattered glass ceilings. She has been a role model and mentor for countless lawyers and judges, many of whom are women of color who have followed in her judicial footsteps. Justice Ada Brown, who serves with Chief Justice Wright on the Fifth Court of Appeals, points to a lunch with the Chief as life-changing. A young prosecutor at the time looking to escape the "pink ghetto" that relegated female ADAs to prosecution of child abuse and domestic violence cases, Justice Brown says "that lunch completely changed my career path...It was only because I'd actually met a woman who had already blazed the trail from bar to bench, that it began to seem like a real possibility for me. Thanks to Chief Justice Wright's advice and encouragement, I became a trial judge."



Fifth Court of Appeals
Justice Ada Brown.
Photo from Justice
Brown's Twitter page.

Justice Brown also points to Chief Justice Wright's creation of an internship program on the court to encourage women and minority lawyers to pursue staff attorney positions. According to her, "When Chief Justice Wright saw that opportunity was not knocking for women, she built us a door."

And that sums up Chief Justice Carolyn Wright's career quite nicely. Lead the way through the door to opportunity, opening it wider for others to follow, and, when necessary, build that door yourself.

³ A copy of the *Howard Law Journal* article is in the Museum of African American History and Culture at the Smithsonian.



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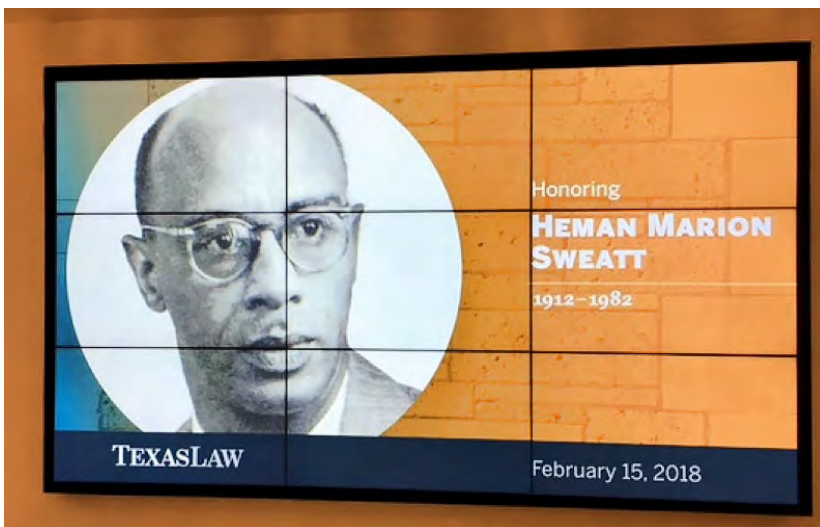
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A Personal Remembrance of the Unforgettable Justice Henry Doyle

By Hon. Murry B. Cohen

Growing up in Houston around 1960, I read a newspaper article about “Heman Sweatt,” and pointed out the error to my father. “The *Chronicle* needs new proofreaders,” I told him. “They left the “r” out of Herman.” My father set me straight, taught me something about African-American history in Texas, and set me on a path to meet the unforgettable Henry Doyle, whose story is closely connected to that of Heman Marion Sweatt.

Heman Sweatt was an African-American mail carrier who aspired to be a lawyer. When denied admission to the University of Texas School of Law because of his race, he sued in Texas courts, lost, and finally won in the United States Supreme Court, which held he could not be barred from admission to law and graduate level education based on race. *See Sweatt v. Painter*, 210 S.W.2d 442 (Tex. Civ. App.—Austin 1947, writ denied), *rev’d*, 339 U.S. 629 (1950).



Left: The University of Texas Law School dedicated a new portrait of civil rights plaintiff Heman Marion Sweatt on February 15, 2018. Right: His daughter Hemella Sweatt spoke about her father’s life during the commemoration. Photos by David A. Furlow.

Before that decision, Texas had established the Texas State University Negro Law School in Austin as a way to afford the “separate but equal” rights approved in *Plessy v. Ferguson*. The school occupied the basement of an old house on 13th Street in Austin near the Capitol. Three students enrolled in 1947, including Heman Sweatt and Henry Doyle. Doyle was scorned by the NAACP for enrolling and then accepting a job as the school’s janitor. The school is now located in Houston and is known as the Thurgood Marshall School of Law; Henry Doyle was

its first graduate. Heman Sweatt never graduated or became a lawyer. Henry Doyle graduated in 1950 at the age of 40, became a Houston civil rights attorney, and in 1978 became the first African-American appellate court justice in Texas when appointed by Governor Dolph Briscoe to Houston's First Court of Appeals.¹

Upon graduating in 1950, Doyle won the praise of the Attorney General of Texas for being a fine product of a segregated legal education. That pride probably disappeared after he began filing civil rights suits against the State.

Before he became a judge, Henry E. Doyle filed a lawsuit that desegregated the Harris County Courthouse's cafeteria. Left: Photo of a young Henry Doyle courtesy of State Bar of Texas Archives. Right: Harris County's Historic 1910 Courthouse now houses the First and Fourteenth Courts of Appeals. Photo courtesy of Wikimedia Commons.



One of those cases, *Derrington v. Plummer*, 240 F.2d 922 (5th Cir. 1957), resulted in an injunction against the exclusion of African-Americans from the "Linoleum Club," the basement cafeteria in the Harris County Courthouse.² The plaintiff was M.W. Plummer, whose father was born into slavery in Tennessee and who had a long successful legal career in Houston. Doyle prevailed over the County's arguments that its cafeteria lessee was a private person whose acts did not constitute state action and that the discrimination issue was moot because the private individual's lease on the cafeteria was about to expire. The Court held that the lessee's conduct was "as much state action as would be the conduct of the County itself," and that because the lease might be renewed or granted to another who would also discriminate, "the public interest in having the legality of the practice settled militates against a mootness conclusion in the absence of an affirmative showing that there is no reasonable expectation that the alleged wrong will be repeated."

When I joined the First Court of Appeals in 1983, Henry Doyle cut a big figure there. I asked his advice and learned from it. He was always prepared, and always respectful of the parties, their counsel, his judicial colleagues, and the law. He was smart, articulate, diligent, ready with a smile, and always carried himself with dignity. He rarely spoke during oral arguments, perhaps because he knew the answers from his careful reading of the briefs.

¹ Hannah Kiddoo, Lindsay Stafford Mader, and Patricia Busa McConnico, "Trailblazers," *Texas Bar Journal*, 77, No. 6 (February 2014): 500-503.

² Having dined in the Linoleum Club as a young lawyer, it is hard to imagine a plaintiff suing for the right to eat there.

Once during my first year on the Court, I confessed to Henry severe lingering doubts about the correctness of a decision I had joined. It seemed that the longer I thought about it, the less certain and more worried I became. Henry advised as follows: "Murry, when you go to a baseball game and see the umpire call a close play, what does he do? Does he worry and wonder? No, he calls it hard and walks away tough." Wisdom there for any judge, new or not.

Who but Henry Doyle would during a case conference or a full court meeting make his point by breaking into long, extemporaneous, accurate, relevant, dramatic, and emotional recitations of Henry Wadsworth Longfellow's *Hiawatha*?³ Or William Cullen Bryant's *To a Waterfowl*?⁴ William Ernest Henley's *Invictus*?⁵ Shakespeare's *Hamlet*?⁶ Or the Bible? Who else wrote original poetry, such as *Free Spirit* (below), Henry's heartwarming tribute to his native



FREE SPIRIT

*A singing mockingbird kept urging me,
To rise with him and greet the dawn above his tree.
Invitation accepted. This day there'll be no
programmed life,
Outdoors, I'll go wherever my heart says go;
For nature has this subtle mode, like so:*

*Here, a hawk, eyes earthward-bent, treads the breeze,
There, sky seeking pines set standards for all trees,
Yonder, a flower yields as a winged robber steals its nectar,
Beyond, an evening sky is lit by a shooting star,
An eager brook goes gurgling by, committed to its
river quest.
These things bring peace of mind to those who heed,
And cleanse the soul for them who need
An everlasting tenet on which to rest.*

*Ah, this life - no when, no where, no time, no place to be,
Just stroll and lounge and climb and sing, a spirit free.
Now - I'll toss a coin in Zilker's wishing well,
Later - I'll taunt the playful wind on Mt. Bonnell,
And tomorrow - homeward bound - high in the sunlit air,
I'll sketch the billowing snow-white cumulus clouds,
And breathe a prayer to HIM who placed them there.*

by HENRY E. DOYLE
July 5, 1982

Left: Photo of the First Court of Appeals' portrait of Judge Henry E. Doyle by David A. Furlow. Right: Judge Doyle was a poet as well as a judge. Image from Judge Doyle's Memorial Service courtesy of Virgie Mouton.

³ "By the shores of Gitchee Gumee, By the shining Big-Sea-Water, Stood the wigwam of Nokomis, Daughter of the Moon, Nokomis . . ."

⁴ "Whither, 'midst the falling dew, While glow the heavens with the last steps of day, Far, through their rosy depths, dost thou pursue Thy solitary way?"

⁵ "It matters not how strait [sic] the gate, how charged with punishment the scrolls, I am the master of my Fate, I am the Captain of my Soul."

⁶ "To be or not to be, that is the question."

Austin? A great conversationalist, Henry deployed ready quips, funny asides, and pungent responses showing knowledge on topic after topic, legal, literary, religious, and historic, sweetened with a rewarding allusion for those able to grasp it.

When he retired, his former law school named for him its Henry Doyle Moot Court Competition. Friends presented him a golf cart to traverse the Hermann Park links, and Judge Andrew Jefferson told how he was known to golfing buddies as “good-shot Henry.” He was full of life and still ably carrying his load at the court, so I asked why he was retiring (at 74) and he said, “Murry, I’ve seen enough appellants and appellees for a while,” and about a year later he was gone from the Court and the earth.



The Thurgood Marshall School of Law’s annual Henry E. Doyle Moot Court Competition honors the memory of the school’s first graduate while spurring greater interest among law students in appellate advocacy. Photo from Thurgood Marshall School of Law website.

In the fall of 1984, the First Court wanted to hold a small going-away party for Henry, and I volunteered my home, the home built by my mother and father, the father who introduced me 25 years earlier to Heman Sweatt and thus led me indirectly to Henry Doyle. I asked Henry and all assembled then, “How could I have imagined then that you, Heman Sweatt’s classmate, and I would be standing together here today as colleagues?”

For once, the brilliant, warm, witty, learned Justice Henry Doyle had no answer.



JUSTICE MURRY B. COHEN is a civil appellate specialist, arbitrator, and Texas Monthly Superlawyer working in the Houston office of Akin Gump Strauss Hauer & Feld LLP. Justice Cohen served for more than nineteen years on the Court of Appeals for the First District of Texas in Houston, where he decided civil and criminal appeals from fourteen Texas counties and became a close friend of Justice Henry E. Doyle, who served on that same court. He is a Life Fellow of the Texas Bar Foundation and the Houston Bar Foundation.

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THE FIRST, THE LAST, THE ONLY:

The Legend of Judge Henry Eman Doyle, First African-American Associate Justice of a Texas Court of Appeals

By Virgie A. Mouton

***"It has a faculty of five full-time professors ...
and one alumnus who has become
a member of the Texas Bar."*¹**

The One Alumnus

I met Henry Doyle in 1982 while interviewing for a position as Briefing Attorney at the First Court of Appeals in Houston. I was an eager third-year law student, preparing to graduate, a wife and mother of two preschoolers. When I entered the interview room, all nine justices were seated in a semicircle facing the one lone chair on the opposite side. Judge Doyle was easily identifiable as he was the only black male justice sitting among the other eight white male justices. I felt confident as I sat in the chair facing them, although inside I felt nervous, not knowing what to expect. I felt as though I was in law school, where I was accustomed to professors asking me to recite cases and answer hypotheticals. I felt I was a law student attending class without reading the assignment, and dreading dismissal for being unprepared. To the contrary, the judges were polite and gracious. I began to feel calm once I realized that I was in the presence of my hero, Henry Doyle, the first graduate of my law school at Texas Southern University, now known as Thurgood Marshall School of Law.

Prior to that interview, I had heard and read about the trials and tribulations Judge Doyle encountered while attending law school. He passed the bar in 1949, and graduated one year later in 1950 as the only member of our first graduating class.² He was the namesake of the law school's Henry Doyle Moot Court Competition.³ He was the distinguished keynote speaker at our law school Hooding Ceremony in 1981.⁴ Judge Doyle was our law school's personal hero, our idol, a living legend engrained in the hearts and souls of our law school community.

¹ *Sweatt v. Painter*, 339 U.S. 629, 633 (1950).

² Hannah Kiddoo, Lindsay Stafford Mader, and Patricia Busa McConnico, *Trailblazers*, 77 TEX. B. J. 163 (2014); DeCarlous Y. Spearman, *Remembering Our Past, Celebrating Sixty-Four Years: Thurgood Marshall School of Law Library 1947-2011*, 36 T. MARSHALL L. REV. 63 (2010); *Retirement Celebration Brochure, Friends Honor Associate Justice Henry E. Doyle* 2 THURGOOD MARSHALL SCHOOL OF LAW (on file with author); Brent Manley, "Judge Has Come Long Way," *Houston Post*, February 5, 1984, 12A; Constance Frisby Fain, *Symposium: When a Lawyer Stood Tall: Sharing and Understanding Stories of Lawyer Heroes: Characteristics of the Heroic Lawyer and Avoidance of Unprofessional Conduct*, 13 WIDENER L.J. 61 (2003).

³ Thurgood Marshall School of Law, *Henry Doyle Moot Court Competition*, <http://tmslboa.org/competitions/henry-doyle-moot-court-competition/>.

⁴ Thurgood Marshall School of Law, *Hooding Ceremony: Honoring the Graduating Class of 1981 of the Texas Southern University Thurgood Marshall School of Law* (May 15, 1981).



Above: In 1983, Judge Henry E. Doyle (front row, second from right) was the only African American serving on the First Court of Appeals in Houston, where Virgie Mouton (back row, far right) served as his Briefing Attorney. Right: Judge Doyle, first row, left, presided over the Thurgood Marshall School of Law's 1982 Hooding Ceremony. Photos courtesy of Virgie Mouton.





The Thurgood Marshall School of Law today. Photo from the School's website.

Students at my law school respected its atypical history and the perseverance Judge Doyle practiced as the first student. We were aware of the unashamed whispers of our school being “conceived in sin,”⁵ but that did not deter Judge Doyle, nor would it deter us, from reaching our goal of becoming lawyers. We were often reminded that in *Sweatt v. Painter*, the Supreme Court referenced Judge Doyle, not by name, but by the indistinguishable “one alumnus who had become a member of the Texas Bar.”⁶ Yet we celebrated Judge Doyle as the first black person to graduate from a Texas law school and pass the bar. Judge Doyle laid the foundation and began building the law school for thousands who would follow him. On that day in 1982, I was honored to be sitting face to face with our hero.

The very next day Judge Doyle called informing me of his decision to hire me as his briefing attorney. I was excited that I would have the honor of working together with our nameless “first alumnus.” Finally, I would have the opportunity to ask and receive answers to my questions directly from our nameless “one alumnus.”

I worked closely with Judge Doyle and Doris, his secretary, for one year, from September 1982 to August 1983. I then worked as a staff attorney with Judge Doyle, Doris, and the entire court through Judge Doyle’s retirement in December 1984. Thereafter, I worked with Judge Doyle’s newly-elected successor, Judge Kenneth Hoyt, also a black graduate from our law school.⁷ I remained at the court through August 1986.

⁵ Otis King, *The Legal Sin: The Creation of Texas Southern University, a Place That Never Should Have Been*, 38 T. MARSHALL L. REV. 13 (2012).

⁶ *Sweatt v. Painter*, 339 U.S. 629, 633 (1950).

⁷ The HistoryMakers, *Kenneth M. Hoyt*, March 5, 2014, <http://www.thehistorymakers.org/biography/honorable-kenneth-m-hoyt>.

***Sweatt v. Painter* and the Ensuing Aftermath**

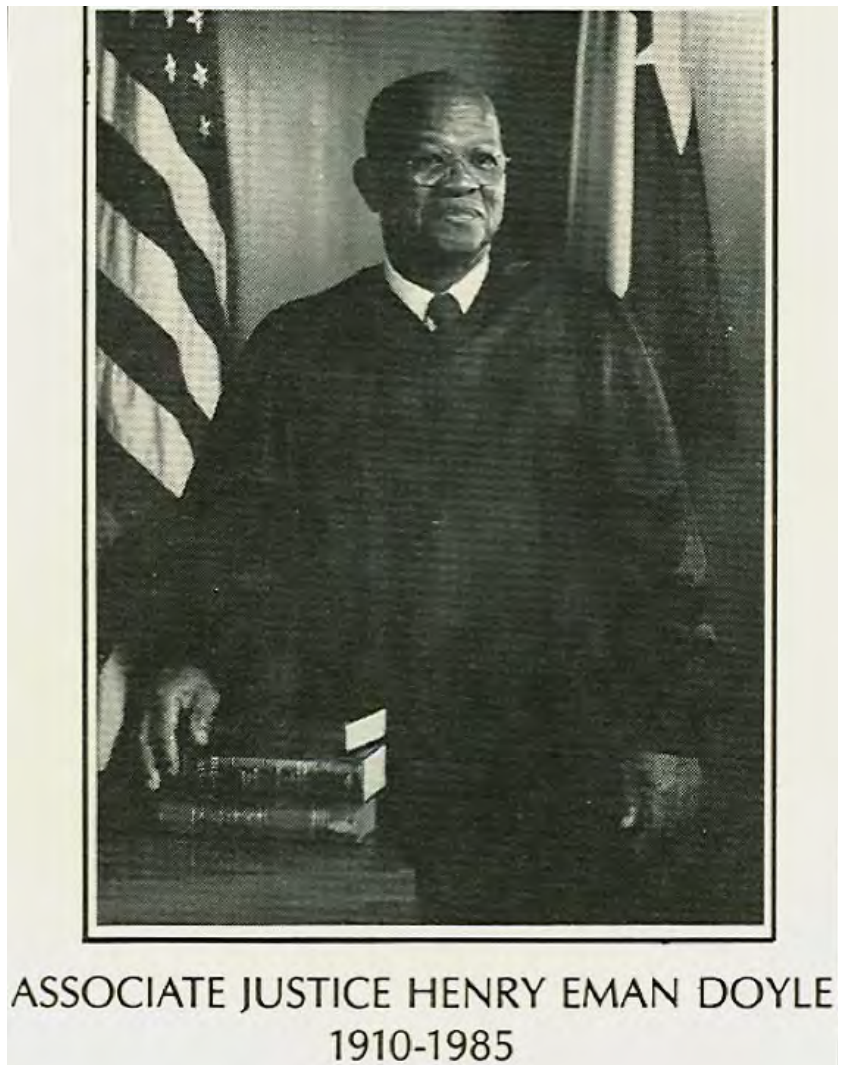
During our first private conversation, Judge Doyle and I talked about the beginning of our law school, acknowledging the legal version. In 1946, Heman Sweatt applied to attend the University of Texas Law School (UT Law), but was denied admission solely because he was black. Thereafter, Sweatt filed a writ against the University to compel his admission. After years of unsuccessful hearings and appeals in Texas, Thurgood Marshall and others were successful in convincing the United States Supreme Court to overturn the Texas decisions and hold that the Equal Protection Clause required the University of Texas to admit Sweatt.

However, discussing Sweatt was not the primary purpose of this conversation. During the *Sweatt* fiasco, the State of Texas created a separate law school for blacks, at times referenced as the “makeshift law school,” the “basement law school,” or the “other law school.” That law school was our school, and I wanted to know all about Judge Doyle’s experiences—his classmates, his professors, and his classes. He gladly indulged and gave me his personal account. And so the “one alumnus” story begins.

Division in the Black Community

Judge Doyle entered the law school at Texas State University for Negroes (TSUN) under less than ideal conditions. His decision to attend that black law school was not looked upon as a favorite with the black community, which was at odds with the establishment of the separate law school for blacks. One side was led by Lulu White, a Houston black activist who maintained that bringing black schools equal to white schools and keeping them separate was unacceptable.⁸

Another side, led by Carter Wesley, an African American newspaper editor and civil rights



Judge Henry E. Doyle’s portrait in the First Court of Appeals in Houston testifies to his legacy in the judiciary. Photo of portrait courtesy of Virgie Mouton.

⁸ Merline Pitre, *In Struggle against Jim Crow: Lulu White and the NAACP 1900-1957* (College Station: Texas A&M Univ. Press, 1999).

activist, supported the position that separate but equal should be established by integration.⁹ Yet Wesley also felt that separate institutions for blacks should be established and maintained. Doyle entered the separate school for blacks amidst a feud in the black community, a feud that continued throughout the *Sweatt* litigation and for years thereafter. But Judge Doyle entered law school in spite of the feud.

Doyle was taught separately in the basement of an Austin building, the “makeshift law school,” by faculty who maintained their faculty positions at UT Law during the day. On several occasions, he talked with me about his classes in that basement.¹⁰ He recalled that he entered law school along with two females and another male, Heaullan Lott. The two females left the classes and Heaullan Lott and Judge Doyle remained. They had to read and answer questions for all the cases in every class. The professors would either call on him to recite one case and Heaullan to recite the next, or vice versa. Or they would switch up and ask him to recite one case, and the next, and the next, without calling on Heaullan, or vice versa. He enjoyed the classes and felt as though he was being tutored with private lessons, instead of sitting in a large classroom with sixty other students. He and Heaullan Lott shared the spotlight—*all* the time!

In August 1948, the makeshift law school was relocated to Houston and Texas State University for Negroes (TSUN) now had a permanent home. Doyle moved to Houston and continued attending the law school.

Houston, a New Beginning

When Judge Doyle spoke about the move from Austin to Houston, he would begin, “They loaded up the books in trucks and I drove behind the trucks to begin classes in Houston.” His voice sounded noncommittal, reflecting little or no emotion—much like reciting the facts of a case. He did not appear to display a particular emotion of sadness or gladness, enthusiasm or apathy, just spoke in a matter-of-fact manner. Because Heaullan Lott did not move to Houston with the TSUN law school, Doyle became the only student in his class. Again, he was compelled to read all the cases, but unlike before, he had to recite them all, as there was no one else to share the load.

Doyle eagerly attended his law classes in the Fairchild Building at the Houston site. One contributing factor was that he enjoyed smelling the food cooking in the Home Economics classes held next to his law classes. When he spoke of the aromas, he would smile with delight and appear as though he could smell the aroma as he talked.

Judge Doyle was known to entertain his personal audience with the description of his class standing in law school. “Did I ever tell you I was number *one* in my class? Did I ever tell you I was number *last* in my class? Did I ever tell you I was the *only one* in my class?” (Emphasis his.) Thereafter, his personal audience, as well as the speaker, would laugh heartily and enthusiastically. He would then proudly display emotions of satisfaction and a sense of accomplishment.

⁹ *Ibid.*

¹⁰ Virgie Mouton, *And So He Rose Alone*, THURGOOD MARSHALL SCHOOL OF LAW (2008), 3. See also DeCarlous Spearman, “Remembering Our Past, Celebrating Sixty-four Years: Thurgood Marshall School of Law Library 1947-2011,” citing Corwin Johnson, Professor Emeritus in Law, University of Texas School of Law, 36 T. MARSHALL L. REV. 63, 64 (2010).



The U.S. Supreme Court's decision in *Sweatt v. Painter* enabled Houston postman Heman Sweatt to attend the University of Texas Law School. Here, Sweatt signs up for classes after the decision. Photo courtesy of the Dolph Briscoe Center for American History.

Henry Doyle was a legend in my eyes. This man withstood the criticism of his own community and of Thurgood Marshall, the attorney leading the cause to integrate the University of Texas Law School. This man remained undeterred from attending his law classes, whether they were held in the basement of an office building in Austin or in a building where his classes were held next to the Home Economics class in Houston.

I asked Judge Doyle what prompted him to attend law school from 1947 through 1950 under those circumstances. Why didn't he wait and attend the University of Texas Law School? He answered quickly with strong conviction, "I was ready to go to law school *then*. I did not want to wait." And so he proceeded—this "one alumnus."

After Judge Doyle passed the bar and graduated from law school, the Supreme Court issued its opinion in *Sweatt*. By that time Doyle had already become a lawyer—because he did not want to wait.

After Passing the Bar—a New Beginning

In 1950, the State of Texas practiced the "separate but equal" doctrine sanctioned

by *Plessy v. Ferguson*, that the separation of the black and white races was constitutional as long as the separation allowed the same or equal provisions for both races.¹¹ Examples included separate seating areas in "picture shows" (now called movie theaters), where it was common for blacks to be seated in the balcony and whites to be seated on the first floor;¹² separate days of attendance for blacks and whites at amusement parks;¹³ separate public schools;¹⁴ separate churches;¹⁵ separate living communities; separate restrooms; and separate drinking fountains.

¹¹ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

¹² The author recalls sitting in the balcony at the "Picture Show" in Highlands, Texas when she was growing up in the 1950s and 1960s.

¹³ The author recalls blacks being allowed to enter "Playland Park" Amusement Park only on "Juneteenth," June 19, the date celebrated by blacks at receiving news of the Emancipation Proclamation in Galveston, Texas in 1865.

¹⁴ The author attended segregated schools in Barrett Station separated from the white schools in Crosby, Texas. We blacks attended Charles R. Drew Elementary School and Charles R. Drew Junior Senior High School in Barrett Station. Dr. Drew was the renowned black medical doctor who attended medical school in Canada and later discovered blood plasma. As was the custom at TMSL where students learned about Henry Doyle, all students attending the separate school learned the story of Dr. Drew, our hero and symbol of pride.

¹⁵ The author attended the black Catholic Church in Barrett Station, named after the black Catholic, Saint Martin de

Doyle began his practice of law under those conditions.

Doyle had been educated in the “separate but equal” schools from elementary through high school, college, and law school. He had taught in the public school system in these “separate but equal schools” in Texas. But in 1950 he faced a different world, a world of new challenges. As an attorney he could not practice in separate but equal courtrooms, for there were no separate “black courtrooms” or “black judges,” as there were black schools, black teachers, black restrooms, and black drinking fountains. The judges, juries, and attorneys were largely whites. Parties were of all colors—either black or white, all-white or all-black. Black criminal defendants were prosecuted by white attorneys, and likely defended by white attorneys. There were very few black attorneys in Texas, and many blacks, if represented by legal counsel, were likely to be represented by white attorneys. 1950 was a “new day” for Henry Doyle.

One year after Judge Doyle’s graduation, he defended a 23-year-old black man, Johnnie Lee Morris, who had killed Florian Nowak, a white Houston bus driver, by stabbing Nowak on a city bus.¹⁶ Although Morris was convicted of killing Nowak, Doyle convinced an all-white jury to sentence Morris to life imprisonment, rather than give him the death penalty.¹⁷ This was a major victory for a newly licensed attorney—or any attorney.

Thereafter, Doyle successfully filed civil rights suits ending segregation of the Harris County Courthouse Cafeteria, Sylvan Beach Park in La Porte, Texas, and the Houston Independent School District.¹⁸

Doyle practiced law for twenty-seven years.¹⁹ In 1977 he was appointed to the bench of Houston Municipal Court No. 6.²⁰ On December 1, 1978, Governor Dolph Briscoe appointed him as an Associate Justice of the First Court of Appeals of Texas, the highest civil judgeship ever for an African American in the State of Texas.²¹

Forging Our Friendship

Judge Doyle was my judge, but most importantly, he was my mentor, my role model, my teacher. We discussed not only legal principles, but common, everyday life principles as well. He was careful not to act as a father, but also not to act as my equal. He acted more as my “elder,” as in “the elders” of a black church, and guided me gently. At times he acted like my “Big Brother,” as he was a member of Omega Psi Phi Fraternity, the unofficial fraternity associated with Delta Sigma Theta Sorority, of which I was a charter member of the chapter at

Porres, whereas the whites attended the white Sacred Heart Catholic Church in Crosby.

¹⁶ Brent Manley, “Judge Has Come [a] Long Way,” *Houston Post*, February 5, 1984.

¹⁷ *Ibid.*

¹⁸ Constance Frisby Fain, “Symposium: When a Lawyer Stood Tall: Sharing and Understanding Stories of Lawyer Heroes: Characteristics of the Heroic Lawyer and Avoidance of Unprofessional Conduct,” 13 *WIDENER L.J.* 61, 61 (2003).

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

the University of Houston.²² He was from humble beginnings, and so was I. Before entering law school, he taught in the public schools, and so did I. He entered law school while in his 30s, and so did I. We found our similarities and connected to form a strong working relationship.

I learned from the wisdom he gained through his vast years of experience. He never talked to me in a condescending manner, never sarcastically, but always with respect. He understood at what point I was in my legal career and taught his lessons so that they corresponded with my level of experience and understanding. He liked to teach using analogies. In one analogy he compared making a cake with proving all the elements of an offense.

“Making a cake calls for several ingredients,” he said, “but if you leave out one ingredient, you can stir and stir all day, but without that ingredient, you will not make a cake. The same is true for proving if a person has committed a crime. If just one element is missing, you can talk and talk all day, but you will not prove the crime.”

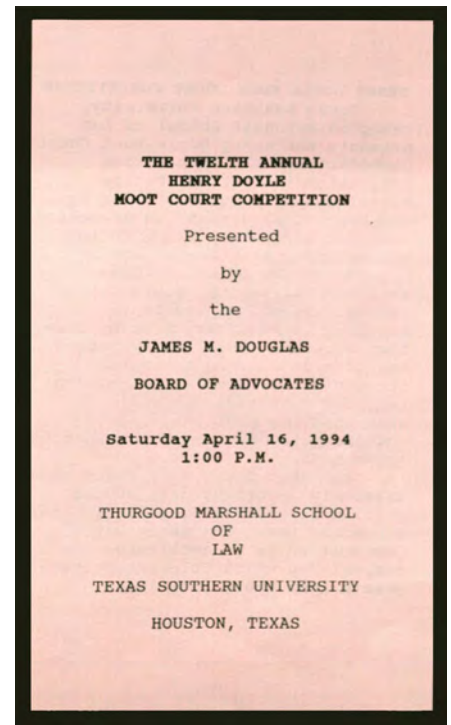
Judge Doyle also broadened my experiences with black social customs, as I learned about those during our lunch breaks. Doris would drive us as we traveled to broaden our horizons. We listened to radio station KCOH, located in the Third Ward, and would often discuss the words to the songs we heard while traveling.

Our first lunch trip was quite amusing. Instead of going to a restaurant, we boarded Doris’s pickup truck and went to a fire sale located in a rather dilapidated building. To Doris’s and my amazement, Judge Doyle purchased several white hand towels. He then explained that he purchased those to share with his buddies as they played golf on the weekends when they played in the hot Houston weather. I often smile as I recall us walking inside that fire sale, inspecting the different items. I am unsure where other Briefing Attorneys and their Judges went to lunch, but I would bet they did not go to fire sales! He taught me to be thrifty and practical.

During another lunch break we visited the Black Heritage Gallery, on Almeda Road, in the Houston Third Ward. There we looked at several paintings and prints created by black artists. He bought a painting, and I bought a sketch of two little girls standing with their arms wrapped around a pole. The girls looked like me and my younger sister, Lynda. I had seen many drawings of little white girls, but this was the first time I remember seeing original artwork of little black girls who looked like me and my sister. This visit was my first exposure to a collection of several local black artists and their works. I still own the framed sketch I purchased that day and it hangs on my living room wall. Judge Doyle taught me to explore and experience black art through black art galleries.

Once, we went to lunch at a black soul food restaurant, “This is It” in the historic Houston Fourth Ward. While we sat at our table eating lunch, a young black man came to our table and politely asked, “Sir, are you Henry Doyle?” to which Judge Doyle answered, “Yes.” The man, dressed casually in jeans and a T-shirt, continued, “You were my lawyer in court and got my sentence reduced to two years. I got out, I have a job, and I’ve never been in trouble since. Thank you very much.” Judge Doyle replied, “And thank you, sir.” I was afraid, but Judge Doyle sat without batting an eye. I asked if he was afraid, but he answered, “No, I have no reason to be afraid.” He taught me that as a lawyer, perform your job well, be fearless, and treat all with

²² I was a charter member of Zeta Sigma Chapter of Delta Sigma Theta Sorority, Inc. at the University of Houston.



Left: Judge Henry E. Doyle conferring the Henry Doyle Moot Court Competition Award at the Thurgood Marshall School in 1994. Right: Announcement of the Twelfth Annual Competition. Photos courtesy of Virgie Mouton.

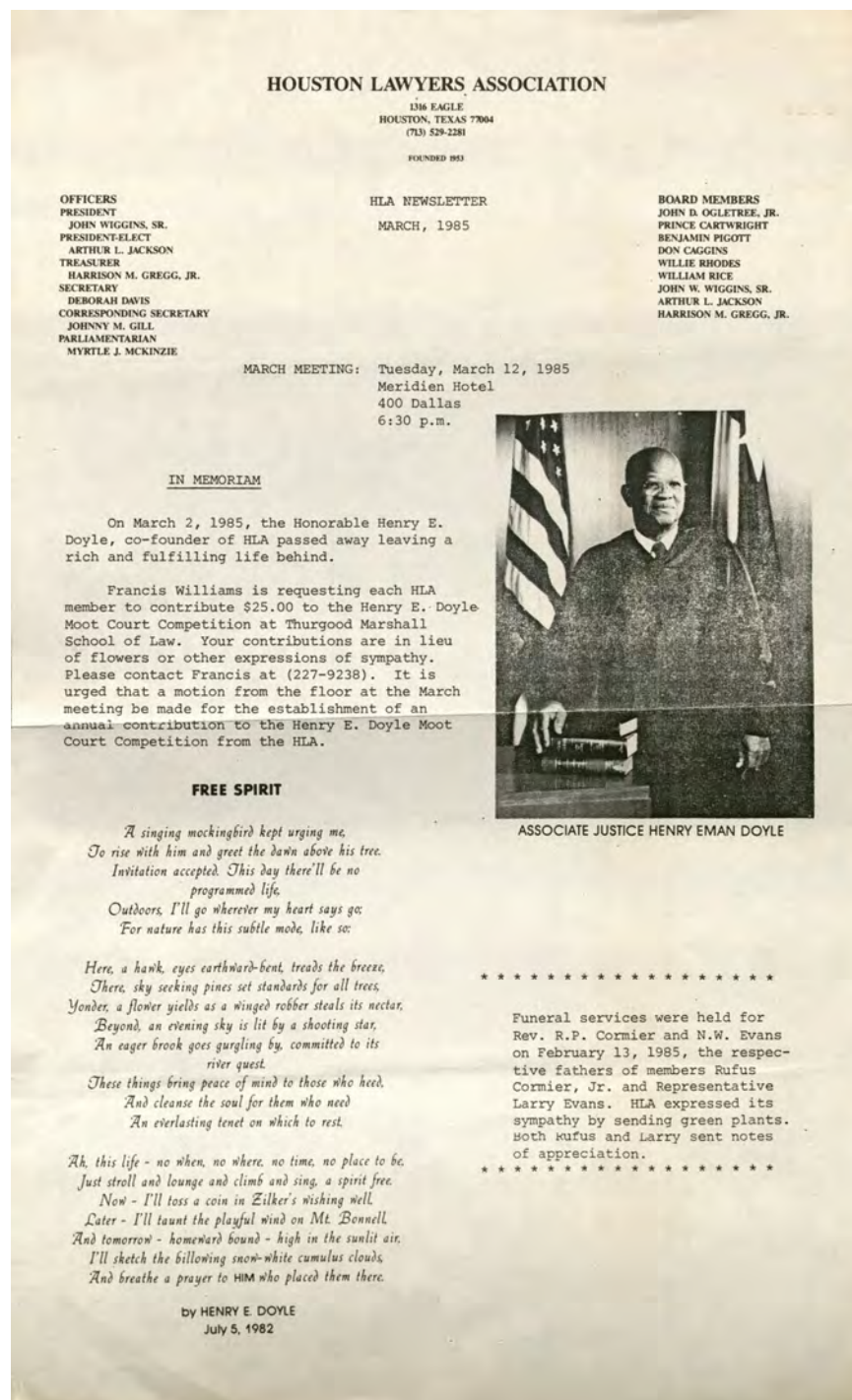
dignity and respect. Judge Doyle was a true gentleman lawyer.

Near the end of my term I asked Judge Doyle, “Why didn’t you stop? When the others withdrew, when you were all alone, when the school moved from Austin to Houston, why didn’t you stop?” He answered with two questions, followed by his own answers.

“Do you know that Peter walked on water? Do you know why he began to sink? He took his eyes off Jesus—the prize. If Peter had kept his eyes on the prize, he would have never sunk. I never wanted to stop so I kept my eyes on the prize—that’s why I never stopped.” Judge Doyle persevered and remained steadfast, determined to become a lawyer. With this lesson he also demonstrated his knowledge of the Bible—after all, he had been a Superintendent of Sunday School.

Final Thoughts

Less than three months after Judge Doyle retired from the First Court of Appeals, he passed away while playing golf with his buddies in Houston. Although Judge Doyle is no longer with us, his accomplishments and his fortitude in staying the course while in law school paved the way for our law school, conceived in sin, to evolve into a law school that has fulfilled Thurgood Marshall’s true dream. Texas Southern University Thurgood Marshall School of Law has been cited numerous times as the most diverse law school in the nation, giving deserving students the opportunity to study law and become lawyers. Thank you, Judge Doyle, for staying the course and paving the way for us all who have followed in your footsteps.



In 1985, the Houston Lawyers Association celebrated
 the accomplishments of Judge Henry Doyle.
 Image courtesy of Virgie Mouton.



VIRGIE A. MOUTON has served as the Assistant Dean for Student Development and Academic Support at the Thurgood Marshall School of Law since 2002 and as an Instructor of Law since 1997. In addition to serving as Justice Henry Doyle's Briefing Attorney and as Research Attorney for the First Court of Appeals, she served as Assistant County Attorney for Harris County.

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An Interview with Judge Kenneth M. Hoyt

By Hon. Andrew M. Edison

As he relaxes behind a simple desk in his chambers at the Federal Courthouse in downtown Houston, Senior United States District Court Judge Kenneth M. Hoyt reflects on his journey from growing up in a small, rural East Texas town to becoming the first African American man to serve as a federal judge in the state of Texas.

"Sure, I have experienced a lot in my life," Hoyt said, his distinguished gray hair reflecting the sunlight coming through the window. "But that has made me who I am today. I think I am much better for it."

Hoyt is a mainstay on the federal bench, serving as a District Court Judge for the past 30 years. A man of deep faith, Hoyt is quiet and reserved. Behind that unassuming front, however, there is a legal trailblazer who has helped pave the way for a generation of underrepresented groups to reach great heights in the legal profession.

Born in 1948 in San Augustine County, Texas, Hoyt grew up poor in a four-room house with no plumbing. His father, Earl, was a disabled World War II veteran unable to ply his trade as a barber and tailor. To make matters more difficult, Hoyt's mother, Fannie, was unable to seek full-time employment outside the house because Earl required round-the-clock attention. As a result, at age 12, Hoyt went to work in various odd jobs to help put bread on the family table.

Rather than causing him to lose faith in humanity, it was his father's war injury that propelled Hoyt into a law career. Although Earl sustained a head injury while on active duty, the Veterans Administration refused to provide him with a full disabled veteran's pension. "At a young age, I decided I wanted to become a lawyer to correct my dad's injustice. I wanted the Veteran's Administration to ante up, recognize my father's disability and pay him the compensation he was due," Hoyt said.

In 1966, after graduating from the segregated Lincoln High School in San Augustine, Texas, Hoyt enrolled in a six-year program at Texas Southern University where he simultaneously could obtain his undergraduate and law degrees. He excelled in the classroom, but he also learned a lot outside the classroom. In May 1967, for example, after returning to his dorm room from a night



U.S. District Court Judge Kenneth Hoyt. Photo provided courtesy of TheHistoryMakers.

of studying, he found himself in the middle a student-police melee that more than 50 years later is known as the "TSU Riot." Police fired rounds of ammunition through his dorm room window, causing Hoyt and other students to flee the building. Once outside, Hoyt and 487 fellow students were arrested in the greatest mass arrest in Houston history. Hoyt was released, but the events of that spring night made a lasting impression on him. "It confirmed for me that I really needed to focus on my studies, get my law degree, and get out in the world to help make a difference," Hoyt said.



Judge Kenneth Hoyt was one of the founders of the *Thurgood Marshall Law Review*.

In law school, Hoyt was a founding member of the *Thurgood Marshall Law Review*. Shortly before he graduated from law school, in a strange twist of fate, the Veterans Administration reversed its position and awarded Earl Hoyt his long-denied benefits. Although the impetus for Hoyt pursuing a legal career had now been put to rest, he was already well on his way to a successful legal career. Upon passing the bar in 1972, he entered private practice handling a variety of legal matters. He also fulfilled a six-year military reserve commitment from 1972 to 1978.

In the fall of 1981, Texas Governor Bill Clements appointed Hoyt to preside over the 125th Judicial District Court of Harris County, Texas. Hoyt took the bench, but did not remain in that position for long. He lost the Republican primary the following spring and returned to practicing law. A few years later, Hoyt decided to toss his hat into the ring once again, this time running for a spot on the First Court of Appeals of Texas. He won that race, served as a Justice on the First Court of Appeals from 1985 through 1988, and has been a jurist ever since.

Roughly a year into Hoyt's tenure at the First Court of Appeals, the Reagan administration approached him about the possibility of a lifetime appointment to the federal bench. To most, this would be a once-in-a-lifetime, can't-turn-it-down opportunity. Hoyt, however, respectfully declined the overtures. "At that time, I just didn't feel as if I was ready to be a federal judge. You have to understand: I had such high regard for federal judges and I had been on the Court of Appeals for only about a year. I still had so much to learn," he said. Roughly a year later, the Reagan administration came knocking again and this time Hoyt felt he was prepared for the challenge.

On November 24, 1987, Hoyt was nominated by President Ronald Reagan to a seat on the United States District Court for the Southern District of Texas. He was confirmed by the United States Senate and received his commission on April 1, 1988. Hoyt was the second African American federal judge in the state of Texas.

Over the years, Hoyt has garnered a reputation as a fair, respectful, and even-handed judge. He treats all those he comes across with the utmost respect, earning him adoration from colleagues, court personnel and regular folk. "I don't think there is anything particularly interesting about me," said the incredibly modest Hoyt. "I am just a simple man." His identity as a "man of the people" is best evidenced by the fact that he always takes the public elevators at the courthouse instead of those reserved for the judges.

Judge Hoyt took senior status on March 2, 2013, but continues to preside over a busy

docket today. Admired by many, Hoyt is not one to toot his own horn. You won't find him bragging about his accomplishments or boasting about his awards (of which there are many). "I needed to be humble so I could overcome the obstacles facing a black man," said Hoyt. "I have done well in spite of the hurdles I faced. But what really bothers me is that I cannot correct the problems for all others. There is a sense of righteous indignation that I cannot enjoy what I have because I want others to be able to enjoy it as well."

It is that sense of justice that has led Hoyt to be a role model for a number of recent African American judges. "Judge Hoyt has been an inspiration to me and countless others. We are all better judges, lawyers and citizens—better people—because of his service," said United States District Court Judge George C. Hanks, Jr., the first African American federal judge in the Galveston Division.

"Judge Hoyt truly understands the sacred trust that society has placed in him as a judge: to protect those who cannot protect themselves and to help others resolve the problems in their lives that they may be powerless to resolve on their own. He has taught us all, by example, that one person, committed to the ideals of justice, can make a positive impact on the lives of so many of our fellow citizens."

Looking back on an incredible career as a jurist, what is it that Judge Hoyt finds most memorable about his time on bench? "I have thoroughly enjoyed the intellectual challenge as well as the chance to work with youngsters—to show them that America is a place not exclusive to one particular group, but a place where anyone can succeed."

A devoted family man, Hoyt has been married to his wife, Veola Johnson Hoyt, for almost 50 years. They have three adult children—Michael, an economist, Stacy, an educator, and Justin, a chemist, all of whom live in the Houston area. Hoyt said he encouraged his children to find their passion in life and pursue it. In his free time, he dotes on his four grandchildren and enjoys playing the role of a handyman, doing his own plumbing, carpentry, and electrical work around the house.

With a world view shaped by his humble upbringing, Hoyt said he hopes others will recognize, by his example, the value of public service and education. "In the end, I think America is much better by the generosity of those who give so much to society."



Judge Hoyt's friend George C. Hanks, Jr. became the first U.S. District Court Judge to serve in the Galveston Division of the Southern District of Texas in 2015. Photo courtesy of U.S. District Court for the Southern District of Texas.



UNITED STATES MAGISTRATE JUDGE ANDREW M. EDISON serves the Galveston Division of the Southern District of Texas. He was appointed to the bench effective February 20, 2018. Judge Edison graduated from Dartmouth College with a Bachelor of Arts in Government in 1991 and from the University of Virginia School of Law in 1994, then engaged in the private practice of law.

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An Interview with the Honorable Gabrielle Kirk McDonald

By Melanie Bragg

Retired Federal Judge Gabrielle Kirk McDonald and I reconnected via Skype on May 16, 2018 to discuss the road she traveled to become the third U.S. African-American federal judge and to help create and preside over the first International Criminal Tribunal for the Former Yugoslavia. Judge McDonald was one of my first female mentors when I graduated from law school in 1982. I was always impressed by her warmth, her beauty, and her down-to-earth personality. Her early experiences, uncomfortable as some of them were, formed the basis for her life's work and accomplishments. Although she doesn't admit it was by design, threads that run through the tapestry of her life spring out of her early beginnings.

Who is Gabrielle McDonald?

When I asked Judge McDonald why she became a lawyer, she gave a big smile and said, "There's a story that my mother tells. When I was about five, she had an appointment with a lawyer and he had a safe in his office. I asked him what was in the safe, and he said money. And that was when I decided I wanted to be a lawyer." She continued, "I don't know if I believe that. I say, 'I never wanted to be a lawyer, I wanted to be a *civil rights lawyer*.' I didn't want to practice tax law. I wanted to save the world."



Left: Judge Gabrielle Kirk McDonald. Photo provided by Judge Gabrielle McDonald. Right: Photo from City University of New York website.

McDonald's Background on the East Coast

Growing up on the East Coast with a bi-racial mother, Judge McDonald experienced racial discrimination from an early age. As she recalled, "My mom was bi-racial, but she looked white. And, she chose to marry black. She took me to Bloomingdale's when I was about eight to get my hair cut. She left me in the salon and went off to shop. When she came back, I was still sitting

there. She turned the place out! I was so petrified. I thought they were going to cut off my ears. There were instances in my childhood where I witnessed the difference between how white people were treated and how black people were treated."

Judge McDonald said she thinks that her background mirrors the average black person growing up:

I was a latch key kid. My mother was divorced when she was very young, and we moved to New York where she became an understudy to Hilda Simms in *Anna Lucasta*, the first Black play on Broadway. My mother was a petite woman, but she spoke up loudly. She always made me feel special in a good sense. I remember her saying, 'I don't care if you don't love me, you're going to do well.' She died of breast cancer when she was fifty-one.

The young McDonald and her mother moved to Teaneck, New Jersey, an almost all-white community, in 1955 as black families began to move in. The era of "block busting" had begun. Judge McDonald recalls, "Realtors would come to white owners of houses and say 'African Americans are moving in, so you had better sell your house, because property values are going down.'" Her mother was active in an interracial organization formed to stop that process. Another instance took place in third grade when they moved to Riverdale and her mother leased an apartment without her daughter being there. Later when Judge McDonald showed up, all hell broke loose. As she explained it,

They wanted to put us out. These types of experiences made me aware of the differences because of the way I was treated. Like when I would run home from school, being called the N-word. I can remember when we went to Washington, D.C. for our senior class. When everyone kind of coupled off on that school trip, I can remember a feeling, a sense of being left out because there was no such thing as interracial dating then. But these examples are somewhat minor compared to what African Americans faced then and face now. I was often a witness to the different treatment by other people and, of course, when I was a "victim" I understood it rather clearly.

When I asked Judge McDonald about her first memories of wanting to save the world, she reminded me of the way the world appeared in the 1950s:

I was thirteen in 1955 when Emmett Till, a fourteen-year old African-American, was lynched in Mississippi after a white woman said she was offended by him in her family's grocery store. Some people have said that was the trigger that started the civil rights movement. His mother left the casket open at his funeral. To this day I remember seeing his photo in *Jet Magazine* on the right-hand side of the page. When I say I wanted to make things better, it's not like I decided then that I was going to work for the NAACP Legal Defense Fund. But, I knew that what he experienced and what I experienced was wrong and I took it upon myself to take on that burden.

Judge McDonald's Hunter College and Howard University days

These early experiences contributed to her desire to combat injustice. Judge McDonald got her determination to make things right in 1961 while at Hunter College in New York City. She attended a symposium to celebrate the 100th Anniversary of the Emancipation Proclamation. Professors from Howard University School of Law were there to talk about the civil rights movement. After the conference, she made an important decision: "I wanted to be a civil rights lawyer and I wanted to go to Howard." With a recommendation from Edward Brooke, the first black Senator from Massachusetts in the United States since Reconstruction, she was accepted.



Left: Great Seal of Howard University. Right: Founders Library, Howard University, Wikimedia.

Judge McDonald's life rose to new heights when she went to Howard University School of Law. For the first time in her life, she was not a member of a minority. "The professors at Howard had all participated in the civil rights movement," she explained. "They were lawyers who had worked with Thurgood Marshall."

When I graduated from Howard, my first job and really the only job I wanted, was with the NAACP Legal Defense Fund. At twenty-five, I mostly handled employment discrimination cases. In 1968, we needed a lawyer in Houston to serve as cooperating counsel with the NAACP Legal Defense Fund. I learned about Mark McDonald, a nice looking, recent divorcee. Mark was seven years older than me and had graduated from Thurgood Marshall Texas Southern University. I called and told him about the case and we set up a time to meet in Houston.

By December, we were married. I traveled the two and a half years that I was with the Legal Defense Fund and argued cases in the Fifth Circuit and Eighth Circuit. When I moved to Houston I was an Earl Warren Fellow, which meant that I was given a stipend for a year to help ease my transition from the New York NAACP office to practicing law. Houston reminded me of Mississippi; discrimination was really institutionalized. All the petrochemical plants would hire blacks but would

keep them in a line of progression that prevented them from going to a higher paying position. We sued all of the corporate giants and all of the steel companies.

Judge McDonald was busy in Houston working for the NAACP Legal Defense and Education Fund. She did not want to be a federal judge and she did not seek it out. Rather, a staffer in Senator Lloyd Bentsen's office contacted her. She says, "I was always the lead lawyer and at that time, there were no women in the U.S. Attorney's office. The only other woman who I saw there regularly was Marian Rosen, with her long mink coat. And, no blacks. Period."

Judge McDonald was in her mid thirties when she was approached to apply for a newly created federal judgeship. She recalls, "My whole life had been spent pushing the system. I stood out and I had my mother's 'I'm gonna get you' attitude. I certainly didn't want to be part of the system, but if Lloyd Bentsen was interested in appointing me, I had to."

Her application went through and she became the third African-American federal judge. President Jimmy Carter nominated McDonald to serve as a federal judge of the U.S. District Court for the Southern District of Texas on February 27, 1979, appointing her to a new seat created by special statute.¹ The U.S. Senate confirmed her nomination on May 10, 1979, and she received her commission on May 11, 1979, when thirty-seven years old. She was the first African-American appointed to serve on a federal Texas court and the third African-American appointed in the entire United States.

While on the federal bench in Houston, many high-publicity cases landed in her court. One of the most notorious was the Ku Klux Klan case that pitted recently arrived Vietnamese fishermen against local fishermen and Ku Klux Klan extremists based in Santa Fe, Texas who threatened to burn the immigrants' fishing boats and made them fear for their lives.² Judge McDonald heard the case and granted relief that brought a swift end to the local Klan chapter's program of domestic terrorism.

In 1980, she struck down the medical state law requiring acupuncturists to be licensed physicians, holding that "[i]t is the individual making the decision, and no one else who lives with pain and the disease. It is the individual making the decision, and no one else, who must undergo or forego the treatment."³

She handled a case filed by Gertrude Barnstone involving the television show *Death of a Princess*, about the execution of a Saudi princess who had taken a commoner as a lover. It may have been the most controversial program in the history of American television.⁴ "The PBS station decided they were not going to show it," she said. "There was testimony that the oil companies did not want it to be shown because it showed Saudi Arabia in a bad light because of the way that women were treated. I held that they were refusing to show it for unconstitutional

¹ 92 Stat. 1629.

² *Vietnamese Fishermen's Association v. Knights of the Ku Klux Klan*, 518 F. Supp. 993 (S.D. Tex. 1981).

³ *Andrews v. Ballard*, 498 F. Supp. 1038 (S.D. 1980).

⁴ Thomas White and Gladys Ganley, "The 'Death of a Princess' Controversy," *PBS Frontline* (1983), <https://www.pbs.org/wgbh/pages/frontline/shows/princess/reflect/harvard.html>

reasons.” Because the local PBS station was a public entity, she viewed it as being a state actor. “The Fifth Circuit reversed me.”

There was a criminal case involving Robert Eckels, a prominent Houston politician. “Eckels and a journalist were charged with bribery. I dismissed the case against the journalist and found Eckels not guilty. I had a lot of high profile cases that were assigned randomly, but I still don’t know how I managed to get all of those cases.”

Judge McDonald retired from the federal bench in 1988. She went on to teach law school and practice in a firm. When I asked her about her transition from federal judge to international judge serving on the International War Crimes Tribunal, she said it was just like becoming a federal judge—someone saw her work and asked her to serve. “I knew the legal advisor at the State Department I had worked with at the NAACP,” Judge McDonald explained. “When the International War Crimes Tribunal was established in 1993, he contacted me because they were looking for judges with criminal experience.”

Having accepted the judgeship, she faced new challenges.

First, we had to create the Tribunal. We had no rules of procedure, no premises, no police force. The eleven judges sat and drafted the rules of procedure and evidence using a document that had been given to us by the U.S. Since I had taught law school procedure and evidence in between being a federal judge and this assignment, this transition fit me very nicely. The rules had a common law bent, as did the statute that the Security Council drafted creating the Tribunal.

When I was presiding over the *Tadic* case at the War Crimes Tribunal we had two trial chambers and it fell into our trial chamber where I was the presiding judge.⁵

Parallels between the tribunal cases and U.S. civil rights issues

I asked Judge McDonald whether the human tragedies she witnessed at the Hague were beyond what she had seen before. She answered, “Yes, it reminded me of our racial problem here.” The case involved two highly integrated communities who were battling each other:

I saw parallels with what was happening in the U.S. My time at the International Criminal Tribunal for the Former Yugoslavia was really a culmination of all my various careers. The culmination of all my civil rights experience I infused into the human rights armed conflict. There’s not too much difference between civil rights and human rights. Human rights we are given because we are human. Civil rights we are given by law. But, racial minorities didn’t have civil rights.

The International Criminal Tribunal for the Former Yugoslavia closed in December 2017. It was the first international criminal tribunal, and it paved the way for the International Criminal Court.

⁵ See “The Tadic Case: the Verdict,” CC/PIO/190-E, *United Nations International Tribunal for the Former Yugoslavia*, <http://www.icty.org/en/press/tadic-case-verdict> (May 7, 1997).

Right:
The International
Criminal Court.
Photo courtesy
of Netherlands
Tourist website.

Below:
Judge Gabrielle
McDonald and
Hillary Rodham
Clinton.
Photo provided by
Judge McDonald.



Judge McDonald's wisdom shared with students

Judge McDonald acknowledges that “things that have happened to me in my life have happened not because I’ve asked for them, but because the job I was doing was seen by someone else to have been of worth. When I was teaching at Thurgood Marshall School of Law after I retired from the federal bench, I would tell the students, ‘You know, when you graduate from law school, as soon as you pass the bar, you are a lawyer. And you have to produce. There is no waiting period.’ And I remember one student saying, ‘You’ve been so successful, and you have all this experience.’ I said, ‘It wasn’t always that way. I was a law student once too.’”

Judge McDonald offered the following advice to her students and the audiences she has addressed: “Give it your all and lead your life with your heart and your mind. That is very important to me personally because if you are in the law, there is a sense of compassion you must have. The more successful you become, the more compassion you need because the more likely you are to lose it.”

“When I taught professional responsibility, I told them to watch it,” she said, “because very quickly, you buy that first BMW and then you start to slip a little, then you slip a little more. It becomes very easy once you start. You have to have a good moral sense. The law is what stands between us and anarchy. We are a society of laws not men.”

At the center of her message to the students at Howard is to keep civil rights at the forefront. “I tell them this,” she said,

“Every student graduating from Howard University School of Law should care about civil rights. That doesn’t mean you have to be a civil rights lawyer. Even if you are a tax lawyer, there will come a defining moment when it’s going to be put to you, that you can do something, say something, or be quiet. And if you are quiet about it, it is going to come back and haunt you. The point is, you ought to speak up, especially if you come from Howard University School of Law. You have an obligation to, because of what has come before you.”

Conclusion

Judge McDonald used her early experiences with discrimination and adversity to rise to the top of her profession. Due to hard work and her determination to “save the world”, she did just that on the national and international scene. Her life has come full circle. She deserves the many accolades she has received.⁶

Judge McDonald closed our interview by acknowledging the key influences in her life. “I am who I am because of my mother, Frances, and grandmother, Priscilla. My grandmother was a rock. She was strong. My mother stayed on me and loved me in a very demonstrative way. One

⁶ Among other accolades, Judge McDonald has received the National Bar Association’s first Equal Justice and Ronald Brown International Law Awards; the American Society of International Law’s Goler T. Butcher Award for Human Rights; the American Bar Association Commission on Women in the Profession’s Margaret Brent Women Lawyers of Achievement Award; the Open Society Institute’s first Women Groundbreakers in International Justice Award in 2007; and the 2008 Dorothy Height Lifetime Achievement Award.

of my relatives wrote me a wonderful letter saying that I reminded her of my grandmother. That was probably one of the greatest compliments I have ever received."



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The Lady on the Bus Stop

By Hon. Evelyn P. McKee

It was a hot and humid afternoon in 1967. Hot and humid is normal for Houston, Texas in the fall. I was seventeen years old, and one of a handful of Black students who attended a formerly all-White college.

On that day, for a reason that over fifty years later I can't even remember, I was standing at a bus stop downtown at the interchange that existed then in cities all across America. At these transfer points, usually near the Woolworth store where a bag of Spanish peanuts cost a quarter, domestic workers changed busses from the "other side" of town where their maid jobs were, to the side of town where they lived in strictly segregated communities.

Dressed in uniforms of white or black and comfortable shoes, these ladies met here twice daily. Their conversations were intimate—quiet and loud, by turn. Talk of hurting bunions, the meanest "Miz Ann," or the most spoiled White children were punctuated with "Amen," "Yeah, girl," and "Sho' you right." Most were middle-aged, but some were elderly, their fingers gnarled with arthritis, and a few were not much older than I was. Each one carried a package or a shopping bag that no doubt held a White child's discarded dress or toy, or left-over food.

With my huge Afro, clunky shoes and bell-bottomed pants, I was obviously an outsider, but a lady standing near me struck up a conversation anyway.

"What yo' name, honey?"

I told her.

"Where you from? You from 'round here?"

"No Ma'am," I said, adding the title that Mama and Grama had taught me to use when addressing my elders. "I'm from a little town in north Texas."

"Well, what you doing here, baby?"

"I'm a student at the college."

"College? You go to college? I'm so proud of you." And indeed a look of pride settled on her face.

"Yes, Ma'am. But this is just my first year," I added self-consciously. Since I was the third generation of my family to attend college, I didn't feel that being only a freshman was deserving of her pride.

"That's alright, baby," she said, disregarding my reticence. "You got to finish that college. For us. Imo hep you."

Help me? How could she help me? And who was "us"? But when I met her eyes, I saw them. I saw women of every hue, from blue-black to high yellow, to pinkish white. I saw the women who had fervently prayed, to a Black god or a White Jesus, for the end of slavery. I saw the women who had killed their babies rather than allow them to live as slaves. I saw the women who had died with their hands tied at the whipping post, because they had learned to read a few words, and the women who had been punished for teaching them. I saw the women who had given birth to their masters' children only to see them sold as chattel. And I saw the women who, with heads held high, had stared Jim Crow in the eye. All of these women, who knew that education was the key to unlocking the chains that bound them, were in her eyes. They stared back at me—asking me how I could take such a gift for granted.

The lady reached into her high pocket, and pulled from her full bosom, a handkerchief tied with the knot that only gramas and church mothers know. Deliberately and painstakingly, she untied the knot, dug out a crumpled dollar bill and folded it into my hand.

Although I'd seen my own grandmother untie such a knot to give me a coin or a bill to put in the collection plate in Sunday school, I was embarrassed to receive this gift from a stranger.

"Thank you, Ma'am, but I don't really need any money. My parents saved up to send me to college. And I have a part-time job typing in an office." I knew that she had worked much harder for that dollar bill than I ever had, or that likely I ever would. I tried to give the bill back to her, but she folded my fingers over it, and patted my hand.

"I'm just doing my part, sugar. This is all I can afford. I want you to keep it. And you remember me." Then her bus came, and she was gone.

I will always remember her. I cannot count the times have I regretted that I didn't get her name and phone number, and that I didn't save that crumpled dollar bill.

At my graduation ceremony four years later, I was surrounded by friends and family who appreciated the milestone—but who had fully expected that I would graduate from college. I wished that the Lady on the Bus Stop could have been there, or at least could have known that I had "finished that college." In a strange way, it was more important to me that she knew, than that my friends and family knew. And in a strange way, I think it would have meant more to her than it did to them.

Ten years later, I graduated from the University of Texas Law School. At the Sunflower Ceremony in the huge and ornate hall, I was again surrounded by friends and family. Once again, I wished that Lady on the Bus Stop could have been there, or at least have known. A few months later, I opened an envelope and confirmed that I had passed the Bar exam. I smiled and wished the Lady on the Bus Stop could have seen that letter, so she could really be proud.

Several years later on a cold January day, I was sworn in as a judge. I am so grateful that my father, who scrimped and saved so that I could have an education, and who died that November, was able to attend the swearing-in ceremony.

I am so grateful that my uncle, who had tied bows just right in my sashes when I was a little girl, and who never had a little girl of his own, attended—just two weeks after heart surgery had left him frail and weak, and against the advice of his doctor. I am grateful that my girlfriend took off her job and drove 200 miles to be with me that day. Even surrounded by friends and family, that day, I wished that the Lady on the Bus Stop could have been there. I know that she—and those women I saw in her eyes—would have been proud.

After over twenty years on the bench, I am retired, and I have published three best-selling novels. At every milestone in my life, I have remembered the Lady on the Bus Stop. I wish that she could know that I have tried to deserve the pride on her face on that hot and humid day in Houston, Texas. I wish that she could know that I've tried to earn that crumpled dollar bill that she worked so hard for. I wish she could know that I strive to emulate her by taking every opportunity to be the Lady on the Bus Stop for another generation of the descendants of slaves. I pray that forty years from now, another woman will remember me—and remember seeing the Lady on the Bus Stop and all those other women in my eyes.



Top: University of Texas Law School students celebrate graduation by wearing a sunflower. Image from the University of Texas School of Law web page. Bottom: Judge McKee and her father. Photo courtesy of Judge McKee.



JUDGE EVELYN MCKEE retired as Presiding Judge of City of Austin Municipal Court in 2013. Her commitment to the profession and the arts included service on the Boards of Directors of the State Bar of Texas, Texas Municipal Courts Education Center, Writers' League of Texas, and Austin Community Radio. In retirement, she has more time to devote to gardening, RV travel, and caring for her "zoo"—two little yappy dogs, a talking parrot, and a tank of five mongrel fish.

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Hon. Harriet M. Murphy: First Permanently Appointed African-American Woman Judge in Texas¹



Photo courtesy of the University of Texas School of Law.

At a civil rights protest at the University of Texas at Austin in the late 1960s, Harriet Murphy, UT Law School class of 1969, remembered holding a sign stating “Put the Black man in the history books.” Murphy, who eventually served on the City of Austin Municipal Court for two decades, has done more than her share toward not only putting Black men in the history books but also putting Black women in the halls of fame.²

Harriet grew up in Georgia, went to high school in Atlanta, and earned her bachelor’s degree at Spelman College. She recalled Atlanta in the 1950s as a thriving civil rights scene, a city humming with influential figures engaged in the struggle for equality. “There were just great leaders there. These were the people that MLK [Martin Luther King Jr.] associated with. These were the people that had a great influence on him being an activist even in high school,” she said. “It was not unusual for Martin Luther King to be the leader that he became, growing up in that kind of environment. And it was not unusual for many others who came through Atlanta to become leaders—not only political leaders but just leaders. It was a tremendous environment to grow up in,” Harriet continued. “I just think that I’m fortunate to have grown up in that environment, which has always made me very candid and very outspoken, and with belief in my opinions.”

Harriet possessed this innate sense of integrity and conviction even in her youth. She laughs as she recounts the story of riding a bus with two friends as a young girl and stubbornly speaking

¹ Reprinted from *As We Saw It: The Story of Integration at the University of Texas at Austin*, edited by Dr. Gregory J. Vincent, Virginia A. Cumberbatch, and Leslie A. Blair, Copyright © 2018. Courtesy of the University of Texas at Austin’s Division of Diversity and Community Engagement.

² All quotes from Harriet Murphy are taken from an interview with Judge Murphy that was conducted by Christopher Palmer, University Communications, and Leslie Blair during the summer of 2010, in Townes Hall at the University of Texas Law School.



Judge Murphy (left) was awarded an Honorary Doctorate of Law degree in 2013 from Spelman College, her undergraduate alma mater. Presenting the degree is Spelman President Beverly Daniel Tatum. Photo courtesy of Spelman College.

up against the driver when he tried to bully a Black man into exiting through the back door of the bus instead of the front. After that, Harriet said, the mothers of her friends forbade them from going downtown with her anymore lest she stir up trouble with her outspoken comments.

It was with this same spirited strength of purpose that Harriet arrived at the University of Texas Law School in 1966. She had been living in Texas for several years. After working as a public school teacher in Georgia and then earning her master's degree from Atlanta University, she had moved to Texas to teach government at Prairie View A&M University. It was there that she met her first husband, a doctor who lived and practiced in Longview and who was visiting at the university's health clinic. After he and Harriet married and relocated to Longview, she put her passion to work advocating with local political leaders in an effort to raise the percentage of African American voters in her county. Though she had for some time thought about attending law school, not until after her husband passed away did she decide to pursue a law degree. She was accepted at the University of Texas at Austin, and as she puts it, "I rolled into town in my white Cadillac in the summer of sixty-six."

"Lo and behold, I was in for a shock," Harriet said, explaining that upon her arrival she discovered that there were only five other women enrolled in the summer class, and there was



Judge Murphy with Chief Judge Carl E. Stewart at a 2017 UT Austin function. Chief Judge Stewart is the keynote speaker for the Texas Supreme Court Historical Society's 2018 Hemphill Dinner. Photo by Leslie Blair.

only one other African American student, but he promptly graduated. "I really don't remember facing the serious problems of segregation that I had faced in Atlanta," Harriet said of her first few years in Austin. She never had any trouble with discriminatory professors in the Law School, though she did face unique problems as the single African American student in the program. "I was not invited to be a part of a study group, and that is so important for preparing for examinations," she said.

As a student, Harriet recalls encountering a great deal of negativity from members of the African-American community in Austin. She was repeatedly told she would never be allowed to graduate from the University of Texas because she was Black; and when she did in fact graduate without a problem, she was told that she would never be allowed to pass the bar. "They really believed that. They knew people—they knew Blacks who had started out here and did not finish, and they knew Blacks who had taken the bar and did not pass. I was getting no encouragement there, so I guess what kept me going was the environment that I grew up in, and I knew that one

day things would be different,” Harriet said.

Harriet was also involved in civil rights activism on campus. “I did protest while I was here,” she said. “At that time there were no Blacks on the football team, and there was an activist on the campus—his name was Larry Jackson—and he had organized students to march every Saturday when there was a home game. We would do this marching, and I would come back to school on Monday and worry about whether somebody recognized me in the line, protesting,” she recalled with laugh. She attributed her determination to continue to fight for equal rights to her upbringing. “Still that background in Atlanta coming forth in my life,” she said, “making me remember that I had a part to play, that I must play, in helping to bring about equality for African Americans in this country.”

While earning her law degree, Harriet taught at Huston-Tillotson University, where she became head of the Government Department. At one point she invited Thurgood Marshall, at the time the US solicitor general, to speak at Huston-Tillotson when he was coming to Austin to visit Lyndon Baines Johnson. His response by letter—which now hangs on her wall—said that his trip would be too short to accommodate a speaking event but asked if they could arrange to have lunch. Harriet recalled expressing her disbelief over the lack of progress at the University of Texas during her meeting with Marshall. “‘You know what, Thurgood,’ I said, ‘after twenty years of *Sweatt v. Painter*, here I am, the only Black at the Law School.’ And I said that I would have thought that something would have been different.”



Judge Murphy's friendship with Justice Thurgood Marshall spanned many years. Photo from Judge Murphy's personal collection.

Because of her perseverance, Harriet has been a great force toward ensuring that things are different in Texas today. In 1973, she became the first African-American woman appointed to a regular judgeship in Texas, and she served on the City of Austin Municipal Court for twenty years. She was a charter member of legal and civil rights organizations in Austin, including the Austin Urban League, the Black Lawyers Association, and the Travis County Women Lawyers Association. For her outstanding contributions Harriet has received numerous awards, among them the highest award from the Austin NAACP and the first Thurgood Marshall award bestowed by the students at the UT Law School. She serves on the board of the National Organization of Black Judges, and in 2010 she was inducted into the National Bar Association Hall of Fame.

Harriet remembers how, running into Dr. King once in an airport, King offered her a job with the Southern Christian Leadership Conference. It was right after she had entered law school, Harriet recalled, and her mind was made up that law school was where she wanted to be. "But now I think I would have been more popular if I had been one of his assistants or something," she said with a laugh. Harriet said her life has always been animated by a deep commitment to work toward equality for African-Americans, but she became a judge to help all people.

There All the Honor Lies: A Memoir

By Judge Harriet M. Murphy

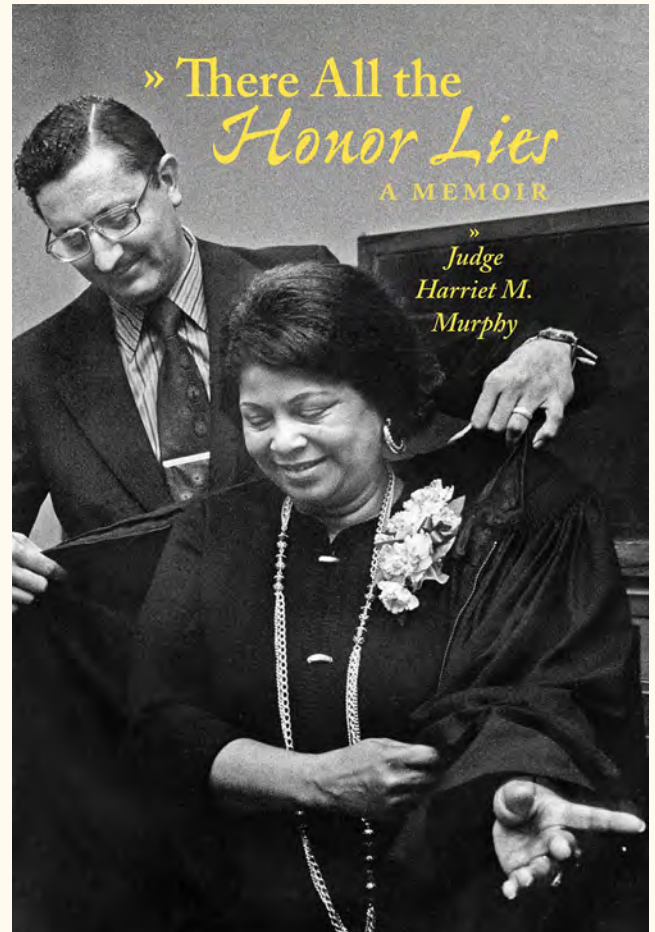
University of Texas Press

February 2018

<https://utpress.utexas.edu/books/murphy-there-all-the-honor-lies>

This autobiography of the first permanently appointed female African-American judge in Texas, Harriet M. Murphy, is the story not only of an African-American woman who grew up in the 1930s and 1940s in a highly segregated society, but of the civil rights movement in its most turbulent years. Through her work with the NAACP and the Urban League, Murphy sought social change at the local level in Georgia and then Texas while pursuing higher education and a career in law as a path to a better life for herself and other African Americans in her community.

Murphy's activism continued during her twenty years as Judge and Presiding Judge of the City of Austin Municipal Court. *There All the Honor Lies* details some of her most notable accomplishments, including being responsible for the court's becoming a court of record and establishing the City's first system of partial payment for fines to prevent warrant arrest of people who could not afford to pay in full. Her unique perspective as an African-American woman, a judge, and an astute observer of human nature comes into full play in this highly readable new book.



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Reconstruction Politics and the Galveston Seven:

The Struggle to Appoint a Judge in the Eastern District of Texas, 1869-72, Part 3

By Stephen Pate

Parts 1 and 2 of this article, published in the Winter and Spring 2018 issues of this Journal, described how the resignation of U.S. District Court Judge Charles Watrous of the Eastern District of Texas in April 1870 led to a long and contentious battle to replace him. At this point in the process, a year has passed, and two nominees among a string of potential candidates have failed to win Senate approval. This third and final installment concludes the story.



Nominee Number 3: General John Bruce— “If he is a good man ... you had better take him.”

With the defeat of J.C.C. Winch’s nomination for the unfilled federal bench in Galveston, the process began again. By then, since he was firmly opposed by both of Texas’s U.S. Senators, it appeared that Chauncey Sabin was out of the running. This meant that the last man standing was Amos Morrill, and it appeared he did indeed this time have the inside track. Senators J.W. Flanagan and Morgan Hamilton went to the White House together to urge President Grant to nominate Morrill. This joint effort caused comment. One article said that the Senators “have reconciled their differences since last session ...,”¹ while another noted that “it would appear that the Texas Lion and the Texas Lamb will again lie down together.”²

The Senators left this meeting believing that their wishes would be heeded.³ But on February 14, 1871, President Grant nominated John Bruce of Alabama for the Eastern District of Texas’s judgeship.⁴

Once again, Texans erupted with incredulity. The *Galveston Daily News* labeled it a mistake. “Bruce, the party named in Winch’s place, is not known here by anyone,” it proclaimed. “All suppose that Dudley is the name intended.”⁵ Another writer noted that, “Bruce is one of the unknowns. He spent a year in Alabama and is recommended by Senator Warner.”⁶ That same article noted that Amos Morrill had been at the White House on the day Bruce was nominated, but did not receive an audience with President Grant.⁷

¹ “Our Washington Correspondence,” *Galveston Daily News* (March 1, 1871), 2.

² “Our Washington Correspondence,” *Galveston Daily News* (February 28, 1871), 1.

³ “Our Washington Correspondence,” *Galveston Daily News* (March 1, 1871), 2.

⁴ Senate Executive Journal, Cong. Globe, 40th Congress, Third Session (February 14, 1871), 654.

⁵ “Telegraphic from Austin,” *Galveston Daily News* (February 18, 1871), 2.

⁶ “The Texas Judgeship—Judge Bruce Nominated,” *Houston Union* (February 17, 1871), 2.

⁷ *Ibid.*



Map of Galveston, Texas in 1871. Photo courtesy of Wikimedia Commons.

The Bruce nomination had that effect on Senators Flanagan and Hamilton that might have been expected. The nomination, the *Galveston Daily News* declared, "causes a great deal of surprise and angry feeling."⁸ The *Houston Union* noted that, "Senators Hamilton and Flanagan threaten an end to their amicable relations with the President unless their requests are heeded by the Executive."⁹

The Bruce nomination has to be regarded as a blunder. Why appoint Bruce? Apparently there were still powerful forces opposed to Morrill. While E.J. Davis and his Republican machine in Texas could not get Sabin the position, they still had enough influence to stop Morrill. On February 9, 1871, about the time Senators Hamilton and Flanagan went to the White House, Davis, James G. Tracy, Attorney General William Alexander, and other prominent Radicals sent Grant a telegram stating that, "The Republican party of Texas unanimously protests against the appointment of Judge Morrill as U.S. District Judge."¹⁰

There were other voices against Morrill, too. In a letter to Grant, Thomas B. Hagais of Galveston claimed that Morrill, upon hearing that Winch might not be confirmed, had published

⁸ *Ibid.*

⁹ "The Federal Judgeship," *Houston Union* (February 18, 1871), 2.

¹⁰ Telegram to President Grant and W.T. Clark, February 9, 1871, Morrill Nomination File, NARA RG60.

a card in the Galveston newspapers representing himself as a Galveston attorney and resident, when he actually lived in Jefferson. Hagais said that “[i]t is therefore respectfully submitted to your Excellency, whether or not a gentleman who by the use of such false pretenses, seeks to secure so important an appointment is worthy of such high honors.”¹¹ An examination of the Galveston newspapers of the relevant time period reveal no such card.

Besides this Texas opposition, Morrill had another enemy—perhaps the most important. F.P. James of the Banking Office of F.P. James and Co., with an address at 45 Wall Street, New York City, and a partner in Cowdrey and James, wrote General Orville Babcock, President Grant’s Secretary, a scathing letter about Morrill, saying that,

I hope and trust that that the President will not nominate Judge Morrill for the vacancy.

I think him totally unfit for the place and would feel great alarm at his getting it, he having solicited the aid of our Defendants in obtaining the office in the hearing of one of our Plaintiffs.

I hope the President will appoint an impartial person entirely unknown to either of the litigants.¹²

F.P. James was not a man to be trifled with. He was a prominent railroad investor and powerful New York banker, socially prominent enough that he and his wife were invited to the Vanderbilts’ famed balls.¹³ James was politically savvy enough to write not to the Attorney General, but to Babcock, Grant’s close confidante, who in effect was Grant’s chief of staff. Moreover, Babcock has been described as a man who “came to personify the looser morals of the Gilded Age.”¹⁴ Wall Street’s voice was going to be heard.

So, is that why another “outside man” was chosen? *Probably*. So, who was John Bruce? The *Galveston Daily News* wrote that he was “said to be a Federal Colonel during the war and a practiced lawyer of superior ability at or near Dubuque Iowa. He enters his new field of duty free from all entanglements and connection with rings and cliques.”¹⁵

John Bruce did seem to be a good lawyer—and later became a distinguished jurist. He was born in Sterlingshire, Scotland in 1832. After immigrating to the United States, he studied law at Franklin College in Ohio, becoming an attorney in 1856.¹⁶ Bruce practiced in Keokuk, Iowa, and when the war came he joined the 19th Iowa Volunteer Infantry. He rose through its ranks

¹¹ John Y. Simon, *The Papers of Ulysses S. Grant* (Carbondale, Ill.: Southern Illinois University Press, 1998), Vol. 22 (June 1, 1871 to January 31, 1872), 294.

¹² F.P. James to Orville Babcock, March 8, 1871, Morrill Nomination File, NARA RG60.

¹³ “The Vanderbilt Ball—A Large and Brilliant Company. Scenes of Festivity in a Luxurious Setting,” *New York Tribune* (December 12, 1883), 5.

¹⁴ Ron Chernow, *Grant* (New York: Penguin Press, 2017), 729.

¹⁵ “The U.S. District Judge,” *Galveston Daily News* (February 25, 1871), 1.

¹⁶ “Bruce, John,” *Biographical Directory of Federal Judges*, <https://www.fjc.gov/history/judges/bruce-john>.

and was brevetted a Brigadier General in 1865.¹⁷ After the war he remained in Wilcox County, Alabama.

Bruce had been considered for the position before. Justice Samuel Freeman Miller, formerly of Keokuk, as mentioned earlier, wrote him a strong letter of recommendation in September 1870.¹⁸ Yet, belying a lack of knowledge, Miller recommended Bruce for a bench on the “northern district of Texas,” a district which then did not exist.¹⁹ Bruce’s nomination file is small. It contains a letter from the citizens of Wilcox County, Alabama recommending him, a petition from Iowa attorneys, and an endorsement from several Alabama officials, including the governor and Senator Willard Warner.²⁰ Iowa Congressman George McCrary also wrote a letter, which stated as a postscript that, “Gen. Clark of Texas will be satisfied with Gen B’s appointment.”²¹ This is the only mention of Texas support in the file—and it did not come from Congressman Clark directly.

Once again, the nomination was doomed from the start. It was in fact suggested that Clark supported Bruce. Clark did have a say in patronage. Governor Davis and Grant were “sworn friends connected as it would appear, by Clark.”²² Yet that would connect Clark to the Davis Radicals. Clark and Bruce had connections. Both had practiced law in Iowa before the War. Both had served in Iowa regiments and risen to the rank of General.²³ Yet there is nothing to indicate that Clark went out on a limb for Bruce. The problem was two Texas Senators—and indeed most of the Senate, who felt the rules of Senatorial Courtesy had been breached.

Senator Flanagan had only been informed of Bruce’s nomination when it was introduced on the Senate floor. “Senator Flanagan did not hear of it until the name had been on the Speaker’s table some time, being casually informed of the fact by a Senator,” wrote the Washington correspondent to the *Galveston Daily News*.²⁴ Flanagan then went to the “Speaker” (actually it



The quest for a district court judgeship transfixed Reconstruction-era Galveston. Photo of a seal in the historic 1857 Galveston Court House and Custom House by David A. Furlow.

¹⁷ “John Bruce,” Find a Grave website for Oakland Cemetery, Keokuk, Iowa, <http://findagrave.com>.

¹⁸ Simon, *Papers of Ulysses S. Grant*, Vol. 22, 293.

¹⁹ *Ibid.*

²⁰ See generally Bruce Nomination File, NARA RG60.

²¹ *Ibid.*

²² “Our Washington Correspondent,” *Galveston Daily News* (March 1, 1871), 2.

²³ Thomas W. Cutrer, “Clark, William Thomas,” *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fcl17>.

²⁴ *Ibid.*

would be the President *Pro Tem*) and

gave him very plainly to understand that the President could not carry things in Texas in this high handed manner....Trumbull, Chairman of the Judiciary Committee, met the Senator soon after and remarked: "If Bruce is a good man (and I am told that he is), you had better take him." "I don't ask and don't care," replied Flanagan, "whether he is a good man or not; that is not the question. And I won't take him in this way, unless forced to do so by the Senate."²⁵

The reporter noted that Senator Hamilton "took the same decided stand and will resent this discourtesy when the question of confirmation comes before the Senate."²⁶

On March 3, 1870, in a vote that was said to have occurred about midnight, the United States Senate tabled the nomination of Bruce by a margin of 28 to 1.²⁷ The *Galveston Daily News* recorded that, "[a]s the contest in this matter was between the President and the Texas Senators, this result is a triumph for Hamilton and Flanagan, as against Grant and Clark."²⁸

So John Bruce did not fill the vacancy. Nevertheless, Grant nominated him for a district judgeship for the Southern District of Alabama in 1875, and he was confirmed two days after nomination. Bruce served as a federal judge in Alabama until his death in 1901.²⁹

Nominee Numbers Four and Five: Bird W. Gray— Nominated, Confirmed, Unconfirmed, Nominated, Tabled

Senators Hamilton and Flanagan had reconciled, first to recommend Morrill, and then to oppose Bruce. As it might be imagined, given the temperament and character of the two men, this reconciliation would not last. When they broke again, it was over, what else, the Eastern District nomination. The 41st Congress ended on March 3, 1871, the day John Bruce was rejected.

On March 4, 1871, the 42nd Congress began, and the Administration was ready with a slew of new appointments.³⁰ One of those would be for the Galveston judgeship. On March 8, Senator Flanagan, supported by Texas lawyer Benjamin Grafton and R.M. Corwine of Ohio, recommended Judge Bird W. Gray from Jefferson, Texas for the vacancy, saying Gray had been on the state bench a number of years, was an able lawyer, and was, of course, "a sound Republican."³¹

Gray's nomination file contains a handwritten note from Flanagan, undated but

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ "Federal Appointments in Texas," *Galveston Daily News* (March 12, 1871), 1; Senate Executive Journal, Cong. Globe, 41th Congress, Third Session, March 3, 1871, 685.

²⁸ *Ibid.*

²⁹ "John Bruce," *Biographical Directory of Federal Judges*.

³⁰ See 42nd Congress, Cong. Globe, March 4, 1871.

³¹ J.W. Flanagan to U.S. Grant, March 8, 1871, Gray Nomination File, NARA RG60.

presumably written the same day. "Knowing Judge Gray personally, professionally and politically, I take pleasure in recommending him ... for the place.... [H]is high standing as a Union Man, and a Republican and supporter of this administration give additional consideration to the application."³²

This did the trick, along with the probability that Grant was probably sick of the whole process. Here was a Texas Unionist, supported by one of the Texas Senators. Grant himself wrote a personal note, absent from any of the other files: "I approve this appointment. U.S. Grant. March 10, 1871."³³

Things moved swiftly. Grant did indeed nominate Bird W. Gray on March 10. On that date, the Senate Executive Journal contains the following words:

On motion by Senator Flanagan the Senate proceeded by unanimous consent to consider the nomination of Bird W. Gray, and resolve that the Senate advise and consent to the appointment, agreeably to the nomination.³⁴

Thus, it would seem, the matter was done.

In one day, Gray was nominated and confirmed. All that was needed was for the President to sign his commission, and he would become the new judge. Yet look in vain for the name of Bird Gray on the list of Judges of the Eastern District of Texas. Someone had forgotten to tell Morgan Hamilton what was going on.

The next thing we hear is the following from the *Houston Union*: "Senator Hamilton has procured a reconsideration of the vote by which Hon. B.W. Gray was confirmed as Judge of the United States Court for the Eastern District of Texas."³⁵ The *Galveston Daily News* noted, somewhat dryly, in discussing Gray's confirmation, that "[i]t will be observed that this appointment was made during Hamilton's absence from the Senate; when that Senator returned to his seat, the first thing he did was to inquire into the condition of Gray's case."³⁶

Less than a month before, Senator Flanagan had been appalled by President Grant's nomination of Bruce without informing the Texas Senators. Now he played the same game on Hamilton. Surely Hamilton was angered. A tone of incredulity crept into the reporting on Gray's confirmation. The *Houston Union* noted that the report of the confirmation was true. The *Galveston Daily News* stated that "many of our citizens had been inclined to doubt" the confirmation "in view of the fact of it being a lifetime appointment to an important office, it was quite unusual to act with so much haste, as the Senate appears to have shown in this instance."³⁷

³² *Ibid.*

³³ *Ibid.*, March 10, 1871.

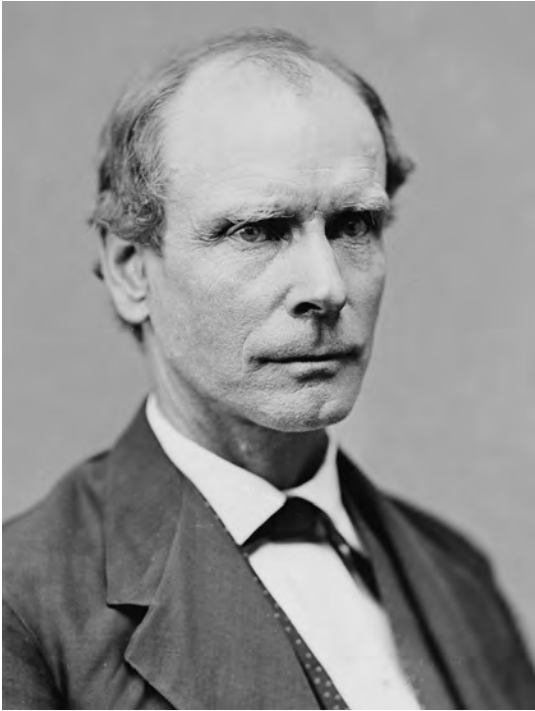
³⁴ Senate Executive Journal, Congressional Globe, 42nd Congress, First Session, March 10, 1871, 12-13.

³⁵ *Houston Union* (March 31, 1871), 2.

³⁶ "Judge Gray and Other Texas Officials," *Galveston Daily News* (April 18, 1871), 1.

³⁷ "Hon. B. W. Gray," *Houston Union* (March 21, 1871), 2; "Confirmed," *Galveston Daily News* (March 21, 1871), 3.

Governor Davis had also not been informed, and he was not happy. On March 13, 1871, Davis wrote James Newcomb, his Secretary of State, the following "The telegraph informs us of the appointment of Bird W. Gray ... as Judge of the Eastern District of Texas. I suppose he will be confirmed, and thus we are to have another nincompoop like Duval [Thomas Duval, Judge of the Western District of Texas]. We are getting well paid for electing old Morgan Hamilton to the Senate."³⁸ To think that Morgan Hamilton was responsible for Gray's nomination reflects how far Davis was removed from the situation; by now he was estranged from both Senators. In another part of the letter he complained that both men were Republicans in name only.³⁹



U.S. Attorney General Amos Akerman. Photo courtesy of Wikimedia Commons.

The confirmation would not stand. On March 14, Amos Akerman, in a letter once again in Walt Whitman's handwriting, wrote Hamilton Fish, the Secretary of State, to nix the nomination:

Sir,

The Senate having requested the President to return to that body its resolution transmitted in my letter of the 13th instant confirming Bird Gray as District Judge of the U.S. for Eastern District of Texas, the President directs me to request that you will return that resolution to this office—and also that the Commission of Mr Gray not be made out.

Very respectfully,

A.T. Akerman

Attorney General⁴⁰

That day, March 10, 1871, was a Friday. Monday came on March 13, 1871, when the motion to reconsider was passed. It is too bad for Judge Gray that no one spent that weekend writing out a commission for Grant to sign. Yet the reconsideration—in effect an "unconfirmation"—occurred, and note how it was said to have occurred: "[A]fter Senator Flanagan left for home," the *Houston Union* reported, "Senator Hamilton, we understand, procured a reconsideration of the confirmation of Judge Gray."⁴¹

Gray's nomination was not dead. But the man who had been a breath away from an Article III Judgeship would now undergo scrutiny. So who was Bird Gray?

³⁸ E.J. Davis to James P. Newcomb, March 13, 1871, Box 2f105, James P. Newcomb Papers, Barker Texas History Center, Austin, Texas.

³⁹ *Ibid.*

⁴⁰ *In Whitman's Hand*, Scribal Documents, Walt Whitman Archive, I.D. nar.02956.

⁴¹ "Federal Judgeship—Judge Sabin," *Houston Union* (May 2, 1871), 2.



Executive Office,

Austin, March 13th 1871

[NB]
[HAMILTON + FLANAGAN]

My dear Newcomb,

I have heard nothing from you since you left Galveston. What is the matter?

The telegraph tells us of the appointment of Bird W. Gray (Lamprey) as Judge of the Eastern Dist. of Texas. I suppose he will be confirmed, and thus we are to have fastened upon us another nincompoop like Duval. We are getting well paid for electing for old Morgan Hamilton to the Senate.

Under the recent Bill which, as I understand, passed Congress, it is provided that the circuit Judge shall appoint a sort of inspectors or Registrars of elections in his circuit. Sub-

Letter from Reconstruction Gov. E.J. Davis to Secretary of State J.P. Newcomb, referring to federal judicial nominee Bird Gray as a "nincompoop." James P. Newcomb Papers, Barker Texas History Center. Photo by Stephen Pate.

Little is known about him today, though he was prominent in Reconstruction Texas. He was, as Senator Flanagan said, a Unionist and post-war Republican. Yet during the War, he had served as a Confederate judge of the 8th District Court in Titus County in northeast Texas.⁴² After the war, Governor A.J. Hamilton reappointed him as a judge, though he left the bench in 1866.⁴³

⁴² B.W. Gray, Confederate Citizens file, Fold3, <https://www.fold3.com>.

⁴³ *Dallas Weekly Herald* (July 28, 1866), 2.

He was born about 1825 in Alabama, and appears to have come to Texas by at least 1850.⁴⁴ Historian Carl Moneyhon confuses him with Peter W. Gray, but it was Bird, not Peter Gray, who met with other Texas Unionists in April 1867 to begin forming the Texas Republican Party.⁴⁵ In 1869 it was reported that he would run for Lieutenant Governor on the same ticket with A. J. Hamilton,⁴⁶ though he declined to do so. In 1867, he was editor of the *Houston Journal*, a Radical paper,⁴⁷ and a forerunner to the *Houston Union*. He had been a delegate to the 1868 Reconstruction Constitution Convention.⁴⁸ Finally, his disabilities for serving as a judge under the Confederacy had been removed.⁴⁹

By 1871, this Judge Bird Gray had been living in Austin for some time as an invalid, though it was said he would soon be restored to perfect health.⁵⁰ If his health was good, then it might be said that Gray checked all the boxes—longtime Texan, solid Unionist, founder of the Republican party and active in its affairs, disabilities removed. Moreover, he was regarded as an able judge.

Yet there was a problem with Bird Gray's nomination. He was friends with J.W. Flanagan and had professional connections with him. That meant railroads, and that was not good. The March 8 letter to Grant had included the signature of R.M. Corwine of Ohio. Corwine was a prominent Cincinnati attorney, influential in Washington, too, and was intimately connected with such railroads as the Southern Pacific and the Memphis and El Paso.⁵¹ Bird Gray had business interests with both railroads.

In 1870, a writer in the *Dallas Weekly Herald* remarked that "[t]he *Jimplecute* [the newspaper of Jefferson Texas] states that Judge B.W. Gray "has received letters...that perfect harmony is established between the Southern Pacific and Memphis and El Paso Railroads and that these Companies propose to form a junction at Dallas, with a common trunk from that place to San Diego. Arrangements are being made to ship iron to Jefferson for one hundred miles of road to be constructed this year."⁵²

These railroad connections—along perhaps with the odd circumstances regarding his first presentation to the Senate—would serve to doom Gray's chances. The *Galveston Daily News* wrote in April: "Mr. Gray's name was brought forth by friends of Cowdrey and James and that interest, prominent among whom were Corwine, Attorney for the Southern Pacific Railroad system (the Memphis and El Paso, Southern Transcontinental and Texas Pacific Railroad having substantially consolidated...)...Senator Flanagan, it is said, advised the appointment of Gray on

⁴⁴ B.W. Gray, Marion County, Texas U.S. Census, 1870, 446.

⁴⁵ Carl Moneyhon, *Republicanism in Reconstruction Texas* (Austin: University of Texas Press, 1980), 62.

⁴⁶ "Telegrams," *Houston Union* (March 19, 1869), 4.

⁴⁷ "Another Radical," *San Antonio Express* (July 11, 1867), 2.

⁴⁸ *List of Delegates to the Reconstruction Convention, Journal of the Reconstruction Convention which met at Austin, Texas 1868-69* (Austin: Tracy, Siemering & Co., 1870), 534.

⁴⁹ "The Disability Bill," *Houston Union* (March 24, 1870), 2.

⁵⁰ *Tri-Weekly State Gazette* (March 15, 1871), 2.

⁵¹ See "Letter from Washington, Another Chapter in Memphis and El Paso—The Machinery Used to Swindle," *Cincinnati Gazette* (March 14, 1872), 2.

⁵² *Dallas Weekly Herald* (May 21, 1870), 2.

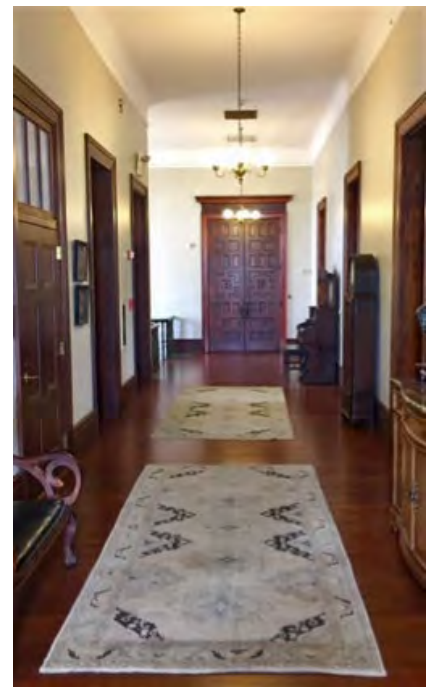
the recommendation of Cowdrey and James's friends."⁵³

The newspaper continued: "It is charged here that the above-mentioned railroad consolidation already controls the Texas Legislature and the Executive Government and now the attempt is made to get possession of the U.S. Court by the appointment of a Judge of their selection."⁵⁴ The paper also reported that, "[a]s Hamilton will oppose Gray's nomination on the ground that he is the appointee of a railroad interest, who have been trying all winter to get a Judge of their selection in the position of U.S. Judge in Galveston, it is very probable that Gray will be rejected."⁵⁵

When this appeared to be the case, the *Houston Union* began to beat the drum again for Chauncey Sabin. "It seems to us that that [Senator Hamilton] ought to be satisfied with either Judge Sabin or Judge Gray....Now we think that justice requires that Judge Gray should be confirmed; if he is rejected, why not the President appoint and the Senate confirm C.B. Sabin?"⁵⁶

After the motion for reconsideration carried, a long procedural dance occurred concerning Gray. On March 20, his confirmation was rescinded, and his nomination was referred to the Judiciary Committee.⁵⁷ On April 12, the Judiciary Committee reported favorably on the nomination.⁵⁸ On April 19, the Senate voted on the nomination—and tabled it indefinitely.⁵⁹

Incredibly, Grant tried again. On May 20, a month later, and almost at the end of the session, he re-nominated Gray.⁶⁰ Hamilton once again strongly opposed it. In a May 14 letter to Akerman, he said that he understood Grant was offering the nomination again because "the people of Texas desired it" and that thinking was probably the result of some of the newspapers quoted above. He said that was not true; it was only the "Railroad Interests" that wanted Gray.⁶¹



The 1857 Federal Building lured able judges and attorneys who aspired to hold a federal bench in Texas. Photos by David A. Furlow.

⁵³ "Judge Gray and Other Texas Officials," *Galveston Daily News* (April 18, 1871), 1.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Houston Union* (April 29, 1871), 2.

⁵⁷ Senate Executive Journal, Cong. Globe, 42nd Congress, First Session, March 27, 1871.

⁵⁸ *Ibid.*, 62.

⁵⁹ *Ibid.*, 78.

⁶⁰ *Ibid.*, 98.

⁶¹ Morgan Hamilton to Amos Akerman, May 14, 1871, Gray Nomination File, NARA RG60.

On May 25, 1871, the Senate voted to table the nomination by a vote of 30 to 23, with Hamilton in the affirmative and Flanagan in the negative.⁶² Congress ended its session on May 27, and would not reconvene again until December. Even had he wanted to do so, Grant could not have made a nomination in those two days. Moreover, after what happened with J.C.C. Winch, a recess appointment was probably the last thing Grant would make. Hamilton, in fact, in his letter, advised him there was no need to make a hasty appointment—the spring court sessions were past; the thing would wait.⁶³

We will never know whether Bird Gray would have been a tool of the Railroad Rings. What we do know is that his health had in fact not returned. We cannot establish an exact date of date for this Judge Gray's death, but we do know that there is a probate record for him dated August 7, 1872 at the Marion County Courthouse in Jefferson, meaning he must have died before then.⁶⁴ The vital papers are missing.

The Consolation Prize

Other events came to the forefront during the summer and fall of 1871. In Texas, Morgan Hamilton and his brother Jack teamed up with Democrats in the Tax-Payers' Convention to fight E.J. Davis's policies.⁶⁵ Davis's excesses were turning more and more Texans away from him; and Grant's Administration was beginning to have its own troubles. There were rumors of corruption that would later be revealed as the "Whiskey Ring" and the "Credit Mobiler" scandals. In June, Amos Akerman turned down the Union Pacific Railroad's request for a huge land grant.⁶⁶ He thus incurred the hatred of such men as Jay Gould and Collis Huntington, representatives of what had become the nation's largest industry.⁶⁷ In fact, Akerman refused an outright attempt by a railroad company to bribe him.⁶⁸

Once again there was an impasse. Morgan Hamilton still wanted Morrill and said so in his May 14 letter—but he also realized there would be difficulty in getting Morrill nominated.⁶⁹ During the summer of 1871 the irrepressible Chauncey Sabin managed to shoot himself in the foot. Congressman Clark was running for reelection. This was controversial. Clark had been first elected in large part because of support among the African-American community. But he had largely ignored that community. They now supported another candidate for the Republican Congressional nomination. Sabin, whether as a result of support from freedmen or because he was angry with Clark for insufficient support for his judicial nomination, supported Clark's opponent. Tracy now turned against Sabin, as reported in the *Houston Union*: "Sabin hates Clark

⁶² Executive Journal Cong. Globe 42nd Congress, First Session, 111, 1871.

⁶³ Morgan Hamilton to Amos Akerman, May 14, 1871, Gray Nomination File, NARA RG60.

⁶⁴ Probate Record #263, Byrd W. Gray, File Date: August 7, 1872 (record missing), Marion County Texas Probate Records.

⁶⁵ Moneyhon, *Republicanism*, 160–61.

⁶⁶ Chernow, *Grant*, 710.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ Morgan Hamilton to Amos Akerman, May 14, 1871, Gray Nomination File, NARA RG60.

because the President forbade Clark to urge his name any more for the Federal Judgeship."⁷⁰ Tracy was enraged, as only Tracy could be, and condemned him: "Sabin you are very fishy, and a spoilt fish at that!"⁷¹

Sabin was out, but who was in? *Flake's Daily Bulletin* made the following comment on August 4, 1871: "The *Houston Times* makes the point that Cowdrey and the Customhouse wing coalesce because Cowdrey wants Clark re-elected so as to get the United States Judgeship under his control as he had Judge Watrous, and that the Customhouse wing is willing to sell out the judgeship for the control of the Post Office, Customhouse, and other Federal appointments." The paper further stated: "President Grant may make the little bantam Connecticut dandy Judge of our Federal Court just to please Cowdrey."⁷²

Another candidate put himself forward. Former Texas Supreme Court Justice Colbert Coldwell requested the appointment in late September.⁷³ This request went nowhere, and as the fall went on, with an impending session of Congress looming, the Administration was quiet.

There was a reason for this. There was another potential candidate.

Grant was under enormous pressure by the railroad interests to get rid of honest Amos Akerman.⁷⁴ Grant succumbed to the pressure and asked for Akerman's resignation on December 12, 1871.⁷⁵ When doing so, Grant explained his reasons:

Hon. A.T. Akerman Attorney General

Sir:

Circumstances convince me that a change in the office which you now hold is advisable, consulting the best interests of the government, and I therefore ask your resignation. In doing so, however, I wish to express my approbation of the zeal, integrity, and industry which you have shown in the performance of all your duties and the confidence I feel personally, by tendering to you the Florida Judgeship now vacant, or that of Texas.⁷⁶

This was Grant's solution to the long-standing problem of the Eastern District, and to the problem of Akerman. Yet Akerman declined the offer. Once again, the game was afoot.

⁷⁰ *Houston Union* (August 23, 1871), 2.

⁷¹ "A Caucus," *Houston Union* (August 2, 1871), 2.

⁷² "Editorial Paragraphs," *Flake's Daily Bulletin* (August 4, 1871), 1.

⁷³ Chernow, *Grant*, 293.

⁷⁴ *Ibid.*, 710.

⁷⁵ *Ibid.*

⁷⁶ Simon, *Papers of Ulysses S. Grant*, Vol. 22, 289.

Nominee Number Six: William H. Goddard—"Who is Goddard?"

On December 18, 1871, President Grant nominated William H. Goddard for the Eastern District judgeship. Once again, Texans were incredulous. The *Dallas Herald* asked, "Who is Goddard"?⁷⁷

Who was Goddard, indeed? He was a well-respected Galveston attorney. As opposed to the outsiders previously put forward, Goddard was the ultimate insider. He had first been recommended in June 1870 when prominent Galveston attorney William P. Ballinger wrote a letter of support to Justice Bradley.⁷⁸ Bradley was impressed, and informed both Grant and Akerman of his thoughts.⁷⁹ Probably more importantly, Morgan Hamilton's May 14 letter had mentioned that if Morrill could not be appointed, "then I respectfully suggest Mr. William H. Goddard of Galveston for the position. He is a man against whom no objection can be urged."⁸⁰

Senator Hamilton even enclosed a private letter—now lost—with his correspondence from none other than Ballinger, probably the most distinguished attorney in Galveston. Ballinger continued to support Goddard. In Hamilton's letter he speaks of Ballinger's high character, and then says that "Ballinger holds Goddard in very high terms."⁸¹



William Pitt Ballinger. Photo courtesy of Rosenberg Library.

So Morgan Hamilton supported Goddard, and Democratic Party leader Ballinger supported Goddard—not that the Democratic viewpoint mattered. Yet even the *Houston Union*, that mouthpiece of the Davis faction, spoke of him in glowing terms: "He is a man of quiet unobtrusive deportment, a diligent student, a man of culture and refined tastes, in good circumstances, and an able and experienced lawyer. He was a Union man during our late troubles and spent most of the time during the war at the North, but he took no part in the contest on either side. He is a Republican, yet he has taken no active part in politics."⁸²

The other newspapers were no less glowing. *Flake's* said: "Mr. Goddard is thoroughly identified with the interests of Texas, is a gentleman of irreproachable character and one whose

⁷⁷ *Shreveport Times* (January 2, 1872), 2.

⁷⁸ W.P. Ballinger to J.P. Bradley, June 29, 1870, Goddard Nomination File, NARA RG60.

⁷⁹ J.P. Bradley to G.M. Robeson, July 17, 1870, Goddard Nomination File, NARA RG60.

⁸⁰ Morgan Hamilton to Amos Akerman, May 14, 1871, Gray Nomination File, NARA RG60.

⁸¹ *Ibid.*

⁸² *Houston Union* (December 21, 1871), 2.

ability as a lawyer is unquestioned.”⁸³ The *Galveston Tri-Weekly News* said: “This appointment was unanimously solicited by the Bar of this city soon after the vacancy occurred, and offers an example that in these days is extremely rare—of the office seeking the man.”⁸⁴

This did seem to be true of Goddard. There is no letter from him seeking the position. As opposed to everyone else, he seems to have offended no one. He had been born in Virginia in 1825, though his parents were northern born.⁸⁵ He was the former law partner of abolitionist firebrand Lorenzo Sherwood, and indeed, at one time, had lived with Sherwood’s family.⁸⁶ He did have one strong Washington connection. Senator Warner of Alabama (a carpetbagger originally from Ohio) had been a college classmate of Goddard at Marietta College. Warner wrote a warm letter of support regarding Goddard to the President.⁸⁷

He seemed to have little interest in politics. He was active in the business community, serving on the board of the National Bank of Texas.⁸⁸ He was one of the group of “solid men”—along with George Ball and John Sealy—who formed the Galveston Insurance Company.⁸⁹ He had actually been appointed Alderman—though he declined the appointment evidencing, perhaps, a disdain for office-holding.⁹⁰ The 1870 Census suggests that he was a long confirmed bachelor.⁹¹ Surely, after so long, Goddard would be confirmed. The thing must end.

The wild card was still Morrill. On December 10, Governor Davis telegraphed Grant, “especially” requesting that Morrill not receive the appointment.⁹² On the other hand, on December 19, the day after Goddard was nominated, Flanagan wrote Grant to support Morrill and to make his opposition to Goddard plain.⁹³

One more wrench had to be thrown into this process. One might have suspected that Flanagan might have thought Goddard would support the Galveston defendants against the Cowdrey and James plaintiffs. No—it was apparently for a different reason. Webb Flanagan, Senator Flanagan’s son, had been indicted for “revenue fraud.” Flanagan, according to one paper, wanted “to get an appointment of one who will favor his son....”⁹⁴

Something was going on. On January 3, 1872, *Flake’s* reported the latest: “Gov. Davis is to receive the judgeship of the Galveston and Brownsville Federal District. Webb Flanagan will be Governor—in that event, Judge Sabin [will be] Attorney General and James H. Bell, Secretary

⁸³ *Flake’s Daily Bulletin* (December 21, 1871), 1.

⁸⁴ *Galveston Tri-Weekly News* (December 25, 1871), 1.

⁸⁵ William Goddard, 1880 Morgan County, Georgia, U.S. Census, 80.

⁸⁶ Lorenzo Sherwood, 1860 Galveston County, Texas, U.S. Census, 58.

⁸⁷ Willard Warner to U.S. Grant, February 12 1871, Goddard Nomination File, NARA RG60.

⁸⁸ *Galveston City Directory 1868–69*, 91.

⁸⁹ “Galveston Insurance Company,” *Galveston Daily News* (January 13, 1871), 3.

⁹⁰ “Alderman Appointed,” *Galveston Daily News* (June 9, 1869), 4.

⁹¹ William Goddard, 1870 Galveston County, Texas, U.S. Census, 299.

⁹² Simon, *Papers of Ulysses S. Grant*, Vol. 22, 294.

⁹³ *Ibid.*

⁹⁴ “Texas News,” *Houston Telegraph* (February 23, 1872), 1.

of State.”⁹⁵ Webb Flanagan would have become Governor because he was by then Lieutenant Governor (President Pro Tem of the Texas Senate).

On January 18, 1872, Thomas Connolly, a Galveston Justice of the Peace, wrote President Grant:

Permit me to state to you the following in regard to the struggle for the Office of U.S. Judge for the Eastern Dist[ri]ct of Texas—Gov. E.J. Davis, Judge Jas. H. Bell, U.S. Senator J.W. Flanagan & his son Webster Flanagan State Senator & acting Lieut Gov. of Tex have mutually agreed among themselves substantially as follows— There are certain indictments pending in the U.S. Dist. Court at Tyler, against the said Webster Flanagan and certain matters in said Court affecting the interests of U.S. Senator J.W. Flanagan.

These gentlemen desire to be relieved of these Court matters and are willing to aid and assist the appointment and confirmation of any gentleman to the U.S. Judgeship through they may effect said relief....Hence an agreement offensive & defensive entered into by these gentleman and perhaps a few others to secure the said Judgeship for either Davis or Bell. If Davis gets the Judgeship, Webster Flanagan becomes Gov. by virtue of his official position....⁹⁶

It appears that Davis was interested in the judgeship, if only for protection. Governor Davis and Secretary of State James P. Newcomb visited Washington and met with Grant on January 16, 1872.⁹⁷ Both Davis and Newcomb were aware that they would be indicted in Austin within two weeks on a charge that they had signed a false Certificate of Election for W.T. Clark, who was later unseated as a Congressman on the grounds of election fraud.⁹⁸

Whatever the truth of these assertions, they probably illustrated several things to U.S. Grant and his new Attorney General. One of two Texas U.S. Senators opposed Goddard, his new nominee. Hamilton would never accept Sabin or Davis. Both U.S. Senators would support Amos Morrill. Perhaps the Wall Street railroad interests would not like Morrill's appointment—but he had already sacrificed Amos Akerman to them in December. E.J. Davis would not like Morrill's nomination, but given the shenanigans described above and the growing dissatisfaction with Davis, it is possible that Grant did not care. On January 18, 1872, Grant withdrew the nomination of William H. Goddard and nominated Amos Morrill in his place.⁹⁹

No one knows what Goddard thought about his brief sojourn as a nominee. He probably did not care one way or another. One of the articles cited above mentions him as being “in good circumstances.” You do not see him in the newspapers as trial counsel, or as an officer in political organizations. He is on the board of companies, and charities, and makes real estate transactions. In other words, he was a businessman. He would leave Galveston in the late 1870s,

⁹⁵ *Flake's Daily Bulletin* (January 3, 1872), 8.

⁹⁶ Simon, *Papers of Ulysses S. Grant*, 295.

⁹⁷ *Papers of James P. Newcomb*, Barker Center for Texas History, Austin, Texas.

⁹⁸ “Bills of Indictment,” *Galveston Tri-Weekly News* (January 29, 1872), 2.

⁹⁹ Senate Executive Journal, Cong. Globe, 42nd Congress, Second Session, January 26, 1872, 181.

and give up his bachelor status to marry a young lady from Georgia fifteen years his junior named Martha “Mattie” Ward.¹⁰⁰

In 1881, Goddard built Mattie a mansion on Connecticut Avenue in Washington.¹⁰¹ He was described there as “a man of wealth” and “largely interested in real estate in this city.”¹⁰² One can imagine him taking the air on Connecticut Avenue with young Mattie at his side, probably wearing a top hat (he would not have worn a derby), sporting a walking stick, and thinking to himself how fortunate he was to escape years of genteel poverty as a federal judge. He took ill in 1891, and went to Europe “for the cure,” but he died in the spa city of Karlsbaden on July 3, 1891.¹⁰³ His will was extensive and he made several bequests to old Galveston friends.¹⁰⁴ Mattie lived on in the mansion, with servants, until at least 1927, when she too fades from history.¹⁰⁵

Nominee Number Seven: Amos Morrill—A Confirmation at Last

On February 5, 1872, seventeen days after the nomination was submitted, the Senate confirmed Amos Morrill as United States District Judge for the Eastern District of Texas.¹⁰⁶ He received his commission the same day.¹⁰⁷ At last, over three years after Judge Watrous had had his stroke, the Eastern District had a permanent judge. No longer would Judge DuVal from Austin, Judge Wood from Mobile, or Justice Bradley have to come to Galveston to try cases.

Morrill would serve on the Galveston bench until October 1883, when he resigned due to poor health.¹⁰⁸ After all this, what kind of judge did he make? Apparently a good one, though not without blemish. *The Bench and Bar of Texas* noted that “he was a fine constitutional scholar and was highly complimented by Judge Bradley for the almost uniform correctness of his decisions.”¹⁰⁹ Importantly for Galveston, “he devoted his judicial vacations to the study of maritime law and admiralty.”¹¹⁰

Yet he had a mixed record on civil rights. In 1875, the manager of the Tremont Opera House in Galveston refused an African-American woman, Mary Miller, the seat for which she had paid. Miller sued under the new Civil Rights Act of 1875, which included penalties for denying any citizens “full and equal enjoyment of inns, public conveyances, theaters, and other places

¹⁰⁰ William Goddard, 1880 Morgan County, Georgia, U.S. Census, 80.

¹⁰¹ “Death of Mr. William H. Goddard,” *Washington Evening Star* (July 16, 1891), 4.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ Probate Records for William H. Goddard, Boxes 122–126, Washington D.C. Wills and Probate Records, 1801–1938.

¹⁰⁵ Entry for Martha Goddard, *Washington City Directory* 1927.

¹⁰⁶ Senate Executive Journal, Cong. Globe, 42nd Congress, Second Session, February 5, 1872, 190.

¹⁰⁷ “History of the District,” United States District and Bankruptcy Court, Southern District of Texas, <http://www.tx.uscourts.gov/page/history-district>.

¹⁰⁸ James D. Lynch, *The Bench and Bar of Texas* (St. Louis: 1885), 153.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

of public amusement.”¹¹¹ The case went before Judge Morrill. Morrill stated he disliked the new law and the case before him, but still upheld it and fined the manager \$500.00. On the record, he said “[H]e wished the fine could be one cent.”¹¹² Several days later, Morrill dismissed the fine without explanation. African Americans in Galveston were outraged. They called a mass meeting in protest, and said that Morrill was unfit to sit on the bench.¹¹³

On the other hand, in *United States v. Le Grand*, Morrill upheld the conviction under the Civil Rights Act of Israel Le Grand, who shot and wounded an African American in an attempt to prevent the African American from giving evidence in a criminal prosecution.¹¹⁴ Found guilty by a jury, Morrill sentenced Le Grand to a \$500 fine and five years of hard labor. The Fifth Circuit reversed, finding no state action, while holding the Civil Rights Act unconstitutional.¹¹⁵

Upon his death in 1884, the Galveston Bar held a memorial service in the federal courthouse and passed resolutions in his honor. W.P. Ballinger, of course, played a major role in the memorial, but it appears that the ceremony was chaired by another prominent Galveston attorney, T.N. Waul, late commanding general of Waul’s Texas Legion, C.S.A.¹¹⁶ William Pitt Ballinger’s superb reputation resulted in his appointment to the Texas Supreme Court in 1874, although he declined the honor to remain in private practice. He died on January 20, 1888.¹¹⁷

The Return of Chauncey Sabin

Technically, Chauncey Sabin was not one of the Galveston Seven. He was never nominated during this time period. Remember, however, that Bird W. Gray was nominated twice. Perhaps Sabin should actually be counted as one of the seven because of his constant presence in the newspapers and correspondence concerning the appointment. And perhaps he also should count as a nominee because eventually, he did in fact receive a nomination.

After Judge Morrill was sworn in, Sabin served as a state district court judge, a state representative, Galveston City Attorney, and Postmaster of Galveston.¹¹⁸ Notably, he and A.J. Hamilton served as counsel for the plaintiff in *Ex Parte Rodriguez*, the “Semicolon Case.”¹¹⁹

On March 25, 1884, President Chester A. Arthur nominated Sabin to be the United States District Judge for the Eastern District of Texas to succeed Amos Morrill. Sabin was easily confirmed

¹¹¹ Douglas Hales, *A Southern Family in Black and White* (College Station: Texas A&M University Press, 2002), 33.

¹¹² *Ibid.*, 34.

¹¹³ *Ibid.*

¹¹⁴ 12 F. 577 (5th Cir. 1882).

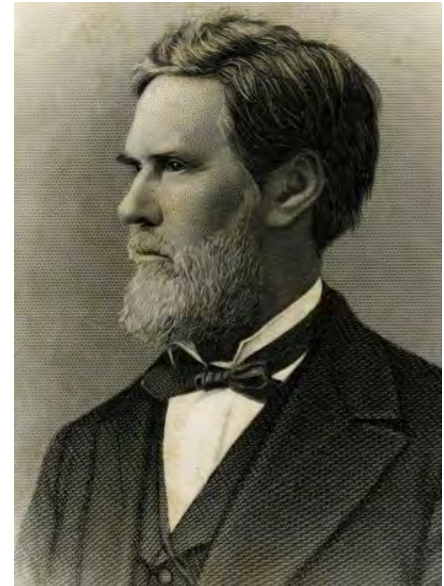
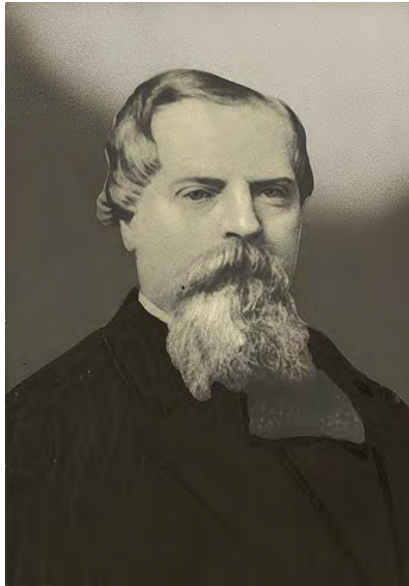
¹¹⁵ *Ibid.*

¹¹⁶ Lynch, *Bench and Bar of Texas*, 154.

¹¹⁷ “William Pitt Ballinger (1825-1888),” *Justices of Texas 1836-1986*, Tarlton Law Library, <https://tarltonapps.law.utexas.edu/justices/profile/view/2>.

¹¹⁸ Randolph B. Campbell, “Sabin, Chauncey,” *Handbook of Texas Online*, <https://tshaonline.org/handbook/online/articles/fsa02>.

¹¹⁹ See *Ex Parte Rodriguez*, 39 Tex. 705 (1874); Carl H. Moneyhon, “Ex Parte Rodriguez,” *Handbook of Texas Online*, <https://tshaonline.org/handbook/online/articles/jre01>.



Left: Judge Chauncey B. Sabin. Center: Judge Amos Morrill. Both photos courtesy of *Justices of Texas, 1836 to 1986*, UT Austin Tarlton Law Library. Right: James G. Tracy. Photo courtesy of Texas Legislative Reference Library.

on April 5, 1884, receiving his commission the same day.¹²⁰ By then, both Flanagan and Hamilton has long since left the Senate. The Bourbon Democrats controlled Texas and the U.S. Senate seats. Yet the Republicans had the White House and controlled judicial appointments. James G. Tracy received the appointment as U.S. Marshal for the Eastern District.¹²¹

Sabin served as the federal judge in Galveston until his death in 1890.¹²² For all of his faults of self-promotion, Sabin had principles. He was right to call out Senator Flanagan for his support of the railroads—though that cost him the 1870 nomination. Many Radical Republicans only paid lip service to African-American rights. Sabin actively fought for them.¹²³ One notable case in 1884 reflected Sabin's commitment to civil rights and his status as a lightning rod for controversy.

In 1879 Emile Francois, a white man, had been convicted of a violation of the Texas anti-miscegenation law for marrying Lottie Stotts, an African-American female.¹²⁴ The Texas Court of Appeals (predecessor of the Court of Criminal Appeals) affirmed the conviction. When Francois filed a writ for a writ of habeas corpus in the Western District, Judge DuVal, though sympathetic, refused to hold the Texas statute unconstitutional.¹²⁵

¹²⁰ "Chauncey B. Sabin," *Biographical Dictionary of Federal Judges*, <https://www.fjc.gov/history/judges/sabin-chauncey-brewer>.

¹²¹ Stephen P. Pate, "Tracy, James Glover," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/ftrac>.

¹²² *Ibid.*

¹²³ See Chauncey Brewer Sabin, *Justices of Texas, 1836 to 1986*, <https://tarltonapps.law.utexas.edu/Justices/profile/view/92>.

¹²⁴ Charles F. Robinson, *Dangerous Liaisons: Sex and Love in the Segregated South* (Little Rock: University of Arkansas Press, 2003), 46–47.

¹²⁵ *Ibid.*, 47.

When Sabin took the bench five years later, Francois's attorney, C.T. Garland, probably the first civil rights attorney in Texas, realized that Sabin might be more sympathetic. Garland filed a new writ of habeas corpus in the Eastern District. Sabin took the matter seriously; in fact he seemed poised to rule that the statute violated the equal protection clause of the Fourteenth Amendment. When Texas Governor John Ireland learned that Sabin was about to act, Ireland pardoned Francois. Francois in turn rejected the pardon, because all his rights were not restored. Sabin sent Tracy to arrest Governor Ireland, and Tracy actually served the warrant, in a somewhat amiable way. A hearing was underway when orders were received from U.S. Attorney General Benjamin Brewster to stop all proceedings.¹²⁶ Still, Francois remained free.

Both Chauncey Sabin and his friend Lorenzo Sherwood, whom Sabin named a son after, are forgotten today. Their era has long passed. Yet the names themselves are not quite forgotten. Lorenzo Sherwood Sabin had a son, Lorenzo Sherwood Sabin, Jr., who became a distinguished member of the United States Navy, serving in World War One, World War Two, and the Korean War. He was one of the few men present at both Pearl Harbor and Omaha Beach. He was a gunnery officer on the *U.S.S. Maryland* at Pearl Harbor on December 7, 1941. Later, he commanded the first flotilla of landing craft to cross the Atlantic and attack North Africa and Europe.¹²⁷

On D Day, he commanded Force O, a group of 200 small craft that assaulted the Normandy Coast.¹²⁸ The great Samuel Eliot Morrison discusses Commander L.S. Sabin's role in his multi-series *History of United States Naval Operations in World War II*.¹²⁹ After the war, now as Rear Admiral L.S. Sabin, he was Chief of Staff, NATO Supreme Allied Command.¹³⁰



Admiral Lorenzo Sherwood Sabin, Jr.,
image available on the internet and
used in accord with Title 17 U.S.C.
Section 107.

In 1943, L.S. Sabin was awarded the Legion of Merit for his wartime efforts. The *Galveston Daily News* proudly noted this achievement, writing of Sabin's Galveston connection as the grandson of Judge Sabin.¹³¹ Somehow forgotten was that seventy years earlier the *Daily News* had routinely excoriated that Radical scoundrel, C.B. Sabin.

¹²⁶ *Ibid.*, 49.

¹²⁷ "Obituary of Admiral L.S. Sabin," *San Diego Union* (June 6, 1988), B-2.

¹²⁸ *Ibid.*

¹²⁹ See, e.g., Samuel Eliot Morrison, *History of United States Naval Operations in World War Two, Vol 2: Operations in North African Waters* (New York: Little Brown and Company, 1947-1962), 272-73.

¹³⁰ Stephen P. Pate, "Sabin, Lorenzo Sherwood, Jr.," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fsabi>.

¹³¹ *Ibid.*

Coda

In December 1873, Governor E.J. Davis lost his bid for reelection as Governor in a landslide to Democrat Richard Coke.¹³² He tried to fight the election results, and bolstered by the decision in *Ex Parte Rodriguez*,¹³³ he and other Republicans like Tracy and Newcomb resolved to seek federal intervention.¹³⁴

In January 1874, Governor Davis asked President Grant for military support.¹³⁵ Grant washed his hands of Davis and refused help.¹³⁶ Coke was inaugurated. On the way out of the Governor's mansion, Davis's wife reportedly put her foot through a portrait of Grant.¹³⁷ The Radical Republicans, and indeed, any version, faction, or form of Republicans were finished on a statewide level for many years. J.W. Flanagan left the Senate in 1876, retiring to Longview where he farmed and practiced law. Upon his death in 1887, the *Dallas Morning News* commented that after he left the Senate, he took no prominent part in politics, "his party being in such a hopeless minority" that he was not interested in "unsuccessful political adventures."¹³⁸

His son Web Flanagan retired from office, too, and became involved in business, serving at one point as President of the Henderson and Overton Branch Railroad.¹³⁹ Morgan Hamilton left the Senate in 1877. He did not return to Texas. The *New York Tribune* wrote that Hamilton's activities during Reconstruction "created antagonisms which led him to leave the State after his retirement to private life."¹⁴⁰ He lived in Brooklyn and New Jersey, and died in 1893.¹⁴¹ There would not be another Texas Republican Senator until John Tower was elected in 1961, and Tower was the candidate of a very different Republican party.¹⁴²

What happened to James G. Tracy, editor of the *Houston Union* and Radical Republican powerbroker, is especially interesting. A change in presidential administrations led to his removal as U.S. Marshal. He then left Texas to live in Washington, D.C. There, in 1888, Tracy shot at the owner of a banking and brokerage House where he did business. He claimed the banker had tried to swindle him. The banker said Tracy owed him \$300.00. Tracy was arrested and charged

¹³² Moneyhon, *Republicanism*, 191.

¹³³ See *Ex Parte Rodriguez*, 39 Tex. 705 (1874).

¹³⁴ Moneyhon, *Republicanism*, 193.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ Carl McQueary, *Dining at the Governor's Mansion* (College Station: Texas A&M University Press, 2003), 53.

¹³⁸ "Major J.W. Flanagan," *Dallas Morning News* (September 23, 1887), 3.

¹³⁹ Thomas W. Cutrer, "Flanagan, James Winwright," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/ffl04>.

¹⁴⁰ "Ex-Senator Morgan C. Hamilton," *New York Tribune* (November 25, 1893), 2.

¹⁴¹ *Ibid.*

¹⁴² Susan Eason, "Tower, John Goodwin," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/ftoss>. Governor W. Lee O'Daniel appointed A.J. Houston, Sam Houston's son, to fill a Senate vacancy in 1941, and Houston served a few days. Though it has been stated that Houston entered the Senate as a Democrat, he had been in fact a life-long Republican. Perhaps he should count as the next Republican Senator. George N. Green, "Houston, Andrew Jackson," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fho69>.

with assault to kill.¹⁴³

At Tracy's trial, the prosecution introduced evidence of his previous "shooting scrape." (The incident is described in Part 2 of this article.) When asked about this on the stand, Tracy testified that,

I was running a Republican newspaper and the bitterness was so great that, if a man was not ready to fight, they would run him out of the country. There was another editor of a Democratic paper who took pains to reflect on me. We were constantly cross-firing and the result was a conflict that resulted in no disaster to either.¹⁴⁴

Tracy neglected to mention the child he fatally wounded. This time, the prosecution was effective. Tracy was found guilty¹⁴⁵ but he died before sentence was pronounced.¹⁴⁶ His remains were returned to Houston, where he was buried in Glenwood Cemetery, not far from the grave of Ballis Hinkle, the boy he killed in 1869.¹⁴⁷

Postscript

Galveston has changed a great deal since the 1870s. It is no longer the largest city in Texas. The Great Storm of 1900, and the dredging of Buffalo Bayou to create the Houston Ship Channel, made Houston the more important port and combined to start Galveston's eclipse. In *Isaac's Storm*, Eric Larson calls present day Galveston "a beach town for Houston."¹⁴⁸ It is more than that, of course, but that is the perception.

There are many wonderful historical buildings in the city. One of them is the 1861 United States Federal Building, which once housed the federal court where Watrous, Winch, Morrill, and Sabin tried cases. It was also the location of the Customhouse where the "Customhouse Gang" was located. It is storied in Texas history; from its steps E.J. Davis launched his 1869 campaign for Governor.¹⁴⁹ Down the street are the offices of the Mills Shirley law firm, the oldest law firm in Texas. Though Ballinger Mills, W.P. Ballinger's great grandson, died in 1992, and there is now no attorney related to Ballinger who works there, the firm retains a reverence for one of its founders.¹⁵⁰ The firm no longer represents the long-since-defunct Galveston, Houston, and Henderson Railroad in its struggles against Cowdrey and James.

There is yet another significant change in Galveston and the court. Galveston is no longer in the Eastern District of Texas. In 1902 the Southern District of Texas was created, and both

¹⁴³ "The Ways of a Texan," *Daily Critic* (January 9, 1889), 1.

¹⁴⁴ *Ibid.*

¹⁴⁵ "Guilty as Indicted," *Daily Critic* (January 11, 1889), 1.

¹⁴⁶ "Death of Colonel Tracy," *Daily Critic* (February 25, 1889), 1.

¹⁴⁷ <https://www.findagrave.com/memorial/35604740/alfred-ballis-hinkle>; <https://www.findagrave.com/memorial/94879991/james-g-tracy>.

¹⁴⁸ Eric Larson, *Isaac's Storm: A Man, a Time, and the Deadliest Hurricane in History* (New York: Random House, 2000), 266.

¹⁴⁹ Moneyhon, *Republicanism*, 117.

¹⁵⁰ Monica Perin, "150 years of law: Oldest law firm in Texas is still making history," *Houston Business Journal* (December 9, 1996).



During the completion of this article, David A. Furlow and I conducted a tour of the 1857 Federal Customs House and Court House, and the nearby J.P. Bryan Texas History Museum, in Galveston. This photo depicts the courthouse's large, colonnaded second floor patio. Left to right: David A. Furlow; Bryan Museum Curator Nathan Jones; the author, Stephen Pate; U.S. District Court Judge George Hanks; U.S. Magistrate Judge Andrew Edison; Law Clerk Nicole Su; Law Intern F. Brad Raymond; Law Clerk Tyrone L. Haynes; Intern Falkner Werkhaven; Texas Historical Commission Site Manager for San Felipe de Austin Bryan McAuley; and San Felipe de Austin Museum Educator Danielle Brissette. Photo courtesy of David A. Furlow.

Galveston and Houston became parts of that district.¹⁵¹ There was still a Galveston Division, and Galveston still has a United States District Judge. On April 22, 2015, George C. Hanks, a Harvard-educated African American, became the Galveston's Division's sitting judge.¹⁵²

What would Amos Morrill, J.C.C. Winch, or Chauncey Sabin make of this? More importantly, what would John Appleton, who led African-American troops into battle in Hank's native Louisiana, think? Appleton, of course, was confirmed to be the judge in Galveston, but had to decline because of health. But if he knew of Judge Hanks having the position, he would probably be glad, and think that, indeed, his sacrifices had not been in vain.

¹⁵¹ Erwin C. Surrency, *Federal District Court Judges and the History of Their Courts*, 40 F.R.D. 139, 164 (1966–67).

¹⁵² George Hanks, *Biographical Directory of Federal Judges*, <https://www.fjc.gov/history/judges/hanks-george-carol-jr>. Judge Hanks is a former colleague of the author's. There can be no finer judge or friend.



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San Jacinto Justice: The Future Supreme Court Judges Who Won Texas Her Freedom at San Jacinto, Part 2

By Dylan O. Drummond

Part 1 of this article, published in the Spring 2018 issue of this Journal, noted that seven of the twenty-eight men who served on the Republic of Texas Supreme Court as Associate Judges or Chief Justices were veterans of the Battle of San Jacinto. Each of these men carried into that battle a different background and set of attributes, and each later made his own unique contributions to the young Republic courts. Part 1 introduced the two veterans who served as Chief Justice: James Collinworth and Thomas J. Rusk. In this second part, we will meet the five San Jacinto veterans who served simultaneously as District Judges and Associate Judges of the Republic Supreme Court.



Judge Edward T. Branch

Associate Judge Edward T. Branch survived Mexican pirates in the Gulf of Mexico and Mexican soldiers at San Jacinto to serve on the Fifth Judicial District and Republic Supreme Court benches.

Branch was a Virginian, born in Richmond on December 11, 1811.¹ He set sail for Cuba in 1835 on a ship called the *Montezuma*.² Mexican pirates captured his ship in the Gulf of Mexico, however, before she could reach port.³ After robbing Branch, the pirates set him ashore in Anahuac.⁴

He settled in nearby Liberty, and became a schoolteacher.⁵ From there, he joined the “Liberty Volunteers” as a First Sergeant under Captain William M. Logan, Jr. on March 6, 1836.⁶

At San Jacinto, Branch’s Liberty Volunteers were made part of Colonel Sidney Sherman’s Second Regiment.⁷ On April 20, 1836, General Houston ordered Colonel Sherman to lead roughly half of his cavalry out to an island of timber in front and to the right of the Texian lines.⁸ When the cavalry entered the timber, however, they discovered some 400 Mexican troops already

¹ James W. Paulsen, *The Judges of the Supreme Court of the Republic of Texas*, 65 TEX. L. REV. 305, 306, 325 (Dec. 1986).

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*; James L. Haley, *The Texas Supreme Court: A Narrative History, 1836–1986* (Austin: University of Texas Press, 2013), 28.

⁵ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 326; see Haley, *Narrative History*, 28.

⁶ Stephen L. Moore, *Eighteen Minutes: The Battle of San Jacinto and the Texas Independence Campaign* (Dallas: Republic of Texas Press, 2004), 92, 447; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 326.

⁷ Moore, *Eighteen Minutes*, 446–47.

⁸ *Ibid.*, 267–68.

occupied it.⁹ The Mexican riflemen opened fire on the retreating Texians, shooting Branch's horse out from under him.¹⁰ Once Branch made it safely back to the Texian camp, he shared a laugh with his comrades regarding the fervor with which he ran back to cover.¹¹

Branch survived the main battle the following day,¹² and went on to represent Liberty County as a member of the First and Second Republic Congresses from 1836 to 1838.¹³ He then served the Fifth Judicial District court from its creation on May 24, 1838 until he resigned in June 1840.¹⁴

Only 28 years old at the time, it is thought Judge Branch may have attended the close of the Court's inaugural session, however, which may account for his failure to author any opinions.¹⁵

Judge Branch's devotion to serving the land he helped free from Mexico's tyrannical grip did not wane when Texas was admitted to the Union. He again represented Liberty County, this time in the 1846 State Legislature.¹⁶

Judge Branch passed away on September 24, 1861 and is buried in his family's cemetery in Liberty.¹⁷

Judge Benjamin Cromwell Franklin

Although he never attended a session of the Republic Supreme Court on which he served, Associate Judge Benjamin C. Franklin bears the distinction of being the very first judge of the Republic of Texas.¹⁸ He was also entrusted by fellow San Jacinto jurist Thomas Rusk to bring the news of the Texian victory and Santa Anna's capture to the world.¹⁹

Benjamin Franklin was born in Clarke County, Georgia on April 25, 1805.²⁰ Franklin graduated from the aptly-named Franklin College in Athens, Georgia.²¹ This was no coincidence.

⁹ *Ibid.*, 268.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 326; Haley, *Narrative History*, 28; Moore, *Eighteen Minutes*, 435, 447.

¹³ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 326; Haley, *Narrative History*, 28.

¹⁴ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 325–26; Appendix B: Jim Paulsen, *Dates of Service for Chief Justices and Associate Judges, Supreme Court of the Republic of Texas*, 65 TEX. L. REV. 371 (1986); Haley, *Narrative History*, 28, 235; Daffin Gilmer, *Early Courts and Lawyers of Texas*, 12 TEX. L. REV. 450 (1934); J.H. Davenport, *The History of the Supreme Court of the State of Texas* (Austin: Southern Law Book Publishers, 1917), 16.

¹⁵ Paulsen, *Sesquicentennial Celebration*, 53 TEX. B.J. at 43.

¹⁶ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 326.

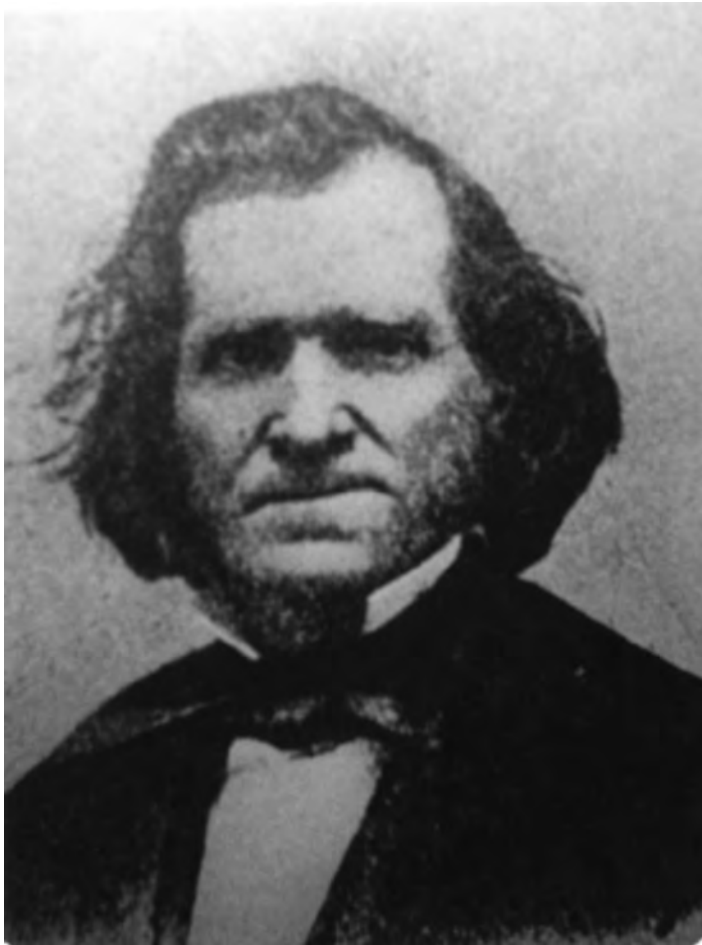
¹⁷ *Ibid.*

¹⁸ Haley, *Narrative History*, 23; *Supreme Court Judges*, 65 TEX. L. REV. at 332; Davenport, *Supreme Court History*, 17.

¹⁹ See Ken Wise, *Judge Benjamin Cromwell Franklin, the First Judge in the Republic of Texas*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 14; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332.

²⁰ Wise, *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 11; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332; James D. Lynch, *The Bench and Bar of Texas* (1885), 173.

²¹ Wise, *First Republic Judge* at 11; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332; Lynch, *Bench and Bar*, 173.



Benjamin Cromwell Franklin. Photo courtesy of Governor Bill and Vara Daniel Center for Legal History, State Bar of Texas.

His father, Abednego, founded the school in 1801, before Benjamin was born.²² Franklin College is now better known as the University of Georgia.²³

Franklin was admitted to the Georgia Bar in 1827.²⁴ Thereafter, he practiced with his brother-in-law, Charles McDonald.²⁵ McDonald would later serve as the Georgia Governor in 1839.²⁶

But by 1835, Franklin was lured to the cause of Texas independence as were his fellow Georgians, James Fannin and Mirabeau B. Lamar.²⁷ He arrived in the Port of Velasco on April 16, 1835.²⁸ Helping Captain Robert J. Calder raise a company, Franklin served with legendary Texas Ranger Erastus “Deaf” Smith.²⁹ While on a scouting mission on March 20, 1836, Franklin came across Deaf Smith’s party, who had just taken a Mexican scout prisoner, along with some of the Mexican company’s horses.³⁰ After the Ranger scouts returned to General Houston’s camp at Beason’s Crossing, another Texian soldier noticed that one of the Mexican horses carried a small bit of clothing from a fallen Alamo defender.³¹

On April 7, 1836, interim President David G. Burnet commissioned Franklin as a Captain to raise his own company of scouts, but Santa Anna’s rapid advance forced Franklin to abandon the effort.³² As a result, Franklin arrived at San Jacinto as a private under his old Captain’s command.³³

²² Wise, *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 11.

²³ *Ibid.*; see University of Georgia, *History of UGA*, <http://www.uga.edu/profile/history/>.

²⁴ Wise, *First Republic Judge* at 11; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332.

²⁵ Wise, *First Republic Judge* at 11; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332.

²⁶ Wise, *First Republic Judge* at 11; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332.

²⁷ Wise, *First Republic Judge* at 11; Clarence Wharton, *Early Judicial History of Texas*, 12 TEX. L. REV. 319, 322 (1934).

²⁸ Wise, *First Republic Judge* at 11; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332; Lynch, *Bench and Bar*, 173.

²⁹ Wise, *First Republic Judge* at 11; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332; Wharton, *Early Judicial History*, 12 TEX. L. REV. at 322; Lynch, *Bench and Bar*, 173; see Davenport, *Supreme Court History*, 17.

³⁰ Wise, *First Republic Judge* at 12; Moore, *Eighteen Minutes*, 89; Davenport, *Supreme Court History*.

³¹ Wise, *First Republic Judge* at 12; Moore, *Eighteen Minutes*, 89-90.

³² Moore, *Eighteen Minutes*, 259, 481 n.20; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332; Lynch, *Bench and Bar*, 173.

³³ Moore, *Eighteen Minutes*, 445, 481 n.20; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332; Wharton, *Early Judicial History*, 12 TEX. L. REV. at 322; Lynch, *Bench and Bar*, at 173.

Upon surveying the Texian army as they camped at the junction of the San Jacinto River and Buffalo Bayou on the morning of April 20, 1836, Franklin described what he saw:

Around some twenty or thirty camp-fires stood as many groups of men, English, Irish, Scotch, French, Germans, Italians, Poles, Yankees, Mexicans, all unwashed, unshaven for months, their long hair, beard and mustaches, ragged and matted, their clothes in tatters, and plastered with mud. In a word, *a more savage band could scarcely have been assembled*.³⁴

Later that day, Franklin transferred to the cavalry corps commanded by his fellow Georgian, then-Colonel Mirabeau B. Lamar.³⁵

During the battle, Franklin rode with renowned Texas Ranger Captain Henry Karnes and several other cavalymen—including survivors from the Goliad Massacre.³⁶ Their band, about eighteen in number, cornered fleeing Mexican soldiers at Vince's Bridge, which Deaf Smith had destroyed earlier in the day.³⁷ The Goliad survivors ensured no prisoners were taken.³⁸

Although they didn't know it, Franklin's cavalry unit nearly captured Santa Anna. The cowardly general later wrote:

They followed me, and after a league and a half, on a large creek where the bridge had been burned they caught up with me.

I lost my horse, and with difficulty I hid myself among some small pine trees. The approach of night gave me the chance to evade their vigilance³⁹

Thus, the burning of Vince's Bridge halted Santa Anna's attempted flight on April 21st, and forced him instead to cower in the woods.⁴⁰ He was captured the following day near the bridge by Sergeant James A. Sylvester.⁴¹

Franklin had one last task to complete before his part in the San Jacinto battle was finished. Secretary Rusk selected Franklin to relay the official news of the victory to interim President Burnet and the rest of the provisional government at Galveston.⁴² Franklin asked his commander,

³⁴ Moore, *Eighteen Minutes*, 260–61 (emphasis added); see Wise, *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, 13.

³⁵ Wise, *First Republic Judge* at 13; Moore, *Eighteen Minutes*, 290–91.

³⁶ Moore, *Eighteen Minutes*, 353; see Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332; Wharton, *Early Judicial History*, 12 TEX. L. REV. at 322; Davenport, *Supreme Court History*, 17; Lynch, *Bench and Bar*, 173.

³⁷ Moore, *Eighteen Minutes*, 353–54. Vince's Bridge was located approximately eight miles southwest of the San Jacinto Battleground, along the only direct wagon road linking the towns of Harrisburg and Lynchburg. *Ibid.*, 303.

³⁸ *Ibid.*, 354. Some of the fleeing Mexican soldiers fell to their knees as they were overtaken by the Texians, exclaiming, "Me no Alamo!" *Ibid.* These were their last words. *Ibid.*

³⁹ *Ibid.*, 355.

⁴⁰ *Ibid.*, 381.

⁴¹ *Ibid.*, 376–77.

⁴² Wise, *First Republic Judge* at 14; Moore, *Eighteen Minutes*, 388, 481 n.20; Paulsen, *Supreme Court Judges*, 65 TEX. L.

Captain Calder, to accompany him, and they commandeered the nearest naval vessel they could find to ferry them down the San Jacinto River toward Galveston Bay.⁴³ Unfortunately, the only nearby vessel was a rowboat.⁴⁴ Franklin and Calder pressed two privates into service to do the rowing, and four days later they reached Galveston Bay after fighting strong winds, high waves, and unrelenting rain during the journey.⁴⁵

In the Bay, the men pulled alongside the Texas Navy Schooner, the *Invincible*, to relay the news of the San Jacinto victory.⁴⁶ Captain Jeremiah Brown threw off his hat and gave Franklin and his men three cheers, ordering the *Invincible*'s eighteen-pound gun nicknamed, "Long Tom," to fire three celebratory rounds as well.⁴⁷ After being ferried to the Navy's flagship, the *Independence*, they were put ashore at Galveston to deliver the good news to interim President Burnet.⁴⁸

The year following the battle, Franklin penned an anonymous article, entitled, "The Battle of San Jacinto: By One Who Fought in It."⁴⁹ It was reprinted on September 7, 1844, but provided enough clues to later verify his identity.⁵⁰

On April 3, 1836, shortly before the San Jacinto battle, the *Invincible* captured an American brig called the *Pocket*.⁵¹ Although her manifest indicated no illicit cargo, she was found to be carrying gun powder, ammunition, dispatches for Santa Anna, and a detailed map of the Texas coastline and her defenses.⁵²

Adjudicating the status of the *Pocket* proved difficult, however, because Texas did not yet have any courts in April 1836.⁵³ To remedy this, interim President Burnet established the "District of Brazos" and asked James Collinsworth to serve as its inaugural judge.⁵⁴ Collinsworth declined, and Burnet appointed Franklin instead on May 8, 1836—nominally making him the first judge of the Republic.⁵⁵ The legality of his appointment, however, is doubtful given the Republic Constitution's provision—adopted less than two months before on March 17, 1836—

REV. at 332.

⁴³ Wise, *First Republic Judge* at 14; Moore, *Eighteen Minutes*, 388, 400.

⁴⁴ Wise, *First Republic Judge* at 14; Moore, *Eighteen Minutes*, 400.

⁴⁵ Wise, *First Republic Judge* at 14; Moore, *Eighteen Minutes*, 388, 400; *Early Judicial History*, 12 TEX. L. REV. at 322–23.

⁴⁶ Wise, *First Republic Judge* at 14; Moore, *Eighteen Minutes*, 400.

⁴⁷ Moore, *Eighteen Minutes*, 400–01.

⁴⁸ Wise, *First Republic Judge* at 14–15; *Eighteen Minutes*, 401.

⁴⁹ Moore, *Eighteen Minutes*, 260, 481 n.20.

⁵⁰ *Ibid.*, 481 n.20.

⁵¹ Wise, *First Republic Judge* at 15; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332; Wharton, *Early Judicial History*, 12 TEX. L. REV. at 322.

⁵² Wise, *First Republic Judge* at 15; Wharton, *Early Judicial History*, 12 TEX. L. REV. at 322.

⁵³ Wise, *First Republic Judge* at 16.

⁵⁴ Wise, *First Republic Judge* at 16; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332 n.188; Wharton, *Early Judicial History*, 12 TEX. L. REV. at 321–22; see *Bench and Bar*, at 173.

⁵⁵ Wise, *First Republic Judge* at 16; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332 n.188; Davenport, *Supreme Court History*, at 17; Lynch, *Bench and Bar*, 173.

that permitted district judges to be seated only by “joint ballot of both Houses of Congress.”⁵⁶ When the trial was eventually held at Velasco during the summer of 1836, Franklin ruled that the *Pocket* was a lawful prize of war.⁵⁷ It is assumed Judge Franklin applied principles of admiralty law in the *Pocket* case, but cannot be known for certain because the Republic had yet to create or adopt any actual laws—maritime or otherwise.⁵⁸

The legality of Judge Franklin’s appointment was subsequently largely mooted because the first Republic Congress, in essence, “ratified” Franklin’s appointment by electing him one of the first four Associate Judges in Texas—the first to preside over the Second Judicial District.⁵⁹ He served in this role until 1839, when he resigned to move to Galveston and re-enter private practice.⁶⁰ Although he was a member of the Republic Supreme Court, he never attended a session or wrote an opinion for the Court because it did not meet for the first time until the year following Franklin’s retirement.⁶¹

During this time, he traveled briefly back to Georgia and was married there on Halloween to Eliza Brantley.⁶² Eliza tragically passed away in 1843.⁶³ He would subsequently marry Estelle Maxwell.⁶⁴

After statehood, Judge Franklin served four terms in the Legislature as a Representative, always as Chairman of the Judiciary Committee.⁶⁵ His final public-service post would be that of state Senator, an office to which he won election with some 67 percent of the vote.⁶⁶ But before

⁵⁶ TEX. CONST. art. IV, § 9 (1836); Jim Paulsen, *A Short History of the Supreme Court of the Republic of Texas*, 65 TEX. L. REV. 237, 240 (1986).

⁵⁷ Wise, *First Republic Judge* at 16; Wharton, *Early Judicial History*, 12 TEX. L. REV. at 323.

⁵⁸ Wise, *First Republic Judge* at 16; Wharton, *Early Judicial History*, 12 TEX. L. REV. at 323. Texas did not adopt the common law of England until January 20, 1840. Act of Jan. 20, 1840, 4th Cong., R.S., reprinted in 2 H.P.N. Gammel, *Laws of Texas 1822–1897*, 177–78 (Austin, Gammel Book Co., 1898), 177–78. However, as the Texas Supreme Court clarified twelve decades later, English common law was only adopted so far as it was consistent with Texas’s constitutional and legislative enactments, as well as the “rule of decision” in Texas. *S. Pac. Co. v. Porter*, 331 S.W.2d 42, 45 (1960). No English statutes were similarly adopted, and the Republic’s congressional act adopting English common law “was not construed as referring to the common law as applied in England in 1840, but rather to the English common law as declared by the courts of the various states, of the United States.” *Ibid.* This adoption is still enshrined in Texas statute to this day. TEX. CIV. PRAC. & REM. CODE § 5.001 (“The rule of decision in this state consists of those portions of the common law of England that are not inconsistent with the constitution or the laws of this state”).

⁵⁹ Wise, *First Republic Judge* at 16; Narrative History, at 26, 34, 235; Paulsen, *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 333; Paulsen, *Dates of Service*, 65 TEX. L. REV. at 370–71; Wharton, *Early Judicial History*, 12 TEX. L. REV. at 323; Gilmer, *Early Courts*, 12 TEX. L. REV. at 448, 450; Daveport, *Supreme Court History*, 16–17; Lynch, *Bench and Bar*, 173.

⁶⁰ Wise, *First Republic Judge* at 16; *Supreme Court Judges*, 65 TEX. L. REV. at 333.

⁶¹ Haley, *Narrative History*, at 18–19, APP’X A, 227; Ariens, *Lone Star Law*, 5–16, 19–20; Paulsen, *Short History*, 65 TEX. L. REV. at 248–49; Davenport, *Supreme Court History*, 7.

⁶² Lynch, *Bench and Bar*, 4.

⁶³ *Ibid.*

⁶⁴ Wise, *First Republic Judge* at 18.

⁶⁵ Wise, *First Republic Judge*, 16–17; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 333; Davenport, *Supreme Court History*, at 17; *Bench and Bar*, at 175.

⁶⁶ Wise, *First Republic Judge* at 17; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 333; *Supreme Court History*, 17;

he could take the oath of office, he passed away on Christmas Day, 1873, just shy of seventy years of age.⁶⁷ Franklin County is named in his honor.⁶⁸

Judge James W. Robinson

Just weeks after James W. Robinson found himself serving as the Governor of the provisional government of Texas, he was fighting Mexican soldiers as a private at San Jacinto.

James Robinson was born before the turn of the nineteenth century in 1790 Indiana.⁶⁹ After being admitted to the Indiana bar, Robinson married in 1820.⁷⁰ His law partner during this time was future United States President William Henry Harrison.⁷¹ After fathering five children, Robinson left his family behind and moved to Arkansas in 1828.⁷² His wife obtained a divorce, and Robinson remarried while in Arkansas.⁷³

Sometime around 1832, Robinson, along with his new wife and child, moved to Nacogdoches County.⁷⁴ After befriending Sam Houston, Robinson was elected Lieutenant Governor of the Republic's provisional government in 1835.⁷⁵ When the provisional government impeached Governor Henry "Hy" Smith following a "violent clash," Robinson became acting Governor on February 12, 1836.⁷⁶

David G. Burnet was elected as the interim President in early March.⁷⁷ Freed from executive service, Robinson took the extraordinary step of enrolling in Mirabeau B. Lamar's cavalry corps as a private.⁷⁸ A little more than two months after heading the provisional government of Texas, Robinson fought at San Jacinto as a private cavalryman.⁷⁹

Lynch, *Bench and Bar*, 176.

⁶⁷ Wise, *First Republic Judge* at 17; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 333; Davenport, *Supreme Court History*, 17; Lynch, *Bench and Bar*, 176.

⁶⁸ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 333.

⁶⁹ *Ibid.* at 353.

⁷⁰ *Ibid.*

⁷¹ Haley, *Narrative History*, 26.

⁷² Paulsen, *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 353.

⁷³ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 353.

⁷⁴ Paulsen, *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 353.

⁷⁵ Haley, *Narrative History*, 26; Moore, *Eighteen Minutes*, 35, 85; Paulsen, *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 353; Davenport, *Supreme Court History*, 18.

⁷⁶ Haley, *Narrative History*, 26; James Donovan, *The Blood of Heroes: The 13-Day Struggle for the Alamo—and the Sacrifice that Forged a Nation* 214 (2012), 214; Moore, *Eighteen Minutes*, 35, 85; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 353; Wharton, *Early Judicial History*, 12 TEX. L. REV. at 319; Davenport, *Supreme Court History*, 18. Former Governor Smith refused to surrender the seal of the office—a brass coat button in the shape of a star, which was used to make an impression upon public documents. Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 353 n.359; *Supreme Court History*, 18 n.1.

⁷⁷ Moore, *Eighteen Minutes*, 35–36.

⁷⁸ *Ibid.* at 35, 436.

⁷⁹ Haley, *Narrative History*, 26; Moore, *Eighteen Minutes*, 35, 436; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 353; Davenport, *Supreme Court History*, at 19.

That December, Judge Robinson became one of the first four Associate Judges of the Republic by being elected as the inaugural judge of the Fourth Judicial District court.⁸⁰ Aged 46 years old when he took the district court bench, he was already one of the oldest judges in Texas.⁸¹

By the time he attended the first session of the Republic Supreme Court in 1840, Robinson was now undoubtedly the oldest member of the Court.⁸² However, the Friday before the Court's first session was to convene the following Monday, a petition was presented to the Republic Congress accusing Judge Robinson of "crimes of the deepest and darkest dye," including corruption, bribery, and murder.⁸³ Although he would later be vindicated, Judge Robinson resigned his office two weeks after the Supreme Court's first session convened to avoid impeachment.⁸⁴



Judge James Robinson.
Photo courtesy of San Diego History Center.

His retirement would prove to be even more eventful than his professional life that preceded it. On March 19, 1840, Judge Robinson attended a meeting between representatives of the Texas government and the Comanche tribes.⁸⁵ He attended alongside his successor on the Fourth Judicial District bench, legendary future Supreme Court Chief Justice John Hemphill.⁸⁶ Judge Hemphill adjourned his court early so that the meeting could take place in his courtroom.⁸⁷

The meeting was being held because several Comanche chiefs and their extended retinue

⁸⁰ Haley, *Narrative History*, 34, 235; Paulsen, *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 353; Paulsen, *Dates of Service*, 65 TEX. L. REV. at 370-71; Gilmer, *Early Courts*, 12 TEX. L. REV. at 448; Davenport, *Supreme Court History*, 16-17.

⁸¹ Haley, *Narrative History*, 26.

⁸² Paulsen, *Sesquicentennial CELEBRATION*, 53 TEX. B.J. AT 43; see Haley, *Narrative History*, 34; Gilmer, *Early Courts*, 12 TEX. L. REV. at 450.

⁸³ Haley, *Narrative History*, 26; Paulsen, *Sesquicentennial Celebration*, 53 TEX. B.J. at 43.

⁸⁴ Haley, *Narrative History*, 26, 34; Paulsen, *Sesquicentennial Celebration*, 53 TEX. B.J. at 44; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 354.

⁸⁵ Haley, *Narrative History*, 6; Paulsen, *Short History*, 65 TEX. L. REV. at 255; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 354.

⁸⁶ See Haley, *Narrative History*, 26.

⁸⁷ *Ibid.*; Paulsen, *Short History*, 65 TEX. L. REV. at 255.

had entered San Antonio under truce to discuss the terms for repatriating Texian captives they held.⁸⁸ Instead of bringing the fifteen Texian captives with them to the meeting, the Comanche brought only one, a teenaged girl named Matilda Lockhart who “showed plain evidence that she had been shockingly tortured.”⁸⁹ When Lockhart informed the Republic representatives that the Comanche intended to bring the surviving captives into town, one-by-one, so as to maximize the price they could get for each, the Texians were enraged.⁹⁰ They informed the Comanche that they would be held hostage until all the captives were safely returned en masse.⁹¹ The skirmish that ensued has been called the “Council House Fight.”⁹² During the fighting, Judge Robinson was wounded, and Judge Hemphill disemboweled one of the Comanche chiefs with his Bowie knife after being attacked himself.⁹³

Two years later in September 1842, Judge Robinson was back in San Antonio attending a district court hearing when the Mexican army under General Adrian Woll invaded and took the entire court prisoner, including the attorneys, jury, and bystanders.⁹⁴ This number included the sitting district judge (himself also an Associate Judge of the Republic Supreme Court), former Associate Judge Robinson, and future Associate Judge William E. Jones.⁹⁵ While being held prisoner in Mexico, Judge Robinson offered his services as a peace emissary to Santa Anna, who released him to secure an armistice with President Houston.⁹⁶

Perhaps in part due to the Gold Rush or to his dissatisfaction with the inherent risks of practicing law on the Texas frontier, Judge Robinson emigrated to California in 1849.⁹⁷ After serving as a district attorney and school commissioner there, he passed away a wealthy man in San Diego in October 1857.⁹⁸

Judge Richardson A. “Dick” Scurry

Associate Judge Richardson “Dick” Scurry rode to San Jacinto alongside General Sam Houston, manned the “Twin Sisters” at San Jacinto, and would later serve as a Congressman both to the Republic and to the United States.

Scurry was born in Gallatin, Tennessee on November 11, 1811.⁹⁹ An extremely bright student

⁸⁸ Haley, *Narrative History*, 26.

⁸⁹ *Ibid.*

⁹⁰ *See ibid.*

⁹¹ *Ibid.*; Paulsen, *Short History*, 65 TEX. L. REV. at 255.

⁹² Haley, *Narrative History*, 26–27; Paulsen, *Short History*, 65 TEX. L. REV. at 255; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 354.

⁹³ Paulsen, *Short History*, 65 TEX. L. REV. at 255; *see* Haley, *Narrative History*, 27; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 354.

⁹⁴ Paulsen, *Short History*, 65 TEX. L. REV. at 263–64; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 354; Wharton, *Early Judicial History*, 12 TEX. L. REV. at 324.

⁹⁵ Paulsen, *Short History*, 65 TEX. L. REV. at 264 n.158; Wharton, *Early Judicial History*, 12 TEX. L. REV. at 324.

⁹⁶ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 354; Davenport, *Supreme Court History*, at 19.

⁹⁷ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 354; *Supreme Court History*, at 19.

⁹⁸ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 354; *Supreme Court History*, at 19.

⁹⁹ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 356; Lynch, *Bench and Bar*, at 178.

in his youth, Scurry was said to have mastered the first six books of Euclid in just three weeks.¹⁰⁰

Scurry was admitted to the Tennessee bar in 1830, and began his law practice in Covington, Tennessee.¹⁰¹ At some point in early 1836, Scurry heeded the call to come to Texas's aid, arriving at Washington-on-the-Brazos by March 1836.¹⁰²

General Houston was named Commander-in-Chief of the Texian army on March 4, 1836.¹⁰³ He departed Washington-on-the-Brazos two days later to join his troops at Gonzales.¹⁰⁴ In tow with General Houston were “two aides-de-camp, one captain, *and a youth*”—24 year-old Dick Scurry.¹⁰⁵

On the banks of the Brazos River on April 14, 1836, Scurry was assigned as First Sergeant in the artillery corps—whose duty it was to man the Twin Sisters.¹⁰⁶ The Twin Sisters were two cannons (probably six pounders) that had been cast in and gifted by the townspeople of Cincinnati, Ohio to the Texians to aid in their quest for independence.¹⁰⁷ Though undersized compared to the nine-pound Golden Standard, the Twin Sisters proved invaluable to the Texian army's victory at San Jacinto both militarily and emotionally as their “roar ... inspire[ed] ... the foot soldiers.”¹⁰⁸ Indeed, determined and accurate fire from the Twin Sisters ensured Santa Anna's Golden Standard fired *only three rounds* before being abandoned and later captured.¹⁰⁹ Scurry's “gallantry and good conduct” at San Jacinto was such that he received a battlefield promotion to lieutenant.¹¹⁰

Following San Jacinto, Scurry was appointed as the district attorney for the First Judicial District.¹¹¹ He was later elected as the first judge of the Sixth Judicial District bench on January 30, 1840, where he served until resigning on February 5, 1841 to serve as district attorney for the Fifth Judicial District.¹¹² It was during his service on the Sixth Judicial District that Judge Scurry wrote three opinions for the Republic Supreme Court's January 1841 term.¹¹³

¹⁰⁰ Lynch, *Bench and Bar*, at 178; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 356.

¹⁰¹ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 356.

¹⁰² *Ibid.*; Lynch, *Bench and Bar*, at 179; Moore, *Eighteen Minutes*, 16.

¹⁰³ Moore, *Eighteen Minutes*, 15.

¹⁰⁴ *Ibid.*, 16–17.

¹⁰⁵ *Ibid.*, 16–17, 213 (emphasis added); Wharton, *Early Judicial History*, 12 TEX. L. REV. at 320. Judge Scurry arrived with General Houston in Gonzales on March 11, 1836. Moore, *Eighteen Minutes*, 43.

¹⁰⁶ Moore, *Eighteen Minutes*, 211, 213, 436.

¹⁰⁷ *Ibid.*, 152–53.

¹⁰⁸ *Ibid.*, 264–67, 325, 333–34.

¹⁰⁹ *Ibid.*, 333–34, 367.

¹¹⁰ Lynch, *Bench and Bar*, 179.

¹¹¹ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 357.

¹¹² *Ibid.*; Paulsen, *Dates of Service*, 65 TEX. L. REV. at 371; see Haley, *Narrative History*, 235; Gilmer, *Early Courts*, 12 TEX. L. REV. at 450; Davenport, *Supreme Court History*, 16–17; Lynch, *Bench and Bar*, at 179.

¹¹³ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 356; Haley, *Narrative History*, 30, 235; Gilmer, *Early Courts*, 12 TEX. L. REV. at 450. These opinions were *Guest v. Guest*, Dallam 394 (Tex. 1841), *Knight v. Huff*, Dallam 425 (Tex. 1841), and *Austin v. Sawyer*, Dallam 445 (Tex. 1841). Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 356; see Davenport, *Supreme Court History*, at 16–17.



The "Twin Sisters" cannons that Richard Scurry operated with "gallantry and good conduct" during the Battle of San Jacinto appear on the lower left side of this photograph of the Bryan History Museum's diorama of the San Jacinto Battlefield. Photo by David A. Furlow.

From November 1842 until February 1844, Scurry served in the Republic House of Representatives during the Seventh and Eighth Congresses, and was elected Speaker of the Republic House during the Eighth Congress.¹¹⁴ During these years, Judge Scurry met and married his wife, Evantha Foster, in 1843.¹¹⁵

After annexation, Judge Scurry was elected as the district judge for Red River County.¹¹⁶ In 1851, he was elected to represent Texas as one of her congressmen in the United States House of Representatives.¹¹⁷

Judge Scurry died at his home in Hempstead on April 3, 1862 due to complications arising from a wound he received in a hunting accident a decade before.¹¹⁸ Upon hearing of Scurry's

¹¹⁴ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 357; Lynch, *Bench and Bar*, 179.

¹¹⁵ Lynch, *Bench and Bar*, 180.

¹¹⁶ *Ibid.*

¹¹⁷ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 357; Lynch, *Bench and Bar*, 180.

¹¹⁸ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 357; Lynch, *Bench and Bar*, 180–81.

passing, Sam Houston said, “There died one of the most wonderful minds I have ever known. It was a vast storehouse of legal lore.”¹¹⁹

Judge Robert McAlpin “Three-Legged Willie” Williamson

One of the most colorful characters of the Republic judiciary was also one of its most able, eminent, and accomplished, both in and out of the courtroom.¹²⁰ So much so that Robert McAlpin “Three-Legged Willie” Williamson has been called the “Patrick Henry of Texas.”¹²¹

Robert McAlpin Williamson was born in Georgia in 1806.¹²² At fifteen years of age, Williamson was stricken with juvenile tuberculous arthritis (also called “white swelling”), which left him with a lame leg.¹²³ During the two years he spent confined to his bed fighting the malady, Robinson studied and mastered language and mathematics.¹²⁴ After he emerged from his convalescence, Williamson strapped a wooden peg to his lame leg, which was tied behind him at the knee.¹²⁵ His resulting appearance gave him the lifelong nickname of “Three-Legged Willie.”¹²⁶

Williamson was admitted to the Georgia Bar at the age of twenty-one, but then left for Texas in 1826 or 1827 after he dueled with another gentlemen defending the “moral character of a young lady.”¹²⁷ He settled in San Felipe, and soon distinguished himself in local affairs.¹²⁸ He established and edited one of the first newspapers in Texas (the *Cotton Plant*) from 1829 to 1831, served as the San Felipe city attorney (the *sindeco procurador*), as well as its *alcalde* in 1833.¹²⁹

¹¹⁹ Lynch, *Bench and Bar*, at 181.

¹²⁰ Williamson was said to be a fine singer, an accomplished poet and storyteller, banjo player, and “a celebrated dancer—wooden leg notwithstanding.” Haley, *Narrative History*, 24–25; Paulsen, *Short History*, 65 TEX. L. REV. at 246; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 364; Catherine M. Foster, *A Texas Portrait: Three-Legged Willie*, 14 TEX. B.J. 15, 53 (Jan. 1964); Davenport, *Supreme Court History*, at 20.

¹²¹ Haley, *Narrative History*, 24; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 364; Lynch, *Bench and Bar*, 196. One historian has said that Williamson “did as much, if not more, than any other man in precipitating and sustaining the revolution of 1835.” Davenport, *Supreme Court History*, at 20.

¹²² Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 363 (listing 1806 as his date of birth); Davenport, *Supreme Court History*, 19 (same); Lynch, *Bench and Bar*, 194 (same). *But see* Haley, *Narrative History*, 24 (stating he was born in 1804); *see also* Foster, *Three-Legged Willie*, 14 TEX. B.J. at 15 (noting both 1806 and 1804 as his possible dates of birth).

¹²³ Haley, *Narrative History*, 24; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 363; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 15; Davenport, *Supreme Court History*, 19; Lynch, *Bench and Bar*, 194.

¹²⁴ Haley, *Narrative History*, 24; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 15.

¹²⁵ Haley, *Narrative History*, 24; Moore, *Eighteen Minutes*, 80; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 363; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 15; *Supreme Court History*, at 19; Lynch, *Bench and Bar*, at 194.

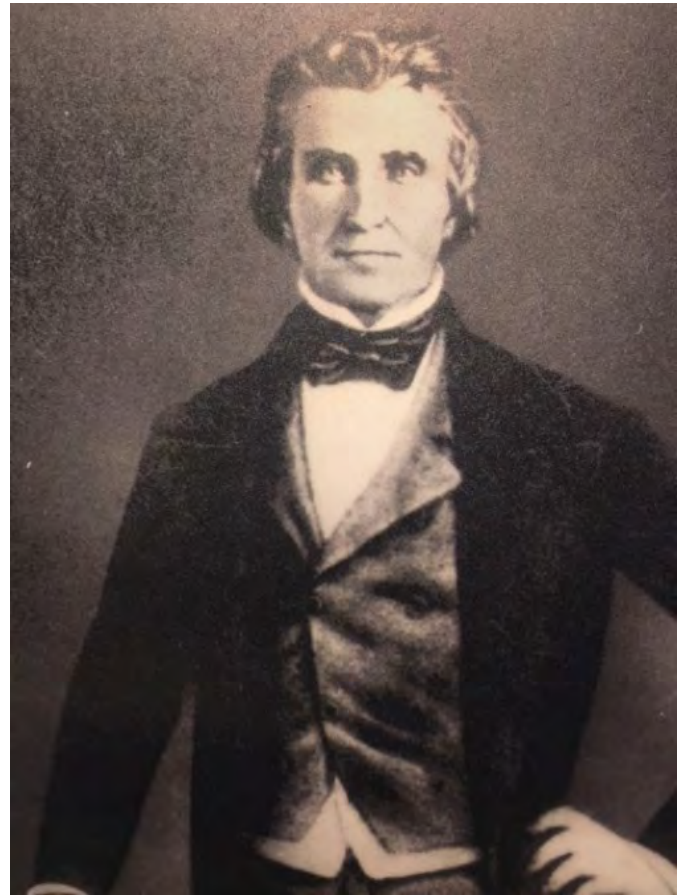
¹²⁶ Haley, *Narrative History*, 24; Moore, *Eighteen Minutes*, 80; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 363; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 15; *Supreme Court History*, at 19; Lynch, *Bench and Bar*, at 194.

¹²⁷ Haley, *Narrative History*, 24 (estimating he left Georgia in 1827); Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 363 (same). *But see* Moore, *Eighteen Minutes*, 80 (placing the date of his immigration to Texas at 1826); Lynch, *Bench and Bar*, at 194 (same); *see also* Foster, *Three-Legged Willie*, 14 TEX. B.J. at 16 (listing both dates and sources for each).

¹²⁸ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 363; Davenport, *Supreme Court History*, at 19–20; Lynch, *Bench and Bar*, at 194.

¹²⁹ Moore, *Eighteen Minutes*, 80; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 363; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 16; Davenport, *Supreme Court History*, at 20.

During this time he befriended another noted San Felipe lawyer named William Barret Travis.¹³⁰ Both began to play a prominent role in the burgeoning Texas revolution, participating in the Anahuac disturbance in 1832 and co-signing the Turtle Bayou Resolution the same year.¹³¹ These actions earned the pair arrest warrants personally issued by Santa Anna.¹³²



Daguerreotype of Robert M. Williamson on display at the San Jacinto Battlefield Museum.
Photo by David A. Furlow.

As the revolution began in earnest, Williamson was made one of the first commanders of the Texas Rangers on November 28, 1835, earning the rank of major.¹³³ Indeed, Williamson received one of Travis's first pleas for Alamo reinforcements while riding between Bastrop and Gonzales with three Ranger companies he raised.¹³⁴ He immediately headed to Gonzales to gather every man he could to ride to the Alamo's aid.¹³⁵ Williamson sent a message back to the Alamo defenders with Lieutenant James Bonham, imploring Travis to hold out until reinforcements from Goliad and Gonzales arrived.¹³⁶ Williamson signed the letter, "Your true friend."¹³⁷ Williamson's message later cheered the weary Alamo garrison's flagging spirits.¹³⁸

Around April 7th or 8th, General Sam Houston relieved Williamson of command of his Ranger regiment for allowing some of his drunken men to kill two Mexican prisoners without first being questioned.¹³⁹ He would later fight at San Jacinto as a cavalry private under the command of his Georgian cousin, Mirabeau B. Lamar.¹⁴⁰ Williamson is said to have offered the following prayer just before the fighting commenced on the San Jacinto plain:

¹³⁰ Donovan, *Blood of Heroes*, 19; see *Supreme Court Judges*, 65 TEX. L. REV. at 363–64.

¹³¹ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 363.

¹³² Donovan, *Blood of Heroes*, 20–21.

¹³³ Moore, *Eighteen Minutes*, 80; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 364.

¹³⁴ Donovan, *Blood of Heroes*, 213; Moore, *Eighteen Minutes*, 80.

¹³⁵ Donovan, *Blood of Heroes*, 214, 231.

¹³⁶ *Ibid.*, 245.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*, 180.

¹⁴⁰ Compare *ibid.* at 436–37, with Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 364; see Foster, *Three-Legged Willie*, 14 TEX. B.J. at 16.

O, Lord, we are about to join the battle with superior numbers of the enemy, and we beseech Thee to march with us into the fray.

But, Heavenly Father, *if You can't see Your way clear to do that, then for Christ's sake don't help those Mexicans, but just lay low and keep dark*, and You'll see the — damndest fight since the Battle of Jericho.¹⁴¹

Following San Jacinto, Williamson was held in such high regard that he was one of the first four judges elected to serve the district courts and Republic Supreme Court on December 16, 1836.¹⁴² He not only was the first judge of the Third Judicial District, Judge Williamson is also credited with convening the first regular session of any district court in the Republic.¹⁴³ This first district court session was held in Columbus (which had not yet been rebuilt since being burned in the Runaway Scrape) beneath “a huge oak tree, with Three-Legged Willie sitting on a powder keg, his docket book and a pistol lying on a dry goods box in front of him, and a loaded shotgun at his knee.”¹⁴⁴ To convene the proceedings, Judge Williamson shouted, “Hear ye! Hear ye! Court for the Third District is either now in session, or by [God] somebody’s going to get killed!”¹⁴⁵



A stone marker on the San Jacinto Battleground denotes the place where “Three-Legged Willie” Williamson camped the night before the battle. Photo by David A. Furlow.

In this manner, Judge Williamson has been described as “almost single[-]handedly ... [bringing] Anglo-Texas law to the tough, lawless country between the Guadalupe and the Sabine.”¹⁴⁶

Another example of his unique if likely necessary brand of courtroom decorum is evidenced

¹⁴¹ Foster, *Three-Legged Willie*, 14 TEX. B.J. at 54 (emphasis added).

¹⁴² Haley, *Narrative History*, 34, 235; Paulsen, *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 364; Paulsen, *Dates of Service*, 65 TEX. L. REV. at 370–71; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 16; Gilmer, *Early Courts*, 12 TEX. L. REV. at 448; Davenport, *Supreme Court History*, 16–17, 20; Lynch, *Bench and Bar*, at 195.

¹⁴³ Haley, *Narrative History*, 101; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 16. This is because Judge Franklin’s adjudication of the *Pocket* case during the summer of 1836 was irregular in that it was convened outside the requirements established by the Republic Constitution. Wise, *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 16; Paulsen, *Short History*, 65 TEX. L. REV. at 246; Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 332 n.188; Wharton, *Early Judicial History*, 12 TEX. L. REV. at 321–22; see Lynch, *Bench and Bar*, 173; TEX. CONST. art. IV, § 9 (1836); see also Paulsen, *Short History*, 65 TEX. L. REV. at 240.

¹⁴⁴ Paulsen, *Short History*, 65 TEX. L. REV. at 246; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 16; see Haley, *Narrative History*, 25.

¹⁴⁵ Foster, *Three-Legged Willie*, 14 TEX. B.J. at 16; see *Short History*, 65 TEX. L. REV. at 246.

¹⁴⁶ Foster, *Three-Legged Willie*, 14 TEX. B.J. at 15.

by a court session he later presided over in Shelby County.¹⁴⁷ Shelby County was on the wild frontier, known to be a haven for outlaws and worse, and where the Regulator-Moderator War had broken out.¹⁴⁸

Judge Williamson was asked by Republic officials to convene the first district court proceeding in Shelby County, despite county residents voting the night before the court session was to open that they needed no court.¹⁴⁹ After the court was called to order the following day, one ruffian demanded the case against him be dismissed.¹⁵⁰ When Judge Williamson asked what authority the man relied upon for such a dismissal, the brigand drew his Bowie knife and drove it into the bench, declaring "This sir, is the law of Shelby County!"¹⁵¹ Unfazed, the old Texas Ranger leapt to his feet and drew his horse pistol and replied, "If that's the law in Shelby County, then this is the Constitution of Texas that overrules your law!"¹⁵² Needless to say, the case proceeded without further disruption.¹⁵³

Judge Williamson wed Mary Jane Edwards in 1837, and resigned from the court in 1839 to serve in the Republic Congress.¹⁵⁴ Because he left the bench before the Republic Supreme Court ever formally convened its first session, he never attended a Court hearing or wrote an opinion.¹⁵⁵

He served five terms in the Republic Congress until statehood, representing Washington and Milam Counties.¹⁵⁶ After Texas was annexed into the United States, Williamson served as a State Senator during the first two legislatures, retiring in 1848.¹⁵⁷ Such a strong proponent of annexation was Judge Williamson that he named one of his seven children, "Annexus."¹⁵⁸

He lived out his retirement with his wife and children on their farm near Independence in Washington County.¹⁵⁹ He later fell ill in 1857 and suffered his wife's death the next year.¹⁶⁰

¹⁴⁷ Haley, *Narrative History*, =25; Paulsen, *Short History*, 65 TEX. L. REV. at 261; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 16, 52.

¹⁴⁸ Haley, *Narrative History*, at 25; Paulsen, *Short History*, 65 TEX. L. REV. at 261.

¹⁴⁹ Paulsen, *Short History*, 65 TEX. L. REV. at 261; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 16.

¹⁵⁰ Haley, *Narrative History*, 25; Paulsen, *Short History*, 65 TEX. L. REV. at 261; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 16.

¹⁵¹ Haley, *Narrative History*, 25; Paulsen, *Short History*, 65 TEX. L. REV. at 261; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 52.

¹⁵² Foster, *Three-Legged Willie*, 14 TEX. B.J. at 52; see Haley, *Narrative History*, 25; Paulsen, *Short History*, 65 TEX. L. REV. at 261. This very likely may be the first recorded instance of someone unwisely bringing a knife to a gunfight. See *The Untouchables* (Paramount Pictures 1987).

¹⁵³ Haley, *Narrative History*, 25; Paulsen, *Short History*, 65 TEX. L. REV. at 261; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 52.

¹⁵⁴ Haley, *Narrative History*, 25; see Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 364; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 53.

¹⁵⁵ Haley, *Narrative History*, 18–19, APP'X A, 227; Ariens, *Lone Star Law*, 15–16, 19–20; Paulsen, *Short History*, 65 TEX. L. REV. at 248–49; Davenport, *Supreme Court History*, 7.

¹⁵⁶ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 364; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 52–53; Davenport, *Supreme Court History*, at 20; Lynch, *Bench and Bar*, at 195.

¹⁵⁷ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 364; Davenport, *Supreme Court History*, 20; see Lynch, *Bench and Bar*, at 195.

¹⁵⁸ Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 364; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 52–53.

¹⁵⁹ Foster, *Three-Legged Willie*, 14 TEX. B.J. at 53; Lynch, *Bench and Bar*, at 195–96.

¹⁶⁰ Foster, *Three-Legged Willie*, 14 TEX. B.J. at 53; *Supreme Court History*, at 21; Lynch, *Bench and Bar*, at 196.

He followed her on December 22, 1859.¹⁶¹ Williamson County was established in 1848 in his honor.¹⁶²

Conclusion

Each of the remarkable men who helped free Texas from Santa Anna's grip at San Jacinto later ensured that liberty would be enjoyed by her citizens through their devoted service to her courts. Their valor on the battlefield and wisdom in the courtroom (even when it was just a powder keg beneath an oak tree) cemented the Texas Supreme Court's storied lineage and unparalleled legacy that continues to this day.

¹⁶¹ *Supreme Court Judges*, 65 TEX. L. REV. at 364; Foster, *Three-Legged Willie*, 14 TEX. B.J. at 53; *Supreme Court History*, at 22; Lynch, *Bench and Bar*, at 196.

¹⁶² Paulsen, *Supreme Court Judges*, 65 TEX. L. REV. at 364.



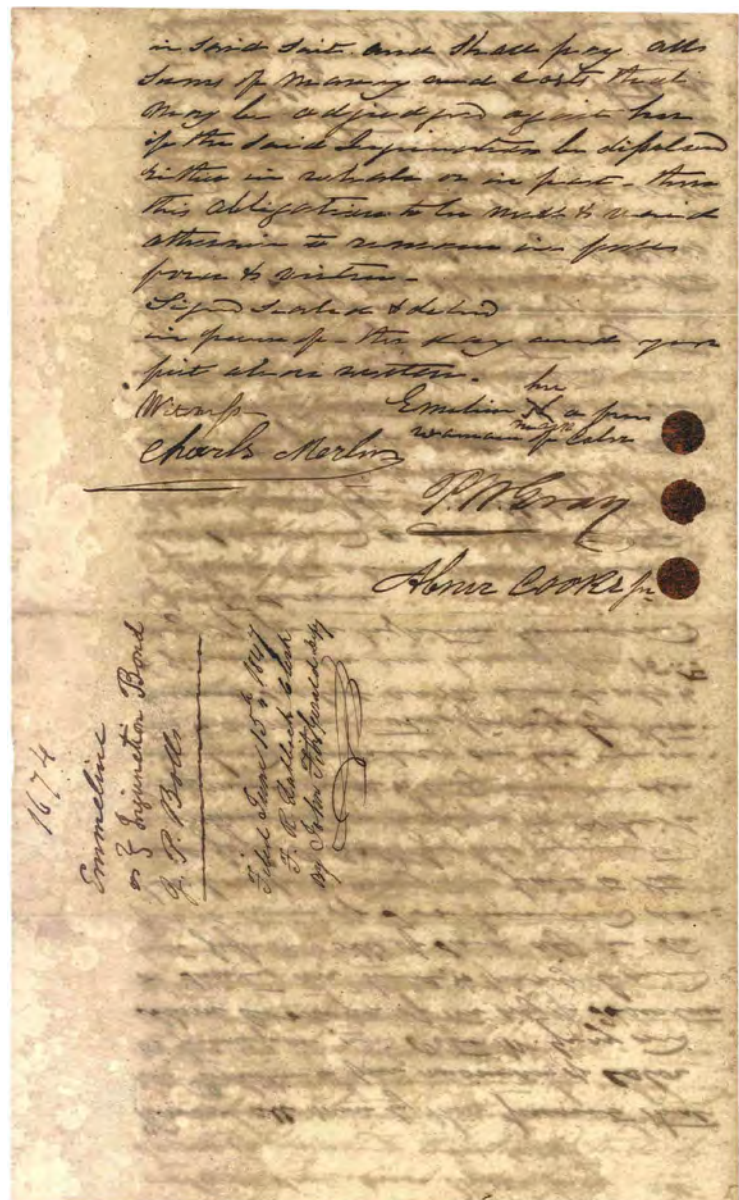
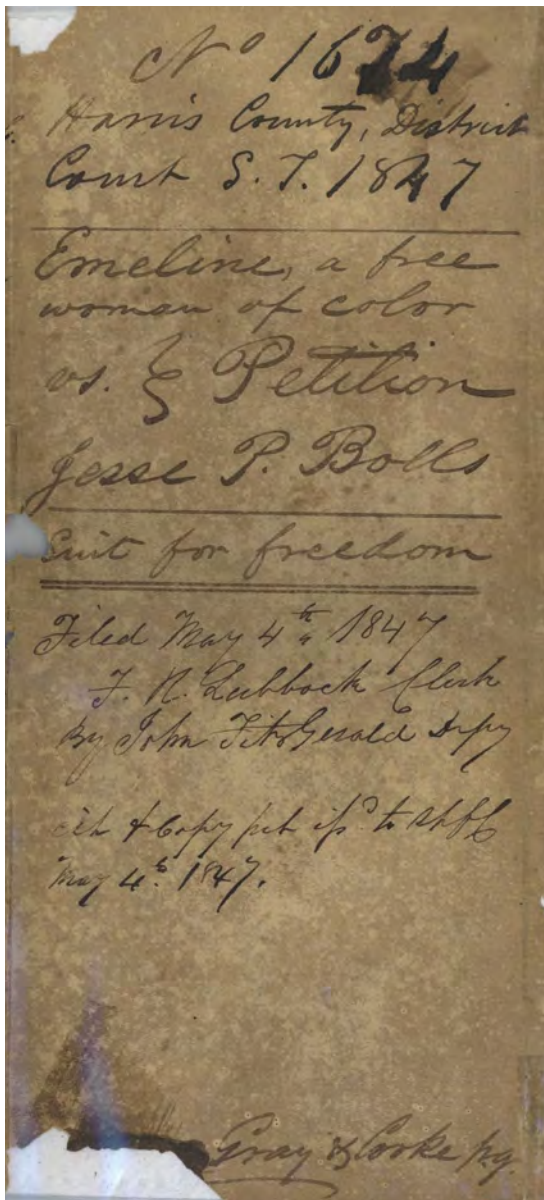
DYLAN O. DRUMMOND is a civil appellate and commercial litigator with the law firm of Gray Reed & McGraw LLP. He currently serves as President-Elect of the Texas Supreme Court Historical Society, Secretary of the Texas Bar Appellate Section and the Texas Bar College, and subcommittee chair of the Texas Bar Pattern Jury Charge Committee for the Business, Consumer, Insurance & Employment volume.

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The Time to Preserve Texas's Slave Case Records is Now

By Bill Kroger

We have done many wonderful things in preserving court records over the past decade. But, I'm regularly reminded of a major unfinished task—the comprehensive preservation and digitization (with access) of historical Texas court records of African Americans who were enslaved until 1865.



Left: The Original Petition in the 1847 *Emeline* lawsuit for freedom filed in Harris County by Peter Gray, later a Justice of the Texas Supreme Court. Right: The injunction bond in the *Emeline* suit. Photos courtesy of Judge Mark Davidson.

The Texas slavery records that are locked away in the district and county courts for Texas counties, especially those in East Texas, need to be preserved as soon as possible. I have seen these records—slavery lawsuits over ownership, titles, transactions, defects, murders, births, escapes, enslavements, or wrongful deaths. Some of these documents are property records in the county courts; some are court papers, journals, or records in civil litigation. Some of these files contain priceless exhibits, such as titles to enslaved persons.

These records are often impossible to access, at least for most people. Few are digitized, and if they are, they are impossible to search. It is also impossible to look for records other than on an individual county-by-county basis. Many of these records are crumbling, or falling apart from decay. Some of these records are folded in a way that, if you open them, they break apart. Others have not been opened, touched, or studied for 150 years or more. Some of these records have been stolen, and are being sold on auction sites. They are probably the largest untapped, unstudied, unpreserved slavery records in the United States. They are a priceless historical resource for all Americans, but especially for African Americans who want to find and understand their family histories.

County officials in Texas are generally supportive of preservation—they recognize the importance of these records. But many of the east Texas counties don't have the money or skills for preservation.

There should be public support—and funding—for this project, if it is to be properly thought through, planned and organized. It also would require a task force whose members bring different disciplines, expertise, and skills.

Now is the time to undertake this project—to conduct a large-scale preservation of these records, so that they are saved for future generations, and become easy to access for families (and historians) to study.



BILL KROGER is the Co-Chair of Baker Botts' Energy Litigation Practice Group. He has served as the Chair of the Texas Supreme Court Historical Records Preservation Task Force from 2009 through the present.

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Chief Justice Carolyn Wright and John Browning Receive Legal History Award

The J.L. Turner Legal Association Foundation held its annual Scholarship and Awards Gala in Dallas on October 21, 2017. At this well-attended event featuring a “Who’s Who” of Dallas’s bar and judiciary, the Foundation presented its 2017 Texas Legal History Award to Chief Justice Carolyn Wright of the Fifth District Court of Appeals and attorney John Browning of Passman & Jones.



Left: Chief Justice Carolyn Wright and attorney John Browning hold their J.L. Turner Foundation award. Right, from left to right: J.L. Turner Foundation Board Chair Kandace Walter, John Browning, Chief Justice Carolyn Wright, and Foundation Board member Janice Robinson. Photos provided by John Browning.

The Foundation cited Wright and Browning’s scholarly work over the past several years in researching, writing on, and raising awareness about the contributions of Texas’s earliest African-American lawyers. Their scholarly work has appeared in numerous publications, including the *Howard Law Journal*, the *Texas Bar Journal*, and the *Texas Supreme Court Historical Society Journal*. They have also educated the public with presentations all over the state, including talks for the Dallas Bar Association, Houston Lawyers Association, Thurgood Marshall Law School, SMU Dedman School of Law, and Texas African-American Lawyers Summit.

Besides the J.L. Turner Foundation award, in 2016 Chief Justice Wright and Mr. Browning received the State Bar of Texas Presidents’ Certificate of Merit for their groundbreaking work. A copy of their *Howard Law Journal* article is also in the Museum of African-American History and Culture at the Smithsonian for an upcoming exhibit on blacks in the professions.

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September 7 Hemphill Dinner Will Feature Address by U.S. Fifth Circuit Chief Judge Carl E. Stewart

By Marilyn P. Duncan

The Honorable Carl E. Stewart, Chief Judge of the United States Court of Appeals for the Fifth Circuit, will be the keynote speaker at this year's John Hemphill Dinner. The dinner, which is the Texas Supreme Court Historical Society's main fundraising event, is scheduled for Friday, September 7, 2018, at the Four Seasons Hotel in Austin.

Chief Judge Stewart began his term as head of the U.S. Fifth Circuit Court of Appeals in October 2012. He has served on the Fifth Circuit since 1994, when he was appointed by President Bill Clinton. He is the first African American to serve as the Fifth Circuit's Chief Judge.

Born and raised in the Shreveport area, Stewart earned his J.D. degree from Loyola University in 1974. Immediately following law school, he joined the Army as a Captain in the Judge Advocate General's Corps, where he served as a defense lawyer for soldiers at Fort Sam Houston in Texas. After leaving the Army, he was in private practice before taking a position in the field office of the Louisiana Attorney General.

In 1979, he joined the U.S. Department of Justice as an Assistant U.S. Attorney. During his four years as a federal prosecutor, he successfully pursued corrupt politicians, people trying to defraud the federal government, and loan sharks. He received a letter of commendation from the Attorney General for his work in civil rights cases.

Chief Judge Stewart left the Justice Department in 1983 to reenter private practice and to teach at Louisiana State University in Shreveport. In 1984, he won election to a six-year term as a First Judicial District Judge for Caddo Parish, Louisiana. Near the conclusion of the term in 1990, he was elected to Louisiana's Second Circuit Court of Appeal, a position he held until his appointment to the U.S. Fifth Circuit Court in 1994.



Justice Dale Wainwright, who served as 2017–18 Society President, will preside over the evening program at the Hemphill Dinner. The program will also include a presentation of the Tenth Annual Chief Justice Jack Pope Professionalism Award by the Texas Center for Legal Ethics. The award recognizes a Texas appellate lawyer or judge who demonstrates the highest level of professionalism and integrity.

For ticket and event information, visit the Society's website at <http://www.texascourthistory.org/hemphill> or email tschs@sbcglobal.net.

23rd Annual John Hemphill Dinner



When: Friday, September 7, 2018

Where: Grand Ballroom, downstairs
Four Seasons Hotel
San Jacinto and Cesar Chavez Streets
Austin, Texas

Time: 6:00 p.m. Invitation-only Reception
with Dinner Speaker
6:30 p.m. Reception with Host Bar
7:00 p.m. Dinner

Sponsorship

Levels: **Hemphill Sponsorship**
(2 tables/seats 20)—\$10,000
\$8,200 is a tax-deductible contribution to TSCHS

Pope Sponsorship
(1 table/seats 10)—\$5,000
\$4,100 is a tax-deductible contribution to TSCHS

Advocate Sponsorship
(1 table/seats 10)—\$2,500
\$1,600 is a tax-deductible contribution to TSCHS

Individual Tickets: \$200
\$110 is a tax-deductible contribution to TSCHS
Wine service during dinner is included in price

Dress: Business suits and dinner dress

Speaker: **Hon. Carl E. Stewart**
Chief Judge of the United States
Court of Appeals for the Fifth
Circuit

Program: Presentation of Chief Justice Jack
Pope Professionalism Award

Guests: Members of the Supreme Court
of Texas and their spouses are
guests of the Society

Questions: Contact TSCHS Office
(512) 481-1840;
tschs@sbcglobal.net
Mary Sue Miller,
Administrative Coordinator



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GREAT WAR COMMEMORATION ON NOVEMBER 14, 2018

The Society and Supreme Court Will Honor Judges and Governors Who Served

By David A. Furlow

"At two minutes to eleven, opposite the South African Brigade, at the easternmost point reached by the British armies, a German machine-gunner, after firing off a belt without a pause, was seen to stand up, take off his helmet, bow, and then walk slowly to the rear. There came a second of expectant silence, and then a curious ripping sound, which observers far behind the front likened to the noise of a light wind. It was the sound of men cheering from the Vosges to the sea."¹

— John Buchan, *The King's Grace* (London: Hodder & Stoughton, 1935).

The Texas Supreme Court and Texas Supreme Court Historical Society will commemorate the 100th anniversary of the Armistice that ended World War I, honor the seven Supreme Court Justices, two Court of Criminal Appeals Judges, and three Governors who served in the Great War, and celebrate Veterans Day during a program on November 14, 2018.



Left: Judge Mark Davidson. Center: Great War Commemorative Pin.
Right: Supreme Court of Texas Justice Paul Green.

The Commemoration will include a formal program in the historic Supreme Court Courtroom in the Capitol as well as a World War I-themed reception in the Texas Law Center. To open the program in the historic Courtroom, Justice Paul Green, the Society's liaison with

¹ The Western Front stretched from the Vosges Mountains near Switzerland to the North Sea.

the Texas Supreme Court and a steward of Texas courthouse history as well as his own family's history, will introduce Society President Marcy Hogan Greer.

President Greer will discuss the Society's role in preserving, protecting, and disseminating the history of the Texas Supreme Court, Texas's judiciary, and Texas law, including the history of the Great War, and then introduce the Commemorative Committee's Chair, Judge Mark Davidson.

Judge Davidson will then honor the judges, justices, and governors who served during World War I. Before becoming Chair of the Committee this past March, Judge Davidson researched the Great War at America's only museum dedicated to World War I, the National World War I Museum and Memorial in Kansas City, Missouri. He has researched, spoken, and written about lawyers and judges who served in the Great War, for example, in "Houston Lawyers Who Made a Difference: Lieutenant Calvin B. Garwood," *The Houston Lawyer* (July/August 2017), 66, 1, 36.

Other speakers will discuss the Great War's impact on Texas, the Governor's office, and the courts. I will speak about the battlefield experience of those honorees who passed through the Great War's storm of steel, a crucible of front-line machine-gun fire, concentrated artillery, and poison gas. Over 198,000 Texans served in the war, most notably in the Navy, Marines, Air Force, the Army's 36th and 90th Infantry Divisions, and the Texas National Guard. Some 450 Texas women served as nurses. At least 5,170 Texans died during the war, including 7 "Gold Star" women from the U.S. Army and Navy Nurse Corps. Congress awarded four Texans the Medal of Honor. Training camps sprang up throughout Texas.

Excerpts from biographies of the Great War veterans will be shared during the Courtroom ceremony, along with other stories from the Great War era in Texas. Judge Davidson will present the published biographies to Justice Phil Johnson and the Court in a special issue of this Journal dedicated to remembrance of the Great War (see below).

Justice Johnson, a 1965–72 Vietnam War U.S. Air Force fighter-bomber pilot and recipient of the Silver Star, Distinguished Flying Cross (twice), the Vietnamese Cross of Gallantry, and the Air Medal, will present the Court's Response to Judge Davidson's Commemoration.

Great War Commemoration Program and Reception



Wednesday, November 14, 2018

1:30 p.m. **Formal Commemoration Program**,
Historic Supreme Court Courtroom,
State Capitol, 3rd Floor.

2:30 p.m. **Commemoration Program concludes.**

2:45 p.m. **Reception and Display of Artifacts
and Records from World War I**
Hatton Sumners Conference Room,
Texas Law Center, 1414 Colorado St.,
Austin, TX 78701.

4:00 p.m. **Reception and Display of Artifacts
and Records concludes.**

Judge Davidson and the other committee members and volunteers are now preparing biographical essays about each of the twelve judges and governors who are known to have served in the War: Supreme Court Justices Few Brewster, Frank Culver, Wilmer St. John Garwood, Meade Griffin, Robert Ham-ilton, Gordon Simpson, and Charles Slatton; Court of Criminal Appeals Judge A. J. Folley and Commissioner George Christian; and Governors James Allred, Beauford Jester, and Dan Moody.



Above left: Texas Supreme Court Justice Phil Johnson, a 1965–72 veteran of the Vietnam War. Above right, left to right: the Distinguished Flying Cross, the Air Medal, and the Vietnamese Cross of Gallantry.

Following the program in the Historic Courtroom, participants will meet in the Texas Law Center's Hatton Sumners Conference Room across from the Capitol to view contemporaneous records, posters, and artifacts of the Great War.

Full program details will be sent to Society members in October. Information will also be posted on the Society's website at www.texascourthistory.org.

Seeking Volunteers for Great War-Themed Issue of the *TSCHS Journal*

The Fall 2018 issue of this Journal will be devoted to the Great War Commemoration. Its release will coincide with the November 14, 2018 program.

The issue will include short biographical articles about each judge, justice, and governor who served in the Great War. Committee Chair Judge Davidson, one of the Society's Trustees, is leading by example. He volunteered to write a biographical article about Governor Beauford Jester's service. Another Trustee, Fourteenth Court of Appeals Justice Ken Wise, will cover the role of Camp Leon Springs southwest of San Antonio as an officers' training center for Texans who joined the armed services. Society Trustee Stephen Pate will write about Governor (and, later, U.S. District Court Judge) James V "Jimmy" Allred's role in the Great War. I'll contribute a brief biography of Supreme Court Justice Few Brewster and an essay about the front-line soldier's experience of battle on the Western Front.

The Committee seeks volunteers among the Society's officers, trustees, Fellows and members, as well as historians and genealogists, interested in publishing short biographies of the other judges, justices, and governors who served in the war. Anyone interested in writing a succinct *Journal* article about one of the men to be commemorated should contact me at dafurlow@gmail.com.

Texas Judges and Governors Who Served in World War I

Articles are needed for names below in RED

1. **James V "Jimmy" Allred**
Governor, 1935–1939.
2. **Few Brewster**
Judge, Commission of Appeals,
1941–1945; Associate Justice, Texas
Supreme Court, 1945–1957.
3. **George Eastland Christian**
Judge, Commission of the Court of
Criminal Appeals, 1927–1941.
4. **Frank Culver**
Associate Justice, Texas Supreme
Court, 1953–1964.
5. **Alfred Jennings "A.J." Folley**
Judge, Texas Commission of Appeals;
Associate Justice, Texas Supreme
Court, 1943–1956.
6. **Wilmer St. John Garwood**
Associate Justice, Texas Supreme
Court, 1948–1958.
7. **Meade Felix Griffin**
Associate Justice, Texas Supreme Court,
1949–1968; Judge, Court of Criminal
Appeals, 1969.
8. **Robert William "Bob" Hamilton**
Associate Justice, Texas Supreme Court,
1959–1970.
9. **Beauford H. Jester**
Governor, 1947–1949.
10. **Dan Moody**
Governor, 1927–1931.
11. **Gordon Simpson**
Associate Justice, Texas Supreme Court,
1945–1949.
12. **Charles Stewart Slatton**
Associate Justice, Texas Supreme Court,
1945–1947.

In-depth historical research has already begun. Judge Davidson and I conducted initial research about the judges, justices, and governors to be honored. State Bar and Society Archivist Caitlin Bumford has begun preparing a database of information about their descendants, which includes, among others, *Black's Law Dictionary* editor Bryan Garner. And Ms. Bumford has also located State Bar of Texas materials about those who served, including the photo album Justice Few Brewster donated to the State Bar, the source of the photos that appear below.

Texas State Librarian Mark Smith, who curated the Texas State Library and Archives' World War I Centennial Commemoration exhibition in 2017, has pledged to make historic letters, newspapers, and photos available to the Society for the program. And Texas Military Forces Museum Director Jeffrey W. Hunt has already assisted us with useful ideas about how to research the Great War veterans' military records.

And now for a special preview, a few photos from Justice Few Brewster's album reflect his service in the Great War experience and its profound influence on his career.



Above left: Texas Supreme Court Associate Justice Few Brewster; photo courtesy of State Bar of Texas Archives. Center: Justice Few Brewster's calendar for the war years 1917 and 1918, from his State Bar photo album. Right: Justice Brewster in uniform as a Second Lieutenant, U.S. Army, 1918, from his album. Below: Justice Brewster and his U.S. Army identity, both from his album.



No. **707**

CAMP CUSTER, MICHIGAN
IDENTITY CARD

Name of Bearer **Few Brewster**

2nd Lieut., Infantry

Rank

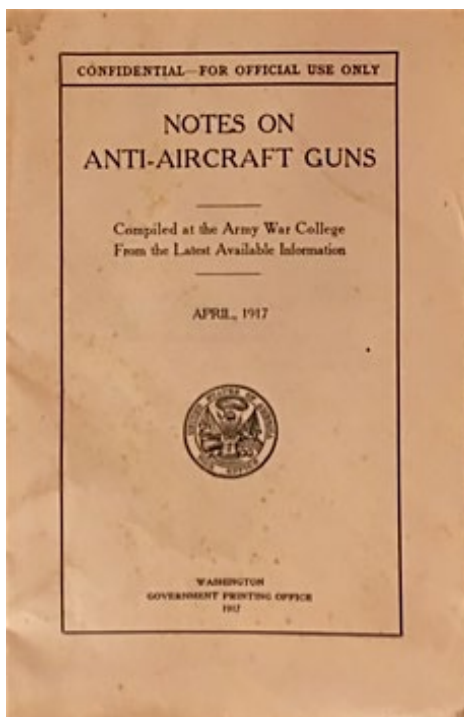
Duty **Co. "F" Dev. Bn. No. 2.**

Signature of Holder
Few Brewster

Attest *Walter Valentine*
May 1918



Above and below: Texas troops preparing for battle, Western Front, 1918. Photos from the Heritage Society of Houston's exhibition "A View from the Trenches: The Oberwetter World War I Collection."





The Great War Commemoration ceremony will take place in the Texas Supreme Court Courtroom on the third floor of the Capitol. Photo by David A. Furlow.

Please consider joining the Justices of the Texas Supreme Court and our Society's Great War Commemorative Committee and Board of Trustees to honor the lives of those judges, justices, and governors of Texas who served in the Great War.



"Sui memores alios fecere merendo." (By the sacrifice they made they earned the remembrance of others.)

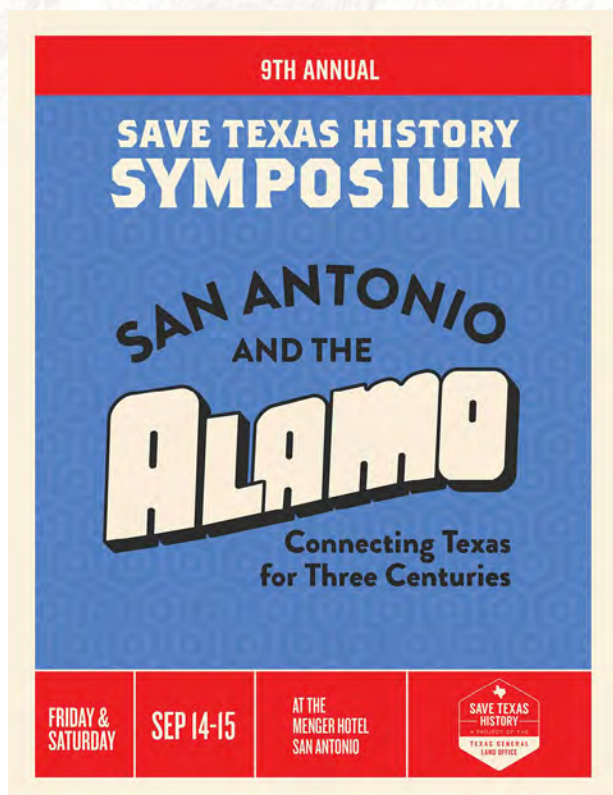
— Inscription on the Memorial Building, Clare College, Cambridge University, quoting from Virgil's *Aeneid*, book 6, line 663.

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Saving and Savoring San Antonio's 300-Year History

By David A. Furlow

F*eliz cumpleaños, San Antonio de Béxar!* This year our Society celebrates the 300th birthday of San Antonio and the Alamo, and the origins of Texas's Spanish and Mexican law, by serving as one of the sponsors of the Texas General Land Office's 9th Annual *Save Texas History* Symposium. This two-day festival of Texas history—historical, political, legal, cultural, and archaeological, from 1718 through 2018—will occur at the Alamo and the historic (1855–present day) Menger Hotel next door, at 204 Alamo Plaza, San Antonio, TX 78205, for those of us who travel through life via GPS, on Friday, September 14 and Saturday, September 15, 2018.



Our Society's fourth sponsorship of these annual *Save Texas History* symposia is one of the most important ways we satisfy our mission of gathering and preserving the history and work of the Texas Supreme Court and the state's appellate courts through research, scholarship, and educational programming. Since 2000, the GLO has made 3 million images of historic Texas maps, land grants, and archival records available online, while adding another 10,000 each month. These *Save Texas History* programs are so interesting and beneficial that I've personally joined the Society in cosponsoring them for the past four years. And I'm notoriously cheap, as my wife, children, and colleagues can attest.

Members of our Society are entitled to receive a \$10.00 discount off the price of registration because of this sponsorship. If you're interested in learning about Texas history in the 300-year-old city that made margaritas, fajitas, and wonderful missions famous around the world, you can register to attend through the GLO's *Save Texas History* web page at <https://events.r20.constantcontact.com/register/eventReg?oeidk=a07ef45p0m5f60e1c29&oseq=&c=&ch=>.

Registration also brings a substantial discount on the rate the historic Menger Hotel charges for an overnight stay: \$120 per night. As Oscar Wilde announced to Henry Ryder-Taylor,

a fellow Englishman and former *London Telegraph* journalist, while Wilde was staying at the Menger Hotel during his 1882 tour of Texas, "Let me be surrounded by luxury, I can do without necessities!" *Not a bad price for such luxury.*

And now for a few highlights of an excellent series of speeches and events.

Our Society's support for the 2018 Save Texas History program sponsors the speech of one of Texas's most important historians, Frank de la Teja, a friend of our Society and a speaker at our Fall 2016 Board of Trustees Meeting. The chronicler of San Antonio's Spanish, Mexican, and Tejano history, Frank will analyze San Antonio's identity as a military city rooted in Spain's efforts to defend its northern frontier from European rivals, autonomous Indian peoples, and eventually from the United States. His presentation will provide an overview of the many ways that the presidio influenced life in the city, from supporting the work of Franciscan missionaries in their work among the province's indigenous populations to forming families and serving as the root stock of the Tejano community. He shows that the military was one of San Antonio's most important institutions from 1718 to 1821.

Alamo historians Machaia McClenny and Sherri Driscoll will discuss the diversity of the Alamo's defenders. The men who defended the Alamo represented the entire spectrum of age,



Interior of the Alamo complex, GLO Save Texas History website.



The Alamo at night, GLO Save Texas History website.

country of origin, social status, military rank, ethnicity, etc. Some aspired to earn a fortune in land for their courage under fire, while others sought glory, defended their homes, or aspired to create a new world on the Texas frontier. Those men set aside their profound differences to fight and die together. They offer examples we should emulate today.

Jackie Davis will speak about Texas's first 127 years of military history—Spanish, Mexican, and Texian—before the arrival of the U.S. Army in 1845. Davis will examine the predecessors to the U.S. Army, asking how Spain, Mexico, and the Republic of Texas organized, uniformed, equipped, supplied, and commanded them—the soldados and soldiers, yes, and the horses they rode in on.

Jake Morgan will offer an insider's guide to the Portal to Texas History, a digital repository filled with historical and cultural heritage materials, and one frequently used by the editors of this Journal and those who author its articles. A collaboration between the University of North Texas Libraries and Portal Partners, this gateway to Texas's past shares a wealth of historical knowledge garnered over the centuries by genealogical societies, museums, libraries, governmental agencies, historians, antiquarians, and the most private of collectors. Jake's presentation will offers special insights about how Portal users can harness its immense power.

Leslie Stapleton will present an overview of the Archives and Special Collections at Texas A&M University–San Antonio. No research trip to San Antonio is complete without a visit to the Aggies' new and rapidly expanding library, which now includes the collections that the Daughters of the Republic of Texas gathered over more than a century, now on loan to Texas A&M. Located downtown in the Bexar County Archives Building, this collection has recently opened to the public for research by appointment.

The Béxar Archives are the Spanish and Mexican records of Texas from 1717 to the end of the Mexican regime in 1836. John Wheat's presentation will cover the size and scope of the archives—encompassing military, civilian, and missionary affairs, Indian relations, revolutions, and much more—including official correspondence, reports, and community censuses that reveal the realities of life from the most humble *jacal* to the wealthiest palacio-style *ranchos*.

Members of the Society have many good reasons to register for this superb Save Texas History program. This coming September 14 and 15, I hope you'll remember the Alamo—and join me in celebrating San Antonio's 300th birthday. *Feliz cumpleaños, San Antonio de Béxar!*



Top: San Antonio's San Fernando Cathedral features a nearly nightly light show that tells stories of San Antonio's history. Bottom: San Antonio features some of the nation's most historic margaritas. Photos by David A. Furlow.

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Calendar of Events

Society-related events and other events of historical interest

Summer/Fall 2018

The Museum of the Coastal Bend continues the exhibit “Sunken History: Shipwrecks of the Gulf Coast.” The museum displays important collections of French, Spanish, Mexican, and Texas artifacts, as well as artifacts from the French warship *La Belle* and the French cannons that once guarded La Salle’s Fort St. Louis. It is located on the campus of Victoria College at 2200 East Red River, Victoria, Texas, at the corner of Ben Jordan and Red River. For additional information, see <http://www.museumofthecoastalbend.org/exhibits>.

Summer/Fall 2018

The Bob Bullock Texas History Museum’s “La Belle: The Ship That Changed History” exhibition continues in the Museum’s first floor Texas History Gallery. The hull of the sunken *La Belle* is open for viewing. <http://www.thestoryoftexas.com/la-belle/the-exhibit>. The museum is located at 1800 Congress Ave., Austin, Texas 78701.

Throughout 2018

The Bryan Museum’s galleries offer artifacts and records from all periods of Texas and Southwestern history. J.P. Bryan, Jr., a descendant of Moses Austin and a former Texas State Historical Association President, founded this museum at 1315 21st Street, Galveston, Texas 77050, phone (409) 632-7685. Its 70,000 items span 12,000 years. <https://www.thebryanmuseum.org/>. <https://www.thebryanmuseum.org/exhibitions-upcoming>.

Throughout 2018

The Texas Historical Commission’s new Museum and Visitor Center at San Felipe de Austin State Park’s galleries present the story of the capital of Stephen Fuller Austin’s colony in Texas. The Grand Opening of this new museum occurred on April 27, 2018, the first day of a three-day Grand Opening weekend. See the News Item in this issue of the *Journal*. The San Felipe de Austin site is located at 15945 FM 1458, in San Felipe, Texas, about a mile north of I-10. For more information go to www.visitsanfelipedeAustin.com or call 979-885-2181.

Summer 2018 through
October 22, 2018

The Bryan Museum presents a special exhibition, “The Life and Times of Charles Goodnight,” to honor the Texas cattleman whose exploits and explorations inspired Larry McMurtry’s novel *Lonesome Dove*. J.P. Bryan, Jr., a descendant of Moses Austin and a former Texas State Historical Association President, founded this museum at 1315 21st Street, Galveston, Texas 77050, phone (409) 632-7685. Its 70,000 items span 12,000 years. <https://www.thebryanmuseum.org/exhibitions-upcoming>.

Summer 2018 through
January 27, 2019

Rodeo! The Exhibition, a dynamic and comprehensive exhibition at the **Bob Bullock Texas History Museum**, brings the excitement of rodeos and livestock shows from around the state into the Museum. The museum is located at 1800 Congress Ave., Austin, Texas 78701.

September 7, 2018

The Society’s Annual John Hemphill Dinner will take place at the Four Seasons Hotel in Austin. Justice Dale Wainwright, the Society’s 2017-18 president, will preside over the evening program, which features a keynote address by Fifth Circuit Court Chief Judge Carl Stewart. For ticket information, visit the Society’s website at <http://www.texascourthistory.org/hemphill> or email tschs@sbcglobal.net.

September 8, 2018

The Texas Supreme Court Annual BA Breakfast will take place at the Texas Law Center in Austin. Ticket information is available this at <http://www.texascourthistory.org/SCOTXbaBreakfast>.

September 14-15, 2018

The Texas General Land Office’s 9th Annual *Save Texas History* Symposium returns to the Menger Hotel to focus on “San Antonio and the Alamo: Connecting Texas for Three Centuries.” TSCHS is one of the sponsors. The Menger is located at [204 Alamo Plaza San Antonio, TX 78205](http://www.menger.com). The symposium is limited to only 200 registrants. Frank de la Teja, Amy Porter, James Crisp, Mark Allan Goldberg, Everett L. Fly, Laura Hernandez-Ehrisman, Gregory Garrett, and Douglass McDonald will speak. Alamo Battlefield Tours and Pioneer Surveying of the Alamo will also be offered.

November 8-11, 2018

The American Society for Legal History will be having its 48th annual meeting in Houston, Texas, at the Hilton-Americas, at a special discounted hotel rate. <http://aslh.net/upcoming-conference/>.

November 14, 2018

10:15 a.m. The Texas Supreme Court Historical Society’s Board of Trustees’ Fall 2018 meeting begins in the Hatton Sumners Room at the Texas Law Center, 1414 Colorado Street Austin, TX 78701.

November 14, 2018

1:30 p.m. The Texas Supreme Court Historical Society's Great War Commemorative Committee, chaired by Judge Mark Davidson, celebrates the service and sacrifice of seven Texas Supreme Court Justices, two Court of Criminal Appeals Judges, and two Governors of Texas.

The commemoration, which marks the 100th anniversary of the November 11, 1918 Armistice that ended World War I, will take place in the Texas Supreme Courtroom on the third floor of the Capitol, 1100 Congress Ave., Austin, Texas 78705. See the article on page 110 of this *Journal*. For the location, see http://www.tspb.state.tx.us/plan/brochures/doc/in_print/capitol_brochure/capitol_brochure.pdf.

November 15, 2018

6:00 p.m. The Houston Philosophical Society invites members of the Texas Supreme Court Historical Society to attend David Furlow and Lisa Pennington's program, "Did Women's Work (Dairying) Save Plymouth Colony?" at the Houston Philosophical Society's November 2018 Meeting at the Cohen House Faculty Club, Rice University Campus, 6100 Main Street, #2, Houston, TX 77005. Anyone interested in attending should contact Houston Philosophical Society President David A. Furlow at 713.202-3931 or dafurlow@gmail.com.

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DISCLAIMER

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

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

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2018-19 Membership Upgrades

The following Society member has moved to a higher dues category since June 1, 2018, the beginning of the membership year.

CONTRIBUTING

Rachel Stinson

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2018-19 New Member List

The Society has added 19 new members since June 1, 2018, the beginning of the membership year. Among them are 18 Law Clerks for the Court(*) who will receive a complimentary one-year membership during their clerkships.

REGULAR

James Barnett*
Jimmy Chalk*
Clayton Cromer*
Trevor Deason*
Barbara DePeña*
Hon. Andrew Edison
Rachel Holland*
Elin Isenhower*
Morgan Menchaca*
Allison Que*
Joanna Raines*
Aaron Reitz*
Miles Robinson*
Cory Scanlon*
Emily Shanks*
Kevin Simmons*
Mason Smith*
Henrik Strand*
Jandi Wilson*

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Membership Benefits & Application

Hemphill Fellow \$5,000

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

Greenhill Fellow \$2,500

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

Trustee Membership \$1,000

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

Patron Membership \$500

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

Contributing Membership \$100

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

Regular Membership \$50

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

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Membership Application

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

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

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

Name _____

Firm/Court _____

Building _____

Address _____ Suite _____

City _____ State _____ Zip _____

Phone (_____) _____

Email (required for eJournal delivery) _____

Please select an annual membership level:

☐ Trustee \$1,000

☐ Patron \$500

☐ Contributing \$100

☐ Regular \$50

☐ Hemphill Fellow \$5,000

☐ Greenhill Fellow \$2,500

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